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A.S. NO.715 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2025

JUDGMENT PRONOUNCED ON : 05 / 03 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.715 OF 2019

Sebastian ... Appellant / Defendant

Vs.

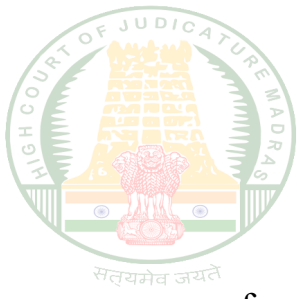
Kattari @ Selvaraj ... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated January 3, 2017 passed in O.S. No.11 of 2014 by the Principal District Court, Thiruvarur.

For Appellant : Mr.M.Thamizhavel
For Respondent : Mr.K.Mahalingam

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated January 3, 2017 passed in O.S. No.11 of 2014 by 'the Principal District Court, Thiruvarur' ['Trial Court' for brevity], the defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].



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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.

PLAINTIFF'S CASE

3. The Suit Properties belong to the defendant. He had purchased the Suit Properties on different dates from different owners through Registered Sale Deeds in Documents Nos.342 of 2007, 345 of 2007, 430 of 2007, 547 of 2007 and 3461 of 2007. The defendant offered to sell the Suit Properties to the plaintiff. On December 20, 2010, the sale price was fixed as Rs.13,00,000/- (Rupees Thirteen Lakhs only) and on the same day the defendant had received Rs.4,00,000/- (Rupees Four Lacs only) from the plaintiff as advance and executed an un-registered Sale Agreement. As per the terms of Sale Agreement, the plaintiff has to pay Rs.3,00,000/- (Rupees Three Lakhs only) on or before April 30, 2011 to the defendant and further, the plaintiff shall pay the balance sale price of Rs.6,00,000/- on or before April 30, 2012. The plaintiff was always ready and willing to pay the balance sale price and perform his part of contract. Several times, the plaintiff called upon the defendant to execute Sale Deed. But the defendant failed to do so. Time was not the essence of the



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contract. From the date of Sale Agreement, the plaintiff has been in possession and enjoyment of the Suit Properties.

3.1. Further case of the plaintiff is that, while the matter stood thus, the defendant has filed a Suit in O.S. No.85 of 2012 on the file of Principal District Munsif, Thiruvarur, seeking permanent injunction against the plaintiff in respect of the Suit Properties and the same is pending till now. Therefore, the plaintiff has no other option except to file the present Suit seeking the relief of specific performance in favour of the plaintiff.

DEFENDANT'S CASE

4. The defendant filed written statement denying the allegations made by the plaintiff in the plaint. The defendant admitted the execution of Suit Sale Agreement as well as the receipt Rs.4,00,000/- as advance on the date of agreement. His case is that the plaintiff was not ready and willing to perform his part of the contract and also did not make the agreed payments on time as per the agreement. Hence, the plaintiff is not entitled for the relief of Specific Performance. The plaintiff has not deposited the balance amount of Rs.6,00,000/- in the present Suit as well as in the previous Suit in O.S. No.85 of 2012 filed by the defendant



against the plaintiff for permanent injunction. Further, the Suit is clearly barred by limitation. The Suit is liable to be dismissed. However, on moral grounds, the defendant is ready to return Rs.7,00,000/- received from the plaintiff. Stating so, the defendant prayed to dismiss the Suit.

TRIAL COURT

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

1. *Whether the plaintiff is entitled to the relief of Specific Performance against the defendant?*
2. *Whether the Suit is barred by limitation?*
3. *To what other relief?'*

6. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and one Balasubramanian was examined as P.W.2 and Ex-A.1 to Ex-A.4 were marked. On the side of the defendant, defendant was examined as D.W.1 and Ex-B.1 to Ex-B.6 were marked.

7. After full-fledged trial, the Trial Court concluded that the plaintiff was always ready and willing perform his part of the Sale Agreement. But the defendant refused to come forward to execute the Sale Agreement. The plaintiff proved that he paid a sum of Rs.7,00,000/-



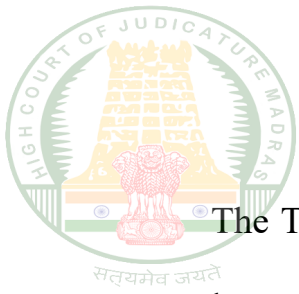
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to the defendant and deposited the balance sale consideration of Rs.6,00,000/- into Court pending Suit. Upon arriving at these findings, the Trial Court decreed the Suit by granting the relief of Specific Performance, as sought for in the plaint by the plaintiff.

8. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

9. Mr.M.Thamizhavel, learned Counsel appearing for the Appellant/Defendant would submit that the Trial Court failed to consider the fact that the Plaintiff was not ready and willing to perform his part of the contract within the stipulated time as per the terms of the contract. The Plaintiff ought to have paid Rs.3,00,000/- on or before April 30, 2011 and the remaining part of the balance sale consideration *i.e.*, Rs.6,00,000/- ought to have been paid on or before April 30, 2012. But the Plaintiff remitted a sum of Rs.2,95,000/- (Rupees two lakhs and ninety five thousand only) only on February 25, 2012, beyond the stipulated period. Further, the balance sale consideration of Rs.6,00,000/- (Rupees six lakhs only) was not paid before April 30, 2012 which clearly establishes that the Plaintiff was not ready and willing to perform his part of the contract.



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The Trial Court failed to consider the aforesaid facts in consonance with law. Accordingly, he would pray to allow the Appeal Suit and set aside the Decree and Judgment of the Trial Court. He would rely upon the following Judgments in support of his contentions: (i) Gana. *Kannappan -vs- G.Mohanlal Patel* reported in 2025 (3) CTC 306; (ii) *Krishnamoorthy -vs- Nagammal* reported in 2019 (3) CTC 215.

10. Per contra, Mr.K.Mahalingam, learned Counsel appearing for the Respondent/Plaintiff drew attention of this Court to Ex-A.2 - Kist Receipts and Ex-A.3 - Adangal Extract issued by the Village Administrative Officer on April 18, 2013 and submitted that the Plaintiff is in possession and enjoyment of the Suit Properties since 2010, even prior to Ex-A.1 - Suit Sale Agreement. Further, time is not the essence of Ex-A.1 - Suit Sale Agreement. The Plaintiff remitted Rs.2,95,000/- (Rupees two lakhs and ninety five thousand only) on February 25, 2012 and handed over a sum of Rs.5,000/- (Rupees five thousand only) directly to the Defendant. The Defendant without any objection or demur, received the said amount. Thereafter, the Plaintiff was ready and willing to perform his part of the contract by tendering the balance sale consideration of Rs.6,00,000/- to the Defendant. But the Defendant for



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reasons best known to him, refused to come forward to execute the Sale Deed. The Plaintiff is an illiterate agriculturist, and he depends only on agricultural income. In these circumstances, the Trial Court rightly appreciated the facts and circumstances and granted relief of specific performance. There is no warrant to interfere with it. Accordingly, he prayed to dismiss the Appeal Suit.

POINTS FOR CONSIDERATION

11. Heard the rival submissions. Perused the evidence available on record. The points that arise for consideration in this Appeal Suit are:

- (i)** Whether the Plaintiff was ready and willing to perform his part of the contract?
- (ii)** Whether the Suit is barred by limitation as contended by the Defendant?
- (iii)** Whether the Plaintiff is in possession and enjoyment of the suit properties and if so, whether he is entitled to protect the same ?
- (iv)** Whether the Decree and Judgment of the Trial Court has to be interfered with?



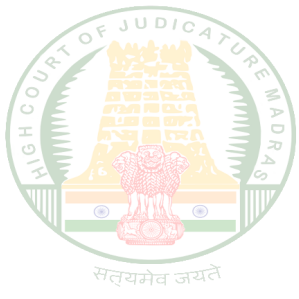
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DISCUSSION AND DECISION

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12. The Defendant is the owner of the Suit Properties. The Plaintiff and the Defendant entered into Ex-A.1 - Sale Agreement on December 20, 2010. The execution and contents of the Sale Agreement is not disputed by both parties. As per the Sale Agreement, the total sale price was agreed at Rs.13,00,000/- (Rupees thirteen lakhs only) and the Plaintiff paid a sum of Rs.4,00,000/- (Rupees four lakhs only) as advance on the date of the agreement itself. As per the terms of the agreement, the Plaintiff shall pay a sum of Rs.3,00,000/- on or before April 30, 2011 and the remaining part of the balance sale consideration *i.e.*, Rs.6,00,000/- shall be paid on or before April 30, 2012. A bare reading of Ex-A.1 - Suit Sale Agreement would show that the parties further agreed that if the Plaintiff failed to remit the amount within the stipulated period, the agreement shall stand cancelled. Relevant extract reads thus:

‘ . . . எங்களில் இரண்டாவது நபருக்கு சொந்தமான அடியில் கண்ட நஞ்சை நிலத்தை 2வது நபர் 1வது நபருக்கு 13,00,000/-ரூ. (பதிமூன்று லட்சம் மட்டும்). (10 ஏக்கர் 30 மா) சுத்த கிரயம் பேசிக் கொடுப்பதாய் பேசி ஒப்புக் கொண்டு அதற்கு அட்வான்ஸ் ரூ.4,00,000/- (நான்கு லட்சம்



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மட்டும்) 1வது நபரிடமிருந்து 2வது நபருக்கு இன்றைய தேதியில் ரொக்கம் செலுத்தி மேற்படி அட்வான்ஸ் தொகையை 2வது நபரும் 1வது நபரிடமிருந்து ரொக்கம் பெற்றுக்கொண்டது நாளே இன்று முதல் வரும் ஏப்ரல் 30ஆம் தேதிக்குள் 5 ஏக்கருக்கு கிரயத்தை 2வது நபரிடம் 1வது நபர் ரூ.3,00,000/- (மூன்று லட்சம் ரூபாய் மட்டும்) கொடுத்து விடவேண்டும். மேலும் மீதி தொகை இரண்டாவது தவணையாக ஏப்ரல் 30, 2012க்கு மீதி தொகையை ரூ.6,00,000/- ஆறு லட்சத்தை 1வது நபர் 2வது நபரிடம் முழு தொகையையும் செலுத்தி 1வது நபருக்கு பத்திர பதிவு செய்து கொள்ள வேண்டும். இந்த ஒப்பந்தப்படி குறிப்பிட்ட தேதியில் பணம் செலுத்தவில்லை என்றால் இந்த ஒப்பந்தம் காலாவதியாகிவிடும். மேலும் இந்த நிபந்தனையில் இருந்து இரண்டு நபர்களும் தவறிய நபர் தவறாத நபர் கோறும் நஷ்டத்திற்கும் பரிகாரங்களுக்கும் கட்டுப்பட வேண்டியது என்றும் எங்கள் பரிபூரண சம்மதமாய் எழுதிக்கொண்ட கிரய ஒப்பந்த ஆவணம்.'

13. As per the terms of Ex-A.1, the plaintiff ought to have remitted Rs.3,00,000/- on or before April 30, 2011. Admittedly, in this case, the Plaintiff remitted a sum of Rs.2,95,000/- (Rupees two lakhs and



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ninety five thousand only) to the defendant's bank account, however only on February 25, 2012 *i.e.*, beyond the stipulated period that too without any prior notice to the defendant about the deposit. According to the Plaintiff, after the said remittance, he paid a sum of Rs.5,000/- (Rupees five thousand only) directly to the Defendant and the Defendant received the said amount without any demur or objection. The Defendant denied the said fact. Admittedly, the Plaintiff did not pay Rs.6,00,000/- on or before April 30, 2012 as agreed in Ex-A.1. The said amount was deposited in the Suit only on October 21, 2016, during the pendency of the Suit. Further, as per Section 16 (c) of the Specific Relief Act, 1963, *dehors* a plea from the defence, the Plaintiff has to plead and prove that he was ready and willing to perform his part of the contract during the stipulated period [See *J.P. Builders -vs- A.Ramadass* reported in (2011) 1 SCC 429] and even thereafter, but the Plaintiff failed to prove the same. The Plaintiff did not give any explanation for the delayed payments. The Plaintiff did not prove that he had a sum of Rs.6,00,000/- (Rupees six lakhs only) in his hand or in his bank account. There is no evidence available on record to show that the Plaintiff had Rs.6,00,000/- (Rupees six lakhs only) in his hand to pay the sale consideration. Further, the Plaintiff presented the plaint in the present Suit on March 06, 2014 *i.e.*, after two years. No



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explanation was given for filing the Suit after a period of two years. The Plaintiff did not issue any legal notice during the period of the agreement to the Defendant expressing his readiness and willingness to perform his part of the contract. No pre-suit notice was issued expressing his readiness and willingness to perform his part of contract. Moreover, the balance sale consideration was not deposited before the Court at the time of filing the Suit; the same was deposited only on October 21, 2016 during the pendency of the Suit. The cumulative facts and circumstances would make it clear that the Plaintiff was not ready and willing to perform his part of the contract. ***Point No.(i) is answered accordingly.***

Point No.(ii):

14. As per the terms of Ex-A.1 - Suit Sale Agreement dated December 20, 2010, the Plaintiff ought to have made a payment of Rs.3,00,000/- on or before April 30, 2011 and further, if the plaintiff fails to perform his part of the contract, Ex-A.1 shall stand cancelled. The Suit was filed on March 06, 2014 and taken on file on April 30, 2014, within three years from the stipulated date for the first payment of Rs.3,00,000/- viz., April 30, 2011, which was not met by the plaintiff. Hence, the Suit has been filed well within the limitation period. Therefore, the defence



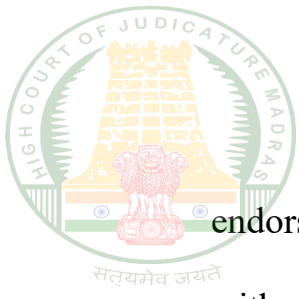
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that the Suit is barred by limitation under Article 54 of the Limitation Act, 1963 does not hold water. **Point No.(ii) is answered accordingly.**

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Point No.(iii):

15. It is stated by the Plaintiff side that the Plaintiff has been in possession and enjoyment of the suit properties. Ex-A.2 - Kist Receipts relied on by the Plaintiff side contains four receipts relating to the Fasli Years 1414, 1417, 1421 and 1422. They range from March 12, 2010 to January 17, 2013. They stand in the Defendant's name, but the payment have been made by the Plaintiff. Mere payment of Kist amount by the Plaintiff that too in the name of Defendant, cannot be taken as conclusive proof of possession. The Plaintiff side would further rely on Ex-A.3 - Adangal extracts issued by Village Administrative Officer on April 18, 2013. It is an inadmissible document as the author of the document was not examined and it does not mention any Fasli Years. Even in Ex-A.3, the Defendant has been mentioned as the owner and the one in possession. Contrary to the contents in the prescribed columns of Adangal Register, the Village Administrative Officer has made an endorsement in Ex-A.3 to the effect that the Plaintiff has been cultivating the suit properties. The Village Administrative Officer has no power or authority to make an



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endorsement contrary to the entries in the prescribed columns, that too without any enquiry after notice. Moreover, the Village Administrative Officer has no authority to issue Adangal Extract. Certified Copies applied as per Board Standing Orders are alone admissible. If any document is issued against the Board Standing Order, is inadmissible [See ***Bhinka -vs- Charan Singh***, reported in ***AIR 1959 SC 960***]. Hence, Ex-A.3 is also not admissible in evidence. In other words, the endorsement which is made in Ex-A.3 can be construed as a statement of the Village Administrative Officer. The said statement which is a statement of a living person, cannot be marked without examining the maker of the statement viz., Village Administrative Officer. For this reason also, Ex-A.3 is inadmissible.

16. Even while assuming that the Plaintiff is in possession and enjoyment of the suit properties, the same is not lawful and cannot be protected, as Ex-A.1 is an un-registered document. Section 53-A of the Transfer of Property Act, 1882 has been amended by the Registration and Other Related Laws (Amendment) Act, 2001 (Act No.48 of 2001) with effect from September 24, 2001. In view of the amendment made in Section 53-A, the Plaintiff cannot protect his alleged possession under the law. It is true that, the Defendant filed a Suit in O.S. No.85 of 2012 before the District Munsif Court, Thiruvarur, seeking a permanent



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injunction against the Plaintiff. It appears that the said Suit was later dismissed, on grounds not known. The Decree and Judgment of that Suit will not have any impact in the present suit and whatever may be, plaintiff's possession cannot be protected in view of amended Section 53-A of the Transfer of Property Act, 1882. ***Point No.(iii) is answered accordingly.***

Point No.(iv):

17. The Defendant in his written statement in Paragraph No.8, has clearly and categorically stated that *“on the grounds of morality this defendant is ready to pay back entire Rs.7,00,000/- seven lakhs to the plaintiff which the defendant received from the plaintiff on two dates.* Further, in Ex-B.2 which is the plaint in the earlier Suit filed by the Defendant, the Defendant has categorically pleaded and admitted that he received a sum of Rs.3,00,000/- and Rs.4,00,000/-, totally Rs.7,00,000/-. As per Section 22 of the Specific Relief Act, 1963, relief of return of advance money cannot be granted to the Plaintiff without a specific prayer to that effect. However, in view of the aforesaid unequivocal admissions made by the Defendant and his willingness to return the said amount, this Court in the interest of justice and to avoid multiplicity of proceedings, is



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inclined to grant a decree of return of amount of Rs.7,00,000/- to the Plaintiff. In view the above as well as the findings under Point Nos.(I) to (III), the Judgment and Decree passed by the Trial Court are liable to be set aside. ***Point No.(iv) is answered accordingly.***

18. No quarrel with the rulings relied on either side.

CONCLUSION

19. In the result, the Appeal Suit is allowed in part in the following terms:

- (i)** The Decree and Judgment passed by the Trial Court are set aside and the Plaintiff is not entitled to the relief of specific performance.
- (ii)** Alternatively, the Plaintiff is entitled to money decree in the following manner:
 - (a)** The Defendant shall pay Rs.7,00,000/- with simple interest at the rate of 6% per annum from the date of Suit till the date of realisation.
 - (b)** A charge is created over the suit properties in favour of the Plaintiff for due realization of the aforesaid amount. If the



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Defendant paid the said amount, the charge shall be raised automatically without any reference to Court.

(c) The Defendant shall pay the aforesaid amount within a period of two months from the date of receipt of a copy of this Judgment.

(d) The Plaintiff is entitled to refund of the balance sale consideration deposited in the Court with accrued interest, if any.

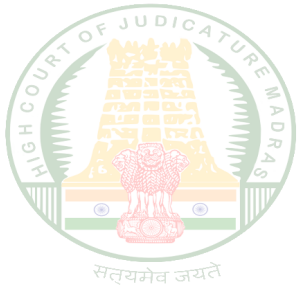
(iii) Considering the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

The Principal District Court
Thiruvarur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.715 OF 2019

05 / 03 / 2026

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