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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A No. 680 of 2025

in

E.P.No.88 of 2023

1. P.Logu

S/o. Ponnurangam,

Old No.48C, New No.1,

E.V.R. Periyar Street,

Kulasekarapuram, Chinmiyanagar,

Kulasekarapuram, Chennai - 600 092.

Applicant(s)

Vs

1. M.Sivaprakasam

Murugesan (Deceased)

Ambiga (Deceased)

2.Sadayan

3.Neelavathy

Venkatesan (Deceased)

4.Elumalai

5.Logeshwari

6.Rathinammal

7.Murugavel



Respondent(s)

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For Applicant	Mr.Sharath Chandran
	For Ms.C.Vijayalakshmi
For R1	Mr.C.Ramu
For R7, R8, R9, R10	Mr.V.Balasubramani

ORDER

This application has been filed seeking to set aside an order dated 24.01.2025 made in E.P.No.88 of 2023 by the learned Master.

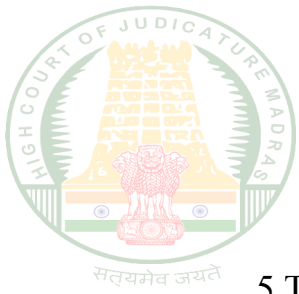
2.E.P.No.88 of 2023 had been filed by the plaintiff in C.S.No.473 of 2002, to put into effect a decree obtained in the said suit consequent to judgment dated 08.03.2010. It is pertinent to point out that the suit had been filed seeking a direction against the defendants therein to execute a sale deed in favour of the plaintiff or his nominee on receipt of balance sale consideration of Rs.90,000/- with respect to the property described in the schedule. In simple terms it could be categorized as a decree for specific performance on deposit of balance sale consideration of Rs.90,000/-. If the defendants failed to come forward to execute the sale deed a consequential direction was also issued that the Court



should execute the sale deed in favour of the plaintiff. The defendants had been set *ex parte* when the decree was passed. This decree was sought to be put into effect by filing the execution petition.

3. There was a delay in deposit of sum of Rs.90,000/-. To condone the delay in depositing the said sum of Rs.90,000/-, the applicant herein had filed A.No.892 of 2022. In that particular application, a learned Single Judge of this Court had directed costs of Rs.90,000/- to be deposited. The costs were deposited. The learned Master had observed that the costs were deposited.

4. But then he took up the issue of non deposit of the balance sale consideration of Rs.90,000/-. The learned Master then took up the Section 28 of the Specific Relief Act, 1963 and passed an order that the decree stood rescinded since the balance sale consideration had not been deposited in Court. The learned Master was of the opinion that the costs imposed and the balance sale consideration were two separate issues and the decree holder / applicant herein had deposited only the costs and not the balance sale consideration and taking recourse to Section 28 had dismissed the execution petition.



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5.The learned counsel for the applicant took umbrage over that particular order and claimed that an order could be passed under Section 28 only when an application is filed and moreover pointed out that such application should be filed in the suit and only before the Court which passed the decree.

6.In the instant case, it is specifically pointed out that no such application had been taken out by any of the defendants / judgment debtors in the suit and the learned Master had himself taken a fancy to read Specific Relief Act, 1963 and had read Section 28 and usurped the powers under Section 28, as if powers had been granted to him and had proceeded to dismiss the execution petition. Very unfortunately, that particular procedure adopted cannot withstand the scrutiny of this Court.

7.The learned counsel for the applicant further placed reliance on the judgment of the Hon'ble Supreme Court in *Sanjay Shivshankar Chitkote v. Bhanudas Dadarao Bokade (Died) Through L.Rs, 2023 SCC OnLine SC 2139*, wherein, the Hon'ble Supreme Court had under practically similar circumstances observed and held as follows:



“7. The controversy between the parties is in a very narrow compass. The controversy is central to Section 28 of the Act. For immediate reference, Section 28 of the Act is extracted as under:

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.”

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;



(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

8. On a reading of sub-section (1) of Section 28 of the Act it is clear that any application seeking rescission of the decree of specific performance or an application seeking further period for the payment of purchase money or other sum which the court has ordered the judgment debtor to pay in a decree in a suit for specific performance will have to be made "in the same suit in which the decree was made" either, to have the contract rescinded or for seeking further time period to make the payment.

When Section 28 says that the application should be filed "in the same suit", it means in the suit itself i.e. on the original side and not in the execution proceedings (Ramankutty Guptan v. Avara³). Therefore, the Executing Court cannot extend the time granted by the Court which passed the decree but an application, though made on the execution side may be transferred to the original side. However, the Executing Court can direct depositing balance price where the trial and appeal courts have not given directions. Further, the power under Section 28 being discretionary, the order of rescission cannot be passed on flimsy grounds but in a clear case of default so as to nullify the decree of specific performance. The Court has also discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed.

Further, as per Section 28(1), the power of the Court either to extend the time for compliance of the decree or grant an order of rescission of the agreement is clear. When the Court passes the decree for specific performance, the contract between the parties is not extinguished. It is in the nature of a preliminary decree and the suit is pending even after the decree.



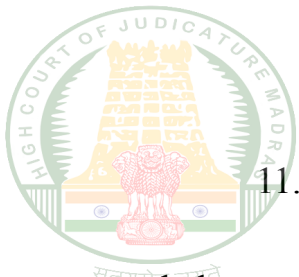
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Thus, the court on passing a decree of specific performance does not become functus officio. On the other hand, it has the power to order rescission of the agreement as well as the power to extend the time to pay the amount or to perform the conditions of decree for specific performance despite the application for rescission of the agreement or decree. In deciding such an application under Section 28(1) of the Act, the Court has also to see all the attending circumstances including the conduct of the parties."

8. In that case, the judgment debtors had filed an application seeking rescission of the contract under Section 28(1) of the Specific Relief Act, 1963 and it was very specifically observed by the Hon'ble Supreme Court that the executing Court has no authority or power to determine the said application.

9. In the instant case, even without filing any application the learned Master had taken upon himself to adjudicate the issue under Section 28(1). It is very obvious that the learned Master had exceeded jurisdiction specifically when no power was vested to exercise jurisdiction over the said issue.

10. The learned counsel for the judgment debtor had raised a grievance that in the execution petition he had filed a detailed counter setting out the case of the defendants. These are issues which the executing Court alone will have to examine. The order of the learned Master is set aside.



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11. The learned Master will now have to examine the issue of deposit of balance sale consideration of Rs.90,000/- and pass appropriate order on that particular aspect and thereafter, examine the counter filed by the defendants and examine the case of the decree holder and determine the execution petition in manner known to law. Since those facts will have to be adjudicated by the Master, I will relegate the issue back to the learned Master without expressing any opinion on the stand taken by the defendants in their counter filed in the execution petition. The order of the learned Master is set aside and the matter is remitted back to the learned Master to adjudicate the issues in manner known to law in E.P.No.88 of 2023. This Application stands allowed.

09-06-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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C.V.KARTHIKEYAN J.

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