

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
24.03.2026PRONOUNCED ON
08.07.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS Nos. 1111 & 1112 of 2015
and M.P.Nos.1 & 1 of 2015**AS No. 1111 of 2015**

S.Natesan (died)

2. Santhi

W/o. S.Nadesan

(SOLE APPELLANT DIED, A2 IS
BROUGHT ON RECORD AS LRS OF
DECEASED SOLE APPELLANT, VIDE
ORDER OF COURT DATED 06/02/2025
MADE IN CMP.NOS.24083, 24084 AND
24085 OF 2024 IN AS.NO.1111 OF 2015)

..Appellant(s)

Vs

M.Senthil Kumar

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 r/w Order XLI Rule 1 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Judge Namakkal made in O.S.No.43 of 2012, dated 08.09.2015.

For Appellant(s) : Ms.V.Srimathi

For Respondent(s): Mr J.Sudhakaran



AS No. 1112 of 2015

S.Natesan (died)

2. Santhi

W/o. S.Nadesan

(SOLE APPELLANT DIED, A2 IS
BROUGHT ON RECORD AS LRS OF
DECEASED SOLE APPELLANT, VIDE
ORDER OF COURT DATED 06/02/2025
MADE IN CMP.NOS.24083, 24084 AND
24085 OF 2024 IN AS.NO.1111 OF 2015)

..Appellant(s)

Vs

1.M.Senthil Kumar

2.Ganesan (Died)

3.Chandrasekar (Died)

4.Sivakami

5.Kavitha

6.Ramya

7.Minor Niranjan

8.Minor Nandhiswari

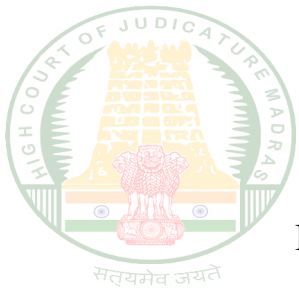
... Respondents

(RR7 & 8 represented by their guardian as his mother Ramya)

(R2 died. RR4 & 5 are brought on record as Lrs of the deceased R2, vide Court order dated 16.06.2025 made in CMP.Nos.27186, 27188 & 27189 of 2024 in AS.No.1112 of 2015)

(R3 died. RR6 to 8 brought on record as Lrs of the deceased R3, vide Court order dated 16.06.2025 made in CMP.Nos.27186, 27188 & 27189 of 2024 in AS.No.1112 of 2015).

PRAYER:- First Appeal filed under Section 96 r/w Order XLI Rule 1 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Additional District Judge Namakkal made in O.S.No.45 of 2012, dated 08.09.2015.



For Appellant(s):

Ms.V.Srimathi

WEB COPY For Respondent(s):

Mr J.Sudhakaran for R1

RR2 & 3 – Died

RR4 to 6 (served) No appearance

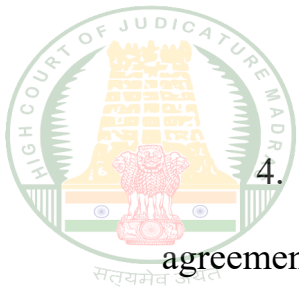
RR7 & 8 minors represented by R6

COMMON JUDGMENT

These Appeal suits have been filed as being aggrieved against the common judgment and decree made on 08.09.2015 in O.S.No.43 of 2012 and O.S.No.45 of 2014 on the file of the Additional District Court, Namakkal.

2. A original suit in O.S.No.43 of 2012 had been filed by the first respondent in both the Appeal suits as against the appellant seeking for a relief of specific performance of an agreement entered between them.

3. A suit in O.S.No.45 of 2014 was filed by the appellant as against the plaintiff in O.S.No.43 of 2012 and two other persons seeking for a relief of permanent injunction from interfering with his possession in the suit property. Both suits were tried together and by a common judgment and decree, the suit in O.S.No.43 of 2012 was decreed granting the relief of specific performance and suit in O.S.No.45 of 2014 had been dismissed.



4. The specific performance suit had been filed on the strength of sale agreement that was entered between the appellant and the first respondent on 25.03.2010 recording a payment of Rs.7,00,000/- towards advance and further sums of Rs.1,00,000/- each and that there had been a total part consideration paid at Rs.10,00,000/- and further that the property had been delivered possession of by the vendor.

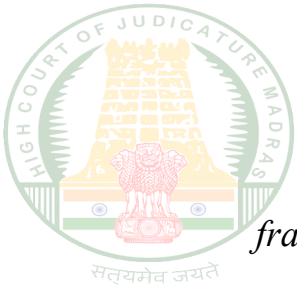
5. It is the further case of the agreement holder that in spite of repeated demands, the vendor had protracted and refused to execute the sale deed. Hence, the suit for specific performance for specifically enforcing the agreement under Ex.A1 had been instituted. On the other hand, the vendor had denied the execution of the sale agreement or even the receipt of the consideration as claimed by the agreement holder. He had also instituted a suit for an injunction on the claim that he had been in possession of the suit property.

6. On consideration of the pleadings, the following issues were framed

O.S.No.43 of 2013

1. Whether the plaintiff is entitled to the relief of specific performance as prayed for in the suit?

2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the plaint?



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3. *Whether the Sale Agreement dated 25.03.2010 is invalid, fraudulent, sham, and not genuine as contended?*

4. *To what other reliefs, if any, is the plaintiff entitled? and additional issues 1 & 2?*

Additional issues:-

1. *Whether the plaintiff was always ready and willing to perform his part of the contract and complete the sale transaction?*

2. *Whether the suit is barred by limitation under the Law of Limitation?*

O.S.No.45 of 2014

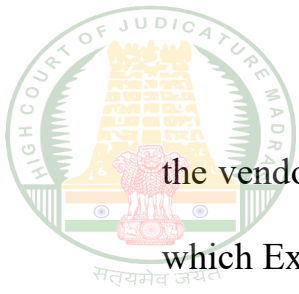
1. *Whether the suit properties are in the possession and enjoyment of the plaintiff?*

2. *Whether it is true that Defendants 2 and 3 never entered upon the suit property and did not in any manner interfere with the plaintiff's peaceful possession and enjoyment of the same?*

3. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in the suit?*

4. *To what other reliefs, if any, are the parties entitled?*

7. Both the suits have been jointly tried and on the side of the agreement holder, PW1 to 5 were examined and Exs.P1 to P6 were marked. On the side of



the vendor, DW1 to 3 were examined and Ex.D1 to 6 were marked. Apart from which Exs.C1 to C4 were marked through DW3.

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8. Dealing with the issues framed in respect of O.S.No.43 of 2012, Trial Court had given a categorical finding that the agreement holder was ready and willing to perform his part of contract and that only the vendor had avoided in performing his part of contract and also that the sale agreement under Ex.B1 had been validly entered to between the parties and held that the agreement holder is entitled for the relief of specific performance on a condition that he deposits the balance sale consideration.

9. In respect of the bare injunction suit filed in O.S.No.45 of 2014, on the strength of Ex.A5 and deposition of PW4, had given a finding that the vendor was not in possession of the suit property and there was no interference by the other third parties. In respect of the suit property and refused to grant permanent injunction as prayed for challenging the judgment and decrees of the Court below, the vendor had preferred these instant appeal suits.

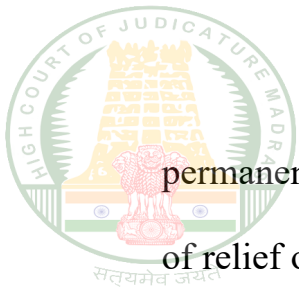
10. Ms.V.Srimathi, learned counsel for the appellant would submit that the property do not stand in the name of the appellant as on the date of the alleged agreement of sale and he had only purchased the property much after the alleged agreement of sale. Therefore, according to her, there could be no



sale agreement. She would further submit that the petitioner had examined DW3, an independent Forensic expert who had marked Exs.C1 to C4 which has been disregarded by the Court on the reasoning that the said expert had not been appointed by the Court and had not verified the original documents. She would submit that when the presumption has been driven home by the vendor that Ex.A1 was a concocted document and the onus is on the agreement holder to substantiate that the agreement had been validly entered to between the parties.

11. She would further contest that if the possession has been handed over as claimed by the agreement holder, then the said agreement ought to have been an registered agreement and therefore, the suit itself could not have been instituted on the basis of the said unregistered agreement. In that context, she would rely upon the provisions of Section 17 of the Registration Act which requires registration of the said document. She would submit that the claim of possession being handed over is a farce, that too when the vendor do not have a title to the property on the date of agreement. She would submit that the Court below failed to frame an issue particularly with regard to possession of consequently issue with regard to maintaining the suit on the strength of such unregistered agreement.

12. She would submit that the Court having given a finding that the agreement holder had been put in possession for rejecting the claim of

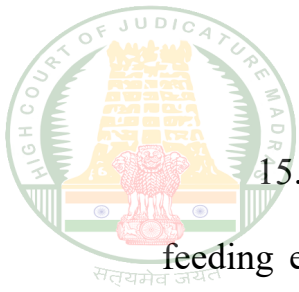


permanent injunction by the vendor, the Court ought to have refused the grant of relief of specific performance on the basis of the unregistered sale agreement.

Hence, she seeks indulgence of this Court.

13. Countering her arguments, Mr.J.Sudhakaran, learned counsel appearing for the first respondent/ agreement holder would submit that there was no error in the Trial Court rejecting the evidence of DW3, even though an independent witness as the said evidence related to a forensic examination of the agreement which admittedly was not a original and the same is also contrary to Order XVI Rule 9 CPC where such investigation could be made only by issuing Commissioner warrant as adumbrated therein.

14. He would submit that none of the original documents produced before the Court was sent for examination of an expert by the Court and therefore, unilateral appointment made by the vendor that too without any of the originals being subject for inspection of such expert would at any stretch of imagination hold the case of the vendor. He would further submit that even the vendor had represented that he is the owner of the property and therefore, the agreement holder had entered into an agreement of sale. The subsequent purchase of the property admittedly by the vendor would entitle the purchaser to protection of Section 43 of the Transfer of Property Act.



15. He would submit that the agreement holder by the principles of feeding estoppel claims a right to seeks execution of the sale agreement. He would further submit that on the date of the agreement, the possession was not handed over for it to be registered. But, only subsequently when payment under Ex.A3 was made, the property was handed over to the agreement holder. Therefore, there is no question of agreement being registered and hence, Section 17 cannot be pressed into service in the present case. He would further submit that having received various monies from the agreement holder, the vendor is attempting to unjustly enrich himself by holding over the property as well as the advance monies paid by the agreement holder. Hence, he seeks dismissal of the Appeal suits.

16. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

17. The issue that arises for consideration in the present Appeal suits are as follows:

(1) Whether the Court below was right in granting a judgment and decree of specific performance of the agreement under Ex.A1?

(2) Whether the Court below was right in refusing the injunction as prayed for by the vendor?



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18. The claims of the agreement holder is that under Ex.A1, an agreement of sale had been entered between himself and the vendor in respect of the Suit scheduled property for consideration of sum of Rs.14,00,000/-. Under Ex.A1, a sum of Rs.7,00,000/- had been paid as advance consideration. An endorsement under Ex.A2 evidencing payment of Rs.1,00,000/- of further consideration has been recorded. Similarly, under Ex.A3 a further sum of Rs.10,00,000/- is claimed to have been made. PW.1, 2, 3 & 5 had spoken about Exs.1, 2 & 3. PW1 is the agreement holder, PW2 is the witness to Ex.A1, PW3 and PW5 were witnesses to the endorsement to Exs.A2 & A3 and they have also admitted to be the scribe of such endorsements.

19. It is the claim of the vendor that on the date of execution of Ex.A1, he had not owned the property and had only subsequently purchased the suit scheduled property under Ex.B4, which is a much posterior document to Ex.A1. In that regard, no reasons have been attributed by PW1, who is the agreement holder as to the reasons for entering into Ex.A1 when the vendor do not have any title over the suit scheduled property on the date of the execution of Ex.A1.

20. A conjoined reading of Exs.A1, 2 & 3 would indicate that a sum of Rs.18,00,000/- has been claimed to have been passed from the agreement holder to the vendor. Even though under Ex.A1, the actual value of the property would



be determined on the extent that had ascertained by a Surveyor appointed in that regard at the time of execution of the sale deed. The payment of higher consideration which is claimed to be in part over and above the actual consideration is not supported by any materials. There is also no pleadings or evidence that on the date of endorsement made under Ex.A3, the property had been valued at a higher amount as claimed in the plaint for which a higher part consideration had been parted with by the agreement holder.

21. Coupled with the facts that the vendor was not holding the title of the suit scheduled property on the date of execution of Ex.A1 and that there is no explanation for making a higher payment as part consideration creates a suspicion of Ex.A1 coming into being as validly executed document by the vendor. These aspects have not been considered by the Court in it's proper perspective and has erroneously exercised the discretion in granting of specific performance.

ISSUE (2):-

22. On the date of execution of Ex.A3, it is the claim of the agreement holder that the possession of the suit scheduled property had been handed over to him. PW5 who admits himself to be the scribe had witnessed Ex.A3 had admitted in his cross that it was informed by the vendor possession had been handed over on that date. This would mean that PW5 had not witnessed the



handing over of physical possession of the suit scheduled property to the agreement holder. PW4 have been examined to drive home the theory of developments being carried in the property at the instance of the agreement holder.

23. It is to be noted that PW4 had supported Ex.A5 series which was a bill issued for levelling the land at the instance of the agreement holder. Ex.A5 series is in the month of December 2010. Under Ex.A4, the agreement holder had issued a notice to the vendor calling upon him to execute the sale deed pursuant to Ex.A1. In reply under Ex.B1 to Ex.A4, the vendor had sent a reply refuting Ex.A1 and the endorsements made under Ex.A2 & A3. It is to be noted that Exs.A4 & B1 are dated in the month of October 2010. When that being so, the alleged relationship between the parties had become litigious in the month of October 2019. Even though under Ex.A1, part consideration have been claimed by the agreement holder there has been no statements with regard to the possession as being handed over to the agreement holder. Ex.A5 series which came into being subsequent to the exchange of notices creates a suspicion over the Ex.A5 series. A perusal of Ex.A5 series particularly the bills dated 05.12.2010 and 06.12.2010 would only confirm suspicions as the working site has been noted to be the suit locality when the suit itself has been initiated by the agreement holder only on 26.04.2012.



25. On the aforesaid facts, this Court is of the conclusive view that Ex.A5 series had been created for the purpose of the suit.

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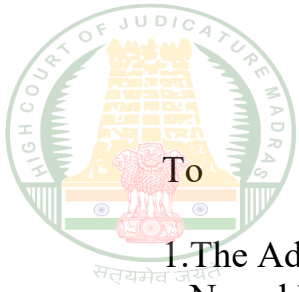
26. For the aforesaid reasons, this Court holds that the findings for refusing to grant the injunction is on the premises that there has been a transfer of possession is wholly ill founded and is liable to be interfered with.

27. For the aforesaid reasons, the impugned judgment and decree on the file of Additional District Judge, Namakkal dismissing the O.S.No.45 of 2012 and allowing O.S.No.43 of 2012 are set aside and as a sequel, O.S.No.43 of 2012 stands dismissed and O.S.No.45 of 2014 stands decreed as prayed for. Accordingly, the Appeal suits stands allowed. Consequently, connected miscellaneous petitions are also closed. However, there shall be no order as to costs.

08.07.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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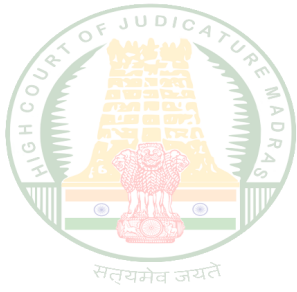


To

1. The Additional District Court,
Namakkal.

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2. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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AS No. 1111 of 2



K.KUMARESH BABU, J.

GBA

A Pre-delivery judgement made in
AS Nos. 1111 & 1112 of 2015
and M.P.Nos.1 & 1 of 2015

08.07.2026