



WEB COPY



S.A. No. 939 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2026
PRONOUNCED ON : 13.08.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 939 of 2014

and

M.P. No. 1 of 2014

Pandiyan
S/o Sellamuthu Mooper, Sembakurichi Village,
Chinnasalem Tk, Villupuram Dist

..Appellant(s)

Vs.

1.Mathiyalagan
S/o Kandasamy, Sathanatham Village, Kunnam
Tk, Perambalur District

2.Balusamy (died)
Ayyakannu Padayachi Sembakurichi Village,
Chinnasalem Tk, Villupuram District.

3.Mahendiran
S/o. Late Balusamy, Ayyakanu Padayachi,
Sembakurichi Village, Chinnasalem T.K,
Villupuram Dt.

[R2 died, R3 is brought on record as LR of the
deceased R2 vide court order dated 12/11/2025
made in CMP Nos.15267,15270 and 15275 of
2025 in S.A.No.939 of 2014]

..Respondent(s)



S.A. No. 939 of 2014

WEB

PRAYER in S.A.No.939 of 2014: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree dated 07.02.2014 made in A.S.No.2 of 2013 on the file of the Subordinate Judge, Kallakurichi and confirming the judgment and decree dated 07.09.2012 made in O.S.No.76 of 2009 on the file of the Additional District Munsif, Kallakurichi and thereby allow the above second appeal.

PRAYER IN M.P.NO.1 of 2014: To grant an order of interim stay of the operation of the decree and judgment made in A.S.No.2 of 2013 dated 07.02.2014 on the file of the Subordinate Judge, Kallakurichi, allowing the appeal and setting aside the judgment and decree dated 07.09.2012 made in O.S.No.76 of 2009 on the file of the Additional District Munsif, Kallakurichi pending disposal of the above second appeal.

For Appellant(s): Mr. V.R. Kamalanathan

For Respondent(s): Mr.S.V.Karthikeyan
For Mr.K.Manikandan

JUDGMENT

The plaintiff has filed this Second Appeal against the judgment and decree dated 07.02.2014, passed in A.S.No.2 of 2013 on the file of the Subordinate Judge, Kallakurichi, whereby the First Appellate Court reversed the



S.A. No. 939 of 2014

judgment and decree dated 07.09.2012, passed in O.S.No.76 of 2009 on the file of Additional District Munsif court Judge , Kallakurichi, by declining the relief of specific performance in favour of the plaintiff, and granted the alternative relief of refund of the advance amount of Rs.40,000/- with interest at 12% per annum.

2. The plaintiff is the appellant, and the 1st and 2nd respondents are defendants 1 and 2. During the pendency of the second appeal, the 2nd respondent died, and his legal representative was brought on record as the 3rd respondent. For convenience, the parties are referred to by their respective ranks in the suit.

3. Plaintiff's case: The plaintiff pleaded that the 1st defendant was the owner of the suit property and that on 26.12.2008 he executed the registered agreement of sale, agreeing to sell the property to the plaintiff for a total consideration of Rs.50,000/-. According to the plaintiff, Rs.40,000/- was paid and received on the date of the agreement, and the balance of Rs.10,000/- was to be paid within 45 days, with the stipulated date being 10.02.2009.



4. The plaintiff requested the 1st defendant to execute the sale deed and offered to pay the balance of the sale price. Despite repeated requests, the plaintiff issued a lawyer's notice dated 23.01.2009. Upon receipt of the notice, the 1st defendant replied on 29.01.2009 with false details.

5. The plaintiff pleaded that the 1st defendant had sold the suit property to the 2nd defendant on 23.01.2009, and averred that the said sale was invalid and illegal; hence, the decree is binding on the 2nd defendant. The plaintiff is always ready and willing to perform; hence, he prayed for specific performance and other relief.

6. The 1st defendant resisted the suit by filing a written statement, which was adopted by the second defendant, contending that the suit was liable to be dismissed. He stated that he had purchased the suit property from the 2nd defendant under a sale deed dated 10.01.2006. Subsequently, he reconveyed it to the 2nd defendant under a sale deed dated 30.09.2008 for a consideration of Rs. 1,50,000/-, and hence the property now belongs to the 2nd defendant. The 1st defendant denied executing the alleged agreement of sale and contended that he had only borrowed Rs.40,000/- from the plaintiff, and that the document in question was executed merely as security for the said loan.



WEB COPY

7. The 1st defendant further contended that the plaintiff is engaged in money-lending and, in similar transactions, used to obtain promissory notes, mortgage deeds and agreements of sale as security for loans. Reference was also made to similar transactions involving one Kathavarayan and others. According to the 1st defendant, the present document was likewise executed solely in connection with a loan transaction and was never intended to be acted upon as an agreement of sale. Despite his willingness, as stated in the reply notice, to repay Rs.40,000/- with interest, the plaintiff instituted the suit with ulterior motives to grab the suit property. Hence, the 1st defendant prayed for dismissal of the suit.

8. Before the trial court , On the side of the plaintiff, the plaintiff was examined as P.W.1; Govindan, an attesting witness to Ex.A1, was examined as P.W.2; and Rajendiran, the scribe of Ex.A1, was examined as P.W.3. Ex.A1 to Ex.A7 were marked. Ex.A1 is the registered agreement of sale dated 26.12.2008; Ex.A2 is the plaintiff's legal notice dated 23.01.2009; Ex.A3 is the acknowledgment receipt ; Ex.A4 is the reply notice of the 1st defendant dated 29.01.2009; Ex.A5 to Ex.A7 are sale deeds. On the side of the defendants, the 1st defendant was examined as D.W.1; Ramasamy, an attesting witness to



S.A. No. 939 of 2014

Ex.A1, was examined as D.W.2; and Kathavarayan was examined as D.W.3.

Ex.B1 to Ex.B9 were marked. Ex.B1 to Ex.B4 relate to earlier transactions between the plaintiff and D.W.3 Kathavarayan; Ex.B5 is the unregistered agreement dated 30.09.2008 between the 1st and 2nd defendants; Ex.B6 is the registered sale deed dated 23.01.2009 executed in favour of the 2nd defendant; Ex.B7 to Ex.B9 are the patta and kist receipt in the name of the 2nd defendant.

9. The Trial Court accepted Ex.A1 on its apparent tenor, rejected the plea that it was merely security for a loan, found the plaintiff ready and willing, and decreed specific performance. It treated Exs.B1 to B4 as collateral transactions relating to D.W.3 and did not consider them sufficient to displace the registered Ex.A1. While granting relief, the Trial Court expressly recorded that the plaintiff had already deposited the balance sale consideration of Rs.10,000/- into Court.

10. Aggrieved by the judgment and decree of the trial Court, the defendants preferred the first appeal. On appreciating the oral and documentary evidence, the First Appellate Court admitted the execution of Ex.A1 but held that Ex.A1 was not intended to be acted upon as an agreement of sale, but was executed only in connection with a loan transaction. It relied on evidence relating to the



S.A. No. 939 of 2014

plaintiff's earlier money dealings, particularly Exs.B1 to B4 and the testimony of D.W.3, and also took note of Ex.B6 concerning the suit property. The First Appellate Court further found that the plaintiff had not satisfactorily established his continuous readiness and willingness to perform his part of the alleged agreement. Accordingly, the appeal was allowed, the judgment and decree of the trial Court were set aside, and the suit for specific performance was dismissed. However, since the 1st defendant had admittedly received Rs.40,000/- from the plaintiff, he was directed to repay the said amount with interest at 12% per annum from the date of the plaint till the date of the decree, and at 6% per annum thereafter till realisation.

11. Aggrieved by the judgment and decree of the First Appellate Court, the plaintiff filed a second appeal. The second appeal is admitted on the following Substantial Question of Law for consideration:

(1) When there is a registered Agreement under Ex.A.1 dated 26.12.2008 entered between the plaintiff and the defendant to sell the suit land in favour of the plaintiff, after decreeing the suit by the trial Court, whether it is open to the Appellate Court to reverse the finding by reaching a conclusion that the transaction was only a loan transaction in the absence of any denial from the 1st respondent in execution of the Sale agreement?



(2) Whether the lower appellate Court was justified in rejecting the relief of specific performance, though it was proved that as the appellant was ready and willing to execute the Sale Deed, as per Section 16 of the Specific Relief Act, more particularly, based on the Registered Agreement to sell in terms of Sections 91 and 92 of the Indian Evidence Act?

(3) Whether the Lower Appellate Court has found that the respondent, having accepted the execution of Sale Agreement Ex.A.1, is not entitled to dispute the averments of the document by his inconsistent and self-contradictory version?

12. The learned counsel for the appellant/plaintiff submitted that Ex.A1, the agreement of sale, was executed on 26.12.2008, with completion of the transaction stipulated by 10.02.2009. Before the stipulated period expired, the plaintiff issued a legal notice to the 1st defendant on 23.01.2009, calling upon him to perform his part of the contract. The 1st defendant replied on 29.01.2009, and thereafter the plaintiff instituted O.S.No.76 of 2009 on 02.02.2009. It was further submitted that, notwithstanding the subsistence of Ex.A1, the 1st defendant executed Ex.B6, a sale deed in favour of the 2nd defendant, on 23.01.2009, and that defendants 1 and 2 are close relatives. According to the



S.A. No. 939 of 2014

learned counsel, the prompt issuance of the legal notice and the institution of the suit clearly establish the plaintiff's continuous readiness and willingness to perform his part of the contract.

13. The learned counsel further submitted that the Trial Court had rightly taken note of the 1st defendant's admission that he had signed Ex.A1 and had concluded that he was fully aware that the document he executed was an agreement of sale. Accordingly, the Trial Court was justified in granting the relief of specific performance. It was also contended that the subsequent sale under Ex.B6 in favour of the 2nd defendant is hit by section 54 of the Transfer of Property Act, 1882.

14. According to the learned counsel, once the execution of Ex.A1 is admitted, its recitals and contents carry due evidentiary weight. If the document had been intended merely as security for a loan, that intention ought to have been reflected in the document itself. He also pointed out that Ex.A1 contains specific terms governing performance and default, which, in his view, clearly indicate that it was intended to operate as an agreement of sale rather than as a security document.



15. Placing reliance on ***D. Ananda Moorthy v. P. Chandrakala, (2010) 5***

MLJ 899, the learned counsel submitted that the plea that an agreement of sale was executed merely as security for a loan must be established by the defendant on acceptable evidence. Referring to Sections 91 and 92 of the Indian Evidence Act, he further contended that where the terms of a transaction are reduced to writing in clear and unequivocal terms, oral evidence cannot ordinarily be permitted to contradict or vary those terms. Reliance was also placed on ***M. Perumal and Others v. K. Chowdri Kesavan, MANU/TN/1547/2022***, for the proposition that the production of the written instrument proves its terms, and that where the defendant asserts that it was executed for a purpose different from that appearing on its face, the burden lies upon the defendant to establish such plea. The learned counsel also relied upon ***Ponnusamy v. Govindan and Others, 2022 (2) CTC 770***, in support of the contention that Section 92 bars oral evidence intended to contradict the terms of a written contract or disposition of property. On these grounds, it was submitted that the evidence on record establishes the genuineness and intended character of Ex.A1 as an agreement of sale, and that the plaintiff is therefore entitled to a decree for specific performance.



16. The learned counsel for the respondents/defendants submitted that, although the execution of Ex.A1 is admitted, the document was never intended to operate as an agreement of sale. According to him, the suit property is a vacant site, and the 1st defendant had merely borrowed Rs. 40,000/- from the plaintiff. Immediately upon receipt of the Ex.A2 legal notice dated 23.01.2009, the 1st defendant replied, specifically asserting that Ex.A1 was executed only in connection with the loan transaction and not with any intention to sell the property. It was further submitted that the property was worth about Rs. 1,50,000/- and that the defence witnesses testified to the circumstances surrounding the transaction. The entire defence regarding the loan transaction and the absence of any intention to sell the property had been specifically pleaded in the written statement.

17. The learned counsel further submitted that Exs.B1 to B4 were marked to establish the plaintiff's prior money-lending transactions and to show that, as a financier, the plaintiff used to advance money and obtain sale-related documents as security. On consideration of the pleadings and the oral and documentary evidence, the First Appellate Court rightly found that Ex.A1 was merely a document executed in connection with a loan transaction and was not an agreement of sale intended to convey the suit property. According to the learned



S.A. No. 939 of 2014

counsel, whether a document styled as an agreement of sale was genuinely intended to effect a sale or was executed merely as security for a loan is a question to be determined from the pleadings, evidence and surrounding circumstances, not merely from the nomenclature of the document.

18. It was also submitted that the plaintiff failed to plead and prove continuous readiness and willingness, as required to obtain the equitable relief of specific performance. According to the learned counsel, mere issuance of a legal notice may furnish a cause of action for filing the suit, but would not, by itself, establish continuous readiness and willingness throughout the relevant period. Reliance was placed on *N.P. Thirugnanam (Dead) by LRs. v. Dr R. Jagan Mohan Rao and Others*, (1995) 5 SCC 115, for the proposition that the plaintiff must continuously establish readiness and willingness to perform his part of the contract. Reliance was also placed on *Umabai and Another v. Nilkanth Dhondiba Chavan (Dead) by LRs.*, (2005) 6 SCC 243, for the proposition that the plaintiff seeking specific performance must plead and prove compliance with the requirements of Section 16(c) of the Specific Relief Act.

19. The learned counsel further submitted that, while declining the relief of specific performance, the First Appellate Court granted alternative relief by



S.A. No. 939 of 2014

directing the repayment of Rs.40,000/- with interest, and that this direction has already been complied by the 1st defendant. On these grounds, he prayed for the dismissal of the Second Appeal and for confirmation of the judgment and decree of the First Appellate Court.

Substantial Question of Law No 1:

20. The first appellate Court reversed the judgment and decree of the trial Court and declined to grant the relief of specific performance in favour of the appellant/plaintiff. As the final Court of fact, the first appellate Court is entitled to reappreciate the entire oral and documentary evidence and, for reasons recorded by it, to reverse the findings of the trial Court. Such findings of fact would warrant interference on a second appeal only if they are perverse or based on an erroneous application of law.

21. In the present case, the first appellate Court reversed the finding of the trial Court upon coming to the conclusion that Ex.A1, though styled and registered as an agreement of sale, was not intended by the parties to be acted upon as an agreement for sale, but was executed only as security for a loan transaction.



S.A. No. 939 of 2014

22. In arriving at such a conclusion, the first appellate Court took into account not only the contents of Ex.A1 but also the surrounding circumstances and the conduct of the parties. It referred to earlier transactions entered into by the plaintiff with other persons, in which agreements of sale had been executed, followed by reconveyance of the properties. Those transactions were considered relevant in examining the true nature of the transaction under Ex.A1.

23. Yet another circumstance noted by the first appellate Court is the consideration stated in Ex.A1. The plaintiff himself admitted in his evidence that the value of the suit property on the date of Ex.A1 was about Rs.60,000/-, whereas the sale consideration stated in Ex.A1 was only Rs.50,000/-. On the defendants' side, it was contended that the property was worth about Rs. 1,50,000/- at the relevant time. Even on the plaintiff's own admission, the consideration stipulated under Ex.A1 was below the then prevailing value of the property. Though inadequacy of consideration, by itself, may not be sufficient to invalidate an agreement of sale, it is certainly a circumstance which can be considered along with the other evidence when determining the true nature and intention of the transaction.



24. More importantly, the first appellate Court also appreciated the evidence of P.W.2, who deposed that the first defendant had borrowed Rs. 40,000/- from the plaintiff. The said evidence, read alongside the other attendant circumstances and the plaintiff's previous transactions, was relied upon by the first appellate Court to conclude that Ex.A1 was intended only as security for the money advanced and was not a genuine agreement intended to culminate in a sale.

25. The mere fact that Ex.A1 is a registered instrument does not, by itself, compel the Court to grant a decree for specific performance. Registration attests to the document's formal execution and lends assurance of its authenticity; nevertheless, the Court is not precluded from examining the evidence and surrounding circumstances to ascertain whether the parties intended the document to operate as an agreement for sale or whether it was executed merely as security for a loan transaction.

26. In this regard, the recent decision of the Hon'ble Supreme Court in **Muddam Raju Yadav v. B. Raja Shanker (D) through LRs., 2026 INSC 214**, is apposite. The Hon'ble Supreme Court considered a case in which the trial



S.A. No. 939 of 2014

court had decreed a suit for specific performance on the basis of an agreement of sale. However, on appreciation of the surrounding circumstances, the High Court found that the agreement was a sham and nominal document executed as security for a loan transaction. The Hon'ble Supreme Court upheld the judgment of the High Court. It reiterated that the parties' conduct and the surrounding circumstances are relevant in determining the real nature of the transaction, and that a document never genuinely intended to operate as an agreement of sale cannot be specifically enforced.

27. The present suit admittedly relates to a transaction entered into before the amendment of the Specific Relief Act, 1963, by Act 18 of 2018. Under the law governing the transaction, the relief of specific performance was discretionary, and the Court was required to exercise that discretion judicially, having regard to the facts and circumstances of the case. Once the first appellate Court, upon reappreciation of the evidence, reached the factual conclusion that Ex.A1 was not intended to be acted upon as an agreement for sale but was executed only as security for a loan transaction, the plaintiff cannot claim specific performance merely on the ground that Ex.A1 is a registered document.



S.A. No. 939 of 2014

28. The finding as recorded by the first appellate Court is based on the oral and documentary evidence and the attendant circumstances. It cannot be characterised as perverse or as suffering from any legal infirmity that would warrant interference on appeal.

29. Accordingly, it is held that the first appellate Court was justified in reversing the trial Court's decree for specific performance, notwithstanding the registration of Ex. A1. The Substantial Question of Law No. 1 is answered against the appellant/plaintiff.

Substantial Question of Law No.2

30. With respect to transactions governed by the Specific Relief Act before its amendment, the relief was equitable and discretionary. Even where the agreement and the plaintiff's readiness and willingness were proved, the Court could refuse specific performance if the surrounding circumstances rendered enforcement inequitable.

31. In the present case, the execution of Ex.A.1 was not disputed. However, the first respondent's defence was that, although the document was expressed as an agreement of sale, it was executed solely as security for a loan. The Lower



S.A. No. 939 of 2014

Appellate Court, being the final Court of fact, examined the entire oral and documentary evidence and concluded that the parties' real intention was not to effect a sale but to secure repayment of a loan.

32. Sections 91 and 92 of the Indian Evidence Act, 1872 do not prevent the Court from examining evidence of the transaction's true nature and surrounding circumstances. Section 91 requires the terms of a written contract to be proved by producing the document itself. Section 92 ordinarily prohibits oral evidence from being adduced to contradict, vary, add to, or subtract from those written terms. However, it does not prevent a party from establishing that the document was never intended to operate according to its apparent tenor, or that it was executed only as security for another transaction.

33. The mere fact that Ex.A.1 is a registered document does not automatically entitle the claimant to specific performance. Registration proves that the document was formally executed and registered. However, it does not conclusively establish that the parties intended an outright sale, nor does it necessarily require the equitable relief of specific performance.



S.A. No. 939 of 2014

34. Therefore, notwithstanding the plaintiff's readiness and willingness, the Lower Appellate Court was entitled to refuse specific performance after finding that Ex.A.1 was intended only as security for a loan and that enforcing it as an agreement of sale would confer an unfair advantage on the plaintiff. That finding is based on an appreciation of the evidence and surrounding circumstances and does not suffer from any perversity or error of law.

35. Accordingly, Substantial Question of Law No. 2 is answered against the appellant/plaintiff.

Substantial Question of Law No.3

36. The admission of execution of Ex.A.1 does not necessarily amount to an admission that the transaction was intended to be treated as an agreement of sale. The 1st defendant did not deny signing or executing the document; his consistent defence was that Ex.A.1 was obtained solely as security for a loan and was never intended to result in the sale of the property.



37. Therefore, the 1st defendant's acceptance of the execution of Ex.A.1 and his explanation of the underlying transaction's true nature are not, by themselves, mutually contradictory. The former concerns the formal execution of the document, whereas the latter concerns the parties' intention and the purpose for which it was executed.

38. The Lower Appellate Court considered this defence in light of the surrounding circumstances, including the inadequacy of the consideration, the plaintiff's previous transactions of a similar nature, and the conduct of the parties. On independent re-evaluation of the evidence, it concluded that Ex.A.1 was intended solely as security for a loan. Merely describing the 1st defendant's version as inconsistent or self-contradictory would not justify interference with that factual finding unless it is shown to be perverse or unsupported by evidence.

39. Further, an admission of execution does not prevent the executant from showing that the document was not intended to operate according to its apparent tenor. The document's evidentiary effect and enforceability must be determined from the entire evidence, not solely from the admission of the signature or execution. Accordingly, the 1st defendant was not precluded, merely by his admission of execution, from explaining the true nature of the transaction.



S.A. No. 939 of 2014

Substantial Question of Law No.3 is therefore answered against the appellant/plaintiff.

40. In view of the answers to all three substantial questions of law, the Second Appeal is dismissed. The judgment and decree dated 07.02.2014 in A.S.No.2 of 2013, on the file of the Subordinate Court, Kallakurichi, are confirmed. No order as to costs. Consequently, the connected miscellaneous petition, if any, is ordered to be closed.

13.08.2026

ay

Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No



WEB COPY



S.A. No. 939 of 2014

To

1. The Subordinate Judge, Kallakurichi
2. The Additional District Munsif, Kallakurichi
3. The Section Officer,
VR Section,
High Court, Chennai.



WEB COPY



S.A. No. 939 of 2014

DR. A.D. MARIA CLETE, J

ay

**PRE DELIVERY JUDGMENT
S.A. No.939 of 2014**

13.08.2026

Page 23 of 23