

L.P.A.No.90 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14/03/2025

CORAM:

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

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1.S.Jayalakshmi

2.Manimaran

3.Arunmzhi @ Arulandam

4.Selvam @ Selvaraj

5.Annadorai

.. Appellants 1 to5 /
Respondents 9 to 13

6.Seeni Ammal(died)

.. Appellant No.6

Vs.

1.Saraswathi Ammal (died)

.. 1st Respondent/Appellant/
Plaintiff

2.N.C.Subbiah (died)

3.Vasantha @ Shanmughathayee

4.V.Kannan @ Pavun

5.Manimanthiravel(died)

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6.V.Selvaraju(died)

7.J.Arogaisamy

8.Tamilarasi

9.S.Geetha

10.Revathi Balakrishnan

11.M.Devandran(died)

12.Malliga(died)

13.Jayachandran(died)

14.Bhaskaran

15.Rajam

16.Minor Gokul Doss

17.Minor Marisamy

***(R16& R17 are represented by their mother
as Guardian15th respondent Rajam)***

18.Thenmozhi

19.Srithar

20.Kasturi Ammal

21.Sivakumar

22.Rajarajan

23.Vijayalakshmi

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24.Maheswari

25.Priya

26.B.Venkata Subramanian

27.B.Shankar Ganesh

28.B.Manikandan

29.B.Vinoth

30.J.Kala

31.Raja Marimuthu

32.Arun Prakash

.. Respondents

PRAYER: This Letters Patent Appeal has been filed under Clause 15 of the Letters Patent Act against the judgment dated 25.09.1998 made in A.S.No.407 of 1984 by this Court reversing the judgment and decree dated 17.11.1983 made in O.S.No.54 of 1981 on the file of the Sub-Court, Kumbakonam.

For Appellants : Mr.K.Sekar

For Respondents : Mr.M.P.Senthil for R10

:Mr.ARL.Sundaresan
Senior Counsel for
Mr.C.Mahadevan
for R14 to R17, R20 to R24, R26 to R29



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:Mr.S.Balakarthick
for R30 & R31

:No appearance for R4, R8, R9
R1, R2, R11 to R13- Died

: R32- Left

JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN,J**)

This Letter Patent Appeal has been filed against the judgment and decree dated 25.09.1998 made in A.S.No.407 of 1984 by this Court reversing the judgment and decree dated 17.11.1983 made in O.S.No.54 of 1981 on the file of the Sub-Court, Kumbakonam.

2. The deceased first respondent filed a suit against the respondents 2 to 8 for specific performance in O.S.No.54 of 1981 before the Sub Court, Kumbakonam. After trial, the trial Judge rejected the relief of specific performance and passed the judgment and decree against the first respondent therein only for recovery of a sum of Rs.1101/- with interest at the rate of 9% per annum from 06.06.1970 till the date of decree and the subsequent interest at the rate of 6% per annum with proportionate costs. Aggrieved over the said

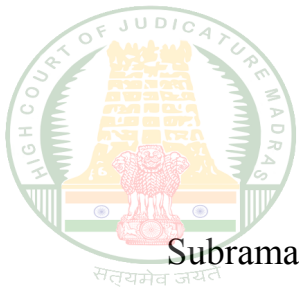


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judgement and decree the plaintiff therein filed an appeal before this Court in A.S.No.407 of 1984. The learned Single Judge after hearing the arguments on either side, set aside the decree passed by the learned Sub Judge and allowed the appeal and decreed the suit as prayed for, and dismissed the cross objection. Aggrieved over the same, the respondents 9 to 13 in the said appeal filed the present Letters Patent Appeal before this Court.

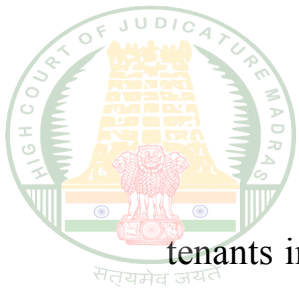
3. For ease of reference, the parties are referred to as per their ranking before the trial Court.

4. The brief facts of the case as per the plaint is that the first defendant is the owner of the suit properties bearing Door No.11A, 11B and 11C. Since the plaintiff was residing in one of the houses as tenant, the first defendant approached the plaintiff through a broker by name one Subramanian and informed that he was in dire need of money to conduct the marriage of his daughter. After some negotiation, the plaintiff and the first defendant entered into a sale agreement dated 06.06.1979 wherein the first defendant agreed to sell the suit properties in favour of the plaintiff for a sum of Rs.39,000/- and received an advance of Rs.1101/- in the presence of the said broker



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Subramanian. No time was prescribed in the sale agreement. However, it was agreed by the parties that whenever the plaintiff called upon, the first defendant to execute the sale deed on receipt of the balance sale consideration. On the date of agreement, the first defendant gave a registration copy of the parent document namely, partition deed dated 05.09.1979. Thereafter even though the plaintiff was ready and willing to perform her part of the contract, the first defendant was postponing the sale. In the meanwhile, the plaintiff came to know that the first defendant in collusion with the second defendant attempted to sell the suit properties to the second and third defendants. Therefore, the plaintiff issued a telegram to the defendants 1 to 3 and further she intimated to the first defendant that she was ready and willing to perform her part of the contract and also ready to get the sale deed in her favour. She also issued notice to the defendants 1 to 3 dated 30.03.1981 for which they replied on 03.04.1981, 06.04.1981 & 13.04.1981 respectively and made false allegations. However, subsequently, the second and third defendants entered into a sale agreement with the first defendant on 23.02.1981 for the purchase of the suit properties. The said agreement is not genuine which was concocted by the defendants 1 to 3. After issuing pre-suit notice, the first defendant sold the suit property to the defendants 2 to 5 and 9. The defendants 2 to 5 & 9 are the



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tenants in the suit property and they are also in possession of the suit property as the tenants. Therefore, the plaintiff filed a suit for specific performance, since the first defendant did not come forward to perform his part of the contract as per the agreement entered between the plaintiff and the first defendant.

5. The brief facts of the case of the first defendant before the trial Court as per the written statement is that he denied the execution of agreement for sale of the suit properties in favour of the plaintiff and Ex.A1 document is concocted one. The plaintiff's husband namely, Marimuthu Chettiar and the 6th defendant Manimanthiravel met the first defendant at Seerkali in the last week of May 1979 regarding to the purchase of the suit properties. The first defendant expressed his unwillingness to sell the property. Since the first defendant was in need of a sum of Rs.15,000/- as loan for conducting the marriage of his daughter, he made a request before the 6th defendant for which he assured that he would arrange for a loan and took the registration copy of the partition deed dated 05.09.1977. The 6th defendant colluded with the husband of the plaintiff and set up an agreement as if the first defendant agreed to sell the suit property to the plaintiff. However, he entered into an agreement



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for sale for the suit property with the second defendant on 08.03.1981, on receipt of advance amount of Rs.1101/- and thereafter, he sold the suit property to the defendants 2 to 5. Therefore, the plaintiff is not entitled to get the relief of specific performance.

6. The brief facts of the case of the second defendant, as per the written statement before the trial Court, is that he admitted the contention of the first defendant that he entered into an agreement for sale of the suit properties with the first defendant and paid an advance of Rs.101/-. Thereafter, he paid Rs. 10,000/- on 08.03.1981 and 23.03.1981 respectively. The total sale consideration was Rs.67,500/-. Based on the said agreement, the defendants 4, 5 & 9 purchased the portion of the suit properties which were already in their occupation as tenants, the 4th defendant purchased Door No.11A, the 5th defendant purchased Door No.11B and the 9th defendant purchased Door No.11C of the suit properties. The defendants 6 & 7 are the tenants under the 4th defendant. The 9th defendant appointed the 2nd defendant as his special Power of Attorney for the house properties. They also suitably replied to the telegram and the notice. There was no collusion between the second defendant and other defendants. Since the defendants 4, 5 and 9 purchased the property



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for valuable consideration, without any notice they are the bonafide purchasers. The agreement said to have been executed between the plaintiff and the first defendant will not bind them. They were not aware of the agreement. Therefore, he prayed for dismissal of the suit as against them.

7. The brief facts of the case of the 7th defendant as per the written statement is that he is one of the tenants in the suit property and the 7 & 8th defendants also one of the tenants in the suit property, who were occupying the portion of the D.No.11C, 9th defendant is the purchaser of D.No.11C from the first defendant. They are ready to pay the rent to the owner of the properties.

8. Based on the pleadings the trial Court has framed the following issues:

1. Whether the agreement dated 06.06.1979 is true, genuine, valid and binding on the defendants?
2. Whether the plaintiff is entitled to specific performance?
3. To what relief, if any, is the plaintiff entitled?



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and following Additional issues were framed on 27.09.1983;

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“1. Whether the third defendant is necessary party to the suit?

2. Whether the defendants 4,5 & 9 are bonafied purchasers?”

9. After framing of the issues, during trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2 and 14 documents were marked as Ex.A1 to Ex.A14. On the side of the defendants 5 witnesses were examined as DW1 to DW5 and 31 documents were marked as Ex.B1 to Ex.B31.

10. After the trial, on hearing of the arguments advanced on either side, the trial Court decreed the suit against the first defendant only for recovery of Rs.1101/- with interest at the rate of 9% per annum from 06.06.1979 till date of the decree and subsequent interest at the rate of 6% per annum with proportionate cost and the main relief of specific performance was rejected and the suit was dismissed in all other aspects. The defendants were ordered to bare their own costs. Aggrieved over the same, he filed the appeal before this Court in A.S.No.407 of 2984. The learned Single Judge after hearing the arguments, considered the following points for determination of the appeal:

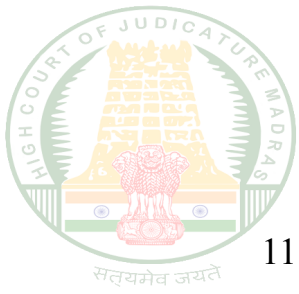


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- i. Whether the Court below is right in holding that the plaintiff is not entitled to the relief of specific performance, having held that Ex.A1 agreement is a valid agreement?
- ii. Whether the lower Court is correct in granting the relief in favour of the 9th defendant having negatived the claim of the said defendant that he is a bonafide purchaser for value and without notice?
- iii. Whether the lower Court is right in holding that the defendants 4 and 5 had no notice of Ex.A1 agreement and dismissing the suit as against the plaintiff and the decreeing in favour of all these defendants particularly, defendant No.9?
- iv. Whether Ex.B6 agreement is a valid agreement for the second defendant to get the sale deed executed by the first defendant in favour of his nominee defendants 4, 5 and 9?
- v. Whether the trial Court is right in having refused the specific performance of Ex.A1 agreement and what relief is the appellant entitled to?



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11. The learned Single Judge, after hearing the arguments on either side and considering the grounds of appeal raised by the appellant, held all the points for determination in favour of the plaintiff, set aside the judgment and decree passed by the trial court, and allowed the appeal. Now aggrieved over the same, the respondents 9 to 13 in the first appeal have filed the present Letters Patent Appeal as appellants 1 to 6. Subsequently, the 5th respondent filed an application for transposing as 6th appellant. As per the order of this Court dated 25.02.2004 made in C.M.P(MD)Nos.1362 & 1362 of 2004, he was transposed as 6th appellant.

12. Pending appeal, some of the parties died and their legal heirs have been impleaded as shown in the cause title.

13. Since the case is based on the agreement Ex.A1 between the plaintiff and the first defendant, the plaintiff filed the suit for specific performance . Though Ex.A1 was in force, the first defendant made an attempt to sell the property to the third party. Immediately the plaintiff sent a telegram to the defendants 1 to 3 and thereafter, he issued legal notice to the defendants 1 to 3. In the meanwhile, the first and second defendants through the third defendant



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sold the property to the defendants 4, 5 & 9. Therefore, the plaintiff filed the suit and subsequently the other tenants and subsequent purchasers and legal heirs have been impleaded.

14. The learned counsel for the defendants 5, 9 to 13 would submit that there are no materials available to show that the defendants 4, 5 & 9 are in the habit of reading Tamil so as to impute knowledge about the publication of Ex.A6. Further, Ex.A7-notice was issued only to the defendants 1 to 3 and the first defendant sent reply under Ex.A8 on 03.04.1981 and the second defendant sent reply under Ex.A9 on 06.04.1989. The third defendant also sent reply on 13.04.1989 under Ex.A10 denying the contents of the telegram. The second defendant is aware of the existence of the prior agreement under Ex.A1 between the plaintiff and the first defendant on 27.03.1981. Though he received Ex.A4-telegram and Ex.A7-notice dated 30.03.1981, the second defendant suppressed the above telegram and notice and he did not bring it to the knowledge of the intending purchasers namely, the defendants 4 & 5. Therefore, the learned Sub Judge, held that the defendants 4 & 5 are bonafide purchasers without notice. When the defendants 4 & 5 are bonafide purchasers, the plaintiff is not entitled to claim specific performance for the properties



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purchased by them. The learned Sub Judge held that the 9th defendants is not bonafide purchaser as he had a knowledge of prior agreement that the contract is indivisible and grant of specific performance in a discretionary relief and it should be exercised in such a manner that does not effect the rights of the third parties. It appears that the plaintiff entered into a wholesale contract to purchase the four door numbers of the property of the first defendant. Therefore, it should be ordered to be performed as a whole or rejected as a whole.

15. It may not be possible for the Court to strike down the portion of the contract relating to D.No.11C and to compel the first defendant to execute the sale deed in favour of the plaintiff and the 9th defendant, who also join with the first defendant in execution of the sale deed. The reason given by the learned Sub Judge is that considering the title for D.No.11C is not known and cannot be fixed as the contract itself is indivisible. There cannot also be a direction that the portion of the property should be sold to the plaintiff for a value price. Under the above factual aspects, the learned Sub Judge held that the defendants 4 & 5 are bonafide purchasers and declined the specific performance as sought for by the plaintiff, even otherwise the plaintiff proved



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that she was ready and willing to perform her part of the contract. When the defendants 1 to 3 sent a reply to the pre-suit notice-Ex.A7 and Ex.A9 & Ex.A10, the plaintiff did not file the suit immediately for specific performance. Therefore, the plaintiff has not proved that she was ready and willing to perform her part of the contract. The relief of specific performance is a discretionary relief and the plaintiff has to prove the readiness and willingness and from the date of agreement till the filing of the suit, the plaintiff has not proved that she was ready and willing to perform her part of the contract. The laxity on the part of the plaintiff shows that she was not any part of the agreement dated 06.06.1979-Ex.A1 and the subsequent events to unfold that the plaintiff is not very particular to enforce the specific performance and the part played by the said Manimanthiravel is important. The first defendant written a letter to Manimanthiravel to return Ex.A2-copy of the partition deed of the first defendant and reply given by Manimanthiravel is significant. The said Manimanthiravel replied and the same is marked as Ex.B4, which would show that he would send the said document as soon as it is made for to him. The Manimanthiravel is a close relative of the plaintiff and he is supporting the case of the plaintiff and he is also present at the time of negotiation between the plaintiff and the first defendant and also at the time of execution of the so



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called agreement-Ex.A1 dated 06.06.1979. If the parties really wants to enforce the agreement under Ex.A1, certainly the said Manimanthiravel would not have written such a letter.

16. PW1-Saraswathiammal/plaintiff had deposed that the first defendant informed her to collect rent from the tenant from the date of Ex.A1 and further stated that the first defendant who was examined as DW2, even introduced her to the tenant to pay the rent to her. Absolutely there is no evidence to show that PW1 had collected rent from the tenants or the tenants had paid rent to her. The 6th defendant himself did not pay the rent to the plaintiff. Even after the agreement, the 8th defendant paid the rent only to the first defendant which was proved through Ex.B15, Ex.B20, Ex.B8. Ex.A1 does not reflect the true consideration for the suit property. As per Ex.A1, the total consideration is fixed at Rs.39,000/- whereas the property sold at Rs.67,000/- to the defendants.

17. The learned Sub Judge clearly appreciated the oral and documentary evidence and rightly dismissed the suit. When the plaintiff filed the appeal, the learned Single Judge failed to consider the pleadings and oral and documentary evidence and also the discussion made by the Sub Judge, wrongly set aside the



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order passed by the learned Sub Judge and allowed the appeal and decreed the suit. Thus the learned Single Judge held that the defendants 4 and 5 cannot under any circumstances be treated as innocent purchasers and without notice for the reason that they purchased the suit properties on 23.08.1981 and the paper publication effected in Dinamalar-Ex.A6 on 09.08.1981 and disbelieved the reason given by the trial Court that the defendants 4 and 5 are the villagers and they might not have come to the knowledge of the paper publication stating that ignorance of law is no excuse. Further the learned Judge held that in Ex.A1, no time is fixed and in such circumstances, at any time, the plaintiff is willing to get the registration done in her favour on payment of the balance sale consideration. She is at liberty to get the sale register by the first defendant in her name or in the name of her nominee.

18. The learned Single Judge differed with the findings of the trial court regarding the sale consideration. The trial court had held that the sale consideration was inadequate, but the learned Single Judge held that such a stand could not be taken, and whatever amount was agreed upon must be adhered to by the parties. The learned Single Judge found fault that in granting the relief in favour of the defendants 4, 5 & 9, inspite of negatived the claim of



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the 9th defendant on the ground of bonafide purchaser and without notice, the reason assigned by the learned Sub Judge in holding that the defendants 4 and 5 are bonafide purchaser is not valid. Aggrieved over the respondents 9 to 13 have filed the present appeal against the finding of the trial Court and the learned Single Judge answered point Nos.1 to 5 in favour of the plaintiff against the contesting defendants.

19. The learned counsel for the appellant would submit that the agreement dated 06.06.1979 under ExA1 consideration is mentioned as Rs. 39,000/- and advance of Rs.1101/- was paid. As per the above said document Ex.A1, no time limit was fixed to conclude the contract but that does not mean that the plaintiff can take his own time to complete the contract as it is settled law that the plaintiff has to establish that she was always ready and willing to perform her part of the contract from the date of agreement till the date of filing of the suit.

20. Though the plaintiff has not proved that she was ready and willing to perform the contract from the date of agreement till the date of filing of the suit, she did not pay the balance sale consideration when she filed the case to



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indicate her readiness and willingness to perform his part of the contract, the learned Single Judge failed to note that prior to telegram Ex.A4 to Ex.A5 and publication under Ex.A6, no document was filed to show that prior to such telegram and publication, the plaintiff has shown her readiness to perform her part of the contract. Further, he would submit that the agreement dated 06.06.1979 as material alteration and also it is an unregistered one. Hence, it is not a notice to third parties as an unregistered document would not reflect in the entry of the said register.

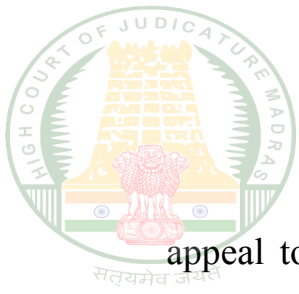
21. Even in a registered document, which is a notice, everybody and any individual purchaser would see the agreement between the parties. Therefore, the defendants 4, 5 and 9 who had purchased the suit properties from the first defendant are bonafide purchasers without notice for valuable consideration. Further he submitted that the third party has acquired rights. There will be no restriction whether the right of the third party have intervened and it would be inequitable to grant right whether the third party has acquired rights or interest in the subject matter of the contract during the subsistence of the contract and without notice of the contract and has acquired such rights or interest for the value.



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22. The learned Single Judge has not reversed the finding of the trial Court regarding the readiness and willingness on the part of the plaintiff. The documents filed by the plaintiff clearly established that till 1981, the plaintiff did not take any steps to get the sale deed from the first defendant, the telegram were issued under Ex.A3 to Ex.A5 only in the year 1981. This clearly establishes that the plaintiff was not ready and willing to perform her part of contract. Further he would submit that the plaintiff has not come with clean hands so as to get the equitable relief by filing a suit on specific performance. In her evidence she had deposed that the notice was given immediately after 7 or 8 months asking the defendants to execute the sale deed. But on the contrary, such notice or reply given by the defendants as alleged was not produced before the Court to establish her contention. Since the plaintiff has come forward with an incorrect plea, she is not entitled for equitable relief. Further he would submit that the judgment dated 26.02.2004 in LPA.No.90 of 1999 by this Bench is based on merits recalled and review application filed only on the technical ground and there is no subsequent development or events to modify or reverse the judgment dated 25.09.1998. Therefore, the judgment of the learned Single Judge dated 25.09.1998 is liable to be set aside and



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appeal to be allowed. The judgment and decree passed by the trial Court is liable to be restored.

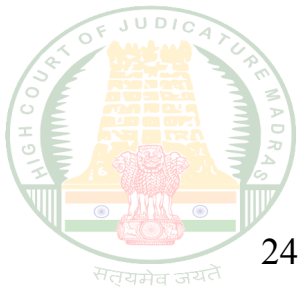
23. The learned Senior counsel appearing for the plaintiff would submit that even the trial Court held that the agreement was true and genuine and only held that the defendants 4,5 & 9 are bonafide purchasers and the defendants 4 and 5 were not aware of the agreement-Ex.A1 between the plaintiff and the first defendant. The trial Court has failed to consider the fact that no time was stipulated for execution of the contract. It is well settled proposition of law as far as immovable property is concerned time is not ordinarily essence of the contract unless there is an express clause mentioned in the agreement itself. In this case, the agreement between the plaintiff and the first defendant does not stipulate any time for execution. Therefore, time for filing the suit is three years even prior to complete the period of three years, the first defendant made an attempt to create encumbrance. Therefore, the plaintiff immediately sent a telegram and the same was also received by the defendants 1 to 3. Even then they have not stopped with that. In the telegram sent to the first defendant, the plaintiff expressed her willingness to get the registration of the sale deed despite the first defendant did not come forward to execute the sale deed by receiving balance sale consideration and the first defendant did not stop with



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that. He also further made appointment so sell the properties to the third party.

When the Ex.A1-sale agreement between the plaintiff and the first defendant was in force and therefore she sent a notice to the defendants 1 to 3 and also sent a public notice published in the newspaper and therefore, she has taken all the efforts preventing to create an encumbrance. However, the plaintiff was always ready and willing to perform her part of the contract. Though the trial Court failed to appreciate the conduct of the parties and the appellate Court rightly re-appreciated the evidence and considering the recitals in Ex.A1 and the further conduct of the plaintiff and the first defendant and held that the plaintiff was ready and willing to perform her part of the contract and despite knowing the fact that the defendants 1 to 3 were created a sale deed in favour of the defendants 4, 5 & 9 and therefore, the defendants 4, 5 & 9 are not the bonafide purchasers. Therefore the trial Court though failed to appreciate the oral and documentary evidence and conduct of the parties, the learned single Judge, the first appellate Court as a fact finding Court always entitled to re-appreciate the evidence independently and to give the independent finding and therefore, there is no merit in the appeal and there is no reason to interfere the judgment and decree of the learned Single Judge and the same is liable to be dismissed.



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24. Heard the learned counsel on either side and perused the materials available on record.

25. In order to decide the Letters Patent Appeal raised by the learned counsel for the appellant, the following points have been taken into consideration:-

- i. Whether the learned Single Judge is correct in refraining the judgment of the trial Court without adverting to the finding of the trial Court even with respect to the readiness and willingness on the part of the plaintiff in performing her part of contract?
- ii. Whether the learned Single Judge is correct in reversing the judgment and decree without giving any finding as to how the trial Court is not correct in rejecting the case of the plaintiff and substituting his own fresh reason in favour of the plaintiff?

26. The specific case of the plaintiff is that the first defendant entered into the sale agreement-Ex.A1 in favour of the plaintiff and the first defendant received Rs.1101/- as an advance and executed a sale agreement on 06.06.1979 and sale consideration was fixed at Rs.39,000/-. No time limit is fixed in the



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agreement of sale. It is agreed between the parties. The first defendant should execute the sale deed whenever the plaintiff call upon him to do so. The plaintiff was always ready and willing to perform her part of the contract by paying balance sale consideration for getting the sale deed to be executed and the first defendant alone postponing the execution of the sale deed by not receiving the balance sale consideration. In the meanwhile, the plaintiff came to understand that the first defendant attempted to let the property and immediately she sent a telegram on 15.03.1981 to the first defendant which was marked as Ex.A3 and on 27.03.1981 to the second defendant which was marked as Ex.A4 and on 26.03.1981 to the third defendant under Ex.A5. After receiving the telegrams, they have not sent any reply. Though the plaintiff also expressed her willingness to the first defendant through Ex.A3 telegram dated 15.03.1981 since there is no response from the defendants 1 to 3 the plaintiff also issued a legal notice on 30.03.1981 under Ex.A7 to the defendants 1 to 3. The first defendant gave a reply for the above said legal notice-Ex.A7 on 03.04.1981 under Ex.A8. The second defendant replied on 06.04.1981 under Ex.A9. The third defendant replied on 13.04.1981 under Ex.A10. Therefore, when the agreement was in force she is ready and willing to perform her part of the contract when the first defendant made an attempt, she also sent a telegram



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and also a legal notice. Further, she also issued a public notice through newspaper. Despite all these facts, the first defendant said to have executed an agreement in favour of the second defendant and based on that the second defendant through the third defendant executed a sale deed in favour of the defendants 4,5 & 9. Therefore the plaintiff has filed the suit impleading the other defendants. Despite knowing the fact of Ex.A1, the defendants 1 to 5 and 9 acted against the interest of the plaintiff. Therefore the defendants 4,5 & 9 are not the bonafide purchasers.

27. The specific case of the contesting defendants is that the agreement Ex.A1 itself is not genuine. It was concocted by the husband of the plaintiff with the help of one Manimanthiravel and the first defendant never intended to sell the property to the plaintiff and he never executed the sale agreement in favour of her and he executed the agreement in favour of the second defendant and therefore all the defendants 1 to 3 had executed the sale deed in favour of the defendants 4, 5 & 9. According to the contesting defendants, the plaintiff did not send the notice or telegram to the respondents 4, 5 & 9. Admittedly he sent telegram only to the defendants 1 to 3 and legal notice only to the defendants 1 to 3 and the 4th and 5th defendants are not the tenants. They were



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away from the suit property. Ex.A1 was not a registered document and further, the defendants 4 and 5 are rustic villagers and they are not in the habit of reading newspapers and therefore, they were not aware of the agreement- Ex.A1 and also the telegram, legal notice and paper publication. Therefore, they were not aware of the Ex.A1 agreement through the bonafide purchasers for valuable consideration without notice. Even assuming that the agreement is valid, the plaintiff has not proved her readiness and willingness. Mere existence of agreement itself is not sufficient to get a discretionary relief of specific performance. Further, the plaintiff has to prove that she was ready and willing to perform her part of the contract from the day one of Ex.A1-sale agreement till the date of filing of the suit.

28. In this case, the plaintiff has not proved that she was ready and willing to perform her part of the contract and even she has not deposited the amount either in the Court or in the bank in the name of the first defendant and further the plaintiff has not proved that she was ready to pay the balance sale consideration and execute the sale deed and further they would submit that the language employed in the agreement itself is unusual and also the material was altered. Further, the plaintiff did not come to the Court with clean hands and



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therefore the trial Court rightly appreciated the evidence and dismissed the suit. However, the learned Single Judge failed to re-appreciate the entire evidence and give finding and even while setting aside the Judgment and Decree passed by the trial Court by the learned Single Judge is not reversed the findings of the trial Court regarding the readiness and willingness on the part of the plaintiff and while refraining the finding of the trial Court, the learned Single Judge has not given any finding as to how the trial Court is not correct in rejecting the case of the plaintiff and substituted his own fresh reasoning in favour of the plaintiff.

Point No.1:

29. The plaintiff has specifically pleaded that the first defendant entered into the agreement with her on 06.06.1979. In order to prove the same, she has examined herself as PW1 and the said agreement has been marked as Ex.A1. Further the plaintiff has specifically pleaded that she was ready and willing to perform her part of the contract. The first defendant was postponing the same. In the meanwhile, the plaintiff came to know that the first defendant in collusion with the second defendant made arrangement to sell the properties to the second and third defendants. The plaintiff also issued telegrams to the



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defendants 1 to 3. The said copy of the telegrams were also marked as Ex.A3 to Ex.A5. In the said telegrams, the plaintiff intimated her willingness to get the sale deed in favour of her and further she also issued notice through advocate on 30.03.1981. The said copy of the notice was also marked as Ex.A7 for which the defendants 1 to 3 sent a reply. The said reply notices were marked as Ex.A8 and Ex.A10. The plaintiff also came to know that the second and third defendants entered into a sale agreement with the first defendant on 23.03.1981 in respect of the suit properties. After the receipt of the notice, the defendants 1 to 3 sold the properties to the defendants 4, 5 & 9. She has stated that the defendants 6 to 8 are the tenants. Though the first defendant has denied the execution of the sale agreement and he has not taken any steps to prove that signatures found in the Ex.A1 is not that of the first defendant. Further the trial Court also found from the oral and documentary evidence that Ex.A1-agreement was genuine and decreed the suit in part for the alternate relief of refund of advance amount. Challenging the same, the first defendant has not filed any appeal or cross-objection.

30. Even now the contesting defendants have only taken the grounds that the plaintiff was not ready and willing to perform her part of the contract.



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Therefore, once the agreement is proved as genuine or otherwise not disputed

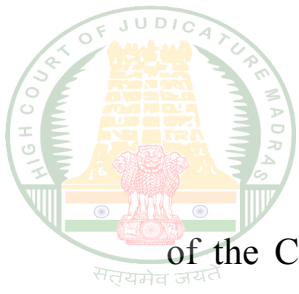
then it is the duty of the plaintiff to prove the readiness and willingness in the case of suit for specific performance. The plaintiff has clearly pleaded that she was ready and willing to perform her part of contract. Only the first defendant was postponing the execution of the sale deed by obtaining the balance sale consideration. Further, the first defendant also admitted that he handed over the certified copy of the partition deed to one Manimanthiravel. But he has taken the defence that the said Manimanthiravel colluded with the husband of the plaintiff. But he has not shown any material that as to whether he has taken any action against the said Manimanthiravel for not returning the said document. Therefore, the agreement is genuine and the first defendant has not further challenged the said agreement. Therefore, after filing the suit, the only defence taken by the defendants are that the plaintiff was not ready and willing to perform her part of the contract and the defendants 4, 5 & 9 are bonafide purchasers without any notice for valuable consideration.

31. A reading of the pleadings, oral, and documentary evidence, with regard to the first point, shows that the plaintiff has pleaded and also deposed that she was ready and willing to perform her part of the contract, and it was



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only the first respondent who was postponing the same. In the meanwhile, the first defendant tried to alienate the property. Admittedly, the first defendant entered into a sale agreement with the second and third defendants on 23.03.1981. The same was also marked as Ex.B6. The plaintiff also issued public notice published in the Dinamalar dated 09.08.1981 and the same was also marked as Ex.A6. A reading of the recital of Ex.A1 wherein the first defendant agreed to sell the suit properties containing four houses bearing Nos. 11C, 11B and 11C in favour of the plaintiff for a consideration of Rs.39,000/- and received Rs.1101/- as an advance and no time was fixed for the completion of contract, but it was agreed that whenever the plaintiff call upon the first defendant, he should execute the sale deed on receipt of balance sale consideration and the registration copy of the document partition deed dated 05.09.1979 was handed over and the same was marked as Ex.A2. Since no time was stipulated in the agreement for execution when the plaintiff has specifically stated that the first defendant agreed to execute the sale deed as and when the plaintiff called. Admittedly the agreement was executed on 06.06.1979. Since the time was not stipulated in the agreement, time for filing the suit is three years and in this case, the time was also not shown as essence of the contract. In this regard, it is pertinent to refer the following judgement



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of the Constitution Bench of the Hon'ble Supreme Court in **Chand Rani v.**

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Kamal Rani, reported in 1993 (1) SCC 519:

“... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract.”

32. Further, a reading of the Ex.A3, Ex.A4 and Ex.A5, the plaintiff sent telegram to defendants 1 to 3 and also expressing her willingness to the first defendant that she is ready and willing to get sale deed by paying balance sale consideration. If at all, the plaintiff was not ready and willing, the first defendant ought to have sent the notice to the plaintiff and go for cancelling the sale agreement before entered into the sale agreement with the second defendant on 23.03.1981. Also Ex.B5 shows that the first defendant entered into the agreement on 08.03.1981 with the second defendant for a portion of the property. Therefore, the plaintiff sent a telegram on 15.03.1981. Therefore, what was heard by the plaintiff was true that the first defendant tried to



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encumber the property. Therefore, she sent telegram in which she has expressed her willingness even thereafter, the first defendant entered into another agreement for the portion of the property on 23.03.1981. Therefore, the plaintiff also issued notice to defendants 1 & 2 on 13.03.1981 under Ex.A7 which all clearly shows the intention of the plaintiff to purchase the property and also to execute her part of contract. Therefore, the plaintiff has proved her readiness and willingness. As far as the readiness is concerned, though the defendants have stated that she was not having sufficient money and she has not shown that she was capable of paying the balance sale consideration and she has also not deposited into the Court, the Hon'ble Supreme Court has held that the purchaser need not having a ready cash on his/her hand always, but it is enough to show that if he/she is able to mobilize sufficient fund. At this juncture, it would be useful to refer the judgment of the Hon'ble Supreme Court in **Civil appeal No.3336 of 2019** in the case of ***Bhavyanath rep. by Power of Attorney Holder v. K.V.Balan(died) through Lrs.***, wherein, the Hon'ble Supreme Court has observed as follows:-

“34. The plaintiff on the date of the suit in the year 2007 was 21 years. The agreement would show that the witnesses to the agreement are one Manoharan, who is none other than the son of the defendant and the other witness is



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Gopinathan, the father of the plaintiff. The trial Court has entered a finding that Gopinathan was actively involved in the contract. We have eluded to the fact that Gopinathan was a witness to the agreement to safely conclude that the father of the plaintiff was in the know of things and he was involved in the transaction. We have referred to Gopinathan, figuring in the deposition to arrive at the conclusion that the plaintiff, though the actual party to the agreement, the moving force and one who intended to support the plaintiff was his father. The assets which are relied on by the plaintiff to establish his financial capacity would appear to belong to the close relatives of the plaintiff, namely, his father, his mother and his wife. We must recall that in his deposition PW1, when he was asked as to on what basis he would claim that he had the financial capacity on 24.03.2008, his answer was that he had gold ornaments which were worth about Rs. 24,00,000/- and he had about Rs.8,00,000/- in cash having regard to the payment of Rs.5,00,000/- by way of advance and further payment to be made, after making the advance, if Rs. 24,00,000/- worth of gold being in the possession of the plaintiff's family members besides Rs.8,00,000/- was there, certainly that would suffice to establish the case of the plaintiff about his financial capacity and readiness to perform the contract. The law is certainly not that the purchaser in a suit for specific relief must prove that he was



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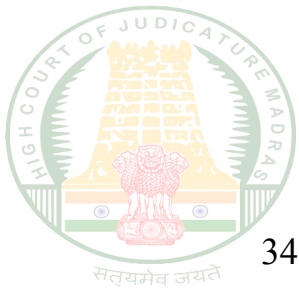
having cash with him from the date of the agreement till the relevant date. What is important is that he had the capacity to allow the deal to go through. If gold was available, as claimed, we would think that on a pragmatic view of the matter, it may be idle to contend that it could not be converted into cash either by immediate sale or by raising a loan.”

33. When the plaintiff had sent telegram expressing her willingness, despite the plaintiff did not turn up, it is not the case of the defendant that the first defendant has also expressed his willingness and called upon the plaintiff to come and pay the balance consideration and get the sale deed executed. In this case, since the time was not stipulated and also it is settled proposition of law that there is no presumption, time is essence insofar as sale of immovable property is concerned, otherwise, it is proved by the defendants, whereas in this case, the conduct of the plaintiff, the pleadings, oral and documentary evidence from Ex.A1 to Ex.A7 clearly shows that the plaintiff was ready and willing to perform her part of the contract and the defendants have not disproved that the plaintiff was not ready and willing to perform her part of the contract. Therefore, from the evidence of the plaintiff and the defendants, the contesting defendants have admitted during the cross-examination that before



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they entered into the sale agreement or sale or before the registration of the sale, they have not verified the encumbrance and they have not applied for the encumbrance certificate and therefore, they cannot be termed as bonafide purchasers without any notice. Even though agreement is not registered, ie., the agreement need not be registered even the oral agreement is enough during the relevant point of time and therefore when the plaintiff specifically proved the existence of agreement and the agreement was in force, the vendor, the first defendant entered into the agreement with the second and third defendants and also to sell a portion of the property. Subsequently, when they entered into the sale agreement in favour of the defendants 2 and 3 and in favour of the defendants 4, 5 and 9, the sale agreement Ex.A1-between the plaintiff and the first defendant was in force. From the oral and documentary evidence, this Court finds that the plaintiff was ready and willing to perform her part of the contract. Though the trial Court failed to appreciate the evidence in right perspective, the learned Single Judge re-appreciated the evidence and found that the plaintiff was ready and willing to perform her part of the contract.



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34. Therefore from the oral and documentary evidence, this Court finds that the plaintiff has proved her readiness and willingness and thus, the **Point No.1** is answered.

Point No.2:

35. It is settled proposition that the first appellate Court is a final Court of fact finding. Further, the first appellate Court always can re-appreciate the entire evidence independently and it can arrive at an independent finding and while re-appreciating the entire evidence and giving independent finding, the appellate Court need not give any finding as to how the trial Court is not correct in rejecting the case of the plaintiff. As the final Court of fact finding, it has power to re-appreciate the evidence and give an independent finding. Therefore, it can substitute its own reasoning in its judgment.

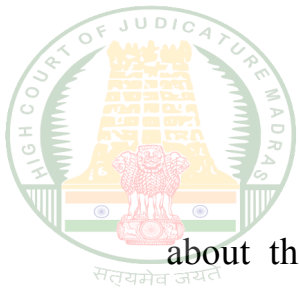
36. In this case, a reading of the judgment of the learned Single Judge, he has elaborately discussed about the oral and documentary evidence and also points have been taken for determination of an appeal and has elaborately discussed about the pleadings, oral and documentary evidence and also has given the reason for its findings, mainly on the grounds of readiness and



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willingness and also the defendants 4,5 and 9 are having knowledge of the Ex.A1 agreement and had given the reason.

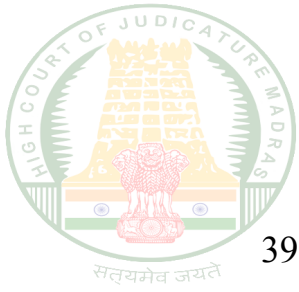
37. Perusal of the deposition of the contesting defendants so called bonafide purchasers they have admitted in their evidence that they have not applied for encumbrance certificate and they have not approached the Registration Department to find out regarding any encumbrance in the suit property. Therefore, now as an afterthought, they cannot take the defence that Ex.A1 agreement is unregistered and therefore, it would not be found in the entry in the encumbrance register maintained by the Registration Department. When they did not apply for encumbrance certificate or not applied to search from the Registration Department and it can be inferred that the defendants were aware about the earlier agreement between the plaintiff and the first defendant. All the agreements between the first defendant and defendants 2 and 3, and also sale deed between defendants 1, 2, and 3, and defendants 4, 5, and 9, occurred only while the Ex.A1 agreement was in force. Therefore, when the plaintiff has proved that the agreement was genuine and the same is in force and she is ready and willing to perform her part of the contract and it is for the contesting defendants/appellants who have to prove that they were not aware



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about the earlier agreement or encumbrance, as the case may be. Despite sending the telegram, issuing a legal notice, and publishing a newspaper advertisement, the tenants cannot simply claim that they were unaware of the sale, especially since the suit properties are residential houses and the tenants are occupying them. Therefore, under these circumstances, this Court finds that there is no force in the point raised by the learned counsel for the appellants/defendants that the learned Single Judge, without giving any finding as to how the trial Court is not correct in rejecting the case of the plaintiff. The first appellate Court always can substitute its own fresh reason for its findings. Accordingly, **Point No.2** is answered in favour of the plaintiff.

38. Further, a careful reading of the judgment passed by the learned Single Judge shows that the learned Single Judge has elaborately discussed and giving his own finding and there is no reason to interfere with the judgment and decree passed by the learned Single Judge.



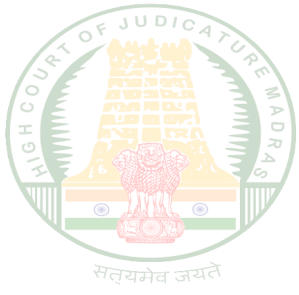
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39. In the above said circumstances, this Court finds that there is no merit in this appeal and it is liable to be dismissed. Accordingly, this Letter Patent Appeal stands dismissed. However, considering the facts and circumstances, there shall be no order as to costs.

[P.V.,J.] [K.K.R.K.,J.]
14/03/2025

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

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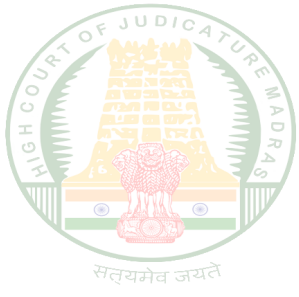


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To

1. The Sub-Court,
Kumbakonam.
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.

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Pre Delivery Judgment made in
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