



A.S.No.509 of 2022 & C.M.P.No.18736 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 08.07.2025

Pronounced on: 17.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.509 of 2022
& C.M.P.No.18736 of 2022

1. V.V.Ravikumar,
S/o.V.S.Sai,
Door No.10/324-Y Balaji Nagar,
Jagathala Road,
Aruvankadu Post,
The Nilgiris.

2. Ajay Gyanoba Aknam,
S/o Gyanoba Bagaiah Ankam,
Door No. 10/324-XI, Balaji Nagar,
Jagathala Road,
Aruvankadu Post, The Nilgiris.

... Appellant/Defendants 2 & 3

/versus/

1. Mrs.M. Vijayam,
W/o late R.V. Mani,
Door No, 129, Rajaji Nagar,
Coonoor,
The Nilgiris District.

... Respondent/Plaintiff

2. N.R.Rajan,
S/o.N.J Raman,
Door No.3/52, Naihatty Hamlet,
Melur Village & Post Coonoor Taluk,
Nilgiris -643 221.

... Respondent/1st defendant



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3. G.Malliga,
W/o.T.Shanmuga Sundaram,
Door No.207, Thangalakshmi Illam,
Ottu Pattarai,
Coonoor Taluk, The Nilgiris.

... Respondent/4th defendant

Prayer:- Appeal Suit has been filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code, pleased to allow the First Appeal and set aside the Judgment and decree dated 15.12.2020 in O.S.No.34 of 2013 on the file of Learned District Judge, The Nilgiris at Udhagamandalam.

For Appellants : Mr.N.Ramesh

For Respondents : Mr.R.Prabakar, for R1
: Mr.Bobbie, for R2
: Mr.S.Kanmani Annamalai, for R3

J U D G M E N T

The Appeal is directed against the decree for specific performance passed in O.S.No.34 of 2013 on the file of the District Judge, Nilgiris.

2. The subject matter of the suit is the sale agreement dated 04.02.2011 entered between the plaintiff Mrs.M.Vijayam (purchaser) and Mr.N.R.Rajan (vendor), in respect of 14.34 acres out of 10.43 acres of tea garden situated at Coonoor.



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3. The averment in the plaint in brief are as follows:

The first defendant is the absolute owner of the suit property. He got the property through the family arrangement between himself and his family members. The first defendant offered to sell the property to the plaintiff free from all encumbrances for a total consideration of Rs.10,00,000/-. The plaintiff accepted the offer and entered into an agreement on 04.02.2011. The part of the sale consideration of Rs.5,00,000/- already paid in cash and the balance sale consideration of Rs.5,00,000/- was paid by cheque on the date of the agreement.

4. After agreement and passing of full consideration, the first defendant handed over the originals of title deeds, the death certificate of his mother, legal heir certificate, the *chitta* and a notarised affidavit from the father and sisters of the first defendant authorising the first defendant to sell the property. He has also executed a General Power of Attorney (GPA) as a mark of receiving the full consideration and giving power to deal with the property to one Mr.A.Krishnan. The said General Power of Attorney was registered on the same day at the Sub Registrar Office, Coonoor.

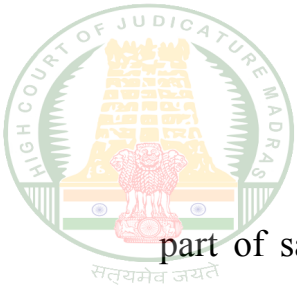


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5. A period of three months time was fixed for completion of the sale transaction, subject to the demarcation of the property agreed to be conveyed and to put in possession of the plaintiff. However, on 4th May 2011, the first defendant sought further time till 30th April 2013 for demarcating the land and made an endorsement to that effect on the back of the sale agreement. Thus, it is evident that time was not the essence of the contract. The land proposed to be conveyed was demarcated in the month of October 2011 and handed over to the plaintiff on 30th October, 2011. The time to execute the sale deed was extended for further period and the same was duly endorsed in the sale agreement.

6. The plaintiff was always ready and willing to complete the sale transaction and was consistently approaching the first defendant, requesting him to execute the sale deed as agreed. However, the first defendant evading the request and neither came forward to give confirmation affidavit stating that the General Power of Attorney given to Mr.A.Krishnan is still in force and the approved life certificate for the plaintiff to get the sale deed registered through his Power Agent. The legal notice dated 27.04.2013, calling upon the first defendant to perform his



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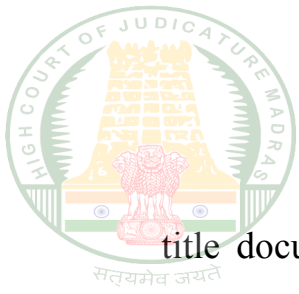
part of sale agreement, was received by the first defendant without any demur.

Hence, the suit was filed for specific performance of the agreement to execute the sale deed, or in alternate, for a direction to refund the sale consideration of Rs.10,00,000/- with interest at 12 % per annum.

7. After the institution of the suit, the plaintiff came to know that the first defendant had sold a larger extent of property including the suit property to third parties under two different sale deeds. These transactions were created to defraud the plaintiff. Hence, the subsequent purchasers impleaded as defendants 3 to 4 for proper adjudication.

8. Gist of the Written statement filed by the first defendant:

The suit for specific performance is not maintainable. The suit schedule property is not the absolute property of the first defendant. The suit property along with other properties are held in common as joint family properties. The sale agreement dated 04.02.2011 was not executed with the intention to sell the property. It was executed as security for the loan availed from one Vidya Prakash to start a tea factory. On the request of Mr.Vidya Prakash, the original



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title documents were handed over to Vidya prakash and the General Power of

Attorney was executed and registered in favour of Mr.A.Krishnan. However, the possession of the suit property is with the first defendant till date. Till December 2013, the interest at the rate of 12% for the loan of Rs.10,00,000/- was paid regularly to Vidya prakash. Only for the past three months, there is default in paying the interest. The first defendant is ready to repay the loan with interest. Mr.A.Krishnan, who is the power agent of the first defendant, is a necessary party to the suit. Therefore, the non-joinder of A.Krishnan renders the suit bad for misjoinder of necessary parties.

9. Gist of the written statement filed by 2nd and 3rd defendants:

The suit filed for specific performance of an unregistered sale agreement, is hit by Section 17 of the Registration Act. The defendants 2 and 3 purchased larger extent of land including the suit property in the year 2011, much prior to the institution of the present suit. These defendants are not necessary parties to the proceedings. The suit is not maintainable against them, being *bonafide* purchasers for value.



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10. The 4th defendant remained absent and therefore, set *ex parte*.

Based on the pleadings, the following issues were framed:

1. *Whether the Sale agreement dated 04.02.2011 was executed by the defendant as security for the loan allegedly he received from one Vidya Prakash of Coonoor?*

2. *Whether plaintiff is entitled to the relief of Specific Performance as prayed for in the suit?*

3. *Whether the plaintiff is entitled to the relief of alternative relief of refund of advance amount?*

4. *To what relief the plaintiff is entitled, if any?*

Additional issue:-

1. *Whether the defendants 2 to 4 are bonafide purchasers of the suit property ?*



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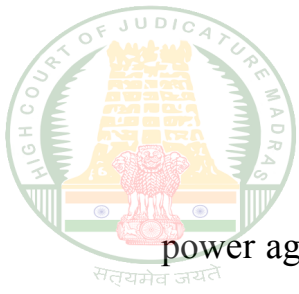
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11. The plaintiff Mrs.M.Vijayam, Mr.Vidyaprakash and Mr.A.Krishnan were examined as PW-1, PW-2 and PW-3 respectively. Ex.A1 to Ex.A11 were marked on the side of the plaintiff. The second defendant, Mr.V.V.Ravikumar, was examined as DW-1 and three documents marked as Ex.B1 to Ex.B3 were marked were produced on the side of the defendants.

12. Based on the evidence adduced by the plaintiff and the defendants, the trial Court decreed the suit as prayed for and directed defendants 1 to 4 to execute the sale deed in favour of the plaintiff within a period of two months from the date of judgment i.e., 15/12/2020.

13. The defendants 2 and 3, who are the purchasers of the property being aggrieved had filed this appeal.

14. The Learned Counsel for the appellants/defendants 2 & 3 submitted that the appellants purchased 7.33 acres of land on 10/09/2012 for a consideration of Rs.29,32,000/- under Ex.B1. The first defendant through his



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power agent, Krishnamoorthy sold the property for valuable consideration and put the appellants in possession of the property. The power of attorney deed dated 07.09.2012 executed in favour of Krishnamoorthy, is marked as Ex.B2.

15. The suit property originally owned by Raniammal, the mother of the first defendant. On her death intestate, the property devolved on her husband N.J.Raman, her son N.R.Rajan (first defendant) and her daughters Chitra, Lakshmi and Jaya. The other legal heirs of Raniammal released their rights in the property through a registered release deed dated 05.09.2012. The perusal of the registered documents, it will be evident that the appellants (defendants 2 and 3) purchased the property through the power agent after paying the consideration.

16. The trial Court failed to consider the fact that the appellants are *bonafide* purchasers for value and that the plaintiff cannot claim specific performance based on an unregistered sale agreement and a defunct power of attorney deed.



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17. The Learned Counsel further submitted the Court below failed to

consider the pleadings properly and also failed to frame appropriate issues. In a suit for specific performance, the core issue to be decided is the 'readiness and willingness' of the plaintiff to perform their part of the contract. In this case, no issue regarding the plaintiff's readiness and willingness was framed.

18. The suit property is not the absolute property of the first defendant. It is the property of Raniammal who is the mother of the first defendant. On the date of the sale agreement, the other legal heirs of Raniammal were co-sharers of the suit property. The sale agreement by the first defendant alleged to have entered with the plaintiff on 04.01.2011 is not legally enforceable. The trial Court failed to consider the defective right of the first defendant to enter into agreement of sale solely.

19. Per contra, the Learned Counsel appearing for the respondent submitted that the appellants are subsequent agreement holders and not *bonafide* purchasers for value. Even without producing the original title documents, they claim to have purchased the property through the power agent of the 1st defendant.



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The allegation that Ex.A1, the agreement for sale, was only executed as a security

for the loan is made contradicting to the contents of a written document.

Moreover, the best person who could substantiate such claim is that the vendor the 1st defendant. He had not been examined as a witness in the case. Having received the entire sale consideration and had given possession of the title deeds and the property towards part performance, the 1st defendant is bound to execute the sale deed in favour of the plaintiff. The ready and willingness by paying the entire sale consideration in the date of agreement and taking over the possession is well proved, the trial Court, after due consideration of the facts and evidence, had rightly allowed the suit for specific performance. Therefore, the judgment and decree passed by the trial Court deserve to be confirmed.

20. To the pre-suit notice, 1st defendant had not replied denying the execution of the sale agreement, nor replied stating that it was executed only as a security. While so, without even examining the principal and the power of attorney holder Krishnamoorthy, the validity of the sale relied by the defendants 2 and 3 is doubtful.



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Point for consideration:-

Whether the relief of Specific Performance, based on the unregistered sale agreement dated 04.02.2011 is sustainable in law in view of the alienation of the suit property prior to filing of the suit?

21. The suit property forms part of a larger extent of land measuring 10.43 Acres. The suit sale agreement, marked as Ex.A1. It is dated 04.02.2011. This sale is in respect of 4.34 acres out of 10.43 acres. It is an admitted fact that the property originally belongs by Raniammal, who died intestate, leaving behind her husband and four children. Ex.A6, dated 12.09.2007 is a notarised affidavit executed by husband and three daughters of Raniammal. In this affidavit, they have stated that they have no objection in including the name of N.R.Rajan (1st defendant) in the Chitta and they also have no objection, if said N.R.Rajan intends to sell the properties mentioned in the schedule. Among the properties listed in the schedule to the said affidavit S.No.192/2 measuring 4.32 acres out of 10.43 acres is included and the said property is the subject matter of the present suit. When the sale agreement Ex.A1, dated 04.02.2011 entered between N.R.Rajan (1st defendant) and Mrs.Vijayam (plaintiff), in respect of 4.32 acres of land out of



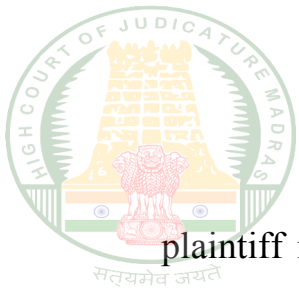
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10.43 acres of land in Old S.No.192/2 and new S.No.118/3 (part), the other legal

heirs of Raniammal were still the owners of the suit property. Hence, Ex.A1 cannot be construed as a valid sale agreement for not been executed by all the co-owners of the property.

22. The affidavit marked as Ex.A6 only indicates that they have no objection to sell the property but it does not indicate through the affidavit they have relinquished their right in the property or authorised the 1st defendant to enter into a sale agreement on their behalf. Contrarily, Ex.B1, Ex.B2 and Ex.B3 which are the documents relied by the defendants 2 & 3 clearly proves that a registered release deed in favour of 1st defendant by other legal heirs of Raniammal was executed on 05.09.2012. Subsequently, the 1st defendant has executed a power of attorney in favour of Mr.Krishnamoorthy on 07.09.2012 (Ex.B2), who, in turn had sold the property to the appellants on 10.09.2012 under Ex.B1.

23. About their bonafideness, it is contended by the plaintiff that they have purchased the property even without the original title documents and their purchase through the power agent was not proved. The said contention by the

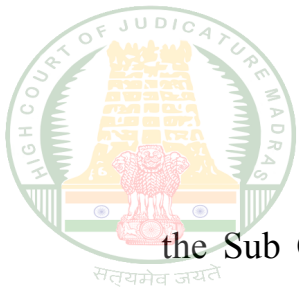


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plaintiff is not sustainable. For the reason best known, the 1st defendant though had filed written statement, had not mounted the witness box. However, his written statement had led to the framing of the first issue:

“Whether the Sale agreement dated 04.02.2011 was executed by the defendant as security for the loan allegedly received from one Vidya Prakash of Coonoor?”

24. To disprove the contention of the first defendant, the plaintiff has examined Mr.Vidya Prakash as P.W.2. He is none other than the son of the plaintiff. He had deposed that Ex.A1 was executed by the first defendant with the intention to sell the property and that he is one of the witness to the agreement. He further stated that the father of the 1st defendant is the another witness. P.W.2 also deposed about the extension of time for execution of the sale deed, which was granted twice and the endorsements made on Ex.A1 to that effect. In the cross examination, P.W.2 admits that, for 3 Acres of land in the same survey number, he had entered into a sale agreement with the 1st defendant and the suit for specific performance based on the said agreement is filed by him, which is pending before



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the Sub Court, Ooty and later transferred to Sub Court, Coonoor. In the cross examination, it is specifically suggested that Ex.A1 was executed only as a security for the loan. However, the trial Court had erroneously observed that there is no suggestion to the witnesses that Ex.A1 was given only as a security.

25. Be that as it may, as rightly pointed out by the Learned Counsel for the appellant, there is no issue framed regarding the plaintiff's ready and willingness to perform her part of the contract. Though, the Learned Counsel for the respondent states that, since the entire sale consideration already paid, there was no necessity for a specific plea for ready and willingness as well as evidence to that effect since payment of full consideration is evident of readiness.

26. This Court is of the view that, 'readiness and willingness' are two different expression. It is not only confined to paying the sale consideration or tendering the sale price but it also includes the intention to purchase the property. In the sale agreement marked as Ex.A1, there is a covenant that the vendor shall measure and demarcate the property agreed to be conveyed and to put the purchaser in possession of the same. Initially, the time for completion of contract



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is mentioned as three months and also the time is essence of contract. The plaintiff rely upon the endorsements on the back of the agreement for sale. These endorsements extend the time for performing the contract initially for a period of six months from 04.05.2011 and then for a further period of 1½ years from 30.10.2011.

27. In the 2nd endorsement, it is stated that the physical possession of the suit property handed over to the purchaser, which means that the demarcation of the property intend to convey was over and the specific portion been handed over to the plaintiff (purchaser) on 30.10.2011. While so, after full consideration paid and possession along with the title documents given to the purchaser, there is no necessity for extending the time for registering the deed by further period of 1½ years. This indicates, the plaintiff not ready to get the sale deed soon after demarcation of the property.

28. Be that as it may, the pre-suit notice issued by the plaintiff only on 26.04.2013. By that time, the 1st defendant had already executed a power of attorney in favour of one Mr.Krishnamoorthy on 07.09.2012 and the said

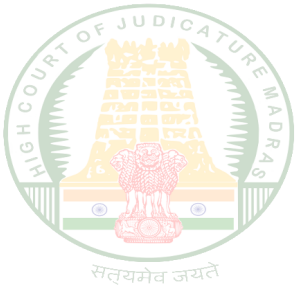


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Krishnamoorthy had sold the property to the appellants on 10.09.2012, which could be seen from Ex.B1 and Ex.B2. On the date when the 1st defendant made the 2nd endorsement i.e., on 30.10.2011 and the alleged handing over the possession, he was not the only owner of the property. His mother and sisters were other co-sharers. On the day, the pre-suit issued nearly after 1½ years i.e., on 26.04.2013, the property already been sold to the appellants.

29. Having coming to know about the sale of the suit property on 10.09.2012, the plaintiff ought to have sought for amendment of the plaint for including the prayer to declaring the sale deed dated 10.09.2012 as null and void. However, for reason best known no such declaration was sought by the plaintiff.

30. This Court therefore conclude that sale agreement dated 04.02.2011, entered between the 1st respondent and the plaintiff is not a valid agreement since it is not entered by a person who has title over the suit property absolutely on the date on which the suit agreement entered. Such a defective agreement for a sale cannot be specifically performed.



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31. That apart, with respect to the plaintiff's willingness to get the property transferred into her name, the plaintiff should have produced evidence that she was willing to get the property registered as soon as the demarcation of the land effected. Admittedly, as per endorsement marked as Ex.A3, the possession of the property given to the plaintiff. If so, there is no reason to delay further the execution of sale deed. Grant of further period of 1½ years for the 1st defendant to execute the sale deed is without any reason. This creates suspicion and doubt regarding the willingness of the plaintiff to get the property transferred in her name by due execution of the sale deed.

32. In this context, the non-framing of issue regarding readiness and willingness gains significance.

33. The trial Court had presumed that, having paid the full sale consideration as shown in the sale agreement, readiness and willingness is not a issue for decision. From the conduct of the plaintiff, the defective agreement Ex.A1, apparently not intended for transferring the property. After taking



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possession on 30.10.2011, the plaintiff had not sought for the execution of the sale

deed immediately. The legal notice issued after 1 ½ years i.e., on 26.04.2013.

Even thereafter, the suit was not filed immediately but was presented only on 25.09.2013 another delay of five months. For an agreement entered on 04.02.2011, specifying the time for performing the contract as three months and time is essence of contract, the suit for specific performance was presented only on 25.09.2013, taking advantage of the endorsements made on the back of the agreement. The said endorsement is also only by the first defendant and not by all the other Co-owners. As pointed out earlier, after the 2nd endorsement on 30.10.2011, the plaintiff need not have waited for 1 ½ years to seek for the execution of the sale deed or to file the suit for specific performance.

In *Man Kaur (dead) by LRs. vs. Hartar Singh Sangha* reported in (2010) 10 SCC 512, it is held that:

“17. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his



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obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney-holder of the person concerned.

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40.A person 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a



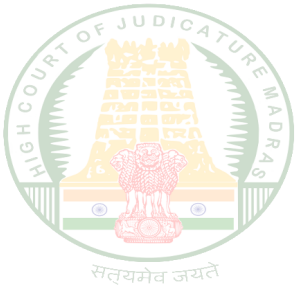
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contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations."

34. It is also to be noted that the A.Krishnan was holding the power of attorney of the 1st defendant, which was executed simultaneously along with the sale agreement on 04.02.2011. The plaintiff admits that the defendant did not come forward to give the life certificate and affidavit for the power agent A.Krishnan for her to get the sale deed registered through the Power Agent. This fact was made known to the plaintiff long before causing of legal notice. While so, the plaintiff need not have waited for a further period of five months to file the suit. These lapses are pointed out to show that the plaintiff willingness was intermediary and not continuous. In such circumstances, the relief of Specific Performance cannot be granted.



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35. The trial Court not only fail to frame issue regarding readiness and willingness, but also failed to take note of the disinterest shown by the plaintiff in getting the sale deed executed in her favour at the earliest point of time. Probably having realised that her sale agreement with 1st defendant is a defective sale agreement. It has been validated only after the release deed executed in favour of the first defendant by the other co-owners on 05.09.2012, the 1st defendant has gained absolute interest over the property. The plaintiff had revived her attempt to enforce the agreement dated 04.02.2011, 26 months after the date of agreement. By that time, the appellant herein had already got the sale deed in their favour.

36. For the reasons stated above, the judgment of the trial Court need to be interfered. Taking into consideration that the 1st appellant had sought for alternate relief of refund of the advance amount paid with interest a decree for refund of advance money of Rs.10,00,000/- with interest of 12% p.a., to be paid by the 2nd respondent/1st defendant from 04.02.2011 till the date of decree and 6% from the date of decree, till the date of realisation is granted.



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37. Accordingly, *Appeal Suit No.509 of 2022 is partly allowed.* The decree for specific performance is set aside. However, the alternate relief of directing the refund of sale consideration of Rs.10,00,000/- along with interest at 12% p.a., from the date of agreement, i.e., 04.02.2011, till the date of decree and from the date of decree till date of realisation 6% p.a., to be paid by the 1st defendant/N.R.Rajan. With costs. Consequently, connected Miscellaneous Petition is closed.

17.07.2025

Index :Yes.
Neutral citation :Yes/No.
bsm

To,
1. The Learned District Judge, The Nilgiris, Udthagamandalam.
2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Appeal Suit No.509 of 2022

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