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SA No. 897 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-11-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 897 of 2015

and

M.P.No.1 of 2015

V.Govindaraj
S/o Kutti,
Door No.143/144 B
Iyerkadu, Periya Semur,
Sukkiramaniagoundenvalasu,
Erode Taluk, Erode District.

Appellant(s)

Vs

S.Nagarajan
S/o V.M.Shanmugam,
Door No.18, Karikalan Street,
Ashokapuram, Erode Erode Taluk,
Erode District.

Respondent(s)

PRAYER: This Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 28.04.2015 made in A.S.No.53 of 2014 on the file of I Additional District Court, Erode in confirming the judgment and decree dated 28.10.2013 made in O.S.No.317 of 2011 on the file of the II Additional Sub Court, Erode by allowing the present second appeal.



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For Appellant(s): M/s.C.Ramaraju
for Mr.M.Guruprasad

For Respondent(s): Mr.S.V.Karthikeyan

JUDGEMENT

This Second Appeal has been preferred against the decree and judgment passed by the first Appellate Court in A.S.No.53 of 2014 on the file of I Additional District Judge, Erode.

2. The respondent herein, being the plaintiff, has filed the suit, being O.S.No.317 of 20211, for specific performance and the same was decreed by the trial Court vide judgment and decree dated 28.10.2013. Aggrieved by the said judgment and decree made in O.S.No.317 of 2011, the appellant has preferred the first appeal in A.S.No.53 of 2014. By judgment and decree dated 28.04.2015, the first appeal was dismissed, by confirming the judgment dated 28.10.2013 made in O.S.No.317 of 2011.

3. For the sake of convenience and brevity, the parties are referred to as per their own ranking before the trial Court.

4. The case of the plaintiff is that the defendant is the owner of the suit property and both the plaintiff and the defendant have entered into an agreement



for sale of the property by fixing the sale price as Rs.3,10,000/- (Rupees Three Lakh and Ten Thousand Only) and the defendant has also received a sum of Rs.3,00,000/- (Rupees Three Lakh only) as advance and to that effect, they have also recited in the agreement dated 15.05.2009. It is stated that the time fixed for completion of the contract is thirty (30) months. Thereafter, when the plaintiff requested the defendant for execution of sale deed, the defendant has failed to do so. Therefore, the plaintiff has issued a notice dated 09.07.2011 to the defendant. After the receipt of the said notice, the defendant has given a false reply dated 18.07.2011. Thereafter, the defendant has failed to execute the sale deed. Hence, the plaintiff had filed a suit for specific performance of contract property.

5. The case of the defendant is that, the defendant has approached the mother of the plaintiff, namely, Pavayammal for obtaining a loan of Rs.50,000/- (Rupees Fifty Thousand only) and the plaintiff's mother had insisted the defendant to hand over the original title deed to the plaintiff, for which, the defendant had also executed Power of Attorney in favour of the mother of the plaintiff. It is also stated that in the month of December, 2010, the defendant has repaid the loan amount of Rs.50,000/- (Rupees Fifty Thousand only). Prior to the payment of said amount, the defendant has also paid interest of Rs.1,500/- per month to the mother of the plaintiff for the loan amount of Rs.50,000/-



(Rupees Fifty Thousand only). When the defendant demanded for return of documents after the repayment of the borrowed money, the plaintiff and his mother demanded interest of Rs.5/- per Rs.100/- per month for an amount of Rs.50,000/- (Rupees Fifty Thousand only). Thereafter, the defendant has cancelled the Power of Attorney and also issued a notice for return of documents. The plaintiff and his mother have issued a false reply. The defendant had never executed any sale agreement and received money as alleged in the plaint. It is also submitted that the defendant has never received any receipt or consent deed and therefore, the Suit is liable to be dismissed.

6. Based on the above said pleadings, the trial Court framed the following issues for trial:

- (1) Whether the plaintiff is entitled to the relief of specific performance?
- (2) Whether the plaintiff is entitled to the alternative relief?
- (3) Whether the plaintiff is entitled to the relief of permanent injunction?
- (4) Whether the document varthamana pathiram is forged one?
- (5) Whether the sale agreement is genuine one?
- (6) To what relief, the plaintiff is entitled?



7. Before the trial Court, on the side of the plaintiffs, PW1 and PW2 were examined and marked Exs.A1 to A7. On the side of the defendant, DW1 was examined and Exs.B1 to B4 were marked.

8. Upon consideration of the oral and documentary evidence, the trial Court decreed the Suit, by directing the defendant to execute the sale deed in respect of the suit property in favour of the plaintiff, within a period of two months, after the receipt of the balance sale consideration of Rs.10,000/- (Rupees Ten Thousand Only). Aggrieved by the said judgment of the trial Court, dated 28.10.2013, the defendant has preferred the first appeal before the First Appellate Court.

9. It appears that the First Appellate Court framed the following point for determination:

(i) Whether the plaintiff is entitled for the reliefs as prayed?

10. After careful scrutiny of the evidences of both sides and the materials placed before the first Appellate Court, the first Appellate Court arrived at a conclusion that there is no infirmity in the findings of the lower trial Court and confirmed the judgement and decree passed by the trial Court in O.S.No.317 of 2011 dated 28.10.2013. Aggrieved by which, the present second appeal has been



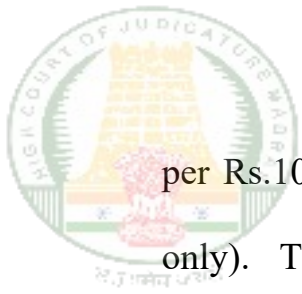
preferred by the defendant.

11. At the time of admitting the Second Appeal, this Court framed the following substantial questions of law:

(a) When the plaintiff himself has not proved the execution of the agreement in lieu of Section 16 and 19 of the Specific Relief Act, as it right on the Court below to misplace the burden on the defendant which is against Section 101 of the Indian Evidence Act

(b) Whether the Courts below are right in decreeing the suit for specific performance when the plaintiff had not come to the Court with clean hands?

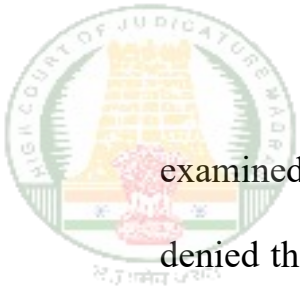
12. The learned counsel appearing for the appellant would submit that the defendant is the owner of the suit property, who borrowed a sum of Rs.50,000/- (Rupees Fifty Thousand only) from the mother of the plaintiff. At the time of borrowing the said amount, the plaintiff's mother had insisted to execute Power of Attorney and the same was executed for the purpose of obtaining the loan and the defendant also repaid the said amount along with the interest. After the repayment, the defendant had approached the plaintiff for return of documents and also to cancel the Power of Attorney executed in the name of the plaintiff's mother. However, the plaintiff's mother demanded more interest i.e., Rs.5 for



per Rs.100/- per month of the amount of Rs.50,000/- (Rupees Fifty Thousand only). Thereafter, the defendant has cancelled the Power of Attorney, which was executed in the name of plaintiff's mother. However, the plaintiff has filed the suit with false allegations.

12.1. It is further submitted that, before the trial Court, the defendant has given categorical evidence and also produced documentary evidence. However, the Trial Court has failed to consider the same and has not appreciated the oral and documentary evidence in proper perspective. When the plaintiff has paid the substantial amount of sale price of Rs.3,00,000/-, he seeks 30 months to pay the balance consideration amount of Rs.10,000/-, which would clearly prove that it is only money transactions, however, the trial Court failed to consider the same and decreed the suit. The plaintiff himself failed to prove the suit agreement and the borrowings, however, the Courts below shifted the burden on the defendant. Therefore, he submitted that the plaintiff has not come to the Court with clean hands. Therefore, the Second Appeal is liable to be allowed by setting aside the judgments and decree of Courts below.

13. The learned counsel for the respondent would submit that the plaintiff and the defendant have entered into an agreement of sale and failed to execute the sale deed as agreed by him. In order to prove the suit claim, the plaintiff



examined PW1 and PW2 and marked Exs.A1 to A7. Though the defendant denied the execution of the agreement, the plaintiff examined PW2, who is one of the attesting witness and he has deposed the execution of the suit agreement and passing of consideration and the trial Court has rightly decreed the suit, which was affirmed by the first Appellate Court.

13.1. The defendant in his evidence admitted the execution of the suit agreement and also the receipt of Rs.3,00,000/-. Therefore, it is the duty of the defendant to prove that the agreement was entered between them was only for money transaction alone. Failing to prove the same, both the trial Court and the first Appellate Court rendered concurrent findings. Therefore, the Second Appeal is liable to be dismissed.

14. After elaborate arguments, both the learned counsel submitted that during the pendency of the Second Appeal, before the Mediation, the parties arrived at amicable settlement. The defendant/appellant has agreed to pay a sum of Rs.6,00,000/- to the plaintiff/respondent and the plaintiff has also agreed for the same and to that effect a sum of Rs.1,00,000/- has been paid towards part payment of the said amount. Thereafter, the defendant/appellant has not paid the remaining amount as agreed before the Mediation. Therefore, the respondent has prayed for appropriate orders. The learned appearing for the appellant also



ready to settle the amounts due, but sought some time for payment of the remaining amount.

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15. During the pendency of the appeal, both the parties agreed for payment and the appellant has agreed to pay a sum of Rs.6,00,000/- and the respondent also agreed to receive the said amount and part payment of Rs.1,00,000/- was paid on 01.01.2018.

16. In view of the above, this Court feels that it would be appropriate to pass the money decree based on the subsequent events held between the parties at the time of admission. As agreed by the parties, recording the same, this Court is inclined to set aside the judgments of the Courts below in respect of the relief of specific performance of contract granted, accordingly set aside. This Court hereby passing money decree by directing the appellant to pay a sum of Rs.6,00,000/- as agreed by the parties. Since the defendant/appellant has paid a sum of Rs.1,00,000/-, the plaintiff is entitled to interest for the remaining sum of Rs.5,00,000/- at the rate of 9% from 01.01.2018 when the parties entered into settlement till the date of realisation. Six months time is granted to the defendant to pay the amount.



17. For the above said money, there shall be a statutory charge over the property.

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18. With the above observations and directions, this Second Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

24-11-2025

Jd

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. I Additional District Judge, Erode.

2. II Additional Subordinate Judge, Erode.



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P.DHANABAL J.
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