

IN THE COURT OF SUBORDINATE JUDGE, THIRUMAYAM.

PRESENT : Thiru. C.Sasi kumar,B.A.,LL.M.,PG.D.Cr.,&F.Sc.,

Subordinate Judge, Thirumayam.

Thursday the 18th day of December 2025

ORIGINAL SUIT No. 64/2024

R.Jothi

.... Plaintiff

Vs.

1. P.Ananth

2. S.Malar

3. S.Sridhar

.... Defendants

This suit came for final hearing before this court in the presence of Thiru.K.Rajakkili, Advocate for Plaintiff and Thiru.R.Mohanraj, Advocate for 1st Defendant and 2nd and 3rd defendants having set ex-parte and on perusal of available material records as well upon hearing both sides and having stood over for consideration till this day, this court delivers the following:

JUDGMENT

Suit for specific performance of the sale agreement dated 20.04.2018 in respect of the suit property and with cost.

1. Gist of the plaint:

The suit property was purchased by T.Shanmuganathan, who is the husband of 2nd defendant and father of 3rd defendant under a sale deed Doc.No.3022/2011 dated 16.11.2011. The said T.Shanmuganathan had appointed the 1st defendant as his power of Attorney by registered deed in Doc.No.3777/2015 dated 22.12.2015. On behalf of his principal, the 1st defendant agreed to sell the property to the plaintiff for Rs.3,75,000/-

and on receiving Rs.3,50,000/- as advance, the plaintiff and the 1st defendant entered into an unregistered sale agreement on 20.04.2018. The plaintiff is to pay the balance sale consideration of Rs.25,000/- within two years from the date of agreement. The 1st defendant has handed over the original title deeds Doc.No.3022/2011 and original power deed Doc.No.3777/2015 to the plaintiff. The principal T.Shanmuganathan died on 30-12-2018 and the 2nd and 3rd defendants are the legal heirs of deceased T.Shanmuganathan. From the date of agreement the plaintiff was always ready and willing to perform her part of the contract, by paying the balance sale consideration and get a sale executed in her name. The defendants were evading the execution of sale deed though they were approached by the plaintiff on 09-03-2020. Hence, the suit.

2. Averments in the written statement filed by D1:

All the averments made in the plaint are denied and false except that those are admitted herein. The averments in paragraphs III (1),(2),(3),(4) of the plaint are admitted by this 1st defendant. The advance sale amount of Rs.3,50,000/- was received by him and the same was handed over to his principal T.Shanmuganathan. On various dates the plaintiff has requested to receive the balance sale price and to execute the sale deed. But he could not do so due to inconvenience. In the meanwhile T.Shanmuganathan died due to illness. Hence the power of attorney was not in force. Therefore this 1st defendant is unable to execute the sale deed in favour of plaintiff. The 2nd and 3rd defendants are liable to execute the sale deed as legal heirs of deceased T.Shanmuganathan. The 2nd and 3rd defendants had wantonly evaded the execution of sale deed to the plaintiff. The sale agreement dated 20.04.2018 is legally binding on the defendants 2 & 3. The plaintiff has failed to perform her part of contract. Hence the suit is not maintainable and therefore the suit is liable to be dismissed.

3. Upon considering the plaint, written statement and other materials this court has framed the following issues:

- (i) Whether the sale agreement dated 20.4.2018 is true, genuine and valid and binding on the parties?
- (ii) Whether the 1st defendant has agreed to sell the suit property for Rs.3,75,000/- and received Rs.3,50,000/- as advance from the plaintiff and thereby executed an unregistered sale agreement on 20.4.2018 in favour of the plaintiff ?
- (iii) Whether the plaintiff was ready and willing to perform the terms of the sale agreement?
- (iv) Whether the defendants were not ready and willing to perform their part of the sale agreement?
- (v) Whether the plaintiff is entitled for relief of specific performance ?
- (vi) To what other relief ?

4. Evidence let in:

The plaintiff has examined herself as Pw1, on her side Ex.A1 to A3 are marked. The 1st defendant did not let in oral evidence and did not mark documents on his side. The 2nd and 3rd defendants remained exparte.

5. Answer to issue Nos.1 and 2:

The suit is instituted for the relief of specific performance of a sale agreement dated 20.4.2018. Before going to see the main issues involved in this case, it is to borne in mind that the relief of specific performance is a discretionary remedy which can be granted only if certain conditions are complied with.

In the judgment reported in **2016 (4) CTC 152** wherein the Hon'ble High Court, Madras has stated the four factors necessary to be pleaded and proved by plaintiff in suit

for specific performance (i) valid Agreement between parties, (ii) Readiness and willingness of plaintiff, (iii) filing of suit within limitation, (iv) no inordinate delay in filing suit from expiry date of time prescribed in Agreement.

The Honourable Supreme court, in the case of **Man Kaur (D) by LRs. Vs. Hartar singh Sangha 2010(6) CTC 652** has explained the necessaray ingredients to be proved to get the relief as follows :

Para 11. To succeed in a suit for specif performance,the plaintiff has to prove;

(a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof;

(b) that the defendant committed breach of the contract and

(c) that he was ready and willing to perform his part of the obligations in terms of the contract.

6. While so, this court has to ascertain whether there is any true, genuine and valid agreement between the plaintiff and 1st defendant and whether the plaintiff and defendants are ready and willing to perform their part of contract.

7. The plaintiff in para 2 of the plaint states that the suit property belongs to the T.Shanmuganathan as his separate property. The plaintiff has filed Ex.A2. Original sale deed Doc.No.3022/2011 dated 16.11.2011. The sale deed stands in the name of the T.Shanmuganathan with respect to the suit property. The 1st defendant also admitted the said fact in his written statement. While so, there is no row that the suit property belongs to T.Shanmuganathan.

8. The plaintiff further states in para 3 of the plaint that the said T.Shanmuganathan had appointed the 1st defendant as his power of Attorney by registered deed and has filed Ex.A2 Original Power Deed Doc.No.3777/2015 dated 22.12.2015. The 1st defendant also

admitted the said fact in his written statement. While so, there is no row that the 1st defendant is the power of Attorney of T.Shanmuganathan.

9. The plaintiff further states in para 4 of the plaint that the 1st defendant has agreed to sell the suit property for a consideration of Rs.3,75,000/- and he has received a sum of Rs.3,50,000/- as advance and executed a unregistered sale agreement in her favour on 20.4.2018. The original unregistered sale agreement has been marked as Ex.A1. The 1st defendant has also admitted the said fact in his written statement. Since the 1st defendant has also admitted the sale agreement, the final answer is that the sale agreement is true, genuine and valid and binding on the parties and the 1st defendant has agreed to sell the suit property for a consideration of Rs.3,75,000/- by receiving a sum of Rs.3,50,000/- as advance and executed ExA.1 sale agreement in favour of the plaintiff. It is also clear that the plaintiff has to pay a balance consideration of Rs.25,000/- in favour of the defendants. Thus, these issues are answered.

10. Answers to Issue Nos. 3 and 4:

While answering to the 1st and 2nd issue, this court has held that Ex.A1 sale agreement was executed by 1st defendant in favour of the plaintiff. However mere proof of execution of sale agreement is not sufficient to get the relief of specific performance of contract.

In the case of **M.Johnson Vs E.Pushpavalli 2016 (4) CTC 152**, the Hon'ble High Court has held as follows :

8. In a suit for specific performance of an agreement of sale, the following are the necessary factors to be pleaded and proved by the plaintiff: (a) that there is a valid agreement entered into between the parties in respect of the suit property; (b) that the plaintiff is always ready and willing to perform his part of the contract, whereas the defendant is not doing so within the time prescribed for completion of the transaction;

(c) that the suit is filed within the period of limitation; and (d) that there is no inordinate or unexplained delay in filing the suit from the date of expiry of the time prescribed under the agreement for the purpose of completion of contract, even though, the suit is filed within the period of limitation. The inordinate or unexplained delay referred to above, though may not be relevant for the purpose of deciding the question of limitation in filing the suit, however, the same would be very much relevant for the purpose of deciding the issue as to whether the plaintiff is always ready and willing to perform his part of the contract from the date of the agreement till the date of filing the suit.

11. Therefore it is clear that the plaintiff has to plead and prove that she is ready and willing to perform her part of the contract and the defendants are not doing so within the time prescribed for the completion of the transactions.

12. In this context, the next question that lingers in the mind of the court is what is 'readiness' and 'willingness'.

In the decision of Hon'ble High Court, Madras in “ **Kadali Venu Sankar -Vs- Pydikondala Lakshmi** ” 2016 (4) L.W.45 it has been explained in para 21 as follows:

"Thus by keeping the above principle in mind, if we look at the words readiness and willingness, the intention of the legislation in coining the language in such a way will come to light. What is readiness? Undoubtedly, it is nothing but to indicate the financial capacity of the agreement holder to fulfill his obligation under the contract. In other words, the word readiness would sound like jingling of coins! No doubt, he does not require to physically do so and it is enough if he pleads and establishes that he was and is capable of making such sound at all the times. Thus, by doing so, the agreement holder satisfies one part of his obligation or requirement under Section 16(c). But is that sufficient to hold that he is also willing to perform his part of the contract in the absence of specific pleading to that effect? At this juncture, it is very crucial to note one aspect.

An agreement holder, after entering into the agreement, at any time later, may change his mind and give up the contract for so many reasons, even though he is financially sound to fulfill his part of the contract. Therefore, his readiness pleaded and established by his financial capacity alone is not sufficient, unless it is also pleaded and proved that he is willing to put such readiness into action to complete the transaction within the time stipulated. Unless such intention of the agreement holder is also pleaded with material averments and proved, it cannot be said that the plaintiff has satisfied the requirement of Section 16(c) in its strict sense. The 'readiness' and 'willingness' being both sides of a coin, should co-exist and survive throughout commencing from the date of agreement till the decree is passed. If readiness is the cart carrying the coins, the willingness is the horse, dragging the cart to its destination. Needless to say, a cart loaded with coins is useless, unless there is a horse to carry it. Equally, existence of an healthy horse is also not sufficient, unless there is a cart loaded with coins for the horse to carry.

13. From the above judgment it is clear that **“readiness”** means financial capacity. **“Willingness”** means his conduct for the completion of transaction.

Pw1 in her chief examination has stated that she has been ready and willing to perform her part of the sale agreement. On perusal of records it reveals that the plaintiff had not taken steps to deposit the balance amount in the court during the pendency of this suit. Hence this court comes to the conclusion that the plaintiff has failed to prove her readiness.

14. Similarly, as stated supra, willingness means his conduct towards the completion of the transactions. The 1st defendant has stated in his written statement that his principal T.Shanmuganathan died and so the Power of Attorney was not in force and therefore he was unable to execute the sale deed in favour of the plaintiff. Further 1st defendant has stated that the 2nd and 3rd defendants are liable to execute the sale deed as legal heirs of

deceased T.Shanmuganathan and they evaded the execution of sale deed. It is not the case of the plaintiff that she was not aware of the death of T.Shanmuganathan. Since the plaintiff had knowledge, she had arrayed the legal heirs of T.Shanmuganathan as 2nd and 3rd defendants in the suit. No documents have been filed to show that the plaintiff had called upon the defendants to specify a date and time for registration and to be present before the office of the Sub-registrar and to receive the balance consideration of Rs.25,000/- and also to execute the sale deed. Further Ex.A1 sale agreement has stipulated two years from the date of agreement to complete the sale. Ex.A1 is just a sale agreement and the necessity to obtain the original sale deed Ex.A2 from the 1st defendant is something unnatural and furthermore the reason for fixing two year for the performance of contract that too for the lesser balance amount of Rs.25,000/- without any specific reason also brings out or creates a doubt as to the readiness and willingness of the plaintiff. Further the plaintiff has not produced any evidence to show that she had purchased any stamp papers for the execution of sale deed. Therefore the conduct of the plaintiff further makes it very clear that she lacks willingness to perform her part of the contract.

15. Keeping in view of the above discussions, this court comes to a conclusion that the plaintiff is not ready and willing to perform her part of the sale agreement. Accordingly, the 3rd issue is answered.

16. The plaintiff states that the defendant were not ready and willing to perform her part of the sale agreement. Such a plea cannot be considered since the plaintiff herself is not ready and willing to perform her part of the contract. While so, the contention of the plaintiff that the defendants were not ready and willing cannot be accepted. Accordingly, 4th issue is answered.

17. Answers to Issue No.5:

The next question that arise for consideration is whether the plaintiff is entitled for the relief of specific performance of Ex.A1 sale agreement. While answering the 1st and 2nd issues it has been held that Ex.A1 was executed by the 1st defendant in favour of the plaintiff. However while answering to the 3rd and 4th issues this court has held that the plaintiff has not proved her readiness and willingness to perform her part of the sale agreement. Further the plaintiff has filed this suit on the basis of Ex.A1 sale agreement dated 20.04.2018. The said agreement is an unregistered document and as per the amendment in the State of Tamilnadu with regard to Sec.17 of Registration Act, every sale agreement has to be registered, with effect from 01.12.2012. As per Sec.49 of the Registration Act, in a suit for specific performance an unregistered document affecting the immovable property could be received in evidence for collateral purposes. Therefore, as per Ex.A1, though the relief of specific performance could not be granted, it could be received in evidence for the recovery the amount paid under the said document.

The 1st defendant has stated in his written statement that the advance amount of Rs.3,50,000/- received by him on behalf of his principal was handed over to his principal T.Shanmuganathan. The 2nd and 3rd defendants who are the legal heirs of deceased T.Shanmuganathan have not turned up to the court and remained exparte and therefore this court presumes that there are no objections by 2nd and 3rd defendants to the plea of the 1st defendant that the advance amount of Rs.3,50,000/- received by the 1st defendant was handed over to his principal T.Shanmuganathan. Considering that Ex.A1 sale agreement being unregistered document and also as the necessary ingredients are not proved, this court is of the view that the plaintiff is not entitled the relief of specific performance but entitled for an alternative relief of recovery of advance amount along with interest and as well a charge decree. Further the 2nd and 3rd defendants as legal heirs of deceased

T.Shanmuganathan are liable to pay the advance amount of Rs.3,50,000/- and subsequent interest on the advance amount of Rs.3,50,000/-from date of sale Agreement i.e. 20-4-2018 till date. Therefore the plaintiff is entitled to recover the advance amount of Rs.3,50,000/- + Interest @ 12% per annum on the advance amount Rs.3,50,000/-from date of sale Agreement i.e. 20.04.2018 till the date of passing of decree along with subsequent interest @ 6% per annum. Accordingly, the 5th issue is answered.

18. Answer to issue No.6:

Having regard to the facts and circumstances of the case, the plaintiff is not entitled to any other relief including costs. Thus the 6th issue is answered.

In the result,

The suit is partly allowed,

1. Suit for specific performance of the sale agreement dated 20.04.2018 stands dismissed.
2. In the alternative thereby directing the 2nd and 3rd defendants to repay Rs.3,50,000/- with interest @ 12% per annum on the advance amount Rs.3,50,000/-from date of sale Agreement i.e. 20.04.2018 till the date of passing of decree and thereafter at 6% till the date of realisation.
3. A charge is created over the suit property unless and until the payment is made in full.
4. No costs.

Dictated to the typist and typed by her, corrected and pronounced in open Court, on this the 18th day of December 2025.

Subordinate Judge,
Thirumayam.

Plaintiff side Witness :

PW1 - Jothi (Plaintiff)

PW2 - Palanivelu

Plaintiff side Exhibits :

Ex.A1 - 20.04.2018 - Original Sale Agreement.

Ex.A2 - 16.11.2011 - Original Sale Deed Doc.No.3022/2011.

Ex.A3 - 22.12.2015 - Original Power of Attorney Doc.No.3777/2015.

Defendants side Witness & Exhibits: Nil.

Subordinate Judge,
Thirumayam.