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THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 06 / 2026

JUDGMENT DELIVERED ON : 01 / 09 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. No.2186 OF 2004

1.Rajeswari
W/o. Late Thiruvengadachari

2.Amutha
D/o. Late Thiruvengadaachari

3.Muthulakshmi
D/o. Late Thiruvengadaachari

4.Santhi
D/o. Late Thiruvengadaachari

5.Vasanthi
D/o. Late Thiruvengadaachari

6.Ramesh
S/o. Late Thiruvengadaachari

7.Baskar
S/o. Late Thiruvengadachari

8.Srinivasan
S/o. Late Thiruvengadaachari

9.Samundeeswari
D/o. Late Thiruvengadaachari ... Appellants / Appellants / Defendants 1-9

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All are residing at :
No.36, Sabapathy Mudali Street,
Perambur,
Chennai – 600 011.

Versus

1.Sampoorrnam (Deceased)
W/o. Late R.Varatharajalu Naidu

2.H.Vijaya
W/o. R.V.Hemadri … Respondents 1 & 2 / Respondents 1 & 2 / Plaintiffs

Both are residing at :
No.10, Post Office Street,
Jawahar Nagar,
Chennai – 600 082.

3.Rajamanickam
S/o. Late Subramani Gramani,
Thottikkarai Village, Thirunindravoor Post,
Thiruvallore Taluk,
Chengalput District.

4.Pushpa
W/o. Late Vinayagamurthy,
Thottikkarai Village, Kalambagam Post,
Thiruvallore Taluk,
Chengalput District. … Respondents 3&4 / Respondents 3&4 / Defendants 10 & 11

5.Smt. Sujatha
6.R.N.Hemadri … Respondents 5 & 6 /legal representatives of deceased Respondent-1

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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 16, 2002 made in A.S.No.105 of 1999 on the file of the II Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated September 17, 1997 made in O.S.No.6774 of 1996 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.T.M.Hariharan
for M/s.T.Srinivasaraghavan

For Respondent - 1: Died - Steps taken

For Respondents - 2, 5 & 6 : Ms.S.V.Deva Shanthi
for M/s.S.V.D.Rajendra Prasad

For Respondent - 3 : Insufficient address

For Respondent - 4 : Served – No appearance

* * *

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated December 16, 2002 passed in A.S. No.105 of 1999 by 'the II Additional Judge, City Civil Court, Chennai' ['First Appellate Court' for convenience], whereby the Judgment and Decree dated September 17, 1997 passed in O.S. No.6774 of 1996 by 'the VII Assistant Judge, City Civil Court, Chennai' ['Trial Court' for convenience] was confirmed.

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2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

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PLAINTIFFS' AVERMENTS NECESSARY FOR THE DISPOSAL OF THIS SECOND APPEAL AS IT UNFURLS FROM THE CASE FILE IN BRIEF

3.An extent of land measuring 6,029 ½ sq. ft. along with the superstructure thereon, bearing Old Door No. 28, New Door No. 36, Sabapathi Mudali Street, Perambur, Madras - 11, originally belonged to Arumuga Gramani. He had a son by name Subramania Gramani, who had two sons, namely S.Vinayagamurthy (Husband of Defendant No.11) and S.Rajamanickam (Defendant No.10). S.Vinayagamurthy and S.Rajamanickam became entitled to the aforesaid property by mode of succession. On November 29, 1973, said S.Vinayagamurthy and S.Rajamanickam together sold an extent of 1,073 sq. ft. thereof to one Saroja, and on June 26, 1977, they together sold an extent of 1,080 sq. ft. thereof to one John Devaraj. S.Vinayagamurthy passed away issueless on January 12, 1985, leaving behind his wife / eleventh defendant - Pushpa as his sole legal heir.

3.1. Thereafter, defendants 10 and 11 jointly executed a registered Sale Deed dated September 19, 1988, conveying the remaining

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extent of 4,049 sq. ft. in the aforesaid property in favour of the plaintiffs. The property conveyed to the plaintiffs is the suit property herein. Pursuant to the said sale transaction, possession of a major portion of the suit property was delivered to the plaintiffs. However, the remaining portion of the suit property continued to be under the occupation of the first defendant and her husband - Thiruvenkatachari. The plaintiffs took steps to obtain possession of the suit property. In response, first defendant and her husband relied upon three Sale Agreement dated June 1, 1980, December 31, 1980 and June 9, 1982 allegedly executed by S.Vinayagamurthy and S.Rajamanickam in their favour, to lay claim in respect of entire suit property.

3.2. Further case of the plaintiffs is that the first defendant and her husband - Thiruvenkatachari filed O.S. No.5500 of 1983 on the file of the V Assistant Judge, City Civil Court, Madras, seeking specific performance of the aforesaid three Sale Agreements. The suit property described herein was the subject matter of the said Suit. The said Suit was decreed *Ex-parte* on November 16, 1983.

3.3. As per the said *Ex-parte* Decree, a sum of Rs.35,724.40/- was required to be deposited by the vendees, the first defendant and her

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husband, towards the balance sale consideration, which they failed to do. The said *Ex-parte* Decree did not prescribe any time limit for such deposit, nor did the vendees take any steps to deposit the balance sale consideration or otherwise act upon the Decree till 1988. Hence, the present plaintiff obtained the aforesaid registered Sale Deed dated September 19, 1988 in respect of the suit property from tenth defendant - Rajamanickam and eleventh defendant - Pushpa.

3.4. The second defendant therein, who is the tenth defendant herein, namely Rajamanickam filed I.A. No.445 of 1991 in O.S. No.5500 of 1983 under Section 28 of the Specific Relief Act, 1963 seeking to rescind the aforesaid *Ex-parte* decree and the same was allowed after contest and pursuantly, a sum of Rs.25,185/- was deposited on November 11, 1991, by him. Thereafter, defendants 1 to 9 herein filed I.A. No.16760 of 1991 seeking review of the Order passed in I.A. No.445 of 1991, which was also dismissed on November 20, 1996. In the meantime, the Execution Petition filed by first defendant and her husband was also dismissed on August 3, 1992. Feeling aggrieved by rescindment of the aforesaid *Ex-parte* decree, it appears that a Civil Revision Petition was filed by defendants 1 to 9, which was also dismissed *vide* Order dated July 11,

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1997 made in C.M.P. No. 18223 of 1995 in C.R.P. (SR) No. 34402 of 1994.

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3.5. Therefore, defendants 1 to 9 have no manner of right, title, or interest whatsoever to remain in possession of a portion of the suit property. The defendants 1 to 9 have lost their right to enforce the *Ex-parte* Decree passed in O.S. No.5500 of 1983. The defendants 1 to 9 filed a Suit in O.S. No.1406 of 1989 against the present plaintiffs and present defendants 10 and 11, seeking injunction not to interfere with their possession and enjoyment over the suit property, thereby creating cloud over the present plaintiffs title. In the above circumstances, it became necessary for the plaintiffs to institute the instant Original Suit seeking declaration of title, declaration that the aforesaid *Ex-parte* Decree is void, not valid and not binding on the plaintiffs and further seeking the relief of recovery of vacant possession of the portion of suit property in the occupation of defendants 1 to 9, permanent injunction and costs.

CASE OF DEFENDANTS 1 TO 9 IN BRIEF:

4.Defendants 1 to 9 filed a written statement resisting the Suit and denying the allegations contained in the plaint. The defendants admitted the plaint averments set out in Paragraph No.3 hereinabove.

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4.1. Main case of the defendants 1 to 9 is that the first defendant and her husband - Thiruvenkatachari (vendees) entered into the aforesaid three Sale Agreements with S.Vinayagamurthy and Rajamanickam (vendors) in respect of the entire suit property. While the vendees were always ready and willing to perform their part of the contract, the vendors failed to execute Sale Deed. Hence, the vendees filed a Suit in O.S. No. 5500 of 1983 seeking the relief of specific performance. Since the vendors did not choose to contest the said Suit, it was decreed *ex parte* on November 16, 1983. The Interlocutory Application in I.A. No.23734 of 1983 filed praying to condone the delay in filing an application to set aside the *Ex-parte* Decree was dismissed. Thereafter, the first defendant and her husband deposited the balance sale consideration on December 22, 1987 as per the Court's direction, *vide* Challan No.623, and filed E.P. No. 464 of 1988 seeking enforcement of the *Ex-parte* Decree. Tenth defendant herein - Rajamanickam contested the execution petition while the eleventh defendant herein - Pushpa endorsed no objection to execution of Sale Deed. When the execution petition in E.P. No. 464 of 1988 was pending, in 1991, the tenth defendant herein filed an Interlocutory Application in I.A. No.445 of 1991 seeking to rescind the aforesaid *Ex-parte* decree on the ground that the first defendant herein and

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her husband are not ready and willing to perform their part of the contract. Further, While the said execution proceedings were pending, the tenth defendant for himself and for the eleventh defendant as her power of attorney holder, executed a Sale Deed in favour of the present plaintiffs on September 19, 1988, with the sole intention of defeating and defrauding the rights accrued to the defendants under the said *Ex-parte* Decree. The said sale transaction is hit by *lis pendens*, and neither valid nor binding upon the defendants 1 to 9, and the plaintiffs cannot derive any right, title, or interest in the suit property thereunder. The plaintiffs being fully aware of the subsistence of the aforesaid three Sale Agreements are not *bonafide* purchasers for value without notice. Accordingly, the defendants 1 to 9 prayed for dismissal of the Suit.

DEFENDANTS 10 AND 11

5.The tenth defendant remained absent and was set *ex-parte* by the Trial Court. The Suit against eleventh defendant was dismissed by the Trial Court.

TRIAL COURT

6.Based on the pleadings, the Trial Court framed the following issues:

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"1.Whether the plaintiffs are entitled to the relief of declaration of title?

2.Whether the plaintiff is entitled to the relief of declaration that the Decree passed in O.S.No.5600 of 1983 is not valid in law?

3.Whether the plaintiffs are entitled to recover a portion of the Suit Property?

4.Whether the plaintiffs are entitled to the relief of permanent injunction?

5.To what relief?"

7.At trial, Hemadri, the son of first plaintiff, was examined as P.W.1 and Ex-A.1 to Ex-A.9 were marked on the side of the plaintiffs. On the side of the defendants, first defendant was examined as D.W.1 and no document was marked.

8.After full-fledged trial, the Trial Court observed that, although the *Ex-parte* Decree in O.S. No.5500 of 1983 was passed on November 16, 1983, the plaintiffs therein, namely, the first defendant and her husband, deposited the balance sale consideration only on December 22, 1987, after a delay of more than four years. The Trial Court further

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observed that the *Ex-parte* decree in favour of first defendant herein and her husband were rescinded under Section 28 of the Specific Relief Act, 1963 *vide* Order passed in I.A. No. 445 of 1991. Review Application filed challenging the Order passed in I.A. No.445 of 1991 was also dismissed. The Execution Proceeding was also dismissed. In these circumstances, the *Ex-parte* Decree passed in O.S. No.5500 of 1983 is unenforceable. On the other hand, the plaintiffs purchased the suit property from the original owners and established their title over the suit property. Accordingly, the Trial Court decreed the suit as prayed for.

FIRST APPELLATE COURT

9.Feeling aggrieved, defendants 1 to 9 preferred an appeal before the First Appellate Court, which after hearing both sides, concurred with the findings of the Trial Court and accordingly, dismissed the appeal and confirmed the Judgment and Decree of the Trial Court.

SECOND APPEAL

10. Feeling aggrieved, defendants 1 to 9 have preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908, which was admitted on November 26, 2004 on the following substantial questions of law:

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"1.When in a suit for declaration of title, the vendors of the plaintiffs suffered a ex parte decree in an earlier suit for specific performance in respect of the suit property, whether the vendors of the appellants thereafter can validly convey to the plaintiffs any right, title or interest in the suit property?

2.When the appellants had deposited the entire amount directed in the decree for specific performance, whether the decree can be rescinded?

3.When the specific performance does not stipulate any time limit for deposit of the balance of the sale price, whether a delayed deposit of money would result in the rescission of the decree?"

ARGUMENTS

11. Mr.T.M.Hariharan, representing M/s.T.Srinivasa Raghavan, learned Counsel on record for the appellants, would submit that the first defendant and her husband - Thiruvenkatachari entered into three Sale Agreements dated June 1, 1980, December 31, 1980, and June 9, 1982, with the owners of the property, namely, legal heir of late S.Vinayagamurthy and S.Rajamanickam. Since the vendors failed to

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execute Sale Deed in accordance with the said Sale Agreements, the first defendant and her husband instituted a Suit in O.S.No.5500 of 1983 seeking the relief of specific performance. The said Suit was decreed *Ex-parte* on November 16, 1983. Subsequently, on December 22, 1987, the first defendant herein and her husband, who were the plaintiffs therein, deposited the balance sale consideration of Rs.35,724.40 to the credit of O.S.No.5500 of 1983 and thereafter filed E.P.No.464 of 1988 for execution of the Sale Deed.

11.1. He would further submit that during the pendency of the execution proceedings, on September 19, 1988, with a view to defeat and defraud the rights of the defendants 1 to 9, defendants 10 and 11 conveyed the suit property in favour of the plaintiffs herein. Thereafter, the tenth defendant herein filed I.A. No.445 of 1991 under Section 28 of the Specific Relief Act, 1963 seeking rescission of the *Ex-parte* decree in O.S.No.5500 of 1983. The first defendant and her husband filed I.A. No.12534 of 1991 seeking dismissal of I.A. No. 445 of 1991. On September 11, 1991, I.A. No.445 of 1991 was allowed and consequently, I.A. No.12534 of 1991 was dismissed. Review Application filed against Order in I.A. No.445 of 1991 was also dismissed.

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11.2. Further, he would submit that defendants 1 to 9 preferred a Civil Revision Petition before this Court. The said Revision Petition was initially returned for rectification of certain defects. Thereafter, the said Civil Revision Petition was re-presented along with C.M.P. No.18223 of 1995, and the same was dismissed on July 25, 1997. He would further submit that the Appellants are taking steps to set aside the Order passed in C.M.P.No.18223 of 1995 and restore the CMP.No.18223 of 1995.

11.3. He further submits that the *Ex-parte* - Decree did not prescribe any specific period for depositing the balance sale consideration. In such circumstances, and in view of the pendency of the petition to set aside the *Ex-parte* Decree, the plaintiffs therein, namely first defendant herein and her husband, who were the decree-holders in O.S. No. 5500 of 1983, deposited the balance sale consideration on December 22, 1987, *vide* Challan No.623.

11.4. He further submits that, prior to filing I.A. No. 445 of 1991 seeking rescission of the decree, defendants 1 and 2 herein had already deposited the balance sale consideration. Hence, the Court which is passed the decree in O.S.No.5500 of 1983 (Vth Assistant Court, City Civil Court, Chennai) ought to have dismissed I.A. No.445 of 1991 and allowed

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I.A.No. 12534 of 1991. Therefore, the Order passed in I.A. No.445 of 1991 is erroneous. In these circumstances, the plaintiffs herein, being fully aware of the Sale Agreements and the *Ex-parte* Decree passed in favour of first defendant and her husband, colluded with defendants 10 and 11 and obtained the Sale Deed in their favour. The said Sale Deed is not binding upon first defendant and her husband.

11.5. The learned Counsel would vehemently contend that I.A. No.445 of 1991 was filed in November, 1990 i.e., after lapse of 7 years from the passing of *Ex-parte* Decree and hence the said application is clearly barred by Article 137 of the Limitation Act, 1963, which proposition he would rely upon the following Judgments:

(a)*The Kerala State Electricity Board, Trivandrum -vs- T.P.Kunhaliumma* reported in ***(1976)* 4 SCC 634**.

(b)*G.S.Chakravarthi Asokar @ G.S.Ashokar -vs- Therasitta Santhi* reported in ***2004-4-L.W. 611***.

(c)*B.V.Gururaj -vs- M.R.Rathindran* reported in ***2010-1-L.W. 361***.

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11.6. In short, his core contention is that the *Ex-parte* Decree passed in O.S. No.5500 of 1983 is valid and subsisting, and the Order passed in I.A. No.445 of 1991 is erroneous. He would submit that the Trial Court as well as the First Appellate Court failed to properly consider the fact that even before the filing of application of recision of *Ex-parte* decree, first defendant herein and her husband had deposited the balance sale consideration into the Court on December 22, 1987 and hence, it cannot be said that they had deposited the sum belatedly. It further failed to consider the fact that they were ready and willing to perform their part of the contract as per the *Ex-parte* Decree. Without considering these facts, the First Appellate Court erred in dismissing the Appeal Suit and confirming the Decree of the Trial Court. He therefore would pray that the Second Appeal be allowed, the Judgments and Decrees passed by the Trial Court and the First Appellate Court be set aside, and the Original Suit be dismissed.

12.*Per contra*, Ms. S.V.Deva Shanthi, learned Counsel representing M/s.S.V.D. Rajendra Prasad, Counsel on record for Respondent Nos. 2, 5 and 6, would submit that the *Ex-parte* Decree passed in O.S. No.5500 of 1983 became unenforceable as the same was rescinded by the Order passed in I.A. No. 445 of 1991 (Ex-A4 & A8). The Review

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Application filed against the said Order was also dismissed, as evidenced by Ex-A.7. The Execution Petition was also dismissed on August 3, 1992. (Ex.A.9)

12.1. The learned Counsel further would submit that, in a Suit for specific performance, the plaintiff must always be ready and willing to perform his/her part of the contract. Such readiness and willingness must continue not only up to the date of the Judgment and Decree but also thereafter, until the execution of the Sale Deed. She further would submit that the *Ex-parte* Decree was passed on November 16, 1983, whereas the balance sale consideration was deposited only on December 22, 1987, *i.e.,* more than four years after the date of decree. This clearly demonstrates that the plaintiffs in O.S. No.5500 of 1983 was not ready and willing to perform their part of the contract. Though the *Ex-parte* Decree was silent as to the period within which the balance sale consideration was to be deposited, the plaintiff ought to have deposited the same within a reasonable period. A delay of more than four years cannot, in the given circumstances, be construed as reasonable. Further, no acceptable or satisfactory explanation has been offered explaining such delay. The Court, after considering the entire facts and circumstances of the case, allowed I.A. No.445 of 1991 and directed the defendants 1 and 2 therein, namely

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defendants 10 and 11 herein, to deposit the interest amount. Pursuant to the said Order, a sum of Rs. 25,185/- was remitted on November 11, 1991, towards the interest, as directed by the Court.

12.2. She further would submit that the Review Application filed against the Order made in I.A.No.445 of 1991 was also dismissed on November 20, 1996. Hence, the Order passed in I.A. No. 445 of 1991 has attained finality. In the circumstances, first defendant herein and her husband, who were the plaintiffs in O.S. No.5500 of 1983, cannot reopen or reagitate the issue once again in this suit. Since the defendants 1 to 9 are in possession and enjoyment of a portion of the suit property, it became necessary for the plaintiff to institute the present Suit *inter-alia* seek declaration and delivery of possession. As the plaintiffs herein were not parties to the earlier proceedings, in order to avoid any technical difficulty, the plaintiffs herein sought a declaration that the *Ex-parte* Decree passed in O.S. No. 5500 of 1983 is null and void and not binding upon them. The Trial Court as well as the First Appellate Court, after considering the evidence available on record, rightly decreed the Suit, and there is no error or infirmity in their Judgments and Decrees. No substantial question of law arises for consideration in the present Second Appeal. Accordingly, she

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would pray for dismissal of the Second Appeal and sustain the Judgments and Decrees of the First Appellate Court and the Trial Court.

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DISCUSSION:

13. This Court has heard the submissions made by the learned Counsel appearing on both sides and perused the materials available on record in light of the Substantial Questions of Law framed.

14. Admittedly, S.Vinayagamurthy and S.Rajamanickam, sons of Subramania Gramani and grandsons of Arumuga Gramani, were entitled to the suit property along with some more extent of properties which originally belonged to Arumuga Gramani.

15. The aforesaid S.Rajamanickam and S.Vinayagamurthy on one hand as vendors and the first defendant herein and her husband - Thiruvenkatachari on the other hand as vendees, entered into three Sale Agreements dated June 1, 1980, December 31, 1980, and June 9, 1982 in respect of the suit property. Based on the said Sale Agreements, the first defendant and her husband instituted a Suit for specific performance in O.S. No.5500 of 1983 on the file of the V Assistant Judge, City Civil Court, Chennai alleging that the vendors failed to perform their part of the contract while they (vendees) were always ready and willing to pay the

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balance sale consideration and get the Sale Deed executed in their favour. The said Suit was decreed *ex-parte* on November 16, 1983 with a direction to first defendant herein and her husband to deposit the balance sale consideration without stipulating any time limit for such deposit. It appears that the defendants therein filed an application to set aside the *Ex-parte* Decree, and the said application was dismissed.

16. While the Decree was passed on November 16, 1983, the first defendant and her husband deposited the balance sale consideration of Rs.35,724.40/- pursuant thereto only on December 22, 1987, that is to say after a lapse of about four years. Thereafter, the first defendant and her husband filed an Execution Petition in E.P. No.464 of 1988 seeking execution of Sale Deed by the tenth defendant herein and the husband of the eleventh defendant herein. At that stage, the tenth defendant herein, who is second defendant in the said Suit, filed I.A. No. 445 of 1991 under Section 28 of the Specific Relief Act, 1963 seeking rescission of the aforesaid *Ex-parte Decree* by contending that the first defendant herein and her husband, who were plaintiffs therein, were not ready and willing to perform their part of the contract and that was the reason for their failure to deposit the balance sale consideration immediately from the passing of the *Ex-parte* Decree; on the other hand, they deposited the balance sale

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consideration only after a lapse of four years from the date of the Decree. The Court allowed I.A. No.445 of 1991. The aforesaid *Ex-parte Decree* was rescinded and consequently, the *Ex-parte* Decree became unenforceable.

17. At this juncture, it is apposite to refer to Order XX Rule 12A of the Code of Civil Procedure, 1908 which reads as follows:

"12A. Decree for specific performance of contract for the sale or lease of immovable property.—

> *Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made."*

18. The *Ex-parte* Decree in O.S. No.5500 of 1983 was clearly not drafted in accordance with the above provision. The lacunae was that no time frame was fixed for deposit of the balance sale consideration. Nonetheless, though the *Ex-parte* Decree was silent as to the period within which the balance sale consideration was to be deposited, first defendant and her husband ought to have made the deposit within a reasonable period. In a Suit for specific performance, even after passing of a decree,

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the contract of sale is treated as a subsisting contract. The plaintiff shall be ready and willing to perform their part of the contract as per the decree. Any failure thereof, the defendant can file application under Section 28 of the Specific Relief Act, 1963 seeking recission of contract and the Court is at discretion to either rescind or extend time based on facts and circumstances. In this regard, it is apposite to cite here the Judgment of Hon'ble Supreme Court in ***Hungerford Investment Trust Ltd. -vs- Haridas Mundhra***, reported in ***(1972) 3 SCC 684*** [Coram Strength =2], wherein it was held as hereunder:

> *"22. It is settled by a long course of decisions of the Indian High Courts that the Court which passes a decree for specific performance retains control over the decree even after the decree has been passed. In Mahommadalli Sahib v. Abdul Khadir Saheb, [(1930) 59 MLJ 351] it was held that the Court which passes a decree for specific performance has the power to extend the time fixed in the decree for the reason that Court retains control over the decree, that the contract between the parties is not extinguished by the passing of a decree for specific performance and that the contract subsists notwithstanding the passing of the decree. In Pearisundari Dassee v. Hari Charan Mozumdar Chowdhry, [ILR (1888) 15 Cal 211] the Calcutta High Court said that the Court retains*

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control over the proceedings even after a decree for specific performance has been passed, that the decree passed in a suit for specific performance is not a final decree and that the suit must be deemed to be pending even after the decree. The same view was taken in Someshwar Dayal v. Widow of Lalman Shah [AIR 1958 All 488] . In Anandilal Poddar v. Gunendra Kr. Roy[AIR 1966 Cal 107] Ray, J., speaking for the Court, said that the court retains control over the matter even after passing a decree for specific performance and that virtually, the decree is in the nature of a preliminary one. In Tribeni Tewary v. Ramratan Nonia [AIR 1959 Pat 460] it was held that the Court retains rescission of the case notwithstanding the fact that a decree for specific performance has been passed and that the decree is really in the nature of a preliminary decree."

18.1. Further, the Hon'ble Supreme Court in ***Sardar Mohar Singh -vs- Mangilal alias Mangtya,*** reported in ***(1997) 9 SCC 217*** has held as hereunder:

"4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to

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grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance. ..."

18.2. Further, Hon'ble Supreme Court in ***Bhupinder Kumar -vs- Angrej Singh***, reported in ***(2009) 8 SCC 766*** [Coram Strength =2], after referring to various decisions, held as hereunder:

"21. It is clear that Section 28 gives power to the court either to extend the time for compliance with the decree or grant an order of rescission of the agreement. These powers are available to the trial court which passes the decree of specific performance. In other words, when the court passes the decree for specific performance, the contract between the parties is not extinguished. To put it clearly the decree for specific performance is in the nature of a preliminary

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decree and the suit is deemed to be pending even after the decree.

22. Sub-section (1) of Section 28 makes it clear that the court does not lose its jurisdiction after the grant of decree for specific performance nor it becomes functus officio. On the other hand, Section 28 gives power to the court to grant an order of rescission of the agreement and it has the power to extend the time to pay the amount or perform the conditions of decree for specific performance despite the application for rescission of the agreement/decree. In deciding an application under Section 28(1) of the Act, the court has to see all the attending circumstances including the conduct of the parties."

18.3. The Hon'ble Supreme Court in its recent decision in ***Anand Narayan Shukla -vs- Jagat Dhari***, reported in ***2026 SCC OnLine SC 827*** [Coram Strength = 2], after referring to various precedents some of which have been cited above, has summarised the legal principles surrounding Section 28 of the Specific Relief Act, 1963 as hereunder:

"33. Upon consideration of the provisions of Section 28 of the 1963 Act as also the decisions noticed above, in our view, the legal principles, inter

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alia, guiding the exercise of power under Section 28 of the 1963 Act could be summarized as under:

(i) ***A decree for specific performance of a contract is in the nature of a preliminary decree and therefore, till the deed is executed pursuant to the decree, the Court that passed the decree is vested with the jurisdiction to either rescind the contract/the decree for non-payment/non-deposit within the stipulated period or extend the period for making such payment/deposit.***

(ii) Neither there is an automatic rescission of the contract/decree for non-payment/non-deposit within the period stipulated by the decree, nor there is an automatic extension of time by making such deposit, if the stipulated period for payment/deposit has expired. However, where the decree stipulates that on failure to pay/deposit within the specified period, the decree shall stand rescinded or the suit shall stand dismissed, the decree is rendered inexecutable on failure to pay/deposit.

(iii) Prayer to extend the time for making deposit in compliance of the conditions stipulated in the decree may be made prior to, or even after, expiry of the period stipulated therefor.

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(iv) There is no form prescribed for making the prayer to extend the time to make such payment or deposit. Therefore, the prayer seeking permission to deposit the defaulted amount may be treated as one for extension of time to deposit. Such prayer may be made even orally while the Court seeks to address an application for rescission of the contract/decree or when the decree is put for execution, provided the execution court is the one which passed the decree. However, if the decree is passed by the appellate court, such prayer/application may be made before the court of first instance having regard to the provisions of Section 37 of CPC. Further, what is important is that such an application must be treated as an application in the suit and numbered accordingly.

(v) As specific performance of a contract is an equitable relief, while considering the prayer for rescission of the contract/decree, or for extension of time to make deposit in compliance of the decree, the Court must be guided by principles of equity. Therefore, while considering the prayer for extension of time to make deposit, to balance the equities, the Court would have to consider the attending facts and circumstances of the case, the conduct of the parties and whether, by putting the decree holder to such additional terms and conditions, the judgment debtor could be adequately compensated for the delay.

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(vi) Though each day's delay in deposit need not be explained as in an application under Section 5 of the Limitation Act, the test is whether from the conduct of the decree holder it could be logically inferred that he had no intention to complete his part of the contract. If it appears so, and there appears an element of willful negligence on the part of the decree holder in complying with the terms of the decree, the Court may invoke its power under Section 28 and rescind the contract.

(vii) ***Under Order XX Rule 12 A of CPC, when a decree for specific performance of a contract for the sale, or lease of immovable property, orders that the purchase-money or other sum is to be paid by the purchaser or lessee, the Court must specify the period within which the payment shall be made.*** *Therefore, where the suit for specific performance is dismissed by the trial court but decreed by the appellate court, or where the appeal against the decree for specific performance is dismissed on merits, the Court must fix the time within which such payment is to be made. If no time limit is fixed, the compliance thereof would have to be within a reasonable period. As to what would be the reasonable period would depend on facts of the case."*

[***Emphasis supplied by this Court***]

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19. Further, this Court also deems fit to cite here the decision of this Court in ***Narasimhan -vs- Balammal,*** reported in ***1988 SCC OnLine Mad 297***, wherein it was held that, when there is no time period stipulated for deposit of balance amount by the vendee in a specific performance decree, the vendee ought to make such deposit within a reasonable time. The Court further noted that the time of three years taken for making such deposit cannot be said to be within reasonable time, however that was on the facts of that case. Relevant extract reads hereunder:

> *"20. On the facts of this case, the respondent has not proved her readiness and willingness to perform her part of the contract within a reasonable time after the decree. Though the decree in the present case has not specified any time to deposit the amount, it was the duty of the plaintiff to have performed her part within a reasonable time. The time taken, viz, 3 years and odd cannot be said to be reasonable by any standard. Hence, the contract has to be rescinded as prayed for by the petitioner. The Court below is wrong in dismissing the application filed by the petitioner. The application filed under S. 28 of the Specific Relief Act will have to be allowed."*

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20. On the strength on the above case laws, one can easily come to the conclusion that though the aforesaid *Ex-parte* Decree did not stipulate any time period for depositing the balance sale consideration, the first defendant herein and her husband ought to have deposited the said amount within a reasonable time. This Court shall not get into the factual question of whether the deposit made by them was within a reasonable time frame or not, for it has already been decided in I.A. No.445 of 1991 against the first defendant herein and her husband and consequently, the aforesaid three Sale Agreements were rescinded. It is to be noted that, after the rescindment, the first defendant and her husband filed a Review Application seeking review of the Order passed in I.A. No.445 of 1991, and the same was also dismissed. It was further submitted that a Civil Revision Petition before this Court was filed on the side of defendants 1 to 9 herein, which was also dismissed at the S.R. stage itself on July 11, 1997. Hence, the Order passed in I.A. No.445 of 1991 under Section 28 of the Specific Relief Act, 1963 attained finality. Consequently, the aforesaid three Sale Agreements were rescinded and the *Ex-parte* Decree passed in O.S. No.5500 of 1983 was rendered unenforceable. Therefore, the defendants cannot reopen or reagitate the matter once again in the present Suit.

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21. Mr. T.M.Hariharan, the learned Counsel appearing for the appellants who are defendants 1 to 9 in the Original Suit, would rely on three case laws as stated above and contend that Article 137 of the Limitation Act, 1963 is applicable to an application filed under Section 28 as well. In this regard, this Court is of the view that the question of limitation ought to have been raised in the proceedings under Section 28 of the Specific Relief Act, 1963. The Order passed in the Interlocutory Application in I.A. No.445 of 1991 reached finality and the question of limitation cannot be raised now in this case. Once the Order of rescindment has reached finality, it would not be appropriate for this Court to get into the merits of the same. The case laws relied upon by him would not come to his aid in this case.

22. Since the defendants are in possession and enjoyment of a portion of the suit property on the basis of the alleged Sale Agreements, it became necessary for the present plaintiffs to institute the present Suit seeking declaration, recovery of possession and permanent injunction. The suit filed by the defendants 1 to 9 seeking injunction against the plaintiffs herein and defendants 10 & 11 herein, was also dismissed for default on

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January 08, 1992. The plaintiffs have filed certified copy of the Decree as Ex.A6. Considering the facts and circumstances, and the evidence available on record both the Trial Court and the First Appellate Court, having concurrently held that the present plaintiffs is entitled to the reliefs sought, rightly decreed the Suit in favour of the present plaintiffs.

23. As narrated *supra*, the aforesaid three Sale Agreements were rescinded by the Order passed in I.A. No.445 of 1991 dated September 11, 1991 (Ex. A-7) and the *Ex-parte* Decree became unenforceable. Hence, there was no subsisting Decree enforceable against the present plaintiffs or in favour of defendants 1 and 2 therein. Consequently, the vendors of the plaintiffs were competent to validly convey their right, title, and interest in the suit property. It is true that Sale under Ex.A.1 Sale Deed dated September 19, 1988 is a *pendente lite* sale, validity of which is subject to the outcome of the Final decision/Final Judgment. As narrated above, order of recision of Sale Agreements/Contracts passed in I.A.No.445 of 1991 reached finality. Hence, Ex-A.1 Sale Deed can not be termed as invalid. ***Accordingly, Substantial Question of Law No.(i) is answered.***

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24. As stated *supra*, in a Suit for specific performance based on Sale Agreement, the plaintiff must demonstrate continuous readiness and willingness to perform their part of the contract, not only from the date of the Sale Agreement until the institution of the Suit, but also thereafter until the passing of the Decree and execution of the Sale Deed. Though the *Ex-parte* Decree was silent as to the period within which the balance sale consideration was to be deposited, the plaintiffs in O.S. No.5500 of 1993 ought to have deposited the same within a reasonable period as elaborated above. Whether the period taken for such deposit is reasonable or not, is a question of fact to be determined based on the facts and circumstances. In the present case, first defendant and her husband who were the plaintiffs in O.S. No.5500 of 1983, failed to establish any satisfactory reason for the delay in depositing the balance sale consideration. Be that as it may, I.A. No.445 of 1991 was allowed and the *Ex-parte* Decree was rescinded, and, pursuant to the Order passed therein, the defendants 10 and 11 deposited the interest amount into Court. Thus, the Order passed in I.A. No. 445 of 1991 has attained finality and, therefore, the same cannot be reopened or questioned in the present Suit. ***Accordingly, Substantial Questions of Law Nos. (ii) and (iii) are answered.***

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25. It is discerned that first defendant herein and her husband, pursuant to the *Ex-parte* Decree, had deposited the balance sale consideration of Rs.35,724.40/- *vide* Challan No.623 dated December 22, 1987 to the credit of O.S. No.5500 of 1983. Further, the tenth defendant herein had deposited a sum of Rs.25,185/- towards interest as per the Order passed in I.A. No.445 of 1991 *vide* Challan No.475 dated November 11, 1991. Both the deposits got lapsed and were eventually remitted to the Government account on March 31, 1994 and March 31, 1997 respectively. The defendants 1 to 9 are entitled to the same. If they file an appropriate application in this regard, the Court may consider the same as per law.

CONCLUSION:

26. Resultantly, the Second Appeal is dismissed. The Judgments and Decrees of the First Appellate Court and the Trial Court are confirmed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected civil miscellaneous petition(s) if any shall stand closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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Note to Registry: In the Second Appeal's cause title, the third respondent / tenth defendant namely Rajamanickam who is actually the son of Subramani Gramani has been erroneously mentioned as the wife of Subramani Gramani. Registry shall carry out the necessary amendment before issuing certified copy.

To

1.The II Additional Judge
City Civil Court
Chennai.

2.The VII Assistant Judge
City Civil Court
Chennai.

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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN S.A. NO.2186 OF 2004

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