



S.A.Nos.787 and 794 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.787 of 2023

and

S.A.No.794 of 2023

S.A.No.787 of 2023:

Pandurangan

... Appellant/Plaintiff

Vs.

1.Kumari

2.Radha

3.Ramani

... Respondents/Defendants

S.A.No.794 of 2023:

Pandurangan

... Appellant/Plaintiff

Vs.

1.Radha

2.Kumari

3.Ramani

... Respondents/Defendants

COMMON PRAYER: These Second Appeals are filed under Section 100 of C.P.C. to set aside the Judgment and Decree in A.S.Nos.24 of 2017 and 27 of 2016 dated 26.03.2021, on the file of Additional District Judge (Fast Track Court) at Villupuram, in reversing the judgment and decree in O.S.No.114 of 2006 dated 22.12.2015 on the file of the I Additional Subordinate Judge at Villupuram.

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For Appellant : Mr.M.Himavanth
in both Appeals

For Respondent: No Appearance
in both Appeals

COMMON JUDGMENT

These Second Appeals are preferred against the judgment and decree dated 26.03.2021 passed in A.S.Nos.27 of 2016 and 24 of 2017 by the Additional District Court, Villupuram. The sole plaintiff has preferred these Second Appeals.

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

3. Despite the receipt of notice, none represented the respondents No.1 to 3 / defendants No.1 to 3.

4. According to the sole plaintiff Pandurangan, the suit property belongs to the 1st defendant. Plaintiff agreed to purchase the suit properties for a sale consideration of Rs.1,01,000/- and on 26.07.2006, 1st defendant received a sum of Rs.25,000/- in the presence of the witnesses and executed a sale agreement with time stipulation of three months.



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4.1. The 1st defendant did not come forward to execute a sale deed after receiving the remaining sale consideration of Rs.76,000/-. Meanwhile, a legal notice was received by the plaintiff from the 2nd defendant to the effect that on 08.09.2006, 1st defendant executed a settlement deed in favour of the 2nd defendant in respect of 4th item of suit property. Therefore, the settlement deed is an invalid document. The 2nd defendant will not get any right or title based on the settlement deed and it was not acted upon. On 26.10.2006, plaintiff was ready with Rs.76,000/- with the non-judicial stamps and waiting for the 1st defendant at the Sub-Registrar Office, the 1st defendant did not come and execute the sale deed in favour of the plaintiff. He has deposited the remaining sale consideration of Rs.76,000/- to the credit of O.S.No.114 of 2006 on the file of 1st Additional Sub-Court, Villupuram.

5. Per contra, the 1st defendant would aver that he is the younger brother of the plaintiff. He has got a son and daughter. His son Elayaraja died on 06.07.1997. Suit items No.1, 2, 3 and 5 belong to him by way of partition deed dated 02.03.1984. The 1st defendant approached the plaintiff and requested for debt of Rs.25,000/- and for the said loan amount, he executed a sale agreement. The 4th item of suit property was settled by his mother and the said property is also in possession and enjoyment of the 1st defendant. He executed a settlement deed in favour of 2nd defendant on 08.09.2006. The 3rd defendant is an unnecessary party to the suit.



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6. Whereas, the 2nd defendant would *inter-alia* contend that the 4th item of suit property was settled in favour of the 1st defendant by his mother on 24.01.1992. The 1st defendant executed a settlement deed in favour of the 2nd defendant on 08.09.2006 in respect of 4th item of suit property and the same is in possession and enjoyment of the 2nd defendant. Their son Elayaraja died on 06.07.1997 as a bachelor. The 1st defendant does not have any right to execute sale agreement and the suit is bad for not arraying their daughter as 3rd defendant. Subsequently, daughter of 1st and 2nd defendant Ramani has been arrayed as 3rd defendant.

7. The 3rd defendant, daughter of the 1st and 2nd defendant would aver that the suit properties were allotted to her father based on Partition Deed dated 02.03.1984 and the suit properties are joint family properties. Her elder brother Elayaraja died on 06.07.1997. She demanded for partition from the 1st plaintiff and issued a notice to the plaintiff as well as the 1st defendant demanding to effect partition. Without intimating about the sale agreement, the 1st defendant acceded to effect partition.

8. Based on the divergent pleadings, the trial Court framed appropriate issues.

9. At trial, on the plaintiff's side, two witnesses have been examined and



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Nineteen documents were marked. Ex.A1 dated 26.07.2006 is unregistered sale agreement executed by the 1st defendant in favour of the plaintiff. Ex.A15 dated 22.09.1990 is the sale deed executed by 1st and 3rd defendant in favour of the plaintiff in respect of 0.21½ cents in S.No.52/11 and 0.01¾ cents in S.No.62/12 of Devayanandal village. On the defendants' side, three witnesses have been examined. Ex. B2 dated 08.09.2006 is the settlement deed executed by 1st defendant in favour of the 2nd defendant in respect of suit item No.4.

10. The trial Court upon consideration of evidence and after hearing the arguments advanced by either side, came to conclusion that the plaintiff has proved that he was always ready and willing to perform his part of the contract and decreed the suit in respect of item No.4 of the suit property and in respect of his 1/3rd undivided share in item Nos.1, 2, 3 and 5 of the suit property.

11. Aggrieved the 1st defendant Radha and his wife / 2nd defendant, preferred separate appeals in A.S.No.27 of 2016 and A.S.No.24 of 2017 before the Additional District Court, Villupuram. The First Appellate Court in consideration of the case records and after hearing the arguments advanced on either side, concluded that the sale agreement was executed for the loan obtained by the 1st defendant and by relying upon the value of the property mentioned in Ex.B15 sale deed of the year 1999 and concluded that suit sale



agreement was executed as security for the loan obtained by the 1st defendant and ordered for return of advance money with 9% interest.

12. The following substantial questions of law arises for consideration:

1. Whether the First Appellate Court is justified in refusing Specific Performance of Agreement under Ex.A1 dated 26.07.2006, especially when the execution of the sum was admitted by the 1st defendant?

2. That when the property in Item 4 of the Schedule property vested absolutely on 1st Defendant under Ex.B1 dated 24.01.1992, whether the fraudulent execution of Settlement deed by 1st defendant in favour of his wife, the 2nd defendant on 08.09.2006 under Ex.B2, can be projected to decline specific performance of agreement under Ex.A1 dated 26.07.2006?

3. That when the testimony of DW1 & DW2 categorically establish that they have accompanied each other to the Advocate's Office to give instructions for issuing notice on the plaintiff and establishes the collusive action between the defendants 1 and 2 in concocting documents after execution of Sale Agreement under Ex.A1 dated 26.07.2006, is the Court below justified in refusing



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specific performance by placing reliance on Settlement

Deed dated 08.09.2006 under Ex.B2 which is created
much after the execution of Sale Agreement?

13. Plaintiff and the 1st defendant are blood brothers. 2nd defendant is the wife of 1st defendant. Third defendant is the daughter of 1st and 2nd defendant. Suit is laid for 5 items of landed properties. Fourth item of suit property is settled in favour of the 1st defendant by his mother as per settlement deed- Ex.B1, dated 24.01.1992 and suit 1st, 2nd, 3rd and 5th items were allotted to the share of 1st defendant are not in dispute. The plaintiff has examined himself as PW1 and he has filed his proof affidavit in line with the details of plaint.

14. Execution of sale agreement Ex.A1 is not in dispute. But, all the defendants would contend that the 1st defendant has got only 1/3rd share in item nos.1, 2, 3 and 5 of suit properties and the 3rd defendant who is the daughter of 1st and 2nd defendant has got 1/3rd share in the above said suit properties. As regards 4th item the fact that it was settled by the mother of the 1st defendant by a settlement deed-Ex.B1, dated 24.01.1992 is also not in dispute.

15. 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



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continuously ready and willing to perform his part of the contract throughout.

Therefore, the burden lies on the plaintiff to prove the fact. It is also relevant to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial in nature.

16. It is relevant to refer to the observations made in ***Nirmala Anand Vs. Advent Corpn. (P) Ltd. reported in (2002) 8 SCC 146***, by 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 have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While



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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.”

17. 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 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



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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.”

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18. Ex.A1 sale agreement is dated 26.07.2006. Execution of sale agreement is admitted by the 1st defendant. But, he would contend that he executed Agreement for Sale for the purpose of obtaining a loan of Rs.25,000/-. Period for performance is fixed as 3 months. Plaintiff has issued legal notice (Ex.A4) to the 1st defendant on 18.09.2006, within two months from the date of Ex.A1. It is pertinent to note that on 08.09.2006, the 1st defendant executed settlement deed in favour of his wife under Ex.B2 in respect of suit item No.4 of the properties. Suit was laid on 02.11.2006.

19. The suit is laid for 5 items of properties and they are situate at Periyapattu Village of Tirunavalur Sub-Registration District and Devayanandhal Village of Tirunavalur Sub-Registration District. On behalf of the defendants, it was put-forth that under Ex.A15 dated 22.09.1999, sale deed was executed by the 1st and 3rd defendant in favour of the plaintiff in R.S.No.52/11 - 0.02½ cents and in S.No.52/11c out of 0.03 ares, 0.01.0 ares = 1090 sq.ft., and in S.No.52/12 - 0.01¾ cents were sold for sale consideration of Rs.10,000/-. The market value of of the said property is mentioned as Rs.13,897.80.



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20. Ex.A15 - Sale Deed executed by the 1st defendant and 3rd defendant

in favour of the plaintiff with regard to a vacant site. Whereas, the suit schedule property is a landed property and therefore, the land value details cannot be compared with Ex.A15 with Ex.A1 and the said findings has to be necessarily interfered with.

21. On a careful perusal of Ex.A1 sale agreement, it has been executed in respect of periyapatthu Village properties situate at (i) R.S.No.29/5 out of 1.81 acre 0.30 ½ cents (ii) Dry S.No.29/3 out of 6.58 acre, 0.15 cents and 0.91½ cents (iii) In Devayanandhal Village in Dry.S.No.48/1, out of 0.28 cents 0.14 cents. (iv) In S.No.52/15, out of 0.65 cents 0.07½ cents.

22. Execution of sale agreement is admitted by the 1st defendant. Though he has admitted execution of Ex.A1 sale agreement, DW1 / 1st defendant would state that the sale agreement was executed for the purpose of obtaining loan.

23. It is also not in dispute that suit item nos.1, 2, 3 and 5 are the properties that fell to the share of 1st defendant and it has been contended by the learned counsel for the 1st defendant that as these properties were allotted to the 1st defendant through a family partition, the daughter - 3rd defendant is entitled for a share and the 1/3rd share of the deceased son of 1st and 2nd



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defendant goes to the 2nd defendant (wife of 1st defendant) and therefore, the 1st defendant is not entitled to execute the sale agreement in respect of the share of other defendants. Of course, the suit item nos.1, 2, 3 and 5 have been allotted to the 1st defendant through family partition that took place on 02.03.1984 is not in dispute. Admittedly, the 1st and 2nd defendant's son died as a bachelor. Apart from these details, a close perusal of Ex.A15 sale deed explicates that an extent of 0.04 $\frac{3}{4}$ cents of vacant site was sold by the 1st defendant along with his daughter (3rd defendant) to the plaintiff herein who is none other than 1st defendant's brother. In such a view of the matter, the contention of the learned counsel for the defendants is legally sustainable and therefore, the 1st defendant is not entitled to execute the sale agreement over and above 1/3rd share in respect of the suit item nos.1, 2, 3 and 5.

24. Proceeding further, as regards 4th item of suit properties which is situated at Devayaandhal Village, originally it was the property of mother of plaintiff and the 1st defendant. The total extent is 0.28 cents in S.No.48/1. The southern portion of 0.14 cents was settled in favour of the 1st defendant. With regard to 4th item of suit property, as it is the separate property of the 1st defendant, he is entitled to execute the sale agreement in respect of 4th item of suit property.

25. Regarding readiness and willingness to perform his part of the



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contract, the plaintiff has satisfactorily complied with the requirements stipulated under Section 16(c) of Specific Relief Act. Still for the below mentioned reasons, he has to be non-suited.

(i) Out of 5 items of properties only 4th item of suit property is the separate property of the 1st defendant.

(ii) The plaintiff having purchased a property under Ex.A15, from his brother / 1st defendant and 1st defendant's daughter (3rd defendant), it should not lie in the mouth of the plaintiff to plead otherwise. Therefore, the plaintiff is not entitled for the relief of specific performance, as the item nos.1, 2, 3 and 5 are the joint family property. As the 1st defendant alone has executed the sale agreement, the plaintiff is not entitled for the relief of specific performance in connection with respective sharers. Plaintiff and the 1st defendant are blood brothers.

26. The sale agreement Ex.A1 is not a real one but was executed as a loan document. While filing the suit for specific performance, the plaintiff has deemed to have waived his right to seek for specific performance as the transaction in question was never intended to be acted upon as the agreement of sale and this Court is of the considered view that Ex.A1 is the contemporaneous document which dis-entitles the plaintiff to seek for the relief of specific performance. The cumulative effect is that the plaintiff is not entitled for the relief of specific performance.



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27. The First Appellate Court has elaborately discussed about the refund of advance amount and ordered refund of advance amount. About refund of advance money is dealt with under Section 22(1)(B) of Specific Relief Act. For better understanding Section 22(1)(B) of Specific Relief Act is extracted hereunder.

“Section 22(1)(b):- Any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.”

28. Law is well settled that refund of advanced money can only be granted if it has been claimed. Here, the plaintiff is not entitled for the relief of specific performance and the 1st defendant has admitted that he has received loan amount of Rs.25,000/- from the plaintiff under Ex.A1 agreement for sale.

29. In these circumstances, as the relief is equitable relief, now the only moot question is whether the plaintiff is entitled for the refund of advance money or not?

30. In the absence of alternate relief in the plaint whether the plaintiff is entitled for the refund of money is to be adverted to.

31. Of Course the plaintiff has not pleaded in his plaint and the defendants were not called upon to meet out such opportunity. Admittedly the



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plaintiff has parted with the money of Rs.25,000/- to the 1st defendant.

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32. In this regard, it is relevant to refer to the observations made by the Hon'ble Supreme Court in ***Srinivas Ram Kumar v. Mahabir Prasad and Ors.***, reported in ***AIR 1951 SC 177(FB)***. The plaintiff entered into an agreement for sale with the defendant on 28.10.1941 for purchasing a house at Gaya for a consideration of Rs.34,000/-. Out of this consideration, a sum of Rs.30,000/- was paid by the plaintiff's firm to a creditor of the defendant. The vendors put the plaintiff in possession of the house agreed to be sold in part performance of the contract and promised to execute the funds as title deeds were returned by Jadu Ram and the balance of sale consideration amount of Rs.4000/- was paid by the plaintiff. Meanwhile, the defendant went back and did not execute the conveyance in favour of the plaintiff even after they got back their title deeds from Jadu Ram. Plaintiff laid a suit for specific performance of contract of sale.

33. The defense put-forth by the defendant was that the document executed by the defendant is a loan document. The trial Court concluded that contract of sale was not established and the defendant's story was true and ultimately a money decree was given to the plaintiff for a sum of Rs.30,000/- with interest at 6% p.a., from the date of suit till realization.



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34. On an appeal to the High Court at Patna, by the plaintiff and the second party defendants filed cross-objections challenging the proprietary of the money decree that was passed against them. The High Court dismissed the suit in entirety and decree for recovery of money passed in favour of the plaintiff by the trial Court was set aside. Against this judgment, the plaintiff preferred appeal before the Apex Court. The observation of the Apex Court is given hereunder:

"9. As regards the other point, however, we are of the opinion that the decision of the trial court was right and that the High Court took an undoubtedly rigid and technical view in reversing this part of the decree of the Subordinate Judge. It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs. 30,000/- was advanced by way of loan to the defendant second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative.

The question, however, arises whether, in the absence of any such alternative case in the plaint it is open



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to the court to give him relief on that basis. The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances when no injustice can possibly result to the defendant, It may not be proper to drive the plaintiff to a separate suit.

As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in Babu Raja Mohan Manucha v. Babu Manzoor (70) I.A. 1. This appeal arose out of a suit commenced by the plaintiff appellant to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower courts as well as by the Privy Council. But the Privy Council held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief outside it in the form of restitution under section 65 of the Indian Contract Act. Although no such alternative claim was made in the



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plaint, the Privy Council allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard ex parte in the absence of the respondent."

35. The Apex Court concluded that when no injustice can positively result to the defendant, it may not be proper to drive the plaintiff to file a separate suit.

36. In this case also, the plaintiff is non suited in respect of relief of specific performance. The 1st defendant has admitted to have received a sum of Rs.25,000/- from the plaintiff. Admittedly no alternate relief for refund of advance money is sought for. But the plaintiff is precluded from filing a separate suit as per Order 2 Rule 2, C.P.C. To avoid these technicalities, in order to do justice to the parties to the suit in full, this Court is of the considered view that the plaintiff is entitled for a money decree for a sum of Rs.25,000/- at the rate of 9% p.a., from the date of Ex.A1 till today and thereafter, at 6% p.a. The plaintiff shall pay the requisite Court fee. From and out of the amount which is deposited into Court by the defendant, the plaintiff is entitled to receive a sum of Rs.25,000/- with interest at 7.5% p.a., from the date of Ex.A1 till today and thereafter at 6% p.a.



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37. Based on the aforestated observations and discussions, both the Second Appeals stand allowed. Sequel to this, judgment and decree dated 26.03.2021 in A.S.Nos.27 of 2016 and 24 of 2017 passed by the First Appellate Court is set aside and the judgment and decree in O.S.No.114 of 2006 dated 22.12.2015 passed by the I Additional Subordinate Judge at Villupuram is confirmed. There is no order as to costs.

21.11.2025

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

ssn

To

1. The Additional District Judge (Fast Track Court),
Villupuram.
2. The I Additional Subordinate Judge,
Villupuram.



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R.KALAIMATHI. J.,

ssn

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