



S.A(MD)No.163 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 23.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

S.A(MD)No.163 of 2018

and

C.M.P(MD)No.4427 of 2018

Ramamoorthy

... Appellant/1<sup>st</sup> Respondent/  
Plaintiff

Vs.

1.Sundararaj

... 1<sup>st</sup> Respondent/Appellant/  
2<sup>nd</sup> Defendant

Narayansamy (Died)

2.Jeyalakshmi

3.Dhanalakshmi

4.Vijayalakshmi

5.Ananth

6.Suresh

7.Vanitha

... Respondents 2 to 7

**PRAYER :-**

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed by the Lower Appellate Court in A.S.No.159 of 2008 on the file of the Sub Court, Theni, dated 23.02.2017 reversing the judgment and decree of the trial Court passed in



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O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Aundipatty, dated 28.02.2007.

For Appellant : Mr.P.V.Gurudevaraj

For R1 : Mr.M.Arjun Varman  
for Mr.S.Rajasekar

For R2 to R7 : Ex-parte (vide EB)

### **JUDGMENT**

This Second Appeal is preferred against the judgment and decree dated 23.02.2017 passed in A.S.No.159 of 2008 on the file of the Sub Court, Theni reversing the judgment and decree dated 28.02.2007 in O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti.

2. The appellant is the plaintiff and the respondents are the defendants in O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti. The appellant/plaintiff filed the suit for declaration that the sale deed dated 03.06.2004 as null and void and for directing the 1<sup>st</sup> defendant to execute the sale deed in favour of the plaintiff after receiving the balance amount and for permanent injunction.



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3. For the sake of convenience, the parties referred as plaintiff and the defendants as arrayed in O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti.

**4. Case of the plaintiff:**

The suit property is 15 cents out of 1 acre 48 cents. The suit property belonged to the 1<sup>st</sup> defendant. The plaintiff and the 1<sup>st</sup> defendant entered into a sale agreement on 31.03.2004 in respect of the suit property for sale consideration of Rs.3,000/-, The plaintiff paid Rs.2,500/-. The balance amount of Rs.500/- has to be paid within 6 months. The plaintiff approached the 1<sup>st</sup> defendant to receive the balance amount and asked to execute the sale deed. But, the 1<sup>st</sup> defendant neglected. The 2<sup>nd</sup> defendant knew very well about the sale agreement. Though the plaintiff is always ready and willing to perform his part, in order to defeat the right of the plaintiff, the 1<sup>st</sup> defendant executed the sale deed 03.06.2004 in favour of the 2<sup>nd</sup> defendant. The said sale deed is illegal. Hence, the plaintiff issued a legal notice. The defendants sent a reply with falsehood. Therefore, the plaintiff laid the suit.



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**5. Case of the 1<sup>st</sup> Defendant:**

The sale agreement between the plaintiff and the 1<sup>st</sup> defendant is true.

In the month of May 2004, the 1<sup>st</sup> defendant approached the plaintiff and asked him to get the sale deed executed. The plaintiff stated that he did not need the property and told to sell the same to somebody. On 28.05.2004, the 1<sup>st</sup> defendant returned the advance amount of Rs.2,500/- to the plaintiff. Then, the 1<sup>st</sup> defendant executed the sale deed to the 2<sup>nd</sup> defendant on 03.06.2004. The plaintiff with false averments sent legal notice and with the same false averments filed the suit. The suit is liable to be dismissed.

**6. Case of the 2<sup>nd</sup> Defendant:**

The alleged sale agreement between the plaintiff and the 1<sup>st</sup> defendant is utter false. The plaintiff is the sister's son of the 1<sup>st</sup> defendant. The plaintiff and the 1<sup>st</sup> defendant created the unregistered sale agreement with the intention to cheat the 2<sup>nd</sup> defendant, who purchased the suit property from the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant denied that he purchased the suit property with the knowledge of sale agreement between the plaintiff and the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant properly verified the encumbrance and only thereafter he purchased the suit property. In order to harass the



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2<sup>nd</sup> defendant, the plaintiff filed the suit with forged sale agreement. The plaintiff's legal notice was properly replied by the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant is a *bona fide* purchaser of the suit property and hence, the sale deed need not be cancelled.

7. The Trial Court framed the following issues:

" (1) *Whether the sale deed dated 03.06.2004 has to be declared as null and void?*

(2) *Whether the 1st defendant has to be directed to execute the sale deed in favour of the plaintiff?*

(3) *Whether the plaintiff is entitled to the relief of permanent injunction?*

(4) *To what other relief the plaintiff is entitled to?"*

8. During trial, on the plaintiff's side, three witnesses were examined as PW1 to PW3 and marked 6 exhibits as Ex.A.1 to Ex.A.6. On the defendants' side, three witnesses were examined as D.W.1 to D.W.3. and no exhibit was marked.

9. After hearing both sides the learned District Munsif-cum-Judicial Magistrate, Aundipatti concluded that the plaintiff has proved his case and



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decreed the suit by passing judgment and decree dated 28.02.2007.

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10. Aggrieved by the judgment and decree in O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti, the 2<sup>nd</sup> defendant preferred the Civil Appeal in A.S.No.159 of 2008 before the Subordinate Court, Theni. The first Appellate Court after hearing both and after perusing records held that the sale agreement was created after the sale deed of the 2<sup>nd</sup> defendant and the plaintiff is not entitled to any relief of declaration and specific performance and thereby set aside the judgment and decree of the trial Court and dismissed the suit and passed the judgment dated 23.02.2017.

11. Challenging the judgment and decree of the First Appellate Court, the plaintiff has preferred this Second Appeal and the same has been admitted for file on 29.06.2018 on the following substantial questions of law:-

*"(1) Whether the lower Appellate Court is right to deny the equitable relief of specific performance, even the agreement is proved by it attesting witnesses?"*



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*(2) Whether the sale agreement dated 31.03.2004 is falsely created one because of the relationship pointed out by the lower appellate Court?*

*(3) Whether the lower Appellate Court is correct in taking the assumption that the sale agreement is created to defeat the sale deed because of mentioning the small extent as in the sale deed of the second defendant, leaving the remaining of large extent in the same survey number, which is owned by first defendant?"*

12. The learned counsel for the appellant/plaintiff has mainly submitted that the plaintiff has proved Ex.A.1 - sale agreement as concluded by the trial Court. But the first Appellate Court, without considering the evidence of P.W.2 and P.W.3, observed that because of the plaintiff and the 1<sup>st</sup> defendant were relatives Ex.A.1 was created to nullify the Ex.A.2 - sale deed executed in favour of the 2<sup>nd</sup> defendant by the 1<sup>st</sup> defendant. Further, the 1<sup>st</sup> Appellate Court wrongly assumed and concluded that the 1<sup>st</sup> defendant could sale other parts of land adjoined to the suit property. The plaintiff proved the genuineness of Ex.A.1 and Ex.A.2 sale deed was executed thereafter, that too the 2<sup>nd</sup> defendant having knowledge of sale agreement purchased the suit property, through the plaintiff side witnesses. The 1<sup>st</sup> defendant admitted the



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sale agreement and also the receipt of major part of the sale consideration, there is no need for further evidence or proof required and hence, the first Appellate Court has to grant discretionary relief under Section 20 of the Specific Relief Act. Further, the 1<sup>st</sup> defendant has not proved about his alleged repayment of advance amount. So, the first Appellate Court ought to have confirmed the decree of the trial Court, but negative the relief to the plaintiff by allowing the first appeal. Therefore, the judgment of the first Appellate Court may be set aside and to allow this Second Appeal. In support of his argument, the learned counsel for the appellant/plaintiff relied on the decision reported in **2022 Live Law (SC) 375 (Ms.Anuradha Mutatkar /v/ Arpit Rai)**.

13. Per contra, the learned counsel for the 1<sup>st</sup> respondent/2<sup>nd</sup> defendant vehemently contended that the plaintiff being the close relative of the 1<sup>st</sup> defendant, colluded together to defeat the sale deed of the 2<sup>nd</sup> defendant. The plaintiff created the sale agreement purposely after the sale deed. Even as per sale agreement, he paid Rs.2,500/- out of sale consideration of Rs. 3,000/-, there is no acceptable explanation for payment of balance meager of Rs.500/- for getting the sale deed executed. So, the plaintiff failed to prove



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the genuineness of Ex.A.1 - sale agreement and his readiness & willingness.

The plaintiff has not even mentioned in the legal notice about the time for specific performance of six months, which itself would prove that the sale agreement was created one after sale deed and the legal notice was also issued after Ex.A.2 - sale deed. P.W.2 is the relative of the plaintiff. P.W.3 in his cross examination clearly deposed that he did not know the contents of the sale agreement and it was brought to him for signature alone. Ex.A.1 - sale agreement is unregistered one. The 2<sup>nd</sup> defendant after verification of encumbrance purchased the suit property, so he is a bona fide purchaser. The 1<sup>st</sup> defendant has also stated in his written statement that he asked the plaintiff for execution of sale deed, but the plaintiff did not want the property and further told to sell the same to somebody and hence, he returned the advance amount to him and sold the property to 2<sup>nd</sup> defendant. This was not specifically denied by the plaintiff. It is the further case of the 2<sup>nd</sup> defendant that the 1<sup>st</sup> defendant is the owner of larger extent of property in the suit survey number, if the plaintiff wanted to have sale deed executed, he could very well get some other portion of the suit survey land to complete the sale agreement. Admittedly, both the plaintiff and the 1<sup>st</sup> defendant are close relatives and hence, there would not be any prejudice between them. The



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first Appellate Court has correctly discussed the evidences adduced by both and correctly reversed the decree of the trial Court and allowed the first appeal. Therefore, the Second Appeal may be dismissed. In support of his argument, the learned counsel for the 1<sup>st</sup> respondent/2<sup>nd</sup> defendant has relied on the following citations:

**"(i) 2020 SCC Online Mad 27940 (Kuppan and Anr. /v/ Muthusamy)**

**(ii) 2022 SCC Online SC 71 (Shenbagam and Ors. /v/ KK Rathinavel)"**

14. Heard the arguments of both sides and perused the material records of the case. It is admitted by both that the plaintiff and the 1<sup>st</sup> defendant are close relatives and that the 1<sup>st</sup> defendant is the owner of a larger extent of 1 acre 48 cents in the suit survey number. The suit property is its eastern side north portion 15 cents. On perusal of evidence of plaintiff's side witnesses, it is clear that PW2 is the relative of the plaintiff and P.W.3 clearly admitted in his cross examination that while he was in his office, Ex.A.1 was brought for putting his signature and he just put his signature, he did not know whether the plaintiff and the 1<sup>st</sup> defendant came to his office and he also specifically admitted that he did not know about the



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other attestors. At this juncture, the learned plaintiff's counsel submitted that the PW3 was threatened by the 2<sup>nd</sup> defendant after he was summoned. In this regard, there is no material produced by the plaintiff before the trial Court or before the first Appellate Court as to whether the plaintiff lodged any police complaint or at least filed any petition to discard cross examination of PW.3. Hence, the first Appellate Court has correctly observed that based on PW.3's evidence the Ex.A.1 was created one after Ex.A.2 - sale deed. As rightly argued by the plaintiff's side, both the plaintiff and the 1<sup>st</sup> defendant are close relatives and hence, there would not be any prejudice between them, the plaintiff can get some other portion of 15 cents in the suit survey number to complete the sale agreement. There is no reason assigned for this and also as to why he wanted the suit property alone to be executed and what prevented to get other portion of the suit survey land when the 1<sup>st</sup> defendant is having larger extent in the suit survey number. In such circumstances, the first Appellate Court has correctly observed that the plaintiff and the 1<sup>st</sup> defendant created Ex.A.1 - sale agreement after Ex.A.2 - sale deed to create question upon Ex.A.2 - sale agreement.



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15. On perusal of records, as per the plaintiff's case, he paid Rs.2,500/- out of total sale consideration of Rs.3,000/-, that being the case, why the plaintiff delayed for getting execution of sale deed for paying the minimum balance sale consideration of Rs.500/-. There is no proper reason stated by the plaintiff. It is also the definite case of the 1<sup>st</sup> defendant, he approached the plaintiff to get the sale deed executed after paying the balance sale consideration, for which the plaintiff replied that he did not want the sale agreement property and told to sell it to somebody else. This was contended in the written statement and also in his evidence by the 1<sup>st</sup> defendant as D.W.1. Though the plaintiff denied this version, he has failed to disprove the same through plaintiff's side witnesses except PW.1. The plaintiff has to prove his case and hence, he is not entitled for discretionary relief of specific performance as rightly held by the 1<sup>st</sup> Appellate Court. Therefore, the first Appellate Court correctly appreciated the evidence adduced by both sides and correctly reversed the finding of the trial Court, which need not be interfered by way of Second Appeal. The citation relied on by the 1<sup>st</sup> appellant/plaintiff is not applicable to the facts of the case, whereas the citations relied on by the 1<sup>st</sup> respondent/2<sup>nd</sup> defendant side are applicable to the facts of the case.



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16. From the above facts and circumstances conjoined with evidences oral and documentary adduced in this case, the first Appellate Court correctly passed the judgment and the said findings need not be interfered by this Court by way of Second Appeal. Hence, the questions of law framed in this appeal are answered against the appellant/plaintiff. Thus, this Second Appeal fails.

17. In the result, the Second Appeal is dismissed. The judgment and decree dated 23.02.2017 passed in A.S.No.159 of 2008 on the file of the Sub Court, Theni reversing the judgment and decree dated 28.02.2007 passed in O.S.No.178 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Aundipatti is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

**23.08.2024**

NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No  
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To

1. The Sub Court,  
Theni.
2. The District Munsif-cum-Judicial Magistrate Court,  
Aundipatti
3. The Record Keeper,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

VSD

Pre-Delivery Judgment made in  
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