



WEB COPY

S.A. No.702 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2025

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 702 of 2019
and C.M.P.No.13458 of 2019**

Murugesan

... Appellant/ Respondent/ Plaintiff

Vs.

Manimaran

... Respondent/ Appellant/ Defendant

Prayer: This Second Appeal is filed Under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 01.04.2019 made in A.S. No.10 of 2018 on the file of the learned III Additional District Court, Kallakurichi, reversing the Judgment and Decree dated 14.03.2018 made in O.S.No.62 of 2012 on the file of the learned Sub Court, Kallakurichi.

For Appellant : Mr. M. Shrish
For N. Manokaran

For Respondent : Mr. K.S. Subramanian
For Mr. Anand Subramanian

JUDGMENT



WEB COPY

S.A. No.702 c



This Second Appeal is filed challenging the judgment and decree passed by the learned III Additional District Judge, Kallakurichi in A.S. No.10 of 2018 dated 01.04.2019, whereby the judgment and decree of the Trial Court made in O.S.No.62 of 2012 dated 14.03.2018 is set aside.

2. The learned counsel appearing for the appellant submitted that, though the lower Appellate Court has extracted the evidence of witnesses, citations submitted and the arguments advanced, it has not considered the merits of the arguments, citations referred, thereby set aside the judgment and decree of the Trial Court. He also submitted that the judgment of the lower Appellate Court is bereft of its reasons and has not given reasons for the points, which are necessary to be considered, hence prays to set aside the judgment and decree of the Appellate Court. He further submitted that there is also no reasons given by the Appellate Court for deviating from the judgment of the Trial Court, which contains various consideration for agreeing with the case of the plaintiff and also for decreeing the suit, whereas no such discussions have been made by the Appellate Court for deviating from the judgment of the Trial Court.



3. The learned counsel appearing for the respondent submitted that the Trial Court has elaborately discussed about the evidence adduced by each parties and also the citations submitted in support of their claim. The lower Appellate Court after considering the same passed the judgment, agreeing with the case of the defendant and set aside the judgment and decree of the Trial Court, hence the judgment and decree of the Appellate Court is sustainable.

4. I have considered the submissions made on both sides and perused the materials available on record.

5. Admittedly, the suit is filed by the plaintiff seeking for specific performance and the same has been resisted by the defendant on the ground that the transactions taken place between the parties is only loan transactions, hence the specific performance could not be ordered. The evidence adduced by the parties also shows that, there are averments regarding the payment and also execution of the sale deeds etc., and the pleadings regarding the readiness and willingness of the parties were also been adduced by the parties. Based on which, the Trial Court has also framed the following issues:

1. Whether the plaintiff is entitled for specific performance as prayed for?



2. *Whether the agreement for sale is valid and executable?*
3. *Whether the agreement for sale was executed by fraudulent manner, as contended by the defendant?*
4. *To what other relief the plaintiff is entitled for?*

6. The Trial Court has considered the above issues elaborately and the Trial Court had held that the sale agreement dated 28.03.2011 entered between the parties is valid and the defendant has already received a sum of Rs.7,50,000/- as advance towards sale consideration, thereby agreed with the case of the plaintiff, directed the defendant to execute the sale in favour of the plaintiff within a period of three months, after receiving the balance sale consideration of Rs.1,50,000/-.

7. Aggrieved over the judgment and decree of the Trial Court, the defendant has preferred an appeal before the lower Appellate Court. The lower Appellate Court by a judgment dated 01.04.2019 has rendered its finding only in paragraph No.10, even though the judgment of the lower Appellate Court seems to run several pages. On careful perusal of the judgment of the lower Appellate Court, it reveals that the Appellate Court has only framed the point for consideration as "*Whether the Appeal is to be allowed or not?*"



8. In paragraph No.4 of the judgment, the lower Appellate Court has extracted the evidence of P.W.1 to P.W.3, in paragraph No.5, it has recorded the arguments of the appellant/ plaintiff side and in paragraph No.6, it has extracted the citations relied on by the appellant side. In paragraph No.7, the Appellate Court has recorded the arguments of the respondent/ plaintiff side, extracted the evidence of the D.W.1 and in paragraph No.8, extracted the citations relied on by the respondent side. Thereafter, the Appellate Court has answered the issue raised in the appeal in paragraph No.10 as follows:

"10. Based on evidence of P.W.1 to P.W.3. The execution of Ex.A.1 is not proved. Notice has been issued on 13.05.2021, (Ex.A.2). The plaint has been presented only on 26.03.2012 nearly after 10 months. Deposit of Balance of sale consideration is made only prior to the pronouncement of judgment. Since the execution of Ex.A.1 is not proved, the entry in Ex.B.1 has no effect. In view of the above discussion, and this is found in favour of the Appellant is answered accordingly."

9. The Apex Court in ***Shasidhar and Others vs. Smt.Ashwini Uma Mathad and another [2015 (11) SCC 269]*** had reiterated the power of the first Appellate Court and the scope of Section 96 read with Order XLI Rule 31 of the Code in paragraph Nos.12 to 21 as follows:

"12. The powers of the first appellate Court, while deciding the first appeal under Section 96 read with Order XLI Rule 31 of the Code,



are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more *res integra*.

13. As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the CPC in *Kurian Chacko vs. Varkey Ouseph*, AIR 1969 Kerala 316, reminded the first appellate Court of its duty as to how the first appeal under Section 96 should be decided. In his distinctive style of writing and subtle power of expression, the learned judge held as under:

“1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation.....” (Emphasis supplied)

14. This Court in a number of cases while affirming and then reiterating the aforesaid principle has laid down the scope and powers of the first appellate Court under Section 96 of the Code.

15. We consider it apposite to refer to some of the decisions.

16. In *Santhosh Hazari vs. Purushottam Tiwari (Deceased)* by L.Rs. (2001) 3 SCC 179, this Court held (at pages 188-189) as under:



WEB COPY

S.A. No.702 c



".....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."

17. The above view has been followed by a three-Judge Bench decision of this Court in Madhukar & Ors. vs. Sangram & Ors., (2001) 4 SCC 756, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

18. In H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243, this Court (at p.244) stated as under:

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

19. Again in Jagannath v. Arulappa & Anr., (2005) 12 SCC 303, while considering the scope of Section 96 of the Code this Court (at pp. 303-04) observed as follows:



"2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."

WEB COPY

20. Again in *B.V. Nagesh & Anr. vs. H.V.Sreenivasa Murthy*, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words:

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;*
- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

*4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide *Santhosh Hazari vs. Purushottam Tiwari*, (2001) 3 SCC 179 at p. 188, para 15 and *Madhukar vs. Sangram*,*



(2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

21. The aforementioned cases were relied upon by this Court while reiterating the same principle in State Bank of India & Anr. vs. Emmsons International Ltd. & Anr., (2011) 12 SCC 174. This Court has recently taken the same view on similar facts arising in Vinod Kumar vs. Gangadhar, 2014(12) Scale 171."

10. In the case in hand, though the evidence and citations relied on both sides were extracted by the lower Appellate Court, the reasons for setting aside the judgment and decree of the Trial Court was not discussed and also the issues such as the validity of the sale agreement and also the defense taken by the defendant that, the sale agreement was executed for repayment of loan were not at all discussed. Therefore, it is unfortunate that the Appellate Court has not properly applied its mind on the various points adduced by the parties, hence I am of the view that the judgment dated 01.04.2019 of the Appellate



Court was not passed on merits. For the aforesaid reasons, it requires reconsideration by the lower Appellate Court, thereby the judgment and decree passed by the lower Appellate Court is to be set aside.

11. It is also submitted by the learned counsel for the appellant that no prayer was made for refund of the advance sale consideration amount. Since this Court is inclined to remand back the matter to the lower Appellate Court to consider the case on merits, the appellant is at liberty to file a similar petition before the lower Appellate Court.

12. Accordingly, this Second appeal is allowed by setting aside the judgment and decree dated 01.04.2019 passed in A.S.No.10 of 2018 on the file of the learned III Additional District Judge, Kallakurichi and the matter is remanded back to the lower Appellate Court for proper consideration of the appeal, more particularly to consider all the evidence rendered by the parties and to decide the case on merits and dispose of the same, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.



S.A. No.702 c



08.09.2025

stn

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

K. RAJASEKAR, J.

stn

To:

1. The III Additional District Court, Kallakurichi.
2. The Sub Judge, Kallakurichi.
3. The Section Officer,
VR Section,
High Court of Madras.

**S.A. No. 702 of 2019
and C.M.P.No.13458 of 2019**



WEB COPY

S.A. No.702 c



08.09.2025