

A.S.No.745 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2025

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE M.JOTHIRAMAN
A.S.No.745 of 2025**

1.C.Rajeshwari
2.C.Karthik

... Appellants /Plaintiffs

V.

M.Govindammal

... Respondent /Defendant

Prayer : This First Appeal is filed under Section 96 of Code of Civil Procedure 1908 against the judgment and decree dated 08.01.2025 made in OS.No.5286 of 2024 on the file of the XVI Additional City Civil Court, Chennai.

For Appellants : Mr.R.Balasubramanian

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was made by M.JOTHIRAMAN,J.)

Unsuccessful plaintiffs have preferred the appeal. The suit is filed for specific performance and for permanent injunction. The trial Court dismissed the suit in entirety. The parties are hereinafter referred to as per their litigative status before the trial Court.



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2. The brief case of the plaintiffs are as follows:

The plaintiffs knew the defendant's husband namely Mr.Moorthy through their father Mr.Chandrasekaran for the past several years. The said Mr.Moorthy obtained loan from some financial company several years back and he was not able to pay the interest and principal amount. In order to settle the said debts. the said Mr.Moorthy approached the plaintiffs father Mr.Chandrasekaran in the 1st week of February, 2022 and received a sum of Rs.5,00,000/-. Later again, the said Mr.Moorthy approached their father in the 3rd week of September,2022 and borrowed an additional amount of Rs.5,00,000/- and settled the another financial institution's loan by promising to return the entire amount of Rs.10,00,000/- and accrued interest after selling his part of house property situated at 2nd Cross Street, Balaji Nagar Main Road, Kolathur, Chennai -600 099. Believing his promise, the plaintiffs father received loan from other friends and relatives, gave another sum of Rs.5,00,000/- to the said Mr.Moorthy.

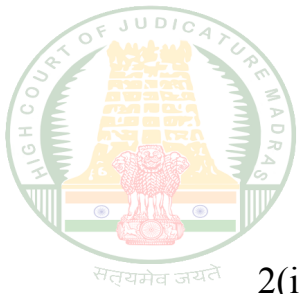
2.(i). On 31.10.2023, the said Mr.Moorthy died due to heart attack. The defendant is the wife of the said Mr.Moorthy undertakes to settle the said loan with interest as soon as possible. The defendant approached the plaintiffs



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on 25.02.2023 and informed that she is going to sell the said house as she is not in a position to settle their debts to the tune of Rs.10,00,000/- with accrued interest amount thereon. As such, the defendant offered to sell the remaining portion of house property to an extent of 1500 sq.ft out of 2400 sq.ft, her husband already sold 900 sq.ft of land to one Mr.Susainathan on 09.03.1998 which is in dilapidated condition for a sum of Rs.25,00,000/-. Since the plaintiffs father also expressed his willingness to purchase the said property by giving a sum of Rs.10,00,000/- with a condition by deducting the previous loan amount of Rs.10,00,000/- which was received by her deceased husband Mr.Moorthy, they executed sale deed in the name of the plaintiffs. Thereafter, the plaintiffs father tendered a sum of Rs.5,00,000/- as cash on 30.02.2023 to the defendant and assured to pay the remaining amount of Rs.7,00,000/-. Then, the plaintiffs father again on 09.02.2023 tendered remaining amount of sale consideration to the tune of Rs.8,00,000/- as cash, for which, stamp paper for Rs.20/- was also purchased in the name of the first plaintiff. As such, on 10.03.2023, the agreement for sale was prepared in favour of the plaintiffs and in the said agreement, the defendant also signed in front of the witnesses on the same day and she handed over the original deed of house property for registration.

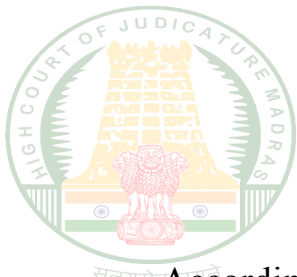


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2(ii). Further, the defendant promised to come to the Sub Registrar Office, Sembiam, Perambur, Chennai-600 011 on 13.03.2023 at 12 noon, but the defendant did not turn up. The next day morning, the plaintiffs and the father went to the defendant's house and the defendant's house was locked. Thereafter, the defendant whereabouts was also not known for a period of four months. During the first week of January 2024, at defendant's relatives house, the plaintiffs insisted the defendant to come to the Sub-Registrar office to execute the sale deed or return the said amount of Rs.25,00,000/- with interest of Rs.50,000/-, but the defendant gave false and evasive reply for her absence and informed that according to her family customs, within a period of one year from the date of death of her husband, no sale deed should be executed nor vacate the house and she promised to execute the sale after performing family rites of her deceased husband. The plaintiffs believed her words and was waiting till 2nd week of March,2024.

2(iii). Incidentally, on 30.04.2014, they happened to see the defendant in the street and insisted her to come to Registrar office for registration or to return the said debt amount or to handover the portion of the suit property, but the defendant took the plaintiffs to her house and promised to handover the possession and she retained single small room till execution of sale deed.



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Accordingly, the plaintiffs received the entire key of the premises except one room. As such, the plaintiffs were in possession and they took much efforts for execution of sale deed, but all their efforts went in vein. Later, they came to understand that the defendant is going to mortgage or sell the suit property for huge amount to others by evading registration to the plaintiffs. Hence, the plaintiffs left with no other option, filed a suit in O.S.No.5286 of 2024 for permanent injunction restraining the defendant from execution of sale deed in respect of the suit property.

3. The defendant did not appear before the Court below, and the defendant was set exparte on 26.11.2024.

4. Based on the pleadings, the trial Court has framed the following points for determination :-

- (i). Whether the plaintiffs are entitled to the relief as prayed for ?
- (ii). to what other relief?

5. Before the Trial Court, on the side of the plaintiffs, the 1st plaintiff examined herself as P.W.1 and Ex. A1 and Ex.A2 were marked.



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6. The findings of the trial Court:

After considering the entire materials on record, the Trial Court concluded that the plaintiffs have not proved their case and the plaintiffs are not entitled to the relief as prayed for in the suit.

7. Learned counsel appearing for the appellants/plaintiffs submitted that the Trial Court failed to consider the Parent Sale deed of the property dated 11.07.1979 in Ex.A1. In Ex.A2 sale agreement and in the plaint, it has been clearly stated that the defendant is the wife of the said Mr.Moorthy and he died on 31.01.2023. The plaintiffs are ready to furnish the death extract of Mr.Moorthy and his Aadhar card to prove it even from the respondent/defendant, but at the time of trial, the trial Court not instructed to furnish it. Further, it is the duty of the defendant to furnish the legal heir certificate but the Trial Court did not insist to furnish the same from either party. The learned counsel further would submit that Section 49 of the Registration Act deals with effects of non-registration of documents required to be registered under the Act. An exception to the general rule is that an unregistered document affecting immovable property can be received as



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evidence of a contract in a suit for specific performance under the Specific Relief Act. The Trial Court had rightly received Exs.A1 and A2 and admitted its contents, but it failed to direct the defendant to execute the sale deed and denied the relief of plaintiffs/appellants in a mechanical manner. The defendant/respondent also received the entire sale consideration and acknowledged the receipt of the amount. Therefore, the suit is ought to be decreed and the impugned judgment and decree dated 08.01.2025 is nothing but an erroneous and against the principals of natural justice.

8. Heard the learned counsel for the appellant. Despite notice sent to the respondent /defendant and her name being printed in the cause list, there is no appearance for the respondent/defendant. We have considered the submissions made on appellant side and perused the available records.

9. The Points for determination arises in this appeal is that,

- (i).Whether the plaintiffs are always being ready and willing to perform their part of contract ?
- (ii).Whether the plaintiffs are entitled to get the relief of specific performance and for permanent injunction as prayed for in the suit?



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10. Admittedly, the respondent/defendant was not chosen to appear before the Trial Court as well as before this Court. In order to prove the case of the plaintiffs, they relied upon the document Ex.A1-Parent Sale deed dated 11.07.1979 and Ex.A2-Sale agreement dated 10.03.2023, along with PW1 proof affidavit.

11. It is well settled that “ the fundamental principle of law is that the plaintiff when he comes to Court must prove his case and he must prove it to the satisfaction of the Court. His burden is not lightened because the defendant is absent. On the other hand, the responsibility increases” (*Deonandan Vs.Janki Singh, 1916 (44) Calcutta 573*).

12. It is relevant to mention that mere absence of the defendant does not of itself justify the presumption that the plaintiff’s case is true. The Court has no jurisdiction to pass exparte decree without any evidence being given by or on behalf of the plaintiff. The Hon’ble Supreme Court of India in the judgment in the case of *Ramesh Chand Ardawatiya vs. Anil Panjwani* reported in **AIR 2003 SC 2508**, wherein, it has been held that while considering the provisions



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of Order IX Rule 6, and Order VIII Rule 10 of the Code of Civil Procedure, observed that even in the suit proceeds ex-parte under Order IX Rule 6, the necessity of proof by the plaintiff of its case cannot be dispensed with.

13. It is seen from the typed set of papers that Ex.A1 and Ex.A2 have been annexed. Ex.A1 is the copy of the sale deed dated 11.07.1979 which shows that one C.P.Rajagopalan and 11 other persons have executed the Power of Attorney in favour of one C.P.Rajagopalan S/o late C.V.Ponnuraja Mudaliar. The said Power of Attorney holder executed the sale deed in favour of one Mr.A.Moorthy s/o late Iyanarappan Naicker with regard to the pieces and parcel of land situate at No.64, Kolathur Village, Saidapet Taluk, Chingleput District more fully described in the Schedule 'A' therein. Further, the recitals shows that A schedule property describes therein relates to Paimash No.219, and New Survey No.136/6 and Patta No.282, situate at No.65, Kolathur Village, Saidapet Taluk, Chingleput District measuring 0.82 cents out of 1 acres and 22 cents. Similarly, 'B' Schedule property mentioned therein stating that all that piece and parcel of land being part of 'A' Schedule land marked as Plot No.6 (six) situate at No.65, Kolathur Village, Saidapet Taluk, Chingleput District comprising in Old Paimash No219 and new Survey no.136/6 and Patta No.282 within the



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Registration District of North Madras and Sub-Registration office of Sembiam
to an extent of 1 ground.

14. On perusal of the Ex.A2- xerox copy of agreement of sale deed dated 10.03.2023 shows that one Govindammal wife of Mr.Moorthy have executed the agreement of sale in favour of the plaintiffs with regard to the property situate at No.65, Kolathur Village, Saidapet Taluk, Chingleput District comprising in Old Paimash No219 and new Survey no.136/6 and Patta No.282, 2nd Cross Street, Balaji Nagar Main Road, Kolathur, Chennai -600 099 to an extent of 2400 sq.ft with the house built therein. Further, it reveals that the said Mr.Moorthy had sold a portion of 900 sq.ft to one Mr.Susainathan son of Mr.Anthony on 09.09.1998. and the remaining extent of 1500 sq.ft is the suit schedule property. Further, one N.Chokkalingam S/o Nagesan and K.Ramani Bai W/o Kuppan have signed as witnesses in the last page.

15. It is the specific case of the plaintiffs that they have been always ready and willing to perform their part of contract, but the defendant who was not inclined to execute the sale deed despite accepting the sale consideration amount.



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16. The law is well settled, the plaintiffs are obliged not only to make specific statement and averments in the plaint, but it is also obliged to adduce oral and documentary evidence to show the availability of funds to make payments in terms of the contract in time. It is relevant to cite the judgment of Hon'ble Supreme Court of India reported in **2024 INSC 927 (R.Shama Naik Vs.G.Srinivasiah)**, wherein it has been held that there is a fine distinction between the readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance. The term 'readiness' means the capacity of the plaintiffs to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiffs.

17. It is the specific case of the plaintiffs that the defendant's husband namely Mr.Moorthy, through the plaintiffs father Mr.Chandrasekaran had obtained a loan for a sum of Rs.5,00,000/- in the 1st week of February,2022 and also obtained another sum of Rs.5,00,000/- in the 3rd week of September 2022 to settle his financial institution loans. The said Chandrasekaran also paid



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another sum of Rs.5,00,000/- to the said Moorthy and the same amount has been arranged by him through his friends and relatives. In order to prove the above said facts, the plaintiffs' father one Mr.Chandrasekaran has not been examined as witness and also not examined the persons who were paid a sum of Rs.5,00,000/- to the said Chandrasekaran. In the proof affidavit of PW1, it has been stated that the defendant agreed to sell the suit schedule property on 30.02.2023. Since the defendant was unable to repay the debt amount received by her deceased husband Moorthy. As such, on 10.03.2023, the agreement of sale in Ex.A2 came to be executed and the defendant also received a sum of Rs.7,00,000/- as cash in the presence of the witnesses and on the same day, the defendant also handed over the original sale deed of the house property. In order to prove the above said facts, the plaintiffs have not chosen to examine the witnesses who have been signed in the Ex.A2-sale agreement. In the plaint, it has been stated that the defendant handed over the original sale deed and the said Moorthy handed over the original parent sale deed to the plaintiffs. Before the Trial Court, the original deed in Ex.A1 has not been marked.

18. It is the specific case of the plaintiffs that the plaintiffs have received the entire key of the suit property except one room which was retained by the



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defendant till execution of sale deed, as such, the plaintiffs were in possession of the suit property. In order to prove the above said facts, the plaintiffs have not chosen to examine any witnesses and not produced any documents.

19. It is pertinent to mention that as per Section 16(c) of the Specific Relief Act, 1963 the plaintiffs are always being ready and willing to perform their part of contract. The contract must be performed within a reasonable time as observed by the Hon'ble Supreme Court in the case of ***K.S.Vidyanadam and Ors. vs. Vairavan reported in (1997) 3 SCC1***. It is also relevant to cite the judgment of Hon'ble Supreme Court reported in ***AIR 2019 SC 1280 (Urvashi Aggarwal (since deceased) through L.Rs and Ors. Vs.Kushagr Ansal and Ors.)***, wherein it has been held that even in cases, where it is not possible to order specific performance, the plaintiff is entitled for refund of advance amount in a suit for specific performance.

20. The burden of proof lies on the plaintiffs to prove their readiness and willingness to perform their part of contract, but they have failed to do so. The Court below finds that there is no material evidence on record to show that the defendant is the wife of the said deceased Moorthy and there is no material



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on record to show that the defendant is the only legal heir to succeed his estate.

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The Court below upon considering the oral and documentary evidence has rightly found that the plaintiffs have not proved their case and therefore, they are not eligible for the relief as sought for in the plaint. In the light of the above discussion, we do not find any reason to interfere with the impugned judgment and decree of the Court below. The points are answered accordingly.

21. In the result, the first appeal is dismissed and the judgment and decree in O.S.No.5286 of 2024 dated 08.01.2025 passed by the learned XVI Additional City Civil Court, Chennai is hereby confirmed. No costs.

(JNB.J.) (MJRJ.)
31.07.2025

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Index : Yes/No

Internet : Yes/No

Speaking order: Non-speaking order

Neutral citation : Yes/No

To
The XVI Additional City Civil Court, Chennai.



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