



S.A.No.504 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2025

PRONOUNCED ON : 12.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 504 of 2014

and

M.P. No. 1 of 2014

K.Pasupathy

...Appellant/8th Respondent/8th Defendant

Versus

1. N.A.Jambulingam
S/o Late Arasu Reddy Periya Natham
Village , Mangavaram Post,
Gummudipoondi Taluk,
Thiruvellore District.

2.N.A.Jagannathan
S/o Late Arasu Reddy Periya Natham
Village, Mangavaram Post,
Kummudipoondi Taluk,
Thiruvellore District.

3.S.V.Annamalai Chettiar
S/o Late Venugopal Chettiar
Sunnambukulam Village And Po,
Gummudipoondi Taluk,
Thiruvellore District.

4.M.Santhanam
S/o Murugesan
Residing at Periya Natham Village ,



S.A.No.504 of 2014

Mangavaram Post, Gummudipoondi Taluk,
Thiruvellore District.

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5.M.Manimaran
S/o N.A.Murugesan
Residing at 3/59 Pachaiyappar Street,
Palavakkam,
Chennai – 600 041.

6.M.Nithyanandam
S/o N.A.Murugesan,
Residing at Periya Natham Village ,
Mangavaram Post, Gummudipoondi Taluk,
Thiruvellore District.

7.Sampornammal
W/o Murugesan,
Residing at Periya Natham Village ,
Mangavaram Post, Gummudipoondi Taluk,
Thiruvellore District.

8.Rukmani
W/o Murali,
Residing at Sengazhaneermedu Village,
Voyalur Post, Via-Minjur Ponneri Taluk,
Thiruvellore District.

9.N.A.Durai
S/o Arasu Reddy
Residing at Periya Natham Village ,
Mangavaram Post, Gummudipoondi Taluk,
Thiruvellore District.



S.A.No.504 of 2014

10.Sabapathy,
S/o.late Arumugam,
Residing at Kottakkarai,
Hamlet of Natham Village,
Mangavaram Post,
Gummidipoondi Taluk,
Thiruvellore District.

11.G.Venu,
S/o.Gopal Reddy,
Residing at Chinna Natham Village,
Hamlet of No.58, Natham,
Revenue Village,
Mangavaram Post,
Gummidipoondi Taluk,
Thiruvellore District.

12.Ashok Kothari,
S/o.Karanraj Kothari,
30/67, Kalathappa Street,
Choolai, Chennai – 600 112.

(R12 impleaded vide order of court
dated 15.03.2024 made in C.M.P.
No.11313 of 2023 in S.A.No.504 of 2014)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 05.12.2013 passed in A.S.No.17 of 2012 on the file of Subordinate Judge, Ponneri reversing the Judgment and decree dated 10.12.2011 in O.S.No.85 of 2005 on the file of the District Munsif Court, Ponneri by allowing the above said second appeal and thus render justice.

PRAYER IN M.P.:

To stay the execution of the Judgment and decree dated 05.12.2013 passed in A.S.No.17 of 2012 on the file of the Sub-Court,



S.A.No.504 of 2014

Ponneri reversing the Judgment and decree dated 10.12.2011 passed in O.S.No.85 of 2005 on the file of the District Munsif Court, Ponneri pending disposal of the above second appeal and thus render justice.

APPEARANCE OF PARTIES:

For Appellant : Mr. R. Viduthalai, Senior Counsel Asst.
by Ms. R. Revathy.

For Respondents : Mr. R. Krishnaswamy for R1 & R2.
Mr. Anoj Elangovan for
Mr. M. Govind Chandrasekar for R12.
Mr. M. Karunakaran for R4 to R8.
R3, R9 to R11 – served – no appearance.

J U D G M E N T

Heard.

2.This Second Appeal is directed against the judgment and decree dated 05.12.2013 in A.S.No.17 of 2012 on the file of the learned Subordinate Judge, Ponneri, by which the judgment and decree dated 10.12.2011 in O.S.No 85 of 2005 on the file of the learned District Munisif, Ponneri, were reversed.

3.The suit was filed for (i)Specific performance of contract directing the defendants 1, 8 and 10 to execute and register a sale deed in respect of the suit properties in favour of plaintiffs and defendants 2 to 7;



S.A.No.504 of 2014

(ii) for declaration that the sale deed dated 30.06.2004 and rectification deed dated 30.11.2004 in favour of 8th defendant, and the sale deed dated 30.06.2004 in favour of the 10th defendant, are null and void; (iii) a permanent injunction; (iv) for Rs.25,000/- towards the share value of eucalyptus trees which were cut and removed; and (v) to pay costs.

4. For convenience, the parties are referred to as arrayed in the plaint.

5. The facts necessary for disposal of this second appeal are briefly stated as follows: The plaintiffs' case is that the suit properties originally belonged to one Arasu Reddy. They were later purchased by Venugopal Chettiar, father of the first defendant, in court auction sale; however, possession of the properties continued with Arasu Reddy. Arasu Reddy, subsequently died, leaving four sons: N.A.Murugesan (father of the defendants 2 to 4 and 6 and husband of 5th defendant), N.A.Durai, (7th defendant), (iii) N.A.Jambulingam, (1st plaintiff) (iv) N.A.Jagannathan, (2nd plaintiff).

6. After his demise, the eldest son N.A.Murugesan, as head of the family, has entered into a sale agreement dated 14.06.1983 (Ex. A1) with Venugopal Chettiar to purchase the suit properties for a total



S.A.No.504 of 2014

consideration of Rs.12,000/-, for himself and on behalf of his three brothers. In 1991, the plaintiffs and their brothers partitioned their other family properties but did not include suit properties in that partition, since the sale transaction concerning these suit properties had not been completed. N.A.Murugesan died in the year 1998. Thereafter, his legal heirs (defendants 2 to 6) and 7th defendant executed a sale deed dated 30.06.2004 in favour of 8th defendant in respect of certain items of property. The plaintiffs challenged that sale deed, alleging that the 8th defendant, under its cover, began cutting and removing of eucalyptus trees standing on the suit lands. A legal notice dated 02.12.2004 was then issued calling upon the first defendant to execute a sale deed in favour of the plaintiffs and defendants 2 to 7. As there was no compliance, the present suit was filed.

7.Defendants 2 to 7 & 10 broadly admitted the foregoing facts but pleaded that, in an oral partition in the year 1991, all family properties, including the suit properties, were divided among the brothers, and that they, together with the first defendant, thereafter, executed a sale deed for their respective shares. They denied the allegation of felling eucalyptus trees, asserting that no such trees stood on the land.



S.A.No.504 of 2014

WEB COPY

8.The 8th defendant, appellant in this Second Appeal, averred in his written statement that, under a valid sale deed dated 30.06.2004 (Ex.B.1), he purchased the properties allotted to the shares of late N.A.Murugesan and 7th defendant, N.A. Durai, in an oral partition among the four brothers.

9.The 9th defendant did not file written statement. The 12th respondent in this Second Appeal is a lis pendens purchaser, impleaded for the first time in this Second Appeal, and was not a party before the courts below.

10.The trial Court dismissed the suit in its entirety. On appeal, the first appellate court reversed the Judgment and decree of the trial Court, except as to the claim for monetary relief claimed by the plaintiff. The 8th defendant in this suit has preferred this Second Appeal. The plaintiffs have not filed any cross appeal or independent appeal against the disallowance of the monetary claim by the trial court which was confirmed by the first appellate court.



S.A.No.504 of 2014

11. On admission of the Second Appeal, the following substantial questions of law were framed by this Court on 29.04.2014, which is reproduced verbatim below:

“1. Whether the suit for specific performance is maintainable in law in respect of an agreement executed 22 years ago?

2. Whether the suit for specific performance is barred by limitation?

3. Whether an innocent purchaser in good faith for consideration is entitled to be deprived of his property and possession pursuant to a suit for specific performance instituted more than 20 years after his purchase?

4. Whether the plaintiffs are entitled to the discretionary remedy of specific performance in the light of the third-party interest that had intervened because of their supine indifference?”

12. There is no dispute between the parties as to their relationship or the antecedent facts. It is common ground that an oral partition was effected among the brothers in the year 1991, during the lifetime of N.A. Murugesan. In Ex.A.1 it is recited that the agreement was jointly executed in favour of all four persons. Of the total consideration of Rs.12,000/-, a sum of Rs.3142.86 was received by Venugopal Chettiar on



S.A.No.504 of 2014

02.01.1982 towards N.A.Murugesan's share, and the balance of Rs.8.857.14 representing the other three shares, was received on 14.06.1983, when Ex.A.1 was executed. Thus, under Ex.A.1 the entire sale consideration stood fully paid, and the vendor agreed to execute the sale deed without demur whenever required by the purchasers. The sale, however, has not yet been executed.

13.The plaintiffs asserts that, in the oral partition, all family properties were divided except 32 suit items covered by Ex.A.1 which were only arranged for convenient enjoyment since sale transaction was incomplete. In contrast, the defendants, however, contend that these 32 items of suit property were also divided among the brothers and that only properties allotted to N.A.Murugesan and 7th defendant were conveyed under Ex.B.1.

14.Thus, the crux of the dispute is whether the suit properties were included in the oral partition of 1991. Since the defendants rely on the alleged oral partition concerning the suit properties, the burden of proof lies on them.

15.In the grounds of appeal, it is averred that the first appellate



S.A.No.504 of 2014

the burden to establish the affirmative case rested on the defendants.

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17. On the defendants' side, the 7th defendant was examined as D.W.1 but did not identify which of the 32 items were allotted to him or to the others. The written statement is likewise devoid of these particulars.

18. D.W.2 (8th defendant), the purchaser under Ex B1, deposed that he is related to plaintiffs and defendants 2 to 7 and was aware of the 1991 oral partition. However, he furnished no particulars regarding the division of the 32 suit items. Accordingly, the plea of oral partition by metes and bounds in respect of suit properties is not proved.

19. The 8th defendant asserts that he is the bona fide purchaser for value and seeks protection of his interest. The evidence, however, shows that he is related to the parties and was aware of the incomplete conveyance between Venugopal Chettiar and the heirs of Arasu Reddy. Despite such knowledge, he included the first defendant as a vendor in Ex.B.1 and claims to have paid Rs.10,500/- to the first defendant and Rs.1,59,500/- to defendants 2 to 7. The first defendant, however, has categorically stated that he signed the deed merely to satisfy the



S.A.No.504 of 2014

purchaser and received no consideration.

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20.DW2, further admitted that he could not recall the consideration paid and that he knew the properties had been allotted to the shares of late N.A.Murugesan and the 7th defendant. If so, it should have been recited in Ex.B.1. Instead, Ex.B.1 traces title to the first defendant as owner and describes defendants 2 to 4 and 7 as purchasers from him; notably, the wife and daughter of late N.A.Murugesan (defendants 5 and 6) are not parties to Ex.B.1. The recitals in Ex.B.1 are thus inconsistent with the 8th defendant's plea in this suit. Under Section 19 (b) of the Specific Relief Act, 1963, only a purchaser for value, in good faith, and without notice of the original contract is protected as bonafide purchaser. Here, the 8th defendant has admitted knowledge of the earlier contract, (Ex.A.1) and even included the first defendant as vendor in Ex.B.1. These facts negate his claim to bonafide purchaser for value without notice; on the contrary sale under Ex.B.1 appears to have been contrived to capitalize on the family dispute between the plaintiff and defendants 2 to 7.

21.The learned counsel for the appellant relied on the following authorities addressing delay in seeking specific performance:



S.A.No.504 of 2014

(i)P.Daivasigamani Vs. S.Sambandan, [(2022) 14 Supreme Court cases 793]; (ii)Azhar Sultana Vs. B.Rajamani and others, [(2009) 17 Supreme Court Cases 27]; (iii)K.S.Vidyanadam and others Vs. Vairavan, [(1997) 3 Supreme Court Cases 1]; (iv)Chand Rani (Smt) (Dead) by LRs. Vs. Kamal Rani (Smt) (Dead) by LRs., [(1993) 1 Supreme Court Cases 519];

22.In the cited decisions, only a portion of the sale consideration had been paid as advance or Earnest money and the purchasers failed to tender the balance consideration and complete the sale within the time stipulated in the agreement.

23.However, in the present case, the entire sale consideration was paid on the very date of Ex.A.1, written agreement of sale was executed and the transferees thereafter continued in possession of the property. These facts satisfy all the requirements of part performance under Section 53A of the Transfer of Property Act,1882. Moreover, the vendor under Ex.A.1 expressly agreed to execute the sale deed, without demur, whenever required by the purchasers.

24.The first defendant admitted that the purchasers never demanded the execution of the sale deed; consequently, there was no



S.A.No.504 of 2014

occasion for refusal. The limitation under Article 54 of the Limitation Act would begin to run only upon such refusal. In these circumstances, the authorities cited by the appellants are distinguishable and inapplicable to the present case.

25.The first defendant has not denied the execution of Ex.A.1. The possession of the plaintiffs and defendants 2 to 7 is protected under the doctrine of part performance. Execution of the sale deed is thus a mere formality to perfect the title. There is, therefore, no legal infirmity to directing the first defendant to execute a sale deed in favour of the plaintiffs and defendants 2 to 7 pursuant to Ex.A.1.

26.Upon such execution, if the plaintiff and defendants 2 to 7 thereafter effect a partition inter se, the 8th defendant and any subsequent purchasers may work out their rights, if any, against the shares allotted to defendants 2 to 7, but not at this stage.

27.The suit was specific performance is maintainable notwithstanding the lapse of 22 years, as it is governed by the second limb of Article 54 of the Limitation Act, 1963. The 1st defendant has



S.A.No.504 of 2014

stated in his written statement that no demand was ever made by plaintiffs or defendants 2 to 7 for execution of sale deed. Under the second limb of Article 54 of the Limitation Act, 1963, limitation commences only from the date of refusal. In the absence of any refusal by the vendor, and in view of finding that the defendants 8 to 12 are not bona fide purchasers in good faith, the suit is within time.

28.The plaintiffs had paid entire sale consideration and were in possession; thus, the question of “readiness” does not arise, only their willingness to complete transaction remains. The discretionary relief of specific performance was, therefore, rightly granted. Accordingly, all the questions of law are answered in favour of plaintiffs.

29.The 12th defendant has been impleaded in the Second Appeal as lis pendens purchaser and, therefore, takes subject to the result of these proceedings. Consequently, the sale executed by the 1st defendant along with two others in his favour is not valid and is not binding on the plaintiffs.

30.It is noticed that the first appellate court’s decree is not properly



S.A.No.504 of 2014

worded. To avoid ambiguity, it is clarified that the suit is decreed as to prayers (a) to (e) in the amended plaint and dismissed as to the monetary relief sought in prayer (e-1).

31.In the result, the Judgment dated 05.12.2013 in A.S.No.17 of 2011 on the file of the Subordinate Judge, Ponneri, is affirmed. Accordingly, this Second Appeal is dismissed with costs. All connected miscellaneous petitions, if any, shall stand closed.

12.11.2025

ay

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1.The Subordinate Judge, Ponneri.

2.The District Munsif, Ponneri.

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

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S.A.No.504 of 2014

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
S.A. No. 504 of 2014
and
M.P. No. 1 of 2014

12.11.2025