



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 22.01.2026 | Judgment pronounced on : 13.03.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.251 of 2024

K.S.A.Sundarrajan

.. Appellant

Vs.

1.Keerthana
2.Preethi
3.Krishnadharshini
4.Chandra
L.Thangadurai (Died)
5.The Sub Registrar,
Ayyothiyapattinam,
Having office of Work at Ayyothiyapattinam,
Salem Taluk and District.

.. Respondents

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the decree and judgment dated 09.02.2024 passed in O.S.No.160 of 2014 on the file of the II Additional District Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.P.Kanan,
Legal Aid Counsel for RR1 to 4
: Mr.M.Murali
Government Advocate for R5

JUDGMENT



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The plaintiff, aggrieved by the dismissal of his suit for specific performance of an agreement of sale, is the appellant.

2.Pleadings:

The plaint in brief:

(a) The suit property was originally belonging to one Lingeswaran, who had purchased the same under a registered sale deed dated 17.09.1992. The 5th defendant is the only son of the said Lingeswaran. The 4th defendant is the wife of the son of Lingeswaran. The defendants 1 to 3 are children of the defendants 4 and 5. The said Lingeswaran executed a registered Will on 06.07.2011, bequeathing his properties to the grandchildren, namely the defendants 1 to 3. The 4th defendant, mother was appointed as guardian for minor defendants 1 to 3. The defendants 4 and 5, in order to provide better education to the defendants 1 to 3, came forward to sell the suit property and after negotiations, the plaintiff agreed to purchase the suit property for a total sale consideration of Rs.4,68,920/-.

(b) An agreement was drawn up on 04.10.2012, fixing 11 months time for completion of the sale transaction. The plaintiff paid an advance



of Rs.1,00,000/- on the date of the agreement of sale. Under the agreement, the defendants agreed to obtain permission from the Court to sell the property of the minors. On 19.10.2012, the defendants 4 and 5 filed GOP.No.210 of 2012 for permission to sell the property of the minors, to the plaintiff. The defendants 4 and 5 did not diligently prosecute the said GOP. In the first week of March 2013, the plaintiff approached the defendants 4 and 5, expressing readiness and willingness to complete the transaction. As the defendants 4 and 5 were evasive, the plaintiff has filed the suit for specific performance. The plaintiff also sought for permanent injunction to restrain the 6th defendant, the SRO from registering any sale deed produced before him for registration.

3.Written statement filed by the Court Guardian on behalf of the 3rd defendant, briefly:

The plaintiff is not a bonafide agreement holder. The value of the property is more than Rs.25,00,000/-. The plaintiff has colluded with the defendants 4 and 5 to defraud the interest of the minors. The plaintiff is not entitled to the equitable relief of specific performance. The suit is also barred by law of limitation.

4.Written statement filed by the 6th defendant in brief:



The Registering Officer is not bound to enquire into the validity of the document brought for registration before him and hence, the registration of the agreement of sale cannot be found fault with, alleging that the executing parties have no right to execute the document.

5. Reply statement filed by the plaintiff:

In the Will of Lingeswaran, he has narrated the wayward life of his son, Thangadurai, the 5th defendant and that is why the 4th defendant, daughter-in-law was appointed as a Court Guardian to take care of the interest of the minors. The 3rd defendant is not entitled to claim benefits of Section 6 of the Limitation Act. The suit is filed in time and not hit by Article 54 of the Limitation Act. The minors, despite attaining majority, have not challenged the agreement of sale, within the time prescribed under the law of limitation. Hence, the plaintiff is entitled to the relief of specific performance.

6. Issues framed by the trial Court:

Based on the pleadings, oral and documentary evidence, the trial Court has framed the following issues:

- i. Whether the suit sale agreement intended to execute on the welfare and interest of the Minors or not?



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ii. Whether the Plaintiff is entitle to Specific performance based upon the sale agreement dated 04.10.2012 as he prayed for?

iii. Whether the Plaintiff is entitle for permanent injunction as he prayed for?

iv. What other relief?

7.Trial:

At trial, the plaintiff examined himself as P.W.1 and one of the witnesses to the agreement of sale, Shanmugam was examined as P.W.2 and Ex.A1 to Ex.A24 were marked on the side of the plaintiff. On the side of the defendants, no evidence was let in. In fact, all the defendants remained ex-parte and considering the welfare of the minors involved in the suit, the Court has appointed a Guardian and it was in pursuance of such appointment that the written statement was also filed. The official respondent, namely the SRO, who was arrayed as 6th defendant however filed a written statement.

8.Decision of the trial Court:

The trial Court, finding that the plaintiff has not proved that the sale proposed was in the interest of the minors, held that the plaintiff is not entitled to the discretionary relief of specific performance. The relief of permanent injunction was also dismissed, however, the trial Court thought it fit to direct refund of the advance of Rs.1,00,000/-, together with 7%



interest from 04.10.2012, till the date of decree and thereafter, at the rate of 6% per annum, till the date of realization.

9. Present appeal:

Challenging the order of the trial Court, the present appeal suit has been preferred.

10. I have heard Mr.R.Nalliyappan, learned counsel for the appellants and Mr.P.Kannan, Legal Aid Counsel for the respondents 1 to 4 and Mr.M.Murali, learned Government Advocate for the 5th respondent.

11. Arguments of the learned counsel for the appellant:

(a) Mr.R.Nalliyappan, learned counsel appearing for the appellant would state that the plaintiff had approached the Court with clean hands. The plaintiff had pleaded readiness and willingness and has also established the same, by letting in oral and documentary evidence. He would further state that the default committed by the defendants 4 and 5 in not getting permission to sell the property of the minors cannot be held against the plaintiff. He would also state that the trial Court has erroneously found that the sale agreement was not in the interest of the minors, when not only the agreement of sale made a mention about the



sale being only for the welfare of the minors and also the averments in the GOP also confirmed the said factum.

(b) The learned counsel for the appellant would therefore state that when the defendants did not even come forward to contest the suit, the Court ought not to have held that the plaintiff has not established that the sale was for the welfare of the minors and in their interest. He would further contend that when there is absolutely no evidence on the side of the defendants, the Court ought to have accepted the plaintiff's contentions and decreed the suit. He would further state that though the Court appointed guardian has stated that the value of the property is Rs.25,00,000/-, the same has also not been established and he would therefore pray for the appeal being allowed.

12.Arguments of the learned counsel for the respondents:

Per contra, Mr.P.Kannan, legal aid counsel for the respondents 1 to 4 would contend that since the agreement was entered into by the parents, namely the defendants 4 and 5 in respect of the property of the minors, the defendants 1 to 3, the agreement was voidable in nature and therefore, such an agreement cannot be specifically enforced. He would further state that there has not even been a pre suit notice expressing readiness and



willingness and demanding for execution and registration of the sale deed.

He would also state that the plaintiff has not adduced any evidence with regard to sufficient funds being available with him, at all relevant points of time to meet the balance sale consideration and that no deposit was also made before the trial Court to show readiness and willingness and availability of funds. He would therefore pray for dismissal of the appeal.

13.Arguments of the learned Government Advocate for the 5th—
respondent:

Mr.M.Murali, learned Government Advocate appearing for the 5th respondent would contend that the trial Court has rightly rejected the blanket relief of permanent injunction sought for against the Sub-Registrar and the same does not warrant interference in appeal, since it is beyond the scope of enquiry by the Sub-Registrar at the time of documents being presented for registration to ascertain whether the executant is competent to execute the document or not. He would also therefore pray for dismissal of the appeal.

14.I have carefully considered the submissions advanced by the learned counsel for the parties and perused the records placed before me.



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15. Point for considerations:

On consideration of submission made by the learned counsel on either side, I frame the following points for consideration:

1. Whether the plaintiff has proved readiness and willingness to perform his obligations under the agreement of sale?

2. Whether the agreement of sale was in the interest of the minors, defendants 1 to 3.

16. Points 1 and 2 are take up together:

The agreement of sale is not disputed. The factum of payment of advance amount of Rs.1,00,000/- is also not in dispute. However, the contention taken by the defendants through the Court appointed guardian for the 3rd defendant is only that the sale is not in the interest and welfare of the minors, since the property was worth Rs.25,00,000/- even on the said date of agreement and the defendants 4 and 5, parents of the minors, have colluded to alienate the property in favour of the plaintiff, for a throw away price of Rs.4,68,920/-. Even in the Will of the original owner Lingeswaran, he has expressed his dissatisfaction over his son's wayward living and that is the reason why he did not want his own son to be the guardian for the minor children and he therefore appointed his daughter-in-law as the guardian for the minor children. The said Will does not, in



fact, permit sale of the suit property. It is not the case of the parties that the testator, Lingeswaran had permitted the guardian to sell the property of the minors. However, the parents of the minors, stating that they were not in a position to maintain and educate the minors, have entered into the agreement of sale in favour of the plaintiff and also received a sum of Rs.1,00,000/-, as advance.

17.No doubt, as contemplated an application in GOP was also filed seeking permission to sell the share of the minors. However, admittedly, no orders were passed in the said GOP for several years together and in fact, noticing that the minors had attained the age of majority, the OP was dismissed as infructuous only on 05.12.2013, that is after more than 11 years since it was filed.

18.The plaintiff was conscious of the fact that the sale in his favour could be effected, only if permission was granted by the Court to sell the property of the minors. It is not even a case where the minors only had a share in the property, but the entire property belonged to the minors. The plaintiff has not taken any steps, despite knowing that the Court permission has been applied for. The plaintiff has also not produced any documentary evidence to show that he was ready and willing and was



possessed of the balance sale consideration of Rs.3,68,920/-, except *ipse dixit* oral evidence P.W.1 and P.W.2. There is absolutely no evidence on the side of the plaintiff that he had sufficient funds and that he was ready and willing to pay the balance sale consideration and get the sale deed executed in his favour. Merely because the defendants have remained ex-parte and have not chosen to contest the suit, it will not automatically entitle the plaintiff to the discretionary relief of specific performance.

19.It is incumbent, under Section 16(c) of the Specific Relief Act for the plaintiff to not only plead, but also prove readiness and willingness. The conduct of the plaintiff in not even calling upon the defendants by way of a pre suit notice stating that he was ready and willing to pay the balance sale consideration and that the defendants have not diligently prosecuted the GOP for getting permission assumes significance. In fact, the plaintiff has only sailed along with the defendants 4 and 5, in not taking any steps to expedite disposal of the GOP until 2023, on which date also, it was dismissed only on account of the minors attaining the age of majority. It is further contended even in the written statement that the property value is more than Rs.25 lakhs and the agreement of sale for Rs.4,68,920/- is not in the interest of the minor



children.

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20.It has been argued by Mr.P.Nalliyappan, that the defendants have not established that the value of the property is more than Rs.25 lakhs and further, the minors, even after attaining majority, have not questioned the agreement of sale, as not being in their interest. I find that there has been no cross examination of plaintiff's witnesses on the side of the defendants 1 to 5, excepting for the cross examination of the said witnesses by the 6th defendant, who is only the Sub-Registrar. Therefore, I am unable to accept the arguments of the learned counsel for the appellant that the valuable property worth much more than the consideration reflected in the agreement of sale was attempted to be given away for song to the plaintiff. However, at the same time, it does not absolve the plaintiff from establishing readiness and willingness.

21.In fact, I find that the trial Court has stopped short of giving any finding on readiness and willingness, by rejecting the agreement of sale at the threshold, on the ground that it was not in the interest of the minor children. Even assuming the agreement was entered into only in the interest and for the welfare of the minors, to maintain and educate them, by not sticking to the timelines fixed in the said agreement of sale, the



very object and purpose for which the property was agreed to be sold itself, stood defeated. The plaintiff cannot attempt to shift the blame on the defendants 4 and 5 for not obtaining permission. The plaintiff, as already stated, was well aware of the fact that the GOP had to be filed and permission was required from the Court to sell the property specifically to the plaintiff. Therefore, if really the plaintiff was ready and willing, he ought to have been behind the back of the defendants 4 and 5 to ensure that necessary permission was obtained from the Court to sell the property of the minors, time or expeditiously. It is in this context that non-issuance of even a notice prior to filing of the suit also looms large and casts doubts on the plaintiff's readiness and willingness.

22.Added to this, at the risk of repetition, there is absolutely nil evidence with regard to sufficiency of funds to meet the balance sale consideration as well. In the light of the above, I do not find any infirmity in the findings arrived at by the trial Court for deciding to not exercise the discretion under Section 20 of the Specific Relief Act in favour of the plaintiff, warranting interference in this appeal.

23.In fact, the trial Court, despite there not even being an alternative prayer for refund of advance, has considered equity and granted a decree



of refund of Rs.1 lakh, together with interest. Therefore, viewed from any angle, I do not see the appellant becoming entitled to the relief of specific performance. For all the above reasons, the points 1 and 2 were answered against the appellant and in favour of the respondents.

24.Result:

In fine, the Appeal Suit is dismissed. There shall be no order as to costs.

13.03.2026

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

1.The Sub Registrar,
Ayyothiyapattinam,
Having office of Work at Ayyothiyapattinam,
Salem Taluk and District.

2.The II Additional District Court,
Salem



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
A.S.No.251 of 2024

13.03.2026