IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 295 of 2025
AND
CMP NO. 8657 OF 2025

1. K. Subhadevi
D.No.3/78, PV Layout, S.V. Mill Post,
S.V. Puram, Kannamapalayam Village,
Udumalaipettai Taluk, Tiruppur 642
126.

Appellant(s)

Vs

1. A. Shajahan
S/o. B. Ammanullah, D.No.45-48,
Singapore Nagar, Uduamalaipettai
Taluk, Tiruppur 642 126.

Respondent(s)

SA No. 295 of 2025

PRAYER
To call for the records and Judgement and Decree passed in As No.62 of 2020 dated 10.01.2025 by the Honble IV Additional District Judge, Udumalaipettai dismissing the appeal and confirming the Judgement and Decree of the Trial Court in OS No.155 of 2017 dated 04.02.2020 by the Honble Subordinate Judge, Udumalaipettai.

SA No. 295 of 2025
For Appellant(s): P. Rakesh Kumar

For Respondent(s):

ORDER

This Second appeal has been filed against Judgement and Decree passed in A.S. No.62 of 2020 dated 10.01.2025 by the IV Additional District Judge, Udumalaipettai dismissing the appeal and confirming the Judgement and Decree of the Trial Court in OS No.155 of 2017 dated 04.02.2020 by the Subordinate Judge, Udumalaipettai.

2. The suit in OS No. 155 of 2017 has been filed by the appellant/plaintiff for the relief of specific performance against the respondent herein/defendant to direct him to execute the sale deed as per the sale agreement dated 24.06.2016. The defendant/respondent herein contested the said suit by filing written statement, in which he stated that the defendant borrowed a sum of Rs.3,50,000/- from the plaintiff for the security purpose the defendant executed the agreement for a sum of Rs.3,95,000/- and also the defendant repaid a sum of Rs.50,000/- as interest and principal. Thereafter, due to business loss, the defendant has not able to pay the interest however the defendant was ready to pay a sum of Rs.3,00,000/- to the plaintiff but he refused the accept the same and filed the present suit.

3. On the side of the plaintiff, two witnesses were examined as P.W.1 & P.W.2 and marked four documents and on the other side the defendant examined as D.W.1.

4. Considering the oral and documentary evidence, the Trial Court held that the plaintiff has not proved his readiness and willingness nor assigned any

reason for fixing 11 months time to pay a meagre amount which itself probablise the case of the defendants that the alleged sale agreement was executed for security purpose. Accordingly, directed the defendant to repay a sum of Rs.3,50,000/- to the plaintiff with interest.

5. Aggrieved over the findings of the Trial Court, the plaintiff preferred the appeal on the file of the IV Additional District Court, Udumalpet, wherein the first appellate Court independently analysed the oral and documentary evidence held that the plaintiff has not proved her readiness and willingness to perform her part of the agreement and plaintiff have a sum of Rs.5,00,000/- in her bank account on the date of execution of the sale agreement but they fixed 11 months to pay a sum of Rs.45,000/- to execute the sale deed which proved that the said time was given to repay the interest for the loan. Accordingly, dismissed the appeal.

6. Challenging the concurrent findings of the Courts below, the plaintiff preferred this second appeal.

7. The learned counsel for the plaintiff submitted that the Courts below ought to have recognized that the appellant acted meticulously in accordance with the terms stipulated in agreement of sale/Ex.A1, which was mutually agreed upon and duly executed by both parties but the Courts below failed to appreciate the same and also the plaintiff diligently adhered to the contractual obligations and made persistent efforts to communicate with the respondent even prior to the expiration of the stipulated 11 month period to facilitate the

execution of the sale agreement. Further, during cross examination of D.w.1, the defendant explicitly admitted that possession of the suit property had been handed over to the appellant. If the agreement of sale had executed as security arrangement for a loan transaction, the defendant would not have transferred the possession of the property but the Court below failed to appreciate the same. Further, the defendant failed to respond the notice issued by the plaintiff, even defendant has not taken steps of repay the alleged loan amount. The plaintiff has taken continuous efforts to contact the defendant both in person and through legal notice, demonstrating clear intent to complete the transaction and also the defendant has not produced any documentary evidence demonstrating that any disbursement of funds was made to the appellant pursuant to the alleged loan agreement. Further, he stated that there is substantial question of law involved in this case in respect of readiness and willingness.

8. Heard the submission of the learned counsel for the appellant.

9. It is an undisputed fact that the suit property is belongs to the defendant. According to the plaintiff, the defendant offered to sell the suit property for a sum of Rs. 3,95,000/- and entered into the sale agreement on 24.06.2016 and on the same day plaintiff has paid a sum of Rs.3,50,000/- as advance and within 11 months the plaintiff bound to pay a remaining sum of Rs.45,000/-(i.e. on or before 23.05.2017), the plaintiff always ready to pay the balance amount but he defendant had evaded to receive the amount hence the plaintiff issued the legal notice even then the defendant not inclined to execute

the sale deed. Hence, the suit was filed by the plaintiff. The defendant contend that he borrowed a loan of Rs.3,50,000/- from the plaintiff as he is money lender for that loan amount interest and principal had to be paid. The defendant had paid a sum of Rs.50,000/- but thereafter due to business loss the defendant has not able to pay the loan amount however he ready to pay the balance amount of Rs.3,00,000/- to the plaintiff but the plaintiff refused to receive the same.

10. The defendant admitted his signature in the alleged sale agreement but contended that the said sale agreement was executed as security for loan. As per the case of the plaintiff, he had paid a sum of Rs.3,50,000/- as advance amount and also stated that the title deed was handed over to her and possession also given to her. During the cross examination, the plaintiff has stated that she was not aware that the suit property stands in whose name and also admitted that she possessed a sum of Rs.5,00,000/- in her bank account on the date of alleged execution of sale agreement, if so, the plaintiff could have paid the entire sale consideration on the date of execution of sale agreement and need not wait for 11 months to execute the sale deed since she have enough amount in her account. When she able to pay entire sale consideration on the date of sale agreement as to why she fixed time to pay the balance amount. Further, holding the original document at the time of execution of sale agreement is not an ordinary practice, only after executing sale deed the original document along with other necessary documents have been handed over to the purchaser. If it is

a loan transaction the original document used to hand over to the money lenders as a security for the loan amount. So also, in the present case the original document is in the hands of the plaintiff which probablise the defence of the defendant that he signed in the sale agreement for security purpose which was rightly appreciated by the Courts below needs no interference. Section 16 of Specific Relief Act, envisages that plaintiff bound to prove that he is ready and willing to perform her part of the contract. As discussed above, plaintiff has not able to explain as to why they fixed 11 months period to pay a balance sale consideration when she was capable to pay the entire sale consideration on the date of the execution of sale agreement itself. Therefore, the plaintiff has not proved her readiness and willingness. To avail equitable remedy plaintiff has to prove his readiness and willingness but plaintiff fails she is not entitle for specific performance. Hence, there is no substantial question of law involved in this case, findings of the Courts below is confirmed, the defendant is directed to pay a sum of Rs.3,50,000/- with 12% interest from the date of the sale agreement till filing of the suit and thereafter 6% interest till the date of realisation within a period of three months from the date of receipt of a copy of this judgement. Accordingly, this second appeal is dismissed. No Costs. Pending petition, if any, is/are closed.

16-04-2025

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

Internet:Yes
Neutral Citation:Yes/No
To
1. The IV Additional District Judge, Udumalaipettai.
2. The Subordinate Judge, Udumalaipettai.
3. The Section Officer, V. R Section, High Court, Madras.

T.V.THAMILSELVI J.
pbl

SA No. 295 of 2025
AND CMP NO. 8657 OF 2025

16-04-2025