



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 285 of 2026

Subbathal (died)
Senniappan (died)

... Plaintiffs 1 & 2

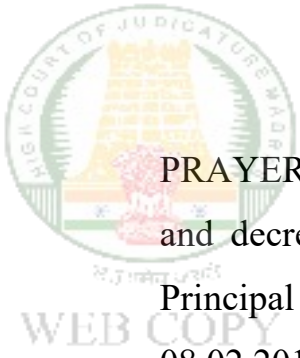
1. Dhanalakshmi
W/o. Gurusamy,
No.1/21, Rayarpalayam,
Nambiyampalayam Village,
Avinashi Tk, Tiruppur District.
2. Moorthi
S/o. Senniappan,
No.1/21, Rayarpalayam,
Nambiyampalayam Village,
Avinashi Tk,
Tiruppur District.

... Plaintiffs 3 & 4 /
Appellants

Vs

Selvi
W/o. Ravichandran,
Kasthuribai Street,
Avinashi Town and Taluk,
Tiruppur District.

... Respondent/
Defendant



PRAYER : Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 20.06.2022 made in A.S.No.65 of 2019 on the file of the Principal District Judge, Tiruppur, reversing the judgment and decree dated 08.02.2019 made in O.S.No.421 of 2016 on the file of the Subordinate Judge, Avinashi.

For Appellant(s): Mr.P.Tamilavel

For Respondent(s): Mr.N.Krishnakumar for
M/s.Sarvabhauman Associates

JUDGMENT

This Second Appeal is filed to set aside the judgment and decree dated 20.06.2022 made in A.S.No.65 of 2019 on the file of the Principal District Judge, Tiruppur, reversing the judgment and decree dated 08.02.2019 made in O.S.No.421 of 2016 on the file of Subordinate Judge, Avinashi.

2. Heard the learned counsels for both sides and also perused the materials available on record.

3. The unsuccessful plaintiffs 3 & 4 are the appellants. The appellants predecessor Subbathal filed a suit for specific performance of the agreement dated 17.10.2002. Pending suit, Subbathal died and her legal heirs / appellants were brought on record. The suit was decreed by the Trial Court and on First Appeal filed by the respondent / defendant, the First Appellate Court reversed the findings of the Trial Court and dismissed the suit in so far as the primary



relief of specific performance is concerned. The First Appellate Court granted an alternate relief of return of the advance amount to the plaintiffs 3 & 4.

Aggrieved over the same, the plaintiffs 3 & 4 are before this Court.

4. According to the plaintiffs, there was a registered sale agreement between the deceased first plaintiff and the respondent on 17.10.2002. As per the terms of agreement, the deceased first plaintiff agreed to purchase the agreement mentioned property for a sale consideration of Rs.4,00,000/-. An advance amount of Rs.2,00,000/- was paid on the date of agreement. It was also agreed that the balance amount would be paid and the sale transaction would be completed within a period of three years. It was further pleaded that though the plaintiffs were ready and willing to perform their part of contract to complete the sale transaction within the stipulated time, the defendant evaded the same. Therefore, the plaintiffs issued a pre-suit notice on 03.10.2005, calling upon the defendant to receive the balance sale consideration and complete the sale transaction. The defendant sent a reply notice with false allegations. Therefore, the plaintiffs were constrained to file a suit for specific performance with an alternate relief of return of the advance amount.

5. The respondent / defendant filed a written statement and resisted the suit by denying the execution of agreement of sale. According to the defendant, she borrowed a sum of Rs.2,00,000/- from one Kesavamurthy, son of the first



plaintiff, on 06.04.2002, agreeing to repay the said amount with interest at the rate of 24% per annum. At that point of time, the first plaintiff and the above said Kesavamurthy insisted the defendant to execute a sale agreement. Hence, the defendant executed a sale agreement in favour of Kesavamurthy on 06.04.2002, as if she agreed to sell the suit property for a sale consideration of Rs.3,00,000/-. In the said agreement, she also acknowledged the receipt of Rs.50,000/- as advance. The time fixed for performance of the sale was three years. It was further stated by the defendant that she has been regularly paying the interest to Kesavamurthy, as agreed earlier. After some time on 14.10.2002, the above said Kesavamurthy insisted the defendant to execute a registered agreement in the name of his mother, the deceased first plaintiff Subbathal. Even though the defendant was not willing to sell the property, as instructed by Kesavamurthy, she executed a suit sale agreement on 17.10.2002, without intention to sell the property. Thus, according to the defendant, the suit sale agreement was executed only as a security for the said loan transaction. On these pleadings, the defendant sought for dismissal of the suit.

6. Before the Trial Court, the third plaintiff was examined as P.W.1. One of the attestors of the suit sale agreement was examined as P.W.2. On behalf of the plaintiffs, seven documents were marked as Exs.A1 to A7. The defendant was examined as D.W.1. The husband of the defendant was examined as D.W.2. On behalf of the defendant, two documents were marked as Exs.B1 & B2.



7. The Trial Court, on appreciation of the oral and documentary evidence available on record, came to the conclusion that the plaintiffs were entitled to the primary relief of specific performance and accordingly, decreed the suit. Aggrieved over the same, the defendant had preferred a First Appeal in A.S.No.65 of 2019 before the Principal District Judge, Tiruppur. The First Appellate Court, on re-appreciation of evidence available on record, came to the conclusion that the suit sale agreement was executed as a security for the loan transaction and dismissed the suit. The First Appellate Court had set aside the decree for the primary relief of specific performance and granted the alternate relief of return of the advance amount. Aggrieved over the same, the plaintiffs 3 & 4 are before this Court.

8. The learned counsel for the appellants would submit that the due execution of suit promissory note was proved by the plaintiffs by examining one of the attestors to the sale agreement and the First Appellate Court without properly considering the evidence available on record, came to the conclusion that the suit sale agreement was executed as a security for the loan transaction.

9. A perusal of the typed set of papers would indicate that even prior to the suit sale agreement, there was an agreement entered into between the defendant and Kesavamurthy, son of the deceased first plaintiff. The said



agreement dated 06.04.2002 was marked as Ex.B1. As per the agreement, the defendant agreed to sell the property to Kesavamurthy for a sale consideration of Rs.3,00,000/- and received an advance amount of Rs.50,000/-. She agreed to pay the balance amount on or before 05.04.2005. The said agreement was unregistered.

10. It is seen from Ex.A7, Ex.B1 was cancelled on 17.10.2002. On the very same day, the suit sale agreement between the deceased first plaintiff and defendant was executed and registered. In the plaint, there was no reference about the earlier sale agreement entered into between the defendant and the first plaintiff's son Kesavamurthy. When the earlier sale agreement of the defendant with Kesavamurthy was subsisting, the necessity to cancel the said sale agreement and enter into a fresh sale agreement has not been properly explained by the plaintiffs. Even though one of the attestors to the suit sale agreement was examined by the plaintiffs to prove the due execution of the suit sale agreement, the plaintiffs failed to explain the necessity for cancellation of the earlier agreement and execution of the suit sale agreement.

11. The suit sale agreement was entered on 17.10.2002. The agreed sale consideration was Rs.4,00,000/-. Admittedly, an advance amount of Rs.2,00,000/- was paid and the balance amount was agreed to be paid within three years. When the plaintiffs paid the substantial amount on the date of the



suit sale agreement towards advance, there was no necessity to fix a longer period of three years for completing the sale transaction. The fixation of such longer period has also not been explained properly.

12. In the plaint, it was stated by the plaintiffs that they had been ready and willing to perform their part of contract throughout. However, the documents filed on behalf of the plaintiffs would indicate that the first notice was issued by the first plaintiff only on 03.10.2005, calling upon the defendant to complete the sale transaction after paying the balance amount. The plaintiffs have not given any explanation for the period from 17.10.2002 to 03.10.2005. Even though the time limit fixed for performance of sale was three years, the plaintiffs have to prove their readiness and willingness from the date of execution of the agreement. In this case, absolutely no evidence is available on record to prove the readiness and willingness of the plaintiffs from 17.10.2002 to 03.10.2005.

13. The First Appellate Court has rightly appreciated the long time gap in calling upon the defendant to complete the sale transaction and came to the conclusion that the plaintiffs failed to prove their readiness and willingness to perform their part of contract. Taking into consideration the long time limit fixed in the agreement for sale and the failure on the part of the plaintiffs to prove their continuous readiness and willingness to perform their part of



contract, the First Appellate Court rightly came to the conclusion that the plaintiffs were not entitled to the decree for the primary relief of specific performance. I do not find any perversity in the said factual findings arrived at by the First Appellate Court. The appellants have not made out any substantial question of law for consideration.

14. In the result, this Second Appeal is dismissed. No costs.

20-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSK



To

1. The Principal District Judge, Tiruppur,
2. The Subordinate Judge, Avinashi.



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SA No. 285 of 2



S.SOUNTHAR, J.

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SA No. 285 of 2026

20-04-2026