



S.A.No.369 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **R.KALAIMATHI**

S.A.No.369 of 2012
and M.P.No.1 of 2012

1.Arumugam(Died)

2.Periyathal

3.A.Sadasivam

4.A.Duraisamy

(A1 Died , A3 and A4 are brought on record
as Legal heirs of the deceased A1 vide Court
order dated 15.11.2024 made in CMP.Nos.26032,
26034 and 26038 of 2024)

... Appellants/Defendants

Vs.

Ramaswamy

... Respondent/Plaintiff

This Second Appeal is filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 30.06.2010 passed in A.S.No.97 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court No.3, Dharapuram, reversing the Judgment and Decree dated 21.01.2008 passed in O.S.No.10 of 2007 by the Subordinate Court, Dharapuram.

For Appellants : Mr.V.Manisekaran

For Respondent : Mr.R.Asokan



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JUDGMENT

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Aggrieved by the Judgment and Decree dated 30.06.2010 passed by the Additional District and Sessions Judge, Fast Track Court No.3, Dharapuram, in A.S.No.97 of 2009, the defendants have preferred this second appeal.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff Ramasamy S/o.Angappa Mudaliar, the suit property belongs to the first defendant as per the sale deed dated 29.05.1992 and as per the consent decree dated 26.10.1998 passed in O.S.No.228 of 1998 by Sub Court, Dharapuram. The first defendant entered into agreement for sale with the plaintiff on 24.10.2005 agreeing to effect sale in favour of the plaintiff for the sale consideration of Rs.10,10,000/- and the plaintiff paid an advance amount of Rs.1,10,000/- on the date of execution of agreement for sale. It was agreed that the plaintiff shall pay the remaining part of sale consideration of Rs.9,00,000/- within six months from the date of agreement for sale and the defendant after receiving the sale consideration to execute a sale deed in the name of the plaintiff with the following conditions:-



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i) For the remaining extent of land, defendant has to effect sub-division and to fix the survey stones.

ii) The defendants have to take steps to change the guideline in the Sub-Registrar Office from the house site to agricultural land.

iii) At the time of handing over the possession, if there is a shortage in total extent of 2.66 cents, the defendant agreed to deduct Rs.2,000/- per cent for such shortage of land.

iv) There shall not be any encumbrance at the time of execution of sale.

3.1. The second defendant is added as a nominal party as she has also signed in the sale agreement. The plaintiff had been ready and willing to perform his part of contract by paying the remaining sale consideration. But the defendants did not take any steps to fulfill the conditions as mentioned supra.

3.2. The defendants had obtained a loan of Rs.2,00,000/- from the Dharapuram Co-operative Society by mortgaging the suit property and the said mortgage was not redeemed by the defendants from the said development bank. No steps were taken by the defendants as mentioned supra. The plaintiff by cancelling the agreement for sale executed by the defendants, issued a lawyer notice dated 18.07.2006, calling upon the defendants to repay the advance amount of Rs.1,10,000/-with interest at the rate of 12%.p.a. Reply was received on 24.10.2005 within a week time with



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untenable details and in order to recover the said money, the suit was laid by the plaintiff.

4. Contending contra, the defendants would state that the defendants had been ready and willing to perform their part of contract. In fact, the defendants took initiative to fulfill the conditions by subdividing the property. The plaintiff was aware of the said fact and the first defendant agreed to deduct Rs.2,000/- per cent for the deficit of 0.52 cents. After sub-division, the first defendant was also taking steps to change the guideline from house site to agricultural land. The plaintiff accepted to deduct the loan amount received from the Land Development Bank from the sale price and to make a mention the said details in the sale deed. The plaintiff is not able to pay the balance sale consideration.

5. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff side, plaintiff has examined himself as P.W.1 and two other witnesses have been examined and three documents have been marked. Ex.A1 is the Agreement for Sale executed by the defendants in favour of the plaintiff dated 24.10.2005 in respect of the suit property. On the defendant side, the first defendant has examined himself as D.W.1 and three documents have been marked.



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6. Upon consideration of oral and documentary evidence and after hearing both sides, the Trial Court dismissed the suit. Aggrieved, the plaintiff preferred appeal before the Additional District and Sessions Court, Fast Track Court N.3, Dharapuram in A.S.No.97 of 2009. Upon consideration of the entire case records and after hearing the arguments of the learned counsels for both sides, the First Appellate Court has concluded that the plaintiff is entitled for the relief of refund of advance amount and by allowing the appeal. Against said findings, the defendants have preferred the second appeal.

7. Execution of Sale Agreement by the defendants in favour of the plaintiff is not in dispute. To state that the plaintiff's case succinctly, the plaintiff who is the vendee has filed the suit for return of advance money paid to the defendants under Ex.A1- Sale Agreement as the defendants failed to comply with the conditions mentioned in the sale agreement. Date of Sale Agreement is 24.10.2005.

8. A careful perusal of both sides evidence would reveal the fact that as regards the first condition has been complied with. As regards the second condition, D.W.1 would state that he has taken steps and no order has been passed. With respect of the 3rd condition, he concedes to deduct



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Rs.2000/-per cent for the deficit of 0.52 cents of land. The fourth condition, that there shall not be any encumbrance on the date of sale.

9. The defendants have obtained a loan of Rs.2,00,000/- from the Land Development Bank by mortgaging the suit property. After executing the sale agreement, the defendants have not taken steps to redeem the mortgage in compliance with the condition No.4 as mentioned supra. Time limit stipulated was fixed as six months in Ex.A1 – Sale Agreement. Date of Sale Agreement is 24.10.2005. The suit was filed by the plaintiff on 06.02.2007 after 16 months from the date of sale agreement.

10. D.W.1 would admit that he has obtained mortgage loan and would state that the plaintiff agreed to deduct the loan amount from the sale price and to mention the same in the sale deed. But these details are not found in the sale agreement. As per the 4th condition, the defendants should have taken steps to clear the encumbrance. Even at the time of examination of D.W1, he has not cleared the encumbrance created in respect of the suit property, namely, the mortgage loan. As the defendants have not complied with the conditions especially condition No.4 then it should not lie in the mouth of the defendants that the plaintiff was not ready and willing to perform his part of contract. The plaintiff stoutly contend that as the defendant did not comply with the stipulated condition, he has failed the suit



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for return of advance money. This Court finds merits in the contention of the plaintiff.

11. The defendants have utterly failed to comply with the conditions and the plaintiff has rightly filed the suit for recovery of advance money and the First Appellate Court has decreed the suit in a right perspective.

12. In such circumstances, this Court does not find any perversity or infirmity with the findings of the First Appellate Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. No substantial question of law arise for consideration.

13. Based on the aforestated discussions and observations, this Second Appeal stands dismissed. Sequel to this, the Judgment and Decree dated 30.06.2010 granted by the Additional District and Sessions Court, Fast Track Court No.3, Dharapuram in A.S.No.97 of 2009 stands confirmed. There is no order as to costs. Consequently,connected miscellaneous petition is closed.

22.05.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
kkd



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R.KALAIMATHI,J.

kkd

To

1. The Additional District and Sessions Court,
(Fast Track Court No.3), Dharapuram.
2. The Subordinate Court, Dharapuram.

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