



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

**SA No. 260 of 2015 and
M.P.No.1 of 2015**

1. Annammal (died)

2. [Manikkammal@Dilli \(died\)](#)

(2nd Appellant recorded as legal heir of the deceased 1st appellant vide order of this Court dated 23.10.2018 made in C.M.P.No.18873 of 2018)

3. V.Geetha

(3rd Appellant brought on record as LR of the deceased 2nd appellant vide order of this Court dated 07.07.2025 made in C.M.P.Nos.8032, 8036 & 8038/2023 in S.A.No.260/2015)

Appellants

Vs

1. Pattu

2. Amutha

3. Anandan

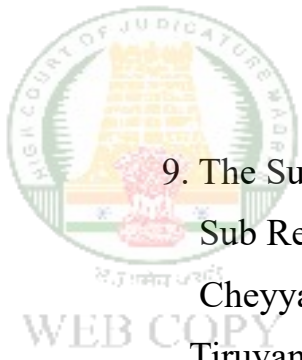
4. Santhikumar

5. Anjalai

6. Sakthivel

7.Jeyapathi

8.Kokila



9. The Sub Registrar,
Sub Registrar Office
Cheyyar-604 407,
Tiruvannamalai District.

Respondents

PRAYER: This Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 06.06.2014 passed in A.S.No.30 of 2012 on the file of Sub Court, Cheyyar in confirming the judgment and decree dated 22.08.2012 passed in O.S.No.145 of 2004 on the file of Principal District Munsif cum Judicial Magistrate Court No.1, Cheyyar.

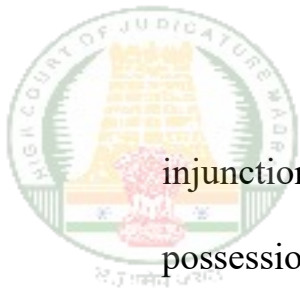
For Appellants: Mr.P.Mani

For Respondents: Mr.K.G.Senthil Kumar (R1 to R8)
Mr.M.Rajandiran, (R9)
Additional Government Pleader

ORDER

This Second Appeal has been preferred against the judgement and decree passed in A.S.No.30 of 2012 dated 06.06.2014 on the file of Sub Court, Cheyyar, confirming the judgment and decree dated 22.08.2012 passed in O.S.No.145 of 2004, on the file of Principal District Munsif cum Judicial Magistrate Court No.1, Cheyyar.

2. The appellants 1 and 2 herein are the defendants 1 and 2 in the suit and the 9th respondent herein is the 3rd defendant in the suit. Originally the plaintiff viz., Vedapuri, filed a suit for specific performance and for permanent



injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the property and also restraining the Sub Registrar, the 3rd defendant from registering any document presented by the defendants 1 and 2 . During the pendency of the suit, the plaintiff died and the respondents 1 to 8 herein who are the legal heirs of the plaintiff were brought on record. The trial Court partly decreed the suit by directing the defendants to execute a sale deed in respect of the suit properties in favour of the plaintiff and the suit in respect of permanent injunction was dismissed. Aggrieved by the said judgement and decree, the defendants 1 and 2 have preferred the first appeal. The first Appellate Court dismissed the Appeal, by confirming the judgment and decree of the trial Court. Aggrieved by the same, the present second appeal has been filed.

3. The parties are referred to as per their own ranking before the trial Court for the sake of convenience.

The brief averments of the plaint are as follows:

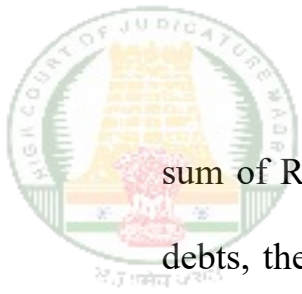
4. Originally, the suit properties belonged to the defendants 1 and 2. The said defendants agreed to sell the same to the plaintiff for a sum of Rs.40,000/- and executed an agreement of sale on 25.11.2000. On the date of agreement a sum of Rs.1,000/- was paid as advance by the plaintiff and on receiving the



same, the possession of property was handed over to the plaintiff by the defendants 1 and 2. Thereafter though the plaintiff was always ready and willing to perform his part of the contract, the defendants 1 and 2 have not come forward to execute the sale deed. Therefore, the plaintiff issued a legal notice dated 28.01.2001 to the defendants 1 and 2 and despite receipt of the said notice, the aforesaid defendants 1 and 2 failed to reply for the same and also have not come forward to execute the sale deed as per the terms of the sale agreement. While so, on 02.02.2001, the defendants 1 and 2 attempted to interfere with the plaintiffs possession and enjoyment of the suit properties. Therefore, the plaintiff filed the suit.

The brief averments of the written statement filed by the 1st defendant and adopted by the 2nd defendant are as follows:

5. The suit is not maintainable either in law or on facts. The allegations in the plaint are all false and frivolous and the plaintiff is put to strict proof of each and every allegation, except those that are specifically admitted herein. The averment that the defendants 1 and 2 had jointly executed the agreement of sale in favour of the plaintiff in respect of suit properties is false. The defendants 1 and 2 are in possession and enjoyment of the suit properties. The plaintiff was not given possession of the suit properties at any point of time. The plaintiff was never ready and willing to perform his part of the contract. The defendants 1 and 2 had borrowed a sum of Rs.5,000/- from Govindaraj and a



sum of Rs.10,000/- from Sankar in the year 1995. In order to discharge those debts, the defendants 1 and 2 borrowed money from outsiders for high rate of interest because of the failure on the part of the plaintiff to perform his part of the contract. The Plaintiff is not ready to pay balance sale consideration of Rs.39,000/- and get the document registered. The amount of Rs.1,000/- paid by plaintiff is only earnest money and not the advance amount. Therefore, the said amount is liable to be forfeited. The plaintiff is not in a position to purchase the suit properties. He also requested the defendants 1 and 2 to sell it to somebody. The defendants did not receive any notice as alleged in the plaint. The plaintiff is not entitled to any relief. The suit is liable to be dismissed.

6. Based on the above pleading and upon hearing both sides and perused the material records of the case, the following issues have been framed for trial:

(i) Whether the defendants 1 and 2 have jointly executed the sale agreement in favour of the plaintiff?

(ii) Whether the possession of the suit property was handed over to the plaintiff?

(iii) Whether the plaintiff demanded the defendants to execute the sale deed on receiving the balance of sale consideration?

(iv) Whether the plaintiff has no means to have the sale deed executed?



WEB COPY

(v) Whether the plaintiff is entitled to the relief of specific performance?

(vi) Whether the Plaintiff is entitled to the relief of permanent injunction as against the defendants 1 and 2?

(vii) Whether the plaintiff is entitled to the relief of permanent injunction against the 3rd defendant?

(viii) What relief the plaintiff is entitled to?

7. Subsequently, the aforesaid issues were recasted as hereunder:

1. Whether the 1st Plaintiff is ready and willing to perform his part of the contract?

2. Whether the plaintiff is entitled to the relief of specific performance of the contract and permanent injunction?

3. What relief the plaintiff is entitled to?

7. On the side of the plaintiff, PW1 to P.W.4 were examined and Exs.A1 to A3 were marked. On the side of the defendants, DW1 was examined and Exs.B1 and B2 were marked.

8. After analysing the evidence adduced on both sides, the trial Court decreed the suit with respect to specific performance and dismissed the suit with respect to permanent injunction. Aggrieved by the said Judgment and Decree,



the defendants 1 and 2 have preferred the first appeal in A.S.No.30 of 2012 on the file of Subordinate Court, Cheyyar.

WEB COPY

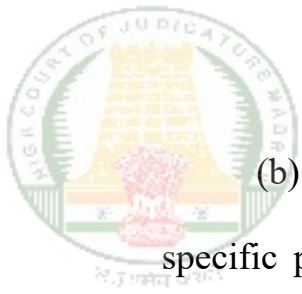
9. The first appellate Court after hearing both sides, framed the following points for determination:

- (i) Whether the judgment and decree of the Trial Court is liable to be set aside and whether the Appeal has to be allowed or not?
- (ii) To what other relief the appellants are entitled to?

10. After hearing both sides and after analysing the evidence adduced on either side, the first Appellate Court dismissed the Appeal by confirming the judgement and decree passed by the Trial Court. Aggrieved by the said judgment and decree, the present second appeal has been filed by the appellants/defendants.

10. This Court at the time of admitting the second appeal has formulated the following Substantial Questions of law:

- (a) Whether the Courts below erred in law in granting decree in favour of the plaintiff for specific performance of the sale agreement when he failed to plead and prove his readiness and willingness to perform his part of the agreement by sufficient oral and documentary evidence?



(b) Whether in law the plaintiff is entitled to the discretionary relief of specific performance of the sale agreement under Section 20 of the Specific Relief Act, 1963 when the defendants were put to hardship because of the subsequent conduct of the plaintiff in not paying the sale consideration in time to discharge the mortgage debts?

(c) Whether the judgment and decree passed by the Courts below are sustainable in law when they have failed to consider the oral and documentary evidence on record in their proper perspective and based their conclusion on mere surmises and conjectures?

11. Pending this appeal, the 1st appellant died and the 2nd appellant was recorded as her legal representative. Subsequently, the 2nd appellant also died and her daughter viz., M.Geetha, was brought on record as her legal heir and arrayed as 3rd appellant.

12. The learned counsel for the appellants would submit that originally the suit properties belonged to the defendants 1 and 2 and they agreed to sell the same to the plaintiff for a sale consideration of Rs.40,000/- and the 2nd defendant entered sale agreement with the plaintiff on receiving a sum of Rs.1,000/- from the plaintiff. Though the plaintiff agreed to pay the balance sum within a period of three months he failed to pay the same and get the sale



deed registered in his favour and therefore it is clear that he was not ready and willing to perform his part of the contract.

WEB COPY

12.1. Further he would submit that the defendants 1 and 2 borrowed a sum of Rs.5,000/- from Govindaraj and a sum of Rs.10,000/- from Sankar under mortgage deeds in the year 1995. In order to discharge those debts, since the defendants 1 and 2 was under financial crisis, they borrowed money from outsiders for high rate of interest because of the failure on the part of the plaintiff to perform his part of the contract. The plaintiff is not ready to pay balance sale consideration of Rs.39,000/- and get the document registered. The amount of Rs.1,000/- paid by plaintiff is only an earnest money and not the advance amount. The defendants did not receive any notice as alleged in the plaint.

12.2. It is further contended that the defendants 1 and 2 are in possession and enjoyment of the suit properties. The plaintiff was not given possession of the suit properties at any point of time. Therefore, the plaintiff is not entitled to relief in respect of specific performance. Further the plaintiff also sought for permanent injunction alleging that he is in possession and enjoyment of the properties. The defendants 1 and 2 are in possession of the suit properties. No possession has been given to the plaintiff pursuant to the said agreement



Though the trial Court has rightly observed that since there is no evidence with respect to handing over of the possession of the suit properties to the plaintiff by the defendants, the plaintiff is not entitled to the relief of permanent injunction failed to consider that the plaintiff has not proved his readiness and willingness to perform his part of the contract.

12.3. Further he would submit that in case specific performance is granted to the plaintiffs, the defendants 1 and 2 will be put to hardships and the trial Court failed to appreciate the evidence in a proper perspective and decreed the suit with respect to specific performance in favour of the plaintiff and the same was confirmed by the first Appellate Court. Therefore, he prays to set aside the judgment and decree of the Courts below.

13. The learned counsel for the respondents would submit that defendants 1 and 2 entered into an agreement of sale with the plaintiff with respect to suit properties on 25.11.2000 and the sum of Rs.1,000/- was paid towards advance and sale consideration was fixed at Rs.40,000/- Three months time was fixed to the defendants 1 and 2 to execute the sale deed. Despite receipt of the legal notice dated 28.01.2001, the defendants 1 and 2 neither executed a sale deed nor returned the advance amount. Therefore plaintiff filed the suit.



13.1. Further he would submit that the plaintiff has proved his readiness and willingness to perform his part of the contract. The trial Court after considering the oral and documentary evidence adduced by the plaintiff and the defendants 1 and 2 decreed the suit and the finding of the trial Court was also confirmed by the first Appellate Court. Therefore, there is no perversity or illegality in the Judgments of the Courts below and hence there is no substantial questions of law involved in this second appeal and this second appeal is liable to be dismissed.

14. This Court heard both sides and perused the material records of the case.

15. Admittedly the suit properties belonged to the defendants 1 and 2 and they entered into an agreement of sale with the plaintiff on 25.11.2000, agreeing to sell the suit properties to the plaintiff for a sale consideration of Rs.40,000/- and on the said date, a sum of Rs.1,000/- was paid as an advance by the plaintiff and three months time was fixed to pay the balance sale consideration. According to the plaintiff, he issued a legal notice dated 28.01.2001 to the defendants 1 and 2 and the same was denied by the defendants 1 and 2. It is the case of the defendants 1 and 2 that the legal notice said to have been sent by the plaintiff was sent to wrong address and the same was not sent to the address mentioned in the Sale Agreement-Ex.A1, which is the correct one. The



plaintiff filed the suit for specific performance and permanent injunction on 16.02.2001 within time stating that the defendants are evading from execution of the Sale Deed. There are no recitals in the Ex.A1 agreement in respect of handing over of the possession of the suit properties to the plaintiff and there is no sufficient evidence to prove the handing over the possession of the property to the plaintiff. Therefore, the trial Court declined to grant relief of permanent injunction. There is no appeal preferred with respect of relief of permanent injunction by the respondents 1 to 8 herein who are the legal heirs of the plaintiff.

16. The defendants 1 and 2 also admitted execution of sale agreement and the receipt of the advance money of Rs.1,000/-. Since the execution of sale agreement is admitted by the defendants, the burden lies on them to prove that it was executed for loan purpose but no sufficient evidence was adduced by them. Therefore, in the absence of proof for the defendants' contention, this Court has to come to the conclusion that the plaintiff has proved the execution of sale agreement. According to the plaintiff, they paid Rs.1000/- and the same is the advance amount and according to the defendants 1 and 2, it is earnest money and therefore the defendants 1 and 2 are not liable to pay amount. The plaintiff has also not sought for alternative relief of return of advance. Since the suit is filed for specific performance, the plaintiff is bound to prove his readiness and willingness to perform his part of the contract. Though there are pleadings with



respect to the readiness and willingness of the plaintiff to perform his part of the contract, the plaintiff failed to pay remaining balance sale consideration to show his readiness and willingness. That apart, mere pleadings is not sufficient to prove readiness and willingness of the plaintiff to perform his part of the contract. Once the defendants pleaded that the plaintiff is not ready to pay balance sale consideration, it is the duty of the plaintiff to prove his readiness and willingness. In order to prove his readiness and willingness, he ought to have taken steps to produce sufficient evidence, but no proper evidence was adduced and not even ready to deposit the balance money before the trial Court. The date of decree of the trial Court is 14.06.2004. The plaintiffs deposited the money only after the judgment of the trial Court. Before the trial Court, the plaintiff failed to produce documents that he had sufficient money to get sale deed within the period of three months time specified in the agreement. Though the defendants have not disputed the financial capacity of the plaintiff, once the defendants disputed the readiness and willingness, the plaintiff should prove that he had sufficient money with him to purchase the property within the time stipulated in the agreement, but he failed to prove that he had sufficient money to get sale deed in his favour.

17. Though the plaintiff relied upon the legal notice-Ex.A2, the address of the defendants 1 and 2 have been mentioned as ***Periyar Pathai,***



Choolaimedu, Chennai-94 and in the sale agreement-Ex.A1, the address has been mentioned as **Chennai, 94, Choolaimedu Kanniyappa Nayakar Street, No.16/38**. Therefore, notice has not been sent to the correct address of the defendants 1 and 2. Even in the said notice, the plaintiff has stated that he is ready to pay the balance amount of sale consideration but has not fixed any date calling upon the defendants 1 and 2 to receive the money and to execute Sale Deed. Further, as per Ex.A1-Agreement, it is stated that if the plaintiff failed to pay the balance sale consideration within the stipulated time and get the sale deed executed, he would lose the money. If the defendants failed to perform their part of the contract, within a stipulated time they have to pay double the advance amount received by them to the plaintiff. But there is no averment in the plaint with respect of either return of advance amount or payment of advance amount in double. Therefore, in view of the above discussion, it is clear that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. It is well settled law that the grant of specific performance is equitable and discretionary relief. According to the defendants 1 and 2, since the plaintiff failed to pay money within time, they had borrowed money from 3rd parties for high rate of interest to discharge their dues, but no sufficient evidence adduced by the defendants to prove the same. However, the plaintiff filed a suit within three months period.



18. In the light of the aforesaid discussions, this Court is of the view that plaintiff was not always ready and willing to perform his part of the contract. As per Section 20 of the Specific Relief Act, 1963, the Court has to see whether any hardship will be caused to the other side, while granting decree of specific performance of contract. In this case, the date of agreement is 25.11.2000 and the date of judgment of trial Court is 22.08.2012 and if the suit is decreed for specific performance, then the defendants would put to hardship due to escalation of market value of the property, but the Courts below failed to consider the said aspect. Therefore, the plaintiff is not entitled to discretionary relief under Section 20 of the Specific Relief Act. The Courts below failed to consider these aspects. The Courts below have not framed any issue with regard to readiness and willingness of the plaintiff to perform his part of the contract. Moreover, the plaintiff has not produced any evidence to show his readiness and willingness to perform his contract. As already discussed, mere pleadings are not sufficient. The Courts below also failed to consider that in case specific performance is granted, plaintiff will get undue advantage and the defendants will be put to hardships. The trial Court without consideration of legal aspects and without properly analysing the evidence in a proper perspective partly decreed the suit and the same was confirmed by the first Appellate Court. Therefore, the judgments of the courts below are liable to be



set aside.

WEB COPY

19. As far as the substantial questions of law formulated by this Court are concerned, the plaintiff filed the suit for specific performance of contract, thereby he has to plead and prove the readiness and willingness, but the plaintiff failed to prove his readiness and willingness. Mere filing suit within time is no automatic to infer the readiness and willingness and the plaintiff has to prove through sufficient evidence but in this case no proof for the readiness and willingness of the plaintiff to purchase the property. As far as the hardship to the defendants under Section 20 of the Specific Relief Act is concerned, the date of agreement is 25.11.2000, the sale price is Rs.40,000/-, advance paid is Rs.1,000/-, time to complete the contract is three months. Pre-suit notice was issued on 29.01.2001, ie., within the time of agreement, but the notice was not served due to insufficient address. The suit was decreed on 06.06.2014 ie., after 14 years from the date of agreement. The plaintiff who paid only a meagre amount of Rs.1,000/- as advance, without paying the balance amount waited for 14 years, certainly would gain unfair advantage due to escalation of price and the defendants would get hardship if the specific performance is ordered. The Courts below failed to consider the said aspects and not appreciated the case in a proper perspective with available records and partly decreed the suit by directing the defendants to execute a sale deed in favour of the plaintiff on mere



surmise and conjunctures. In view of the above discussions, the decree and judgment passed by the trial Court and confirmed by the appellate Court are unsustainable and to be set aside.

20. Accordingly, the judgment and decree dated 06.06.2014 passed in A.S.No.30 of 2012, on the file of Sub Court, Cheyyar and the judgment and decree dated 22.08.2012 passed in O.S.No.145 of 2004 on the file of Principal District Munsif cum Judicial Magistrate Court No.1, Cheyyar are set aside. This Second Appeal is allowed. The suit in O.S.No.145 of 2004 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

17-02-2026

arr

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



WEB COPY

SA No. 260 of 2015



P.DHANABAL J.

arr

To

1. The Subordinate Court, Cheyyar.

2. The Principal District Munsif cum Judicial Magistrate Court No.1, Cheyyar.

SA No. 260 of 2015

17-02-2026