



A.S.No.53 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2025
PRONOUNCED ON : 19.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

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1. M.Srinivasa Gounder (deceased)
Late Munisamy Gounder,
2. S.Vijaya
W/o Srinivasa Gounder
3. S.Sekar
S/o Srinivasa Gounder
4. S.Ulaganathan
S/o Srinivasa Gounder
5. S.Chitra
D/o Srinivasa Gounder

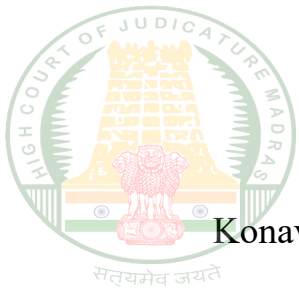
All Are Res At 1/164, Katpadi Main Road,
Veppanganeri Village, K.V.Kuppam Post,
Katpadi Tk, Vellore District

(Memo Sr.No.9697/17 Dt.23/10/17
Is Recorded And Appellants 2 To 5 Are Recorded
As Lrs Of The Died 1st Appellant Vide Order Of
This Court Dt. 06/11/2017 made in
C.M.P.No.4586 of 2017 in A.S.SR.No.18449 of
2017 By Asj & Pkj.)

..Appellant(s)

Vs

1.P.ELUMALAI (Died)
S/o N. Pachaiappan, No. 1/53, Jeevarathinam St ,
1/16



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Konavattam, Vellore Tk And District

2.V.Chokkalingam

S/o Velayatham, No. 2/50, Arasamara Street,
Karugampathur Village, Vellore Tk, Vellore District

3.Lakshmi

W/o. Pachaiyappan, Residing at No.1/53,
Jeevarthinam Street, Konavattam, Vellore Taluk and
District

4.Chandra

W/o.P.Elumalai, Residing at No.1/53, Jeevarthinam
Street, Konavattam, Vellore Taluk and District

5.E.Dhandapani

S/o. P.Elumalai, Residing at No.1/53, Jeevarthinam
Street, Konavattam, Vellore Taluk and District

6.E.Dinesh

S/o. P.Elumalai, Residing at No.1/53, Jeevarthinam
Street, Konavattam, Vellore Taluk and District.

R1 Died. R3 to R6 are brought on record as LRS of
deceased R1 vide court order dated 8.9.2025 made
in CMP.No.10247,10249 of 2025 in AS.No.53/2018
(ADM CJ)

PRAYER: Appeal suit filed against the Judgment and decree dated
01.12.2016 made in O.S.No.30 of 2012 on the file of the Principal
District Judge, Vellore.

For appellant : Mr.Dhanyakumar

For respondent : R1 – died. Steps taken

R2 – served- no appearance

Mr. M. Praveenkumar for R3 to R6.



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J U D G M E N T

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This Appeal Suit is filed by the defendants against the judgment and decree dated 01.12.2016 passed by the learned Principal District Judge, Vellore, in O.S.No.30 of 2012, whereby the suit for refund of advance amount was decreed, directing the defendants to repay a sum of Rs.15,00,000/- with interest at 6% per annum from the date of plaint till realization, and further declaring a charge over the suit schedule property till full realization.

2. For convenience, the parties are referred to as they were arrayed before the trial Court.

3. The plaintiff's case is that the defendants were the absolute owners of the suit property, measuring 14.07 acres, and that the defendants agreed to sell the same to the plaintiffs at the rate of Rs.10,500/- per cent, for a total sale consideration of Rs.1,47,73,500/-. According to the plaintiff, an unregistered agreement of sale dated 11.12.2009 was executed, under which the defendants received an advance amount of Rs.15,00,000/- on the date of agreement itself. The



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plaintiffs further pleaded that though the agreement contemplated execution of sale deed on or before 10.09.2010 on receipt of the balance sale consideration, the time was not the essence of the contract, that they were ready and willing to perform their part, and that the defendants began to evade performance. It was also pleaded that the property was intended to be developed into house plots, that the defendants had agreed to such course, that later they objected to the development, removed the trees, demanded more money, and even prepared draft sale deeds in favour of third parties on 14.07.2010. On that footing, the plaintiffs sought refund of the advance amount with interest at 24% per annum and a charge over the property.

4. The 1st defendant filed a written statement, which was adopted by defendants 2 to 4. The 5th defendant remained ex parte. In the written statement, the defendants did not dispute their title to the suit property. They also admitted the execution of the sale agreement dated 11.12.2009 and the receipt of a sum of Rs.15,00,000/- from the plaintiffs as advance. However, they disputed the legal effect of the transaction and contended that the plaintiffs had approached them for purchase of the property and, since the defendants were in urgent need of money, the parties entered



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into the agreement. According to the defendants, time was the essence of the contract and, though the period of nine months was mentioned in the agreement, the actual understanding between the parties was that the plaintiffs should pay the balance sale consideration within six months. The defendants further pleaded that the suit property was a large thope containing several valuable trees, namely 1200 coconut trees, 120 mango trees, 250 tamarind trees, 100 neem trees, 50 country wood trees, 150 palm trees and other trees, the total value of which was about Rs.20,00,000/-. It is their case that, as the plaintiffs had agreed to purchase the property, they were permitted to remove the trees within the stipulated period, but immediately after the execution of the agreement, the plaintiffs cut and removed the trees and carried them away. The defendants also referred to the legal notice dated 29.07.2010 issued by the plaintiffs and their reply dated 06.08.2010, wherein they called upon the plaintiffs to appear before the Sub Registrar, K.V.Kuppam, on 20.08.2010 at 10.00 a.m., with the entire balance sale consideration by way of demand draft. According to the defendants, the plaintiffs neither complied with the said demand nor sent any reply thereafter. On the above pleadings, the defendants contended that the plaintiffs had committed breach of contract, that the advance amount stood forfeited, that the plaintiffs were liable to pay a sum of Rs.20,00,000/- towards the value of

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the trees removed by them, and that the suit for refund was liable to be dismissed.

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5. On the above pleadings, the learned trial Judge framed the following issues:

(i) Whether the plaintiffs are entitled for refund of the advance amount received by the defendants in pursuance of the alleged sale agreement entered between the parties on 11.12.2009 ?

(ii) Whether time is the essence of the contract?

(iii) Whether the plaintiffs is entitled for the interest at 24% per annum as prayed for?

(iv) To what other relief are the plaintiffs entitled?

6. Before the trial Court, on the side of the plaintiffs, P.W.1 and P.W.2 were examined. Exs.A1 to A9 were marked through P.W.1, and Exs.A10 to A14 were marked during the cross-examination of D.W.1. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B8 were marked. Ex.A1 is the unregistered agreement of sale dated 11.12.2009.



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Exs.A2 to A9 are draft sale deeds dated 14.07.2010 in favour of various persons. Exs.A10 to A14 are title documents relating to the property.

Ex.B1 is the legal notice dated 29.07.2010 issued on behalf of the plaintiffs. Ex.B2 is the reply notice dated 06.08.2010 issued on behalf of the defendants. Ex.B3 is the copy of the police complaint with CSR. Ex.B4 is the legal notice dated 08.08.2011 issued on behalf of the defendants. Ex.B5 is a returned postal cover and Exs.B6 to B8 are acknowledgment cards.

7. The trial Court, on consideration of the oral and documentary evidence, found that the execution of Ex.A1 sale agreement dated 11.12.2009 and the receipt of Rs.15,00,000/- as advance sale consideration by the defendants were admitted facts. The trial Court further found that the plaintiff had issued Ex.B1 legal notice dated 29.07.2010 even before the expiry of the period fixed under the agreement, thereby expressing his readiness and willingness to perform his part of the contract. Though the defendants contended that the plaintiff had cut and removed trees worth about Rs.20,00,000/-, the trial Court held that the defendants had not produced any acceptable documentary evidence to substantiate the said allegation. The trial Court



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also took note of the admission of D.W.1 and held that there was no proof to show that the plaintiff had caused any loss to the defendants.

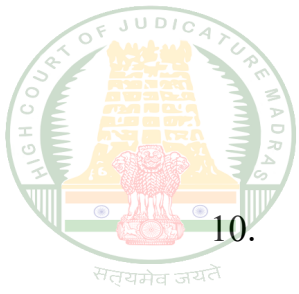
Accordingly, the trial Court answered the issues in favour of the plaintiff, held that time was not the essence of the contract, and decreed the suit directing the defendants to refund the advance amount of Rs.15,00,000/- with interest at 6% per annum from the date of plaint till realization, besides creating a charge over the suit property until realization of the amount.

8. Aggrieved by the judgment and decree the defendants preferred the present appeal. In the memorandum of grounds, the defendants contend that the trial Court failed to appreciate that the plaintiffs alone committed breach of contract, that the plaintiffs were neither ready nor willing nor financially capable of completing the sale, that time was the essence of the contract, that Ex.B2 clearly called upon the plaintiffs to complete the sale on 20.08.2010, that there was no reply to Ex.B2, that Ex.B4 terminated the agreement, that the plaintiffs had no proof of financial capacity, that they had cut and removed trees worth Rs.20,00,000/-, and that the trial Court erroneously decreed refund merely because receipt of the advance was admitted. The grounds also challenge the award of charge over the entire property and the award of interest.



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9. The learned counsel appearing for the appellants/defendants would submit that the plaintiff was never ready and willing to perform his part of the contract by paying the balance sale consideration. According to the learned counsel, the defendants were always ready to execute the sale deed and, by reply notice dated 06.08.2010, had specifically called upon the plaintiff to appear before the Sub Registrar Office, K.V.Kuppam, on 20.08.2010 with the balance sale consideration by way of demand draft. However, the plaintiff neither sent the demand draft nor appeared before the Sub Registrar Office to complete the sale transaction. It is further submitted that, after entering into the sale agreement, the plaintiff cut and removed valuable trees from the suit property worth about Rs.20,00,000/-, thereby causing substantial loss to the defendants. In view of the default committed by the plaintiff and the terms contained in the sale agreement, the defendants were justified in forfeiting the advance amount. Therefore, the learned counsel would submit that the trial Court erred in decreeing the suit for refund of the advance amount with interest, and the judgment and decree passed by the trial Court are liable to be set aside.



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10. The learned counsel appearing for the respondent/plaintiff

submitted that, after entering into the sale agreement, the plaintiff was always ready and willing to perform his part of the contract in terms of the agreement. When the plaintiff requested the defendants to execute the sale deed, defendants 3 and 4 demanded an amount over and above the agreed sale consideration. Therefore, the plaintiff was constrained to file the suit for refund of the advance amount, and not for specific performance. It is further submitted that, in the cross-examination of P.W.1, the plaintiff has established his readiness and willingness to perform his part of the contract, and that it was only the defendants who committed breach of the agreement. The learned counsel would further submit that D.W.1, namely the third defendant, admitted in his cross-examination that there is no recital regarding the number of trees in Ex.A11 sale deed dated 09.11.2001. Except the bald averments made in the written statement, the defendants have not produced any acceptable evidence to prove the alleged cutting and removal of trees by the plaintiff. Further, the defendants have not filed any set-off or counter-claim either for forfeiture of the advance amount or for compensation towards the alleged loss of trees. Hence, the trial Court, on proper appreciation of the oral and documentary evidence, rightly decreed the suit for refund of the advance amount with interest at 6% per annum, and the same does not

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warrant any interference.

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11. Points for Consideration:

1. Whether the plaintiff is entitled to refund of the advance amount with interest?

2. Whether the judgment and decree of the trial Court are liable to be set aside?

Point No.1:

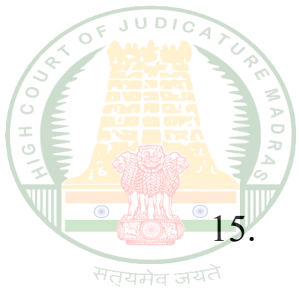
12. The plaintiff filed the suit seeking refund of the advance amount paid under the sale agreement dated 11.12.2009, marked as Ex.A1. The admitted facts are that the plaint schedule property belongs to the defendants and that the plaintiff and defendants entered into a sale agreement in respect of the said property. The total sale consideration was fixed at Rs.1,47,73,500/-, and the parties agreed that the sale should be completed within nine months, namely, on or before 10.09.2010. The plaintiff paid a sum of Rs.15,00,000/- as advance. However, the sale transaction could not be completed, and both parties blame each other for the failure to complete the sale transaction.



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13. On side of the plaintiff, it is contended that he was always ready and willing to complete the sale transaction, but the defendants deliberately delayed the same. Therefore, according to the plaintiff, he is entitled to refund of the advance amount together with interest. Per contra, the defendants contend that they had expressed their readiness through a reply notice, but the plaintiff failed to honor the terms of the agreement. It is further contended that the plaintiff cut and removed trees worth about Rs.20,00,000/-, and that, in view of the forfeiture clause contained in the sale agreement, the advance amount stood forfeited.

14. In the present case, the sum of Rs.15,00,000/- was paid towards part of the agreed sale consideration and not as earnest money. Further, the agreement does not contain any penalty clause, as contemplated under Section 74 of the Indian Contract Act, 1872, for failure to perform the contractual obligations. Although the agreement contains a recital that, in the event of the purchaser failing to complete the sale within the stipulated period, the advance amount paid would have no connection with the property, such a recital, by itself, cannot be construed as a stipulation by way of penalty so as to attract Section 74 of the Indian Contract Act.



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15. Section 73 of the Indian Contract Act deals with compensation for loss or damage caused by breach of contract and provides for compensation only in respect of the actual loss suffered by the aggrieved party. Therefore, the burden lies upon the defendants to establish: (i) that the contract was breached on account of the plaintiff; and (ii) that they suffered actual and proximate loss on account of such breach.

16. In the case on hand, it appears that when the defendants failed to execute the sale deed in favour of the proposed purchasers introduced by the plaintiff, the plaintiff issued a legal notice under Ex.B1, to which the defendants sent a reply under Ex.B2 expressing their readiness. Though the defendants alleged in the written statement that the plaintiff had cut and removed trees worth about Rs.20,00,000/-, the said allegation has not been substantiated by any acceptable evidence or particulars. Further, such an allegation cannot, by itself, be treated as a loss arising out of the alleged breach of contract, as it constitutes an independent claim. Admittedly, the defendants have not chosen to file any counter-claim or claim any set-off in respect of the said allegation. There is absolutely no evidence to establish that the defendants suffered any monetary loss on account of the alleged breach of contract by the plaintiff. On the contrary,



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the evidence probabilises the plaintiff's case that the sale transaction could not be completed due to the reluctance of the defendants. Hence, the plaintiff is entitled to refund of the advance amount.

17. The defendants further contend that the agreement does not contain any clause providing for payment of interest in the event of refund of the advance amount. Though there is no specific contractual stipulation to that effect, the defendants have retained the plaintiff's money for a considerable period and, in equity, are liable to compensate the plaintiff by payment of reasonable interest. The award of interest lies within the discretion of the Court. The trial Court, after considering the relevant facts and circumstances, awarded interest at 6% per annum, which, in the opinion of this Court, is only reasonable and nominal. Accordingly, this point is answered.

Point No.2:

18. In view of the findings rendered on the aforesaid points, this Court finds no valid ground to interfere with the judgment and decree passed by the trial Court. The judgment and decree under appeal do not suffer from



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any illegality, perversity or infirmity warranting interference by this Court.

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19. In the result, the appeal stands dismissed with costs and the judgment and decree of the trial Court dated 01.12.2016 passed by the learned Principal District Judge, Vellore, in O.S.No.30 of 2012 are confirmed. Consequently, connected miscellaneous petition, if any, shall stand closed.

19.06.2026

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Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No



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DR. A.D. MARIA CLETE, J

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To

1.The Principal District Judge, Vellore.

2. The Section Officer,
V.R.Records,
Madras High Court.

PRE DELIVERY JUDGMENT
A.S. No. 53 of 2018

19.06.2026

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