

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE, TINDIVANAM

**PRESENT : Thiru. T. H. Mohammed Farooq, M.A., M.L.,
I Additional District Judge, Tindivanam.**

Wednesday the 14th day of August 2024

O.S.No.27/2021

CNR.No.TNVPOC0000502021

S.Dhatchinamoorthy

..

Plaintiff.

Vs

1. A.Valliyammal

2. A.Mangaiyarkarasi

3. S.Rajalakshmi

4. S.Vetrivel

5. R.Rajalakshmi

..

Defendants

This Suit coming before me for final hearing on 07.08.2024 in the presence of Thiru.P.Malarmarban Advocate for the Plaintiff and the defendants were called absent and set exparte and after hearing the arguments of plaintiff's side and after perusing the material records, having stood over for consideration till this day, this Court delivers the following ...

JUDGMENT

1. This suit has been filed by the plaintiff seeking the relief of specific performance to execute the sale deed in favour of the plaintiff in respect of the sale agreement dated 12.03.2018 or in the alternative relief to direct the defendants to

pay a sum of Rs.12,35,600/- with subsequent interest from the date of agreement till realization to the plaintiff.

The plaintiff's case:

2. The suit property originally belongs to one Annamalai who is the husband of 1st defendant. The defendants 2 and 5 are the daughters, 3rd defendant is daughter in law and 4th defendant is the grand son of said Annamalai. The said Annamalai agreed to sell the suit property to the plaintiff by fixing the price as Rs.17,85,600/- to an extent of 5.76 cents at the rate of Rs.3100/- per cent. The sale agreement was entered between the plaintiff and Annamalai on 12.03.2018 and the plaintiff paid Rs.10,00,000/- as advance. The remaining amount of Rs.7,85,600/- was agreed to be paid by the plaintiff within three months and that he would get the sale executed in his favour. On 14.03.2018, the said Annamalai received a sum of Rs.50,000/- and on 16.03.2018, he received a sum of Rs.50,000/- totalling Rs.1,00,0000/- from the plaintiff by way of bank account. Thereafter the said Annamalai received Rs.35,600/- from the plaintiff. The said amount has been endorsed in the sale agreement dated 12.03.2018. Due to the non performance of said Annamalai, the execution of sale was delayed. The said Annamalai has not come forward to execute the sale deed in favour of plaintiff after receiving the balance sale consideration. On 4.6.2018, the plaintiff sent a notice calling for the

said Annamalai to come forward to execute the sale. After receiving the said notice, the said Annamalai assured the plaintiff to execute the sale deed in his favour. In the meantime, the said Annamalai died on 13.08.2020 without making any arrangements in respect of suit property. The defendants 1 to 5 are only the legal representatives of the deceased Annamalai. But the defendants have not come forward to execute the sale deed in favour of the plaintiff. The plaintiff had been ready and willing to perform his part of contract. The defendants have violated the terms of agreement. The defendants shall execute the sale deed in favour of the plaintiff or in the alternate the defendants shall pay the advance amount of Rs. 12,35,600/- with subsequent interest. Hence the suit. **(Pleadings amended as per order in I.A.1/2022 dated 25.09.2023).**

3. The defendants 1 and 2 having served with summons and entered appearance through their advocate, failed to file their written statement despite several chances and therefore they were called absent and set exparte. The defendants 3 to 5 having receiving the summons have failed to appear and they are called absent and set exparte.

4. Point for determination is that whether the plaintiff is entitled for the relief of Specific Performance as prayed for?

5. To prove the plaintiff's case, he examined himself as PW1 and one of the attesting witness in the sale agreement, Tr.Elumalai is examined as PW2 and Ex.A1 to Ex.A7 are marked.

6. Ex.A1 is the sale agreement deed dated 12.03.2018 wherein Annamalai has agreeing to sell the suit property to the plaintiff and received an advance of Rs.10,00,000/- and agreed to receiving the balance sale consideration amount of Rs.7,85,600/- within a period of three months from the date of sale agreement and to execute the sale deed in favour of the plaintiff. Further the vendor Annmalai has also made endorsements under Ex.A2 for receiving additional advance amount on various dates for a sum of Rs.2,35,600/- in the suit sale agreement. Ex.A3 is the pre suit notice issued by the plaintiff's counsel on 4.6.2018 calling upon Annamalai to execute the sale deed after receiving the balance sale consideration. The said vendor Annamalai died on 13.08.2020 and Ex.A4 is the copy of death certificate of Annamalai. Ex.A5 is the legal heir certificate showing that the defendants are the legal representatives of the deceased Annamalai. Ex.A6 and Ex.A7 are the postal acknowledgment cards for service of notice at office and residence address of Annamalai.

7. By way of proving the above documents both PW1 and PW2 have deposed in consonance with the plaintiff's claim to prove the sale agreement

Ex.A1 entered between the plaintiff and Annamalai. Since the said Annamalai died, the plaintiff has filed the suit against the legal representatives of deceased Annamalai who are the defendants D1 to D5 herein. The defendants have not chosen to contest the suit and remained exparte. From the evidence of PW1 and PW2, the execution of sale agreement by Annamalai is proved. The receipt of advance amount of Rs.10,00,000/- under the sale agreement and further additional advance amount of Rs.2,35,600/- under the endorsements in Ex.A2 made in Ex.A1 sale agreement are also proved by the plaintiff.

8. One of the condition for granting the relief of specific performance is that the plaintiff shall prove his readiness and willingness continuously to perform his part of contract. The plaintiff has pleaded in his plaint that he was ready and willing to perform his part of contract and that the deceased Annamalai was only evading the same. To show his readiness and willingness, the plaintiff has also issued pre suit notice under Ex.A3 to the vendor Annamalai. Having received it he has not chosen to give any reply denying the plaintiff's claim. The defendants being the legal representatives of deceased Annamalai the right to be sued survive upon them on the death of Annamalai and the contract is binding on them. Therefore, from the above discussed material, the plaintiff has proved his claim and he is entitled for the relief of specific performance as prayed for. Accordingly the suit is to be decreed.

RESULT:

9. In the result, the suit is decreed granting the relief of specific performance as prayed for with costs. The defendants are directed to receive the balance sale consideration amount of Rs.5,50,000/- from the plaintiff and execute the sale deed in favour of the plaintiff within two months, failing which the plaintiff shall deposit the balance sale consideration amount of Rs.5,50,000/- within 10 days after the expiry of two months and get the sale deed executed through Court by filing execution proceedings.

Dictated to the Steno-typist, transcribed by her in Computer, printed out corrected and pronounced by me in Open Court on this the 14th day of August 2024.

(Sd/-T.H.Mohammed Farooq),
I Additional District Judge,
Tindivanam.

List of witnesses and documents**Plaintiff's side witness:**

PW1 S.Dhatchinamoorthy (Plaintiff)
PW2 Elumalai

Plaintiff's side documents:

Ex.A1	12.03.2018	Original sale agreement deed entered between the plaintiff and Annamalai.
Ex.A2		Endorsements made in original sale agreement deed

Ex.A3	04.06.2018	Copy of legal notice issued by the plaintiff's counsel to Annamalai
Ex.A4		Copy of death certificate of Annamalai
Ex.A5		Copy of legal heir certificate
Ex.A6	08.06.2018	Postal Acknowledgment card
Ex.A7	12.06.2018	Postal Acknowledgment card.

**(Sd/-T.H.Mohammed Farooq),
I Additional District Judge,
Tindivanam.**

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**I Additional District Judge,
Tindivanam.**