



S.A.No.1151 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.07.2025
Pronounced on	08.08.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.1151 of 2019
Cross Objection No. 3 of 2020

S.A.No.1151 of 2019

Kanniga Ammal

...Appellant

Vs.

1.Annarkali
2.G.Ravichandran (Died)
3.R.Jayanthi
4.R.Dinesh Kumar
5.R.Sharmila

[*R2 died, RR3 to R5 are brought on record as legal heirs of the deceased R2 vide Court order dated 31.07.2024 made in C.M.P.Nos.13351, 13354 & 13356 of 2024 in S.A.No.1151 of 2019 (VLNJ)]

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 to against the judgment and decree of the learned III Additional District Judge,



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WEB COPY Vellore, Tiruppattur in A.S. No.27 of 2014 dated 17.12.2018 reversing the judgment and decree of the learned Sub-Court, Vaniyambadi, Vellore District in O.S. No.80 of 2009 dated 17.09.2012.

Cross Objection No. 3 of 2020

G.Ravichandran (Died)

2.R.Jayanthi

3.R.Dinesh Kumar

4.R.Sharmila

[*Sole cross objector (G.Ravichandarn) died , cross objectors 2 to 4 are brought on record as legal representation of the deceased sole cross objector vide Court order dated 12.06.2024 made in C.M.P.Nos.21084, 21086 & 21089/2022 in Cross Objection No.3 of 2020 & S.No.1151 of 2019(VL NJ)

...Cross Objector

1.Kanniga Ammal

2.Annarkali

...Respondents

Prayer : Cross Objection filed under Order 41 Rule 22 of CPC, 1908 to set aside the decree and judgement dated 17.12.2018 rendered in A.S.No.27 of 2014, on the file of the III Additional District Judge,



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Vellore at Tirupattur, modifying the decree and judgment dated 17.09.2012 rendered in O.S.No.80 of 2009, on the file of the Subordinate Judge, Vaniyambadi, Vellore District, in so far as the decree directing the cross objector to pay a sum of Rs.1,00,000/- to the first respondent herein, together with interest at the rate of 12% per annum from 14.12.2004 to till the date of decree, and thereafter interest at the rate of 6% per annum, from the date of decree till the date of repayment of entire amount to the first respondent, is concerned by allowing the cross objections with cost.

For Appellant : Mr.V.Jeevagiridharan
in S.A.No.1151 of 20199
for R1 in Cross Obj. No.3 of 2020

For Respondents : Ms.Elizabeth Ravi
Mr.Venkatswara Rao for R3 to R5
in S.A.No.1151 of 2019 : No appearance for R1
for Cross objector in Cross Obj.No.3 of 2020

JUDGMENT

Challenge in this second appeal is made to the judgement and decree dated 17.12.2018 passed in A.S.No.27 of 2014, on the file of III Additional District Court, Tirupathur., partly reversing the judgment and



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WEB COPY decree dated 17.10.2012 passed in O.S.No.80 of 2009 on the file of Sub Court, Vaniyambadi.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiff in O.S.No.80 of 2009 is the appellant in the Second Appeal. Cross Objection No.3 of 2020 is preferred by the 2nd defendant in the above suit. Since G.Ravichandran (2nd respondent in S.A.No.1151 of 2019 / 1st cross objector in Cross Objection No.3 of 2020), his legal heirs are brought on record as respondents 3 to 5 in Second appeal No.1151 of 2019 and Cross objectors 2 to 4 in Cross Objection No.3 of 2020.

4.It is a suit for specific performance.

5.Briefly stated according to the case of the plaintiff, On 10.02.2000 the 1st defendant executed an agreement of sale in respect of her property described as Schedule "A" in the suit in favour of the 2nd defendant agreeing to sell the property either to the 2nd defendant or to

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the nominee of the 2nd defendant for a sum of Rs.40,000/- and on the same day the 1st defendant received an advance of Rs.21,000/- from the 2nd defendant towards the said sale transaction. Again on 23.04.2000 the 1st defendant received further advance of Rs.18,000/- from the 2nd defendant and the receipt of the said further advance by the 1st defendant has been duly endorsed by the 1st defendant on the reverse of the sale agreement and possession of the property was delivered by the 1st defendant to the 2nd defendant as part performance of contract of sale of "A" schedule property and time was not intended as essence of contract of sale. On 11.7.2004 the 2nd defendant executed an agreement of sale of "B" schedule property which includes "A" schedule property in favour of the plaintiff agreeing to sell the "B" schedule property to the plaintiff at the rate of Rs.113/- per sq.foot. The 2nd defendant on the same day of execution of sale agreement on 11.7.2004 received an advance of Rs.15,000/- from the plaintiff towards the said transaction. Again on 1.8.2004, 04.1.2004, and on 14.12.2004 the 2nd defendant received further advance of Rs.10,000/-, Rs.45,000/- and Rs.30,000/- respectively from the plaintiff towards the said sale transaction. The 2nd defendant



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duly endorsed the receipt of further advances from the plaintiff on the reverse of sale agreement then and there in the presence of respectable witnesses. Totally the 2nd defendant received Rs.1,00,000/- from the plaintiff and delivered possession of "B" schedule property as part performance of contract of sale. On 11.7.2004 the 2nd defendant delivered title deeds of the 1st defendant and 2nd defendant to the plaintiff. The plaintiff has been always ready and willing to perform her part of contract but the defendants have been neglecting to perform their part of contract. Since the 1st defendant executed the sale agreement as said in respect of "A" schedule in favour of the 2nd defendant upon agreeing to execute the sale deed by the 1st defendant either to 2nd defendant or to his nominee, the transfer of the said sale agreement on 11.7.2004 in favour of the plaintiff is valid under law and is enforceable law. The plaintiff sent a lawyer notice dated 17.10.2005 to the defendants, calling upon them to perform their part of contract on 24.10.2005. The defendants 1 and 2 received the notice. A reply dated 5.11.2005 by the 1st defendant was sent through her counsel with false allegations. Hence, the above suit for specific performance of contract



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5.1.The 1st defendant resisted the plaintiff's suit contending that the first defendant is residing at Karnataka and her husband has gone to foreign. Hence, she left the property to the second defendant for safe custody. The first defendant did not know anything about the agreement executed by the second defendant in favour of the plaintiff.

5.2.The 2nd defendant contention is that, suit agreement is fabricated and it is not necessary for him to sell the suit property to the plaintiff and the suit is barred by limitation.

5.3. In support of the plaintiff's case, the plaintiff was examined as P.W.1 and four other witnesses were examined on her side and 15 documents were exhibited as A1 to A15. On the side of the defendant three witnesses were examined and Ex.B.1 was marked.

6.On consideration of the oral and documentary evidence let in by the respective parties and the submissions put forth in the matter, the trial Court dismissed the suit filed by the plaintiff. Challenging the same, the



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first appeal has been preferred by the plaintiff and the First Appellate Court, on an appreciation of material available on record both oral and documentary, and the arguments putforth by the respective counsel confirmed the findings of the trial Court, refusing to grant the decree for specific performance and partly allowed the appeal by granting the relief of refund of advance amount.

7.Impugning the same, the plaintiff has preferred the second appeal and the defendants have preferred the Cross Objection No.3 of 2020. Challenging the refund of advance money.

8.The learned counsel appearing for the appellant submits that inspite of the categorical admissions made by the defendants 1 and 2 with regard to the sale agreements marked as Ex.A.1 and A.3 executed by the defendants 1 and 2 in favour of the plaintiff as true and valid, the Courts below erred in not decreeing the suit for specific performance. His further contention is that, the 1st defendant after receiving further advance amount from the plaintiff, has made endorsement in Ex.A.1 sale



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agreement, marked as Ex.A.2 and by stating that she is willing to receive the balance sale consideration at the time of registration of the sale deed. The defendants are under obligation to execute the sale deed. No time limit was fixed in the sale agreement for registration of sale. Hence, time is not the essence of contract. He would further contend that the 1st defendant has categorically stated in the written statement about handing over the original document and possession of the property to her brother, the 2nd defendant long back and she is not in possession of the property as she is living in Karnataka State. His further submission is that though 'B' Schedule property described in Ex.A.3 agreement says that the extent of land is 1200 sq. ft., the recitals of the agreements clearly says that the property will be measured at the time of registration of the sale and a sum of Rs.113/- will be paid per sq. ft. only for the extent actually available while measuring it. Moreover, the plaintiff is in possession of the suit property and that the water connection and electricity connection stands in the name of the plaintiff. His further contention is that once the plaintiff has an agreement, an agreement holder is put in possession of the property and the original documents have been handed over, time is



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not an essence of contract, the Courts below ought to have granted the relief of specific performance in favour of the plaintiff.

9.On the other hand, the learned counsel appearing for the respondents/defendants and Cross Objector submits that the Courts below rightly rejected the claim of the plaintiff for specific performance. The Courts below have rightly found that, the 2nd defendant has no right to sell the half share in property belonging to the 1st defendant and it is further submitted that plaintiff is not entitled for specific performance of the contract since it is difficult to decide which portion of property is to be sold and which is to be retained. To support her contention, she has relied upon the judgment in the case of ***Shanker Singh vs. Narinder Singh*** and others reported in ***2012 (2) MWN (Civil) 104***. In which the Hon'ble Supreme Court as held as follows:

*Suit for Specific Performance of Agreement -
Contention of Appellant/Vendor that he did not have
right to sell suit property as half share in property
belonged to wife and minor sons and he was not entitled
to sell coparcenary property - Moreover, land was found*



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to be excess Contention of than what had been mentioned in Agreement- contention of the Respondent/Purchaser that they were ready to relinquish share of wife in property and also ready to restrict themselves to purchase of area of land as described in Agreement - High Court in Second Appeal decreed Suit for Specific Performance and recorded statement of purchasers that part of Agreement which was not capable of being performed was relinquished Offer of relinquishment made by Respondents, held, ambiguous one and difficult to decide which portion of property is to be sold and which is to be retained - Held, part of Agreement relinquished should be identifiable and demarcated - Certainty with respect to property, a must in Suit for Specific Performance of Agreement - Thus, Agreement cannot be specifically enforced in spite of relinquishment made by Respondent - Suit for Specific Performance dismissed - Nonetheless, Appellant directed to pay an amount of ₹5,00,000/- inclusive of earnest money and compensation to Respondents."

10. The learned counsel would further contend that the First Appellate Court ought not to have granted the relief of return of the



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advance amount in the absence of any alternative prayer. Section 22 (2) of the Specific Relief Act provides that the plaintiff in a suit for Specific Performance would not be entitled to any relief, in the event of the relief of the specific performance not granted, unless and until such relief was asked for by the plaintiff.

11.Heard on both sides and records perused.

12.On 10.02.2000, the 1st defendant in favour of the 2nd defendant executed a sale agreement, in which three months time was given for performance of contract. It is specifically mentioned in the sale agreement that on or before 09.05.2000, the 2nd defendant should pay the balance amount and get registration of sale deed. Before the trial Court, the defendants have raised various defences. Firstly, the 2nd defendant has denied the execution of A1 sale agreement entered between the 1st and 2nd defendant and the execution of A.3 sale agreement entered between the plaintiff and the 2nd defendant. He further contented that he did not have the authority to enter into the agreement to sell the share of the 1st



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defendant. However, the Courts below held that the plaintiff by means of oral and documentary evidence proved the execution of Ex.A.3 sale agreement and the receipt of Rs.1 lakh by the 2nd defendant as advance. However, the trial Court and First Appellate Court held that, since the 2nd defendant failed to file a suit for specific performance against the 1st defendant within the limitation period, the contract under Ex.A.1 stood lapsed. Hence, the plaintiff is not legally entitled for specific relief as against the 1st defendant's half share in the property. The trial Court and First Appellate Court have further held that even in the event of relinquishment made by the plaintiff in respect of the 1st defendant's share in the suit property, the plaintiff is not entitled for the relief of specific performance, stating that the 2nd defendant had not properly described the property which was agreed to be sold under Ex.A.3 agreement. Applying the principle laid down in Shanker Singh's case referred above, the part of agreement relinquished should be identifiable and demarcated. Though, the learned counsel for the appellant would contend that as contemplated under Section 12 of the Specific Relief Act, 1963, where a party to a contract is unable to perform the whole of his



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part of it, the Court may direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency. When the 2nd defendant has no right to sell the share of the 1st defendant, even in the event of relinquishment made by the plaintiff to the share of the 1st defendant, when it is difficult to decide which portion of property is to be sold and which is to be retained, the relief of specific performance cannot be granted. As held in the judgment referred on the side of the defendants, part of agreement relinquished should be identifiable and demarcated. In a suit for specific performance of agreement, certainty with respect to the property is a must. Hence, the Courts below have rightly declined the relief of specific performance to the plaintiff. No perversity or infirmity found in the said findings of the Courts below.

13.However, the first Appellate Court directed the defendants to refund the advance amount with 12% interest to the plaintiff. The learned counsel appearing for the cross objector submits that in the absence of any clinching evidence regarding payment of advance amount to the tune of Rs.1,00,000/- the 1st Appellate Court ought not to have directed the



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cross objector to pay a sum of Rs.1,00,000/- to the plaintiff, together with interest at the rate of 12% per annum. Her further contention is that when the plaintiff had not sought for the return of the advance amount, as on alternative relief, not only at the time of the institution of the suit, but also having not made any alternative claim after getting the plaint amended, the plaintiff would not be entitled to any of the reliefs, as provided under Section 22 (2) of the Specific Relief Act, 1963. Admittedly, the plaintiff did not seek for any alternative prayer for the return of the advance amount it has to be seen whether the 1st Appellate Court was right in granting such relief to the plaintiff. When Section 22 (2) of the Specific Relief Act, 1963, provides that in the event of the relief of specific performance not granted, the plaintiff in a suit for specific performance would not be entitled to any relief, unless and until such relief was asked for by the plaintiff. Hence, a decree directing the return of the advance amount without any alternative prayer for the return of such advance amount as granted by the 1st Appellate Court is without any jurisdiction.



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WEB COPY 14. In the result, this second appeal stands dismissed and cross objection is allowed. No costs.

08.08.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn

To

1. The III Additional District Judge, Vellore, Tiruppattur
2. The Sub-Court, Vaniyambadi, Vellore District,
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
vsn

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and Cross Objection No. 3 of 2020

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