



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 68 of 2020

Alamelu

..Appellant(s)

Vs

1. Chandranathan
2. Duraisamy
3. Jayaraman

..Respondent(s)

Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree of the Learned Principal Subordinate Judge, Tindivanam in AS No.45/2014 dated 14/12/2018 confirming the Judgment and Decree of the Learned District Munsif cum Judicial Magistrate, Vanur in OS No. 16/2009 dated 28/08/2014.

For Appellant(s): Mr.R.P.Ruban Chakravarthy
for M/s.S.Kaithamalai Kumaran

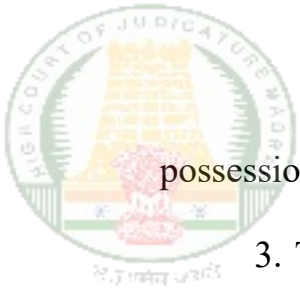
For Respondent(s): M/s.T. Sai Krishnan for R1
R2-Refused
M/s.R.P.Ruban Chakravarthy for R3

JUDGMENT

The second defendant in a suit for specific performance is the appellant. The first respondent herein filed a suit for specific performance of sale agreement and also for permanent injunction. The suit was decreed by the trial court. The first appeal filed by the second defendant was also dismissed. Hence, the appellant/2nd defendant has come before this court by way of second appeal.



2. According to the first respondent/plaintiff, the plaintiff and the first defendant in the suit are brothers. The first defendant in the suit purchased the agreement mentioned property from one Kathavaraya Gounder S/o. Subbaraya Gounder under sale deed dated 06-12-1985. He agreed to sell the suit property to the plaintiff for sale consideration of Rs.30,000/- and executed a sale agreement on 19-02-1991. On the date of sale agreement itself, the entire sale consideration of Rs.30,000/- was paid by the plaintiff in favour of the first defendant. The possession of the agreement mentioned property was also handed over to the plaintiff. Thus, from the date of agreement onwards, the plaintiff has been in possession and enjoyment of the agreement mentioned property treating it as his own property. It was also stated that the plaintiff prescribed title to the suit property. Further, it was pleaded by the plaintiff that in view of close relationship between the plaintiff and the first defendant, the plaintiff believed that the first defendant would execute the sale deed at any time on request made by the plaintiff. Just prior to the filing of the suit, the first defendant attempted to alienate the property to defendants 2 and 3. Hence, a legal notice was issued by the plaintiff on 04.03.2009 calling upon the defendants 1 to 3 not to encumber the property. The defendants came up with false reply. Hence, the plaintiff was constrained to file a suit for specific performance of sale agreement dated 19.02.1991. The plaintiff also sought for permanent injunction restraining the defendants from interfering with his



possession over the suit property.

3. The first defendant filed a written statement denying the execution of sale agreement. It was his specific case that the suit sale agreement was a forged document and the possession of agreement mentioned property was never handed over to the plaintiff. It was also stated that the first defendant sold the property to second defendant for a valuable consideration and hence, the first defendant sought for dismissal of the suit.

4. The appellant/ 2nd defendant in the suit filed a written statement denying the execution of suit sale agreement. The second defendant also denied the claim made by the plaintiff that he had been in possession and enjoyment of the suit property. It was further pleaded by the second defendant that she purchased the property on 05.03.2009 from the first defendant for valuable consideration and she was a bonafide purchaser of the property and hence, the suit shall be dismissed.

5. Before the trial court, the plaintiff was examined as PW1. The attestor and scribe to Exhibit A1, suit sale agreement were examined as PW2 and PW3. One independent witness was examined as PW4. On behalf of the plaintiff, 23 documents were marked as Ex.A1 to Ex.A23. The second defendant was examined as DW1 and one independent witness was examined as DW2. On behalf of the defendants, four documents were marked as Ex.B1 to Ex.B4.

6. The Trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the suit sale agreement was a



genuine document. It concluded that the plaintiff was entitled to specific performance and also injunction and decreed the suit as prayed for. Aggrieved by the same, the second defendant preferred an appeal in AS.No.45 of 2014 on the file of Principal Subordinate Judge, Tindivanam. The first appellate court affirmed the findings of the trial court. Aggrieved by the concurrent findings, the present second appeal is filed.

7. At the time of admission, this Court formulated the following substantial questions of law by order dated 28.01.2020.

a) Are the Courts below justified in holding that an agreement of sale can be enforced even after 18 years of the execution, especially when the execution is not admitted by the executant?

b) When the jurisdiction to decree specific performance is discretionary and the Courts below are not bound to grant the relief merely because it is lawful, and the Courts below justified to grant the relief of specific performance after 18 years of the alleged agreement of sale?

8. Elaborating the substantial questions of law framed at the time of admission, the learned counsel for the appellant submitted that the suit sale agreement was executed on 19-02-1991 and the present suit has been filed by the plaintiff only on 11-03-2009 nearly after 18 years. Therefore, the plaintiff has not proved his readiness and willingness as required under Section 16 of Specific Relief Act. The learned counsel further submitted that in the plaint,



there is no averment about the readiness and willingness of the plaintiff and hence, the trial court committed a serious error in decreeing the suit for specific performance without rendering any findings with regard to readiness and willingness.

9. The learned counsel for the contesting first respondent/plaintiff submitted that the entire sale consideration has been paid by the plaintiff on the date of sale agreement. Therefore, almost all obligations under agreement has been performed by the plaintiff on the date of agreement itself. In such circumstances, mere delay in filing a suit cannot be put against the plaintiff.

10. Exhibit A1, suit sale agreement was dated 19.02.1991. Admittedly, the suit has been presented by the plaintiff only on 11.03.2009 nearly after 18 years. In the plaint, the plaintiff has not stated anything about his attempt to get the sale deed executed. Nowhere in the plaint the plaintiff has stated that after execution of the suit sale agreement and payment of the sale consideration, he approached the 1st defendant and called upon him to execute the suit sale agreement. The first demand was made by the plaintiff only by way of legal notice dated 04.03.2009. In the absence of averment in the plaint that the plaintiff approached the 1st defendant calling upon him to execute the sale deed, it will be very difficult to come to the conclusion that the plaintiff proved his readiness and willingness. The mere payment of entire sale consideration would not absolve plaintiff of his obligation to plead and prove readiness and willingness. As a purchaser, he has to purchase stamp papers, make ready sale



deed and call upon agreement vendor to complete the sale transaction. Payment of amount may be the proof for readiness. But his failure to follow up and get the sale deed executed in his name clearly establish lack of willingness on the part of plaintiff.

11. It was vehemently contended by the learned counsel for the first respondent/plaintiff that in the suit sale agreement, no time limit has been fixed for performance. Therefore, the delay in filing of the suit cannot be put against the plaintiff.

12. It is settled law that if no time limit is prescribed in the suit sale agreement, the party shall endeavour to complete it within the reasonable time. What is the reasonable time for performance of an agreement is depending on the facts and circumstances of the case. In the case on hand, admittedly, the entire sale consideration has been paid by the plaintiff on the date of sale agreement. In such circumstances, absolutely there is no necessity for the plaintiff to wait for nearly 18 years to prosecute the performance of the agreement. It is stated that the parties are brothers and hence, believing the first defendant would execute the sale deed at any time, the plaintiff kept quiet for a long time. The period of 18 years cannot be treated as a reasonable period for seeking performance of the agreement. It is also submitted by the learned counsel for the first respondent that the possession of the agreement mentioned property was handed over to the plaintiff on the date of agreement and hence, he kept quiet for such a long time.



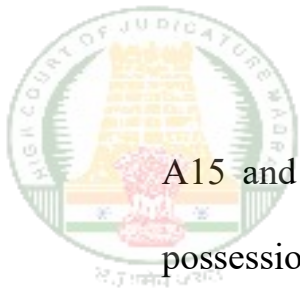
13. In order to prove the possession of the plaintiff over the suit property, he produced kist receipt paid by him and the revenue documents like Adangal and Patta. The kist receipts in the name of plaintiff have been marked as Ex. A3 to Ex.A9. A perusal of the same would indicate that he paid kist for various properties with different patta numbers. In the kist receipt produced by the plaintiff, the patta number of the agreement mentioned property namely 221 is also mentioned. Therefore, it is clear that the plaintiff paid kist for agreement mentioned property from the year 1991. However, a perusal of Exhibit A18, Patta.No.221 would indicate that patta for agreement mentioned property stands in the name of Kannammal, W/o Subbarayan and the said Kannammal is the mother of first defendant's vendor Kathavaraya Gounder. Therefore, though plaintiff said to have paid kist for Patta.No.221, the fact remains that the patta all along stood only in the name of vendor of the first defendant. Therefore, from the payment of kist, we cannot come to a definite conclusion that plaintiff has been in effective possession of the suit property. The plaintiff and the first defendant are only brothers. On account of close relationship, if one brother pays kist for the properties of other brother, it will be accepted by revenue officials. Therefore, the plaintiff cannot take advantage of the same.

14. Exhibit A14 is the Adangal extract for the suit survey number (New Survey.No. 116/2B) fazali 1407 to 1418. A perusal of the same would indicate that the name of the plaintiff, Chandranathan is mentioned in the adangal. Exhibit A15 is the adangal extract for the agreement mentioned property (New



Survey.No. 116/2B) fazali 1407 to 1418. A perusal of the same would indicate that the name of the plaintiff has been mentioned along with the name of Pattatharar, Kannammal. As mentioned earlier, Exhibit A18, Patta.No.221 stands only in the name of Kannammal. In that case, how adangal extract was issued by the Zonal Deputy Tahsildar exclusively in the name of plaintiff Chandranathan under Exhibit A14 is not clear. However, Exhibit A15 has been issued in the name of Kannammal by mentioning the name of Chandranathan also. Ex.A14 and Ex.A15 were obtained on 01.04.2011 subsequent to the presentation of the suit. A conjoint reading of Ex.A14 and Ex.A15 would indicate that both the documents are contrary to each other. Further, in the light of Exhibit A18, Patta No.221, which stands in the name of 1st defendant's vendor's mother, the adangal extract issued in the name of plaintiff under Exhibit.A14 cannot be accepted. Therefore, it is not safe to rely on Ex.A14 and Ex.A15 which were obtained by plaintiff after filing of the suit collectively for nearly 12 years (fazali 1407 to 1418).

15. On the part of the defendants, patta stands in the name of the second defendant has been marked as Exhibit B2. 'A' Register stands in the name of the second defendant has been marked as Exhibit B3. Kist receipt stands in the name of second defendant has been marked as Ex.B4. However, all these documents came into existence only in the year 2013 and 2014 subsequent to the suit. Therefore, there is no document produced by both the parties to show their possession prior to filing of the suit. As mentioned earlier, Exs.A14 and



A15 and kist receipts produced by the plaintiff are not helpful to prove the possession over the suit property. Therefore, the submission made by the learned counsel for the 1st respondent/plaintiff that the possession was handed over to the plaintiff on the date of agreement is not acceptable to this court. The plaintiff has no justification for waiting 18 long years to seek performance. The plaintiff not even pleaded about his readiness and willingness. Hence, mandatory requirement under Section 16(c) of Specific Relief Act is not complied with. The courts below committed serious error in ordering specific performance after 18 years. In view of law settled by the Hon'ble Apex Court that there shall not a decree for repayment of advance without specific prayer (refer to *K.R.Suresh Vs R.Poornima reported in 2025 INSC 617*), the refund of advance amount cannot be granted.

16. In view of the discussion made, both the substantial questions of law framed at the time of admission are answered in favour of appellant/ 2nd defendant and against the first respondent/plaintiff. Accordingly, the second appeal stands allowed by setting aside the judgment and decree passed by the courts below. As a necessary consequence, the suit stands dismissed. There shall be no order as to costs.

10-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Subordinate Judge, Tindivanam.
2. The District Munsif cum Judicial Magistrate, Vanur.



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S.SOUNTHAR, J.

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