



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-04-2025

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CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 374 of 2025

Thanakodi

Appellant(s)

Vs

Dhanam

Respondent(s)

PRAYER:- Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the decree and Judgement dated 25.08.2022 passed in A.S. No. 37 / 2023 by the III Additional District and Sessions Court of Cuddalore at Vridhachalam by confirming the Judgement and Decree dated 02.03.2022 made in OS No.12/2020 on the file of the Subordinate Judge Court at Tittagudi.

For Appellant(s): Mr. E.Arasu



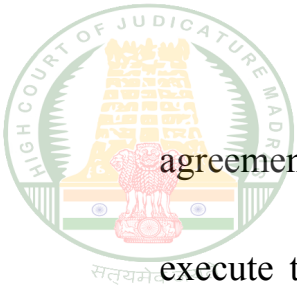
JUDGEMENT

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The appellant, who is the plaintiff filed the suit seeking for the relief of specific performance before the trial court in O.S. No. 12 of 2020 on the file of Subordinate Judge, Thittagudi and the same was dismissed by the trial court. Against which, she preferred an appeal in A.S.No.37 of 2023 on the file of III Addl. District and Sessions Court, Vridhachalam at Cuddalore and the same was also dismissed by confirming the findings of the trial court. Now, challenging the concurrent findings of courts below, the plaintiff preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for the relief of specific performance against the defendant stating that she entered into sale agreement agreeing to sell her property for a sum of Rs.3,25,000/- and executed Ex.A1 sale agreement. She had received a sum of Rs.3,00,000/- as advance on the date of



agreement i.e. 16.09.2009 itself and within three years, she had agreed to

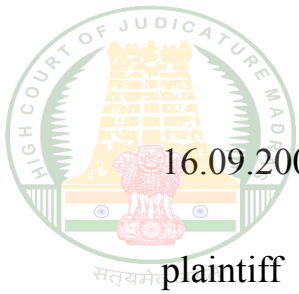
execute the sale deed on or before 15.09.2012, but she failed. Therefore, on

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01.09.2012 she issued a notice, but the defendant gave a false reply. Hence, she

come forward with the present suit.

4. The defendant contended that already she gave the suit property to plaintiff husband's aunt viz., Patchiammal under usufructuary mortgage for the period of six years and the said usufructuary mortgage was made over to the plaintiff and on the alleged date of agreement 16.09.2009, when the defendant went to Sub-Registrar office to discharge the mortgage, taking advantage of her illiteracy, the plaintiff has obtained her signature in the alleged Ex.A1 sale agreement and without her consent, the said agreement came into force. Therefore, she denied the entire contents of the plaintiff and she had also produced the receipt in respect of discharging usufructuary mortgage. Moreover, to prove the discharge, she produced the encumbrance Ex.B2, wherein there was an endorsement made for the discharge of usufructuary mortgage. She would also contended that on the date of alleged agreement on



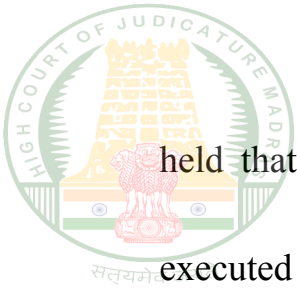
16.09.2009, the defendant discharged the usufructuary mortgage, but the

plaintiff has not disclosed all these facts in her plaint, which amounts to

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suppression of facts. Hence, she prayed to dismiss the suit.

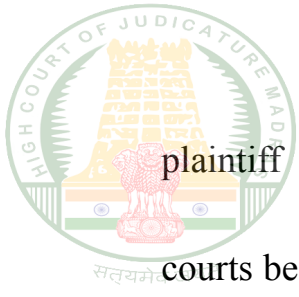
5. Before the trial court, both parties adduced evidence and during trial, the plaintiff also admits that in respect of payment of consideration of Rs.3,00,000/-, a sum of Rs.1,00,000/- was given for discharge of usufructuary mortgage and a sum of Rs.2,00,000/- by way of cash was given to Patchaiammal, which itself shows that she has not paid a sum of Rs.3,00,000/- as a sale consideration to the plaintiff and the same was observed by the trial judge, besides, the trial court also held that the plaintiff approached the court with suppression of facts by not disclosing the discharge of usufructuary mortgage on 16.09.2009 and on the same day, the agreement was came into force with the consent of defendant also probabilise the conduct of plaintiff. Therefore, the trial court held that the agreement is surrounded with suspicious circumstances. Accordingly, the suit was dismissed. Against which, she preferred an appeal in A.S.No. 37 of 2023, wherein the first appellate judge also



held that the suppression of discharge of usufructuary mortgage, which was executed by the defendant to plaintiff husband's aunt in respect of suit property

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that too on the same day of alleged sale agreement said to be executed shows that there is a suspicion over the execution of Ex.A1. Therefore, the first appellate judge has held that the plaintiff has not approached the court with clean hands. Furthermore, the defendant also proved that on the date of alleged execution of agreement, the usufructuary mortgage was discharged by her over the suit property, which was shown as Survey No. 236/1 in Ex.B2 encumbrance. Further, in her own pleadings, the plaintiff submits that balance sum of Rs.1 lakh was adjusted to discharge the usufructuary mortgage made by the defendant for Patchaimmal, but it was not shown in Ex.A1. Therefore, the earlier transaction was suppressed and also not examined any of the witnesses to establish that it is true and valid one, thereby the plaintiff failed to prove the same. Hence, there is no question of law involved for consideration of this Second Appeal as prescribed under Sec. 16(c) of Specific Relief Act, which is a mandatory requirement to avail the remedy of specific performance, but the plaintiff approached the court with unclean hands, so, as discussed above, the



plaintiff suppressed the real facts before the courts below. Hence, both the

courts below rightly held that plaintiff is not entitled for any relief, which needs

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no interference. Accordingly, this Second Appeal is dismissed as no merit and

the findings rendered by the courts below is confirmed. Suit is dismissed. No

costs.

30-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. III Addl. District Court, Vridhachalam.

2. Sub-Judge, Thittakudi.

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



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T.V.THAMILSELVI J.

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