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C.R.P.No.3533 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 06.01.2026**

**PRONOUNCED ON : 29.01.2026**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.R.P.No.3533 of 2024**

1.K.S.Anandan

2.K.A.Ramalingam @ Ramesh

... Petitioners

VS.

1.Hemakumari

2.Krishnamoorthy

3.Lakshminarasimhan

... Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal Order, dated 02.04.2024 passed in I.A.No.833 of 2016 in O.S.No.180 of 2016 by the District Munsif Judge at Ponneri by allowing the above Civil Revision Petition.

For Petitioners : Mr.E.Prabu

For R1 and R2 : Mr.R.Krishnasamy



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## **ORDER**

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The Civil Revision Petition is filed challenging the order passed by the District Munsif Judge, Ponneri in I.A.No.833 of 2016 in O.S.No.180 of 2016, dated 02.04.2024 granting leave to the respondents 1 and 2/plaintiffs under Order 2 Rule 2 of the Code of Civil Procedure for filing a suit for Specific Performance on same cause of action.

2. The respondents 1 and 2 filed a suit seeking declaration that Sale Deed dated 15.12.1997 executed by one Kalavathi and her children in favour of 1<sup>st</sup> petitioner/1<sup>st</sup> defendant was null and void and for consequential injunction restraining the petitioners/defendants 1 and 2 from interfering with their peaceful possession and enjoyment of Suit 'B' and 'C' Schedule Properties. It was the case of the respondents 1 and 2 that father of the 1<sup>st</sup> respondent was tenant under above mentioned Kalavathi/mother of 3<sup>rd</sup> respondent herein and she was residing in Suit 'B' Schedule Property. After sometime, there was misunderstanding between the 1<sup>st</sup> respondent's father and said Kalavathi and hence, the 1<sup>st</sup> respondent filed a suit in O.S.No.106 of 1992 for bare injunction against the said Kalavathi and the same was decreed. The Rent Control Eviction proceedings initiated by Kalavathi was

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dismissed. Thereafter, there was a mediation between them and the said Kalavathi executed a Consent Deed in favour of the 1<sup>st</sup> respondent acknowledging that she received amount from the 1<sup>st</sup> respondent's father and in lieu of the same, agreed to allot a portion of the Suit 'A' Schedule Property in her favour at the time of selling the property. However, the said Kalavathi without knowledge of the respondents 1 and 2 sold the properties to the petitioners under the above mentioned Sale Deed and hence, the present suit was laid.

3. The respondents 1 and 2 reserved their right to seek Specific Performance of the agreement entered into between the 1<sup>st</sup> respondent's father and Kalavathi under Consent Deed. Hence, along with the plaint, they also filed an application under Order 2 Rule 2 of the Code of Civil Procedure seeking leave of the Court to file separate suit for Specific Performance based on same cause of action. The said application was allowed by the Trial Court. Aggrieved by the same, the petitioners have come before this Court.



4. The learned counsel appearing for the petitioners would contend that the respondents 1 and 2 in the present suit sought for declaration that Sale Deed executed by Kalavathi in favour of the petitioners was null and void and the cause of action for the said prayer was Consent Deed executed by Kalavathi. He further submitted that cause of action for Specific Performance is also the Consent Deed executed by said Kalavathi. Therefore, even at the time of filing the present suit, the relief of Specific Performance was available to the respondents 1 and 2 and they consciously failed to seek the relief of Specific Performance and as on today, the suit for Specific Performance is barred and without considering the limitation, the Trial Court committed serious error in granting leave to file suit for Specific Performance. The learned counsel also submitted that leave granted by the Trial Court cannot extend the period of limitation for Specific Performance Suit and in this regard, he relied on the judgment of the Apex Court in *Arifa and others vs. Abhiman Apartment Co-operative Housing Society Limited and others* reported in **2025 SCC Online SC 1492**.

5. The learned counsel appearing for the respondents 1 and 2 would submit that the suit was filed in the year 2016 and the application seeking leave to file separate suit for Specific Performance was also filed on 4/10



29.08.2016. However, the petitioners, who were arrayed as the respondents 1 and 2 in the said application had taken nearly six years to file their counter and the counter of the 2<sup>nd</sup> petitioner was filed only on 25.11.2022. Hence, there was some delay in disposing the application filed under Order 2 Rule 2 of the Code of Civil Procedure. The petitioners, who dragged on the hearing of leave application cannot be heard to say that limitation for filing suit for Specific Performance got expired as on today. The learned counsel further submits that the respondents 1 and 2 already instituted a suit for Specific Performance in O.S.No.152 of 2025 on the file of the District Munsif Court, Ponneri and the same is pending. He further submitted that the petitioners already filed an application to reject the plaint under Order 7 Rule 11 of Code of Civil Procedure on the ground of limitation and the same is also pending consideration.

6. A perusal of the pleadings of the parties would indicate that the cause of action for declaration prayer in the present suit and cause of action for relief of Specific Performance are one and the same (i.e., execution of Consent Deed by Kalavathi). There is no doubt, when the present suit was filed, the cause of action for relief of Specific Performance was very well available to the respondents 1 and 2. Infact, conscious of the same, the



respondents 1 and 2 rightly filed an application under Order 2 Rule 2 of the Code of Civil Procedure seeking leave of the Court to file separate suit for Specific Performance.

7. A perusal of the plaint averment would indicate that the petitioners taking advantage of Sale Deed executed by Kalavathi in their favour attempted to interfere with the possession of the respondents 1 and 2 and hence, they were constrained to file a suit for declaration that Sale Deed executed by Kalavathi in favour of the 1<sup>st</sup> petitioner was null and void and for consequential injunction restraining the petitioners from interfering with their possession over Suit 'B' and 'C' Schedule Properties. Therefore, the immediate cause of action for filing the suit was alleged interference by the petitioners. In view of the said urgency, the suit was filed by the respondents 1 and 2 with the prayer challenging the Sale Deed in favour of the petitioners and injunction. The respondents 1 and 2 were conscious of the availability of the yet another relief of Specific Performance on the bundle of facts relied on by them and therefore, they also filed an application seeking leave under Order 2 Rule 2 of the Code of Civil Procedure even in the year 2016.



8. It is seen from the typed-set of papers that the leave petition was dragged on for years and the 2<sup>nd</sup> petitioner alone filed counter after six years on 25.11.2022. The 1<sup>st</sup> petitioner failed to file counter and he was set *ex parte* in interlocutory application. Though the respondents 1 and 2 filed leave petition on 29.08.2016 along with the plaint, it was kept pending due to non-filing of counter by the petitioners and ultimately, it was disposed of by impugned order dated 02.04.2024.

9. The learned counsel appearing for the petitioners vehemently contended that as on today, the Specific Performance Suit is time barred and therefore, the Court below ought not have granted leave.

10. The rights of the parties have to be decided based on their position on the date of presentation of the plaint. On the said date, the respondents 1 and 2 had multiple claims against the petitioners on the same cause of action. They decided to sue for some of the claims and reserved their right to sue for other claims at a later point of time. As mentioned earlier, the immediate cause of action for suit was alleged interference by the petitioners and in view of the urgency, the respondents 1 and 2 reserved their right to file suit for Specific Performance at a later point of time.



11. When there is a justification for respondents 1 and 2 to reserve their right in view of urgency for injunction prayer, the Court below is justified in ordering application under Order 2 Rule 2 of the Code of Civil Procedure. Whether the subsequent suit for Specific Performance filed by the respondents 1 and 2 is within the time or not is a matter to be decided in the said suit.

12. Admittedly, the respondents 1 and 2 already filed a separate suit for Specific Performance as stated earlier and petitioners also filed an application seeking rejection of the plaint on the ground of limitation. Therefore, the question of limitation raised by the petitioners can be decided by the concerned Court in the suit for Specific Performance filed by the respondents 1 and 2. The said question need not be considered in an application filed by the respondents 1 and 2 in the present suit.

13. The scope of application filed under Order 2 Rule 2 of the Code of Civil Procedure is limited. On the date of filing of said application in the year 2016, the relief of Specific Performance was available to the respondents 1 and 2. Therefore, the Trial Court rightly allowed the said



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application. I do not find any error in the order impugned in this civil revision petition.

14. It is made clear that the petitioners are at liberty to raise the defence of limitation in the suit for Specific Performance filed by the respondents 1 and 2. The petition for rejection of plaint filed by the petitioners on the ground of limitation shall be decided on its own merits without being influenced by anything said in this order.

15. With this clarification, the Civil Revision Petition is dismissed. No costs.

**29.01.2026**

Index :Yes / No  
Speaking order :Yes / No  
Neutral Citation :Yes / No  
dm

To

The District Munsif Judge,  
Ponneri.



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**S.SOUNTHAR, J.**

dm

**Pre-delivery order made in**  
**C.R.P.No.3533 of 2024**

**29.01.2026**