



A.S.(MD).No.6 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.10.2025

PRONOUNCED ON : 04.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).No.6 of 2020
and CMP(MD).No.375 of 2020

1.G.Thangasamy Nadar (died)

2.T.Antony Micheal AmmalAppellants/Defendants

3.Kavitha

4.Sudha

5.Gauri Mageshwari

6.Sanaa

7.Saravana Anthony John ...Legal heirs of the deceased
1st appellant

(Appellants 3 to 7 are brought on record as legal heirs
of the deceased 1st appellant vide Court order
dated 27.04.2022)

Vs

Dr.D.RajkumarRespondent/Plaintiff

Prayer: The First Appeal filed under Section 96 of C.P.C, to set aside the
judgment and decree dated 26.09.2019 made in O.S.No.70 of 2017 on the file



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of the Principal District Judge, Thoothukudi by allowing the above appeal.

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For Appellant : Mr.S.Kadarkarai

For Respondent : Mr.G.Prabhurajadurai

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The defendants in a suit for specific performance have preferred the present appeal challenging the decree for specific performance.

(A).Factual Matrix:

2.The defendants are the owners of the suit schedule property. They entered into a sale agreement on 22.08.2016 to alienate the property in favour of the plaintiff. The total sale consideration is Rs.1,01,25,000/-. Rs.5,00,000/- was paid in cash as advance. A cheque for a sum of Rs.22,00,000/- was paid in favour of the defendants for remitting the loan from the State Bank of India. It was agreed that the balance sale consideration of Rs.74,25,000/- was to be paid within a period of three months. In the meantime, the property has to be measured with the help of a Government Surveyor in the presence of the plaintiff and the defendants should have redeemed the property.

3.The plaintiff had issued a legal notice on 29.05.2017 calling upon the defendants to execute the sale deed after receiving the balance sale consideration. The defendants had sent a reply on 06.06.2017 contending that



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the plaintiff was not ready and willing to perform his part of the contract due to lack of funds arising out of demonetization. In the reply notice, it was further pointed out that the plaintiff had refused to perform his part of the contract on the ground that the property is an unapproved land. It was further pointed out in the reply notice that the plaintiff has sent a Whatsapp message to the defendants' son on 21.11.2016 intimating that he is not willing to proceed with the agreement and requesting for refund of the advance amount. In the reply notice, the defendants requested the plaintiff to get refund of the advance amount in instalments.

4.The plaintiff had filed the suit for specific performance on 17.07.2017 contending that he was ready and willing to perform his part of contract and the defendants alone had delayed the execution of the sale deed citing demonetization.

5.The defendants had filed a written statement admitting the execution of the sale agreement and the receipt of Rs.27,00,000/-. The primary contention of the defendants was that on 21.11.2016, the plaintiff has sent a Whatsapp message to the defendants' son indicating his disinclination to purchase the property and for refund of the advance amount. Therefore, it should be deemed that the sale agreement got cancelled on 21.11.2016. It was further contended in the written statement since the plaintiff demanded interest for the advance amount, there was some dispute between the plaintiff



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and the defendants. The defendants had further contended that on 03.05.2012, the Government of Tamil Nadu has issued a Government Order to the effect that unless the sale agreement is registered, such a document would not be valid. Therefore, the present suit for specific performance is not legally sustainable.

6.The plaintiff had filed a reply statement to the effect that on 21.11.2016, when the plaintiff and his relative were discussing the issue in the defendants' house, the defendants' son might have used the mobile phone of the plaintiff for sending such a Whatsapp message. Therefore, such a message is a fraudulent one. In fact, no reply was sent by the defendants to the said Whatsapp message.

7.A rejoinder was filed by the defendants disputing the allegation in the reply statement.

8.On the side of the plaintiff, the plaintiff had examined himself as PW1 and one Muthanna was examined as PW2. Exs.A1 to A11 were marked on the side of the plaintiff. On the side of the defendants, the first defendant got himself examined as DW1 and his son Saravanan was examined as DW2. Exs.B1 to B5 were marked.

9.The trial Court framed the following issues:

1)Whether it is true that the plaintiff is not ready to get the sale deed by performing his part of contract as per the agreement



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of sale?

2)Whether the plaintiff is entitled to the relief of specific performance as claimed?

3)What are the other reliefs the plaintiff is entitled to?

10.The trial Court found that the plaintiff had Rs.35,00,000/- in his Bank account and another sum of Rs.12,00,000/- in the name of his wife. The capacity of the plaintiff has not been denied by the defendants. The plaintiff has deposited the balance sale consideration on 08.11.2017 before the Court and therefore, the plaintiff has established his readiness and willingness during the period of contract. The trial Court further found that the Whatsapp message has been marked as Ex.B1 subject to objection. A certificate has been issued under Section 65-B of Indian Evidence Act as Ex.B5. However, it has not been proved whether it originated from the device. In fact, the plaintiff has explained the circumstances under which the message came to be sent.

11.Based upon the above said findings, the trial Court proceeded to decree the suit as prayed for. Challenging the same, the present appeal has been preferred by the defendants.

(B).Submissions of the learned counsels appearing on either side:

12.The learned counsel appearing for the appellants had submitted that the Whatsapp message under which the plaintiff cancelled the agreement and demanded refund of the advance amount is referred to in Ex.A5 reply notice.



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However, the same has not been controverted in the plaint averments. Only when the defendants reiterated those averments in his written statement, a reply statement came to be filed by the plaintiff.

13.The learned counsel for the appellants had further submitted that even in the reply statement, the plaintiff has not disputed such a message. Therefore, the authenticity of message is not in question. The plaintiff had only made an attempt to explain how the message would have been sent from his mobile number. When the authenticity is not disputed, there is no necessity to get any certificate under Section 65-B of the Indian Evidence Act. He had further submitted that the certificate issued by the Browsing Centre from where the Whatsapp message got downloaded and the printed copy has been produced as Ex.B5. In such circumstances, it is clear that the plaintiff, having cancelled the sale agreement and demanded refund of the advance amount, cannot file a suit for specific performance.

14.The learned counsel appearing for the appellants had further submitted that the suit for specific performance can be filed only if the agreement is subsisting. When the agreement has been cancelled by the agreement holder, the present suit for specific performance is not maintainable. The learned counsel had further contended that the documents relied upon by the plaintiff would not establish the readiness and willingness on his part. The balance sale consideration of Rs.74,25,000/- was not



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available in his Bank account on the date of expiry of the sale agreement.

Therefore, the plaintiff has not established his readiness and willingness from the date of agreement till the execution of the sale deed.

15.The learned counsel for the appellants had further submitted that the land has to be measured with the help of a Government Surveyor in the presence of the plaintiff. However, the plaintiff has not come forward for measurement of the suit schedule property. Though the three months time had expired on 22.11.2016, the suit came to be filed only on 17.07.2017. Only the plaintiff had delayed the payment on the ground that the land is an unapproved property and due to demonetization, he is not able to gather funds. In such circumstances, the trial Court was not right in arriving at a finding that the plaintiff has established his readiness and willingness to perform his part of the contract. He had further submitted that the trial Court has clearly ignored the Whatsapp message dated 21.11.2016 wherein the agreement stood cancelled. Hence, he prayed for setting aside the judgment and decree of the trial Court.

16.Per contra, the learned counsel for the respondent/plaintiff had submitted that the plaintiff is a medical professional and out of Rs.1,01,25,000/-, a sum of Rs.27,00,000/- has been paid as advance on the date of the agreement. Out of the balance amount of Rs.74,00,000/-, Rs.47,00,000/- were found in the Bank account of the plaintiff and his wife



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on the date of the expiry of the terms fixed under the sale agreement. In fact, during the period of three months prescribed under the sale agreement, the demonetization happened in November 2016 and therefore, there was some difficulty in gathering funds from his sources. That apart, the entire balance sale consideration was deposited before the Court immediately, after filing of the suit. In such circumstances, the plaintiff had clearly established his readiness and willingness to purchase the suit schedule property.

17. The learned counsel appearing for the respondent had further submitted that the plaintiff in his reply affidavit, has explained the circumstances in which the defendants' son would have sent the Whatsapp message from his mobile number. Therefore, the entire burden would be upon the plaintiff to establish the authenticity of the message. In case, if the such a serious decision is taken by the plaintiff and informed to the defendants through Whatsapp, certainly the defendants would have replied through Whatsapp. However, there is no reply whatsoever to the alleged message of the plaintiff on 21.11.2016. He had further submitted that Ex.B5 certificate has been issued only by a Browsing Centre and not by a competent authority as contemplated under Section 65-B of the Indian Evidence Act to ensure its authenticity.

18. The learned counsel for the respondent had further submitted that the plaintiff having admitted the execution of the agreement, he is trying to



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wriggle out of the said agreement on the alleged premise that the plaintiff is not ready and willing to perform his part of the contract. Hence, he prayed for sustaining the judgment and decree of the trial Court.

19. We have considered the submissions made on either side and perused the material records.

(C).Points for consideration are as follows:

19(i).Whether the plaintiff has established his readiness and willingness to perform his part of the contract?

(ii)Whether the sale agreement has been cancelled by the plaintiff through his Whatsapp message dated 21.11.2016 as contended by the defendants?

(D).Analysis:

20.As pointed out earlier, the suit sale agreement dated 22.08.2016 and the terms of the said agreement are admitted by both the parties. The plaintiff contends that though he was ready and willing to perform his part of the contract, the defendants had not come forward to execute the sale deed. On the other hand, the defendants contend that the sale agreement stood cancelled by the Whatsapp message sent by the plaintiff on 21.11.2016 and the plaintiff was not ready and willing to perform his part of the contract.

21.Out of the sale consideration of Rs.1,01,25,000/-, an advance amount of Rs.27,00,000/- has been paid under the sale agreement. The



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defendants had utilized the said amount and redeemed the mortgage from the Bank. The Court can take a judicial notice of the fact that the demonetization was announced in November 2016 and there was some difficulty in undertaking cash transaction at least for a period of six months. The plaintiff has filed his Bank statement as Ex.A6 and his wife Bank statement as Ex.A7. Both accounts put together, the aggregate amount on the last date prescribed in the sale agreement (22.11.2016), the plaintiff had Rs.38,00,000/- in his Bank Account.

22.The suit notice has been issued by the plaintiff on 29.05.2017 and the reply notice has been sent by the defendants on 06.06.2017. The suit has been filed on 17.07.2017. The plaintiff deposited the entire sale consideration before the Court on 08.11.2017. A cumulative reading of the above said facts would clearly establish the fact that the plaintiff was ready and willing to perform his part of the contract.

23.The defendants claim that the plaintiff had cancelled the sale agreement by way of Whatsapp message on 21.11.2016 and demanded refund of the advance amount. The first defendant who was examined as DW1, during his cross examination, he stated that his son has sent a reply message requesting the plaintiff to get back the advance amount. However, there is no pleading to the said effect. On contrary, the defendants' son who examined as DW2, during his cross examination, admits that he has not sent any reply to



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the Whatsapp message. This creates a doubt whether any such Whatsapp message was sent by the plaintiff to the defendants' son on 21.11.2016. The plaintiff in his reply statement has categorically contended that the defendants' son might have used his mobile phone to send this Whatsapp message. In such circumstances, the entire burden would be upon the defendants to establish that such a Whatsapp message emanated from the plaintiff.

24.The defendants have filed Ex.B5 which is said to be a certificate issued by the Browsing Centre to the effect that Whatsapp message from the mobile phone was downloaded to his computer and written on a Compact Disk. There is no reference about the print out being taken in the said certificate. Neither the mobile device nor the Compact Disk have been produced before the Court. A print out of the Whatsapp message alone has been marked as Ex.B1. In fact, there is no reference about this print out in the certificate issued by the Browsing Centre, which is marked as Ex.B1.

25.That apart, the Browsing Centre cannot be considered to be the competent authority to issue such a certificate under Section 65-B of the Indian Evidence Act. The Hon'ble Supreme Court in a judgment reported in ***(2020) 7 SCC 1 (Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal and others)*** has categorically held that a certificate required under Section 65-B(4) of the Indian Evidence Act is unnecessary only when the original



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document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned or operated by him. However, where a secondary evidence (a Compact Disk copied from the computer or a print out taken from such a computer) is produced, a certificate is required under Section 65(B)(4) of the Act and it is a condition precedent for admissibility of such a secondary evidence.

26.In the present case, the certificate which is produced under Ex.B5 reveals that the Whatsapp message found in the mobile device of the son of the first defendant has been down loaded to the computer and thereafter, it was written on a CD. As pointed out earlier, neither the mobile phone nor the CD has been produced before the Court. A paper print out of the alleged Whatsapp message has been marked as Ex.B1. The said paper print out has not been certified as contemplated under Section 65B(4) of the Indian Evidence Act. In such circumstances, the contention of learned counsel appearing for the appellants that the agreement has been cancelled through Whatsapp message is liable to be rejected, in view of the fact that Ex.B1 paper print out is inadmissible in evidence.

27.The plaintiff has established his readiness and willingness and deposited the balance sale consideration immediately after filing of the suit.



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The plaintiff has also established the fact that the agreement was subsisting on the date of the filing of the suit and was not cancelled as contended by the defendants.

(E).Conclusion:

28.The trial Court after careful consideration of the oral and documentary evidence, has decreed the suit as prayed for. We do not find any merit in the appeal. The judgment and decree of the trial Court are confirmed and the First Appeal stands dismissed. No cost. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.) (R.V.J.)
04.11.2025.

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
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To
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1.The Principal District Judge
Thoothukudi

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

msa

Pre-delivery Judgment made in
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and CMP(MD).No.375 of 2020

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