



A.S(MD)No.202 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2025

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**A.S(MD)No.202 of 2015
and
CMP(MD)No.12832 of 2024**

K.Mohammed Hanifa (Died)

.. Appellants /1st Defendant

1.M.Hidayadullah

2.M.Zaheer Hussain

3.M.Fareetha

4.M.Chithi Zunaitha

5.M.Jesima Yasmin

6. M.Fairoja

.. Appellants / Defendants 2 to 7

Vs.

1.M.Mohammed Mustaba

2.M.Abdul Rehman

.. Respondents/ Plaintiffs

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 10.03.2015, passed in O.S.No.61 of 2011 on the file of the II-Additional District Judge (FTC), Tiruchirappalli.



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For Appellants : Mr.S.R.Rajagopal
Senior Counsel
for Mr.A.S.Vaigunth

For Respondents : Mr.C.Vakeeswaran

JUDGMENT

P.VELMURUGAN., J.

The respondents herein filed a suit for specific performance against the appellants in O.S.No.61 of 2011 before the learned II Additional District Judge, Tiruchirappalli. The suit came to be decreed on 10.03.2015. Aggrieved by the same, the defendants in the suit have filed the present appeal before this Court.

2. The brief facts of the case, as per the plaint averments in the suit, are that the suit properties belonged to the appellants. The first appellant is the father. The appellants 2 to 3 and the respondents are brothers. The appellants agreed to sell the suit properties in favour of the respondents under a sale agreement dated 06.04.2008 for a total sale consideration of Rs.49,00,000/- and received a sum of Rs.5,00,000/- from the respondents as an advance, i.e., Rs.3,00,000/- by way of cash and



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Rs.2,00,000/- by way of two cheques, and agreed to execute the sale deed

within two months from the date of the agreement. One of the conditions was that the appellants had to measure the property with the help of the surveyor and execute the sale deed. When the respondents made a request on 25.05.2008 to take the necessary steps to measure the suit property with the help of the surveyor, the appellants requested one more month. Again, on 25.06.2008, the respondents made a request to the appellants to survey the lands and also expressed their willingness to pay the balance sale consideration of Rs.44,00,000/-. However, the appellants did not come forward to perform their part of the contract. In the meanwhile, the respondents came to know that the appellants were trying to alienate the suit property to third parties for a higher price by suppressing the above sale agreement. Therefore, the respondents sent a notice on 06.08.2008 to the appellants, calling upon them to execute the sale deed after receiving the balance sale consideration. Despite receiving the legal notice, the appellants neither sent a reply nor come forward to execute the sale deed. On 21.03.2011, the respondents came to know through their relative, one Jaffer Ali, that the appellants had tried to alienate the property to third parties for a higher price. Therefore, the respondents filed a suit. Pending the suit, the first appellant died on 26.10.2012. Since

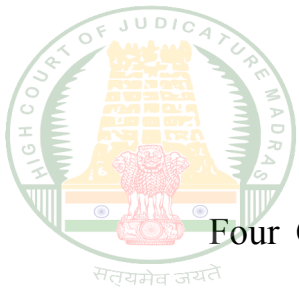


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the other appellants, sons of the deceased appellant, were already on record as defendants 2 & 3, his four daughters were impleaded as defendants 4 to 7 in the said suit, and the suit was proceeded.

3. The brief facts of the case of the appellants, as per the written statement filed by the appellants, are as follows:

3.1. The appellants denied the sale agreement dated 06.04.2008 and also the total consideration of Rs. 49,00,000/- and the payment of Rs. 5,00,000/- as advance. They denied the execution of the sale agreement. Regarding the suit property, there was a civil suit filed in this regard and a second appeal also pending. The first appellant was in dire need of money for his daughter's marriage. Therefore, the deceased first appellant sought financial assistance from the respondents and borrowed a sum of Rs.5,00,000/- as a loan, for which the deceased first appellant executed a registered loan document as security in favour of the respondents. After receiving the advocate's notice on 06.08.2008, the appellants came to know that the respondents might have forged the loan document as an agreement for sale by fraudulent means to grab the property. Subsequently, they filed the suit in O.S.No.61 of 2011. The suit property is located in a prime town and is worth about Rs. 4,00,00,000/- (Rupees



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Four Crores only). Though the alleged sale agreement is said to have been executed on 06.08.2008, the respondents filed the suit only in the year 2011. The respondents suppressed all these facts, and even though the appellants sent a reply on 16.08.2008 denying the agreement, the respondents waited for three years and filed the suit only just one day prior to the completion of three years from the date of the agreement. The respondents were not ready and willing to perform their part of the contract, even assuming that the agreement is genuine, if not the loan document. It is the duty of the respondents to plead and prove their readiness and willingness. The respondents have not given any explanation for the long delay, especially since the appellants sent a reply on 16.08.2008 itself, expressing their view that the alleged sale agreement was not executed by the appellants. Therefore, under these circumstances, the suit is liable to be dismissed.

4. On completion of pleadings, the Trial Court framed the following issues:

- (1) Whether the plaintiffs are entitled to the relief of specific performance? and*
- (2) To what relief are the plaintiffs entitled?*



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5. After completion of pleadings and framing of issues, during the trial, on the side of the respondents, one witness was examined as PW1 and 7 documents were marked as Ex.A1 to Ex.A7. On the side of the appellants, two witnesses were examined as DW1 and DW2, and two documents were marked as Ex.B1 and Ex.B2.

6. After the trial and conclusion of the arguments, the Trial Court decreed the suit by directing the appellants to execute a sale deed in favor of the respondents as per the sale agreement dated 06.04.2008, after receiving the balance sale consideration, at the cost of the respondents, within three months from the date of judgment, failing which, the same shall be done through the process of the Court. One month's time was granted for payment of the balance consideration and a permanent injunction was also granted, restraining the appellants from alienating the property to third parties. Aggrieved by the same, the defendants have filed the present appeal.

7. The learned Senior Counsel for the appellants would submit that the appellants denied the alleged sale agreement dated 06.04.2008. The



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deceased first appellant borrowed a sum of Rs. 5,00,000/- for the purpose of conducting the marriage of his daughter, and he had executed a registered loan document as security for the loan borrowed by him. Thereafter, the respondents, with the intention to grab the suit property at a throwaway price, created a sale agreement as if the same was executed by the defendants and also produced the xerox copy of the patta passbook, which was handed over as security for the loan borrowed by the deceased first appellant for conducting the marriage of his daughter. But, it is only a loan agreement entered into between the parties, and it was not a sale agreement. Even if it is assumed, for the sake of argument, that it is an agreement for sale, the agreement was dated 06.04.2008, and it was agreed by both parties that the sale deed would be executed within four months. However, as per the agreement, the respondents/plaintiffs were never ready and willing to get the sale deed executed. The respondents, as early as 06.08.2008, issued a notice calling upon the appellants to execute a sale deed, and for the same, the deceased first appellant also sent a reply on 16.08.2008. Even thereafter, the suit was not filed immediately by the respondents for specific performance, and they waited until the last day of limitation. The suit was filed only on 28.03.2011, and this itself shows that the respondents were never ready



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and willing to get the sale deed executed and were not ready to pay the balance sale consideration. The Trial Court has failed to consider this fact and, without going into the question of readiness and willingness on the part of the respondents, had simply decreed the suit for specific performance.

8. Further, the learned Senior Counsel for the appellant would submit that in a suit for specific performance, readiness and willingness are sine qua non, and whereas in this case, even though the agreement was denied, as early as 16.08.2008, by way of a reply notice, the respondents/plaintiffs have not come forward to file a suit and deposit the amount either in the bank or in the court at the time of filing the suit. Though the respondents/plaintiffs are not required to deposit the amount in the court as a pre-condition, in order to prove bona fide intent and to show that the respondents were ready and willing to perform their part of the contract, they have filed the suit only after three years from the reply notice. Therefore, under these circumstances, the respondents/plaintiffs have failed to prove readiness and willingness, and therefore, he insists that the suit be dismissed and contends that the Trial Court erroneously decreed the suit. Therefore, the present appeal.



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9. Though in the reply statement, it is stated that in respect of the suit property, a second appeal is already pending, there is a cloud on the title. At this juncture, since there is a defect in the title, the agreement is not valid under Section 17 of the Specific Relief Act, 1963.

10. The learned Senior Counsel placed reliance on the judgments reported in **2011 (1) SCC 429 [J.P. Builders and Another v. A. Ramadas Rao and Another]** and **2020 (3) SCC 311 [Atma Ram v. Charanjit Singh]**.

11. The learned counsel for the respondents would submit that the appellants executed a sale agreement on 06.04.2008 for a valuable sale consideration of Rs.49,00,000/-, for which, on the same day, they received a sum of Rs.5,00,000/- as advance by way of cash and cheques. In the very same agreement, they agreed to execute a sale deed within four months from the date of the agreement, after measuring the property with the help of a surveyor. The respondents made a request on 25.05.2008 to measure the suit property with the help of the surveyor, for which the appellants requested one more month's time. Therefore, again



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on 25.06.2008, the respondents requested the appellants to survey the property with the help of the surveyor and execute the sale deed, expressing their willingness to get the sale deed registered by receiving the balance sale consideration of Rs.44,00,000/-. Since the respondents came to know through a third party about the conduct of the appellants that they were trying to alienate the property to third parties, they sent a notice on 06.08.2008. Though the appellants sent a reply on 16.08.2008, it was alleged to be a false reply, and therefore, the respondents filed the suit. Time is not of the essence of the contract, since there was litigation pending between the parties, and also because the property had to be measured by the appellants before executing the sale deed. Therefore, considering the relationship of the parties, they were waiting until the expiry of the last date, but the appellants/defendants did not come forward to execute the sale deed. Therefore, the respondents filed the suit. The respondents were always ready and willing to perform their part of the contract and, to show their genuineness, immediately after the decree, the respondents also deposited the entire sale consideration. The respondents have pleaded in their plaint that they were ready and willing to perform their part of the contract. Even in the evidence, they have proved that they were ready and willing to perform their part of the



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contract. The appellants have not denied the financial capacity of the respondents, and the respondents are in possession of the property and have the right and title over it. However, in order to evade executing the sale deed in favor of the respondents, the appellants made a false allegation that there is a cloud on the title. The appellants have admitted the execution of the agreement. However, they were not able to substantiate that it was executed only for security purposes. Therefore, the suit for specific performance cannot be converted into a comprehensive suit, and thus, the Trial Court rightly appreciated the oral and documentary evidence and decreed the suit.

12. Heard both sides and perused the materials available on record.

13. From the above said materials, the Court has taken the following points for consideration:

(1) Whether the agreement dated 06.04.2008 - Ex.A1
is a sale agreement or a loan agreement?

(2) Whether the respondents are ready and willing to



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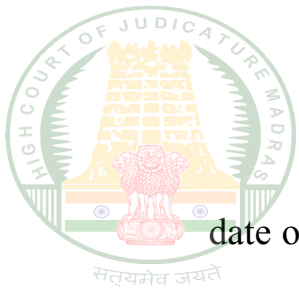


perform their part of the contract?

(3) Whether there is any reason to interfere with the judgment and decree passed by the Trial Court?

Point No. 1:

14. According to the respondents, who filed the suit before the Trial Court for specific performance, they made averments in the plaint that the appellants approached the respondents during the last week of March 2008 and agreed to sell the suit property for a valuable sale consideration of Rs.49,00,000/- and executed a sale agreement on the same day, for which they received an advance of Rs.5,00,000/- by way of cash and cheques. As per the agreement, four months' time was fixed for executing the sale deed. Though the respondents approached the appellants twice, i.e., first on 25.05.2008 and second on 25.06.2008, for executing the sale deed, the appellants postponed the measurement of the property and execution of the sale deed by receiving the balance sale consideration. Therefore, the respondents sent a legal notice on 06.08.2008, expressing their readiness and willingness. Thereafter, the appellants sent a reply on 16.08.2008 with false averments, and therefore, they filed the suit. The agreement is dated 06.04.2008, and they filed the suit on 28.03.2011. The suit has been filed within three years from the



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date of the sale agreement. Therefore, the suit is not barred by limitation.

The appellants have not denied the execution of the sale agreement, and they have not challenged or disputed the financial capacity of the respondents. Therefore, the Trial Court rightly decreed the suit. So, according to the appellants, the sale agreement was not executed as alleged by the respondents. Since the deceased first appellant had to perform his daughter's marriage, he was in dire need of money. Therefore, he approached the respondents and borrowed a sum of Rs. 5,00,000/- as a loan, for which they executed the loan document in favour of the respondents for security purposes. Later, they came to know about the sale agreement and the intention of the respondents only on receipt of the lawyer's notice on 06.08.2008. Therefore, they sent a reply suitably on 16.08.2008. If at all the agreement is genuine, when the appellants denied the execution of the agreement, the respondents ought to have filed the suit immediately without waiting until the last date of limitation, which itself shows that the agreement, said to have been executed on 06.04.2008, is not genuine. From 07.04.2008 till the end of March 2011, the respondents were not ready and willing to perform their part of the contract.



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15. The learned Trial Judge, even without framing issues regarding the readiness and willingness and regarding the principle of "time is of the essence of the contract," framed vague issues that the plaintiffs are entitled to the relief of specific performance. It is the prime duty of the respondents to prove the readiness and willingness. Granting a decree for specific performance, readiness and willingness are sine qua non, whereas in this case neither the respondents pleaded and proved, nor the Trial Court framed the specific issues and answers for those issues. Therefore, the judgment of the Trial Court is perverse and the same is liable to be set aside.

16. A perusal of the records shows that the respondents filed the suit for specific performance based on the alleged sale agreement dated 04.06.2008. First of all, this Court has to see as to whether any sale agreement exists between the parties. The respondents in the pre-suit notice dated 06.08.2008, which was marked as Ex.A3, have clearly stated that the appellants agreed to sell the suit property for valuable sale consideration of Rs.49,00,000/- and agreed to sell the property and executed the sale agreement on 06.04.2008 and received Rs.5,00,000/- as



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an advance by way of cash and cheques. They further stated that they approached the appellants on two occasions, i.e., on 25.05.2008 and 26.06.2008, and also expressed their willingness to get the sale deed executed by giving the balance sale consideration of Rs.44,00,000/-. Though they expressed their readiness and willingness to perform their part of the contract and also were ready to pay the balance sale consideration, the appellants gave some evasive replies. Further, they stated that the appellants indulged in the act of approaching a third party to sell the suit property, and therefore they sent a notice calling upon the appellants to execute the sale deed, to which the first appellant sent a reply, Ex.A7. In the reply, though they denied the execution of the sale agreement, they stated that they had preferred the second appeal against Subbaiah Pandaram and others before this Court pertaining to the suit properties, and the same is pending. Further, they accepted that the first appellant was in dire need of money for the marriage of the daughter of the deceased first appellant and that they approached the respondents for financial assistance to meet the marriage expenses. At that time, the respondents insisted on producing immovable properties for security for the loan proposed to be advanced to the appellants and to get the security embodied in a registered loan document. Therefore, at the instance of the



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respondents, they executed a registered loan document for Rs.5,00,000/- in favor of the respondents. The said document is only a loan document and not an agreement for sale. After receiving the notice, they came to know about the fact that the respondents fraudulently created the said loan document as an agreement and they denied that the defendants were always ready and willing to perform their part of the contract, and the facts mentioned in the notice are utterly false. Even the averments made in the reply notice reflected in the written statement, a conjoint reading of Ex.A7 reply and written statement, and the proof affidavit filed by the deceased first appellant as DW1, they categorically admitted the execution of the document on 06.04.2008. However, according to the appellants, it is a loan document.

17. The appellants have not denied the signature, and they have not denied the access between the parties. The first and second appellants are the sons of the deceased appellant, and they have not denied the execution of the document dated 06.04.2008. Therefore, the Court has to see whether the document said to have been executed by the appellants in favour of the respondents is a sale agreement or a loan document. In order to substantiate the case of the respondents, during the trial, the first



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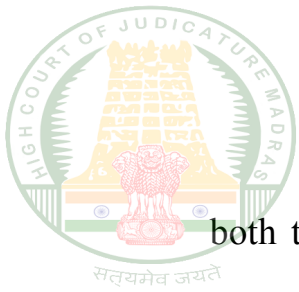
respondent has examined himself as PW1. In his proof affidavit, he has reiterated the averments made in the plaint by stating that the appellants approached the respondents for selling the suit property, agreed to sell the suit property, and entered into an agreement dated 06.04.2008 for a valuable consideration of Rs.49,00,000/-, out of which Rs.5,00,000/- was paid as an advance by way of cash and cheques, and they denied the suggestion that Ex.A1 was only a loan document. They also stated that the payment of advance amount and cheques were honoured and also denied the readiness and willingness, and also the financial capacity, and denied the suggestion that Ex.A1 was created. He emphasized that Ex.A1 is a sale agreement and also, in order to prove Ex.A1, they examined PW2, who also deposed that he stood as one of the witnesses in the said agreement. He also deposed that on 06.04.2008, he went to the house of the plaintiffs. At that time, the respondents and the deceased appellant and other appellants were present. There was a negotiation regarding the alienation of the property, and they executed a sale agreement. He stood as one of the witnesses, and on the same day, the appellants received Rs. 5,00,000/- as advance by way of cash and cheques. He signed as a second witness in the said agreement, and the period for execution of the sale deed was fixed as four months, and the property had to be surveyed by



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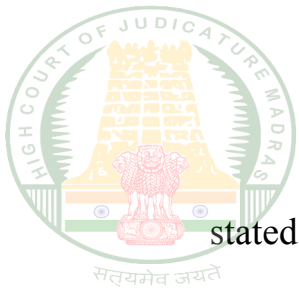
receiving the balance sale consideration. Even during the cross-examination, nothing was chatted by the appellants. One of the other witnesses, who is the scribe of Ex.A1-sale agreement, was examined as PW3, and he has deposed in his evidence that he went on 06.04.2008 to the first respondent's house. At that time, the respondents and the appellants 1 and 2, along with the deceased appellant, were there in the house of the first respondent, and they agreed to sell the property to the respondents. On the instructions of both the deceased appellant, appellants 1 and 2 and the respondents, he prepared an agreement, and both parties entered into the sale agreement. The sale price was fixed at Rs.49,00,000/-, and Rs.5,00,000/- was paid as advance.

18. After preparing the document, he went to the house of the respondents with the sale agreement. He also read over the agreement in the presence of all, and after coming to know the contents, they signed the document. He has also admitted that PW2 was present at the time, and he signed as one of the witnesses in Ex.A1 agreement. During the cross-examination, nothing was chatted, and he also denied the submission made by the learned counsel for the appellants that it was only a loan document. Both the witnesses have stated that they knew



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both the appellants and respondents personally. Therefore, a reading of the plaint, Ex.A1 agreement, Ex.A3 notice, and the evidence of PW1 and PW3, this Court finds that the respondents have proved that Ex.A1 was executed by the appellants as only a sale agreement and not a loan document. Yet another reason is that the respondents sent a legal notice on 06.08.2008, i.e., immediately after the four-month period mentioned in the sale agreement. Further, even as per Ex.A1, the respondents met the appellants on 25.05.2008, immediately one month after the agreement, and a second time on 26.06.2008, and since there was no response, they sent the notice on 06.08.2008. The deceased appellant sent a reply to the notice on 16.08.2008, which is marked as Ex.B7. In Ex.B7, he has not stated anything about the repayment of the loan borrowed by the appellants, though the appellants admitted that Ex.A1 is a loan document and not a sale agreement. As per the evidence of PW3, he only prepared the document, and he is the scribe of the document. Before signing the document, he read it over, and both parties heard, understood, and signed the document. If at all it is a loan document, there is no mentioning of the repayment of the loan borrowed by them. Even in the written statement, he has not stated anything about the repayment of the loan. Even till the filing of the appeal, the deceased first appellant has not



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stated anything about repayment of the said loan or, soon after receiving the notice, he paid the loan amount along with the reply notice or at the time of filing the suit, he deposited the loan amount. When he came to know that Ex.A1 was a concocted document and fraudulently created, he has not stated as to why he has not taken any steps against the respondents for the fraudulent act committed by them. Therefore, from conjoint reading of the entire materials, though the appellants have taken the defence that it is not a sale agreement, but it is only a loan document, the reason has been invented by the appellants only for the purpose of evading the execution of the sale deed. Therefore, this Court, from the pleadings, oral and documentary evidence, has come to the conclusion that Ex.A1 is only a sale agreement and not a loan document. Thus, the first point for consideration is answered in favour of the respondents/plaintiffs.

Point No.2:

19. As far as readiness and willingness are concerned, the respondents, as plaintiffs, have stated in their plaint that they were ready and willing to perform their part of the contract, and though they sent Ex.A3 pre-suit notice on 06.08.2008, in which they clearly stated their



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readiness and willingness, only the appellants denied the purpose of execution of the document. Though sent a reply on 16.08.2008, they denied readiness and willingness. However, in the reply, the deceased appellant stated two things. One is with regard to the title that second appeal is pending and another one is that it is a loan document. As already held in the previous point that Ex.A1 is the sale agreement. The recitals show that the appellants were to measure the property and execute the sale deed after receiving the balance sale consideration, and the respondents expressed their readiness and willingness by sending Ex.A3 pre-suit notice on 06.08.2008. Although the appellants replied to the notice and raised another issue that the second appeal was pending regarding the suit property. But, the appellants did not provide any details regarding the pending second appeal, nor did they mention the appeal number or other particulars of the second appeal. Though the reply notice was issued on 16.08.2008, the suit was filed in the year 2011. The appellants filed their written statement, and even in 2011, they did not mention anything about the particulars of the second appeal that was pending. The learned Senior Counsel for the appellants submits that in the second appeal, the judgment of the first appellate court was set aside and remitted back to the Trial Court for fresh consideration. But



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upon reading the written statement, no particulars were given, and no documents were marked to show the title of the property, except for the marriage invitation and a copy of the miscellaneous petition in M.P(MD)No.1 of 2012, and no other documents were filed. The appellant has not filed any document to show that the property did not belong to the appellants. Therefore, under these circumstances, the plaintiff, as PW1, in his deposition, has stated that he was ready and willing to perform his part of the contract. As far as readiness is concerned, the appellants have not denied the financial capacity of the respondents. The Hon'ble Supreme Court, in a catena of judgments, has held that in order to prove readiness, the purchaser need not show cash in hand or even a bank balance. If he is able to prove his financial capacity that he is a man of means and is able to raise funds, that is sufficient. As far as willingness is concerned, the respondents within the period of four months as stipulated in the sale agreement, they approached the appellants twice. The appellants only postponed the transaction. Therefore, the respondents sent the notice immediately after the completion of four months, and in the reply, the appellants denied it. The agreement also stated about the pending second appeal and the suggestions made by the appellants to PW1. Due to their relationship,



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they were aware of all the matters. Therefore, it is admitted that the appellants themselves acknowledged that the respondents are relatives, and thus, the respondents have proved their readiness and willingness. Although the learned Senior Counsel would submit that after sending Ex.A7 reply on 16.08.2008, the respondents did not file the suit immediately and waited for three years, filing the suit only on 28.03.2011, i.e., on the last day of limitation. It is well-settled proposition that for selling of immovable property, the time is not ordinarily the essence of contract. If the time is essence of contract, it must be stipulated in the agreement, and the parties would also need to plead and prove it. In this case, it is not the case of the appellants that time was of the essence of the contract, and since the respondents did not perform their part of the contract within the stipulated time, they are not entitled to the relief of specific performance. The appellants have denied the very character of the document dated 06.04.2008 itself. Under these circumstances, since the respondents have pleaded and proved that Ex.A1 is a sale agreement and they approached the appellants on several occasions and sent the legal notice immediately after the completion of the four months stipulated in the agreement, but the appellants continuously negotiated and only postponed the execution of the sale



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deed, this Court finds that time is not of the essence of the contract.

Therefore, the respondents were ready and willing to perform their part of the contract. In these circumstances, this Court finds that the respondents have proved their readiness and willingness. It is settled proposition of law that readiness and willingness need not be covered only from the language employed in the pleadings, but Court can gather the intention of the parties from entire pleadings, since the suit for specific performance is a discretionary remedy. The Court must consider the conduct of the parties based on all the materials. Therefore, on reading the entire materials, this Court finds that the respondents have proved their readiness and willingness. This point is answered accordingly in favor of the respondents/plaintiffs.

Point No.3:

20. As far as the third point is concerned, though the learned Senior Counsel for the appellant would submit that the Trial Court has not framed the specific issue of readiness and willingness, in a suit for specific performance, the plea and proof of readiness and willingness is a *sine qua non*, and the Trial Court failed to frame the specific issues and answer for the same. Therefore, the judgment of the Trial Court is



perverse.

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21. It is not out of place to mention that the first appellate Court is a fact-finding court and it is the final Court of fact-finding. The first appellate Court can re-appreciate the evidence independently and give the reasons independently, and then give the finding, and it need not sail on the appreciation and finding given by the Trial Court. Whether the evidence upon the record is sufficient to enable the appellate Court to pronounce the judgment, the appellate Court may, after re-casting the issues if necessary, finally determine the suit notwithstanding that the appeal is preferred as proceeding wholly upon the same ground other than that on which the appellate Court proceeds.

22. Whether the Court, on whose decree the appeal is preferred, has omitted to frame or try any issue or to determine any question of fact which appears to the appellate Court to be essential to the right decision of the suit upon the merits, the appellate Court may, if necessary, frame the issues or refer the same to the trial Court from whose decree the appeal is preferred. In such case, direct the trial Court to take additional evidence required, and such Court shall proceed by such issues and shall



return the evidence to the appellate Court together with its finding and the reasons thereto, within the time fixed by the appellate Court or extended by it from time to time.

23. Therefore, the conjoint reading of the pleadings shows that the parties understood the issues between them through the oral and documentary evidence. Therefore, under these circumstances, this Court does not find any reason for non-framing of issues, specifically as readiness and willingness would be fatal to the case of the respondents. In this regard, as early as 1956, the Hon'ble Supreme Court held in the case of *Nagubai Ammal v. Sharma Rao*, reported in *AIR 1956 SC 593*, in which the Hon'ble Supreme Court observed that the original trial does not get vitiated on the wrong, improper, or defective issue. Therefore, the Trial Court framed the issue of whether the plaintiffs are entitled to the relief of specific performance. As per the settled proposition of law, granting relief of specific performance requires the plea and proof of readiness and willingness, which is sine qua non. A reading of the entire materials, pleadings, oral and documentary evidence produced by both the parties show that the parties understood the issues involved in the case, and therefore, the readiness and willingness were covered under the



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larger issues framed by the Trial Court. Therefore, this Court, as the appellate Court, has taken the specific point separately and also analyzed the entire materials and has found that the respondents proved the readiness and willingness by producing the agreement and examining the first plaintiff as PW1, and also the scribe of the document was examined as PW3, and one of the witnesses to Ex.A1 was examined as PW2 and nothing was chatted by the appellants from the evidence of PW1 to PW3. Therefore, this Court, on conjoint reading of the entire oral and documentary evidence, finds that the respondents have proved the foundational fact that the appellants have executed the sale agreement and they have not acted upon it. Therefore, the respondents filed the suit for specific performance. Once the initial burden has been proved by the respondents, the onus shifts to the appellants. It is then for the appellants to shift the onus that Ex.A1 was not executed for selling the property and that it is not a sale agreement and it is only a loan document. A reading of the entire materials shows that the appellants have not examined any independent witnesses and only the deceased appellant was examined as DW1 and the first appellant was examined as DW2 and no independent witness was examined, and no document was produced to show that there was a defect in title. As already stated, he has not spoken anything about



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the repayment of the alleged loan amount borrowed by him. If at all the document is a loan agreement, soon after receiving the legal notice, he ought to have taken steps for repayment of the loan or otherwise, he ought to have taken steps by depositing the amount in filing the suit for cancellation of the agreement. The appellants have not done so, and therefore, once the initial burden has been proved by the respondents, and the onus has been shifted to the appellants, the appellants have not discharged their onus. Therefore, under these circumstances, though it is a settled proposition of law, the defendants need not prove their defence in the same manner as the plaintiffs, but the defendants have to discharge their onus with preponderance of probabilities. The appellants have not examined any independent witnesses or produced any document to show that the amount was borrowed only for the purpose of marriage and Ex.A1 document was executed for security purposes. Therefore, in the absence of discharging the onus, this Court finds that the judgment of the trial Court is not perverse, and there is no reason to interfere with the judgment and decree passed by the Trial Court. This point is answered accordingly.



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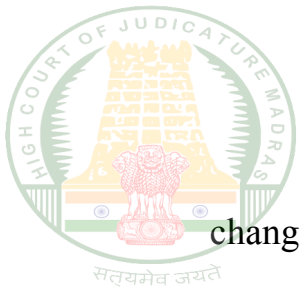
24. The learned Senior Counsel for the appellant has filed an application stating that the deceased first appellant had filed a suit in O.S.No.149 of 1999 on the file of the District Munsif, Manapparai, seeking the relief of declaration of title and for a consequential relief of injunction in respect of the suit property against the Sri Selvanayagam Temple and its then Managing Trustee. The above suit was decreed as prayed for on 31.03.2003. Being aggrieved by the said decree, the defendants therein filed an appeal in A.S.No.163 of 2003 on the file of the Principal District Court, Trichy. The first appellate Court allowed the appeal on 29.10.2023 and set aside the judgment and decree passed by the Trial Court. Therefore, the father of the appellants filed a Second Appeal in S.A.No.830 of 2004 before this Court, and after the death of the deceased appellant, the present appellants have brought themselves on record, and the second appeal was allowed on 10.11.2022 by setting aside the judgment and decree of the first appellate Court and remitting the matter back to the Trial Court for fresh disposal in accordance with law. After remand, the Trial Court, by judgment and decree dated 21.04.2023, dismissed the above-said suit in O.S.No.149 of 1999 on the file of the Principal District Munsif Court, Manapparai, and ignored the patta granted in their favour during the settlement. Being aggrieved by



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the judgment and decree passed by the Trial Court, the appellants have preferred the appeal before the Sub Court, Manapparai, and the same is pending disposal. Therefore, they filed the present application in C.M.P(MD)No.12832 of 2024 for receiving those proceedings as additional evidence.

25. As far as the application in C.M.P(MD)No.12832 of 2024 is concerned, the said documents have nothing to do with the sale agreement (Ex.A1), and till there is no finality obtained in the suit filed by the deceased appellant for declaration, and still they have filed the appeal, which is pending. The stand of the appellants is that the suit properties belong to them. Therefore, the suit for specific performance cannot be converted into a comprehensive suit. Therefore, the appellants have to go with the terms and conditions of Ex.A1, even assuming that title suit is pending regarding suit property, the judgment and decree is subject to only the outcome of the said suit regarding title. Therefore, once this Court finds that Ex.A1 is genuine, and the appellants have executed the sale agreement, and the respondents have proved the readiness and willingness, under these circumstances, allowing this application for receiving these documents as additional evidence will not



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change the result of the appeal. All the documents are available, except for the disposal of the second appeal, the decree in the Trial Court and the decree in the first appellate Court are very much available. Even during the pendency of the suit and the second appeal itself dismissed and remitted back on 10.11.2022, the appellants have not taken any steps to bring these documents in earlier occasions, and therefore, when the matter is listed for final disposal, and at this stage, the appellants have filed the present application. Even otherwise, perusal of the affidavit filed by the appellants in this CMP and the documents will not give any effect to the judgment and decree, and even assuming that the documents are received as additional evidence, the decision will not change the result of the appeal. Hence, the application in C.M.P(MD)No.12832 of 2024 is dismissed.

26. The learned counsel for the respondents submitted that soon after filing the suit, the respondents deposited the entire decree amount. Therefore, the appellants are directed to execute the sale deed in favour of the respondents after receiving the sale consideration, which has been deposited. Failing to execute the sale deed, the Trial Court is directed to execute the sale deed if the respondents have already deposited the entire



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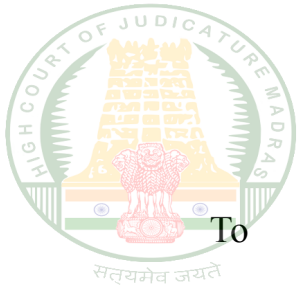
balance sale consideration. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

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27. With the above direction, this Appeal Suit is dismissed. No costs.

**(P.V.,J.) (K.K.R.K., J.)
14.02.2025**

Index : Yes
NCC : Yes/No
PJJ



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To

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1. The I-Additional District Judge (FTC),
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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**P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

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14.02.2025