



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 19.12.2025

JUDGMENT PRONOUNCED ON: 17.03.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A.No.437 of 2014

and

M.P.No.1 of 2014

and

CMP No.21524 of 2017

Rajeswari

... Appellant/Respondent No.1/Plaintiff

Vs

1. Srikanth

2. Radhika

3. Jegatha

4. Amutha

... Respondents 1 To 4/Appellants/Defendants 1 To 4

5. The Executive Engineer,

Tamil Nadu Housing Board,

Tatabad, Coimbatore.

1/13



...5th Respondents/ 2nd Respondent/ 5th Defendant

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PRAYER:

This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 26.04.2013 passed in A.S.No.19 of 2013 on the file of the First Additional District Judge, Coimbatore, modifying the judgment and decree dated 07.12.2011 passed in O.S.No.458 of 2011 on the file of the First Additional Sub Judge, Coimbatore.

For Appellant	:Mr.Alladi Rahul
For R1 to R4	: Ms.J.Swetha for Mr.K.Govi Ganesan
For R5	: Mr.V.Gunasekar

JUDGEMENT

This Second Appeal arises from a suit for specific performance of an agreement of sale dated 03.08.2006, said to have been executed by late Janagaraj, the allottee of a Tamil Nadu Housing Board unit, and, in the alternative, for refund of the advance amount with interest.



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2. The matter has passed through several stages of litigation. The suit in O.S. No.458 of 2011 on the file of the I Additional Subordinate Judge, Coimbatore, was decreed by judgment dated 07.12.2011, granting the relief of specific performance. Challenging the same, the defendants preferred A.S. No.19 of 2013 before the I Additional District Judge, Coimbatore. By judgment dated 26.04.2013, the appellate Court set aside the decree for specific performance and, in its place, granted the alternative relief of refund of the advance amount.

3. The plaintiff thereafter preferred this Second Appeal, which came to be dismissed by this Court by judgment dated 09.03.2022. The said judgment was challenged before the Supreme Court in SLP (C) No.18381 of 2022, and by order dated 06.11.2023, the Apex court set aside the judgment of this Court and remitted the matter for fresh consideration, without expressing any opinion on the merits.

4. In view of the remittance order passed by the Supreme Court, the present Second Appeal is taken up for fresh disposal.



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

6. The plaintiff's case, in brief is as follows: The plaintiff entered into an agreement of sale with the deceased father of defendants 1 to 4 for the purchase of the suit property for a total sale consideration of Rs.8,50,000/-. It is her case that a sum of Rs.5,00,000/- was paid as advance under a written agreement dated 03.08.2006, and that the balance sale consideration was agreed to be paid within 15 days. The suit property had been allotted to the said Janagaraj by the Tamil Nadu Housing Board under an allotment order dated 15.07.1991. According to the plaintiff, when she approached the allottee for completion of the sale, she learnt that Janagaraj had died on 26.08.2006. As the defendants failed to perform their part of the agreement, she caused a legal notice dated 27.06.2007 to be issued, to which the defendants sent a reply dated 09.07.2007 disputing her claim.

7. The defence of defendants 1 to 4, in substance, is as follows: The suit is not maintainable for want of compliance with Section 138 of the Tamil Nadu State Housing Board Act, 1981. According to them, since the plaintiff claims to have been put in possession under the agreement, the document ought to have been



registered under the Registration Act, 1908. It is further contended that Janagaraj, being only an allottee under the Housing Board, had merely a licensee's or lessee's interest and no saleable title in the property. They would also contend that the plaintiff has failed to establish her readiness and willingness to perform her part of the contract. Their further case is that the alleged agreement of sale is illegal, opposed to public policy, and unenforceable, as it is in violation of the conditions governing Housing Board allotments. They specifically deny that Janagaraj received a sum of Rs.5,00,000/- or that he entered into any such agreement of sale.

8. The defence of the fifth defendant, namely the Tamil Nadu Housing Board is as follows: The dispute is essentially one between the plaintiff and defendants 1 to 4, and that the Board has been unnecessarily impleaded. According to the Board, under the lease-cum-sale agreement, particularly Clause 12(ii), the allottee is prohibited from assigning, sub-letting, or parting with possession of the property without its prior written permission. Therefore, any agreement of sale entered into in contravention of the said condition would not be binding on the Housing Board.



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9. Findings of the Courts below: The Trial Court, upon framing the necessary issues, recording oral evidence, and marking the documentary exhibits, decreed the suit for specific performance. On appeal, the First Appellate Court reversed the judgment and decree of the Trial Court, holding that the agreement was not specifically enforceable; however, it granted the alternative relief of refund of the advance amount of Rs.5,00,000/- together with interest. Aggrieved thereby, the plaintiff preferred the present Second Appeal, which came to be dismissed by this Court on 09.03.2022.

10. Scope of remand by the Hon'ble Supreme Court: Pursuant to the order dated 06.11.2023 passed by the Hon'ble Supreme Court, this Court is required to consider the issue relating to non-payment of the refund of the advance amount of Rs.5,00,000/-, as well as the plaintiff's claim for refund of Rs.3,50,000/-, said to have been deposited with the fifth defendant on behalf of the allottee. The Hon'ble Supreme Court has also set aside the order of this Court dated 09.03.2022 and directed that the present Second Appeal be decided afresh.



11. Insofar as the refund of Rs.5,00,000/- is concerned, the First Appellate Court has already passed a decree directing repayment of the said amount. The plaintiff has preferred the present Second Appeal questioning the denial of the principal relief of specific performance and the correctness of confining the relief to refund alone. In such circumstances, it is not open to the plaintiff, on the one hand, to challenge the very decree granting refund and, on the other, to contend that the defendants have failed to comply with it. If the plaintiff seeks to realise the amount decreed by the First Appellate Court, it is always open to her to work out her remedy in execution, particularly when the decree has also created a charge over the suit property.

12. The plaintiff has further asserted that she deposited a sum of Rs.3,50,000/- with the fifth defendant, namely the Tamil Nadu Housing Board, on behalf of the allottee. This claim has been specifically denied by the fifth defendant. In such circumstances, the burden squarely rests upon the plaintiff to prove the alleged deposit. However, no documentary evidence has been produced by the plaintiff to establish that any such payment was in fact made to the Tamil Nadu Housing Board. In the absence of even a single supporting document, the alleged deposit of Rs.3,50,000/- cannot be accepted, and consequently, no direction for refund of the said amount can be granted.



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13. Fresh consideration of the Second Appeal: The First Appellate Court has held that the agreement of sale is not enforceable, since it was entered into in contravention of the conditions contained in the lease-cum-sale agreement executed between the allottee and the Tamil Nadu Housing Board.

14. The Tamil Nadu Housing Board is a statutory body constituted under the Tamil Nadu State Housing Board Act, 1981, and the conditions governing allotment and transfer of its properties carry statutory force. The materials on record disclose that Ex.A1, the agreement of sale, was entered into in breach of the conditions contained in Ex.B8, namely the lease-cum-sale agreement. Any such alienation, effected without the prior written permission of the Housing Board and before fulfilment of the statutory conditions, is plainly prohibited.

15. Section 23 of the Indian Contract Act declares that an agreement is void if its object or consideration is forbidden by law or is opposed to public policy. Such an agreement is, therefore, unenforceable in law.



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16. The object of the Tamil Nadu Housing Board scheme is to provide housing to eligible persons, and any transfer by the allottee to a third party, even before compliance with the allotment conditions, would defeat the very purpose of the scheme. Therefore, the agreement entered into between the deceased allottee and the plaintiff is void and unenforceable in the eye of law.

17. On the side of the appellant, it was argued that, notwithstanding the bar contained in Ex.B8, the lease-cum-sale agreement, the defect was only curable in nature and that, in view of Section 13 of the Specific Relief Act, 1963, the sale agreement could be enforced after expiry of the five-year bar on alienation. This contention is unsustainable. The present case is not merely one involving an imperfect title of the deceased defendant. The parties had acted in violation of the provisions of the Tamil Nadu State Housing Board Act, 1981, and thereby against the public policy referred to above. The deceased defendant and the plaintiff sought to carry out an act forbidden by law. Hence, Ex.A1 agreement is void ab initio, and no relief can be granted on the basis of the said agreement.



18. It was further argued that the first appellate Court had not framed a point for consideration with regard to Ex.B8. A perusal of the judgment of the first appellate Court shows that, though no specific point was framed in that regard, there was a detailed discussion on the issue, and both sides had also advanced their submissions thereon. In these circumstances, the mere non-framing of a specific point for determination has not caused prejudice to the parties.

19. Readiness and willingness: Once the agreement itself is found to be void and unenforceable, the question of examining compliance with Section 16(c) of the Specific Relief Act, 1963 does not arise.

20. Even otherwise, a plaintiff seeking the relief of specific performance must mandatorily plead and prove continuous readiness and willingness to perform her part of the contract. Appendix A, Form No.47 of the Code of Civil Procedure, which prescribes the form of a plaint in a suit for specific performance, specifically requires such an averment. In the present case, the plaintiff has not satisfactorily complied with or established this requirement.



21. Upon a careful consideration of the entire materials available on record, this Court finds no infirmity or error of law in the judgment and decree passed by the First Appellate Court. No substantial question of law arises for consideration in this Second Appeal.

22. In the result, the judgment and decree dated 26.04.2013 passed by the I Additional District Judge, Coimbatore, in A.S. No.19 of 2013 are confirmed. The Second Appeal is dismissed with costs. Consequently, connected miscellaneous petitions, if any, are closed.

17.03.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No



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To

1. The First Additional District Judge, Coimbatore.
2. The First Additional Sub Judge, Coimbatore.

Copy to

The Section Officer,
VR Section,
High Court, Chennai.



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DR. A.D. MARIA CLETE, J

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