



S.A.No.309 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2025

PRESENT:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No. 309 of 2014

1) Naseer Begam
W/o Abdul Karim

2) Samma
D/o Abdul Karim

3) Sabji
D/o Abdul Karim

All are residents of Majeed Street,
Erumaipatti
Namakkal Taluk & District.

... Defendants 2 to 4/Appellants 2 to 4/
Appellants 1 to 3

Vs.

1) Abdul Gafoor
S/o Samsudeein,
Erumapatti Namakkal taluk & district
Rep., by his power agent M.A. Abdul Wahab
S/o Abdul Qadar 67,
Meenambal Street, Erumaipatti,
Namakkal District.

... Plaintiff/2nd Respondent/1st Respondent



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2) Minor Najina

D/o Abdul Karim aged 14 years

resident of Erumaipatti

Namakkal taluk & district

Rep., by court guardian

N.S Sukumar Advocate /

Bar Association - Civil

Namakkal

... 5th Defendant/5th Appellant /2nd Respondent

PRAYER: Second Appeal filed against the judgment and decree of the learned subordinate judge Namakkal dated 25/06/2012 passed in A.S.No.41/2009 confirming the judgment and decree of the Learned Principal District Munsif, Namakkal dated 21/10/2005 passed in O.S.No.383/2004.

For Appellant : Mr. I. Abrar Mohamed Abdullah

For Respondents : Mr. S.Senthil for R1

R2 – Notice served no appearance

J U D G M E N T

Heard.

2.This Second Appeal is filed by the defendants against the judgment and decree dated 25.06.2012 passed in A.S.No.41 of 2009 on the file of the Principal Subordinate Judge, Namakkal, confirming the judgment and decree dated



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21.10.2005 passed in O.S.No.383 of 2004 on the file of the Principal District

Munsif, Namakkal.

3.The appellants are the defendants 2 to 4 and the respondents are the plaintiff and the 5th defendant in the trial Court. For the sake of convenience, the parties are referred to as arrayed in the suit.

4.The brief background of the case necessary to dispose of this second appeal are as follows: The plaintiff is the father of the deceased first defendant. The plaintiff had earlier executed a settlement deed in favour of his son, namely the first defendant, in respect of the suit property. Subsequently, when the first defendant intended to sell the suit property, the plaintiff and the first defendant entered into a sale agreement dated 11.12.1998, whereby the plaintiff agreed to purchase the property for a total consideration of Rs.1,00,000/-. An advance amount of Rs.12,000/- was paid and six months' time was fixed for completion of the sale. Possession of the property was also handed over to the plaintiff.



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5. When the plaintiff approached the first defendant to pay the balance sale consideration and to complete the transaction, the first defendant evaded execution of the sale deed. Therefore, the plaintiff issued a legal notice dated 07.05.1999, which was refused by the first defendant. Left with no other alternative, the plaintiff instituted the present suit for specific performance of contract.

6. During the pendency of the suit, the first defendant died and his legal heirs were impleaded as defendants 2 to 5.

7. The second defendant in the written statement contended that the first defendant had been working abroad and returned to India in the year 1995 in a terminally ill condition due to diabetes, resulting in amputation of his leg. It was claimed that at the time of hospitalisation at Coimbatore, the plaintiff gave a sum of Rs.10,000/- towards medical expenses and, by force, obtained the thumb impressions of the first defendant on blank papers and stamp papers and later fabricated the agreement of sale. It was further contended that the plaintiff's son through his second wife, Abdul Gafoor, had filed O.S.No.400 of 1999 against the first defendant challenging the settlement deed, and that the said suit was in fact



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pursued by the plaintiff himself. The second defendant also pleaded that the plaintiff was never put in possession and had been allowed only to store wooden articles in the suit premises. Hence, dismissal of the suit was sought.

8.On behalf of defendants 4 and 5, who were minors, a court guardian was appointed and a written statement was filed denying the plaint averments.

9.The plaintiff filed a reply statement denying the allegations of fraud and fabrication of documents as alleged by the defendants.

10.On the plaintiff's side, two witnesses were examined and documents were marked. No witness was examined on the defendants' side.

11.The Trial Court, after considering oral and documentary evidence, decreed the suit for specific performance. The First Appellate Court, by a reasoned judgment, confirmed the findings of the Trial Court and dismissed the appeal.



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12.In the present Second Appeal, the appellants essentially challenge the **probability of execution of the agreement**, arguing that it is improbable for a father who executed a settlement deed in 1997 to later enter into an agreement of sale in 1998 with the same son granting six months' time for execution.

13.This contention is purely factual in nature. Both the Courts below, upon appreciation of evidence, have categorically held that Ex. A1 agreement was duly executed by the first defendant and that the plaintiff was ready and willing to perform his part of the contract.

14.Both Courts have concurrently exercised judicial discretion in favour of granting specific performance, taking note of the surrounding circumstances and credibility of evidence.

15.It is well settled that under Section 100 of CPC, this Court cannot interfere with concurrent findings of fact unless perversity, illegality, or misapplication of law is demonstrated. The findings rendered by the Courts below are based on proper appreciation of evidence and settled legal principles. No



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perversity, error of law, or failure of justice is shown. Thus, no substantial question of law arises for consideration in this Second Appeal.

16. In view of the above discussion, this Second Appeal stands dismissed at the admission stage itself. There shall be no order as to costs. Consequently, the connected miscellaneous petition, if any, stands closed.

03.12.2025

ay

Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

To

1. The Subordinate Judge,
Namakkal.

2. The District Munsif,
Namakkal.

3. The Section Officer,
V.R. Section,
High Court of Madras.

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DR. A.D. MARIA CLETE, J

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Dated: 03.12.2025