



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 71 of 2015

K. Srinivasan
S/o Kandasamy Pottai Road, Sankarapuram
Chinnasalem District

..Appellant(s)

Vs

1. A.K. Ponnusamy
S/o Kandasamy Pillai Vallikandan Nilayam
Katchery Road, Kallakurichi Villupuram
District
2. The District Registrar,
Kallakurichi District, Kallakurichi

Impleaded The 2nd Respondent, Vide Order Of
Court Dated 19/06/2023 Made in Cmp.No,
3573/2023 In As.No.71/2015

..Respondent(s)

PRAYER : Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment dated 01.04.2009 in O.S.No.12/2005 on the file of the Principal District Judge, Villupuram.

AS No. 71 of 2015

For Appellant(s): Ms.G.V.Seethalakshmi
For Appellant

For Respondent(s): M/s.K.Rajasekaran
FOR R1
Mr.M.Murali,
Government Advocate For R2



JUDGMENT

Unsuccessful defendant has preferred this appeal suit. The Suit is filed for Specific Performance and the suit is decreed as prayed for. Aggrieved over the same, the defendant has preferred this appeal. For the sake of convenience, parties are referred to as per their rankings in the Trial Court.

2. Brief case of the plaintiff is as follows:

2.1. The suit schedule property belongs to the defendant. He agreed to sell the suit property to the plaintiff for Rs.7,00,000/- and received a sum of Rs.6,50,000/- as advance from the plaintiff. The plaintiff agreed to receive balance of Rs.50,000/- within 6 months and to execute the sale agreement, as per the agreement of sale dated 20.12.004, entered between the plaintiff and the defendant. The plaintiff is always ready and willing to perform his part of contract.

2.2. The plaintiff has been asking the defendant from the beginning of February, 2005 to receive the balance of sale consideration of Rs.50,000/- and to execute the sale deed at the expense of plaintiff, but the defendant has been evading to execute the sale deed. Hence, the plaintiff issued a legal notice dated 14.02.2005 calling upon the defendant to execute the sale deed. According to the plaintiff, he has not received the notice. Hence the Suit is for Specific Performance.



3. Brief case of the defendant is as follows:

3.1. The defendant specifically denied that he had received a sum of Rs.6,50,000/- from the plaintiff and executed a sale agreement dated 20.12.2004. The said sale agreement dated 20.12.2004 is not true and the defendant did not execute the same. The defendant did not enter into any sale agreement with the plaintiff and as such, the sale agreement with the plaintiff is concocted one. The defendant is one of the members in the Chit company run by one Mani during the year 2003 and he had participated in the chit funds monthly meeting and taken the chit amount as the highest bidder for two lakhs. There was dispute with regard to the quantum of interest which leads to sending petitions to the police department by this defendant. Aggrieved by the act of the defendant, the said Mani joining hands with the plaintiff and fabricated the suit sale agreement dated 20.12.2004. The defendant did not receive any legal notice from the plaintiff. The plaintiff has not at all deposited Rs.50,000/- as stated in the plaintiff. The cause of action as alleged in the plaint is not true. The value of the suit property is Rs.25/- lakhs as per the guideline value of the Registrar Officer and with wrong intention, ulterior motive and to grab the property, the plaintiff along with Mani had intended to create the sale agreement and filed the vexatious suit with false and untenable grounds. Hence, prayed to dismiss the Suit.



4. Based on the above pleadings, the Trial Court has framed the following issues:

(i) *Whether the defendant's denial of having executed the Sale Agreement dated 20.12.2004 is true?*

(ii) *Whether the defendant is legally bound to execute the sale deed upon receipt of balance sale consideration of Rs.50,000/- ?*

(iii) *Whether the plaintiff is entitled to have the sale deed executed and registered through intervention of the Court in the event of the defendant's refusal?*

(iv) *Whether the plaintiff is entitled to be put in possession of the suit property?*

(v) *To that reliefs, if any, the plaintiff is entitled?*

5. On behalf of the plaintiff, the plaintiff Tr.Ponnusamy, examined himself as PW1 and one Periyasamy as PW2 and documents Exs.A1 to A3 were marked. On behalf of the defendant, the defendant examined himself as DW1 and marked Exs.B1 and B2.

Finding of the Trial Court:

6. As regards the execution of Ex.A1- Sale agreement, the plaintiff had chosen to examine PW2, one of the witness signed in Ex.A1. PW2



categorically deposed about the passing of advance money to the defendant.

Hence, the plaintiff proved the execution of Ex.A1-Suit Sale Agreement. The plaintiff had also paid a sum of Rs.6,50,000/- and the total sale consideration was fixed at Rs.7,00,000/- and the time fixed for performance is 6 months. On 14.02.2005, the plaintiff had chosen to sent Legal Notice - Ex.A2 to the defendant. The defendant was evading in performing his part of contract and therefore, the plaintiff had filed the Suit on 18.03.2005 within the time specified in the sale agreement. The defendant had produced Exs.B1 and B2 – Police complaints said to have been given by the defendant as against one Mani. With regard to chit fund transactions with the said Mani, neither the said Mani nor any independent witness has been examined. The plaintiff is entitled to the relief of specific performance. Aggrieved over the judgment and decree, the defendant has preferred this appeal.

7. The learned counsel appearing for the appellant / defendant would submit that the Court below has failed to frame the essential issue with regard to readiness and willingness of the plaintiff, which is very vital to the case. Ex.A1 – Suit Sale Agreement does not exhibit uniform handwriting or drafting. The first page is written neatly, clearly, with proper spacing, whereas the 2nd and 3rd pages are cramped, congested and written in an inconsistent manner. This would show clear differences in style, margin usage, spacing, slant, ink flow and correction patterns. This stark variation in handwriting and page formatting



indicates that the document was prepared at by later insertions, added after obtaining the defendant's signature. When the defendant has specifically pleaded that he had given blank signed papers to one Mani, the chit fund operator, his signatures were later misused for creating the present agreement and the contents were filled in after obtaining his signature of by using old papers. The alleged sale agreement is dated 20.12.2004, yet the stamp paper on which it is written was purchased in the defendant's name in the year 2002. It is wholly improbable that a stamp paper purchased two years earlier and standing in the defendant's name would be used for executing a sale agreement in favour of a complete stranger.

8. The learned counsel for the appellant / defendant would further argue that plaintiff's claim that he paid an unusually large sum of Rs.6,50,000/- to a person outside the jurisdiction of his permanent residence, while seeking six months time to pay the balance of Rs.50,000/- is inherently unnatural and contrary to normal human conduct. Therefore, the alleged Sale Agreement dated 20.12.2004 – Ex.A1 is highly doubtful and devoid of credibility. The plaintiff has failed to explain why a stamp paper purchased by the defendant in 2002 was allegedly used for an agreement said to have been entered into in the year 2004 or how he came into possession of such stamp paper. The plaintiff has not proved due execution of the alleged sale agreement as required under Law. A document born in suspicion cannot be the foundation of a decree for



specific performance, an equitable remedy requiring highest good faith. The plaintiff has not proved payment of Rs.6,50,000/-, no receipts, no bank entries or independent witness to prove that he has paid the said amount. The readiness and willingness must be proved continuously and the plaintiff has failed to prove his readiness and willingness from the date of agreement till the filing of the Suit. The possession of the property is still with the appellant/defendant and therefore, the plaintiff has not come with clean hands. Without properly appreciating the oral and documentary evidence, the Court below has passed the decree for specific performance, which is unsustainable in law and the same is liable to be set aside.

9. *Per contra*, learned counsel appearing for the respondent / plaintiff would submit that the Suit Sale Agreement was proved through examining one of the witness in the sale agreement, namely PW2- Periyasamy who categorically deposed about the execution and passing of advance money to the defendant. Therefore, the plaintiff has proved the execution of Ex.A1- Suit Sale Agreement. Though the defendant has taken a stand that he has signed in blank papers, whereas he has not pleaded in his written statement. The defendant also contended that he had chit transactions with one Mani and the said Mani joining hands with the plaintiff has filed the Suit. In order to prove the alleged chit transaction with the said Mani, neither the said Mani nor any independent witness has been examined. The document relied upon by the defendant in



Ex.B1 dated 10.03.2004 pertains to the alleged complaint given by the defendant against the said Mani before Sankarapuram Police Station. Similarly, Ex.B2- complaint dated 15.04.2004 was given by the defendant before the DSP Villupuram. The above said two documents have nothing to do with the sale agreement entered into by the plaintiff with the defendant. The plaintiff entered into sale agreement with the defendant under Ex.A1 dated 20.12.2004, in which the terms agreement by both the parties that sale has to be completed within 6 months, for paying the balance sale consideration of Rs.50,000/-. Before expiry of 6 months period, the plaintiff has chosen to send Legal Notice – Ex.A2 dated 14.02.2005 and the Suit came to be filed on 18.03.2005. The plaintiff has always been ready and willing to perform his part of contract. Since the defendant was evading his part of contract, the plaintiff has filed the Suit within the time specified in the Sale Agreement. Upon appreciating the oral and documentary evidence, the Court below has rightly decided the issues in favour of the plaintiff and decreed the suit and there is no reason to interfere with the judgment and decree passed by the Court below. It is further submitted the respondent / plaintiff had filed E.P.No.3 of 2010 in O.S.No.12 of 2005. Whether the appellant/defendant was set exparte in that proceedings. In pursuance to the order of the Execution Court, the Court below executed the sale deed in favour of the respondent / plaintiff on 12.01.2011, registered as Doc.No.277 of 2011 before SRO, Sankarapuram.



10. This Court has considered the submissions made on either side and perused the records carefully.

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11. Points for determination arises in his appeal are:

(i) Whether the plaintiff is always ready and willing to perform his part of contract?

(ii) Whether the Suit Sale Agreement in Ex.A1 dated 20.12.2004 is genuine ?

(iii) Whether the plaintiff is entitled to the relief of Specific Performance?

POINT NOS.1 TO 3

12. Ex.A1- Suit Sale Agreement is dated 20.12.2004. In order to prove the execution of Ex.A1, one Periyaswamy/PW2 one of the witness to the suit sale agreement was examined. PW2, in his evidence, categorically deposed about the execution of agreement and passing of advance money to the defendant. The defendant, in his written statement, in paras 2 and 3, has stated that the suit sale agreement is concocted and fabricated one. Similarly, in para 3 of the proof affidavit of the defendant, the defendant alleged that his signature was forged. In order to prove the above said facts, the defendant has not chosen to examine any witness or produced any documents. On the contrary of the above pleadings, he categorically admitted in his cross examination that he has signed in Ex.A1- Suit Sale Agreement and admitted that the signature found in Ex.A1 was his own. The defendant had contended that he signed in blank



papers, but the said plea was not stated in the written statement nor in his proof affidavit. Therefore, the plea of concocted, fabricated and forged documents are all disproved by the admission of DW1. It is the further case of the defendant that he has signed in blank papers, it is not stated in the written statement.

13. The defendant has taken a stand that he entered into chit transaction with Mani and he borrowed as sum of Rs.2,00,000/- and the said Mani joining hands with the plaintiff has filed the Suit for Specific Performance. In order to prove the above said facts, the defendant has not filed any document to show that he had entered into chit transaction with the said Mani and the defendant has not chosen to examine the said Mani nor any independent witness to prove that he had participated in the chit fund transaction with the said Mani. A perusal of Ex.B1 dated 10.03.2004 shows that the defendant has given complaint against one Main before the Sankarapuram Police Station. Ex.B2 is the complaint given by the defendant against Mani before the Superintendent of Police, Villupuram, wherein it has been stated that the defendant was one of the Members in the Chit Fund company run by Mani during the year 2003 and he had participated in the monthly chit fund meetings and taken a chit amount as highest bidder for Rs.2,00,000/- and there is dispute with regard to quantum of interest which leads to sending petitions to the police department, since the said Mani has threatened the defendant. In this regard, he has also lodged a complaint dated 10.03.2004 before the Sub Inspector of Police. The defence



raised by the defendant has not been proved by him. In order to substantiate the claim of the defendant, he has relied upon Exs.B1 and B2 – police complaints against the said Mani, whereas the defendant in his evidence, categorically admitted that he did not give any police complaint against the said Mani. From the evidence of PW1 and PW2, it is clear that the appellant/defendant executed Ex.A1- Sale Agreement in favour of the respondent / plaintiff.

14. The next point arises for consideration is that whether the plaintiff has always been ready and willing to perform his part of contract. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in ***R.Shama Naik v. G.Srinivasiah reported in 2024 INSC 927***, wherein it was observed as under:

“10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.”



15. As per Ex.A1- Suit Sale Agreement dated 20.12.2004, the plaintiff had entered into a sale agreement with the defendant for a total sale consideration of Rs.7,00,000/- and has paid advance of Rs.6,50,000/- and the time fixed for performance is 6 months. Thereafter, the plaintiff had issued Ex.A2- Legal Notice dated 14.02.2005 to the defendant calling upon the defendant to execute the sale deed upon receipt of balance sale consideration. A perusal of Ex.A2 shows that the legal notice was written to the addressee “Enquiry not known”. Since the defendant has evaded to perform his part of contract, he filed the Suit on 18.03.2005, within the time stipulated in the sale agreement. From the date of the suit sale agreement, within 2 months the plaintiff has issued Ex.A2 – Legal Notice and thereafter, within 3 months from the date of the sale agreement, the plaintiff has filed the Suit on 18.03.2005. As regards financial status of the plaintiff, the plaintiff in his evidence, categorically admitted that the plaintiff is a bus owner and also doing business and also man of means. Therefore, the plaintiff has been always ready and willing to perform his part of contract. ***Point Nos.1 to 3 are answered accordingly.***

17. Upon appreciation of oral and documentary evidence, the Court below rightly decreed the Suit for Specific Performance. There is no perversity or infirmity in the judgment and decree passed by the Court below. There is no merit in this appeal and the same is liable to be dismissed.



18. In the light of the reasons assigned above, this Appeal Suit stands dismissed, confirming the judgment and decree dated 01.04.2009 in O.S.No.12/2005 passed by the Principal District Judge, Villupuram.

26-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

JVM

To
The Principal District Judge,
Villupuram.

Copy to:
The Section Officer,
VR Section,
High Court of Madras.



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M.JOTHIRAMAN J.

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