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AS No. 548 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15-12-2025

Pronounced on : 12-02-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K. KUMARESH BABU

AS No. 548 of 2018

and

CMP No.13921 of 2018

1. P.Ramakrishnan (died)
2. Maheswari
3. Sridevi
4. Balamurugan
5. Hariperumal

Sole appellant died, A2 to A5 are brought on record as LR's of deceased sole appellant, vide order of Court dated 18.11.2024 made in CMP No.8304 of 2024 in A.S.No.548 of 2018 by (RSMJ and CKJ)

..Appellant(s)

Vs

1. V.Arumugam
2. A.Saravanan



3. A.G.Venkatachalam
4. D.Sivakumar
5. A.Sivagami
6. S.Kamala
7. Minor S.Mouleeswaran

Rep. by his next friend and Natural
Guardian/mother Kamala

..Respondent(s)

This Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of CPC, to set aside the Judgement and Decree dated 27/03/2018 made in OS.No.212/2012 on the file of the learned IV Additional District Court, Erode District, Bhavani by allow this First Appeal.

For Appellant(s): Mr.N. Manokaran

For Respondent(s): Mr.P.Valliappan, Senior Counsel
For Mr.N.Loganathan
for R1, R2 and R6



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AS No. 548 of 2



JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The plaintiff in O.S.No.212 of 2012, on the file of the IV Additional District Court at Bhavani, aggrieved by the judgment dated 27.03.2018 had filed the present Appeal Suit.

2.Pending the appeal, the plaintiff / appellant died and his legal representatives had been brought on record.

3.O.S.No.212 of 2012 had been filed seeking a direction against the defendants 1, 2 and 3 to execute sale deed in favour of the plaintiff for a sum of Rs.27,00,000/- with respect to the suit property after receiving the balance sale consideration and on failure, for the Court to execute the sale deed and to put the plaintiff in lawful possession of the suit property or in the alternate to refund of the advance sale consideration together with interest. By judgment dated 27.03.2018, the relief of specific performance was denied and the alternate relief of payment of advance amount had been granted. Challenging that judgment, the Appeal Suit had been filed.



O.S.No.212 of 2012 (IV Additional District Court, Bhavani):

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4. In the plaint, it had been contended that the suit property consisting of vacant land of 13,200 sq.ft. (0.30 cents) at Pachampalayam Village, Bhavani Taluk, belonged to the 1st defendant, V.Arumugam who had been allotted the same under a partition deed dated 26.02.1998. The 2nd and 3rd defendants are the sons of the 1st defendant. The 1st, 2nd and 3rd defendants had offered to sell the said suit property for a total sale consideration of Rs.27,00,000/- to the plaintiff and an unregistered agreement of sale was executed on 24.09.2009 and an advance of Rs.6,00,000/- had been paid towards part sale consideration. The plaintiff had earlier paid a sum of Rs.50,000/- as advance which had also been reduced into writing on 03.09.2009. Thereafter, a registered agreement of sale was entered into with the plaintiff and the 4th and 5th defendants on one part and the 1st, 2nd and 3rd defendants on the other part on 01.10.2009. The 4th and 5th defendants were added as necessary parties for proper adjudication of the case. The time stipulated for performance of the contract was one year under the unregistered agreement of sale. It was contended that possession had also been handed over to the plaintiff. It was also contended that the cart track running East to West ending with the Panchayat Road had not been formed and handed over to the Panchayat. In view of that particular fact, the sale deed had not been executed by the 1st, 2nd and 3rd defendants who delayed execution of the sale deed giving one reason or the other.



5.It was contended that a further advance was paid on 23.12.2009 for a sum of Rs.1,50,000/- and an endorsement was made on the agreement dated 24.09.2009. A further advance of Rs.2,00,000/- was paid on 23.03.2010 and this again was endorsed in the agreement of sale deed dated 24.09.2009. Thereafter, the 3rd defendant had been hospitalized and the 1st and 2nd defendants stated that they would obtain his signature after he recovered from his illness. It was contended that the plaintiff had paid a total advance of Rs.9,50,000/- to the 1st, 2nd and 3rd defendants. It was further contended that the plaintiff was ready and willing to pay balance sale consideration.

6.It was further contended that the 1st, 2nd and 3rd defendants were attempting to alienate the suit property to third parties necessitating the plaintiff to issue a legal notice on 27.08.2012 calling upon them to perform their part of the agreement. The 1st and 2nd defendants had received the notices. The 3rd defendant had also received the notice, but the acknowledgement card was not returned. A reply was issued on 13.09.2012 denying the execution of agreement of sale and requesting xerox copies of the same.

7.The plaintiff then issued a re-joinder notice and permitted the 1st, 2nd and 3rd defendants and their counsel to inspect the document in the office of the counsel of the plaintiff on 18.09.2012. Accordingly, the counsel for the 1st, 2nd



and 3rd defendants inspected the documents and also made an endorsement about his inspection in the rejoinder notice dated 18.09.2012. It was under those circumstances, that the suit had been filed seeking specific performance of the agreement of sale or in the alternate for refund of the advance amount together with interest and costs.

8. Pending the suit, the 2nd defendant died and his legal representatives had been impleaded as defendants 6 to 8.

9. The 3rd defendant filed a written statement denying the agreement of sale. He denied the unregistered agreement of sale dated 24.09.2009 and denied receiving advance of Rs.6,00,000/- and the earlier token advance of Rs.50,000/-. It was pointed out that the said advance amount of Rs.50,000/- was not mentioned in the unregistered agreement of sale. It was further contended that the registered agreement of sale dated 01.10.2009 reflected the sale consideration at Rs.90,000/- and an advance of Rs.60,000/- had been mentioned. The balance payable was only Rs.30,000/-. He also denied the endorsement made for receipt of further advance towards sale consideration. It was contended that they were forged and created for the purpose of suit. It was further contended that the plaintiff was never ready and willing to perform his part of the agreement. It was further contended that the plaintiff was never put in possession. It was stated that the 4th and 5th defendants wanted security for the



loan advanced by them and therefore, on 01.10.2009 a registered agreement of sale was entered into by the 1st, 2nd and 3rd defendants in favour of the plaintiff and the 4th and 5th defendants. It was further contended that the defendants had no intention of selling the suit property. It was further contended that the suit was barred by limitation. It was contended that the suit should be dismissed.

10. An additional written statement was filed by the 3rd defendant that the legal representatives of the 2nd defendant were not parties to the agreement of sale and they cannot be bound to the sale agreement.

11. On the basis of the above pleadings, the following issues were framed:

“1. Whether the document dated 03.09.2009 evidencing token advance of Rs.50,000/- is true and valid?

2. Whether the agreement of sale dated 24.09.2009 is true valid and executable?

3. Whether the endorsement dated 23.12.2009 is true valid and binding on defendants 1 to 3?

4. Whether endorsement dated 23.09.2010 is true valid and binding on the defendants 1 to 3?

5. Whether the registered agreement of sale dated 01.10.2009 is true, valid?

6. Whether the suit is barred by limitation?

7. Whether the plaintiff is entitled for the relief of specific performance of the contract?



8. Whether the plaintiff is entitled for alternate relief of refund of advance amount of Rs.9,50,000/-?

9. To what relief? ”

12. During trial, the plaintiff examined himself as PW-1 and examined five other witnesses as PW-2 to PW-6. The 3rd defendant examined himself as DW-1. The plaintiff marked Exs.A1 to A11. Ex.A1 dated 03.09.2009 was the agreement for the token advance paid. Ex.A2 dated 24.09.2009 was the unregistered agreement of sale. Exs.A3 and A4 were the endorsements made in Ex.A2. Ex.A5 dated 01.10.2009 was a registered agreement of sale and Ex.A6 was the endorsement made in Ex.A5. Exs.A7, A9 and A10 were the notices exchanged between the parties. Ex.A11 was the endorsement made on Ex.A10.

13. The defendants did not mark any document. However, Exs.C1 to C6 were marked as Court documents. Ex.C1, C2, C3 and C4 were the reports of the Forensic Science Laboratory and Exs.C5 and C6 were photographs forwarded by the Forensic Science Laboratory.

14. The learned Trial Judge while examining the facts and the evidence adduced, noted that since the defendants had disputed the agreement, the plaintiff had taken steps to send the disputed documents to the handwriting expert and to the fingerprints expert for comparison of the admitted signatures.



The reports were marked as Exs.C1 to C6 and the experts were examined as PW-5 to PW-6. The learned Trial Judge noted that the reports revealed that the signatures and the thumb impressions found in the disputed document belong to the 1st to 3rd defendants. It was also noted that in Ex.A1, in all the five pages, the plaintiff and the 1st to 3rd defendants have signed. The document was witnessed by PW-2. The document was written by PW-4. The 3rd defendant was examined as DW-1. In his cross examination, he admitted his signature in Ex.A1. The handwriting expert / PW-5 found that all the signatures in Ex.A5 were signed by D1 to D3. The witness withstood cross examination. It was therefore held that Ex.A1 was true and valid document.

15.With respect to the registered agreement of sale marked as Ex.A1, it had been contended in the written statement that it was executed as security for loan advanced by D4 and D5. The plaintiff had however, claimed the relief only on the basis of the unregistered agreement of sale. The learned Trial Judge, after examining the evidence, held that Ex.A5 was also true and valid and binding on the defendants.

16.Thereafter, with respect to the unregistered agreement of sale, which was marked as Ex.A2, which also contained the endorsements for receipt of further advance, it had been held that the defendants had denied the signatures. But however, quite apart from the signatures, Ex.A2 also contained their left



thumb impressions. In Ex.A3, in one of the endorsements, PW-2 was the attester. PW-6, the fingerprint expert had also stated that the thumb impressions were that of the defendants. It was therefore held that the signatures and the thumb impressions in Exs.A2 to A4 were true and genuine. It was finally held that, Exs.A2 to A4 were valid and binding on the defendants.

17.With respect to the issue of readiness and willingness, the learned Trial Judge observed that the total sale consideration was fixed at Rs.27,00,000/- and it was mentioned that another advance of Rs.5,50,000/- should be paid within 10 days, but which was not paid. But however, a sum of Rs.6,00,000/- had been paid on 24.09.2009. It was further agreed that the sale deed had to be executed within one year and that time was till 23.09.2010. In the interregnum period, the plaintiff had paid a sum of Rs.1,50,000/- on 23.12.2009 and another sum of Rs.2,00,000/- on 23.03.2010.

18.The case of the plaintiff was that the defendants did not lay the road from the suit property till the panchayat road. It was observed that this aspect was not mentioned in the agreement. It was also observed that the plaintiff could have also levelled the roads, since he had claimed he put in possession. It was further held that the plaintiff was not able to prove that he was ready and willing to perform his part of the agreement. In view of these reasonings, the relief of specific performance was denied but the alternate relief of refund of advance amount was granted.



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19.Challenging these findings, the plaintiff had filed the present Appeal Suit.

20.Heard both sides.

A.S.No.548 of 2018:

21.The point to be decided in this appeal is “*whether the appellant was ready and willing to perform his part of the agreement*”.

22.The plaintiff in O.S.No.212 of 2012, on the file of the learned IV Additional District Court, Bhavani, had filed the present appeal. The said suit had been filed seeking specific performance of an unregistered agreement of sale dated 24.09.2009 marked as Ex.A2. As a matter of fact, the plaintiff had paid a token advance even earlier to the said agreement of sale on 03.09.2009 and this was also written down in a document which was marked as Ex.A1. The consistent stand of the 1st, 2nd and 3rd defendants was denial of execution of their signatures and affixing of their thumb impressions on both Exs.A1 and A2. However, this denial had been found to be false, owing to the reports received on their authenticity when the documents were sent for forensic examination. The witness who compared the signatures of the 1st, 2nd and 3rd defendants was



examined as PW-4 and the witness who compared the thumb impression was examined as PW-5. Their exhibits were marked as Exs.C1 to C6.

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23.The learned Trial Judge had held that Exs.A1 and A2 namely, the documents reflecting payment of advance of Rs.50,000/- and the unregistered agreement of sale were both valid and binding on the defendants. There also endorsements made in Exs.A3 and A4 for receipt of further advance amounts and the signature therein were also held to be proved, by examining the witnesses to the said endorsements and also by the evidence of PW-4 and PW-5. Therefore, it is clear that the 3rd defendant, who had filed the written statement, had not come to Court with clean hands and had not divulged the true facts before the Court.

24.Once he had taken a false stand of denial of agreement which contention stood discredited owing to the signatures and the thumb impressions being found true and genuine, atleast to the extent of the thumb impressions, on which the evidence of the expert is conclusive, the Court will have to be necessarily have to view every stand taken by the defendants with prudence and will have to be carefully scan their evidence.

25.The appellant had entered into an agreement of sale with respect to the suit property for total sale consideration of Rs.27,00,000/-. This amount had



been mentioned in Ex.A2. Ex.A2 had been declared as binding on the defendants. The defendants had not filed any appeal challenging this particular finding by the trial Court. The appellant had paid an initial advance of Rs.50,000/- even before the agreement and thereafter, he had also paid an advance of Rs.6,00,000/- on the date of execution of Ex.A2. He had paid a further advance of Rs.1,50,000/- and an additional advance of Rs.2,00,000/- on 23.12.2009 and on 23.03.2010. These endorsements were marked as Exs.A3 and A4. The total advance of Rs.9,50,000/- had been paid.

26.The appellant had issued a legal notice calling upon the defendants to execute the sale deed. This notice had been issued on 27.08.2012 and had been marked as Ex.A7. The acknowledgement cards with respect to the 1st and 2nd defendants were marked as Ex.A8. A reply notice was issued on 13.09.2012, which was marked as Ex.A9. In the reply notice there had been denial of execution of the agreement of sale. A rejoinder notice was, therefore, issued on 18.09.2012 under Ex.A10. The counsel for the plaintiff had called upon the counsel for the defendants to come over to his office to examine the documents. Inspection was accordingly made. An endorsement, in this connection, was made under Ex.A11. The respondents admitted to the execution of the registered agreement of sale, which was marked as Ex.A5. It was the contention of the defendants that Ex.A5 had been entered into as security for amounts advanced by the 4th and 5th defendants. They had not summoned the 4th and 5th



defendants to elicit this particular fact. Once, the stand of the defendants in the written statement is found to be false, no credence can be given to their further explanation for entering into the registered agreement of sale. The fact remains that there has been an agreement of sale between the 1st appellant on the one hand and the 1st, 2nd and 3rd respondents on the other hand. The 2nd defendant had died and legal representatives had been brought on record. They cannot disclaim knowledge of the agreement.

27. In (2022) 7 SCC 384, *P. Ramasubbamma v. V. Vijayalakshmi*, it had been held as follows:

“9. Considering the fact that original Defendant 1—vendor original owner admitted the execution of agreement to sell dated 12-4-2005 and even admitted the receipt of substantial advance sale consideration, the learned trial court decreed the suit for specific performance of agreement to sell dated 12-4-2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff vendee. Therefore, as such the learned trial court rightly decreed the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the



advance sale consideration; thereafter no further evidence and/or proof was required.”

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28. The appellants had been non-suited only on the ground that they were not ready and willing to perform their part of the agreement namely, to pay the balance sale consideration. However, it is to be pointed out that when the respondents had denied the execution of the agreement and had withheld the advance amount paid, the appellant necessarily had to exercise caution before committing himself to pay the payment of balance sale consideration. The defence taken by the 1st to 3rd defendants had been proved to be false during the course of trial. The disputed documents had been forwarded to the Forensic Science Laboratory and the signatures were held to be the signatures of the defendants and the thumb impressions were held to be the thumb impressions of the defendants. When they had actually affixed their signatures and thumb impressions and had thereafter, belatedly denied execution of the document naturally, the 1st appellant will have to exercise caution before paying the balance sale consideration. It is only prudent that he exercised such caution.

29. It is informed that subsequent to the decree, the balance sale consideration had been deposited into Court. The learned Trial Judge having held that the agreement was valid and binding on the defendants, should not have viewed the non-payment of the balance sale consideration with such



narrow eyes. A notice had been issued prior to the period stipulated in the agreement. Once, in the reply to the notice, the defendants had taken a stand that the agreements were not executed by them, then naturally, the time limit specified in the agreement will have to be extended to determine this particular fact and to establish that the agreements had actually been entered into by the 1st, 2nd and 3rd defendants. This was established only during the course of trial.

30. Therefore, we hold that, time could never have been the essence of the agreement, in view of the stand taken by the 1st to 3rd defendants in the reply notice Ex.A9. They had denied execution and therefore, there was an obligation on the part of the appellant to prove the agreement and prove the signatures and thumb impression in the agreement and prove the endorsements in the agreement. This could be done only during the course of trial.

31. We therefore find no fault with the appellant for not paying the further advance before instituting the suit. The appellants can never be non-suited on the ground that he was not ready and willing to pay the balance sale consideration. We hold that the conclusion reached by the trial Court, will necessarily have to be interfered and set aside. Therefore, the Appeal Suit is allowed with costs. We hold that the appellants are entitled for specific performance of the agreement and we direct that if the balance sale consideration had been deposited into the Court, the respondents should come



forward to execute the sale deed within a period of four weeks from the date of receipt of a copy of this judgment, failing which the trial Court should execute the sale deed in favour of the appellants herein. Consequently, connected Civil Miscellaneous Petition is closed.

(C.V.K.,J.) (K.B.,J.)
12-02-2026

smv

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

To

- 1.The IV Additional District Court, Bhavani, Erode District.
- 2.The Section Officer
VR Section,
High Court of Madras.



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**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

smv

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