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A.S.No.52 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-07-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S.No.52 of 2021

and

C.M.P.No.3642 of 2021

1.Thirupurasundari

D/o.Late Subramania Chettiar, No.2/111,
Chairman Kandasamy Street, New Gummidipoondi Village,
Gummidupoondi Taluk, Tiruvallur District.

2.Nithyamohan

S/o.Late Subramania Chettiar, No.2/111,
Chairman Kandasamy Street, New Gummidipoondi Village,
Gummidupoondi Taluk, Tiruvallur District.

Appellant(s)

Vs

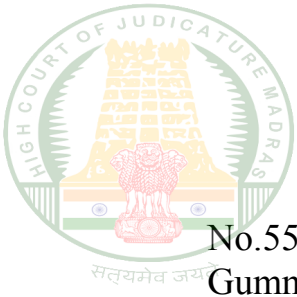
1.R.Kumaran

S/o.Rajendran,
No.13/2, Perumal Koil Street, Pudupakkam
Village, Budur Post,
Chennai 600 067.

Lakshmiammal(died)

2.V.B.Murali

S/o.Balakrishna Chettiar,



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No.556, Vania Street, Thervazhi Village,
Gummidipoondi Taluk, Tiruvallur District.

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3.Manimohan
S/o.R.S.Mani, No.18, First Cross Street,
Ma.Po.Si.Nagar, Old Gummidipoondi
Village, Gummidipoondi Taluk, Thiruvallur
District.

4.M.Charumathi
W/o.Mani Mohan, No.18, First Cross
Street, Ma.Po.Si.Nagar, Old
Gummidipoondi Village, Gummidipoondi
Taluk, Thiruvallur District.

5.Arun Manohar
S/o.Mani Mohan,
No.18, First Cross Street, Ma.Po.Si.Nagar,
Old Gummidipoondi Village,
Gummidipoondi Taluk, Thiruvallur District.

6.M.Midhun Monohar
S/o.Mani Mohan,
No.18, First Cross Street, Ma.Po.Si.Nagar,
Old Gummidipoondi Village,
Gummidipoondi Taluk, Thiruvallur District.

Respondent(s)

First Appeal filed under Section 96 CPC to set aside the judgment and
decree dated 27.06.2019 passed in O.S.No.118 of 2011 on the file of IV
Additional District Court, Tiruvallur at Ponneri, insofar as granting an
alternate relief of refund of advance amount with interest is concerned.



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For Appellant(s) : Mr.A.E. Ravichandran

For R1 : Mr.Sai Srujan Tayi

JUDGMENT

Unsuccessful defendants 2 and 3 have preferred the present appeal challenging the judgment and decree dated 27.06.2019 passed in O.S.No.118 of 2011 on the file of IV Additional District Court, Tiruvallur at Ponneri, insofar as granting an alternate relief of refund of advance amount with interest is concerned. The plaintiff has not preferred any appeal against the dismissal of the suit for the relief of specific performance.

2. Suit is filed for specific performance of the contract or in alternative, to refund of the earnest money together with interest. The trial Court negatived the relief of specific performance and granted the alternative relief of refund of the advance amount with interest.

3. The parties are referred to as per their rankings in the trial Court.



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4. The brief case of the plaintiff is as follows:

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The plaintiff and the defendants 1 to 3 have entered into an agreement of sale on 01.08.2008. On the same day, the plaintiff had paid a sum of Rs.10,10,000/- as an advance. The total sale consideration was fixed at Rs.49,35,000/-. The defendants undertook to receive the balance sale consideration of Rs.39,25,000/- to execute and register the sale deed on or before 31.10.2008. The plaintiff has approached the defendants 1 to 3 with the balance sale consideration and requested them to produce the original title deeds for perusal and to prepare the sale deed. Though the defendants 1 to 3 promised to produce the original title deeds, postponed the same by giving elusive reasons. Subsequently, the defendant 1 to 3 have demanded a further sum of Rs.5,00,000/- and undertook to produce the original title deeds and agreed to extend three months time to execute the sale deed. The plaintiff believing the words of the defendants 1 to 3 had paid the said sum on 04.03.2009 and at that time, the second defendant alone was available and hence, she alone signed in the agreement in the presence of the witness. The plaintiff was always ready and willing to perform his part of the contract. The plaintiff came to know that the defendants 1 to 3 in collusion



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with the fourth defendant have conveyed the property to the defendants 5 to 8 under two sale deeds. The plaintiff on 17.06.2011 has issued notice to the defendants calling upon them to receive the balance sale consideration and to execute the sale deed. The said notice was duly acknowledged by the defendants 4 to 8 and for the defendants 1 to 3 it had been returned with the endorsement “no such addressee”. The defendants 5 to 8 have sent reply through their counsel on 27.06.2011. Hence the suit.

5. The written statement filed by the second defendant was adopted by the defendants 3 and 4, wherein, it has been stated that the plaintiff is not known to the defendants 1 to 3. The first defendant Lakshmi died on 10.04.2015 due to ailment. One Velu of Redhills was introduced by the brokers Rajamani, Murali and Jeyachandran. The said Velu along with the brokers inspected the suit property and agreed to purchase the suit schedule property and had paid a sum of Rs.10,001/- as token advance and in the end of July, the said Velu came to the house of the defendants 1 to 3 and advanced a sum of Rs.10,00,000/-. On the aforesaid date, the said Velu had never obtained any signature from the defendants 1 to 3. After several



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days, the said Velu came to their house and obtained signatures from the defendants 1 to 3. Believing his words, the defendants 1 to 3 put the thumb impression and the signature in the agreement. Even on the said day, the plaintiff was not present in-person. Thereafter, the second defendant was admitted in hospital for treatment and after discharge, the second defendant asked to complete the sale, for which, the said Velu gave Rs.5,00,000/-. On that day alone, this defendants enquired about Kumaran (plaintiff). The said Velu had stated that Kumaran is his binamy and so, believing his words, the second defendant had signed the reverse side of the agreement. According to the wishes of Velu, along with the brokers viz. Rajamani and Jeyachandran introduced one Manimohan, fifth defendant, for the same priced fixed and negotiated and this defendant received the remaining balance amount from the said Manimohan and executed the sale deed in his favour. The defendants never received any legal notice dated 17.06.2011. The defendant acknowledged the notice dated 01.08.2011 and not 17.06.2011. The suit has been filed beyond of the period of limitation. The plaintiff approached the Court with unclean hands by suppressing the facts and truth.



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6. The written statement filed by the fifth defendant was adopted by the defendants 6 to 8, wherein, it has been stated that the sale made by the defendants 1 to 4 in favour of the fifth defendant is perfectly valid and binding upon the plaintiff. The defendants are the *bona fide* purchasers for valid consideration without notice.

7. Based on the above pleadings, the trial Court has framed the following issues:

- (1) Whether the plaintiff is entitled to the relief of specific performance as claimed in the suit?
- (2) Whether the sale deeds dated 24.02.2010 and 15.11.2010 are as sham and nominal and not binding on the plaintiff?
- (3) To what relief?

8. The trial Court has also framed additional issues, which are as follows:

- (1) Whether the agreement of sale dated 01.05.2008 is true, valid and executed by the defendants 1 to 3?
- (2) Whether the payment of Rs.15,10,000/- to the defendants 1 to 3, in pursuance of the agreement alleged by the plaintiff is true?



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- (3) Whether there is no privity of contract between the plaintiffs and the defendants 1 to 3?
- (4) Whether the plaintiff has performed his part of the contract?
- (5) Whether the plaintiff has been ready and willing to perform his part of the contract?
- (6) Whether the defendants 5 to 8 are bona fide purchasers for value without notice?
- (7) Whether the plaintiff is entitled to the alternative relief as prayed for?

9. During trial, on the side of the plaintiff, Kumaran/plaintiff examined himself as PW1, Senthilkumar was examined as PW2 and Mohan was examined as PW3 and Exs.A1 to A14 were marked. On the side of the defendants, Thirupurasundari/second defendant examined herself as DW1, Rajamani was examined as DW2, Manimohan/fifth respondent was examined as DW2 and Exs.B1 and B2 were marked.

Findings of the trial Court:

10. The parties to the contract as per the sale agreement in Ex.A1 are the defendants 1 to 3 and the plaintiff has not signed in that sale agreement. The suit is preceded by the plaintiff's notice dated 17.06.2011 as



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per the legal notice in Ex.A3. Though the time for compliance in the sale agreement under Ex.A1 was fixed as three months, the said time was not intended to be the essence of the contract. The plaintiff has paid another sum of Rs.5,00,000/- on 04.03.2009 and the same was endorsed on the reverse side of the agreement and the same was acknowledged by the second defendant. Though the defendants took a plea that there was no privity of contract, yet, the receipt of Rs,5,00,000/- by the second defendant would go to demolish such plea. DW1, in her cross-examination admitted about the receipt of the advance amount and the signatures of the defendants 1 to 3 in the sale agreement, then, it is clear that there is a legally enforceable contract between the plaintiffs and the defendants 1 to 3 and she cannot take on the principle of unjust enrichment and therefore, the defendants 2 and 3 are liable to return the said amount with interest.

11. The submissions made by the learned counsel appearing for the appellants/defendants 2 and 3:

11.1 There is no privity of contract between the defendants 2 and



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3 and the plaintiff. The defendants 1 to 3 had received an advance amount of Rs.15,10,000/- from Velu and not from the plaintiff. The plaintiff has miserably failed to prove that he had paid money to the defendants 1 to 3.

11.2 One Velu had introduced the fifth defendant to the defendants 1 to 3 and the second defendant received the balance sale consideration and executed the sale deeds in favour of the defendants 5 to 8 as per the direction of Velu.

11.3 The trial Court went wrong in directing the defendants 2 and 3 to pay a sum of Rs.15,10,000/- with interest when the defendants 2 and 3 claim to have not received any amount from the plaintiff. The defendants 1 to 3 did not receive any legal notice dated 17.06.2011 issued by the plaintiff and the defendants received the notice after filing of the suit.

11.4 The alleged sale agreement is an unregistered document and the same would attract Section 47 of the Registration Act, 1908 and the suit is barred by limitation and the alleged sale agreement is unenforceable in law and the same could not be used for any purpose of evidence.



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11.5 On the basis of the signatures of the defendants 1 to 3 in the alleged sale agreement, has falsely filed the suit.

11.6 The trial Court has erred in granting alternative prayer of refund of the advance amount with interest at 12% per annum, since the advance amount was adjusted in the subsequent sale deeds.

12. *Per contra*, the submissions made by the learned counsel appearing for the first respondent/plaintiff:

During the cross-examination of DW1, she categorically admitted about the receipt of the sale consideration amount of Rs.15,10,000/- from the plaintiff and moreover, when the defendants 1 to 3 have signed in the agreement in Ex.A1 dated 01.08.2008, the existence of the sale agreement has been proved by the plaintiff and therefore, the plaintiff is entitled to get back the advance amount from the defendants 2 and 3.

13. The points for determination that arises in this appeal are as follows: (a) whether there is privity of contract between the plaintiff and the



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defendants 1 to 3? and (b) whether the defendants 1 to 3 had received the advance amount of Rs.15,10,000/- from Velu or from the plaintiff?

14. A perusal of the sale agreement in Ex.A1 shows that the first defendant/Lakshmikanthammal (deceased), the second defendant/Thirupurasundari and third respondent/Nithyamohan have signed in the agreement. In the recitals, the name of the plaintiff is found place and there is no signature of the plaintiff in the sale agreement. As per the sale agreement, the total sale price was fixed at Rs.49,35,000/- at the rate of Rs.35,000/- per cent for the total extent of land 1 acre 41 cents. It also shows that the defendants 1 to 3 had received a sum of Rs.10,10,000/- as advance and the balance sale consideration of Rs.39,25,000/- has to be paid within three months on or before 31.10.2008. It also shows that the second defendant has received a sum of Rs.5,00,000/- from the plaintiff on 04.03.2009 and extended three months time for completing the sale. The signatures of the defendants 1 and 3 are not found in the endorsement made in the backside of the first page in the sale agreement.



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15. Ex.A3 is the legal notice dated 17.06.2011 issued by the plaintiff to the defendants 1 to 8 calling the defendants 1 to 3 to receive the balance sale consideration and to register the sale deed in his favour within two weeks from the receipt of the notice, failing which, he would be constrained to file the suit for specific performance and also informing that the purchase made by the defendants 5 to 8 is sham and nominal and not binding on him. Exs.A4, A5 and A6 are the returned covers of the defendants 1 to 3, respectively. Ex.A7 to A11 are the acknowledgments of the defendants 4 to 8 respectively. Ex.A12 is the reply notice given by the defendants 5 to 8 to the plaintiff's counsel.

16. It is the specific case of the defendants 1 to 3 that there is no privity of contract between them and the plaintiff and one Velu alone advanced the sum of Rs.10,10,000/- and obtained the signature and thumb impression and subsequently received Rs.5,00,000/- through Velu and therefore, there is no necessity to execute the sale deed as claimed by the



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plaintiff in his favour.

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17. It is pertinent to mention that the statutory mandate set out in Section 16(c) of the Specific Relief Act, 1963 that the plaintiff must exhibit his readiness and willingness to perform his part of the contract, as held by the Hon'ble Supreme Court in ***R.Shama Naik Vs. G. Srinivasiah*** reported in **2024 INSC 927**. It is to be noted that the plaintiff has paid another sum of Rs.5,00,000/- on 04.03.2009 and the same was endorsed on the reverse side of the agreement in Ex.A1 and the receipt of the same was acknowledged by the second defendant alone.

18. It is not in dispute that the defendants 1 to 3 have sold a portion of the suit property in favour of the fourth defendant under sale deed dated 27.04.2009 in Ex.B1 and also they have executed two sale deeds under Ex.A13 and A14 in favour of the defendants 5 to 8 in respect of the suit schedule property. The sale agreement in Ex.A1 was executed on 01.08.2008 and the legal notice in Ex.A3 was issued on 17.06.2011 and the suit was filed on 01.08.2011.



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19. PW1, in his cross-examination, deposed that the sale agreement in Ex.A1 was entered into after seeing the defendants 1 and 2 and he did not see the defendants 3 and 4 and one month before entering the sale agreement, he visited the suit property and at that time, Velu and Tamil accompanied him. He further deposed that the land brokers viz. Rajamani and Sivalingam have informed about the suit schedule property and at the time of execution of sale agreement in Ex.A1, the said Velu, Tamil, Rajamani and Sivalingam were also present and one Gowri has signed as witness in Ex.A1. Further, he deposed that his Advocate has wrongly sent the notice to the defendants 1 to 3 in Pudukkam address and thereafter, he has sent another legal notice through another Advocate.

20. PW2, in his cross-examination has deposed that on 01.08.2008 an advance amount of Rs.10,10,000/- was paid to the second defendant and at that time, the defendants 1 and 3 were also present.

21. PW3, in his evidence, has deposed that on 04.03.2009, the plaintiff has paid a sum of Rs.5,00,000/- to the second defendant and he signed as a witness to that effect.



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22. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India has considered the term “unjust enrichment” in the judgment reported in *(2005) 3 SCC 738, Sahakari Khand Udyog Mandal Ltd vs Commissioner of Central Excise & Customs*, wherein, it has been held that “unjust enrichment” means retention of a benefit by a person that is unjust or inequitable and “unjust enrichment” occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

23. Further, it is relevant to cite the judgment of the Hon'ble Supreme Court reported in *AIR 2019 SC 1280 (Urvashi Aggarwal (since deceased) through L.Rs and Ors. Vs. Kushagr Ansal and Ors.)*, wherein, it has been held that even in cases where it is not possible to order specific performance, the plaintiff is entitled for refund of advance amount in a suit for specific performance.

24. DW1/second defendant, categorically admits the execution of sale agreement under Ex.A1 dated 01.08.2008, but, she deposed that the



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defendants 1 to 3 have received a sum of Rs.10,10,000/- from one Velu.

She further admits the signature of the defendants 2 and 3 and thumb impression affixed in the sale agreement and also admits that the defendants 1 to 3 have received Rs.5,00,000/- on 04.03.2009 and she has signed to that effect. She also admits that the defendants 1 to 3 have received a sum of Rs.15,10,000/- from the plaintiff.

25. When DW1 herself admits the receipt of an advance amount from the plaintiff, then, the defendants 2 and 3 are liable to return the same with interest. By applying the ratio laid down in *Urvashi Aggarwal* case (cited *supra*), the plaintiff is entitled for refund of advance amount.

26. *Ergo*, the trial Court has answered all the issues raised in this appeal. This Court finds no merit in this appeal and the same is liable to be dismissed. The points are answered accordingly.

In the result, this First Appeal is dismissed confirming judgment and decree dated 27.06.2019 passed in O.S.No.118 of 2011 on the file of IV



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Additional District Court, Tiruvallur at Ponneri. No costs. Connected C.M.P.

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10-07-2025

nsd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No

To
The IV Additional District Judge, Tiruvallur at Ponneri



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M.JOTHIRAMAN J.

nsd

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