



S.A.No.279 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.279 of 2020
and C.M.P.No.5806 of 2020

M.Chandran

... Appellant

vs.

SBM Trust by its Secretary
David Liwingston,
S/o. Devairakkam,
SMB Compound,
Northy Thiruchy Road,
(Tamil Strict Paapthishthu Trust)
For by its Secretary,
Namakkal Town,
Namakkal District.

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 03.09.2019 made in A.S.No.26 of 2019 on the file of the learned Additional Sub Court, Namakkal confirming the judgment and decree dated 21.12.2018 made in O.S.No.404 of 2017 on the file of the learned Additional District Munsif, Namakkal by allowing this Section Appeal.

For Appellant : Mr.N.Manoharan

For Respondent : No Appearance

J U D G M E N T

The unsuccessful plaintiff in the suit is the appellant.



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2. The plaintiff filed a suit in O.S.No.404 of 2017 for specific performance. The suit as well as first appeal filed by the appellant/plaintiff were dismissed by the Trial Court as well as First Appellate Court. Aggrieved by the concurrent finding, the appellant has come before this Court.

3. According to the appellant/plaintiff, he entered into an Agreement of Sale, dated 14.12.1997 with the respondent for purchase of the agreement mentioned property. As per the terms of agreement, the sale consideration was fixed at Rs.50,000/- and the entire sale consideration was paid on the date of agreement. The possession of the suit property was also delivered to the plaintiff. Since no time limit was fixed for performance of the Sale Agreement, the plaintiff has not taken any steps to seek specific performance immediately. However, it is stated that the plaintiff approached the defendant number of times in person and requested them to execute the Sale Deed. However, they evaded the request. Ultimately, on 06.12.2017 the plaintiff issued a notice to the defendant seeking execution of sale deed. The defendant having received the notice, failed to give any reply. Hence, the present suit was filed seeking specific performance of the agreement of sale, dated 14.12.1997.



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4. After receipt of suit summon, the respondent failed to appear and file written statement and therefore, they were set *exparte*.

5. Before the Trial Court, the plaintiff was examined as PW.1 and 3 documents namely (i) suit sale agreement, (ii) legal notice and (iii) postal acknowledgment card were marked on his side as Exs.A1 to A3.

6. The Trial Court on appreciation of evidence available on record, came to the conclusion that the plaintiff had not given any acceptable reason for explaining the delay of nearly 18 years in seeking performance of the agreement and dismissed the suit. Aggrieved by the same, the judgment and decree, the plaintiff preferred an appeal in A.S.No.26 of 2019 on the file of the Additional Subordinate Court, Namakkal. The First Appellate Court affirmed the finding of the Trial Court and dismissed the appeal. Aggrieved by the same, the plaintiff has come before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law by order dated 16.08.2024:-

“a) Have not the courts below committed an error in dismissing the suit for specific performance on the ground that an unregistered agreement of sale cannot be enforced, when there is no legal hurdle to maintain the suit for specific performance under Section 17 and 49 of the



Registration Act, 1908?

b) Whether the Courts below erred in non-suiting the plaintiff on the ground of delay in filing the suit to enforce the sale agreement, especially when the time is not an essence of the contract in respect of immovable property is concerned, after the payment of entire sale consideration to the defendant and handing over possession to the plaintiff?

c) Have not the Courts below committed an error in dismissing the suit by ignoring the fact that the defendant was set ex-parte and not shown any interest to defend the suit in view of the undisputed sale agreement executed for a valid sale consideration?"

8. The learned counsel appearing for the appellant would submit that the plaintiff paid the entire sale consideration on the date of Sale Agreement and the possession of the property was also handed over to him and therefore, the Courts below committed error in dismissing the suit on the ground of readiness and willingness, especially in the absence of any defence raised by the defendant. The learned counsel also submitted that in the suit sale agreement, no time limit has been fixed for performance and therefore, the delay in seeking performance cannot be put against the plaintiff.

9. It is settled law that by virtue of Section 16(c) of the Specific Relief Act, 1963, a person seeking specific performance must plead and prove his

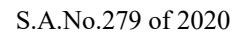


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readiness and willingness to perform on the part of the contract. Merely because the defendant has not filed written statement and denied the readiness and willingness, the plaintiff will not be absolved of his liability to prove his readiness and willingness.

10. In the case on hand, the suit sale agreement was dated 14.12.1997. Though it is claimed by the plaintiff that entire sale consideration of Rs.50,000/- was paid on the date of agreement, absolutely, there is no explanation on his part why he waited for nearly 20 years to issue first notice calling upon the defendant to complete the sale transaction.

11. Ex.A2 is the first notice issued by the plaintiff to the defendant and the same was dated 06.12.2017. Therefore, it is clear that there is a delay of nearly 20 years in approaching the defendant requesting them to complete the sale transaction. Even though in the suit sale agreement, no time limit is fixed. The person seeking performance of the contract is expected to file a suit for specific performance within a reasonable time. What is the reasonable time for filing a suit seeking performance of the contract depends on the facts and circumstances of the case and no straight jacket formula can be given for the same.



13. As far as the substantial question of law (a) is concerned, the
s below have not dismissed suit on the ground that Suit Sale
ement was unregistered one and hence, it could not be enforced. The



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Courts below dismissed the suit filed by the plaintiff mainly on the ground that he failed to establish his readiness and willingness. Therefore, the first substantial question is not really arising for consideration in the present case. Therefore, the same need not be answered. In any event, non-registration of agreement will not affect the right of parties to agreement seeking specific performance. Even if, substantial question of law (a) is answered in favour of appellant, in view of answer to substantial question of law (b) and (c) it will not have impact on final decision of second appeal.

14. In view of the above discussion, the Second Appeal fails and the same is dismissed. In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

24.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

1.The Additional Sub Court, Namakkal.

2.The Additional District Munsif,
Namakkal.

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S.SOUNTHAR, J.

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