



S.A. Nos.887/2019 & 629/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.887 of 2019

and

Second Appeal No.629 of 2021

and

C.M.P.Nos.18691 of 2019 & 14312 of 2021

S.A.No.887/2019:

T.Krishnan

... Appellant/Plaintiff

Vs.

D.Kumari

... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 22.02.2019 made in A.S.No.25 of 2018 on the file of the IV Additional District Court, Ponneri, thereby partly allowed the appeal suit to refund the advance amount against the Judgment and Decree dated 24.01.2018 made in O.S.No.80 of 2010 on the file of the Subordinate Court at Ponneri.

For Appellant	:	Mr.A.Lakshminarasimhan
For Respondents	:	Mr.R.Venkatraman
		For Mr.N.R.Gopaalan



S.A. Nos.887/2019 & 629/2021

S.A.No.629/2021:

D.Kumari

... Appellant/Defendant

Vs.

T.Krishnan

... Respondent/Plaintiff

PRAYER: Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 22.02.2019 made in A.S.No.25 of 2018 on the file of the IV Additional District Court, Ponneri, allowing the said appeal and thereby reversing the Judgment and Decree dated 24.01.2018 made in O.S.No.80 of 2010 on the file of the Subordinate Court at Ponneri.

For Appellant : Mr.R.Venkatraman
For Mr.N.R.Gopaalan

For Respondents : Mr.A.Lakshminarasimhan

COMMON JUDGMENT

These Second Appeals arising out of same Judgment dated 22.02.2019 in A.S.No.25 of 2018 passed by the IV Additional District Judge, Ponneri challenging the Judgment dated 24.01.2018 in O.S.No.80 of 2010, passed by the Subordinate Judge, Ponneri. The S.A.No.887 of 2019 filed by the plaintiff, challenging dismissal of Specific Performance and S.A.No.629 of 2021 filed by the defendant challenging the direction to refund the advance sale consideration



S.A. Nos.887/2019 & 629/2021

ordered by the Appellate Court.

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2. For the sake of convenience, the parties are referred to hereunder as per their litigative status and ranking before the Trial Court.

3. The case of the plaintiff, T.Krishnan is that he entered into an agreement of sale dated 01.03.2006 to purchase the suit property for a total sale consideration of Rs.6,72,000/-. On the same day, an advance sale consideration of Rs.50,000/- was paid. Subsequently, on three occasions i.e., 15.03.2006; 30.03.2006; and 03.02.2007, additional advance sale consideration of Rs.25,000/-; Rs.30,000/- and Rs.50,000/- respectively were paid to the husband of the defendant. In this regard, separate endorsements were also entered into. Thereafter, the plaintiff approached the defendant to execute the sale deed, but the defendant failed to come forward and execute the same. It is also averred that the plaintiff was ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.5,17,000/-. Notices were also exchanged between the parties in this regard and subsequently, suit was filed.

4. The case of the defendant, D.Kumari is that, she admits execution of



agreement of sale and receiving the advance sale consideration. She further admits the receipt of Rs.25,000/- on 15.03.2006 and endorsement was also made to that effect. However, she disputes the further endorsements and receipt of additional advance sale considerations and contended that the plaintiff was not ready and willing to perform his part of contract and committed a breach of contract even after the three months period expired. In the meantime, the value of the property had also increased substantially. Further, the plaintiff attempted to take forcible possession of the property, which was prevented, and a police complaint was lodged in this regard. Hence, he prays for dismissal of the suit.

5. Based on the pleadings made on both sides, the Trial Court framed the following issues:

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

2. Whether the plaintiff is entitled for vacant possession in respect of suit property as prayed for?”

3.To what other relief if any the plaintiff is entitled?”

6. The trial Court after accepting the evidence filed by the defendant and held that the plaintiff was not approached the Court with clean hands hence



S.A. Nos.887/2019 & 629/2021

dismissed the relief of specific performance.

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7. Aggrieved over the same, the plaintiff has filed an appeal before the IV Additional District Court, Ponneri. The Appellate Court reconsidered the issues raised before the Trial Court and re-appreciated the evidence, and re-framed the points for consideration. The trial Court had accepted the execution of agreement, the admissions and also the endorsements made therein. However, based on the evidence, the Appellate Court has accepted the rejection of Specific Performance, on the ground that allowing the petition to the plaintiff would cause undue hardship to the defendant. Thereby, refused the grant of specific performance of the contract however granted a refund of the advance sale consideration.

8. Aggrieved over the rejection of specific performance, the plaintiff has filed S.A.No.887 of 2019 and aggrieved over the grant of refund of sale consideration, the defendant has filed S.A.No.629 of 2021.

9. At the time of admission, this Court has ordered notice to the respondent and the learned counsel also entered appearance.



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10. The learned counsel appearing for the appellant/plaintiff submitted that the Lower Appellate Court has not properly considered the evidence placed on record has held that there was no tampering of records, accepted the agreement of sale entered between the parties and its subsequent endorsements as effective and binding on the defendant. However, the Lower Appellate Court has wrongly held that granting specific performance would cause prejudice to the interests of the defendant, and the same is not proper since the suit itself was filed within a reasonable time and there was no valid reason for rejecting the suit for specific performance. He further submitted that the Lower Appellate Court has granted a refund of the advance sale consideration though there was no alternate relief, by relying on the unreported Judgment of this Court in ***Sundara Kanthi vs. B.N.Govindaraj [S.A.No.612 of 2008] dated 07.11.2014***. He further submitted that, if this Court is not inclined to accept the contention of the plaintiff with regard to grant of specific performance, the order for refund of the advance sale consideration may be confirmed.

11. Per contra, the learned counsel appearing for the defendant submitted that there is a categorical finding rendered by the trial Court that the documents, more particularly Ex.A1, the agreement of sale had been tampered with by the



plaintiff, thereby the plaintiff filed suit with unclean hands, hence no discretionary relief could be granted in favour of the plaintiff. The Lower Appellate Court has set aside the same on the ground that adding the name of the witness in the agreement did not cause any consequences, since the plaintiff had not cross-examined in this regard. Further though the plaintiff has not sought for refund of the advance sale consideration, no refund could be ordered as per the Judgment of the Hon'ble Apex Court in ***K.R.Suresh vs. R.Poornima and Others*** reported in **2025 INSC 617**.

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

13.The substantial questions of law raised herein are:

(1) whether the rejection of relief of specific performance prayed by the plaintiff on the ground of alteration of contents in the agreement is valid or not?

(2)whether the Lower Appellate Court was erred in decreeing the suit for refund of Advance Sale Consideration is valid or not?

14. The decree for specific performance was not granted based on the fact



recorded by the Trial Court that, there is tampering of Agreement for Sale which is sought to be enforced in this suit. Originally, Ex.A1-Agreement for Sale was witnessed by two persons but the name of a third witness was subsequently added. The third witness was examined as P.W.3 before the Trial Court. This finding rendered by the Trial Court was based on the documents filed by the plaintiff along with the plaint. It is recorded by the Trial Court that at the time of filing the suit copy of original agreement was produced as supporting documents to take cognizance of the suit. However, at the time of marking the documents, the plaintiff produced the original of Ex.A1, which included the name of the third person as witness (P.W.3). Since the exhibit marked is altered from the original document filed before the Court at the time of filing the suit, the trial Court has held that the plaintiff had altered Ex.A1. This view taken by the trial Court was reversed by the Appellate Court on the reason that the third witness may have signed the document after a photo copy was taken, and that the three witnesses had subscribed to the agreement of sale. This Court is unable to accept this reasons/findings since the execution of the agreement must be complete only after signing of all the witnesses. Admittedly, at the time of filing of suit, the parties have to file all the documents. Accordingly, copy of Ex.A1 had been produced and it contain only two persons as witnesses to the examination of



Ex.A1. The plaintiff has to explain how third witness had subscribed his signature and when it was made and why the third person's (witness) signature was left out in copy of Ex.A1.

15. Order VII Rule 13, mandates production of document on which the plaintiff sues after properly enter such documents in a list, and produce it in Court when the plaint is presented. This is very important mandatory provision. Once the document was not produced along with plaint, no document could be recorded as evidence, without leave of the Court. Hence, producing the document along with list shall be form part of the plaint.

16. That being the case, Ex.A1-Agreement for Sale produced at the time of filing of suit shall not contain any additional contents which would materially altered the nature of document. In this case, the execution and extension of time and acknowledging the endorsements have to be proved by the plaintiff herein more importantly, to establish the fact that there was no delay on his part and he was ready and willing. In this case, Ex.A1 produced, contain the additional attestation of document to show the execution of the agreement for sale, and it was produced at the time of purchase. This is a clear case of alteration of the



agreement of sale that the plaintiff sought to be enforced, and even now, there are no reason stated by the plaintiff for such circumstances. I am of the view that the plaintiff is not entitled for the suit for discretionary relief of specific performance since he has not approached the Court with clean hands and the Trial Court rightly rejected the specific performance. Substantial question of law No.1 is answered accordingly.

17. With regard to the refund of sale consideration without a prayer for the same, no such refund could be ordered. The Appellate Court, relying on a Judgment of this Court held that refund could be ordered even without a prayer of refund of advance sale consideration, which is clearly contrary to the ratio laid down by the Apex Court in ***K.R.Suresh vs. R.Poornima (2025) INSC 617***, which reads as follows:

“ 58.It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under Section 22 of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an



*“appropriate case” exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in **Desh Raj v. Rohtash Singh**, reported in (2023) 3 SCC 714. The relevant observations are reproduced hereunder:*

“35. On a plain reading of the above-reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.”

*59. The judgment in **Desh Raj** (supra) has been relied upon by the learned counsel appearing for the appellant herein. However, it is difficult to understand how this judgment furthers their case. On the contrary, this judgment clearly contradicts*



their position, stating in unequivocal terms that, in the absence of a prayer for the relief of refund of earnest money, such relief cannot be granted by this Court.

60. *Another judgment which has been relied upon by the learned counsel for the appellant in reference to the issue of refund of earnest money, is the case of **Kamal Kumar v. Premlata Joshi**, reported in (2019) 3 SCC 704. Notably, the ruling in this case also stands contrary to the arguments advanced by the appellant on account of the fact that the relief of refund of earnest money was denied therein. The relevant observations are extracted hereunder:*

“9. In the case at hand, we find that the two courts below have gone into these questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready nor willing to perform his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land. It was also held that the plaintiff was not entitled to claim any relief of refund of earnest money because it was liable to be adjusted as agreed between them.”

61. *Applying these principles to the facts of the case at hand, we find ourselves unable to accept the submissions of the*



appellant that, in the absence of a specific prayer for the refund of advance money paid by them, Prayer (c) of the plaint which specifies the grant of “such other relief(s) as the Hon’ble Court deems fit in the facts and circumstances of the case in the interest of justice”, can be construed to include a prayer for such an alternative relief.”

18. I am of the view that, as held by the Apex Court, refund of advance sale consideration ordered by the Appellate Court, is not permissible without prayer for the same. Further, admittedly, there was no amendment petition filed before the Appellate Court. Hence, the Judgment and Decree of the Appellate Court directing refund of Advance Sale Consideration is hereby set aside. The substantial question of law No.2 is answered accordingly.

19. In the result,

(i)S.A.No.887 of 2019 is dismissed.

(ii)S.A.No.629 of 2021 is allowed.

(iii)The Judgment and Decree dated 22.02.2019 made in A.S.No.25 of 2018 on the file of the IV Additional District Court, Ponneri, allowing the said appeal and thereby reversing the Judgment and Decree dated 24.01.2018 made in O.S.No.80 of 2010 on the file of the Subordinate Court at Ponneri is set



S.A. Nos.887/2019 & 629/2021

aside. There shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

12.09.2025

ssi

Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The IV Additional District Judge,
Ponneri.
2. The Subordinate Judge,
Ponneri.
3. The Section Officer,
VR Section,
High Court, Madras.



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S.A. Nos.887/2019 & 629/2021

K. RAJASEKAR, J.

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S.A. No.887 of 2019 and
S.A.No.629 of 2021



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S.A. Nos.887/2019 & 629/2021

12.09.2025