



A.S.NO.35 OF 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

JUDGMENT RESERVED ON : 19 / 06 / 2025

JUDGMENT PRONOUNCED ON : 18 / 09 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.35 OF 2012

AND

M.P.NOS.1 AND 2 OF 2012

1.A.V.Subramaniam

2.V.Mahesh

... Appellants / Plaintiffs

Vs.

1.Kuppayammal

2.R.Ganesh

3.R.Raghupathy

4.R.Gopal @ Gopalakrishnan

5.R.Prakash

6.R.Chellammal

7.B.Revathi

... Respondents / Defendants

PRAYER: First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 28, 2011 passed in O.S.No.271 of 2007 by the learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur.

For Appellants : Mr.C.S.Kiran

Page No.1 of 33



A.S.NO.35 OF 2012

For Respondents : Mr.M.S.Subramanian

WEB COPY

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated November 28, 2011 passed by the 'learned Additional District and Sessions Judge, Fast Track Court III, Thiruvallur' ['Trial Court' for brevity] in O.S.No.271 of 2007, the plaintiffs therein have filed this Appeal Suit under Section 96 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The case of the plaintiffs as put forth in the plaint is that the plaintiffs entered into a Sale Agreement with one Ramasamy Mudaliar, the husband of the first defendant and father of the other defendants on July 10, 2005 in respect of Suit Property for a sale consideration of Rs.11,70,000/-. On the same day, a sum of Rs.2,00,000/- was paid as advance in the presence of second and third defendants. The second defendant, who is the eldest son of Ramasamy Mudaliar had written the

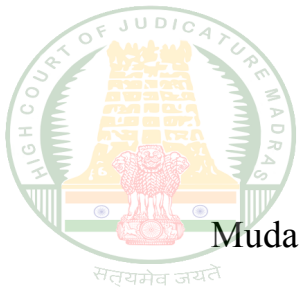


WEB COPY

Sale Agreement. As per the Sale Agreement, the transaction should be completed on or before September 10, 2005 and the balance sale consideration had to be paid at the time of execution of Sale Deed.

3.1. Then, upon the insistence of the said Ramasamy Mudaliar, the plaintiffs were forced to make further payments; the plaintiffs paid a sum of Rs.3,00,000/- on August 7, 2005 at his residence in Chennai in the presence of his family members including the defendants 1 to 4 herein and a further sum of Rs.4,00,000/- on September 3, 2005 in the presence of defendants 2 and 3 herein in Ramasamy Mudaliar's shop. In return for the payments made, possession of the Suit Property was handed over to the plaintiffs and they are in absolute possession till date. The defendants 2 and 3 were assisting the plaintiffs on behalf of their father to improve the Suit Property.

3.2. When the plaintiffs contacted Ramasamy Mudaliar on September 9, 2005 for approval of draft Sale Deed and execution of Sale Deed within the stipulate period, Ramasamy Mudaliar informed that he will meet the plaintiffs at his shop premises at Nungambakkam in the evening hours and execute the Sale Deed. Unfortunately, Ramasamy



WEB COPY

Mudaliar passed away in a fatal road accident at Ambattur before the meeting. Upon hearing the same, the first plaintiff proceeded to Hyderabad since there was no chance of registration on that day.

3.3. After ten days of the demise of Ramasamy Mudaliar, the plaintiffs approached the defendants 1 to 4 in person and insisted on execution of Sale Deed as agreed upon, and they assured the plaintiffs to execute the Sale Deed at the earliest. When contacted again during middle of November 2005, they requested the plaintiffs to wait further to enable them to get all the legal heirs of the deceased for execution of the Sale Deed. Later, the plaintiffs came to know that the defendants have entered into a Partition Deed dated December 7, 2005 among themselves, without the knowledge of the plaintiffs by suppressing the Sale Agreement dated July 10, 2005. In response, the plaintiffs also lodged a complaint on the file of the Inspector of Police, CCB III Team, Chennai in Crime No.179 of 2007.

3.4. According to the plaintiffs, the defendants failed to fulfil their obligation under the Sale Agreement and the defendants are trying to interfere with the plaintiffs' peaceful possession and smooth running of

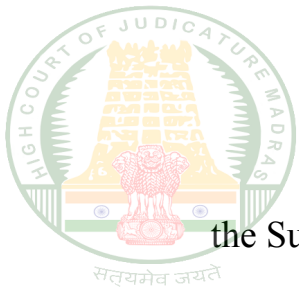


WEB COPY

business activities in the Suit premises. Hence, after exchange of notices, the plaintiffs filed the Suit for Specific Performance, for declaration that the Partition Deed is null and void, and for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the Suit Property and not to encumber the Suit Property.

DEFENDANTS' CASE

4. The first defendant filed written statement which was adopted by the defendants 2 to 7, denying the allegations made by the plaintiffs in the plaint. The defendants admit the Suit Sale Agreement and the receipt of Rs.2,00,000/- on the same day as advance. But the other alleged payments made by the plaintiffs viz., Rs.3,00,000/- on August 7, 2005 and Rs.4,00,000/- on September 3, 2005 were denied. According to the defendants, the endorsements made in the agreement for the above payments are forged and fabricated by the plaintiffs. It was further denied that possession of the Suit Property was handed over to the plaintiffs and that the defendants assisted the plaintiffs in improving the Suit Property. It is denied that the plaintiffs have started functioning of their company in



the Suit Property.

WEB COPY

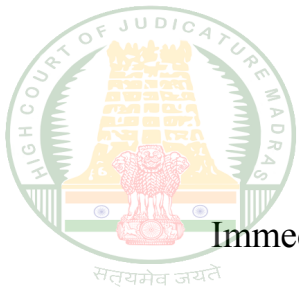
4.1. According to the defendants, despite repeated demands from Ramasamy Mudaliar, the plaintiffs have never come forward to perform their part of the contract except the payment of Rs.2,00,000/- as advance on July 10, 2005. After the demise of Ramasamy Mudaliar, during the evening hours on September 10, 2005, the plaintiffs came to the defendants house and felt sorry for the sudden and unfortunate demise of Ramasamy Mudaliar and handed over the Original Sale Agreement dated July 10, 2005 stating that they are no more interested in purchasing the Suit Property. Plaintiffs suggested that the advance amount of Rs.2,00,000/- paid could be returned and get the Sale Agreement cancelled. The defendants agreed and immediately handed over Rs.2,00,000/- to the plaintiffs. On receipt of the said amount, the plaintiffs requested the defendants to return the original Sale Agreement as the same required for their account purpose. Accordingly, the defendants handed over the original Sale Agreement. Further, an endorsement was taken from both the plaintiffs in a photo copy of the Sale Agreement dated July 10, 2005 evidencing the receipt of Rs.2,00,000/- and cancellation of the Sale Agreement. The said endorsement has also been attested by



witnesses who were present at that time. In fact, the first plaintiff has written with his own hand about the receipt of original Sale Agreement from the first defendants before he subscribed his signature in the endorsement.

4.2. According to the defendants, the plaintiffs have unnecessarily lodged a police complaint with false and untenable allegations. Followed by the complaint, the plaintiffs employed heavy pressure and influence upon the police and under the guise of investigation, obtained signatures of defendants 1 to 4 as though they undertook to re-pay the plaintiffs a sum of Rs.9,00,000/-.

4.3. Further, upon obtaining an order of ad-interim injunction, the plaintiffs engaged unlawful group of 20 persons and hurriedly began to put up metal mesh fencing around the Suit Property on August 2, 2007. The second defendant visited the property by 10.00 a.m., on August 2, 2007 and witnessed the unlawful acts of the plaintiffs. Immediately, the matter was reported to the Mappedu Police. The Sub-Inspector of Police, Mappedu Police Station visited the Suit Property on August 2, 2007 at 04.00 p.m., and questioned the unlawful acts of the plaintiffs.



Immediately, on August 3, 2007 an Interlocutory Application in I.A.No.786 of 2007 was filed for appointment of Advocate-Commissioner. The Court also appointed an Advocate-Commissioner on August 10, 2007. On August 11, 2007 the Advocate-Commissioner visited the Suit Property and noted down the fresh fence, small room constructed etc. Further, the Suit Document Nos.7, 8, 10 to 13 were secured by the plaintiffs for the purpose of the Suit. Suit Document No.9 was denied as the signature found thereon was not that of Late S.Ramasamy Mudaliar. The plaintiffs are not entitled to any relief as sought in the plaint. Accordingly, the defendants prayed to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- “1. Whether the plaintiffs are entitled for specific performance of contract of sale agreement dated July 10, 2025 entered between plaintiffs and Ramasamy Mudaliar ?*
- 2. To what relief the plaintiffs are entitled ?”*



5.1. Subsequently, the issues were recast as follows:

WEB COPY

1. *Whether the plaintiffs are entitled for specific performance of contract of Sale Agreement dated July 10, 2005 entered between plaintiffs and Ramasamy Mudaliar ?*
2. *Whether the plaintiffs are ready and willing to perform their part of contract throughout from the date of agreement ?*
3. *Whether the payment dated August 7, 2005 and September 3, 2005 are true ?*
4. *Is time the essence of contract ?*
5. *Whether there is cancellation of agreement ?*
6. *Whether the plaintiffs are entitled to permanent injunction as prayed for ?*
7. *Whether the plaintiffs are entitled to get relief of declaration that the partition deed dated December 7, 2005 amongst the defendants is invalid ?*
8. *To what relief?"*

6. At trial, plaintiffs were examined as P.W.1 and P.W.2 and Ex-A.1 to Ex-A.43 were marked on the side of the plaintiffs. On the side of the defendants, fourth defendant was examined as D.W.1 and one R.Indirajith was examined as D.W.2 and Ex-B.1 to Ex-B.4 were marked. Advocate-



Commissioner's Report was marked as Ex-C.1.

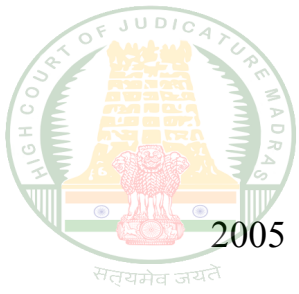
WEB COPY

7. After full-fledged trial, the Trial Court concluded that Ex-A.1 - Suit Sale Agreement dated July 10, 2005 was cancelled and the plaintiffs failed to prove the readiness and willingness to perform their part of contract. The alleged payments of Rs.3,00,000/- and Rs.4,00,000/- on August 7, 2005 and September 3, 2005 respectively were not proved. Time is the essence of contract. Possession was not handed over to the plaintiffs and they trespassed into the Suit Property after obtaining the ad-interim injunction and constructed the fences and shed. Upon these findings, the Trial Court dismissed the Suit.

8. Feeling aggrieved, the plaintiffs have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

9. Mr.C.S.Kiran, learned Counsel for the appellants / plaintiffs would argue that after execution of Ex-A.1 – Suit Sale Agreement, at the insistence of the Ramasamy Mudaliar, the plaintiffs paid further payments of Rs.3,00,000/- and Rs.4,00,000/- on August 7, 2005 and September 3,



2005 respectively. The same were duly endorsed in a photocopy of Ex-

WEB COPY

A.1 – Suit Sale Agreement and the endorsements have been marked as Ex-A.2 and Ex-A.3 respectively. Ex-A.1 to Ex-A.3 were scribed / written by second defendant – Ganesh, the eldest son of Ramasamy Mudaliar. Further, the defendants have admitted the further payments to the tune of Rs.7,00,000/- made by the plaintiff in Ex-A.35 – Letter from first defendant to Police, and Ex-A.39 - Statement from second defendant witnessed by 3rd and 4th defendants. Possession of the Suit Property was handed over to the plaintiffs in return. Since then, the plaintiffs have been paying land tax and house tax in respect of the Suit Property and they have been running an Ice Factory thereon. Ex-A.19 - SSI Certificate has also been obtained for the same.

9.1. Referring to Ex-A.20 to Ex-A.29 which consists of Bank Statements, Letters from various financial corporation, Income Tax Return, etc., he would contend that the balance sale consideration was only Rs.2,70,000/-, the plaintiffs had the wherewithal to pay the same, and the plaintiffs were always ready and willing to perform their part of the contract. While it was planned to get Sale Deed executed in the evening of September 9, 2005, unfortunately Ramasamy Mudaliar passed



WEB COPY

on the same day before execution of Sale Deed in a road accident. The plaintiffs did not attend the condolence nor did they meet the defendants on September 10, 2005. Only ten days thereafter, the plaintiffs met the defendants and requested them to execute Sale Deed. The defendants agreed to execute Sale Deed at the earliest possible. However, subsequently, with a view to defeat and defraud the rights of the plaintiffs, the defendants entered into Ex-A.8 – Partition Deed dated December 7, 2005.

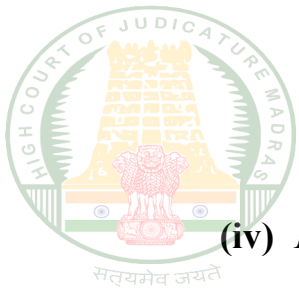
9.2. As regards the alleged cancellation of the Sale Agreement dated July 10, 2005, he would submit that the plaintiffs did not meet the defendants on September 10, 2005. After execution of Sale Agreement, on the same day viz., July 10, 2005, the original was given to the plaintiffs and a photocopy was given to the Ramasamy Mudaliar, and the plaintiffs endorsed on the photocopy of Sale Agreement as to the receipt of the original and affixed their signatures. Below his signature, the first plaintiff also mentioned the date of his signature viz., "10.7.2005". The defendants overwrote the 7 in "10.7.2005" as 9 and wrote there above as if the plaintiffs cancelled the Sale Agreement. In short, the alleged endorsement as to the cancellation of the Sale Agreement is a forged one.



The evidence of D.W.2 is not natural and not a reliable one. The Trial Court failed to consider the above aspects and erroneously dismissed the Suit. The Judgment and Decree of the Trial Court deserves to be interfered with. Accordingly, he would pray to set aside the Judgment and Decree of the Trial Court.

9.3. He would rely on the following decisions in support of his contentions:

- (i) ***Chand Rani's Case*** - Judgment of Hon'ble Supreme Court in Chand Rani -vs- Kamal Rani, reported in (1993) 1 SCC 519;
- (ii) ***Babulal Agarwal's Case*** - Judgment of Hon'ble Supreme Court in Babulal Agarwal -vs- Jyoti Shrivastava, reported in 2000 (1) MPLJ 102;
- (iii) ***Kapil Corepacks Private Limited's Case*** - Judgment of Hon'ble Supreme Court in Kapil Corepacks Private Limited -vs- Harbans Lal reported in (2010) 8 SCC 452;



(iv) *Dipakbhai's Case* - Judgment of Hon'ble Supreme Court in
WEB COPY Dipakbhai Jagdishchandra Patel -vs- State of Gujarat, reported in
(2019) 16 SCC 547;

(v) *Sukhbir's Case* - Judgment of Hon'ble Supreme Court in Sukhbir
-vs- Ajit Singh, reported in (2021) 6 SCC 54;

(vi) *Daivasigamani's Case* - Judgment of Hon'ble Supreme Court in
P.Daivasigamani -vs- S.Sambandan, reported in (2022) 14 SCC 793;

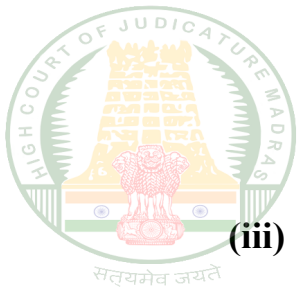
10. On the other hand, Mr.M.S.Subramanian, learned Counsel for the respondent / defendants would argue that time is of the essence of Ex-A.1 – Sale Agreement. Further, if really the plaintiffs made further payments as alleged, the same would have been endorsed on the original and not the photocopy, that too when even as per the plaintiffs, the original of Ex-A.1 lies with them. No independent witness was examined in support of the alleged payments. Ex-A.2 and Ex-A.3 – Endorsements as to the alleged further payments are not proved as per law. Further, the alleged admissions made before police in Ex-A.35 – Letter from first defendant to Police and Ex-A.39 - Statement from second defendant, are



obtained by force and not valid in the eyes of law. Hence, the plaintiffs have failed to prove the alleged further payments. Further, Ramasamy Mudaliar never handed over possession to the plaintiffs and upon obtaining ad-interim injunction, they trespassed into the Suit Property and put up shed and fences. Further, the plaintiffs cannot protect his alleged possession when the Sale Agreement is an unregistered one in view of the amendment made in Section 53-A of the Transfer of Property Act, 1882. The Trial Court rightly dismissed the Original Suit. There is no need to interfere with the same. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

10.1. He would rely on the following decisions in support of his contentions:

- (i) ***Sukhwinder Singh's Case*** - Judgment of Hon'ble Supreme Court in Sukhwinder Singh -vs- Jagroop Singh reported in (2021) 20 SCC 245;
- (ii) ***J.P.Builders' Case*** - Judgment of Hon'ble Supreme Court in J.P.Builders -vs- A.Ramadas Rao reported in (2011) SCC 429;



WEB COPY

(iii) ***P.Meenakshisundaram's Case*** - Judgment of Hon'ble Supreme

Court in *P.Meenakshisundaram -vs- P.Vijayakumar*, reported in
(2018) 15 SCC 80;

(iv) ***Sarojini's Case*** - Judgment of this Court in *S.Sarojini -vs- P.Mariappan* reported in 2018 (4) CTC 13;

(v) ***Saraladevi Surana's Case*** - Judgment of this Court in *S.Saraladevi Surana -vs- G.S.Sundararaj* reported in 2021 (3) MWN (Civil) 749;

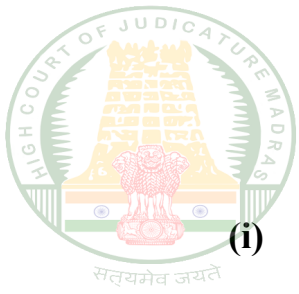
(vi) ***Dutta Seethamahalakshamma's Case*** - Judgment of Andhra Pradesh High Court in *Dutta Seethamahalakshamma -vs- Yanamadala Balaramaiah* reported in AIR 2003 AP 430;

(vii) ***Ayithi Appalanaidu's Case*** - Judgment of Andhra Pradesh High Court in *Ayithi Appalanaidu -vs- Petla Papamma* reported in AIR 2011 AP 172.

DISCUSSION:

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:



A.S.NO.35 OF 2012

WEB COPY

- (i) Whether the plaintiffs made further payments of Rs.3,00,000/- and Rs.4,00,000/- on August 7, 2005 and September 3, 2005 respectively ?
- (ii) Whether Ex-A.1 – Sale Agreement was cancelled on September 10, 2005 as alleged by the defendants ?
- (iii) Whether the plaintiffs were ready and willing to perform their part of the contract ?
- (iv) Whether the plaintiffs are entitled to get Sale Deed executed in their favour ?
- (v) Whether the plaintiffs are entitled to injunctions as prayed for ?
- (vi) Whether Ex-A.8 – Partition Deed dated December 7, 2005 entered among the defendants is valid ?
- (vii) Whether the Judgment and Decree of the Trial Court warrant any interference of this Court ?



Point No.(i)

WEB COPY 12. The defendants admitted the execution of Ex-A.1 – Sale Agreement, the sale consideration fixed thereunder as well as the receipt of Rs.2,00,000/- as advance on the very same day of execution. But the defendants deny the receipt of Rs.3,00,000/- and Rs.4,00,000/- on August 7, 2005 and September 3, 2005 respectively and Ex-A.2 and Ex-A.3 – Endorsements therefor.

13. In Ex-A.6 – Reply Notice itself, the plaintiffs have clearly stated that Ex-A.1 – Suit Sale Agreement, Ex-A.2 and Ex-A.3 – Endorsements were all scribed by the second defendant – Ganesan. Ramasamy Mudaliar have signed in Ex-A.1 to Ex-A.3. The same has been pleaded in the plaint as well. After exchange of notices, the plaintiffs preferred a police complaint before Central Crime Branch Team V, Egmore, Chennai against the defendants and in the due course of enquiry, the second defendant submitted a signed statement (Ex-A.39) wherein 3rd and 4th defendants have signed as witnesses. In Ex-A.39, it has been stated that as the Sale Agreement in respect of the Suit Property has expired, the defendants are ready to return the advance amount of Rs.9,00,000/- but cannot execute Sale Deed in favour of the plaintiffs in



WEB COPY

respect of the Suit Property. To be noted, Ex-A.39 was made at the stage of preliminary enquiry itself when no criminal case was registered against the defendants. Ex-A.39 was not obtained when the second defendant was under police custody. The second defendant did not enter into the witness box to support the contention that Ex-A.39 – Statement was obtained by force or fraud. No complaint to any higher police official or anybody was sent by the defendants that Ex-A.39 was obtained by force. Merely because endorsements were made on a photocopy of Ex-A.1 – Sale Agreement, it cannot be said that they are forged or false in nature. From Ex-A.20 to Ex-A.29 which inter alia contains the plaintiffs' Income Tax Returns, Bank Account Statements, Letter from Life Insurance Corporation of India, the ability of the plaintiffs to mobilise money to the tune of Rs.7,00,000/- can be inferred. In these circumstances, Ex-A.39 can be proved against the defendants, Section 25 and Section 26 of Indian Evidence Act, 1872 do not stand as an impediment for the same, and this Court is of the view that the plaintiffs have prima facie proved Ex-A.2 and 3. This Court would like to note here that in Ex-A.35 – Letter from first defendant to Police witnessed to defendants 2 to 4 as well, the defendants seems to have admitted the receipt of Rs.9,00,000/- as



advance. However, Ex-A.35 was written after filing of Ex-A.42 – First Information Report (FIR). At the time of Ex-A.35, the defendants were arrayed as accused and hence, Sections 25 and 26 of Indian Evidence Act, 1872 will come into play. Hence, Ex-A.39 is alone considered by this Court and not Ex-A.35.

14. Now the onus is upon the defendants who failed to discharge the same. The second defendant was not examined as stated supra, that too when the plaintiffs have taken a specific stand that it was the second defendant who scribed Ex-A.1 to Ex-A.3. Further, the only defendant who entered the witness box is D.W.1 / fourth defendant but he has not deposed anything about the usage of force to get Ex-A.39 executed. The defendants did not take any step to send Ex-A.2 and Ex-A.3 – Endorsements for expert opinion on the signatures found therein. When perused through naked eye, this Court could not find any fundamental variation between the signatures of Ramasamy Mudaliar found in Ex-A.1 and in Exs-A.2 and A.3. There is no evidence available on record to show that there was force behind the execution of Ex-A.39.



WEB COPY

15. Hence, this Court is of the view that Ex-A.2 and Ex-A.3 – Endorsements are true and that the plaintiffs paid Rs.3,00,000/- and Rs.4,00,000/- on August 7, 2005 and September 3, 2005 respectively as evidenced by Exs-A.2 and A.3. The Trial Court found that no explanation was assigned for Ex-A.2 and Ex-A.3 – Endorsements being in a photocopy of Ex-A.1 – Sale Agreement and not the original. In the facts and circumstances of this case, this Court is of the view that the finding of the Trial Court is not justifiable as there is no bar to make an endorsement on a photocopy. **Point No.(i) is answered accordingly in favour of plaintiffs and against the defendants.**

Point No.(ii)

16. According to the defendants, on September 10, 2005 i.e., on the next day of demise of Ramasamy Mudaliar, the plaintiffs visited the defendants for condolence, and sought for cancellation of Sale Agreement. The defendants agreed, returned the advance amount of Rs.2,00,000/- received by Ramasamy Mudaliar on the date of execution of Ex-A.1, obtained endorsement to that effect in the photocopy of Ex-A.1. The signatures of the plaintiffs found in the aforesaid endorsement 1 and 2 have been marked as Ex-B.2 and Ex-B.3 respectively. Further, the



WEB COPY

first plaintiff himself in his own hand has written that the original of Ex-A.1 – Sale Agreement is received by them and the same has been marked as Ex-B.4.

17. That being the case of the defendants, the plaintiffs' case is that Ex-B.4 – Endorsement and Exs-B.2 and B.3 – Signatures were made at the time of execution of Ex-A.1 i.e., on July 10, 2005 and that the defendants have forged the date by overwriting 7 in 10.7.2025 as 9 and also added false endorsement about cancellation of Ex-A.1 above Ex-B.2 and Ex-B.3.

18. Both sides did not send the date in Ex-B.2 – Signature of first plaintiff for expert opinion. If really the Ex-A.1 was cancelled, naturally the first plaintiff would have endorsed that the Sale Agreement was cancelled. There was no reason for him to mention that the original was received. Further, admittedly, Ramasamy Mudaliar passed away in a road accident on September 9, 2005 at 6.30 p.m. (See Ex-A.34 - FIR). It being a death due to road traffic accident (medico-legal case), post-mortem would have been carried out. Generally post-mortem will not be carried out after dusk and hence, it would have been carried out on the next day



A.S.NO.35 OF 2012

WEB COPY

only i.e., September 10, 2005, which means the body of the deceased was received only on September 10, 2005. In such a scenario, it is highly unnatural that the plaintiffs sought for cancellation of Sale Agreement in the condolence house and that the defendants agreed to the same and instantly returned the advance amount of Rs.2,00,000/-. Furthermore, as held under Point No.(i), the advance amount is Rs.9,00,000/- and not Rs.2,00,000/-. Moreover, a careful perusal of the date in Ex-B.2 would show that the number “9” alone looks odd and out of proportion, as if it has been written over number “7”. These makes the case of the plaintiffs that Ex-B.2 to Ex-B.4 were made at the time of Ex-A.1 i.e., on July 10, 2005 probable. Indeed the defendants’ side have examined D.W.2 namely Indrajeet and he has deposed in favour of the defendants in this regard. However, in view of the above narrative, this Court is of the view that his evidence is not trustworthy. Hence, the cancellation of Ex-A.1 on September 10, 2005 is not proved by the defendants. **Point No.(ii) is answered accordingly in favour of plaintiffs and against the defendants.**



WEB CO **Point No.(iii)**

19. Admittedly, the first plaintiff retired as a Senior Bank Manager in Canara Bank and the second plaintiff is running a factory. Ex-A.20 to Ex-A.29 would establish that the plaintiffs had sufficient capacity and wherewithal to purchase the Suit Property. As held under Point No.(i), the plaintiffs have paid Rs.7,00,000/- in addition to the initial advance amount of Rs.2,00,000/-. Thus, total advance amount is Rs.9,00,000/- and the remaining sale consideration is only Rs.2,70,000/-. The plaintiffs in their evidence have stated that they were ready and willing with a Draft Sale Deed in hand on September 3, 2005 itself but Ramasamy Mudaliar sought for some time citing personal inconvenience. Further stated that on September 9, 2005, when the plaintiffs insisted on execution of Sale Deed, Ramasamy Mudaliar agreed and had planned to execute Sale Deed in the evening. However, unfortunately, he passed away before execution of Sale Deed. Further, the plaintiffs have deposited the balance sale consideration into the Court. Considering the cumulative facts and circumstances of the case, this Court is of the view that the plaintiffs were ready and willing to perform their part of the contract. **Point No.(iii) is**



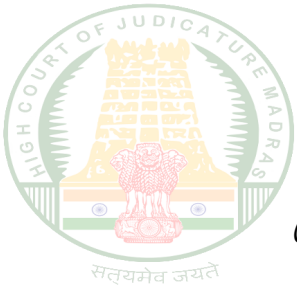
A.S.NO.35 OF 2012

answered accordingly in favour of plaintiffs and against the defendants.

Point No.(iv)

20. This Court deems fit to extract hereunder a portion of the Sale Agreement :

"மேற்படி கிரயத் தொகையில் இன்றைய தேதியில் கிரைய முன்பணமாக 2-வது நபரும் 3-வது நபரும் சேர்ந்து 1 வது நபருக்கு ரூ.200000/- (ரூபாய் இரண்டு லட்சம் மட்டும்) கொடுத்து மீதி கிரயத் தொகை ரூ.970000/- (ரூபாய் ஒன்பது லட்சத்து எழுபது ஆயிரம் மட்டும்) இன்றைய தேதியில் இருந்து 2 (இரண்டு) மாத காலத் தவணைக்குள் அதாவது 10.09.2005 க்குள் 2-வது நபர், 3-வது நபர் சேர்ந்து 1-வது நபருக்கு செலுத்தி கிரய பத்திரம் எழுதி பதிவு செய்து கொள்ள வேண்டியது மேற்படி ஒப்பந்தப்படி கிரயம் பெற்றும் 2-வது நபர், 3-வது நபர் குறிப்பிட்ட காலத்திற்குள் பதிவு செய்து கொள்ளாமல்

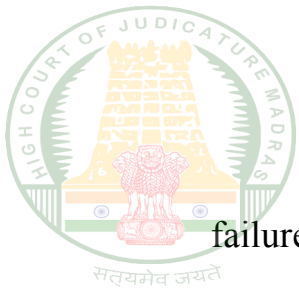


A.S.NO.35 OF 2012

WEB COPY

போனால் மேற்படி முன்பணமாக கொடுத்த ரூ.200000/- (ரூபாய் இரண்டு லட்சம்) இழந்து விடுகிறார்கள். 1-வது நபர் கிரயம் தருபவர் பணம் பெற்று கொண்டு கிரய பத்திரம் பதிவு செய்து கொடுக்காமல் போனால் ரூ.200000/- (ரூபாய் இரண்டு லட்சம்) மும் மற்றும் ஈடு தொகையாக 10% (பத்து சகவிதம்) தேர்த்து மொத்தம் ரூ.220000/- (ரூபாய் இரண்டு லட்சத்து இருபது ஆயிரம் மட்டும்) மாக கொடுக்க வேண்டும். இதன் உடன் படிக்கைக்கு முன்று நபர்களும் முழு மனதுடன் ஒப்பந்த பத்திரம் மூலம் சாட்சிகள் முன்னிலையில் கட்டுப்படுகிறோம் என்பதை முழு மனதுடன் ஒப்பு கொள்கிறோம்".

21. From the above, it is clear that as per the terms of Ex-A.1 – Sale Agreement, if the plaintiffs fail to perform their part of the contract, it will lead to forfeiture of the advance amount of Rs.2,00,000/-. On the other hand, if the defendants fail to fulfil their obligation under Ex-A.1, they have to return the advance amount of Rs.2,00,000/- along with 10% thereon as compensation i.e., totally Rs.2,20,000/-. The consequences of



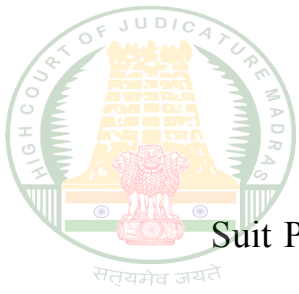
WEB COPY

failure on either side has been clearly spelt out in the contract itself. There is no consequence or remedy spelt out such that the aggrieved party may enforce the Sale Agreement and get the Sale Deed executed through Court of Law. There is no such a thing in the subsequent endorsements as well viz., Ex-A.2 and Ex-A.3. In a Suit for specific performance, what had been agreed by the parties alone can be enforced. As held under Point No.(i), a further advance of Rs.7,00,000/- was made. Bearing in mind the same and interpreting Ex-A.1, the remedy available to the plaintiffs in case of failure on the part of the defendants to perform their part of the contract, is return of the advance amount of Rs.9,00,000/- along with 10% thereon as compensation. To put it differently, through Court of Law, the plaintiffs can only seek Rs.9,90,000/-, and not execution of Sale Deed.

Point No.(iv) is answered accordingly.

Point No.(v)

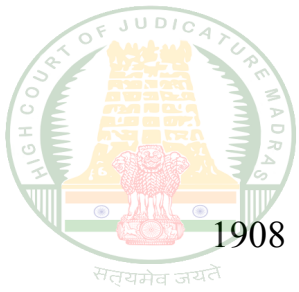
22. As regards permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the Suit Property, Ex-A.1 – Sale Agreement is an unregistered one. There is no recital in Ex-A.1 to Ex-A.3 that possession was handed over to the plaintiffs. The plaintiffs claim to be in possession and enjoyment of the



WEB COPY

Suit Property on the basis of Ex-A.10 to Ex-A.15 and Ex-A.19. Ex-A.10 to Ex-A.12 – Receipts for Kist paid by plaintiffs in the name of Ramasamy Mudaliar. Mere payment of Kist does not mean that the plaintiffs are in possession and enjoyment of the Suit Property. Kist can be paid by anyone. Ex-A.13 is the second plaintiff's Cheque Book showing his address as the Suit Property, issued by ICICI Bank on February 15, 2006 i.e., just before the exchange of notices. Ex-A.14 and Ex-A.15 are House Tax Receipt and Miscellaneous Receipt respectively issued in favour of the plaintiffs in respect of the Suit Property just before the filing of Suit (Suit has been filed on July 27, 2007). Ex-A.19 – SSI Certificate has been obtained stating as if the Suit Property belongs to the plaintiffs. Thus, it has been obtained by misleading the authority by suppression of fact and it also cannot be taken to show the possession of the plaintiffs pursuant to the Sale Agreement. There is no satisfactory evidence to show that possession was handed over to the plaintiffs by Ramasamy Mudaliar.

23. Be that as it may, in view of the Registration and other related laws (Amendment) Act, 2001 [Act No.48 of 2001] with effect from September 24, 2001, which amended Section 17 of the Registration Act,



WEB COPY

1908 and Section 53-A of the Transfer of Property Act, 1882, when protection of possession is sought under said Section 53-A as a part performance of contract, the Sale Agreement must be a registered one. Ex-A.1 being an unregistered one, even while assuming that the plaintiffs are in possession and enjoyment of the Suit Property, they cannot seek injunction under Section 53-A of the Transfer of Property Act, 1882.

24. As regards the permanent injunction against the defendants not to alienate the Suit Property, mere Sale Agreement does not provide any title over the Suit Property. Hence, the plaintiffs cannot seek permanent injunction not to alienate against the defendants. **Point No.(v) is answered accordingly in favour of defendants and against the plaintiffs.**

Point No.(vi)

25. As regards the relief of declaration that Ex-A.8 – Partition Deed dated December 7, 2005 is null and void, as already stated supra, the plaintiffs are entitled only to the return of Rs.9,90,000/- as per the terms of Ex-A.1 – Sale Agreement. In such a scenario, post Ramasamy Mudaliar's demise, his legal heirs are entitled to his property as per law.



Hence, the partition is valid and the plaintiffs have no locus to question the Ex.A.8 - Partition Deed and thus, not entitled to the relief of declaration that the Partition Deed is null and void. **Point No.(vi) is answered accordingly in favour of defendants and against the plaintiffs.**

Point No.(vii)

26. The Trial Court is not right in its finding that Ex-A.2 and Ex-A.3 – Endorsements are not proved by the plaintiffs. The plaintiffs were ready and willing to perform their part of the contract. As stated supra, the plaintiffs are entitled to receive Rs.9,00,000/-, along with 10% thereon as compensation.

27. Taking judicial notice of the fact that the market value of the Suit Property, which is situate in a Thiruvallur – Sriperumpudur Main Road, has sky rocketed and touched Crores, and also considering the fact that even the guideline value is Rs.1,50,00,000/- per acre as on July, 2024 and that the nature of transaction under Ex-A.1 is commercial transaction, in the interest of justice, this Court is inclined to award interest at the rate of 18 % (simple interest) from the date of Suit till realisation. In short, the



plaintiffs are entitled to Rs.9,90,000/- along with 18 % simple interest thereon from the date of Suit till realisation. Thus, the Judgment and Decree of the Trial Court are liable to be set aside by this Court. **Point No.(v) is answered accordingly.**

28. No quarrel with the case laws relied on by either side.

CONCLUSION:

29. Resultantly, the Appeal Suit stands partly-allowed, the Judgment and Decree of Trial Court is hereby set aside, and suit is partly decreed in the following terms:

- (a) The defendants shall pay Rs.9,90,000/- (Rupees Nine Lakh and Ninety Thousand only) along with 18 % simple interest thereon to the plaintiffs from the date of Suit till the date of realisation, within 3 months from today. Charge is created on the Suit Property to enable the plaintiffs to realise the said amount and interest;
- (b) As it is said that the plaintiffs are in possession and enjoyment of the Suit Property after filing of the Suit, the



WEB COPY



A.S.NO.35 OF 2012

plaintiffs shall handover vacant possession of the Suit Property to the defendants within three months from today;

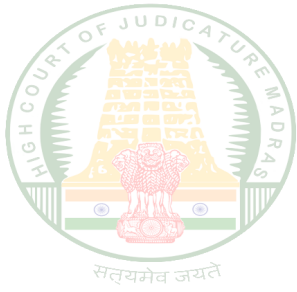
- (c) The plaintiffs are entitled to withdraw any amount deposited before the Trial Court towards remaining sale consideration with accrued interest, if any, thereon;
- (d) The plaintiffs are not entitled to the relief of injunctions and declaration as prayed for.

29.2. Keeping in mind the facts and circumstances of the case, the plaintiffs are entitled to costs throughout from the defendants.

29.3. Connected Miscellaneous Petitions shall be closed.

/ 09 / 2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
TK
To
The Additional District and Sessions Judge
Fast Track Court III
Thiruvallur.



WEB COPY



A.S.NO.35 OF 2012

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.35 OF 2012

18 / 09 / 2025

Page No.33 of 33