



S.A.No.611 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.KALAIMATHI**

S.A.No.611 of 2023

and

CMP.No.19331 of 2023

Jothi @ Saravanabava

... Appellant /Plaintiff

vs.

C.Mani

.. Respondent/Defendant

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., to set aside the judgment and decree made in A.S.No.15 of 2019, dated 23.02.2023 on the file of Subordinate Court, Sankari, reversing the judgment and decree made in O.S.No.259 of 2011 dated 01.07.2014 on the file of the District Munsif Court, Sankari.

For Appellant : Mr.S.Anil Sandeep
for M/s.N.Vijay Baskar

For Respondent : Mr.J.Ramakrishnan



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JUDGMENT

This Second Appeal has been preferred by the plaintiff herein against the Judgment and Decree dated 23.02.2023 passed in A.S.No.15 of 2019 by the Subordinate Court, Sankari.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, the suit property is situate at Katchipalli Village, Edapadi Taluk, Salem District- in S.No.421/2 dry land Hectare 0.22.5/ 0.56 cents belongs to the defendant by way of registered sale deed dated 22.06.1994. The defendant is a close relative of the plaintiff. The defendant offered to sell the suit property to the plaintiff. The plaintiff also agreed to purchase the suit property. On 10.02.1995, and sale Agreement was executed by the defendant in favour of the plaintiff for a sale consideration of Rs.93,000/-. The plaintiff paid the entire sale consideration of Rs.93,000/- to the defendant on the same date. The defendant also handed over the

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original sale deed dated 26.02.1994 executed in his favour to the plaintiff and possession of the suit property to the plaintiff. Since the defendant is a close relative to the plaintiff, the defendant had no urgency to get the sale deed executed at the earliest time.

3.1 The plaintiff came to understand that the defendant was making attempts to alienate and encumber the suit to third party by suppressing the sale agreement dated 10.02.1995. Hence, the plaintiff demanded the defendant to execute the sale deed in his favour. But the defendant was reluctant to perform his part of contract. Therefore, the plaintiff caused to issue legal notice to the defendant on 19.09.2011, calling upon him to come to the Registrar Office, Edapadi on 23.09.2011 at about 10.00 a.m. and to execute sale deed as agreed upon. The defendant evaded to receive the notice and he did not come to the Sub-Registrar Office, Edapadi on the said date, although, the plaintiff was waiting at the Sub-Registrar Office on the said date from 10.00 a.m.onwards. Therefore, he has left with no option except to file the suit for specific performance.



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4. The claim details are not admitted by the defendant. The plaintiff is the sister's husband of the defendant. The plaintiff used to conduct chits and he approached the defendant in the year 1994 to join in a chit for Rs.50,000/- conducted by him. The defendant participated in the chit and he was paying the chit amount regularly. The plaintiff used to get the signatures and thumb impression in the empty stamp papers, white sheet, promissory note and also would receive original documents at the time of bidding the chit and receiving the chit. He received the chit amount from the plaintiff and affixed thumb impression in the empty stamp paper and also handed over the original sale deed dated 22.06.1994.

4,1. The defendant paid the entire chit amount and asked the plaintiff to return the stamp paper and original sale deed of the year 1996, he did not return the same. The alleged sale agreement dated 10.02.1995 is a forged and fraudulently created document.

5. Based on the divergent pleadings, the Trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, two witnesses have been examined and five documents



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have been marked. ExA1 dated 10.02.1995 is the Sale Agreement executed by the defendant in favour of the plaintiff. On the defendant's side, defendant has examined himself as DW1 and his father-in-law ,Kandasamy - Marimuthu has been examined as DW2.

6. The Trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsel on either side held that the execution of sale agreement has duly been proved by the plaintiff and, as per the written statement details, defendant failed to examine suitable person and granted the relief of specific performance in favour of the plaintiff. Aggrieved, the defendant preferred Appeal Suit before the Subordinate Court, Sankari in A.S.No.15/2019. The First Appellate Court, upon consideration of case records and after hearing the arguments advanced by the learned counsel appearing on either side, doubted the genuineness of the sale agreement and allowed the appeal by setting aside the Judgment granted by the Trial Court. Aggrieved, the plaintiff herein has preferred this Second Appeal.



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7. The learned counsel for the appellant would vehemently contend that the plaintiff has paid the entire sale consideration on the date of execution of sale agreement (Ex.A1). Therefore, his readiness and willingness to perform his part of contract cannot be doubted. He would also further contend that by examining P.W.2, Execution of the sale agreement is also proved by the plaintiff.

8. The learned counsel for the respondent/defendant would contend that the sale agreement is a forged document and that the plaintiff has built up the case on the basis of invalid signed papers. Therefore, he cannot lay a claim for specific performance sought for dismissal of the appeal.

9. To strengthen his arguments, the following Judgments are referred to:-

i) G.Nagarajs. R.J.Anandmul & another reported in
2023(4) LW 520;

ii) *K.A.Kumaresan vs. K.S.Nanjundan* reported in
2018(3)CTC 89



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iii) *S.Ashok Kumar vs. S.Subramaniam* reported in
2017(5)CTC 390

10. The following substantial question of law arise for consideration:-

“Whether the First Appellate Court was incorrect in allowing the appeal based on the fact that when the plaintiff paid the entire sale consideration on the date of execution of sale agreement and his readiness and willingness to perform his part of contract is duly complied with or not?”

11. The plaintiff has laid the suit for the relief of specific performance by stating that the entire sale consideration of Rs.93,000/- has been paid on the date of execution of Ex.A1 – Sale Agreement.

12. In a suit for specific performance, the basic principle of law is that the plaintiff who is the vendee must aver and prove that he has been continuously ready and willing to perform his part of the contract throughout. Therefore, the burden lies on the plaintiff to prove the fact. It



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is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

13. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, a Three Judge Bench of the Apex Court held as under:-

“It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the consideration besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to



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have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

14. In **K. Prakash Vs. B.R. Sampath Kumar, reported in (2015)**

1 SCC 597, the Apex Court observed as under:-

“The principles which can be enunciated is that where the Plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the Plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established



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that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated u/s 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

15. The execution of suit sale agreement is denied by the defendant and he has pleaded forgery. In order to prove the execution of Ex.A1 Sale Agreement, plaintiff has examined himself as P.W.1. He has spoken about the execution of Ex.A1- Sale Agreement executed by the defendant. During the cross examination of P.W.1, when he was questioned from whose, he purchased the stamp paper, he has answered that he purchased from Nehrukumar S/o.Lakshmanan at Rangapalayam.



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16. On a careful perusal of Ex,A1- Sale Agreement, stamp vendors 's name is found as R.Gopal from perusal of round seal. It appears that the stamp papers were purchased from Tuticorin Treasury. A perusal of Ex.A-1 Sale Agreement, in the first page, the last three lines have been typed in single line space, whereas, the first eleven lines, have been typed in double line space which creates a huge doubt as to the execution of sale agreement. Though the plaintiff would state that possession and enjoyment of the suit property is with him , P.W.2 would state that the suit property is in possession and enjoyment of the defendant. P.W.1 states that on the date of execution of the sale agreement, the total sale consideration of Rs.93,000/- was paid by him When the total sale consideration is paid by the plaintiff for what reason sale deed was not executed and explained by the plaintiff. As per records, the plaintiff had issued a legal notice to the defendant on 19.09.2011 (Ex.A3) almost after 16 years, he laid the suit on 12.10.2011. The plaintiff, having paid entire sale consideration on the date of Ex.A1, kept quiet for 16 years, is not believable and acceptable.

17. P.W.1 would state that he paid the entire sale consideration on the date of execution of sale agreement. There is no time stipulated in the sale agreement. But no prudent man would keep quiet for such a

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long period when he has paid the entire sale consideration without getting the sale deed executed in his favour.

18. A thorough perusal of Ex.A1-Sale Agreement explicates that, as stated by the defendant , the signatures have been obtained on the blank stamp papers and the blank papers thereafter have been typed and, in the first page, as mentioned supra, because of the space constraint, the last three lines have been typed in a single line space. When P.W,1 was posed the question to the effect that as to why he did not take any steps for registration of the sale deed by the defendant, he has answered that “... பிரதிவாதி சச்சுபள்ளி கிராம நிர்வாக அலுவலரிடம் கடன் பெற்றாலும் மைத்துனர் என்பதால் பொறுமையாக செய்து தருவதாக சொன்னதால் பத்திரம் பதிவு செய்யவில்லை.”

19. Therefore, for the abovestated reasons, it is concluded that the defendant has not executed the sale agreement as pleaded by the plaintiff. The relief of specific performance is an equitable remedy. The plaintiff has not approached the Trial Court with clean hands. Based on the aforesaid observations, this Court is of the considered view that sale agreement is not a true and valid document, it is concluded that the sale agreement is shrouded with serious doubts.

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20. This Court does not find any infirmity or perversity in the findings of the First Appellate Court. This Court also does not find any good reason to upset the findings of the First Appellate Court. The substantial question of law is answered against the plaintiff.

21. Above being position, the second appeal stands dismissed. Sequel to this, Judgment and decree passed in A.S.No.15 of 2019 dated 23.02.2020 is hereby confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking / Non-speaking order
kkd

To

- 1.The Subordinate Court, Sankari.
- 2.The District Munsif Court, Sankari.



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R.KALAIMATHI, J.,

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