



A.S.No.593 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 18.09.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.593 of 2010

K.Kolandai Sevi

... Appellant

VS.

1.Arumugam

2.Alamelu

3.Kailasam (Died)

4.A.Elumalai

5.A.Ganesan

6.Mohanambal

7.Kamala

8.Vanitha

9.Uma Devi

10.T.S.Madesan

11.Ramasamy

12.S.Murugan

1/16



A.S.No.593 of 2010

13.Seetha

WEB COPY 14.Raja

15.Kalaivani

16.M.Ravi

17.Malarkodi

18.Loganathan

19.Jayammal

20.Kalaivani

21.Vijayan

22.K.Palanisamy

23.Rani

24.Govindaraju

25.Dhanalakshmi

26.E.Srinivasan

27.P.Kumar

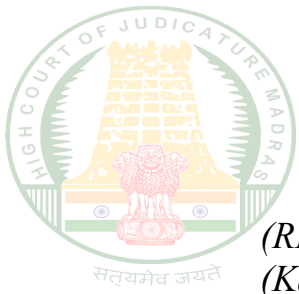
28.K.Chinnaponnu

29.T.Kumaresan

30.Gowrishankar

31.Lalitha

... Respondents



A.S.No.593 of 2010

(RR30 to 31 brought on record as Lrs of the deceased R3 (Kailasam) vide order of Court dated 16.12.2020 made in C.M.P.No.13586 of 2020 in A.s.No.593 of 2010)

WEB COPY

PRAYER: This First Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree passed by the Additional District Judge (Fast Track Court No.1) Salem in O.S.No.88 of 2009, dated 20.04.2010.

For Appellant : Mr.S.Kaithamalai Kumaran

For R1, R2 and
R4 to R9 : Mr.J.Franklin

For R3 : Died

For R15 : Given up

For R10 to R14
and R16 to R31 : No Appearance

J U D G M E N T

This First Appeal has been filed to set aside the judgment and decree passed by the Additional District Judge (Fast Track Court No.1) Salem in O.S.No.88 of 2009, dated 20.04.2010.

2. The unsuccessful plaintiff in a suit for Specific Performance is the appellant. He filed a suit for Specific Performance of Sale Agreement dated



05.12.2003, which was marked as Ex.A1 against the respondents/defendants. The said suit was dismissed by the Trial Court.

Aggrieved by the same, the plaintiff has come before this Court by way of filing this appeal.

3. According to the appellant/plaintiff, the defendants 1 to 9 were the original owners of the property covered by the Suit Sale Agreement. They entered into a Sale Agreement with 10th defendant for sale of agreement mentioned property on 05.12.2003. As per the terms of agreement, the total consideration was fixed at Rs.6,50,000/-. On the date of agreement, the 10th defendant paid a sum of Rs.1,00,000/- to the defendants 1 to 9 and agreed to pay the balance amount within a period of 11 months from the date of agreement. It was also stated that the 10th defendant agreed to discharge the encumbrance in the agreement mentioned property within the time stipulated. Subsequently, on 01.09.2006, the 10th defendant received a sum of Rs.1,00,000/- from the plaintiff and assigned the Sale Agreement in his favour. Though the plaintiff was ready and willing to perform his part of the contract as Assignee of the agreement under the original Vendee, the Agreement Vendors namely defendants 1 to 9 postponed the execution of



Sale Agreement. After acquiring knowledge about the sale of the agreement

mentioned property in favour of the defendants 11 to 29, the plaintiff issued a legal notice to the defendants on 16.09.2008, which was marked as Ex.A3. The defendants 1 to 9 came up with a reply on 16.10.2008 containing false pleadings. Hence, the plaintiff was constrained to file a suit for Specific Performance of the Agreement and the suit was filed on 10.11.2008.

4. The 5th defendant filed a written statement and resisted the suit and the written statement of the 5th defendant was adopted by the defendants 1 to 4 and 6 to 9. In the written statement, the defendants 1 to 9 denied the execution of the Suit Sale Agreement. It was the specific case of the defendants 1 to 9 that the 10th defendant promised them to arrange for a loan amount from a third party for low interest. Therefore, believing his words, they put their signatures in empty stamp paper and green conquer sheets and handed over the same to the 10th defendant. It was specific case of the defendants 1 to 9 that those signed papers were utilised by the plaintiff and 10th defendant to create the Suit Sale Agreement.

5. The 10th defendant filed a written statement supporting the plea of plaintiff.

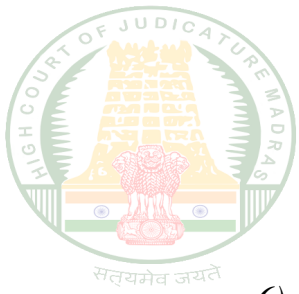


WEB COPY

6. The defendants 11 to 29, who are all purchasers from defendants 1 to 9 filed a written statement claiming that they purchased the agreement mentioned property for value without notice of prior agreement. It was also stated that the agreement mentioned property was divided into housing site, after getting proper approval from the Competent Authority and thereafter, the defendants 11 to 29 had purchased the same. At the time of division of agreement mentioned property into the house site there was no objection by the plaintiff. Therefore, they sought for dismissal of the suit.

7. Based on the above pleadings, the Trial Court framed the following issues for consideration:-

- 1) *Whether the defendants 1 to 9 executed an agreement of sale in favour of 10th defendant on 05.12.2003?*
- 2) *Whether the sale agreement dated 05.12.2003, is barred by limitation and the plaintiff is not entitled to enforce the same?*
- 3) *Whether the sale agreement dated 05.12.2003, is barred by limitation and the plaintiff is not entitled to enforce the same?*
- 4) *Whether the sale agreement dated 05.12.2003 is a forged document?*
- 5) *Whether the 10th defendant had not expressed his readiness and*



willingness to perform the terms of contract?

6) *Whether the suit is maintainable or not?*

7) *To what relief the plaintiff is entitled to?*

8. Before the Trial Court, the plaintiff was examined as PW.1 and 32 documents were marked on his side as Exs.A1 to A32. On behalf of the defendants, the 5th defendant was examined as DW.1 and yet another witness namely Madheswaran was examined as DW.2. On behalf of the defendants, two documents were marked as Exs.B1 and B2.

9. Based on the evidence available on record, the Trial Court came to the conclusion that the plaintiff failed to prove the due execution of the Suit Sale Agreement and dismissed the suit. The Trial Court also found that the plaintiff also failed to prove his readiness and willingness and held that the suit was barred by limitation. As necessary consequence, the suit was dismissed and aggrieved by the same, the plaintiff has come before this Court by way of filing this appeal.

10. The learned counsel appearing for the appellant/plaintiff would submit that the 5th defendant, who was examined as DW.1 clearly admitted his signature in the Suit Sale Agreement and therefore, the Trial Court has

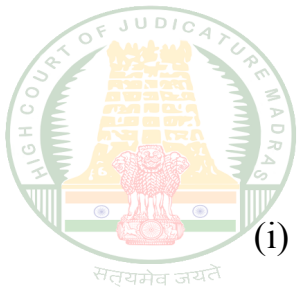


committed a serious error in coming to the conclusion that the execution of agreement was not proved. He further submitted that as per the evidence of DW.1, the Mortgage Debt on the agreement mentioned property was discharged only in the year 2007 and therefore, the delay in seeking Specific Performance cannot be put against the plaintiff. The learned counsel for the appellant would further submit that in view of admission made by DW.1 non-examination of Attestor and Scribe to Ex.A1 will not affect the case of the plaintiff. Therefore, he sought for allowing of the appeal. In support of his contention, the learned counsel for the appellant relied on the following judgments:-

- (i) ***Jayalakshmi Ammal and 8 others vs. Chinnasamy Gounder and another*** reported in **2007 (1) CTC 449**.
- (ii) ***B.Vetriselvan vs. T.Ganesan*** reported in **2022 (2) MWN (Civil) 393**.

11. The learned counsel appearing for the respondents 1, 2 and 4 to 9 advanced his arguments in support of findings of the Trial Court.

12. Based on the pleadings and arguments advanced by the respective counsel, the following points are arising for consideration in this appeal:-



WEB COPY

(i) Whether the execution of suit sale agreement is proved?

(ii) Whether the plaintiff proved his readiness and willingness to perform his part of the contract?

(iii) Whether the plaintiff is entitled to main relief of Specific Performance?

Discussion on Point No.1:-

13. The plaintiff is not a party to the Suit Sale Agreement-Ex.A1. Admittedly, the Suit Sale Agreement was entered into between the defendants 1 to 9 on the one hand and 10th defendant on the other hand. The plaintiff is only an Assignee of the Suit Sale Agreement from the 10th defendant. The Assignment Endorsement on the back side of the first page of Ex.A1, is marked as Ex.A2. Therefore, it is clear that the plaintiff has no personal knowledge about the due execution of the Suit Sale Agreement. In the written statement filed by the defendants 1 to 9, the execution of Suit Sale Agreement was specifically denied. Though they admitted the signature

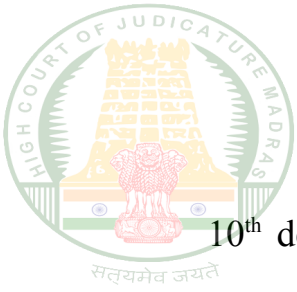


WEB COPY

found in the Ex.A1, it was specifically pleaded by them that as per the promise made by 10th defendant to get loan for lower interest, the defendants 1 to 9 signed in empty stamp paper and green conquer sheets and the same had been utilised for creating the Suit Sale Agreement.

14. In view of the specific stand taken by the defendants 1 to 9 denying due execution of the Suit Sale Agreement, it is incumbent on the plaintiff to prove the execution of Suit Sale Agreement. In order to prove the execution of Suit Sale Agreement, absolutely there is no evidence available on record except the evidence of PW.1. As mentioned earlier, the PW.1 is not a party to the Suit Sale Agreement. He is only an Assignee under the Agreement Vendee. In these circumstances, he has no personal knowledge about the execution of Suit Sale Agreement-Ex.A1. Hence, based on the evidence of PW.1 alone, this Court cannot come to a conclusion that the due execution of Suit Sale Agreement is proved.

15. Though the Agreement Vendee namely the 10th defendant filed a written statement supporting the case of the plaintiff, he has not come before this Court to give a evidence. In the absence of any statement on oath by the



10th defendant, this Court is not in a position to accept the version in the written statement filed by the 10th defendant. For the reason best known to him, the plaintiff failed to examine the Attestor to Ex.A1 and the Scribe. In such circumstances, the Trial Court was justified in coming to the conclusion that due execution of Suit Sale Agreement was not proved by the plaintiff.

16. The learned counsel appearing for the appellant by relying on the judgment of this Court in *Jayalakshmi Ammal* case cited supra, would submit that the burden of proving that the defendant signed blank papers is on him and he failed to discharge the said burden. In the case law relied on by the learned counsel for the appellant, the defendant raised a plea of coercion. It is settled law that whenever the plea of coercion is raised, it is for the person, who raises the plea shall prove the same. On the other hand, in the case on hand, the execution is denied, the signature alone was admitted and it is the bounden duty of the plaintiff to prove that the defendant subscribe his signature in the agreement after preparation of the same. Therefore, the said case law is not applicable to the facts of the present case.



A.S.No.593 of 2010

WEB COPY 17. In ***B.Vetriselvan*** case cited by the learned counsel for the appellant taking into consideration the responsible position occupied by the defendant therein. this Court held possibility of in signing the blank papers was not acceptable. In the case on hand, as mentioned earlier, the own plaintiff's side witness had no personal information regarding the execution of the Suit Sale Agreement. So the initial burden of proving the execution has not been discharged by examining the person who was present at the time of execution of Suit Sale Agreement. In such circumstances, the case laws relied on by the learned counsel for the appellant are not useful to advance his case. Accordingly, the Point No.1 is answered against the appellant.

Discussion on Point Nos.2 and 3:-

18. Ex.A1-Suit Sale Agreement was entered into on 05.12.2003. The total consideration was fixed as Rs.6,50,000/-. On the date of agreement, a sum of Rs.1,00,000/- was paid by the Agreement Vendee in favour of defendants 1 to 9. As per the agreement, the balance amount shall be paid by the Agreement Vendee within a period of 11 months. The said 11 months

12/16



period expired on 05.11.2004. Subsequently, the agreement was assigned in favour of plaintiff by Agreement Vendee on 01.09.2006. From 05.11.2004 to the date of assignment i.e., 01.09.2006, the Agreement Vendee did not issue any notice to the Agreement Vendors requesting them to complete the sale transaction. After assignment, the plaintiff also kept quiet without demanding performance of the agreement. The first notice was issued by the plaintiff only on 16.09.2008 nearly after two years from the date of assignment.

19. Though the time for performance was expired on 05.11.2004, the first notice demanding performance of agreement was issued only on 16.09.2008 nearly after 4 years. The plaintiff failed to explain the long delay of 4 years. Though the learned counsel for the appellant submitted that there was some delay on the part of the defendants discharging the Mortgage Debt, the same is not acceptable to this Court in view of the specific clause in the Sale Agreement that in case of failure to complete the sale transaction by paying the balance amount within time stipulated, the Agreement Vendee shall forfeit the advance amount and agreement shall stand cancelled automatically.



WEB COPY 20. In view of such stringent clause in the agreement, there is no justification for silence on the part of the Agreement Vendee and the plaintiff for 4 years. Therefore, this Court has no hesitation in coming to the conclusion that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. Therefore, the plaintiff is not entitled to a decree for Specific Performance and accordingly, the Trial Court is justified in dismissing the suit.

21. The learned counsel appearing for the appellant also made a faint attempt to submit that even if the main relief of Specific Performance is negatived, the plaintiff is entitled to alternative remedy for return of advance amount. This Court already came to a conclusion that the execution of Suit Sale Agreement is not proved. Therefore, there cannot be a decree for return of advance amount. Further, in the plaint there was no specific prayer for return of advance amount. In such circumstances, the argument made by the learned counsel for the appellant regarding return of advance amount is not acceptable to this Court. In view of the discussion made earlier, I do not find any error in the findings of the Trial Court.



A.S.No.593 of 2010

WEB COPY 22. Accordingly, the First Appeal is dismissed. No costs.

18.09.2025

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

The Additional District Judge
(Fast Track Court No.1) Salem.



WEB COPY



A.S.No.593 of 2010

S.SOUNTHAR, J.

dm

A.S.No.593 of 2010

18.09.2025