



AS No. 209 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 06.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.209 of 2013

K. Chidambaram (Deceased)

2. Jayamani

3. Senthil Kumar

4. Kottravel

(Sole Appellant died,

A2 to A4 are brought on record as

LRs of deceased Sole Appellant,

vide Order of Court dated 23.06.2014

made in CMP.Nos.5711 to 5713 of 2013

in A.S.No.209 of 2013)

.. Appellants

Versus

M. Palaniappan (Deceased)

2. Komathi

3. Kannan

(Sole Respondent died. R2 and R3

brought on record as LRs of the deceased

Sole Respondent vide Order of Court dated

24.08.2017 in CMP.Nos.9881 to 9883 of 2017

in A.S.No.209 of 2013)

.. Respondents

Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the Judgment and Decree dated 20.02.2013 made in O.S. No. 4 of 2010 on the file of the learned First Additional District Judge, Erode.

For Appellants : Mr. C. Prakasam

For Respondents : Mr. A. Yogaraj for



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Mr. R. Marudhachalamurthy

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JUDGMENT

This Appeal Suit is filed to set aside the Judgment and Decree dated 20.02.2013 made in O.S. No. 4 of 2010 on the file of the learned First Additional District Judge, Erode.

2. The legal heirs of the deceased sole plaintiff are the appellants in this appeal. The suit was filed by the deceased sole plaintiff for specific performance of the agreement dated 16.07.2009 and to direct the defendant to execute the registered sale deed in respect of the property described in the Plaint in favour of the plaintiff or his nominees on receipt of the balance sale consideration. In case the defendant fails to execute the sale deed, the Court may be pleased to execute the registered sale deed on behalf of the defendant, in favour of the plaintiff or his nominees and put the plaintiff in possession of the property described in the Plaint through the process of the Court and pass a consequential injunction restraining the defendant, his agents and assignees etc., from either alienating or creating any encumbrances over the property described in the Plaint till the execution of the sale deed and delivery of possession of the property described in the Plaint by means of permanent injunction or in the alternative direct the defendant to refund the sum of Rs.5,26,000/- to the plaintiff with subsequent interest at the rate of 12% per

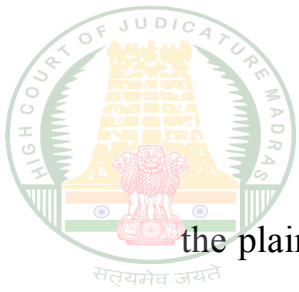


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annum from the date of the plaint till the date of realisation and to create a charge over the property described in the Plaint towards the due payment of the aforesaid amount and for costs.

3. The sole plaintiff – K. Chidambaram has filed the suit in O.S. No. 4 of 2010 contending that the defendant was the owner of the property described in the plaint and he offered to sell it to him for a sum of Rs.11,18,250/- at the rate of Rs.3,55,000/- per acre. When the plaintiff expressed his interest to purchase the said property, the defendant insisted him to make an advance of Rs.5,00,000/-. Accordingly, on 16.07.2009, an agreement was entered into between the plaintiff and the defendant, on which date, a sum of Rs.5,00,000/- was paid by the plaintiff to the defendant as advance. As per the agreement, the balance sale consideration has to be paid by the plaintiff within a period of six months and upon receipt of it, the defendant has to execute a sale deed free from all encumbrance and also to deliver vacant possession of the land. That apart, it was also recited that the defendant has to remit the balance stamp duty registration charges and get the original sale deed dated 23.01.2008 registered as document No. 320 of 2008 from the office of the Sub-Registrar, within the six months time and hand over the same after executing the sale deed in favour of the plaintiff. According to



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the plaintiff, he was always ready and willing to get the sale deed executed in his favour, but it was the defendant, who evaded and avoided to execute the sale deed. Therefore, on 31.12.2009, the plaintiff sent a legal notice calling upon the defendant to receive the balance sale consideration and execute the sale deed in his favour. Even though the defendant received the notice, he has not issued any reply. The plaintiff also came to know that the defendant is attempting to alienate the property described in the Plaint in favour of prospective purchasers notwithstanding the agreement of sale deed dated 16.07.2009 entered into with him. Therefore, the plaintiff has filed the suit.

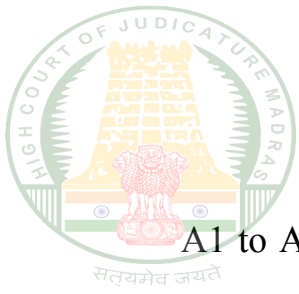
4. On notice, the defendant filed a written statement contending that he never offered to sell property described in the plaint to the plaintiff. The original sale deed of the property is under the custody of the registration department wherein it was alleged that the sale deed executed in favour of the defendant, by his vendor, is under-valued. The defendant never received Rs.5 lakhs from the plaintiff or entered into any agreement on 16.07.2009. The plaintiff never demanded this defendant to execute a sale deed, after receipt of the balance sale consideration. It was stated that after receipt of a notice dated 31.12.2009 sent on behalf of the plaintiff, the defendant approached the plaintiff and enquired about the legal notice. However, the Plaintiff replied



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that the said notice was issued at the instigation of one E. Saraswathi to get more amount and that there was no such agreement in existence as mentioned in the notice. Therefore, the defendant did not issue any reply notice to the notice sent on behalf of the plaintiff. It was also stated that already a suit was filed by one Rajamanickam at the instigation of the plaintiff and one S. Ganesamoorthy against the defendant, K. Chidambaram and Ganesamoorthy in O.S. No. 657 of 2009 on the file of District Munsif, Erode. Further, another suit in O.S. No. 534 of 2009 was filed before the District Munsif Court, Erode by the above said E.Saraswathi in connection with the very same property described in the plaint schedule. When the suits are pending, the defendant cannot alienate the property in question. Therefore, the allegation that the defendant is attempting to alienate the property without complying with the terms and conditions of the agreement dated 16.07.2009 is incorrect. The suit agreement dated 16.07.2009 is cooked up and therefore, no relief can be claimed. Accordingly, the defendant prayed for dismissal of the suit in O.S. No. 4 of 2010.

5. The trial court has taken up all the three suits in O.S. No. 4 of 2010, O.S. No. 169 of 2011 and O.S. No. 170 of 2011 together for a joint disposal. During trial, the plaintiff examined himself as PW1 and marked Exs.



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A1 to A3. On behalf of the defendant, neither any witness was examined nor any document marked. Before the trial court, the defendant was called absent and he was set exparte on 03.12.2012. However, the plaintiff was cross-examined by the plaintiff in the other suits namely O.S. No. 169 of 2011 and O.S. No. 170 of 2011. It was further observed that the plaintiff in O.S. No. 169 of 2011 and O.S. No. 170 of 2011 namely E. Saraswathi was not claiming any right over the property and she submitted through a memo that the dispute in the suits are settled out of court. At the same time, it was observed that the plaintiff did not submit any document to prove that the suit property belongs to the defendant, while so, the plaintiff is only entitled to an alternative relief of refund of the sum of Rs.5,26,000/- together with interest at the rate of 12% per annum from the date of suit till the date of the judgment and at the rate of 6% per annum for the advance amount of Rs.5,00,000/-.

6. Assailing the common judgment dated 20.02.2013, passed in O.S. No. 4 of 2010, the present appeal is filed by the plaintiff-appellant.

7. The learned counsel for the Appellant submitted that the Appellant is the Plaintiff in O.S.No.4 of 2010 on the file of the learned First Additional District Judge, Erode. The Suit in O.S.No.169 of 2011 was filed by one E.Saraswathi against the Plaintiff, M. Palaniappan, P. Kannan and K.



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Palanisamy and O.S. No. 170 of 2011 was filed by the very same E. Saraswathi against M.Palaniappan, P. Kannan and K. Palanisamy before the learned I Additional District Judge, Erode. Since the properties in all the Suits are the same, a common judgment was pronounced by the learned First Additional District Judge, Erode, in the three Suits namely O.S. No. 4 of 2010, O.S. No. 169 of 2011 and O.S.No.170 of 2011. It is the submission of the learned Counsel for the Appellant that the Appellant is the Plaintiff in O.S. No. 4 of 2010 which was filed for the relief of specific performance of agreement dated 16.07.2009. The defendant in O.S. No. 4 of 2010 is also one of the defendants in the other suits in O.S. No. 169 and 170 of 2011. Pending Suit, the Plaintiff in O.S. Nos.169 and 170 of 2011 namely E. Saraswathi filed a memo that the dispute concerning the Suits in O.S. Nos. 169 and 170 of 2011 were amicably settled between the parties and therefore sought dismissal of the Suit in O.S. No. 169 of 2011 and O.S. No. 170 of 2011. In those two suits, neither the plaintiff nor the defendants therein filed any oral or documentary evidence. On the other hand, during trial in O.S. No. 4 of 2010, the Plaintiff examined himself as P.W.1 and three documents were marked as Ex.A-1 to Ex.A-3 which are the sale agreement, notice and postal acknowledgment. The sole Defendant in O.S. No. 4 of 2010 was set ex-parte. However, while passing the common Judgment, the learned Judge has erroneously observed as



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7. The plaintiff in O.S.No.4/2010 pleaded that the suit property absolutely belongs to the defendant namely M.Palaniappan by virtue of a registered sale deed dated 23.01.2008 registered as document No.320/2008 on the file of Sub Registrar Office, Avalpoondurai Village. The document submitted by the plaintiff Saraswathi dated 24.01.2008 which is the sale agreement in between M.Palaniappan and P.Kannan as one part and Palanisamy and Saraswathi in another part. In the above sale agreement in page 2 it is mentioned as follows:-

"நம்மில் 1, 2 லக்கமிட்டவருக்கு 23.01.2008ம் தேதியில் எழுதி அவஸ்துநது றை சார் பதிவாளர் அலுவலகத்தில் 1 புத்தகம், 2008ம் வருஷித்திய 320, 321, 322, 323 நெம்பராக பதிவு செய்யப்பட்டிருக்கும் கிரைய சாசனப் பத்திரப்படிக்கு சுயார்ஜித வகையில் சர்வ சுதந்திரமாக பாத்தியப்பட்டு மேற்படியார்களுடைய சுவாதீன அனுபோகத்தில் இருந்து கொண்டு வருகிற இதனடியில் கண்ட சொத்தை".

8. On the other hand, the plaintiff in O.S. No. 4 of 2010 submitted the sale agreement dated 16.07.2009, which is also marked as Ex.A1 in the suit. It is mentioned that the suit property is the absolute property of M. Palaniappan. Either the plaintiff in all the suits nor the defendants in all the suits submitted original sale deed, thereby, whether the suit property belong to M. Palaniappan or the suit property belong to M. Palaniappan and P. Kannan itself not proved by any one. In O.S.No.4/2010 the defendant namely M. Palaniappan was set exparte. The Plaintiff K. Chidambaram alone was examined as PW1. He was cross-examined by the plaintiff in O.S. No. 169 of 2011 and O.S. No. 170 of 2011. After cross-examination, the case was posted for the cross of other defendants in O.S. No. 169 of 2011 and O.S. No. 170 of 2011.

9. At this stage, counsel for the plaintiff in O.S.No.169/2011 and O.S.No.170/2011 submitted a memo stating that the suit is settled out of court in between the plaintiff and the defendants, thereby, the plaintiff in O.S.No.169/2011 request to dismiss the suit as settled out of court and pass an order to refund half of the court fee paid in O.S.No.169/2011. The counsel for the plaintiff in O.S.No.170/2011 submitted a memo stating that the suit is settled out of court in between the



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plaintiff and the defendants, thereby the plaintiff in O.S.No.170/2011 request to dismiss the suit as not pressed. Hence, I dismissed both the suits in O.S.No.169/2011 and O.S.No.170/2011 and the plaintiff in O.S.No.169/2011 is entitled to get refund of court fee as per rules.

10. In O.S.No.4/2010, the defendant was called absent and he was set exparte on 03.12.2012. Only the plaintiff in O.S.No.169/2011 and O.S.No.170/2011 cross examined the plaintiff. Now she is not claiming any right over the suit property and she herself submitting a memo that her suits are settled out of court. under such circumstances, she is not having any claim in the suit property.

8. By referring to the above observations, the learned counsel for the plaintiff-appellant submitted that the defendant did not contest the suit and was set exparte. The Plaintiff examined himself as PW1 and marked three documents as Exs. A1 to A3 and proved his case. While so, the learned Judge ought to have granted the decree for specific performance of contract for sale in continuation of the agreement for sale entered into with the sole Defendant in O.S.No.4 of 2010. Instead, the learned Judge granted the decree for the alternate relief of refund of the advance amount.

9. It is the contention of the learned Counsel for the Appellant that no harm or damages would be caused to the Defendant if the Suit is decreed as sought for by the Plaintiff. Further, he submitted that the said E. Saraswathi filed the Suit in O.S. No. 169 of 2011 against the Defendants seeking



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permanent injunction to not to encumber or alienate the Suit property. The 1st

Defendant therein is the sole Respondent in the present Appeal. On filing of memo, it has been reported that except the Suit property in O.S. No. 4 of 2010, other properties were sold by M. Palaniappan/1st Defendant in O.S. Nos.169 and 170 of 2011. Therefore, no prejudice would be caused to the Respondent/1st Defendant in the light of the memo filed by the Plaintiff in O.S. Nos.169 and 170 of 2011 if a decree for specific performance is passed in O.S. No. 4 of 2010. The learned Judge ignored the same and observed that the Plaintiff in O.S. No. 4 of 2010 namely K. Chidambaram had not filed any document to prove that the Suit property belongs to the sole Defendant/M.Palaniappan and granted the alternate relief which is perverse. The original document must be produced by the defendant, but he was set exparte. While so, the observations that original document has not been filed by the plaintiff cannot be countenanced. Therefore, the learned counsel appearing for the plaintiff-appellant prayed this Court to allow this appeal by setting aside the Judgment and Decree dated 20.02.2013 passed in O.S. No. 4 of 2010 on the file of the learned Additional District Judge, Erode, whereby alternative relief of refund of court fee alone was granted.

10. The learned counsel for the respondent-defendant submitted that



the respondent-defendant was called absent and he was set exparte before the trial court. The learned Additional District Judge, Erode on appreciation of the evidence available on record, rightly passed the judgment and decree in O.S. No. 4 of 2010 and it does not call for any interference by this Court. Accordingly, the learned counsel for the respondent-defendant prayed for dismissal of the appeal.

Point for consideration:-

Whether the Plaintiff/ appellant is entitled for a decree for specific performance of contract as prayed for in O.S. No. 4 of 2010?

12. Heard the learned counsel for the appellant as well as the learned counsel for the respondent. Perused the records, including the Judgment and Decree dated 20.02.2013 passed in O.S. No. 4 of 2010 on the file of the learned Additional District Judge, Erode.

13. The Plaintiff in O.S. No. 4 of 2010 before the learned Additional District Judge, Erode is the Appellant herein. The Suit in O.S. No. 4 of 2010 was filed by the Plaintiff for the relief of specific performance of agreement of sale dated 16.07.2009. As per the claim made by the Plaintiff, he entered into an agreement for the purchase of property described in the Plaint from the

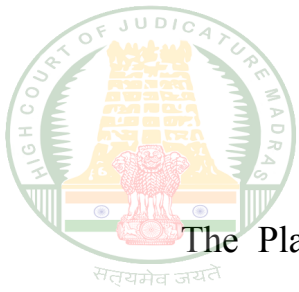


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Defendant. It is stated that the property described in the plaint absolutely belongs to Defendant. The sale price was fixed at Rs.11,80,250/- on 16.07.2009. On the same day, a sum of Rs.5,00,000/- was paid by the plaintiff as advance. It was further stated that the Defendant purchased the Suit property through a registered sale deed dated 23.01.2008 registered as Document No.320/2008 on the file of the Sub Registrar, Avalpoonthurai. The original sale agreement dated 16.07.2009 is with the Plaintiff and the photostat copy of the same is with the Defendant. As per the terms and conditions of the agreement, the balance sale consideration is to be paid to the Defendant within six months from the date of agreement. Upon such payment, the Defendant shall execute the sale deed free from all encumbrance and deliver possession of the property described in the plaint to the Plaintiff or his nominee. In the agreement of sale, it was stated that the Plaintiff has to bear the Registration expenses and other usual terms and conditions.

14. According to the Plaintiff he was always ready and willing to perform his part of contract and had the entire balance sale consideration payable to the Defendant and to get the sale deed executed. But the Defendant due to some reasons, wilfully avoided and evaded to execute the sale deed. Such refusal to comply the terms and conditions of the agreement is illegal.

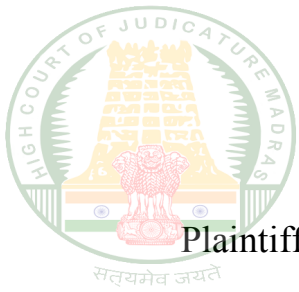


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The Plaintiff therefore caused a notice dated 03.12.2009 calling upon the Defendant to receive the balance sale consideration and execute the sale deed.

The notice issued on behalf of the Plaintiff was also received by the Defendant on 05.12.2009, but he did not choose to send any reply, hence, the suit was filed. To prove the plaint averments, the Plaintiff examined himself as P.W-1 and marked Ex.A-1 to Ex.A-3. Ex.A-1 is the sale agreement dated 16.02.2009. Ex.A-2 is the Office copy of the lawyer's notice issued by the Plaintiff to the Defendant dated 03.12.2009. Ex.A-3 is the postal acknowledgment card received by the Plaintiff to show the receipt of lawyers notice by the Defendant.

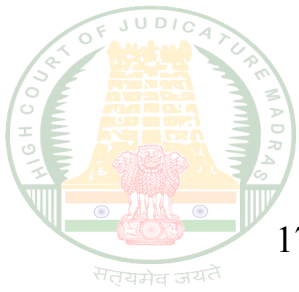
15. It is seen from the records that regarding the same Suit property, there were Suits filed and pending in O.S. No. 169 of 2011 filed by one E.Saraswathi against the Defendant/appellant and three others viz., M.Palaniappan, P.Kannan and K.Palanisamy. She also filed yet another Suit in O.S. No. 170 of 2011 in which other than the Plaintiff/K.Chidambaram, all the other Defendants in O.S. No. 169 of 2011 are arrayed as Defendants. On behalf of the Plaintiff in O.S. No. 169 & 170 of 2011, the Plaintiff in O.S. No. 4 of 2010/K.Chidambaram was cross-examined. In the cross-examination, the



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Plaintiff in O.S. No. 4 of 2010 admitted that the sale agreement under Ex.A-1 was not registered. When it was suggested that he had not registered the sale agreement to avoid payment of registration fees and stamp duty, he denied the same. P.W-1 admitted that he had not deposited the balance sale consideration into the Court deposit in O.S. No. 4 of 2010.

16. The Suit in O.S. Nos. 169 & 170 of 2011 were filed by the same Plaintiff/E.Saraswathi. The Defendants in both the Suits are almost similar. The Suit in O.S. No. 170 of 2011 was originally filed before the learned District Munsif, Erode as O.S. No. 534 of 2009 in which the Plaintiff/E. Saraswathi has sought a permanent injunction against the Defendants to not to create encumbrance in the Suit property. The Plaintiff in O.S. No. 169 of 2011/E.Saraswathi filed another Suit in O.S. No. 170 of 2011 before the learned Sub Judge, Erode, in which E. Saraswathi had sought specific performance of her half share in the Suit property. In the very same Suit property, alternatively, she claimed return of advance amount. Therefore, the three Suits were withdrawn from the learned Principal District Munsif and learned Sub Judge, Erode and transferred to the file of the learned Additional District Judge as all the properties in the suits are one and the same.



17. Pending trial, the Plaintiff in O.S. Nos. 169 & 170 of 2011/Saraswathi filed memo reporting that the subject matter of the Suit was amicably settled. Therefore, both the Suits were dismissed by the learned Additional District Judge, Erode and also directed the refund of the Court fees to the Plaintiff/Saraswathi in both the Suits in O.S.No.169 & 170 of 2011. After dismissal of both the Suits, the learned Additional District Judge in his Judgment had observed as follows:-

“10. In O.S. No. 4 of 2010, the Defendant was called absent and he was set ex-parte on 03.12.2012. Only the Plaintiff in O.S.No.169 of 2011 and O.S.No.170 of 2011 cross-examined the Plaintiff. Now, she is not claiming any right over the Suit property and she herself submitting a memo that her Suits are settled out of Court. Under such circumstances, she is not having any claim in the Suit property.

11. Now, the question is whether the Plaintiff in O.S.No.4 of 2010 is entitled to get a decree of specific performance or he is entitled alternative relief. As already stated the Plaintiff did not submit any document to prove that the Suit property belongs to the Defendant. Under such circumstances, the Plaintiff cannot claim specific performance as against the Defendant. On the other hand, the Plaintiff submit the sale agreement which is marked as Ex.A-1 would prove that the Plaintiff entered into a sale agreement with the Defendant. Since the Defendant failed to appear before this Court and he was set ex-parte. I found that the Plaintiff is entitled to get alternative relief of return of advance amount. Thereby I found that the Plaintiff is entitled to recover a sum of Rs.5,26,000/- from the Defendant with subsequent interest at the rate of 12% per annum from the date of the the Suit till this date of Judgment, thereafter the Plaintiff is entitled to claim 6% per annum for the advance amount of Rs.5,00,000/-. Accordingly, the Suit is decreed as prayed for with cost. In respect of other prayers, the Suit is dismissed.



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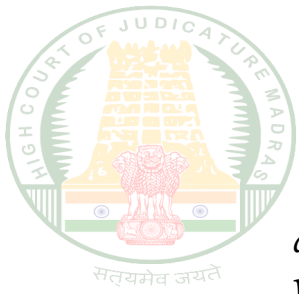
12. Result in O.S.No.4 of 2010:-

In the result, the Suit is decreed with cost in respect of the alternative prayer. The Plaintiff is entitled to recover for a sum of Rs.5,26,000/- from the Defendant with subsequent interest at the rate of 12% per annum from the date of the Suit till this date of Judgment, thereafter the Plaintiff is entitled to claim 6% per annum for the advance amount of Rs.5,00,000/-. Further it is hereby ordered that the Suit is dismissed in respect of other prayers.”

18. Therefore, the only ground raised by the Plaintiff/Appellant in this Appeal is that the other side remained ex-parte. While so, the learned Additional District Judge instead of granting the relief of specific performance had only granted the alternate relief of refund of the advance amount paid by the Plaintiff to the Defendant.

19. In this Appeal, the Defendant entered appearance and had not filed the documents. The learned Counsel for the Appellant submitted that the Respondent has no locus-standi to enter appearance as he remained ex-parte before the learned first Additional District Judge. Still, the learned Counsel for the Respondent placed reliance on the ruling in ***C.A.No.2399-2401 of 2023 (in the case of Ranjit Singh & Another Vs. State of Uttarkand)***. The relevant portion reads as follows:-

5. On 1st July, 2002, the defendants applied for setting



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aside the order dated 3rd May, 2002 by which their defence was struck out. The application proceeds on the allegation that on 3 rd May, 2002, the Court proceeded to strike out the defendants' defence without giving them an opportunity of being heard and the hearing was conducted ex parte. Very interestingly, a reply was filed to the said application by the plaintiffs in which a stand has been taken that as the suit was directed to proceed ex parte, there was no occasion to give an intimation to the defendants or their counsel that the application will be taken up on 3 rd May, 2002. Therefore, it is an accepted position that the application for striking out the defence of the defendants was taken up on the cause list on 3rd May 2002 without issuing notice to the defendants, though on 22nd April, 2002, the next date was already fixed as 30th May 2002. The application for setting aside the order dated 3rd May, 2002 was rejected. At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation. Therefore, notwithstanding an order passed earlier to proceed ex parte, while deciding an application for striking out the defence, it was the duty of the Court to give an opportunity of being heard to the defendants. However, that was not done. As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence. When the defendants had appeared in the suit, the act of preponing the date without notice to them or their advocate was completely illegal and contrary to elementary principles of natural justice. Therefore, it follows that the order striking out the defendants' defence is completely illegal, and the said order deserves to be set aside.

20. On perusal of the Judgment of the learned first Additional District



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Judge, Erode, it is found that the learned Judge refused to grant the relief of specific performance only on the ground that the Plaintiff has not filed copy of the sale deed in the name of the Defendant. It was also observed that whether the property belonged to the Defendant was not clear before granting the relief of specific performance. The Suit in O.S. Nos. 169 & 170 of 2011 were filed by the same Plaintiff/E.Saraswathi seeking specific performance regarding her share in the property. The pleadings in O.S. Nos. 169 and 170 of 2011 are not before this Court. The said Saraswathi claimed that the subject matter was amicably settled. If the subject matter is settled, either the property was executed in her favour by Palaniappan, the Defendant before the learned Additional District Judge and the first Defendant in O.S. No. 169 & 170 of 2011 or she withdrew the Suit. In the same pleadings in O.S. No. 4 of 2010, it is stated that the Defendant was evasive in executing the sale deed. Also, it was stated by the Plaintiff that the Defendant was attempting to encumber the property.

21. On perusal of the depositions of the Plaintiff/K.Chidambaram as P.W-1, the learned Counsel for the Plaintiff in O.S. Nos. 169 & 170 of 2011 had cross-examined him in which it was clearly stated that the sale agreement relied on by the Plaintiff in O.S. No. 4 of 2010 is an unregistered sale deed.



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Only to avoid registration fees and stamp duty, it was an unregistered sale

deed. Whereas the agreement relied on by Plaintiff/Saraswathi in O.S. No.

169 & 170 of 2011 and in the Suit for specific performance in O.S. No. 170 of 2011 is based on a registered sale agreement deed. In the cross-examination by the Plaintiff in O.S.Nos.169 & 170 of 2011, the Plaintiff in O.S.No.4 of 2010 admits that he had not deposited the balance sale consideration while filing the Suit in O.S.No.4 of 2010. He also admitted that he had not filed his Bank account as proof of the claim that he had sufficient money to pay the entire balance sale consideration and get the sale deed executed by the Defendant. A suggestion was made that the Plaintiff is a relative of the Defendant/Palaniappan and therefore, the Suit in O.S. No. 4 of 2010 which was filed as a collusive Suit to cause loss to the Plaintiff in O.S.No.170 of 2011 for specific performance was denied by the Plaintiff in O.S.No.4 of 2010. Under those circumstances, the learned Judge was not clear in his mind that the Defendant had the property with him on the date of the Judgment. Therefore, in order to weigh the scales of justice, it was observed that instead of granting relief of specific performance it is better to grant the alternate relief of refund of the advance amount.

22. The claim made by the Plaintiff in O.S. No. 4 of 2010 as the



Appellant before this Court in A.S. No. 209 of 2013 is that when the

Defendant remained ex-parte, what prevented the learned Judge from granting a decree for specific performance is found unacceptable in the light of the Provisions of Specific Relief Act. Section 20 of the Specific Relief Act is extracted hereunder:-

20. Discretion as to decreeing specific performance.—

(1)The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2)The following are cases in which the Court may properly exercise discretion not to decree specific performance:—

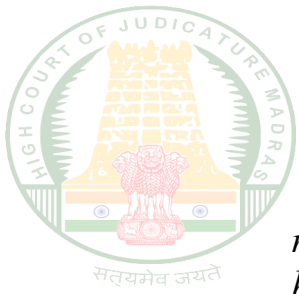
(a)where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b)where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c)where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the



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meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3)The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4)The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

23. At the same time, it is the discretion of the Court to either grant a decree for specific performance or refuse to grant it on the basis of the evidence available on record. The sale agreement entered into between the Plaintiff and the Defendant is unregistered. The plaintiff did not file the bank statement to show his wherewithal that he is resourceful enough to mobilise the balance sale consideration at the time of institution of the suit. The plaintiff also did not deposit the balance sale consideration to the Court. Admittedly, more than a decade has passed since the plaintiff and defendant have entered into the agreement of sale dated 16.07.2009. In the meantime, the price of the land would have sky-rocketed. The present appeal itself was filed in the year 2013. At this length of time, it is not fair for this Court to set aside the Judgment of the learned First Additional District Judge granting refund of advance amount instead of a decree for specific performance. Even on merits, when the plaintiff has not chosen to deposit the balance sale



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consideration into Court all these years, it will not be equitable to set aside the judgment of the trial court and to grant a decree for specific performance.

Even though the defendant was called absent and set exparte, the Court need not grant a decree when there is none to oppose the pleadings. Even in such a situation, the Court is empowered to go through the documentary evidence as well as merits of the case to arrive at a just conclusion based on the principles of fairness, equity and good conscience which governs the Civil Court to grant the relief. Therefore, the submission made by the learned Counsel for the Appellant is found unacceptable. The Judgment passed by the learned First Additional District Judge in O.S. No. 4 of 2010 dated 20.02.2013 cannot be faulted. Such a well-reasoned Judgment does not warrant interference by this Court in exercise of power under Section 96 and Order 41 of the Civil Procedure Code.

24. In the light of the above discussions, the point for determination is answered against the Appellant/Plaintiff and in favour of the Respondent/Defendant.

25. In the result, this *Appeal Suit is dismissed*. The Judgment and



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Decree dated 20.02.2013 made in O.S. No. 4 of 2010 on the file of the learned

First Additional District Judge, Erode is confirmed. No costs. Consequently,
connected Miscellaneous Petition is closed.

06.06.2025

dh

Index : Yes/No

Speaking/Non-speaking order

To

1. The Additional District Judge – I,
Erode.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Pre-delivery Judgment made in
A.S.No.209 of 2013

06.06.2025



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