



A.S.No.389 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2025

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.389 of 2023

and

C.M.P.No.13617 of 2023

D.Saraswathi

... Appellant

Versus

1. R.Krishnaveni

2. Varalakshmi

3. R.Srinivasan

... Respondents

Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of CPC against the judgment and decree dated 14.03.2023 made in O.S.No.21 of 2017 on the file of the learned Additional District Court, Hosur.

For Appellant : Mr.N.Manoharan

For Respondents : Mr.R.Bharath Kumar

JUDGMENT

Appeal Suit has been filed against the judgment and decree dated 14.03.2023 made in O.S.No.21 of 2017 on the file of the learned Additional District Court, Hosur.

2. The brief facts, which are relevant for consideration in this Appeal, are



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as follows:

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2.1. The Plaintiff had filed the suit in O.S.No.21 of 2017 against Defendant-1 to Defendant-3 for the relief of specific performance of contract for the sale of the property. As per the plaint averments, the Plaintiffs and Defendants were known to each other. The suit property is a house and the house site is situated within Hosur Town located in Plot No.71. The suit property was originally acquired by Ramasamy, S/o.G Ramasamy Naidu, the husband of Defendant-1 and father of Defendant-2 and Defendant-3 through a registered sale deed bearing Document No.11493/2005 on the file of the Sub-Registrar, Hosur dated 07.12.2005. The owner of the property died intestate leaving behind the Defendant-1 to Defendant-3 as his legal heirs on 17.11.2006. As the Defendants intended to dispose the suit property, they approached the Plaintiff during December 2014 to sell the scheduled mentioned property. The Plaintiff offered to purchase the scheduled property. After bargaining, the Defendants agreed to sell the suit property to the Plaintiff for Rs.10,50,000/- and the Plaintiff agreed for the same. On the same day, Plaintiff paid an amount of Rs.10,00,000/- to the Defendant as advance. The sale agreement was executed in favour of the Plaintiff and registered as Document No.18978/2014 dated 26.12.2014 on the file of the Sub Registrar, Hosur. As per the terms and conditions of the agreement of sale, the



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Defendants shall execute a regular sale deed in favour of the Plaintiff within two years from the date of contract for sale. Within the set time limit, the Plaintiff was ready and willing to pay the balance amount of Rs.50,000/-. The Defendants did not come forward to execute regular sale deed. The Defendants evaded to register the sale deed by one pretext or the other. Hence the Plaintiff was constrained to file a suit. Before filing of the suit, the Plaintiff issued registered legal notice to the Defendants on 03.11.2016 calling upon them to execute the sale deed on receipt of the balance of sale consideration. The Plaintiff was ready and willing to perform her part of the contract and demanded the Defendants to perform their part of the contract by executing the sale deed after receiving the balance amount. The Defendant-1 and Defendant-3 received the legal notice on 10.11.2016 but the acknowledgment card not delivered by the Postal Department to the Plaintiff. The Plaintiff had filed postal delivery report along with the plaint. Even after the receipt of the said legal notice, the Defendants did not come forward to execute the sale deed and kept quiet. Therefore, the suit had been filed seeking relief of specific performance of contract for sale. The Defendants have filed a written statement disputing the claim of the Plaintiff. The Defendants admitted that they executed the registered sale agreement deed bearing Document No. 18978 of 2014 dated 26.12.2014 on the file of the Sub Registrar, Hosur. In fact the Plaintiff said that as security, instead of mortgage deed, the Plaintiff drafted



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sale deed. It is denied that as per the terms and conditions of the agreement for sale, the Defendant should execute a regular sale deed in favour of the Plaintiff within two years from the date of the agreement for sale of the property. The Plaintiff was ready and willing with the remaining balance of Rs.50,000/- under the contract for sale. The claim that the Defendants were not coming forward to execute a regular sale deed in favour of the Plaintiff is not true. If it is so, Rs.50,000/- is not a big amount. They could have registered the sale deed on the same day itself. It is denied that the Defendants are evading registration on one pretext or other. It is denied that the Plaintiff also issued legal notice to Defendants on 03.11.2016 calling upon the Defendants to execute the sale deed and the claim that the Plaintiff was ready and willing to perform her part of the contract and demanded the Defendants to register the sale deed. The claim that the Defendants received the legal notice were not true.

2.2. It is a case of the Defendants that the Defendants agreed to mortgage the property to the Plaintiff for Rs.10,00,000/- to meet the family expenses and urgent necessities. All the reasons mentioned in the Plaint are denied which are as follows: The Defendants had availed for a loan, at that time but the Plaintiff insisted for sale agreement deed. The Defendant was ready to execute mortgage deed. but the Plaintiff insisted for sale agreement deed. There is no contract for sale of the property as it was only given as a loan for which the Defendant executed the sale agreement deed as a security. The



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Defendant had already settled the interest. The Defendants are ready and willing to give the Principal for the loan availed from the Plaintiff. But the Plaintiff was cheating and sought to execute a sale agreement deed. The claim made by the Plaintiff that the legal notice was issued is false. The Defendant did not receive notice. It is surprising that the suit was filed in the year 2017 after a delay of five months. Therefore, the Defendant was not aware of the same. The Defendants disputed the claim made by the Plaintiff and claimed that the execution of the agreement itself was misused. Therefore, the Defendant sought dismissal of the suit.

2.3. On the pleadings of both the Plaintiff and Defendants, the learned Additional District Judge, Krishnagiri at Hosur had framed the following issues:

- i) Whether the Plaintiff is entitled to the decree for specific performance of contract as prayed for?*
- ii) Whether the sale agreement is a loan transaction?*
- iii) To what relief the Plaintiff is entitled?*

2.4. The husband of the Plaintiff examined himself as P.W-1. In the evidence, the Husband of the Plaintiff as P.W-1 had marked the documents in support of the Plaintiff as Ex.A-1 to Ex.A-6. Ex.A-1 is the sale agreement deed registered as Document No.18978 of 2014 dated 26.12.2014. Ex.A-2 is the registered sale agreement deed bearing Document No.11493 of 2005 dated 07.12.2005. Ex.A-3 is the copy of the legal notice issued by the Plaintiff to the



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Defendants 1 to 3 dated 03.11.2016. Ex.A-4 is the receipts for registration of the notice. Ex.A-5 is the postal delivery report regarding the notice sent to the Defendants. Ex.A-6 is the special power of attorney deed executed by the Plaintiff in favour of her husband dated 04.02.2019. The attestors to the sale agreement deed were examined as P.W-2 and P.W-3. The Defendant-3 was examined as a D.W-1. No documents were marked on the side of the Defendants. One witness by name Ravi was examined as D.W-2. After conclusion of the trial, after hearing the arguments of the learned Counsel for the Plaintiff and the learned Counsel for the Defendant, and on assessment of evidence, the learned Additional District Judge, Krishnagiri at Hosur by judgment in O.S.No.21 of 2017 dated 14.03.2023 had dismissed the suit and granted alternate relief of refund of the advance amount of Rs.10,00,000/- along with interest at 9% per annum from 26.08.2015 till the date of judgment and from the date of judgment till the date of repayment of the entire amount at 6% interest.

2.5. Aggrieved, the Plaintiff before learned Additional District Judge Krishnagiri at Hosur had preferred this Appeal seeking to set aside the judgment of the learned Additional District Judge, Krishnagiri at Hosur and sought the decree of specific performance of contract for sale of the property.

3. The contention of the learned Counsel for the Appellant is that the



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defence of the Defendant is that the sale agreement was not executed for sale rather, it was intended as security for the loan obtained by the Defendant.

4. The learned Counsel for the Appellant invited the attention of this Court to the claim of the Defendant in the written statement and in the cross examination of the Defendant as D.W-1. He had admitted that he received Rs.10,00,000/- and he had not furnished any proof regarding repayment of interest. Therefore, the learned Judge ought to have decreed the suit for specific performance. Instead, the learned Judge had dismissed the suit for specific performance and granted the alternate relief of refund of Rs.10,00,000/- along with interest. Aggrieved by the same, the Plaintiff had approached this Court to set aside the Judgment and decree, and grant the relief of specific performance of contract for sale of the property.

5. In support of his contention, the learned Counsel for the Appellant relied upon the following reported decisions:

(i) In the case of ***Jamila Begum (Dead) through Legal Representatives vs. Shami Mohd through Legal Representatives*** reported in ***(2019) 2 Supreme Court Cases 727***.

(ii) In the case of ***M.Ramalingam and Others v. V.Subramanyam and Others*** reported in ***MANU/TN/0143/2003*** in which it is held as follows:



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“10. What the defendant contended before the lower Court and equally here also is that it was only a loan transaction; that the sale agreement was only manipulated and brought about to hold a threat upon the defendant to secure the due repayment of Rs. 40,000/- lent by the plaintiff; and that it was never intended to be acted upon. When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction all together, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by him, was never intended to be operated as an agreement for sale, but only a loan transaction, which was not recorded in the document. After careful consideration of the available materials, the Court may hasten to say that the appellants have miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except for the interested testimony of the defendant, nothing more is available on record. The specific averments in the written statement run as follows.

This part of the written statement would clearly be indicative of the fact that before executing Ex.A1 sale agreement, the defendant had the full knowledge that it was an agreement for sale in respect of the plaint Schedule mentioned property, and it was also registered. Hence, the contention of the appellants' side that the defendant signed the document without knowing the contents of the same cannot be countenanced.”

(iii) In the case of **D.Ananda Moorthy v. P.Chandrakala** reported in

(2010) 5 MAD LJ 899, it is held as follows:

“42. From the cumulative reading of the rival decisions cited by both sides, the Court can very well come to a conclusion that if there is any written document, wherein the terms mentioned is in unequivocal manner and neither party disputes it, oral evidence is not permissible under Sections 91 and 92 of the Indian Evidence Act. But at the same time, if one party has taken a definite stand that a particular document is not the document for which it has been executed, in reality it has been executed for some other purpose, the bar created under Sections 91 and 92 of the Evidence Act, is not applicable and in that circumstances, oral evidence is permissible so as to prove the intention of the parties with regard to execution of the document in question.



44. In many places it has been discussed and ultimately found that Ex.A1 is a sale agreement and in pursuance of Ex.A1 the plaintiff has shown her readiness and willingness always and therefore, the plaintiff is entitled to get the relief of specific performance. The Courts below have concurrently rejected the contention urged on the side of the defendant and further as per the dictum of the Honourable Apex Court, this Court has pointed out that there is no substantial question of law in the present second appeal and altogether the present second appeal is liable to be dismissed.

(iv) In the case of ***P.Ramasubbamma v. V.Vijayalakshmi and Others*** reported in **(2022) 7 Supreme Court Cases 384**, it is held as follows:

“9. Considering the fact that original defendant No. 1 – vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell.”

(v) In the case of ***Madhukar Nivrutti Jagtap and Others v. Pramilabai Chandulal Parandekar (Dead) through legal representatives and Others*** reported in **(2020) 15 Supreme Court Cases 731**.

(vi) In the case of ***T.G.Pongiamman v. K.M.Natarajan and another*** reported in **2009 (6) CTC 301** it has been held as under:

“14. The defendants have not proved by any shard or shred, scintilla or pint-sized, iota or molecule extent of evidence that any interest was paid by them to plaintiff towards the alleged loan. As such, this Court can only treat their plea as a false one. Had really D.W.1 (D1), as claimed in his Chief Examination Affidavit, paid 18% interest for the sum of Rs.75,000/- or so, then there would have been at least



some passbook or note book or any chit, evidencing the same.

18. It is a trite proposition of law that the adequacy of consideration is not germane for deciding the specific performance of an agreement to sell. Only if there is a prima facie case that fraud has been committed by one party as against the other, in such an event alone inadequacy of consideration would arise.

20. It is the case of the defendants that they, understanding the real nature of the transaction, entered into the said agreement to sell Ex.A1. However, they would contend that it was the plaintiff, who persuaded them to enter into such a transaction under Ex.A1, instead of a mortgage transaction, to avoid the cost of registration and stamp duty. As an after thought, if any plea is dishd out so as to wriggle out of a registered document, it is not for the Court to render judicial help to him and that too when he never acted in a fair manner.”

(vii) In the case of **R.Lakshmikantham v. Devaraji** reported in (2019)

8 Supreme Court Cases 62, it is held as follows:

“11. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See [Mademsetty Satyanarayana v. G. Yelloji Rao and others](#) (paragraph 7) which reads as under (AIR p.1409):

“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is



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beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

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8. The learned Counsel for the Respondent submitted that the Respondent as Defendant in the suit had filed written statement. It is the claim of the Defendant that the sale agreement claimed by the Plaintiff is not intended for sale of the property. It was only executed as a security for the loan from the Plaintiff by the Defendant. The Plaintiff had claimed that the Defendant had handed over title deeds in continuation of the sale agreement and also handed over the possession of the property. The Defendant disputes such claim. The Defendant was ready to repay the loan with interest. The Plaintiff refused to accept it and the Defendant had not at all handed over possession and the suit property is still in their possession.

9. Also it is the contention of the Defendants that the value of the property is Rs.30,00,000/- on the date of execution of the sale agreement deed. No reason was offered by the Plaintiff as to why two years of time was granted for the payment of the balance amount of Rs.50,000/-. Instead of registering the sale agreement deed, the Plaintiff ought to have registered the sale deed. Although a period of two years was granted for the sales, the Plaintiff has not explained why such an extended period of two years was necessary. Having paid almost the entire sale consideration the Plaintiff must explain what



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prevented the Plaintiff from executing the sale for a meagre amount of Rs.50,000/-. As per Clause 27 of the General Clauses Act, the Plaintiff had not discharged the burden cast upon her. In the cross examination of P.W-1 stating that

“பிரதிவாதிகள் தான் காலக்கெடு கேட்டார்கள்

It was an improvement, it was not stated in the present notice and in the plaint. The Plaintiff claimed that she herself approached this Court and it is unbelievable that she approached the Defendant directly. Saraswathi was not examined as witness.

10. The Defendants claim that they are residing in the suit property which is their residence proof in the Aadhar Card of D.W-1. D.W-1 was examined after 8 years from the date of sale agreement, by which time the property fetches Rs.65,00,000/-. The Plaintiff relied on Section 92 of Indian Evidence Act to challenge the defense of the Defendant which is contradictory to the recitals in the document.

11. The learned Counsel for the Respondent relied on the following reported decisions:

“(i) In the case of *Pungodi v. Dhamotaran* reported in **2023 SCC OnLine Mad 702** it has been observed as under:



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“18. The following circumstances has to be noted when this Court examine whether the Agreement was a sale transaction or a document which was executed by defendants as a security for the loan transaction without any intention to act upon as a sale agreement.

(a) As pointed out earlier, major portion of the sale consideration was paid on the date of Agreement; but for paying the balance amount of Rs.50,000/- out of RS.13.50 lakhs, two years time was stipulated by the Plaintiff to pay and get the sale deed registered. From the evidence, it is also admitted by the plaintiff that the plaintiff was not in a position to mobilise the balance amount within the stipulated time. There is no explanation from years to pay a paltry sum of Rs.50,000/- especially when the plaintiff was capable of paying the entire advance immediately after the defendants approached her to release the property from prior agreement.

(c) In the Agreement -Ex.P-1, there is a specific reference that possession is not handed over to the plaintiff. However, quite contrary to the recitals in the document, the plaintiff has stated in the plaint as well as in the evidence that possession and the parent documents for the suit properties were delivered to the plaintiff. The fact that parent document were delivered to the plaintiff is proved by the plaintiff by producing the original sale deeds in favour of 2nd defendant marked as Exs.P5 to P8. Normally, parent documents are handed over to the purchaser only at the time when the actual sale deed is executed by the vendors. May be in certain cases, possession will be handed over to the purchaser when substantial amount of money is advanced under the sale agreement. The fact that possession was not handed over but title deeds were given to plaintiff is also a circumstance to probablise the case of defendants.”

ii) In the case of **Pappammal @ T.Pappa vs. P.Ramasamy** reported in **2012 SCC Online Mad 1265**.

(iii) In the case of **P.R.Ramanathan v. M.K.Ranganathan** reported in **2012-2-L.W.246**, in which it is held as follows:

“28. In more than one place, D.W.1 mentioned that 7.3.2008 was



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the date fixed as the last date for performance of the contract. Therefore, one line could not be picked out from the cross examination of D.W.1, by the learned counsel for the plaintiff, as if the defendant waived the date fixed in the contract. I am not inclined to agree with the submissions of the learned counsel for the plaintiff. It is well settled that the evidence shall be read as a whole and a line alone could not be picked out. If the entire evidence of D.W.1 is read, it would make it clear that the agreement of Exhibit P-4 got lapsed after 7.3.2008 and he also sent Exhibit D-1 dated 25.3.2008 in this regard. While rejecting the submissions of the learned counsel for the plaintiff, I am of the view that the defendant never waived the date as fixed in the contract.

29. In support of the contention that the defendant waived the date fixed in the contract, the judgment of the Honourable Supreme Court in Divisional Manager, United India Insurance Co. Ltd. and Another v. Samir Chandra Chaudhary (supra) relied on by the learned counsel for the plaintiff is not applicable to the facts of this case. In my view, the said judgment far from helping the plaintiff, supports the case of the defendant.

Points for determination:

1. Whether the claim made by the Plaintiff that the sale agreement deed was executed for the sale of the property is true?

2. Whether the claim made by the Defendant that the sale agreement deed even though registered as sale agreement deed was not intended for sale of the property. It was executed only on the insistence of the Plaintiff is true?

3. To what relief the Appellant/Plaintiff is entitled to?

12. Heard the learned Counsel for the Appellant N. Manokaran and the learned Counsel for the Respondent Bharath Kumar. Perused the original



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records of the trial Court in O.S.No.21 of 2017, the depositions of the witnesses and documents filed by the Plaintiff as Ex.A-1 to Ex.A-5 and the judgment of the learned Additional District Judge, Krishnagiri at Hosur.

13. The submission of the learned Counsel for the Appellant that on the date of the agreement, Ex.A-1, the sale price was fixed at Rs.10,50,000/-. Out of which, the Plaintiff had paid Rs.10,00,000/- and for the payment of the balance of sale consideration of Rs.50,000/-, two years time was fixed which is found unusual from the point of view of an ordinary prudent man. When the sale price is fixed at Rs.10,50,000/- for the house and house site in a place in Hosur Town nearby Bengaluru which is a costly area. Therefore, it has all the facilities in any Municipal Towns in Tamil Nadu. Being nearer to Bengaluru City, the price fluctuates often. Therefore, if the intention of the Plaintiff was to purchase the property, the Plaintiff could have registered the sale deed immediately. The Plaintiff having the wherewithal to pay Rs.10,00,000/- in one installment need not seek two years time for the payment of the balance meagre amount of Rs.50,000/- is found unusual.

14. The argument of the learned Counsel for the Appellant (Plaintiff before the trial Court) is that the sale agreement is a registered sale agreement. Therefore, it is to be presumed as a bona fide sale agreement and the defence of



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the Defendant is contradictory to the recitals in the sale agreement deed under Ex-A-2 and therefore cannot be permitted in a Court of law as per Sections 91 and 92 of the Indian Evidence Act. Therefore, the learned Additional District Judge, Krishnagiri at Hosur by rejecting the claim of the Plaintiff had dismissed the suit for specific performance and instead granted the relief of refund of the advance amount is erroneous and is to be set aside is found not acceptable in the facts and circumstances of this case.

15. The decision cited by the learned Counsel for the Appellant in the case of *Jamila Begum (Dead) through Legal Representatives vs. Shami Mohd through Legal Representatives* reported in *(2019) 2 Supreme Court Cases 727* supports the claim of the Plaintiff. A registered document carries with it a presumption that it was validly executed and it is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law as per Section 16(1) of Indian Contract Act by proving that one of the parties was in a position to dominate the will of the other. Here, the Defendants were in dire need of money. When they approached the Plaintiff, the Plaintiff insisted for sale deed whereas the Defendants considered executing a mortgage deed. However, the Plaintiff insisted on a sale agreement deed. Accordingly, the Defendants had executed sale agreement deed and on demand of the Plaintiff they had handed over the sale deed in favour of the



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father of the D.W-1, Defendant-3 in the suit and husband of the Defendant-1.

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This is found probable in the facts of this case. The Plaintiff who claims to have paid Rs.10,00,000/- for the sale price fixed at Rs.10,50,000/- need not grant a period of two years for a meagre amount of Rs.50,000/- which itself creates suspicion in the mind of an ordinary prudent man. Therefore, what had been stated by the Defendants in the written statement is found probable. They are in dire need of money. The Plaintiff had granted the loan when the persons seeking money was ready to execute mortgage deed. However, the Plaintiff insisted for sale agreement deed is found probable. The statutory notice issued by the Plaintiff as per the claim of the Plaintiff was received by the Defendant. But they had not signed the acknowledgment. Therefore, acknowledgment card was not received by the Plaintiff. The Plaintiff had taken postal tracking receipt and filed it as proof of delivery. The Defendant dispute the address for which the Statutory notice was issued. Therefore, the Defendant had denied in the written statement that they had received notice. In the evidence as well as the arguments before the trial Court, it was stated on behalf of the Defendants that the summons in the suit was also not served on them. They themselves found out that the suit had been instituted against them and then engaged a Counsel and filed written statement. Those things are found against the claim made by the Plaintiff. The Plaintiff did not attend the Court. Instead the husband of the Plaintiff alone had adduced evidence. As per section 120 of the



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Indian Evidence Act, the parties to the suit, the spouse of the parties are competent witnesses. Therefore, the husband of the Plaintiff had adduced evidence on behalf of the Plaintiff. The husband as P.W-1 had denied the claim made by the Defendants in his cross examination. Still, the Court is within its discretion to draw adverse inference from the conduct of the Plaintiff in granting a long period of two years time for a meagre amount of Rs.50,000/-. The reported decision relied by the learned Counsel for the Appellant will not help the case of the Appellant herein. As the Plaintiff being the lender is in an advantageous position, the Defendant being the person who was in dire need of money was ready to execute any document as per the demand of the Plaintiff. The wife of D.W-1 was only a name lender. The person who was involved in all these transactions was her husband. This also can be presumed in the ordinary course of a normal prudent man. That is why, the Plaintiff, Saraswati had been reluctant to adduce evidence. The sale agreement having been registered gives an impression that it is bona fide. At the same time, the party to the document who had executed sale agreement deed and who were aware of the consequences of executing the sale agreement deed had later disputed it admitting that a loan of Rs.10,00,000/- was availed but denying the execution of the sale agreement. They claimed that the sale agreement deed was executed only for the purpose of availing the loan at the insistence of the Plaintiff. As the Plaintiff insisted to provide security for the loan availed, the Defendant was



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willing to execute mortgage deed, but the Plaintiff insisted sale agreement of immovable property. Therefore, the sale deed in the name of the father of D.W-1 was handed over as security and the amount was availed as loan. This can be the only probable cause for grant of two years time for the meagre amount of Rs.50,000/-. If the intention of the Plaintiff was to purchase the property, the Plaintiff could have very well executed the sale deed on the date of the sale agreement deed itself, since the Plaintiff had paid the entire sale consideration less Rs.50,000/-, a meagre amount. By the time, two year period expires, the value of the property will multiply several times, as Hosur is a Municipal town nearby Bengaluru City. As the price of the property in and around Hosur is high. For the property being house and house site, the amount was fixed at Rs.10,50,000/- on the date of the sale agreement. If the intention of the Defendant was to sell, the Plaintiff could have very well executed the sale deed immediately on the same day, instead of registering it as sale agreement deed as Document No. 18978 of 2014 dated 26.12.2014 before the Sub Registrar Office, Hosur. The person having Rs.10,00,000/- with him or her may not find it difficult to furnish Rs. 50,000/- extra for which they need not grant two years. Therefore, the claim of the Plaintiff in the suit as well as the clause in the sale agreement deed granting two years period for execution of sale deed is found not to be in favour of the sale deed, it is otherwise as claimed by the Defendant.



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WEB COPY 16. As per the reported decision in the case of ***Jamila Begum (Dead) through Legal Representatives vs. Shami Mohd through Legal Representatives*** reported in ***(2019) 2 Supreme Court Cases 727***, the claim of the Appellant that the sale agreement is a registered one and therefore it is a bona fide sale agreement is true as per the contents. The signature on the sale agreement is not denied by the Defendants. The Defendant examined himself as D.W-1 admits that they executed it, but claims it was executed only as security. When the Defendant insisted for mortgage deed, the Plaintiff insisted for sale agreement deed and the original sale deed to be granted to the Plaintiff. Therefore, they had handed over original sale deed also. In the evidence, the Defendant had clearly stated that their possession was not handed over to the Plaintiff. In the course of the cross examination, D.W-1 claims that they had paid interest to the Plaintiff, but the Plaintiff had not issued any receipt for the same. They claimed that 3% interest was paid.

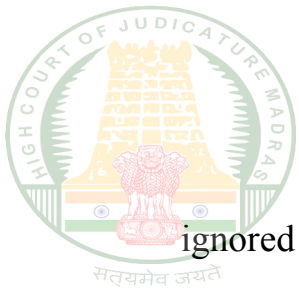
17. The decision in ***(2004) 4 SCC 794 (Parvinder Singh vs. Renu Gautam and others)*** is based on the decision of the Privy Council reported in ***AIR 1936 PC 70*** in the case of ***Tyagaraja Mudaliyar v. Vedathani*** wherein the proposition that oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real



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transaction between the parties but it was something different. Based on the said decision of the Honourable Supreme Court in 2004 (4) L.W 53, it was held the fact that Ex.A-1 which came into being, it was never contended to be acted upon and it was a sham document when the said stand is probed into further as held by the Honourable Supreme Court, the bar under 92 of the Indian evidence Act vis-a-vis Ex.A-1 would operate if only the Appellant attempt to rely upon Ex.A-1 agreement and simultaneously sought to vary and contradict its terms. According to the Appellant, the entire evidence let in both oral and documentary was only to demonstrate that in spite of existence of Ex.A-1, it will have to be held that the parties had a different contract all together and Ex.A-1 was never intended to be acted upon” That principle is applicable to the facts of this case. The claim of the Plaintiff granting 2 years period for the Defendant to execute sale deed is found unusual by which time the value of the property increases manifold. It is not a rural area. It is a Municipal area near to Bengaluru where the value of the immovable properties fluctuates on a daily basis. Therefore, by all means what had been stated by the Defendants cannot be rejected lightly.

18. The registered Ex.A-1 having been registered indicates that it is a bona fide sale agreement deed. But the claim made by the Defendant cannot be rejected lightly. The person who loses his property, *dwelling house* cannot be



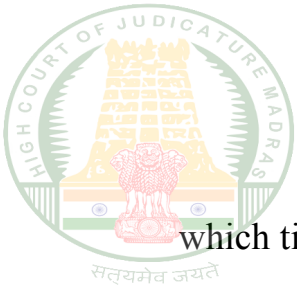
ignored or lost sight of by the trial Court or by the Appellate Court. It is the claim of the Defendant that they wanted to pay the money back, but the Plaintiff was not willing to accept it. Unfortunately, in this case, there was no exchange of notices prior to filing of the suit. Therefore, what is in evidence before the trial Court alone had to be considered.

19. The learned Counsel for the Respondent relied on the evidence of the P.W-2 and P.W-3 to support his contention. P.W-1 Devarajan was an auto rickshaw driver. Witnesses are also auto rickshaw drivers. In his cross examination, P.W-2 Krishnamurthy claims that the transaction of the contract was at the residence of the Defendant. He was unable to specify what the agreement between the parties was and when they went to talk about the loan and the sale agreement, he claimed ignorance regarding the terms of the contract, but claimed that he had affixed his signature as a witness only when the sale agreement was registered before the Sub Registrar Office. P.W-3 Ramamurthy also had spoken to about the same. To the pointed question by the Counsel for the Defendants how a person having the resources to pay Rs.10,00,000/- was not able to pay a meagre amount of Rs.50,000/-. They did not have an answer. Instead of waiting for two years, what prevented the Plaintiff from getting the sale deed itself registered? They did not have an answer. The suggestion put to P.W-2 and P.W-3 that as friends of the Plaintiff,



they wantonly supported the claim of the Plaintiff knowing well that the property was not intended for sale by the Defendants and that they denied the claim of the Defendants in the written statement was denied by P.W-2 and P.W-3.

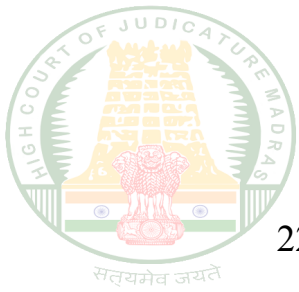
20. The reported decision cited in the case of ***M.Ramalingam v. V.Subramanyam*** reported in ***2003 1 MLJ 694*** is on the similar set of facts. The Defendant in the said case had stated that it was not intended for sale of the property. It was a loan transaction. The sale price in the said case was Rs.40,000/- and on the said sale agreement date, Rs.35,000/- was paid granting six months time for balance amount of Rs.5000/-. The claim of the Defendant was rejected by the Division Bench of this Court. The Defendant had went in Appeal in the judgment in the reported decision and the Appeal was dismissed. Here it is not 6 months time, it was two years time for a meagre amount of Rs.50,000/-. Therefore, the finding of the Division Bench is not applicable to the facts of this case. Further, two year period indicates increase in the value of the property. The Defendant had stated that as on the date of execution of Ex.A-1, the value of the property was Rs.30,00,000/- whereas the sale agreement deed, it was given as Rs.10 lakh. Therefore, their intention was not to sell the property. By the time the Defendant-3 was examined as D.W-1, 8 years had passed from the date of execution of the sale agreement deed by



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which time, the value of the property was Rs. 65 lakhs that cannot be denied or rejected lightly. Further it is the dwelling house of the Defendants. Therefore as per the Specific Relief Act, the Court has the discretion either to grant or refuse to grant specific relief.

21. Here, the facts of the case as per the Defendant is that the value of the property was Rs.30,00,000/- on that date of execution of the sale agreement. When the sale price was fixed at Rs.10,00,000/- and the Plaintiff had paid entire Rs.10,00,000/- and for a meagre amount of Rs.50,000/-, a period of 2 years time had been granted, by which time, the value of the property multiplied. Therefore, the reported decision relied by the learned Counsel for the Appellant will not be helpful to the facts of this case. There, in the reported decision, for meagre amount of Rs.5000/-, six months time was granted. The trial Court granted specific performance of contract decreed the suit for specific performance against which Defendant filed Appeal. The Appeal was dismissed as the Defendant was unable to prove the case of loan transaction. In this case, the recitals itself is in favour of the Defendant. Therefore the argument of the learned Counsel for the Appellant relying on the decision in the case of *M.Ramalingam v. Subramanyam* reported in **2003 1 MLJ 694** is not found applicable to the facts of this case. Hence rejected.



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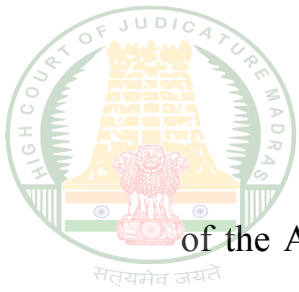
22. In the reported decision cited by the learned Counsel for the

Appellant in the case of ***D.Ananda Moorthy v. P.Chandrakala*** in ***2010 5 MLJ***

899, the Honourable Supreme Court had observed,

“42. From the cumulative reading of the rival decisions cited by both sides, the Court can very well come to a conclusion that if there is any written document, wherein the terms mentioned in unequivocal manner and neither party disputes it, oral evidence is not permissible under Sections 91 and 92 of the Indian Evidence Act. But at the same time, if one party has taken a definite stand that particular document is not the document for which it has been executed, in reality it has been executed for some other purpose, the bar created under Sections 91 and 92 of the Evidence Act, is not applicable and in that circumstances, oral evidence is permissible so as to prove the intention of the parties with regard to execution of the document in question.”

23. Here, the property is in Hosur town. It is a municipal town where the property fetches higher value and it fluctuates very often as it is a place nearer to Bengaluru City having all the advantages available in Bengaluru City. Therefore, the evidence of the Defendant cannot be rejected lightly. As per the Defendants contention, the value of the property was Rs.30,00,000/- on the date of the sale agreement. But the sale price was fixed at Rs.10,00,000/-. The Defendant wanted to execute mortgage deed. The Plaintiff insisted for sale agreement. Since the Defendants were in dire need of money, they had to heed to the insistence of the Plaintiff. That much of evidence is available in the evidence of the Defendant. Therefore, the learned Additional District Judge Krishnagiri at Hosur had dismissed the suit of the Plaintiff and granted the alternate relief of refund of the advance amount along with interest. The claim



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of the Appellants relying on the decision herein is rejected in the light of the observations of the honourable Supreme Court regarding oral evidence under Section 91 and 92 of the Indian Evidence Act.

24. In the reported decision in the case of ***P Ramasubamma v. Vijayalakshmi and others*** reported in ***(2022) 7 SCC 384***, the party to a sale agreement who agreed for sale of the property having accepted sale consideration had sold the property subsequently to third parties. The third parties were not impleaded in the suit. Still, on appreciation of evidence, the learned trial judge had decreed the suit for specific performance in favour of the Plaintiff. Aggrieved, the Defendant had approached the High Court. The High Court had set aside the decree of the Trial Court against which the affected party moved to the Honourable Supreme Court. The Honourable Supreme Court had set aside the judgment of the High Court and restored the judgment of the trial Court.

25. Here, the facts are different. The Defendant claims that the sale agreement was only at the insistence of the Plaintiff. When the Defendant had approached the Plaintiff for loan, the Defendant was ready to execute mortgage Deed. Still, the Plaintiff insisted for sale agreement deed for disbursement of the amount by handing over the original sale. Accordingly, the Defendant had



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agreed for the same. But the intention was not for sale of the property, the dwelling house. Therefore, two year period was granted. That is reflected in the sale agreement deed itself for a meagre amount of Rs.50,000/-.

26. Here, the trial Court had on proper appreciation of evidence dismissed the suit for Plaintiff and instead granted the alternate relief of refund of the amount. Therefore, the Plaintiff has come forward by filing this Appeal. The judgment of the learned Additional District Judge, Krishnagiri at Hosur is found proper, on proper appreciation of evidence, particularly in the light of the recitals in Ex.A-1 and the claim made in the written statement. Particularly when there is no exchange of notices between the parties prior to filing of the suit. Under those circumstances, the judgment of the learned trial Judge is found proper and not erroneous. The facts of the reported decision in the case of ***P.Ramasubbama v. V.Vijayalakshmi and Others*** is not helpful to the facts of this case.

27. In the reported decision in the case of ***Madhukar Niruttii Jagtap and others v. Pramila Bai Chandulal Parandekar reported in (2020) 15 Supreme Court Cases 731*** is a case where the concurrent finding of the Trial Court and Appellate Court were set aside in Second Appeal. The High Court rejected the claim of the Defendant that the sale agreement was executed as



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loan transaction based on appreciation of evidence. Here, in our case, the Plaintiff had already paid Rs.10,00,000/- only for Rs.50,000/-, a meagre amount, the two years time was granted which is found unusual. Instead of granting two years, the Plaintiff ought to have executed the sale deed itself on the date of the sale agreement under Ex.A-1. Therefore, the finding of the learned trial Judge cannot be erred. The reported decision relied by the learned Counsel for the Appellant is not found applicable to the facts of this case.

28. In the reported decision in the case of ***R.Lakshmikantham v. Devaraji*** reported in ***(2019) 8 Supreme Court Cases 62***, is a case where the concurrent finding of the Courts below were reversed by the High Court that the Plaintiff was not ready and willing to perform his part of the contract against which the Plaintiff had approached the Honourable Supreme Court. In this case, the sale price was Rs.3,65,000/- and the Plaintiff in the reported case had paid Rs.65,000/- and balance of sale consideration to be paid within 6 months. Within 3 months, the Defendant in the reported case had to obtain parent deed by clearing the mortgage, but had not executed the sale deed within the specified time. The Plaintiff sent legal notice directing the Defendant to execute the sale deed. The Defendant received the notice, but did not reply. The trial Court decreed the suit against which Defendant went in Appeal. The Appeal was dismissed against the concurrent judgment. The Defendant went



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for Second Appeal. In the Second Appeal, the Second Appeal was allowed and

the concurrent finding of the trial Court and first Appellate Court were set aside. Therefore, the Plaintiff in the suit had preferred the Appeal to the Honourable Supreme Court. The Honourable Supreme Court set aside the judgment of the High court and granted specific relief, thereby restored the judgment of the trial Court. In our case, the trial Court had on proper appreciation of evidence refused specific performance, but granted the alternate relief of refund of the amount. The Specific Relief Act is clear regarding exercise of discretion for as far as the facts of the case, the Court need not grant specific performance in all cases, it varies on case to case regarding facts of each case. Accordingly in the case before the learned Additional District Judge, Krishnagiri at Hosur, on appreciation of evidence, the learned Judge had declined specifically but in equity granted refund of the advance amount. It cannot be found erroneous or faulty. Therefore the reported decision cited by the learned Counsel for the Appellant in the case of ***R.Lakshmikantham v. Devaraji*** is not helpful to this case. There, the Defendants undertook to clear the mortgage debt after receiving part of the sale consideration, but failed to clear the mortgage and handed over the title deeds. Therefore, the Plaintiff approached the Court, the Court granted decree in favour of the Plaintiff. When the Defendant went in Appeal, Appeal was dismissed, confirming the judgment of the trial Court. In the Second Appeal, the Honourable High Court set aside



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the concurrent finding of facts against which the Plaintiff went in Appeal to the Honourable Supreme Court. Here, the facts are different. The Plaintiff having paid almost full the sale price, for a meagre amount of Rs.50,000/- he had granted two years time by which time, the value of the property would surely increase. Therefore, what is claimed in the written statement by the Defendant that it was not intended for sale is found justified. It was created as security for the loan availed also probablized the case. Therefore, the learned Judge had on equity granted the alternate relief of refund of the amount. As per Specific Relief Act, the Court need not decree the suit for specific performance, need not exercise discretion for grant of specific relief. The discretion is with the Court either to grant specific relief or to refuse to grant specific relief. Here, the Court after appreciation of evidence declined to grant the relief of specific performance but in equity granted refund of the amount. Therefore, the reliance placed by the learned Counsel for the Appellant in the case of ***R.Lakshmikantham v. Devaraji*** is rejected.

29. The reliance placed by the learned Counsel for the Respondent in the case of ***Pappammal @ T.Pappa v. P.Ramasamy*** reported in ***2012 SCC OnLine Mad 1265***, the facts of this reported decision are similar to the facts of the case before the learned Additional District Judge krishnagiri at Hosur. In the reported decision, the sale price was fixed at Rs.40,000/-. Rs.30,000/- paid

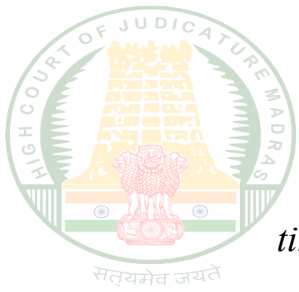


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on the date of the sale agreement and for the balance amount Rs.10,000/-, 5 years period was granted. The trial Court decreed the suit. In the Second Appeal, the High Court set aside the decree holding that it was not intended for sale. In the reported case, the Plaintiff admitted in evidence that five years period was granted provided as he was not having means to pay Rs.10,000/- immediately. Therefore, having regard to the admission of the respondent that on the date of the agreement for sale he was not having means to pay and the reading of clause in the agreement for sale would make it clear that the Respondent can enforce the specific performance at any time within the period of five years. In the evidence he had admitted that he did not register the sale agreement as he was not having sufficient finance. Therefore, on appreciation of evidence, the trial Court decreed the suit. The Appeal preferred by the Defendant was dismissed against which Second Appeal was filed. In the Second Appeal, the concurrent finding of the Courts below were set aside holding that it was not intended for sale it was only a security towards loan transaction. In the reported decision, based on the decision of the Honourable Supreme Court in *K.S.Vidyanadam*, it is observed as follows

“28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested by K.S.Vidyanandam:

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore



time/period prescribed cannot be ignored.

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(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

30. In the reported decision in the case of ***P.R.Ramanathan v. M.K.Ranganathan*** reported in ***2012-2-L.W-246***, the suit for specific performance was dismissed on appreciation of evidence. As per the sale deed, the sale price was fixed at Rs.33,00,000/- and the Plaintiff had paid only Rs.10,00,000/- on the date of the sale agreement, advance Rs.10,00,000/- on 07.12.2007 agreeing to pay the balance amount within 3 months specifically mentioning the date as 07.03.2008 failing which the contract will get lapsed



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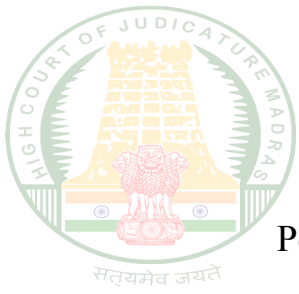
and time is the essence of the contract. The Plaintiff sought to get over the fixation of time in the contract by arguing that the time limit was waived by the Defendant as the Defendant agreed to come to the Registration office for execution of sale deed on 16.04.2008. This was pleaded so by the Plaintiff in the plaint. However, the same was not established by the Plaintiff by any acceptable evidence. The Defendant categorically stated that he approached the Plaintiff during the last week of February 2008 and demanded the balance sale consideration to complete the sale before the date fixed in the sale agreement. In the written statement by the Defendant, it is stated that in spite of the same, the Plaintiff did not bother to perform his part of the contract. Therefore, the agreement got lapsed. The Defendant directed the Plaintiff to get back the advance amount within 15 days as per the terms of agreement. During appreciation of evidence it was observed that the Defendant as D.W-1 mentioned that 07.03.2008 was the date fixed as the last date for performance of the contract. Therefore, one line picked out from the cross examination D.W-1 by the learned Counsel for the Plaintiff as if the Defendant waived the date fixed in the contract was not accepted by the learned Judge of this Court. and on appreciation of evidence, it was found that the Plaintiff is not entitled to the discretionary relief as he approached the Court with unclean hands by deliberately suppressing the letter dated 25.03.2008 marked as Ex.D-1 during the course of the trial. In equity, the Plaintiff was granted the refund of the



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advance amount. Therefore, here also, the Plaintiff had approached the Court for specific performance of contract. Still the claim of the Plaintiff is to be accepted instead of registering the sale agreement he ought to have executed the sale deed on the same day, when almost the sale price Rs.10,00,000/- was paid and for a meagre amount of Rs.50,000/- he need not have granted two years time. Therefore two years time was considered by the trial Judge as the claim made by the Defendant that it was executed for security purpose was found probable. It is supported by the decisions relied in the case of **Pungodi v. Dhamotaran** reported in **2023 SCC OnLine Mad 702**, where the learned Judge of this Court had relied on various earlier rulings of this Court in *Tyagaraja Mudaliyar v. Vedathani* reported in *AIR 1936 PC 70*, in *K.Muthusamy v. K.V.K.Subramaniam* reported in *(2011) 2 LW 289*; in *Tejram v. Patirambhau* reported in *(1997) 9 SCC 634* and in *T.Pappa v. P.Ramasamy* reported in *(2012) 4 CTC 100*, in the light of these decisions, the submission of the learned Counsel for the Respondent is found proper regarding the claim made in the written statement. Therefore the judgment of the learned Additional District Judge Krishnagiri at Hosur is not found erroneous as claimed by the Appellant herein.

31. In the light of the above discussion, Point for determination 1 and 2 are answered against the Appellant and in favour of the Respondents.



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Point for determination-1 - The claim made by the Plaintiff that the sale agreement deed was executed for the sale of the property is not true.

Point for determination-2 - The claim made by the Defendant that the sale agreement deed even though registered as sale agreement deed was not intended for the sale of the property. It was executed only on the insistence of the Plaintiff.

Point for determination-3, The Plaintiff is entitled to refund of the amount as ordered by learned Additional District Judge, Krishnagiri at Hosur.

In the result, **the Appeal Suit is dismissed** with cost throughout. The Plaintiff is entitled to the refund of the amount as was ordered by the learned Additional District Judge, Krishnagiri at Hosur. Consequently, connected Miscellaneous Petition is closed.

03.06.2025

Shl
Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order

To:

1. The Additional District Judge,

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Krishnagiri at Hosur.

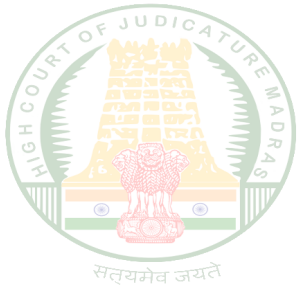
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2. The Section Officer,
V.R. Section,
High Court Madras.

SATHI KUMAR SUKUMARA KURUP, J.,

shl

**Judgment made in A.S.No.389 of 2023
and C.M.P.No.13617 of 2023**



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03.06.2025