



SA. Nos. 1121/13 & 649/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 24.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 1121 of 2013

&

Second Appeal No. 649 of 2014

S.A. No. 1121 of 2013

Anjalai Ammal

.. Appellant

Versus

1. Radha

2. Selvaraj

.. Respondents

S.A.No.649 of 2014

Radha

.. Appellant

Versus

1. Anjalai Ammal

2. Selvaraj

.. Respondents

Second Appeals are filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 07.02.2013 made in A.S. No. 17 of 2012 on the file of the learned II Additional District Judge, Tindivanam reversing the Judgment and decree dated 01.07.2011 made in O.S. No. 55 of 2008 on the file of the Court of the learned Principal Subordinate Judge, Tindivanam.

S.A. No. 1121 of 2013



SA. Nos. 1121/13 & 649/2014

For Appellant : Mr. T. Dhanasekaran
For Respondent : Mr. M. Kamalanathan

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S.A. No. 649 of 2014

For Appellant : Mr. M. Kamalanathan
For Respondent : Mr. T. Dhanasekaran

COMMON JUDGMENT

Both these Second Appeals are filed to set aside the Judgment and decree dated 07.02.2013 made in A.S. No. 17 of 2012 on the file of the Court of the learned II Additional District Judge, Tindivanam reversing the Judgment and decree dated 01.07.2011 made in O.S. No. 55 of 2008 on the file of the Court of the learned Principal Subordinate Judge, Tindivanam.

2. The Second Appeal No. 1121 of 2013 is filed by the first Defendant in O.S. No. 55 of 2018 in so far as it relates to the judgment of the First Appellate Court in reversing the Judgment and Decree dated 01.07.2011 passed in O.S. No. 55 of 2008.

3. The other appeal in S.A. No. 649 of 2014 is filed by the Plaintiff in the suit in so far as it relates to the refusal of the first appellate Court to grant a decree for specific performance.

4. For the sake of convenience, the parties to this appeal are referred



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to as per their litigative status in the suit as 'Plaintiff' and 'Defendants'.

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5. The suit in O.S. No. 55 of 2008 was filed by the Plaintiff (Appellant in Second Appeal No. 649 of 2014) contending that the Defendants are the owners of the plaint described property and they have entered into an agreement dated 24.06.2006 to sell the said property for a sum of Rs.1,000/- per cent. The total extent of the plaint described property was 1 acre 71 cents and therefore the total sale consideration was Rs.1,71,000/-. Therefore, a sum of Rs.1,00,000/- was paid by the Plaintiff as advance and it was received by the first Defendant. The balance sale consideration payable is Rs.71,000/-. Even though at the time of entering into the agreement of sale, the Plaintiff was ready to pay the full price, but it was the first Defendant who had chosen to receive only Rs.1,00,000/- as advance by stating that he require some time to prepare the documents. Further, the marriage of Mr. Logu, son of the first Defendant was arranged during September 2006 and therefore, the first Defendant sought three months time to execute the sale deed. The agreement of sale was also signed by Mr. Logu, son of first Defendant, as a witness. After when the Plaintiff demanded the first Defendant to execute the sale deed, he evaded and postponed it for no reason. When the Plaintiff caused enquiries, she came to know that the first Defendant attempted to sell the plaint described property to the second Defendant, in contravention to the agreement of sale



dated 24.09.2006. According to the Plaintiff, the second Defendant was fully aware of the agreement of sale dated 24.09.2006 entered into by the first Defendant with the Plaintiff. Notwithstanding the same, the second Defendant proceeded to purchase the plaint described property. The Plaintiff also contends that he has deputed one Ganesan to demand the first Defendant, on her behalf, to execute the agreement of sale. However, the said Ganesan acted to the detriment of the Plaintiff and facilitated the second Defendant to enter into an agreement of sale with the first Defendant. The Plaintiff also states that the second Defendant is none other than the brother of the said Ganesan. According to the Plaintiff, the agreement of sale entered into between the first and second Defendant will not bind her. Therefore, the Plaintiff has filed the suit to direct the first Defendant to execute the sale deed after receiving the balance sale consideration. On failure to do so, the Court shall execute a sale deed on behalf of the first Defendant. Alternatively, the Plaintiff also prayed for a decree directing the first Defendant to repay the sum of Rs.1,00,000/- together with interest at the rate of 12% per annum and for the costs of the suit.

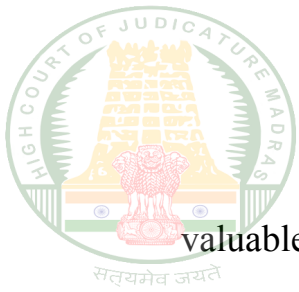
6. On notice, the first Defendant filed a written statement contending inter alia that the first Defendant is not the exclusive owner of the plaint described property and he had not entered into any agreement of sale on 24.06.2006 with the Plaintiff. It is also incorrect to state that the sale price was



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fixed at Rs.1,71,000/- and the Plaintiff paid Rs.1,00,000/- as advance to the first Defendant. The first Defendant has not received any such sum from the Plaintiff. According to the first Defendant, the first Defendant borrowed a sum of Rs.40,000/- from the Plaintiff for performing the marriage of his elder son. Accordingly, the Plaintiff paid a sum of Rs40,000/- to the first Defendant. At the time of paying the loan amount, the Plaintiff obtained the signature of the first Defendant in blank papers which she utilised for creating a bogus agreement of sale. The first Defendant has neither received Rs.1,00,000/- from the Plaintiff nor executed any agreement of sale, to sell the plaint described property. It was further stated that the plaint described property belonged to one Mr. Lakshmi Reddiyar and his wife Dhanalakshmi Ammal. On 22.11.1989, the plaint described property was purchased by the first Defendant and his wife, jointly and therefore, his wife is also having a right and interest in respect of half of the property described in the plaint. In such event, the suit, as filed by the Plaintiff, is not maintainable. The suit is bad for non-joinder of wife of the first Defendant and prayed for dismissal of the suit.

7. The second Defendant filed a written statement contending that the first Defendant is not the absolute owner of the plaint described property. The first Defendant has only 50% right over the property and her husband Mr.Selvaraj has got another half share in the property. It was further stated that the second Defendant has already purchased the plaint described property for a



valuable sale consideration. He was a bona fide purchaser of the plaint described property having purchased it for a valuable sale consideration. The Plaintiff has no right to file the suit for specific performance. Accordingly, the second Defendant prayed for dismissal of the suit.

8. Before the Trial Court, the Plaintiff examined herself as PW1 along with two other witnesses as Pws 2 and 3 and marked Ex. P1, agreement of sale dated 24.06.2006 as document on her side. On behalf of the Defendants, the first Defendant examined herself as D.W-1 along with four other witnesses as D.W-2 to D.W-5. Ex.B-1 to Ex.B-5 were marked as document on the side of the Defendants.

9. The trial court, on appreciating the oral and documentary evidence refused to accept the plea of the Plaintiff and dismissed the suit. For dismissing the suit, the trial court has concluded that the stamp paper for executing the agreement of sale, Ex.P1 was not purchased a day or two prior to its execution but it was obtained atleast six months ago. Further, it was concluded that the Plaintiff obtained the signature of the first Defendant in blank papers and utilised it to create the agreement of sale under Ex.P1. The trial court also referred to the cross-examination of Plaintiff, as PW1, wherein she has stated that the second Defendant was not aware of the agreement of



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sale she entered into with the first Defendant. Therefore, the trial court concluded that the plea of the Plaintiff in the plaint and in her cross-examination are inconsistent with each other. Accordingly, the trial court dismissed the suit filed by the Plaintiff.

10. Aggrieved by the judgment and decree dated 01.07.2011 passed in O.S. No. 55 of 2008, the Plaintiff preferred an appeal in A.S. No. 17 of 2012 before the learned II Additional District Judge, Tindivanam. The Appellate Court, on considering the oral and documentary evidence, held that from the deposition of PW2 and 3, who have signed Ex.A1 as witnesses, the Plaintiff has proved that Ex.A1 has been executed between the Plaintiff and the first Defendant. The Appellate Court also concluded that the document, Ex.A1 had been written by PW2 who is an inexperienced person to write such documents as there are minuscule mistakes found under Ex.A1. The first appellate Court also pointed out that D.W-2, Loganathan has denied that he has not signed Ex.A1. It was held by the Appellate Court that if it is so, the Defendants ought to have filed necessary application to compare the signatures of D.W-2 in Ex.A1 along with his admitted signatures, but it was not done. Therefore also, the Appellate Court concluded that Ex.A1 is a genuine document, which was entered into between the Plaintiff and the first Defendant. With reference to readiness and willingness on the part of the Plaintiff, it was concluded that



there is no evidence to show that the Plaintiff was ready and willing to perform her contract and she has ready money available with her. To show the financial capacity of the Plaintiff, no document has been produced by the Plaintiff. Therefore, it was concluded that the Plaintiff has no wherewithal to perform her part of the contract or she was willing to perform her part of the contract. Accordingly, the First Appellate Court modified the Judgment and Decree of the trial court and held that the Plaintiff is not entitled for the relief of specific performance, but directed the first Defendant to refund the sum of Rs.1,00,000/- to the Plaintiff with interest at the rate of 12% per annum from the date of agreement till the payment inasmuch as the Plaintiff has proved that she had paid the sum of Rs.1,00,000/- to the first Defendant at the time of execution of Ex.A1, agreement of sale.

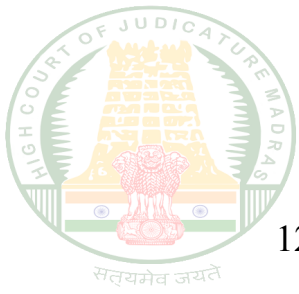
Arguments advanced by the Counsel for first Defendant (Appellant in SA No. 1121 of 2013)

11. The learned Counsel for the First Defendant/Appellant submitted that the Suit was filed for specific performance of the sale agreement, Ex.P1. The first Defendant filed a written statement stating that she had approached the Plaintiff only for a loan of Rs.40,000/- to perform the marriage of her son and at that time the Plaintiff obtained her signatures in blank papers to create a

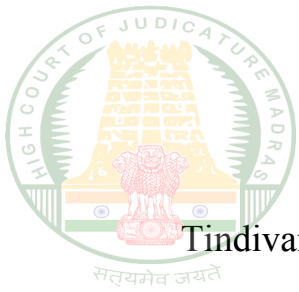


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sale agreement. The first Defendant had not entered into any sale agreement with the Plaintiff. It is the further submission of the learned Counsel for the Appellant that the property measuring 1 Acre and 70 Cents was purchased by the first Defendant along with her husband. If really the first Defendant had entered into the sale agreement with the Plaintiff on 24.06.2006, the Plaintiff would have obtained the signature of her husband also on Ex.A-1. Since it was not done, it is clear that it was created against the first Defendant. Further, all the witnesses and the scribe of Ex.A1 are relatives of the Plaintiff. In this context, issues were framed by the trial Court. The Plaintiff examined herself as P.W-1 and her brother-in-law as P.W-2, who is the scribe of Ex.A-1 and another witness was examined as P.W-3. The first Defendant had examined herself as D.W-1 and her relatives were examined as D.W-2 to D.W-5. The sale agreement was marked as Ex.A-1. The sale deed stands in the name of the first Defendant and her husband dated 02.11.1989 was marked as Ex.B-1. The first Defendant also marked Ex.B-2 to Ex.B-5. The learned Counsel invited the attention of this Court to the admission made by P.W-1 in cross-examination and the discussion of evidence by the learned Principal Subordinate Judge, Tindivanam that the claim of the first Defendant that the sale agreement was not entered into with the intention to sell the property was accepted dismissed the Suit by Judgment dated 01.07.2011.



12. The learned Counsel further submitted that in the appeal filed by the Plaintiff, the learned II Additional District Judge, in the course of discussion, differed from the reasoning of the learned trial Judge. The learned II Additional District Judge, on erroneous interpretation of the clause in the sale agreement, rejected the contention of the first Defendant in the written statement and arrived at a conclusion that Ex.A1 is genuine. Though the learned II Additional District Judge discussed elaborately that time is not essence of contract had arrived at a conclusion that the Plaintiff was not willing to perform her part of contract. Having arrived at such a conclusion that the Plaintiff did not perform her contract, granted the alternative relief of refund of an advance amount to the Plaintiff. The learned Counsel further submitted that the learned First Appellate Judge, on the one hand, concluded that sale agreement, Ex.A1 is genuine and on the other hand, concluded that the Plaintiff was not willing to perform her part of contract. At the same time, without any valid reasons, granted the alternate relief. When it is the specific plea of the first Defendant that the sale agreement is ingenuine and she had not received the alleged advanced Sale Consideration of Rs.1,00,000/-, the conclusion reached by the learned First Appellate Judge in A.S.No.17 of 2012 is not proper. Therefore, the learned Counsel for the first Defendant/Appellant prayed to set aside the Judgment and Decree passed in A.S. No. 17 of 2012 and to restore the Judgment of the learned Principal Subordinate Judge,



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Tindivanam in O.S. No. 55 of 2008 dated 01.07.2011.

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Arguments of the learned Counsel for the Appellant in Second Appeal No. 649 of 2014 (Plaintiff in O.S. No. 55 of 2008)

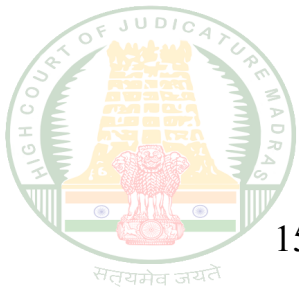
13. The learned Counsel for the Plaintiff/Appellant submit that the first Defendant in the written statement had not denied the signature in Ex.A1. She had admitted that she had approached the Plaintiff for money to perform the marriage of her son. The reasoning given by the learned Principal Subordinate Judge, Tindivanam that Ex.A-1-sale agreement deed are witnessed by the relatives of Plaintiff cannot be a reason to refuse the relief of specific performance. Such a conclusion reached is erroneous as the witnesses can be made normally by friends, relatives or persons known to the executant. In the appeal, even though the First Appellate Court concluded that Ex.A1 is proved by the Plaintiff, refused to grant the relief of specific performance. Instead, directed the first Defendant to pay the advance amount of Rs.1,00,000/-. When the first appellate Court concluded that Ex.A1 is genuine and upon execution of the same the first Defendant paid Rs.1,00,000/-, ought to have decreed the suit instead of directing the first Defendant to pay the advance amount. Therefore, the learned Counsel for the Plaintiff/Appellant in S.A.No.649 of 2014 seeks to set aside the decree and Judgment of the learned Second Additional District



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Judge, Villupuram at Tindivanam and to direct the first Defendant to execute the sale deed in her favour in respect of the Plaintiff described property.

14. Also, the learned Counsel for the Plaintiff/Appellant in S.A.No.649 of 2014 submitted that the claim that the first Defendant in the written statement is not true. The agreement, under Ex.A1 was executed with the intention to execute a sale deed. In fact, the first Defendant handed over the photostat copies of the parent documents to the Plaintiff at the time of entering into the sale agreement as per Ex.A-1. While so, it cannot be contended that Ex.A1 was not executed with the intention to alienate the plaintiff described property. In the plaint, it was specifically pleaded by the Plaintiff that she was ready and willing to pay the entire sale price but it was the first Defendant, who wanted three months time to execute the sale deed. In the light of such specific averment on the part of the Plaintiff and her deposition, as PW1, the Appellate Court ought to have decreed the suit for specific performance instead of modifying the decree and judgment of the trial court with a direction to the first Defendant to refund the advance amount. The learned Counsel therefore prayed this Court to set aside the Judgment and Decree of the First Appellate Court and to decree the suit in O.S. No. 55 of 2008 as prayed for.



15. Having heard the learned Counsel for the parties, the following substantial question of law is framed in S.A. No. 1121 of 2013 filed by the first

Defendant:-

“Whether the first Appellate Court is right in modifying the decree and judgment passed by the trial court on the ground that Ex.A1, agreement of sale is genuine and valid?

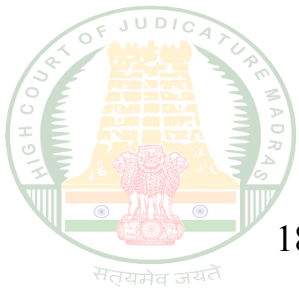
16. On 04.07.2014, when Second Appeal No. 649 of 2014 was taken up for hearing, this Court framed the following substantial questions of law for consideration and they are:-

“a) When the sale agreement entered on 24.06.2006 and when the lower Appellate Court found that time is not the essence of the contract, whether the Lower Appellate Court is right in refusing the relief of specific performance in favour of the Appellant in respect of the Suit property?

b) Whether the Lower Appellate Court is right in denying the equitable relief of specific performance when the Appellant was ready and willing to perform his part of contract?

c) Whether the Appellant can be denied the right of specific performance of the Suit agreement when the Respondents failed to comply with the conditional order passed by the lower Appellate Court?

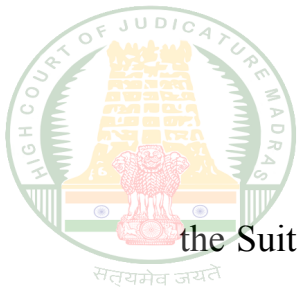
17. The substantial questions of law that arise in both these appeals are inter-twined and inter-related with each other. Therefore, all the substantial questions of law are taken up for consideration and decided hereunder.



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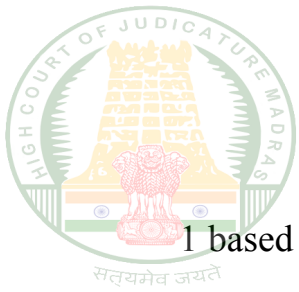
18. On consideration of the submissions of the learned Counsel for the Appellant in S.A.No.1121 of 2013 (first Defendant in O.S. No. 55 of 2008) and the learned Counsel for the Appellant in S.A. No. 649 of 2014 (Plaintiff in O.S. No. 55 of 2008), it is found that the learned Principal Subordinate Judge, Tindivanam in paragraph No.7 to 16 has concluded that the witnesses in the sale agreement deed dated 24.06.2006 under Ex.A-1 did not sign in the presence of the first Defendant. It was reasoned that the Scribe, who was examined as P.W-2, had in his cross-examination, stated that he is not a professional document writer and he has studied only up to +2. Further, it was found that PW2 is the brother-in-law of Plaintiff/P.W-1. The Trial Court also concluded that the stamp paper on which Ex.A-1 was entered into between the Plaintiff and first Defendant was purchased six months prior to Ex.A1 dated 24.06.2006. On perusal of the evidence of Plaintiff as P.W-1, in her cross-examination it was concluded by the trial Court that the first Defendant borrowed Rs.25,000/- from Elumalai, Rs.45,000/- from one Poongavanam and Rs.10,000/- from other friends and paid Rs.1,00,000/- as advance to the first Defendant. On examining the stamp paper it was noticed that it was purchased on 07.11.2005, long prior to the date of execution of sale agreement deed dated 24.06.2006.

19. In the course of the cross-examination of P.W-1, she admitted that



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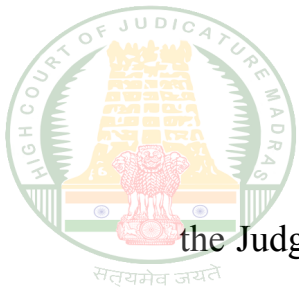
the Suit property is not an exclusive property of the first Defendant and it was jointly purchased by the first and her husband. If it is so, the sale agreement ought to have been entered into between the Plaintiff as well as the first Defendant and her husband. However, the Plaintiff entered into the sale agreement only with the first Defendant, who is not the exclusive owner of the plaint described property. The Plaintiff admitted that she obtained the photostat copy of the parent deeds in the name of the first Defendant and her husband which is Ex.B-1 dated 02.11.1989. She also admits that the details of the properties were found in Ex.B-1 and accordingly Ex.A-1 contained the details. However, the Plaintiff failed to explain as to why the sale agreement was entered only with the first Defendant. The scribe who was examined as P.W-2- Chandran had in his evidence stated he studied up to +2 and he is not a professional document writer. He also admitted that he had not written any document prior to Ex.A-1. In the cross-examination, he also admitted that he does not know the meaning of the Tamil word i.e., **மனைவி** (referring to wife in the Tamil). Taking note of the above inconsistencies in the evidence of the Plaintiff witnesses, the learned Principal Subordinate Judge had arrived at a conclusion that the details of the properties were entered into in Ex.A-1 only based on the photostat copy of the sale deed in the name of the first and second Defendant without their knowledge. Further, the particulars were stated to the scribe/P.W-2 by none other than the Plaintiff herself. PW2 also prepared Ex.A-



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1 based on Ex.B1. Further, P.W-3 in his evidence stated that he is a resident of Chennai and he had gone to the residence of the Plaintiff on 23rd. On that day before execution of Ex.A-1-sale agreement deed he reached Tindivanam by 10.30 in the house of the first Defendant where he saw the Plaintiff and first Defendant entering into an agreement and reduced it in to writing. Therefore, the learned Sub Judge found out that the Witnesses P.W-1 to P.W-3 are friends and acquaintances of the Plaintiff/P.W-1. On appreciation of their evidence, the learned Principal Subordinate Judge, Tindivanam arrived at a conclusion that the sale agreement deed Ex.A-1 did not come into existence as stated by the Plaintiff in her evidence and the Plaintiff averments and rejected the claim of the Plaintiff for specific performance of contract.

20. The learned Counsel for the Plaintiff invited the attention of this Court to the discussion of very same evidence by the learned Appellate Judge, learned Additional District Judge – II, Villupuram at Tindivanam in Paragraph Nos.13 to 30 concluding that the scribe of Ex.A-1 need not be a professional document writer and on that ground Ex.A-1 need not be rejected. However, it was recorded that the Plaintiff was not ready to get the sale deed executed within the time stipulated in Ex.A-1 when time was the essence of the contract. In this context, the learned first Appellate Judge relied on the ruling reported in **(2010) 3 MLJ 870 in the case of A. Ramadoss Rao Vs. J.P. Builders** in which



the Judgment reported in **1999 L.W 239** in the case of **V.Y. Rathna Sabapathy Pillai Vs. T.R.Sivarama Chettiyar** was relied on. In the above decision, it was

held that the obligations under the Contract to be performed must be taken into account and if, under the terms of the contract, the obligations of the Parties have to be performed in certain sequence, one of the parties to the contract cannot require compliance with the obligations by other party without in the first instance performing his own part of the contract which, in the sequence of obligations, is performable by him earlier.

21. In Paragraph No. 42 of the judgment, which is impugned in these appeals, the learned First Appellate Judge stated that as per the principles laid down in the ruling cited in (1997) 2 RCR (Civ) 312, (1997) 1 Scale 739, (1997) 1 SCJ 415, (1997) 2 CLT 70, (1997) 2 Supreme 597, (1997) 0 AIR (SCW) 956, (1997) 2 JT 375, (1997) 3 SCC 1, (1997) 0 AIR (SC) 1751, the vendor cannot be expected to obtain the sale of entire share of two brothers with a right to force partition on the sisters, who were not parties to the agreement of sale. It was further stated that the relief of specific performance need not be granted entirely when the value of the property was raising fast.

22. In the case on hand, the Plaintiff entered into agreement on 24.06.2006. The period stipulated in the agreement expired on 23.09.2006. The



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Plaintiff filed the Suit on 18.05.2008 i.e., nearly after one year and nine months. The reason for such a long period has not been properly given by the Plaintiff. However, in her deposition as PW1, she had stated that she approached the first Defendant two or three times and demanded the execution of the sale deed and therefore the delay has occurred in instituting the suit. It is seen from the plaint averments that prior to the institution of the suit, the Plaintiff has not issued a notice calling upon the first Defendant to execute the sale agreement. The Plaintiff, without even issuing a pre-suit notice, has filed the present suit seeking the relief of specific performance.

23. The learned Counsel for the first Defendant (Appellant in S.A.No.1121 of 2013) contended that even though the learned Second Additional District Judge, Villupuram has concluded that the Plaintiff was not ready and willing to perform her part of the contract, yet granted the alternative relief of return of the advance sale amount of Rs.1,00,000/- which the first Defendant did not receive.

24. When it was observed by the First Appellate Court that the Plaintiff is not ready and willing to perform her part of the contract, then, the learned First Appellate Judge ought to have confirmed the finding of the learned Principal Subordinate Judge, Tindivanam. Instead the learned Judge



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had confused himself in the subsequent paragraphs and arrived at a conclusion that the Plaintiff is entitled to alternate relief of refund of advance amount. In paragraph No.44, the learned Second Additional District Judge in his Judgment reasoned that the Plaintiff has established that the first Defendant has entered into the sale agreement with him and received an advance of Rs.1,00,000/- and therefore, the first Defendant has to return the advance amount to the Plaintiff with interest at the rate of 12 % per annum from the date of agreement till the date of payment and thereby reversed the findings rendered by the learned Principal Subordinate Judge, Tindivanam.

25. The discussion of evidence by the learned First Appellate Judge in paragraph Nos.42 to 44 is found contradictory. It is nothing but confusion in the mind of the learned Appellate Judge in reversing the finding of the learned trial Judge. The learned trial Judge had in the discussion in Paragraph Nos.9 to 16 had arrived at a logical conclusion based on the fact that the Plaintiff in her evidence stated that she did not pay the advance amount. She borrowed from three individuals on three different amounts viz., Rs.10,000/-, Rs.25,000 and Rs.45,000/- and paid the amount of Rs.1,00,000/-. This statement of the Plaintiff only proves that she did not have resources on the date of execution of the sale agreement. Further, she admitted that the photostat copy of the sale deed from the first Defendant have been obtained wherein it was found that the



property stood in the name of the first Defendant and her husband. Thus, out of the total extent of 1 Acre and 70 cents, the first Defendant has only half share with whom the Plaintiff had alleged to have entered into the sale agreement for 1 Acre and 70 cents. Further, the husband of the first Defendant was not aware of entering into the sale agreement and this was also admitted by P.W-1 in the cross-examination. Therefore, the finding of the learned Principal Subordinate Judge, Tindivanam that the Plaintiff had not issued notice prior to the filing of the Suit calling upon the Defendant to come and execute the sale deed is correct. The Plaintiff has not taken steps to issue notice calling upon the first Defendant to execute the sale deed.

26. The sale agreement was dated 24.06.2006 but the stamp paper for the same was purchased on 07.12.2005, long before entering into the sale agreement. Those circumstances are against the Plaintiff. Therefore, the learned Principal Subordinate Judge in his Judgment had observed that the claim of the Plaintiff that she was “ready and willing” had not been proved. P.W-2, brother in law of the Plaintiff had in his evidence clearly stated that the wording for the sale agreement was stated by the Plaintiff and the first Defendant and he does not know the meaning of ஸாதிஸாதி. He exposed the ignorance of the terms used in Tamil. He is not a professional document writer. As claimed by the first Defendant, the Plaintiff and the Plaintiff Witnesses viz.,



P.W-2 and P.W-3 are relatives and with the help of the relatives, the Plaintiff had created Ex.A1. When P.W-1 admitted in cross-examination that the photostat copy of the sale deed in the name of the first Defendant and her husband was produced to her, it is not known why the Plaintiff could enter into the agreement of sale only with the first Defendant. The Plaintiff cannot enforce such an agreement of sale entered into with a person who is not the owner of the entire property. In such circumstance, the sale agreement cannot be enforced against the husband of the first Defendant who is not a signatory to Ex.A-1. Other than Ex.A-1, there are no other document filed on behalf of the Plaintiff in support of her contentions.

27. It was argued before the Appellate Court that 'X' mark has been put in the bottom of each page of Ex.A1 and it would establish that without writing a document, signatures has been obtained near the mark from the first Defendant. This argument was rejected by the Appellate Judge by stating that 'it is the habit of some persons to put x mark before getting signature from the party and that cannot be a reason to disbelieve Ex.A1. In this context, in the written statement, it is vehemently contended that some blank signature of the first Defendant has been obtained which was used to create Ex.A1. Further, the deposition of PW2 and 3 are contrary to each other. Therefore, the reasons assigned by the First Appellate Court to conclude that Ex.A1 is genuine cannot



be accepted. The First Appellate Court lost sight of the fact that the stamp paper for writing Ex.A1 was purchased long before and this only shows that Ex.A1 was not entered into between the Plaintiff and the first Defendant for alienation of the plaint described property at all.

28. If the Plaintiff was ready and willing as claimed in the Plaint, the Plaintiff ought to have issued legal notice to the first Defendant, prior to instituting the Suit and calling upon the first Defendant and Second Defendant to come and execute the sale deed. The legal notice is not found in this case. The Plaintiff had not instituted the Suit then or immediately after the expiry of three months period. Instead, the Suit was filed on 18.06.2008, long after execution of the sale agreement deed in Ex.A-1 dated 24.06.2006.

29. The learned First Appellate Judge, learned Second Additional District Judge, Villupuram at Tindivanam had rightly discussed those facts that the Plaintiff was not ready and willing as per the ruling cited by the learned First Appellate Judge to confuse himself subsequently claiming the Plaintiff is entitled to the relief of Specific Performance of contract and thereby reversed the finding in Paragraph Nos.42 to 44 which are found contrary. That shows the learned Judge had confused his mind in the discussion and reversed the finding not on logical deduction of the fact and law. Therefore, the submission of the



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learned Counsel for the Appellant in S.A.No.1121 of 2013 (first Defendant in O.S.No.55 of 2008) is found acceptable in the facts and circumstances of the case and also in the light of the Judgment of the learned Principal Subordinate Judge, Tindivanam and learned Second Additional District Judge.

30. It is the submission of the learned Counsel for the Appellant in S.A.No.649 of 2014 that merely because of P.W-2 and P.W-3, the scribe in the attester is relative of Plaintiff that cannot be a ground to refuse the relief as was stated by the learned Principal Subordinate Judge, Tindivanam cannot be accepted as the Plaintiff always ready and willing to perform her contract, the Judgment of the learned Second Additional District Judge, Villupuram at Tindivanam in coming to a conclusion that Ex.A-1 sale agreement deed is a bonafide sale agreement deed is based on proper re-appreciation of evidence and therefore, the learned Appellate Judge is to be held and confirmed is found unacceptable particularly for the concluding Paragraphs of the Judgment, the learned Appellate Judge confused himself regarding the claim of the Plaintiff that she is ready and willing to perform his part of contract in the light of the reported ruling cited before the learned First Appellate Judge in ***(2010) 3 MLJ 870 in the case of A.Ramados Rao Vs. J.P.Builders and also relied on 1999 L.W 239 in the case of V.Y.Rathna Sabapathy Pillai Vs. T.R.Sivarama Chettiyar .***



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after those long period and refused to grant decree for specific performance of contract. Whereas the learned First Appellate Judge confused himself and stated in the discussion that the Plaintiff was not willing to perform her part of contract. But the concluding Paragraphs stated that the Plaintiff has to be granted decree for specific performance of contract which is nothing but contradictory finding. The finding of the learned First Appellate Judge is found erroneous only in those circumstances. The learned first Appellate Judge ought to have discussed the finding of facts by the learned Principal Subordinate Judge, Tindivanam and then distinguished himself by reappraisal of evidence by him. That was not done. Merely because, the first Appellate Judge decreed the Suit by granting alternate relief of refund of money, the Appellant in S.A. No. 649 of 2014 cannot seek to confirm the Judgment of the learned First Appellate Judge.

32. Based on appreciation of evidence, the learned trial Judge, learned Principal Subordinate Judge, Tindivanam refused the relief which is a discretionary relief exercised by the Civil Court under the principles of fairness, equity and good conscience by refusing the relief. The learned First Appellate Judge, the learned Second Additional District Judge, Villupuram at Tindivanam failed to consider those facts and instead granted the alternate relief by directing the first Defendant to refund the advance amount.



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33. When the learned Sub Judge arrived at a conclusion that Ex.A-1-sale agreement deed itself is not a proper sale agreement deed on three conditions it was created behind the back of the first Defendant. It did not contain the signature of first Defendant and her husband/second Defendant. The Plaintiff was not willing to perform her part of contract. He had instituted the Suit without issuing legal notice prior to filing of Suit calling upon the Defendant to execute the sale deed. He had not deposited the balance sale consideration in the Court on the date of filing of the Suit to show his readiness and willingness. As per the evidence of Plaintiff herself as P.W-1, she had stated that she had borrowed from three individuals on three different amounts viz., Rs.25,000/-, Rs.45,000/- and Rs.10,000/- and paid the first Defendant. That shows that on the date of the sale agreement, she did not have sufficient resources. Therefore, the learned trial Judge had rejected the contention of the Plaintiff. When the learned Principal Subordinate Judge had on appreciation of evidence arrived at a conclusion, the learned Second Additional District Judge ought not to have interfered with the finding. It is because, the learned trial Judge has the advantage of observing demeanor of witness, which advantage is not available to the learned First Appellate Judge. The learned First Appellate Judge can re-appreciate the entire materials, but does not have the advantage of observing the demeanour of witnesses. Therefore, the finding of the trial Court



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had to be given due weightage. Under those circumstances, the reversal of the

Judgment by the learned Second Additional District Judge is unwarranted.

Therefore, granting alternate relief of refund of advance amount itself is perverse.

In the result,

(i) **Second Appeal No. 1121 of 2013 is allowed** and the judgment and decree dated 07.02.2013 made in A.S. No. 17 of 2012 on the file of the II Additional District Judge, Tindivanam, reversing the Judgment and decree dated 01.07.2011 made in O.S. No. 55 of 2008 on the file of Principal Subordinate Judge, Tindivanam is set aside. The judgment of the learned Principal Subordinate Judge, Tindivanam in O.S. No. 55 of 2008 is restored.

(ii) Consequently, **Second Appeal No. 649 of 2014 is dismissed**

(iii) No costs. Consequently, connected miscellaneous petitions are closed.

24.06.2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order
dh/srm

To

1. The II Additional District Judge,
Tindivanam.



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2. The Principal Subordinate Judge,
Tindivanam.

3. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Common Judgment in
SA Nos. 1121/2013 & 649/2014

24.06.2025