



C.S.No.104 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2025

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

**C.S.No.104 of 2022 &
O.A.Nos.322 and 323 of 2022**

M/s Love and Concern
rep.by its President
Mr.John Venkatesan

... Plaintiff

Vs.

1. K.Dhananjayan
2. D.Karthick Raghunath
3. Dhanasekaran
4. D.Shyamala
5. D.Preethi
6. Saravanaperumal
7. Vijay Saravanaperumal
8. Sudha Saravanaperumal
9. D.Saranya
10.Sangeetha

... Defendants

Prayer:

The Civil Suit filed under Order IV Rule 1 of O.S.Rules r/w VII (a)
1 of Civil Procedure Code for (a) Directing the defendants herein to
perform their part of contract in accordance with suit registered sale
agreement dated 07.05.2018 vide sale agreement document no.2503 of
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2018 on the office of the Sub-Registrar, Purasaiwakkam by accepting

the remaining sale consideration and to execute a sale deed in respect of the suit property in favour of the plaintiff herein, in default, on behalf of the defendants herein, the Assistant Registrar, Original Side of this Court to execute a sale deed in favour of the plaintiff herein; (b) for permanent injunction restraining the defendants or their henchmen, person or persons, agent or agents from in any manner interfering with plaintiff's peaceful possession and enjoyment of the suit property; (c) for permanent injunction restraining the defendants or their respective authorised agents or persons from alienating or encumbering the suit property to any third parties in any manner.

For Plaintiff : Mr.S.Nambi Arroram for
Mr.K.V.Ramesh and
Mr.S.K.Masthan

For Defendants : Mr.P.T.Perumal for D3 to D5 & D9 and
D10
Mr.V.Chandrakanthan for D1, D2 and
D6 to D8

J U D G M E N T

This Civil Suit has been filed by the plaintiff as against the



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defendants for the relief of Specific Performance of Contract based on the agreement dated 07.05.2018; for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of property and for relief of permanent injunction restraining the defendants from alienating or encumbering the suit property to any third parties.

2. The brief averments of the plaint are as follows:-

(i) The plaintiff, viz., M/s Love and Concern (Trust) represented as President of the Plaintiff had originally entered into a tenancy agreement in respect of the suit property with the 1st defendant and the said agreement is dated 11.03.1992. Pursuant to the said agreement, the plaintiff had been in possession and enjoyment of the property and he is paying rent of Rs.1,800/- per month. Further, the plaintiff had paid a sum of Rs.20,000/- as advance. Originally, the suit property belongs to T.R.P.Kothandaraman and after his demise, the defendants 1 to 10, being legal heirs are entitled to the suit property. The defendants 1 to

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10 agreed to sell the suit property to the plaintiff for a sum of

Rs.3,51,14,365/- and the registered sale agreement was executed

between the parties on 07.05.2018 and on the same day, a sum of

Rs.1,15,42,500/- was paid towards advance of the sale price.

(ii) Further more, the plaintiff and the defendants had entered into a Memorandum of Understanding pertaining to the suit property prior to the suit agreement, but due to certain unexpected subsequent events, they were unable to proceed further with the same, thereby they decided to enter into a registered agreement dated 07.05.2018. On various dates, the plaintiff paid a sum of Rs.1,15,42,500/- to the defendants. The remaining amount of Rs.2,35,71,865/- to be paid at the time of execution of sale deed. In the said agreement, it was clearly mentioned that the purchaser, as a tenant, who was already in possession of 2790 sq.ft., of the schedule mentioned property, through tenancy agreement dated 11.03.1992 and after entering into the said agreement, the plaintiff is in occupation of entire suit property and enjoying the same.



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(iii) The time fixed for completion of sale is 10 months, the plaintiff was always ready and willing to perform his part of contract by paying a balance of sale consideration, but the defendants evaded to receive the balance of sale consideration and to execute the sale deed. Thereafter, the plaintiff issued notice dated 11.12.2021 to the defendants expressing his willingness to purchase the property by paying the remaining sale price. But the defendants have failed to perform their part of contract. The plaintiff is in possession of the property and the defendants are bound to execute the sale deed, therefore, filed the suit.

3. The brief averments of the Written Statements filed by the defendants 1, 2 and 6 to 8 are as follows:

(I) As per the plaint averments, the plaintiff is a Trust, but no documents have been filed to show that the plaintiff is a Trust. The plaintiff has no *locus-standi* to file the suit on behalf of the Trust. The agreement has been made between the defendants and M/s Love and Concern represented by Mr.John Venkatesan, but no authorisation letter

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was filed along with the plaint to show that the said John Venkatesan is

representing the plaintiff's trust. The suit is based on the agreement of

sale dated 07.05.2018 and the suit was filed on 22.12.2021, therefore,

the suit is barred by limitation.

(ii) It is true that the defendants are the owners of the property through settlement deed executed by T.R.P.Kothandaraman through settlement deed dated 21.07.1980 and as per the settlement deed, there is a condition that Mr.K.Dasarathan shall enjoy the property during his life time without any power of alienation and thereafter, his male heirs shall enjoy the property absolutely. Similarly, the son of K.Dhananjayan shall enjoy the property during his lifetime without any power of alienation and his male heirs shall enjoy the property absolutely.

(iii) The son of K.Saravanaperumal shall enjoy the property during his life time without any power of alienation and his male heirs shall enjoy the property absolutely. As per the settlement deed, son of

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K.Dhanasekar shall enjoy the property during his lifetime without any power of alienation and his male heirs shall enjoy the property absolutely. After settlement deeds, the defendants are enjoying the properties along with their children, while so, the plaintiff approached the said K.Dhananjayan, viz., 1st defendant to let out the property allotted to him for monthly rent of Rs.1,800/- for a period of eleven months.

(iv) In the said lease deed, it was wrongly stated that the lease property to an extent of 2790 sq.ft.. In fact, the said Dhananjayan is entitled to only to an extent of 1320 sq.ft., and other portion of an extent of 780 Sq.ft., had been already sold under a sale deed dated 15.09.1997. The 1st defendant did not read the lease deed and believed the words of the plaintiff. The plaintiff approached Dasarathan, Dhansekaran and Saravana Perumal to purchase the property to an extent of 8076 sq.ft., and the defendants also agreed to sell the property and entered into sale agreement dated 11.03.2010 for Rs.2,86,02,500/-.

The plaintiff paid a sum of Rs.4,42,500/- to Dasarathan, Rs.2 Lakhs to

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Dhananjayan, Rs.2,00,000/- to Dhanasekaran and Rs.2,00,000/- to

Saravana Perumal. The balance of sale consideration to be paid within 60 days.

(v) Based on the said agreement, the plaintiff was not ready to get the sale deed by paying the balance amount. Thereafter, the plaintiff, again, offered to purchase the property for a sum of Rs.6 Crores and requested these defendants to enter into Memorandum of Understanding. Accordingly, a Memorandum of Understanding dated 26.02.2018 was entered into between the plaintiff and the defendants, but one Ramakrishnan another son of Dhananjayan did not sign in the Memorandum of Understanding.

(vi) As per the Memorandum of Understanding, the plaintiff has to pay a sum of Rs.6,00,00,000/- within a period of ten months after adjusting advance amount of Rs.10,42,500/-. Further, the plaintiff paid advance of Rs.50,000/- on 12.02.2017 and a sum of Rs.4,50,000/- on 23.06.2017, in total, he paid a sum of Rs.15,42,000/- Thereafter, on 8/42



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26.02.2018, the plaintiff paid Rs.50,00,000/- in favour of Mrs.Saranya

and on 01.03.2018, he paid a sum of Rs.50,00,000/- in favour of Saravanaperumal and Dhananjayan. In total, advance amount of Rs.1,15,42,500/- was paid as per Memorandum of Understanding dated 26.02.2018 and the time was fixed for a period of ten months and the same is the essence of contract. Thereafter, the plaintiff failed to perform his part of contract.

(vii) The plaintiff requested the defendants to enter into a fresh agreement for sale for guideline value and promised to pay the balance by cash. Believing the representation of the plaintiff, the defendants agreed to execute fresh agreement dated 07.05.2018 for sale consideration of Rs.3,51,14,365/- and the earlier advance amount of Rs.1,15,42,500/- was adjusted as advance and the remaining amount has to be paid within 10 months. As per the agreement dated 07.05.2018, the plaintiff, as a tenant, is in possession of 2790 sq.ft., only if the purchaser failed to pay the amount as per the agreement, he shall vacate and handover the vacant possession of Rs.1,15,42,500/-.



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On 25.01.2017, the defendants sent a legal notice to the plaintiff based on the Memorandum of Understanding dated 26.02.2018.

(viii) The plaintiff suppressed the earlier agreement dated 11.03.2010 and the Memorandum of Understanding dated 26.02.2018 and filed the suit with false allegations. The plaintiff has to pay the balance amount of Rs.4,84,57,500/- as per the Memorandum of Understanding dated 26.02.2018. Therefore, the plaintiff was not ready to pay the balance amount and he is not entitled to specific performance of contract. The plaintiff is in possession of the property only to an extent of 2790 sq.ft. The value of the property is more than Rs.12 Crores and the plaintiff himself agreed to purchase the property for Rs.6 Crores.

(ix) The agreement dated 07.05.2018 was cancelled by the defendants by notices dated 25.01.2019 and 10.10.2019 and again on 23.12.2021. Therefore, the plaintiff is not entitled to any relief and the



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suit is liable to be dismissed.

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4. The brief averments of the Written Statement filed by the defendants 3 to 5, 9 and 10 are as follows:-

(i) There was no tenancy agreement executed by the plaintiff -Trust M/s Love and Concern with the 1st defendant. In fact, the tenancy agreement was executed on 11.03.1992 between the Church of the Word and the 1st defendant for an extent of 2790 sq.ft., under the agreement dated 11.03.1992. The lessee trust was permitted to put up temporary thatched shed for running a church. The lessee was not permitted to use premises other than church purposes. There is no agreement between Dhananjayan and the plaintiff's concern M/s Love and Concern. Neither the 3rd defendant, Dhanasekaran nor his brothers voluntarily entered into sale agreement as mentioned in the plaint. In fact, Mr.John Venkatesan used his henchmen to coerce the defendants and they are forced to compelling circumstances to agree for sale of the properties. The total sale consideration mentioned in Paragraph No.7 of 11/42



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the plaint are false. The plaintiff was not given the possession and occupation of the entire suit property.

(ii) The plaintiff was not ready and willing to perform his part of contract. The defendants categorically cancelled the said sale agreement and they are no longer obligated under law to comply the request of the plaintiff. The description of the property is incorrect and the value of the property is not correct and the said John Venkatesan, who is said to be christian pasture and the trustee of a Christian trust by name, Church of the Word approached the 1st defendant and entered into tenancy agreement taking possession of 2790 sq.ft., for running a church. After constructing a church, the behavior of the said John Venkatesan got changed.

(iii) Thereafter, the said John Venkatesan and all the four sons of T.R.P.Kothandaraman entered into agreement on 11.03.2010 for sale with M/s Love and Concern, a Social Service Trust. As per the said

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agreement, an extent of 8076 sq.ft., land was agreed to be sold to the

total cost of Rs.2,86,02,500/-. The advance of Rs.10,42,500/- was

received, within 60 days the sale has to be completed, but the plaintiff

was not ready to get the sale deed. In the month of April, 2014, all the

defendants entered into Joint Venture agreement with M/s GKP builders

to build an apartment complex and then they have to vacate John

Venkatesan and handover the vacant possession to the builder. But the

said John Venkatesan refused to vacate the premises, therefore, the

defendants sent a legal notice dated 06.11.2017 and he failed to

perform his part of obligation. Thereafter, the said John Venkatesan

offered to purchase the property for a sum of Rs.6 crores and the

Memorandum of Understanding dated 26.02.2018 was entered between

the parties.

(iv) As per the Memorandum of Understanding a sum of

Rs.6 Crores was fixed as sale consideration and the time was fixed as

10 months, due to this development, joint venture agreement with M/s

GKP enterprise was cancelled on 07.03.2018. Thereafter, once again,

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a fresh agreement was executed between the defendants and M/s Love and Concern. The total sale consideration was reduced to Rs.3.51

Crores and the sale has to be completed on or before 07.03.2018, which was not again honoured by the said John Venkatesan, therefore, the defendants issued notice dated 25.09.2019 but there was no any reply.

(v) On 10.10.2019, another notice was issued stating that the agreement dated 07.05.2018 stand cancelled and requested to receive the refund and vacate the occupied possession within one month. The said John Venkatesan has always violated his own terms and the suit is not maintainable and it is an abuse of process of Court. Therefore, the suit is liable to be dismissed and the said John Venkatesan may be directed to receive the refund of advance amount of Rs.1,15,42,500/- and to handover vacant possession of his occupied portion of the property.



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5. Based on the above said pleadings and on perusal of the records and hearing both sides, this Court framed the following issues for trial on 19.09.2023:-

“(i) Whether the plaintiff has the locus standi to file a suit on behalf of the Trust?

(ii) Whether the sale agreement dated 07.05.2018 is true, valid and binding on the defendants ?

(iii) Whether the sale agreement dated 07.05.2018 is unenforceable due to the earlier agreement dated 11.03.2010 and memo of understanding dated 26.02.2018?

(iv) Whether the plaintiff was ready and willing to perform his part of contract?

(v) Whether the plaintiff has been given with possession pursuant to the sale agreement dated 07.05.2018?

(vi) Whether the plaintiff is in lawful possession of the suit property?

(vii) Whether the plaintiff is entitled to the decree for specific performance?



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(viii) Whether the plaintiff is entitled to the relief of two permanent injunctions as prayed?

(ix) Whether the time is the essence of contract?

(x) Whether the suit is barred by limitation and to what other relief? If any.”

6. The learned counsel appearing for the plaintiff would submit as follows:-

(i) The defendants are the owners of the suit property and they entered into sale agreement with the plaintiff on 07.05.2018. the said agreement is a registered one and as per the agreement, the sale price was fixed as Rs.3,51,14,365/- and a sum of Rs.1,15,42,500/- was paid towards advance of sale consideration. The remaining amount of Rs.2,35,71,865/- to be paid at the time of execution of registration of sale deed. The time was fixed for 10 months and prior to the agreement, the plaintiff was in possession and enjoyment of the property ,as tenant, for an extent of 2790 Sq.Ft., and thereafter, based on the agreement, the entire property was handed over to the

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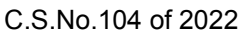


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possession of the plaintiff. The plaintiff was always ready and willing to perform his part of contract, but the defendants are always evading from executing sale deed, therefore, filed this suit.

(ii) In order to prove the case of the plaintiff, on the side of the plaintiff, P.Ws.1 and 2 were examined and marked Exhibits Ex.P.1 to P.17. On the side of the defendants, D.W.1 was examined and marked Ex.D1 to D.8.

(iii) P.Ws.1 and 2 categorically deposed about the execution of agreement and the defendants have also admitted execution of the sale agreement, therefore, as per the agreement, they have to execute the sale deed after receipt of balance sale consideration. When the plaintiff was always ready and willing to perform his part of contract by paying remaining sale price, the defendants refused to execute sale deed, therefore, the plaintiff is entitled to the relief of specific performance of contract.



7. The learned counsel appearing for the defendants 1, 2 and 6 to

Id submit as follows:-

(I) The suit property belonged to the defendants and they entered into an agreement with the plaintiff, the plaintiff is a trust, but the suit was not filed by the trust, therefore, the suit is not maintainable. In fact, the defendants entered into agreement with the plaintiff. The plaintiff entered into the premises as tenant in the year 1992 through a lease agreement dated 11.03.1992, to an extent 2790 sq.ft., and after, in the year 2010, the defendants entered into agreement with the plaintiff to sell the property for a sum of Rs.2,86,02,500/- through



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sale agreement dated 11.03.2010. On 15.03.2010, the defendants

received a sum of Rs.10,42,500/- and the remaining amount of Rs.2,75,56,000/- payable within 60 days but the said terms of agreement have not been complied by the plaintiff.

(ii) Thereafter, again, the plaintiff offered to purchase the property for a sum of Rs.6 Crores and the Memorandum of Understanding was entered into between the parties dated 26.02.2018 and the advance already received through the previous agreement for a sum of Rs.10,42,500/- was adjusted for the advance of amount and again, the plaintiff paid money to the defendants on various dates, totally paid a sum of Rs.1,15,42,500/-.

(iii) The plaintiff after entering into the tenancy agreement in the year 1992, refused to vacate the premises and three times entered into agreement, but not performed his part of contract and without any money to purchase the property, he filed the suit. Once the plaintiff agreed to purchase the property for Rs.6 crores, he cannot file the suit

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for meager amount of Rs.1,15,42,500/-. The defendants admitted the

receipt of advance amount and they are ready to repay the amount, but the plaintiff has not prayed for alternative relief of return of advance money, already the plaintiff filed a petition to amend the plaint and the same was dismissed, therefore, the plaintiff is not entitled to any relief and the suit is liable to be dismissed.

(iv) As per the Memorandum of Understanding, 10 months time was granted for completion of contract, but the plaintiff failed to perform his part of contract, again, the plaintiff and defendants entered into registered agreement dated 07.05.2018 by fixing the sale consideration of Rs.3,51,14,365/- and earlier, the advance amount of Rs.1,15,42,500/- has been adjusted as advance and the remaining consideration of Rs.2,35,71,865/- is payable by the plaintiff within 10 months, but the plaintiff failed to perform his part of contract. As per the Memorandum of Understanding, the plaintiff has to pay the remaining amount of Rs.4,84,57,500/-, as per the request of the plaintiff, for guideline value purpose, the subsequent agreement was entered for the lesser price

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but the remaining amount was agreed by the plaintiff to pay in cash. But

the plaintiff failed to perform his part of contract. The plaintiff was not ready and willing to perform his part of contract and during the cross examination, he admitted that he has no money to purchase the property at present and therefore, he is not ready and willing to perform his part of contract and only to delay the proceedings, he has filed the present suit.

8. The learned counsel appearing defendants 3 to 5 & 9 and 10 also reiterated the same arguments as that of the arguments made by the learned counsel for the defendants 1, 2 and 6 to 8.

9. Heard the learned counsel on either side and perused the entire documents on record.

10. Answers to Issue No.(i) *Whether the plaintiff has the locus standi to file a suit on behalf of the Trust?*

The plaintiff has filed the suit for the relief of specific performance



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based on the agreement between the plaintiff and the defendants dated

07.05.2018. The plaintiff in the cause title mentioned as M/s Love and

Concern represented by its President, John Venkatesan, however, in

the body of the plaint, he has stated that the plaintiff is a trust, therefore,

the defendants raised the maintainability of the suit filed by the plaintiff.

The said agreement dated 07.05.2018 has not been denied by the

defendants. The said agreement has been marked as Ex.P.2. On

perusal of the Ex.P.2, Agreement of sale, revealed that the agreement

was entered between the defendants and M/s Love and Concern

represented by its President, John Venkatesan, therefore, the plaintiff,

Mr. John Venkatesan, on behalf of M/s Love and Concern, as a

President entered into an agreement and filed this suit and not on

behalf of the Trust, therefore, the plaintiff has locus standi to file the suit.

Hence the suit is maintainable. The suit is not filed by the Trust and the

agreement is also not on behalf of the Trust, thus, the issue is

answered.

11. Answers to Issue Nos.(ii) *Whether the sale agreement dated*

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07.05.2018 is true, valid and binding on the defendants? (iii) Whether the sale agreement dated 07.05.2018 is unenforceable due to the earlier agreement dated 11.03.2010 and memo of understanding dated 26.02.2018?

(i) According to the plaintiff, they entered into sale agreement dated 07.05.2018 for a sum of Rs.3,51,14,365/- and already the defendants received advance on various dates from 11.03.2010 to 09.04.2018 to the tune of Rs.1,15,42,500/-. The defendants also admitted the receipt of advance as mentioned in the agreement and according to the defendants, already they entered into agreement in the year 2010 to sell the property and the same was not performed and again, the Memorandum of Understanding was entered into between the parties.

(ii) As per the memorandum of understanding dated 26.02.2018 the sale price was fixed at Rs.6 Crores and the same was agreed

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between the parties. Thereafter, the plaintiff approached the defendants

for fresh the agreement of sale for the guideline value. According to the

defendants, the balance money as agreed in the Memorandum of

Understanding has to be paid by cash and believing the said

representation, the defendants agreed to execute fresh agreement of

sale dated 07.05.2018. The plaintiff during the course of cross

examination admitted the Memorandum of Understanding and as per

the Memorandum of Understanding, the sale price was fixed at Rs.6

crores, according to the defendants, they entered into joint venture

agreement with one Builder, namely, M/s GKB Builders during April

2014 and thereafter, the plaintiff once again offered to purchase the

property for Rs.6 Crores and the advance amount of Rs.10,42,500/-

was adjusted as advance for the said amount and again based on the

Memorandum of Understanding, the plaintiff paid the remaining amount

of Rs.1,05,00,000/-

(iii) Therefore, both the parties admitted the previous sale

agreements, however, thereafter, they entered into registered sale

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agreement dated 07.05.2018 and the defendants also admitted the execution of the said agreement and they also admitted the amount already received by them towards advance, therefore, the defendants cannot deny the execution of said sale agreement and the same is valid and binding on the defendants .

(iv) The learned counsel appearing for the defendants would submit that already the defendants entered into an agreement dated 11.03.2010 and Memorandum of Understanding dated 26.02.2018 and the plaintiff failed to perform his part of contract. When the plaintiff agreed to purchase the property for Rs.6 crores, through Memorandum of Understanding dated 26.02.2018, the agreement dated 07.05.2018 is unenforceable. But the plaintiff stated that though the earlier agreements were entered into between the parties subsequent to the last agreement dated 07.05.2018, the defendants agreed to sell the properties. Therefore, after the execution of the registered agreement dated 07.05.2018, they cannot deny the execution of the sale deed, therefore, the agreement is enforceable. In this context, both the

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parties agreed all the agreements dated 11.03.2010 and Memorandum of Understanding dated 26.02.2018 and the suit agreement dated 07.05.2018. Therefore, the last agreement dated 07.05.2018 is enforceable, since the earlier agreements have not been pressed into by both the parties. Though the defendants relied upon the Memorandum of Understanding dated 26.02.2018, they have not approached this Court for enforcement of that Memorandum of Understanding and the plaintiff has only approached this Court for enforcement of agreement dated 07.05.2018, which is also admitted by the defendants, therefore, agreement dated 07.05.2018 is enforceable irrespective of the earlier agreements dated 11.03.2010 and the Memorandum of Understanding dated 26.02.2018. Thus the issues (ii) and (iii) are answered.

12. Answers to *Issue No.(ix) Whether the time is the essence of contract?*

The plaintiff has filed the suit for the relief of specific performance of contract as per the agreement dated 07.05.2018 and the stipulated



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time of completion of contract is ten months, but the plaintiff has not

taken any steps to perform the contract within the said period of 10

months. According to the defendants, time is the essence of contract.

It is well settled law that normally as far as immovable properties are

concerned, time is not essence of contract, unless there is a specific

condition mentioned in the agreement. In the agreement, Ex.P.2, there

is no any specific condition mentioned about the time is essence of

contract. The defendants also had not taken any steps immediately

after the lapse of 10 months and it shows that the time is not essence of

contract. Thus the issue (ix) is answered.

13. Answers to Issue No.(iv) '*Whether the plaintiff was ready and willing to perform his part of contract?*'

(I) The plaintiff has filed the suit for specific performance of contract. The defendants also admitted the execution of the agreement.

The date of agreement is 07.05.2018 and time for completion of contract is ten months, but within the said contractual period, the

plaintiff has not taken any steps to get the sale deed in his favour and

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not even sent notice to the defendants by expressing his willingness to perform his part of contract and to get the sale deed in his favour for repayment of agreed amount. Per contra, the defendants only sent a notice to the plaintiff to the plaintiff by cancelling agreement in the year 2019. The plaintiff pleaded in the plaint that he has been always ready and willing to perform his part of contract but the conduct shows he was not ready and willing to get sale deed in his favour after payment of balance sale price. It is well settled law that the plaintiff has to prove his readiness and willingness to perform his part of contract from the date of agreement till the date of execution of sale deed. The plaintiff in the plaint pleaded that he was always ready and willing to perform his part of contract, but those pleadings are not sufficient to prove the readiness and willingness and plaintiff must aver and prove his readiness and willingness.

(ii) There is no evidence that the plaintiff has taken steps to perform his part of contract. Moreover, the plaintiff, during his cross examination categorically admitted that he has no money to pay the balance of sale consideration at present and he is unable to pay

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balance of consideration. While so, it is clear that the plaintiff has no money to purchase the property and was not always ready and willing to perform his part of contract. Further, the conduct of the plaintiff by entering into three sale agreements with the defendants after entering into tenancy to some of the portion shows that by misusing his lease, he refused to vacate the premises, therefore, the plaintiff failed to prove his readiness and willingness. Thus the issue is answered.

14. Answers to Issue Nos.(v) and (vi): (v) *Whether the plaintiff has been given with possession pursuant to the sale agreement dated 07.05.2018?* (vi) *Whether the plaintiff is in lawful possession of the suit property?*

According the plaintiff, he entered into possession to one portion of the property to an extent of 2490 sq.ft., through tenancy agreement dated 11.3.1992 and thereafter, he entered into sale agreement dated 07.05.2018 and based on the said agreement the possession was given to him for the entire property, but according to the defendants, after entering into sale agreement, the plaintiff taking advantage of the same,

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forcibly occupied entire suit property. In this context, it is relevant to

refer the recitals of the sale agreement, viz., Ex.P.2. In Ex.P.2, no

where it is stated about the possession of the entire property. Per

contra, clause 8 of sale deed clearly indicated that the purchaser, as a

tenant, is already in possession for 2790 sq.ft., of the schedule

mentioned property, as per the rental agreement dated 11.03.1992 and

he shall continue to occupy, possess and enjoy the same, therefore, the

plaintiff was not given possession of the entire property and he has

given possession only in respect of the tenanted property to an extent

of 2790 sq.ft., therefore, the plaintiff is not in lawful possession of the

entire property and his possession is unlawful except the tenancy

property of 2790 sq.ft., Thus the issues are answered.

15. Answers for Issue Nos.(vii): *Whether the plaintiff is entitled to the decree for specific performance?*

(i) The plaintiff has filed the suit for specific performance of contract based on the sale agreement dated 07.05.2018. The

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agreement was also admitted by the defendants. The defendants also admitted the receipt of advance amount. But according to the plaintiff, he was always ready and willing to perform his part of contract but the defendants denied the readiness and willingness of the plaintiff, this Court in the previous issues based on the evidence and documents decided that the plaintiff was not always ready and willingness to perform his part of contract.

(ii) The plaintiff admitted that the defendants have no right to sell the property and as per the settlement, they have given only the life interest and their heirs are alone entitled to the property after the life time. The said copies of settlement deeds have been marked as Ex.P.14 to Ex.P.17 and those documents clearly revealed that the settlor settled the properties through settlement deeds by giving life interest to his sons and the children of the settlor have to enjoy the properties after the life time of Dhanasekaran, Dhananjayan and Saravanaperumal. Therefore, it is admitted that the defendants are not entitled to enter into sale agreement in respect of the suit property. The plaintiff after

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knowing the rights of the defendants entered into sale agreement.

Therefore, the plaintiff is not entitled to specific performance of contract as against the defendants in respect of the suit property.

(iii) It is well settled law that as far as the relief of specific performance is concerned, the plaintiff has to prove that he has been always ready and willing to perform his part of contract, but plaintiff failed to prove his readiness and willingness. The agreement was entered with the life interest holders and on the date of agreement, the parties are not absolute owners of the properties thereby the said agreement cannot be enforced. Therefore, the plaintiff is not entitled for specific performance of contract. Moreover, the plaintiff entered into agreements frequently and failed to perform his part of contract on earlier occasions. The above said conduct also dis-entitle him from the relief of specific performance of contract. Thus the issue is answered.

16. Answers for Issue No.(viii) : *Whether the plaintiff is entitled to the relief of permanent injunctions as prayed?*



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(i) The plaintiff sought for relief in the suit for permanent injunction

restraining the plaintiff from interfering with the plaintiff's peaceful possession and enjoyment of the property and restraining the defendants from alienating the suit property to the third parties in the suit. It is admitted fact that the plaintiff is in possession of the property through tenancy to an extent of 2790 sq. ft., and for the remaining extent he is in unlawful occupation. Therefore, as far as the tenancy property is concerned, the plaintiff is in lawful possession and as far as the remaining property is concerned, he is a tress-passer, therefore, the plaintiff is not entitled for the relief of permanent injunction in respect of the entire property.

(ii) As far as the relief of permanent injunction from alienating the property is concerned, the plaintiff admitted that all the defendants are not the absolute owners of the property and the executors of the agreement are only life interest holders. The plaintiff was not ready and willing to perform his part of contract and therefore, he is not entitled for the relief of specific performance of contract and the defendants being

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right holders of the property, are entitled to alienate and encumber the property, according to their rights. Therefore, the plaintiff is not entitled to the relief of permanent injunction in respect of alienating the property, thus the issue is answered.

17. Answers to Issue No.(x) *Whether the suit is barred by limitation and to what other relief? If any.*

The defendants have taken a plea that the suit is barred by limitation, as per the agreement. The date of agreement is dated 07.05.2018 and the period of contract is 10 months, therefore, the time starts after a period of 10 months from the date of agreement. As far as specific performance is concerned, the limitation period is three years, when the time is mentioned in the agreement. In this case, time of 10 months has been mentioned, therefore, after lapse of 10 months, the suit ought to have been filed within a period three years. In this case, the suit is filed well within the period of limitation. Therefore, the contention that the suit is barred by limitation is not acceptable. Thus the issue is answered.



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18. In view of above said detailed discussions, this Court is of the opinion that the plaintiff is not entitled to relief of specific performance of contract, however, the plaintiff paid a sum of Rs.1,15,42,500/- towards advance of the sale price. The defendants also admitted the receipt of amounts and they are also ready to repay the said amount. Therefore, there is no bar to direct the defendants to repay the advance amount. It is true that as per Section 22 of the Specific Relief Act, the Court has to grant alternative relief on specific prayer and at any time, the Court can permit for amendment. Already plaintiff also filed an application and the same was dismissed that is now under challenge. This Court has dismissed the said application on a different context. Since the defendants themselves admitted the receipt of advance amount and ready to repay the amount, in the absence of any prayer for refund of advance, under equity, the Court can grant Money Decree. This position was already settled by the **Hon'ble Supreme Court in Srinivas Ramkumar Firm Vs. Mahabir Prasad & Others [1951 SCC Online SC11]**.



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19. There is no doubt that as far as specific performance is concerned, it is discretionary and equitable relief and when the defendants themselves admitted the receipt of advance and ready to repay the amount, this Court can safely grant the relief of money decree to the plaintiff based on the admissions under equity, therefore, this Court is inclined to pass Money Decree in favour of the plaintiff for the admitted money of Rs.1,15,42,500/- Though the defendants have admitted to pay the advance amount, the plaintiff is not entitled to interest for that amount, since he is enjoying the suit property based on that agreement.

In the result, the present Suit is dismissed in respect of relief of Specific Performance and Money Decree is granted in favour of the plaintiff by directing the defendants to repay the advance amount of Rs.1,15,42,500/- [One Crore Fifteen Lakhs Forty Two thousand and Five Hundred only] within a period of two months from the date of

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receipt of copy of this Judgment, failing which, the said amount shall

carry 9% interest from the date of Judgment. Consequently, connected

applications are closed. There shall be no order as to costs.

24.11.2025

Index:Yes/No;

Internet:Yes/No

Speaking / Nonspeaking Judgment

ssd

1) List of Witnesses Examined on the side of the Plaintiff:-

1.P.W.1 – Mr.John Venkatesan

2.P.W.2 - Mr.Paul Gunaseelan

2) List of Exhibits Marked on the side of the Plaintiff:-

<i>Exhibits</i>	<i>Date</i>	<i>Description</i>
Ex.P.1	11.03.1992	Photocopy of tenancy agreement between the plaintiff and the 1 st defendant
Ex.P.2	07.05.2018	Original sale agreement between the plaintiff and defendants in respect of the suit property registered before the Sub Registrar, Purasaiwakkam
Ex.P.3	20.10.2021	The original CSR copy issued by the police
Ex.P.4	11.12.2021	Office copy of the legal notice issued by the plaintiff's counsel to the defendants along with postal receipts.
Ex.P.5	14.12.2021	Original acknowledgment cares of defendats 1 to 8
Ex.P.6	-	Original electricity charges card issued by the TANGEDCO



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Ex.P.7	17.12.2021	The printout of the FIR along with 65B affidavit
Ex.P.8	17.12.2021	The printout of the encumbrance certificate in respect of suit property along with 65B affidavit
Ex.P.9	21.12.2021	The printout of the tracking report of 9 th and 10 th defendants along with 65B affidavit
Ex.P.10	13.12.2021 21.06.2021	Original EB receipt nos.6647168 and 6350413
Ex.P.11	25.03.2002	Original Trust Deed
Ex.P.12	-	Certified copy of the statement of account issued by the bank authorities for the period from 01.10.2016 to 30.09.2017
Ex.P.13	15.12.2021	Certified copy of the Power of Attorney executed by all the defendants in favour of myself and Arul John Bosco
Ex.P.14	-	Certified copy of the Settlement deed registered as Doc.No.1377/1980 before the SRO, Purasaiwalkam executed by my father in favour of Dhasaradhan
Ex.P.15	-	The certified copy of the settlement deed registered as Doc.No.1377/1980 before the SRO, Purasaiwalkam executed by father in favour of Dhananjayan
Ex.P.16	-	Certified copy of settlement deed registered as Doc.No.1376/1980 before the SRO, Purasaiwalkam executed by father in favour of Dhasaradhan
Ex.P.17	-	Certified copy of the settlement deed registered as Doc.No.1389 /1980 before the SRO, Pursaiwalkam executed by my father in favour of Saravana Perumal



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3)List of Witnesses Examined on the side of the defendant:-

D.W.1 – Mr.K.Dhanasekaran

4)List of Exhibits Marked on the side of the defendants:-

<i>Exhibit</i>	<i>Date</i>	<i>Description</i>
Ex.D.1	11.03.2010	Original Agreement for sale
Ex.D.2	26.02.2018	Original MOU
Ex.D.3	25.01.2019	Office copy of the legal notice issued by the defendant to the plaintiff along with the acknowledgment
Ex.D.4	13.6.2011	Letter written by PW1 on behalf of the plaintiff to the then advocate of the defendants, Mr.Chandrasekaran
Ex.D.5	23.12.2021	Office copy of the notice along with acknowledgment card
Ex.D.6	April, 2014	The Original joint venture agreement executed in April 2014 by the defendants with M/s GKP Builders for the suit schedule property
Ex.D.7	07.03.2018	The original deed of cancellation
Ex.D.8	06.11.2017	Office copy of the legal notice sent by defendants 1, 3 and 6 to the plaintiff.

24.11.2025

To

The Sub Assistant Registrar,
O.S.Section,
High Court, Madras

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P.DHANABAL, J.

ssd

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