



S.A.Nos.1018 and 1019 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.Nos.1018 and 1019 of 2012

S.A.No.1018 of 2012:

1.Eswari
2.I.Nagaraj ... Appellants / Defendants

vs.

Saravanakumar ... Respondent / Plaintiff

S.A.No.1019 of 2012:

Eswari ... Appellant / Plaintiff

vs.

Saravanakumar ... Respondent / Defendant

COMMON PRAYER: Second Appeals are filed under Section 100 of C.P.C., against the judgment and decree in A.S.Nos.87 and 88 of 2010 passed by the Principal District Judge, Erode dated 04.04.2012, reversing the Judgment and Decree in O.S.Nos.102 and 19 of 2010 passed by the Subordinate Judge, Sathyamanglam, dated 30.07.2010.

For Appellant : Mr.A.V.Arun
for M/s.R.T.Doraisamy

For Respondent : Mr.N.Manokaran

COMMON JUDGMENT

S.A.No.1018 of 2012 has been preferred by the defendants No.1



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and 2 against the judgment and decree dated 04.04.2012 passed in A.S.No.87 of 2010 by the Principal District Court, Erode.

2. S.A.No.1019 of 2012 has been preferred by the sole plaintiff Eswari against the judgment and decree dated 04.04.2012 passed in A.S.No.88 of 2010 by the Principal District Court, Erode.

3. Parties are indicated herein as per their litigative status and ranking before the trial Court.

O.S.No.19 of 2010:

4.1. According to the plaintiff, Eswari W/o. Nagaraj, suit property namely 0.90 cents of land in New Survey No.41/5, Old Survey No.84F and 89T in Poosari Palayam Village, Sathyamangalam Taluk. Boundaries on north – Palanisami Gounder vagayara's land, South by Sathyamangalam-Mettupalayam road, East by Dr.Moorthy vagayara's land and west by Palanisami's land along with asbestos sheet roofed construction measuring 20 X 11¼ feet building inclusive of machinaries, concrete cement mixture, electricity connection bore-well, motor pump set exclusive of electricity connection No.496.

4.2. The defendants agreed to sell the same to the plaintiff herein



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for a sum of Rs.2,50,000/- and received a sum of Rs.2,00,000/- as an advance amount from the plaintiff and executed a sale agreement on 08.10.1999 and on the same day, possession was also handed over to the plaintiff. From the date of sale agreement, plaintiff has been in possession and enjoyment of the suit property. Period was fixed as 5 years for completion of sale.

4.3. Within a year, when the plaintiff demanded the defendants to execute the sale deed, defendant did not come forward to execute the sale deed and demanded more money than the amount mentioned in the sale agreement. The defendants filed a suit for relief of permanent injunction in (O.S.No.15 of 2001) O.S.No.102 of 2010 before the District Munsif cum Judicial Magistrate Court, Sathyamangalam, by claiming that the sale agreement was treated as anomalous mortgage. The defendant Saravanakumar moved an application in I.A.No.38 of 2001 seeking relief of interim injunction and it was dismissed.

4.4. Plaintiff has been ready and willing to perform her part of the contract. Plaintiff issued legal notice on 16.05.2002 calling upon the defendant to execute the sale deed in her favour and on receipt of the said legal notice, the defendant issued a reply notice on 14.06.2002. Plaintiff filed suit for specific performance in alternate for return of advance amount paid by her to the defendant and to create a charge.



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5.1. Per contra, on behalf of the defendant (vendor Saravanakumar) it was contended that the execution of sale agreement dated 08.10.1999 by the defendant in favour of the plaintiff on receipt of Rs.2,00,000/- as an advance and the fact that the possession was handed over on the same date are denied by the defendant. Hollow brick Company in the name of Veeramathi, is situate at the suit property. Value of the suit property is about Rs.9,00,000/-.

5.2. The defendant in order to repay the debt obtained from one Selvakumar executed an anomalous mortgage and agreed to sell the suit property for a sum of Rs.2,50,000/-. He received an advance amount of Rs.2,00,000/- and executed the sale agreement and it was registered. The value of the suit property is Rs.9,00,000/- and above. The suit property was mortgaged and loan was obtained from the plaintiff.

5.3. The defendant has been carrying on his business at the suit property. On 08.10.1999, the defendant repaid the debt received from Selvakumar. In the said document, the plaintiff's husband has attested the same. It is not necessary for the defendant to sell the property for a lesser price. The defendant has obtained a loan for doing the said business from the branch of State Bank of India, Iyan Salai Branch, Sathyamangalam and he has also got licence from the Government.



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5.4. During the month of January 2001, as difference of opinion arose between the parties, the plaintiff and her husband told him that they were taking forceful possession of the suit property. As the plaintiff attempted to take forcible possession on 10.01.2001, defendant laid a suit in O.S.No.15 of 2001 before Sathyamangalam Munsif Court and the same was decreed in favour of the defendant on 11.03.2005.

5.5. As the debt is a mortgage loan, period for performance was fixed as 5 years for the execution of sale deed. If really the intention of the defendant was to effecting the sale, usually one year time would have been fixed.

6. Based on the divergent pleadings, the trial Court framed the following issues:

- (i) Suit sale agreement was executed for the mortgage loan (the contentions of the defendant that) is correct?
- (ii) Whether the plaintiff is entitled for the relief of specific performance?
- (iii) To what other relief the plaintiff is entitled to?

O.S.No.102 of 2010:

7. The suit was filed by the vendor Saravanakumar for the relief of



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permanent injunction not to interfere with the peaceful possession and enjoyment of the suit property.

8. The above said details of written statement have been averred in his plaint. Whereas, on behalf of the purchaser Eswari, it has been contended as per the above said plaint details.

9. The trial Court framed the following issues:

(i) Whether the contention of the defendant that he was in possession and enjoyment of the suit property from the date of sale agreement (08.10.1999) is correct or not?

(ii) Whether the property is in the possession and enjoyment of the plaintiff?

(iii) Whether the contention of the plaintiff that he executed a anomalous mortgage deed in favour of the defendant?

(iv) Whether the contention of the plaintiff is correct or not?

(v) Whether the plaintiff is running a hollow bricks Company in the suit property is correct?

(vi) Whether there is no cause of action for the suit?

(vii) To what other relief, the plaintiff is entitled to?

(viii) Whether the plaintiff is entitled for the relief of permanent



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injunction (Additional issue).

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10. As the suit property is one and the same between the same parties, and the relieves sought for are connected, common evidence was recorded and documents were marked in O.S.No.19 of 2010 and judgment was pronounced.

11. At trial, on the plaintiff's side, Eswari, the plaintiff has examined herself as PW1 and her husband, Nagaraj has been examined as PW2 and seventy two documents were marked. On the defendant's side (vendor Saravanakumar), the defendant has been examined as DW1 and one Marappa Gounder has been examined as DW2 and twenty four documents were marked.

12. The trial Court upon consideration of oral and documentary evidence and the arguments advanced by the learned counsels appearing on either side held that the plaintiff is entitled for relief of specific performance in O.S.No.19 of 2010 and two months time was fixed for execution of sale deed.

13. The suit in O.S.No.102 of 2010 which was filed by the vendor,



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Saravanakumar, for the relief of permanent injunction was dismissed.

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14. Aggrieved, the defendant (vendor Saravanakumar) preferred appeal in A.S.No.87 of 2010 (O.S.No.102 of 2010) and A.S.No.88 of 2010 (O.S.No.19 of 2010) and in consideration of the available records and after hearing the arguments advanced on either side, the First Appellate Court concluded that Ex.A1, sale agreement was executed by the appellant with an intention to get the loan and not with an intention to execute the sale deed and concluded that the purchaser (Eswari) is entitled to the alternate relief of refund of advance amount with interest and the relief of permanent injunction in favour of the vendor, Saravanakumar was granted and both the appeals were allowed.

15. Aggrieved by the judgment and decree passed by the First Appellate Court as mentioned supra in the above said appeals, the purchaser Eswari has preferred these two Second Appeals.

16.1. The learned counsel for the appellant/plaintiff would strenuously argue that in the sale agreement itself, it is specifically stated that possession was handed over to the vendor and her husband and they are in continuous possession and enjoyment of the suit property. In



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fact, the defendant has admitted the execution of Ex.A1 sale agreement and also admitted the receipt of Rs.2,00,000/-.

16.2. It is incorrect on the part of the First Appellate Court in holding that since the loan obtained by the vendor, Saravanakumar from State Bank of India has not been shown in Ex.A1. The contention of the vendee, Eswari that Ex.A1 has been entered between the plaintiff and the defendant with an intention to execute the sale deed is not correct. Plaintiff was residing and doing business in the suit property was not taken note of. To buttress his arguments, the following judgments were referred to:

- 1) *Sugar Singh v. Hari Singh (Dead) through legal representatives and Others* reported in (2021) 17 SCC 705.
- 2) *Placido Francisco Pinto (D) by LRS and Another v. Jose Francisco Pinto and Another* reported in 2021 SCC OnLine SC 842.

17.1. Whereas the learned counsel for the respondent (borrower / Saravanakumar) would vehemently argue that cancellation of sale agreement in favour of Selvakumar by Saravanakumar (Ex.A70) and execution of sale agreement in favour of Eswari on the same day (Ex.A1) would amply prove the fact that he was in need of money and the



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document executed has to be construed as anomalous mortgage deed.

For payment of Rs.50,000/-, period fixed as 5 years would indicate the fact that the vendor did not have any intention to execute a sale deed in favour of the plaintiff in respect of the suit property.

17.2. The properties are worth about Rs.9,00,000/- and for lesser amount the agreement for sale is executed would go to show that it is only mortgage deed was executed in the place of agreement for sale. It is his further argument that Ex.A1 sale agreement was executed by the vendor, Saravanakumar in order to repay the debt of Selvakumar as per Ex.A70. The plaintiff also knows about the said fact because her husband Nagaraj, has attested in the cancellation of sale agreement executed by Saravanakumar in favour of one Selvakumar. To strengthen his arguments, the below said judgments were referred to:

i)Kamireddi Sattiaraju & Another v. Kandamuri Boolaeswari reported in 2007 (1) LW 309.

ii)J.P.Builders and another v. A.Ramadas Rao and Another reported in (2011) 1 SCC 429.

iii)Padmakumari v. Dasayaan reported in (2015) 8 SCC 695.

iv)Shenbagam and Others v. K.K.Rathinavel reported in 2022 SCC OnLine SC 71.

v) Atma Ram v. Charanjith Singh reported in 2020 (3) SCC 311.



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18. The following substantial questions of law arise for consideration:-

a) Whether the 1st Appellate Court is correct in law, construing Sale Agreement dated 08.10.1999/ Ex.A1, as an instrument executed only as security for the loan received from the plaintiff by the defendant in view of Section 92 of the Indian Evidence Act which stands contrary?

b) Can the defendant be permitted to give evidence against the contention of written and registered document Ex.A1 after having admitted to the execution of the same?

19. Suit is laid under Section 16(c) of Specific Relief Act, which is an equitable relief. The said relief could be granted only if the plaintiff makes out a strong case for exercising the discretion. That apart, the plaintiff has to prove the readiness and willingness to perform his part of the contract till date.

20. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract



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throughout. Therefore, the burden lies on the plaintiff to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

21. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, a Three Judge Bench of the Apex Court held as under:-

“It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that



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ordinarily the plaintiff cannot be allowed to have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

22. In **K. Prakash Vs. B.R. Sampath Kumar**, reported in (2015) 1

SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is



established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

23. Execution of sale agreement and receipt of Rs.2,00,000/- based on Ex.A1 by the vendor Saravanakumar are not in dispute.

24. A careful perusal of Ex.A1 would explicate that it was executed on 08.10.1999 for a consideration of Rs.2,50,000/-. It is also an admitted fact that on the date of Ex.A1, vendor Saravanakumar received a sum of Rs.2,00,000/- and for the remaining amount of Rs.50,000/- fixing a period as five years would pose a big question as to the veracity of Ex.A1.

25. It is also relevant to note that on the same date, cancellation of sale agreement was executed by the vendor, Saravanakumar as regards



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one Selvakumar (Ex.A71/08.10.1999), in which, PW2 Nagaraj, husband of Eswari has also attested in the said document. It is also to be noted that already the suit properties were mortgaged by the vendor, Saravanakumar @ SBI, Iyan Salai Branch. The properties already encumbered as on Ex.A1 is a strong factor against the purchaser Eswari. Saravanakumar is Eswari's (purchaser) uncle's son and both are close relatives. The plaintiff Eswari, issued a notice after 17 months from the date of Ex.A1 for payment of Rs.50,000/- would reflect the fact that she was not ready and willing to perform her part of contract (Ex.A2). Legal notice issued by the plaintiff is dated 16.05.2002. The defendant strongly contends that he did not have any intention to execute the sale deed and only for the purpose of getting loan, the said document was executed.

26. In fact, there is no dispute at all as to the execution of Ex.A1 agreement by the vendor, Saravanakumar. As per Section 92 of Indian Evidence Act, the vendor is permitted to contradict or vary or subtract the terms contained in Ex.A1 agreement. What is left to be considered is whether the contention put-forth by the vendor was never intended to be acted upon needs to be analyzed in the light of testimony and documentary evidence available on record. For better understanding, Section 92 of Indian Evidence Act, 1872 is extracted hereunder:



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"Section 92 of the Indian Evidence Act, 1872, deals with the exclusion of oral evidence to contradict, vary, add to, or subtract from the terms of a written document. Essentially, when a contract, grant, or other document is used to record the terms of an agreement, oral statements or agreements cannot be used to alter or contradict those written terms."

27. As early as in 1936, privy council in ***Tyagaraja Mudaliyar v. Vedathanni*** reported in ***AIR 1936 PC 70***, it was concluded that *"the oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different..."*

28. It is relevant to refer to the observations made by the Hon'ble Supreme Court in ***Gangabai W/o. Rambildas Gilda v. Chhabubai W/o. Pukharajji Gandhi*** reported in ***1982 (1) SCC 4***. It is held as follows:

"...with reference to Section 92(1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other



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agreement altogether, not recorded in the document, was entered into between the parties."

29. In the judgment of **Parvinder Singh v. Renu Gautam and Others**, reported in **2004 (4) SCC 794**, the Apex Court observed that "...
An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction."

30. In the backdrop of the above said details, if the evidence of PW1 and DW1 are approached along with the documents as mentioned supra, it is pellucid that though the plaintiff Eswari is a woman of means and for an amount of Rs.50,000/- fixing the time for performance of contract as 5 years amply strengthen the defendant's stand that Ex.A1 sale agreement is a sham document. The defendant though has executed the registered document, he is permitted to contradict the terms of Ex.A1 sale agreement under Section 92 of Indian Evidence Act.

31. To succinctly state that based on the below said circumstances, the plaintiff's case cannot be accepted. a) On the date of Ex.A1, namely execution of sale agreement, the vendor Saravanakumar executed cancellation of sale agreement in favour of one Selvakumar in which purchaser Eswari's husband Nagaraj (PW2) has signed as an



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attestor. b) The vendor had executed a sale agreement earlier and it was cancelled (Ex.A71-Cancellation Deed) and on the same day i.e., on 08.10.1999, he executed another sale agreement in favour of the plaintiff for a sum of Rs.2,50,000/-. c) The vendor admits to have received the said amount of Rs.2,00,000/-. d) For an amount of Rs.50,000/- fixing 5 years time to execute the sale deed would tilt the case on the side of the vendor. e) Yet another strong fact which would strengthen the vendor's case is that the property has been already mortgaged with SBI, Iyan Salai Branch.

32. All these details would probabalise the case of the vendor that he had not animus to execute the Sale Agreement in furtherance of Ex.A1-Sale Agreement, though the vendor has not shown any positive evidence to prove the fact that the property is worth about Rs.9,00,000/- at the relevant point of time.

33. In the given circumstance, this Court has no hesitation to conclude that the plaintiff having initiated legal proceedings after 17 months from the date of sale agreement for an amount of Rs.50,000/- would clearly explicate that she was not ready and willing to perform her part of the contract. On the other hand, the vendor's contention that for making payment of Rs.50,000/- fixing period of 5 years for performing the



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contract would go to show that the vendor never intended to execute the sale deed in favour of the plaintiff and he executed a mortgage deed. After analysing both the sides oral and documentary evidence, the learned First Appellate Court has rightly held that in equity the purchaser, Eswari is entitled for relief of return of advance amount of Rs.2,00,000/-.

34. As regards the suit for permanent injunction, evidence of DW1 Saravanakumar requires serious consideration. It is his evidence that the hollow brick Company which is situate in the suit property is taken care of by his brother. He does not know anything about the registration certificate and the payment of electricity charges and is only known to his younger brother. Ex.A1 agreement for sale is a registered document. It has been mentioned in the agreement for sale that the possession is handed over to the purchaser on the date of Ex.A1. In consideration of the above said details, First Appellate Court has rightly held that the vendor is not entitled for the relief of permanent injunction and therefore, needs no interference by this Court.

35. In view of the foregoing discussions, the substantial questions of law are answered in favour of the defendant/ Saravanakumar (respondent herein). This Court does not find any infirmity or perversity in



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the findings of the First Appellate Court.

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S.A.No.1018 of 2012 :

36. Based on the aforesaid discussions and observations, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 04.04.2012, passed by the Principal District Judge, Erode in A.S.No.87 of 2010 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions if any stands closed.

S.A.No.1019 of 2012 :

37. Based on the aforesaid discussions and observations, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 04.04.2012, passed by the Principal District Judge, Erode in A.S.No.88 of 2010 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petitions if any stands closed.

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

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1. The Principal District Judge, Erode
2. The Subordinate Judge, Sathyamanglam.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

ssn

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