



S.A.No.212 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.212 of 2023
and C.M.P.No.6071 of 2023

Mr.G.Babu

... Appellant / Plaintiff

-VS-

M.Kanniyappan

... Respondent / Defendant

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.8 of 2012, dated 25.07.2022, on the file of the II Additional District Judge, Vellore @ Ranipet in confirming the judgment and decree in O.S.No.93 of 2005, dated 20.09.2010 on the file of the Subordinate Judge, Ranipet.

For Appellant : Mrs.V.Srimathi

For Respondent : Mr.K.Mohanamurali

JUDGMENT

This Second Appeal is focused against the judgment and decree passed in A.S.No.8 of 2012 on the file of the II Additional District Court,



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Vellore at Ranipet.

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2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. Heard the arguments of the learned counsel for the appellant/plaintiff and the learned counsel for the respondent/defendant.

4. According to the plaintiff, the defendant entered into an agreement for sale with the plaintiff on 07.09.2002, agreeing to sell the suit property for a sale consideration of Rs.2,00,000/- and received an advance amount of Rs.1,75,000/-. The defendant agreed to execute the sale deed in favour of the plaintiff on payment of balance sale consideration of Rs.25,000/- within a period of three years from the date of agreement. The plaintiff is always ready and willing to perform his part of the contract. As the defendant evaded to perform his part of the contract, despite repeated requests and demands,



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a legal notice was caused to be issued to the defendant on 30.08.2005.

Thereafter also as the defendant did not come forward to execute the sale deed, suit for the relief of specific performance was laid by the plaintiff.

5. Contending contra, the defendant would state that he obtained loan from the plaintiff for an amount of Rs.10,000/- and at that point of time, the defendant was asked to sign in many empty stamp papers. He repaid the said loan in full but after the repayment of the said loan, the plaintiff was evading to return back the said empty signed papers. In this regard, plaintiff told that the said papers were misplaced and he would return that as soon as the papers are found out. On receipt of legal notice, the defendant requested the plaintiff to return back the empty signed stamp papers. But the plaintiff told him that notice was sent by mistake. But, after 10 months, the plaintiff filed the suit by fabricating the sale agreement and signed papers. The sale agreement was not executed by the defendant and no consideration was received from the plaintiff. Hence, there is no contract entered between the



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plaintiff and the defendant. It has been further averred that the plaintiff is not ready to perform his part of the contract.

6. Based on the rival submissions, the trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff side, plaintiff has examined himself as PW1 and Mayandi, 2nd attesor to the sale agreement (Ex.A1) was examined as PW2 and three documents were marked. Agreement of sale executed by the defendant in favour of the plaintiff (unregistered) dated 07.09.2002 is Ex.A1. On the defendant side, defendant has been examined as DW1.

7. The sum and substance of the plaintiff's case is that the defendant herein entered into an agreement of sale with the plaintiff on 07.09.2002 agreeing to sell the suit property - cultivating land, for a sale price of Rs.2,00,000/- and the defendant received an advance amount of Rs.1,75,000/-. He has been always ready and willing to perform his part of



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the contract. However, the defendant has been evading to perform his part of contract inspite of repeated demands made by him.

8. With regard to execution of sale agreement, defendant would contend that he has signed in the empty stamp papers and that was forged and suit has been laid with the said document. In the written statement, the defendant had admitted his signature found in the sale agreement. In the additional written statement, he has denied the same.

9. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.



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10. It is relevant to refer to the observations made in ***Nirmala Anand***

Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146, a Three Judge

Bench of the Apex Court held as under:-

"It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her



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along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

11. In **K. Prakash Vs. B.R. Sampath Kumar, reported in (2015) 1**

SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after



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appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

12. PW1 would state that stipulated time for conclusion of contract is three years and the legal notice was issued on 30.08.2005 (sale agreement was executed on 07.09.2002). The question of limitation in respect of agreement of sale is governed by the provisions of Article 54 of the Limitation Act. For better understanding, Article 54 of the Limitation Act is extracted



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hereunder:

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<i>Article</i>	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
54	For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

13. As per Article 54 of the Limitation Act, if the date is fixed for performance of the agreement, non-compliance of the agreement on the said date would rise to cause of action to file a suit for specific performance within three years from the date so fixed. In case, no such date is fixed, limitation period of three years would begin when the plaintiff noticed that the defendant has refused the performance of his part of the agreement.

14. As there is no time limit stipulated in Ex.A1 sale agreement, limitation commences on the date of issuance of legal notice-Ex.A2 by the plaintiff. From the evidence of PW1 and PW2, it is pellucid that agreement for sale was executed on 07.09.2002 for sale consideration of Rs.2,00,000/- and



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the defendant received a sum of Rs.1,75,000/- and an amount of Rs.25,000/- alone remains unpaid. Almost on the 36th month from the date of Ex.A1, plaintiff showed his readiness and willingness to perform his part of the contract and issued legal notice to the defendant herein calling upon him to execute the sale deed after receiving remaining sale consideration of Rs.25,000/-.

15. It is also relevant to note that the balance sale consideration of Rs.25,000/- was only deposited by the plaintiff in the trial Court on 04.09.2013 in the context of direction issued by the First Appellate Court in the judgment dated 23.08.2013 after a period of 11 years from the date of sale agreement. Therefore, these actions of the plaintiff would clearly explicate that the plaintiff was never ready and willing to perform his part of the contract. Therefore, the Courts below have non-suited the plaintiff. Making payment of Rs.25,000/- after a period of 11 years would also clearly



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indicate the fact that the plaintiff's readiness and willingness are not in appreciable state as per Section 16 (c) of the Specific Relief Act.

16. From the plaintiff side evidence, it is pellucid that there is a total inaction on the part of the plaintiff to enforce the contract for about 35 months. It is a clear case of laches and it is inequitable to grant a decree in favour of the plaintiff.

17. In the given circumstances, the plaintiff has utterly failed to prove the fact that he has always been ready and willing to perform his part of the contract as per the terms of Ex.A1 sale agreement and the plaintiff on that score was non-suited by the First Appellate Court. This Court does not find any good reason to upset the findings of the learned First Appellate Court. No substantial question of law arise for consideration. This Court does not find any infirmity or perversity in the findings of the First Appellate Court.



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18. Based on the aforestated observations and discussions, this Second Appeal stands dismissed. Sequel to this, the judgment and decree granted by the II Additional District Judge, Vellore @ Ranipet in A.S.No.8 of 2012, dated 25.07.2022, stands confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.07.2025

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
ssn

R.KALAIMATHI,J.

ssn

To

1. The II Additional District Judge,
Vellore @ Ranipet.
2. The Subordinate Judge,
Ranipet.
3. The Section Officer,

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V.R.Section,
High Court of Madras,
Chennai.

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