



S.A.No. 326 of 2025

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WEB CO **T.V.THAMILSELVI, J.**

This matter was taken up for hearing under the caption “For Being Mentioned” today at the instance of the learned counsel for the appellant.

2. The learned counsel for appellant would submit that this Court by Judgment dated 22.04.2025 dismissed the above Second Appeal. However, he would submit that the appellant/2nd plaintiff had already deposited a sum of Rs.1,15,000/- before the Subordinate Court, Pollachi, but she was not permitted to withdraw the same. Hence, he prayed to mention the same in the judgment passed by this court.

3. The learned counsel for respondent appeared and submitted that he has no objection in permitting her to withdraw the said amount.

4. Heard the contentions of learned counsel for appellant and the learned counsel for respondent and perused the order.

5. Considering both side submissions, at the end of para 28 of the judgment, the words viz., **“However, since the appellant/2nd plaintiff had already deposited a sum of Rs.1,15,000/- before the Sub-Court, Pollachi, she is permitted to withdraw the said amount on filing proper petition before the trial court.”** shall be added.



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WEB COPY 6. Registry is directed to incorporate above correction in the Judgment of this Court in S.A.No.326 of 2025 dated 22.04.2025 and issue fresh order copy to the appellant.

20.02.2026

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-04-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 326 of 2025

MANJULADEVI

W/o.Late Vijayakumar, Door No.4/9
(old No.4/2), Vadakku Thottam,
Thippampatti, Pollachi Tk.,
coimbatore Dist.

Appellant(s)

Vs

SENTHILVEL

S/o.Late C.Arumugam,
Ilangombukadu, Elachipalayam,
Karumathampatti, Coimbatore Tk
and Dist.

Respondent(s)

PRAYER

Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 25-03-2024 made in AS.No.122/2018 on the file of the Principal District Court, Coimbatore, confirming the judgement and decree dated 31-10-2017 made in OS.No.103/2009 on the file of Subordinate Court, Coimbatore.

For Appellant(s): P.M.Duraiswamy

For Respondent(s): M/s. B.Singaravelu



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ORDER

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The appellant has filed this appeal to set aside the judgment and decree dated 25.03.2024 passed in A.S. No. 122 of 2018 on the file of the Principal District Court, Coimbatore, confirming the judgment and decree dated 31.10.2017 made in O.S. No. 103 of 2009 on the file of the Subordinate Court, Coimbatore.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the concurrent findings of the courts below, the second plaintiff has preferred this appeal. Originally, one Mohan Sundaram filed a suit in O.S. No. 103 of 2009 against the respondent/defendant seeking the relief of specific performance, directing him to execute the sale deed as per the sale agreement dated 07.02.1996, along with consequential relief in respect of the suit property described in the plaint schedule.

4. Pending the suit, the said plaintiff Mohan Sundaram died unmarried, leaving behind his sister, Manjula Devi, as his legal heir. He



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had also executed a Will in her favour on 26.05.2014, expressing his

intention for her to continue the present suit and two other pending suits and to enjoy the benefits thereof. Accordingly, she filed I.A. No. 950 of 2014 and was impleaded as the second plaintiff. Hence, she proceeded with the suit after the demise of the original plaintiff, Mohan Sundaram.

5. The respondent/defendant filed a written statement disputing the terms of the alleged sale agreement and contended that the plaintiff was never ready and willing to perform his part of the contract. It was for this reason that the defendant issued a notice dated 16.09.1996, requesting the plaintiff to return the advance amount along with interest. Nearly 10 years later, the plaintiff filed the present suit with inordinate delay, and the defendant prayed for its dismissal in accordance with law.

6. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiff, P.W.1 and P.W.2 were examined, and Exs. A1 to A11 were marked. On the side of the defendant, D.W.1 was examined, and Exs. B1 to B14 were marked.

7. Based on the oral and documentary evidence, the learned trial



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judge framed the following three issues:

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- i) Whether the plaintiff was always ready and willing to perform his part of the agreement?
- ii) Whether the plaintiff had given up his right to obtain the sale deed?
- iii) Whether the plaintiff is entitled to the relief of specific performance as prayed for?

8. Considering the evidence on record, the learned trial judge held that by issuing a notice dated 14.09.1996, the plaintiff had expressed his intention to retrieve the advance amount. Thereafter, Ex.A6 notice was issued, for which a reply was sent by the defendant on 09.09.1996, enclosing copies of all relevant documents related to the property.

9. Subsequently, the plaintiff called upon the defendant to appear at the Sub-Registrar's Office, and the defendant complied. However, the plaintiff was not inclined to execute the sale deed. Therefore, the trial court concluded that the plaintiff merely attempted to show readiness, but in reality, had no intention to complete the sale by paying the balance amount.



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10. Furthermore, the suit was filed with insufficient court fees, and the plaint was returned on several occasions. It was re-presented nearly 10 years later, which itself indicates that the plaintiff was not genuinely prepared to perform his part of the agreement. As per Clause 5 of the agreement, if the plaintiff failed to perform, he would forfeit the advance amount. Hence, the trial court held that the plaintiff was not entitled to any relief, much less specific performance, and dismissed the suit.

11. Aggrieved by the said findings, the second plaintiff preferred A.S. No. 122 of 2018. The learned first appellate judge, after analyzing the evidence and facts, framed separate points for consideration. The plaintiff contended that the defendant had neither measured the property nor cleared the encumbrances within the stipulated time.

12. In response, the learned appellate judge observed that there was no clause in the sale agreement requiring the measurement of the property. As for the encumbrances, the defendant had redeemed the mortgage within five months from the date of the agreement and had



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shown the discharge receipts and original settlement documents to the plaintiff through notices and telegrams.

13. Therefore, the appellate court concluded that the defendant was ready to execute the sale deed and had produced all relevant documents, but the plaintiff alone was not inclined to perform his part of the agreement. Initially, the plaintiff was willing only to retrieve the advance amount through a lawyer's notice and later changed his mind by requesting execution of the sale deed.

14. Moreover, prior to entering into the agreement, the plaintiff did not measure the property or obtain an encumbrance certificate. He was also unable to specify when possession was handed over to him, despite the contents of Ex.A4 notice. Having already repudiated the agreement, the plaintiff subsequently filed the present suit, seeking a direction to the defendant to execute the sale deed.

15. The appellate court further observed that the plaintiff failed to establish that he was always ready and willing to perform his obligations. He neither pleaded nor proved his readiness and willingness, which is an essential requirement for the relief of specific performance. The delay in



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paying the proper court fee and the fact that the plaint was returned multiple times, before being re-presented after 10 years, further supported this conclusion. Accordingly, the appeal was dismissed, confirming the findings of the trial court. Challenging these concurrent findings, the second plaintiff has now preferred the present appeal.

16. The learned counsel for the appellant argues that the courts below failed to consider the pleadings raised in the written statement and the admissions made during the cross-examination of the defendant on vital aspects of the case. He further submits that the courts below did not properly consider the fact that the plaintiff was always ready and willing to perform his part of the contract, whereas it was the respondent who evaded performance.

17. The learned counsel points out that the defendant failed to produce the necessary documents on time. Consequently, time was mutually extended, and an additional advance amount was paid. A telegram dated 05.07.1996 was sent by the first plaintiff informing the defendant that he would be waiting at the Sub-Registrar's Office to fulfill his part of the contract. Later, the time was further extended to

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13.09.1996. However, the courts below, without proper evaluation of the records, erroneously concluded that the plaintiff failed to perform his part due to incapacity to pay the balance sale consideration, which is incorrect.

18. The learned counsel further contends that the defendant never intended to execute the sale deed. He failed to clear the encumbrance, take steps to measure the property, or produce the original parent documents. This led the plaintiff to issue a notice requesting a refund of the advance amount. However, the defendant persuaded the plaintiff, assuring him that the sale deed would be executed. As both parties were close relatives, the first plaintiff patiently waited for the execution of the sale deed. Although he waited at the Registrar's Office on 15.09.1999, the defendant failed to turn up. The courts below failed to appreciate these facts and circumstances and erroneously held that the plaintiff was not ready and willing to perform his part of the agreement. This finding is erroneous and liable to be set aside. The courts below failed to appreciate the true facts, and hence, a substantial question of law is involved. The learned counsel prays for admission of the appeal.

19. Considering the findings of the courts below, it is evident that



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the suit was dismissed and the relief of specific performance was not granted to the appellant/plaintiff, on the ground that the first plaintiff had failed to prove his continuous readiness and willingness to perform his part of the agreement, as mandated under Section 16(c) of the Specific Relief Act.

20. Based on Ex.A1, the Sale Agreement, the original plaintiff, Mohan Sundaram, approached the court seeking a direction to the defendant to execute the sale deed. As per the Will executed by Mohan Sundaram, and before filing the suit, various notices and telegrams were exchanged between the parties and were duly marked before the trial court. At the earliest point of time, through Ex.A4 (reply notice), the plaintiff effectively rescinded the contract by demanding the return of the advance amount. Ex.A1 shows that the Sale Agreement was executed between the parties on 07.02.1996, with a five-month period stipulated for performance, ending on 08.07.1996.

21. As per Ex.A2 endorsement, the plaintiff paid an additional advance amount of Rs.25,000/- and the time was extended to 13.09.1996. On 09.09.1996, the defendant issued Ex.A3 notice, stating he was ready



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to execute the sale deed on stamped paper and demanded settlement of the balance sale consideration. He also warned that if the plaintiff failed to honor the agreement, the advance amount would be forfeited.

22. Through Ex.A3, the defendant clearly expressed his willingness to fulfill his part of the agreement. The plaintiff, in response, requested time to measure the property and allow redemption of the mortgage. This extension of time is an admitted fact. The loan was redeemed, and a copy of the relevant document was given to the plaintiff this fact is also not disputed.

23. Therefore, the defendant was able to establish his willingness to proceed with the terms of the agreement. It is a settled position of law that the grant of specific relief is discretionary. Before granting such relief, the court must consider various factors and exercise its discretion judiciously, not arbitrarily or unreasonably, as required under Section 20(2) of the Specific Relief Act.

24. Under Section 16(c) of the Act, the plaintiff must plead and



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prove that he has always been ready and willing to perform the essential terms of the contract. Continuous readiness and willingness are essential prerequisites for the grant of specific performance.

25. In the present case, the plaintiff filed the suit without paying the requisite court fee. The plaint was returned multiple times, and it took nearly 10 years for the plaintiff to represent it with the proper fee. The suit was finally taken on file only in the year 2009.

26. This fact was admitted by the plaintiff, during the cross-examination. Therefore, the conduct of the plaintiff shows that he was not proved his readiness and willingness. Besides, he also not intended to get the sale deed by paying the balance sale consideration.

27. This fact was admitted by the plaintiff during cross-examination. Therefore, his conduct indicates that he failed to prove his readiness and willingness. Moreover, he was not genuinely interested in obtaining the sale deed by paying the balance sale consideration.

28. The courts below thoroughly examined the conduct of the



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original plaintiff, Mohan Sundaram, and rightly dismissed the suit. The

submissions made on the side of the appellant are unsustainable. The

courts below rightly concluded that the plaintiff is not entitled to the

reliefs prayed for, and no substantial question of law arises for

consideration.

29. Accordingly, the appeal is dismissed as devoid of merits. There shall be no order as to costs.

22-04-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1.The Principal District Judge, Coimbatore.

2.The Subordinate Judge, Coimbatore.



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