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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated 05.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

**A.S.Nos.354 & 355 of 2022**
**and CMP.No.12740 of 2022**

D.Radhakrishnan (Deceased)
1.Sathiya
2.R.Kamala ... Appellant in both ASs

Versus

1.C.N.Munusamy
2.P.Kandasamy ... Respondents in both ASs

**Prayer:** Appeals filed under Section 96 read with Order 4 Rule 1 of Code of Civil Procedure, to set aside the judgment and decree dated 29.03.2022 made in O.S.Nos.162 of 2014 and 173 of 2012 respectively on the file of the Sessions Fast Track Mahila Judge, Namakkal.

In both ASs

For Appellant : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran

For respondents : Mr.A.Sundara Vadhanam for R1
Mr.V.Raghavachari, Senior Counsel
for Mr.C.E.Pratap for R2

**COMMON JUDGMENT**



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These two appeals are filed challenging the decree and judgment of the Trial Court in O.S.No.173 of 2012 and O.S.No.162 of 2014.

2. O.S.No.173 of 2012 has been filed for relief of specific performance of agreement dated 27.12.1997 and O.S.No.162 of 2014 has been filed by the tenant who is said to be a tenant to the agreement holder for permanent injunction as against the defendant not to evict him except by due process of law. Both the appeals have been partly decreed. Hence, the present appeals.

3. The main issue to be decided in these appeals is with regard to the comprehensive suit for specific performance. The suit in O.S.No.162 of 2014 is depending on the decision of the O.S.No.173 of 2012 filed for enforcing the contract. Since both the appeals were tried and disposed vide a common judgment, this Court is inclined to dispose of both the appeals vide a common judgment. The parties are arrayed to as per their own ranking before the Trial Court.

4. Brief facts leading to filing of the suit in O.S.No.173 of 2012 are as



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follows:

4.a. It is the case of the plaintiff that the deceased 1st defendant Radhakrishnan is the allottee of the suit house by the Tamilnadu Housing Board bearing door number M.65. The 1st defendant was in possession and enjoyment of the same. On 27.12.1997, the deceased 1st defendant entered into a written agreement of sale with the plaintiff in respect of the suit property and as per the sale agreement the sale price of the suit property was fixed at Rs. 3,00,000/- and a sum of Rs. 2,50,000/- was paid by the plaintiff to the 1st deceased defendant as advance as a part of the sale price and as per the sale agreement, the understanding was that as soon as the Housing Board executes the sale of the suit house in favour of the 1st defendant. The 1st defendant should inform about the same to the plaintiff and the plaintiff should pay the balance sale price to the 1st defendant and obtain a registered sale deed in favour of the plaintiff within a period of six months thereafter and the balance sale price of Rs.50000/- to be paid at the time of the registration of sale deed. It is also the case of the plaintiff that he was in possession of the suit property on the date of agreement as a part performance of the contract of sale.

4.b. Further, the plaintiff has let the suit property on rent, to one C. N.



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Munusamy and that the tenant is in possession of the suit property. Plaintiff is also paying the property tax for the suit property in Kadachanalur panchayat board, at times in his name and at times in the name of the deceased 1st defendant. TNEB service connection for the suit property stands in the name of the Executive Engineer, TNEB and plaintiff has been paying the electricity charges in the name of Executive Engineer TNEB and obtained receipts. The plaintiff has always been ready and willing to perform his part of the contract to pay the balance sale price of Rs. 50,000/- to the deceased 1st defendant. The plaintiff has spent about Rs. 3,50,000/- in the suit property by way of improvement in the year 2006 with the knowledge of the deceased 1st defendant. The plaintiff has paid the installment due to the Housing Board either by himself or through the deceased 1st defendant. On 31.12.2002 the Housing Board Salem, had issued notice to the deceased 1st defendant which was received by the plaintiff since he is in occupation of the suit property. The plaintiff paid a sum of Rs. 75,000/- to the Housing Board through the deceased 1st defendant and requested the deceased 1st defendant to get back the sale deed from the Housing Board as soon as possible and inform him so that the plaintiff would pay the balance of the sale price of Rs. 50,000/- and get the sale deed executed by the deceased 1st defendant.



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4.c. The plaintiff had been enquiring the deceased 1st defendant as to whether the Housing Board has executed the sale deed in favour of the deceased 1st defendant, to which the deceased 1st defendant told the plaintiff that he had not received the sale deed and he would inform the plaintiff when he receives the sale deed from the Housing Board. While things stood thus, the plaintiff was shocked when he was called upon to Pallipalayam police station on 03.09.2012 on the basis of the complaint preferred by the deceased 1st defendant. The deceased 1st defendant had given a complaint that the plaintiff had trespassed into the suit property unlawfully and illegally and is in possession of the suit property. Only thereafter, the plaintiff came to know that the deceased 1st defendant had received the sale deed from the Housing Board on 02.01.2012 and that the deceased 1st defendant had deliberately suppressed the same. Therefore, the plaintiff issued notice to the deceased 1st defendant on 10.09.2012 demanding him to receive the balance sale price and execute the sale deed in his favour in respect of the suit property. After receipt of the legal notice on 13.09.2012, the defendant had approached the Anti Land Grabbing Cell at Namakkal. Besides sending a reply notice, deceased 1st defendant denied the sale agreement and receiving the



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advance amount of Rs. 2,50,000/- from the plaintiff. Hence the suit is filed for specific performance or in the alternative for return of Rs.2,50,000/- with interest.

4.d. It is the contention of the deceased first defendant in the written statement that he did not execute any sale agreement for sale of property nor received Rs.2,50,000/- as advance and agreed to execute the sale deed within 6 months after the Housing Board executes the sale deed in favour of the defendant. It is also denied that the plaintiff was put in possession of the suit property Admitting that the suit property was allotted to defendant as per the order reference No.R1/15046/86 dated 16.04.1987 in respect of terraced house measuring 1643 sq.ft., it is the contention of the defendant he has been paying monthly installments regularly. On 02.01.2012, the Tamil Nadu Housing Board executed a sale deed in favour of the defendant. It is the contention that after house was alloted to the defendant, he permitted one Sundaram who worked with him in the Seshayee Paper mill to occupy the house and be in management of the house. The said Sundaram committed suicide and the plaintiff who was working as sub-staff in the mill took advantage of the situation, trespassed into the property and also let one Munusamy as a tenant in the suit property. The agreement has been fabricated after



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the police complaint has been given and the alleged improvement by the plaintiff is denied. Readiness and willingness is also denied.

4.e. After the death of the first defendant, the legal heirs namely the 2nd and 3rd defendant also filed separate written statement taking the original stand of the deceased first defendant and submitted that the plaintiff has trespassed into the suit property taking note of the financial dealing with Sundaram. In that regard, complaint is also given in the police station. According to them, agreement has been fabricated, stamp papers have been purchased in Uttangarai. Admittedly, the first defendant was residing in Pallipalayam near Erode. Further, the so-called tenant one Munusamy/agreement holder of Kandasamy had filed the suit in O.S.No.162 of 2014 seeking for relief of permanent injunction not to evict him except by due process of law. That suit is also opposed by the defendants.

4.f. Based on the above pleadings, the Trial Court in O.S.No.173 of 2012 has framed the following issues:

i. Whether the sale agreement dated 27.12.1997 is true and valid and enforceable?

ii. Whether the plaintiff was ready to pay the balance sale consideration amount



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throughout and get the sale deed executed in his favour?

iii. Whether the plaintiff is entitled to the relief of specific performance as sought for?

iv. Whether the plaintiff is entitled to the alternate relief of return of advance amount paid by him?

v. Whether the plaintiff is entitled to the relief of permanent injunction as claimed for?

vi. What other relief is the plaintiff entitled to?

vii. Whether it is true that the signature of the 1st defendant was forged in the sale agreement dated 27.12.1997?

viii. Whether it is true that the plaintiff has unlawfully encroached into the suit property and has sub-let it to Munusamy and is collecting rent from him?

ix. Whether the plaintiff is entitled for charge over the suit property?

4.g. Similarly, the Trial Court in O.S.No.162 of 2014 has framed the following issues:

i. Whether there is any sale agreement entered between the first defendant and the second defendant as claimed by the plaintiff?



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ii. Whether there is any land-lord tenant relationship between the 2nd defendant and the plaintiff as claimed by the plaintiff?

iii. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

iv. To what other relief is the plaintiff entitled to?

v. Whether the plaintiff entered into an oral agreement to pay enhanced rent as claimed by the 2nd defendant?

4.h. In both the suits, common evidence was recorded. On the side of the plaintiff, PW1 to PW3 were examined and Exs.A1 to A25 were marked. On the side of the defendants, DW1 and DW2 were examined and Exs.B1 to B20 were marked. Exs.C1 to C3 were also marked.

4.i. Based on the oral and documentary evidences, the Trial Court partly decreed the suit vide the common judgment. Challenging the same, the present appeals have been filed.

5. The learned senior counsel for the appellants submitted as follows:



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a. that Ex.A1 sale agreement dated 27.12.1997 is fabricated. The alleged sale agreement has been fabricated after the defendant gave complaint for alleged trespassing into the property in the year 2012.

b. that the evidence of PW1 itself indicate that he came to know about the execution of the sale deed only after the police complaint made by the defendant, thereafter, legal notice was issued by the plaintiff. The evidence of PW1 and PW3 with regard to the execution of the document is highly improbable and against the normal human conduct.

c. Ex.A1 does not speak about the part performance of the contract by putting the plaintiff in the possession of the property, whereas, for the first time in the plaint, it is pleaded as if he was put in possession of the property and Ex.A5 series has been created only for the purpose of case.

d. The very pleadings of the plaintiff indicate that he has received a demand notice from the Tamilnadu Housing Board, therefore, he paid Rs.75000/- to the Housing Board through the first defendant. If really that amount has been paid by the plaintiff, there was no necessity to pay the remaining balance sale consideration, since, he has already paid excessive amount more than the agreed amount.

e. The evidence of PW1 clearly shows that he did not know where the first



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defendant was residing after 1992, he never met the first defendant thereafter. Therefore, first defendant executing the agreement of the year 1997 is highly improbable. The evidence of PW1, PW3 and the so-called attesting witnesses is totally contradictory, in fact, their evidence also probabilise the defendants theory that when there was no agreement, same has been created later after the police complaint.

f. Ex.A5 is in respect of different assessment number, admittedly, the plaintiff is also owning two or three flats in the Housing Board scheme, therefore, merely on the basis of some receipt produced, it cannot be concluded that he was in put in possession of property. Whereas, Exs.B4 and B7 clearly establish the fact that defendant never lived in Salem and residing in different address.

g. Therefore, the person allegedly paying substantial amount in the year 1997 and keeping silent all these years without even taking steps to enforce the alleged contract proves the fact that agreement has been created.

h. Though expert has not been given any opinion and given a report that no conclusion could be arrived, the fact remains that purchase of stamp papers at Dharmapuri, when parties are admittedly residing in and around Salem probabilise the defendants case that the agreement has been fabricated.



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i. document filed on the side of the defendants clearly shows that stamp vendor who has sold Ex.A1 stamp paper has been arrested in a stamp paper scam and the records are seized by the police officials. These facts clearly show that Ex.A1 has been fabricated. Therefore, merely, because PW3 who is a close aid of plaintiff had examined the genuineness of the document cannot be inferred when the doubt as to genuinity of the document is inherent on the face of document, the plaintiff has to establish the genuineness of the document. When the genuineness of the document has not been established, the plaintiff cannot seek for specific performance, whereas, the Trial Court has come to the conclusion that Ex.A1 is genuine by just comparing the signature of the deceased found in Ex.A1 and B2, sale deed executed in favour of the defendant in the year 2012.

j. The Trial Court assumed the role of expert and in fact sitting over as the appellate authority to the expert opinion compared the signature and gave opinion without any reasons.

6. Whereas, the learned senior counsel for the respondents submitted as follows:

a. Admittedly, the allotment was made in favour of the first defendant. Ex.A1 has



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been executed by the first defendant and the plaintiff was put in possession of the property. Ex.A2 house tax receipts clearly proves that the plaintiff has paid property taxes from the year 2009 onwards. Ex.A3/water charges is also filed by the plaintiff. Ex.A4/electricity charges have been paid by the plaintiff. Ex.A5 is the notice issued by the Tamil Nadu Housing Board, Salem addressed to the house address is received by the plaintiff. Family cards have been obtained by Munusamy/tenant under Ex.A13. All these facts clearly show that plaintiff was put in possession of the property.

b. The very conduct of the defendants in not even verifying the property till 2012 and police complaint was given clearly shows that they handed over the possession of the property to the plaintiff. Hence, it is the contention that the entire case is projected by the defendants as if the plaintiff has trespassed into the suit property after the death of one Sundaram in the suit property. The said Sundaram died in Pallipalayam not in the suit property. Ex.A23, FIR in Cr.No.171 of 1999, Erode South Police Station clearly proves the above fact. Therefore, when the defendants case has not been established by the documentary evidences, it has to be held that plaintiff is entitled to specific performance.

c. Further, the contention that under Ex.B11/complaint given by the deceased first



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defendant dated 29.08.2012, there was no mention about the alleged suicide of Sundaram in the suit house. Therefore, the false defense has been set up in the written statement. These facts clearly indicate that the plaintiffs case is more probable and the defendants has set up falsity only to non suit the plaintiff.

d. expert opinion report clearly shows that the document could not be compared and no opinion has been given, whereas, contrary to the report, DW2 has given evidence as if the signature of the first defendant is not tallied with the original admitted signature. That evidence cannot be given much importance. The Trial Court considered the conduct of the parties and the documents and rightly come to the conclusion that the plaintiff is entitled to specific performance. Hence, opposed the appeal.

7. In light of the above submissions, now, the points arises for consideration are as follows:

(i) Whether the agreement dated 27.12.1997 is true and valid? If so, whether, the plaintiff was ready and willing to perform his part of contract?

(ii) Whether the plaintiff in O.S.No.162 of 2014 is entitled for permanent injunction as prayed for?



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Point (i)

8. The suit has been proceeded as if the first defendant has executed a sale agreement for sale of the property, i.e., housing property allotted under the Tamil Nadu Housing Board for a total sale consideration of Rs.3 lakhs and received a sum of Rs.2.50 lakhs and agreed to execute the sale within a period of 6 months after the sale is executed in favour of the defendant by the Tamil Nadu Housing Board. It is the further case of the plaintiff that he was put in possession of the property as a part performance of contract. However, in the year 2012, he was called to police station on the basis of complaint lodged by the defendant against him for trespassing into the property, only, thereafter, he came to know about the execution of the sale deed in favour of the defendant by Housing Board. Hence, the plaintiff issued a legal notice and thereafter, the suit was laid. Whereas, the defendant has denied the execution of the agreement and it is the contention of the defendant that the plaintiff has trespassed into the suit property taking advantage of the death of one Sundaram and also inducted one Munusamy as a tenant.

9. In light of the above submissions, now, it has to be seen whether Ex.A1



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has been properly executed for sale of property. The conduct of the parties assumes significance in deciding the nature of the contract and its genuineness etc., It is the admitted case that the subject property was originally alloted to the first defendant under Ex.B15. Ex.B15 when carefully perused, house was alloted under MIG and House No.65 was alloted to the first defendant by order dated 14.03.1988 and the first defendant was directed to pay the monthly installments for certain period. Proceedings under Ex.B15 makes it clear that House No.65 has been specifically mentioned. It is the case of the plaintiff that in the year 1997, an agreement came to be executed by the plaintiff for sale of the suit property. From the evidences itself, it is very clear that plaintiff in O.S.No.173 of 2012 is also having two or three Housing Board houses in the same locality. These facts are relevant to determine the validity of the agreement particularly in view of the various circumstances available on record. Though the defendant's stand that the plaintiff has trespassed the suit property after the suicide of one Sundaram in the suit house is concerned, that defence appears to be only an afterthought for the simple reason that said Sundaram has not died in the suit property. Ex.A23/FIR in Cr.No.171 of 1999, Erode South Police Station filed in this regard, clearly shows that Sundaram died in Pallipalayam in house belonging to some third parties. The very defence



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that Sundaram died in the suit property and his body was removed from the suit house has not been established.

10. Therefore, now it has to be seen mere one circumstances pleaded by defendant is found to be false will that fact alone absolve the plaintiff from proving the genuineness of Ex.A1/sale agreement is concerned. This Court is of the view that merely one such circumstances pleaded by the defendant is found against them, the same will not absolve the plaintiff from proving the genuineness of the contract. It is specific case of the plaintiff that agreement came to be executed on 27.12.1997 and he was put in possession of the property. When Ex.A1 carefully perused, it never indicates that possession was given as part performance of contract on the date of agreement. There was no whisper whatsoever in the agreement as to handing over of possession on the date of agreement. Further, in the schedule of properties, door number of the house is conspicuously absent. Admittedly, the plaintiff is already having houses in the Housing Board in the same locality, this Court is of the view that when he is intended to purchase the property having known the specific property alloted to the defendant, normal human conduct would be to include the door number of the house in the schedule



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of property, however, that has not been done so.

11. Be that as it may, it is the case of the plaintiff that both the plaintiff and defendant was residing in Tiruchengode, i.e., Kadaichanallur. When both of them were residing in the same place, there was no necessity for one of the party to go to Uthangarai to purchase the stamp paper. It is relevant to note that it is established on record that the stamp vendor, who has sold the stamp paper has already proceeded for criminal case and several registers have already been seized and handed over to the concerned Court. Therefore, the factum of purchase of stamp paper in Uthangarai when both parties admittedly residing in Tiruchengode cannot be ignored altogether in light of the following discussions

12. It is relevant to note that on the date of agreement, i.e., 27.12.1997, proper stamp duty for any agreement of sale is only Rs.10/-. Rs.10/- has been enhanced to Rs.20/- only by way of an amendment by the Tamil Nadu Act 9 of 2001 with effect from 11.07.2001. Therefore, when the stamp duty is only for Rs.10/- at the relevant point of time, i.e., 1997, there was no need to purchase Rs.20/- stamp paper. In fact, stamp duty has been enhanced only in the year 2001.



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These facts also creates serious doubt about the very genuineness of the agreement. It is further fortified by the following facts.

13. On perusal of the Ex.A1, it would makes it clear that signature found in the document is in same ink. Normally, when the document writer prepares the document, her name would be typed, whereas, writing her name in ink later is against the normal conduct. Further, agreement reads as if the vendor resides in the suit property, which also creates serious doubt for the simple reason that vendor Radhakrishnan as per the admission of PW1 itself shows that he left the place in the year 1992, thereafter, PW1 does not know where the defendant Radhakrishnan residing. These facts cannot be ignored altogether.

14. The plaintiff, according to him, after he was put in possession of the property in the year 1997, he has been paying the taxes and also paid the installments in the name of the himself and the first defendant. It is relevant to note that Ex.A2 series shows that tax receipts have been issued in the name of the plaintiff for the period of 2000 – 2012. It is also the specific case of the plaintiff that he has spent Rs.3.5 lakhs in the suit property by way of improvement in the



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year 2006 with the knowledge of the first defendant. When such positive assertion is made in the plaint and in light of the evidence, this Court is of the view that contention of the defendant that agreement has been fabricated is more probable. In the cross examination of the PW1, the evidence of PW1 is that he did not know when Radhakrishnan retired, where he is residing presently and also admitted that whenever he receives a communication from the Housing Board, he has handed over such communication to Radhakrishnan. It is relevant to note that when the plaintiff has not even aware where Radhakrishnan is residing even after 1992 after his retirement, handing over the communication received from the Housing Board to the deceased first defendant is highly improbable.

15. Further, the important statement of the plaintiff in the plaint when carefully seen, according to him, he has received a communication namely Ex.A5 series dated 31.12.2002 from the Housing Board demanding payment of sum of Rs.75,000/-. On perusal of the above communication, it makes it clear that Housing Board has demanded an additional amount with interest, whereas, it is the case of the plaintiff that the plaintiff has paid the said amount of Rs.75,000/- to the Housing Board through the first defendant. It is relevant to note that when the



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plaintiff was able to produce certain receipts from the Housing Board in the name of the deceased first defendant under Ex.A6 series, if the entire Rs.75000/- is paid by him to the Housing Board through the first defendant, the normal conduct of human being is to demand receipt from the Housing Board for such huge amount. It is relevant to note that the very statement of the plaintiff that he has paid a sum of Rs.75000/- to the first defendant for the payment towards Housing Board is highly improbable for the simple reason that his evidence clearly indicate that he does not know where the first defendant was residing after 1992. He also clearly admitted that he has not sent any communication to the deceased first defendant thereafter. Therefore, the very pleadings that a sum of Rs.75,000/- is paid in pursuant to the communication dated 31.12.2002 to the Housing Board through the first defendant cannot be held to be true for the simple reason that his own witness namely PW3 in his evidence has stated that amount of Rs.75000/- is paid to him and he has in turn handed over to his father. These two contradictory evidence clearly show that the contention of the plaintiff has not been established.

16. PW3 was examined to prove the execution of the document by the first



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defendant. Though he has stated in his evidence that he was present while the document was signed by the first defendant. His evidence when seen, it would indicate that at the instruction of his father, he signed the document. According to him, the plaintiff used to give installments to him and he will receive the amount and hand over to his father. According to him, plaintiff has paid a sum of Rs.75,000/- and Rs.10,000/- and he has handed over to his father. Whereas, the evidence of PW1 clearly indicate that sum of Rs.75,000/- was paid to the first defendant. These facts creates serious doubts about the entire transactions. It is relevant to note that it is the specific evidence of PW3 that his father died in the year 2001, this itself falsify his statement that the plaintiff has paid a sum of Rs.75000/- to him and he has handed over to his father. The stand of the plaintiff that sum of Rs.75000/- has been paid in pursuant to the communication dated 31.12.2002. Therefore, PW3 statement that the plaintiff has paid the said amount to him and he has handed over to his father, who had died in the year 2001 itself makes it clear that his evidence is highly improbable and an after thought.

17. Therefore, merely on the basis of certain communication addressed by



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the Housing Board where the plaintiff somehow or other came to the house, it cannot be said that agreement is genuinely established by the plaintiff. It is relevant to note that according to the plaintiff on 31.12.2002, he had paid Rs.75,000/- to the Housing Board through the first defendant. If that amount is taken note of and the entire amount is cleared to the Housing Board through the first defendant in the year 2002 itself, adding this to the so-called advance amount, the plaintiff appears to have paid more than the sale consideration, i.e., 3,25,000/-. This Court is of the view that if the plaintiff had paid such huge amount, will the plaintiff keep quite for further 10 years without even making any enquiry as to the nature of the document till he was summoned to the police station in the year 2012. This is also against the normal human conduct.

18. The Trial Court without considering the above and appreciating the evidences of PW1 and PW3 has held that Ex.A1 is proved. It is relevant to note that the Trial Court has compared the document and assumed the role as appellate authority to the expert opinion and compared Ex.A1 and Ex.B12. It is relevant to note that the signature of a person will change or vary with the passage of time. Comparing signature with two different period by naked eye will not give a



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conclusive result. In such circumstances, the Court venturing to compare the signatures of different period by naked eye without any expertise of knowledge is not prudent. The Trial Court has committed fundamental error by comparing the documents of different ages. Whereas, the Ex.A1 is of the year 1997 and the same has been compared with a document of the year 2012.. Therefore, the Trial Court coming to the conclusion that signature found in both the document are one and the same in view of this Court is not correct, in fact, the expert opinion in Exs.C1 to C3, expert has given an opinion to the effect that on the basis of the present standard material, it is not possible to offer any reliable opinion on the red enclosed signatures stamped and marked Q1 to Q3 on a comparison with the red enclosed signatures similarly stamped and marked A1 to A27.

19. When the experts themselves were unable to give any opinion on the disputed signature even in their expertise, the Trial Court by merely comparing the signatures has come to the conclusion without any proper reasons that the character of the signatures are completely similar to each other. Such a finding of the Trial Court is nothing but perverse in view of this Court.

20. In this regard, the Hon'ble Supreme Court in the case of *Thiruvengada Pillai v. Navaneethammal* reported in *AIR 2008 SC 1541* has held as follows:



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> *" **17.** The decision in Murari Lal [(1997) 7 SCC 110 : 1997 SCC (Cri) 992] and Lalit Popli [(1980) 1 SCC 704 : 1980 SCC (Cri) 330] should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further, even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal."*

21. In the case on hand, the execution of the so-called sale agreement itself is denied by the deceased first defendant in his written statement and the plaintiff also did not establish the execution of contract. Accordingly, this Court is of the view that the genuineness of the document has not been established. When a person entering into a contract and does not even know where the seller resides and having allegedly paid more than the agreed amount, keeping silent for more than 10 years without taking any action also creates serious doubt. That apart, the manner in which the so-called payments projected is also totally contradictory in



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evidence of PW1 and PW3. Further, the very stamp value of Rs.20/- was amended as per amendment under Act Tamil Nadu Act 9 of 2001 only with effect from 11.07.2001 has been used in the so-called agreement which is of the year 1997. Further, the person who has sold such stamp paper has been proceeded for criminal action, files have been seized and handed over to the concerned Court, these facts cannot be brushed aside altogether. When a person seeking relief of specific performance of the contract has to first establish the genuineness of the contract, when the genuineness of the contract has not been established and the document creates serious doubt, even the slightest doubt arises as to the genuineness of the contract, the relief of specific performance which was discretionary at the relevant point ot time cannot be extended based on such doubtful agreement. Therefore, merely, because the plaintiff has produced some receipt in his name, readiness and willingness cannot be inferred when the very document/Ex.A1 itself has not been established. Such view of the matter, the plaintiff is not entitled to relief of specific performance.

22. It is also to be noted that it is the case of the plaintiff that the plaintiff with the consent of the first defendant has spent a sum of Rs.3,75,000/- for the



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purpose of improvement of the suit property. Whereas, his evidence indicate that the plaintiff was not even aware where the defendant was residing. Therefore, plaintiff spending such amount towards improvement with the knowledge of the defendant is also highly improbable. This Court is of the view that all these facts dis-entitles the plaintiff for claiming specific performance. Further, merely, because the defendant is not in a position to prove as to how the plaintiff came into the suit property and their plea that plaintiff came into the possession, on the death of one Sundaram has not been established that will not give absolute right to the plaintiff to seek specific performance, plaintiff has to establish the genuineness of the contract which has not been done so. Accordingly, this point is answered.

Point (ii)

23. As far as the suit against the grant of permanent injunction is concerned, it is the admitted case of both sides that Munusamy is in occupation of the property. Such view of the matter, as this Court is declined to grant the relief of specific performance, there cannot be any permanent injunction against the true owner. However, at the same time, true owner has to resort to due process of law to evict the person who is in occupation of the property. Accordingly, this point is



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answered.

24. In view of the above, the decree and judgment of the Trial Court decreeing the suit in O.S.No.173 of 2012 for specific performance stands set aside and the suit is dismissed. This Court is also not inclined to grant alternative relief for the simple reason that all these years, the plaintiff was in possession and enjoying the benefits, that apart, alleged improvement over the suit property is also not established.

25. Similarly, the decree and judgment of the Trial Court decreeing the suit in O.S.No.162 of 2014 for permanent injunction is set aside and the suit stands dismissed. Since both the parties have admitted the occupation of Munusamy, the true owner shall resort to due process of law in evicting the person who is in occupation of the property.

26. In all, the appeal in A.S.No.355 of 2022 stands allowed and the appeal in A.S.No.354 of 2022 stands allowed in above terms. The parties shall bear their



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respective costs throughout.

Consequently, connected miscellaneous petition stands closed.

05.03.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

1. The Sessions Judge
Sessions Fast Track Mahila Judge, Namakkal.

2. The Section Officer
VR Section, Madras High Court

**N. SATHISH KUMAR, J.**



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**A.S.Nos.354 & 355 of 2022**
**and CMP.No.12740 of 2022**

05.03.2025



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