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A.S.No.541 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.541 of 2025

and

C.M.P.No.8431 of 2025

Mr.Purusothaman

... Appellant/Plaintiff

-VS-

Shanmugam (Died)

1. Mrs.Rajathi

2. Mrs.Shruthi

3. Ms.Kalki

4. Ms.Kamali

... Respondents 1 to 4/Legal heir of the defendant

5. Mrs.Varalakshmi

... 5th Respondent/3rd Party

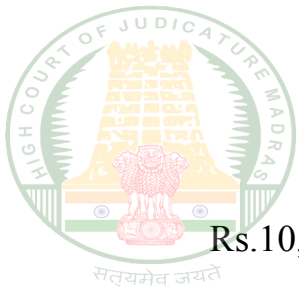
(Cause Title accepted by an order dated 30.04.2024)

Prayer: Appeal Suit is filed under Order XLI Rule 1 of CPC r/w Section 96 of CPC to set aside the judgment and decree dated 12.04.2023 in O.S.No.19 of 2020 on the file of the III Additional District Judge at Kallakurichi.

For Appellant : Mr.S.Dharmakkan

J U D G M E N T

A challenge has been made to the judgment and decree of the Trial Court, dismissing the suit for specific performance and granting only the alternative relief of directing the defendant to pay a sum of



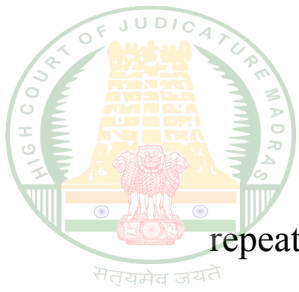
A.S.No.541 of 2025

Rs.10,00,000/- with interest @ 9% from the date of agreement dated 04.01.2018 till the date of judgment and decree and thereafter, with interest @ 6% till the date of realization.

2. Notice to the respondents/defendants is dispensed with, as no adverse judgment is going to be rendered against them. The main case is taken up for final disposal at the admission stage itself.

3. The parties are arrayed as per their own ranking before the Trial Court.

4. It is the case of the plaintiff that the defendant had agreed to sell the suit property for a total sale consideration of Rs.12,00,000/- and executed a registered sale agreement dated 04.01.2018. On the date of agreement, a sum of Rs.10,00,000/- had been paid by the plaintiff to the defendant and it was agreed between the parties that the sale should be completed within a period of two years from the date of agreement on payment of the remaining sale consideration of Rs.2,00,000/-. Despite



A.S.No.541 of 2025

WEB COPY

repeated demands, the defendant has not come forward to execute the sale deed and therefore, the plaintiff has issued a legal notice on 05.12.2019.

Though the notice had been received by the defendant, there was no reply on the side of the defendant.

5. The defendant has filed a written statement, contending that he never executed any agreement for sale and an agreement came into existence in a loan transaction. Both the plaintiff and defendant were close relatives and as the defendant's daughter was studying medicine in a foreign country, he borrowed a loan for a sum of Rs.10,00,000/- on interest and he was paying Rs.30,000/- towards interest. Thereafter, the plaintiff was insisting higher rate of interest, which the defendant had refused to accept and annoyed by the same, the defendant had issued a legal notice on 05.12.2019. According to him, though the plaintiff had agreed in the presence of Panchayathars that he will not go to Court, he has filed a suit.

6. The Trial Court, based on the above pleadings framed the following issues:

- i) Whether the agreement for sale was for the loan



A.S.No.541 of 2025

transaction of Rs.10,00,000/-?

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ii) Whether the sale agreement dated 04.01.2018 is true and valid?

iii) Whether the plaintiff is ready and willing to perform the contract?

iv) Whether the plaintiff is entitled to the relief of specific performance?

v) To what other relief the plaintiff is entitled to?

7. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A3 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B12 were marked.

8. The Trial Court, after appreciation of evidence, found that the agreement came into existence in a loan transaction. That apart, the Trial Court also held that the plaintiff has not established his readiness and willingness to perform his part of contract and thereby dismissed the suit for specific performance. In the alternative, the Trial Court directed the



A.S.No.541 of 2025

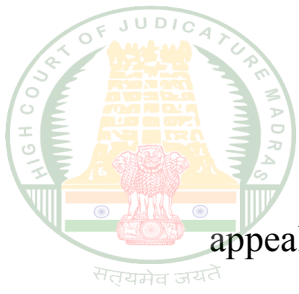
defendant to pay a sum of Rs.10,00,000/- with interest @ 9% p.a.

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Challenging the findings of the Trial Court, the present appeal has been filed.

9. Learned counsel for the appellant would mainly submit that once a registered agreement has been entered into between the parties, the defendants cannot take contrary view. The defendant, having entered into an agreement with the plaintiff, had executed a settlement deed in favour of the defendants 1 to 4 and thereafter, the property has been sold to 5th defendant. Therefore, it is the submission of the learned counsel for the appellant that the very conduct of the defendants itself indicates that in order to defeat the rights of the plaintiff, they have taken a false defence. The Trial Court has not properly considered the evidence of P.W.1 and P.W.2. The plaintiff has sent the legal notice within a period of two years and therefore, he was always ready to deposit the remaining sale consideration. The Trial Court has not considered all these factors and simply dismissed the suit for specific performance.

10. In the light of the above, the points for consideration in this



A.S.No.541 of 2025

appeal are as follows:

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i) Whether the plaintiff was ready and willing to purchase the suit property?

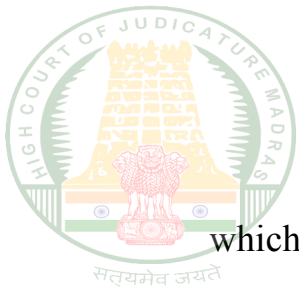
ii) Whether the plaintiff is entitled to the relief of specific performance?

iii) Whether the sale agreement dated 04.01.2018 is intended for sale of property?

POINTS:

11. Heard the learned counsel for the appellant and perused the material documents available on record.

12. It is not disputed by the parties as to the execution of agreement dated 04.01.2018. It is a registered contract. The only contention of the defendants is that though the agreement is a registered one, the same came into existence in a loan transaction that was availed by the defendant in order to meet out the educational expenses of his daughter, who was pursuing her studies in medicine in Russia. Normally, when a party takes a defence to the effect that the document is not intended for the purpose for

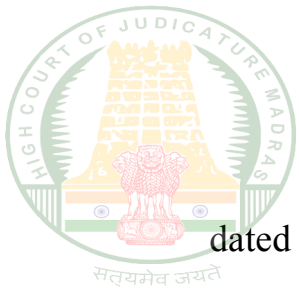


A.S.No.541 of 2025

which it is executed, the party should bring out probabilities in terms of the proviso to Section 92 of the Indian Evidence Act to show that the document is not intended for sale agreement.

13. It is established on record that the parties are close relatives and there is no dispute in respect of the fact that the defendant's daughter was undergoing medical course in Russia. The evidence produced by the defendants under Ex.B1 and Ex.B2 makes it clear that the plaintiff has entered into sale agreements with one Thangammal and Kannan and thereafter, the same has been cancelled in the year 2011 after a period of two years. The conduct of the plaintiff in executing agreements one after the other and cancelling after some time itself probabalizes the defendant's case that the document was not intended for sale. This fact has been further fortified by the evidence of Ex.B9 to Ex.B11. Ex.B9 is the amount sent for educational expenses; Ex.B10 and Ex.B11 are money transactions made for the educational expenses through one Manikandan, who is an employee of the plaintiff and the said aspect has been clearly recorded by the Trial Court in Paragraph No.18 of the judgment.

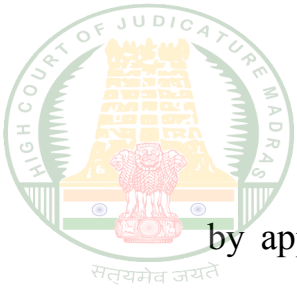
14. Be that as it may, if really the sale agreement in Ex.A1



A.S.No.541 of 2025

dated 04.01.2018 has been executed for sale of property, having paid a substantial amount of Rs.10,00,000/- on the date of agreement, to pay the remaining Rs.2,00,000/-, fixing the time for another two years is against the normal human conduct, more particularly, the plaintiff is said to be a wealthy person and he has also been drawing sufficient income from agricultural products. De hors the defence, it is to be seen as to whether the plaintiff has proved his readiness and willingness to complete the sale from the very inception of the contract / sale agreement till the same culminated into a sale deed . It is relevant to point out that the readiness and willingness are two distinct acts. The readiness is the capacity to mobilise the fund or raise the fund. Willingness is the mental attitude to complete the transaction. Unless both go together and is established on record, the equitable relief cannot be granted merely on the ground that the agreement is a registered one.

15. Further, the plaintiff claims that he is intended to purchase the property. Though the plaintiff has entered into an agreement, the evidence does not show that he has taken any steps at least to verify the title



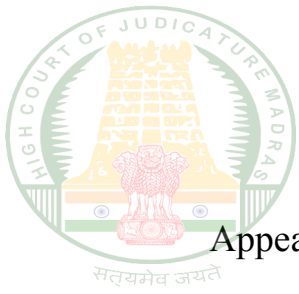
A.S.No.541 of 2025

by applying encumbrance or taken any steps to survey the property, etc.

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Whereas the legal notice has been issued just one month before the expiry of the period of agreement. This Court is of the view that mere sending legal notice just one month before expiry of the agreement, one cannot contend that he is always ready and willing to perform the part of the contract. There is no evidence forthcoming to show that the plaintiff had sufficient money to deposit the remaining sale consideration. Of course, there is no doubt true that the deposit of remaining sale consideration is not mandatory as per Section 16 of the Specific Relief Act, 1963, but, at the same time, non deposit of the money also assumes to assess the readiness on the part of the plaintiff. From the date of filing of the suit and even after decree has been passed, it appears that no amount has been deposited. Therefore, this Court is of the view that the Trial Court has rightly exercised its discretion on appreciation of the entire evidence and dismissed the suit for specific performance and granted the alternative relief to the plaintiff. The judgment of the Trial Court does not require any interference by this Court. Accordingly, the points are answered.

16. In the result, finding no merits in the appeal, the instant



A.S.No.541 of 2025

Appeal Suit is dismissed in respect of specific performance. The judgment

and decree of the Trial Court is hereby confirmed.

17. It is seen that the settlement deed has been executed by the defendant in favour of the defendants 1 to 4 on 05.09.2023 immediately after dismissal of the suit and thereafter, it appears that the property has been sold to the 5th respondent / a third party, without even waiting for the lapse of appeal period. Their conduct clearly shows that an attempt has been made by the defendants to defeat the rights of the plaintiff with regard to the money. Therefore, there shall be a charge over the property till realization of the amount. No costs. Consequently, connected Miscellaneous Petition is closed.

08.04.2025

Index: Yes / No
Internet: Yes / No
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A.S.No.541 of 2025

WEB COPY **To:**

1. The III Additional District Judge
Kallakurichi.
2. The Section Officer,
V.R.Section,
High Court,
Madras.



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A.S.No.541 of 2025

N.SATHISH KUMAR,J.,
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A.S.No.541 of 2025

08.04.2025