



WEB COPY

SA No. 720 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 720 of 2021 and
CMP Nos.14217 and 14218 of 2021**

S.Balaji, S/o Seenuvasalu Reddy,
No.97 Thozhur Village,
Tiruvallur Taluk And District,
Tamil Nadu 602 003.

..Appellant(s)

Vs

1. Prabakaran (died)
S/O Radhakrishnan.

(R1 died, R2 is recorded as legal representative
of the deceased R1 vide court order dated
10/04/2026 made in S.A.No.720 of 2021 and
CMP Nos.14217 and 14218 of 2021)

2. Babu, S/o Prabakaran, No.75 Putlur Road,
Kakkalur Village, Tiruvalur Taluk And District
Tamil Nadu 602 003.

3. M.Banu, W/o K.Mohan, Thirunindravur,
Poonamallee Taluk, Tiruvallur District Tamil
Nadu 602 024

4. J.Renuga, W/o S.Jaganathan,
No.5, Vallar Street, Periyakuppam,
Tiruvallur, Tamil Nadu 602 001.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the judgment and the decree in AS No.19/2018 dated 18-03-2021 on the file of the Subordinate Court, Tiruvallur, confirming the judgment and decree in OS No.400/2007 dated 02-03-2018 on the file of District Munsif Court, Tiruvallur.



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For Appellant(s):

Ms. V. Srimathi

For Respondent(s):

Mr. A.Palaniappan for R1, R2 and R4

R3 - Insufficient Address

JUDGMENT

The unsuccessful plaintiff in a suit in O.S.No.400 of 2007 is the appellant herein.

2. The appellant/ plaintiff filed the above said suit seeking specific performance of the sale agreement dated 26.05.1994 and it was dismissed by the trial court. The findings of the trial court were affirmed by the first appellate court in A.S.No.19 of 2018 filed by the plaintiff. Aggrieved by the concurrent findings of the courts below, the plaintiff has come before this court by filing the present second appeal.

3. According to the appellant/plaintiff, the suit property belonged to the respondents/defendants and he entered into a sale agreement with them on 26.05.1994 to purchase the suit property for a sale consideration of Rs.43,500/- and he paid a sum of Rs.3,500/- as advance on the date of sale agreement itself. As per the terms of the sale agreement, the sale transaction had to be completed within six month time by paying the balance sale consideration amount, however, time was not the essence of the contract. It was stated by the plaintiff



that the suit property was delivered to the plaintiff and he has been in possession and enjoyment of the same. It was further pleaded by the plaintiff that the defendants received a sum of Rs.5,000/- from the plaintiff towards part of sale consideration on 14.06.1997. It is the further case of the plaintiff that though he was always ready and willing to perform his part of contract, the defendants attempted to alienate the properties to third parties. Therefore, the plaintiff issued a pre suit notice to the defendants on 22.03.2007, calling upon them to complete the sale transaction. But the defendants refused to perform their part of contract through a reply notice dated 24.03.2007 by sending a demand draft for Rs.8,500/- dated 24.03.2007 to the plaintiff. In such circumstances, the plaintiff was constrained to file the present suit seeking specific performance of the sale agreement against the respondents/defendants.

4. The defendants filed a written statement and contended that time was treated as an essence of the sale agreement and they also denied the readiness and willingness of the plaintiff to perform his part of agreement. It was also contended by the defendants that the sale agreement was time barred and on these pleadings, they sought for dismissal of the suit.

5. Before the trial court, on the side of the plaintiff, he examined himself as PW1 and three other witnesses were examined as PW2 to PW4 and 21 documents were marked as Ex.A1 to Ex.A21. On the side of the defendants, the



2nd defendant was examined as DW1 and three other witnesses were examined as DW2 to DW4 and 19 documents were marked as Ex.B1 to Ex.B19.

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6. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his readiness and willingness to perform his part of contract and dismissed the suit. Challenging the findings of the trial court, the plaintiff preferred an appeal in A.S.No.19 of 2019 on the file of the Subordinate Judge, Thiruvallur and the same was dismissed. Aggrieved by the concurrent findings of the courts below, the plaintiff has filed the instant second appeal.

7. The learned counsel for the appellant/plaintiff would submit that in the sale agreement, the defendants agreed to receive 8% interest, apart from the balance sale consideration, if the plaintiff failed to pay the balance sale consideration, within the stipulated time. Therefore, the parties never treated the time as essence of contract and in such circumstances, the courts below committed serious error in holding that the plaintiff has not proved his readiness and willingness to perform his part of contract. The learned counsel further submitted that the plaintiff had deposited the balance sale consideration on 22.01.2018 before the trial court. In such circumstances, according to her, the suit for specific performance should have been decreed by the courts below.



8. It is seen from the typed set of papers that the sale agreement was entered into between the plaintiff and the defendants on 26.05.1994 agreeing to the sale consideration of Rs.43,500/-. On the date of sale agreement itself, the plaintiff paid a sum of Rs.3,500/- as advance and both the parties agreed that the balance sale consideration shall be paid within six months. However, in the sale agreement, there was a clause, saying that, in case of failure to pay the balance sale consideration within the stipulated time mentioned in the agreement, the balance amount shall carry interest at the rate of 8% p.a. It is also seen from the pleadings of the parties that subsequent to the sale agreement, the plaintiff paid a sum of Rs.5,000/- on 14.06.1997 towards part payment for the balance sale consideration. Hence, the balance amount to be paid by the plaintiff was Rs.35,000/-. The first pre suit notice was issued by the plaintiff on 22.03.2007 calling upon the defendants to complete the sale transaction. Immediately, the defendants sent a reply notice on 24.03.2007, and also sent a Demand Draft for a sum of Rs.8,500/- to the plaintiff stating that the request for execution of sale deed is time barred. Therefore, the plaintiff was constrained to file the suit for specific performance.

9. From the facts narrated above, it is clear that there was a delay of nearly 13 years in issuing pre suit notice to the defendants by the plaintiff. The sale agreement was entered into between the parties on 26.05.1994 and six months period fixed in the agreement expired on 25.11.1994. However, in the



agreement, there was a default clause that in case of failure to pay the balance sale consideration, within the stipulated time, the plaintiff shall pay interest at the rate of 8% p.a. Citing this clause in the agreement, it was argued by the learned counsel for the appellant that time was not treated as essence of contract. It is pertinent to mention that the plaintiff paid a sum of Rs.5,000/- on 14.06.1997 and the same was also accepted by the defendant. The default clause in the agreement, directing payment of interest and the receipt of Rs.5,000/- by the defendant on 14.06.1997 would indicate that the parties never treated the time of essence of contract. However, merely because there is a clause in the agreement, directing the defaulted party to pay interest at the rate of 8% p.a. for the balance sale consideration, the plaintiff cannot wait indefinitely to complete the said transaction. The plaintiff should have paid the balance sale consideration within reasonable time. In the case on hand, the first pre suit notice was issued by the plaintiff only on 22.03.2007, nearly after 13 years from the date of sale agreement. The plaintiff has no explanation for waiting such long period of 13 years to perform his part of contract. Further, the plaintiff has failed to lead any evidence to convince this court that he has been ready and willing to perform his part of contract from the date of sale agreement till the date of filing the suit. The plaintiff, in his evidence as PW1, categorically admitted that he has not taken any steps to complete the sale transaction. The relevant portion of the plaintiff's evidence has been extracted by the first appellate court.



10. In the light of the admission made by PW1, the courts below, came to the conclusion that the plaintiff had failed to prove his readiness and willingness to perform his part of contract from the date of sale agreement till the date of filing the suit. The said findings are based on proper appreciation of material evidence available on record and there is no perversity in the conclusion reached by the courts below. Therefore, I do not find any substantial question of law arising for consideration in the second appeal.

11. Accordingly, the second appeal stands dismissed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

20-04-2026

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

MST

To

1. The Subordinate Judge, Thiruvallur.
2. The District Munsif, Thiruvallur.



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S.SOUNTHAR, J.

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