



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.560 of 2020

Ramachandran

... Appellant

VS.

1.R.Velusamy (died)
2.Angammal
3.Nandagopal
4.Dhandapani
5.Balan @ Balasubramaniam

... Respondents

(R1-died, R2 to R4 already on record are recorded as
Legal Representatives of the R1, recorded vide
c/o dated 10.03.2026 made in S.A.No.560/2020)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgement and Decree dated 13.06.2018 made in A.S.No.6 of 2018 on the file of the Subordinate Judge, Paramathi and by confirming Judgment and Decree dated 26.02.2014 made in O.S.No.94 of 2005 on the file of the District Munsif cum Judicial Magistrate, Paramathi.

For Appellant : Mr.S.Senthil

For Respondents : Mr.K.Muthukumarasamy
for Mr.V.Sanjeevi



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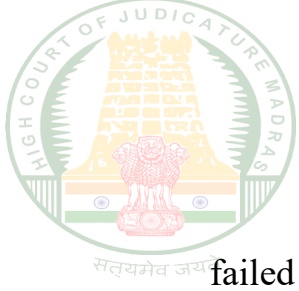
J U D G M E N T

The unsuccessful 1st plaintiff is the appellant.

2. The appellant and 5th respondent herein filed a suit for specific performance. The suit was decreed by the Trial Court by granting decree for specific performance in favour of the appellant/ 1st plaintiff alone.

3. The appeal filed by the respondents 1 to 4/defendants was allowed by the First Appellate Court and decree of the trial Court was modified by granting alternative relief of return of advance amount. Aggrieved by the same, the 1st plaintiff alone has filed the second appeal.

4. According to the plaintiffs (appellant and 5th respondent), the suit property belonged to the respondents 1 to 4/defendants 1 to 4. The plaintiffs entered into an agreement with defendants 1 to 4 on 07.04.2003, agreed to purchase the suit property for sale consideration of Rs.30,000/- and on the date of agreement, an advance of Rs.20,000/- was paid. The balance amount of Rs.10,000/- was agreed to be paid and sale transaction shall be completed on or before 06.07.2003.

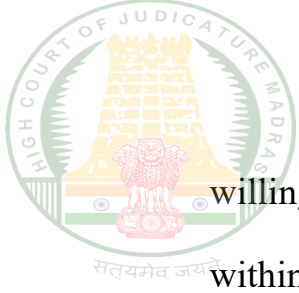


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5. It is the case of the plaintiffs that the 2nd plaintiff/ 5th respondent failed to co-operate for completion of sale transaction and hence the 1st plaintiff issued a notice on 09.12.2004 under Ex.A2, calling upon the defendants 1 to 4 to execute the sale deed. In the said pre-suit notice, it was stated by the 1st plaintiff that at the time of agreement, he paid his share of sale consideration namely Rs.15,000/- and the 2nd plaintiff/5th respondent paid only Rs.5,000/- towards his share and remaining amount of Rs.10,000/- has to be paid by the 2nd plaintiff/ 5th respondent. Initially, the suit was filed only by the 1st plaintiff by arraying the 2nd plaintiff as the 5th defendant. Later the 5th defendant was transposed as 2nd plaintiff.

6. It is further stated that the 1st plaintiff has been ready and willing to perform his part of the contract, however, the 2nd plaintiff and other defendants colluded together and refused to complete the sale transaction.

7. The contesting defendants filed a written statement and contended that as per the agreement both the plaintiffs jointly paid the advance amount of Rs.20,000/- and they agreed to complete the sale transaction by paying the balance sale consideration on or before 06.07.2003. It was further averred by the contesting defendants that the plaintiffs were not ready and



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willing to perform their part of the contract and complete the sale transaction within time stipulated and hence they were not entitled to relief of specific performance.

8. It was also stated that as per the terms of agreement, on failure of the plaintiff to pay balance sale consideration within the time stipulated, the agreement shall stand automatically cancelled. It was also pleaded by the defendants that in the agreement, there was no mention about the share of the 1st plaintiff and the 2nd plaintiff in the sale consideration and both of them agreed to pay the balance amount jointly.

9. Before the Trial Court, the 1st plaintiff was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3. On behalf of the plaintiffs, six documents were marked as Exs.A1 to A6. The 1st defendant was examined as DW.1 and no documentary evidence was let in by the defendants.

10. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the 1st plaintiff



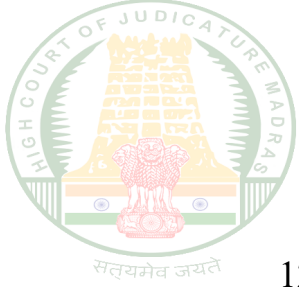
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proved his readiness and willingness to perform his part of the contract and hence entitled for specific performance of the agreement. The suit was decreed by granting primary relief of specific performance in favour of 1st plaintiff. Aggrieved by the same, the defendants 1 to 4 filed an appeal in A.S.No.6 of 2018 on the file of the Subordinate Court, Paramathi. The First Appellate Court reversed the findings of the trial Court and negated the primary relief of specific performance, however, it granted alternative relief. Aggrieved by the same, the plaintiffs have come before this Court.

11. At the time of admission, this Court formulated the following substantial questions of law, by order dated 29.10.2020:

“ 1. Whether the Lower Appellate Court is right in law in setting aside the decree for specific performance on the ground that the 5th defendant who was subsequently transposed as 2nd plaintiff was not ready and willing, ignoring the judgment of this Hon’ble Court reported in Vol.92 LW Page 65.

2. Whether the Lower Appellate Court is right in law in setting aside the decree for specific performance particularly when the 1st defendant who examined himself as DW.1 has admitted that the 1st plaintiff was always ready and willing to perform his part of the obligating under the contract.”



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12. The learned counsel appearing for the appellant by relying on the judgment of this Court in *Ponnuswami Gounder Vs. Rama Boyan and others* reported in (1979) 92 LW 65 would submit that in cases, where two or more persons entered into an agreement of sale and some of the agreement holders are not willing to complete the sale transaction, the willing agreement holder can always maintain a suit for specific performance. According to the learned counsel for the appellant, the 1st plaintiff proved his continuous readiness and willing to perform his part of the contract and inspite of the same, the first Appellate Court had committed an error in denying the primary relief of specific performance.

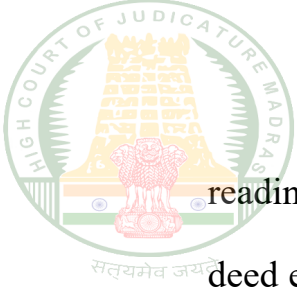
13. It is seen from the typed set of papers and records, as per the terms of suit sale agreement Ex.A1, both the plaintiffs 1 and 2 jointly agreed to purchase the suit property for Rs.30,000/- and paid advance amount of Rs.20,000/- on the date of agreement. They also agreed that the balance amount of Rs.10,000/- should be paid and the sale consideration should be completed on or before 06.07.2003. There is also clause in agreement which says, in case of failure on the part of the agreement holder to complete the sale consideration within time stipulated, the agreement shall stand automatically cancelled.



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14. It is seen from the records that the first notice calling upon the defendants to execute the sale deed was issued by the 1st plaintiff only on 09.12.2004, nearly after five months from the date of expiry of the time stipulated in the sale agreement. The plaintiffs have no explanation for delay in issuing pre-suit notice. Further, a perusal of Ex.A2 pre-suit notice would indicate that the 1st plaintiff clearly stated that the balance sale consideration should be paid by the 2nd plaintiff and he colluded with the other defendants and failed to pay balance sale consideration. Therefore, it is clear in pre-suit notice, the 1st appellant did not express his willingness to pay the balance sale consideration to the agreement vendor and get the sale deed executed.

15. In the light of the averment contained in Ex.A2, pre-suit notice, this Court is unable to accept the submission made by the learned counsel for the appellant that the 1st plaintiff proved his readiness and willingness to perform his part of the contract. First of all, in the agreement, there is no mention about the alleged indoor arrangement between the 1st plaintiff and 2nd plaintiff. As per the terms of agreement, both the plaintiffs agreed to pay balance sale consideration of Rs.10,000/- within time stipulated. However, the plaintiffs, who issued pre-suit notice, failed to express

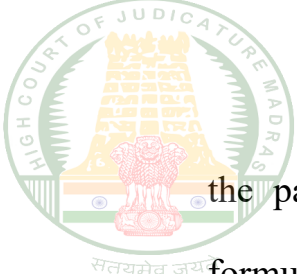


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readiness and willingness to pay balance sale consideration and get the sale deed executed. Further, there is unexplained delay of five months in issuing pre-suit notice. The First Appellate Court, taking into consideration all these factors, rightly came to the conclusion that the appellant/1st plaintiff failed to prove his readiness and willingness to perform his part of the contract and hence was not entitled to primary relief of specific performance.

16. In *Ponnuswami Gounder Vs. Rama Boyan and others* relied on by the learned counsel for the appellant, this Court observed that when one of the agreement holders is not willing to perform his part of the contract, the other agreement holder, who expressed his willingness to perform agreed part of the contract, can pay the entire sale consideration and seek specific performance. In the case on hand, the 1st plaintiff in his pre-suit notice failed to express willingness to pay balance sale consideration. Therefore, the citation relied by the learned counsel for the appellant is not applicable to the facts of the present case, wherein the 1st plaintiff's willingness is not at all mentioned in the pre-suit notice.

17. I do not find any perversity in the factual conclusion reached by the First Appellate Court with regard to lack of readiness and willingness on



S.A.No.560 of 2020

the part of the 1st plaintiff. Therefore, the substantial questions of law formulated at the time of admission are answered against the appellant.

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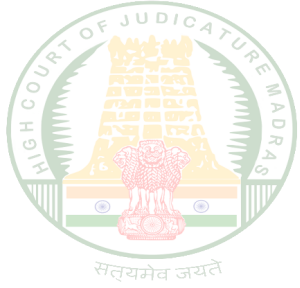
18. Accordingly, the Second Appeal stands dismissed. In the facts and circumstances of the case, there will be no order as to costs.

02.06.2026

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

- 1.The Subordinate Judge, Paramathi.
- 2.The District Munsif cum Judicial Magistrate, Paramathi.



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S.A.No.560 of 2020

S.SOUNTHAR, J.

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S.A.No.560 of 2020

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