

SA No.611 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved : 21/04/2026

Date of Pronounced : 01/06/2026

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

SA No.611 of 2003
and
CMP.No.5708 of 2003

1.S.Periasamy

2.S.Senthoor Pandian

3.S.Sudalaiyandi

: Appellants/Respondents/
Plaintiffs

Vs.

1.Ganapaty Thevar (Died)

: 1st Respondent/Appellant/

2.Subbulakshmi

Defendant

3.Mariyammal

4.Shanmugalakshmi (Died)

5.Sornam

6.Mahendra Boopathy

7.Sudha

8.Minor Santhosh

(8th respondent minor represent by his
mother and natural guardian-7th Respondent)

(Respondents 2 to 8 are brought on record as LR.s of the deceased
Sole Respondent, vide Court order, dated 07/07/2025 made in



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CMP(MD)Nos.16526 to 16528 of 2023 in SA No.611 of 2003)

9. Thalavai Alias Kili

10. Minor T. Parkavi Suguna

: Respondents 2 to 10

(10th Respondent is minor represented by
her father/9th respondent herein)

(Respondents 9 and 10 are brought on
record as LR.s of the deceased 4th respondent
vide Court Order, dated 07/07/2025 made in
CMP(MD)Nos.8663, 8665 and 8668 of 2025
in SA No.611 of 2003)

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 21/11/2002 in A.S.No.312 of 2001 on the file of the Principal District Judge's Court, Tirunelveli, preferred against the judgment and decree, dated 12.09.2001 in O.S.No.108 of 1997 on the file of the Additional Subordinate Judges, Court, Tenkasi.

For Appellants : Mr.M.Saravanan

For R2, R3, R5 to R8 : Mr.S.Sundarapandian

JUDGMENT

This second appeal is filed against the judgment and decree dated 21.11.2002 rendered in A.S.No.312 of 2001 on the file of the Principal District Judge, Tirunelveli, which was preferred against the



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judgment and decree, dated 12.09.2001 made in OS No.108 of 1997 on

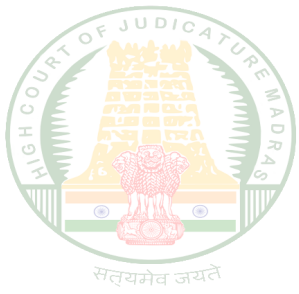
the file of the Additional Sub Judge, Tenkasi.

2. The appellants/plaintiffs filed the original suit O.S.No.108 of 1997 against the deceased Ganapathi Thevar as sole defendant for the relief of specific performance.

3. The case of the plaintiffs is that the suit property originally belonged to the deceased Ganapathy Thevar, the defendant (since died, leaving behind respondents 2 to 8 herein as his legal heirs).

4. The plaintiffs and the deceased Ganapathy Thevar entered into a sale agreement dated 23.10.1996 for the purchase of the suit schedule property for a total sale consideration of Rs.2,10,000/-. An advance amount of Rs.10,000/- was paid on the date of the agreement. It was agreed that the sale deed shall be executed on or before 30.06.1997. Apart from the initial advance, the plaintiffs paid further sums as follows:

- * Rs.20,000/- on 08.11.1996
- * Rs.10,000/- on 12.04.1997



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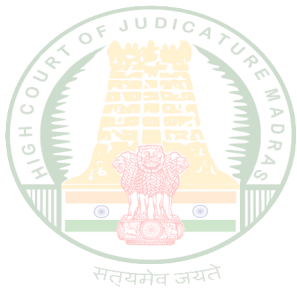
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* Rs.10,000/- on 11.05.1997

* Rs.10,000/- on 14.06.1997

Thus, a total sum of Rs.60,000/- was paid towards the sale consideration, all of which were duly acknowledged by the defendant. The remaining balance sale consideration payable is Rs.1,50,000/-.

5. Even prior to the sale agreement, the defendant had executed a mortgage deed dated 19.08.1993 in respect of the suit schedule property in favour of the plaintiffs for a sum of Rs.10,000/-. The said mortgage amount remains unpaid, and the mortgage period has also expired. The plaintiffs have always been ready and willing to perform their part of the contract. They issued a legal notice ON 25.06.1999 calling upon the defendant to receive the balance sale consideration and execute the sale deed. However, the defendant failed and neglected to comply with the same. Hence, the plaintiffs are entitled to seek specific performance of the agreement of sale. The plaintiffs therefore, prayed to direct the defendant to receive the balance sale consideration and execute the sale deed in favour of the plaintiffs. In the event of the defendant's failure, the plaintiffs pray that the Hon'ble Court may execute the sale deed on behalf of the Plaintiffs.



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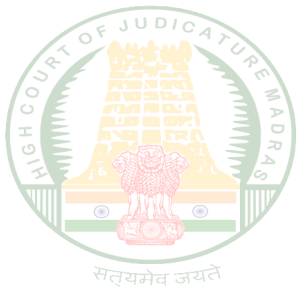
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6. In the written statement, the defendant admits the execution of the sale agreement dated 23.10.1996 and the receipt of part of the sale consideration. However, it is contended that the plaintiffs failed to pay the balance sale consideration within the stipulated time, namely on or before 30.06.1997. The plaintiffs were not ready and willing to perform their part of the contract within the agreed period. Due to their failure, the sale could not be completed. Therefore, the plaintiffs are not entitled to the equitable relief of specific performance. The suit is liable to be dismissed.

7. The trial Court, after perusing the plaint and written statement filed by the parties, has framed the following issues:-

1. Whether the plaintiffs are entitled to the relief as prayed for?
2. To what other reliefs?

8. On the side of the plaintiffs, three witnesses were examined as PW1 to PW3. On the side of the defendant, one witness was examined as DW1 and no document was marked.



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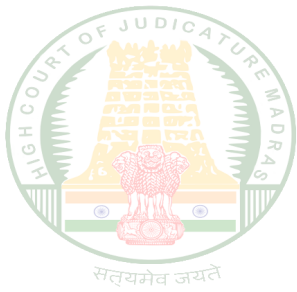
9. After hearing both sides, the Trial Court decreed the suit in favour of the plaintiffs directed the defendant to execute the sale deed upon receipt of the balance sale consideration, failing which, the sale deed would be executed by the Court itself.

10. Aggrieved by the same, the defendant filed an appeal in A.S No. 312 of 2001 before the Principal District Judge, Tirunelveli. The Principal District Judge reversed the findings of the Trial Court and held that the plaintiffs had failed to prove their readiness and willingness to perform their part of the contract till 30.06.1997 and allowed the appeal. Against which the present appeal filed.

11. This second appeal was admitted on the following substantial questions of law:-

a. Whether the lower appellate Court was right in holding that time was the essence of the Contract when in a case of sale of immovable property there is no presumption that time is the essence vide AIR 1993 Sec.1942?

b. Whether in law the lower appellate Court was right in failing to see that even otherwise, the appellants had demanded execution of the sale deed even prior to the last date stipulated in Ex.A1?



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c. Whether in law the Lower Appellate Court was not wrong in holding that the appellants did not have the amount required overlooking that the appellants did not have to jingle the coins and that it was enough if they proved their means?

d. The Lower Appellate Court grievously erred in not supporting its conclusions with reasons as mandated under O 41 R 31 C.P.C. ?

12. Heard the learned counsel on either side and perused the materials available on record.

13. Answer to the substantial question of law as follows :

According to the plaintiffs, they requested the defendant from 15.06.1997 onwards to execute the sale deed upon receipt of the balance sale consideration. However, the defendant failed to comply. It is further alleged that, on the ill-advice of third parties, the defendant attempted to alienate the property to others.

14. Consequently, the plaintiffs issued a legal notice dated 25.06.1997 calling upon the defendant to receive the balance sale consideration and execute the sale deed. The said notice was admittedly



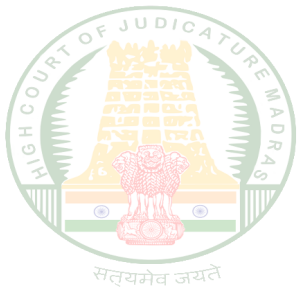
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received by the defendant on 26.06.1997. Thereafter, the plaintiffs issued a telegram dated 30.06.1997 requesting the defendant to appear before the Sub-Registrar's Office for execution of the sale deed.

15. The plaintiffs have specifically pleaded and proved that they were present at the Sub-Registrar's Office on 30.06.1997 from 10.00 a.m. to 5.45 p.m., awaiting for the defendant. The plaintiffs also purchased stamp papers worth Rs.10,000/- on 10.07.1997 for completion of the transaction.

16. Despite receipt of notices, the defendant did not respond promptly and issued a reply only on 02.07.1997, falsely alleging that the plaintiffs had no intention and means to complete the transaction. The plaintiffs have consistently asserted that they were always ready and willing to perform their part of the contract.

17. There is no dispute regarding the execution of Exhibit A1 sale agreement. The defendant has admitted the receipt of the advance amount and subsequent payments made by the plaintiffs up to 11.05.1997. It is also undisputed that the parties agreed to complete the sale on or before 30.06.1997.



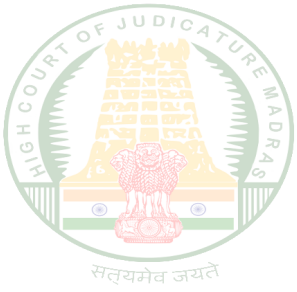
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18. The First Appellate Court, invoking Section 55 of the Indian Contract Act, held that since time was stipulated, and as the plaintiffs allegedly lacked sufficient funds and readiness, they were not entitled to specific performance.

19. However, the materials on record clearly establish otherwise the plaintiffs had continuously paid part of the sale consideration up to May 1997, which has been admitted by the defendant. Even prior to the expiry of the agreement period, the plaintiffs issued a notice dated 25.06.1997 expressing their readiness and calling upon the defendant to execute the sale deed. Though the defendant received the said notice on 26.06.1997, he did not respond by expressing his readiness or calling upon the plaintiffs to pay the balance consideration. Instead, he remained silent.

20. The plaintiffs further issued a telegram on 30.06.1997 requesting execution of the sale deed on the same day, which was also received by the defendant. The plaintiffs have also proved purchase of stamp papers for execution of the sale deed.



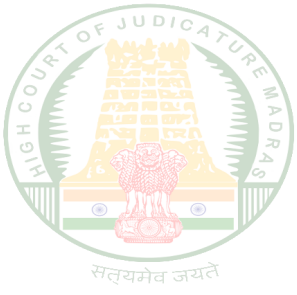
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21. The defendant's primary contention is that the plaintiffs lacked sufficient means to pay the balance consideration. To substantiate their financial capacity, the plaintiffs produced Ex.A12 bank passbook, which shows a credit balance of Rs.95,150/- as on 24.06.1997, i.e., prior to the expiry of the agreement.

22. Further, the plaintiffs relied on a mortgage transaction executed by the defendant, evidencing that a sum of Rs.10,000/- was payable by the defendant, thereby strengthening the plaintiffs' financial position. The entries in Ex.A9 further show that the plaintiffs deposited Rs.43,750/- on 01.03.1997 and Rs.13,200/- on 02.03.1997, indicating availability of funds. The plaintiffs have also asserted that, apart from bank balance, they possessed sufficient cash to meet the remaining consideration.

23. Under Section 16(c) of the Specific Relief Act, the plaintiff must establish readiness and willingness to perform his part of the contract. It is well settled that the plaintiff need not carry cash physically at all times. It is sufficient to demonstrate financial capacity and bona fide intention.



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24. In the present case:

The plaintiffs paid substantial amounts prior to the due date, they issued notices prior to expiry of the agreement. They remained present at the Sub-Registrar's Office on the stipulated date. They sent a telegram evidencing defendant's default. They purchased stamp papers for execution. They proved financial capacity through documentary evidence

25. On the contrary, the defendant did not respond promptly to notices, he did not call upon the plaintiffs to pay the balance amount. He issued a reply only after expiry of the agreement. Further in the cross-examination, he admitted unwillingness to return the advance and expressed intention to sell the property to third parties

26. In view of the above, this Court holds that the plaintiffs have satisfactorily established their readiness and willingness to perform their part of the contract. The First Appellate Court failed to properly appreciate the evidence on record and erroneously reversed the well-reasoned judgment of the Trial Court. Accordingly, the judgment and



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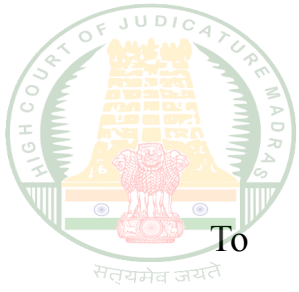
decree of the First Appellate Court are set aside, and the judgment and
decree of the Trial Court granting specific performance are hereby
restored.

27. In the result, the second appeal is allowed and the
judgment and decree dated 21.11.2002 passed in A.S.No.312 of 2001 on
the file of the Principal District Court, Tirunelveli, are set aside and the
judgment and decree dated 12.09.2001 passed in O.S.No.108 of 1997 on
the file of the Additional Subordinate Court, Tenkasi are restored. No
costs. Consequently, connected miscellaneous petition is closed.

01.06.2026

Index : Yes
Internet : Yes
NCC : Yes / No

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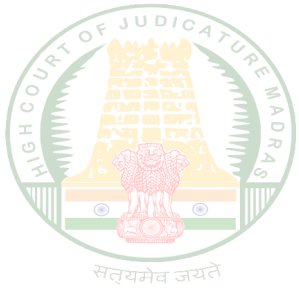
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1.The V Additional Sessions Judge,
Tirunelveli.

2.The Sub Judge,
Tirunelveli.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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Pre-Delivery Judgment in
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