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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.12.2025

PRONOUNCED ON : 09.02.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

A.S.No. 491 of 2016

G.S.Kesavan (died) ... Appellant/Defendant

2. G.K.Vimala

3. G.K.Babuji

4. G.K.Rammohan

5. R.Lakshmi

6. G.K.Saraswati ...Appellants

Vs

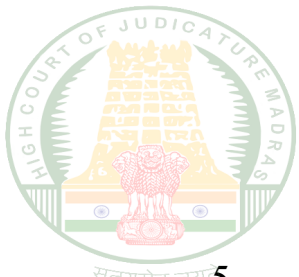
1. Gurrappa Naidu

2. D.M.Chandrasekar

3. B.Subashchand Jain

4. V.Raghunatha Reddy

V.Sathya (died)



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5. S.Hemavathi
6. Minor S.Kavya
7. Minor S.Yogesh
8. Minor S.Lohitha

[minors 6 to 8 are represented by her
mother S.Hemavathi]

... Respondents/Plaintiffs

PRAYER: Appeal filed under Order 41 Rule 1 read with Section 96 C.P.C., against the Judgment and Decree dated 31.07.2015 made in O.S.No. 25 of 2010 on the file of II Additional District and Sessions Judge, Vellore at Ranipet.

For Appellants : Mr. P.Valliappan
Senior Counsel
for Mr.P.Krishnan

For Respondents : Mr.M.L.Joseph
Assisted by Ms.P.Kavitha

JUDGMENT



(Order of the Court was made by **C.V.KARTHIKEYAN, J.**)

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The defendant in O.S.No. 25 of 2010 on the file of II Additional District Court at Ranipet is the appellant herein.

2. The said suit in O.S.No.25 of 2010 had been filed by the respondents seeking a direction against the defendant to execute a sale deed conveying the suit schedule properties to the plaintiffs for a sum of Rs.1,10,00,000/- on receipt of the balance sale price of Rs.8,00,000/- and in case of failure, for the Court to execute such sale deed and deliver possession of the suit properties to the plaintiffs and for permanent injunction restraining the defendant from alienating the suit properties and for costs of the suit.

3. The suit properties as described in the schedule to the plaint was land measuring 38,400 sq.ft., together with buildings, 5 shops, rice mill, 2 HP electric motor starters and electricity service connections at S.No. 148/115, Gandhi Road, Arakkonam Town, Vellore District, now Ranipet District. By Judgment dated 31.07.2015, the suit was decreed with costs



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directing the defendant to execute the sale deed after receiving the balance sale consideration of Rs.8,00,000/-. A further direction was issued to the plaintiffs to pay the balance sale consideration within two months from the date of decree and to the defendant to execute the sale deed within one month thereafter and on failure thereof, for the Court to execute the sale deed and deliver vacant possession of the suit properties. Aggrieved by the said Judgment and Decree, the defendant had filed the present Appeal.

4. Pending the Appeal, the defendant died and his legal representatives have been brought on record.

O.S.No. 25 of 2020-II Additional District Court at Ranipet:

5. In the plaint, it had been contended that on 04.07.2004, the defendant, claiming to be the absolute owner of the suit properties offered to sell the same to the plaintiffs for a total consideration of Rs.1,10,00,000/-. A registered agreement of sale deed dated 19.05.2005 was entered into between the parties. The plaintiffs had paid a sum of Rs.1,00,00,000/- as advance sale consideration. This fact had been stated in the agreement itself.



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It was further contended that the defendant agreed to receive the balance sale consideration of Rs.10,00,000/- within a period of 11 months, namely, on or before 18.04.2006 and agreed to execute a registered sale deed conveying the suit properties to the plaintiffs.

6. The plaintiffs had called upon the defendant to execute the sale deed and sent telegram dated 17.04.2006. It was however contended that time was never agreed to be the essence of the contract. There were tenants in occupation in a portion of the building and the defendant had undertaken to vacate them. The defendant however demanded a further sum of Rs.2,00,000/- as additional advance to vacate the tenants. It had been further stated that on 22.06.2007, the defendant and his son came to Chittoor and received the further advance amount of Rs.2,00,000/- and this was also endorsed on the agreement of sale itself. The son was an attester to the said endorsement. It had been stated that the defendant had then received a total sum of Rs.1,02,00,000/- and only a sum of Rs.8,00,000/- was payable by the plaintiffs.

7. The plaintiffs then again sent another telegram on 24.09.2007



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calling upon the defendant to come forward to execute the sale deed. The defendant issued a lawyer's notice on 19.11.2007 contending that time was the essence of the contract and that the plaintiffs had committed breach of the contract. The defendant agreed to return the advance.

8. The plaintiffs replied by notice dated 28.11.2007 denying and disputing the contentions of the defendant. It was under those circumstances that the suit had been filed calling upon the defendant to come forward to execute the sale deed pursuant to the agreement.

9. A written statement had been filed by the defendant denying and disputing the contentions raised. It was contended that the properties were owned by his father, who executed a registered Will on 05.07.1995 bequeathing his properties to his three sons. One of the contentions under the Will was that if any one of the sons were to sell the properties allotted to him, he must first offer it to the other two brothers and not to third parties. The father died on 21.06.1998. The defendant had been allotted the suit schedule properties and he became the absolute owner.



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10. It was further stated that an oral agreement was agreed on 04.07.2004 at Chittoor in Andhra Pradesh between the plaintiffs and the defendant with respect to the suit properties. This was then reduced into writing on 19.05.2005. The total sale consideration was determined at Rs.1,10,00,000/- and an advance of Rs.1/- crore was paid under various installments. There was a balance sale consideration of Rs.10/- lakhs. It had been stated that the plaintiffs agreed to receive back the advance of Rs.1/- crore. It had been stated that the defendant also agreed to repay the same. It was also stated that the defendant had returned a sum of Rs.25/- lakhs through Dr.Panneerselvam, President of Arakkonam Rotary Club. A further sum of Rs.10/- lakhs was also returned through Dr.Panneerselvam. It was further contended that the plaintiffs abducted the son of the defendant and forcibly obtained an endorsement as if a further advance of Rs.2/- lakhs was paid. It was contended that the plaintiffs exercised influence with the assistance of the police. It was stated that the defendant would refund the balance advance amount of Rs.65/- lakhs, on the plaintiffs returning the original title deeds. It was contended that the suit was barred by limitation since time was the essence of the agreement. It was thus contended that the suit should be dismissed.



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11. On the basis of the above pleadings, the following issues were
been framed:-

*“1. Whether the sale agreement is true
and valid?*

*2. Whether the plaintiffs are entitled for
the relief of specific performance contract as
prayed in the plaint?*

*3. Whether the plaintiffs are entitled to
permanent injunction as prayed?*

*4. Whether the suit is barred by
limitation?*

*5. To what other relief the plaintiffs are
entitled?”*

12. The plaintiffs marked Exs.A-1 to A-14. The defendant marked
Ex.B-1.



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13. The third plaintiff was examined as PW-1. The defendant examined himself as DW-1 and examined Dr.Panneer Selvam as DW2. Ex.A-1 was the registered agreement of sale and Exs.A-2 and A-3 were the copies of telegram issued by the plaintiffs, Ex.A-6 was the notice sent by the defendant and Ex.A-7 was the reply to the said notice and Ex.A-14 was the rejoinder notice. Ex.B-1 was the copy of the Will executed by the father of the defendant.

14. In the Judgment now under Appeal, it had been observed that Ex.A-1, the agreement dated 19.05.2005, was a registered agreement and that a sum of Rs.1,00,00,000/- had been paid as advance out of the total sale consideration of Rs.1,10,00,000/- and that this fact had also been admitted by the defendant. The signatures in Ex.A-1 was also admitted by the defendant. With respect to the endorsement made date 22.06.2007, it had been observed in the Judgment that the son of the defendant had signed as one of the witnesses. It had been further observed that since there was an admission, no further proof was required about the genuinity of the signature. It had been further held that though it had been contended by the defendant that his son had been abducted, documents relating to police



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complaint had not been filed by the defendant. It was held that the endorsement was made voluntarily after receiving the further advance of Rs.2/- lakhs. It was also stated that reply was not issued to Ex.A-2 telegram dated 17.04.2006. It was also observed that in Ex.A-3 telegram, an endorsement has been made by the defendant that a sum of Rs.1.02/- Crores had been received as advance. Thus the defendant had admitted to the receipt of substantial advance of Rs.1.02/- crores out of the total sale consideration of Rs.1.10/- crores. With respect to the statement made by the defendant that a sum of Rs.35/- lakhs had been repaid to the plaintiffs through DW-2 Dr.Panneerselvam, it had been observed that evidence was not adduced to support the claim that DW-2 had given Rs.35/-lakhs to the plaintiffs. As a matter of fact, in his proof affidavit, DW-2 had stated that the defendant only paid Rs.35/- lakhs to the plaintiffs in his presence and not through him.

15. It was finally held that the defendant had not proved that he had returned back the said sum of Rs.35/- lakhs. It was further observed that the brother of the defendant had filed O.S.No. 24 of 2010 seeking permanent injunction on the basis of the condition imposed in the Will



executed by the father and during trial, it was established that the said suit was filed only under the instigation of the defendant. For all these reasons, the suit was decreed with costs.

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16. Challenging the said Judgment and Decree, the defendant then filed the present Appeal.

17. During the pendency of the Appeal, the appellant/defendant died and his legal representatives were brought on record.

18. Heard arguments advanced by Mr.P.Valliappan, learned Senior Counsel for the appellants and Mr.M.L.Joseph, learned counsel for the respondents.

19. Mr.P.Valliappan, learned Senior Counsel took the Court through the facts of the case. He pointed out the dates during which the



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entire transactions had taken place. The father of the appellant had executed a Will on 05.07.1995. This Will was marked as Ex.B-1. The Will came into effect on 21.06.1998 on the demise of his father on 04.07.2004. The learned Senior Counsel stated that the appellant and the respondents entered into an oral agreement for sale of the suit properties. This agreement was reduced into writing and registered on 19.05.2005. The total sale consideration was determined at Rs.1.10/- crores and advance of Rs.1/- crore had been paid by the respondents to the appellant. It was contended by the learned Senior Counsel that time was the essence of the agreement. He contended that the parties had covenanted that the balance sale consideration should be paid on or before 18.04.2006. The learned Senior Counsel therefore contended that when a specific date had been stipulated and when the respondents had not come forward to pay the balance sale consideration, specific performance should be denied.

20. In this connection, the learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court reported in *AIR 2011 SC 3351 [Citadel Fine Pharmaceuticals Vs. Ramaniyam Real Estates and others]*, with specific reliance on paragraph No. 46 which is as follows:-



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“ 46. In ***K.S.Vidyanadam Vs. Vairavan (1997) 3 SCC1*** reference was made to a Constitution Bench judgment of this Court in ***Chand Rani (Smt.) (Dead) by LRs.v. Kamal Rani (Smt.) (Dead) by Lrs. reported in (1993) 1 SCC 519***. The same question, whether time was of essence of the contract was discussed in *Chand Rani (supra)*. The Constitution Bench of this Court while dealing with this question referred to another decision of this Court in the case of *M/s. Hind Construction Contractors by its sole proprietor Bhikamchand Mulchand Jain (Dead) by LRs. v. State of Maharashtra reported in (1979) 2 SCC 70*. By referring to various judgments, the Constitution Bench in *Chand Rani (supra)* formulated the proposition that even where parties have expressly provided time to be of the essence of the contract, such a stipulation will have to be read along with other terms of the contract. Such other terms, on a proper construction, may exclude the inference that the completion of work by a particular date was meant to be fundamental. The learned Judges indicated the following circumstances which may indicate a contrary inference; (a) if a contract



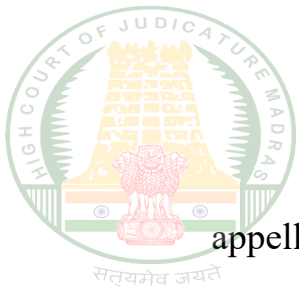
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includes clauses providing for extension of time in certain contingencies, or (b) if there are clauses for payment of fine or penalty for every day or week the work undertaken remains unfinished after the expiry of time. The Constitution Bench held that such clauses would be construed as rendering ineffective the express provision relating to time being of the essence of contract (see para 22 at page 528 of the report).

21. It was thus contended by the learned Senior Counsel that in the instant case, since the parties had agreed that the balance sale consideration should be paid on or before 18.04.2006 and there was no clause extending the time, and when admittedly the plaintiff had not paid the said amount, this Court should interfere with the Judgment of the trial Court and dismiss the suit filed seeking specific performance.

22. The learned Senior Counsel further contended that the endorsement in Ex.A-1 about receipt of further advance of Rs.2/-lakhs should be held by this Court as having been obtained by threat and coercion. The learned Senior Counsel pointed out that the specific case of the



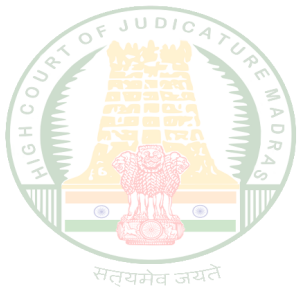
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appellant was that his son had been abducted by the respondents and signature obtained forcibly on the reverse of the agreement of sale.

23. It was also contended by the learned Senior Counsel that the suit is not maintainable since the appellant had terminated the agreement and relief had not been sought to declare such termination as null and void.

24. In this connection, the learned Senior Counsel placed reliance on the Judgment of the Hon'ble Supreme Court reported in *(2013) 15 SCC 27 [I.S.Sikandar (dead) by LRS. Vs. K.Subramani and Others)*. The learned Senior Counsel placed specific reliance on paragraph Nos. 37 and 38 which are as follows:-

“37. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of agreement of sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis



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of agreement of sale and consequential relief of decree for permanent injunction is not maintainable in law.

38. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non-existing agreement of sale is wholly unsustainable in law. Accordingly, Point (i) (see para 32.1) is answered in favour of Defendant 5. ”

25. Pointing out the dictum laid in the above Judgment, the learned Senior Counsel argued that the suit was not maintainable, since, in view of the breach of the terms and conditions by the respondent the agreement had been terminated and a relief had not been sought that such termination as bad in law.

26. The learned Senior Counsel further pointed out that thought the agreement had been registered on 19.05.2005, the suit had been instituted only in the year 2010. The suit had been instituted with much



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delay after nearly 5 years from the date of the agreement of sale. The learned Senior Counsel pointed out that this was deliberately done by the respondents to take advantage of the increase in the marketable value of the properties. The learned Senior Counsel therefore urged that this Court should allow the appeal and set aside the Judgment and Decree of the trial Court.

27. Mr.M.L.Joseph, learned counsel for the respondent however disputed these contentions. The learned counsel pointed out that the appellant had admitted to the agreement and had also admitted to receiving the advance sale consideration. The total sale consideration had been fixed at Rs.1.10/- crores and an advance of Rs.1/- crore representing 90% of the sale consideration had been paid and acknowledged by the appellants. The learned counsel therefore contended that the respondents can never be claimed to be neither willing nor ready to pay the balance sale consideration of Rs.10/- lakhs. The learned Senior Counsel very strongly denied the allegations that the respondent had abducted the son of the appellant.

28. He further contended that there no evidence was adduced to



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establish the claim of the appellants that a sum of Rs.35/-lakhs had been paid to the respondent through DW2, Dr.A.Panneerselvam. He further added that the evidence of DW-2 was extremely vague and self contradictory and therefore asserted that no amount had been so paid as claimed by the appellant. The learned counsel further pointed out that the appellant had not examined his son to speak about the allegations relating to abduction and alleged force applied while obtaining the endorsement in Ex.A-1 agreement of sale. The learned counsel argued that since the agreement had been admitted and since receipt of balance sale consideration had been admitted, the Court should grant specific performance unless the appellant had proved discharge.

29. In view of these reasons, the learned counsel contended that the appeal must be dismissed and the Judgment and Decree of the trial Court must be upheld.

30. We have carefully considered the arguments advanced and perused the materials available on records.



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31. The following points arise for consideration:

(1) whether the registered agreement dated 19.05.2005 is enforceable in law?;

(2) Whether the endorsement made in the said agreement had been obtained by force and coercion?;

(3) Whether time is the essence of the contract between the parties? And

(4) Whether the respondents are ready and willing to perform their part of the obligation?

32. Since the evidence relating to all the above points are interlinked, all the points are taken up for discussion and determination together.

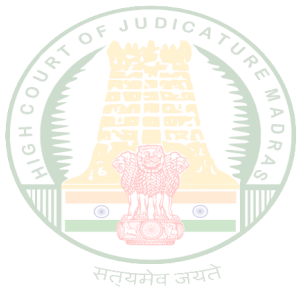


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33. The appellant herein, who died during the pendency of the appeal and the respondents had initially entered into an oral agreement of sale relating to the suit properties on 04.07.2004. This fact is admitted by the appellant therein. This agreement had been reduced into writing and a registered agreement of sale had been entered into by the parties on 19.05.2005. This fact is also admitted by the appellants. The total sale consideration for the suit property was determined at Rs.1.10/- crores. An advance of Rs.1/- crore had been paid by the respondents. These facts are also admitted by the appellant.

34. The suit property was land measuring 38,400 sq.ft., along with buildings, 5 shops, rice mill, 2 H.P. Electric motor starters and electricity fittings in S.No. 148/115, Gandhi Road, Arakkonam. The identity of the suit property is not in dispute. The fact that the appellant was the absolute owner of the suit property was not in dispute. The properties had been bequeathed to him under a Will dated 05.07.1995 marked as Ex.B-1 and executed by his father. The Will came into force on 21.06.1998 on the demise of his father.

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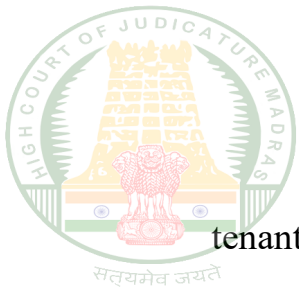


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35. In the Will, it had been stated that if one of the three brothers to each one of whom various properties had been bequeathed were to sell their bequeath, then they should first offer the same to the other two brothers. Claiming that this portion of the Will had been breached by the appellant, one of his brothers filed O.S.No. 24 of 2010 against the appellant and the respondents seeking permanent injunction against the enforcement of agreement of sale. During trial, it was found that this suit was instigated only by the appellant himself. This fact had been very clearly stated in the Judgment of the trial Court.

36. This finding of the learned Judge had not been raised as a ground of challenge in the grounds of Appeal. In the grounds of Appeal, it had only been stated that as per the terms of the registered Will, the property cannot be sold to third parties. But the very specific finding that O.S.No.24 of 2010 had been filed by the brother of the appellant only under the instigation of the appellant to delay performance of the agreement of sale had not been challenged in the grounds of appeal. This very fact would expose the conduct of the appellant herein.

37. As a matter of fact, it is also to be noted that there were



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tenants in the suit property. The specific case of the respondents was that the tenants should be evicted and vacant possession must be handed over. That was not possible within the time prescribed in the agreement. It has to be therefore held that time could never have been the essence of the agreement. There were obligations to be performed by the appellant. He had to evict the tenants. He failed to do so. Moreover, he had instigated his brother to file a suit in O.S.No. 24 of 2010 seeking injunction from dealing with the suit property and proceeding with the execution of the sale. These are factors which extended the period of performance of the obligations under the agreement. Therefore, the argument that time was essence of the agreement is rejected by us.

38. It is to be noted that out of the total sale consideration of Rs.1.10/- crores, an advance of Rs.1/- crore had been paid. This fact had not been denied by the appellant. The respondents can never come forward to pay the balance sale consideration since the tenants had not been evicted. Further O.S.No. 24 of 2010 had to be finally disposed of.

39. It is also seen that in the agreement of sale, an endorsement had been made on 22.06.2007 for receipt of a sum of Rs.2/- lakhs. It is the



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contention of the appellants that the son of the appellant had been abducted and his signature had been forcibly obtained in the said endorsement. But however, the appellant had not filed any complaint before the police in this regard. There is no other proof of this allegation. It is thus evident that the endorsement had been made with intention to receive further sale consideration of Rs.2/- lakhs.

40. The respondents had issued a legal notice and had issued telegrams calling upon the appellant to come forward to execute the sale deed. The balance sale consideration was only Rs.8,00,000/-. The advance sale consideration which had been paid was Rs.1.02/- crores.

41. We hold that the agreement having been admitted and the receipt of advance sale consideration having been admitted, unless the appellant had proved discharge, specific performance cannot be denied.

42. It is the case of the respondents that out of the advance amount of Rs.1/- crore, they had returned back a sum of Rs.35/- lakhs through DW-2 Dr.Panneerselvam. His evidence is wholly unsatisfactory. In



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his proof affidavit, he had stated that the said sum had been returned to the respondents in his presence. But however, the case of the respondents was that the sum was handed over to DW-2 to be given to the respondents. Both the facts have not been proved. DW-2 had also not affirmed these fact with confidence.

43. In (2022) 7 SCC 384 [*P.Ramasubbamma Vs. V.Vijayalakshmi and Others*], the Hon'ble Supreme Court has held as follows:-

“9.Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration;



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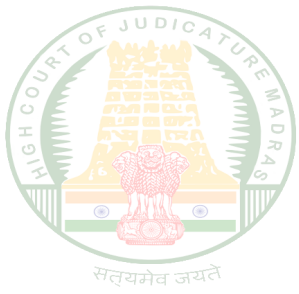
thereafter no further evidence and/or proof was required.”

44. Even in the instant case, the agreement has been admitted. The total sale consideration had been admitted. The identity of the property is not under dispute. The receipt advance sale consideration had not been denied. The alleged explanation that the son of the appellant had been abducted had not been proved. The claim that part of the advance sale consideration had been paid through DW-2 had also not been proved.

45. The further claim that the agreement had been terminated is rejected since the appellant had agreed to evict the tenants and had failed to do so and therefore can never claim that time was the essence of the agreement and that the agreement stood cancelled.

46. In these circumstances, we hold that the Appeal Suit should fail and the same is accordingly dismissed with costs. The Judgment and Decree of the Trial Court is upheld. The appellants are directed to execute the sale deed in favour of the respondents within a period of 4 weeks from this date, failing which the trial Court should execute the sale deed.

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[C.V.K., J.]

[K.B., J.]

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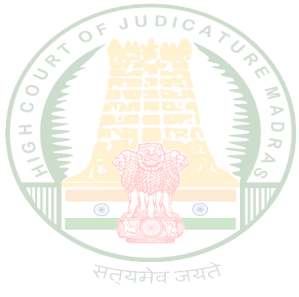
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Neutral Citation: Yes/No

To:

1. II Additional District and Sessions Judge, Vellore at Ranipet.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

vsg



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Pre-Delivery Judgment made in

A.S.No. 491 of 2016

09.02.2026