

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
TIRUPPUR**

Present :- Dr.V.Sree Vidya,
Principal Subordinate Judge,
Tiruppur.

Monday, the 9th day of March 2026
(Thiruvalluvarandu 2057, Visuvavasu Varudam Masi Thingal 25th Day
O.S.No. 393/2023
(TNTI04-001298-2023)

S.Balaji

.....Plaintiff

//Vs//

Anand

..... Defendant

This suit came up before me for the final hearing on 11.03.2026 in the presence of Thiru.S.Manikandan., B.A., B.L., learned counsel for the Plaintiff and Thiru.Loganathan., B.A., B.L., learned counsel for the Defendant and hearing both side arguments, and on perusal of available records for consideration, this court delivered the following :

Judgment

1. The plaintiff has instituted this suit under Order VII Rule 1 of the Code of Civil Procedure, 1908 read with the provisions of the Specific Relief Act, 1963, seeking specific performance of a Sale Agreement dated 27.01.2016 in respect of an immovable property situate at Tiruppur District, Tiruppur Taluk, Pongupalaiyam Village, bearing Survey No. 23/B, and in the alternative, for refund of the advance amount of Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only) paid under the said Agreement, together with interest at 18% per annum and costs of the suit.

2. Case of the plaintiff:

The plaintiff averred that the defendant is the owner of an immovable property described in the plaint schedule, allotted to him under the name "Vijaya Garden" by

partition decree in A.O.P. No. 5476/2015 on the file of the Sub-Registrar, Avinasi. The defendant agreed to sell the said suit property to the plaintiff for a total consideration of Rs.3,60,000/- and a Sale Agreement dated 27.01.2016 was executed between them. Pursuant to the Agreement, the plaintiff paid an advance of Rs.1,00,000/- on the date of the Agreement itself, and thereafter paid the balance sale consideration in ten instalments through receipts between 14.01.2016 and 05.02.2018, aggregating the total amount of Rs.3,60,000/-. Despite having paid the entire sale consideration, the defendant wilfully evaded and refused to execute the registered Sale Deed in favour of the plaintiff. The plaintiff issued a legal notice on 10.12.2022 through his advocate demanding execution of the Sale Deed, to which no proper reply was sent. On 13.12.2022 the defendant acknowledged the notice and on 29.12.2022 sent a reply with false and untenable averments. Having left with no option, the plaintiff filed this suit seeking specific performance of the Agreement or in the alternative refund of the amount paid with interest and costs.

3. Case of the defendant:

3.1 The defendant filed a Written Statement denying the material averments of the plaint. The defendant contended that the plaintiff's suit is barred by law and is not maintainable. It is contended that the alleged Sale Agreement dated 12.02.2016 relied upon by the plaintiff was never registered and no such valid Sale Agreement was executed as described. Further, the defendant pointed out that as per the Agreement, the balance sale consideration ought to have been paid within 10 months, i.e., by 27.11.2016. The plaintiff having failed to pay the balance amount within the stipulated time lost the right to seek specific performance. The defendant further contended that he is not ready and willing to execute the Sale Deed, that he was cheated by multiple buyers in similar transactions, and that the plaintiff had approached this Court with unclean hands. The defendant also filed counter pleadings claiming that the suit is liable to be dismissed with costs.

4. Issues for trial:

The following Issues were framed for trial on 04.03.2024:

- I. Whether the Plaintiff is entitled to get Specific Performance relief as prayed for?
- II. Whether the Plaintiff is entitled to get Attention (Alternative) relief as prayed for?
- III. To what other relief, if any, the Plaintiff is entitled?

5. Evidence:

5.1 On the Plaintiff's side, PW1 (Thiru. Balaji, the plaintiff himself) was examined. Exhibits A1 to A6 were marked on the plaintiff's side. On the Defendant's side, no witness was examined and no documents were marked. The evidence on record may be summarised as under:

Ex.A.1 – Original payment receipts (10 in number) for the amount paid from 14.01.2016 to 05.02.2018.

Ex.A.2 – Original receipt issued by the District Collector's office / complaint filed against the defendant.

Ex.A.3 – Original complaint lodged with the Police / District Vigilance.

Ex.A.4 – Office copy of the legal notice issued by plaintiff's counsel dated 10.12.2022.

Ex.A.5 – Acknowledgement of the legal notice by the defendant.

Ex.A.6 – Reply notice sent by the defendant dated 29.12.2022.

6.Points for determination:

6.1 Upon a careful consideration of the pleadings, oral evidence of PW1, the documentary evidence Exhibits A1 to A6 and the written arguments of both parties, the following points arise for determination:

- (i) Whether there existed a valid, enforceable Sale Agreement between the parties dated 27.01.2016?
- (ii) Whether the plaintiff has proved readiness and willingness to perform his part of the contract continuously upto the date of the suit?
- (iii) Whether the suit for specific performance is barred by limitation?

(iv) Whether the plaintiff is entitled to the alternative relief of refund of the advance amount with interest?

7. Discussion and findings:

Point (i) – Validity of the sale agreement:

7.1 PW1 (the plaintiff) has deposed in his affidavit-in-chief that the defendant is the owner of the suit property allotted to him under A.O.P. No. 5476/2015 in the Sub-Registrar's office, Avinasi. He deposed that a Sale Agreement was entered into on 27.01.2016, and he paid a sum of Rs.1,00,000/- as advance on the very date of the Agreement, with the balance to be paid in instalments within ten months. He produced ten original receipts (Ex.A.1) evidencing payment of the entire sale consideration of Rs.3,60,000/-. The defendant, during cross-examination, categorically admitted that the plaintiff was part of his 60-month instalment housing scheme; that he and the plaintiff entered into a Sale Agreement on 27.01.2016 (though he alleged it was an unregistered one); that the plaintiff had paid Rs.1,00,000/- on the date of the Agreement; and that on 05.02.2018 he had received Rs.2,21,000/-. The defendant further admitted in cross-examination that he had always been ready to accept money. These admissions during cross-examination, coupled with the documentary evidence of Ex.A.1 receipts, overwhelmingly establish the existence of a valid and subsisting Agreement to Sell between the parties.

7.2 The defendant's assertion in the Written Statement that no valid Agreement was executed is belied by his own admissions in the cross-examination noted above. The law is clear that facts admitted by parties need not be proved. As held under Section 58 of the Indian Evidence Act, 1872 (Section 53, Bharatiya Sakshya Adhiniyam, 2023), facts formally admitted in pleadings or in evidence do not require further proof. Since the defendant has conceded the material aspects of the Agreement in cross-examination, Point (i) is answered in the AFFIRMATIVE.

Point (ii) – Readiness and willingness:

7.3 Section 16(c) of the Specific Relief Act, 1963 mandates that a plaintiff seeking specific performance must plead and prove that he has performed or is ready and willing to perform his part of the contract. The proof of such readiness and willingness must be continuous from the date of the contract to the date of the decree. In *Saradamani Kandappan v. S. Rajalakshmi & Ors.*, (2011) 12 SCC 18, the Hon'ble Supreme Court held that the plaintiff must demonstrate continuous readiness and willingness throughout, particularly in contracts specifying a time frame. In the instant case, while the plaintiff has proved payment of the full consideration through Ex.A.1, the Agreement itself stipulated that the remaining sale consideration was to be paid within ten months from the Agreement date, i.e., by 27.11.2016. The plaintiff admittedly made the last instalment payment only on 05.02.2018 – nearly fourteen months after the contractual deadline – and thereafter failed to take any steps to demand execution of the Sale Deed until December 2022, a gap of nearly four and a half years. The plaintiff's own deposition reveals that he made no demand for registration between 2018 and 2022.

7.4 Section 16(c) requires that the plaintiff must continuously manifest readiness and willingness and not merely at the time of filing the suit. In *K. Shanmugam v. C. Samiappan*, Second Appeal No. 863 of 2008 (Madras High Court), it was held that specific performance is a discretionary relief and the conduct of the plaintiff throughout is relevant. In the present case, the substantial delay from 2018 to 2022 in taking steps towards registration, the absence of any evidence of demand for Sale Deed execution during this period, and the non-production of the Sale Agreement (Ex.A.1 being only receipts and not the Agreement itself) cast a serious doubt on the plaintiff's continuous readiness and willingness. The defendant's written argument also rightly draws attention to the absence of the original unregistered Sale Agreement being marked in evidence. Section 49 of the Registration Act, 1908, read with Section 17(1A) thereof as amended in 2001, mandates that contracts for transfer of immovable property of a value of Rs.100 or more are compulsorily registrable, and an unregistered

Agreement to Sell affects immovable property cannot be received in evidence to affect such property. However, as the plaintiff has proved full payment through receipts and the defendant has admitted the Agreement in cross-examination, its non-registration affects the question of specific performance but not the cause of action for refund. Accordingly, on account of the failure to prove continuous readiness and willingness as mandated under Section 16(c) of the Specific Relief Act, 1963, the relief of specific performance cannot be granted, and Point (ii) is answered in the NEGATIVE.

Point (iii) – Limitation for specific performance:

7.5 Article 54 of the Limitation Act, 1963 prescribes a period of three years for suits for specific performance of a contract, to be computed from the date fixed for performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. In the instant case, the Agreement stipulated that payment was to be completed within ten months from 27.01.2016, i.e., by 27.11.2016. If the date is so fixed, the suit should have been filed within three years therefrom, i.e., by 27.11.2019. The suit was filed on 12.07.2023 – more than six years after the date of breach. Even if computed from the last instalment payment on 05.02.2018, the suit was filed approximately five and a half years thereafter. No application for condonation of delay was filed, and no satisfactory explanation has been offered for the inordinate delay in approaching this Court. In view of the above, the suit for specific performance is barred by limitation under Article 54 of the Limitation Act, 1963, and Point (iii) is answered in the Affirmative (suit is time-barred).

Point (iv) – Alternative relief or refund:

7.6 Even where specific performance is declined, a court of equity is not helpless. Section 22 of the Specific Relief Act, 1963 expressly enables the plaintiff to seek the alternative relief of refund of advance amount paid under the contract at any stage of the proceedings. As held by the Hon'ble Supreme Court, relief of refund of advance can be sought even after disposal of the suit at the time of execution and it was held that the relief of refund of advance amount is protected under Article 56 of the

Limitation Act read with Section 55(6)(b) of the Transfer of Property Act, 1882, and is governed by a limitation period of twelve years and not three years.

7.7 Furthermore, in *K. Shanmugam v. C. Samiappan*, Second Appeal No. 863 of 2008 (decided on 10.09.2013 by the Honourable Mr. Justice P.R. Shivakumar), the Madras High Court held that there is no question of the relief of refund being barred by limitation during the pendency of the suit, and since a charge is created over the property for the value of the advance amount, the limitation for seeking refund of advance is twelve years and not three years.

7.8 Turning to the evidence, the payment of the total sale consideration of Rs.3,60,000/- by the plaintiff to the defendant is established beyond doubt by the following evidence: (a) Ex.A.1, the series of ten original receipts for the period from 14.01.2016 to 05.02.2018 (receipt numbers 9843, 10237, 12491, 13600, 14292, 15988, 17536, 18359, 3403 and 20457), collectively evidencing payment of the full amount; (b) the defendant's categorical admission in cross-examination that he received Rs.2,21,000/- on 05.02.2018; (c) the defendant's admission that the plaintiff was part of his 60-month instalment scheme; and (d) the defendant's admission that he always remained ready to accept money. These admissions conclusively establish that the plaintiff had paid the entire consideration of Rs.3,60,000/-. The defendant has provided no rebuttal whatsoever – his side is completely silent on evidence, not having examined any witness or produced a single document.

7.9 The Hon'ble Supreme Court in *Saradamani Kandappan* (supra) has also held that the distinction between time being of the essence and not being of the essence of a contract depends upon the parties' intention, nature of the property and surrounding circumstances, and that notwithstanding default in completion within the specified period, specific performance may be granted if it is not inequitable to do so. However, the present Court, having regard to the cumulative effect of the long delay (2018–2022)

without any demand, the substantial lapse of time, and the failure to file the suit within the limitation period under Article 54, finds that specific performance would be inequitable and is not entitled to be granted in the circumstances. The plaintiff's suit for specific performance must therefore fail.

7.10 However, the defendant having admittedly received the entire sale consideration of Rs.3,60,000/- from the plaintiff and having failed to execute the Sale Deed, it would be manifestly unjust and inequitable to permit the defendant to retain the monies paid by the plaintiff. The plaintiff's claim for refund of the said sum with interest being founded on a valid cause of action, cognizable under Section 22 of the Specific Relief Act, 1963, and being within twelve years' limitation from the date of the Agreement (27.01.2016 to 12.07.2023), is well within time and is fit to be decreed.

7.11 As regards interest, the plaintiff has prayed for interest at 18% per annum from the date of the Agreement till realisation. This Court, exercising its discretion under Section 22 of the Specific Relief Act, 1963 read with Section 34 of the Code of Civil Procedure, 1908, awards interest at the rate of 6% per annum from the date of the suit (12.07.2023) till the date of the decree, which is just and proper in the facts and circumstances. Point (iv) is accordingly answered in the AFFIRMATIVE.

Issue I : Answered in the NEGATIVE. Specific performance declined.

Issue II : Answered in the AFFIRMATIVE. Alternative relief of refund decreed.

Issue III : Relief as follows.

8.Decree:

8.1 In the result, the suit for specific performance is Dismissed. However, the plaintiff's alternative prayer for refund of the advance amount is Decreed. The defendant is directed to pay the plaintiff the following amounts:

(a) Principal amount of Rs.3,60,000/- (Rupees Three Lakh Sixty Thousand only);

(b) Interest thereon at 6% per annum from the date of the suit (12.07.2023) till the date of the decree;

(c) Costs of the suit.

Dictated to the Steno-typist, transcribed, typed by him, corrected and pronounced by me in Open Court, on this the 9th day of March, 2026.

Principal Subordinate Judge,
Tiruppur.

I. List of witness examined on the side of the Plaintiff :-

P.W.1	Balaji
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II. List of Documents marked on the side of the Plaintiff :-

Ex.A1	14.01.2016 - 05.02.2018.	Original payment receipts (10 in number)	Original
Ex.A2	10.10.2022	Original receipt and complaint petition filed against defendant at the District Collector's Office, Tiruppur	Original
Ex.A3	10.10.2022	Complaint lodged with District Police / Revenue Vigilance against defendant	Office Copy
Ex.A4	10.12.2022	Office copy of legal notice	Office Copy
Ex.A5	-	Postal Acknowledgement Card	Original
Ex.A6	29.12.2022	Reply notice by defendant	Office Copy

III. List of witness examined on the side of the Defendant :- Nil

IV. List of Documents marked on the side of the Defendant :-Nil

Principal Subordinate Judge,
Tiruppur.

**Fair / Draft Judgment in
O.S. No.393/2023
Dated : 09.03.2026
PSJ Court, Tiruppur.**