



WEB COPY



SA No. 1006 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 1006 of 2012

1. V.Dhanapal

Appellant(s)

Vs

1. S.P.Muthuragopal

2.S.P.Vijayagopal

Respondent(s)

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.06.2011 passed in A.S.No.41 of 2009 on the file of the Principal District Judge, Coimbatore, reversing the judgment and decree dated 10.09.2007 in O.S.No.521 of 2005 on the file of the I Additional Sub Judge, Coimbatore and decree the suit in O.S.No.521/2005.

For Appellant(s): Mr T. Murugamanickam
Senior Counsel For
Mr B.Gopalakrishnan

For Respondent(s): Mr S. Mukund, Senior Counsel
For M/S.SARVABHAUMAN
ASSOCIATES FOR RR1 AND 2

JUDGMENT

The plaintiff in the suit is the appellant herein. The suit has been filed for seeking relief of specific performance.



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2. The trial Court had decreed the suit as against which a first appeal was preferred by the defendants. The first appellate Court has allowed the appeal and set aside the judgment of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has preferred this second appeal.

SHORT CASE PLEADED IN THE PLAINT:

2.1. The defendants have agreed to sell the suit property to the plaintiff for a total consideration of Rs.1,48,000/- and a sale agreement has been entered on 15.12.1998 and on the date of the sale agreement a sum of Rs.60,000/- was received as advance and time fixed as six months from 15.12.1998 to complete the sale. Thereafter, the plaintiff has also made part payment on 09.02.2004 towards the part sale consideration. The plaintiff has issued a legal notice on 01.07.2005 and the first defendant has received the same and the second defendant has not chosen to receive the said notice. However, the defendant sent a reply dated 12.08.2005 containing false allegations.

2.2. Since the defendants with an evil intention were postponing the sale till the expiry of the period prescribed in the sale agreement and also was evading to receive the balance sale price which the plaintiff was ready to pay, the plaintiff has filed the suit for specific performance.



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WRITTEN STATEMENT IN BRIEF:

2.3. The written statement has been filed by the second defendant adopted by the first defendant. The defendants submit that they have not entered into any sale agreement. The defendants have borrowed a sum of Rs.60,000/- from the plaintiff on 15.12.1998 as a loan amount and signed in two blank promotes and blank stamp paper and in certain bond papers. After the above said borrowal, the defendants have borrowed a further sum of Rs.10,000/- as a further loan and put his signatures in the bond and stamp papers. Since the averments made in the plaint are absolutely false, the suit has to be dismissed.

TRIAL COURT:

3. On the basis of the above pleadings, the trial Court had framed the following issues:

1. வாதி தாவாவில் கோரியவாறு ஏற்றதை ஆற்றுக பரிகாரம், இதர பரிகாரங்கள் பெற அருகரா?
2. 15.12.1998 தேதியிட்ட ஒப்பந்தம் செல்லத்தக்கதா?
3. தாவா நிலைக்கத் தக்கதா?
4. வாதிக்கு கிடும் பரிகாரம் யாது?

4. During the course of the trial, on the side of the plaintiff, one witness viz., Dhanapal was examined as P.W.1 and Exs.A1 to A5 were marked



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and on the side of the defendants, one witness viz., Vijayagopal was examined as D.W.1.

5. On considering the evidence on record, the trial Court had decreed the suit.

LOWER APPELLATE COURT:

6. The first appeal has been preferred by the defendants challenging the judgment of the trial Court which was allowed by setting aside the judgment of the trial Court and by dismissing the suit. Aggrieved by which, the plaintiff has preferred this appeal by raising the following substantial questions of law:

“(i) Whether the learned District Judge had travelled beyond the pleadings by way of written statement and proof by way of D.W.1 to dismiss the suit ?

(ii) Whether the learned District Judge had committed a grave error in disbelieving the case of the plaintiff that, the defendants had received a part of sale consideration on 09.02.2004 and hence the suit was filed in time, when the defendant himself had categorically admitted in his cross examination (DW1) to the effect that, he had received a sum of Rs.10,000/- on 09.02.2004 from the plaintiff ?”



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7. The learned counsel for the appellant would submit that even though the defendants have admitted their signatures in the sale agreement and also admitted that they have received the said amount from the plaintiff, the first appellate Court has chosen to allow the appeal by setting aside the judgment of the trial Court on the finding that the suit is barred by limitation. The first appellate Court arrived at a wrong conclusion even though the sale agreement has been proved before the trial Court. Since the signatures were admitted, the appeal ought to have been dismissed or at least partly allowed by modifying the decree in respect of refund of the said amount.

8. The learned counsel for the respondents would submit that the appellant has not proved before the trial Court that the suit is saved by limitation and hence, the first appellate Court is right in allowing the first appeal on the ground of limitation.

9. However, the defendants states that the amounts were received by them towards loan amount and not in pursuant to any sale agreement. On perusal of the records, the trial Court got convinced with regard to the existence of the sale agreement and decreed the suit. The trial Court has made an observation as to the receipt of the part sale consideration in piece meal and that the suit is not barred by limitation. However, the first appellate Court has not



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given any contradictory view with regard to the existence of the sale agreement, but, has rendered finding only with regard to the limitation. Though the defendant had admitted in his cross examination that he had received a sum of Rs.10,000/- from the plaintiff on 09.02.2004, the first appellate Court without appreciating the above fact had recorded a finding that the suit is barred by limitation.

11. Whatever may be the case, the fact remains that the plaintiff has been making an inordinate delay without seeing the contract is fulfilled within the reasonable time. The worth of the property would have got appreciated multiple times and hence, the appellant/plaintiff cannot be allowed to make any undue enrichment out of his own fault. Therefore, the conduct of the plaintiff is not satisfactory to the extent of filling the equitable circumstances in his favour for granting the relief of specific performance.

12. On the other hand, the defendants did not deny the receipt of the payments on various dates and also admitted their signatures in the agreement. Therefore, it would have been appropriate if the first appellate Court has modified the decree by allowing the alternate relief of refund of alleged advance amount instead of setting aside the whole of the judgement of the trial Court in its entirety. Therefore, to this limited extent, I feel the substantial questions of



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law can be answered in favour of the appellant and consequently, the appeal can be partly allowed.

13. In the result, this second appeal is partly allowed and the judgment of the first appellate Court is set aside to the extent of disallowing the plaintiff to get the relief of refund of part sale consideration which has been already paid. Hence, the suit is partly decreed by granting the appellant/plaintiff the relief of refund of the part sale consideration of Rs.70,000/- with interest at the rate of 9% from the date of the receipt of the payment. The suit is dismissed in respect of the relief of specific performance. The time for completion of payment is one month from the date of the receipt of the copy of this order. No costs.

13-11-2025

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

1. The Principal District Judge, Coimbatore.
2. The I Additional Sub Judge, Coimbatore.
3. The Section Officer, V.R. Section,
High Court, Madras.



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R.N.MANJULA J.

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