

S.A(MD)No.164 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 17.12.2025

DELIVERED ON : 19.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD).No.164 of 2019
and
C.M.P.(MD)No.6780 of 2019**

R.Gnana Soundari : Appellant/Respondent/
Defendant

Vs.

R.Chellappan(died) : Respondent/Appellant/
Plaintiff

2.C.Avayambal

3.C.Baskar

4.C.Pandian

5.C.Gnanaprakasam

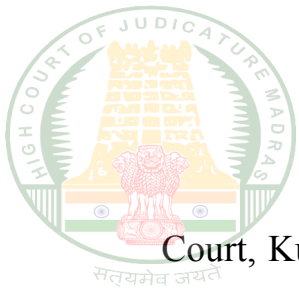
6.C.Jegadeesan

7.Rajeswari

8.C.Gunavathi

(Respondents 2 to 8 are brought on record
as LR's of the deceased sole respondent vide
Court order dated 25.07.2025 made in
C.M.P.(MD)Nos.9920, 9922 and 9924 of
2025)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code,
against the judgment and decree made in A.S.No.19 of 2016, in the Principal Sub



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Court, Kumbakonam, dated 20.11.2018 reversing the judgment and decree dated 22.12.2015, made in O.S.No.305 of 2008, on the file of the Principal District Munsif at Kumbakonam.

For Appellant : Mr.A.Jegadeesan

For Respondents : Mr.V.Meenakshi Sundaram
for Mr.L.Siva
for R.2 to R.8

: R.1 died

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.19 of 2016, dated 20.11.2018, on the file of the Principal Subordinate Court, Kumbakonam, reversing the judgment and decree passed in O.S.No.305 of 2008, dated 22.12.2015, on the file of the Principal District Munsif Court, Kumbakonam.

2. The appellant is the defendant. The deceased first respondent as sole plaintiff filed a suit claiming the relief of specific performance of the sale agreement dated 10.06.1990.



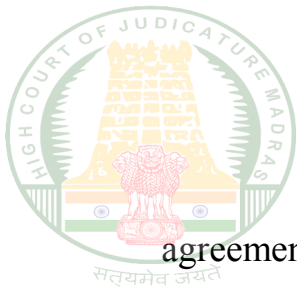
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3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff in brief is as follows:

The suit properties absolutely belonged to the defendant. The defendant offered to sell the suit properties and the plaintiff agreed to purchase the same. Both of them entered into a sale agreement on 10.06.1990 fixing the sale price at Rs.23,500/-. The plaintiff paid the entire sale price of Rs.23,500/- to the defendant on the date of sale agreement itself. The defendant handed over the possession of the suit properties to the plaintiff and the plaintiff has been in possession and enjoyment of the suit properties since 10.06.1990. Both parties agreed to have the execution of the sale deed on any date, according to the plaintiff's desire. Though the plaintiff has always been ready and willing to perform his part of contract to get the sale deed executed and registered, the defendant has been postponing the same on some pretext or the other. Hence, the plaintiff sent a legal notice dated 06.08.2008 calling upon the defendant to execute the sale deed and get it registered. The defendant having received the legal notice on 07.08.2008, sent a reply notice dated 18.08.2008 containing false and untenable allegations. Since the first defendant had denied the sale



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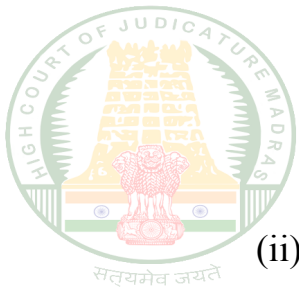
agreement and refused to execute the sale deed, the plaintiff was constrained to file the above suit for specific performance of the agreement dated 10.06.1990.

5. The defence of the defendant in brief is as follows:

The defendant did not execute any sale agreement dated 10.06.1990 in favour of the plaintiff in respect of the suit properties and did not receive the alleged sale consideration of Rs.23,500/- from the plaintiff. Since the plaintiff is the defendant's cousin's brother, she had requested him to look after the suit properties as she was residing in her matrimonial home in a different village. The plaintiff, under the guise of obtaining patta had secured the signatures of the defendant on blank papers. The plaintiff forged and fabricated the sale agreement with an intention to grab the suit properties. The suit is barred by limitation. The suit has not been properly valued and requisite court fee has not been paid. Hence, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings of both parties framed the following issues:

(i) Whether the plaintiff is in possession of the property in pursuance of the sale agreement?



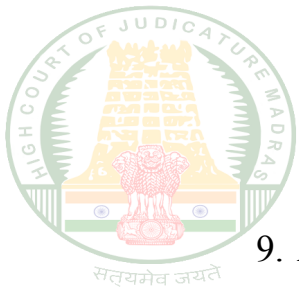
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(ii) Whether the plaintiff is entitled to get the relief of specific performance?

(iii) To what other reliefs?

7. During trial, the plaintiff examined himself as P.W.1 and examined one Dhakshinamoorthy as P.W.2 and exhibited 5 documents as Exs.P.1 to P.5. The defendant examined herself as D.W.1 and examined Dr.Manikandan – medical officer attached to Jipmer Hospital, Puducherry as D.W.2 and exhibited 5 documents as Exs.D.1 to D.5. The learned trial Judge, considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree, dated 22.12.2015, dismissing the suit.

8. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.19 of 2016 and the learned Principal Subordinate Judge, Kumbakonam, upon considering the materials available on record and on hearing the arguments of both sides, passed the impugned judgment and decree dated 20.11.2018, allowing the appeal and thereby setting aside the judgment and decree of the trial Court and granted the relief of specific performance as prayed for. Challenging the impugned judgment and decree, the defendant has preferred the present Second Appeal.



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9. At the time of admission, the following Substantial Questions of Law came to be formulated:

“(A) Whether the suit is barred by limitation or not?

(B) When the possession of the property was handed over only to look after and maintain the property, whether the suit for specific performance is maintainable under the provision of Specific Relief Act?”

10. At the outset, it is pertinent to note that the learned trial Judge had recorded a specific finding that the sale agreement dated 10.06.1990 marked as Ex.A.1 is genuine. However the suit came to be dismissed, on the grounds that the plaintiff had failed to prove his readiness and willingness to perform his part of contract throughout and that the suit was barred by limitation. Aggrieved by the dismissal of the suit, the plaintiff preferred the first appeal. Admittedly, the first defendant did not choose to file any cross-appeal or cross-objection, challenging the finding with regard to the genuineness and validity of Ex.A.1 sale agreement. Order 41 Rule 22 C.P.C., contemplates that a respondent, who is aggrieved by any finding, even though the decree is in his favour, must file a cross-objection if he seeks to challenge such finding and failure to do so would result in the said finding attaining finality.



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11. It is settled law that an adverse finding recorded by the trial Court cannot be permitted to be challenged in an appeal filed by the opposite party unless the respondent has filed a cross-objection. In the present case, as already pointed out, since the defendant has not filed any cross-appeal or cross-objection challenging the finding with regard to Ex.A.1 sale agreement, the learned first appellate Judge has rightly held that the finding of the trial Court with regard to the genuineness of Ex.A.1 has attained finality and the same cannot be reopened in the appeal filed by the plaintiff. Consequently, the arguments advanced on the side of the appellants/defendants with regard to the genuineness and validity of Ex.A.1 sale agreement cannot be gone into in the present Second Appeal as well.

12. The learned trial Judge, upon appreciation of the evidence and by placing reliance on the decisions of the Hon'ble Supreme Court reported in **1993(1) SCC 519 (Chand Rani (Smt) (Dead) by LRs., Vs. Kamal Rani (Smt) (Dead) by LRs** and **1997(3)SCC 1(K.S.Vidyanadam and others Vs. Vairavan)** held that the plaintiff has failed to establish his readiness and willingness to perform his part of contract within the time stipulated and was therefore not entitled to the relief of specific performance. However, the learned first Appellate Judge while referring to the said decisions relied upon by the learned



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trial Judge, observed that in those decisions, part of sale consideration had already been paid by the purchaser and only the balance sale consideration remained to be paid.

13. In the present case, as per Ex.A.1 sale agreement, the entire sale consideration of Rs.23,500/- was paid by the plaintiff to the defendant on the date of the agreement itself. Further, Ex.A.1 agreement would reveal that possession of the suit properties was also handed over to the plaintiff on the very same day. Admittedly, no time limit was fixed for performance under Ex.A.1 agreement. As rightly observed by the learned first appellate Judge, when the entire sale consideration had been paid and possession had already been delivered, nothing further remained to be performed by the plaintiff, in pursuance of Ex.A.1 sale agreement, except the execution of the sale deed by the defendant. In this context, the learned first appellate Judge has relied upon the decision of this Court reported in **2010(1) MWN (Civil)49 (P.Velumani Vs. K.A.Noorjahan and another)**, wherein it was held that when the entire sale consideration has been paid and possession has been delivered and only the execution of the sale deed remains, the question of pleading readiness and willingness on the part of the purchaser would not arise. The learned first appellate Judge also referred to the decision of this Court reported in **1998(III) CTC 25 (K.R.Rajendran Vs. Arul Prakasam)**,

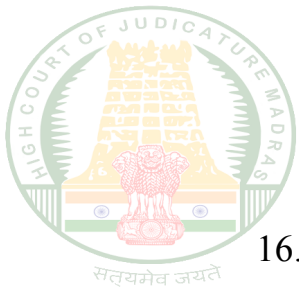


wherein it was held that mere delay by itself is not sufficient to deny the relief of specific performance in the absence of waiver or abandonment of rights.

14. As already pointed out, Ex.A.1 sale agreement contains a recital to the effect that whenever the plaintiff comes forward with the sale deed prepared at his expense, the defendant has agreed to execute the same and have it registered and the relevant portion is extracted hereunder:

“தாங்கள் எந்த உத்தியில் தங்கள் செலவில் கிரய பத்திரம் வாங்கி எழுதிக்கொண்டு வந்தாலும் நான் அதில் கையெழுத்து செய்து தங்கள் செலவில் கிரையம் செய்து கொடுப்பனாகவும்”

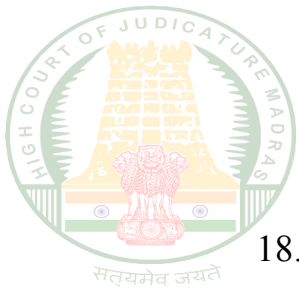
15. It is the specific case of the plaintiff that he had approached the defendant on several occasions seeking execution and registration of the sale deed, but the same was postponed by the defendant on one pretext or another. Thereafter, the plaintiff issued a legal notice under Ex.A.2 calling upon the defendant to execute the sale deed and have it registered. In response, the defendant sent a reply notice under Ex.A.4 denying the execution of Ex.A.1 sale agreement and refused to execute the sale deed, compelling the plaintiff to file the suit without any delay.



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16. In view of the above, as rightly observed by the learned first appellate Judge, since the entire sale consideration had been paid and possession had already been delivered to the plaintiff on the date of the agreement itself, the question of pleading and proving readiness and willingness on the part of the plaintiff to perform his part of the contract does not arise. Hence, the findings recorded by the learned first appellate Judge in this regard do not warrant interference.

17. The learned counsel for the defendant would submit that the present suit has been filed after a lapse of 18 years from the date of the alleged sale agreement and that merely because the plaintiff had issued a legal notice after such a long delay, the suit cannot be entertained. According to the learned counsel, the plaintiff remained inactive from 10.06.1990 till 10.06.2008, i.e., for a period of 18 years, and therefore, the suit is hopelessly barred by limitation. He would further submit that the learned first appellate Judge, by taking note of the reply notice sent by the defendant, has erroneously held that the suit is within the period of limitation.



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18. Both the learned Counsel for the plaintiff and the learned Counsel for the defendant have placed reliance on the decision of the Hon'ble Supreme Court in ***Rathnavathi and another Vs. Kavita Ganashamdas*** reported in **(2015)5 SCC 223** in support of their respective contentions. The learned Counsel for the defendant would submit that the intention of the parties has to be gathered from the express terms of the contract, the conduct of the parties, the nature of the property and the surrounding circumstances and the relevant portion is extracted hereunder:

“Contract Act, 1872 - S. 55 Contract for sale of immovable Whether time essence of contract -property Intention of parties can be Determination of -of parties, nature of property and surrounding circumstances gathered from express terms of contract, conduct time of signing contract and to pay balance sale consideration within 60 days Stipulation in contract requiring purchaser to pay advance money at from date of expiry of lease period - Further stipulation in contract providing seller's efforts with Development C b Authority for transfer of suit property in favour of purchaser, "time stipulated for balance payment and completion of sale transaction will be agreed mutually between the parties" Absence of any stipulation in agreement providing for completion of its execution on or before any specific date -Even after plaintiff buyer made payment of balance sale consideration, owner made efforts to transfer suit land in plaintiff's name - Held, time to perform contract was not made



essence of contract by parties.”

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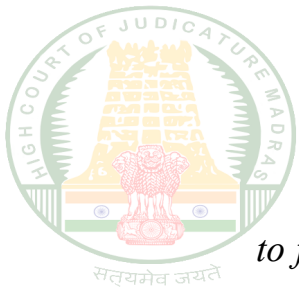
19. The learned Counsel for the plaintiff would rely on the following passages:

“40. Since it was the case of the plaintiff that she paid the entire sale consideration to defendant no. 2 and was accordingly placed in possession of the suit house, the threat of her dispossession in 2000 from the suit house coupled with the fact that she having come to know that defendant no. 2 was trying to alienate the suit house, gave her a cause of action to serve legal notice to defendant no. 2 on 6.3.2000 calling upon defendant no. 2 to perform her part and convey the title in the suit house by executing the sale deed in her favour. Since defendant no. 2 failed to convey the title, the plaintiff filed a suit on 31.3.2000 for specific performance of the agreement.

41. [Article 54](#) of the [Limitation Act](#) which prescribes the period of limitation for filing suit for specific performance reads as under:

54	For Specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused
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42. Mere reading of [Article 54](#) of the [Limitation Act](#) would show that if the date is fixed for performance of the agreement, then non-compliance of the agreement on the date would give a cause of action



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to file suit for specific performance within three years from the date so fixed. However, when no such date is fixed, limitation of three years to file a suit for specific performance would begin when the plaintiff has noticed that the defendant has refused the performance of the agreement.

43. The case at hand admittedly does not fall in the first category of *Article 54* of the *Limitation Act* because as observed supra, no date was fixed in the agreement for its performance. The case would thus be governed by the second category viz., when plaintiff has a notice that performance is refused.”

20. The learned Counsel for the plaintiff would also rely on a decision of the Hon'ble Supreme Court in *Madina Begum and another Vs. Shiv Murti Prasad Pandey and others* reported in *2016(6) SCC 155* and the relevant passages are extracted hereunder:

“19.

11. The inevitable conclusion is that the expression “date fixed for the performance” is a crystallized notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on “when the plaintiff has notice that performance is refused”. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both



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the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression “date” used in [Article 54](#) of the [Schedule to the Act](#) definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.”

20. Quite independently and without reference to the aforesaid decision, another Bench of this Court in [Rathnavathi and Another v. Kavita Ganashamdas](#)[2] came to the same conclusion. It was held in paragraph 42 of the Report that a mere reading of [Article 54](#) would show that if the date is fixed for the performance of an agreement, then non-compliance with the agreement on the date would give a cause of action to file a suit for specific performance within three years from the date so fixed. But when no such date is fixed, the limitation of three years would begin when the plaintiff has notice that the defendant has refused the performance of the agreement. It was further held, on the facts of the case that it did not fall in the first category of [Article 54](#) since no date was fixed in the agreement for its performance.”

21. In the present case, as rightly contended by the learned counsel for the



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plaintiff, the second limb of Article 54 of the Limitation Act is applicable.

Admittedly, no time limit was fixed for performance under Ex.A.1 sale agreement. Upon receipt of the legal notice dated 06.08.2008 issued under Ex.A. 2, the defendant sent a reply notice dated 18.08.2008 denying the execution of Ex.A.1 sale agreement and refusing to perform the same. The plaintiff thereafter filed the present suit on 11.09.2008. Since the suit has been instituted immediately after the plaintiff came to know of the defendant's refusal to perform the agreement, this Court has no hesitation in holding that the suit has been filed within the period of limitation and the objection raised by the defendant in this regard is liable to be rejected.

22. At the time of final hearing of the Second Appeal, the learned counsel for the defendant raised an additional contention that Ex.A.1 sale agreement was signed only by the defendant/vendor and not by the plaintiff/purchaser and that therefore, the suit agreement cannot be enforced in law. In support of the said contention, the learned counsel relied upon the decisions of this Court in ***K. Sheik Adham Sahib (died) and 6 others Vs. A. Maruthamuthu Pillai*** reported in ***1999 L.W. 1008*** and in ***Pushpa Bai Vs. Dr. Williams and others*** reported in ***(2001) 3 MLJ 52***, wherein it has been held that specific performance of a contract may be obtained by any party to the agreement or his representative in interest or



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assignee of the contract, and that in a case where the plaintiff/purchaser has not signed the agreement, nor anyone else has signed on his behalf, such an agreement cannot be legally enforced against the defendant/vendor.

23. To counter the said argument, the learned counsel for the plaintiff relied upon the decision of the Hon'ble Supreme Court in ***Aloka Bose Vs. Parmatma Devi and Others*** reported in **2009 (2) SCC 582**, wherein it has been specifically held that an agreement of sale of immovable property signed by the vendor alone and delivered to and accepted by the purchaser constitutes a valid and enforceable contract and that, in the event of breach by the vendor, the same can be specifically enforced by the purchaser. The relevant portions are extracted hereunder:

“6) Certain amount of confusion is created on account of two divergent views expressed by two High Courts. In [S. M. Gopal Chetty vs. Raman](#) [AIR 1998 Madras 169], a learned Single Judge held that where the agreement of sale was not signed by the purchaser, but only by the vendor, it cannot be said that there was a contract between the vendor and the purchaser; and as there was no contract, the question of specific performance of an agreement signed only by the vendor did not arise. On the other hand, in [Md. Mohar Ali vs. Md. Mamud Ali](#) [AIR 1998 Gauhati 92], a learned Single Judge held that an agreement of sale was an unilateral contract (under which the vendor



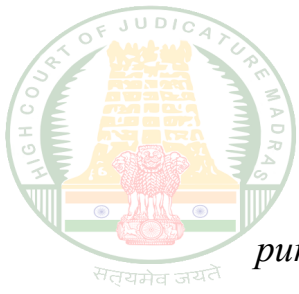
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agreed to sell the immovable property to the purchaser in accordance with the terms contained in the said agreement), that such an agreement for sale did not require the signatures of both parties, and that therefore an agreement for sale signed only by the vendor was enforceable by the purchaser.

*7) We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in [Md. Mohar Ali](#) (supra) stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari & Joseph M. Perillo in *The Law of Contracts* (4th Edition Para 2-10(a) at pages 64-65):*

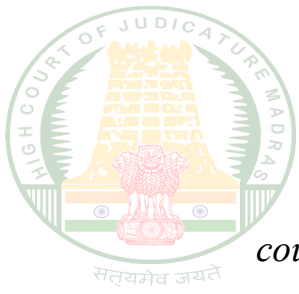
"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$ 100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation."

All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in [S.M. Gopal Chetty](#) (supra) that unless agreement is signed both by the vendor and



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purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. [Section 10](#) of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the [Contract Act](#). The proviso to [section 10](#) of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and



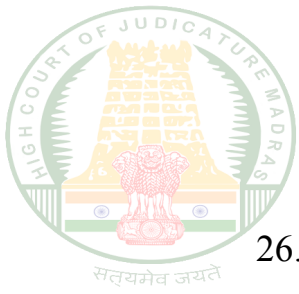
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counter-offers by letters or other modes of recognized communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.”

24. Hence, the contention of the defendant that Ex.A.1 sale agreement is legally unenforceable on the ground that it has not been signed by the plaintiff, cannot be sustained.

25. Considering the above, the learned first appellate Judge, upon appreciating and re-appreciating evidence available on record, has rightly come to the conclusion that the plaintiff is entitled to the relief of specific performance and the same cannot be faulted. Having regard to the facts and circumstances of the case, this Court directs the parties to bear their own costs. Accordingly, the Substantial Questions of Law are answered against the appellant and in favour of the respondent/Plaintiff.



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26. In the result, the Second Appeal is dismissed and the judgment and decree in A.S.No.19 of 2016, dated 20.11.2018, on the file of the Principal Subordinate Court, Kumbakonam stands confirmed. Consequently, the connected Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

19.02.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To:

- 1.The Principal Subordinate Court, Kumbakonam
- 2.The Principal District Munsif Court, Kumbakonam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD).No.164 of 2019**

19.02.2026