



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.402 of 2011

Varadan

..Plaintiff/Respondent/Appellant

Vs.

Govindasamy (deceased)

- 1.G.Mani (died)
- 2.G.Krishnamurthy
- 3.G.Venkatesan
- 4.G.Anbzhagi
- 5.G.Shanthi
- 6.G.Vijaya
7. M.Saravana
8. M.Bharath
9. P.Somya

..Defendants/Appellants /Respondents

(R-1 died, R7 to R9 are impleaded as legal heirs of the deceased R1 vide Court order dated 08.03.2024 made in CMP No.4303 /2024 in SA No.402 of 2011)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 31.01.2011 made in A.S.No.99 of 2008 on the file of the Principal District Judge, Thiruvallur,



reversing the judgment and decree dated 29.08.2008 made in O.S.No.5 of 2007 on the file of the Subordinate Judge, Poonamallee.

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For Appellant : Mr.N.Sridhar
For Respondents : R1 – Died
Mr.C.T.Mohan
Senior Counsel for
Mr.R.Vijayaraghavan
for R2 to R6
M/s.P.Radhika
for R7 to R9

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 31.01.2011 made in A.S.No.99 of 2008 on the file of the Principal Sub Court, Thiruvallur, reversing the judgment and decree dated 29.08.2008 made in O.S.No.5 of 2007 on the file of the Subordinate Court, Poonamallee.

2. Heard Mr.N.Sridhar, learned counsel for the appellant and Mr.C.T.Mohan, learned Senior Counsel for Mr.R.Vijayaraghavan for respondents 2 to 6 and Ms.P.Radhika, learned counsel for respondents 7 to 9 and perused the materials available on record.



3. The Appellant is the plaintiff, who has filed a suit for the relief of specific performance against the original defendant. The Trial Court has decreed the suit. Since the sole defendant died, the legal representatives of the deceased sole defendant preferred a First Appeal which was also allowed by dismissing the suit. Hence, the plaintiff has filed this Second Appeal.

4. The short facts pleaded in the plaint are as follows:

The suit property belongs to the defendant Govindasamy. The defendant had executed a sale agreement dated 30.09.2004 to sell the suit property to the plaintiff at the rate of Rs.3,500/- per cent. The total extent of the suit property is 1 acre 15 cents and thus, the total sale consideration was agreed at Rs.3,99,000/-. An advance amount of Rs.1,67,600/- was paid by the plaintiff to the defendant on the date of the sale agreement itself. The defendant had availed a loan from Indian Overseas Bank, Nazarathpet and the plaintiff has agreed to settle the loan from and out of the remaining sale consideration. The outstanding loan amount in respect of the above loan is said to be Rs.1,31,400/-. There is another loan in Land Development Bank at Poonamallee which is in respect of the suit property. The plaintiff was all



along ready and willing to perform his part of contract and approached the defendant to cooperate. But the defendant has stated that the loan is going to be waived by the bank and that the plaintiff need not settle the loan but to the knowledge of the plaintiff, the loan was still subsisting and hence, he was not able to pay the pending loan amount to the defendant. Regarding the other loan pending with the Land Development Bank also, the defendant was all along saying that it would be waived. As the plaintiff owns lands adjacent to the suit property, he has taken possession of the suit property on the date of sale agreement itself and the status of the sale deed also would read the same. The plaintiff is in possession and enjoyment of the suit property as the possession of the property was handed over to him as part performance of contract. However, the defendant did not take any steps to settle either of his loans. As the defendant did not complete the contract, the plaintiff had sent a legal notice dated 19.12.2006. The defendant on receipt of the legal notice did not send any reply. Hence, the plaintiff has filed the suit for specific performance.

5. The averments made in the written statement filed by the defendant are as follows:



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The suit is false, frivolous and vexatious one. The defendant used to borrow small amounts from the plaintiff to meet his immediate needs. The plaintiff compelled the defendant to repay the debts. As the defendant was unable to repay the debts, the plaintiff coerced the defendant to sign the suit sale agreement by putting him under threat. The defendant never agreed to sell the land to the plaintiff for a sum of Rs.3,99,000/- as alleged and that he never asked the plaintiff to discharge any of the loan amounts. The plaintiff has not paid any advance amount as alleged. The defendant is paying his own loan dues to the banks. The defendant never asked the plaintiff to go and pay Rs.1,00,000/- to the bank for discharging his loan. The plaintiff was not ready and willing to perform his part of contract and hence the plaintiff is not entitled to the relief as prayed for and the possession of the suit property is also with the defendant and hence, the suit should be dismissed.

6. During the course of the trial, on the side of the plaintiff, he examined himself as PW1 and Exs.A1 to A9 were marked. On the side of



the defendant, son of the defendant was examined as DW1 and no documents were marked.

7. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has decreed the suit as prayed for. Since the sole defendant died, his legal representatives preferred an appeal. The First Appellate Court dismissed the suit by reversing the judgement of the Trial Court. Aggrieved over the same, the plaintiff has filed this Second Appeal. The second appeal was admitted on 09.07.2012 by formulating the following substantial questions of law:

1. *Whether the first lower appellate Court has properly appreciated and applied the principles to find out the admissibility of the additional documents in the first appeal, especially when the respondents herein failed to comply with the mandatory requirements contemplated under Rules 27 and 28 of Order 41 CPC?*
2. *When the documents came into existence subsequent to the filing of the suit and marked as Exhibits, i.e., Ex.B.1 to B.17 in the appellate stage is relevant for*



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the purpose of the case particularly when the pleading and oral evidence adduced by the defendant will support the case of the plaintiff?

3. *When the first appellate Court is bound to render judgement in accordance with Section 96 read with Order 41 Rule 31 of the Code of Civil Procedure, when the impugned judgement of the Lower Appellate Court rendered in violation of the said provisions is sustainable in law?*
4. *When the judgement and decree of the Lower Appellate Court is correct in failure to draw a presumption under Section 114 of the Indian Evidence Act, when the defendant, who is a party to Ex.A1, Agreement of Sale does not enter into the witness box and states his own case on oath and does not offer himself to be cross- examined by the plaintiff?*
5. *Is the Judgement and Decree of the lower Appellate Court is correct in law when the defendant has miserably failed to plead and prove the plea of coercion and misrepresentation, as contemplated under Sections 15, 16, 17 and 18 of the Indian Contract Act, 1872?*



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8. The learned counsel for the appellant submitted that the defendants had filed additional documents before the First Appellate Court and the First Appellate Court had received those documents in evidence without affording any opportunity to the plaintiff to confront the defendants and other witnesses on additional documents filed. Just by receiving the documents, the First Appellate Court proceeded to mark the evidence without following the due procedure.

9. It is further submitted by the learned counsel for appellant that the additional documents filed by the defendants which were marked as Ex.B1 to B17 have not been pleaded in the written statement filed by the defendants. Despite receiving the additional evidence and looking into false facts pleaded by the defendants and though the defendants did not come to the box, the First Appellate Court did not follow Order XLI Rule 31 CPC and failed to draw an adverse presumption against the defendants. The defendants did not prove coercion and misrepresentation and hence, the



first appeal ought to have been allowed. The Trial Court did not have the opportunity to appreciate the documents filed on the side of the defendants as the defendants did not file those documents before the Trial Court.

10. The learned counsel for respondents submitted that the additional documents filed by the defendants before the First Appellate Court are only medical documents to show that the original defendant was not well and they have got nothing to do with the merits of the case.

11. But on perusal of the records, it is seen that the first defendant has produced the documents only before the First Appellate Court, and those documents are not only medical certificates, but also patta, chitta, kist receipts, bank receipts, electricity consumption card, etc. The first appellate court had allowed the first appeal by reversing the judgment of the Trial Court and dismissed the suit. The first Appellate Court had observed that those documents would have an impact on the decision of the Appellate Court and hence, received them as additional evidence on the side of the defendants. In that case, the plaintiff ought to have been given an opportunity to cross-examine the witnesses on the side of the defendant,



who could speak about those documents. But those documents have been marked directly without examination of any witness.

12. As the first Appellate Court has failed to give an appropriate opportunity to the plaintiff the additional evidence which have been received and marked as additional evidence Ex.B1 to Ex.B17, I feel that the matter has to be remanded to the file of the First Appellate Court to rehear the appeal for giving appropriate opportunity to the appellant confront with regard to the additional evidence received on the side of the defendants. Though the first Appellate Court is not wrong in receiving the additional evidence, marking them can be done only by examining any of the witnesses on the side of the defendants. Unless the plaintiff gives consent the documents cannot be marked without examining the witness. In the instant case, it is seen that the plaintiff did not give any consent. While marking the documents through any of the defendants' side witnesses, the plaintiff ought to have been given an opportunity to confront the defendants' side witness with regard to the additional evidence. Only thereafter the First Appellate Court can re-appreciate the same.



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13. In view of the above stated reasons, this Second Appeal is **allowed** and the judgment and decree of the First Appellate Court are set aside. And, the matter is remanded to the file of the first appellate Court and the first appellate court is directed to recall the defendants' side witnesses or any other witnesses, who are related to the additional evidence received by the Court through Ex.B1 to B17 and grant an opportunity to the plaintiff to cross-examine those witnesses only on the aspect of additional evidence (Ex.B1 to B17) and hear further arguments of both sides and then, appreciate the matter and pass an order afresh and dispose the first appeal within two months from the date of receipt of a copy of this judgment. No costs.

06.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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To

1.Principal District Judge, Thiruvallur,

2. Subordinate Judge, Poonamallee

3. The Section Officer, VR Section, High Court, Madras



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R.N.MANJULA, J.

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