



WEB COPY



S.A.Nos.990 and 991 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on : 19.06.2024**

**Pronounced on : 26.06.2024**

**CORAM:**

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**S.A.Nos.990 and 991 of 2021  
and  
C.M.P.Nos.18565 and 18566 of 2021**

**S.A.No.990 of 2021:**

N.Govindappa

... Appellant

vs.

1.Muniyamma  
2.Gowramma  
3.Muni Venkatappa  
Respondents

...

**Prayer:** Second appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 20.04.2021 passed in A.S.No.20 of 2018 on the file of the Additional District Court, Hosur confirming the Judgment and Decree dated 27.02.2018 passed in O.S.No.112 of 2011 on the file of the Subordinate Court, Hosur.

For Appellant : Mr. R.Bharath Kumar

For Respondents : Ms. Mitraneshaa.B.S.  
for Ms.V.Srimathi



S.A.Nos.990 and 991 of 2021

WEB COPY

**S.A.No.991 of 2021:**

N.Govindappa

... Appellant

vs.

1.Gowramma  
2.Muniyamma  
3.Muni Venkatappa  
Respondents

...

**Prayer:** Second appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 20.04.2021 passed in A.S.No.11 of 2019 on the file of the Additional District Court, Hosur modifying the Judgment and Decree dated 27.02.2018 passed in O.S.No.112 of 2011 on the file of the Subordinate Court, Hosur.

For Appellant : Mr. R.Bharath Kumar

For Respondents : Ms. Mitraneshaa.B.S.  
for Ms.V.Srimathi

### **COMMON JUDGMENT**

This second appeal has been filed by the plaintiff, aggrieved by the findings of the lower appellate Court. The plaintiff had filed a suit in O.S.No.112 of 2011 on the file of the Subordinate Court, Hosur



S.A.Nos.990 and 991 of 2021

against the respondents and had sought for the relief of specific performance of an agreement of sale and in the alternate had sought for refund of the advance amount of Rs.1,20,000/- from the second defendant together with interest at 12% p.a. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The plaintiff claims that the second defendant had agreed to sell the suit schedule property to the plaintiff for a total sale consideration of Rs.1,50,000/- under an agreement of sale dated 21.10.2009. According to the plaintiff, under the said agreement of sale, he paid an advance amount of Rs.1,20,000/- to the second defendant and it was agreed upon that the balance sale consideration of Rs.30,000/- would be paid by the plaintiff within a period of eleven months from the date of execution of the registered sale agreement dated 21.10.2009.

3. According to the plaintiff, while perusing the documents in the month of October, 2009 for the purpose of completing the sale in



S.A.Nos.990 and 991 of 2021

his favour, he found that there was a mistake in the parent document viz., the sale deed dated 13.11.2006 registered as Doc.No.14834 of 2006. According to the plaintiff, in order to rectify the mistake in the sale deed dated 13.11.2006, the parties to the said sale deed viz., Muniyamma, Gowramma and the husband of the second defendant viz., Muni Venkatappa, who is the third defendant jointly executed a fresh sale agreement dated 21.10.2009 in favour of the plaintiff. According to the plaintiff, he was always ready and willing to complete the sale as per the sale agreement dated 21.10.2009. According to him, despite several reminders, the defendants failed to receive the balance sale consideration of Rs.30,000/- and to execute the sale deed in his favour.

4. On the other hand, as seen from the written statement filed by the defendants, they have pleaded as follows:

a) The suit schedule property is a joint family property as the property was purchased in the name of the second defendant from the joint family funds;

b) The defendants never agreed to sell the suit schedule property



under the agreement for sale dated 21.10.2009;

WEB COPY

c) The defendants had only borrowed money from the plaintiff and never executed any sale agreement. The suit schedule property is worth Rs.15,00,000/- as on the year 2009 and therefore, no prudent seller would have agreed to sell the suit schedule property for a meagre sum of Rs.1,50,000/-;

d) The defendant signed loan document on 17.11.2008, while availing a loan from the plaintiff and the same was cancelled on 21.10.2009 and on the same date, i.e., on 21.10.2009, the plaintiff has fraudulently obtained another document from the defendants claiming to be an agreement of sale without the defendants' knowledge. The alleged sale agreement dated 21.10.2009 is a fabricated and fraudulent document.

5. Based on the pleadings of the respective parties, the Trial Court had framed the following issues:

- 1. Whether it is true that the defendants agreed to sell the suit schedule property to the plaintiff?*
- 2. Is the suit sale agreement genuine?*
- 3. Whether the plaintiff is entitled to the relief of*



S.A.Nos.990 and 991 of 2021

*specific performance as sought for?*

*4. Whether the contention of the defendants that the sale agreement executed for loan is true?*

*5. Whether the plaintiff is entitled to the alternative relief as sought for?*

6. The Trial Court viz., the Sub Court, Hosur in its judgment and decree dated 27.02.2018, rejected the relief of specific performance sought for by the plaintiff. But, granted the alternative relief of refund of the advance amount of Rs.1,20,000/- together with interest at 9% per annum from the date of suit till the date of judgment and decree and at the rate of 6% per annum from the date of judgment till the date of realisation in full.

7. Aggrieved by the findings of the Trial Court, both the plaintiff and the defendants filed separate first appeals before the Additional District Court, Hosur. A.S.No.20 of 2018 was filed by the plaintiff and A.S.No.11 of 2019 was filed by the second defendant. The lower appellate Court by its common judgment and decree dated 20.04.2021 passed in A.S.No.20 of 2018 and A.S.No.11 of 2019 held as follows:



S.A.Nos.990 and 991 of 2021

a) A.S.No.20 of 2018 filed by the plaintiff in the suit

O.S.No.112 of 2011 is dismissed;

b) Judgment and decree of the Trial Court viz., Sub Court, Hosur in O.S.No.112 of 2011 dated 27.02.2018 is modified;

c) The suit for the relief of specific performance and alternative relief is dismissed;

d) The sale agreement in Doc.No.7400 of 2009, SRO, Hosur stands cancelled. The SRO, Hosur is directed to record the cancellation of the document in the Registers;

e) The appeal filed by the second defendant in A.S.No.11 of 2019 is allowed.

8. Aggrieved by the findings of the Courts below, the plaintiff in the suit has filed these second appeals. The second appeal No.990 of 2021 has been filed against A.S.No.20 of 2018 and the second appeal No.991 of 2021 has been filed against A.S.No.11 of 2019.

9. This Court by its order dated 25.11.2021 issued notice to the respondents returnable by 16.12.2021. Though it was observed in the



said order that this Court is not inclined to interfere with the judgment of the Courts below, refusal to grant the relief of specific performance, this Court had ordered notice to the respondents after finding that there is some substance to consider the alternative prayer of refund of the advance amount sought for by the plaintiff.

**10. Submissions of the learned counsels:**

Learned counsel for the plaintiff would submit as follows:

a) The Trial Court has erroneously held that Ex.A1, sale agreement dated 21.10.2009, was executed for the purpose of security towards due repayment of the loan as in an earlier occasion, a similar agreement of sale dated 17.11.2008 was executed between the same parties and the same was subsequently cancelled by Ex.B2 dated 21.10.2009;

b) The Trial Court has erroneously held that the plaintiff has not pleaded anything about the execution of earlier agreement and cancellation deed (Exs.B1 and B2) and that the plaintiff had suppressed the material facts;

c) The Trial Court has erroneously held that Ex.A2 legal notice



S.A.Nos.990 and 991 of 2021

was issued on 06.08.2010 but the suit was filed on 18.07.2011, after a lapse of 11 months and there was no explanation for the delay in filing the suit and therefore, the plaintiff was not ready and willing to perform his part of the contract and he has not approached the Court with clean hands;

d) The Trial Court has erroneously held that Ex.A1 sale agreement was executed by the second defendant as security for the due repayment of the loan of Rs.1,20,000/- but, the second defendant had failed to prove that the loan was discharged and therefore, the plaintiff is entitled for alternative relief of refund of Rs.1,20,000/- together with interest at 9% p.a. from the date of filing of the suit till the date of decree and further interest at 6% from the date of decree till the date of realisation;

e) The first appellate Court has erroneously held that the attesor to Ex.A1 is also an attesor to Ex.B2 (Cancellation Deed) and according to PW2, Ex.B2 alone was executed and neither the defendants nor the witnesses were aware of the execution of Ex.A1 and that the defendants were made to execute two documents by misrepresentation and sale agreement, (Ex.A1) was executed by fraud.



WEB COPY

11. In support of the plaintiff's contention, the learned counsel for the plaintiff drew the attention of this Court to the impugned Judgments of the Courts below and also to the oral and documentary evidence placed on record before the Trial Court and after referring to the same, he would submit that, the lower appellate Court has erroneously modified the findings of the Trial Court by refusing the alternative relief of refund of advance amount of Rs.1,20,000/- together with interest to the plaintiff as decreed by the Trial Court.

12. In support of his submission that if the suit for specific performance is filed well within the period of limitation, for the short delay, the plaintiff cannot be non-suited, he relied upon a Judgment of the Madras High Court in the case of ***R.Lakshmikantham Vs. Devaraji reported in 2019 (6) CTC 859.***

13. Learned counsel for the plaintiff would also submit that the defendants have intentionally failed to receive the legal notice, issued by the plaintiff, and send a reply. According to them, if they had sent a



WEB COPY

reply, the plaintiff could have brought to the notice of the Trial Court through pleadings as well as through evidence about the ill motive of the defendants and the circumstances in which the earlier agreement of sale, Ex.B1, was executed and the same was subsequently cancelled through Ex.B2. According to him, non disclosure of the earlier agreement of sale by the plaintiff is unintentional and it neither affects the case of the plaintiff nor supports the case of the defendants. Therefore, according to him, the findings of the Trial Court that the plaintiff has approached the Court with unclean hands is unwarranted.

14. Learned counsel for the plaintiff would also contend that the defendants in paragraphs No.5 of the written statement have stated that the suit property is a joint family property of the defendants and their children are having shares. According to him, the fact remains that the suit property is a self acquired property of the second defendant who purchased it by a registered sale deed in her name. According to him, this plea was taken only to impress upon the Court that the relief of specific performance cannot be granted in the absence of other co-sharers as parties to the suit.



WEB COPY

15. Learned counsel for the plaintiff would further contend that since Ex.A1 is a registered sale agreement, the defendants cannot adduce contra evidence in view of the legal bar under Section 92 of the Indian Evidence Act, 1872. In support of the said contention, the learned counsel for the plaintiff relied upon a Judgment of the Madras High Court in the case of *V.Vaiyapuri Vs. M.Pavayi and Another reported in 2011 (1) LW 1002*.

16. The learned counsel for the plaintiff would also contend that the defendants have not proved the plea of discharge of loan and failed to prove that the suit transactions are pertaining to loan and not sale. He would also submit that the defence taken by the defendants that the suit transaction is a loan transaction is hit by Section 92 of the Indian Evidence Act. In support of the said contention, he relied upon a Judgment of the Madras High Court in the case of *Rajeswari and Others Vs. K.M.Kumarasamy and Others reported in 2007 (4) MLJ 442*.

17. Learned counsel for the plaintiff would further contend that



S.A.Nos.990 and 991 of 2021

the defendants have failed to discharge the burden of proof with regard to the plea of fraud made by them against the plaintiff in the manner known to law. In support of the said contention, the learned counsel for the plaintiff relied upon a judgment of the Madras High Court in the case of *Karuppaiah and Others Vs. Uma Mageshwari and Others reported in 2023 (4) MLJ 156*.

18. Learned counsel for the plaintiff also drew the attention of this Court to the impugned judgments of the Courts below and also to the oral and documentary evidence placed on record before the Courts below and would submit that the Courts below have erroneously failed to see that the defendants have not established that the loan outstanding was discharged and no materials, whatsoever have been placed by the defendants before the Courts below, excepting vague pleadings. Hence, the learned counsel for the plaintiff would plead before this Court that the plaintiff is entitled for the alternative relief of refund of advance amount together with interest from the defendants.

19. On the other hand, the learned counsel for the defendants



would submit as follows:

WEB COPY

a) The defendants never entered into the sale agreement (Ex.A1) with the plaintiff. The lower appellate Court has rightly modified the findings of the Trial Court by dismissing the suit in entirety without granting any alternative relief for suppression of material facts by the plaintiff;

b) The plaintiff has suppressed the fact that earlier the defendants approached the plaintiff for a loan of Rs.1,00,000/- in and around October, 2008 and towards the said loan, the plaintiff wanted security and a sale agreement was entered into between the parties on 17.11.2008 (Ex.B1) and the same was registered. A perusal of the said agreement would indicate that the total sale consideration was fixed at Rs.1,50,000/- and the advance that was paid as per the erstwhile agreement was Rs.1,00,000/-. The loan was discharged in October, 2009 and accordingly, the defendants sought for cancellation of the said agreement of sale dated 17.11.2008 marked as Ex.B1. The plaintiff had agreed to the same, and accordingly, a cancellation agreement dated 21.10.2009 was entered into between the parties cancelling the agreement dated 17.11.2008;



c) A perusal of the recitals of the cancellation agreement dated

21.10.2009 would indicate that the agreement dated 17.11.2008 was cancelled since

*"the purchaser (plaintiff) did not want to buy the schedule property" and that "the vendors and purchaser of the property jointly agreed for the cancellation and termination of all rights and duties of the above said agreement".*

This would clearly establish the fact that the plaintiff had agreed for cancellation of the said agreement only after the defendants had discharged the loan of Rs.1,00,000/- which was due to the plaintiff;

d) In the alleged sale agreement dated 21.10.2009 (Ex.A1), the plaintiff had neither uttered a word about the earlier agreement of sale and cancellation of the said agreement, nor is there any averment in the plaint. The cancellation deed and the alleged sale agreement (Ex.A1) were entered into on the very same date which is on 21.10.2009 and therefore, the alleged sale agreement dated 21.10.2009 (Ex.A1) is a fabricated and fraudulent document.

e) It is the admitted case of the defendants that they had gone to



S.A.Nos.990 and 991 of 2021

the office of the Sub Registrar only to cancel the agreement dated 17.11.2008 and not to enter into a fresh sale agreement. The defendants are illiterates. They are in possession of the suit property till date. The original title deeds and the parent documents of the suit property continues to be in possession of the defendants;

f) The plaintiff during his cross examination had admitted the execution of sale agreement i.e. Ex.B1 and the cancellation deed Ex.B2. It is not the case of the plaintiff that Ex.B1 was cancelled as time for performance had expired and accordingly, Ex.A1 was entered into. The plaintiff is guilty of suppression of material facts. The defendants had specifically pleaded in the written statement, the misrepresentation and fraud committed by the plaintiff;

g) The plaintiff has also admitted during his cross examination that Ex.B1 sale agreement and Ex.B2 cancellation deed were executed. In support of her contention that a party seeking for the relief of specific performance must approach the Court with clean hands and proper disclosure of facts, she relies upon a Judgment of the Honourable Supreme Court in the case of ***Citadel Fine Pharmaceuticals Vs. Ramaniyam Real Estates Private Limited and***



***Another reported in 2011 (9) SCC 147.***

WEB COPY

h) The learned counsel for the defendants would also submit that the attesting witness, viz., Narayana Reddy was examined as PW2. During his cross examination he deposed that he had signed as attesting witness only on one document on 21.10.2009. However, when questioned about recitals of the said document, he deposed saying that he was unaware of the same. Further, PW2 deposed saying that he had witnessed "after signing, Rs.20,000/- was handed over to a male member", however, he does not say as to whom the said sum of Rs.20,000/- was handed over by cash;

i) When the defendants had pleaded fraud and misrepresentation, the initial burden is upon the plaintiff to prove that the agreement under Ex.A1 is a bonafide agreement. Learned counsel for the defendants would also submit that in the case of fraud, Section 92 of the Indian Evidence Act does not get attracted. According to her, "fraud vitiates contract" and for the said proposition, she relied upon a judgment of the Honourable Supreme Court in the case of ***Ganga Harinarayanan Vs. K. Pattammal and Others reported in 2011 SCC Online Mad 110;***

j) Learned counsel for the defendants would submit that since the



S.A.Nos.990 and 991 of 2021

fraud committed by the plaintiff has been proved by the defendants, the question of refund of the alleged advance amount to the plaintiff under the vitiated contract viz., the agreement of sale Ex.A1 does not arise.

20. Learned counsel for the defendants would therefore, submit that the lower appellate Court under its impugned Judgment has rightly modified the findings of the Trial Court, by dismissing the suit in entirety and making it clear that the plaintiff is not entitled for refund of advance amount.

**Discussion:**

21. The following are the undisputed facts:

a) The plaintiff did not disclose the earlier agreement of sale and its cancellation in his plaint and in his cross examination he has also admitted the said fact;

b) The earlier agreement of sale was cancelled on the same date as that of the alleged agreement of sale for which the suit for specific performance was filed which is the subject matter of this second appeal;



S.A.Nos.990 and 991 of 2021

c) The second defendant is an illiterate person against whom the plaintiff has sought for the relief of specific performance in respect of an alleged agreement of sale entered into with him. The illiteracy of the second defendant has also not been disputed by the plaintiff either in his pleadings or in his deposition;

d) Eventhough, the plaintiff had sought for the relief of specific performance and in the alternative relief of refund of advance amount, before this Court in this second appeal, learned counsel for the plaintiff on instructions has submitted that the plaintiff will be satisfied if the relief of refund of advance amount is alone granted by this Court.

22. Specific performance is a discretionary relief as per the Specific Relief Act prior to its amendment to which the case on hand falls as the alleged agreement of sale is dated prior to the amendment. A party seeking the relief of specific performance must approach the Court with clean hands. There should not be any suppression of material facts. In the case on hand, the plaintiff has not disclosed in the plaint the fact that earlier, he had entered into an agreement of sale with the very same second defendant and the said agreement of sale was



S.A.Nos.990 and 991 of 2021

cancelled under a registered cancellation deed executed on the same date as that of the alleged agreement of sale for which the suit for specific performance was laid by the plaintiff which is the subject matter of this second appeal.

23. It is unbelievable as to why the earlier sale agreement was cancelled by a registered cancellation deed and on the same date, another agreement of sale is alleged to have been entered into between the plaintiff and the second defendant. Both the cancellation deed and the alleged agreement of sale are registered documents, registered on the very same date. A person who is genuinely interested in buying a property by paying market value to the seller would not have cancelled the earlier agreement of sale and entered into a fresh agreement of sale for the very same property on the very same day. In the cancellation deed, the plaintiff has himself stated that he is not interested in purchasing the property from the second defendant. Despite the said assertion, it is surprising and unbelievable to take a plea that another agreement of sale was entered into on the very same date by which the second defendant has agreed to sell the very same property for a total



S.A.Nos.990 and 991 of 2021

sale consideration of Rs.1,50,000/-. A plea has also been taken by the defendants that the market value of the property as on the date of the agreement of sale for which the suit for specific performance has been laid is worth more than Rs.15,00,000/- though in the sale agreement the total sale consideration fixed is only Rs.1,50,000/-. No evidence has also been placed on record by the plaintiff to disprove the defendants' statement that the market value of the property was more than Rs.15,00,000/- as on the date of the alleged agreement of sale. The defendants have also pleaded fraud on the part of the plaintiff as they claim that the agreement of sale is a fabricated and fraudulent document and was never executed by the second defendant. The defendants have also pleaded that they are illiterates. The illiteracy of the defendants has also not been disputed as seen from the pleadings and from the evidence available on record. Therefore, it has to be believed that the defendants are illiterates.

24. If a party proves fraud, Section 92 of the Indian Evidence Act does not get attracted, as fraud is an exception to the said Section. Therefore, though the agreement of sale is alleged to have been entered



S.A.Nos.990 and 991 of 2021

into between the plaintiff and the second defendant as seen from the complaint, the same has been disputed by the defendants and they have also alleged fraud on the part of the plaintiff for filing the suit of specific performance while denying the execution of the alleged agreement of sale. The surrounding circumstances, as seen from the evidence available on record, also makes this Court to conclude that the plaintiff has perpetrated fraud upon the defendants by fabricating an agreement of sale, though the defendants never agreed to enter into such an agreement of sale, as on the same date the earlier agreement of sale stood cancelled by a registered cancellation deed. In the registered cancellation deed, the plaintiff has himself acknowledged that he is not interested in buying the property.

25. Fraud vitiates contract. When the contract has been vitiated, Section 92 of the Indian Evidence Act, does not get attracted and the defendants are entitled to take a plea contrary to the terms of the alleged agreement of sale which has been categorically denied by the defendants.



WEB COPY

26. The defendants in the written statement as well as in their deposition have categorically stated that they had executed only one document viz., the cancellation deed dated 21.10.2009 and they never executed an agreement of sale also dated 21.10.2009 as alleged by the plaintiff. PW2, the attesting witness in his deposition has also deposed that he had signed only one document. PW2 has also deposed that,

*"One male and two women were present during the said execution and after signing, Rs.20,000/- cash was handed over to the male member."*

The second defendant is a women and the plaintiff is a male. Therefore, it can also be inferred that the second defendant had never agreed to enter into a fresh agreement of sale on the date of the registered cancellation deed. There is no independent proof apart from the disputed agreement of sale which is held to be a fabricated document by this Court to show that the plaintiff had paid an advance amount of Rs.1,20,000/- to the second defendant. However, the Trial Court without any basis had directed refund of the sum of Rs.1,20,000/- to the plaintiff by the second defendant.



WEB COPY

27. The Honourable Supreme Court in the case of ***Ganga Harinarayanan Vs. K. Pattammal and Others reported in 2011 SCC Online Mad 110*** has held that "fraud vitiates contract". Since the surrounding circumstances for the execution of the alleged agreement of sale conclusively establishes that the alleged agreement of sale is a fabricated document and the defendants have proved that fraud has been committed by the plaintiff, the alleged agreement of sale for which the suit for specific performance has been filed, is a void contract and not enforceable under law.

28. It is well settled law that a person seeking the relief of specific performance must approach the Court with clean hands. The Judgment of the Honourable Supreme Court rendered in the case of ***Citadel Fine Pharmaceuticals Vs. Ramaniyam Real Estates Private Limited and Another reported in 2011 (9) SCC 147*** relied upon by the learned counsel for the defendants is one of the many decisions rendered by the Honourable Supreme Court for the said proposition.

29. Since the alleged contract viz., the agreement of sale for



S.A.Nos.990 and 991 of 2021

which the suit for specific performance has been laid is vitiated by

fraud, the decisions relied upon by the learned counsel for the plaintiff

in the cases of *V.Vaiyapuri Vs. M.Pavayi and Another reported in*

*2011 (1) LW 1002* and *Rajeswari and Others Vs. K.M.Kumarasamy*

*and Others reported in 2007 (4) MLJ 442* have no applicability for the

facts of the instant case as in those cases fraud was not established and

the contracts were genuine contracts and only under those

circumstances Section 92 of the Indian Evidence Act got attracted,

whereas, in the instant case, since the alleged agreement of sale is

vitiated by fraud, Section 92 of the Indian Evidence Act does not get

attracted and the defendants are allowed to plead and depose contrary

to the terms and conditions of the fabricated document viz., the

agreement of sale.

30. The defendants have proved through their pleadings, oral and documentary evidence that the defendants had never entered into the alleged agreement of sale for which the plaintiff had filed the suit for specific performance and had also sought for the alternative relief of refund of advance amount. The lower appellate Court has correctly



S.A.Nos.990 and 991 of 2021

appreciated the pleadings and the evidence available on record and has come to the right conclusion that the agreement of sale is a fabricated document and is vitiated by fraud and the plaintiff is also not entitled to the alternative relief of refund of advance amount. The lower appellate Court has rightly directed the concerned SRO to cancel the agreement of sale dated 21.10.2009.

31. There are no debatable issues of fact or law involved for this Court's further consideration under Section 100 of C.P.C. There is no substantial question of law involved in this second appeal. Only based on the pleadings and the evidence available on record, the lower appellate Court has rendered its findings against the plaintiff. In the result, there are no merits in these second appeals. Accordingly, these second appeals are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

Index: Yes/ No  
Speaking order / Non speaking order  
Neutral citation : Yes / No  
ab

To  
1. The Additional District Court, Hosur.



S.A.Nos.990 and 991 of 2021

2. The Subordinate Court, Hosur.
3. The Section Officer, V.R. Section, Madras High Court.

WEB COPY