



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-11-2025

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THE HONOURABLE MR.JUSTICE P. DHANABAL

**SA No. 34 of 2015
and M.P. No.1 of 2015**

1. Ramalakshmi Ammal
W/o Muniswamy Naidu, Perumalpattu
Village Thiruvallur Tk And Dist

2.M.Babu Naidu
S/o Muniswamy Naidu, No. 6, Selva
Vinayagar Koil St, Gandhi Nagar,
Arakkonam

Appellant(s)

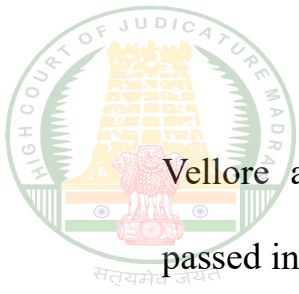
Vs

1. PREMA
W/o G.V.Subbanaidu, No. 1
Oothukkattan St, Periamet, Chennai 3

2.The Sub Registrar
ARAKKONAM

Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 02.12.2014 passed in A.S. No.2 of 2014 by the learned II Additional District and Sessions Judge,



Vellore at Ranipet confirming the Judgment and Decree dated 05.04.2013 passed in O.S. No.20 of 2006 by the learned Sub Judge, Ranipet.

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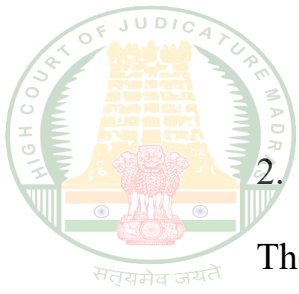
For Appellant(s): M/s.J.Thilagaraj

For Respondent(s): Mr. A.R.L. Sundaresan,
Senior Counsel for
M/s. W.M.Abdul Majeed,
[for R1]

R2 – served – No appearance.

ORDER

This Second Appeal has been preferred as against the decree and judgment passed by the II Additional District and Sessions Judge, Vellore at Ranipet in A.S. No.2 of 2014 dated 02.12.2014. The 1st respondent herein has filed a Suit as against the appellant herein and the 2nd respondent in O.S. No.20 of 2006 on the file of the Subordinate Judge, Ranipet. The said Suit was decreed in favour of the Plaintiff. Aggrieved by the said decree and judgment, the defendants 1 and 2 have preferred an appeal before the First Appellate Court in A.S. No.2 of 2014 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet and the appeal was dismissed. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the defendants 1 and 2.

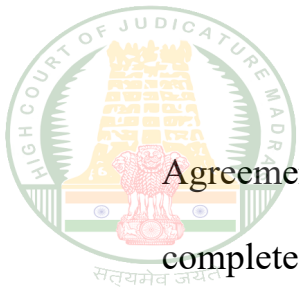


2. **The brief facts of the Plaintiff are as follows:**

The defendants 1 and 2 are the absolute owners of the Suit property. The Plaintiff and the defendants 1 and 2 entered into a Sale Agreement in respect of the Suit property. The sale price was fixed at Rs.4.9 lakhs and a written agreement was entered on 07.08.2003 and on the date of agreement, Rs.50,000/- was paid towards advance. The time was fixed to complete the sale as 3 months. When the Plaintiff was always ready and willing to perform her part of contract by paying the balance sale consideration of Rs.4,40,000/-, the defendants 1 and 2 were evading from executing the Sale Deed. Moreover, there was an attachment over the property. The said attachment was not raised by the defendants and thereafter, the Plaintiff had issued a notice dated 01.10.2005 calling upon the defendants to execute the Sale Deed, but they failed to perform their part of contract. Therefore, the applicant filed a Suit for the relief of 'specific performance of contract'.

3. **The brief avements of the written statement filed by the defendants are as follows:-**

The Suit is not maintainable either in law or on facts. The defendants 1 and 2 are the owners of the Suit property and they entered into a Sale Agreement with the Plaintiff for a sum of Rs.4,90,000/- and also received an amount of Rs.50,000/- towards advance from the Plaintiff under a Sale



Agreement dated 07.08.2003. As per the Sale Agreement, the Plaintiff should complete the sale transaction on or before 06.11.2003, i.e., within 3 months, failing which, the advance paid by the Plaintiff is liable to be forfeited. The Plaintiff was not ready and willing to perform her part of contract. The attachment is nothing to do with the Sale Agreement dated 07.08.2003. In fact, the defendants discharged the loan amount due to Lakshmiammal on 16.08.1989 itself. The receipt issued by the said Lakshmiammal for the discharge of the said loan was shown to the Plaintiff at the time of entering into a Sale Agreement on 07.08.2003 itself. Immediately after issuing notice dated 04.11.2003 to the defendants, the Plaintiff approached the defendants along with her sister for settlement and requested one month time for balance sale consideration, thereby, they also granted one month time, thereby the defendants had not issued any reply notice. Even after that, the Plaintiff failed to pay the balance sale consideration. Therefore, the sale advance of Rs.50,000/- is liable to be forfeited and the agreement dated 07.08.2003 has to be treated as cancelled. The Plaintiff demanded the defendants to return the advance amount paid by her. As the Plaintiff failed to perform her part of contract, as per the terms and conditions of the agreement, the Plaintiff is not entitled to the return of advance amount. By suppressing the above said facts, the Plaintiff once again issued a notice dated 24.08.2004 and demanded a sum of Rs.1,00,000/- as per the agreement. Once again after issuing the notice dated 24.08.2004, both

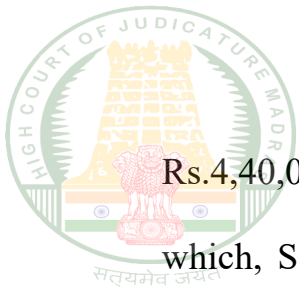


the defendants were compelled by the Plaintiff through mediators to return the advance amount paid by her with interest. Though the defendants under the negotiation, agreed to return the advance amount of Rs.50,000/-, they refused to pay interest as demanded by the Plaintiff. The Plaintiff is not entitled to any relief through the Suit and the Suit is liable to be dismissed.

4. Based on the above said pleadings, the trial Court has framed the following issues for trial:

- (i) ***Whether time is the essence of the contract dated 07.08.2003.***
- (ii) ***Whether the Plaintiff was ready and willing to perform her part of the contract.***
- (iii) ***Whether the Plaintiff is entitled for a decree of specific performance.***
- (iv) ***To what relief, the Plaintiff is entitled to.***

5. In order to prove the case, on the side of the Plaintiff, she examined PW1 and PW2 and marked Ex.A.1 to Ex.A.4. On the side of defendants, they examined DW1 and Ex.B.1 to Ex.B.3 were marked. After analysing the evidences adduced on both sides, the trial Court decreed the Suit and directed the defendants 1 and 2 to execute the Sale Deed in favour of the Plaintiff in respect of the said property after receipt of balance sale consideration of



Rs.4,40,000/- by the Plaintiff and put her possession of the suit property, failing which, Sale Deed will be executed by the Court after depositing the balance Sale Consideration of Rs.4,40,000/- by the Plaintiff into the Court. The time for payment of balance sale consideration is two months from the date of judgment and the defendants shall execute the Sale Deed in favour of the Plaintiff and put her in possession within 15 days and also granted permanent injunction from alienating or encumbering the Suit property. Aggrieved by the decree and judgment, the defendants 1 and 2 have preferred the first appeal in A.S. No.2 of 2014 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet.

6. The I Appellate Court framed the point for determination that ***Whether the Appeal filed by the appellants / defendants 1 and 2 against the judgment and decree dated 05.04.2013 passed by the learned Sub Judge, Ranipet in O.S. No.20 of 2006 has to be allowed or not.***

7. The First Appellate Court, after hearing both sides and perusing the records, dismissed the appeal by confirming the decree and judgment passed by the trial Court. Aggrieved by the said judgment and decree, the present second appeal has been preferred by the defendants 1 and 2 / appellants in the first appeal.



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8. This Court at the time of admitting the appeal, framed the following

substantial questions of law:

1. ***Whether the failure of the Plaintiff to comply with the terms of the decree to pay the balance of sale consideration to the defendants within the time stipulated in the decree would automatically prove that the Plaintiff was not all along ready and willing to perform her part of contract.***
2. ***Whether in the instant case, the Plaintiff has proved that she was all along ready and willing to perform her part of contract.***

9. The learned counsel appearing for the appellant would submit that the Plaintiff has filed the Suit for specific performance of contract as against the appellants. The 1st respondent and the appellants entered into a Sale Agreement in respect of the Suit property and the sale price was fixed at Rs.4,90,000/- and an advance amount of Rs.50,000/- was paid on the date of agreement on 07.08.2003. The time was fixed as three months, but within the time limit, the Plaintiff was not ready and willing to perform her part of contract. As per the terms and conditions of the said agreement, if the Plaintiff is not ready to get the Sale deed within the time stipulated in the agreement, the advance amount will



be forfeited and if the defendants refused to execute the Sale deed and the Plaintiff is ready, then the defendants have to pay double the advance amount to the Plaintiff. Therefore, the Plaintiff being the defaulter to get the sale deed within the time by paying the balance sale consideration, the advance amount paid by her is to be forfeited. The date of agreement was dated 07.08.2003. The time was fixed at 3 months. Within the said period, the Plaintiff was not ready to get the sale deed in her favour.

9.1. The Plaintiff issued a notice only on 04.11.2003 calling upon the defendants to produce the Court order or renew the agreement dated 07.08.2003 for another 3 months. Again on 24.08.2004, the Plaintiff issued a legal notice to the 2nd defendant calling upon to pay a sum of RS.1 lakh towards default amount or to clear the encumbrance in the schedule land and to sell the property to the Plaintiff. Again on 01.10.2005, she issued another notice to execute the Sale Deed after clearing the attachment over the property. In fact, there is no due and some money borrowed by the defendants from one Lakshmiammal was already settled and they also got receipt for the repayment of the loan. The said receipt was also shown to the Plaintiff on the date of agreement itself and therefore, the Plaintiff was not ready and willing to perform her part of contract to get the sale deed in her favour within the time stipulated and the Plaintiff is not entitled to decree for 'specific performance of contract'. However, the



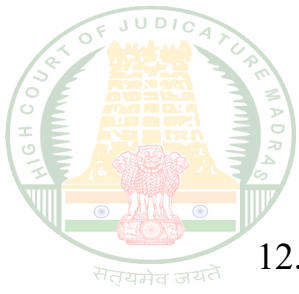
Courts below have decreed the Suit without considering the conduct of the Plaintiff. Moreover, even after the decree passed by the trial Court, by granting two months' time to pay the amount to the defendants, without approaching the defendants after lapse of 60 days, she deposited the amount before the Court, without permission of the Court. Therefore, the said conduct of the Plaintiff would show that the Plaintiff was not ready and willing to perform her part of contract and therefore, the Courts below have failed to consider the case of the defendants and simply decreed the Suit. Therefore, the decree and judgment passed by the Courts below are liable to be set aside by allowing the second appeal.

10. The learned Senior counsel appearing for the 1st respondent would submit that the Plaintiff has filed the Suit for 'specific performance of contract and both the Courts have rendered concurrent findings that the Plaintiff was ready and willing to perform her part of contract and decreed the Suit. There are no grounds to interfere with the concurrent judgments of the Courts below. In fact, the Sale agreement and the receipt of advance was admitted by the defendants 1 and 2 and there was an attachment in the suit property, thereby it is the duty of the defendants to clear the encumbrance. When the Plaintiff approached the defendants, they failed to perform their part of contract after clearing the encumbrance. They delayed the execution of sale deed and thereby,



the Plaintiff issued a notice dated 01.10.2005, but the defendants failed to perform their part of contract. The Plaintiff was always ready and willing to perform her part of contract only for want of free from encumbrance, for which, she waited and she also deposited the balance sale amount before the trial Court. Therefore, she filed the Suit. There was delay in depositing the amount due to non-availability of challan due to procedural lapses in getting lodgement of schedule for depositing the amount. Thereafter, they filed an application before the trial Court for extension of time and the trial Court closed the petition as infructuous with liberty to the respondents to file a petition under Section 28 of Specific Performance to rescind the contract. As against the said liberty granted by the trial Court to the respondents, they preferred a Civil Revision petition in C.R.P. No.4790 of 2015 and the same is also pending. However, the amount was deposited before the trial Court. Therefore, the Plaintiff was always ready and willing to perform her part of contract. The trial Court after careful examination of the evidences adduced on both sides, correctly decreed the Suit and the concurrent findings of the Courts below need not be interfered without any substantial question of law and without any perversity. Therefore, the present second appeal is liable to be dismissed.

11. This Court heard both sides and perused the entire materials available on record.

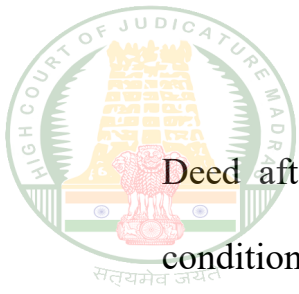


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12. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

13. In this case, the Plaintiff has filed the Suit for the relief of ‘specific performance of contract’. There is no dispute in respect of the ownership and the agreement entered into between the parties and the advance amount paid by the Plaintiff and the time fixed in the agreement. According to the Plaintiff, after entering into an agreement, she came to know about the attachment passed as against the property through Court and she requested the defendants 1 and 2 to clear the encumbrance. The said attachment over the property is also admitted by the defendants 1 and 2. But according to them, in the year 1989 itself, the money was settled to the creditor and the receipt was also obtained from the creditor and the said fact is very well known to the Plaintiff, however the Plaintiff was not ready to get the Sale Deed in her favour.

14. In this context, it is relevant to refer the documents in Ex.B.1 and Ex.B.2. Ex.B.1 is the notice issued on 24.11.2003 calling upon the 2nd defendant to execute the sale deed after clearing the encumbrance of attachment or to extend the time for another 3 months. Again Ex.B.2 was issued by the Plaintiff on 24.08.2004 to the 2nd defendant calling upon him to execute the Sale



Deed after clearing encumbrance or to pay a sum of Rs.1 lakh as per the conditions of the agreement. Those two documents have not been referred in

the Plaint and those notices were suppressed by the Plaintiff and the Plaintiff filed the Suit as if she issued legal notice only on 01.10.2005. From Ex.B.1 and Ex.B.2, it is clear that the Plaintiff came to her knowledge about the attachment on 24.11.2003 itself, but she has not taken any steps to get the Sale Deed.

15. According to the Plaintiff, she awaited for raising of attachment, but according to the defendants, the said attachment is known to the Plaintiff and after the attachment only, the agreement was entered into between the parties. The Plaintiff, who intended to purchase the property, has to verify the documents and about the encumbrance over the property, if any and the Plaintiff ought to have verified the encumbrance over the property. The conduct of the Plaintiff, for non-taking steps even after knowing the attachment through notice dated 24.11.2003 would show that she was not ready and willing to purchase the property. Moreover, the Plaintiff issued notice dated 24.08.2004 claiming Rs.1 lakh and also to clear the encumbrance. Thereafter, immediately she has not filed any Suit for showing his readiness and willingness and the Suit has been filed only on 14.03.2006 at the fag end of the limitation period. Therefore, the Plaintiff was not ready and willing to perform her part of contract. But the Courts below have failed to consider the above said conduct of the Plaintiff.



Therefore, the decree and judgment passed by the Courts below are erroneous and unsustainable and are liable to be set aside.

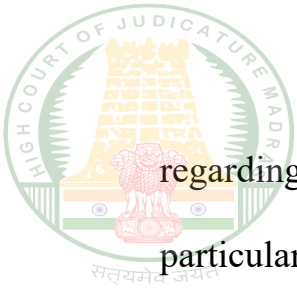
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16. As far as the 1st substantial question of law that *whether the failure of the Plaintiff to comply with the terms of the decree to pay the balance of sale consideration to the defendants within the time stipulated in the decree would automatically prove that the Plaintiff was not all along ready and willing to perform her part of contract*, is concerned, the Plaintiff filed the Suit for specific performance of contract stating that she is always ready and willing to perform her part of contract and the trial Court decreed the Suit by directing the Plaintiff to pay the balance sale consideration of Rs.4,40,000/- within two months to the defendants, but the Plaintiff has failed to pay the amount to the defendants within the said period and deposited the money after a lapse of 2 months time granted by the trial Court. According to the Plaintiff, there is a delay in getting the lodgement of schedule for depositing money in the Court. It is an admitted fact that the Plaintiff has not filed any application to condone delay in depositing the money before the trial Court and after lapse of 60 days, there was 5 days delay and the Court also received the amount. There are no records to show as to when the Plaintiff applied for depositing the amount before the Court and when the Court issued lodgement schedule to the Plaintiff.



The date of agreement is 07.08.2003 and the time for completing the sale is 3 months. The Plaintiff had not taken any steps to get the sale deed in her favour by paying the sale consideration to the defendants 1 and 2 and the reasons stated about the encumbrance is not acceptable, because there are no records to show that what is the encumbrance and for what amount, the attachment was ordered. No any particulars are available. Either the Plaintiffs or the defendants have produced any document with regard to the alleged attachment. According to the Plaintiff, she was ready to get sale deed, but due to the attachment, she was unable to get the sale deed, while so, it is her duty to establish as about the particulars of attachment, i.e., date of attachment, value of the attachment and other particulars. Equally the defendants also admitted the money received from the 3rd party and the said loan was paid and they produced the receipt, however, they have not produced any records regarding the attachment. Therefore, the said attachment cannot be a reason to the Plaintiff for not getting the sale deed in her favour.

17. It is well settled law that the Plaintiff must aver and prove the readiness and willingness from the date of agreement till the execution of Sale Deed. According to the Plaintiff, there was an attachment over the property, thereby unable to get sale deed in her favour. While so, it is the duty of the Plaintiff to prove the said reason. But no particulars produced by the Plaintiff



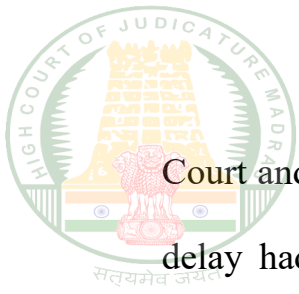
regarding the said attachment. Even in the Ex.B.1 and Ex.B.2, there are no particulars about the value of the attached money. Moreover the trial Court decreed the Suit on 05.04.2013 by granting two months time to get sale deed after payment of balance of sale price. Even now the Plaintiff is not sure about the quantum of money involved for the attachment. In this case, even after passing decree by granting 2 months time, the Plaintiff failed to pay money to the defendants and after a lapse of 60 days, she deposited money before the Court without even informing to the defendants. Therefore, the above said conduct of the Plaintiff, automatically shows that the Plaintiff was not all along ready and willing to perform her part of contract.

18. At this juncture, it is relevant to refer the following judgments relied upon by the learned counsel appearing for the appellants:

(i) P.R. Yelumalai v. N.M. Ravi reported in (2015) 9 Supreme Court Cases 52.

(ii) Pankajam Parthasarathy and five others v. Kasturi Guna Singh reported in 2001 (1) CTC 200.

On a careful perusal of the above judgments, it is clear that if the Plaintiff / decree holder neither deposited balance sale consideration within the time stipulated nor in the manner stipulated by Court in conditional decree and the Plaintiff buyer delayed payment by one day even after extension of time by



Court and further automatic extension due to Court holidays and said one day's delay had not been condoned. In such circumstances, the Suit for 'specific performance of contract', held, stood automatically dismissed when said conditions for decree were not complied by the decree holder and the Plaintiff is not entitled to seek execution of decree which does not exist in the eye of the law due to deemed dismissal of the Suit and further non-deposit money as ordered by the Court would show that the purchaser was not ready and not possessed any funds and the purchaser should show readiness and willingness. In the case on hand also, the Plaintiff has not paid the balance sale consideration to the defendants and the money was also not deposited before the Court within the time stipulated by the Court and after a delay, the amount was deposited in the Court. Therefore, in view of the above said discussions and above said judgments, the Court can safely come to a conclusion that the non-deposit of amount within the time stipulated by the Court would automatically prove that the Plaintiff was not all along ready and willing to perform her part of contract. Thus, the *1st substantial question of law* is answered.

19. As far as the 2nd substantial question of law that *Whether in the instant case, the Plaintiff has proved that she was all along ready and willing to perform her part of contract*, is concerned, the Plaintiff has pleaded that she was always ready and willing to perform her part of contract, but the conduct of



the Plaintiff shows that she was not ready and willing to perform her part of contract. The Plaintiff issued 1st notice to the defendants on 24.11.2003. On the date of issuance of 1st notice, the Plaintiff had knowledge about the encumbrance of attachment and thereafter, she had again issued a notice dated 24.08.2004 to the 2nd defendant calling upon him to execute Sale Deed after clearing the encumbrance or to pay a sum of Rs.1 lakh. Thereafter, she issued another notice dated 01.10.2005. The previous notices dated 24.11.2003 and 24.08.2004 have been suppressed by the Plaintiff. The Plaintiff has filed the Suit only on 14.03.2006. The above said fact shows that she was not ready and willing to perform her part of contract. She ought to have taken steps to get the Sale deed immediately after notice dated 24.11.2003, but she has not taken any steps till the date of filing of the Suit. Therefore, the Plaintiff failed to prove that she was always ready and willing to perform her part of contract. Moreover, the Plaintiff has not mentioned about the particulars of attachment and there are no records to show the alleged attachment. Whether the attachment is after the agreement or prior to the agreement? Once the Plaintiff pleaded that due to the encumbrance in respect of the attachment, she was unable get the sale deed, it is her duty to produce the particulars of attachment over the property. But she failed to produce the particulars or documents in respect of the attachment.



20. According to the defendants, the amount to the creditor was already settled in the year 1989 itself and the same was also known to the Plaintiff even at the time of entering into the sale agreement itself. Therefore, the above said conduct of the Plaintiff would show that she is not ready and willing to perform her part of contract, but the Courts below have failed to consider the same. The main requirement for the grant of relief of ‘specific performance of contract’ is readiness and willingness, but the Plaintiff failed to prove her readiness and willingness to perform her part of contract. The Courts below have also failed to consider the above said aspects and erroneously decreed the Suit.

21. At this juncture, it is relevant to refer the following judgements relied upon by the learned counsel appearing for the appellants:

- (i) ***U.N. Krishnamurthy (since deceased) through Legal representatives vs. A.M. Krishnamurthy reported in (2023) 11 Supreme Court Cases 775.***
- (ii) ***S. Gananatha Perumal v. S. Valliappan reported in 2010(6) CTC 95.***
- (iii) ***G.Kasi Reddiyar v. K. Ravi reported in 2017(3) MWN (Civil) 185.***
- (iv) ***C. Balakrishnan v. Francis Rosaria Saraswathi Balakrishnan reported in 2013 (2) MWN (Civil) 375.***

On a careful perusal of the above said judgements, it is clear that in the absence of evidence produced by the Plaintiff to show continuous “readiness



and willingness” to pay the consideration money in agreement to sell, which Plaintiff was required to prove, regardless of any default by original defendant, the Plaintiff is not entitled to relief of ‘specific performance’ and also clear that without any explanation for the delay of around 3 years and filing the Suit at the time of fag end of limitation period would show that the Plaintiff was not ready and willing to perform their part of contract.

22. Further, the learned counsel appearing for the appellants has relied upon the following judgments:

(i) Jugraj vs. P. Sankaran and others reported in 2010 (3) CTC 297.

(ii) Alagammal and others v. Ganesan and others reported in (2024) 3 Supreme Court Cases 232.

(iii) M. Ranganathan v. M. Thulasi Naicker (deceased) and either others reported in 2008 (5) CTC 428.

On a careful perusal of the above judgments, it is clear that even if time is not essence of contract, parties under agreement have to perform their obligations within a reasonable time and delay in filing the Suit would operate as acquiescence or waiver and make it inequitable to grant relief of specific performance. Even when time is not found to be of the essence, need for performance within reasonable time. If the Plaintiff neither attempted to pay, nor paid the balance consideration within the stipulated time, nor within the



reasonable time, not entitled to relief of 'specific performance'. In the case on hand also, the date of agreement is 07.08.2003 and the time was fixed at 3 months, but the Plaintiff has not proved her readiness and willingness by paying the balance sale consideration and the Suit was filed at the fag end of the limitation period and also, the Plaintiff suppressed the earlier notices issued by her to the 2nd defendant, where she demanded double the amount of advance money and therefore, the Plaintiff failed to prove her readiness and willingness to perform her part of contract.

23. Further the learned counsel for the 1st respondent / Plaintiff has argued that the 1st respondent / Plaintiff has filed the Suit within the limitation period and as far as the Suit for specific performance of contract is concerned, if the Suit is filed within the limitation period, the delay cannot be put against the Plaintiff. In order to support his contention, he has also relied upon the judgment in ***R. Lakshmikantham vs. Devaraj in Civil Appeal No.2420 of 2018***, wherein the Hon'ble Supreme Court has held as follows:

"In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – see Mademsetty Satyanarayana v. G. Yelloji Rao and others reported in AIR 1965 Supreme Court 1405 (Paragraph 7) which reads as under:



(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems – English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a Suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the Suit is in time, delay is sanctioned by law; if it is beyond time, the Suit will be dismissed as barred by time; in either case, no question of equity arises”.

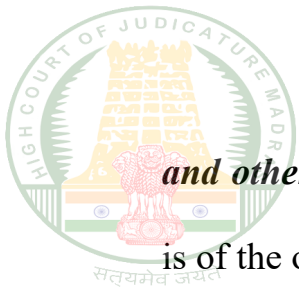
On a careful perusal of the above said judgment, it is clear that so long as Suit for specific performance is filed within a period of limitation period, delay cannot be put against the Plaintiff. In the case on hand, the Plaintiff failed to prove her readiness and willingness to perform her part of contract and the conduct of the Plaintiff would show that she was not ready and willing to perform her part of contract. The delay alone has not been put against the Plaintiff and her conduct also taken into account. Therefore, the said case law will not be applicable to the present facts of the case. Thus, the **2nd substantial**



question of law is answered.

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24. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that the judgment and decree passed by the Courts below are liable to be set aside by allowing this second appeal. Since the Plaintiff is not entitled to the relief of specific performance of contract, she is also not entitled to permanent injunction restraining the defendants from alienating or encumbering the Suit property. However, the defendants 1 and 2, themselves admitted the receipt of advance money and the Plaintiff also not sought for any alternative relief for return of advance money. As per Section 22(3) of the Specific Relief Act, the Plaintiff has to seek alternative relief for return of advance amount and the Plaint can be amended at any stage in respect of the return of advance money. But no steps have been taken to amend the Plaint praying to return advance money. However, the relief of 'specific performance of contract' is discretionary and equitable relief. Once the defendants admitted the receipt of advance money and ready to repay the said money, there is no impediment to pass a money decree in favour of the Plaintiff. Once the defendants admitted their liability, the Plaintiff need not file a fresh Suit for the recovery of advance money and thereby, this Court can safely grant money decree to the Plaintiff. The said position is also settled by the Hon'ble Supreme Court in *Srinivas Ram Kumar Firm vs. Mahabir Prasad*



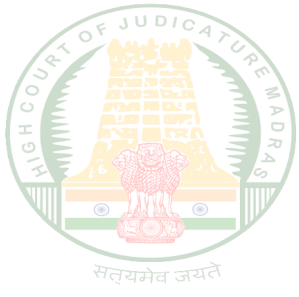
and others reported in 1951 Supreme Court Cases 136. Therefore, this Court is of the opinion that the Plaintiff is entitled for money decree.

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25. In the result, the ***Second Appeal is allowed.*** The decree and judgment passed by the trial Court in O.S. No.20 of 2006 on the file of Subordinate Court, Ranipet, Vellore confirmed by the First Appellate Court i.e., II Additional District and Sessions Judge, Vellore at Ranipet in A.S. No.2 of 2014 dated 02.12.2014 are set aside. The Suit in O.S. No.20 of 2006 is ***dismissed*** in respect of the relief of ‘specific performance of contract’ and ‘permanent injunction’, however, money decree is granted to the Plaintiff by directing the defendants 1 and 2 to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) with interest @ 9% p.a. from the date of agreement till the realisation of amount. Considering the nature of Suit, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28-11-2025
[1/2]

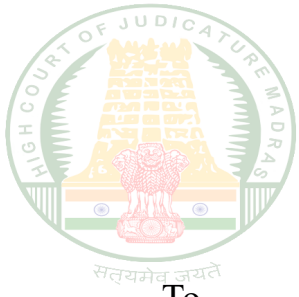
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Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



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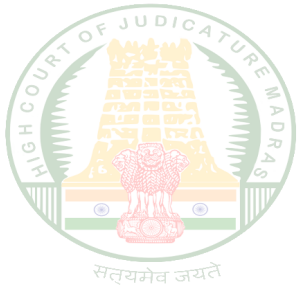
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1. The Sub Registrar
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2. The II Additional District and
Sessions Judge, Vellore at Ranipet.
3. The Sub Judge, Ranipet.



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