



A.S. No. 280 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2025
PRONOUNCED ON : 01.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No. 280 of 2021

A.Sivakumar,
S/o.Arunachalam,
No.69, Sathy Road,
Ganapathy, Coimbatore.

...Appellant

Versus

1.M.Loganayaki,
W/o.A.V.Parthasarath,
No.A/9, Pricacolony,
Kaundamapalayam,
Coimbatore.

2.D.Santhamani,
W/o.Devaraj,
No.70, Sathy Road,
Ganapathy, Coimbatore.

3.Radhamani,
W/o.P.Sivasamy,
Residing at No.7/55, Thekku Thottam,
Thennammanallur,
Coimbatore.

...Respondents

PRAYER:

Appeal Suit filed under Section 96 of the Code of Civil Procedure,
1908 against the Judgment and decree dated 20.04.2021 made in



A.S. No. 280 of 2021

O.S.No.116 of 2007 on the file of the III Additional District Judge,
Coimbatore.

For Appellant : Mr.K.Balamurali, Mr.Shivakumar, Advocates.

For Respondents : Mr.Chenthoori Pugazendi for
Mr.K.Balu for R1.

R2 & R3 – Served - No appearance.

J U D G M E N T

The present appeal has been preferred by the first defendant assailing the judgment and decree dated 20.04.2021 passed in O.S. No.116 of 2007 on the file of the learned III Additional District and Sessions Judge, Coimbatore, by which the suit instituted by the plaintiff for specific performance came to be decreed.

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

3. Case of the Plaintiff: The plaintiff pleaded that the suit property originally belonged to one C. Muthusamy Gounder and, upon his demise, devolved on the first defendant under a Will dated 10.01.2001. It was further pleaded that the first defendant entered into a sale agreement dated 09.10.2006 (Ex.A2), agreeing to sell the suit property for a total

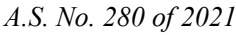


A.S. No. 280 of 2021

sale consideration of Rs.10,15,000/-, and received a sum of Rs.6,00,000/- by way of advance.

4. According to the plaintiff, although a period of three months was stipulated under the agreement, she had, at all times, been ready and willing to perform her part of the contract. It was her further case that the first defendant failed to produce the original title deeds and furnish the correct measurements of the suit property, and thereafter issued a notice dated 27.01.2007 cancelling the agreement and forfeiting the advance amount, which was suitably refuted by the plaintiff through a reply notice. The plaintiff also asserted that she was present at the office of the Sub-Registrar on 15.02.2007 with the balance sale consideration, but the first defendant did not turn up. Hence, the suit came to be laid for specific performance and permanent injunction.

5. Defence of the First Defendant: The first defendant, while admitting the execution of Ex.A2, contended that time was the essence of the contract. It was his specific stand that, since the plaintiff had failed to pay the balance sale consideration within the stipulated period of three months, the agreement was validly terminated by notice dated 27.01.2007 and the advance amount stood forfeited.



6. In the additional written statement, the first defendant further

7. Findings of the Trial Court: The Trial Court tried O.S. No.116



A.S. No. 280 of 2021

8. Aggrieved by the judgment and decree in O.S. No.116 of 2007, the first defendant has preferred the present appeal. No appeal has been filed against the dismissal of O.S. No.14 of 2013.

9. Grounds of Appeal: The appellant/first defendant assailed the judgment and decree of the Trial Court contending that Ex.A2 was an independent agreement and not a mere continuation of Ex.B1; that time was the essence of the contract; that the plaintiff had failed to establish continuous readiness and willingness, as mandated under Section 16(c) of the Specific Relief Act; that the agreement had already been validly terminated by notice dated 27.01.2007; and that, in the absence of a prayer seeking declaration that such termination was invalid, the suit for specific performance was not maintainable.

10. The learned counsel for the appellant/1st defendant contended that the Trial Court erred in granting specific performance by misconstruing the documentary evidence. It was argued that the agreement dated 09.10.2006 (Ex.A2) is an independent contract and not a continuation of the earlier agreement dated 01.12.2005 (Ex.B1), the earlier agreement has been suppressed by the plaintiff, and that Ex.A2 contains no recital indicating any extension or renewal of Ex.B1. It was



A.S. No. 280 of 2021

further contended that Ex.A2 prescribed a period of three months for completion and provided for forfeiture of advance and cancellation upon default, thereby making time the essence of the contract. The plaintiff having failed to pay the balance consideration within the stipulated period, the agreement stood validly cancelled, as evidenced by the notice dated 27.01.2007. The finding of the Trial Court that unilateral cancellation without notice is invalid was assailed.

11. The learned counsel also submitted that the plaintiff failed to establish continuous readiness and willingness as required under Section 16(c) of the Specific Relief Act, inasmuch as no evidence of financial capacity during the contractual period was produced, and subsequent transactions cannot cure such defect. The Trial Court erred in relying upon Ex.A9, a subsequent sale deed, to infer the plaintiff's financial capacity, thereby impermissibly stepping into the shoes of the plaintiff. It was further contended that the Trial Court erred in holding that the reason for fixation of time was not stated and in concluding that the defendant was not ready to perform. The findings regarding alleged obligations of the 1st defendant to clear, measure the property or produce original title deeds were stated to be unsupported by Ex.A2. It was also pointed out



A.S. No. 280 of 2021

that PW3, in his deposition, admitted that he had inspected the title deeds and measured the property.

12. In support of the said submissions, reliance was placed upon *Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Pvt. Ltd.*, *Kamal Kumar v. Premlata Joshi*, *Sukhwinder Singh v. Jagroop Singh*, *C.S. Venkatesh v. A.S.C. Murthy*, *R. Shama Naik v. G. Srinivasaiah*, *Shenbagam v. K.K. Rathinavel*, *U.N. Krishnamurthy v. A.M. Krishnamurthy*, and *Kolli Sathyanarayana v. Valuripalli Kesava Rao Chowdary* to emphasize that time is essence of the contract, time stipulations may be binding, and specific performance cannot be granted absent proof of readiness and willingness.

13. The learned counsel for the respondent/plaintiff contended that the Trial Court had rightly decreed the suit for specific performance, since the 1st defendant had admittedly agreed to sell the suit property for a total consideration of Rs.10,15,000/- and had received a substantial advance of Rs.6,00,000/-. According to her, though there had been an earlier agreement dated 01.12.2005 in favour of her husband and the payments made thereunder were given credit in the subsequent agreement dated 09.10.2006 executed in her favour, the transaction could not be



A.S. No. 280 of 2021

completed only because of the delay attributable to the 1st defendant, particularly his failure to clean and measure the property as agreed.

14. She further submitted that the notice dated 27.01.2007 was false and was issued only as an attempt to wriggle out of the contract after the value of the property had increased, whereas she had, throughout, been ready and willing to pay the balance sale consideration of Rs.4,15,000/- and complete the sale.

15. It was also contended that the Trial Court had properly appreciated the evidence and had rightly held that time was not the essence of the contract, particularly in the light of the earlier course of dealings between the parties and the endorsement extending time. According to the respondent, her readiness and willingness stood established by the reply notice, telegram, oral evidence and materials relating to her financial capacity, and therefore the decree for specific performance called for no interference.

16. In support of the said submissions, reliance was placed on ***M. Michaelsamy(deceased) v. John Kennedy Pradeep, I.S. Sikandar v. K. Subramani, and Govind Prasad Chaturvedi v. Hari Dutt Shastri*** for the proposition that, in contracts relating to immovable property, while



A.S. No. 280 of 2021

examining the question of time being essence of the contract, court should look into the surrounding circumstances in order to decide the intention of the parties at the time of agreement.

17. The following points arise for consideration:

- (i) Whether the suit for specific performance without challenging the termination of Ex. A2 is maintainable?
- (ii) Whether the plaintiff has proved continuous readiness and willingness?
- (iii) Whether the plaintiff is entitled to the discretionary relief of specific performance?
- (iv) Whether the judgment and decree of the Trial Court require interference?

Point No. 1:

18. Nature of Ex.A2 and Suppression of the Earlier Transaction:

A significant aspect emerging from the evidence is the existence of the earlier agreement, Ex.B1 dated 01.12.2005, entered into between the first defendant and the plaintiff's husband, under which a sum of Rs.5,00,000/- had already been paid. Though the plaint has been framed



A.S. No. 280 of 2021

as if Ex.A2 was the first and only agreement between the parties, it has come to light in cross-examination that the advance paid under Ex.B1 was carried forward and appropriated as part of the advance under Ex.A2. Thus, out of the total sum of Rs.6,00,000/- shown as advance under Ex.A2, only Rs.1,00,000/- was in fact paid on the date of Ex.A2, while the remaining amount Rs.5,15,000/- pertains to the earlier transaction.

19. This material fact has not been disclosed in the plaint. In the absence of necessary pleadings, the plaintiff cannot be permitted to rely on oral evidence to portray Ex.A2 as a continuation of Ex.B1. It is well settled that no amount of evidence can be looked into in the absence of pleadings.

20. Effect of Termination — Maintainability of the Suit: Admittedly, the first defendant terminated the agreement by issuing notice dated 27.01.2007 (Ex.B2). Though the plaintiff sent a reply thereto, no declaratory relief has been sought to challenge the validity of such termination. The Hon'ble Supreme Court, in ***I.S. Sikandar v. K. Subramani*, (2013) 15 SCC 27**, has held that where an agreement has been terminated, a suit for specific performance, in the absence of a prayer for declaration that the termination is invalid, is not maintainable.



A.S. No. 280 of 2021

In the light of the said principle, the present suit, being one for bare specific performance, is legally not maintainable. Thus, Point no.1 is answered in favour of 1st defendant / appellant.

Point No. 2:

21. Whether Time Was the Essence of the Contract: Ex.A2 contains a specific stipulation fixing a period of three months for completion of the sale transaction. The backdrop of the earlier failed transaction under Ex.B1 lends considerable significance to such stipulation and indicates that the parties intended to prescribe a definite and binding time frame under Ex.A2. The said period expired on 09.01.2007, and the first defendant thereafter issued a notice dated 27.01.2007 terminating the agreement. Till the issuance of such termination notice, there is no convincing material to show that the plaintiff had taken any concrete or effective steps to perform her part of the contract. In the above circumstances, this Court is of the view that the parties intended time to be the essence of the contract.



A.S. No. 280 of 2021

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22. Readiness and Willingness: The plaintiff has adopted inconsistent stands. While, on the one hand, she claims that she was always ready and willing to perform her part of the contract, on the other, she seeks to attribute the delay to the first defendant on the ground that he had not produced the title deeds and had not cleared and measured the property. These explanations do not inspire acceptance. The evidence of P.W.2 and P.W.3 clearly discloses that the plaintiff's husband had verified the title documents even prior to Ex.B1. In that view, the contention that the title deeds were not furnished cannot be sustained. It is also well settled that a vendor cannot ordinarily be expected to part with the original title deeds before the execution of the sale. The conduct of the plaintiff, including her silence during the stipulated period and the absence of satisfactory proof regarding her financial capacity, would clearly indicate that continuous readiness and willingness has not been established. Thus, Point no.2 is answered in favour of 1st defendant / appellant.



A.S. No. 280 of 2021

Point No. 3:

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23. Discretionary Relief: Specific performance is an equitable and discretionary relief. In the case on hand, the plaintiff has suppressed material facts, failed to establish continuous readiness and willingness, and approached the Court without seeking the necessary relief in respect of the termination of the agreement. In such circumstances, the plaintiff cannot be held entitled to the equitable relief of specific performance. Thus, Point no.3 is answered in favour of 1st defendant / appellant.

Point No. 4:

24. In view of the foregoing findings, this Court holds that the plaintiff has failed to establish her continuous readiness and willingness to perform her part of the contract; that the agreement stood validly terminated; that, in the absence of a prayer for declaratory relief, the suit as framed is not maintainable; and that the Trial Court has misdirected itself both in its appreciation of the evidence and in its application of the governing legal principles. Thus, Point no.4 is answered in favour of 1st defendant / appellant.

25. In the result, the appeal is allowed and the judgment and decree dated 20.04.2021 passed in O.S. No.116 of 2007 are set aside.

13/15



A.S. No. 280 of 2021

Consequently, O.S. No.116 of 2007 shall stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions, if any, shall stand closed.

01.04.2026

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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

To

1. The III Additional District Judge,
Coimbatore.

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



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A.S. No. 280 of 2021

DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
A.S. No. 280 of 2021

01.04.2026