

S.A.No.489 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 10 / 2024

JUDGMENT PRONOUNCED ON : 04 / 06 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.489 OF 2019

AND

CMP NO.8148 OF 2019

Kannan ... Appellant / Respondent /
Plaintiff

Vs.

Venkatesan ... Respondent / Appellant /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated October 30, 2018 made in A.S.No.26 of 2016 on the file of the learned Additional District Judge (Fast Track Court) Villupuram, reversing the Judgment and Decree dated December 22, 2015 made in O.S.No.36 of 2012 on the file of the 1st Additional Sub Judge, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : Mr.S.Sriram
for Mr.K.Govi Ganesan



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J U D G M E N T

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This Second Appeal is directed against the Judgment and Decree dated October 30, 2018 passed in A.S.No.26 of 2016 by the 'Additional District Court (Fast Track Court) Villupuram' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated December 22, 2015 passed in O.S.No.36 of 2012 by the '1st Additional Sub Court, Villupuram' ['Trial Court' for brevity] was set aside and alternate remedy of return of advance money was granted.

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 was owned and possessed by the defendant. On November 1, 2010, both parties entered into a Sale Agreement, wherein the plaintiff agreed to purchase the Suit Property for Rs.1,86,000/- and the defendant accepted an advance of Rs.1,00,000/-. The remaining Rs.86,000/- was to be paid within 40 days, after which the defendant was to execute the Sale Deed in the plaintiff's name. The Sale Agreement was properly executed with signatures from both parties,



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witnesses and the scribe. The plaintiff was always ready and willing to perform his part of the contract and repeatedly requested the defendant to execute the sale deed, but the defendant delayed under various pretexts. The plaintiff issued a legal notice on December 1, 2010 demanding performance, but the defendant responded with a false reply notice, claiming the amount was a loan alleging coercion in obtaining blank promissory notes and other documents. The plaintiff denied these allegations and asserted that the agreement was genuine and the advance was paid in the presence of the defendant's wife. Since the defendant failed to execute the Sale Deed, the plaintiff has no option but to file the Suit for specific performance of the agreement and for the alternate relief of return of advance amount.

DEFENDANT'S CASE

4. The defendant asserts that the suit is vexatious, unsustainable in law and should be dismissed with costs. The defendant denied the alleged Sale Agreement dated November 1, 2010, the agreed sale price of Rs.1,86,000/- and the receipt of Rs.1,00,000/- as advance, and contended that the plaintiff is put to strict proof of the same. The defendant never intended to sell the Suit Property and did not execute any



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such agreement. The Suit Property's total value is at Rs.4,18,500/- which

contradicts the claimed sale price, showing no *consensus ad idem*. The

defendant states that the plaintiff has suppressed the true facts and filed a

false case. The defendant never intended to sell the Suit Property to the

plaintiff. On October 28, 2010, he sought a loan from the plaintiff, who

demand a photo copy of the Sale Deed pertaining to the Suit Property.

On November 1, 2010, the plaintiff obtained the copy as well as the

defendant's signatures in a Rs.20/- stamped paper, a green paper, and two

blank promissory notes. It was all intended for the purpose of money

transaction and not any Sale Agreement. The plaintiff fabricated the Sale

Agreement. The defendant was ready to repay the loan of Rs.1,00,000/-

with interest from October 28, 2010, but the plaintiff refused to

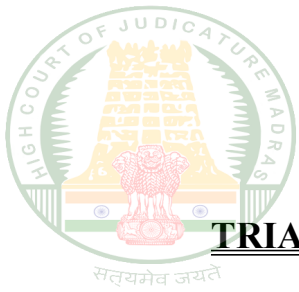
acknowledge it. The defendant sent a legal Notice on November 30, 2010,

but the plaintiff, with an ulterior motive, responded on December 1, 2010

without referring to the defendant's notice. Hence, the plaintiff is

disqualified from seeking specific performance or alternative relief.

Accordingly, the defendant sought to dismiss the Suit.



TRIAL COURT

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5. At trial, plaintiff was examined as P.W.1 and one Sivakumar was examined as P.W.2 and Ex-A.1 to Ex-A.7 were marked on the side of the plaintiff. The defendant was examined as D.W.1 and one Ramani was examined as D.W.2 and the plaintiff's signature found in the photo copy of the unregistered Suit Sale Agreement was marked as Ex-B.1.

6. After hearing both sides and after full-fledged trial, the Trial Court concluded that Ex-A.1 – Suit Sale Agreement is a true and valid document executed by the defendant in favour of the plaintiff; that the plaintiff is ready and willing to perform his part of the contract; that, hence, he is entitled to the relief of specific performance. Accordingly, the Trial Court granted the main relief of specific performance with costs.

FIRST APPELLATE COURT

7. Feeling aggrieved, the defendant preferred an appeal before the First Appellate Court, which, after hearing both sides, concluded that Ex-A.1 – Suit Sale Agreement was never intended to be acted upon, the plaintiff did not approach the Court with clean hands, the



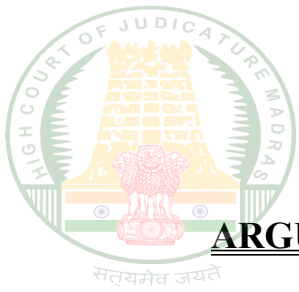
plaintiff has made a material alteration in Ex-A.1 – Suit Sale Agreement.

Accordingly, it allowed the appeal set aside the Judgment and Decree of the Trial Court and granted the alternate relief of return of advance money with interest.

SECOND APPEAL

8. Feeling aggrieved, the plaintiff has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on September 6, 2024 on the following Substantial Questions of Law:

- “(i) *Whether the Court below is right in refusing to grant the relief of specific performance without taking into consideration the valid admission made by D.W.1 that he had signed the document after seeing the corrections made therein and she [sic] did not object to the same?*
- (ii) *Whether the Court below is right in reversing the decree and judgment of the Trial Court when the defendant has admitted that he had signed Ex-A.1?*
- (iii) *Whether the Court below is right in disallowing the relief of specific performance in the face of the mutually contradictory evidence adduced by the defendant relating to the execution of Ex A.1 in chief examination and in cross examination? ”*

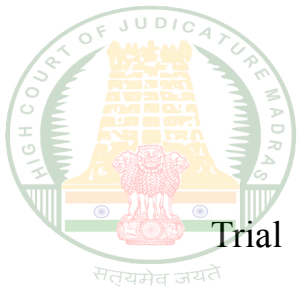


ARGUMENTS

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9. Mr.M.Suresh, learned Counsel for the appellant / plaintiff

would argue that the First Appellate Court failed to appreciate the evidence available on record; that the defendant himself has admitted in his evidence that at the time of preparing Ex-A.1, some typographical error crept in and the same were rectified by the document writer / P.W.2. Further, Ex-A.1 reveals that the per Cent cost of Suit Property is Rs.2,000/- and also that the total sale price for the Suit Property which is of an extent of 93 Cents is Rs.1,86,000/-. Both are consistent with each other. Further, the First Appellate Court without adverting to the above evidence wrongly concluded that the plaintiff altered Ex-A.1 – Sale Agreement. Further, the First Appellate Court concluded that the plaintiff had not taken due care to protect his rights and interest and the same is erroneous. There is no legal bar against purchasing a mortgaged property. Further, the plaintiff has paid more than half of the sale price as advance money and the plaintiff is ready and willing to perform his part of the contract. The defendant with a view to wriggle out of the contract falsely sent Ex-A.2 - Notice during the subsistence of the period of performance itself. Hence, after exchange of Notices, the plaintiff filed the Suit. The



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Trial Court rightly appreciated the evidence and decreed the Suit. The First Appellate Court without considering the evidence available on record in the right perspective, erroneously allowed the appeal and dismissed the Suit *qua* main relief and granted the alternate relief. The same is liable to be set aside. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court, and confirm the Judgment and Decree of the Trial Court.

9.1. He would rely on the following decisions in support of his contentions:

- (i) ***K.Prakash's Case*** - Judgment of Hon'ble Supreme Court in ***K.Prakash Vs- B.R.Sampathkumar***, reported in ***(2015) 1 SCC 597***;
- (ii) ***Zarina Siddiqi's Case*** - Judgment of Hon'ble Supreme Court in ***Zarina Siddiqui -vs- A.Ramalingam***, reported in ***(2015) 1 SCC 705***.

10. Per contra, Mr.S.Sriram for K.Kovi Ganesan, learned Counsel for the respondent / defendant would argue that no ordinary prudent man would purchase a property which is subject to a mortgage



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and without verifying the encumbrance particulars. The plaintiff is a money lender and the defendant borrowed Rs.1,00,000/- for his son's educational expenses and signed a blank Twenty Rupees Stamp Paper, two green papers and two blank Promissory Notes. The unsigned Stamp Paper has been misused and fabricated into a Sale Agreement. Further, the Suit Property is worth more than Rs.4,500/- per Cent, even as per the Suit Sale Agreement – Ex-B.1. However, the defendant came to know after filing of the Suit that, the price of the Suit Property has been fraudulently modified and reduced to Rs.2,000/- per Cent in Ex-A.1. The First Appellate Court appreciated the evidence in the right perspective and allowed the appeal granting the alternate relief. There is no reason to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court.

10.1. He would rely on the following decisions in support of his contentions:

- (i) ***Baskaran's Case*** - Judgment of this Court in ***J.Baskaran Vs. T.Pappa***, reported in ***2012 SCC OnLine Mad 1277***;
- (ii) ***Arokiadoss's Case*** - Judgment of this Court in ***T. Arokiadoss Vs. P.John Philip***, reported in ***2023 (1) MWN (Civil) 230***.



DISCUSSION:

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11. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

12. This Court has perused Ex-A.1 – Original Unregistered Suit Sale Agreement. It is mentioned in Ex-A.1 that the Suit Property admeasures an extent of 93 Cents and that the sale was price was fixed at Rs.2,000/- per Cent. Calculation of the total sale price would result in Rs.1,86,000/-. The total sale price recorded in Ex-A.1 is also Rs.1,86,000/- and it has been recorded in both figure and words. The defendant's contention is that originally only Rs.4,500/- per Cent (both figure and words) was recorded as the sale price of the Suit Property, however, the same has been altered and reduced to Rs.2,000/- (both figure and words), knowledge of which was gained by the defendant only after filing of the Suit. To be noted, the defendant does not deny or contradict the total sale price of Rs.1,86,000/- mentioned in Ex-A.1 - Suit Sale Agreement. P.W.2 who is the document writer / scribe to Ex-A.1, has deposed that there had crept in a typographical error in the sale price per Cent (both figure and words) in Ex-A.1 and that he later rectified the same (both figure and words). Notably, D.W.1 has deposed that Ex-A.1



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had correction and that he did not make any enquiry about with the document writer. Relevant extract of the evidence of D.W.1 reads thus:

'**வா.சா.ஆ.1 கிரைய ஒப்பந்தத்தில் திருத்தம் இருந்தது. திருத்தம் இருப்பதால் அதை பற்றி நான் ஒப்பந்தத்தை தட்டச்சு செய்தவரிடம் நான் கேட்கவில்லை. அவர் பெயர் சிவக்குமாரின் அலுவலகம் ஆஞ்சிநேயர் கோயில் அருகில் உள்ளது. அவர் அலுவலகத்திற்கு நானும் என் மனைவியும் சென்றோம். தட்டச்சு செய்யும் போது நானும் என் மனைவியும் அங்கு இல்லை. தட்டச்சு செய்தது எனக்கு தெரியாது. எனக்கும் தட்டச்சு செய்த சிவக்குமாருக்கும் எந்த வித விரோதமும் கிடையாது. சிவக்குமார் பத்திரம் எழுதுபவர்தான். 2010ல் கிரைய ஒப்பந்தம் போடும் காலத்தில் சொத்தின் மதிப்பு 1,86,000 என்றால் அது பற்றி எனக்கு தெரியாது. நான் அக்கிரிமெண்ட் எழுதி கொடுக்கவில்லை. . . .**

13. In view of the evidence of P.W.2 – Scribe as well as the admission of D.W.1, it is clear that some change has been effected. Nonetheless, there has been material change in consequence of the changes. Only the per Cent price of the Suit Property has been reduced from Rs.4,500/- to Rs.2,000/-, not the Total Sale Price and the modified



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per Cent Sale Price recorded in Ex-A.1 continues to be Rs.1,86,000/- even after the modification. Hence, no material alteration can be said to be made to Ex-A.1. The Trial Court correctly held that there was no material alteration while the First Appellate Court without appreciating the evidence of P.W.2 & D.W.1, and without properly perusing Ex-A.1, erroneously concluded that Ex-A.1 – Suit Sale Agreement is not *bona fide* and that the plaintiff failed to approach this Court with clean hands.

14. As regards the execution of Ex-A.1, the defendant admitted the signature found in Ex-A.1. He has deposed as D.W.1 that he signed blank stamped and unstamped papers for the purpose of loan from the plaintiff. He further admits that he borrowed / received a sum of Rs.1,00,000/-. The plaintiff's case is that the said Rs.1,00,000/- is an advance towards the Sale under Ex-A.1 - Suit Sale Agreement. The plaintiff in his evidence has deposed that after deciding to purchase the Suit Property, he did not check for encumbrances even at the time of Ex-A.1 and the time of institution of Suit. He has further deposed that he is unaware of the fact that the defendant has mortgaged the Suit Property in Central Bank. He further deposes that the defendant agreed to sell the Suit Property for meeting out his son's educational expenses. But the



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defendant contends that it was only a loan and nothing more than a money transaction. According to the defendant, Ex-A.1 was never intended for Sale. To be noted, in Ex-A.1, the defendant's wife has been signed as one of the witnesses. Both the first defendant / D.W.1 as well as his wife / D.W.2 have not denied their signatures in Ex-A.1. Ex-A.1 is not a compulsory attestable document and the plaintiff examined the scribe as P.W.2 who has deposed clearly about the execution of Ex-A.1. Thus, execution of Ex-A.1 has been proved.

15. The date of Ex-A.1 – Sale Agreement is November 1, 2010. Date of Ex-A.2 - Notice caused by the defendant is November 30, 2010, and in Ex-A.2 the defendant has categorically stated that he along with his wife signed two blank Promissory Notes as well as pre-typed Rs.20 Stamp papers along with one green paper. To be noted, Ex-A.1 is recorded in a Rs.20 Stamp papers and one green paper only. The defendant in Ex-A.2, has initially stated that he along with his wife signed pre-typed Stamp papers and green papers, but after filing of the Suit, he has contradicted his earlier stand by stating that he along with his wife signed in blank Rs.20 Stamp papers and green paper. Relevant extract of Ex-A.2 is hereunder:



'3. 01-11-2010 அன்று தங்களை மீண்டும் அனுகிய எனது கட்சிக்காரரிடம் ரூ.1,00,000/- (ரூபாய் ஒரு இலட்சம்) கடன் கொடுக்க தயாராகிய தாங்கள் மேற்படி கடன் தொகைக்கு மாதா மாதம் ரூ.1000/- (ரூபாய் ஆயிரம்) வட்டி தர வேண்டும் எனக் கூறி, நிரப்பப்படாத வெற்று பிராம்சரி நோட் இரண்டில், ஸ்டாம்பு ஒட்டி (Revenue Stamp) மொத்தமாக நான்கு கையொப்பமும், மேலும் ரூ.20/- பத்திரம் மற்றும் பச்சை பேப்பரில் ஏற்கனவே தாங்கள் தட்டச்சு செய்து தயார் நிலையில் வைத்திருந்த டாக்குமெண்டில் கையொப்பங்களும் பெற்றுக் கொண்டும், சாட்சிக்கு எனக்கூறி, எனது கட்சிக்காரரின் மனைவி ரமணி என்பவரிடம் ஒரு கையொப்பமும் பெற்றுக் கொண்டு, மேற்படி கடனாக ரூ.1,00,000/- (ரூபாய் ஒரு இலட்சம்) கொடுத்ததாகவும் எனது கட்சிக்காரர் திட்டவட்டமாக தெரிவிக்கிறார்.'

15.1. From the above, it is discernible that Ex-A.1 was executed by the defendant. The question is whether it was executed with an intention to sell the Suit Property or intending the Suit Property as a security for the loan he obtained from the plaintiff. Ordinarily, if a person is intending to purchase a property, he ought to be prudent and proactive to verify the original records, revenue records, encumbrance certificate

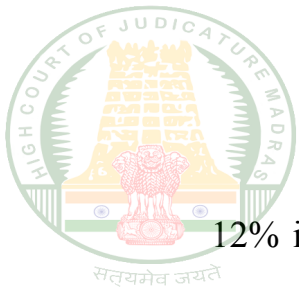


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and such other documents, and gained knowledge about the encumbrance,

if any, either at the time of Sale Agreement or during the currency of the

Sale Agreement. There is no legal bar against sale or purchase of mortgaged property. If really a property was mortgaged, the same would be mentioned in the Sale Agreement *inter alia* whether the sale is to be made subject to the mortgage or after the vendor clears the same, if so within what time period. In this case, the plaintiff himself has deposed that he did not make any enquiry into the encumbrances of the Suit Property and there is no whisper of any mortgage in Ex-A.1 – Suit Sale Agreement. These facts makes the defence theory that Ex-A.1 was executed for the purpose of loan transaction and that the defendant was prepared to repay and clear the debts along with the interest, a plausible one. To be noted, in Ex-A.2 – Notice itself, which was issued on November 30, 2010 *i.e.*, 10 days before the expiration of the alleged prescribed time period for performance the defendant has expressed his readiness and willingness to repay the debt of Rs.1,00,000/- along with interest. Hence, this Court is of the view that the plaintiff is not entitled to the equitable relief of specific performance. However, he is entitled to the alternate prayer of return of advance amount of Rs.1,00,000/- along with



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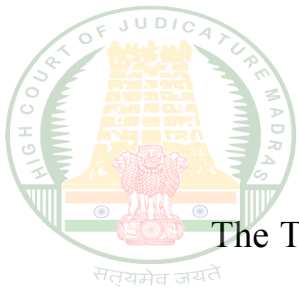
12% interest per annum from the date of Suit till the date of realisation.

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As regards interest, the First Appellate Court had granted Pre-Suit interest from the date of Ex-A.1 - Suit Sale Agreement at 12% per annum, Post Suit interest at the rate of 9% and Post Decree interest at the rate of 6 %, which in the considered opinion of this Court is not just, fair and proper considering the facts and circumstances of this case.

16. To be noted, the relief of specific performance is an equitable relief. As per Section 20 of the Specific Relief Act, 1963, as it stood before the amendment made vide Specific Performance (Amendment) Act, 2018, the Court is not bound to grant the relief of specific performance, merely because it is lawful to do so. At the same time, the discretion of the Court shall be sound, reasonable, not arbitrary and guided by judicial principles. Now Section 20 has been removed. However, the 2018 amendment is prospective in nature and cannot be applied to the present case which was instituted in the year 2010.

17. Hence, though this Court is in disagreement with the First Appellate Court's reasons for its decision, this Court is in concurrence with its ultimate decision that the plaintiff is entitled to the alternate relief.



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The Trial Court without considering the evidence as well as the facts and circumstances of the case, decreed the Suit for specific performance which is incorrect. Substantial Questions of Law are answered accordingly. No quarrel with the rulings relied on by either side. They lay down general principals of law and need not be referred to in this case, in the considered opinion of this Court.

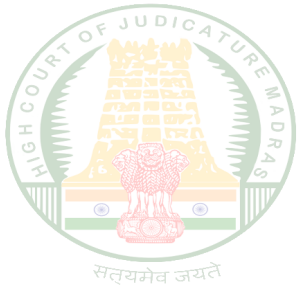
CONCLUSION:

18. Resultantly, the Second Appeal stands partly-allowed. The First Appellate Court Judgment and Decree is modified *qua* interest alone. The plaintiff is entitled to Rs.1,00,000/- along with 12% interest per annum from the date of Suit till the date of realisation. A charge under Section 55 (6) (b) of the Transfer of Property Act, 1882 is created over the Suit Property to enable the plaintiff to realise the aforesaid amount. In view of the facts and circumstances of this case, the parties shall bear their own costs. Connected Civil Miscellaneous petitions shall be closed.

04 / 06 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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R. SAKTHIVEL, J.

TK

To

- 1.The Additional District Judge
(Fast Track Court)
Villupuram.
- 2.The 1st Additional Sub Judge
Villupuram.
- 3.The Section Officer
V.R. Section
Madras High Court

PRE-DELIVERY JUDGMENT MADE IN
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