



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**S.A.No.68 of 2015 &
M.P.No.1 of 2015**

1. Ramachandran (Deceased)
2. Rajendran (Deceased)
3. R.Nirmala
4. R.Geethalakshmi
5. A.Sarala
6. N.Amutha
7. S.Sudha
(Appellants 3 to 7 brought on record as LR's of
the deceased 1st appellant vide order
of Court dated 13.02.2018 made in CMP No.2419
to 2421 of 2018 in S.A.No.68 of 2015 by PSNJ)

Vs

1. Thangavel (Died)
V.Rajammal (Died)
2. Shanthi
3. Shantha
4. Janaki
5. T.Rathinam
6. T.Manishankar
7. T.Kanagamani
(Respondents 5 to 7 brought on record as LR's of
the deceased 1st respondent vide order
of Court dated 30.06.2021 made in CMP
No.17115 to 17117 of 2019 in S.A.No.68 of 2015
by CSNJ)

..Respondents

Prayer:

Second Appeal filed under Section 100 of CPC as against the Judgment and Decree dated 30.06.2011 made in A.S.No.24 of 2010 on the file of the learned Principal District Judge, Namakkal, reversing the Judgment and Decree dated 26.10.2009 passed in O.S.No.144 of 2008 on the file of the Sub Court, Tiruchengode.



For Appellants:

Mr.R.Marudhachalamurthy

R1 – Died

For Respondents

Mr.D.Rajasekaran for R2 to R4

Mr.T.L.Thirumalisamy for R5 to R7

J U D G M E N T

This Second Appeal has been preferred as against the Decree and Judgment passed in A.S.No.24 of 2010 on the file of the learned Principal District Judge, Namakkal dated 30.06.2011. In fact, before the trial court, the plaintiff has filed the suit for specific performance of contract and the same was dismissed. Aggrieved by the said Decree and Judgment of the trial court, the plaintiff has preferred the Appeal Suit before the First Appellate Court and the First Appellate Court reversed the Judgment of the trial court and Decreed the suit. Aggrieved by the said Decree and Judgment, the defendants 2 and 3 have preferred this Second Appeal.

2. For sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.

3. The brief averments of the plaint are as follows:-

Originally the suit property belonged to one Varadaraju Chettiar and the said Varadaraju Chettiar has entered into an agreement with the plaintiff to sell the property for a sum of Rs.2 Lakhs and a sum of Rs.1 Lakh was paid towards advance and the remaining amount has to be paid within 55 months, to that effect, the sale agreement dated 02.11.1998 was entered into



between the plaintiff and the said Varadaraju Chettiar. The plaintiff was always ready and willing to perform his part of contract by paying the balance of sale price and to get the sale deed in his favour, but the said Varadaraju Chettiar was evading from executing sale deed. In the meantime, the said Varadaraju Chettiar died intestate leaving behind his wife, children, namely, defendants 1 to 6. Since the defendants are evading from executing the sale deed, as per the agreement, the plaintiff issued notice dated 17.05.2003 and the defendants 1 to 3 received the said notice, the defendants 4 to 6 managed to return the same. Even after the receipt of notice, the defendants failed to perform their part of contract, therefore, the plaintiff filed this suit.

4. The brief averments of the Written statement filed by the defendants are as follows:-

The suit is not maintainable either in Law or on facts. The relationship between the parties is correct. The averments made in the plaint that the property belonged to Varadaraju Chettiar and he agreed to sell the property for a sum of Rs.2,00,000/- and received the sum of Rs.1,00,000/- towards advance and executed agreement dated 02.11.1998 are all false. In fact, the said property belonged to father of Varadaraju Chettiar, namely Ramasamy Chettiar and the said agreement is forged one. The properties are not under the possession and enjoyment of the defendants. The defendants are not liable to execute any sale deed and the other legal heirs of Varadaraju Chettiar have not been impleaded as parties to the suit. Therefore, the suit is bad for non-joinder of necessary parties. There is no cause of action for the



suit and daughters of 2 and 3 defendants filed the suit before the District Court, Namakkal in O.S.No.44 of 2004 and the same is pending. These defendants are not parties to the agreement, therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

“1. Whether the suit is bad for non-joinder of parties?

2. Whether the agreement dated 02.11.1998 is true?

3. Whether the plaintiff was always ready and willing to perform his part of contract?

4. Whether the plaintiff is entitled to decree for specific performance?

5. Whether the plaintiff is entitled for permanent injunction?

6. To what other reliefs, the plaintiff is entitled to?”

Before the trial court on the side of the plaintiff, P.Ws.1 and 2 were examined and marked Exhibits A.1 to A.8. On the side of the defendants, D.W.1 was examined and marked Exhibits B.1 to B.13. After analysing the evidences adduced on both sides, the trial court dismissed the suit. Aggrieved by the said Judgment and Decree, the unsuccessful plaintiff, has filed the Appeal Suit in A.S.No.24 of 2010 on the file of the learned Principal District Judge, Namakkal. The First Appellate Court had framed the following points for consideration:-



“Whether the Judgment and Decree in O.S.No.144 of 2008 dated 26.10.2009 passed by the learned Sub Judge, Tiruchengode dismissing the suit is justicible?”

After analysing the evidences adduced on both sides, the First Appellate Court reversed the Judgment of the trial court and allowed the appeal by decreeing the suit. Aggrieved by the said Judgment and Decree, the present Second Appeal has been filed by the defendants 2 and 3 .

6. At the time of admitting the Second Appeal on 06.03.2015, this Court formulated the following Substantial Questions of Law for consideration:-

“ (i) Whether the First Appellate Court was right in reversing the decree and Judgment of the trial Court by holding Mr.Varadharaju Chettiar had independent title to enter into the sale agreement with the plaintiff/ first respondent ?

(ii) Whether the First Appellate Court was right in reversing the decree and judgment of the Trial Court ignoring the suspicious circumstances surrounding the alleged sale agreement dated 02.11.1998?

(iii) Is it not the suit barred by limitation even assuming that the same agreement is true?”

7. The learned counsel appearing for the appellants would submit as follows:-

(i) The plaintiff filed a suit for specific performance of contract alleging that the husband of the 1st defendant and father of the defendants 2 to



6 executed a sale agreement in respect of the suit property agreeing to sell the property for a sum of Rs.2,00,000/- and received a sum of Rs.1,00,000/- towards advance and executed a written agreement dated 02.11.1998 and thereafter, he failed to perform his part of contract and thereby filed the suit. The defendants denied the execution of agreement and the receipt of advance by the said Varadaraju Chettiar, the defendants are legal heirs of Varadaraju Chettiar. The plaintiff was not always ready and willing to perform his part of contract. Even assuming that agreement was executed, the plaintiff was not always ready and willing to perform his part of contract and failed to prove his readiness and willingness. In order to prove the case of the plaintiff, P.W.1 and P.W.2 were examined and marked exhibits Ex.A.1 to Ex.A.8 and on the side of the defendants, D.W.1 was examined and marked Ex.B.1 to B.13. After analysing the evidences, the trial court came to a conclusion that P.W.1 himself stated that the agreement was executed in the year 1993 and the time was fixed at 11th Month of 1993, whereas the suit agreement is dated 02.11.1998 by fixing 55 months time to complete the contract and immediately after the execution of agreement, within 20 days, the said Varadaraju Chettiar died and immediately after demise of Varadaraju Chettiar, no steps have been taken to get sale deed in favour of the plaintiff and after 4 1/2 years, plaintiff issued notice. Therefore, dismissed the suit. However, the First Appellate Court without framing proper point for consideration and without appreciating the case of the defendants in a proper perspective manner, only based upon, Ex.A.1 agreement and relying upon the evidence of P.W.2, decreed the suit.



(ii) The First Appellate Court failed to consider that there was no evidence that plaintiff was always ready and willing to perform his part of contract and simply relying upon Ex.A.1 decreed the suit, therefore, the First Appellate Court failed to consider as to why a period of 55 months time was fixed and immediately, after demise of Varadaraju Chettiar no steps have been taken to get sale deed in favour of the plaintiff and thereby the First Appellate Court failed to consider the case in a proper perspective manner and therefore, the decree and judgment passed by the First Appellate Court is liable to be set aside.

8. The learned counsel appearing for the respondents would submit that originally the suit property belonged to Varadaraju Chettiar and he entered into agreement with the plaintiff to sell the property and also entered into an agreement dated 02.11.1998 and as per the agreement, the sale price was fixed at Rs.2 Lakhs and on the same day of sale agreement, a sum of Rs.1 Lakh was paid towards advance and a period of 55 months time was fixed for payment of balance amount at the request of the said Varadaraju Chettiar. The plaintiff after the demise of Varadaraju Chettiar approached the defendants but they evaded from execution of sale deed, thereby issued notice dated 17.05.2003 and thereafter, since the defendants evaded from executing sale deed, as per agreement, he filed the suit. In order to prove the case of the plaintiff on his side, he examined P.W.1 and P.W.2 and P.W.2 is the attesting witness of the sale agreement and he categorically deposed about the execution of agreement and passing of consideration through the



said agreement, he also marked exhibits Ex.A.1 to A.8 through the evidence of P.W.1 and 2 and the documents, Exs. A.1 to A.8 the plaintiff has proved the execution of agreement and passing of consideration through the agreement and also the plaintiff was always ready and willing to perform his part of contract. However, the trial Court has failed to appreciate evidence in a proper perspective and erroneously dismissed the suit, thereby the plaintiff preferred an appeal, whereas the First Appellate Court after analysing the evidence correctly appreciated the evidences and decreed the suit by setting aside the decree and judgment of the trial court, therefore, the First Appellate Court has correctly decreed the suit and there is no substantial questions of law involved in this case and the Second Appeal is liable to be dismissed.

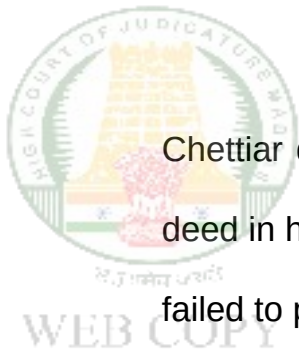
9. Heard the learned counsel on both sides and perused the entire documents placed on record.

10. In this case, there is no dispute that the defendants are the legal heirs of the deceased of Varadaraju Chettiar and the suit property belonged to Varadaraju Chettiar. The plaintiff filed the suit alleging that the suit property belonged to Varadaraju Chettiar and he entered into an agreement for sale of the said property and the sale price was fixed at Rs.2 Lakhs and a sum of Rs.1 Lakh was paid as advance and the time was fixed at 55 months for completion of contract, to that effect, they entered into agreement dated 02.11.1998. The defendants, who are the legal heirs of Varadaraju Chettiar, denied the execution of sale agreement and passing of



consideration through sale agreement and the plaintiff was not always ready and willing to perform his part of contract. Before the trial court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and marked Exhibits Ex.A.1 to Ex.A.8 and on the side of the defendants, D.W.1 was examined and marked Exhibits Ex.B.1 to B.13. Further, after analysing evidences adduced on both sides, the trial court framed the necessary issues, answered the issues and dismissed the suit by holding that the agreement dated 02.11.1998 itself has not been proved and immediately after demise of Varadaraju Chettiar, the plaintiff has not taken any steps and issued notice only on 17.05.2003, after 4 1/2 years. P.W.1 in his evidence stated that Varadaraju Chettiar executed an agreement of sale in the Eleventh Month of 1993 and he also instructed the Counsel to issue notice for the agreement in the 11th Month of 1993, whereas the suit agreement is dated 02.11.1998. Further P.W.2 also in his evidence stated that the agreement was prepared by Varadaraju Chettiar, whereas in his cross examination, he had stated that there is no reference and he does not know whether any recitals about the name of the scribe and the said agreement was prepared at Tiruchengode.

11. The trial Court further analysed the evidences adduced by both evidences of P.Ws.1 and 2 and observed that for the extent of 2134 sq.f.t., the sale price was fixed at Rs.2 Laks and Rs.1 Lakh was paid towards advance and for balance of payment, time was fixed for 55 months and thereby the trial court held that the said agreement is not a genuine one. Though the alleged agreement was dated 02.11.1998 and the said Varadaraju



Chettiar died on 25.11.1998, the plaintiff has not taken any steps to get sale deed in his favour and only issued notice on 17.05.2003, therefore, the plaintiff failed to prove his readiness and willingness and thereby dismissed the suit.

12. The above said decision of the trial court is based on the evidences adduced by both sides and there is no explanation from the plaintiff as to why the time was fixed for 55 months when the sale price was fixed at Rs.2 Lakhs and Rs.1 Lakh was paid on the date of sale deed itself. Moreover, when Varadaraju Chettiar died on 25.11.1998, immediately after 23 days from the date of execution of agreement why they have not taken any steps and issued only notice on 17.05.2003 and filed this suit on 29.07.2003, has not been explained by the plaintiff, therefore, the plaintiff has failed to prove his readiness and willingness. Therefore, the trial court has correctly dismissed the suit.

13. However, the First Appellate Court allowed the appeal and decreed the suit by reversing the Judgment of the trial court. The First Appellate Court has not framed proper point for consideration and there is no discussion about the readiness and willingness. It is well settled law that as far as suit for specific performance of contract is concerned, the plaintiff must aver and prove his readiness and willingness from the date of agreement till the execution of sale deed. The Appellate Court discussed in the Judgment that Ex.A.1 has been proved through evidences P.W.1 and 2. The PW.2 is the attesting witness and thereby execution of agreement was duly proved



and the defendants failed to take steps for expert opinion, as per agreement Ex.A.1, time was fixed for 55 months, therefore, the plaintiff can wait for 55 months to get execution of sale deed,; the plaintiff issued notice on 17.05.2003 and on the basis, he was ready to get execution of sale deed,; therefore, the suit agreement was proved and the plaintiff is entitled to decree of specific performance of contract. The above said findings of the First Appellate Court are not based on the principles of law. The First Appellate Court failed to consider as to why 55 months time was fixed for completion of contract when substantial portion of amount was paid on the date of agreement itself and the First Appellate Court failed to discuss whether the plaintiff was ready and willing to perform his part of contract and failed to consider that immediately after execution of agreement, the said Varadaraju Chettiar died within 23 days but no action was taken till 17.05.2003. Therefore, the Judgment and Decree passed by the First Appellate Court is not in accordance with law and whereas the trial court has correctly analysed the evidences and dismissed the suit. Therefore, the Judgment and decree of the First Appellate Court are unsustainable and liable to be set aside.

14. As far as Substantial Question of Law (i) Whether the First Appellate Court was right in reversing the Decree and Judgment of the trial Court by holding that Varadaraju Chettiar had independent title to enter into the sale agreement with the plaintiff and first respondent' is concerned, according to the plaintiff, property belonged to Varadaraju Chettiar and he entered into sale agreement to sell the property and executed agreement



dated 02.11.1998 and the sale price was fixed at Rs.2 Lakhs and on the date of sale agreement itself, a sum of Rs.1 Lakh was paid towards advance of sale price. There is no pleadings by denying the entitlement of the property by Varadaraju Chettiar, however, DW1, viz., Ramachandran, in his evidence stated that Varadaraju Chettiar has no right to execute the agreement and the defendants totally denied the execution of agreement and the receipt of advance by Varadaraju Chettiar. It is well settled proposition of Law that without pleadings, evidence cannot be looked into. There are no pleadings by denying the right of Varadaraju Chettiar to enter into sale agreement in respect of the suit property, therefore, the question of denial of independent title in favour of Varadaraju Chettiar will not arise, thus the Substantial Question of Law (i) is answered.

15. As far as Substantial Question of Law '(ii) Whether the First Appellate Court was right in reversing the Decree and Judgment of the trial Court ignoring suspicious circumstances surrounding the alleged sale agreement dated 02.11.1998' is concerned, according to the plaintiff, sale agreement was executed on 02.11.1998, but immediately after 23 days, the said owner of the property, namely, Varadaraju Chettiar died on 25.11.1998, the plaintiff has not taken any steps immediately after demise of Varadaraju Chettiar. An ordinary prudent man when entering into an agreement with the person, after the demise of original owner with whom entered into an agreement, immediately would have taken steps for execution of sale deed by approaching his legal heirs, but in this case, the plaintiff had waited for more



than 4 1/2 years and the said conduct is unnatural. Further, fixing a period of 55 months time for completion of sale itself creates suspicion through genuinity of the agreement. Though the plaintiff had examined P.W.2, his evidence alone is not sufficient to dispel the suspicious circumstances over the execution of agreement dated 02.11.1998 and the conduct of the plaintiff by fixing time for 55 months and not taking steps after knowing that the said Varadaraju Chettiar died and waited 4 1/2 years for taking steps, would create suspicion over genuinity over the agreement and those suspicious circumstances have not been dispelled by the plaintiff, thereby the trial court correctly dismissed the suit, however, the First Appellate Court failed to consider the same and ignoring suspicion circumstances surrounding the alleged sale agreement dated 02.11.1998, reversed judgment and thereby it is unsustainable and the same is liable to be set aside.

16. The learned counsel for the appellant relied on the following Judgments :-

(i)Thiruvengadam Pillai Vs. Navaneethammal and Another reported in (2008) 4 Supreme Court Cases 530

(ii)U.N.Krishnamurthy (Since deceased) through legal representatives Vs. A.M.Krishnamurthy reported in (2023) 11 Supreme Court Cases 775

(iii)M.Jayaprakash Narayanan Vs. Santhammal and Others reported in 2017 SCC Online Mad 38180



(i) On a careful perusal of the above said judgments, it is clear that mere signature of the parties established on the basis of some interested witnesses of the parties, who wants to enforce the contract in respect of huge property, the execution cannot be inferred merely based on such witness, there must be evidence to show that the agreement is made out on free consent of parties and there is lawful consideration through said agreement, only when the plaintiff established that there was a consensus ad idem between the parties and a valuable consideration, then the above contract can be termed as a valuable contract capable of enforcing before the Court of Law. When two elements, namely, free consent and lawful consideration are absent in the document, such document cannot be considered for lawful consideration in the eye of Law. Also it is clear that there must be averments and proof of readiness and willingness to perform an obligations to pay money. The fact that suit had been filed after three years just before expiry of period of limitation can be considered as a ground to decline equitable relief of specific performance for the purpose of immovable property and once the defendants denied the execution of the agreement, the burden was on the part of the plaintiff to prove that the agreement was executed by the defendants and not on the defendants to prove the negative.

(ii) In the case on hand also when the defendants denied the agreement executed by the said Varadaraju Chettiar, it is the duty of the plaintiff to prove the execution through the expert and the evidence of P.W.2 alone is not sufficient to prove the same, as the evidence of P.W.2 is not



cogent and not sufficient to prove the execution. Also the plaintiff failed to prove his readiness and willingness and the conduct of the plaintiff for not taking steps even after demise of the original executor of the agreement, filing of the suit after 4 1/2 years, shows his non readiness and willingness, therefore, the First Appellate Court has failed to consider the above said aspects and decreed the suit by holding that the agreement has been proved. Even assuming that the agreement has been proved, mere execution of the agreement is not sufficient to grant relief of specific performance of contract and the plaintiff must prove his readiness and willingness, which in this case is absent and therefore, the plaintiff is not entitled to the relief of specific performance of contract and the Judgment and Decree of the First Appellate Court are unsustainable and liable to be set aside. Thus the Substantial Question of Law (ii) is answered.

17. As far as the Substantial Question of Law (iii) ' Is it not the suit is barred by limitation even assuming same agreement is true' is concerned, there is no pleadings in respect of limitation, the courts below have not framed any issues in respect of limitation. The agreement was executed on 02.11.1998, 55 months time was fixed, the suit was filed on 29.07.2003, therefore, the suit is not barred by limitation and the suit is filed within the limitation period. Thus the Substantial Question of Law (iii) is answered.

18. In view of the above said discussions and the answers to the Substantial Questions of Law, this Court is of the opinion that the Judgment of



the First Appellate Court is unsustainable and the same is liable to be set aside and the Judgment and the decree passed by the trial court is to be restored.

19. Accordingly, the present Second Appeal is allowed and the Judgment and decree passed by the First Appellate Court in A.S.No.24 of 2010 dated 30.06.2011 is set aside and the Judgment and Decree passed by the Trial Court in O.S.No.144 of 2008 dated 26.10.2009 is restored. Consequently, connected miscellaneous petition is closed. No costs.

27.01.2026

Index : Yes/No
Speaking Order : Yes/No
ssd

To

1. The Principal District Judge, Namakkal
2. The Sub Judge, Tiruchengode.



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P.DHANABAL, J.

ssd

S.A.No.168 of 2015

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