



A.S.No.406 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.406 of 2024

and

C.M.P.No.12262 of 2024

Natarajan

... Plaintiff/Appellant

Versus

1. Sathiyam

2. P.Selvam

... Defendants/Respondents

Prayer:- First Appeal filed under Section 96 of Civil Procedure Code r/w. Order XLI Rule 1 of Civil Procedure Code, 1908, to set aside the Judgment and decree dated 30.11.2023 made in O.S.No.186 of 2022 on the file of the learned III Additional District Judge, Puducherry.

For Appellant : Mr.R.Thiagarajan

For Respondents : Served through paper publication

J U D G M E N T

This First Appeal has been filed to set aside the Judgment and decree passed by the learned III Additional District Judge, Puducherry, in O.S.No.186 of 2022, dated 30.11.2023.

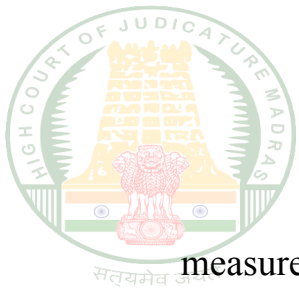
2. The Appellant herein is the Plaintiff before the learned III



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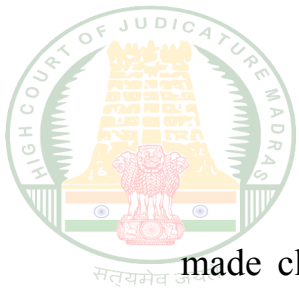
Additional District Judge, Pondicherry. The Plaintiff entered into sale agreement with the first Defendant on 24.08.2017. The property was allotted to the first Defendant through the partition deed dated 28.04.2017 on which date, the sale price for the property was fixed at Rs.12,00,000/-. On the same day, the Plaintiff had paid Rs.10,00,000/- and it was registered as Doc.No.11422 of 2017 with the Sub Registrar, Oulgaret. The sale agreement was prepared on 13.02.2020 and signed by the first Defendant on 14.02.2020, in the presence of witnesses and notary. The terms and conditions were recorded and Rs.10,00,000/- was paid in cash on the same day by the Plaintiff at the premises of Bank of Baroda (formerly Vijaya Bank), Rajiv Gandhi Square, Puducherry. The receipt of the advance amount was mentioned in the sale agreement and was also recorded on the mobile phone as a visual record. The first Defendant, at the first instance should have produced the original title deed, encumbrance certificate, payment details, and all other relevant documents. The first Defendant had not taken any steps towards the performance of his obligations despite the repeated requests made by the Plaintiff. The Plaintiff was always ready and willing to pay the balance sale consideration of Rs.2,00,000/- to the first Defendant and the same was intimated to the first Defendant, who also assured the Plaintiff that he would execute the sale deed on appreciation of the above documents and also would



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measure the property. In the meanwhile, there was Covid -19 lock down.

Therefore, the first Defendant agreed to perform the contract after the month of February, 2021 and the Plaintiff believed the words of the first Defendant and waited patiently. However, the first Defendant did not come forward to execute the sale deed. Therefore, the Plaintiff checked encumbrance regarding the schedule mentioned property with Puducherry Registration Department's Online Website on 12.02.2021. Only then, he came to know that the first Defendant purposely and intentionally entered into a sale agreement with the second Defendant on 01.09.2020. It was subsequent to the sale agreement with the Plaintiff, the first Defendant had entered into a sale agreement with second Defendant where the first Defendant suppressed existence of an earlier sale agreement entered into with the Plaintiff on 13.02.2020. The said sale agreement with the second Defendant is for an imaginary sale consideration value of Rs.50,00,000/-. The Plaintiff approached the Sub Registrar of Oulgaret on 04.03.2021, calling upon the first Defendant to hand over the documents, 30 years encumbrance certificate and revenue records to the Plaintiff within a week and in respect of the schedule mentioned property for oral acknowledgment of his legal rights over the property. It was further requested that the property be measured and sale deed executed in the name of the Plaintiff after receipt of the balance sale consideration of Rs.2,00,000/-. It was



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made clear that upon failure to perform the contract, the Plaintiff would be forced to file a suit for specific performance against the first Defendant. The Plaintiff had issued legal notice to Defendants 1 and 2 in which the Plaintiff insisted on the execution of sale deed, failing which, the Plaintiff would file a Suit for specific performance against the first Defendant. The Plaintiff also informed the second Defendant that he shall not proceed with the execution of sale deed as the sale agreement was in favour of the Plaintiff as his sale agreement was the earliest sale agreement with the first Defendant and the alleged transaction between the first and second Defendant does not bind the Plaintiff. Also, the Plaintiff caused legal notice on the Sub Registrar Office, Oulgaret to record the objection of the Plaintiff with regard to re-survey No.151/37 in his final record, and not to register any Document submitted either by the first Defendant or by any other party, which is in contradiction to the Plaintiff's agreement. The notice to the first Defendant dated 05.03.2021 and 06.03.2021 returned as "refused and unclaimed". The second Defendant acknowledged the notice dated 05.03.2021 and the Sub Register, Oulgaret acknowledged the notice on 08.03.2021. None of the Defendants replied to the notice of the Plaintiff. Therefore, the first Defendant is deemed to have failed to execute his part of contract under the sale agreement. It is the contention of the learned Counsel for the Appellant that during the existence of the sale



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agreement dated 13.02.2020, the subsequent sale agreement dated 01.09.2020 is not bona fide. As precautionary measure, the Plaintiff is forced to measure the property, issue notice to Sub Registrar regarding his objection in respect of schedule mentioned Suit property in the official records and not to register any document which is submitted either by the first Defendant or whomsoever till the existence of the sale agreement with the Plaintiff in respect of the schedule mentioned property. The first Defendant signed the sale agreement on 14.02.2020. The period for performance of the sale agreement and the limitation period to file the Suit is from 14.02.2020 to 14.12.2023. The first Defendant refused to perform his part of contract and the terms and condition of the sale agreement after receipt of legal notice dated 04.03.2021. The postman intimated the notice to the first Defendant. He did not come forward to execute the sale deed from 05.03.2021. The limitation to file the Suit commences from 05.03.2021 and extends upto 05.03.2024 as per Article 54 of Limitation Act, 1963. After return of plaint, the Plaintiff was advised to issue rejoinder of notice to legal notice dated 04.02.2021 to the first Defendant and Sub Registrar, Oulgaret for correction of the date of execution of sale agreement and the receipt of advance amount on 19.07.2022, and the same was acknowledged by the second Defendant. On 20.08.2022, the first Defendant purposely evaded the post and returned the same with the endorsement "left".



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Despite acknowledgment of the legal notice and benefit of reopened legal notice, they had not issued any reply notice. Therefore, the Plaintiff had instituted the Suit seeking a direction to the first Defendant to come and execute the sale deed in favour of the Plaintiff or his nominee in respect of the Suit property on receipt of the balance sale consideration of Rs.2,00,000/- and register the same within a time fixed by this Court and to direct the first Defendant to deliver the vacant possession of the Suit property, and consequently declare the alleged sale agreement dated 01.09.2020 executed between the first Defendant and second Defendant registered with Oulgaret Sub Register Office as Doc. No.1526 of 2020 as null and void *ab-initio* and *non-est* in the eyes of law. Alternatively, directing the first Defendant to pay the Plaintiff a sum of Rs.12,00,000/- which was paid by the Plaintiff to the first Respondent as advance amount. The Plaintiff also prays before this Court to pass orders of permanent injunction restraining the Defendants and their men, agents, servants, or anyone claiming through them and in any way alienating or encumbering the Suit property.

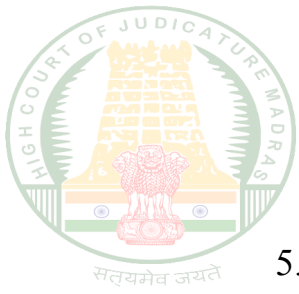
3. After issuance of summons on the Defendants 1 and 2, they remained *ex parte*. Therefore, the learned Judge had examined the Plaintiff as P.W-1 and the documents were marked on the side of the Plaintiff as Ex.P-1 to



Ex.P-13. On appreciation of evidence the learned Judge had in the Judgment observed as follow:-

“5.On perusal of sale agreement Ex.A-2 it seems that both plaintiff and 1st defendant had entered into sale agreement with respect to suit property for Rs.12,00,000/- and the 1st defendant had received a sum of Rs.10,00,000/- as advance. Admittedly, the said document is unregistered document. The 1st defendant did not come forward to contest the suit. Even in the absence of defendant the burden is upon the plaintiff to prove that he is always ready and willing to perform his part of contract. As per the sale agreement a period of three months has been fixed to perform the contract. So, as per the sale agreement the 1st defendant also enforce the contract on or before 13.05.2020 within the period of three months the plaintiff has not taken any steps to enforce the contract. He has issued legal notice only on 04.03.2021 after the stipulated period of three months. Even after issuance of notice the plaintiff was not chosen to file suit for specific performance within reasonable time. Instead of taking steps to perform the contract the plaintiff issued the another rejoinder notice dated 18.02.2022. The contract of the plaintiff would show that he is not always ready and willing to perform his part of contract. Therefore the plaintiff is entitled to relief of specific performance. At the same time, the plaintiff has proved that the 1st defendant has received a sum of Rs.10,00,000/- as advance on the date of execution of sale agreement. Hence the plaintiff is entitled to alternate relief of advance amount of Rs.10,00,000/- with reasonable interest at the rate of 12% per annum from the date of sale agreement till the date of decree and thereafter 6% per annum till realization. I answered this point accordingly.”

4. After hearing both parties and on perusal of the records, the learned III Additional District Judge, Puducherry, had partly decreed the Suit. Aggrieved, the Plaintiff preferred this Appeal before this Court.

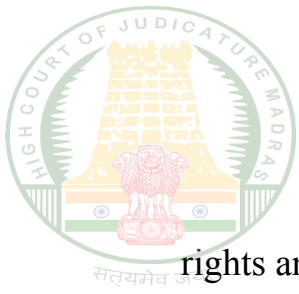


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5. The learned Counsel for the Appellant submitted that the Point for consideration raised by the learned III Additional District Judge, Puducherry is, whether the Plaintiff is entitled to the relief as prayed for? which indicates that the learned Judge had not applied his mind to the facts and circumstances of this case.

6. It is the contention of the learned Counsel for the Appellant that the learned Judge had not considered the provisions of Specific Relief Act, 1963 and Specific Relief Amendment Act, 18/2018 by which Sec 16(c) and Section 20 read with Section 19 were amended. Earlier, it was a discretion of the learned trial Judge to grant the relief. Now, after amendment, the Judge cannot exercise discretion arbitrarily. He/she has to necessarily grant the relief. The discretionary power of the Judge is taken away. The Suit is filed in the year 2022. Therefore, it is subsequent to the amendment. Therefore, it is no longer the discretion of the learned Judge. As per the Specific Relief Act prior to amendment as well as subsequent to the 2018 amendment, the Plaintiff has to prove readiness and willingness to perform the contract.

7. The learned Counsel for the Appellant also invited the attention of this Court to Section 55 of Transfer of Property Act, which deals with the



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rights and liabilities of the seller and the purchaser.

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8. Also, he invited the attention of this Court to Form 47 and Form 48 of Civil Procedure Code regarding pleading in a Suit for specific performance of contract for sale of the property.

9. The learned Counsel for the Appellant further invited the attention of this Court to Section 16 (c) and Section 20 of Specific Relief Act. Section 16(c) is extracted hereunder:-

“Section 16. (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the Defendant.”

As it stood prior to 2018 Act and as it stood consequent to amendment in 18/2018, in a Suit for specific performance, the Plaint should be preferred as per Form 47 and 48 of Civil Procedure Code. After Act, 18/2018, the Specific Relief Act is amended, the Plaintiff shall establish before the Court that the Plaintiff is ready and willing to perform his part of contract. The readiness is a mental state of mind mentioned in the book of ***Pollock & Mulla The Indian Contract & Specific Relief Act by R.Yashod Vardhan 17th Edition.*** Section 20 is extracted as under:-



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“Section 20. Discretion as to decreeing specific performance.(before amendment)—

(1)The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2)The following are cases in which the court may properly exercise discretion not to decree specific performance:

(a)where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b)where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c)where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).Explanation

2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3)The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4)The court shall not refuse to any party specific



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performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

which is amended by the Specific Relief (Amendment) Act, 2018 reads as follows:-

“20. Substituted performance of contract.

(1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872 (9 of 1872), and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency: Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.”

10. Also, the learned Counsel for the Appellant submitted that the



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Court while considering the evidence has to consider whether the parties to the sale agreement were equally placed? and whether the agreement was an unfair advantage to one of the parties to the contract? Here, those facts are not available to the learned Judge. Therefore, the learned Judge had without any reason instead of granting decree for specific performance of contract had granted decree of alternate relief of refund of advance amount, which is perverse as per the Specific Relief Amendment Act, 18/2018.

11. In support of the contention, the learned Counsel for the Appellant relied on the rulings of the Hon'ble Supreme Court in the case of **Chand Rani Vs. Kamal Rani** reported in 1993 (1) SCC 519. The relevant portion reads as follows:-

“Specific Relief Act, 1963 – Ss.9 & 10 and 16 – Vendee's Suit for specific performance of contract for sale of immovable property – Whether time was essence of the contract – No presumption exists – Can be ascertained from express provisions of the contract, nature of the property and surrounding circumstances – Contract stipulating 'Rs.98,000/- (Rupees Ninety-eight Thousand Only) will be paid by the second party to the first party within a period of ten days only' – Despite notices of vendor to perform vendee's part of payment of the stipulated amount, vendee not willing to pay the same unless vacant delivery of possession of part of the property given – In view of the express term of the contract coupled with the conduct of vendee, held, time was essence of the contract and vendee was not ready and willing to perform the contract – Hence High Court justified in setting aside decree for specific performance granted by trial Court – Contract Act, 1872, S.55.”



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12. In support of the contention, the learned Counsel for the Appellant relied on the rulings in the case of ***Thirugnanasambandam Vs. Kannan and Ors.*** reported in **2018 (6) CTC 198**. The relevant portion reads as follows:-

“Contract - Specific Performance - Section 15 of Specific Relief Act, 1963 Appellant challenged order passed by trial court whereby trial court denied relief of specific performance to Appellant and granted alternative relief of refund of Rs. 21,49,425/- and further, directed Appellant to hand over possession of suit properties to Respondents - Whether when Defendants 2 to 8 were not parties to sale agreement, whether they have any locus standi to contest suit for specific performance, especially when it was admitted that Defendant no. 1 alone was owner of suit property - Held, section 15 of Act clearly stipulates that specific performance of contract could be obtained by any party thereto - Hence, it was very clear that so far as specific performance was concerned, it was only between parties thereto - Defendants 2 to 8 admittedly were not parties to suit sale agreement - It was also admitted fact that Defendant no. 1 was very much alive and as such, Defendants 2 to 8 were not legally entitled to claim any right over suit property, especially when Defendant no. 1 alone was owner of property - Therefore court below was not correct even in allowing impleading application filed by Defendants 2 to 8 - As Defendants 2 to 8, who were not parties to sale agreement, have no locus standi to contest case, as Defendant No. 1 was very much alive. [29]”

where an agreement is to be registered, the subsequent sale agreement is to be set aside.

13. The learned Counsel for the Appellant invited the attention of this Court to Ex.A-4 which is the subsisting agreement. The contract of sale entered into with the Plaintiff by the first Defendant has neither been revoked nor rescinded.



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14. Also, he invited the attention of this Court to Sections 27 and 28 of Specific Relief Act, as per which if the first Defendant had not revoked the contract of sale, the Plaintiff is within his right seeking to enforce the contract.

15. The postman had informed the first Defendant regarding the legal notice. However, the first Defendant had refused to receive the notice. Ex.A-11 is the unclaimed returned RPAD cover containing the said notice.

16. Also, the learned Counsel for the Appellant invited the attention of this Court to the conduct of first Defendant in the sale agreement.

17. He also invited the attention of this Court to the Judgment of the learned III Additional District Judge, Puducherry dated 30.11.2023, wherein he alleged that the point for determination was not properly framed. When the trial Court had erred, the Appellate Court shall exercise discretion to render justice for which he had relied on the following rulings:-

(i) In the case of ***Lala Durga Prasad and Others Vs. Lala Deep Chand and Others*** reported in ***(1953) 2 SCC 509 : AIR 1954 SC 75*** the Hon'ble Supreme Court has held as follows:-



“A. Property Law - Transfer of Property Act, 1882 - S. 40 Pt. II and S. 54 Rights of buyer under contract for sale of immovable property - Enforcement of, vide suit for specific performance where property concerned stands transferred at law to subsequent transferee with notice of such prior contract for sale - Proper form of decree in such suit.

-Held, proper form of decree in such suit is to direct specific performance of contract between the original seller and the plaintiff buyer and direct the subsequent purchaser with notice of the prior contract for sale, to join in the conveyance so as to pass on the legal title to the property concerned which resides in him to the plaintiff buyer - Clarified, however, such subsequent transferee would not be bound by any special covenants made between the plaintiff buyer and the original seller - All that such subsequent transferee does is to pass on his legal title to the property concerned to the plaintiff buyer under the prior contract for sale.”

(ii) In the case of ***DR Jiwan Lal And Others Vs. Brij Mohan Mehra And Another*** reported in ***(1972) 2 SCC 757*** the Hon'ble Supreme Court has held as follows:-

“Specific Relief Act, 1963 (47 of 1963) - Suit for Contract specific performance of contract of sale - containing a condition for the benefit of the vendee - Vendee, if could waive the condition Delay of two years in filing suit - If fatal.”

(iii) In the case of ***R.C. Chandiok and another Vs. Chuni Lal Sabharwal and Others*** reported in ***1970) 3 SCC 140*** the Hon'ble Supreme Court has held as follows:-

“Specific Relief Act, 1963 – Sections 21, 22 – Specific Performance of contract – Agreement to sell plot allotted by Rehabilitation Ministry – Sanction delayed – Whether renders the agreement void for uncertainty – Subsequent conduct of Respondents affirming agreement – Whether Respondent can introduce by subsequent letters a condition as to time being essence of the contract – Whether Appellant had necessary funds



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and was willing to perform his part of contract – Whether withdrawal of earnest money deposited in Court a bar to Appellant claiming specific performance – Whether purchases from Respondent bound by decree for specific performance – Appeal decree granting specific performance.”

(iv) In the case of ***Prakash Chandra Vs. Angadlal and Others*** reported in **1979 (4) SCC 393** the Hon'ble Supreme Court has held as follows:-

“9. The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case the conduct of the appellant has not been such as to disentitle him to the relief of specific performance. He has acted fairly throughout, and there is nothing to show that by any act of omission or commission he encouraged Mohsinali and Qurban Hussain to enter into the sale with the first and second respondents. There is no evidence that the appellant secured an unfair advantage over Mnhseinai and Qurban Hussain when he entered into the agreement. Nor is there anything to prove that the performance of the contract would involve the respondents in some hardship which they did not foreses. In our opinion, there is no reason why the appellant should not be granted be relief of specific performance. An application on has been filed before us by the first and second respondents alleging that the said respondents had raised certain court ructions on the site during the pendency of the litigation and, there fore, specific relief should not be granted to the appellant. It is denied by the appellant that any permanent constructions have been erected on the land in dispute. It is said that a temporary wooden structure only has been put up on a portion of the land. The respondents have attempted to show by reference to a map and photographs that permanent constructions have been made on the site. Having regard to the material before us, we are unable to hold that any permanent constructions have been raised on the said land. If the first and second respondents have in fact raised any constructions on the site, it will be open to them to remove the building material when possession is delivered to the appellant.

10. It is urged by learned Counsel for the first and second respondents that the contract for sale contains a clause for payment of damages in case of breach of the contract and that,



therefore, damages should be awarded instead of specific performance. A perusal of the terms of the contract indicates that the stipulation for damages was made only for the purpose of securing performance of the contract and not for the purpose of giving an option to Mohsinali and Qurban Hussain of paying money in lieu of specific performance. Even if a sum has been named in the contract for sale as the amount to be paid in case of a breach, the appellant is entitled in law to the enforcement of the agreement."

(v) In the case of **Smt. Indira Kaur and Others Vs. Sheo Lal Kapoor**

reported in **1988 (2) SCC 488** the Hon'ble Supreme Court has held as follows:-

"Specific Relief Act, 1963 – Sections 16, 19, 22 – Suit for specific performance of contract of sale of immovable property – Question as to which party was not prepared to perform his part of the contract – Concurrent findings of fact of trial Court, lower Appellate Court and High Court regarding – Held, open to interference by Supreme Court under Article 136 in case of manifest injustice – Finding of the Courts below that Plaintiff-Appellant was not ready and willing to perform his part of the contract, held on facts, contrary to the evidence and palpably unreasonable – Hence findings set aside and Plaintiff's Suit for specific performance decreed – Constitution of India, Article 136

Constitution of India – Article 136 – When can Supreme Court interfere with concurrent findings of fact."

(vi) In the case of **S.V.R.Mudaliar (Dead) by LRs. And others Vs.**

Rajabu F.Buhari (Mrs) (Dead) By Lrs. And others reported in **1995 (4) SCC**

15 the Hon'ble Supreme Court has held as follows:-

"27. In so far as the delay in the disposal of the case and the rise in prices during interregnum, Shri Parasaran urges that the delay not having been occasioned by any act of the plaintiff, he may not be punished for the same on the principle of 'actus curiae neminem gravabit' an act of the court shall prejudice no man. As regards the rise in prices,, the submission is that it should not weigh with the court in refusing the relief if otherwise due, as opined in S. V. Sankaralinga Nagar v. P.I.S. Ratnaswami



Nadar, AIR 1992 Madras 389, which decision was cited with approval in [Mr. Abdul Hakeem Khan v. Abdul Menon Khadri](#), AIR 1972 Andhra Pradesh 178. We are in agreement with this view because of the normal trend of price in prices of properties situate especially in metropolitan city like Madras, where the property in question is situate. If merely because the prices have risen during the pendency of litigation, we were to deny the relief of specific performance if otherwise due, this relief could hardly be granted in any case, because by the time the litigation comes to an end sufficiently long period is likely to elapse in most of the cases. This factor, therefore, should not normally weigh against the suitor in exercise of discretion by a court in a case of the present nature.

28.The final onslaught is on the ground that the plaintiffs successors-in-interest having assigned the right to third parties in the meantime, we may not grant the relief because the assignees have, as already noted, purchased litigation and so the transaction could be described as champertous. Shri Parasaran, however, contends that all assignments pendente lite cannot be regarded as champertous; the same would depend on the facts of each case. It is also urged that an assignee has the right to pray for specific performance because he is one who has to be regarded as "representative-in-interest", of which mention has been made in clause (b) of [section 15](#) of the aforesaid Act dealing with the persons who may obtain specific performance. 'Mat an assignee would be such a person was accepted by this Court in [T.M. Balakrishna Mudaliar v. M. Satyanarayana Rao](#), 1993 (2) SCC 740.

29.We are of the view that if in a case the act of the third party could be regarded akin to champertous, the relief of specific performance may be refused; indeed, should be refused. In the present case, however, we find that the assignees themselves applied to this Court for impleading them as appellants and put on record the deeds of assignment, a perusal of which shows that the need for assignment was It for pressing reasons. There has been no hide an seek with the court and the legal representatives of the original plaintiff having received a sum of about Rs. 13 lacs pursuant to the contract of assignments entered between September to November '1988, we do not think if we would be justified in refusing the relief of specific performance, if the conduct of the respondents is also borne in mind, about which one could say that the same is tainted



inasmuch as they departed from truth to bolster their case and went to the extent of not complying with the desire of the trial judge in allowing aforesaid Kamal to be examined even as a court witness. Such parties who pay foul with equity cannot be allowed to use the shield of equity to protect them.

30.The result of the foregoing discussions is that we allow the appeal, set aside the impugned judgment of the Letters Patent Bench and restore that of the trial Judge and decree the suit for specific performance. The respondents or their successors- in-interest would reconvey the property mentioned in Schedule 'A' of the plaint within a period of 1 month, failing which it would be open to the trial Judge to execute the required document(s). In the facts and circumstances of the case, the parties are left to bear their own costs throughout.”

(vii) In the case of ***Sukhbir Singh and Others Vs. Brij Pal Singh and Others*** reported in ***(1997) 2 SCC 200*** the Hon'ble Supreme Court has held as follows:-

“A. Specific Relief Act, 1963 – S. 16 (1) (c) – Readiness and Willingness to perform essential part of the contract of reconveyance of land – Pleading and proof regarding – Averments in the Plaint should be in substance in conformity with Forms 47 and 48 of Appendix AA of CPC (as amended by Allahabad High Court) – Plaintiff -Respondents pleading on proof that they kept on waiting in the office of Sub-Registrar but Defendant-Petitioners did not turn up on the appointed day to have the sale deed executed and registered as agreed upon – Petitioners contending that Respondents did not have sufficient means to pay the sale consideration – Held, Respondents' readiness and willingness to perform their part of the contract proved – Respondent's presence in Sub-REGistrar's Office shows their readiness and willingness as also possession of necessary funds, whereas Petitioner's failure to attend the Office shows their avoidance – Civil Procedure Code, 1908, Appendix AA (as amended by Allahabad High Court) Forms 47 & 48.

B. Civil Procedure Code, 1908 – Or. 6 and Appendix A – Pleadings – Averments should conform with the forms

C. Civil Procedure Code, 1908 – Preamble – Procedure is



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the handmaid to substantive rights.”

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Point for determination:-

Whether the Appeal is to be allowed and the Appellant/Plaintiff is to be granted specific performance of contract for sale/purchase of the property against the first Defendant?.

18. Heard the learned Counsel for the Appellant. Though notice was served on the Respondents, none appeared on behalf of the Respondents.

19. Perused the records and the Judgment of the learned III Additional District Judge, Puducherry.

20. As per the plaint averments and the evidence produced by the Plaintiff before the trial Court, the Plaintiff had entered into a sale agreement with first Defendant on 13.02.2020 which was signed by the first Defendant on 14.02.2020 wherein three months time was granted for the performance of contract regarding the sale of property.

21. Subsequently, Covid lockdown had intervened. Therefore, the Plaintiff was unable to institute the suit at the time as it was beyond the control of both the Plaintiff as well as the first Defendant. After the Covid lockdown

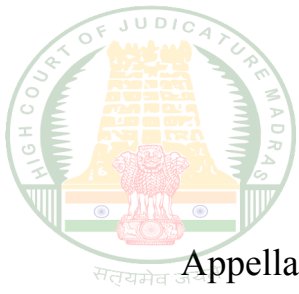


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restrictions were relaxed stage by stage, the first Defendant is alleged to have entered into agreement for the sale of the same property with the second Defendant, whereas the sale price was fixed at Rs.50,00,000/- for the same property for which the first Defendant had entered into sale agreement with the Plaintiff. The subsequent sale agreement between the first and second Defendant was dated 01.09.2020 wherein the sale consideration value was Rs.50,00,000/-, and in the sale agreement it was stated that a sum of Rs.40,00,000/- was received by the first Defendant from the second Defendant, and the said sale agreement was registered. Since the Plaintiff was in consistent touch with the first Defendant he insisted him to execute the sale deed. The first Defendant was also seeking time but he had not come forward to execute the sale deed which forced the Plaintiff to verify the encumbrance from the online website of Sub Registrar, Oulgaret. He came to know that the first Defendant entered into the sale agreement with the second Defendant for an imaginary amount of Rs.50,00,000/-. As per his claim, it is an imaginary amount of Rs.50,00,000/- and the Suit property is not worth Rs.50,00,000/- and it is intended only to cause loss to the Plaintiff. The first Defendant had entered into a sale agreement showing exorbitant amount.

22. It is the submission of the learned Counsel for the



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Appellant/Plaintiff that time was granted to produce the original copy of the partition deed in the family of the first Defendant and other documents regarding title. The Plaintiff was willing to pay the balance sale consideration on the date of execution of sale deed. It was only when the first Defendant evaded, he was forced to seek encumbrance certificate.

23. The sale agreement between the Plaintiff and the first Defendant was notarized in the office of the notary public in the presence of witnesses. It is not a registered sale agreement deed.

24. The Specific Relief Act, 1963 (47 of 1963) is enacted for the purpose of providing specific remedies for enforcing civil rights and obligations. The Specific Relief Act, 1963 is supplementary to the Transfer of Property Act, 1882 and the Registration (Tamil Nadu Amendment) Act, 2012, while transferring the rights of the immovable properties. It is mandatory that the sale agreement which transfers the ownership of the immovable property valued more than Rs.100/- inter vivos has to be compulsorily registered without which it cannot be enforced before a Court of law under Section 53A of the Transfer of Property Act, 1882, and Section 17 (1) (g) of the Registration (Tamil Nadu Amendment) Act, 2012. Thus, an unregistered sale agreement



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cannot be accepted as evidence in the eyes of law.

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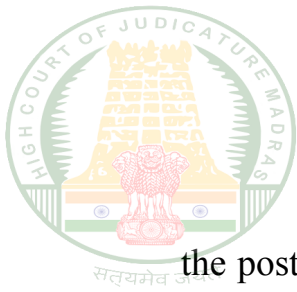
25. It is the contention of the learned Counsel for the Appellant/Plaintiff that he had already paid Rs.10,00,000/- on the date of sale agreement i.e., 14.02.2020 and only Rs.2,00,000/- remains to be paid. He had issued notice under Ex.A-5 dated 04.03.2021 which was received by the second Defendant on 05.03.2021 under Ex.A-7 and received by the Sub Registrar, Oulgaret, Pondicherry on 08.03.2021 as per Ex.A-8. In the same notice, the second Defendant was put on notice that there was an earlier sale agreement with the Plaintiff dated 14.02.2020 and cautioned him. He did not proceed with the sale agreement deed dated 01.09.2020. Also, he cautioned the Sub Registrar, Oulgaret to not to register the sale agreement. While the earliest agreement deed executed by the first Defendant with the Plaintiff on 14.02.2020 is pending, the sale agreement between the first and second Defendant which was registered with the Sub Registrar Office, Oulgaret cannot be proceeded with. The Plaintiff obtained certified copy of the sale agreement dated 01.09.2020 between the first and second Defendant. The same is marked as Ex.A-9. The encumbrance certificate obtained by the Plaintiff from online website of the Registration Department was marked as Ex.A-4. The photo in which the first Defendant received amount of Rs.10,00,000/- from the Plaintiff



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which was recorded on the mobile phone was marked as Ex.A-3 is produced in a compact disk.

26. While considering these evidence along with the pleadings, evidence of the Plaintiff, and the Judgment dated 30.11.2023 by the learned III Additional Judge, Pondicherry in O.S.No.186 of 2022, it is seen that, the first Defendant executed the sale deed on 14.02.2020 and the period of performance of the sale agreement contract by the first Defendant and then the period of limitation to file the Suit starts from 14.02.2020 and extends upto 14.12.2023. Further more, the first Defendant refused to perform his part of contract after receipt of legal notice dated 04.03.2021. The Postman again intimated the notice to the first Defendant. However, the first Defendant did not come forward to execute the sale deed from 05.03.2021. Thus, the limitation period to file the Suit starts from 05.03.2021 and extends up to 05.03.2024 as per Article 54 of Limitation Act,1953. After return of Plaint, the Plaintiff was advised to issue rejoinder notice to his legal notice dated 04.02.2021 to the second Defendant and Sub Registrar for correction of the date of execution of sale agreement and the date of advance amount ie., 18.02.2022 and the same was acknowledged by the second Defendant on 19.02.2022 and the Sub Registrar, Oulgaret on 20.08.2022, but the first Defendant purposely evaded



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the post and returned the same with endorsement “left”. While considering the evidence, the learned Judge had observed as follows:-

“5.On perusal of sale agreement Ex.A-2 it seems that both plaintiff and 1st defendant had entered into sale agreement with respect to suit property for Rs.12,00,000/- and the 1st defendant had received a sum of Rs.10,00,000/- as advance. Admittedly, the said document is unregistered document. The 1st defendant did not come forward to contest the suit. Even in the absence of defendant the burden is upon the plaintiff to prove that he is always ready and willing to perform his part of contract. As per the sale agreement a period of three months has been fixed to perform the contract. So, as per the sale agreement the 1st defendant also enforce the contract on or before 13.05.2020 within the period of three months the plaintiff has not taken any steps to enforce the contract. He has issued legal notice only on 04.03.2021 after the stipulated period of three months. Even after issuance of notice the plaintiff has not chosen to file suit for specific performance within reasonable time. Instead of taking steps to perform the contract the plaintiff issued another rejoinder notice dated 18.02.2022. The contract of the plaintiff would show that he is not always ready and willing to perform his part of contract. Therefore the plaintiff is entitled to relief of specific performance. At the same time, the plaintiff has proved that the 1st defendant has received a sum of Rs.10,00,000/- as advance on the date of execution of sale agreement. Hence, the plaintiff is entitled to alternate relief of advance amount of Rs.10,00,000/- with reasonable interest at the rate of 12% per annum from the date of sale agreement till the date of decree and thereafter 6% per annum till realization. I answered this point accordingly.”

27. The ruling of the Hon’ble Supreme court relied by the learned Counsel for the Appellant/Plaintiff that the time is not of essence to the contract in **Chand Rani Vs. Kamal Rani** reported in **1993 (1) SCC 519** will not



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hold good in the facts of this case.

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28. It is common knowledge that the value of the property throughout India steeply rises day by day. Therefore, the ruling of the Hon'ble Supreme Court in the case of *Saradamani kandappan Vs. S. Rajalakshmi and others* reported in *(2011) 12 SCC 18* time is to be considered in the light of laws supported by the property owner who intends to sell the property. Considering those facts and also considering the fact that the sale agreement between Plaintiff and first Defendant is not a registered sale agreement, whereas the sale agreement entered by first Defendant with the second Defendant is a registered sale agreement. That is why, the Plaintiff was able to get encumbrance certificate and certified copy of the sale agreement. Also, it is to be noted that the sale agreement which is registered carried authenticity and is *bona fide* as the party entering into such a sale agreement has to pay necessary stamp duty and other expenses to the Registration Department. Therefore, it has more value in the eyes of law.

29. As per the Amended Specific Relief Act, only registered sale agreement deed can be considered to invoke the *bona fides* of the Specific Relief Act for execution of sale deed. The claim of the learned Counsel for the Appellant that the first Defendant executed the sale agreement with second



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Defendant for an imaginary amount, cannot be accepted as the parties paid stamp duty and registration expenses and the property value is Rs.50,00,000/- as shown in the sale agreement deed. Therefore, it is not an imaginary amount. In contrast the Plaintiff had avoided registration even when it was made compulsory. Therefore, invoking the Specific Relief Act for execution of sale deed for the value of Rs.12,00,000/- after the value is shown as Rs.50,00,000/-, amounts to causing loss to the State. The Court has the duty to uphold the laws in the country, which are in the statute. Therefore, to render justice, the learned III Additional District Judge had ordered refund of advance amount which was already paid by the Plaintiff to the first Defendant and for which evidence is available through Ex.A-3.

30. The reasoning put forth by the learned Counsel for the Appellant seeking specific performance of contract instead of alternate relief is found unacceptable in the facts and circumstances of the case as stated by the learned trial Judge. The learned trial Judge had observed that from the records it is seen that the Plaintiff was not ready as he had not approached the Court by filing suit for specific performance immediately after getting the reply notice. Instead, he had filed the suit belatedly after the issuance of rejoinder notice. Therefore, he had observed that though the Plaintiff made the claim that he was



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ready and willing to perform his part of the contract, he was not actually ready.

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31. The learned Counsel for the Appellant submits that after 2018 amendment, the discretionary power of the Court had been taken away. Prior to the amendment, in Specific Performance suit, the discretion is always with the trial Judge either to grant relief under the Specific Relief Act or to grant alternate relief whichever is just as per the facts and circumstances of the case. Now after the amendment, this discretion had been taken away.

32. The learned counsel for the Appellant further submitted that the learned Judge had erred in granting alternate relief ignoring the provisions of Specific Relief Act as amended in 2018.

33. The arguments of the learned Counsel for the Appellant seeking specific performance of contract on the ground that after 2018 amendment, the discretionary power of the Court had been taken away which was ignored by the learned trial Judge while granting alternate relief. Therefore, this Appeal. This argument of the learned Counsel for the Appellant is found not acceptable. The argument of the learned Counsel for the Appellant is blowing hot and cold on the same issue. After the amendment, he claims that the



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discretionary power of the trial Judges had been taken away in cases of specific performance, whereby the trial Judge had the discretion either to grant relief of specific performance or in the alternative, refund of amount by the first Defendant. Only for that purpose, he had filed this suit. At the same time, the observation of the learned Judge that the sale agreement is not registered is countered by the learned Counsel for the Appellant stating that registration is not compulsory. The facts of this case attracted prior to the amendment Act. Therefore, what was the rule prior to the amendment is applicable to the case of the Plaintiff. Therefore, the observation of the learned trial Judge that the sale agreement was not registered, whereas the sale agreement entered into between the Defendant-1 with the Defendant-2 was registered. Therefore, the learned trial Judge had given much weightage to the registered sale agreement. Also he had noted that the property is valued at Rs.50,00,000/- which was also attacked by the Plaintiff herein claiming that the sale agreement entered into between Defendant-1 with Defendant-2 is with an exaggerated amount, only to cause loss to the Plaintiff. The property does not fetch Rs.50,00,000/-. It is an exaggerated version. The learned trial Judge had observed that the attack by the Plaintiff that the property is not worth Rs.50,00,000/- was rejected by the learned trial Judge on the ground that without any reason, the Defendant-2 will not pay that much stamp duty and registration fees if the property does not



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fetch Rs.50,00,000/-. Therefore, the claim of the Plaintiff that the property is not worth Rs.50,00,000/- was rejected. Since the Plaintiff had knocked the doors of the Court, it is the duty of the Plaintiff to convince the Court by adducing evidence regarding valuation of the property that it does not fetch Rs.50,00,000/-.

34. As per the claim of the Plaintiff, the Plaintiff had paid Rs.10,00,000/- out of the fixed sale consideration of Rs.12,00,000/- on the date of Ex.A-1, sale agreement deed. The sale agreement deed was not registered. When the sale agreement deed entered between Defendant-1 and the Plaintiff was subsisting, Defendant-1 had entered into sale agreement with Defendant-2 with an exaggerated amount of Rs.50,00,000/- which is a fictitious valuation as it is not the actual value. The value of the property is only Rs.12,00,000/-, cannot be accepted. If what had been stated by the Plaintiff were true, the Plaintiff ought to have obtained a guideline value from the Sub-Registrar concerned as a document. He had not done so. Therefore, as rightly observed by the learned trial Judge, the valuation of the property given by the Defendant-1 in favour of the Defendant-2 that Rs.50,00,000/- is the value of the property fixed on the date of the sale agreement deed between Defendant-1 and Defendant-2 without parting with huge amount as stamp duty and



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registration fees for Rs.50,00,000/- the sale agreement between Defendant-1 and Defendant-2 cannot be registered. The said observation of the learned trial Judge is found to be a well reasoned judgment. For a meagre amount of Rs.12,00,000/-, a property worth Rs.50,00,000/- is attempted by the Plaintiff herein which cannot be accepted by any Court of law. The claim of the Plaintiff that after sale agreement, the Plaintiff could not pay the balance amount within time, due to Covid lockdown is found acceptable. At the same time, he issued notice to the Defendant-1 calling upon the Defendant-1 to come and execute the sale deed, the first Defendant had sent a reply notice denying the claim of the Plaintiff. Ex.A-1 is the photostat copy of the partition deed of Defendant-1. Ex.A-3 is the photo with Compact disc. Ex.A-4 is the Online copy of the sale agreement deed copy. Ex.A-5 is the Office copy of the legal notice issued to the first Defendant by the Plaintiff and the Sub Registrar, Oulgaret. Ex.A-6 is the return postal cover. Ex.A-7 is the acknowledgment for the receipt of notice by Defendant-2. Ex.A-8 is the acknowledgment card regarding legal notice sent by the Plaintiff being received by the Sub Registrar, Oulgaret. Ex.A-9 is the certified copy of the sale agreement between Defendant-1 and Defendant-2 dated 01.09.2020. Ex.A-10 is the Office copy of the rejoinder by the Plaintiff to the first Defendant. Ex.A-13 is the returned postal cover by the Defendant-1. The reasoning by the learned Additional



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District Judge, Puducherry in refusing to grant the relief of specific performance and instead granting the alternate relief is found proper. It is a well reasoned judgment.

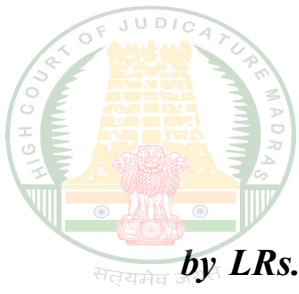
35. The learned Counsel for the Appellant claims that the suit was filed after the amendment of Specific Relief Act 1963 as amended as on Act 18 of 2018 by which it is mandatory to register the sale agreement. When the Plaintiff had not registered the sale agreement, the Plaintiff had failed to act as per the amended Specific Relief Act. At the same time, the Plaintiff relies on the amended Act for seeking decree for specific performance of contract for purchase of the property by the Plaintiff. The conduct of the Plaintiff is found unacceptable considering the fact that he had not been ready and willing to perform his part of the contract. Still considering the period as covid lockdown period, the learned Judge had considered the plight of the Plaintiff and granted alternate relief. Instead, the Plaintiff had approached this Court seeking specific performance of contract for sale of the property seeking to set aside the sale agreement between the Defendant-1 and Defendant-2.

36. If the Plaintiff had registered the sale deed, it could have had some authenticity. The first Defendant could not have entered into sale agreement,



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since it was a registered sale agreement deed. Here the Plaintiff had not registered the sale agreement. But claims the benefit of the amendment in the year 2018 regarding the powers of the trial Judges that they shall not grant alternate relief yet they shall grant specific performance. When the Plaintiff had not followed or obeyed the Amended 2018 Act, the claim of the Plaintiff seeking to enforce an unregistered sale agreement deed with a value which is very much different from the value of the property shown under Ex.A-9 where the value of the property is shown as Rs.50,00,000/- cannot be enforced by this Court. The reasoning of the learned III Additional District Judge, Puducherry granting alternate relief is found proper as per the Specific Relief Act. In the light of such development, the rulings relied on by the learned Counsel for the Appellant in (i) ***Chand Rani Vs. Kamal Rani*** reported in ***1993 (1) SCC 519***; (ii) ***Thirugnanasambandam Vs. Kannan and Ors.*** reported in ***2018 (6) CTC 198***; (iii) ***Lala Durga Prasad and Others Vs. Lala Deep Chand and Others*** reported in ***(1953) 2 SCC 509 : AIR 1954 SC 75***; (iv) ***DR Jiwan Lal And Others Vs. Brij Mohan Mehra And Another*** reported in ***(1972) 2 SCC 757***; (v) ***R.C. Chandiok and another Vs. Chuni Lal Sabharwal and Others*** reported in ***(1970) 3 SCC 140***; (vi) ***Prakash Chandra Vs. Angadlal and Others*** reported in ***1979 (4) SCC 393***; (vii) ***Smt. Indira Kaur and Others Vs. Sheo Lal Kapoor*** reported in ***1988 (2) SCC 488***; (viii) ***S.V.R.Mudaliar (Dead)***



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by ***LRs. And others Vs. Rajabu F.Buhari (Mrs) (Dead) By Lrs. And others***

reported in ***1995 (4) SCC 15*** and (ix) ***Sukhbir Singh and Others Vs. Brij Pal Singh and Others*** reported in ***(1997) 2 SCC 200*** will not help the case of the Plaintiff as he had failed to observe the amendment in the Registration Act which makes it compulsory for registration of documents regarding immovable property whether it is sale agreement or sale. Under those circumstances, when he failed to adhere to the Registration Act as amended which mandatorily insist for sale agreement to be registered. The reliance placed on the amendment to the Specific Relief Act regarding discretion of the learned trial Judge cannot at all be accepted. The Court will not come to the rescue of the person who failed to adhere to the statutory rules.

37. In the light of the above discussion, ***point for determination is answered in favour of the Defendants/Respondents and against the Plaintiff/Appellant.*** The Judgment and decree dated 30.11.2023 made in O.S.No.186 of 2022 on the file of the learned III Additional District Judge, Puducherry is not perverse. It is a well reasoned judgment.

In the result, this ***Appeal Suit is dismissed.*** The Judgment and decree dated 30.11.2023 made in O.S.No.186 of 2022 on the file of the learned III



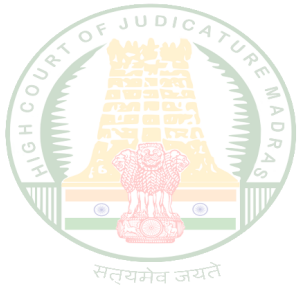
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Additional District Judge, Puducherry, is confirmed. No costs. Consequently,
connected miscellaneous petition is closed.

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25.06.2025

dh/shl
Index : Yes/No
Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

dh/shl

To

1. The III Additional District Judge,
Puducherry.
2. The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
A.S.No.406 of 2024

25.06.2025