



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-06-2026

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 361 of 2026 and
CMP No.12318 of 2026**

P.Krishnan, S/o.G.Palaniyappan,
6/1, Vadapura Line,
Sakthi Athani Main Road, Malayadiputhur Village,
Sathyamangalam, Erode District.

..Appellant(s)

Vs

1. K.Selvam, S/o.Chinnakaruppagounder,
Kottuveerampalayam Village, Mariyamman
Kovil Street, Sathyagamangalam Taluk,
Erode District.

2. K.Mani, S/o.Periyakaruppagounder,
Kottuveerampalayam Village, Mariyamman
Kovil Street, Sathyamangalam Taluk,
Erode District.

K.MARIMUTHU (DIED)

3. M.Chidambaram
S/o.K.Marimuthu, No.8, Chellammal Nagar,
Periyar Illam, Gopichettipalayam Taluk,
Erode District.

4. Thoppa Gounden
S/o.Muthugounder, No.21, Kathukottai,
Kolanthpalayam, Oolakadam Post,
Bhavani Tk, Erode District.

5. A.Gunasekaran,
S/o.Ammasai, No.336, Manogar Maligai Shop
Street, Kurupanayakanpalayam,
Bhavani Taluk, Erode District.



6. Rajalakshmi
W/o.Marimuthu(Late), Saibaba Street,
Pudukodu, Nanjagoundanpalayam,
Gopichettipalayam, Erode District.

7. M.Gopalakrishnan
S/o.Late Marimuthu, NO.72/141, Subbanan
STreet, Gopichettipalayam Taluk,
Erode District.

8. M.Vasanthi
D/o.K.Marimuthu(Late) Saibaba Nagar,
Pudukadu, Nanjagoundanpalayam,
Gopichettipalayam, Erode District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree passed in AS.No.39 of 2018 on the file of the Sub Court, Sathyamangalam dated 04-03-2020 confirming the judgement and decree passed in OS.No.250 of 2005 on the file of the Dist.Munsif Court, Sathyamangalam.

For Appellant(s): Mr. Shangar Murali

JUDGMENT

The unsuccessful 8th defendant in a suit in O.S.No.250 of 2005 is the appellant herein.

2. The respondents 1 and 2/plaintiffs filed the above said suit for specific performance and it was decreed by the trial court. Aggrieved by the same, the 8th defendant filed an appeal and the findings of the trial court were affirmed by



the first appellate court. Challenging the concurrent findings of the courts below, the 8th defendant/appellant has filed the present suit.

WEB COPY

3. The 1st and 2nd plaintiffs filed the above said suit for specific performance of the agreement dated 17.02.2005 entered with the deceased first defendant Marimuthu. It is the case of the plaintiffs that as per the terms of the agreement, they agreed to purchase 1/4th share in the agreement mentioned property for a sale consideration of Rs.65,000/-. On the date of agreement, an advance amount of Rs.25,000/- was paid and it was agreed that the balance sale consideration shall be paid to the agreement vendor and the sale transaction shall be completed within a period of six months. It is further stated by the plaintiffs that they have been always ready and willing to perform their part of contract, however, the first defendant evaded to execute the sale agreement. Therefore, on 09.08.2005, the plaintiff issued a legal notice to the agreement vendor, asking him to be present in the office of the Sub Registrar on 17.08.2005 for receiving the balance sale consideration and also to execute the sale deed in favour of the plaintiffs. The first defendant issued a reply notice on 02.09.2005, calling upon the plaintiff to produce the copy of the sale agreement dated 17.02.2005 for the purpose of perusing it. The plaintiffs issued a rejoinder notice on 15.09.2005 stating that he could peruse the sale agreement on 20.09.2005 between 5.00 to 7.00 p.m. In spite of the reply notice by the plaintiffs, the first defendant did not approach the plaintiffs and peruse the



agreement. In the legal notice dated 09.08.2005 issued by the first defendant, it was stated that he borrowed a sum of Rs.10,000/- from the plaintiffs on 16.02.2005, agreeing to repay the same with interest at the rate of 10% p.a. and at the time of borrowal, the plaintiffs obtained signature of the first defendant in two ten rupees stamp papers and also two green papers. It was also stated that the averments in the said notice that a threat was issued by the plaintiffs as if they would create sale agreement by utilising the signed stamp papers was false. Since the first defendant evaded to perform his part of contract, the plaintiffs were constrained to file the suit for specific performance on 14.11.2005.

4. The 2nd defendant is son of first defendant. The defendants 3 and 4 are the first subsequent purchasers, who purchased the agreement mentioned property pending suit. During pendency of the suit, the first defendant died and his legal heirs were brought on record as defendants 2 and 5 to 7. The 8th defendant is a person, who purchased the agreement mentioned property, pending suit from the first subsequent purchaser, namely the defendants 3 and 4.

5. The defendants 1 and 2 filed a written statement and denied the very execution of the sale agreement. According to the defendants, the first defendant borrowed a sum of Rs.10,000/- from the plaintiffs and at the time of borrowal, the plaintiffs obtained signature of the first defendant in a blank stamp papers and green sheets. Taking the signature of the first defendant



WEB COPY

available in the blank stamp papers as model, the plaintiffs created the suit sale agreement by forging the signature of the first defendant. The defendants 1 and 2 also denied the readiness and willingness of the plaintiff to perform their contract of the sale agreement. It was further stated by them that the suit property belonged to the first defendant's mother and after her death, the first defendant and his brothers were entitled to get their respective share in the said property. Therefore, the first defendant is not the absolute owner of the suit property. It was also claimed that the suit property was worth about more than Rs.4,00,000/- and the sale consideration mentioned in the sale agreement was very much low. On these averments, the defendants 1 and 2 sought for dismissal of the suit.

6. The appellant/8th defendant, who was the subsequent purchaser of the agreement mentioned property pending suit, filed the written statement supporting the case of the defendants 1 and 2. In his written statement, it was specifically averred that on enquiry, he came to know that the sale agreement was not intended to be acted upon.

7. Before the trial court, the first plaintiff was examined as PW1 and the attestors to the sale agreement were examined as PW2 and PW3. The neighbour of the suit sale agreement mentioned property was examined as PW4. On behalf of the plaintiffs, 12 documents were marked as Ex.A1 to Ex.A12. On



WEB COPY

the side of the 8th defendant, he examined himself as DW1 and the persons, who were attestors to the sale deed in favour of the 8th defendant, which came into existence pending suit, were examined as DW2 and DW3 and three documents were marked as Ex.B1 to Ex.B3.

8. It is to be noted that the first defendant died pending suit and he was represented by his legal heirs D2 and D5 to D7. Though the 2nd defendant is son of the 1st defendant and he was represented by his counsel, he failed to lead any evidence. The other legal heirs of the first defendant, namely D5 to D7 remained exparte.

9. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs were entitled to a decree for specific performance and decreed the suit. Aggrieved by the same, the 8th defendant preferred an appeal in A.S.No.39 of 2018 on the file of Subordinate Judge, Sathyamangalam and the First Appellate Court, affirmed the findings of the Trial Court. Challenging the concurrent findings of the courts below, the 8th defendant has filed the present suit.

10. The learned counsel for the appellant would submit that the plaintiffs failed to prove their continuous readiness and willingness to perform their part of contract from the date of sale agreement till the date of filing of the suit.



WEB COPY

Therefore, according to the counsel, the courts below have committed an error in granting decree for specific performance. The learned counsel also submitted that the First Appellate Court committed an error in observing that the plea of readiness and willingness to perform the contract was not available to the subsequent purchaser. He further submitted that the suit sale agreement is an unregistered document and therefore, it cannot be relied on to grant a decree for specific performance.

11. In the written statement, the defendants 1 and 2/agreement vendors denied the very execution of the sale agreement and described it as a forged document. According to their plea in the written statement, at the time of borrowal of Rs.10,000/- from the plaintiffs, they obtained signatures of the first defendant in blank stamp papers and blank green sheets. It was pleaded by the defendants 1 and 2 that by taking the signatures available in the said documents as a model, the plaintiffs forged the signature of the first defendant in the suit sale agreement and created the document. However, in the pre-suit notice issued by the first defendant on 09.08.2005, it was stated that the plaintiffs proclaimed that they would create sale agreement by utilising blank stamp papers and green sheets, obtained by them at the time of borrowal of Rs.10,000/- by the first defendant. Therefore, there was a contradiction in the stand taken by the first defendant /agreement vendor in his pre-suit notice and in the written statement. In the pre suit notice, he had taken a stand that the plaintiffs proclaimed that

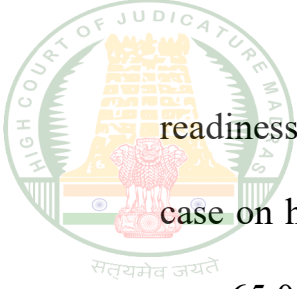


WEB COPY

agreement would be created by utilising the blank stamp papers signed by the first defendant. However, in the written statement, it was averred that the sale agreement was a forged document. The stand taken by the agreement vendor in the pre-suit notice and the written statement are mutually destructive in nature.

12. The first plaintiff was examined as PW1 and he deposed about the due execution of the sale agreement. The attestors to the sale agreement have been examined as PW2 and PW3. Both the courts below, on appreciation of evidence of attestors to the sale agreement, came to the conclusion that the due execution of sale agreement was proved. The trial court rendered a findings that nothing had been elicited in the cross examination of PW1 and PW2 and absolutely there was nothing on record to suggest that the PW2 and PW3 were not speaking truth. I do not find any perversity in the findings given by the court below in coming to the conclusion that the execution of sale agreement was duly proved by the evidence of attestors to the sale agreement.

13. Coming to the question of readiness and willingness, the first appellate court observed that the plea of readiness and willingness was not available to the subsequent purchaser. The said observation made by the first appellate court is not inconsonance with the law laid down by the Apex Court in **KADUPUGOTLA VARALAKSHMI VS. VUDAGIRI VENKATA RAO AND OTHERS** reported in **2024 (15) SCC 435**, wherein it was held that the plea of



WEB COPY

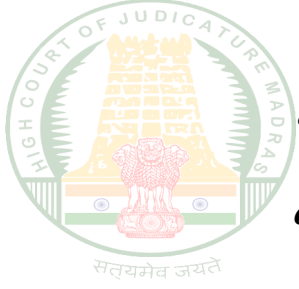
readiness and willingness was also available to the subsequent purchaser. In the case on hand, as per the terms of sale agreement, the agreed sale consideration was 65,000/- and on the date of sale agreement, a sum of Rs.25,000/- was paid by the plaintiffs as advance and the balance amount of Rs.40,000/- was agreed to be paid within a period of six months. The said period of six months expired on 17.08.2005. Before expiry of six months period, the plaintiffs issued a legal notice dated 09.08.2005, under Ex.A2, calling upon the first defendant to come to the Sub Registrar Office on 17.08.2005 and to complete sale transaction. On the very same date, the defendants 1 and 2 issued a separate notice mentioning about the borrowal of amount and alleged threat by the plaintiffs about creation of agreement as stated above. On receipt of pre suit notice issued by the plaintiffs, the defendants issued a reply notice on 02.09.2005, calling upon the plaintiffs to produce copy of sale agreement for perusal. Though the plaintiffs issued a notice on 15.09.2005 mentioning the date and time for the purpose of perusing the sale agreement, it was stated that the first defendant had not come and perused the agreement. In such circumstances, the suit was filed by the plaintiffs on 14.11.2005 seeking specific performance and also possession of the property. The narration of events above would make it clear that before expiry of 6 months period, the plaintiffs by issuing notice dated 09.08.2005, called upon the 1st defendant to perform his part of contract by fixing the date to execute the sale deed on 17.08.2005 and they also filed the suit on 14.11.2005, without any inordinate delay. Therefore, the plaintiffs proved their continuous



readiness and willingness to perform their part of contract from the date of agreement till the date of filing of the suit. In view of the said conclusion I don't find any error in the final conclusion reached by the courts below that the plaintiffs are entitled to a decree for specific performance of the agreement.

14. The learned counsel for the appellant also contended that the sale agreement is an unregistered document and therefore, the same should not be relied on for the relief of specific performance. It is not a case, where the plaintiffs have relied on the suit sale agreement for the purpose of part performance under the agreement. In fact, the plaintiffs prayed for specific performance of the sale agreement and for possession of the suit property. When the agreement is not relied on for the purpose of part performance as recognised under Section 53-A of the Transfer of Property Act, as per the law settled by the Division Bench of this court in ***K. Manoharan Vs. T. Janaki Ammal and others reported in 2012 (3) CTC 205 = MANU/TN/1502/2012***, the same is admissible in evidence and can be relied on. The relevant observation reads as follows.

37. It is not as if all the agreements for sale referring to instance of delivery of possession shall be compulsorily registered under Section 17(1-A) of Indian Registration Act. Only when the agreement for sale which speaks about delivery of possession is filed to claim benefit of

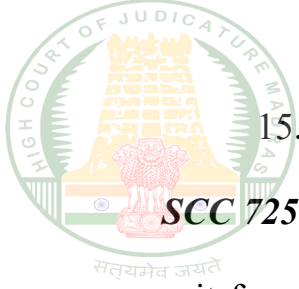


WEB COPY

“part performance” as contemplated under Section 53-A of Transfer of Property Act, Court will have to find out whether the document was registered or not. if such document was not registered, then the benefit of Section 53-A of Transfer of Property Act cannot be claimed by the prospective purchaser of the property. (Vide R. Palanisubramanian V. Trans Media (India) Ltd. and another, MANU/TN/158/2009: AIR 2009 Mad 110). We fully endorse the said views of the learned Single Judge.

38. In the case on hand, plaintiff is not seeking for protection or claiming benefit under Section 53-A of Transfer of Property Act. Plaintiff has only sought for permanent injunction restraining the defendants 1 to 3 from in any way alienating the property. Such relief sought for is an independent of the clause of handing over possession to the plaintiff. That being so, there is no embargo for the plaintiff to rely upon Ex.A1 – Agreement of sale.

Hence, the unregistered sale agreement is very well admissible in evidence.



WEB COPY

15. The Apex Court in ***R.Hemalatha Vs. Kasthuri*** reported in **2023 (10) SCC 725** categorically held that an unregistered agreement can be relied on in a suit for specific performance in view of proviso to Section 49 of Registration Act. The relevant observation reads as follows:

25. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act 21 of 1929 and thereafter, Section 1791-A0 came to be inserted by Act 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53-A of Transfer of Property Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of said Section 53-A. So, the exception to the proviso to Section 49 is provided under Section 18(1-A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1-A) shall be applicable.

26. Under the circumstances, as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the Registration



WEB COPY

Act or the Transfer of Property Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act. it is not the case on behalf of either of the parties that the document/agreement to sell in question would fall under the category of document as per Section 17(1-A) of the Registration Act. Therefore, in the facts and circumstances of the case, the high Court has rightly observed and held relying upon the proviso to Section 49 of the Registration Act that the unregistered document in question, namely, unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.

Therefore, the above said contention made by the learned counsel for the appellant is not appealable to this court. In view of the discussion made earlier, I do not find any substantial question of law arising for consideration in this second appeal.



16. Accordingly, this second appeal is dismissed. There shall be no order as to costs. Connected civil miscellaneous petition is closed.

WEB COPY

05-06-2026

Index: **Yes**

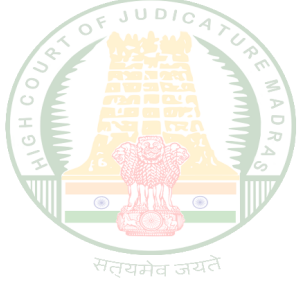
Speaking order

Neutral Citation: **Yes**

MST

To

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



WEB COPY

SA No. 361 of 2



S.SOUNTHAR, J.

MST

SA No. 361 of 2026

05-06-2026