2026:MHC:1376

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 08 / 2025

JUDGMENT PRONOUNCED ON : 07 / 04 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S. NO.882 OF 2020
AND
C.M.P. NO.10483 OF 2020
AND
C.M.P. NO.15927 OF 2021 IN C.M.P. NO.10483 OF 2020
IN A.S. NO.882 OF 2020

S.Nanthakumar
S/o.R.M.Subramanian
D.No.104/1-Vengamettu Thottam,
Sivanmalai Village, Ramapattinam,
Kangeyam Taluk, Tiruppur District. ... Appellant / Defendant

Vs.

Asokan
S/o. Palanisamy
D.No.166, Sivanmalai Village,
Ramapattinam, Kangeyam Taluk,
Tiruppur District. ... 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 June 17, 2020 passed in O.S. No.220 of 2014 by the III Additional District and Sessions Court, Tiruppur @ Dharapuram.

For Appellant : Mr.S.Sriram
for M/s.K.Govi Ganesan

For Respondent : Mr.C.Prakasam

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JUDGMENT

Feeling aggrieved by the Judgment and Decree dated June 17, 2020 passed in O.S. No.220 of 2014 by 'the III Additional District and Sessions Court, Tiruppur @ Dharapuram' ['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].

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 Property measuring an extent of hectares 0.85.0 in Re-Survey No.8/1 absolutely belongs to the Defendant as per registered Sale Deed dated January 20, 2011 on the file of Sub-Registrar's Office, Kangeyam. The Defendant agreed to sell the suit property to the Plaintiff for a sum of Rs.20,00,000/- and accordingly, they both entered into a Sale Agreement on September 6, 2013 and the same was registered on the same day at Sub-Registrar's Office Kangeyam. On the date of execution of the Sale Agreement itself, the Plaintiff paid a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) towards part sale consideration amount in advance to the Defendant which was received by him in the presence of witnesses. It

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was agreed by them that the balance sale consideration amount of Rs.5,00,000/- has to be paid by the Plaintiff to the Defendant in one year span from the date of the Sale Agreement and in turn, the Defendant has to execute Sale Deed in favour of the Plaintiff without any encumbrance, after making necessary measurements, with the aid of original documents. Right from the date of agreement the Plaintiff was always ready and willing to perform the sale as agreed, but the Defendant refused and evaded from receiving the balance sale consideration amount and executing the Sale Deed.

3.1. The Plaintiff met the Defendant in person and requested the Defendant to receive the balance sale consideration amount and execute Sale Deed as agreed. But the Defendant evaded by giving lame reasons. Therefore, the Plaintiff caused a legal notice on August 18, 2014 calling upon the Defendant to receive the balance sale consideration amount and execute Sale Deed as per agreement, which was received by him on August 22, 2014. The Defendant sent a reply notice dated August 30, 2014, which was received by the Plaintiff on September 1, 2014, wherein the Defendant framed a false story that the Sale Agreement executed by him in favour of the Plaintiff was only a security for a loan amount of Rs.15,00,000/- obtained by him from the Plaintiff. The Defendant is eagerly trying to sell

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the suit property to third person. Stumbled by this reply, the Plaintiff with no other option for resolving the issue approached the Trial Court with the present Suit seeking specific performance and delivery of possession of the suit property and in the alternative, seeking a direction to the Defendant to refund the advance sale consideration amount of Rs.15,00,000/- with 12% interest from September 6, 2013 to October 6, 2014 totalling to a sum of Rs.16,95,000/- along with subsequent interest and to create a charge over the suit property until realization of the Suit amount.

DEFENDANT'S CASE

4. The Defendant filed a written statement and an additional written statement by which the Defendant denied the plaint averments at its entirety. The specific case of the Defendant is that the Sale Agreement was executed only as a security to a loan borrowed by the Defendant from the Plaintiff. The readiness and willingness of the Plaintiff to perfrom his part of the contract was denied. Even though the defendant assured repayment of the loan amount, the Plaintiff has filed the Suit with an intention to usurp the suit property. Further, the Sale Agreement is not valid after the time prescribed in it and the Suit is barred by limitation. The Plaintiff was never ready, willing or capable of performing the sale. The Plaintiff has not produced any evidence or documents to show that he had sufficient source

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of income to perform the sale. Since the value of the suit property had increased, the Plaintiff has filed this Suit with the intention to grab the suit property. Stating so, the Defendant sought to dismiss the Suit with costs.

TRIAL COURT

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

'1) Is it correct to say that the Suit Sale Agreement dated September 6, 2013 was entered between the plaintiff and defendant with intend to sell the suit property?

2) Is it correct to say that the suit sale agreement was executed for security purpose for the loan amount which said to have been borrowed by the defendant from the plaintiff?

3) Whether the plaintiff was readiness, willingness and capable on his part to perform the sale as per agreement?

4) Whether the plaintiff is entitled to get the decree of specific performance as prayed for with costs?

5) Whether the plaintiff is entitled for the alternative relief?

6) To what other reliefs the plaintiff entitled for'

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6. At trial, on the side of the Plaintiff, the Plaintiff was examined as P.W.1; one Sendhilkumar was examined as P.W.2; one Sabapathy was examined as P.W.3; and Ex-A.1 to Ex-A.5 were marked. On the side of the Defendant, the Defendant was examined as D.W.1 and no document was marked.

7. After full-fledged trial, the Trial Court concluded that the Sale Agreement was executed with an intention to sell the Suit Property and the Plaintiff proved his readiness, willingness and capability of executing the Sale Deed whereas the Defendant miserably failed to prove his stand. Accordingly, the Trial Court decreed the Suit as prayed for by granting the relief of decree of specific performance and delivery of possession of the suit property to the Plaintiff.

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

ARGUMENTS

9. Mr.S.Sriram, learned Counsel appearing on behalf of Mr.K.Govi Ganesan, Counsel on record for the Appellant/Defendant would submit

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that the Trial Court failed to consider the evidence available on record properly. The Trial Court ought to have accepted the defense of the Defendant that Ex-A.1 - Suit Sale Agreement was not executed with an intention to sell the Suit Property; it was executed altogether for a different transaction, i.e., to stand as a security for a money transaction. He would further submit that the Trial Court failed to appreciate the fact that the Defendant was ready and willing to return Rs.15,00,000/- with reasonable interest. The Trial Court failed to appreciate the fact that the Plaintiff was not ready and willing to perform his part of the contract and that the Plaintiff was not capable of paying the balance sale consideration of Rs.5,00,000/- during the subsistence of the agreement as well as at the end of the period of performance. In short, his argument is that Section 16(c) of the Specific Relief Act, 1963 was not satisfied. Accordingly, he would pray to allow this 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). *Vasantha -vs- M.Senguttuvan* reported in *1997 SCC OnLine Mad 449;* (ii). *Shanthi Kawarbai -vs- Sushila* reported in *2009 (4) CTC 842;* (iii). *Muthukrishna Gounder -vs- Gowri* reported in *2014 SCC OnLine Mad 138;* (iv). *Basavaraj -vs- Narayanappa,* reported in *MANU/TN/1277/2023.*

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10. *Per contra,* Mr.C.Prakasam, learned Counsel appearing for the Respondent/Plaintiff would submit that Ex-A.1 - Sale Agreement is a registered agreement. The Plaintiff proved the execution and passing of part sale consideration by examining the attestors, namely, P.W.2 & P.W.3. The evidence of P.W.2 & P.W.3 are trustworthy. There is no reason to disbelieve the same. The Plaintiff paid a sum of Rs.15,00,000/- i.e., 75% of the total sale consideration at the time of the Sale Agreement itself. The Suit Property has to be measured; that is the reason one year time for performance has been agreed between the parties under Ex-A.1 - Sale Agreement. The Plaintiff issued a legal notice within the time period of performance on August 18, 2014 and the same was received by the Defendant. The Defendant changed his mind and sent a reply notice dated August 30, 2014 with incorrect and false particulars. The Trial Court rightly appreciated the facts and circumstances and granted the relief of specific performance. There is no warrant to interfere with it. Accordingly, he would pray to dismiss this Appeal Suit and sustain the Decree and Judgment passed by the Trial Court.

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DISCUSSION

11. The Points that arise for consideration in this Appeal Suit are as follows:

(i) Whether Ex-A.1 - Suit Sale Agreement is true and genuine ?

(ii) Whether Ex-A.1 - Suit Sale Agreement entered between the Plaintiff and the Defendant was executed with an intention to sell the Suit Property or to stand as a security to a loan transaction as alleged by the Defendant?

(iii) Whether the Plaintiff was ready and willing to perform his part of the contract?

(iv) Whether the Decree and Judgment of the Trial Court has to be interfered with?

Point Nos.(i) & (ii):

12. Ex-A.1 - Suit Sale Agreement is a registered one, wherein it has been stated that on the date of the Sale Agreement itself, the Defendant received a sum of Rs.15,00,000/- from the Plaintiff and agreed to execute the Sale Deed within a period of one year. The Defendant's case is that the Defendant borrowed a sum of Rs.15,00,000/- and executed Ex-A.1 - Sale Agreement only for the purpose of security to the aforesaid loan amount. It is settled law that Sections 91 and 92 of the Indian Evidence Act, 1872

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do not act as a bar against taking a defence that Ex-A.1 - Sale Agreement was executed altogether for a different transaction. But the said defence has to be proved by the Defendant as per law. In this case, the Plaintiff examined P.W.2 & P.W.3, who are the attesting witnesses to Ex-A.1 - Sale Agreement. They clearly deposed that Ex-A.1 was executed with an intention to sell the Suit Property and the Defendant received a sum of Rs.15,00,000/- from the Plaintiff as an advance on the date of execution itself. On the other hand, the Defendant did not file or produce any document to show that Ex-A.1 - Sale Agreement was executed for altogether a different transaction; that Ex-A.1 was executed to stand as a security to the loan amount of Rs.15,00,000/- borrowed by him from the Plaintiff. No oral or documentary evidence was adduced to establish his defense. Hence, this Court concludes that the Ex-A.1 - Sale Agreement is true and genuine and the same was executed with an intention to sell the Suit Property by the Defendant to the Plaintiff. **Point Nos.(i) & (ii) are answered accordingly in favour of the Plaintiff and against the Defendant.**

Point No.(iii):

13. As answered under Point Nos.(i) and (ii), the execution and the true intention of the parties have been proved. The date of the Sale

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Agreement is September 06, 2013. The sale price was fixed at Rs.20,00,000/- and an advance of Rs.15,00,000/- was paid on the date of Ex-A.1 - Sale Agreement itself. The balance sale consideration is Rs.5,00,000/-. The Plaintiff issued Ex-A.2 - Legal Notice on August 18, 2014 calling upon the Defendant to come forward to measure out the suit property, produce original Title Deeds and execute Sale Deed in favour of the Plaintiff. The Defendant caused Ex-A.4 - Reply Notice on August 30, 2014 denying that Ex-A.1 was executed for the purpose of sale of suit property; the Defendant averred that it was executed to stand as a security for a loan of Rs.15,00,000/- and that he is ready to repay the same. The Plaintiff examined himself as P.W.1 deposed that at the time of execution of Ex-A.1, he had to arrange a considerable portion of the Rs.15,00,000/- part payment from his father and that he did not have the balance sale consideration of Rs.5,00,000/- with him and hence, the one year time period for performance. In other words, he deposed that, only for the purpose of mobilizing the balance sale consideration of Rs.5,00,000/-, one year time period was agreed upon under Ex-A.1 - Sale Agreement. In such a case, though the Plaintiff issued a legal notice on August 18, 2014 during the currency of the agreement period, the Plaintiff did not produce any document to show that he possessed a sum of Rs.5,00,000/- to perform his

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part of the contract. It is settled law that the Plaintiff need not jingle the coin, but at the same time, the Plaintiff has to prove that he was ready and willing to perform his part of the contract along with his financial capability to pay the balance sale consideration by producing his bank passbook containing statement of accounts or any other evidence. Further, *dehors* the defence, the Plaintiff has to prove his readiness and willingness under Section 16(c) of the Specific Relief Act, 1963 [See Judgment of Hon'ble Supreme Court in ***J.P.Builders -vs- A.Ramadas Rao***, reported in ***(2011) 1 SCC 429***]. In this case, the Plaintiff has miserably failed to produce the bank passbook containing statement of accounts to show that he possessed a sum of Rs.5,00,000/- to perform his part of the contract or any other evidence to show that he had sufficient money at his hand to pay the balance sale consideration and get the Sale Deed executed. Mere pleadings are not sufficient to prove readiness and willingness of the Plaintiff. The Trial Court without considering the said aspect, granted a decree for specific performance. Though the Sale Agreement is true and valid, in view of the Plaintiff not proving his readiness and willingness, the Plaintiff is not entitled to get the main relief of specific performance; but he is entitled to get the alternate relief of a refund of the advance amount.

Point No.(iii) is answered accordingly.

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Point No.(iv)

14. The Trial Court had decreed the Suit and granted the relief of specific performance. This Court for the dis-positive reasoning alluded to *supra* is inclined to set aside the relief of specific performance, and grant the alternate relief of return of advance amount of Rs.15,00,000/- along with 12% interest from the date of Suit till the date of realisation, with proportionate costs. Charge is created over the suit property to enable the Plaintiff to realise the aforesaid amount along with interest and costs. **Point No.(iv) is answered accordingly.**

15. No quarrel with the case laws relied on by the learned Counsel for the Appellant / Defendant.

CONCLUSION:

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

(i) The Decree and Judgment passed by the Trial Court is set aside and the Plaintiff is not entitled to the relief of specific performance.

(ii) The Plaintiff is entitled to get refund of the advance amount in the following manner:

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(a) The Defendant shall return to the Plaintiff the advance amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) with interest at the rate of 12% per annum from the date of Suit till the date of realization, with proportionate costs incurred by the Plaintiff before the Trial Court.

(b) Charge is created upon the Suit Property to enable the Plaintiff to realize the aforesaid amount with interest and costs specified as above. The charge shall be raised automatically on payment of the aforesaid amount with interest and costs by the Defendant to the Plaintiff without any reference to the Court.

(c) The Defendant shall pay the aforesaid amount to the Plaintiff within a period of two months from the date of receipt of a copy of this Judgment, failing which, the Plaintiff is entitled to execute the aforesaid decree as per law.

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

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(iii) Considering the facts and circumstances of the case, there shall be no order as to costs in Appeal Suit. Consequently, connected Civil Miscellaneous Petitions are closed.

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

The III Additional District and Sessions Court,
Tiruppur @ Dharapuram.

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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT IN
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