

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON  
26.03.2026PRONOUNCED ON  
05.06.2026

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CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**AS No. 9 of 2011**  
**and CRP.No.140 of 2011**  
**and CMP.No.2 of 2012**

Danton Baskaran

..Appellant(s) in A.S.  
No.9 of 2011 &  
Petitioner in  
CRP.No.140 of 2011

Vs

1. BANUMATHI,(Deceased)
2. Sridevi
3. Ramadoss
4. Prakash
5. Ashock

RR 3 to 5 brought on record as LRs of the  
deceased R1 vide order dt 03/02/17 in MP 1, 2  
& 3/2012 in AS 9/2011

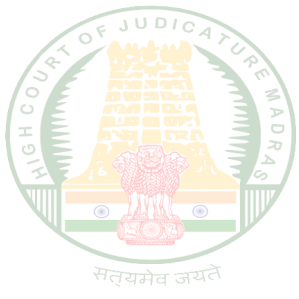
..Respondent(s) in A.S.  
No.9 of 2011

- 1.Banumathi
- 2.Ramadoss
- 3.Sridevi

..Respondent(s) in  
CRP.No.140 of 2011

**A.S.No.9 of 2011**

**PRAYER:-** First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed by the learned Additional District Court Puducherry at Karaikal, dated 29.04.2010 made in O.S.No. 8 of 2007.



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AS No. 9 of 2



For Appellant(s):

Mr.A.Arun Babu  
for M/s.B.Jawahar

For Respondent(s):

R1 – Died  
Mr.N.Umapathy for R2  
R3 – Not ready in notice  
Mr.N.Thiagarajan for RR4 & 5

**CRP.No.140 of 2011**

**PRAYER:-** The Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code against the judgment and decree passed by the learned Additional District Court, Karaikal, dated 29.04.2010 made in O.S.No.14 of 2008.

For Appellant(s):

Mr.A.Arun Babu  
for M/s.B.Jawahar

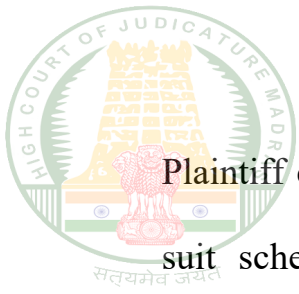
For Respondent(s):

R1 – Died  
Mr.N.Thiagarajan for R2  
R3 – No appearance

**COMMON JUDGMENT**

The Appeal suit has been filed challenging the judgment and decree made in O.S.No.8 of 2007, dated 29.04.2010 by the learned Additional District Judge, Puducherry, Karaikal rejecting the claim for specific performance by directing the refund of advance amount.

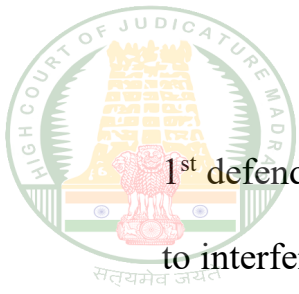
(i). The case of the Plaintiff is that the 1<sup>st</sup> defendant was the absolute owner and in possession of the suit schedule property. On 09.03.2006, the



Plaintiff entered into a Sale Agreement with the 1<sup>st</sup> defendant in respect of the suit schedule property, wherein the total sale consideration was fixed at Rs.6,20,000/-. Pursuant to the said agreement, the Plaintiff had paid a sum of Rs.2,00,000/- as advance to the 1<sup>st</sup> defendant. It was agreed that the 1<sup>st</sup> defendant would survey and measure the suit property, deliver possession of the same, hand over the keys to the Plaintiff. Further the 1<sup>st</sup> defendant had also agreed to furnish the original anterior title deeds and produce a nil encumbrance certificate for the preceding 30 years along with Patta and other relevant documents. The time period fixed to complete the entire Sale transaction and the execution of the Sale deed under the said Sale Agreement was three months.

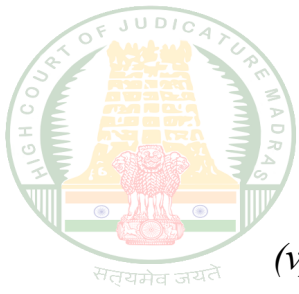
(ii). According to the Plaintiff, owing to certain doubts regarding the title and extent of the property, he had issued a legal notice to the 1<sup>st</sup> defendant and had also expressed his readiness and willingness to perform his part of the contract. However, the said notice was evaded by the 1<sup>st</sup> defendant. Thereafter, the 1<sup>st</sup> defendant issued a reply notice dated 05.06.2006 stating that she was ready and willing to comply with the terms of the Sale Agreement and calling upon the Plaintiff to pay the balance sale consideration. According to the Plaintiff, possession of the suit property along with the keys had already been handed over to him on the date of the Sale Agreement itself.

(iii). The Plaintiff further avers that, during the exchange of notices, the



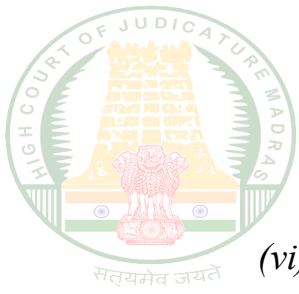
1<sup>st</sup> defendant attempted to alienate the suit schedule property to third parties and to interfere with the Plaintiff's possession. Hence, the Plaintiff had filed a suit in O.S.No.251 of 2006 seeking permanent injunction restraining the 1<sup>st</sup> defendant from alienating the suit property and interfering with his possession, wherein the interim injunction application was allowed by the learned Trial Court on 02.03.2007. According to the Plaintiff, despite his readiness and willingness to pay the balance sale consideration, the 1<sup>st</sup> defendant had executed a nominal and notional sale deed in favour of the 2<sup>nd</sup> defendant, who was fully aware of the prior Sale Agreement and the pending litigation concerning the suit property. Therefore, the Plaintiff contends that the said sale is not valid or binding on him.

(iv) The Plaintiff further states that he has always been ready and willing to perform his part of the contract and had even filed a lodgment schedule along with challan for deposit of the balance sale consideration before the Court. However, since the 1st defendant failed to execute the sale deed as agreed, the Plaintiff instituted the present suit seeking specific performance by directing the 1st defendant, or alternatively the 2nd defendant, to execute the sale deed in favour of the Plaintiff or his nominees upon deposit of the balance sale consideration of Rs.4,20,000/-. In the alternative, the Plaintiff seeks refund of the advance amount of Rs.2,00,000/- with interest at 24% per annum from the date of the Sale Agreement till realization, together with compensation of Rs.72,000/- for breach of contract.



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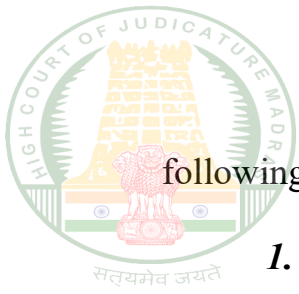
(v). The 1st defendant had filed her written statement admitting the execution of the Sale Agreement dated 09.03.2006 in favour of the Plaintiff and the receipt of an advance amount of Rs.2,00,000/-. However, the 1<sup>st</sup> defendant had specifically denied the allegation that possession of the suit property was handed over to the Plaintiff, contending that possession remained with her until the property was sold to the 2nd defendant 02.03.2007. It is contended that the Plaintiff had suppressed the fact that the IA.No.149 of 2006 in OS.No.251 of 2006 was dismissed by the learned Trial Court on 26.02.2007, holding that the Plaintiff was not in the possession of the Property mentioned on the Sale Agreement. The defendant asserts that the orders were passed in the IA.Nos.149 of 2006 and 150 of 2006 on the dated if 27.02.2007 and not on 02.03.2007 as alleged in the Plaint. Subsequent to the aforesaid order passed, the defendant had returned the advance amount of Rs.2 lakhs by the way of Pay order to the Plaintiff on 27.02.2007, which the Plaintiff intentionally failed to receive. Thereafter upon filing an appropriate application the same amount was deposited into before the Trial court by the way of FDR on 27.11.2007. Subsequently the Plaintiff had sold the Suit schedule property to the 2<sup>nd</sup> defendant. Therefore the allegation made in the notice dated 07.03.2007 by the Plaintiff that the 1<sup>st</sup> defendant sold the Suit Schedule property to the 2<sup>nd</sup> defendant while the IA 149 of 2006 was pending was incorrect.



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(vi). The 1<sup>st</sup> defendant further contended that the Plaintiff was never ready and willing to perform his part of the contract and had not expressed any such readiness or willingness to conclude the sale in the notice dated 01.06.2006. According to the 1<sup>st</sup> defendant, through a rejoinder notice dated 16.06.2006, she had informed the Plaintiff that the Sale Agreement stood automatically cancelled on account of the expiry of the stipulated period of three months fixed under the Sale agreement as the time was the essence of the contract. The 1<sup>st</sup> defendant further contended that the 2<sup>nd</sup> defendant had purchased the suit property for valid sale consideration and without knowledge of the earlier litigation and therefore, cannot be compelled to execute any sale deed in favour of the Plaintiff. It is further stated that the 1<sup>st</sup> defendant had agreed to sell the suit property fixing a time limit of three months only to meet her urgent medical expenses. However, instead of performing his obligations under the agreement, the Plaintiff had filed a suit for permanent injunction in O.S.No.251 of 2006 without seeking the relief of specific performance. Hence, it was further contended that since the Plaintiff had omitted to seek the relief of Specific Performance in the earlier suit, cannot sue for the omitted relief in the present suit, without obtaining leave of the Trial Court. On the above grounds, the 1<sup>st</sup> defendant sought dismissal of the suit

(vii). Based upon the above pleadings the learned Trial Court had framed the

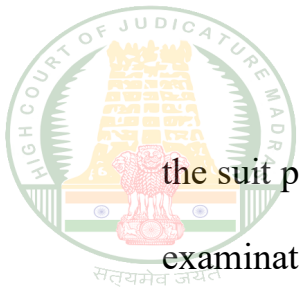


following issues in O.S.No.8 of 2007 to be determined as follows

1. ***Whether the time is the essence of contract?***
2. ***Whether the Plaintiff relinquished his right to enforce the sale agreement?***
3. ***Whether the 2<sup>nd</sup> defendant is a Bonafide purchaser without notice of previous agreement ?***
4. ***Whether the Plaintiff was ready and willing to perform his part of the contract ?***
5. ***Whether the plaintiff is entitled for the relief of specific performance?***
6. ***What the other reliefs to the parties?***

(viii). On the side of the Plaintiff, the plaintiff is examined as PW1 and the six documents were marked as Ex.A1 to Ex.A6. On the side of the defendants the defendants 1 and 2 were examined as DW1 and DW2 and had marked Ex.B1 to Ex.B19 as the documentary evidences.

(ix). The learned Trial Court, after hearing both sides and upon perusing the evidence available on record, determined the issues vide judgment dated 29.04.2010. Insofar as Issues Nos.1, 2 and 4 are concerned, the learned Trial Court observed that the Plaintiff, in his chief examination as PW1, had not stated his readiness and willingness to perform his part of the contract, namely, paying the balance sale consideration of sum of Rs.4,20,000/- and purchasing



the suit property. The learned Trial Court further observed that during the cross-examination PW1 had admitted the execution of the Sale Agreement dated 09.03.2006 marked as Ex.A1 and the payment of Rs.2,00,000/- as advance. PW1 had further admitted that he had measured the suit schedule property, wherein he found that the extent of the property was only 16 kuzhies as against 22 kuzhies, thereby revealing a shortage of 6 kuzhies. Consequently, he had refused to purchase the property for Rs.6,20,000/- and had instead demanded execution of the Sale deed for just 16 kuzhies upon payment of Rs.3,00,000/-. The learned Trial Court noted that this fact had not been pleaded in the plaint. Accordingly, the learned Trial Court held that the deposition of PW1 clearly demonstrated the fact he was not ready and willing to perform his part of the contract within the stipulated period of three months prescribed under Ex.A1, particularly since the Plaintiff still continued to have doubts regarding the title and extent of the property

(x). The learned Trial Court had further taken note of the deposition of the 1st defendant as DW1, wherein she had categorically deposed that she had returned the advance amount of Rs.2,00,000/- to the Plaintiff through a pay order dated 22.07.2007 drawn in favour of the Plaintiff and sent the same by RPAD. It was further noted that the Plaintiff had refused to receive the same and, therefore, DW1 had filed an application before the learned Trial Court seeking permission to deposit the said amount before the Court, which was



allowed in IA.311/2017 dated 20.11.2007. The learned Trial Court further noted that the DW1 had issued a notice dated 05.06.2006 calling upon the Plaintiff to conclude the sale by the date of 08.06.2006 which was not complied with by the Plaintiff. Thereafter, the 1st defendant had issued a rejoinder notice informing the Plaintiff that the Sale Agreement stood automatically cancelled on 09.06.2006 since the stipulated period of three months under Ex.A1 had expired. The defendant had also marked the xerox copy of the demand draft for Rs.2,00,000/- drawn on Canara Bank.

(xi). Therefore, the learned Trial Court, upon appreciating the depositions of PW1 and DW1 along with the documentary evidence, had categorically held that time was the essence of the contract and that the Plaintiff had failed to perform his part of the contract within the stipulated time period of 3 months as prescribed under Ex.A1 Sale Agreement. Consequently, the learned Trial Court held that the Plaintiff had lost his right to enforce the contract on 09.06.2006 and was thereby barred from seeking enforcement of the Sale Agreement, as his rights under the said Sale Agreement (Ex.A1) stood relinquished from 09.06.2006 . In view of the same, the learned Trial Court held that the Plaintiff had relinquished his right to enforce the Sale Agreement and accordingly answered the above issues.

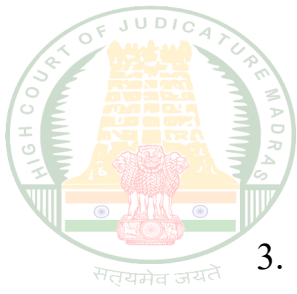
(xii). Insofar as Issue No.3 is concerned, the learned Trial Court had noted



that 2nd defendant had deposed as DW2 and had purchased the suit property only on 02.03.2007. In light of the aforesaid finding that Plaintiff was not ready and willing to perform his part of the contract within the time stipulated under Ex.A1 Sale Agreement, the learned Trial Court, upon considering the depositions of DW1, DW2 and PW1, held that the 2nd defendant was a bonafide purchaser of the suit property and the said issue was answered accordingly.

(xiii). Insofar as Issues Nos.5 and 6 are concerned, the learned Trial Court held that, in view of the findings rendered on Issues Nos.1, 2 and 4, the Plaintiff was not entitled to the relief of Specific Performance as prayed for. However, the learned Trial Court held that the Plaintiff was entitled to refund of the advance sale consideration of Rs.2,00,000/- deposited by the 1st defendant before the Court. Accordingly, vide judgment dated 29.04.2010, the learned Trial Court ordered the sum of Rs.2,00,000/- lying in Court deposit to the Plaintiff and consequently dismissed the suit. Aggrieved by the said judgment, the Plaintiff had preferred the present appeal suit challenging the same by impleading both the defendants as respondents respectively.

2. The Civil Revision is against the judgment and decree made in O.S.No.14 of 2008, dated 29.04.2010 of the learned District Judge dismissing the suit filed under Section 6 of the Specific Relief Act.



3. As regards the suit in O.S.No.14 of 2008, the following issues were

framed:

***1. Whether the physical possession of the suit property was handed over by the first defendant to the plaintiff on the date of the sale agreement as alleged in the plaint?***

***2. Whether the suit is filed within six months from the date of the alleged dispossession?***

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

***4. Whether the defendant No.2 is a necessary party and the suit is bad for misjoinder of unnecessary party?***

***5. To what reliefs plaintiff is entitled?***

4. On the side of the plaintiff, he had examined himself as PW1 and one Shanmugavel as PW2 and had marked Exs.A1 to A15. On the side of the respondents, the second defendant was examined as DW1 and had marked Exs.B1 to B4.

5. On consideration of the aforesaid pleadings, depositions of the respective parties and the examination of various exhibits, the Court below had come to the conclusion that the plaintiff/ petitioner was not handed over the possession of the suit property and therefore, there is no question of him being dispossessed, apart from that the suit had been barred by the law of limitation. Challenging the aforesaid judgments and decrees the appeal suit and Revision



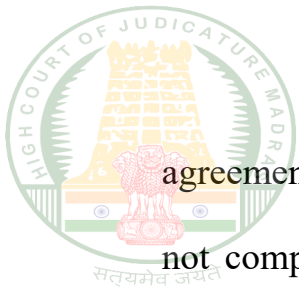
have been filed by the unsuccessful plaintiff.

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6. Heard the learned counsels appearing for their respective parties in the respective Appeal suit and Revision.

7. The learned counsel for the appellant/ petitioner would submit that the possession of the property had been handed over to the appellant and on a wrong consideration and interpretations of various exhibits particularly Ex.A1, the Court below had come to a wrong conclusion that the possession of the property had not been handed over and that the suit under Section 6 of the Specific Relief Act had been barred by the period of limitation.

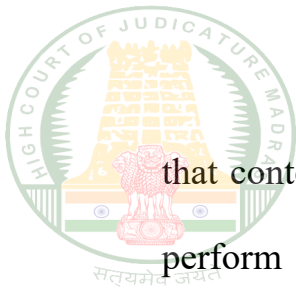
8. That apart, he would submit that in spite of notices sent by him for execution of the Sale deed, it is only the vendor of the property who had refused to execute the sale deed. He would submit that the Court below had misunderstood the reply notice of the vendor as if the vendor was ready and willing and it was only the appellant who had failed to perform his part of the contract. He would submit that there has been some discrepancies in the extent of the schedule of property under the Sale Agreement and the actual extent of the suit schedule property. Only in that context, he had sought for clarifications and was ready and willing to pay the actual value of the extent available in the suit schedule property rather than the extent that had been given in the



agreement for sale. Therefore, there is bonafidies on the part of the appellant in not complying with his obligations under the agreement which had not been considered by the court below in refusing to extend the discretionary relief of specific performance of the Sale Agreement. Hence, he would seek indulgence of this Court.

9. Countering his arguments, Mr.N.Thiagarajan, learned counsel appearing for the legal heirs of the respondent vendor, who had died pending the appeal suit, would submit that that appellant had been never handed over the possession of the suit property. He would submit that even under the Sale Agreement, the possession was to be handed over along with the parent documents during the execution of the Sale Deed. However, the appellant have been attempting to delay the process as he did not have sufficient means to pay the sale consideration.

10. He would submit that in a suit filed under Section 6 of the Specific Relief Act, an application for injunction was sought for which came to be dismissed, against which he had not prosecuted any further. That apart, in an application taken out by the vendor to deposit the part sale consideration received under the Sale Agreement, in view that the respondent/ appellant failed to receive the same, an order came to be passed by the Court below by which the vendor had also deposited the advance received to the credit of the suit. In



that context, he would submit that had the appellant been ready and willing to perform his part of the contract, he would have shown his bonafide by depositing the balance sale consideration into the Court and he had also failed to do so. Hence, he would submit that there is not infirmity or illegality in the findings and reasonings of the Trial Court in both the judgment and decrees warranting interference by this Court.

11. Mr.N.Umapathy learned counsel appearing for the subsequent purchaser, the second respondent in the appeal would submit that the respondent is a bonafide purchaser for valuable sale consideration and further he would submit that a suit filed for specific performance of the agreement as against the vendor without challenging the sale deed executed in favour of the second respondent would not be maintainable as the appellant was very well aware that a sale deed had been executed in her favour.

12. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

13. The point for consideration in the present Appeal suit and the Revision Petition are that:-



***a) Whether the Court below was right in holding that the suit filed under Section 6 of the Specific Relief Act is barred by law of limitation?***

***b) Whether the Court below was right in refusing to grant the relief of specific performance?***

**ISSUE (a)**

14. It is the claim of the appellant/ petitioner that he had been dispossessed from the property on 26.03.2007. the plaint is dated 25.06.2007, but however, a reading of the decree would indicate that the plaint was presented before the Court only on 26.10.2007 and returned for certain compliances and was finally taken on file on 19.03.2008.

15. Section 6 (2) of the Specific Relief Act mandates that no suit under Section 6 can be brought about after the expiry of 6 months from the date of such dispossession. The plaint admits that the appellant was dispossessed on 26.03.2007 and the records also reveal that the plaint was only presented before the Court only on 26.10.2007 as reflected in the decree and the appellant had not produced any contra evidence to substantiate that the appeal has been filed within six (6) months as stipulated under Section 6(2) of the Specific Relief Act, 1963. For the aforesaid reasons, this Court do not find any reasons to interfere with the said issue and therefore, this Court does not travel into the other issues raised thereon.

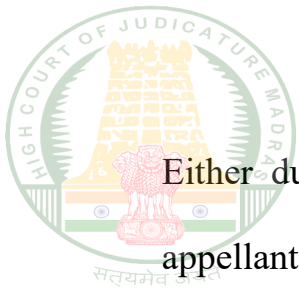
**ISSUE (b)**

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16. With regard to readiness and willingness, the Court below had recorded various facts including the doubts that the appellant had raised with regard to the extent of the suit property and also of a fact that in spite of the reply notice given by the defendant/respondent to indicate that she was ready and willing to perform her part of the obligation and calling upon the appellant to pay the balance sale consideration, the appellant had not produced any material that he had made good the balance sale consideration to be paid to the vendor and was willing to register the sale deed.

17. It is also to be noted that the appellant had earlier instituted a suit in O.S.No.251 of 2006 seeking for a permanent injunction to protect his possession and also an injunction against the vendor not to alienate the suit property. This filing of the suit would also indicate that there was a relationship between the parties pursuant to the sale agreement under Ex.A1 which had become litigious and he had not sought for a relief of specific performance in the earlier suit. Hence, the present suit would also be hit by principles of Order II Rule 2 CPC.

18. That apart, only after the dismissal of the his application for an interim injunction on 02.03.2007, the present suit had been filed on 14.03.2007.



Either during the earlier suit or even during the pendency of this suit, the appellant had not attempted to show his bonafidies by depositing the sale consideration. Coupled with these reasons and the doubt that was raised by the appellant with regard to the extent of the suit schedule property, this Court is of the view that there is no infirmity or irregularity with the findings of the Court below on the readiness and willingness which was not found in favour of the appellant.

19. For the aforesaid reasons, both the Appeal suit as well as the Revision fails and are accordingly, dismissed. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

**05.06.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

GBA

To

1. The Additional District Judge,  
Puducherry, Karikal.

2. The Section Officer,  
VR Section,  
Madras High Court, Chennai.



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AS No. 9 of 2



**K.KUMARESH BABU, J.**

**GBA**

A Pre-delivery judgment made in  
**AS No. 9 of 2011**  
**and CRP.No.140 of 2011**  
**and CMP.No.2 of 2012**

**05.06.2026**

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