



S.A.No.829 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

**S.A.No.829 of 2024**  
**and**  
**CMP.No.26401 of 2024**

S.Chinnasamy

.. Appellant

Vs.

1.Sarojini  
2.M.P.Sakthivel  
3.P.Ramasamy  
4.P.Thiyagaraj

.. Respondents

**PRAYER :** Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 03.07.2023 made in A.S.No.31 of 2018 on the file of the I Additional District and Sessions Court, Tiruppur, partly modifying the judgment and decree dated 30.01.2018 made in O.S.No.201 of 2011 on the file of the Principal Subordinate Court, Tiruppur.

|               |                            |
|---------------|----------------------------|
| For Appellant | : Mr.M.Adhishree           |
| For R1        | : Mr.Singaravelu Balaraman |
| For R2 to R4  | : Mr.V.S.Kesavan           |



S.A.No.829 of 2024

WEB COPY

## **JUDGMENT**

The appellant has filed this Second Appeal against the Judgement and Decree dated 03.07.2023 made in A.S.No.31 of 2018 on the file of the I Additional District and Sessions Court, Tiruppur, partly modifying the judgment and decree dated 30.01.2018 made in O.S.No.201 of 2011 on the file of the Principal Subordinate Court, Tiruppur.

2. Heard M/s. M. Adhishree, learned counsel for the appellant, Mr. Singaravelu Balaraman, learned counsel appearing for R1, and Mr. V.S. Kesavan, learned counsel appearing for respondents R2 to R4. Perused the materials available on record.

3. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the concurrent findings of the courts below, the plaintiff preferred this appeal. Before the trial court, he filed a suit for specific performance, seeking a direction to the defendant to execute the sale deed as per the agreement dated 25.10.2007. Subsequently, the time for execution was



S.A.No.829 of 2024

extended through a separate extension agreement, which was marked as Ex.A-2. However, even within the extended period, the defendant failed to execute the sale deed after receiving the balance amount. Consequently, the plaintiff issued a notice calling upon the defendant to perform his obligations under the agreement. Since the defendant refused to comply, the suit was filed.

5. The defendant raised objections, contending that he never intended to sell the property to the plaintiff. He claimed that due to losses in his dying business, he had borrowed a loan of Rs. 5,00,000/- from the plaintiff, for which the alleged sale agreement was executed. He further stated that the original document was handed over to the plaintiff only because the latter insisted on it at the time of borrowing the loan. Therefore, the defendant denied the plaintiff's claim.

6. Before the trial court, both parties presented oral and documentary evidence. On the plaintiff's side, he was examined as P.W.1 and another witnesses was examined as P.W.2 and Ex.A.1 to Ex.A.10 were marked as exhibits. On the defendant's side, D.W.1 to D.W.3 were examined and Ex.B.1



S.A.No.829 of 2024

to Ex.B3 documents were adduced.

WEB COPY

7. The defendant admitted the existence of the agreement but contended that he was unable to vacate the tenants who were occupying the property. The trial court accepted the validity of the sale agreement between the parties but found the defendant's reason for non-performance to be justified, as he could not vacate the tenants in time. As a result, the relief of specific performance was denied to the plaintiff. Instead, the trial court directed the defendant to refund the advance amount of Rs. 5,00,000/- with interest at 9%.

8. Aggrieved by this decision, the plaintiff preferred an appeal in A.S. No. 31 of 2018. The first appellate court analyzed the evidence on record and concluded that a valid sale agreement existed between the parties. However, it also found that the defendant was unable to perform the terms of the agreement due to the tenants' occupation of the property. Furthermore, it observed that, as of the present date, the value of the property had increased to more than Rs. 45,00,000/-. Therefore, the plaintiff could not be permitted to enforce the sale deed for a significantly lower price. Consequently, the



S.A.No.829 of 2024

appellate court confirmed the trial court's order directing the refund of the advance amount and dismissed the appeal. Challenging these concurrent findings, the present Second Appeal has been filed by the appellant.

9. The learned counsel for the appellant challenges the findings of the Courts below on the following grounds.

*i.* It is submitted that the suit sale agreement dated 25.10.2007 is not in dispute. Extension of time under Ex.A2 dated 30.09.2008 is also not in dispute. The only defence taken by the defendant is that the sale agreement was executed towards security for the loan.

*ii.* It is submitted that the defendant has taken a plea that the suit sale agreement was executed as if, It was a mortgage deed. Ex.A1 and Ex.A2 are registered documents. They were duly executed and registered, which carries a legal presumption.

*iii.* It is submitted that when the defendants have taken a plea of loan transaction, they have to prove the said plea, whereas, the courts below have faulted the plaintiff as if, he has not taken any steps to enforce Ex.A1.

*iv.* It is submitted that the variations in the reasons given for extension under Ex.A2 is not a ground to disbelieve the transaction. The plaintiff had



S.A.No.829 of 2024

paid Rs. 3 lakhs out of Rs. 6 lakhs under Ex.A1 and paid Rs. 2 lakhs under Ex.A2. It shows his readiness and willingness.

v. It is submitted that the plaintiff has continued to approach the deceased defendant to get the sale deed on payment of the balance sale consideration, but the defendant was not in a position to do so, therefore, the time was extended on payment of further advance of Rs. 2 lakhs.

vi. It is submitted that in a suit for specific performance, the time is not an essence of the contract. There is no evidence to show that the plaintiff was not ready and willing to enforce Ex.A1 and Ex.A2. Even otherwise, the suit filed within three years is well maintainable.

vii. It is submitted that adequacy and inadequacy of the sale consideration is not a ground for refusing specific performance as per Sec. 20 of the Specific Relief Act.

viii. It is submitted that when the onus is heavy upon the defendant to establish that Ex.A1 came into existence only as security document in respect of the loan transaction, and on his failure to prove the same with acceptable evidence, his defence has to be rejected.

ix. It is submitted that the Specific Relief Act was amended w.e.f. 01.10.2018. Since it is a procedural law, the Amended Act has to be given



S.A.No.829 of 2024

retrospective effect. Even otherwise, the legislative intention has to be used as a guidance for deciding the matter

10. Upon considering the entire facts, though the defendant contended that they never intended to sell the property and had merely borrowed a loan from the plaintiff, which led to the alleged agreement coming into force, no evidence was submitted to support this claim. However, the defendant admits to sign in the agreement. The trial court, therefore, concluded that there was a valid agreement between the parties.

11. Furthermore, as of today, the value of the property exceeds Rs.45,00,000/-, whereas the plaintiff seeks to acquire it for only Rs.5,00,000/- based on the sale agreement executed in 2007. This indicates an attempt by the plaintiff to purchase the property at a significantly lower price by relying on the outdated agreement.

12. Moreover, the property was under the occupation of a tenant, and the defendant was unable to vacate it within the stipulated time. Thus, there was no fault on the part of the defendant. Considering these factors, the



S.A.No.829 of 2024

courts below rightly granted the refund of the advance amount and denied the relief of specific performance. This decision does not warrant interference by this court. It is a well-settled principle that, due to the escalation of property prices, a party cannot be permitted to enforce an agreement to acquire property at an unreasonably low price. Therefore, this court finds no infirmity in the order passed by the courts below, and the appeal lacks merit.

13. The learned counsel for the appellant submitted that the suit was filed in 2011 and that the appellant has been pursuing the case more than a decades. In light of this prolonged litigation, the appellant requested an increase in the rate of interest. Considering the circumstances, this court is inclined to increase the interest rate. Accordingly, the respondents are directed to refund the advance amount of Rs.5,00,000/- with interest at the rate of 12% within two months from the date of receipt of a copy of this order.

14. Upon receipt of the entire payment, the appellant is directed to hand over the original title deeds to the respondents without any unnecessary delay. In case of non-compliance, the respondents shall be entitled to enforce



S.A.No.829 of 2024

the order through the court of law.

WEB COPY

15. With the above directions, this second appeal is disposed of.

Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

**20.11.2024**

Index : Yes/No

Speaking Order: Yes/No

Nutral citation: Yes/No

rri

To

1.The I Additional District and Sessions Judge, Tiruppur.

2.The Principal Subordinate Judge, Tiruppur.

3.The Section Officer, VR Section,  
High Court of Madras.



WEB COPY



S.A.No.829 of 2024

**T.V.THAMILSELVI, J.**

rrr

**S.A.No.829 of 2024**  
**and**  
**CMP.No.26401 of 202**

20.11.2024