



A.S.No.30 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.30 of 2022
and CMP.No.1512 of 2022

S.J.Parameswari

... Appellant

Versus

Pavunammal

... Respondent

Prayer: Appeal filed under Section 96 of Code of Civil Procedure read with Order 41 and 41-A of CPC, to set aside the judgment and decree dated 02.09.2021 made in O.S.No.2253 of 2018 on the file of XVIII Additional Sessions Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Venkatesh
For Respondents : Mr.R.Vasudevan

JUDGMENT

Challenging has been made against the dismissal of the suit in entirety.

2. The suit has been filed for specific performance to enforce the agreement dated 25.01.2016. It is the case of the plaintiff that the defendant has agreed to sell



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the property for a total sale consideration of Rs.19,30,500/- and after parting with

Rs.3 lakhs, original documents were handed over to the plaintiff for verification.

Thereafter, on the date of sale agreement, a sum of Rs.6,50,000/- was paid as advance, wherein, it is agreed between the parties that sale shall be completed within a period of three months and last payment was made on 31.07.2017 and according to the plaintiff, the total sale consideration was paid to the defendant, however, the defendants did not come for execution of the sale deed. Hence, the suit was filed

3. It is the stand of the defendant in the written statement that in fact, the plaintiff entered a sale agreement for purchase of the same property for a total consideration of Rs.26 lakhs on 12.08.2015. According to them, the said sale agreement has been suppressed. Only at the request of the plaintiff's husband, subsequent agreement came to be executed for a sum of Rs.19,30,500/- and it is the contention of the defendant is that they have received only a sum of Rs.16,30,500/- and the other 3 lakhs was paid to the defendant's son is a different transaction.



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4. Based on the above pleadings, the Trial Court framed the following

issues:

- 1) Whether the plaintiff is entitled to specific performance of contract of sale agreement dated 25.01.2016 as prayed for ?
- 2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
- 3) Whether the plaintiff has only paid a sum of Rs.1,50,000/-- and Rs. 5 lakhs totalling Rs.6,50,000/- to the defendant and not Rs.9,50,000/- as alleged and whether the balance sale consideration apart from Rs.3,70,000/- and Rs.6,10,500/- has not been paid by the plaintiff?
4. To what other reliefs is the plaintiff entitled to?

5. On the side of the plaintiff, plaintiff herself was examined as PW1 and marked Exs.A1 to A7. On the side of the defendant, defendant was examined as DW1 and marked Exs.B1 and B2.

6. The Trial Court taking note of the fact that there was an unregistered document of the year 2015 for higher value which has not been disclosed in the



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suit. Therefore, the person who has come for equitable remedy is not entitled for specific performance. Having said that as an alternative relief is not sought for dismissed the suit in entirety. Hence, the appeal.

7. The learned counsel for the appellant submitted that even assuming that agreement is not enforceable that there was a previous agreement, the plaintiff is certainly entitled to return of the sale consideration which is admittedly paid by the plaintiff and received by the defendant. Whereas it is the contention of the defendant is that as per the agreement, they received only a sum of Rs.16,30,500/- not Rs.19,30,500/-. According to the defendant, a sum of Rs.3 lakhs was paid to the defendant's son is a different transaction and for establishing that the payment, the plaintiff has not taken any steps to examine the defendant's son. The defendant is at the most is bound to repay only a sum of Rs.16,30,500/- with reasonable interest.

8. In the light of the above submissions, now the following points arises for consideration:

i) Whether the defendant has received a sum of Rs.19,30,500/- as per the agreement, Ex.A2 dated 25.01.2016



ii) Whether the plaintiff is entitled for recovery of amount?

Points (i) and (ii)

9. The execution of sale agreement/Ex.A2 is not disputed by the parties. It is also not disputed that prior to Ex.A2, the parties have entered into an unregistered agreement for the sale of same property for a total consideration of Rs.26 lakhs. There are two different transactions, one is registered and another unregistered document. Normally when there are two different documents, one is unregistered and another registered document, Section 50(1) of the Registration Act, 1908 stipulates that a duly registered document takes precedence over any unregistered document concerning the same property. Be that as it may, as the parties are not in dispute with regard to the execution of Ex.A2 and the only dispute raised by the parties is with regard to the payment. According to the defendant, she has received only a sum of Rs.16,30,500/-, whereas, the plaintiff would contend that she has paid the total sale consideration of Rs.19,30,500/- as per the agreement.

10. Be that as it may, as the execution of document has been admitted by the parties, the contents also bind on the parties. Once the execution of contract has been admitted, no oral evidence contrary to the terms of the contract is permissible



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as per Section 92 of the Indian Evidence Act, 1872 or Section 95 of the Bharatiya Sakshya Adhiniyam, 2023. Be that as it may, the contention has been raised by the defendant to the effect that amount of Rs.3 lakhs paid to the son of the defendant is a different transaction, therefore, that amount cannot be included. Whereas, it is the specific case of the plaintiff that the amount has been paid even at the time of agreement for verifying the document. As the defendant did not have bank account at the relevant point of time, the amount has been sent through the bank account of the defendant's son. Be that as it may, though in the written statement a stand has been taken by the defendant as if the plaintiff's husband has borrowed a sum of Rs.5 lakhs as hand loan on 25.01.2015 from the defendant's son, in her evidence, she has categorically admitted that his son is not in a position to advance any amount, in fact, he is in the habit of borrowing money.

11. Though a decree of specific performance has not been granted by the Trial Court taking note of the earlier contract, as the amount has been admittedly received by the defendants, this Court is of the view that even though the plaintiff has not asked for alternate relief for the return of advance sale amount, the Court is empowered to mould the relief to render complete justice.



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12. It is relevant to point out that a Coordinate Bench of this Court in *N.Sekaran and another vs. C.Rajendran* reported in *AIR 2018 Mad 67* has granted alternate relief for return of advance sale amount, even though the plaintiff has not asked for alternate relief in order to render complete justice.

13. In view thereof, the appeal suit is partly decreed for alternate relief for return of a sum of Rs.19,30,500/- by the defendant to the plaintiff, together with simple interest @ 7.5% p.a., from the date of agreement, viz., 31.07.2017 till the date of realisation. For the decretal amount, charge is also created over the suit property and it is made clear that until the entire amount is paid, charge shall continue. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order
dhk



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N. SATHISH KUMAR, J.

dhk

To,

The XVIII Additional Sessions Judge,
City Civil Court, Chennai.

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