



S.A. No.1062 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.07.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.1062 of 2019

A.K. Sekar

...Appellant

Vs.

Gowthamchand

... Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 28.01.2019 passed by the Additional District Judge (Fast Track Court), Villuppuram, in A.S. No.32 of 2016, reversing the judgment and decree dated 29.10.2015 passed by the Additional Subordinate Judge, Tindivanam, in O.S.No.110 of 2010.

For Appellant : Mr. T. Sathyamurthy
for Mr.K.G. Senthilkumar
For Respondent : Mr. C. Munusamy

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JUDGMENT

The defendant in O.S. No.110/2010 has filed the present Second Appeal challenging the decree and judgment dated 28.01.2019 passed by the learned Additional District Judge (Fast Track Court), Villuppuram, in A.S. No.32 of 2016, granting the relief of refund of money with interest without there being a claim, in a suit for specific performance.

2. For the sake of convenience, the parties will be addressed with the same ranking assigned in the suit.

3. The case of the plaintiff is as under:

3.1. It was agreed between the plaintiff and the defendant to enter into a sale agreement in respect of the defendant's property for a valid consideration of Rs.7,50,000/- and accordingly, they entered into a sale agreement on 10.10.2006 and on the same day the defendant received a sum of Rs.7,50,000/- from the plaintiff, which is acknowledged in the written agreement. In the said agreement, it was specifically mentioned

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that the defendant should execute a sale deed in favour of the plaintiff as and when the plaintiff call upon him to do so. As the entire amount has been paid, the plaintiff was delivered possession of the first item of the suit property. The same was subsequently mentioned in the agreement. In respect of the 2nd item of the suit property, the plaintiff continued in possession under the original agreement with the defendant. The xerox copy of the agreement was handed over to the plaintiff. Thereafter, in spite of repeated demands, the defendant failed to execute the sale deed in favour of the plaintiff.

3.2. It is further submitted that the 1st item of the suit property belongs to the defendant by way of purchase and the 2nd item of the suit property at the time of execution of sale agreement was bequeathed to the defendant under a Will by his father Kannan Chettiar to whom the property was allotted in a partition among himself and his brothers. On 17.11.2008, the said Kannan Chettiar executed a registered settlement deed in favour of the defendant settling not only the suit Item No.2 but also the other properties. The settlement deed was duly executed,



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accepted and acted upon. Hence the defendant is the absolute owner of Item No.2 by virtue of the said settlement deed. However, to the shock of the plaintiff, the defendant has filed a suit against the plaintiff in O.S. No.146 of 2009 for recovery of possession in respect of suit Item No.2. The father of the defendant was also added as 1st plaintiff in the above suit. In the said suit the plaintiff was described as a tenant denying the title of the landlord. The defendant has deliberately suppressed the agreement dated 10.10.2006 in the said suit. Thereafter, the plaintiff found that the defendant was adopting these methods to get more money than the contract amount. Hence the plaintiff was constrained to file the present suit for specific performance of the contract.

3.3. The suit was resisted by the defendant by stating that at no point of time he had executed sale agreement in favour of the plaintiff in respect of the suit properties. Item No. 1 of the suit schedule property is owned by defendant by virtue of purchase and Item No. 2 of the suit property is not the separate property of the defendant and it belongs to the defendant, his father Kannan Chettiyar, his brother Vital Chettiyar



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and his sisters Bakkiyalakshmi and Pushpavathi. The plaintiff has filed only photostat copy of sale agreement. It is false that original sale agreement is with the defendant and that entire sale amount has been paid on 10.10.2006 and that the defendant agreed to execute sale deed as and when called upon and that the defendant failed to execute sale deed when called upon by the plaintiff and that the plaintiff was always ready and willing. The alleged sale agreement is a false and created document. The plaintiff is in possession of the 2 item of the suit property only as a tenant and he had never been in possession as its owner. The plaintiff is a tenant under the father of the defendant. The suit properties in Item 1 and 2 are situated 3 KMs away from each other. Item I of the suit property being a house site, it is in possession of the defendant and there is no agreement of sale for the said property.

3.4. According to the defendant, the plaintiff in order to grab the suit properties had falsely created the sale agreement and had also obtained a sale deed from the defendant's brother. The plaintiff is doing money lending business and the defendant at the time of borrowing



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money from the plaintiff had signed a blank stamp papers along with his wife and brother-in-law has also signed in it. The said loan amount was been discharged by the defendant and in view of the relationship between them, the blank signed papers were not received from the plaintiff. The plaintiff in the year 2009 had complained to the panchayatdhar that the defendant had executed a sale agreement in the year 2006 by producing a photostat copy to them and the defendant on 28.2.2009 had issued notice to the plaintiff calling upon him to return the copy of the agreement but the plaintiff failed to receive the said notice. The defendant and his father, thereafter issued a legal notice on 1.3.2009 to the plaintiff to vacate item 2 of the suit property and the said notice was also returned by the plaintiff. Hence, a suit in OS.146/2009 was filed against the plaintiff to vacate item 2 of the suit property. Further his sister Bakkiyalakshmi has filed OS.37/2009 for partition in which the plaintiff is the 5^a defendant. The defendant at no point of time had agreed to sell the suit properties and no prudent man will handover the original agreement to the executant. The plaintiff having alleged that he had received the entire sale consideration, it is not necessary to execute sale agreement instead



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of sale deed. The plaintiff in his legal notice has stated that the suit property has been devolved on the defendant by way of oral partition while contra to the same in the plaintiff has stated that it has been acquired by way of Will. The plaintiff had not come with clean hands to the court as it is not necessary for him to get a sale deed in respect of the same property from the defendant's brother. Hence, prayed for dismissal.

3.5. At trial, the plaintiff examined two witnesses and marked seven documents. On the side of the defendant two witnesses were examined and three documents were marked.

3.6. The trial court, based on the materials on record, dismissed the suit. Aggrieved by this, the plaintiff preferred an appeal suit in A.S. No.32/2016 before the Principal District Court, Villupuram. The first appellate court rendered a finding that though the plaintiff is not entitled for the relief of specific performance, he is entitled for refund of advance amount and directed the respondent to pay a sum of Rs.7,50,000/- to the plaintiff with interest at the rate of 6% per annum from the date of sale



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WEB COPY agreement till the date of realisation. Challenging the same, the defendant has preferred this Second Appeal under Section 100 of the Code of Civil Procedure.

4. The Second Appeal has been admitted on the following substantial questions of law.

- 1. Having recorded a finding that the suit agreement was not intended to be entered upon as an agreement of sale and was executed as a security, whether the lower appellate court was right in granting a decree for repayment of advance?*
- 2. Whether the lower appellate court was right in granting a decree for refund of advance in the absence of prayer to that effect?*

5. Learned counsel for the appellant submitted that the first appellate Court having disbelieved the plaintiff's case by concluding that the plaintiff is not entitled for the relief of specific performance, ought not to have granted the relief of refund of advance money without a specific prayer being sought for and without there being any amendment



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made in the plaint. In support of his contention, the learned counsel for appellant/defendant relied on the judgment of Hon'ble Supreme Court in ***Desh Raj and others vs. Rohtash Singh*** reported in (2023) 3 SCC 714 and judgments of this court in the case of ***Jauanthi vs. Murugan (A.S. No.223 of 2021 dated 05.09.2023)***.

6. *Per contra*, learned counsel for the respondent/plaintiff would submit that the first appellate court, after analysing the entire materials on record, had rightly come to the conclusion that the respondent/plaintiff is entitled for refund of advance amount and directed the appellant/defendant to pay a sum of Rs.7,50,000/- to the plaintiff with interest at the rate of 6% per annum from the date of sale agreement till the date of realisation, which warrants no interference by this Court and hence, prayed for dismissal of the appeal.

7. A perusal of the judgment rendered by the courts below and the oral and documentary evidence adduced by the parties disclose that the trial court as well as the first appellate court had gone into the



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genuineness of the agreement of sale and rendered a finding that the plaintiff is not entitled for the relief of specific performance. The trial court dismissed the suit whereas the first appellate court directed the defendant to refund that so called advance amount even without a specific prayer for the alternative remedy. Since the plaintiff is not on appeal, the question of entitlement for the relief of specific performance would not be dealt here under the Second Appeal.

8. The short question in this second appeal is whether the first appellate court had erred in granting the relief of refund of money paid by the plaintiff without there being the prayer for the same or any amendment in this regard at later stage. The first appellate court while granting the relief of refund of money, has relied upon the judgments in the case of *Ramesh Chand (dead) through legal representatives vs. Asruddin (dead) through legal representatives and another* reported in (2016) 1 SCC 653 and in the case of *N. Sekaran and another vs. C. Rajendran* reported in (2017) 8 MLJ 671, in which the Hon'ble Supreme Court and this Court held that even in absence of prayer for



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refund of advance, to render complete justice, Court is empowered to mould relief. The relevant portions in the above decided cases are extracted hereunder:

(2016) 1 SCC 653

9. In the above facts and circumstances of the case and the judicial principle discussed above, we are of the opinion that it is a fit case where instead of granting decree of specific performance, the plaintiff can be compensated by directing the appellant to pay a reasonable and sufficient amount to him. We are of the view that mere refund of rupees four lakhs with interest @ of 8% per annum, as directed by the trial court, would be highly insufficient. In our considered opinion, it would be just and appropriate to direct the appellants (legal representatives of original Defendant 1, since dead) to repay rupees four lakhs along with interest at the rate of 18% per annum from 21-6-2004 till date within a period of three months from today to the LRs of Respondent 1 (mentioned in IA No. ... of 2015 dated 7-9-2015). If they do so, the decree of specific performance shall stand set aside. We clarify that if the amount is not paid or deposited



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before the trial court in favour of the LRs of Respondent 1 within a period of three months, as directed above, the decree of specific performance shall stand affirmed. We order accordingly.

(2017) 8 MLJ 671

13. The legal position enumerated above would only indicate that in an agreement of sale, where money is paid only as part of sale price, the forfeiture clause will be treated as having the effect of penalty. Further, even in the absence of a prayer for refund of the advance sale amount by the plaintiff, with a view to render complete justice, the Court is empowered to mould the relief and to issue appropriate direction to the defendant for refund of the advance sale price. Notwithstanding the above legal position, in the present case, as rightly pointed out by the learned counsel for the plaintiff, on 15.02.2009 when the plaintiff and the defendants have entered into an agreement of sale under Ex. A1, the defendants have not acquired any right, title or interest over the suit property and on that date they are only agreement holders in respect of the suit property. Further, admittedly, even after the



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expiry of the time stipulated in the agreement of sale under Ex.

A1, it is only the first defendant who has acquired a right over the suit property along with the other co-owners and therefore, the plaintiff cannot be blamed for not performing his part of the obligations contained under the agreement of sale dated 15.02.2009. Furthermore, in such a circumstances, the conditions incorporated in the agreement of sale dated 15.02.2009 will not bind the plaintiff in any manner or such conditions will confer any right to the defendants to forfeit the advance sale amount paid by the plaintiff. In such circumstances, we feel that the trial court is wholly justified in issuing a direction to the defendants to refund the advance amount of Rs. 28,77,000/- to the plaintiff. At the same time, we find that the rate of interest of 12% per annum, at which the defendants were directed to pay the advance amount of Rs. 28,77,000/-, is not warranted and instead the defendants shall be directed to pay the amount of Rs. 28,77,000/- with interest at the rate of 7.5% per annum.

In the case of ***N. Sekaran and another vs. C. Rajendran*** (cited supra)



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the plaintiff has sought for an alternative prayer for refund of the advanced amount. In the case of ***Ramesh Chand (dead) through legal representatives vs. Asruddin (dead) through legal representatives and another*** (cited supra) the execution of agreement was proved and therefore, the Hon'ble Supreme Court, considering the facts and circumstances of that case, directed for refund of advance amount to do complete justice for the plaintiff. In the present case, the execution of the sale agreement and payment of advance amount itself is doubtful. Therefore, the above decisions are not applicable to the facts and circumstances of the present case. Moreover, when Section 22 (2) of the Specific Relief Act, 1963, provides that in the event of the relief of specific performance not granted, the plaintiff in a suit for specific performance would not be entitled to any relief, unless and until such relief was asked for by the plaintiff. Hence, a decree directing the return of the advance amount without any alternative prayer for the return of such advance amount as granted by the first appellate court is without any jurisdiction. Accordingly, the substantial questions of law are answered in favour of the appellant.



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9. In the result,

- 1) The Second Appeal is allowed. No costs.
- 2) The Judgment and decree dated 28.01.2019 passed by the Additional District Judge (Fast Track Court), Villuppuram, in A.S. No.32 of 2016, is set aside.
- 3) The judgment and decree dated 29.10.2015 passed by the Additional Subordinate Judge, Tindivanam, in O.S.No.110 of 2010, is upheld.

02.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional District Judge (Fast Track Court), Villuppuram
2. Additional Subordinate Judge, Tindivanam
3. The Section Officer, VR Section, High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI,J
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Predelivery Judgment in
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