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S.A.No.278 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.278 of 2026

G.Kannagi

... Appellant

VS.

1.Karunakaran

2.Shanmugam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 15.09.2025 made in A.S.No.20 of 2021 on the file of the learned Additional District Judge at Chengalpattu, partly modifying the judgment and decree dated 30.09.2019 made in O.S.No.226 of 2010 on the file of the learned Additional Sub Judge at Chengalpattu, allow the appeal by decreeing the suit as prayed for.

For Appellant : Mr.S.Ruban Prabu

J U D G M E N T

The unsuccessful plaintiff in the suit is the appellant. She filed a suit for Specific Performance of Sale Agreement dated 07.03.2003. The suit was dismissed by the Trial Court. The first appeal filed by the plaintiff was



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partly allowed and the First Appellate Court granted a decree for alternative relief of return of advance amount. Aggrieved by the dismissal of the suit in respect of the primary relief of Specific Performance, the plaintiff has come before this Court.

2. According to the plaintiff, she entered into a Suit Sale Agreement with 1st respondent for purchase of the agreement mentioned property for a sale consideration of Rs.6,00,000/- on 07.03.2003. As per the terms of agreement, the plaintiff paid advance amount of Rs.5,70,000/- on the date of agreement and she agreed to repay the balance amount and get the sale deed executed within three months after discharge of the mortgage liability to the tune of Rs.1,66,308/- as on the date of agreement. Though the 1st defendant agreed to discharge the mortgage debt within the time stipulated, he failed to discharge the same inspite of several representation made by the plaintiff. Therefore, the plaintiff issued a pre-suit notice dated 17.11.2003 calling upon the 1st defendant to discharge the mortgage debt and execute the sale agreement after receiving the balance sale consideration within the weeks time. However, there was no response from the 1st defendant. Since the 1st defendant attempted to alienate the suit property, the plaintiff filed a suit in O.S.No.27 of 2004 on the file of the District Munsif, Chengalpattu



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seeking injunction restraining the 1st defendant from alienating or encumbering the agreement mentioned property. The said suit was dismissed for default on 01.09.2005. After dismissal of the suit, the 1st defendant sold the property to the 2nd defendant. The plaintiff acquired knowledge about the sale only on 08.09.2005, when she obtained Encumbrance Certificate. Thereafter, the plaintiff issued another notice to the 1st defendant, it was returned. In such circumstances, the plaintiff was constrained to file a suit for specific performance.

3. The 1st defendant filed written statement denying execution of the suit sale agreement. It was his case that the plaintiff was conducting a chit business and as a subscriber, the 1st defendant handed over the unfilled signed stamp paper and plain paper to plaintiff as a security and the same has been misused by her. It was the specific case of the 1st defendant that he never agreed to sell the property to the plaintiff and he never received any advance amount. It was further pleaded that he sold the property to the 2nd defendant pursuant to the prior agreement entered into with him. The 1st defendant also denied the readiness and willingness of the plaintiff.



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4. The 2nd defendant filed written statement and claimed that he purchased the property from the 1st defendant without notice of earlier agreement between the plaintiff and 1st defendant and hence, sought for dismissal of the suit.

5. Before the Trial Court, the plaintiff was examined as PW.1 and the attester to the agreement was examined as PW.2. On behalf of the plaintiff, 19 documents were marked as Exs.A1 to A19. The defendants 1 and 2 were examined as DW.1 and DW.2. On behalf of the defendants, 5 documents were marked as Exs.B1 to B5.

6. The Trial Court on consideration of evidence available on record, came to the conclusion that the plaintiff was not entitled to decree for specific performance and dismissed the suit. Aggrieved by the same, the plaintiff preferred first appeal in A.S.No.20 of 2021 on the file of the Additional District and Sessions Court, Chengalpattu. The First Appellate Court on re-appreciation of evidence came to the conclusion that Ex.A1 was a valid agreement. However, the First Appellate Court held that the plaintiff failed to prove her readiness and willingness and hence, negated the relief of specific performance. The 1st defendant was directed to repay the advance



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amount received by him with interest at the rate of 6% per annum.

Accordingly, the first appeal was partly allowed. Aggrieved by the negating of the relief of specific performance, the plaintiff has come before this Court.

7. The learned counsel appearing for the appellant would submit that at the time of entering into suit sale agreement, the subject matter of the agreement was subjected to mortgage liability and the 1st defendant failed to discharge the mortgage debt and therefore, the plaintiff was not in a position to file a suit for specific performance immediately. In other words, it is the case of the appellant that the 1st defendant failed to perform his part of the contract and therefore, the appellant/plaintiff was not in a position to file a suit within the time and the said vital fact has not been taken into consideration by the First Appellate Court.

8. It is seen from the typed-set of papers the Suit Sale Agreement was entered into on 07.03.2003. The agreed sale consideration was Rs.6,00,000/-. The plaintiff paid an advance amount of Rs.5,70,000/- on the date of agreement. The balance amount to be paid by the plaintiff is only Rs.30,000/-. As per the terms of agreement, the time limit of three months



was fixed by the parties. It was also stated in the agreement that the 1st defendant must discharge the mortgage debt and execute the sale deed.

The time limit stipulated in the agreement expired on 07.06.2003. However, the plaintiff issued first notice only on 17.11.2003. Absolutely, there is no evidence available on record to suggest that the plaintiff demanded the 1st defendant to discharge the mortgage debt and execute the sale deed within three months period as stipulated in the agreement.

9. It is also seen after issuing the pre-suit notice under Ex.A2 on 17.11.2003, the plaintiff had not taken any steps to get the sale deed executed and hence, she has no right to compel the 1st defendant for performance of the contract. Further, even according to the pleadings of the plaintiff that there was an attempt on the part of the 1st defendant in the year 2004 to alienate the agreement mentioned property. Therefore, the suit for injunction was filed by plaintiff in O.S.No.27 of 2004 seeking injunction restraining the 1st defendant from alienating or encumbering the properties. Therefore, as per plaintiff's case, the 1st defendant attempted to wriggle out of the agreement as early as 2004. However, the plaintiff only sought for injunction and she never sought for specific performance of the agreement.



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10. It is also seen from the records that the 1st defendant sold the property to 2nd defendant on 08.09.2005 after discharging the mortgage debt.

The plaintiff in her plaint averment categorically admitted that she obtained knowledge about the Sale Deed executed by 1st defendant in favour of the 2nd defendant after applying for Encumbrance Certificate. It was also stated that she acquired knowledge about the conveyance only based on the counter filed by the 1st defendant in I.A.No.1358 of 2005 filed by him seeking restoration of the suit. However, the plaintiff has not taken any steps to file a suit for specific performance immediately and the same was filed only on 02.09.2006. There is enormous delay of more than three years in filing the suit for specific performance by the plaintiff. The First Appellate Court also found that the plaintiff failed to prove that he had sufficient money at his disposal before expiry of time fixed in the agreement. It is pertinent to point out that the plaintiff issued first presuit notice on 17.11.2003 after expiry of five months. He waited for two years and issued another notice on 07.12.2005. However, suit was filed only on 02.09.2006.

11. Taking into consideration the sequence of events, the First Appellate Court came to a factual conclusion that the plaintiff failed to prove the readiness and willingness to perform her part of the contract

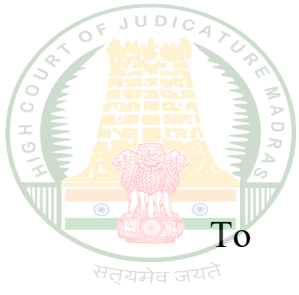


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especially when the balance sale consideration is only Rs.30,000/-. The said conclusion reached by the First Appellate Court is based on proper appreciation of evidence available on record. I do not find any perversity in the findings reached by the First Appellate Court. Accordingly, the Second Appeal stands dismissed. In the facts and circumstances of the case, there will be no order as to costs.

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

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1.The Additional District Court, Chengalpattu.

2.The Additional Sub Court, Chengalpattu.



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S.SOUNTHAR, J.

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