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SA No. 7 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24-04-2025**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**SA No. 7 of 2025**

**AND**

**SA NO. 656 OF 2024,CMP NO. 154 OF 2025,CMP NO. 20937 OF 2024**

1. N.Venkatesan

S/o. T.A.Nanjappan, Residing at Door  
No.12-3/6A, South Car Street, 12th  
Ward, Tharamangalam Town  
panchayat, Tharamangalam, Omalur  
Taluk, Salem District

Appellant(s)

Vs

1. K.Kumaravel

S/o. Ka.Ko. Kandasamy, Residing at  
Anaikadu, Ayyayiram Roobaikarar  
Complex, 8th ward, Pallipalayam,  
Tiruchengode Taluk, Namakkal District

2.K Gopal

S/o. Kanajamalai, Residing at MGR  
Colony No.2, Thangasalai Theru,  
Tharamangalam, Omalur Taluk, Salem  
District

Respondent(s)

**SA No. 656 of 2024**

1. K.Gopal

S/o.kanajamalai, MGR Colony No.2,  
Thangasalai Theru, Tharamangalam,  
Omalur Taluk, Salem District

Appellant(s)



Vs

1. K.Kumaravelu  
S/o.Ka.Ko.Kandhasamy, Aandikadu,  
Ayyayiram Roobaikarar complex, 8th  
Ward, Pallipalayam, Thiruchengodu  
Taluk, Namakkal District

Respondent(s)

**SA No. 7 of 2025**

**PRAYER**

To set aside the judgement and decree dated 16-04-2024 in A.S.No.43/2021 on the file of the Principal District Judge, Salem reversing the Judgment and decree dated 28-06-2019 in O.S.No.536/2018 on the file of the Sub Court, Omalur.

**SA No. 656 of 2024**

**PRAYER**

To set aside the Judgment and decree dt. 16.04.2024 passed in AS No.43/2021, on the file of Principal District Court, Salem, reversing the Judgment and decree dt. 28.06.2019 passed in OS No.536/2018 on the file of the Subordinate court, Omalur

**SA No. 7 of 2025**

For Appellant(s):  
(in S.A No. 7 of 2025)

Mr. V. Sekar

For Appellant(s):  
(in S.A No. 656 of 2024)

Mr. P. Mathivanan

For Respondent(s):  
(in S.A No. 656 of 2024)  
(in both appeals)

K. Govi Ganesan

For Respondent(s):  
(in S.A No. 7 of 2025)  
(in both appeals)

K. Govi Ganesan For R1  
Mr.P.Mathivanan For R2

**COMMON JUDGMENT**

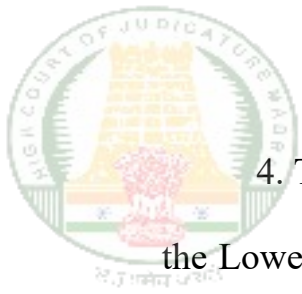
These second appeals have been filed to set aside the Judgment and decree dated 16.04.2024 passed in AS No.43/2021, on the file of Principal District Court, Salem, reversing the Judgment and decree dated 28.06.2019



passed in OS No.536/2018 on the file of the Subordinate court, Omalur.

2. The parties are denoted as per the suit. The plaintiff filed the suit in old OS No. 47 of 2011 New OS No. 536 of 2018, on the file of the Sub Court, Omalur, against the defendant for the relief of specific performance directing the defendant to receive the balance amount and to execute the sale deed. The said suit was contested by the defendant, who admitted the sale agreement but denied the other allegations and he contended that within stipulated period the has plaintiff not expressed his readiness and Willingness and not intended to get sale deed by paying balance amount, near about 2 ½ years later within stipulated period he issued notice thereafter also not filed suit, hence with inordinate delay he approached the Court and also disputed the readiness and Willingness of the plaintiff. Considering the both side submissions the Trial Court framed the issues, the foremost issue is whether plaintiff entitle for relief of specific performance. On considering the evidence on record, the Trial Court concluded that plaintiff has not proved the readiness and willingness there is an inordinate delay on the part of the plaintiff and directed the defendant to refund advance amount. Accordingly, decreed the suit partly. Challenging the same, defendant preferred an appeal in A.S No. 43 of 2021, on the file of the Principal District Court, Salem, wherein the first appellate Court framed the separate points for consideration and finally concluded that plaintiff has proved his readiness and willingness but the Trial Court failed to take into account of the fact that Ex.A1 to Ex.A5, legal notice/Ex.A3 was issued and the plaintiff expressed his readiness





4. The findings of the Lower Appellate Court are perverse in nature, since the Lower Appellate Court has miserably failed to appreciate the oral as well as documentary evidence on record in proper perspective and the findings of the lower appellate court are contradictory to the evidence and perverse in nature and the same are liable to be set aside by this Hon'ble court.

5. The Lower Appellate below has failed to take in to consideration that after lapse of two years from the date of agreement the respondent herein has issued legal notice to the appellant herein and for which the appellant has sent the reply notice dated.04.09.2011 denying the allegations. However, the respondent herein without sending any rejoinder and after lapse of six months the present suit was filed on 16.03.2011.

6. The Lower Appellate below is not correct and proper in holding that there is no specific denial with regarding non-existence of electric pole and wire in the suit property. However the lower appellate court has failed to look into the reply notice ExA.4 and the written statement the appellant herein has specifically denied the existence of the electric pole. The removal of electric pole and wire are invented for the non-performance of the contract.

7. This Court admitted the both appeals on the following substantial questions of law:

- i. Whether the Lower Appellate Court is correct in allowing the appeal when the plaintiff is not coming to the court with unclean hands?
- ii. When the plaintiff in his written statement as well as reply notice



Ex.A.4 denied the existence of Electrical post and wire and removing the same is invented by the plaintiff for his nonperformance of contract, is not the lower appellate court perverse in holding that there is no specific denial by the appellant herein regarding nonexistence of electric poles and wires in the suit property?

iii. Is not the judgement and decree of the Lower Appellate Court perverse in granting the discretionary relief in favour of the respondent, without setting aside the well-considered findings of the trial court in granting returned of advance money alone?

8. The learned counsel appearing for the respondent/plaintiff argued that the first appellate Court has rightly concluded that plaintiff proved his readiness and willingness by appreciating the document adduced on his side as well as legal proposition by relying the judgement of this Court and rightly granted relief of specific performance as such is well reasoned needs no interference. Further, he raised objection stating that during the pendency of the proceedings suit properties were purchased by the second defendant as such he is not a bonafide purchaser and he is not permitted to file the appeal to that effect he relied judgement in the case of Khemchand Shankar Chaoudhari and another Vs. Vishnu Hari Patil and other reported in 1983 (1) Scc 18 para 6 :

*The question for consideration is whether the High Court, the Government and the Revenue authorities were right in the circumstances of the case in holding that the*



*appellants had no locus standi to ask for an equitable partition particularly when the sales in favour of the appellants were not in dispute.*

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*Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of [Order 22 of the Code of Civil Procedure](#) clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. An heir or a legatee or an official receiver or a transferee can participate in the execution proceedings even though their names may not have been shown in the decree, preliminary or final. If they apply to the court to be impleaded as parties they cannot be turned out. The Collector who has to effect partition of an estate under [section 54](#) of the Code of Civil Procedure has no doubt to divide it in accordance with the decree sent to him. But if a party to such a decree dies leaving some heirs about whose interest there is no dispute should he fold up his hands and return the papers to the civil court ? He need not do so. He may proceed to allot the share of the deceased party to his heirs. Similarly he may, when there is no dispute, allot the shares of a deceased party in favour of his legatees. In the case of insolvency of a party, the official receiver may be allotted the share of the insolvent. In the case of transferees pendente lite also, if there is no dispute, the Collector may proceed to make allotment of properties in an equitable manner instead of rejecting their claim for such equitable partition on the ground that they have no locus standi. A transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor. There is no dispute that a party can ask for an equitable partition. A transferee from him, therefore, can also do so. Such a construction of [section 54](#) of the Code of Civil Procedure advances the cause of justice. Otherwise in every case where a party dies, or where a party is adjudicated as an insolvent or where he transfers some interest in the suit property pendente lite the matter has got to be referred back to the civil court even though there may be no*



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*dispute about the succession, devolution or transfer of interest. In any such case where there is no dispute if the Collector makes an equitable partition taking into consideration the interests of all concerned including those on whom any interest in the subject matter has devolved, he would neither be violating the decree nor transgressing any law. His action would not be ultra vires. On the other hand, it would be in conformity with the intention of the Legislature which has placed the work of partition of lands subject to payment of assessment to the Government in his hands to be carried out 'in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares'.*

9. Further, relied on Judgement of the Apex Court in the case of Amit Kumar Shaw and Another Vs. Farida khatoon and Another reported in 2005) 11 Scc 403:

The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:

- (1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or
- (2) When, without his presence, the questions in the suit cannot be completely decided.

*15. Section 52 of the Transfer of Property Act is an expression of the principle "pending a litigation nothing new should*



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*be introduced". It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This Section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:*

- 1. There must be a suit or proceeding pending in a Court of competent jurisdiction.*
- 2. The suit or proceeding must not be collusive.*
- 3. The litigation must be one in which right to immovable property is directly and specifically in question.*
- 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.*
- 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.*

10. Considering the both side submissions, the facts reveal that respondent/plaintiff Kumaravelu said to be entered into sale agreement with first defendant/appellant herein Gopal on 03.09.2008. Admittedly, the suit property as described in the plaint schedule is belongs to the first defendant by way of purchase in the year 2007 through sale deed. . According to the plaintiff, the defendant agreed to sell the suit property to the plaintiff at the rate of Rs.120/- per square feet and total extent of property is 1664 square feet and total consideration was fixed as Rs. 1,99,680/-. and the palintiff had paid advance of



Rs.50,000/- and the time to execute the sale deed was fixed as three months.

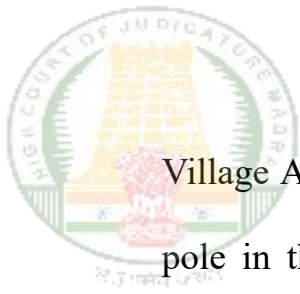
Therefore, the said time ends in the month of December 2008, the plaintiff contended that after agreement he expressed his readiness and willingness but the defendant evaded to execute the sale deed and at the instance of the defendant, the plaintiff paid further amount of Rs.70,000/- as a part of sale consideration on 03.10.2000 to that effect endorsement made on the backside of the sale agreement in the presence of witness. Further, the defendant would agreed to remove electric pole planted in the suit property. But he failed to comply the terms. Therefore, plaintiff issued notice on 12.08.2010. Thereafter, the defendant issued reply notice on 16.03.2011. Thereafter, he approached the Court for Specific relief.

11. The defendant admits the sale agreement but denied the alleged endorsement and also stated that he never admitted to remove the electric pole in the suit property. In fact, there is no electric pole situated in the suit property hence the burden is upon the plaintiff to prove the terms between the parties and also readiness and willingness as required under Section 16(c) of Specific Relief Act. In respect of second endorsement made in the sale agreement, the plaintiff examined P.W.2 to that effect Trial Court also admits that agreement was proved. There is no contra evidence to that effect on the side of the first defendant. In respect of readiness and Willingness the Trial Court concluded that near about 2 ½ years later from date of endorsement in the sale deed he issued notice. Thereafter, near about 6 months later he preferred suit. So delay has not



been properly explained, which shows that he was not ready and willing throughout from the date of agreement thereby the suit dismissed in respect of specific relief Act, directed to refund the advance amount since the agreement was admitted. However, Considering the findings of 1<sup>st</sup> appellate court where it was held that plaintiff has proved his readiness and willingness stating that suit was filed within limitation period and notice also issued within limitation period. Thereby, readiness and willingness established by the plaintiff. Section 16 (c ) of the Specific Relief Act, mandates that a plaintiff seeking specific performance of a contract must prove they were ready and willing to fulfill their part of the contract, not only at the time of contract formation, but also throughout the period leading up to the filing of the suit.

12. The plaintiff bound to prove tha he was always ready and willing to perform his part of the agreement. Admittedly, the sale agreement was executed in the year of 2008 and three months time was fixed for execution. Thereafter, plaintiff contended that the time was extended by receiving another part of the amount. Thereafter, 2 ½ years latter the notice was issued, which is an undisputed fact. According to the plaintiff, there is a electric pole in the suit property and the defendant has agreed to remove the same but thereafter the defendant evaded to remove the electric pole and to execute the sale deed. As rightly pointed out by the Trial Court there is no terms in respect of electric pole in the sale agreement. Even the contention of the defendant is that there is no electric pole in the suit property to prove the same the defendant examined



Village Administrative Officer/P.W.3, as per his evidence there is no electricity pole in the suit property. Therefore as alleged by the plaintiff that defendant agreed to remove the electric pole as such is not true one. Removal of electric pole is invented by the plaintiff it is not the terms of the agreement but the first appellate Court failed to appreciate said aspects. Reason for the delay is not acceptable one. As discussed above, the plaintiff has not approached the court with clean hands but the first appellate court failed to appreciate the said legal proposition and erroneously granted relief. Accordingly, questions of law i, ii and iii are answered. The findings of the first appellate Court is set aside. The findings of the Trial Court is confirmed.

13. In respect of S.A No. 7 of 2025. The learned counsel for the plaintiff relied judgements would argues that pendente lite purchaser has no locus standi to participate the suit proceedings but the said judgement is not acceptable one for the reason that the plaintiff himself failed to prove his readiness and willingness and he is not entitle for relief of specific performance. Accordingly, appeal is allowed. The findings of the Trial Court is confirmed suit dismissed in respect of specific relief. Both the defendant are directed to refund the advance amount Rs. 1,20,000/- with interest of 7.5% per annum from the date of suit as per detailed calculation memo filed by the appellant. The calculation memo filed by the defendant/appellant is forming part of the decree.

14. In the result, these appeals are allowed. No Costs. Pending petition(s), if any, is/are closed.



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**24-04-2025**

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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S/o. Ka.Ko. Kandasamy, Residing at  
Anaikadu, Ayyayiram Roobaikarar  
Complex, 8th ward, Pallipalayam,  
Tiruchengode Taluk, Namakkal District

2.K Gopal  
S/o. Kanajamalai, Residing at MGR  
Colony No.2, Thangasalai Theru,  
Tharamangalam, Omalur Taluk, Salem  
District.

3. The Section officer, V.R Section,  
HighCourt, Madras.

4. The Principal District Judge, Salem.

5. The Sub Court, Omalur.



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**T.V.THAMILSELVI J.**  
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**24-04-2025**