



WEB COPY

SA No. 1024 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 09-06-2026**

CORAM

**THE HON'BLE MR.JUSTICE S. SOUNTHAR**

**SA No. 1024 of 2021 and  
CMP.No.19431 of 2021**

1. Rajaram  
S/o. Ramamurthy, Anikurichan Village,  
Udayarpalayam Tk, Ariyalur Dt.
2. Banumathi  
W/o. Seetharam, Anikurichan Village,  
Udayarpalayam Tk, Ariyalur Dt.

..Appellant(s)

Vs

Masilamani  
S/o. Rathinam, East Street, Kuvagam Village,  
Andhimadam Tk, Jayankondam, Ariyalur Dt.

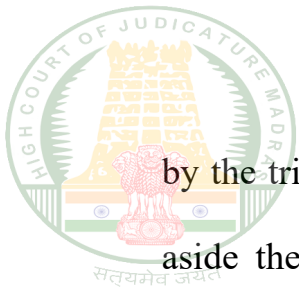
..Respondent(s)

**Prayer:** Second appeal is filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated 18.12.2019 made in AS.No.8 of 2019 on the file of the Additional District and Sessions Judge, Ariyalur partly reversing the judgment and Decree dated 27.11.2018 made in OS.No.270 of 2017 on the file of the Subordinate Judge, Jayankondam (Ariyalur Sub Court OS No.263 of 2016)

|                    |                             |
|--------------------|-----------------------------|
| For Appellant(s):  | M/s.M.Senthil Vadivu        |
| For Respondent(s): | M/s.A.Suresh Sakthi Murugan |

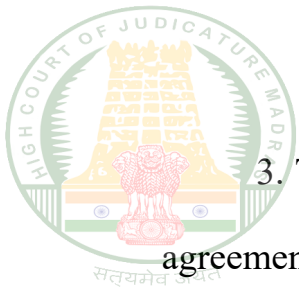
### **JUDGMENT**

The unsuccessful plaintiffs are the appellants. The suit was filed for specific performance of the sale agreement dated 01.08.2013 entered between the father of the plaintiffs and the defendant/respondent. The suit was decreed



by the trial court. On appeal filed by the defendant, the first appellate court set aside the decree of the trial court and granted decree for return of advance amount. Aggrieved by the same, the plaintiffs have come before this court by way of second appeal.

2. According to the plaintiffs, the father of the plaintiffs entered into suit sale agreement dated 01-08-2013 with the respondent/defendant for purchase of the agreement mentioned property. The total sale consideration was Rs.2,25,000/-. On the date of agreement, an advance amount of Rs.2,00,000/- was paid. As per the terms of agreement, remaining balance amount of Rs.25,000/- shall be paid within a period of one year. Later on 25-07-2014, the plaintiffs' father paid a further sum of Rs.20,000/- to the respondent and made an endorsement in the suit sale agreement. Though plaintiffs' father has been ready and willing to perform his part of the contract, the defendant evaded execution of the sale deed pursuant to the agreement. In the circumstances, on 05-02-2015, the father of the plaintiffs passed away and the plaintiffs also requested the defendant to execute the sale deed as per the terms of the agreement. However, the defendant evaded the same. Hence, the plaintiffs issued a legal notice on 01-08-2016 calling upon the defendant to complete the sale transaction. In spite of the same, there was no positive response on the part of the defendant and hence, the suit was filed seeking specific performance of the sale agreement.



3. The respondent/defendant filed a written statement and denied the sale agreement relied on by the plaintiffs. According to the defendant, he borrowed a sum of Rs.1,00,000/- from the father of the plaintiffs agreeing to repay the same with 24% interest. As a security for the said loan transaction, the suit sale agreement was executed by the defendant without any intention to convey the suit property. It was stated that the value of the suit property was Rs.50 lakhs and the defendant never entered into sale agreement with the plaintiffs' father for selling the same. It was further stated that the defendant repaid Rs.1,00,000/-, the amount borrowed by him together with interest to plaintiffs' father. Though he promised to cancel the suit sale agreement, he died on 05.02.2015. Later, the first plaintiff also promised to cancel the suit sale agreement. However, with an intention to grab the suit property, the present suit has been filed. It was also stated that the period of one year fixed in the agreement was over and therefore, as per the terms of the agreement, it got time barred.

4. Before the trial court, the first plaintiff was examined as PW1. PW2 and P.W.3 are attesting witnesses to the endorsement found in suit sale agreement for payment of Rs.20,000/- on 25.07.2014. The scribe of Exhibit A2, endorsement was examined as PW4. On behalf of the plaintiffs, six documents were marked as Ex.A1 to Ex.A6. The defendant was examined as DW1 and no documents were marked on his side.



5. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs were entitled to the relief of specific performance and decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in AS.No.8 of 2019 on the file of Additional District and Sessions Judge, Ariyalur. The first appellate court set aside the findings of the trial court and granted alternative relief of return of advance amount. Aggrieved by the same, the plaintiffs have come before this court.

6. The learned counsel for the appellants/plaintiffs submitted that the first appellate court committed a serious error in granting a decree for return of advance amount based on the submission made by the learned counsel for the appellant/defendant before the first appellate court. The learned counsel submitted that the plaintiffs paid more than 95% of the sale consideration and proved readiness and willingness to perform their part of the contract and in such circumstances, the first appellate court ought not have negated the relief of specific performance.

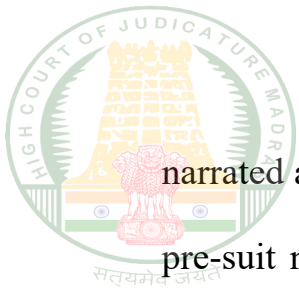
7. It is seen from the typed set of papers that the suit sale agreement was allegedly entered into between the father of the plaintiffs and defendant on 01-08-2013. As per the terms of the agreement, the total sale consideration was Rs. 2,25,000/-. On the date of agreement itself, a sum of rupees Rs.2,00,000/- was paid by the plaintiffs' father to the defendant. For payment of balance sale consideration of Rs.25,000/-, a longer time limit of one year has been fixed.



When the plaintiffs' father/agreement holder paid a substantial portion of the sale consideration nearly 87% of the sale consideration, fixation of longer period of one year appears to be very unnatural to this court. It is also seen that just before the expiry of one year time limit fixed in the agreement, the plaintiffs' father paid a further sum of Rs.20,000/- on 25.07.2014 and got an endorsement in the suit sale agreement. Therefore, the balance amount to be paid by the agreement holder was only Rs.5,000/-. However, he has not taken any steps to complete the sale transaction till his death on 05.02.2015. The agreement holder, who said to have paid more than 95% of the sale consideration, need not have waited for such a long time. Though it was averred in the plaint that the plaintiffs' father was always ready and willing to perform his part of the contract, the plaintiffs failed to give any plausible explanation for failure of their father to take steps to complete the sale transaction from July 2014 to February 2015.

8. After the death of plaintiffs' father, the plaintiffs have not taken any steps to complete the sale transaction. The first notice was issued only on 01.08.2016 nearly after two years from the date of second payment on 25.07.2014. The delay of two years on the part of the plaintiffs in issuing a legal notice proves lack of readiness and willingness on the part of the plaintiffs.

9. It is settled law that plaintiff, in a suit for specific performance, must prove his readiness and willingness to perform his part of the contract from the inception of the contract to the date of filing of the suit. In the case on hand, as



narrated above, there was enormous delay on the part of the plaintiffs in issuing pre-suit notice. Hence, the plaintiffs failed to prove readiness and willingness and hence, they are not entitled to the relief of specific performance.

10. The first appellate court set aside the trial court decree for specific performance and granted alternative relief merely on the ground that the defendant expressed his readiness to pay the entire amount said to have been paid under the agreement with interest. The said approach of the first appellate court is not agreeable to this court. However, as narrated above, the plaintiffs failed to prove their readiness and willingness to perform their part of the contract and hence, the conclusion of the first appellate court with regard to the primary relief of specific performance is affirmed on different reason.

11. In the light of the discussion made earlier, the judgment and decree passed by the first appellate court stands affirmed and the second appeal is dismissed as devoid of any substantial question of law. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

**09-06-2026**

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

To

1. The Additional District and Sessions Judge, Ariyalur.
2. The Subordinate Judge, Jayankondam, Ariyalur.



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**S.SOUNTCHAR, J.**

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