



WEB COPY

SA No. 599 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2025

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

S.A.No.599 of 2024

and

C.M.P.No.19115 of 2024

1.U.Vani

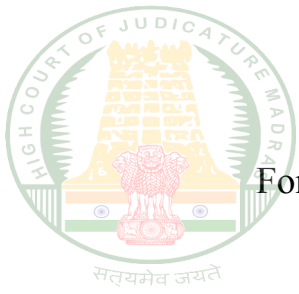
2.M.Venkaiah Naidu ...Appellants/Respondents/Defendants

Vs.

Y.Vijaya Baskar ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 01.02.2024 made in A.S.No.40 of 2012 on the file of the learned Additional District Judge, Kancheepuram, Chengalpattu reversing the Judgment and Decree dated 26.06.2008 made in O.S.No.10 of 2004 on the file of the learned Additional Subordinate Judge, Chengalpattu.

For Appellants : Mr.B.Srinivasan



For Respondents : Mr.M.L.Joseph
for Chennai Law Associates

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JUDGMENT

The above Second Appeal arises against the Judgment and Decree dated 01.02.2024 made in A.S.No.40 of 2012 on the file of the learned Additional District Judge, Kancheepuram, Chengalpattu reversing the Judgment and Decree dated 26.06.2008 made in O.S.No.10 of 2004 on the file of the learned Additional Subordinate Judge, Chengalpattu.

2.The appellants are the defendants. The plaintiff filed a suit O.S.No.10 of 2004 on the file of the learned Additional Subordinate Judge, Chengalpattu, seeking for the relief of Specific Performance with alternate remedy to refund a sum of Rs.2 lakhs with interest @ 18% per annum from 05.12.2000.

3.The plaintiff stated that the 1st defendant is the absolute owner of the



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immovable property of agricultural land as described in the Complaint schedule. He gave Power of Attorney in favour of the 2nd defendant on 30.06.1999. The defendant approached the plaintiff to sell the property for a valid consideration of Rs.4 lakhs and he accepted the offer and both of them entered into a Sale Agreement on 14.06.2000. On that date itself, the plaintiff paid Rs.1 lakh as advance and the balance amount to be paid on or before 30.09.2000, thereby, the plaintiff came to know that some litigations are pending in respect of the suit property and the defendants failed to show the survey boundaries. So, the plaintiff requested the 2nd defendant to carry out the survey but the defendants evaded the same and requested time. By mutual consent of both parties, the time mentioned in the agreement was waived. On 05.12.2000, further payment of Rs.1 lakh was paid by the plaintiff. The time was not treated as the essence of contract. The plaintiff was always ready to perform his part but the defendants have shifted his residence to Hyderabad from Chennai. Therefore, the plaintiff issued notice to both the defendants on 24.03.2003. But, they failed to reply for the same. Again, the plaintiff gave a remainder to the defendants. On 19.07.2003, he issued another notice and it was replied by the defendants



and they have not inclined to execute the Sale Deed. Hence, this suit.

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4.The defendants 1 and 2 contested the suit. They filed their Written Statement admitting that the 1st defendant is the owner of the suit property and the Power of Attorney executed by the 1st defendant is undisputed fact. They submitted that according to the Sale Agreement, the transaction should be completed on or before 30.09.2000. They always ready to perform their part. But the plaintiff repudiated the Contract stating that the suit property is with encumbrance. Thereafter, again the plaintiff paid Rs.1 lakh after the stipulated period, but however, he expressed his intention not to incline to purchase the property by his letter dated 24.03.2003. Thereafter, the present suit was filed. But, he was not ready to perform his part within the stipulated period. Therefore, the suit is not maintainable and prayed for dismissal of the suit.

5.Both parties contested the suit before the Trial Court by adducing evidence. Considering the evidence on record, the Trial Judge held that he stipulated period, i.e., on or before 30.09.2000, the plaintiff has not paid the



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balance sale consideration. The defendants have also not disputed the payment of advance of Rs.2,00,000/- paid by the plaintiff. Therefore, the Trial Judge held that readiness and willingness have not been proved and the defendants are directed to refund the amount of Rs.2 lakhs with interest.

6.Challenging the findings of the Trial Court, the plaintiff filed an appeal in A.S.No.40 of 2012 on the file of the learned Additional District Judge, Kancheepuram, Chengalpattu. After analysing the evidence and facts, the First Appellate Judge independently held that the defendants have not produced the alleged letter dated 24.03.2003 written by the plaintiff to repudiate the Contract. Furthermore, the defendants sold the property to the third parties. But, they have not produced the said Sale Deed also. But, the plaintiff proved his readiness and willingness since the time is not an essence of the Contract. The defendants shifted their residence to Hyderabad. Therefore, the plaintiff is not able to get the Sale Deed. As such, the suit is not maintainable for the relief of Specific Performance. Accordingly, the findings of the Trial Court was set aside and the Appeal Suit is allowed directing the defendants to execute the Sale Deed



in favour of the plaintiff. Challenging the said findings, the defendants preferred this Second Appeal.

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7. After hearing both sides, this Court had framed the following Substantial Question of Law:

“Whether the plaintiff was ready and willing to perform his part of Contract throughout and whether the act and conduct of the plaintiff could be termed as one not falling foul of the mandates as found in Sections 16 and 20 of the Specific Relief Act?”

8. The learned counsel appearing for the appellants/defendants would submit that the Lower Appellate Court has failed to see the aspects conjointly that the Sale Deed vide Document No.616/97 dated 27.03.1997 on the file of Tirupporur stands in favour of the 1st appellant, was cancelled on 14.10.1997. The said cancellation was challenged in O.S.No.29 of 1998 on the file of the learned District Munsif, Chengalpattu, and the same was decreed on 26.04.1999



in favour of the 1st appellant, had been recited in Ex.A.1 with that of Clause 4 of

Ex.A.1 that the suit property was free from encumbrance. Further, upon the lingering mind, the plaintiff only breached himself was unnoticed by the First Appellate Court. He would submit that the Lower Appellate Court has grossly erred to see the Ex.A.2 and Ex.A.3 dated 24.03.2003 in a proper perspective that the respondent had already made up his mind decisively not to venture into further, thereby severed his part of further performances on the ground that the suit property was subjected to litigation. Further, the said aspects were confirmed with jurisdictional Sub Registrar.

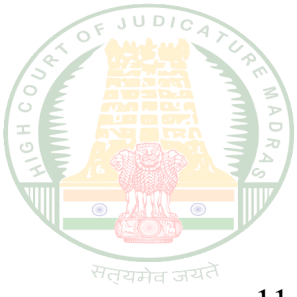
9.The learned counsel for the appellants would submit that the Lower Court has miserably failed to look into the main aspect of respondent's capacity to pay and conclude his part of contractual obligations as per Ex.A.1 and nothing was placed to prove his capacity to pay before the Courts below. Further, the Lower Appellate Court has failed to look into the vital unexplained aspects as to why the respondent was virtually dormant and slept over from 14.06.2000 to 24.03.2003 for the best reasons known to the respondent,



especially, his acts should be speedy and continuous. The Lower Appellate

Court has erred to look into the aspect that respondent was known about the sale negotiations of the suit property to the third parties and consequent sale in the 2nd week of April 2003. Therefore, it was prompted the respondent and to wake up just prior to sale and cause Ex.A2 and Ex.A3 to the appellants herein.

10.It is an admitted fact that the 1st defendant is the owner of the property. The 1st defendant had executed a registered Power of Attorney dated 30.06.1999 in favour of the 2nd defendant. The 2nd defendant entered into terms of Agreement with the plaintiff on 30.06.1999. On the date itself, the plaintiff paid Rs.1 lakh towards advance to the defendants. The plaintiff is bound to pay the balance amount on or before 30.09.2000. But, the plaintiff has not paid the balance amount within the stipulated period. On 05.12.2000, he paid further payment of Rs.1 lakh to the defendants and made an endorsement on the back side of the Agreement. Thereafter, notice was issued in the year 2003 and on two occasions, they sent notices to the defendants. After that, the present suit has been filed.



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11. Section 16(c) of the Specific Relief Act, 1963, mandates that a plaintiff seeking specific performance of a contract must aver and prove that they have either performed their part of the contract or have been consistently ready and willing to perform the essential terms of the contract. This “readiness and willingness” must be demonstrated substantially, not just as a matter of form.

12. Section 16(c) of the Specific Relief Act, mandates that the plaintiff is bound to establish that he was always ready and willing to perform his part of the contract. In the case on hand, within the stipulated period, the plaintiff has not paid the balance amount to the defendants. But, he paid a sum of Rs.1 lakh thereafter, even then he has not paid the entire balance amount. Furthermore, the alleged second payment was made on 05.12.2000. Thereafter, nearly about 2 years 9 months later, he issued notice and filed the suit. There is no reason on the side of the plaintiff for the inordinate delay on his part to pay the balance amount. Even after filing of the suit, he has not deposited the balance amount into the Court. Therefore, the plaintiff has not proved his readiness and



willingness which was rightly appreciated by the Trial Court. But, the First

Appellate Court erroneously held that the suit was filed within the litigation period ignoring the conduct of the plaintiff, as such, is illegal and it is liable to be set aside. Therefore, the issue is answered accordingly. Hence, the findings rendered by the Trial Court is confirmed.

13. Accordingly, this Second Appeal is allowed. The suit is partly decreed. In respect of the prayer for Specific Performance, the suit is dismissed. The defendants are directed to refund a sum of Rs.2,00,000/- with interest @ 18% per annum, as per the terms of Agreement, from the date of the suit till the date of filing of the suit and thereafter, 12% per annum is ordered from the date of Agreement till the date of realisation. No costs. Consequently, connected Miscellaneous Petition is closed.

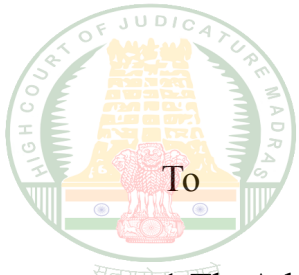
11.06.2025

Speaking / Non Speaking order

Neutral Citation : Yes/No

Index :Yes/No

mps



SA No. 599 of 2024



To

1. The Additional District Judge,
Kancheepuram,
Chengalpattu.

2. The Additional Subordinate Judge,
Chengalpattu.

3. The Section Officer,
VR Section,
Madras High Court.

T.V.THAMAILSELVI, J.

mps



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 599 of 2024

U. Vani

D/o. Ummalaneni Subha Rao, H.1,
Hodhi Homes, No.10, 1st Street,
Rangarajapuram, Kodambakkam,
Chennai 24.

Appellant(s)

Vs

Y. Vijaya Baskar

S/o. Venkatasamy, Flat C, No.23,
Bhagirathiammal St, T. Nagar, Chennai
17.

Respondent(s)

SA No. 599 of 2024

For Appellant(s): B.Srinivasan

For Respondent(s): Mr.M.L.Joseph For M/s.Chennai
Law Associates

**ORDER**

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This petition has been listed under caption for "being mentioned" under the instance of the learned counsel.

2. It is brought to the notice of the Court that some typographical error crept in the judgment dated 11.06.2025 in para 12 & 13. Accordingly, para 12 & 13 in the judgment dated 11.06.2025 is replaced as follows:

12. Thereafter nearly about 2 years and 9 months later, he issued notice and filed the suit. There is no reason on the side of the plaintiff for the inordinate delay on his part to pay the balance amount. Even after filing of the suit, he has not deposited the balance amount into the Court. Therefore, the plaintiff has not proved his readiness and willingness which was rightly appreciated by the Trial Court. But, the First Appellate Court erroneously held that the suit was filed within the limitation period ignoring the conduct of the plaintiff, as such, is illegal and it is liable to be set aside. Therefore, the issue is answered accordingly. Hence, the findings rendered by the Trial Court is confirmed.

13. from the date of suit till the date of realisation. If the respondent/plaintiff refused to receive the refund amount, then the appellant/defendants are directed to deposit the advance amount along with interest as aforesaid before the Additional Subordinate Judge, Chengalpattu, to the credit of OS No. 10 of 2004. No costs. Consequently, connected Miscellaneous Petition is closed.



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3. The Registry is directed to issue fresh order copy, after making above corrections in the judgement.

01-07-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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T.V.THAMILSELVI J.
pbl

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01-07-2025