



S.A.No.391 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 25.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No.391 of 2016

S.Gopal

...Appellant

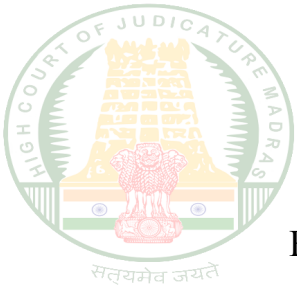
Vs.

Gem Avenue Association, Kanchipuram
represented by its office bearers

- 1.D.Sundaramoorthy
- 2.S.P.Kalyanasundaram
- 3.N.Jayaraman
- 4.Selvam Ammal
- 5.G.Latha

...Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 25.01.2010 made in A.S.No.32 of 2007 on the file of the Hon'ble Sub-Court, Kanchipuram, confirming the judgement and decree dated 05.07.2005 made in O.S.No.832 of 1999 on the file of the Hon'ble Additional District Munsif Court, Kanchipuram.



S.A.No.391 of 2016

For Appellant : Mr.T.Sathiyamoorthy

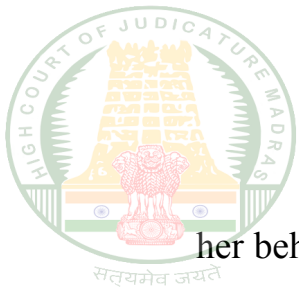
WEB COPY For Respondents : For R1 to R3 – No such person
For R4 – Served – No appearance
For R5 – Not Ready in Notice

JUDGMENT

The Second Appeal has been filed to set aside the Judgment and Decree dated 25.01.2010 made in A.S.No.32 of 2007 on the file of the Hon'ble Sub-Court, Kanchipuram, confirming the judgement and decree dated 05.07.2005 made in O.S.No.832 of 1999 on the file of the Hon'ble Additional District Munsif Court, Kanchipuram.

2. Heard Mr.T.Sathiyamoorthy, learned counsel appearing for the appellant.

3. When the matter is taken up for hearing, there is no representation on the side of the respondents. As per the records, notice to respondents 1 to 3 had been returned with the endorsement “No Such Person”. Notice to R5 has not yet been served and is shown as either served or unserved. Though 4th respondent's name is printed in the cause list, there is no representation on



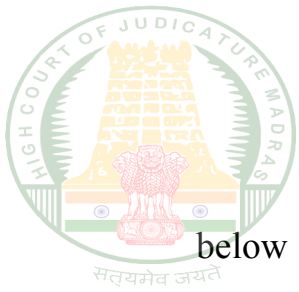
S.A.No.391 of 2016

her behalf.

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4. Mr.T.Sathiyamoorthy, learned counsel appearing for the appellant would submit that the appellant being a Member of an Association, which is represented by the defendants 1 to 3, have agreed to sell a residential plot in the land developed by them, for which, the appellant had paid a sum of Rs.7,000/-, which is evidenced under Ex.A1. Without honouring this, the property had been sold in favour of the 4th defendant, who had already settled the property in favour of the 5th defendant. He would submit that the Association had not executed any sale agreement. However, on receipt of the sale consideration they would execute a sale deed in favour of the person making such payment. To substantiate the claim, P.W.2 was examined and he had also deposited the amount under Ex.A8, for which he had been sold Plot No.10. This evidence had not been rebutted by the defendants and the respondents 1 to 3 had remained *exparte*. Therefore, the claim of the appellants stood established.

5. The learned counsel for the appellant would submit that the Courts

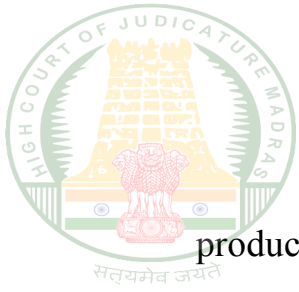


S.A.No.391 of 2016

below had erroneously held that Ex.A1 does not substantiate the case of the appellant nor the evidence of P.W.2 would come to his assistance. According to him, such findings given by the Courts below are contrary to the materials available on record, that too without appreciating the evidence placed by the appellant. Hence, he seeks indulgence of this Court.

6. I have considered the submissions made on behalf of the learned counsel appearing for the appellant and have perused the materials available on record.

7. The appellant had placed reliance upon Ex.A1, which is a Bank Challan issued to take a Demand Draft to be paid to the respondents 1 to 3. The appellant had not produced the details of the Demand Draft nor the details on which date he had paid the sale consideration to respondents 1 to 3. He had also not produced any receipt issued by the defendants 1 to 3, evidencing receipt of sale consideration from the appellant. Similarly, even though P.W.2 had deposed that under Ex.A8, he had made payment and had been benefited with the sale of Plot No.10, no such sale deed had been



S.A.No.391 of 2016

produced by P.W.2 to substantiate his evidence. The Courts below have rightly held that Ex.A1 cannot be taken into consideration to substantiate the proof of payment of sale consideration by the appellant for purchase of plots.

8. This Court is of the view that there has been no error had been committed by the Courts below in rejecting the claim of the appellant and the appellant has also not raised any substantial questions of law for this Court to interfere with the well considered judgment and decree of the Courts below.

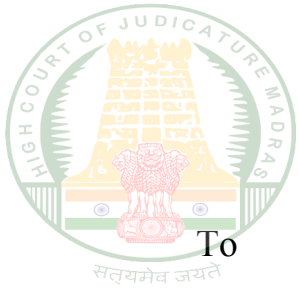
9. In fine, the Second Appeal stands dismissed. No costs.

25.06.2025

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Index : Yes/No

Speaking Order/Non-Speaking order



S.A.No.391 of 2016

To

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1. The Sub-Court,
Kanchipuram.
2. The Additional District Munsif Court,
Kanchipuram.
3. The Section Officer,
V.R. Section,
High Court, Madras.

K.KUMARESH BABU, J.



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S.A.No.391 of 2016

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S.A.No.391 of 2016

25.06.2025