



A.S.No.569 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.No.569 of 2022

and

C.M.P.No.21581 of 2022

S.Mahendran

.. Appellant

Versus

1. V.Kalaiselvi
2. M.Mubarak
3. C.Venkatesan

.. Respondents

Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree dated 22.08.2022 made in O.S.No.59 of 2019 on the file of the Additional District Court, Krishnagiri by allowing the above appeal.

For Appellant : Mr.N.Nathami

For Respondents : Mr.B.Vasanth for R1 and R2

Mr.P.M.Duraiswamy for R3

J U D G M E N T

This Appeal Suit arises out of the judgment and decree dated 22.08.2022 passed in O.S.No.59 of 2019 by the Additional District Judge, Krishnagiri. The appellant is the plaintiff and respondents 1 to 3 are the defendants in the said suit.



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2. For the sake of convenience, the parties are described as per their ranking in the Trial Court.

3. The brief facts of the case are as follows:

According to the plaintiff, he entered into a sale agreement dated 11.04.2016 with the first defendant for Rs.20,00,000/- and Rs.13,00,000/- was paid as advance and the balance Rs.7,00,000/- was agreed to be paid within six months. In spite of plaintiff's readiness and willingness to perform his part of the agreement, and legal notice dated 14.03.2019, the first defendant failed to perform her part of contract. While that being so, the first defendant is attempting to alienate the suit property to the second defendant. Hence, the plaintiff has filed a suit in O.S.No.59 of 2019 for specific performance and for permanent injunction restraining the third defendant from creating any encumbrance in the suit property and for alternative relief of refund of advance amount. Pending suit, in spite of interim injunction, the first defendant created a sale deed dated 25.03.2019 in favour of the third defendant in collusion.

4. The defences raised by the first defendant in O.S.No.59 of 2019 in the written statement, which was adopted by the second defendant, *inter alia*, are as follows :

The suit filed by the plaintiff based on the unregistered sale



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agreement dated 11.04.2016, is not a valid one as per Section 17(1)(g) of

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the Registration Act. The first defendant has borrowed a sum of Rs.10,00,000/- on 11.04.2016 from the plaintiff, for which, the plaintiff has obtained signature of the first defendant in an unregistered sale agreement. The suit agreement is only a loan transaction. The plaintiff is an usurious and abnormal interest monger in finance business and that he added Rs.3,00,000/- as interest for Rs.10,00,000/- and fixed the advance amount as Rs.13,00,000/-. The first defendant is ready to pay Rs.10,00,000/- with interest at the rate of 12% per annum to redeem the loan. The plaintiff has not issued any legal notice within the alleged six months. However, he remained silent nearly for three years and issued notice only on 14.03.2019, and also without giving time to the first defendant to submit her reply, the plaintiff has filed the suit on 20.03.2019. In order to discharge the said loan transaction, the first defendant sold the suit property to the third defendant on 25.03.2019 and when the first defendant approached the plaintiff to receive the amount, he claimed abnormal interest. The first defendant has sold the suit property before passing of injunction order in the suit and the relief of injunction has become infructuous. Further, there is no restriction in selling the property by defendants 1 and 2 to the third defendant and the



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plaintiff has no right to object the sale deed of the third defendant, as the third defendant is a *bona fide* purchaser and title is passed in his favour.

Hence, the suit is liable to be dismissed.

5. The written statement was filed by the third respondent denying the allegations contained in the plaint and submitted that, after verifying the entire Revenue Records, title documents and encumbrance in respect of the suit property, after clearing the mortgage loan obtained by the first defendant in the Bank and has purchased the suit property from the first defendant by way of sale deed dated 25.03.2019. Hence, the third defendant is a *bona fide* purchaser of the suit property for valuable sale consideration. He is not aware of the filing of the suit or about the interim injunction granted by the Court against the first defendant.

6. On the basis of the above pleadings, the trial Court had framed the following issues on 19.02.2021 :

1. Whether the suit is barred by Limitation ?
2. Whether the suit filed for specific performance on the basis of unregistered sale agreement dated 11.04.2016 is maintainable as per 17(1)(g) of Registration Act ?



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3. Whether it is true that the un-registered sale deed dated 11.04.2016 entered into between plaintiff & first defendant as a security for loan transaction ?
4. Whether the unregistered sale agreement dated 11.04.2016 is binding the third defendant ?
5. Whether the plaintiff is entitled to the relief of specific performance & permanent injunction ?
6. Whether it is true that the suit property has been sold out prior to the filing of the suit ?
7. Whether the plaintiff is entitled to the alternative relief ?
8. To what other relief the plaintiff is entitled ?

Additional issue was framed on 21.10.2021

1. Whether the third defendant is the *bona fide* purchaser of the suit property ?

The issues were re-casted as follows on 10.08.2022 :-

1. Whether the suit filed for specific performance on the basis of unregistered sale agreement dated 11.04.2016 is maintainable as per 17(1)(g) of Registration Act?
2. Whether it is true that the un-registered sale deed dated 11.04.2016 entered into between plaintiff and



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first defendant as a security for loan transaction ?

3. Whether plaintiff was always ready and willing to perform his part of contract ?

4. Whether the suit is barred by Limitation ?

5. Whether the unregistered sale agreement dated 11.04.2016 is binding the third defendant ?

6. Whether it is true that the suit property has been sold out prior to the filing of the suit ?

7. Whether the third defendant is a *bona fide* purchaser of the suit property ?

8. Whether the plaintiff is entitled to the relief of specific performance and permanent injunction ?

9. Whether the plaintiff is entitled to the alternative relief ?

10. To what other relief the plaintiff is entitled to ?

7. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 12 documents were marked as Exs.A1 to A12. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and no documents were marked. Besides, third party documents were marked as Ex.X1 and Ex.X2.

8. At the conclusion of the trial and after considering the evidence, the learned trial Judge had chosen to decree the suit by granting

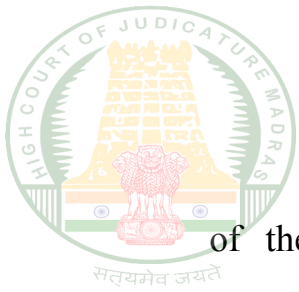


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the alternative relief of refund of advance amount of Rs.13,00,000/- with interest at 12% per annum from the date of agreement till date of decree and thereafter, at the rate of 6% per annum as interest till realization from the first defendant alone and dismissed the suit in respect of relief of specific performance and permanent injunction. Aggrieved by the same, the plaintiff has preferred the present First Appeal.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

10. It is the contention of the learned counsel for the appellant that though the trial Court granted alternative relief for refund of advance amount of Rs.13,00,000/- with 12% interest, but refused to grant statutory charge upon the suit property till the defendants repaid the advance amount. In spite of the plaintiff's readiness and willingness to perform his part of the contract, the trial Court erroneously came to the conclusion that the plaintiff was not ready and willing to perform his part of contract and also not given any valid reasons for not taking steps for more than two and half years, and thereby, the trial Court dismissed the equitable relief of specific performance. The trial Court has agreed the genuineness



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of the agreement and also payment of advance amount, however, dismissed the main relief of specific performance. That being the case, the trial Court ought to have granted charge over the decree and properties under the agreement. Therefore, the present appeal is filed only for limited purpose.

11. Per contra, learned counsel for the respondent/first defendant contented that the first defendant purchased the suit property by way of sale deed dated 09.04.2014 and she is the absolute owner of the suit property. The suit agreement is only a loan transaction. In order to discharge the loan of the plaintiff, the first defendant sold the suit property to the third defendant, who is the subsequent purchaser, who was also impleaded in the suit, *vide* order in I.A.No.3 of 2019 dated 06.07.2019. It is further contended that, now the first respondent is ready to settle the matter amicably by refunding the amount received as advance and hence, this Court may direct for charge over for other properties, instead of the property mentioned in the agreement. Today, when the matter is taken up for hearing, the learned counsel for the respondents produced the documents, which shows that the value of the property is only Rs.3 lakhs and odd and the outstanding due is Rs.13 lakhs and



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interest. Therefore, the contention of the first respondent is not acceptable.

12. Points for consideration that arises in this appeal are :

Whether the judgment and decree of the trial Court below is fair and proper ?

13. Admittedly, the appellant filed the suit for specific performance in O.S.No.59 of 2019 on the file of the Additional District Court, Krishnagiri. The trial Court, after trial, dismissed the suit in respect of the main relief of specific performance, by judgment dated 22.08.2022. However, the trial Court granted the alternative relief of refund of advance amount of Rs.13 lakhs and interest at the rate of 12% per annum from the date of agreement till the date of decree and thereafter, interest at the rate of 6% per annum till realization from the first defendant alone. Admittedly, pending suit, the first respondent had created encumbrance over the suit property and hence, the trial Court ought to have granted charge over the decree of the suit property, which was covered under the agreement. Though the trial Court granted the alternative relief of recovery of advance amount, failed to grant a statutory charge upon the suit property, which was covered under the said agreement. It is seen



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from the records that the first Appellate Court as a final Court of fact finding Court, while re-appreciating entire materials finds that the appellant has not proved his case for main relief of specific performance.

14. Therefore, the appeal is dismissed in respect of relief of specific performance, however the appeal is partly allowed with reference to the charge over decree alone. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.08.2025

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

To

- 1.The Additional District Judge,
Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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