



S.A.(MD)No.204 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.204 of 2025

Thangaraj @ Santhanakrishnan ... Appellant/Appellant/
Plaintiff

Vs.

1.Muthulakshmi

Ramasamy (Died

2. M.Karuppusamy ... Respondents / Respondents 1&3 /
Defendants 1 & 3

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 05.02.2025 passed in A.S.No.2 of 2022 on the file of the Additional District Court, Palani, confirming the judgment and decree dated 15.12.2021 passed in O.S.No.194 of 2004 on the file of the Additional Sub Court, Palani.

For Appellant : Mr.S.Anand Chandrasekar
for M/s.Sarvabhauman Associates

JUDGMENT

This second appeal has been filed challenging the judgment and decree dated 05.02.2025 passed in A.S.No.2 of 2022 on the file of the



S.A.(MD)No.204 of 2025

WEB COPY

Additional District Court, Palani, confirming the judgment and decree dated 15.12.2021 passed in O.S.No.194 of 2004 on the file of the Additional Sub Court, Palani.

2. The plaintiff is before this Court on Appeal. The parties are referred, as per the litigative status before the trial Court.

3. It is the case of the plaintiff that he entered into sale agreement on 06.11.2002 in Ex.A1 with the husband of the first defendants, viz., Subramanian. As per the agreement, the suit property was agreed to be sold for a total sale consideration of Rs.5,00,000/- and on the date of agreement itself, an advance of Rs.4,75,000/- was paid and for the payment of balance consideration Rs.25,000/-, time period of 3 years was fixed for payment and completion of the same. It is the case of the plaintiff that since three years time has been fixed, they have time till 05.11.2005 to pay the balance consideration and complete the sale. According to the plaintiff, the said Subramanian with whom the sale agreement in Ex.A1 was entered into died on 23.09.2004 and thereafter, the plaintiff was ready with the balance sale consideration and had issued

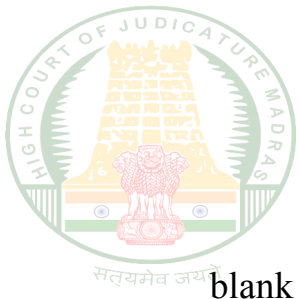


S.A.(MD)No.204 of 2025

WEB COPY

a legal notice to the first defendant, who is the wife of the deceased Subramanian on 05.10.2004 in Ex.A2, calling upon her to come and execute the sale deed in the Registrar office on 11.10.2004. It is also their claim that the plaintiff was ready and present in the Registrar office to complete the sale, but, however, the first defendant did not turn up and had subsequently issued a reply notice dated 18.10.2004 in Ex.A4, denying the sale agreement. As such, the plaintiff had come forward with the suit for specific performance of the sale agreement in Ex.A1. Further, according to the plaintiff, since after the agreement in Ex.A1, the first defendant's husband had executed a power of attorney in favour of his brother, the second defendant, who in turn had executed a sale agreement in favour of the third defendant, had been added as parties in the suit.

4. The defendants resisted the suit by filing a written statement denying the transaction in Ex.A1. It is the case of the defendants that the husband of the first defendant's friend one Rajendran, who is an employee in the Forest Department, obtained a loan and Subramanian had stood as Guarantor and for that purpose as a security had executed



S.A.(MD)No.204 of 2025

WEB COPY

blank promissory note and also stamp papers. It is also the case of the defendants that no such sale agreement has been executed for the suit property in Ex.A1 by Subramanian and further as the value of the property even at the time of Ex.A1 was nearly One Crore, there was absolutely no necessity for the said Subramanian to enter into sale agreement for a meagre sum of Rs.5,00,000/-.

5. During trial, the plaintiff examined himself as P.W.1, one Kanagaraj as P.W.2 and marked Ex.A1 to Ex.A4. On the side of the defendants, the second defendant examined himself as D.W.1 and have marked Ex.B1 to Ex.B6.

6. The trial Court, after analyzing the documents and evidences, even though came to the conclusion that the execution of the sale agreement in Ex.A1 is valid, but however, denied the relief of specific performance on the ground that the plaintiff was not ready and willing to complete his part of the contract and ultimately dismissed the suit. However, even though there was no prayer seeking any alternative relief of advance of refund, still the trial Court proceeded and granted a decree



S.A.(MD)No.204 of 2025

for an alternative relief of refund of the advance amount.

WEB COPY

7. Aggrieved by the decree of the trial Court, the plaintiff preferred an Appeal. On appeal the First Appellate Court by judgment dated 05.02.2025, reappraised the evidence and also taking note of the fact that the property had a higher value, in view of the document marked in Ex.B6 and also considering the fact that even though the plaintiff had issued a legal notice, calling for registration on 11.10.2004, he had not even purchased the stamp paper as such he decided that he was not ready on that date for completion of the sale, dismissed the appeal confirming the judgment and decree of the trial Court. It is to be noted that as against the grant of alternative relief to refund advance amount, the defendants had not preferred any appeal. Assailing the judgment and decree of the Courts below, the plaintiff is before this Court on appeal.

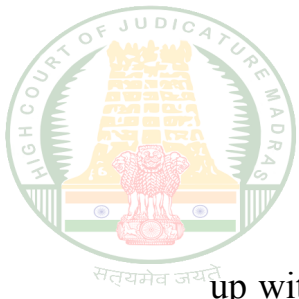
8. In view of the materials available on record, the second appeal is taken up for hearing in the admission stage itself.



S.A.(MD)No.204 of 2025

WEB COPY

9. The learned counsel appearing for the appellant vehemently contended that there was no specific denial on the part of the first defendant in respect of the sale agreement in Ex.A1, but, however, had later shifted the stand by introducing a defence that the agreement was executed for the purpose of security in respect of loan availed by her husband's friend. It is also the contention of the learned counsel that the first defendant did not choose to examine herself as a witness, who had a better knowledge of the transaction entered into by the husband and therefore, sought that adverse interference to be drawn. The learned counsel further contended that even though the second defendant was examined as D.W.1, he is only the brother of the first defendant's husband and he had no knowledge about the transaction in Ex.A1, but, however, since a power of attorney was executed in his favour, who in turn registered a sale agreement in favour of the third defendant, the subsequent agreement holder has also been made as a party. The learned counsel further contended that having paid an advance of Rs.4,75,000/- and the agreement was valid for a period of three years, the plaintiff had time to complete the same by paying the sale consideration and within the time fixed, the legal notice has been issued and the plaintiff had come



S.A.(MD)No.204 of 2025

WEB COPY

up with the suit, which the Courts below had not considered in a proper perspective and the decision arrived at is perverse and not based on evidence on record and therefore sought for interference of this Court.

10. Heard the learned counsel for the appellant and perused the materials available on record.

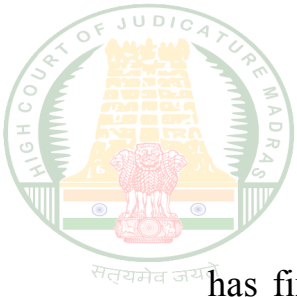
11. The plaintiff had come up with the above suit for specific performance based on the sale agreement dated 06.11.2002 in Ex.A1. As per the averments contained in the sale agreement, total sale consideration has been fixed for a sum of Rs.5,00,000/- out of which, an advance of Rs.4,75,000/- has been paid by the plaintiff on the date of sale agreement itself and for the balance payment of Rs.25,000/- towards sale consideration, time period of three years has been fixed in the sale agreement. The first defendant's husband, viz., Subramanian, who had entered into the sale transaction with the plaintiff admittedly died on 23.09.2004.



S.A.(MD)No.204 of 2025

WEB COPY

12. It is to be noted at this juncture that even though the parties are free to enter into the agreement agreeing their own terms and condition, in a suit filed for specific performance, the intention and conduct of the parties in respect to the sale transaction is to be considered by this Court. In that context, if the sale agreement in Ex.A1 is taken into consideration, it is seen that out of a total sale consideration of Rs.5,00,000/-, even on the date of the sale agreement itself, at least more than 95% of the consideration amount, amounting to Rs.4,75,000/- has been paid. However, for the meagre balance sum of Rs.25,000/-, time period of three years has been fixed in the sale agreement. No reason has been spelt out in the sale agreement for abnormally granting three years time period for completion of the sale agreement. In the evidence, P.W.1 had admitted that there is no other reason for giving such a long time, but, only since Subramanian, husband of the first defendant requested for time, a period of three years had been fixed in the sale agreement. In this context, in a normal sale transaction entered into, when the plaintiff wanted to purchase the property and he had also paid a sum of Rs.4,75,000/- on the date of agreement itself, it is highly improbable and unacceptable that the plaintiff agreed to the first defendant's husband and



S.A.(MD)No.204 of 2025

WEB COPY

has fixed the period of three years to complete the sale, by paying the balance sale consideration of Rs.25,000/-.

13. Though the claim was within the time of the sale agreement, but the fact remains that till the date of death of the husband of the first defendant, i.e., on 23.09.2004, which is nearly after two years from the date of execution of the sale agreement, the plaintiff had not issued any notice or called upon the defendant to complete the sale by paying the balance sale consideration. The legal notice was issued only 05.10.2004 in Ex.A2, that is after the death of the first defendant's husband. In the legal notice, the plaintiff had called upon the defendant to be present in the Sub Registrar office to complete the sale on 11.10.2004. In this regard, the trial Court and the appellate Court had also considered the admission of the plaintiff that on 11.10.2004, when it is claimed by the plaintiff that he was ready to complete the sale consideration, admittedly the plaintiff had not even purchased the stamp paper and prepared the sale deed for completing the sale, which makes the claim of the plaintiff doubtful.



S.A.(MD)No.204 of 2025

WEB COPY

14. On receipt of the legal notice in Ex.A2, the first defendant had issued a reply on 18.10.2004 in Ex.A4, disputing the sale transaction in Ex.A1. It is the specific denial on the part of the defendants that this agreement came into existence only when the first defendant's husband stood as a guarantor in respect of the loan availed by his friend, who was working in the Forest Department.

15. In the suit for specific performance, when the plaintiff approaches the Court claiming discretionary relief, the plaintiff is expected to prove that he was always ready and willing to perform his part of the contract. The plaintiff will be entitled to specific performance only if he satisfies the condition as per Section 16(c) of the Specific Relief Act, 1963. Section 16(c) of the Specific Relief Act, 1963 reads as follows:

16. Specific performance of a contract cannot be enforced in favour of a person,

(a) ...

(b) ...



(c): who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.

16. The issue of readiness and willingness, which is contained in Section 16(c) of the Specific Relief Act has been considered by the Hon'ble Supreme Court in the case of ***His Holiness Acharya Swamiganesh V. Shri Sita Ram Thapar*** reported in ***1996-SCC-4-526***, where the Hon'ble Supreme Court held that the readiness means the financial capacity of the plaintiff to pay the balance sale consideration and the willingness means the conduct of the plaintiff in completing the sale transaction.



S.A.(MD)No.204 of 2025

WEB COPY

17. In the case on hand, as referred earlier, though it is claimed that an amount of Rs.4,75,000/- has been paid as advance, even on 06.11.2002, when the sale agreement was executed in Ex.A1, still for payment of Rs.25,000/-, a period of 3 years has been fixed. Further, till the legal notice was issued in Ex.A2, there was no claim on the part of the plaintiff, to call upon the defendants to complete the sale transaction. Apart from this, the plaintiff ought to have proved the readiness and willingness from the date of execution of the agreement till the date of decree. Here, even after the suit was filed, an *ex-parte* decree came to be passed in the suit on 19.04.2005, whereupon, the Court had directed the plaintiff to deposit the balance sale consideration within a period of two months. However, even after *ex-parte* decree was passed and the condition was imposed, the plaintiff has not come forwards to deposit the balance sale consideration and the plaintiff choose to file an Interlocutory Application in I.A.No.268 of 2008, seeking extension of time to deposit the balance sale consideration of Rs.25,000/-. However, that Interlocutory Application came to be dismissed only on 16.12.2019, that is after a period of 14 years from the date of *ex-parte* decree. From the above it is evident that the plaintiff was not ready and willing to



S.A.(MD)No.204 of 2025

WEB COPY

perform his part of the contract, based on the sale agreement in Ex.A1, even prior to filing of the suit and also post filing of the suit, when the *exparte* decree came to be passed and the plaintiff was directed to deposit the balance sale consideration within a period of two months. The conduct of the plaintiff is established by the facts borne out from records. The plaintiff has miserably failed to prove his readiness and willingness to perform his part of the contract, entitling him for a decree for specific performance, based on the sale agreement in Ex.A1.

18. Further, it is evident that it is the specific claim of the defendants that the value of the property fetched more than One Crore, even at the time of the sale agreement. In this regard, the defendants had marked Ex.B6, which is the valuation register and the Appellate Court based on this Ex.B6 had rendered a finding that the value of the suit property even on the date of execution of the sale agreement was nearly One Crore, as claimed by the first defendant. It is also seen that the suit property is a vast extent of building and in the facts and circumstances of the present case, where the sale agreement has been executed for a meagre sum of Rs.5,00,000/- and the plaintiff even after the advance of



S.A.(MD)No.204 of 2025

WEB COPY

the major amount, did not choose to complete the sale, all makes it evident that the sale agreement in Ex.A1 has not been proved by the plaintiff, to seek for decree of specific performance.

19. The Courts below have rightly analyzed the evidences in a proper perspective and rendered a finding of fact which is based on the materials available on record. This Court does not find any illegality or perversity in the findings rendered by the Courts below, warranting any interference. This Court is not able to find any substantial question of law that arises in the appeal for consideration.

20. In fine, the Second Appeal is dismissed. However, there shall be no order as to costs.

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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12.06.2025

To

1.The Additional District Court,
Palani.

14/16



S.A.(MD)No.204 of 2025

WEB COPY

2.The Additional Sub Court,
Palani.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.204 of 2025

G.ARUL MURUGAN,J.

LS

SA.(MD)No.204 of 2025

12.06.2025