



A.S.(MD)No.203 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.10.2025	17.11.2025

CORAM:

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

**A.S.(MD)No.203 of 2017
and
C.M.P.(MD)No.11675 of 2017**

1.B.Prabakaran
2.S.Manjula

... Appellants / Plaintiffs

vs.

1.K.Vadivel Servai (Died)
2.V.Muneeswaran
3.Suvetha
4.V.Easwaran
5.V.Murugan
6.Ahalya
7.Deepika
8.V.Parameswaran
9.Minor Bhuvan

... Respondents / Defendants

[R2, R4, R5 & R8 are recorded as LR's. of the deceased R1, vide
order dated 06.10.2016 passed in M.P.(MD)No.1 of 2025 in
A.S.(MD)SR.No.40400 of 2014]



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[R9 Rep. through his father and natural guardian R8]

[R3, R6 and R7 are declared as Majors and their
Guardianship is discharged vide order dated
17.11.2025 in Memo dated 28.10.2025]

PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the judgment and decree dated 21.02.2013 passed in O.S.No.46 of 2009, on the file of the Additional District and Sessions Court, Dindigul.

For Appellants : Mr.PT.S.Narendra Vasan

For R2 to R8 : Mr.S.Sadeskumar

JUDGMENT

C.V.KARTHIKEYAN, J.

The plaintiffs in O.S.No.46 of 2009 on the file of the Additional District and Sessions Court at Dindigul, are the appellants herein.

2. The suit in O.S.No.46 of 2009 was filed by the plaintiffs seeking specific performance of an agreement entered into with the defendants dated 28.06.2008, on receipt of the balance sale consideration of Rs.52,54,000/-. In the alternative, the plaintiffs sought a refund of the advance amount of Rs.20,00,000/- with interest at 12% per annum, along with a permanent injunction restraining the defendants from alienating the suit property, and for costs of the suit.

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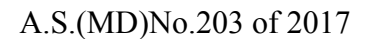
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3. The agreement between the parties related to vacant land measuring 4.19 acres out of a larger extent of 4.45 acres situated at Thattankulam Village, Palani, Dindigul District. As a matter of fact, the defendants had donated a portion of the land, measuring 63 cents, to the Municipality for construction of a road, leaving 3.56 acres actually available. However, the plaintiffs had paid Court fees assuming that 2.34 acres were available with the defendants and proceeded with the agreement for 4.19 acres.

4. The defendants contested the suit, denying that any portion of the land had been donated to the Municipality for road or park purposes, and questioned the *bona fides* of the plaintiffs in entering into an agreement for 4.19 acres. The rate per cent of land had been determined at Rs.31,000/-.

5. The Trial Court, by judgment dated 21.02.2013, rejected the claim for specific performance but granted the alternate relief of refund of the advance amount paid. Challenging that finding, the present First Appeal has been filed.



7. The learned counsel for the respondents 2 to 8, however, denied this contention. According to them, the agreement was for the purchase and sale of 4.19 acres of land at Rs.31,000/- per cent. Even according to the appellants, an area of 63 cents had been donated to the Municipality for road construction, leaving 3.56 acres available. The learned counsel also pointed out that the suit was filed only for specific performance of 2.34 acres. He contended that, since the identity of the property is not definite, specific performance cannot be granted. He further submitted that the Trial Court had correctly dismissed the suit for specific performance and granted only the refund of the advance amount paid.



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8. We have carefully considered the arguments advanced and perused the material records.

9. The scope of the suit in O.S.No.46 of 2009 filed by the appellants before the Additional District and Sessions Court, Dindigul, was quite narrow. The suit was filed for specific performance of an agreement of sale dated 26.08.2008. The agreement related to the sale and purchase of vacant land measuring 4.19 acres out of a larger extent of 4.45 acres. Even in the plaint, it had been stated that though the agreement mentioned 4.19 acres, a portion of the land had been donated by the respondents for the construction of a public road and park, and that the extent actually available was only 2.34 acres. The suit was therefore laid for specific performance in respect of 2.34 acres.

10. It was the contention of the appellants that there was an obligation on the part of the respondents to measure the land and that the respondents had failed to discharge that obligation. We are, however, of the firm view that it was the responsibility of the appellants to first identify the lands they intended to purchase and to enter into an agreement for that specific extent. In the event of



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denial of performance, a suit for specific performance could then have been filed for the clearly identified property.

11. In the present case, there appears to be no *consensus ad idem* between the parties regarding the actual extent of land that was agreed to be sold and purchased. When the description and area of the property are uncertain, not specifically mentioned or agreed upon, and the land has not been demarcated by fixed boundaries, a decree for specific performance can never be granted.

12. The learned Trial Judge, on the basis of the evidence available on record, had correctly concluded that since the extent of the land was not determinable, the suit necessarily had to be dismissed insofar as the relief of specific performance was concerned. However, the Trial Court rightly granted the alternate relief of refund of the advance amount, which had been specifically sought by the appellants.

13. We find no infirmity in the judgment of the Trial Court. As a matter of fact, there was no *consensus ad idem* between the parties with respect to the



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identity or extent of the property sought to be purchased by the appellants and sold by the respondents.

14. At this juncture, it is relevant to refer to Order VII Rule 3 C.P.C. which reads as follows:-

"Order VII

3. Where the subject-matter of the suit is immovable property.-

Where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers."

15. The provisions stipulate that where the subject matter of the suit pertains to immovable property, and in the present case, Court fees have been paid for 2.34 acres of land, it is incumbent upon the plaintiffs to properly describe the property by specifying the boundaries and furnishing other necessary particulars. In the absence of such specific description, a decree for specific performance cannot be granted.



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16. In the result, we find no merits in the appeal and the same stands dismissed with costs. Consequently, connected Miscellaneous Petition is closed. Permission may be granted to the appellants to withdraw the balance sale consideration deposited by them, which may be permitted by the trial Court without even issuing notice to the respondents.

17. A Memo has been filed by the learned counsel for the respondents 2 to 8 stating that the respondents 3, 6, and 7, who were shown as minors in the cause title, have now attained majority. To substantiate the same, copies of their School Certificates have been enclosed along with the Memo. The Memo is taken on record. The Registry, while issuing the order copy, shall note in the cause title that respondents 3, 6, and 7 have attained the age of majority and shall suitably amend the cause title by discharging their guardians from the representation.

Index : Yes

NCC : Yes

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To

1.The Additional District and Sessions Judge,
Dindigul.

[C.V.K., J.] & [R.V., J.]

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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.

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PRE-DELIVERY JUDGMENT MADE IN
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