



AS No. 949 of 2008

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-06-2025

CORAM

THE HONOURABLE MR JUSTICE RMT. TEEKAA RAMAN

AS No. 949 of 2008

and

CMP Nos. 1921, 1920 & 1922 of 2018

V.Subramani
S/o. Varadhan,
6, Rakesh Sharma Street, Minjur,
Ponneri Taluk, Thiruvallur District,

Appellant(s)

Vs

M/s.E.L.E. Farms Private Ltd.,
Rep. by its Managing Director,
R.Devadoss,
having office at
Old No.130, New No.435/24,
T.H.Road, Kaladipet, Chennai-19.

Respondent(s)

For Appellant(s): Dr.A.E.Chelliah
Senior counsel
for Ms.C.Vasanthakumari Chelliah



AS No. 949 of 2008

ORDER

WEB COPY

This matter has been brought before this Court by way of “For being mentioned”.

2. Heard the learned counsel appearing on behalf of either sides.

3. In the order passed in A.S.No.949 of 2008 dated 16.12.2024, at paragraph No.19(b) in the first line, the area of the land owned by the appellant was inadvertently mentioned as 2.4 acres instead of 2.84 acres. Therefore, Registry is directed to replace the following as first line of paragraph 19(b) of the order passed in A.S.No.949 of 2008 dated 16.12.2024 and issue fresh order copy:

“19(b). Admittedly, the appellant/defendant is the owner of the 2.4 acres only.”

4. It is open to the petitioner to file appropriate application for the return of original, pending before the trial Court, if he be so advised and it is also open to the petitioner to file appropriate application for refund of court fee, he is entitled to.

06-06-2025

sai

Note: Registry is directed to carry out necessary correction and issue fresh order copy.



WEB COPY



AS No. 949 of 2008

RMT.TEEKAA RAMAN J.

sai

**AS No. 949 of 2008 and
CMP Nos. 1921, 1920 & 1922 of 2018**

Dated: 06-06-2025



WEB COPY



AS No. 949 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.06.2024	16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.949 of 2008

and

M.P.Nos.1& 2 of 2008

V.Subramani

... Appellant/defendant

-Vs-

M/s.E.L.E.Farms Private Limited,
represented by its Managing Director,
Thiru.R.Devadoss having office at
Old No.130, New No.435/24,
T.H.Road, Kaladipet,
Chennai-600 019.
/plaintiff

... Respondent

Appeal suit filed under Section 96 read with Order 41 of the Civil
Procedure Code, 1908, as against the judgment and decree dated 19.02.2008



AS No. 949 of 2008

made in O.S.No.18 of 2007, on the file of the learned Principal District Judge,
WEB COPY
Thiruvallur.

For Appellant : Dr.A.E.Chelliah
Senior Counsel
for M/s.C.Vasanthakumarichelliah

For Respondent : Mr.K.S.Viswanathan
Senior Counsel
for Mr.S.Sivakumar

J U D G M E N T

As per the unamended Appellate Side Rules, the case was heard by a Division Bench and subsequently to the modification of the pecuniary jurisdiction, the case is made over to the Bench consisting of a Single Judge and by an administrative order, the case is posted before this Court.

2(a). The suit was filed on 06.03.2006. When the matter was posted before the learned Single Judge, there was no representation and accordingly, the appeal suit was dismissed for default on 09.02.2021.



AS No. 949 of 2008

WEB COPY

2(b). It appears that pursuant to the above said order of dismissal, the lower Court records have been sent back to the trial Court. Thereafter, after the filing of the application, selected documents alone have been sent for Forensic Science Department for expert opinion as per the orders made in the CMP and after conclusion of the arguments with reference. But certain other documents have been made and it is again called for. After orders have been reserved, the lower Court records were called for by VR Section. Hence, some delay has occurred.

3. C.M.P.Nos.1920, 1921 and 1922 have been filed for forwarding the documents to Forensic Science Department and report has been received on 19.07.2023.

4. The suit is filed for specific performance without a prayer for possession. However, decree for possession has also been granted by the trial Court.



AS No. 949 of 2008

WEB COPY

5. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

6. The defeated defendant is the appellant herein.

7. The respondent/plaintiff filed suit for specific performance of the Ex.A1- Suit Sale Agreement dated 09.02.1996 for a sale consideration of Rs.17,98,200/-.

8. The plaint proceedings on the basis that;

(i) the suit properties mentioned in the schedule belongs to the defendant.

The defendant has entered into a sale agreement on 09.02.1996 to sell the lands mentioned in the schedule. In the sale agreement totally 9 items were mentioned and the total sale consideration was fixed as Rs.46,06,500/-. The Plaintiff has paid Rs.9,000/- as advance. Subsequently, the defendant received as sum of



AS No. 949 of 2008

Rs.3,00,000/- and Rs.1,91,000/- by way of cheque bearing Nos.967714 and 9967715 respectively. On 16.02.1996 and on 22.7.1999 the defendant received a sum of Rs.2,00,000/- by way of cheque bearing No.545873 and on 10.06.2002, the defendant received a sum of Rs.8,50,000/- by way of cash from the plaintiff, all payments were duly acknowledged by the defendant.

(ii) as per the pleadings, four items mentioned the agreement viz. S.Nos 763/1, 764, 765 and 768/1 totally measuring to and 1.15 acres were not belongs to the defendant and the properties stated above belong to the Plaintiff. Since the above mentioned properties are not belongs to the defendant, he has no right to execute the sale deed in favour of plaintiff. On 24.10.2004, the defendant received a sum of Rs.9,00,000/- from the plaintiff and duly acknowledged for the same. The defendant executed a power deed in favour of the plaintiff's son with regard to the properties ion S.Nos.744/1, 743 and 746/1, totally measuring an extent of acre 1.22 cents on 10.2.1999 and the plaintiff has constructed the building in the lands, he is exclusive possession and enjoyment of the properties. Now the defendant is liable to execute the sale deed with regard to



AS No. 949 of 2008

WEB COPY

the remaining properties viz.745/1 and 745/2 totally measuring an extent of 1.62 acres only.

(iii) Further, it is pleaded that four items in the agreement does not belong to the defendant and hence a sum of Rs.12,76,500/- is to be excluded from the sale consideration. The balance is Rs.6,24,700/- to be paid.

9(a). The defendant in his written statement denied the signatures in the agreement and three further payment alleged to have been received by the defendant and also denied his signature in the subsequent payment as projected by the plaintiff.

9(b). It is a specific case of the defendant that the defendant is the owner of the property mentioned in the schedule except the land in S.Nos.763/1, 764, 765 & 768/1 which belong to the sister's father-in-law namely Murugan. At the time of agreement, this defendant has made himself very clear that he was not the owner of the lands which stood in the name of Murugan. However, the



AS No. 949 of 2008

plaintiff promising that he would negotiate with Murugan directly who being this defendant relative, the plaintiff himself has included the survey numbers belonging to Murugan in the said agreement.

9(c). Further, the case of the defendant is the cheque dated 22.07.1996 bearing Cheque No.23030 drawn in favour of the State Bank of India at Thiruvottiyur, in the name of the defendant for a sum of Rs.2,00,000/- when presented was returned by the bank stating that there are no sufficient funds and original cheque is still with the defendant and the plaintiff did not pay the amount due under the cheque. The allegations made by the plaintiff in para No.3 are totally false and the plaintiff is put to strict proof of the payments alleged by the plaintiff.

10. It is specifically denied that he has not given possession of any property either to the plaintiff or to the plaintiff's son and they are not in possession and enjoyment in any capacity. Being the absolute owner in respect



AS No. 949 of 2008

of those properties, this defendant is in possession and enjoyment and Murugan is in possession and enjoyment of his properties. Further the plaintiff's son has not put up any construction in S.Nos.744/1, 743 & 746/1 as claimed by the plaintiff.

11. Thereafter, by way of additional written statement the defendant has specifically stated that he has not received Rs.9,00,000/- from the plaintiff and never executed the alleged payment voucher on 24.10.2004 (Ex.A2) as alleged by the plaintiff and the plaintiff is not entitled for specific performance as per Article 54 of the Limitation Act, this suit is barred by limitation. Further, the schedule mentioned properties are acquired by the Government for expansion of Chennai Fort Trust and acquisition proceedings initiated as early as 1999. Hence, it is prayed that the suit may be dismissed.

12. The learned Senior Counsel Mr.A.E.Chelliah, for the appellant/defendant land owner could contend that when the defendant has



AS No. 949 of 2008

WEB COPY

specifically pleaded the signature in the document viz., Ex.A1, Ex.A2 & Ex.A4 are denied, besides Ex.A1 contains three endorsement. Further, the signature ought to have referred to the Forensic Science expert for comparison of the disputed signature with the admitted sample signatures.

13. Ex.A1-suit sale agreement is dated 09.02.1996. Ex.A2-payment voucher is dated 24.10.2004. The date of filing of the suit is 06.03.2006. The payment voucher-Ex.A2 is worth about Rs.9,00,000/- whereby the period comes within the period of limitation. The same is discussed infra.

14. Based upon the document and arguments, following points have arisen for consideration:

1. Whether Ex.A1-suit sale agreement is true and genuine as projected by the plaintiff/respondent or forged one as projected by the appellant/defendant?
2. Whether Ex.A2-payment voucher dated 24.10.2004 is forged?



WEB COPY



AS No. 949 of 2008

3. Whether the land in question was acquired by the Fort Trust as relied on Ex.B3 by the defendant?
4. Whether the plaintiff is ready and willing to perform his part of the contract?
5. Whether the suit is barred by limitation as projected by the defendant/appellant?
6. Whether the plaintiff is entitled for specific performance of the suit sale agreement since the suit properties are acquired by the Tamilnadu Fort Trust.

15. Discussion:

The plaintiff's Company Managing Director was examined as PW1 and Ex.A1 to Ex.A4 were marked. On the side of the defendant, he himself examined as DW1 and one attesting witness Nilavazhagan was examined as DW2 and Ex.B1 to Ex.B3 were marked. The case of the plaintiff is that the defendant is the absolute owner schedule property. The claim of the defendant is



AS No. 949 of 2008

WEB COPY

that the signature in Ex.A1-suit sale agreement stamp paper dated 06.02.1996 and agreement dated 09.02.1996 and the voucher payment is under Ex.A2 are forged. Based upon the forged signature and by creating false document, the plaintiff has filed the specific performance suit and hence, resisted the claim.

15(b). The trial Court has compared the signature and come to the conclusion. On comparison of the signature in the naked eye of the Judicial Officer, the signature is found to be genuine, accordingly, he accepted the case of the plaintiff.

15(c). Specifically, it appears that pending appeal, necessary CMPs are filed and the matter was referred to the Forensic Science Department and the Forensic report has also been received. As per the forensic report, the disputed signature in Ex.A2-payment voucher dated 24.10.2004, is found to be forged. Both the learned Senior Counsel for the appellant/defendant and respondent/plaintiff are not disputed the Forensic report. Hence, the same is



AS No. 949 of 2008

suo motu marked as Ex.C1 by the Court. The report of the Forensic Science
WEB COPY

Department is discussed infra. Now the scenario changed pursuant to the order passed in the above stated CMPs, ie., the disputed signatures in document Ex.A1, Ex.A2 and Ex.A4 were sent to the Forensic Science Department and Ex.C1 now marked in the appeal. Under Ex.C1, the Forensic Science Department has given the opinion that Ex.A1 and Ex.A4 are similar to the admitted signatures whereas the disputed signature of the defendant in Ex.A2- payment voucher for Rs.4,00,000/- is found to be forged. In the absence of any contra arguments, Ex.C1 is accepted.

16. It is a specific case of the plaintiff that though the agreement is dated 09.02.1996, after a period of eight years, the defendant has received a sum of Rs.9,00,000/- and made a payment voucher under Ex.A2 on 24.10.2004. It is a specific case of the defendant that the alleged signature found in Ex.A2 is forged. Now the expert evidence of the Forensic Science Department lends corroboration to the evidence and stand of the defendant.



AS No. 949 of 2008

WEB COPY

17. The agreement is dated 09.02.1996 and the period of agreement for performance is nine months. The contract expires on 09.11.1996. The suit ought to have been filed on 09.11.1999. The suit was filed on 06.03.2006 on the strength of Ex.A2 in which he had received Rs.9,00,000/- on 24.10.2004. Since the suit is filed on 06.03.2006, reliance is placed upon Ex.A2. But in view of the Ex.C1-Forensic Science Report, Ex.A2-alleged payment voucher projected by the defendant dated 24.10.2004 has no legs to stand. Consequently, the suit ought to have been filed on or before 09.11.1999 whereas the suit has been filed on 06.03.2006. Hence it is clearly barred under Article 54 of the Limitation Act which prescribed 3 years period and hence the suit is out of time and barred by the limitation. Point No.3 is hereby answered accordingly.

18(a). Whether the plaintiff is ready and willing to perform his part of the contract. It remains to be stated that PW1 in the witness box admitted that he wss not issued any pre-suit notice and hence whether he is willing to perform



AS No. 949 of 2008

his part of the contract is doubtful besides as to the readiness to purchase the schedule property.

18(b). Even go by the pleadings in the cross-examination, he had admitted that he has not deposited the balance of sale consideration either on the date of filing of the suit or during the course of the trial.

18(c). On the core question both the learned Senior counsel represented that even after decreeing of the suit, no such balance of amount of Rs.6,24,700/- is to be deposited in the Court also creates doubt in the mind of the Court that he is ready with money to complete his part of the transaction and hence this Court comes to the conclusion that the plaintiff has not demonstrated his ready and willingness as contemplated under Section 16(3) of the Specific Relief Act.

18(d). In this connection, the alleged payment made by the plaintiff is also disputed by the defendant assumes significance. In the sense that it is a specific case of the defendant that he has received only Rs.13,00,000/-. The cheque for Rs.2,00,000/- given on 22.07.1996 is dishonoured. That was admitted by the PW1 in the cross-examination. Now that the voucher payment



AS No. 949 of 2008

WEB COPY

for the receipt of Rs.9,00,000/- under Ex.A2 is found to be bogus and hence, I find that even the plea of the plaintiff by further payment made during the subsistence of the agreement is also false. Now the ground seeks further payment of Rs.2,00,000/- by cheque is dishonoured. The alleged voucher receipt of Rs.9,00,000/- is also found to be bogus and hence the plea of the plaintiff/respondent is nothing but a fraudulent exercise by the plaintiff. Thus two points 2 &4 is answered in negation against the respondent/plaintiff.

19(a). The prayer in the suit is for specific performance, but there is no prayer for possession. It is a specific case of the defendant/appellant land lord that the land in question was taken by the land acquisition proceedings for the construction of the staff quarters of the Fort Trust-Ex.B3 and the same was produced which is of the year 06.05.1999. Now the question is only for receipt of compensation.

19(b). Admittedly, the appellant/defendant is the owner of the 2.4 acres



AS No. 949 of 2008

WEB COPY

only. For the reasons best known in the suit sale agreement Ex.A1, the survey Nos.745/1, 745/2, 763/1, 764, 765 and 768/1 was mentioned but the last four survey numbers does not belong to the defendant. It is specifically pleaded in the written statement as well as in his evidence as PW1. This is not known how the plaintiff has alleged to have been entered into an agreement with the landlord for which he has no title over the property.

19(c).Hence, I find that Ex.A1 is found to be doubtful though it has a signature. It is a specific pleading of the defendant appellant that the signature obtained in the blank paper are made into fabricated as an agreement assumes significance. Hence, the defendant has not received Rs.9,00,000/- under Ex.A2 in view of the report of the Forensic Science Department under Ex.C2 and cheque for Rs.2,00,000/- is also been dishonoured. This Court is unable to uphold the alleged plea of respondent herein regarding the further payment under the agreement and hence this Court has once again come to the conclusion that all is not well with the coming into existence of Ex.A1.



AS No. 949 of 2008

WEB COPY

19(d). Further payment alleged itself made by the plaintiff and the possession has already been taken over by the Fort Trust as could be seen from Ex.B3. In the absence of any prayer for possession in the plaint, the trial Court has grossly erred in granting the relief of recovery of possession without the plea, without evidence and without court fee. Hence, I have no hesitation to come to the conclusion that the judgment passed by the trial Court is unsustainable in law and liable to be set aside. Besides the plaintiff has come forward with false plea of further payment and come forward with the agreement which is forged and hence he has not entitled for the equitable relief of specific performance of the suit sale agreement.

20. In the result,

- i. The appeal suit allowed.
- ii. The judgment and decree, dated 19.02.2008 made in O.S.No.108 of 2007 by the Principal District Judge, Thiruvallur is set aside.



WEB COPY



AS No. 949 of 2008

iii. O.S.No.108 of 2007 on the file of the Principal District Judge,

Thiruvallur, stands dismissed. Consequently, connected

miscellaneous petitions are closed. There shall be no orders as to

Costs.

16.12.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PJL

To

1.The Principal District Judge,
Thiruvallur.

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



WEB COPY



AS No. 949 of 2008

RMT.TEEKAA RAMAN, J.

PJL

PRE-DELIVERY JUDGMENT

IN

A.S.No.949 of 2008

16.12.2024