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S.A.No.50 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.50 of 2020
and CMP.No.1057 of 2020

M.Ramanathan

... Appellant

vs.

Dharmaraj

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 29.03.2019 made in A.S.No.14 of 2014 on the file of the I Additional District Judge, Tiruppur, reversing the Judgment and Decree dated 30.04.2014 made in O.S.No.29 of 2008 on the file of the Subordinate Court, Udumalpet.

For Appellant : M/s.N.Umapathi

For Respondent :M/s.Goviganesan



defendant through mediators and he was assured that sale transaction would be completed within a month. As per the instruction given by the defendant, the plaintiff waited in the Sub Registrar's Office on 14.02.2008. However, again he failed to turn up. In these circumstances, the plaintiff issued pre-suit notice on 22.02.2008 calling upon the defendant to complete the sale transaction. The defendant issued a reply notice on 23.02.2008 with false allegation claiming that the agreement was cancelled. In these circumstances, the plaintiff was constrained to file a suit seeking specific performance of the agreement.

5. The defendant filed a written statement and resisted the suit on the ground that the plaintiff was not ready and willing to perform his part of the contract. The defendant specifically denied the claim of the plaintiff that the suit property was delivered in favour of the plaintiff on the date of agreement. The defendant also denied the plaintiff's averment that he was waiting at the Sub Registrar's Office on 14.01.2008 and 14.02.2008.

6. It is further pleaded by the defendant, the averments made by the plaintiff in the pre-suit notice are all false statement and on these pleadings, he sought for dismissal of the suit.



7. The plaintiff was examined as PW.1, one of the attestor to the sale agreement was examined as PW.2. The document writer was examined as PW.3. Nine documents were marked on the side of the plaintiff as Exs.A1 to A9. On behalf of the defendant, the defendant was examined as D.W.1 and three documents were marked as Exs.B1 to B3.

8. The trial Court on consideration of evidence available on record came to the conclusion that the plaintiff was entitled to specific performance and decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.14 of 2004 on the file of I Additional District Court, Tiruppur. The First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.

9. The learned counsel appearing for the plaintiff would submit that the plaintiff waited in Sub Registrar's Office on 14.01.2008 well before expiry of the time stipulated in the suit sale agreement with the balance sale consideration, however, the defendant failed to turn up to complete the sale transaction. He also submitted that after default by the defendant on 14.01.2008, there was a mediation and the defendant agreed to execute the sale deed within the month. Hence, as per the understanding, the plaintiff

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the alleged failure of the defendant to turn up to Sub Registrar's Office.

However, it is further pleaded by the plaintiff that there was mediation between the plaintiff and defendant and in the mediation process, the defendant agreed to execute the sale deed within a month. Though it was stated by the plaintiff that the mediation was done by one Nagaraj, the plaintiff examined only said Nagaraj and other mediator Karuppusamy has not been examined. In the evidence of PW.1, he deposed that mediation has taken place in the house of Nagaraj. However the said Nagaraj who was examined as PW.2, in his evidence, deposed that he went to the defendant's place and mediated. The material contradiction with regard to place of mediation in the evidence of PW.1 and PW.2 has been highlighted by the First Appellate Court, while rejecting the evidence of PW.2. PW.3 is a document writer examined by the plaintiff. A close scrutiny of deposition of PW.3 would indicate his evidence is not at all useful to the plaintiff.

12. It was the specific case of the plaintiff that he waited in the Sub Registrar's Office for the second time, as per the instruction given by defendant during the mediation, on 14.02.2008 with draft sale deed. The said draft sale deed marked as Ex.A9. However, PW.3 document writer has not said anything about the preparation of draft sale deed by him in his evidence. He clearly mentioned that on 14.02.2008, the plaintiff personally

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handed over the suit sale agreement. However, he specifically deposed that on that day, no sale deed was prepared.

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13. In such circumstances, the evidence of PW.3 is not useful to prove that he prepared draft sale deed for plaintiff. As rightly pointed out by the First Appellate Court, the stamp paper used in the draft sale deed have been purchased from the different stamp vendors. In the pre-suit notice issued by the plaintiff, there was no doubt about preparation of the draft sale deed. In the pre-suit notice issued by the plaintiff which was marked as Ex.A6, there was no mention about waiting of the plaintiff in Sub Registrar's Office on 14.02.2008.

14. Taking into consideration all these factors, the First Appellate Court rightly came to the conclusion that the plaintiff failed to prove his continuous readiness and willingness. The time fixed by the agreement expired on 15.01.2008, the first pre-suit notice was issued by the plaintiff under Ex.A6 only on 22.02.2008.

15. A perusal of suit sale agreement would indicate that in the event of failure to pay balance consideration and complete the sale transaction, the



plaintiff shall forfeit his advance amount. Moreover, the agreement also says in the event of failure to complete the sale transaction within time stipulated, the same will stand automatically cancelled.

16. In fact, in reply notice issued by the defendant, which has been marked as Ex.A8, referring to the clause in the agreement, the defendant cancelled the sale agreement. Taking into consideration the totality of the circumstances and the evidence available on record, the First Appellate Court came to the conclusion that the plaintiff failed to prove his continuous readiness and willingness to perform his part of the contract.

17. I do not find any error in the said factual conclusion reached by the First Appellate Court. Accordingly, the second appeal stands dismissed. Consequently, the connected civil miscellaneous petition is closed. No costs.

20.04.2026

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

1.The I Additional District Judge,
Tiruppur.

2.The Subordinate Court, Udumalpet.



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S.SOUNTHAR, J.

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