



A.S.Nos.543, 544 and 546 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2025

Pronounced on : 25.06.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.Nos.543, 544 and 546 of 2024

and

C.M.P.Nos.16393, 28391, 28296, 29299, 16405, 28292, 29301, 16474,
28288/24 & 593, 594, 335/25

A.S.No.543 of 2024

M/S. Club Pioneer (India) Pvt Ltd,
Rep. by its Director, Mr. Sarath Kakkumanu,
Office at No.195, St. Marys Road,
Alwarpet, Chennai - 018

.. Appellant/Plaintiff

A.S.No.544 of 2024

Mr.Sarath Kakkumanu

.. Appellant/Plaintiff

A.S.No.546 of 2024

Ms.Nisha Prita Kakkumanu

.. Appellant/Plaintiff

Vs.

1.Deluxe Tools And Moulders
A Partnership firm,
Rep. by its Partners 2 to 4,
Res. at No.24, Nelson Manickam Road,
Madras - 029.



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2.O.M. Shahul Hameed

3.O.M. Syed Ahmed

4.O.M.S Ahmed Ibrahim

5.Malargandhi Nagarajan

6.M/s. S.G.P. Exim Pvt. Ltd.,
Rep. by its Executive Director,
R. Doraiswami having reg. office at
2nd Floor, Trinity Tower,
No.30, Conran Smith Road,
Gopalapuram, Chennai - 086.

(Impleaded in O.S.Nos.13637, 12149 & 12016 of 2010
as per order in I.A.Nos.6/2015, 18787/2024 and 18786/2024)

.. Respondents/Defendants in all Appeal Suits

COMMON PRAYER: Appeal Suits are filed under Section 96 of C.P.C,
to set aside the judgment and decree dated 05.04.2024 passed in
O.S.Nos.13637, 12149 & 12016 of 2010 respectively on the file II
Additional City Civil Court, Chennai.

For Appellants : Mr.P.R.Raman, Senior Counsel
for M/s.Abitha Banu

For R1 to R4 : Ex-parte in Lower Court

For R5 : Mr.R.Srinivas, Senior Counsel
for Mrs.Mythili Srinivas



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For R6 : M/s.Rita Chandrasekar for
Aiyar & Dolia

COMMON JUDGMENT

The suits for specific performance filed by these three appellants against the vendors, who are common to all three suits, but had sold their land in three separate parts to the appellants, were dismissed by the Trial Court through a common judgment. Hence, these three appeals have been filed.

2. Brief facts for better understanding of the dispute:

The property in question, comprised in R.S.No.7 and 8/2 (Part) T.S.No.11/7, Door No.23/1, Block No.11 at Nelson Manickam Road, Vada Agaram No.173, Madras-29 within the Registration Sub District of Kodambakkam and Registration District of Madras, measuring a total of 3 grounds and 1800 sq.ft., was owned by M/s. Delux Tools and Moulders, a partnership firm represented by its partners, including Mr.O.M. Shahul Hameed, O.M. Syed Ahmed and O.M.S Ahmed Ibrahim. On 04.09.1996, the following three plaintiffs entered into separate sale agreements with defendants 1 to 4, who are common to all three suits:



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1. **Ms.Nisha Pritha Kakkumanu**, plaintiff in O.S. No.12016 of 2010, agreed to purchase 2,796.1 sq.ft. of land for a total consideration of Rs.24,00,000/-, and paid Rs.1,00,000/- as advance.
2. **Mr.Sarath Kakkumanu**, plaintiff in O.S. No.12149 of 2010, agreed to purchase 2,520.65 sq.ft. of land for Rs.24,00,000/-, and paid Rs.13,00,000/- as advance.
3. **M/s.Club Pioneer (India) Private Limited**, plaintiff in O.S. No. 13637 of 2010 (represented by its Director, Mr. Sarath Kakkumanu, also the plaintiff in O.S. No. 12149 of 2010), agreed to purchase 3,683.25 sq.ft. of land for Rs. 24,00,000/-, and paid Rs. 1,00,000/- as advance.

As per the agreements, the time for performance was fixed at four months, subject to the vendors (defendants 1 to 4) handing over vacant possession and producing the Income Tax Clearance certificate before registration.



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3. However, the time frame could not be adhered to, as:

- The title documents were hypotheticated with the Kilpauk Benefit Fund.
- The property was in possession of tenants.
- The defendants were unable to redeem the property or obtain possession or documents, thereby failing to fulfill the contract conditions.

Initially, time was treated as the essence of the contract. However, the defendants continued to receive part payments from the plaintiffs on different dates, indicating that both parties treated time as non-essential. Meanwhile, the defendants, along with adjacent landowners such as Saral Beevi and others, applied to the MMDA for reclassification of the land from residential to commercial use. This request was made first in 1997 and again in 2000.

4. Despite ongoing payments and willingness on the part of the plaintiffs to perform their contractual obligations, the defendants failed to:



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- Obtain the income tax clearance certificate,
- Vacate the tenants from the suit property,
- Retrieve the title documents from Kilpauk Benefit Fund.

While matters stood thus, on 10.03.2001, the defendants entered into a transaction with the 5th defendant, selling the entire property, measuring 3 grounds and 1800 sq.ft., along with the building, by executing a sale deed in his favour vide Document No. 2475 of 2001. The 5th defendant purchased the property with full knowledge of the plaintiffs' prior agreements. He purchased the property without any benefit on his part just to divide the interest of the plaintiffs.

5. After executing the sale deed, the defendants withdrew the MMDA reclassification proposal. As a result, the plaintiffs faced severe hardship in obtaining regularization. They were forced to file a fresh application for reclassification, this time excluding the property sold by defendants 1 to 4. Meanwhile, due to the threat of dispossession, the plaintiffs filed O.S. Nos.5279 to 5281 of 2001 before the V Assistant Judge, City Civil Court, Chennai, seeking a permanent injunction.



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6. The plaintiffs' case is that they are owners of adjacent parcels of land and, in order to enhance the utility and enjoyment of their property, intended to purchase the suit property from defendants 1 to 4. They have always been ready and willing to perform their part of the contract by depositing the balance sale consideration. However, defendants 1 to 4 failed to complete the sale transaction and instead executed a sale deed in favour of the 5th defendant. Consequently, the plaintiffs filed suits for specific performance and delivery of possession, along with a prayer for costs.

7. Defendants 1 to 4 remained ex parte. The 5th defendant contested the suits by filing a written statement. During the pendency of the suits, the 6th defendant was impleaded in all three suits.

8. According to the 5th defendant, the suits are not maintainable and are liable to be dismissed on the grounds of limitation and are barred under Order II Rule 2 of the Code of Civil Procedure (CPC). He contends that:



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- The plaintiffs were never in possession of the suit property.
- The alleged sale agreements dated 04.09.1996 are sham and nominal.
- The suits are based on suppression of material facts and are thus liable to be dismissed.
- The earlier injunction suits were withdrawn without obtaining liberty to file fresh suits, and therefore, the present suits are barred under Order II Rule 2 of CPC.
- There is no evidence to show that the plaintiffs prepared draft sale deeds, which is a mandatory step for obtaining income tax clearance. Hence, the claim that defendants 1 to 4 failed to obtain the necessary clearance is false.

The 5th defendant further contends that she purchased the property from defendants 1 to 4 for valuable consideration, took possession, and holds the original title documents, which were subsequently deposited with Standard Chartered ANZ, Grindlay Bank. She argues that, even assuming any valid agreement exists between the plaintiffs and defendants 1 to 4, the appropriate remedy lies in seeking compensation from the vendors,



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not in filing a suit for specific performance over a property that has already been sold to her.

9. The sale deed executed in favour of the 5th defendant is claimed to be genuine and bonafide. One of the issues for consideration is whether the suit for specific performance is barred under Order II Rule 2 of the Code of Civil Procedure (CPC). The defendants 1 to 4 had executed a sale deed in favour of the 5th defendant on 16.07.2001. The 6th defendant, who was subsequently impleaded, is in possession of the suit property from the date of sale i.e., on 01.07.2014. The 5th defendant sold the property to one Vijayashree Vachagan, represented by her mother and Power of Attorney holder, Mr.Susheela. Later, on 01.07.2014, Vijayashree Vachagan settled the property in favour of her mother Mrs.Susheela. Subsequently, Mrs.Susheela sold the property to the 6th defendant for a sale consideration of Rs. 5,40,00,000/-, through Asset Reconstruction of India Limited vide sale deed dated 08.07.2014. On the same day, possession of the property was handed over to the 6th defendant.



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10. The plaintiffs contend that the property remains classified as residential land and that the suit property was intended to be reclassified, which did not occur. However, the plaintiffs have failed to demonstrate "readiness and willingness" to perform the contract either explicitly in the pleadings or by conduct. Unless there is a specific clause or recital showing that the extension of time for performance was mutually agreed upon beyond the original four-month period, any alleged subsequent payments cannot extend or revive the limitation period. The payments alleged to have been made by the plaintiffs after a delay of more than five months strongly indicate that the plaintiffs were neither ready nor willing to perform their contractual obligations within the stipulated time.

11. Based on the pleadings, issues were framed separately for each of the three suits. However, since defendants 1 to 4 are common to all suits and the plaintiffs are seeking specific performance in respect of undivided portions of the same property, though under separate agreements for distinct measurements, the issues were ultimately recast into the following common issues:

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“1. Whether the plaintiffs were always ready and willing to perform their part of the agreement of sale?

2. Whether the payments made by the plaintiffs to the defendants 1 to 4 are true? If it is true whether it will extend the period for performance of the sale agreement?

3. Whether the suit is barred by limitation?

4. Whether the suit is hit under principles of Order II Rule 2 of CPC?

5. Whether the defendants 5 and 6 are bonafide purchasers for value without notice?

6. Whether the plaintiffs are entitled for the relief of specific performance of the agreement of sale dated 04.09.1996 and for possession of the suit property?

7. To what reliefs the plaintiffs are entitled to?”

12. Before the Trial Court, one A.Senthilnathan was examined as PW-1 on the side of the plaintiffs and thirty two (32) documents were marked as Ex.A1 to Ex.A32. On the side of the defendants, two



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witnesses were examined as DW.1 and DW.2 and sixteen (16) documents were marked as Ex.B1 to Ex.B16.

13. Upon considering the evidence, the Trial Court held that the plaintiffs had not proved their readiness and willingness to enforce the contract. Even after the defendants repudiated the contract by notice on 28.09.1999, the plaintiffs did not take any steps to perform their part or to enforce the agreement until the year 2001. The Trial Court also observed that the earlier suits in O.S. Nos. 5279 to 5281 of 2001, filed by the respective plaintiffs for permanent injunction, were withdrawn without seeking permission to file a fresh suit. Therefore, in the absence of leave under Order II Rule 2 of CPC, the subsequent suits for specific performance were held to be barred.

14. Following the dismissal, the plaintiffs filed appeals raising various grounds and also submitted applications seeking permission to:

- Mark certified copies of the application and docket order filed in I.A.SR.No. 34728 of 2001 in O.S. No.5279 of 2001,



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I.A.SR.No.15139 in O.S.No.5280 of 2001 and

I.A.SR.No.34730 of 2001 in O.S. No.5281 of 2001.

- Make an alternate prayer for refund of the sale consideration.
- Receive documents showing further payments made by them to defendants 1 to 4.

These applications were strongly opposed by the defendants on the ground that they were belated and an afterthought.

15. This Court reserves its discussion and findings on these applications to the end of the judgment.

16. The appellants relied upon Exhibits A-18, A-23, and A-26, which are the sale agreements dated 04.09.1996. These agreements imposed three specific obligations on the vendors:

1. To hand over the title documents within seven days,
2. To obtain a No Objection Certificate from the Income Tax Department, and
3. To vacate the tenant and hand over possession.



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17. The plaintiffs contended that the sale deed was to be executed only after defendants 1 to 4 complied with these three obligations. Since the vendors failed to do so, the four-month time period specified in the contract stood compromised. Moreover, the vendors continued to receive part payments from the plaintiffs, which further supports the plaintiffs' claim that they are entitled to specific performance.

18. It is well established that a prime requirement for granting specific performance is proving the plaintiffs' **readiness and willingness** to perform the contract.

- **Readiness** can be demonstrated through oral or documentary evidence, such as proof of financial capacity or availability of funds.
- **Willingness** refers to the purchaser's state of mind and must be demonstrated through their conduct or supporting oral evidence.

In the present case, none of the plaintiffs who were parties to the



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agreements entered the witness box to prove their willingness to purchase the property. Instead, one Senthilnathan filed a proof affidavit and an additional affidavit in lieu of chief examination and was cross-examined by the defendants. He claimed to be one of the directors of the plaintiffs company and stated he was acquainted with the facts of the case.

19. It is pertinent to note that of the three suits, two are individuals and one by a private limited company. For all the three suits, a common witness examined. In cross-examination, the witness Senthilnathan admits:

- He is aware of the injunction suits in O.S.Nos. 5279 to 5281 of 2001 filed by the plaintiffs,
- He had no knowledge about the withdrawal of those suits,
- He was not employed with M/s.Club Pioneer (India) Private Limited, the plaintiff in O.S. No. 13637 of 2010, but work in one of its group company, and
- His involvement with the plaintiffs' records began only in 2010.



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20. When this witness was confronted with the legal notice issued by the defendants through their counsel, which repudiated the agreement dated 04.09.1996, he admit the receipt of the notice. He proceeded to add that, even after receipt of the notice, defendants 2 to 4 continued to receive part payments. However, when confronted with the fact that there is no reference to this repudiation notice in the pleadings, the witness conceded that Ex.A21, dated 28.09.1999, was not mentioned.

21. Thus, it is clearly established that the agreement, upon which the plaintiffs seek relief of specific performance, had been expressly repudiated by the vendors through the notice dated 28.09.1999. The plaintiffs, however, relying on the alleged part payments made subsequently had filed the suits for specific performance only on 25.02.2002, nearly 3 years after the notice of repudiation.

22. In **O.S. No. 12016 of 2010**, the plaintiff claims to have paid a total of Rs.5,65,000/- (inclusive of an advance of Rs.1,00,000/-) out of the agreed sale consideration of Rs. 24,00,000/-. In **O.S. No. 12149 of**



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2010, the plaintiff states that he paid Rs. 13,10,000/- at the time of the agreement and made no further payments up to the filing of the suit. In **O.S. No. 13637 of 2010**, the plaintiff asserts to have paid a total of Rs. 5,35,000/-, including the advance of Rs. 1,00,000/-.

23. There is no evidence whatsoever to indicate that any of the plaintiffs expressed their readiness to perform the contract, either before or after the issuance of Ex.A21. There is a complete lack of evidence to establish the plaintiffs' willingness to perform their contractual obligations. In such circumstances, the Trial Court rightly dismissed the suits for specific performance.

24. The trial Court has noted that, in the absence of a specific prayer for refund of the advance money, it was not in a position to consider relief of refund on equitable grounds. Hence, in the pending appeal, the appellants through petitions attempt to amend their prayers and introduce additional documents to claim further advance payments made to the vendors, thereby trying to enhance their claim for refund.



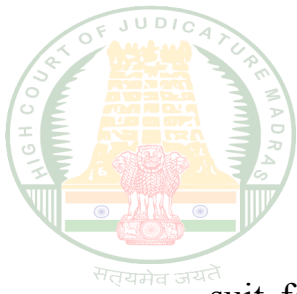
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25. This Court, on considering the relief sought in the said applications, dismissed them outright, holding that entertaining such applications would revive a case that is hopelessly barred by limitation. When the main relief of specific performance is barred by limitation since the agreement dated 04.09.1996, is sought to be enforced in 2002, same is equally applicable to the alternate relief of the refund.

26. For academic interest, with respect to the other applications seeking to receive documents pertaining to the docket order passed by the Trial Court, which allegedly granted leave to file a suit for injunction reserving the right to seek specific performance in future, this Court holds in the absence of disclosure of such leave in the subsequent pleadings, the introduction of a new document at the appeal stage not found necessary.

27. The earlier suit for bare injunction, filed in 2001, the appellants asserted that possession had been handed over to them pursuant to the agreement dated 04.09.1996. However, in the subsequent



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suit for specific performance, delivery of vacant possession is prayed, stating that defendants failed to hand over possession within the stipulated time. This inconsistency in the plaintiffs' own pleadings, first claiming that possession with them and subsequently denying it, reveals false averments which undermines their credibility.

28. These contradictory positions regarding possession in the earlier suit for injunction and later suits for specific performance disentitle the plaintiffs to any relief. Accordingly, the *Appeal Suits stand dismissed*. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed. There shall be no order as to costs.

25.06.2025

Index: Yes/No
Speaking/Non Speaking order
Internet: Yes
Neutral Citation: Yes/No
rpl

To

- 1.The II Additional City Civil Court, Chennai.
- 2.The Section Officer, High Court of Madras, Chennai.

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DR.G.JAYACHANDRAN,J.

rpl

delivery Judgment made in

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