



WEB COPY

SA No. 461 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**S.A.No. 461 of 2026
and
C.M.P.No.16823 of 2026**

1. Vasanthamani

W/o. Late. Murugesu Mudaliyar, Door No.9/152J,
K.K.Nagar, Mettupalayam, Town and Taluk,
Coimbatore 641 301.

2. Amudha

W/o. Late. Rangaraj, Door No.9/152J, K.K.Nagar,
Mettupalayam, Town and Taluk, Coimbatore 641 301.

3. Karthick

S/o. Late. Rangaraj, Door No.9/152J, K.K.Nagar,
Mettupalayam, Town and Taluk, Coimbatore 641 301.

4. Priyadharshini

D/o. Late. Rangaraj, Door No.9/152J, K.K.Nagar,
Mettupalayam, Town and Taluk, Coimbatore 641 301.

5. Selvi Priyanka

D/o. Late. Rangaraj, Door No.9/152J, K.K.Nagar,
Mettupalayam, Town and Taluk, Coimbatore 641 301.

Appellant(s)

Vs

1. Arunkumar

S/o. Late. Arumugam, Residing at Door No.46C,
Annur Road, Mettupalayam, Town and Taluk,
Coimbatore District.

Respondent(s)

PRAYER: Appeal filed under Section 100 of CPC, praying to set aside the Judgment and Decree dated 03.02.2026 made in AS No.40 of 2023 on the file of the court of the I Additional District Judge, Coimbatore confirming the Judgment and Decree dated 31.10.2022 made in OS No.66 of 2021 (Old OS



No.736 of 2011) on the file of the Court of the Subordinate Judge, Mettupalayam, Coimbatore District and allow the above Second Appeal with cost and thus render justice.

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For Appellant(s): Mr.B.Srinivasan

For Respondent(s): Mr.C.R.Prasanan

JUDGMENT

The defendants are the appellants in this second appeal. They are aggrieved by the dismissal of their regular appeal by the learned I Additional District Judge, Coimbatore, and thereby confirming the judgment and decree for specific performance granted by the learned Subordinate Judge, Mettupalayam, Coimbatore, in O.S.No.66 of 2021 (Old O.S.No.736 of 2011).

2.For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3.O.S.No.736 of 2011 is a suit for specific performance of an agreement of sale dated 26.03.2011, entered into between the plaintiff and one M.Rangaraj. In terms of the said agreement, the original defendant, the said M.Rangaraj, agreed to alienate the property for a sum of Rs.1,17,000/- per cent. The extent of the property sold under the agreement was 7 cents, converting to 3,360 sq.ft. It is not in dispute that the plaintiff paid advance amount of Rs.2,00,000/-, leaving balance of Rs.7,01,852/-to be paid to the defendant. The period for conversion of the sale agreement into sale deed was one month. In default of the



completion of the transaction by the agreement purchaser, the agreement vendor was entitled to forfeit the advance amount of Rs.2,00,000/-.

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4.The parties did not enter into the sale deed before 25.04.2011. The plaintiff issued the suit notice on 26.07.2011. He claimed that he was and is ready and willing to convert the sale agreement into sale deed and it was the agreement vendor, who was dilly dally and was not doing the needful. Notice was served on the defendant and a reply was issued by the agreement vendor, stating that the agreement purchaser was not ready and willing to purchase the property on account of the fact that as the value of the property had come down, he had lost interest in the transaction. He claimed, on account of circumstances such as the vegetable market shifting near the property, the value of the property had gone up and therefore, the plaintiff renewed his interest in the agreement dated 26.03.2011.

5.As the demand of the plaintiff has not been favourably responded to by the defendant, they have presented a suit before the learned Principal District Judge, Coimbatore, on 12.09.2011. The learned Principal District Judge, Coimbatore, returned the plaint for presentation before the proper Court on the very same day. Two days thereafter, the plaintiff represented the suit before the Sub Court at Coimbatore on 14.09.2011. Summons were served on the



defendant. The defendant presented a written statement more or less on the same lines as per the reply notice dated 09.08.2011.

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6. Along with the suit, the plaintiff moved an application for interim injunction restraining the defendant from alienating the property in favour of any third party. This was in I.A.No.677 of 2011. The learned Subordinate Judge found a *prima facie* case in favour of the plaintiff and granted an *ex parte* injunction as prayed for. In addition, he directed the plaintiff to deposit the balance sale consideration to the credit of the suit. However, the Court did not issue the schedule of lodgement, despite passing this order for deposit on 28.09.2011.

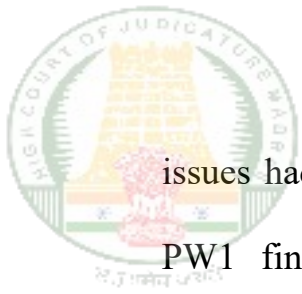
7. I.A.No.677 of 2011 suffered some adjournments and finally, on 30.01.2012, the learned Principal Subordinate Judge, Coimbatore, made the injunction absolute. Even then, the schedule of lodgement had not been issued. It is on record that the plaintiff had filed the schedule of lodgement seeking permission of the Court to deposit the amount on 19.09.2011 itself. It was only on 03.08.2012 that the Court directed the amount to be deposited. It is not in dispute that this amount was finally deposited only after the order was passed on 14.09.2011. Thereafter, issues were framed and the parties were pushed to trial.



8. Before the Trial Court, the plaintiff entered the witness box and deposed himself as PW1 and marked documents as Ex.A1 to Ex.A4. The matter was adjourned for cross examination of the plaintiff. In the meantime, on account of the creation of a Camp Court at Mettupalayam, the Principal Subordinate Judge, Coimbatore directed transfer of the suit from his file to the file of III Additional Sub Court, Coimbatore, which had the territorial jurisdiction to deal with the matter.

9. Soon after the transfer order was passed, the sole defendant passed away. Consequently, the plaintiff took an application to bring on record the legal representatives of the deceased sole defendant. This application was filed on 29.04.2017. It came to be allowed by the learned Subordinate Judge, Mettupalayam, on 22.02.2022. The learned Subordinate Judge, Mettupalayam, had received the bundle on 09.08.2021 from the file of the III Additional Sub Court, Coimbatore. The learned Judge permitted the amendment of the plaint in I.A.No.3 of 2022 on 14.06.2022 and received the amended plaint copy on 07.07.2022. Written statement was filed by the 4th defendant, one of the legal heirs of the deceased sole defendant and it was adopted by the other legal heirs.

10. The learned Judge, on 02.08.2022 adjourned the matter for framing of issues. On 03.08.2022, he framed the issues, but struck it out on the ground that



issues had already been framed and listed the matter for cross examination of PW1 finally to 10.08.2022. On 10.08.2022, he adjourned the matter to 17.08.2022. On 17.08.2022, he closed the evidence of PW1 as no cross examination had taken place and adjourned the matter to 24.08.2022 for evidence to be presented by the defendants. On 24.08.2022, finding that the suit had been pending for more than 10 years, he closed the evidence of the defendants and posted the matter for arguments on 13.09.2022. On 14.09.2022, the plaintiff moved an application in I.A.No.4 of 2022 to amend the plaint seeking return of advance amount. That application came to be allowed on 20.09.2022. The amended plaint was filed on 26.09.2022. Thereafter, granting an adjournment for filing additional written statement, the learned Judge proceeded to pronounce the judgment in the suit and decreed the suit as prayed for on 31.10.2022.

11. Aggrieved by the said judgment and decree, the defendants preferred a regular appeal before the learned Principal District Judge, Coimbatore. This was received as A.S.No.40 of 2023. It was thereafter, bound over to the I Additional District Judge, Coimbatore, for disposal.

12. The learned First Appellate Judge, by judgment dated 03.02.2026, dismissed the appeal confirming the judgment and decree of the Court below.



13. Aggrieved by the judgment and decree dated 03.02.2026, the present second appeal.

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14. When the matter came up for admission, finding that the issue involved in this appeal is on a very narrow compass, I issued notice in this appeal.

15. Mr. B. Srinivasan has entered appearance for the appellants / defendants. Mr. C. R. Prasanan has entered appearance for the respondent / plaintiff.

16. As a plea had been taken by the appellants that no opportunity had been granted to the defendant and also since he pleaded that the order passed in I.A.No.677 of 2011 has not been complied within the time fixed by the Court, entire records were called for from the file of the Courts below.

17. Records have been received and the parties have perused the records. This Second Appeal was heard on the following substantial questions of law:-

(i) Whether the Trial Court was correct in passing a judgment and decree, on the merits of the suit, when there was no evidence on the side of the defendant?



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(ii) *Whether the plaintiff was ready and willing to convert the sale agreement into sale deed as urged by him in the suit?*

(iii) *Whether any hardship would be caused to the defendant, if the suit for specific performance would be decreed?*

18. Expanding the questions of law, it is the plea of the appellants that an injunction had been granted by the Trial Court on 14.09.2011 not to alienate the property. In addition, the Trial Court also directed the plaintiff to deposit the balance of sale consideration by 28.09.2011. Though the injunction was made absolute three months thereafter on 30.01.2012, the plaintiff did not deposit the amount and only much later on 27.08.2012, he deposited. This, according to him, shows that the plaintiff had not been ready and willing to convert the sale agreement to sale deed and it speaks volume about the readiness and willingness about the performance of the plaintiff.

19. Insofar as question of law No.(i) is concerned, he submitted that the defendant had not let in any evidence on their side. Therefore, the option that was left to the Court under explanation appended to Order XVII Rule 2, is to decree the suit *ex-parte*, instead, the Trial Court passed a judgment on merits which constrained the defendant to file a regular appeal.

20. Per contra, Mr.C.R.Prasanan appearing for the plaintiff argued that it is



not the mistake of the plaintiff that he had not deposited the amount in the Court. He submitted that for the purpose of depositing the amount into the Court, all that the plaintiff could have done before the Court is to file a schedule of lodgement and await orders of the Court to issue a challan. From the certified copy produced by the defendant in this appeal, it is seen that the order was passed on 14.09.2011 and the schedule was lodged on 19.09.2011. Despite filing a schedule of lodgement on that date, the Court did not pass any orders permitting the plaintiff to deposit the balance amount till 03.08.2012. Immediately, on receipt of the orders, the plaintiff had deposited the amount on 27.08.2012. He points out that this plea had already been raised by the defendants before the Lower Appellate Court and it had been rejected, as is clear from paragraph No.12.5 of the Lower Appellate Court's judgment.

21. With respect to second plea, Mr.C.R.Prasanan urged that the suit had been dragged on by the plaintiff, not only before the Principal Sub Court, Coimbatore, but also before the III Additional Sub Court at Coimbatore and finally by the time the suit went up before the Sub Court at Mettupalayam, more than a decade had lapsed from the date of the presentation. As the defendants were not co-operating with the Court, the Court did not have any other option other than to decree the suit on the basis of the available evidence. He states, it is not a case of the Court not granting opportunity to the defendant, but a case of



the defendants not availing the opportunity already granted to them. He states, more than a decade and half has passed from the date on which the plaintiff had entered into the agreement and he is still waiting before the Court for the purpose of obtaining a decree. On these grounds, he seeks dismissal of the second appeal.

22.I have carefully considered the submissions of both sides. I have gone through the records in detail.

23.The narration of the aforesaid facts would show that, on the date on which the Court took up the suit for passing the judgment, the only evidence available on record before the Court was the evidence of the plaintiff. The Trial Court, acting under the administrative direction of this Court, felt that a 10 year suit has to be given priority and in view of this, the Trial Court rightly did so. Yet, giving priority for a 10 year old suit does not mean the provisions of Code of Civil Procedure should be given a go by.

24.If a party does not co-operate for disposal, a Court under the Code of Civil Procedure is granted two modes of disposal. It can either proceed under Order IX of the Code and set the defendants *ex-parte*, in case they did not appear before the Court when the suit is called for hearing and when the



plaintiff is ready to proceed with the trial. The other alternative is found under Order XVII Rule 2 of Code. It is this provision which enables the Court to proceed and pronounce judgment on the merits of the suit as if such parties were present. Though the learned Trial Judge has not specifically stated that he is proceeding under Order XVII Rule 2, a perusal of the judgment indicates that he has invoked this power for the purpose of disposal.

25. Order XVII Rule 2 applies, when on the date the suit is adjourned for hearing, the party or parties fail to appear. This gives an option to the Court either to proceed under Order IX or pass such further orders as it thinks fit. Explanation appended to Order XVII Rule 2 clarifies the position. A Court is entitled to proceed and pronounce judgment on merits only when the evidence or a substantial portion of the evidence of any party has already been recorded and **such party** failed to appear on the date the suit is adjourned for hearing.

26. A combined reading of Order XVII Rule 2 with the explanation appended to it clarifies the position that if the Court wants to proceed with the merits of the case, as it has been done in the present situation, the Court should have before it a substantial portion of the evidence of the defendant or the completed evidence thereof. In case, no evidence had been let in by the defendant, the only option given to the Court by the Code is to proceed under



Order IX. Unfortunately, the Trial Judge has bypassed the provision of Order XVII Rule 2 explanation and has proceeded to the merits of the case and decreed the suit. If the suit is proceeded on its merits and the same is decreed, the defendant would not be in a position to file an application under Order IX Rule 13 of the Code to have the same set aside. This closed the way for the right of the defendant to appear before the Court and explain the reasons that prevented him to appear before the Court on the date the judgment was pronounced. If a suit is decreed on merits and an application under Order IX Rule 13 is not maintainable, the only option left to the defendant is to file an appeal. This is the course of action that has been adopted by the defendants / appellants in the present case. The Lower Appellate Court, despite having the records before it, has not considered the aspect that Order XVII Rule 2 and the explanation appended to it had not been followed by the learned Trial Judge.

27.I should recollect here that Code of Civil Procedure is a code of fairness. It is not a tool to punish the defendant for not appearing before the Court. Neither is it a Spanish Boot to fit the defendant with and punish him for not having appeared. Out of the two options available to the Court, the Court has to only proceed and pronounce the judgment *ex parte*, instead the Court had adopted the means of going into the merits of the case, pronouncing the judgment as if it is a contested decree.



28.As this Court has concluded that the judgment and decree are contrary to law, the substantial question of law No.I is answered in favour of the appellant.

29.Since this Court has come to the conclusion that the judgment is contrary to Order XVII Rule 2 explanation, necessarily the judgment of the Trial Court as well as the Lower Appellate Court would have to be set aside and the matter would have to be remitted back to the file of the Trial Court for consideration on merits.

30.Insofar as the other substantial questions of law are concerned, as the suit is being remanded, it is left open to the parties to agitate the said issue before the Trial Court.

31.It is the plea of Mr.C.R.Prasanan that the legal heirs of the sole defendant have taken a defence, which goes way beyond the written statement that had been filed by the original defendant. He is right. A legal representative merely represents the estate of the deceased defendant and it is not open to such a representative to raise a plea which had not been raised by the original defendant. Therefore, the learned Trial Judge shall ensure that the pleas that had been taken by the defendants 2 to 7 are within the four corners of the written



statement filed by the original defendant. Further, I should point out that irrespective of the defence taken by the defendant, it is the duty of the Court to apply Sections 16(1) and 20 of the Specific Relief Act, at the time of disposal of a suit for specific performance.

32. In the light of the above discussions, the Second Appeal succeeds. The judgment and decree of the I Additional District Judge, Coimbatore, in A.S.No.40 of 2023 dated 03.02.2026 in confirming the judgment and decree of the Subordinate Judge, Mettupalayam, Coimbatore District, in O.S.No.66 of 2021 dated 31.10.2022 are set aside.

33. The suit in O.S.No.66 of 2021 will stand restored on to the file of the learned Subordinate Judge, Mettupalayam, Coimbatore. This appeal being allowed and remanded, the Court fee that had been paid by the appellants in the present appeal will be refunded to the defendants / appellants.

34. The suit, having been presented on 14.09.2011, the learned Subordinate Judge, Mettupalayam, shall pay utmost attention to the suit and ensure that at least two effective hearings per week are given to the suit from the date the records are received by him from the Registry of this Court.



35. The learned Subordinate Judge, Mettupalayam, is requested to pronounce judgment in the suit within a period of four (4) months from the date on which the records are received by him. The stage on which the defendant were set *ex- parte* was PW1 cross. Therefore, there is no necessity for the Trial Court to start all over again. The Trial will start from the stage of cross examination of PW1. This direction does not mean the plaintiff is barred from bringing on record any additional evidence that is in his possession. Yet, the Court should ensure that on that basis the suit is not prolonged and the Court shall strictly adhere to the timeline granted in this judgment. Consequently, the connected miscellaneous petition is closed. No costs.

06-08-2026

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

NOTE: (i) The records in both the suit and the appeal has been received by this Court pursuant to the direction given on 09.07.2026. They shall be forthwith sent to the file of the learned Subordinate Judge, Mettupalayam, Coimbatore, so as to ensure the learned Subordinate Judge, Mettupalayam, complies the direction given by this Court.

(ii) Upload order copy on **12.08.2026**.

To

1. The I Additional District Judge, I Additional District Court, Coimbatore.
2. The Subordinate Judge, Sub Court, Mettupalayam, Coimbatore.



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V.LAKSHMINARAYANAN J.

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