



S.A.No.158 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.09.2025

PRONOUNCED ON : 24.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 158 of 2014

Rajendiran,
S/o.Sengoda Gounder,
Pudukadu,
Malliyapadi,
Sankarapuram Taluk,
Villupuram District.

...Appellant

Versus

1.Perumayee
W/o.G.R.Kandasamy,
Kottukottai,
Kottakarai Parigam,
Pottiyam Trust,
Sankarapuram Taluk,
Villupuram District.

2.Sarasu,
D/o.G.R.Kandasamy,
Vadachettikara Thottam,
Manmalai Kattukottai,
Sankarapuram Taluk,
Villupuram District.

3.Padmini,
D/o.G.R.Kandasamy,
W/o.Govindasamy,
Damkarar Thottam,
Ulugamkathan Post,



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Kallakurichi Taluk,
Villupuram District.

...Respondents

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 14.08.2013 made in A.S.No.154 of 2005 on file of Sub Court, Kallakurichi, confirming the Judgment and Decree dated 11.07.2005 made in O.S.No.621 of 2000 on the file of I Additional District Munsif Court, Kallakurichi and pray to set aside the same.

APPEARANCE OF PARTIES:

For Appellant : Mr.P.Valliappan, Senior Counsel for
M/s.P.V.Law Associates.

For Respondents : Mr.G.Mohammed Aseef for R3.
R1 – Served.
R2 – Refused.

J U D G M E N T

Heard.

2.The plaintiff in O.S. No. 621 of 2000 has preferred this Second Appeal, assailing the concurrent dismissal of his suit by the I Additional District Munsif Court, Kallakurichi, by judgment and decree dated 11.07.2005; and the Sub Court, Kallakurichi, in A.S. No. 154 of 2005, by judgment and decree dated 14.08.2013.



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3.The plaintiff is the appellant and the defendant is the respondent.

For the sake of convenience, the parties are referred as per their rank in the trial court.

4.The case is brief: According to the plaintiff, a sale agreement dated 04.03.1999 was entered between the plaintiff and the defendant whereby the defendant agreed to sell the suit property at a total consideration of Rs.15,000/-. The plaintiff paid Rs.13,000/- as advance and undertook to pay the balance Rs.2,000/- on or before 04.03.2000. When the defendant evaded execution of the sale deed, the plaintiff issued a legal notice dated 14.01.2000 calling upon the defendant to execute the deed. The defendant replied on 27.01.2000 containing false allegations, leading to the present suit for specific performance.

5.The defendant states that the parties are related and there is longstanding enmity. According to the defendant, the plaintiff and his associates, forcibly obtained the defendant's thumb impression on blank stamp papers and fabricated an agreement dated 04.03.1999. It is stated that the plaintiff habitually signs documents. The defendant contends that



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the suit property had already been sold to one Mrs. Ranjitham, a fact well known to the plaintiff, and that the present suit is a device to grab the property.

6.At the time of admission, this Court framed the following substantial question of law which is reproduced verbatim here below:

“a)Whether both the Courts below were right in dismissing the suit on the ground of non-joinder of the subsequent purchaser of the property when admittedly the suit property was sold in favour of D.W.3 much after the execution of the agreement of sale in favour of the plaintiff?

b)Whether the findings of both the Courts below to the effect that the defendant had executed the agreement of sale under coercion can be termed as perverse since it runs contrary to the evidence adduced on the side of the plaintiff wherein the plaintiff apart from examining himself had also examined the scribe and attesor of the document marked as Ex.A.1?

c)Whether both the Courts were right in going into the issue of title of the defendant in a suit for specific performance and the same runs contrary to the provisions of Section 55 of the Transfer of Property Act, 1882?



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d)Whether the findings rendered by both the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence available on record?

7.Evidence on Ex.A1: The plaintiff relies on Ex.A1, the agreement dated 04.03.1999 purportedly executed by the defendant for Rs. 15,000, denies execution and consideration. To prove Ex.A1, the plaintiff examined an attesting witness and the scribe as P.W.2 and P.W.3. It is not in dispute that the defendant was in the habit of signing documents, which is evident from Ex. A3 and Ex. B2, yet Ex.A1 bears only the defendant's thumb impression, with no satisfactory explanation for this departure from his usual practice.

8.As regards the recitals of Ex A1, its recitals state that the plaintiff was in possession of the property as a lessee; yet, contrarily in evidence, the plaintiff professed ignorance as to who was in possession of the property. The Plaintiff further claimed that the defendant owned only a 1/3rd share in the schedule property, whereas the defendant asserted ownership over the entire extent and proved that the entire extent had been sold to Mrs. Ranjitham under Ex B2 prior to the suit. These



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contradictions create considerable doubt about the genuineness of Ex. A1 and the circumstances under which it came into existence. Even the one-year period allowed in Ex. A1 for payment of the meagre balance of Rs.2,000/- appears unusual.

9.It is undisputed that after the alleged execution of Ex.A1 and prior to the institution of the suit on 14.07.2000, the defendant conveyed the entire property to Mrs. Ranjitham under Ex.B2 dated 20.05.1999; she was examined as D.W.3. Both courts below held that non-joinder of the subsequent purchaser was fatal.

10.In this regard, the plaintiff places reliance on the following citations to contend that a subsequent purchaser need not be impleaded as a party.

(i)Anil Kumar Singh vs Shivanth Mishra Alias Gadasa Guru,
[(1995) 3 SCC 147].

(ii)S.G.Kannappan vs Murugesan and others,
[MANU/TN/0325/2001].

(iii)Gurmit Singh Bhatia vs Kiran Kant Robinson and others
[(2020) 13 SCC 773].



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The respondent cites the recent Supreme Court decision in *M/s. J.N. Real Estate v. Shailendra Pradhan & Ors.*, (2025 INSC 611) which holds that a subsequent purchaser is a proper, not a necessary, party. However, such purchaser ought to be impleaded to determine the genuineness of the subsequent transaction and to secure complete and effective adjudication.

11. The significant distinction arises between:

a) A pre-suit purchaser who acquires the property without knowledge of the sale agreement; and

b) A purchaser pendente lite—one who buys after institution of the suit.

A purchaser pendente lite is governed by Section 52 of the Transfer of Property Act and is bound by the eventual decree; a pre-suit transferee is not so bound. In the absence of D.W.3, the prior purchaser, no effective decree for specific performance can be passed; any decree behind her back would be a mere “paper decree,” incapable of execution. Her presence is also necessary to determine whether she is a bona fide purchaser for value without knowledge of the earlier agreement. As on the date of institution of the suit, the defendant had no saleable interest in



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the suit property, the same having already been conveyed to D.W.3. The non-joinder of the prior purchaser therefore assumes significance. Both courts below found this defect as substantial and dismissed the suit. This Court finds no infirmity in that reasoning.

12.In **Kasturi v. Uyyamperumal**, [(2005) 6 SCC 733], para 6, the Supreme Court held as under:

“6.In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be



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passed in the absence of such party.

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13. In a suit for specific performance, a subsequent purchaser of the suit property is a necessary and a proper party and, where the decree passed would directly affect his title and possession. Section 19(b) of the Specific Relief Act, 1963 expressly enables a decree for specific performance to be enforced against a person claiming under the vendor, including a subsequent purchaser, unless he establishes that he is a bona fide purchaser for value without notice. The questions whether the subsequent purchaser had notice of the prior agreement and whether the decree should bind him cannot be determined in his absence; his presence is therefore indispensable. The Supreme Court in re **Durga Prasad v. Deep Chand**, AIR 1954 SC 75; **Kasturi v. Uyyamperumal**, [(2005) 6 SCC 733] that a subsequent purchaser is a necessary party in a specific performance suit. Non-impleadment may not, by itself, compel dismissal of the suit, but any decree passed would be ineffectual against such purchaser.

14. The courts below did not undertake a substantive adjudication of title but only examined the extent of the defendant's ownership



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incidentally while assessing the validity of Ex. A1. The plaintiff himself claimed that the defendant owned only 1/3rd share and had entered into a separate agreement with another co-owner. However, Ex. B2 shows that the defendant conveyed the entire extent to D.W.3, who is now in possession. Incidental reference to ownership for deciding the validity of Ex. A1 does not amount to adjudication of title.

15.The substantial questions of law stand answered in favour of the defendant. The concurrent findings of the courts below are supported by the evidence and applicable legal principles and disclose no perversity or error warranting interference under Section 100 CPC.

16.In the result, the Second Appeal is dismissed with costs. Consequently, all connected CMPs, if any, stand closed.

24.11.2025

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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

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To

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



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DR. A.D. MARIA CLETE, J

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**PRE DELIVERY JUDGMENT
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