



WEB COPY

SA NO. 839 of 20254

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 839 of 2024

Periyammal

Appellant(s)

Vs

1.Manickam

Ganesan (Died)

2.Sundaram

3.Rasammal

4.Baskar

Respondents

Prayer: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 30.11.2022 made in A.S.No.13 of 2015 on the file of the Additional District Court, Namakkal, confirming the judgment and decree dated 13.01.2015 made in O.S.No.227 of 2003 on the file of the Subordinate Court, Namakkal.

For Appellant(s)

: Mr.S.Senthil

For R1

: Mr.T.Dhanya Kumar

For R2

: Insufficient Address

For R3 & R4

: No appearance



JUDGMENT

WEB COPY

The appellant has filed this appeal to set aside the Judgment and decree dated 30.11.2022 made in A.S.No.13 of 2015 on the file of the Additional District Court, Namakkal, confirming the judgment and decree dated 13.01.2015 made in O.S.No.227 of 2003 on the file of the Subordinate Court, Namakkal.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The appellant herein is the second defendant in the suit. Challenging the concurrent findings of the courts below, the second defendant has preferred this appeal. Before the trial court, the respondent/plaintiff, Manikam, filed a suit in O.S. No. 227 of 2003 against two defendants, namely Palaniandi and his wife Periyammal, seeking a direction to execute a sale deed as per the sale agreement dated 09.07.2001. He also sought alternative relief concerning the suit properties described in the plaint schedule. Defendants Palaniandi Gounder and Periyammal are

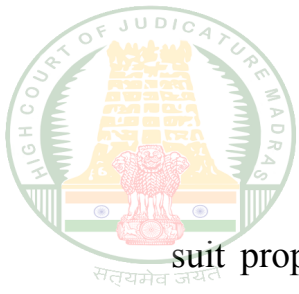


WEB COPY

husband and wife. During the pendency of the proceedings, the first defendant, Palaniandi, died, leaving behind two sons as his legal heirs. They were impleaded as defendants 3 and 4.

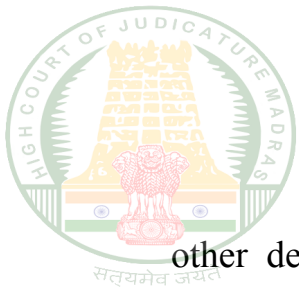
4. The brief facts of the plaintiff's case are that the suit property originally belonged to defendants 1 and 2, and they agreed to sell the property to him for a total sum of Rs.1,70,000/-. On 09.07.2001, defendants 1 and 2 received Rs.1,45,000/- as advance, and the balance Rs.25,000/- was to be paid within 3 years, on or before 08.07.2004. Despite repeated demands, the defendants refused to execute the sale deed. However, possession of the property was handed over to the plaintiff on the date of the agreement. Even after the issuance of notice, the defendants were not inclined to execute the sale deed, hence the suit was filed for specific performance and, in the alternative, for refund of the advance amount.

5. The second defendant filed a written statement denying that she and the first defendant were husband and wife. She claimed that both defendants were unaware of the alleged sale agreement. However, she admitted that the



WEB COPY

suit property was purchased by defendants 1 and 2 via a sale deed dated 05.02.1983 and that they were the absolute owners of the property. She contended that in 2001, due to the old age and ill-health of the first defendant, he was admitted to the hospital. At that time, the second defendant approached the plaintiff, who was a moneylender, and borrowed Rs.5,000/-. As security, the plaintiff obtained her thumb impression and the first defendant's signature on blank papers. Taking advantage of their illiteracy and old age, the plaintiff allegedly fabricated the sale agreement and made a false claim over the suit property. She further denied that possession of the property was handed over to the plaintiff. During the pendency of the suit, the first defendant died, and the third defendant alone was recognized as his legal heir. Subsequently, the third defendant sold his half-share to the plaintiff. However, the suit was not properly amended to reflect this transaction. In her additional written statement, the second defendant contended that after the demise of the first wife of the first defendant, he married the second defendant. Defendants 3 and 4 are the sons born through the first wife. She claimed that D-3 and D-4 had sold their half-share to the plaintiff on 19.01.2005, but such a sale is not binding on the



other defendants. Therefore, she prayed that the suit be dismissed as it lacked merit.

6. Before the trial court, only the second defendant contested the suit. Defendants 3 and 4 remained ex parte. Both parties adduced oral and documentary evidence. On the side of the plaintiff, P.W.1 to P.W.4 were examined, and documents marked as Exs. A1 to A7 were produced. The second defendant, Periyammal, was examined as D.W.1, and one document was marked as Ex. B1 on the side of the defendants.

7. The trial court framed three issues. Considering the evidence on record, the learned trial judge held that the second defendant failed to prove that she had signed blank papers and that the sale agreement was fabricated by the plaintiff. No evidence was adduced by her to support that claim. Furthermore, she did not take any legal steps to recover the original document after the alleged loan was discharged. Hence, the conduct of the second defendant was viewed as suspicious.



WEB COPY

8. Additionally, during the pendency of the suit, defendants 3 and 4 executed a sale deed in favour of the plaintiff regarding their half-share, which corroborated the plaintiff's version. The plaintiff also proved the execution of the agreement through the attesting witness and the scribe of the document. He demonstrated his readiness and willingness to perform his part of the contract within the stipulated time. Accordingly, the suit was decreed, granting the relief of specific performance.

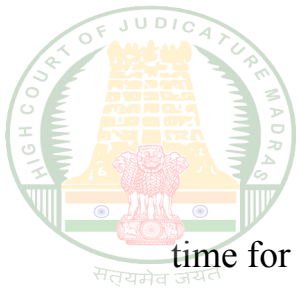
9. Challenging the findings, the second defendant preferred an appeal in A.S. No. 13 of 2015 before the Additional District Court, Namakkal. The learned first appellate judge discussed the facts and circumstances of the case and framed separate points for consideration. After examining the evidence, the judge observed that Exhibit A1, the sale agreement dated 09.07.2001, was unregistered. However, though the agreement mentioned delivery of possession and would generally require registration under Section 53-A of the Transfer of Property Act due to the amendment, the amendment itself came into force only on 24.09.2001. Since the agreement was executed before the amendment came into force, registration was not



required. Further, the learned appellate judge noted that defendants 3 and 4 executed a sale deed in favor of the plaintiff regarding their half-share, indicating their acceptance of the agreement. The plaintiff also sent a legal notice within the stipulated period expressing his readiness and willingness, which went unanswered. The second defendant failed to prove that she signed blank papers under coercion or for a loan. Therefore, the appellate court confirmed the findings of the trial court and dismissed the appeal.

10. Challenging the concurrent findings of the Courts below, the 2nd defendant preferred this appeal on following grounds.

(i) The Trial Court and First Appellate Court failed to consider the fact, though the 1 respondent claimed to be put in possession immediately on the date of sale agreement i.e., on 09.07.2001, however he did not give the reason as to why for the payment of the balance sale consideration of a meagre sum of Rs. 25,000/- and execution of the sale deed was fixed for a long time of 3 year i.e., on 08.07.2004. If really the parties' intention was to execute a sale deed, then the period would have been prudently fixed for a short time and not a very long period of 3 years. It clearly shows that the intention was only a security for the purpose of loan to provide sufficient



time for its repayment.

WEB COPY

(ii) The Trial Court and the First Appellate Court failed to consider that the suit properties are a valuable property measuring 3.12 Acres of land which anybody in their right mind would not part away for a meagre sum of Rs. 1,70,000/- as sale consideration.

(iii) The Trial court and the first Appellate Court failed to consider the collusion between the 1st Respondent/ Plaintiff and Defendants 2 and 3. During the pendency of suit they executed Ex.B1, Sale Deed on 19.01.2005 in favour of the 1st Respondent. But the said fact was suppressed by the 1st Respondent, when he files the Amended Plaint on 31.08.2006, by impleading the Defendants 2 and 3. This shows that the 1st respondent has forged Ex. A1 Sale Agreement and at any cost wanted to grab the property. There is a clear collusion between the sons of the Palaniandi Gounder and the 1st respondent to cause the appellant, who is an elderly lady, a victim of this entire conspiracy.

(iv) The Court below failed to consider the evidence of PW1 who concedes in his cross examination that the date on which the Ex. A1 Sale Agreement was executed i.e., on 09.07.2001, is the date on which PW-4



Notary Advocate Arumugam himself had purchased five Rs. 10 Non

Judicial Stamp papers and the 1st respondent did not approach PW-4 on any date prior to it to execute sale agreement. However, it is clear from bare perusal of the unregistered sale agreement that the stamp papers were purchased by the 1st respondent from the stamp vendor on 15.05.2001, which will go to show that signatures were obtained in unfilled stamp papers readily available with the 1 Respondent, while granting loan.

(v) The Court below ought to have disbelieved the evidence of PW1, as he had deposed that it was the Advocate who purchased the stamp papers on 09.07.2001, which is contrary to the notings in Ex. A1. According to PW-2, does not know when the stamp papers were purchased despite working as junior advocate in the office of the PW-4. According to PW-3 Ravi, 09.07.2001 was the date on which the sale agreement was executed and it was PW-2 who purchased stamp papers and typed the contents of the Ex. A1. According to PW-4, he directed parties to purchase stamp papers. The evidence of PW-1 to PW-4 are clearly contrary. Regardless of the evidence a mere perusal of the document Ex. A1 Sale Agreement would reveal that it was purchased by the 1" respondent on 15.05.2001. From the evidence and



WEB COPY

document, it can be clearly inferred that it was the 1st respondent who filled the stamp papers obtained for security purpose, which has been handed over to his brother-in-law PW-2 and it was him who got the contents typed and forged the document with the help of P.W.4 his senior advocate to help the 1st respondent in order to fulfil his intention to grab property from the appellant and her husband.

(vi) The Trial Court and First Appellate Court ought to have disbelieved the sale agreement because there is contradiction in the evidence of PW-1 to PW3 regarding the parties who were present during price negotiation. The 1st respondent states Chandramohan, Muthusamy, Perumal, Subramani are present during price negotiation whereas PW-3 states Perumal, Thirumalaisamy, Muthusamy were present during price negotiation. The non-examination of Chandramohan, Subramani and Thirumalaisamy shows the narration of the price negotiation, execution is false and there never was any negotiation between the parties for sale of the property.

(vii) The Trial Court and the First Appellate Court ought to have

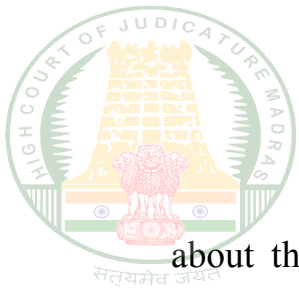


WEB COPY

disbelieved the sale agreement as the intention to sell the property has not been established by the 1 respondent through evidence. When the 1 respondent failed to prove that the sale agreement is voluntary execution and the appellant pleads that she and her husband were suffering from ailment and were in need of money, the preponderance of evidence and probabilities is that they have given security empty stamp papers for the loan.

(viii) The Trial Court and the First Appellate Court ought to have disbelieved the sale agreement by considering that the appellant and her husband were victim of undue advantage exercised by the 1 respondent over the appellant and her husband to obtain signature and thumb impression on empty stamp papers in the guise of security for the loan and later with the greed to acquire their valuable property from the elderly citizens, forged Ex. A1 Sale Agreement.

(ix) The Trial Court and the First Appellate Court ought to have refused the specific performance by considering that the Plaintiff miserably failed to prove the execution of unregistered Ex. A1 Sale Agreement through attesting witnesses. The witnesses have failed to corroborate each other the execution of the sale agreement cogently and there is clear contradiction



WEB COPY

about the parties who were present during price negotiation, the date of purchase of stamp papers, who drafted the contents of the agreement and passing of sale consideration which creates suspicion over the execution. There is no averment or evidence to prove offer, acceptance and passing of sale consideration between parties.

(x) The trial Court and the first appellate court erred in decreeing specific performance when the 1st respondent himself admits the fact that the appellant is entitled to 1/3 share in the 1/2 share of the Palaniyandi Gounder share as legal heir of the deceased Palaniandi Gounder, and seeks specific performance for a portion of the property which is against the settled proposition of Law that 'a suit for specific performance cannot be decreed in a piecemeal manner'.

(xi). The Trial Court and the First Appellate Court erred in decreeing a suit for specific performance only on the point of readiness and willingness without framing issue with regard to the intention of the parties of sell the property and issue with regard to the execution of sale agreement when there is clear suspicion in the very execution of the Ex. A1 Sale Agreement.



WEB COPY

11. This Court admits the second appeal on 25.11.2024, on following substantial questions of law:

" A. Whether the Trial Court and First Appellate Court are right in law, in without framing issues and without rendering any finding on the intention of the parties to sell the property and the execution of sale agreement, when it is the specific case of the appellant that Ex. A1 Sale Agreement was created by misusing the documents submitted by them while availing loan from the 1st respondent?

B. Whether the Trial Court and First Appellate Court are right in law, in appreciating the evidence of PW1 to PW4 while granting the decree of specific performance by merely rendering finding that the 1st respondent has complied section 16(c) of the Specific Relief Act by ignoring the vital fact that 1st respondent has proved neither execution or negotiation?"

12. The learned counsel for the respondents argues that before the trial court, the plaintiff proved his readiness and willingness, as well as the



WEB COPY

execution of the agreement, by examining the attester and the scrap of Ex.A-

1 agreement. Accordingly, the courts below rightly framed the issues. By appreciating the evidence on record, the trial court granted the relief of specific performance, which was confirmed by the first appellate court and, therefore, requires no interference. The issues were properly framed, and relief was rightly granted in favour of the plaintiff. Hence, he prays for the dismissal of the appeal as it has no merits. Further, he submits that during the pendency of the suit, defendants D-3 and D-4 conveyed their share in favor of the plaintiff, which indicates that they were inclined to comply with the terms of the agreement, except for this appellant. Therefore, the agreement between the parties has been proved to be true. Hence, he submits that no substantial question of law is involved, and prays for the dismissal of the appeal as it lacks merits.

13. Upon considering the submissions of both sides, the facts of the case reveal that the suit property belongs to the first and second defendants by way of a purchase through a sale deed executed in the year 1983. It is an admitted fact that the property belongs to D-1 and D-2. According to the



WEB COPY

plaintiff, the defendants offered to sell the suit property for a sum of Rs. 1,70,000/- and executed a sale agreement on 09.07.2001. A sum of Rs. 1,45,000/- was paid as advance, and the balance amount of Rs. 25,000/- was agreed to be paid within 3 years, on or before 08.07.2024. On 04.02.2023, the plaintiff expressed his readiness and willingness to perform his part of the contract, but there was no response from the defendants. Hence, he filed the suit. During the pendency of the proceedings, D-1 died. His sons were added as D-3 and D-4. The second defendant conducted the suit, claiming that she owns a half share in the property, and the remaining half share belonged to the first defendant. They jointly purchased the property in 1993. Due to old age and illness, both had medical expenses. For that purpose, they borrowed Rs.5,000/- from the plaintiff, who was a moneylender. At that time, the plaintiff allegedly obtained a signature and thumb impression from D-1 on a blank paper, which was later fabricated into a sale agreement. Thus, the second defendant disputed the validity of the sale agreement.

14. To avail equitable remedy, the burden is cast upon the plaintiff to prove that the sale agreement is true and valid, as well as to establish the



execution of the agreement and his readiness and willingness to perform his part. Admittedly, Exhibit A-1, the alleged agreement, was said to be drafted by a notary advocate, Arumugam, and attesting witnesses were one Karunanithi (junior), and two others, Ravi and Chandramohan. The plaintiff examined Advocate Karunanithi as PW2, who claimed to be an attesting witness, and Ravi as PW3. The notary public, Advocate Arumugam, was examined as PW4. Based on these witnesses, the learned counsel for the respondent submits that the execution of the document was proved.

15. However, the learned counsel for the appellant argues that all the witnesses are related to the plaintiff and were strangers to the defendants. The document was also prepared by Arumugam at the instance of the plaintiff. In support of this, he relied on depositions annexed in the typed set of papers submitted along with the appeal.

16. Upon considering the evidence of PW1, the plaintiff claimed that he was in possession of the property as per the sale agreement. However, during cross-examination, he admitted that he did not possess any revenue



WEB COPY

records to prove his possession or enjoyment of the suit property. Therefore, the alleged possession claimed by him was not proved. According to his evidence, the stamp paper was purchased by Notary Arumugam on the date of the agreement. However, it was contended that the other two witnesses, Ravi and Chandramohan, were brought by the defendants. Admittedly, the witnesses were close relatives of the plaintiff. He further submitted that the terms and conditions of the agreement were finalized at the agricultural land belonging to the defendants. PW2's evidence disclosed that he signed the agreement at the instance of the plaintiff. The agreement was drafted by Arumugam, the notary public advocate, but he was not aware of who purchased the stamp paper. After the agreement was typed, the defendants allegedly signed and affixed their thumb impressions, thereafter, they also signed in the register maintained by the notary public. However, the notary public, Arumugam, was examined as DW4, another witness, Ravi, stated that Karunanithi brought the stamp paper and typed the agreement. The evidence of the notary public (PW4) revealed that he executed Exhibit A-1 agreement as per the Notary Rules and that the document was executed in his office, eventhough, he admitted that as per Notary rules, all documents

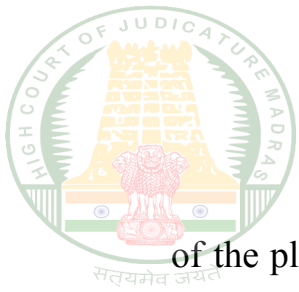


WEB COPY

signed in the office must be entered in the register maintained by him. The said register was produced before the court as Exhibit A-7, however, the particulars of the defendants who allegedly signed the agreement were not entered in the register.

17. Moreover, the stamp paper on which the alleged agreement was prepared was purchased on 15-05-2001, whereas the agreement is stated to have been executed on 09-07-2001. The plaintiff has not provided any valid reason for using a stamp paper purchased on an earlier date for executing the sale agreement. This discrepancy raises suspicion. Furthermore, the attesting witnesses to the agreement are neither cogent nor reliable. No explanation has been given for the failure to register the particulars of D1 and D2 in the notary register, which is required to be maintained under the law.

18. The conduct of the witnesses, as well as that of the plaintiff, supports the defense's contention that blank stamp papers were handed over to the plaintiff, which were later misused to fabricate the alleged sale agreement. Admittedly, one of the witnesses, Karunanithi, is a close relative



WEB COPY

of the plaintiff. It was at the plaintiff's instance that Karunanithi went to the advocate's office, where the agreement was said to have been drafted. There is no proof that the other two witnesses were brought by the defendants. Hence, it is evident that the plaintiff, in conspiracy with these witnesses, fabricated the Ex.A-1 sale agreement.

19. Additionally, the Notary advocate failed to register the particulars of the signatories in the mandatory register, thereby casting serious doubt over the authenticity of the agreement. The plaintiff failed to dispel these doubts with sufficient explanation. To claim the equitable relief of specific performance, a party must approach the court with clean hands. In this case, the plaintiff has not done so. His conduct, coupled with the lack of proper explanation for crucial irregularities, reflects dishonesty. Furthermore, during the pendency of the proceedings, the plaintiff obtained a sale deed for a half share in the suit property. However, he did not properly amend the suit or seek appropriate relief based on the changed circumstances. Despite seeking specific performance for the entire property, he was already in possession of part of it, which undermines his claim.



WEB COPY

20. Moreover, the appellant has a half share in the suit property and is also entitled to 1/3rd share from her husband/D1's half share. Therefore, the sale transaction entered into by the plaintiff with D3 and D4 during the pendency of the suit is not binding on the appellant.

21. The court below failed to properly appreciate these legal and factual aspects, and erroneously granted relief in favor of the plaintiff. Since the findings of the trial court are based on flawed reasoning and overlook material facts, this Court finds it necessary to interfere. Accordingly, questions of law 1 and 2 are answered in favor of the appellant.

22. Accordingly, the appeal is allowed. Consequently, the suit is dismissed. There shall be no order as to costs.

22.04.2025

20\22



Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

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

T.V.THAMILSELVI, J.

rri



WEB COPY

SA NO.839 of 2024

22.04.2025

22\22