

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2026 PRONOUNCED ON : 02.04.2026

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CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR JUSTICE K.RAJASEKAR

**AS No. 924 of 2018
and
CMP No.23611 of 2018**

1. T.Meyyappan

2. Venugopal

..Appellant(s)

Vs.

C.Selvan

..Respondent(s)

Appeal Suit filed under Order 41 Rule 1 of CPC read with Section 96 of CPC, to set aside the judgment and decree dated 06.08.2018 passed in OS No.23 of 2016 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam.

For Appellant(s): Mr.S.Kaithamalai Kumaran

For Respondent(s): Mr.S.A.Mohamed Mubarak



JUDGMENT

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(Judgment of the Court was delivered by C.V.Karthikeyan J.)

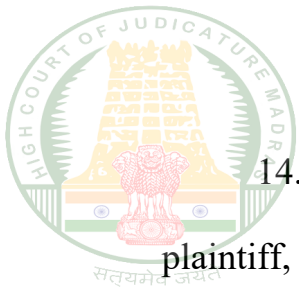
The defendants in O.S.No.23 of 2016 on the file of the III Additional District Court, Gopichettipalayam at Erode, aggrieved by the judgment and decree dated 06.08.2018 have filed the present Appeal Suit.

2.The suit in O.S.No.23 of 2016 had been filed by the respondent, C.Selvam, seeking specific performance of an agreement of sale or in the alternate to refund the advance amount of Rs.33,42,000/- together with interest and also future interest till realization and also to create a charge over the suit properties as security for the recovery of the advance amount and also for costs of the suit.

3.By judgment dated 06.08.2018, the suit was decreed, necessitating the defendants, T.Meiyappan and T.Venugopalan to file the present appeal.

O.S.No.23 of 2016 (III Additional District Court, Gopichettipalayam at Erode):

4.In the plaint it had been stated that the suit property described in the schedule to the plaint belonged to the defendants and that on



14.09.2015, the defendants had entered into an agreement of sale with the plaintiff, to convey the suit property for a total sale consideration of Rs.58,08,000/- at the rate of Rs.6,00,000/- per acre. An advance of Rs.20,00,000/- had been paid. The agreement was also reduced into writing.

5. In the agreement, it had been stipulated that the balance sale consideration of Rs.38,08,000/- should be paid within a period of three months and then the sale deed should be executed. The defendants had also agreed to measure the property before the execution of the sale deed. It was further provided that if the plaintiff failed to perform his part of the agreement, then the defendants could forfeit the advance amount, and if the defendants were to fail to come forward to execute the sale deed, the plaintiff could file a suit seeking specific performance.

6. The plaintiff contended that he was always ready and willing to pay the balance sale consideration but that the defendants protracted measuring the property and fixing the boundaries. However, on 18.12.2015, the defendants received a further sum of Rs.10,00,000/- and entered into another agreement and extended the time for performance of the contract till the last date of January 2016. The plaintiff contended that he had been calling upon the defendants to come forward to execute the sale deed and to receive the balance sale consideration. Since they did not do so, the plaintiff had issued a notice on

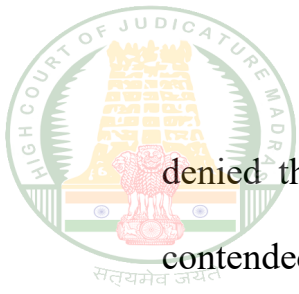


14.04.2016 expressing readiness and willingness to pay the balance sale consideration and calling upon the defendant to come over to the Sub-Registrar Office, Sathyamangalam on 21.04.2016 to execute the sale deed and receive the balance sale consideration of Rs.28,08,000/-.

7.The defendants issued a reply notice on 20.04.2016 refusing to execute the sale deed. They claimed that the plaintiff was not ready and willing to perform his part of the agreement and that the plaintiff did not have sufficient funds to pay the balance sale consideration. It was contended that time was the essence of the contract and the defendants were entitled to forfeit the advance amount.

8.It had been further contended in the plaint that the 1st defendant along with another individual U.Selvaraj sought enhancement of the sale consideration to Rs.7,00,000/- per acre which was accepted by the plaintiff, but thereafter not responded by the defendants. The plaintiff claimed that the defendants were deliberately avoiding execution of the sale deed and under those circumstances filed the suit seeking specific performance or in the alternate for return of the advance amount.

9.In the written statement, the defendants denied that the properties belonged to them or that it was allotted to them under the partition deed. They



denied the execution of the agreement and receipt of advance sale price as contended in the plaint. They denied every other allegation in the plaint including receipt of further advance of Rs.10,00,000/- and the issuance of notice and the exchange of notices. They further denied that they sought enhancement of sale consideration from Rs.6,00,000/- per acre to Rs.7,00,000/- per acre.

10.They thereafter stated that time was the essence of agreement and that the plaintiff was never ready and willing to pay the balance sale consideration. It was further contended that the plaintiff never had intention to purchase the property, but entered into the agreement to make profit. The allegations that the plaintiff met the defendants and demanded execution of the sale deed were also denied. They sought dismissal of the suit.

11.An additional written statement had been filed stating that the agreements are inadmissible in evidence since they had not been registered under the Registration Act.

12.On the basis of the above pleadings, the Trial Court framed the following issues:

“1.Whether the agreement dated 14.09.2015 was true and valid?

2.Whether the plaintiff was ready and willing to perform



his part of the agreement?

3. Whether the plaintiff was entitled for the relief of specific

performance?

4. Whether the plaintiff was entitled for the alternate relief

of refund of advance sale consideration?

5. Whether the plaintiff was entitled for grant of charge

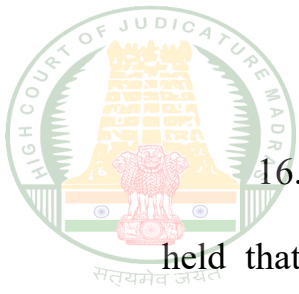
over the property?

6. To what other reliefs is the plaintiff entitled to?"

13. During trial, the plaintiff examined himself as PW-1 and examined another witness as PW-2. The 1st and 2nd defendants examined themselves as DW-1 and DW-2. They examined two further witnesses as DW-3 and DW-4.

14. The plaintiff marked Exs.A1 to A7. Exs.A1 and A2 dated 14.09.2015 and 18.12.2015 respectively were the agreements of sale. Exs.A3 and A6 were the notices exchanged between the parties. Ex.A7 was the Bank Statement of the plaintiff obtained from Axis Bank, Sathyamangalam.

15. On the side of the defendants, Exs.B1 to B5 were marked. Exs.B1, B2 and B3 were the sale deeds in the name of family members of the plaintiff. Ex.B4 was the reply dated 20.04.2016 issued to the Advocate of the plaintiff.



16. On the basis of the oral and documentary evidence, the Trial Court held that the agreement was true and valid and in this connection, placed reliance on the evidence of DW-1 who admitted to the agreement and to the receipt of advance under the agreement. This fact was also confirmed by DW-2. It must be noted that DW-1 and DW-2 were the two defendants. The Trial Court also observed that PW-2 Selvaraj was a witness to Exs.A1 and A2 and therefore held that the two documents had been entered into by the plaintiff with the defendants. It was finally observed that under the two agreements a total advance sale consideration of Rs.30,00,000/- had been received by the defendants and it was therefore held that the agreements were valid and binding on the defendants.

17. With respect to the issue on readiness and willingness, the bank statement in Ex.A7 of the plaintiff was examined wherein, there was a balance of Rs.72,00,000/- and very specifically on 13.04.2016 there was a balance of Rs.40,00,000/- and on 21.04.2016 there was a balance of Rs.33,00,000/-. It was therefore contended that the plaintiff possessed the necessary funds to purchase the property. The statement of the plaintiff that his wife had possessed 10.15 acres and that there was a surplus income of Rs.6,00,000/- to Rs.7,00,000/- was also noted. It was also observed that income was also received from a Trust which was running a school and college. It was therefore held that the plaintiff had the necessary resources to purchase the property. Holding as above, the Trial Court decreed the suit with costs.

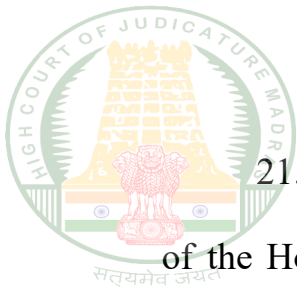


18.Challenging the said judgment and decree, the defendants have filed the present appeal.

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19.Heard arguments advanced by Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants and Mr.S.A.Mohamed Mubarak, learned counsel appearing for the respondent.

20.Mr.S.Kaithamalai Kumaran, learned counsel appearing for the appellants, in his arguments pointed out that both the agreements were unregistered. The 1st agreement was dated 14.09.2015 and the 2nd agreement was dated 18.12.2015. The learned counsel contended that in the 1st agreement, it had been provided that the total sale consideration was Rs.58,08,000/- at Rs.6,00,000/- per acre and that an advance of Rs.20,00,000/- had been given. It had been very specifically provided that the balance sale consideration of Rs.38,08,000/- should be paid within a period of three months. Under the 2nd agreement, a further advance of Rs.10,00,000/- had been paid. It was contended by the learned counsel that under Ex.A7 on the date of expiry of the agreement that the required balance was not available in the account of the respondent. He further contended that only much later the amount had been deposited. He contended that the respondent had not proved that he was ready and willing to perform his part of the agreement.



21. In this connection, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2019) 3 SCC 704, Kamal Kumar Vs. Premlatha Hoshi and Others**, wherein the Hon'ble Supreme Court had stipulated the factors to be considered in a suit for specific performance. The relevant paragraphs of the judgment are as follows:

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance are:

7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the



defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

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7.5.Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.”

22.The learned counsel stated that even in the instant case, the respondent was neither ready nor willing to perform his part of the agreement within the stipulated time.

23.The learned counsel also placed reliance, for the same issue, on the judgment of the Hon’ble Supreme Court reported in **(2015) 8 SCC 695, Padmakumari and Others Vs. Dasayyan and Others** and the judgment of the Division Bench of the Madurai Bench of Madras High Court reported in **2019 (3) CTC 564, R.Gnana Arulmoni Vs. R.S.Maharajan.**

24.The learned counsel further argued that time was the essence of the agreement and for that proposition, placed reliance on the judgment of the Hon’ble Supreme Court reported in **(2024) 3 SCC 232, Alagammal and Others Vs. Ganesan and Another.** The learned counsel therefore contended that the appeal should be allowed and the judgment and decree of the Trial Court should be set aside.



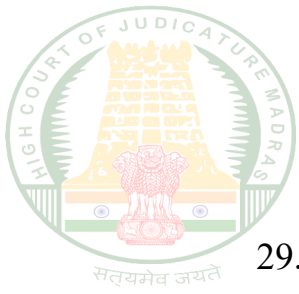
25. Mr. S. A. Mohamed Mubarak, learned counsel appearing for the respondent, on the other hand, pointed out the document filed, particularly, Ex.A7 and stated that the respondent was possessed of necessary funds to purchase the property. The learned counsel contended that by entering into the 2nd agreement, the appellants had consciously moved away from the stipulation that time was the essence of the agreement. They had also accepted the further advance of Rs.10,00,000/-. He stated that the trial Court had considered all the relevant factors and had come to a correct conclusion that the respondent was entitled for specific performance of the agreement of sale. The learned counsel urged that the appeal should be dismissed.

26. We have carefully considered the arguments advanced and perused the material records.

27. The points which arise for consideration are,

- i). Whether the respondent was ready and willing to perform the agreements?*
- ii). Whether the time was essence of the agreement?*

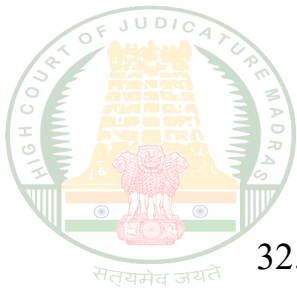
28. Since the pleadings and evidence overlap, both the points are taken up together for consideration.



29. The appellants were the owners of the suit schedule property. Though in the written statement they denied that fact and had denied every other statement in the plaint, they admitted to the agreements and the receipt of advance sale consideration.

30. The respondent had entered into an agreement of sale on 14.09.2015 with the appellants to purchase the suit schedule property at the rate of Rs.6,00,000/- per acre for a total consideration of Rs.58,08,000/-. An advance of Rs.20,00,000/- had been paid. It had been mentioned in the agreement that within a period of three months, the balance should be paid by the respondent. However, a subsequent agreement was entered into on 18.12.2015 and a further advance of Rs.10,00,000/- had been received by the appellants. This would indicate that the appellants had consciously not considered that time should be the essence of the agreement since they received a further advance of Rs.10,00,000/- after the expiry of three months period. Therefore, time could never have been the essence of the agreement.

31. It had been further provided in the agreement that the appellants should come forward to measure the land and to fix the boundaries. There is no indication that they did so. Again, owing to their inaction, time can never be insisted upon to be the essence of the agreement.



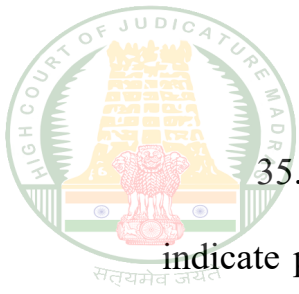
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32.The respondent had issued a notice on 11.04.2016 calling upon the appellants to execute the sale deed and receive the balance sale consideration. In the reply notice, the appellants admitted the receipt of the sale consideration of Rs.20,00,000/- and Rs.10,00,000/- but contended that the respondent was never ready and willing to pay the balance sale consideration. It was contended that therefore the appellants would not come over to the Sub-Registrar Office to execute the sale deed.

33.This stand would constitute refusal to perform the agreement. Article 54 of the Limitation Act, 1963 provides a three year period from the date of such refusal to institute the suit. Article 54 of the Limitation Act is as follows:

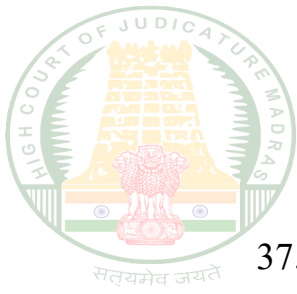
<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time for which period begins to run</i>
<i>54. For specific performance of a contract.</i>	<i>Three years.</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

34.The plaint was however filed much earlier on 29.09.2016 within about six months from the date of refusal.



35.Ex.A7 is the statement of accounts produced by the respondent to indicate possession of funds. The said document had been carefully examined by the Trial Court. We have also perused the same. It reflects that the respondent was in possession of a sum of Rs.72,00,000/-. At the time of expiry of the 2nd agreement of sale, on 13.04.2016, the respondent had a balance of Rs.40,00,000/- and on 21.04.2016 a balance of Rs.33,00,000/-. It is thus seen that the respondent was possessed of the funds.

36.The respondent had issued a notice on 11.04.2016, when he had the balance sale consideration in his account, calling upon the appellants to come over to the Sub-Registrar Office, Sathyamangalam, to execute the sale deed. A reply notice was issued under Ex.A6 on 20.04.2016 alleging that the respondent did not have necessary funds. This statement is contradictory to the facts presented under Ex.A7. In the reply notice, the appellants refused to come over to the Sub-Registrar Office to execute the sale deed. The respondent had a three year period to institute the suit from the date of such refusal. He however instituted the suit within a period of six months. It is further seen that even before the written statement was filed, the balance sale consideration of Rs.28,08,000/- had been deposited into the Court on 12.07.2017. It is only thereafter that the written statement was filed on 27.10.2017. Even before the pleadings had been settled, the respondent had deposited the balance sale consideration exhibiting readiness and willingness.



37. The principles enunciated in *(2019) 3 SCC 704, Kamal Kumar Vs.*

Premlata Joshi and Others, referred *supra*, are satisfied by the respondent.

There were valid and concluded contracts between the parties and the respondent was always ready and willing to perform his part of the agreement.

He had actually performed his part of the agreement by depositing the balance sale consideration even before the filing of the written statement. We hold that in such circumstances, it is only appropriate that a direction is issued to the appellants to come forward and execute the sale deed.

38. With respect to the contention that the agreements have not been registered, we hold that under the proviso to Section 49 of the Registration Act, the documents may be used as contract and could be taken into consideration even if the agreements were inadmissible in evidence for want of registration.

39. In view of the above reasons, we answer the points framed for consideration that the agreements were true and valid and binding on the appellants and that the respondent was always ready and willing to perform his part of the agreement.

40. We therefore confirm the judgment and decree of the trial Court in O.S.No.23 of 2016 dated 06.08.2018.



41. Accordingly, the Appeal Suit stands dismissed with costs.

Consequently, connected Civil Miscellaneous Petition is closed.

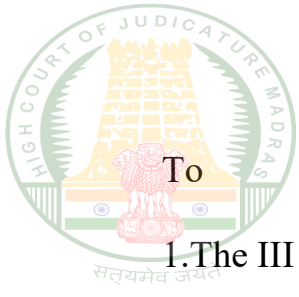
(C.V.K.,J.) (K.R.S.,J.)
02-04-2026

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



To

1. The III Additional District and Sessions Court, Erode, Gobichettipalayam.

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2. The Section Officer,

VR Section, Madras High Court.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

smv

Pre-Delivery Judgment made in
AS No. 924 of 2018

02-04-2026