

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
23.03.2026PRONOUNCED ON
08.07.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 309 of 2017
and CMP.Nos11649 of 2017 & 28014 of 2025Rajendiran
S/o. Perumal

..Appellant(s)

Vs

Ayyadurai
S/o. Rangapillai

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, to set aside the judgement and decree dated 23/11/2016 passed in OS.No.23/2012 passed by the Additional District Judge-III, Tirupattur and pass such further orders.

For Appellant(s): M/s.T.Balaji

For Respondent(s): Mr.A.Sundaravadhanan
For M/s.Karan and Uday**CMP.No.28014 of 2025**

Ayyadurai

... Petitioner

Vs

Rajendiran

... Respondents

PRAYER:- Civil Miscellaneous Petition filed to amend the plaint as appended in the petition filed hereunder which is subject matter in O.S.No.23 of 2012 on the file of the Additional District Court-III, Thirupattur and pass such other orders.



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AS No. 309 of 2



For Appellant(s):

Mr.A.Sundaravadhanan
for M/s.Karan and Uday

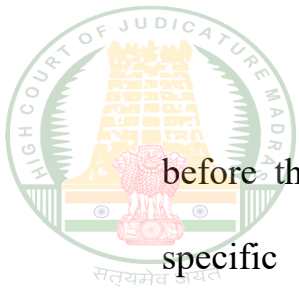
For Respondent(s):

M/s.T.Balaji

COMMON JUDGMENT

The present Appeal Suit has been filed challenging the judgment and decree dated 23.11.2016 passed in O.S.No. 23 of 2012 on the file of the learned III Additional District Court,Tirpattur.

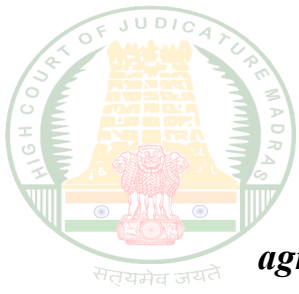
2. The case of the plaintiff, is that the suit property absolutely belonged to the defendant and that the defendant had agreed to sell the same to the plaintiff for a total sale consideration of Rs.16,00,000/-. Pursuant thereto, an agreement of sale dated 20.01.2011 was entered into between the parties, under which the defendant allegedly received a sum of Rs.15,00,000/- as advance and agreed to execute the sale deed on receipt of the balance sale consideration of Rs.1,00,000/-. According to the plaintiff, the period fixed for completion of the transaction was eleven months and he was always ready andwilling to perform his part of the contract by paying the balance consideration and obtaining the sale deed. It was further pleaded that, despite repeated requests, the defendant postponed execution of the sale deed, compelling the plaintiff to issue a legal notice dated 10.12.2011 calling upon the defendant to execute the sale deed. Since the defendant failed to comply with the demand and also failed to appear



before the Sub-Registrar as required, the plaintiff instituted the suit seeking specific performance of the agreement, permanent injunction restraining alienation of the suit property and costs.

3. The defendant, in the written statement, denied the plaint averments and contended that the suit agreement was not a genuine agreement of sale but was executed only as security for a loan transaction. According to the defendant, he had borrowed money from the plaintiff through the plaintiff's brother Arumugham for the purpose of construction of a house in the suit property and, as security for such loan, the impugned agreement dated 20.01.2011 had been executed. It was specifically pleaded that the defendant had no necessity to alienate the suit property, which was his only property, and that the plaintiff and his brother were habitually obtaining agreements of sale while advancing loans. The defendant further contended that even prior to issuance of notice, he had attempted to repay the amount together with interest, but the plaintiff refused to receive the same with an intention to grab the valuable immovable property. Hence, the defendant contended that the plaintiff was not entitled to the discretionary relief of specific performance and sought dismissal of the suit.

4. Upon the above pleadings, the Trial Court framed the following issues:-



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(1) Whether the suit agreement dated 20.01.2011 is a sale agreement as claimed by the plaintiff or it is a loan transaction agreement as alleged by the defendant ?

(2) If the suit agreement is a sale agreement, whether the plaintiff was always with readiness and willingness to perform his part of contract ?

(3) Whether the plaintiff is entitled to the suit claim of specific performance?

(4) Whether the plaintiff entitled the claim of permanent injunction ?

(5) To what other reliefs?

5. Before the Trial Court, the plaintiff examined himself as PW1 and examined Arumugham as PW2, marking Exs.A1 to A5. On the side of the defendant, the defendant examined himself as DW1 and examined one Ambiga as DW2 and marked Exs.B1 to B10.

6. The Trial Court, while considering the first issue, observed that the ownership of the suit property by the defendant was not in dispute. The principal controversy before the Court was whether Ex.A1 dated 20.01.2011 constituted a genuine agreement of sale, as pleaded by the plaintiff, or whether



it had been executed merely as security for a loan transaction, as contended by the defendant. The plaintiff pleaded that the defendant agreed to sell the suit property for a total sale consideration of Rs.16,00,000/- and that a sum of Rs.15,00,000/- was paid as advance, leaving only Rs.1,00,000/- as balance sale consideration. The plaintiff further claimed that the agreement period was fixed as eleven months and that he was always ready and willing to complete the transaction. On the other hand, the defendant specifically contended that he had borrowed money for construction purposes and that the agreement was executed only as collateral security for repayment of the loan.

7. The Trial Court held that, though execution of Ex.A1 was admitted by the defendant, the burden still rested upon the plaintiff to establish that the document was intended to operate as a true agreement of sale. In support of such reasoning, the Court relied upon the judgment reported in 2012 (1) TNLJ 396, wherein it was held that the initial burden lies upon the plaintiff to prove the true nature and intention of the agreement.

8. The Court then scrutinized the oral evidence adduced by the parties. The plaintiff examined himself as PW1 and examined one Arumugham as PW2, who was shown as an attesting witness to Ex.A1. However, the Trial Court found that PW2 was admittedly the elder brother of the plaintiff and therefore not an independent witness. The Court observed that no independent attestor or

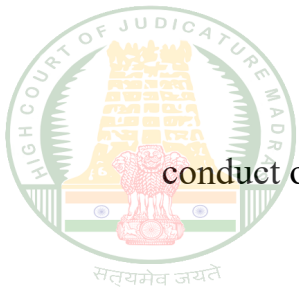


third party witness had been examined on behalf of the plaintiff to substantiate the alleged sale transaction.

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9. The Trial Court further found the terms of Ex.A1 itself to be unnatural and improbable. The Court observed that, out of the alleged sale consideration of Rs.16,00,000/-, the plaintiff had allegedly paid Rs.15,00,000/- as advance, leaving only Rs.1,00,000/- balance. In such circumstances, the Court found it unusual that as long a period as eleven months had been fixed for completion of the transaction. According to the Court, if the agreement was truly intended as a sale transaction, there was no satisfactory explanation as to why such a long period was required for payment of the comparatively meagre balance amount. The Court held that neither Ex.A1 nor the oral evidence of PW1 disclosed any convincing explanation in that regard.

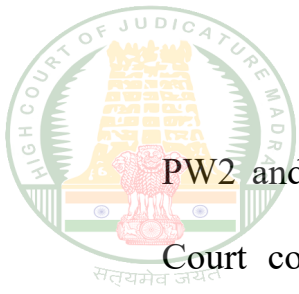
10. The Trial Court also relied upon certain admissions elicited from PW1 during cross-examination. PW1 admitted that, at the time of execution of the agreement, there existed a building in a portion of the suit property, but he did not know the extent or value of the construction. PW1 further admitted that he had not verified the title documents relating to the suit property prior to entering into the transaction. The Court observed that a prudent purchaser would ordinarily ascertain the nature, extent and title of the property before entering into an agreement involving substantial consideration. Hence, the



conduct of the plaintiff appeared unnatural and improbable.

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11. The Trial Court then considered the defence plea that the plaintiff and PW2 Arumugham were habitually engaged in money lending transactions and used to obtain agreements of sale as security for loans advanced by them. In this regard, the Court took note of Exs.B1 to B8, which related to earlier agreements of sale and subsequent cancellation deeds executed in favour of the plaintiff and PW2. Ex.B1 and Ex.B2 disclosed a prior agreement obtained by the plaintiff from third parties and its subsequent cancellation. Likewise, Exs.B3 to B5 revealed similar transactions involving PW2 Arumugham. The Court held that these documents probalised the defence version that the plaintiff and his brother used to obtain agreements of sale as collateral security for loans. Particular significance was attached by the Trial Court to Ex.B6 and Ex.B8. Ex.B6 was a prior agreement dated 19.03.2010 executed by the defendant himself in favour of PW2 Arumugham with respect to the very same suit property, and Ex.B8 was the cancellation deed relating thereto dated 20.01.2011. The Court observed that when an agreement already existed in favour of PW2 regarding the same property, there was no necessity for the plaintiff to obtain another agreement on the very same date unless the transactions were connected with loan dealings. The plaintiff failed to provide any satisfactory explanation in this regard. The Trial Court also accepted the evidence of DW2 Ambiga, who deposed that she too had borrowed money from



PW2 and had executed documents in connection with such transactions. The Court considered such evidence as corroborative of the defence case that agreements of sale were being obtained as security instruments for money lending activities.

12. The Trial Court further relied upon several judicial precedents cited on behalf of the defendant. In particular, reliance was placed upon the decision in *V.P. Murugan vs P.SheikMideen* reported in **2016 (1) L.W. 332**, wherein it was held that where the plaintiff was a money lender accustomed to obtaining sale agreements while lending money, the Court was entitled to conclude that the document was intended only as security for loan transactions. Reliance was also placed on the decisions reported in **2007 (4) MLJ 1** in *Vallithai and others vs Arul raj* and **2003 (3) MLJ 199** in *M.Ramalingam vs Vijayakumar and others*, wherein it was held that mere execution of a sale agreement is insufficient and the surrounding circumstances and conduct of parties must establish that the transaction was genuinely intended as a sale.

13. The Trial Court further observed that the plaintiff was employed as an Assistant Educational Officer in the Education Department and had admittedly not obtained prior permission for purchase of immovable property. The Court also accepted the defendant's plea that the suit property was his only residential property and that there was no pressing necessity for him to sell the same.

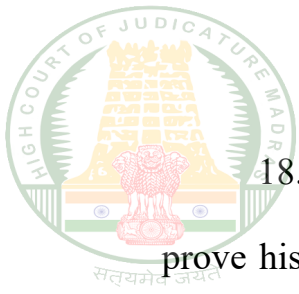


14. Upon cumulative consideration of the oral evidence, documentary evidence and surrounding circumstances, the Trial Court concluded that Ex.A1 had not been executed as a genuine agreement of sale but only as security for repayment of a loan transaction. Accordingly, Issue No.1 was answered against the plaintiff.

15. While considering Issue No.2, the Trial Court observed that the financial capacity of the plaintiff to pay the balance amount of Rs.1,00,000/- was not seriously disputed by the defendant. However, the Court held that mere financial capacity by itself would not establish readiness and willingness within the meaning of Section 16(c) of the Specific Relief Act.

16. The Court observed that, in view of the finding under Issue No.1 that Ex.A1 was only a security document for a loan transaction, the question of willingness on the part of the plaintiff to purchase the property lost much of its significance.

17. Even otherwise, the Trial Court found that the plaintiff had not produced any convincing documentary evidence to establish continuous readiness and willingness to complete the sale transaction. Except the oral testimony of PW1 and issuance of legal notice, no independent material had been produced to show that the plaintiff had taken genuine steps towards completion of the sale.



18. The Trial Court therefore held that the plaintiff failed to satisfactorily prove his readiness and willingness to perform his part of the alleged contract. Accordingly, Issue No.2 was answered against the plaintiff.

19. On considering Issue 3 ,The Court observed that the plaintiff had failed to establish that Ex.A1 was a genuine agreement of sale and had also failed to prove continuous readiness and willingness.

20. On Considering Issue 4, The Trial Court held that the relief of permanent injunction sought by the plaintiff was consequential to the main relief of specific performance. Since the plaintiff failed to establish his entitlement to specific performance and the Court had already found that Ex.A1 was only a loan security document, the plaintiff was not entitled to any injunction restraining alienation of the suit property. Accordingly, Issue No.4 was also answered against the plaintiff.

21. While dealing with the final issue, the Trial Court observed that the defendant had nowhere denied receipt of Rs.15,00,000/- from the plaintiff. On the contrary, the defendant had specifically admitted in the written statement that he was prepared to repay the said amount together with interest. The Trial Court found that admittedly no portion of the amount had been repaid by the defendant till the date of suit. Therefore, notwithstanding dismissal of the relief



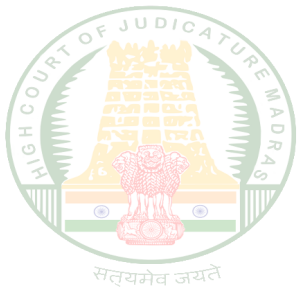
for specific performance, the Court held that the plaintiff was entitled to refund of the amount advanced.

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22. Accordingly, the Trial Court decreed the suit in part by directing the defendant to repay the sum of Rs.15,00,000/- together with interest at the rate of 9% per annum from 20.01.2011 till date of realization. The Court further created a charge over the suit property to secure realization of the decretal amount.

23. In the result, the suit for specific performance and permanent injunction was dismissed, but a money decree for refund of advance amount with interest and charge over the suit property was granted in favour of the plaintiff.

24. The appellant/defendant, being aggrieved by the Judgment and Decree dated 23.11.2016 passed in O.S.No.23 of 2012 on the file of the learned III Additional District Judge, Tirupattur, preferred the present First Appeal under Section 96 CPC mainly challenging that portion of the decree whereby the Trial Court, while dismissing the suit for specific performance, directed refund of Rs.15,00,000/- with interest in favour of the plaintiff.



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25. Heard Mr.T.Balaji, learned counsel for the appellant and Mr.A.Sundaravadhanan, learned counsel for M/s.Karan & Uday, appearing on behalf of the sole respondent.

26. Learned counsel appearing for the appellant would contest that when the suit had not been framed under Section 22 of the Specific Relief Act, the Court below ought not to have granted a decree for refund of the amount that was allegedly paid as advance that too when having given a specific finding that the alleged agreement was a sham and nominal document. He would submit that Section 22 of the Specific Relief Act mandates that a prayer for grant of refund of the amount ought to be necessarily be pleaded for grant of relief of refund of advance amount. The attempt by the appellant to amend the plaint to seek such a relief by filing an application for the same should not be entertained by this Court in the appellate proceedings.

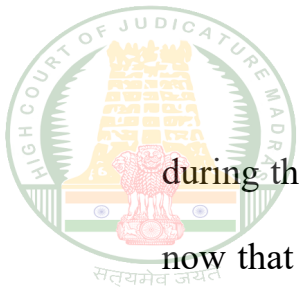
27. In support of his contentions, he had also relied upon a judgment of the Hon'ble Apex Court in the case of *K.R.Suresh Vs R.Poornima and Others* reported in **2025 SCC online 1014** and a judgment of the learned Single Judge of this Court made in **AS.No.636 of 2019**. Hence, he seeks indulgence of this Court.



28. Learned counsel appearing on behalf of the respondent on the other hand would contend that even though, the respondent had not sought for a specific prayer for grant of refund of advance amount, he would submit that even in the written statement that was initially filed, the appellant had contradicted the sale agreement by contesting the same to be an agreement that was entered to secure the money that was advanced to him and that there was a specific pleading that there is an order passed by the Court he is willing to repay the amount that had been received by him as loan from the respondent.

29. In that context, he would submit that there was no error on the part of the Court in granting a relief of refund of advance amount as alleged in the said sale agreement. He would further draw attention of this Court to the findings of the Trial Court in concluding that the said sale agreement was only pursuant to the loan transaction that had been entered between the parties and in fact not a continued sale agreement entered between the parties.

30. He would submit that the respondent had not challenged the said findings and therefore, the claim of the appellant that only if a specific relief had been sought for under Section 62 there could an order for refund cannot satisfy. He would further submit that even in the judgment relied upon by the appellant of the Hon'ble Apex Court, the Hon'ble Apex Court had given a liberty for the plaintiff to take out an application to amend the plaint either

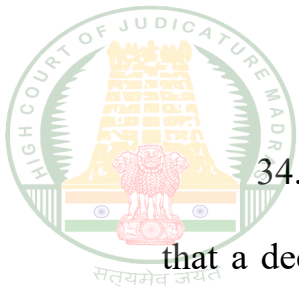


during the trial or at least during the first appellate stage. He would submit that now that he had taken out an application, the technical objections raised by the appellant cannot be allowed to stand. He would further submit that in the interest of justice, the appellant cannot be allowed to unjustly enrich himself by holding on to the amounts which he had admitted to receive from the respondent. Hence, he prays dismissal of the Appeal suit.

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

32. The only issue that arises for consideration is whether the Court below was right in granting a relief of directing the appellant to repay the amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) together with interest.

33. The Trial Court in rejecting the claim for specific relief had given a categorical finding that the sale agreement was a sham and nominal document and had been executed in furtherance of a loan transaction between the parties. The Court had also given a categorical finding that the practice of executing a sale agreement for loan transaction was prevalent in the area in also coming to an conclusion that the sale agreement was not a genuine sale agreement. Apart from the other facts particularly the payment of utmost in the entire sale consideration that is alleged to have been passed under the sale.



34. As contended by the learned counsel for the appellant, it is correct that a decree for refund of the advance amount paid under the sale agreement should be pleaded/ prayed for on the refusal of a decree of the specific performance under Section 22 of the Specific Relief Act. However, by a Proviso appended to Sub-Section 2 of Section 22, a right to amend the plaint had been granted vesting discretion of the Court for including a claim for refund of the advance paid. Order VI Rule 17 of CPC permits amendment to the pleadings at any stage of proceedings for determining the real questions in controversy between the parties. A Proviso appended to the said rule clothes the power with the Court to allow an amendment after the trial only if it comes to a conclusion that in respect of due diligence the party could not have raised the same before the commencement of the trial.

35. In that context, analysing the Provisions of the Specific Relief Act and the various judgment in that regard would show that a relief of specific performance of an agreement is discretionary relief that could be refused by the Court in certain contingencies. When such refusal is made, the agreement holder cannot be allowed to suffer without the refund of the advance paid. Only in that context, Section 22 envisages the circumstances that the agreement holder would be entitled to refund of the Earnest Money Deposit paid by him and that such relief should be so sought for. However, it had been repeatedly held that if such alternative relief for refund of the Earnest Money/ advance had



not been specifically sought for, such relief could not be granted by the Court.

However, the amendment seeking for such relief at any stage of the proceedings have been entertained.

36. In the present fact of the case, the appellant had originally filed a written statement, wherein he had specifically pleaded that he is willing to repay the amount passed under the sale agreement together with interest if order by the Court. But, however, by an additional written statement that had been filed wherein, he had denied passing of consideration under the said documents and had further in contradiction of the said averment had claimed to have refunded the same in the Lok Adalat. In the said additional written statement, he had not sought for any leave to eschew an earlier written statement filed by him.

37. The Court below had also held that the document under Ex.A1 was only a document which had been given as a security of the loan obtained by the appellant and also that he had not disputed the passing of consideration to him under Ex.A1. In that context, this Court is of the view that the relief granted by the Court below without a prayer before if for refund of the amount is a violation of Section 22 of the Specific Relief Act, as the said Section open up an *non-obstante* clause with regard to the Act of Civil Procedure Code meaning that the inherent powers under Section 151 to grant a relief or even powers under Order XLI Rule 33 for the Appellate Court to grant a relief in the interest



of justice cannot be involved in a suit for specific performance to grant a relief of Earnest Money Deposit without a specific prayer.

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38. But, however, Proviso to Section 22 entitles a plaintiff to seek an amendment of the plaint at any stage of proceedings which would also include the Appeal that is open to an Appeal suit under Section 96 being final Court of finding of the fact for granting the relief. For better appreciation, the relevant paragraphs in the judgment of the Hon'bl Apex Court reported in **2025 SCC Online 1014** is extracted hereunder:-

“63. In our considered opinion, the law contained under Section 22(2) of the 1963 Act is adequately broad and flexible to allow the appellant to seek an amendment of the plaint for the said relief, even at the appellate state. However, no such application for an amendment of the plaint was moved either before the trial court or during the course of the first appeal before the High Court. That is to say, the appellant never prayed for the refund of the advance money. Here, it would be redundant to state that the law aids the vigilant, not those who sleep over their rights.”

39. In view of the specific admission made by the appellant in his written statement which stands on record, this Court do not see any impediment in allowing the application seeking for amendment of the plaint to sustain the



decree granted by the Court in directing the appellant to refund the amount.

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40. For the aforesaid reasonings, the Civil Miscellaneous Petition in CMP.No.28014 of 2025 stands allowed and as a consequence, the Appeal suit stands dismissed. Consequently, connected miscellaneous petition in CMP.No.11649 of 2017 is closed. However, there shall be no order as to costs.

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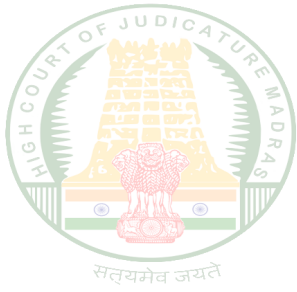
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

To

1.The Additional District Court-III,
Tirupattur.

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



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AS No. 309 of 2



K.KUMARESH BABU, J.

GBA

A Pre-delivery judgment made in
AS No. 309 of 2017
and CMP.Nos11649 of 2017 & 28014 of 2025

08.07.2026