



A.S. No.671 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2025
PRONOUNCED ON : 19.02.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 671 of 2018

R. Vigneshwari

... Appellant

Vs.

1. B.Hemalatha

2. B.Gowtham

3. Minor Koushik (died)

...Respondent

R3 died. R1 is the sole legal heir (B.Hemalatha) of deceased R3 herein.
Minor Koushik memo recorded vide Court order dated 05.08.2025 (RSVJ).

PRAYER in A.S.: Appeal Suit filed under Section 96 of CPC to set aside the judgment and decree dated 26.03.2018 made in O.S.No.550 of 2012 on the file of the V Additional District Court, Coimbatore.

For Appellant : Mr.S.Mukunth
Senior Counsel for
M/s.Sarvabhauman Associates

For Respondent : Mr.V.Venkatasamy for R2

J U D G M E N T

This First Appeal is directed against the judgment and decree dated 26.03.2018 in O.S. No.550 of 2012 on the file of the learned V Additional



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District Judge, Coimbatore, whereby the suit for specific performance and consequential reliefs came to be dismissed.

2. For the sake of convenience, the parties are referred to in this appeal as they were arrayed in the suit.

3. The plaintiff's case is that she instituted the suit for specific performance on the basis of an alleged sale agreement dated 21.07.2010, stated to have been executed between her and late R. Balasubramaniam, in respect of one acre of land forming part of his 60% undivided share in the suit property. The total sale consideration was fixed at Rs.20,00,000/-, and the plaintiff claims to have paid an advance of Rs.15,00,000/-. The time stipulated for completion of the sale was two years from 20.07.2010. According to the plaintiff, she was always ready and willing to perform her part of the contract; however, the vendor did not execute the sale deed and died on 31.01.2012. Thereafter, notwithstanding the issuance of legal notice and exchange of correspondence, the defendants, being the legal heirs of the deceased vendor, failed to execute the sale deed, compelling her to file the present suit. In the alternative, the plaintiff seeks refund of the advance amount with interest and also prays for permanent injunction.



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4. The defendants have filed a written statement denying the plaintiff's claim in toto. While admitting the relationship between the parties and that late R. Balasubramaniam held 6/10 share in the suit property along with the co-owner S.A. Thangavelu, the defendants specifically contend that no agreement for sale was executed by late R. Balasubramaniam in favour of the plaintiff and that the alleged agreement is a fabricated and manipulated document. The defendants also dispute payment of any advance and contend that the plaintiff lacked the financial capacity to pay such a huge sum. They further point out inconsistencies relating to the date of the alleged agreement and the stamp paper said to have been used. According to the defendants, the property had already been developed into an approved layout known as "Sabari Gardens" and several plots had been sold, rendering the alleged agreement improbable. The defendants also deny the plaintiff's readiness and willingness, raise a plea of non-joinder of a necessary party, dispute the cause of action, and contend that the plaintiff is not entitled to the discretionary relief of specific performance.

5. On the side of the plaintiff, the plaintiff was examined as PW-1 and an attesting witness as PW-2, and Exs.A1 to A11 were marked. On the



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side of the defendants, the first defendant was examined as DW-1 and the co-owner as DW-2, and Exs.B1 to B5 were marked.

6. The trial Court, upon consideration of the pleadings and the oral and documentary evidence, held that the plaintiff had failed to establish the genuineness and enforceability of the alleged sale agreement. The Court further held that the plaintiff had not satisfactorily proved her continuous readiness and willingness, which is a mandatory requirement for grant of specific performance. It was also observed that the nature of property being an undivided share in a larger extent jointly owned with a third party, coupled with the disputed nature of the agreement, disentitled the plaintiff to the discretionary relief. In that view, the suit came to be dismissed.

7. Aggrieved, the plaintiff have preferred the present appeal contending, inter alia, that the Trial Court erred in disbelieving Ex.A2 solely on account of the date/stamp discrepancy; failed to duly appreciate Ex.A8 relating to encashment of a cheque for Rs.10,00,000/-; did not properly evaluate the evidence of PW-2; and omitted to draw appropriate inferences from the admissions of DW-1, including that Balasubramaniam was known as “Balu”. It is further urged that the Trial Court incorrectly concluded want



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of readiness and willingness merely on the ground that a sum of Rs.5,00,000/- was advanced as a loan during the subsistence of the agreement period.

8. Learned counsel for the appellant submitted that the Trial Court failed to properly appreciate the evidence proving execution and genuineness of the suit agreement for sale (Ex.A2) and erroneously disbelieved it merely because the agreement is dated 20.07.2010 whereas the stamp paper was purchased on 21.07.2010, overlooking that the terms were concluded on 20.07.2010 and the subsequent purchase of stamp paper and reduction into writing on the next day does not render the agreement suspicious; it was further contended that late R. Balasubramaniam had confirmed the sale price, period for performance and other essential terms for sale of one acre, and that the Trial Court ignored proof of advance payment of Rs.15,00,000/- out of Rs.20,00,000/-, particularly Ex.A8 bank statement showing cheque No.822973 for Rs.10,00,000/- dated 21.07.2010 was encashed by Balasubramaniam on 22.07.2010, whereby the burden shifted to the respondents to show the amount was not towards Ex.A2. Learned counsel also submitted that though the respondents disputed the signature, they took no steps to prove forgery by expert opinion and, having not established



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forgery, the Trial Court still erred in dismissing the suit; further, the Trial Court failed to give due weight to PW-2, an attesting witness who proved execution in the manner known to law, and lastly, it was urged that the finding on want of readiness and willingness is erroneous as it was based only on a loan advance of Rs.5,00,000/- on 21.01.2011 despite Ex.A2 granting two years for performance, and such transaction during the subsisting period cannot by itself negate readiness and willingness. and it was further submitted that since the plaintiff had proved payment of the advance amount, the Trial Court nevertheless committed a serious error in refusing the alternative relief of refund of the said advance amount.

9. On the contra, the learned counsel for the respondent submitted that Ex.A2 is surrounded by suspicious circumstances and is not a valid or enforceable contract, since there was no concluded offer and acceptance as required under the Contract Act and the agreement does not even specify the exact extent of the property, rendering it void and incapable of enforcement; it was further pointed out that the date of execution and the date of writing on the stamp paper differ, casting serious doubt on the document, that the cheque amount relied upon by the plaintiff does not disclose the purpose for which it was issued, that PW-2 is not a reliable attesting witness, and that as the



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defendant has specifically denied the vendor's signature, the burden squarely lies on the plaintiff to prove that the signature is genuine, and therefore the Trial Court rightly dismissed the suit and was justified in refusing even the alternative relief.

10. Points for Consideration:

- (i) Whether Ex.A2, the agreement for sale, is true and valid?
- (ii) Whether the plaintiff has established continuous readiness and willingness to perform her part of the contract, as required under law?
- (iii) Whether the plaintiff is entitled to the alternative relief of refund of the advance amount with interest?

Point 1:

11. In a suit for specific performance, the burden lies squarely on the plaintiff to prove the execution and genuineness of the agreement. Mere production of a document is not sufficient when execution is specifically denied. Though an agreement for sale need not be compulsorily attested, where its execution is disputed and the alleged executant is no more, a stricter scrutiny becomes necessary. In the present case, the plaintiff examined only one attesting witness as PW-2, while the other attesting witness was not examined. Further, no steps were taken to subject Ex.A2 to expert examination.



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WEB COPY 12. In the suit notice (Ex.A3), the date of execution is stated as 20.07.2010, whereas the stamp paper is shown to have been purchased only on 21.07.2010. The explanation that the terms were concluded earlier and reduced into writing on a later date is not supported by any independent evidence and appears to be an afterthought.

13. The recitals do not clearly specify the identifiable extent agreed to be conveyed out of the undivided 60% share. In transactions involving an undivided share in property developed into a layout, clarity in description assumes significance. While the plaintiff asserts that the deceased agreed to sell one acre out of his 6/10 share, Ex.A2 does not describe the subject-matter in those terms; it refers to the price for one acre, but does not clearly state the precise extent agreed to be conveyed.

14. Only one attesting witness was examined, and no handwriting expert was examined, notwithstanding the specific allegation of fabrication. The plaintiff claims that 75% of the sale consideration was paid on the date of the agreement; however, a period of two years was stipulated for completion,



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which, in the circumstances, raises a serious doubt as to the true nature of the transaction.

15. The Trial Court has correctly appreciated the above inconsistencies. The finding that Ex.A2 has not been proved cannot be termed perverse. Accordingly, Point No.1 is answered against the plaintiff.

Point 2:

16. For grant of the discretionary relief of specific performance, the plaintiff is bound to establish continuous readiness and willingness to perform her part of the contract, as mandated under Section 16(c) of the Specific Relief Act. Such readiness and willingness must be proved not merely at the time of the agreement, but throughout the subsistence of the contract and up to the date of decree.

17. In the present case, the agreement Ex.A2 stipulates a period of two years for completion of the sale. The plaintiff claims to have paid Rs.15,00,000/-, being three-fourths of the total sale consideration of Rs.20,00,000/-, on the very date of the agreement, leaving only Rs.5,00,000/- payable. In such circumstances, stipulation of a long period of two years for



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completion appears unusual and commercially improbable. This circumstance casts a serious doubt on the true nature of the transaction and lends support to the defence plea that the arrangement was more in the nature of a financial dealing than a genuine agreement for sale.

18. Further, a significant circumstance militating against the plaintiff's case is that, instead of tendering the balance sale consideration of Rs.5,00,000/- and calling upon the vendor to execute the sale deed, the plaintiff admittedly advanced a further sum of Rs.5,00,000/- to the very same vendor on 20.01.2011 and obtained a promissory note. The plaintiff has also instituted a separate suit on the said promissory note after the death of the executant on 31.01.2012. This plea is wholly inconsistent with that of a plaintiff/purchaser who claims to have been genuinely ready and willing to complete the sale by paying the balance consideration.

19. The cumulative effect of the above circumstances clearly demonstrates that the plaintiff has failed to establish continuous readiness and willingness to perform her part of the contract. Hence, this point is answered against the plaintiff.



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Point No 3:

20. The alternative claim is founded on the very same agreement.

When execution itself is not proved, refund cannot be granted in the same suit unless there is independent and satisfactory proof of payment. The alleged payment of Rs.15,00,000/- has not been established through cogent documentary evidence. In the absence of proof of the agreement and proof of payment in pursuance thereof, the alternative relief cannot be granted. Accordingly, Point No.3 is answered against the plaintiff.

21. In view of the findings recorded on Point Nos.1 to 3, this Appeal Suit is dismissed with costs, and the judgment and decree dated 26.03.2018 passed in O.S. No.550 of 2012 by the learned V Additional District Judge, Coimbatore, are confirmed. Consequently, the connected miscellaneous petition, if any, stands closed.

19.02.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The V Additional District Court,
Coimbatore

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DR. A.D. MARIA CLETE, J.

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Pre-Delivery Judgment in

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