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A.S.(MD)NO.134 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

A.S.(MD)No.134 of 2016

and

CROSS.OBJ(MD)No.4 of 2018

and

C.M.P.(MD)No.9225 of 2016

A.S.(MD)No.134 of 2016

M.Loganathan

... Appellant /Plaintiff

Vs.

Vijayalakshmi

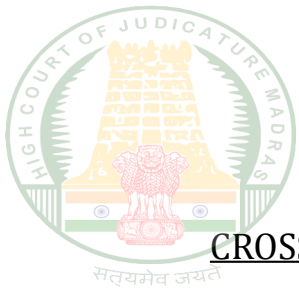
... Defendant / Respondent

Prayer: Appeal suit filed under Section 96 CPC, to set aside the judgment and decree dated 05.03.2016 passed in O.S.No.145 of 2007 on the file of the III Additional District Judge, Thanjavur at Pattukottai and to allow the appeal of the appellant throughout with cost.

For Appellant : Mr.G.Prabhu Rajadurai,
for Mr.B.Jameel Arasu.

For Respondent : Mr.S.Meenakshi Sundaram,
Senior counsel,
for Mr.M.Sengu Vijay

* * *



CROSS. OBJ(MD)No.4 of 2018

WEB COPY Vijayalakshmi

... Cross Objector

Vs.

M.Loganathan

... Respondent

Prayer: Cross Objection filed under Order 41 Rule 22 CPC, to set aside the decree and judgment dated 05.03.2016 made in O.S. No.145 of 2007 on the file of the III Additional District Judge, Thanjavur at Pattukottai with respect to grant of relief to the plaintiff to the alternative relief of recovery of the advance amount of Rs.10,00,000/- instead of Rs.8,00,000/- from the defendant and allow this cross objection.

For Cross Objector : Mr.S.Meenakshi Sundaram,
Senior counsel,
for Mr.M.Sengu Vijay.

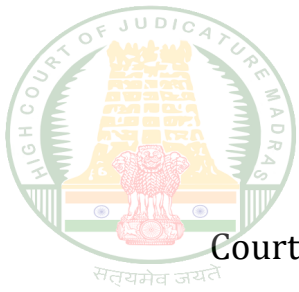
For Respondent : Mr.G.Prabhu Rajadurai,
for Mr.B.Jameel Arasu.

* * *

COMMON JUDGMENT

(By G.R.SWAMINATHAN, J.)

The plaintiff in O.S.No.145 of 2007 on the file of the III Additional District Judge, Thanjavur @ Pattukkottai has filed this appeal. The appeal arises out of a suit for specific performance. The



Court below vide judgment and decree dated 05.03.2016 dismissed the suit denying the relief of specific performance but ordered the defendant to repay the advance amount of Rs.10,00,000/- with interest from the date of the suit till the date of payment. The defendant has filed cross objection contending that while she is ready to refund Rs. 8,00,000/- with interest, she cannot be saddled with the additional amount of Rs.2,00,000/-. In other words, the scope of this cross objection is confined to refund of Rs.2,00,000/- alone.

2. The case of the plaintiff is as follows:-

The defendant agreed to sell the suit property to the plaintiff @ Rs.7,600/- per kuzhi. On 05.01.2006, the sale agreement Ex.A1 was entered into between the parties. The plaintiff paid a sum of Rs. 5,00,000/- towards advance (Rs.1,00,000/- by way of demand draft and Rs.4,00,000/- by way of cash). The total sale consideration was fixed at Rs.66,34,800/-. A further sum of Rs.5,00,000/- was to be paid within one month from the date of agreement. 50% of balance sale consideration was to be paid within six months and the entire sale consideration was to be paid within one year from the date of



agreement. The case of the plaintiff is that on 09.02.2006, further sum of Rs.5,00,000 was paid as agreed (Rs.3,00,000/- by way of demand draft and Rs.2,00,000/- by way of cash). It is the case of the plaintiff that he had valid reasons for not paying the balance amount in time. According to the plaintiff, time was not the essence of contract. The plaintiff issued Ex.A.2 notice dated 28.05.2007 calling upon the defendant to receive the balance sale consideration and execute the sale deed. The defendant issued reply notice Ex.A4 dated 07.06.2007 denying various claims put forth in the notice. Since the defendant declined to comply with the demand, O.S.No.145 of 2007 came to be instituted.

3. The defendant filed written statement denying the case of the plaintiff in *toto*. According to the defendant, a sum of Rs.4,00,000 alone was received towards advance.

4. Based on the rival pleadings, the Court below framed the following issues:-

1. Whether the suit sale agreement is valid?
2. What was the advance amount actually received by



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the defendant from the plaintiff?

3. Whether the plaintiff is entitled for decree for specific performance?
4. Whether the suit is barred by limitation?
5. To what reliefs the plaintiff is entitled to?"

5. Plaintiff examined himself as P.W.1. One Alexander who had attested as a witness when the second installment was paid, was examined as PW2. The manager of the bank where the demand drafts given by the plaintiff were encashed was examined as PW3. Ex.A1 to Ex.A8 were marked. The defendant examined herself as DW1. Copy of the sale agreement was marked as Ex.B.1. Since the endorsement (Ex.A5) was disputed, the plaintiff sought expert opinion. The Assistant Director of Regional Forensic Science Laboratory, Madurai was examined as CW1. Ex.C1 to Ex.C5 were marked as court documents. After considering the entire evidence on record, the Court below vide judgment and decree dated 05.03.2016 denied the relief of specific performance, but granted the alternative relief of recovery of the advance amount of Rs.10,00,000/- from the defendant. Thus, the suit was partly decreed.



6. Heard both sides. The points that arise for determination in

this appeal are as follows:-

- i) Whether the plaintiff was ready and willing to discharge his part of the obligation throughout?
- ii) Whether the Court below was justified in coming to the conclusion that the defendant had received the advance amount of Rs.10,00,000/- as claimed by the plaintiff?
- iii) Whether the Court below could have come to a conclusion by dissenting from the report of the forensic expert without proper reasons?
- iv) Whether time was of essence in this contract?

7. It is not in dispute that the parties should have concluded the entire transaction within one year from the date of execution of the sale agreement i.e., on or before 04.01.2007. But the plaintiff issued the pre-suit notice only in May 2007. The learned counsel appearing for the plaintiff would contend that since the transaction pertained to sale of an immovable property, there is no presumption that time is of essence in this contract. This proposition is beyond cavil. But it has been held that the Court may infer that time is of essence by taking



into account the express terms of the contract and from the attendant circumstances.

8.The Hon'ble Supreme Court in the decision reported in **(2024) 3 SCC 232 (vide *Alagammal vs Ganesan*)** had held as follows:-

"25. ... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?):

(1) from the express terms of the contract;

(2) from the nature of the property; and

(3) from the surrounding circumstances, for example, the object of making the contract.'

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised."

In the case on hand, in the agreement itself, it has been mentioned that the defendant was in urgent need of money to discharge her debts. In fact in the plaint itself, it has been averred that the



defendant entered into the agreement of sale to discharge certain family needs and family expenses. Therefore, on the own showing of the plaintiff, the time was the essence of the contract. The point is answered accordingly.

9. The nest question that calls for consideration is whether plaintiff was ready and willing to perform his part of the contract throughout. The element of readiness and willingness has been explained in a number of decisions. One such decision is ***P. Daivasigamani v. S. Sambandan, (2022) 14 SCC 793.*** The Hon'ble Supreme Court held therein as follows :

“21. Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances [See para 2 in *Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526*] . Continuous readiness and willingness on the part of the plaintiff



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purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.”

The plaintiff was obliged to show that he was ready and willing to perform his part of the contract throughout. Admittedly, the total sale consideration was to be paid in four stages (ie) on the date of agreement, within one month from the date of agreement, within six months from the date of agreement and within one year from the date of agreement. The Court below has given a categorical finding that the plaintiff has miserably failed to perform at the third and fourth stage. The Court below rightly came to the conclusion that the plaintiff was not ready and willing to perform his part of the contract fully. Once this finding was arrived at, the necessary consequence was the denial of the relief of specific performance. The Court below rightly came to the conclusion that the time was the essence of the contract. Hence, we do not find any ground to interfere with the decree of the Court below. However, in the interest of justice, we enhance the rate of interest fixed by the court below from 6% p.a. to 7.5% p.a.



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10.The learned Senior counsel appearing for the defendant strongly contended that the Court below could not have directed refund of a sum of Rs.10,00,000/-. According to him, the evidence on record points to the fact that a sum of Rs.8,00,000/- was received by the defendant and that therefore this Court ought to allow the cross objection as prayed for.

11.According to the plaintiff, a sum of Rs.5,00,000/- was paid on the date of agreement and a further sum of Rs.5,00,000/- was paid on 09.02.2006. His specific case was that a sum of Rs.4,00,000/- was paid in cash on 05.01.2006 and a sum of Rs.2,00,000/- was paid in cash on 09.02.2006. Receipt of the sum was endorsed on the reverse side of Page No.1 of the sale agreement (Ex.A5). The plaintiff stated that the endorsement made by the defendant was witnessed by one Alexander and the husband of the defendant. The defendant had denied this endorsement in her written statement. The opinion of the forensic expert was also not in favour of the plaintiff.

12.The question that calls for consideration is whether the court below could have rejected the expert opinion. The learned Senior counsel would contend that if the Court below wants to reject



an expert opinion, it must obtain a contra opinion from another expert. As per Section 45 of the Indian Evidence Act, 1872, (corresponding to Section 39(1) of the Bharatiya Sakshya Adhiniyam, 2023) the opinion of an expert is a relevant fact. The expert's opinion is not conclusive and not binding on the Court, more so in the case of handwriting analysis which is an imperfect science. (Vide ***Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, 1963 SCC OnLine SC 114; *Murali Lal v State of MP* (1980) 1 SCC 704**). Of course, the Court will not casually brush aside an expert's opinion. If the Court wants to reject an expert opinion, it must give convincing reasons. In the case on hand, the Court below had stated that neither the report nor the reasoning sheet contained the characteristics of the signatures applied and examined by her and that they are not explanatory in nature. We are satisfied that the Court below has given proper reasons for negating the expert's opinion. The learned trial Judge could have taken recourse to Section 73 of the Act. But then, such an approach was not taken. Instead, based on the overall pleadings and documentary evidence, the Court below came to the conclusion that the defendant had received a sum of Rs.10,00,000/-.



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13.The next question that calls for consideration is whether this finding is justified. It is settled that if a party to a *lis* does not disclose all material facts truly and fairly but states them in distorted manner to mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law (vide ***Zarina Siddiqui v. A. Ramalingam*, (2015) 1 SCC 705**). Even though in the cross objection, it is conceded that the defendant had received a sum of Rs.8,00,000/-, in the written statement, the defendant had claimed that only a sum of Rs.4,00,000/- was received as advance. DW.1 went to the extent of stating that she received only a sum of Rs.1,00,000/- on the date of sale agreement and that she did not receive the cash amount of Rs.4,00,000/-. We, therefore, come to the conclusion that the defendant cannot be termed as a truthful witness. While the plaintiff chose to examine P.W.2 Alexander who was one of the attestors, the defendant did not examine her husband who was the other attestor. The defendant claimed that she was ready to examine her husband but she did not examine him. Failure of the defendant to examine her husband goes against her. The stand taken by the cross objector/defendant in this appeal falsifies the stand taken by her



before the court below. The court below has given convincing reasons for concluding that a sum of Rs.10,00,000/- was paid as advance. We do not find any merit in the cross objection. The cross objection stands dismissed. Even while upholding the denial of specific performance and directing refund, we enhance the rate of interest fixed by the Court below from 6% p.a. to 7.5% p.a.

14.This appeal suit is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
4th June 2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PMU/skm

To:

1. The III Additional District Judge,
Thanjavur at Pattukottai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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14

A.S.(MD)NO.134 OF 2016

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AND

R.POORNIMA, J.

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