



SA(MD)No.307 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.307 of 2025

and

C.M.P(MD)Nos.10670 and 10671 of 2025

R.Gurusamy Thevar

... Appellant / 1st Respondent/

Plaintiff

Vs

1.K.Annalakshmi

2.K.Paulpandi

... Respondents 1 and 2 / Appellants /
Defendants 1 and 3

3.K.Pandiyammal

4.K.Chinna Pandiyammal

... Respondents 3 and 4 / Respondents 2 and 3/
Defendants 2 and 4

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree dated 23.04.2025 made in A.S.No.33 of 2021 on the file of Subordinate Court, Sattur, reversing the judgment and decree dated 08.02.2011 made in O.S.No.90 of 2008 on the file of District Munsif Court, Sattur.



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For Appellant : Mr.P.Rajagopalan

For Respondents : Mr.V.Meenakshi Sundaram
for Mr.K.Seenuramachandran

JUDGMENT

The unsuccessful plaintiff is before this Court on appeal. It is unfortunate to note that the right is claimed through an agreement executed on 04.10.1993 and it is still in dispute even after 32 years.

2. The Second Appeal is filed challenging the judgment and decree dated 23.04.2025 in A.S.No.33 of 2021 on the file of Subordinate Court, Sattur, reversing the judgment and decree dated 08.02.2011 made in O.S.No.90 of 2008 on the file of District Munsif Court, Sattur.

3. It is the case of the plaintiff that he had entered into a sale agreement on 04.10.1993 in Ex.A1 with one Krishnasamy Thevar. As per the sale agreement, sale consideration of Rs.42,100/- was fixed and a sum of Rs.31,100/- was paid as advance on the date of execution of Ex.A1. It was agreed that the balance amount of Rs.11,000/- will be paid



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at the time of execution of the sale deed. In the sale agreement, no time has been fixed for completion of the sale. According to the plaintiff, the possession of the property was given to the plaintiff on the date of agreement itself. Though the plaintiff had been repeatedly requesting Krishnasamy Thevar to complete the sale by receiving the balance sale consideration, he had been delaying the execution of the sale deed and he ultimately died on 26.11.1993. Thereafter, the plaintiff had approached the legal heirs of Krishnasamy Thevar and they have also delayed the execution of the sale deed. As such the plaintiff had issued a legal notice on 07.03.2008 in Ex.A2 for which the defendants had issued a reply on 12.03.2008 in Ex.A5 disputing the sale agreement. Hence the plaintiff had come up with the suit for specific performance.

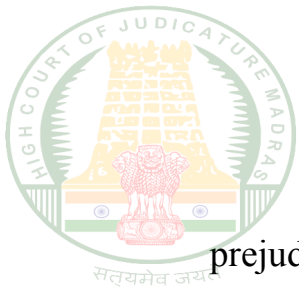
4. The defendants resisted the suit by denying the sale agreement dated 04.10.1993 in Ex.A1. It is the case of the defendants that in fact originally a sale agreement was executed with the plaintiff on 03.06.1992 and the sale consideration was fixed at Rs.42,100/- and an advance of Rs.31,100/- was paid. However, since the plaintiff failed to complete the sale, the agreement was cancelled and the advance amount was returned



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to the plaintiff. The sale agreement dated 03.06.1992 was cancelled and based on the signatures found in the cancelled agreement, the plaintiff has fabricated the suit sale agreement in Ex.A1. Further, since the suit has been filed after 15 years, it is not maintainable and sought for dismissal of the suit.

5. During trial, the plaintiff examined himself as P.W.1 and the attester in the sale agreement as P.W.2 and marked Ex.A1 to Ex.A5. On the side of the defendants, the third defendant was examined as D.W.1 and other witnesses from the Registration Department were examined as D.W.2 and D.W.3 and no document was marked by the defendants but however through the witnesses, documents in Ex.X1 to Ex.X8 were marked. It is to be noted that the trial Court had not even framed any issue in respect of the readiness and willingness of the plaintiff to complete the sale. However, the trial Court by analyzing the evidence came to the conclusion that the sale agreement in Ex.A1 is proved by examining the attester as P.W.2. The trial Court also gave a finding that the discrepancies found in Ex.X4 in respect of the sale of the stamp paper through some other person, does not create any doubt which will



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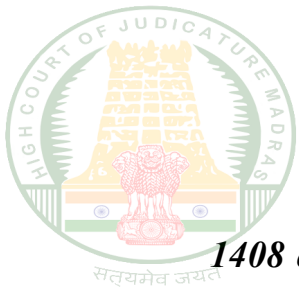
prejudice the claim of the plaintiff. The trial Court on concluding that since, the time was not fixed, the plaintiffs had issued the legal notice and had come with the suit, since the defendants had not executed the sale deed, decreed the suit. On the appeal preferred by the defendants, the lower appellate Court, reappraised the evidences and came to the conclusion that the plaintiff had filed the suit in the year 2008 which is after 15 years from the date of execution of Ex.A1 in the year 1993. Further, it is to be noted that in the appeal, the sale agreement in Ex.A1 was sent for report of the forensic expert and the report was received and marked in Ex.C1. Based on the report and also coupled with the fact that the stamp paper in Ex.A1 has not been purchased in the name of the plaintiff and the plaintiff failing to offer any satisfactory explanation, came to the conclusion that the sale agreement in Ex.A1 is fabricated. Further on finding the discrepancies between the sale consideration mentioned in Ex.A2 and the plaint filed and also the claim of possession in the legal notice and the sale agreement, had concluded that the sale agreement is not proved, the plaintiff was not ready and willing to perform his contract and thereby allowed the appeal, reversing the judgment and decree of the trial Court. Assailing the reversal of the



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decree by the lower appellate Court, the plaintiff has preferred the above appeal.

6. Learned counsel for the appellant argued that admittedly no time limit has been fixed in the sale agreement in Ex.A1 and therefore, the suit filed by the plaintiff seeking for specific performance is within time. It is his further contention that as per Section 54 of the Limitation Act, a time period of three years is fixed for filing a suit for specific performance and when no time is fixed in Ex.A1, the suit has been filed within three years from the issuance of the legal notice and the reply received in Ex.A5. It is the further vehement contention of the learned counsel that since the expert opinion received in Ex.C1 in the lower appellate Court has been marked without examining the expert, the document in Ex.C1 cannot be treated as a valid evidence and therefore the decision of the lower appellate Court in reversing the finding based on the expert opinion in Ex.C1 is erroneous and perverse. In support of his contention, the learned counsel relied on the decision of this Court in the case of ***Kathirvelu Pillai Vs V.Arjunan***, reported in ***2012 (1) MWN (Civil) 642*** and the unreported decision of this Court dated 25.06.2015 in ***S.A.No.***



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1408 of 2008 and the decision of the Hon'ble Supreme Court in the case of *Ishwari Prasad Mishra Vs Mohammad isa* reported in (1963) AIR (SC) 1728.

7. Contending contra, learned counsel appearing for the caveators / respondents argued that the suit filed by the plaintiff seeking for specific performance of the agreement after a period of fifteen years itself is not maintainable, since the plaintiff had not communicated his readiness or issued any notice after the execution of the sale agreement. Further, he contended that after the death of Krishnasamy Thevar, the plaintiff had issued a legal notice for the first time in Ex.A2, after a period of fifteen years which itself reveals that the plaintiff was not ready and willing to perform his part of the contract.

8. It is his further contention that unless the plaintiff proves his readiness and willingness, as per Section 16(c) of the Specific Relief Act, the plaintiff will not be entitled for the discretionary relief of specific performance. The trial Court, though erroneously had without analyzing the legal provisions, decreed the suit, the lower appellate Court had set



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right the anomaly by allowing the appeal. It is his further contention that the expert opinion received and marked in lower appellate Court in Ex.C1 was without any objection on the side of the plaintiff and further it is only an additional material to show that the transaction claimed by the plaintiff through Ex.A1, is not bonafide. *De-hors*, the expert opinion and even assuming that the sale agreement in Ex.A1 is a valid document, still a decree of specific performance can be granted only on the proof of readiness and willingness of the plaintiff. Therefore, the lower appellate Court had rightly interfered and reversed the decree which is based on the materials available and in accordance to the provisions of the specific relief Act and needs no interference and sought for dismissal of the appeal.

9. Heard the rival submissions and perused the materials available on record.

10. Admittedly, one Krishnasamy Thevar was an absolute owner of the suit property. The plaintiff had filed the suit for specific performance based on a sale agreement dated 04.10.1993 in Ex.A1. As per the sale



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agreement, the sale consideration of Rs.42,100/- is fixed and an advance of Rs.31,100/- has been paid on the date of Ex.A1. No time for completion of the sale is fixed and the balance sale consideration of Rs.11,000/- will be paid on the date of execution of the sale deed.

11. It is to be noted that when the sale agreement has been entered into as early as on 04.10.1993 and admittedly when the Krishnasamy Thevar who is a party to the sale agreement had died on 26.11.1993, the plaintiff had not issued any letter or notice calling upon the legal heirs of Krishnasamy Thevar who are the defendants, to execute the sale deed as per the sale agreement by receiving the balance sale consideration. For the first time, the plaintiff had issued the legal notice on 07.03.2008 in Ex.A2 which is after a period of 15 years after the date of execution of the sale agreement. Absolutely, there is no material to show that the plaintiff was ready to perform his contract and complete the sale by paying the balance sale consideration after execution of the sale agreement till the legal notice was issued which was after a period of 15 years.



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12. In the absence of any time fixed in the sale agreement, the limitation to file the suit would start from the date of denial of the defendants to execute the sale deed. When the sale agreement in Ex.A1 is 04.10.1993 and no time has been fixed in the sale agreement, the plaintiff, if atleast, had issued any notice within a period of three years, from the execution of the sale agreement in Ex.A1, it would be open to him to contend that since inspite of their calling upon the defendants to complete the sale, they have come forward and refused to execute sale deed and thereby the limitation would start run from the date of denial. However, the instant case, the plaintiff had not chosen to communicate with the defendants expressing his readiness and willingness, calling upon the defendants to complete the sale by receiving the balance sale consideration. The legal notice issued by the plaintiff after 15 years on 07.03.2008 in Ex.A2 would not come to the aid of the plaintiff to claim that the suit has been filed within time. In this regard, it is also useful to refer the decision of the Hon'ble Supreme Court in the case of ***Saradamani Kandappan Vs S.Rajalakshmi and others***, reported in ***(2011) 12 Supreme Court Cases 18***, wherein it is held that the defendant cannot be compelled to execute the sale deed after a delay of several



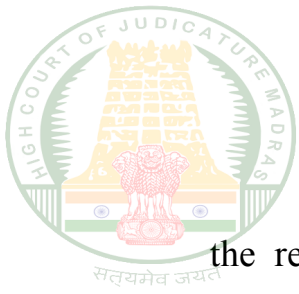
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years considering the escalation of the price of the property, simply on the ground that no time is fixed in the agreement. When the plaintiff had approached the Court seeking a discretionary relief of specific performance, then the plaintiff is bound to plead and prove the readiness and willingness as per Section 16(c) of the Specific Relief Act. Section 16(c) of the Specific Relief Act is extracted hereunder for easy reference:

16. Personal bars to relief. - Specific performance of a contract cannot be enforced in favour of a person -

(c) who fails to aver and 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.

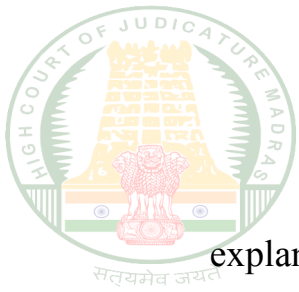
13. Unless the plaintiff pleads and proves his readiness and willingness to perform his part of the contract, the plaintiff is not entitled to the discretionary relief. Further the readiness and willingness has been explained by the Hon'ble Supreme Court in the case of ***Holiness Acharya Swami Ganesh Dassji Vs Sita Ram Thapar***, reported in (1996) ***4 Supreme Court Cases 526***, where the Hon'ble Supreme Court held that



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the readiness refers to the financial capacity of the plaintiff and the willingness refers to the conduct of the plaintiff in completing the sale transaction.

14. In the instant case, when according to the plaintiff, he had paid a sum of Rs.31,100/- even on the date of execution of the sale agreement in Ex.A1 on 04.10.1993, there is absolutely no explanation offered by the plaintiff as to why he did not take any steps to complete the sale by paying the balance sale consideration of Rs.11,000/- for the period of 15 years till the legal notice in Ex.A2 was issued. Further, it is to be noted that as per the legal notice issued in Ex.A2 on 07.03.2002, the plaintiff has contended that the entire amount covered under the sale agreement in Ex.A1 has been paid. But however, the averments in the plaint is contrary to the averments in the legal notice in Ex.A2, when in the plaint it is averred that the balance sum of Rs.11,000/- is due payable by the plaintiff. Further the plaintiff claims that the possession was handed over to him when the agreement was entered into in ExA1, whereas there is no such averments in Ex.A1 sale agreement whereby the possession of the suit property was handed over. The plaintiff had not offered any



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WEB COPY explanation in the discrepancies found in the legal notice, sale agreement and the plaint filed by him. The conduct of the plaintiff as referred by the Hon'ble Supreme Court in the case of ***Holiness Acharya Swami Ganesh Dassji Vs Sita Ram Thapar***, reported in ***(1996) 4 Supreme Court Cases 526 (stated above)***, in making different claims contrary to the sale agreement in Ex.A1, the legal notice and the plaint shows that the plaintiff has not approached the Court with clean hands, disclosing the correct facts and the plaintiff, in such circumstances would not be entitled for the discretionary relief.

15. The defendants had categorically denied the execution of the sale agreement in Ex.A1. When the sale agreement in Ex.A1 has been denied, the plaintiff had chosen to examine the attesor as P.W.2. However, as it could be seen from the evidence of P.W.2, the P.W.2 had deposed that he is not aware of the person who had wrote Ex.A1. When P.W.2, the attesor was not clear in respect of the execution of the sale agreement in Ex.A1 and support the claim, the plaintiff had not proved the execution of the sale agreement in Ex.A1. In this regard, as abundant caution, even though the defendants had failed to seek for the expert



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opinion in the trial Court, had filed an application in the lower appellate Court which came to be allowed and the sale agreement in Ex.A1 was sent for expert opinion and on receipt of the expert opinion dated 27.01.2023, it has been marked as Ex.C1. The expert opinion has been marked without any objection on the side of the plaintiff.

16. It is the vehement contention of the learned counsel for the appellant by relying on the aforesaid decisions in contending that when the expert has not been examined before the Court, then as per Section 45 and 60 of the Indian Evidence Act, the report cannot be relied on by the lower appellate Court, as the expert opinion is not a valid evidence in the absence of examining the expert before the Court.

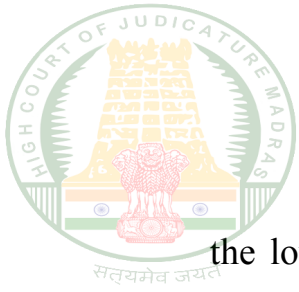
17. Though the expert opinion in Ex.C1 has been marked in the appellate Court without examination of the expert, the expert opinion only supports the defence that the document in Ex.A1 has not been executed by Krishnasamy Thevar. Even in the absence of Ex.C1, the position does not change. As dealt above, when the plaintiff had filed the suit for specific performance, even assuming that the agreement is valid and further even in the absence of any denial by the defendants, in



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respect of readiness and willingness, the onus is upon the plaintiff to establish the readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act, failing which the suit cannot be decreed.

18. In view of the above, the decision relied on by the appellant, does not enure to his benefit and the lower appellate Court had rendered a specific finding that when the sale agreement has been executed in the year 1993, the suit filed after the inordinate delay of 15 years in the year 2008, cannot be sustained. Further, when the stamp paper in Ex.A1 has not been purchased in the name of the plaintiff, the plaintiff has not offered any explanation in respect of the same, particularly when the defendants have by examining the official witnesses as D.W.2 and D.W.3 and marked Ex.X1 to Ex.X8, particularly, the documents in Ex.X4 which goes to show that the number of the stamp paper which is marked in Ex.A1 corresponds to the stamp paper sold in respect of some other third party, by which a sale has been executed. The readiness and willingness not being proved and further the facts in agreement, legal notice and plaint are contrary to each other. When there is such a discrepancy and the plaintiff having not explained the same, the expert opinion relied on



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the lower appellate Court was only be an additional factor, in rejecting the document in Ex.A1.

19. In view of the above deliberations, this Court does not find any illegality or perversity in the finding rendered by the lower appellate Court. No substantial question of law arise for consideration in the Second Appeal.

20. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

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

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To

1. The Subordinate Judge, Sattur.
2. The District Munsif, Sattur.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ARUL MURUGAN, J.

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