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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.01.2026

Delivered on : 18.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.364 of 2022
and
C.M.P(MD)No.4279 of 2022

Selvin Kanagaraj

: Appellant

/Vs./

Murugesan

: Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 09.11.2021 in A.S.No.71 of 2021 on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree, dated 16.10.2020 made in O.S.No.110 of 2013 on the file of the Sub Court, Ambasamudram.

For Appellant : Mr.J.Barathan,
for Mr.K.Chengiz Khan

For Respondent : Mr.R.J.Karthik



JUDGMENT

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The second appeal is directed against the judgment and decree made in A.S.No.71 of 2021, dated 09.11.2021 on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.110 of 2013, dated 16.10.2020, on the file of the Sub Court, Ambasamudram.

2.The appellant is the defendant. The respondent/plaintiff filed a suit in O.S.No.110 of 2013, on the file of the Sub Court, Ambasamudram, claiming the relief of specific performance of the sale agreement, dated 05.12.2012 or in alternative, to refund the advance amount with interest and costs.

3. For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

4.The case of the plaintiff, in short, is as follows :

a) The suit property originally belonged to one Simson Nadar, father of the defendant. The said Simson Nadar executed a registered settlement deed, dated 31.10.2012 settling the suit property in favour of his son/defendant and since then, he has been in possession and enjoyment of the suit property as its absolute owner.



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b) The defendant offered to sell the suit property to the plaintiff, who in turn agreed to purchase the same and both the parties entered into a sale agreement, dated 05.12.2012, whereunder, they have fixed the sale price at Rs.5,00,000/- and the period of performance as one year. The plaintiff paid an advance amount of Rs.4,00,000/- and the same came to be received by the defendant on the date of agreement itself.

c) The defendant's brother-in-law Koil Pitchai and his close friend Balraj attested the sale agreement and also one Asir Selvaraj, S/o.Koil Arputhamani and Jeyaraj, S/o.Koil Chellamani were present and witnessed the execution of the said sale agreement.

d) The plaintiff has always been ready and willing to pay the balance sale price and to get the sale deed executed and registered. The plaintiff during August 2013, demanded the defendant to receive the balance sale price of Rs.1,00,000/- and to execute the sale deed, but the defendant replied that he was searching for a house for rent and asked the plaintiff to wait for some time, he would vacate the suit property and register a sale deed within December 2013. But, the defendant has not taken any steps to vacate the house as agreed by him. Hence, the plaintiff



sent a legal notice, dated 29.11.2013 to the defendant and the same was received on 30.11.2013. The defendant sent a reply notice on 02.12.2013 with false and untenable averments.

e) The defendant deposited the balance sale consideration of Rs.1,00,000/- in Pandiyan Grama Bank, Kadayam on 05.12.2013. Since the defendant was not ready and willing to perform his part of the contract, the plaintiff was constrained to file the above suit for specific performance of the sale agreement, dated 05.12.2012.

5. The defence of the defendant, in short, is as follows :

a) The suit is not maintainable either in law or on facts. The suit property originally belonged to the defendant's father and he settled the same in favour of the defendant through an unregistered settlement deed, dated 22.02.2009. Thereafter, the property tax assessment, water tax and electricity service connection were changed to the defendant's name in 2009 itself. The defendant renovated the house and conducted a house warming function on 29.10.2010 and the defendant has been in possession and enjoyment of the suit property.

b) The defendant was running a chit fund business in Mettur Village and the plaintiff and other villagers had subscribed chits. Since the defendant suffered



loss, the plaintiff and other villagers lodged a complaint against the defendant before the Economic offence Wing, Tirunelveli. At that time, the plaintiff had obtained the settlement deed dated 31.10.2012 and the sale agreement dated 05.12.2012 by coercion, towards the liability in chit fund transactions.

c) The defendant had no intention at any point of time to sell the suit property and he never received any advance amount from the plaintiff. Since the plaintiff's brother-in-law Jeyaraj' s house is situated adjacent to the defendant's house and the plaintiff had an ill intention to get the defendant's property for his brother-in-law, he had been persistently insisting that the defendant sell the property, however the defendant has refused to do so.

d) The plaintiff and others had made as if, the defendant suffered loss in the chit fund business and threatened the defendant to part with the suit property allegedly to save the defendant and his family. The defendant lodged a complaint against the plaintiff and others before the Inspector of Police, DCB, Tirunelveli to enquire the fraud and forgery. The defendant also lodged complaints before the Sub-Registrar, Kadayam, the District Registrar, Cheranmahadevi, and the District Inspector General of Registration, Tirunelveli, seeking an enquiry into the fraudulently registered document.



e) The plaintiff had not deposited any amount in Pandiyan Grama bank.

The defendant has been living with his wife and three children and aged father in the suit property. Hence, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings of both the parties, framed the following issues :

1. Whether plaintiff is entitled to get decree for specific performance directing the defendant to execute the sale deed in terms of alleged sale agreement dated, 05.12.2012 ?

2. Whether plaintiff is entitled to get refund of Rs 4,00,000/- with interest?

3. Whether alleged sale agreement was created as alleged in the written statement?

4. To what relief the plaintiff is entitled to?

7. During trial, the plaintiff examined himself as P.W.1 and three other witnesses, Thiru.Asir Selvaraj, Thiru. Paulsingh and Thiru.Murugan as P.W.2 to P.W.4 respectively and exhibited 8 documents Ex.P.1 to Ex.P.8. The defendant examined himself as D.W.1 and his brother-in-law Koil Pitchai as D.W.2 and exhibited 33 documents as Ex.D.1 to Ex.D33. The copy of the plaintiff's bank



account maintained with Pandiyan Grama Bank was marked and exhibited as

Court Document Ex.C.1.

8. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment and decree, dated 16.10.2020, granting the relief of specific performance as prayed for. Aggrieved by the said judgment and decree, the defendant preferred an appeal in A.S.No.71 of 2021 and the learned Principal District Judge, Tirunelveli, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 09.11.2021, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the defendant has preferred the present second appeal.

9. At the time of admission, the following substantial questions law came to be formulated.

i) Whether the admission of P.W.1 in his cross examination that he did not inspect the Suit property, did not measure and noted down its physical features and did not value the same before entering into



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the Sale agreement dated 05.12.2012 gives an inference that it was not really intended for selling the suit property?

ii) Whether the admission of P.W.1 in cross examination that the appellant/Defendant was running a chit fund and the respondent/plaintiff was a subscriber to it and that disputes arose between the villagers and Appellant/defendant culminated into police complaint before the Economic Offences Wing and that the respondent/plaintiff was also one of the complainant given an inference that the execution of sale agreement is only for a loan transaction?

iii) Whether the Respondent/plaintiff was ready and willing to perform his part of contract as contemplated under Section 16(c) of the Specific Relief Act, that to when P.W.1 admits that he did not have sufficient money in his hands ?

10. Admittedly, the suit property originally owned by the defendant's father Simson Nadar and he settled the property in favour of his son, the defendant herein. According to the plaintiff, the defendant's father executed the settlement deed, dated 31.10.2012 under Ex.A.2, settling the suit property in favour of the defendant. But, on the other hand, according to the defendant, his father settled



the suit property in his favour vide unregistered settlement deed, dated 22.02.2009 under Ex.B.3; that the property tax, water tax and electricity service connection were changed to his name in 2009 itself; that he renovated the suit property and conducted house warming ceremony on 29.10.2010 and that he has been in possession and enjoyment of the suit property.

11. Admittedly, Ex.B.3 is an unregistered and unstamped document. Regarding, Ex.A2 settlement deed, the defendant's own brother-in-law D.W.2 in his evidence would admit,

“ செல்வின் கனகராஜ் அப்பா பெயர் சிம்சன் நாடார் என்றால் சரிதான். சிம்சன் நாடார் விபரமான நபர் என்றால் சரியல்ல. அவருக்குப் படிப்பறிவு கிடையாது. சிம்சன் நாடார், செல்வின் கனகராஜ் பெயருக்கு சொத்துக்களை பொறுத்து பதிவு ஆவணங்கள் எழுதிக்கொடுத்துள்ளாரா என்றால் நன்கொடை பத்திரம் எழுதிக்கொடுத்துள்ளார். அந்த நன்கொடை பத்திர விபரம் எனக்கு தெரியும். அந்த நன்கொடை பத்திரத்தில் நான் சாட்சியாக கையொப்பம் செய்துள்ளேன் என்றால் சரிதான் அந்த பத்திரம்தான் வா.த.சா.ஆ.2 என்றால் சரிதான். அதில் 1வது சாட்சியாக கையொப்பம் செய்துள்ளேன் என்றால் சரிதான். அப்பாவு நாடார் மகன் பால்ராஜ் என்னுடைய நண்பர்.

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வா.த.சா.ஆ.2 பத்திரம் எழுதுவதற்கு சிம்சன் நாடாரின் குடும்ப அட்டையை பார்த்து அவரின் அடையாளம் உறுதி செய்யப்பட்டது என்றால் சரிதான். வா.த.சா.ஆ.2ல் கண்ட புகைப்படம் என் முன்னிலையில் தான் ஒட்டப்பட்டது என்றால் சரிதான் அதில் சிம்சன் நாடார் ரேகை வைத்துள்ளார் என்றால் சரிதான். வா.த.சா.ஆ.2ன் மூலமாக செல்வின் கனகராஜ் சொத்துக்களை அனுபவம் செய்து வந்தார் என்றால் சரிதான். வா.த.சா.ஆ.2 பத்திரத்தை எழுதியவுடன் பதிவு செய்த பிறகு சிம்சன் நாடார் செல்வின் கனகராஜ் வசம் அசல் பத்திரத்தை ஒப்படைத்தார் என்றால் சரிதான். வா.த.சா.ஆ.2 க்கும். வாதிக்கும் எந்த சம்பந்தமும் கிடையாது என்றால் சரிதான். சிம்சன் நாடார் விருப்பப்பட்டு எழுதிக்கொடுத்த ஆவணம் என்றால் சரிதான்.”

12. The specific defence of the defendant is that Ex.A2 settlement deed and Ex.A1 sale agreement are fraudulent documents said to have been obtained by coercion. Insofar as Ex.A2 settlement deed is concerned, it is the stand of the defendant that the said document does not refer to the house situated in the suit property, whereas the sale agreement, allegedly executed within 35 days from the date of Ex.A2, makes reference to the said house. According to the defendant, this discrepancy itself would demonstrate the fraudulent nature of Ex.A2 settlement deed.



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13. On a careful consideration of the evidence of D.W.2, it is evident that Ex.A2 settlement deed was executed by the defendant's father, Simson Nadar, in favour of the defendant. Significantly, D.W.2 has categorically admitted that the plaintiff had no connection whatsoever with the execution of Ex.A2 settlement deed. If that be so, the plaintiff cannot be faulted for the non-reference of the house in Ex.A2. As rightly explained by the plaintiff, examined as P.W.1, the omission to refer to the house in the suit property might have been with a view to reduce the stamp duty and registration expenses.

14. Be that as it may, the fact remains that as on the date of Ex.A1, the defendant was the owner of the suit property. According to the plaintiff, he and the defendant entered into a sale agreement on 05.12.2012, fixing the sale price at Rs.5,00,000/- and the period of performance as one year.

15. It is the further case of the plaintiff that he paid a sum of Rs.4,00,000/- as advance on the very date of agreement, which was received by the defendant and that the plaintiff agreed to pay the balance sale price within one year before 04.03.2012 and get the sale executed and registered.



16. The plaintiff, examined as P.W.1, has deposed in line with the averments in the plaint. He has also examined P.W.2, who is said to have been present at the time of execution of Ex.A1. P.W.2 has spoken about the execution of Ex.A1 and the payment of the advance amount, reiterating the version of the plaintiff. Though P.W.2 was subjected to cross-examination, it was only suggested that he is a close relative of the plaintiff's wife, that he had not directly witnessed any monetary transaction, and that he has deposed falsely in favour of the plaintiff.

17. P.W.2 has admitted that he is a distant relative of the plaintiff's wife and that he has not subscribed his signature in the document. However, as rightly pointed out by the learned counsel for the plaintiff, the core aspects of his testimony, namely the execution of Ex.A1 and the payment of Rs.4,00,000/- as advance, were not effectively challenged, nor was any specific suggestion put to him denying the same. The plaintiff has further examined the scribe of Ex.A1 as P.W.3, who has deposed that the defendant approached him for preparation of the sale agreement, furnished the settlement deed, and that on that basis, Ex.A1 was prepared. He has further stated that the defendant received the advance amount from the plaintiff, subscribed his signature in the agreement, and thereafter, the document was registered.



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18. P.W.3, in his evidence, has also spoken about the execution of Ex.A2 settlement deed and has reiterated the execution of Ex.A1 sale agreement. Though it was suggested on the side of the defendant that P.W.3, in collusion with the plaintiff, fabricated Ex.A1 and Ex.A2, the same was categorically denied.

19. As rightly contended by the learned counsel for the plaintiff, the evidence of P.W.3 with regard to the preparation, execution, attestation and passing of consideration in his presence has not been effectively challenged in cross-examination, nor has any specific suggestion been made disputing the same. Therefore, as rightly observed by the Courts below, the plaintiff, through his own evidence and that of P.W.2 and P.W.3, coupled with the production of the registered sale agreement marked as Ex.A1, has satisfactorily proved the execution of Ex.A1.

20. The learned counsel appearing for the defendant would mainly contend that the plaintiff has failed to prove the execution of agreement of sale by not examining the attesting witnesses. However, the said contention cannot be countenanced. It is well settled that an agreement of sale is not a document, which is compulsorily required by law to be attested.



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21. Section 68 of the Indian Evidence Act mandates the examination of at least one attesting witness only in respect of those documents, which are required by law to be attested, such as a Will or a mortgage deed. Since an agreement of sale does not fall within the category of documents requiring compulsory attestation, the rigour of Section 68 of the Indian Evidence Act would not apply.

22. In the present case, the plaintiff has examined a witness, who was present at the time of execution of sale agreement, as well as the scribe of the document, both of whom have categorically deposed about the execution of the document by the defendant in favour of the plaintiff. In such circumstances, this Court has no hesitation in holding that the execution of Ex.A.1 sale agreement has been duly proved and that non-examination of the attesting witness is not fatal to the plaintiff's case.

23. Now turning to the defence of the defendant, it is evident, as rightly observed by the Courts below that he has taken contradictory stands at different stages of the proceedings with regard to Ex.A1 sale agreement.



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24. In reply notice, under Ex.A7, the defendant has stated,

“ஏற்கனவே, தங்கள் கட்சி, எம் கட்சியிடம் வீட்டை கிரையத்திற்கு கேட்டு அதற்கு எம் கட்சி குடியிருக்கும் ஒரே வீட்டை கிரையம் கொடுக்க மறுத்துவிட்டார். அன்றிலிருந்து தங்கள் கட்சி அந்த வீட்டை அபகரிக்க திட்டமிட்டு, நம் கட்சியுடன் நயவஞ்சகமாக பேசி, கூட்டாக சிப்பண்ட் தொழில் செய்யும் ஆசையைத் தூண்டி, நஷ்டத்தை ஏற்படுத்தி, அதிலிருந்து எம் கட்சியை காப்பாற்றுவது போல் நடித்து, அதற்கு கூடுதலாக முதலீடு செய்வதாக கூறி, அதற்கு அடமானமாக எம் கட்சி குடியிருக்கும் ஒரே வீட்டை பத்திர பதிவு செய்து தருமாறு கட்டாயப்படுத்தி, அதற்காக நம் கட்சியின் தந்தையையும் கட்டாயப்படுத்தி செட்டில்மெண்ட் பத்திரம் பதிவுச் செய்ய வைத்து, அடமானப்பத்திரம் என்று கூறி கிரைய ஒப்பந்தத்தில் கையெழுத்து வாங்கியுள்ளார். இவ்வாறு, எம் கட்சியிடம் உண்மையை மறைத்து பதிவுச் செய்யப்பட்டுள்ள கிரைய ஒப்பந்தம் போலி ஆவணம் ஆகும்.”

25. Apart from the above, the defendant, in his written statement has raised the following defence;

“ The said settlement document, dated 31.10.2012 is forged one and made under coercion; that alleged settlement document is totally fraud; that fraud-filled settlement document was created to create the subsequently, created fraud-filled sale agreement.



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The said sale agreement is with unfree consent caused by coercion. The signatures of Mr.Koil Pitchai, Mr.Balraj are with tainted consent caused by coercion in the sale agreement.”

26. The defendant in his chief examination affidavit,

... மேலும், என்னை இந்த பணப்பிரச்சனை மற்றும் போலீஸ் பிரச்சனைகளில் இருந்து காப்பாற்றுவதற்கு உதவி செய்வதாகக் கூறி நயவஞ்சகமாக என்னுடைய மனைவி மற்றும் என்னுடைய தந்தை ஆகியோரிடம் பேசி எனக்கு பணஉதவி செய்வதாக கூறினார். மேலும், அதற்கு என் வீட்டை அவருக்கு அடமானமாக கொடுக்கச் சொன்னார். மேலும், அடமானத்திற்காக இரண்டு பத்திரங்கள் போட வேண்டும் என்று கூறினார். இதற்கு மறுத்தால் என்னை போலீஸ் பிடித்து சிறையில் போட்டுவிடுமென்றும், அந்த செய்தி பத்திரிக்கையில் வரும், அதைப் பார்த்து உன் மனைவி குழந்தைகளுடன் தற்கொலை செய்து விடுவாள் என கூறி, என்னையும் என் தந்தையையும் இரண்டு பத்திரங்களில் கையெழுத்து போட வைத்தார். வாதி எந்த பத்திரத்தின் நகலும் என்னிடம் தரவில்லை. ஆனால், வாதி சொன்னபடி பண உதவி எதுவும் செய்யவில்லை. அதன் பின் பிறர் கூறக் கேட்டு அது மோசடியாக ஏற்படுத்தப்பட்ட செட்டில்மெண்ட் பத்திரம் மற்றும் கிரைய ஒப்பந்தம் என்று தெரிந்தது.



WEB COPY 27. The Defendant has also stated,

“நான் குடியிருக்கும் வீட்டை அபகரிக்கும் கெட்ட எண்ணத்துடன் என்னையும், என் குடும்பத்தாரையும் மிரட்டி மோசடியாக போலியான ஆவணங்கள் ஏற்படுத்தியதுடன், என்னை தொடர்ந்து தொந்தரவு செய்து மிரட்டிக் கொண்டிருந்த வாதி மீது நடவடிக்கை எடுக்க வேண்டி, திருநெல்வேலி மாவட்ட காவல்துறை கண்காணிப்பாளர் அவர்களிடமும், திருநெல்வேலி மாவட்ட குற்றப்பிரிவு ஆய்வாளர் அவர்களிடமும் புகார் கொடுத்தேன். ...

மேற்படி வழக்கில் தபசில் சொத்தாக குறிப்பிடப்பட்டுள்ள சொத்தின் ஆவணங்களான செட்டில்மெண்ட் ஆவணம் 4366/2012 மற்றும் அதைத் தொடர்ந்து போடப்பட்டதாக கூறப்படும் கிரைய ஒப்பந்தம் 4816/2012 ஆகியவை என்னுடைய சுயவிருப்பமின்றி வற்புறுத்தலால் மோசடியாக வாதியால் ஏற்படுத்தப்பட்ட போலியான ஆவணங்கள் ஆகும்.

28. In his cross-examination, the defendant has taken a new stand to the effect that Asir Selvaraj (P.W.2) and one Jeyaraj, who are shown as witnesses to the execution of Ex.A1 on the side of the plaintiff, had borrowed monies from the defendant and executed promissory notes marked as Ex.D28 and Ex.D29 respectively. It is his further case that, since both of them failed to repay the loan amounts, disputes arose between the parties, and that, in such circumstances,



Ex.A1 and Ex.A2 were allegedly obtained under coercion. The relevant portion is extracted hereunder:

ஆசிர் செல்வராஜீக்கு நான் பணம் கொடுத்தேன். ஜெயராஜீக்கும் நான் பணம் கொடுத்தேன். செட்டில்மெண்ட் ஆவணம் மற்றும் கிரைய ஒப்பந்தம் ஏற்படுவதற்கு முன்பு பணம் கொடுத்தேன். அவர்கள் பணத்தை தரவில்லை. அந்த நெருக்கடியை சமாளிப்பதற்காகத்தான் வா.தா.சா.ஆ.1, வா.தா.சா.ஆ.2 ஏற்பட்டதாக சொல்கிறேன். ஆசிர் செல்வராஜ், ஜெயராஜ் என்னிடம் பணம் பெற்றதற்கு அன்றைய தேதியிலேயே பிராமிசரி நோட் எழுதிக் கொடுத்ததாக 2 ஆவணம் தாக்கல் செய்துள்ளேன் என்றால் சரிதான். மேற்படி ஆவணங்கள் பி.வா.சா.ஆ.28, 29 ஆகும். பி.வா.சா.ஆ.28 மற்றும் பி.வா.சா.ஆ.29 படி வாங்கிய பணத்தை கொடுக்காததால் நெருக்கடி ஏற்பட்டதாகவும், அதனால்தான் வா.சா.ஆ.1, வா.சா.ஆ.2 ஏற்பட்டதாக சொல்கிறேன் சரிதான்.

29. During subsequent cross examination, he would reiterate,

“ஆசிர் செல்வராஜ், ஜெயராஜ் கடன் சம்பந்தமாகத்தான் ஏற்பட்ட கடனுறுதி சீட்டு சம்பந்தமாகத்தான் இந்த கிரைய ஒப்பந்தம் ஏற்பட்டது என்ற விபரத்தை என் வழக்கறிஞரிடம் பதில் போடும்போது சொல்லியுள்ளேன். வழக்கறிஞர் அறிவிப்பிலும் சொல்லியுள்ளேன். அந்த 2 கடனும் இல்லை என்றால் தாவா கிரைய ஒப்பந்தம் ஏற்பட்டிருக்க வாய்ப்பில்லை என்றால் சரிதான்.”



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30. D.W.1 in his cross examination, has categorically admitted that the signature found in Ex.A1 agreement is his, though he would contend that the same was obtained under coercion and the relevant portion is extracted hereunder :

என்னிடம் காட்டப்படும் வா.தா.சா.ஆ.1 கிரையப்பத்திரத்தில் உள்ள கையெழுத்து என்னுடையதா என்றால் என்னுடையதுதான். ஆனால் மிரட்டி கட்டாயப்படுத்தி மேற்படி கையெழுத்து போட வைக்கப்பட்டது.

...

என்னை வலுக்கட்டாயமாக வற்புறுத்தி கிரைய ஒப்பந்தம் எழுதி வாங்கினார்கள்.

31. However, the above defence was not raised in the reply notice, in the written statement or in the chief examination affidavit. Considering the above evidence of the defendant, it is clearly evident that he has admitted the execution of Ex.A1 sale agreement and the signature found therein. But according to him, the said document was brought into existence fraudulently and under coercion.

32. When a specific question was put to him as to the circumstances under which, Ex.A1 was allegedly obtained by coercion, the defendant failed to offer any satisfactory explanation. The relevant portion is extracted hereunder :



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எதற்காக என்னை வற்புறுத்தி வா.தா.சா.ஆ.1 ஆவணத்தை எழுதி வாங்கினார்கள் என்றால் நான் வா.தா.சா.ஆ.1 காலத்தில் வாதிக்கு பணம் எதுவும் கொடுக்க வேண்டியதில்லை. வாதி என்னிடம் சொத்தை விலைக்கு எதுவும் கேட்டதில்லை.

33. As already pointed out, it is the case of the defendant that he was conducting a chit fund business along with the plaintiff and that the plaintiff, with an ulterior motive, created a situation as if the said business had incurred losses. It is his further case that the plaintiff, along with certain villagers, lodged a complaint against the defendant and, taking advantage of the said situation, obtained the documents in question fraudulently and under coercion.

34. The plaintiff has specifically denied that he was conducting any chit fund business along with the defendant. According to him, the chit fund business was conducted solely by the defendant, and since the defendant failed to repay the chit amounts to the plaintiff as well as to others, complaints came to be lodged before the Economic Offences Wing. Though the defendant, in his chief-examination, would state that the chit fund business was conducted jointly with the plaintiff, he has subsequently taken a “U” turn in his cross-examination and



deposed that the plaintiff was only a subscriber to the chit. The relevant portion is extracted hereunder:

வாதி என்னிடம் சீட்டு புள்ளியாக இருந்தார் என்றால் சரிதான். வாதி எவ்வளவு ரூபாய் சீட்டு போட்டிருந்தார் என்றால் நினைவில்லை. வாதி போட்ட சீட்டுக்கு பணத்தை நான் திருப்பி கொடுக்கவில்லை என்றால் சரியல்ல கொடுத்துவிட்டேன். அந்த சீட்டு சம்பந்தமாகத்தான் வாதி என் மீது எஸ்.பி. அலுவலகத்தில் புகார் கொடுத்தார் என்றால் சரிதான். வாதியைப் போன்றே சீட்டு போட்ட வேறு நபர்களும் மாவட்ட கண்காணிப்பாளரிடம் புகார் கொடுத்தார்கள் என்றால் வாதி பெயரில் புகார் கொடுக்கப்பட்டது மற்றவர்களும் வந்திருந்தார்கள்.

35. It is evident from the records that the dispute relating to the chit transactions arose only in the year 2013, whereas the sale agreement in question is of the year 2012. The defendant himself, in his cross-examination, has admitted that there was no complaint against him with regard to the chit transactions in the year 2012 and that there was no dispute between him and the plaintiff till November 2013. The relevant portion is extracted hereunder:

“2013- ம் ஆண்டு நவம்பர் மாதம்தான் சீட்டு சம்பந்தமாக பிரச்சனை ஏற்பட்டது. அதற்கு முன்புவரை எனக்கும், வாதிக்கும் பிரச்சனை எதுவும் இல்லை என்றால் சரிதான்.”



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36. Even according to the defendant, he had obtained an encumbrance certificate in January and, on that basis, came to know about Ex.A1 and Ex.A2. However, admittedly, he had not taken any action for nearly one year even after acquiring such knowledge. As already pointed out, the plaintiff issued a legal notice dated 29.11.2013, and it was only thereafter that the defendant sent a reply notice on 02.12.2013 disputing the said documents.

37. As rightly observed by the Courts below, there was no dispute between the plaintiff and the defendant in the year 2012, and the dispute arose only in 2013 when the plaintiff, along with others, lodged complaints against the defendant regarding non-payment of chit amounts. Though the defendant has produced several copies of complaints, receipts and acknowledgements relating to the sending of petitions, as rightly observed by the trial Court, most of them came into existence only after the issuance of the pre-suit notice dated 29.11.2013.

38. As already pointed out, even after allegedly coming to know of Ex.A1 sale agreement in January 2012, it is not the case of the defendant that he had issued any legal notice or lodged any police complaint alleging that the said document had been obtained fraudulently or under coercion.



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39. It is pertinent to note that the defendant, in his cross-examination, has admitted that it was he who furnished the description of the suit property to the scribe for the preparation of the sale agreement. He has also admitted that he has no enmity with P.W.3. Though D.W.2, in his chief-examination, reiterated the defence of the defendant, in cross-examination he has admitted that the signature found in Ex.A1 is that of the defendant and that he himself subscribed his signature as a witness to Ex.A1, followed by his friend Balraj. He would state as follows:

வா.த.சா.ஆ.1 ல் கண்ட செல்வின் கனகராஜ் கையெழுத்து பிரதிவாதியின் கையெழுத்து என்றால் சரிதான். வா.த.சா.ஆ.1 ல் நான் சாட்சியாக கையொப்பம் செய்த பிறகு 2-வது சாட்சியாக நண்பர் பால்ராஜ் கையொப்பம் செய்தார் என்றால் சரிதான். சார் பதிவாளர் அலுவலகத்தில் செல்வின் கனகராஜை அடையாளம் காட்டி நான் கையொப்பம் செய்யவில்லை. வா.த.சா.ஆ.1-ல் இன்னாரென்று நிரூபித்தவர்கள் என்ற இடத்திலுள்ள கையொப்பம் என்னுடையதுதான். 2வது கையெழுத்து என் நண்பர் பால்ராஜ் கையொப்பம் என்றால் சரிதான். வா.த.சா.ஆ.1 ல் உள்ள வாக்காளர் பதிவு அட்டை செல்வின் கனகராஜீடையது என்றால் சரிதான்.



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40. However, he would subsequently state that he was not aware of the sale agreement entered into between the plaintiff and the defendant. In further cross-examination, D.W.2 has admitted that Ex.A1 sale agreement was written by the document writer Balraj and that Balraj alone used to prepare documents relating to the defendant's family. The relevant portion is extracted hereunder:

“நான் கையொப்பம் செய்ததாக சொல்லக்கூடிய வா.த.சா.ஆ.1 கிரைய ஒப்பந்தத்தை எழுதியவர் பத்திர எழுத்தர் பால்ராஜ் என்றால் சரிதான். பால்ராஜ்தான் செல்வின் கனகராஜ் குடும்ப சம்பந்தப்பட்ட பத்திரங்களை எழுதும் பத்திர எழுத்தர் என்றால் சரிதான்.

41. D.W.2 has also admitted that he had no direct knowledge about any monetary transaction between the plaintiff and the defendant and that he was not aware as to whether the defendant had received any amount from the plaintiff.

42. On a consideration of the entire evidence available on record, the Courts below have rightly come to the conclusion that the defendant has miserably failed to establish that Ex.A1 sale agreement was obtained either fraudulently or under coercion.



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43. It is the specific case of the plaintiff that he has always been ready and willing to pay the balance sale consideration and to have the sale deed executed and registered. According to the plaintiff, he had deposited the balance sale consideration of Rs.1,00,000/- in Pandiyan Grama Bank, Kadayam. In order to substantiate the same, he has examined the Manager of Pandiyan Grama Bank as P.W.4, who has deposed that the plaintiff had deposited a sum of Rs.1,00,000/- in his savings bank account and that the said amount was very much available in the account.

44. The learned counsel appearing for the defendant would, however, rely upon the admission made by the plaintiff in his cross examination to the effect that he was not having sufficient funds at the time of entering into the sale agreement and the relevant portion is extracted hereunder :

வீட்டின் மதிப்பு அதாவது 4 x 5 லட்சத்தில், 4 லட்சம் கொடுத்த பிறகு 1 லட்சம் உடனே கொடுத்து ஏன் கிரயம் முடிக்கவில்லை என்பதற்கு காரணம் என்னவென்றால் எனக்கு அப்போது பணம் இல்லை. காலி செய்வதற்கு அவகாசம் பிரதிவாதி கோரினார்.



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45. Placing reliance on the above admission, the learned counsel would contend that the plaintiff himself has admitted that he did not possess sufficient funds to complete the sale transaction and that, therefore, it must necessarily be held that the plaintiff was not ready and willing to perform his part of the contract.

46. There can be no dispute that, in a suit for specific performance, the plaintiff is required to plead and prove his continuous readiness and willingness to perform his part of the contract, as mandated under Section 16(c) of the Specific Relief Act. As per the terms of Ex.A1 sale agreement, the total sale consideration was fixed at Rs.5,00,000/-, out of which the plaintiff paid a sum of Rs.4,00,000/- as advance. The balance sale consideration of Rs.1,00,000/- was agreed to be paid within a period of one year, i.e., on or before 04.12.2013, upon which the defendant was to execute and register the sale deed at the instance of the plaintiff.

47. It is also recited in the said agreement that the defendant was in possession of the suit property. Though the plaintiff has admitted that he did not have the balance sale consideration of Rs.1,00,000/- at the time of entering into



the agreement, such admission by itself, would not be sufficient to conclude that the plaintiff was not ready and willing to perform his part of the contract.

48. The agreement itself contemplates a period of one year for the payment of the balance sale consideration and completion of the transaction. Therefore, what is required to be established is the continuous readiness and willingness of the plaintiff to perform his part of the contract within the stipulated period of one year, and not necessarily his financial capacity on the date of execution of agreement.

49. When the plaintiff has already paid a substantial portion of the sale consideration at Rs.4,00,000/- out of Rs.5,00,000/-, his conduct would indicate his *bona fide* intention to complete the transaction. In the absence of any evidence to show that the plaintiff had failed to mobilize the balance amount or had otherwise expressed his unwillingness to perform his part of the contract within the agreed time, the mere fact that he was not possessed of the balance amount on the date of the agreement cannot be put against him.

50. In such circumstances, the Courts below have rightly held that the plaintiff has satisfactorily established his readiness and willingness to perform his



part of the contract within the time stipulated under the agreement and has complied with the mandatory requirements under Section 16(c) of the Specific Relief Act, 1963.

51. The learned counsel appearing for the defendant would contend that, under the unamended Section 20(2) of the Specific Relief Act, the Court is vested with discretion to refuse the relief of specific performance, having regard to the terms of the contract, the conduct of the parties, and the surrounding circumstances. It is further contended that, while the settlement deed dated 31.10.2002 executed by the defendant's father describes the property as a vacant site, the sale agreement dated 05.12.2012 (Ex.A1) refers to a pucca residential building, which, according to the defendant, could not have come into existence within a short span of 35 days, nor could property tax assessment and door number have been obtained within such time. It is also contended that the house tax and water tax receipts produced would indicate that the defendant was the owner and in possession of the property even prior to the execution of Ex.A2 settlement deed. The learned counsel would further submit that the plaintiff himself has admitted that, since the defendant had not repaid the chit amounts, he lodged a complaint along with others, and that the plaintiff has also admitted that he had not visited the suit property prior to the execution of the sale agreement



and was not aware of its extent, nature, and other features. According to the learned counsel, these admissions would clearly indicate that the plaintiff had not genuinely entered into the sale agreement and, therefore, the Courts below ought to have exercised their discretion under Section 20(2) of the unamended Specific Relief Act and refused the relief of specific performance.

52. The contention of the defendant that Ex.A2 settlement deed describes the property as a vacant site, whereas Ex.A1 refers to a pucca building, has already been considered and rejected earlier. Similarly, the defence relating to the alleged chit transactions has also been examined and negatived by this Court. The defendant has not established that the terms of the agreement confer any unfair advantage upon the plaintiff or that its enforcement would result in any undue hardship to the defendant. Nor has it been shown that the grant of specific performance would be inequitable or otherwise opposed to law. In such circumstances, there are no valid grounds to invoke the discretionary jurisdiction under Section 20(2) of the unamended Specific Relief Act to deny the relief of specific performance.

53. The learned counsel appearing for the defendant would place reliance on the decision of this Court in *C. Subash Chandra Bose and another vs. M.*



Sundararajan and another, reported in **2017 SCC OnLine Mad 23708**. In the said case, the parties had entered into a sale agreement fixing the sale consideration at Rs.7,00,000/- with a period of two years for performance, and a sum of Rs.6,00,000/- was paid as advance. The Division Bench, on appreciation of the evidence, particularly the testimony of D.W.1 and D.W.2, who had categorically deposed that the transaction was only a loan, and in the absence of any contra evidence on the side of the plaintiff to establish that Ex.A1 was in fact a sale agreement, concluded as follows:

12.Thus, in the light of the above and coupled with the factual finding rendered especially the fact that Rs.6,00,000/- is said to have been given at the time of executing the agreement giving 2 years time for payment and in the absence of any evidence let in by the plaintiff to show that Ex.A.1 is only an agreement as against the evidence of D.Ws.1 and 2, we are constrained to hold that Ex.A.1 has been executed as a collateral security for the loan obtained.

54. The learned counsel would also place reliance on the decision in **Mrs.Pappammal @ T.Pappa vs. P.Ramasamy** reported in **2012 4 L.W 435**, and the relevant portion is extracted hereunder :

“ 34.Therefore, the substantial question of law No.2. is answered in favor of the appellant. Hence, even assuming that Ex.A.2, the agreement of sale is a genuine document, having regard to the fact



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that the respondent was not ready and willing to perform his part of the contract, he is not entitled to the relief of specific performance. Under Section 20 of the Specific Relief Act, the grant of relief of specific performance is purely discretionary and even though, the plaintiff is entitled, as per the terms of the contract to the relief of specific performance, the Court need not grant such relief.”

55. In the above decision, this Court having found that the plaintiff was not ready and willing to perform his part of the contract, held that he was not entitled to the discretionary relief of specific performance.

56. In the present case, however, the above decisions are not applicable to the facts on hand. The Courts below, on a proper appreciation of the entire evidence on record and by applying the settled legal principles in the correct perspective, have rightly come to the conclusion that the plaintiff is entitled to the relief of specific performance, and such findings do not warrant any interference. Considering the overall facts and circumstances of the case, this Court is also of the view that the plaintiff is entitled to costs throughout. Accordingly, the substantial questions of law are answered.



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57. In the result, the Second Appeal is dismissed, confirming the concurrent judgments and decrees passed in O.S.No.110 of 2013 on the file of the Subordinate Court, Ambasamudram, and in A.S.No.71 of 2021 on the file of the Principal District Court, Tirunelveli. The defendant is directed to pay costs throughout. Consequently, connected Miscellaneous Petition is closed.

18.03.2026

NCC : Yes/ No
Index : Yes/ No
Internet : Yes/ No
das

To:

- 1.The Subordinate Court, Ambasamudram.
- 2.The Principal District Court, Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.364 of 2022
and
C.M.P(MD)No.4279 of 2022

Dated: 18.03.2026