



A.S.No. 77 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 77 of 2023
and
C.M.P. No.3657 of 2023

S. Viswanathan

... Appellant

Versus

P. Azhagesan

... Respondent

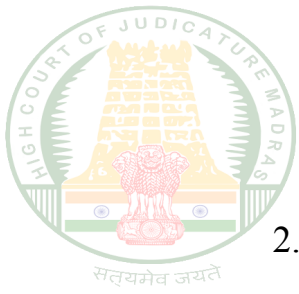
Appeal Suits had been filed under Section 96 of Civil Procedure Code seeking to set aside the judgment and decree dated 08.04.2022 passed in O.S.No. 13 of 2018 by the learned Principal District and Sessions Judge, Ariyalur.

For Appellant : Mr. V. Shanmugasundaram

For Respondent : Ms. P. Srividya

JUDGMENT

This Appeal Suit had been filed to set aside the judgment and decree dated 08.04.2022 passed in O.S.No. 13 of 2018 by the learned Principal District and Sessions Judge, Ariyalur.



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2. The brief facts which are necessary for consideration of this

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2.1. The Plaintiff had stated that the property in Ariyalur District, Jayamkondam Village in R.S. No. 247/18 D1 punja lands measuring an extent of 0.18.00 ares bearing patta No. 5156 and in R.S. No. 247/18 C punja lands measuring an extent of 0.10.50 ares bearing patta No. 1687 was the property of the Defendant. The Plaintiff entered into a registered sale agreement with the Defendant on 15.04.2017 vide Document No. 748/2016. The agreed amount fixed is Rs. 16,00,000/-. On 15.04.2017 the Defendant received a sum of Rs.15,00,000/- as advance and the time fixed for performance of the sale is one year. The Plaintiff was always ready and willing to perform his part of the contract and thus within one year period sent a lawyer's notice on 27.02.2017 calling upon the Defendant to execute the sale deed by receiving the balance sale consideration. A reply was sent by the Defendant's lawyer stating that the transaction was only a loan transaction and denied all the averments in the notice. Therefore, the Plaintiff has filed the Suit in O.S.No. 13 of 2018 seeking specific performance directing the Defendant to execute a valid and proper sale deed under the suit agreement dated 15.04.2016 in favour of the Plaintiff on the stamp papers to be furnished by the Plaintiff after receiving the balance of the sale consideration namely the sum of Rs.1,00,000/- within a



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time to be fixed by the Court and on his failure to do so, order execution of the sale deed through Court at the costs of the Defendant in favour of the Plaintiff conveying the suit schedule properties as contemplated under law and have it registered and deliver possession or in the alternative directing the Defendants to pay the Plaintiff the sum of Rs.15,00,000/- with interest at 12% per annum from the date of Plaint till the payment in full on charges of the suit property and directing the Defendant to pay the Plaintiff the costs of the suit.

2.2. The Defendant had filed written statement admitting the execution of the registered sale agreement. He further stated that the Plaintiff was in the lending business and on that basis for the purpose of his business, borrowed Rs.7,00,000/- as loan and as per the village practice, the schedule mentioned property document was given as a security i.e Rs. 16 lakhs. He further stated that the said amount of Rs. 7,00,000/- was obtained in March, June, July 2016 and January 2017 and the said amounts were credited to the Plaintiff's State Bank of India account towards interest Rs. 30,000/- Principal Rs. 30,000/- totally Rs. 60,000 likewise he had paid Rs. 2,40,000/-. Further unfilled cheques were received by the Plaintiff and promissory note for a sum of Rs. 16 lakhs was also obtained from the Defendant. When the Defendant requested for the repayment of the said Rs. 7 lakhs in instalments the Plaintiff threatened



the Defendant with his promissory note and the cheques. The property is worth several crores. The sale agreement was given in Trust as security for the loan amount and thus there is no cause of action for the suit and prayed for dismissal of the same.

2.3. On perusal of the plaint and written statement, the learned Principal District and Sessions Judge, Ariyalur, had framed the following issues:

1. Whether the sale agreement is true? Valid ? binds the Defendant?
2. Whether the sale agreement was executed for the purpose of loan transaction?
3. Whether the Plaintiff is entitled to the relief of specific performance?
4. What other reliefs the Plaintiff is entitled to?

2.4. During trial, on the side of the Plaintiff, he was examined as P.W-1 and documents were marked as Ex.A-1 to Ex.A-3 . On the side of Defendant, he was examined as D.W-1 and marked his Bank Statement as Ex.B-1 and pass book as Ex.B-2.

2.5. The learned Principal District and Sessions Judge, Ariyalur on



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consideration of the materials available through evidence of Plaintiff as P.W-1 and the documents of the Plaintiff as Ex.A-1 to Ex.A-3 and the evidence of the Defendant as D.W-1 and the documents marked on the side of the Defendant as Ex.B-1 and Ex.B-2 had granted the decree for specific performance in favour of the Plaintiff thereby directing the Defendant to execute the sale deed within three months after receiving the balance of sale consideration of Rs.1,00,000/-.

3. Aggrieved by the said judgment, the Defendant had preferred this Appeal Suit raising the following grounds:

3.1. The trial Court failed to consider the vital facts that the Appellant/Defendant was actually received loan amount and for which he has given the written sale agreement and there is no intention to sell his lands to the Respondent/Plaintiff and no other supportive documents to justify the stand taken by Respondent.

3.2. The trial Court ought to have taken note of the fact that for seeking a prayer for specific performance in the suit. It is paramount duty of the Respondent/Plaintiff to file additional documents to support the sale agreement deed since it is fact that when any person, that village is used to



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WEB C borrow loan amount from any other person and normally who shows the liability of person when he is borrowing the money has to write sale agreement with the condition that to sell the property to the persons who will fail to repay loan. This aspect has not been discussed and no issues has been framed on this aspect. Therefore the Judgment and decree of the trial Court is liable to be set aside.

3.3. The Appellant/Defendant humbly further submit that the trial Court ought to have take note of the fact that the Appellant's Bank amount transaction which shows actual purpose of money transaction between the parties and this fact was over looked by the trial Court.

3.4. It is further submitted that money transaction from 20-05-2016 to 16-08-2021 showing different dates of transaction in favour of Respondent/Plaintiff has not been properly explained or discussed in the Judgment and it is fact that the Respondent/Plaintiff had clearly accepted in his deposition that under what purpose of the Appellant/Defendant has come forward for sale of the property. This fact shows that the Appellant/Defendant has used to cultivate his lands and when under proper cultivation works are going on the land what is the necessity to accept or agree to sell the land to



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Respondent/Plaintiff and therefore averments in the Documents of Ex.A-1 is not supported by any other documents and therefore trial Court Judgment and Decree is liable to be set aside.

3.5. It is pertinent to submit that when the Respondent/Plaintiff deposed that he came to contact of this Appellant only through one of his friends Mr. Pandu from Pudukudi and when that being the fact of this case, it is duty of the Respondent/Plaintiff to summon his friend for let an evidence and to prove merit of the case in the trial Court. The trial ought to have give direction to Respondent to issue summons for enquiry and therefore trial Court Judgment and Decree is liable to be set aside.

4. The learned Counsel for the Appellant Mr. V. Shanmugasundaram submitted that the Appellant herein was the Defendant in the main suit. The said suit is for specific performance with regard to an agreement dated 15.04.2016 and also having alternative prayer to refund the loan amount of Rs.15 lakhs with interest. Even though the execution of agreement, its contents and his signature were admitted by the Defendant, the trial Court failed to appreciate the facts that the Respondent/Plaintiff was doing lending business and on that basis, this Appellant borrowed loan amount of Rs.7 lakhs,



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as per the village practice, the schedule mentioned property document was given to Respondent/Plaintiff as a security. It is pertinent to mention that the trial Court did not give any finding with regard money transaction and in four occasions some part of loan amount and interest were credited to the Respondent/Plaintiff Bank i.e., State Bank of India Account towards interest Rs:30,000/-, principal Rs:30,000/- totally Rs:60,000/- like wise this Appellant had paid more than Rs:2,40,000/-. Further, unfilled cheque and promissory note for Rs.16 lakhs were also received by the Plaintiff. The subject matter of argument is Rs.15 lakhs had received by the Appellant and this Appellant had received loan amount only for irrigation purpose. The suit schedule property is heavy worth of several crores.

5. He further submitted that the Respondent/Plaintiff in his deposition admitted the various deposited amounts from 20.05.2016 to 16.08.2017 were made to the credit of his account. But he falsely stated that the amounts were deposited by his customers. It is for the Respondent/Plaintiff to prove that the amounts were paid by his customers but he has not even mentioned the name of the single customer. No proof of evidence has been adduced by him which created a reasonable doubt and presumption that Respondent/Plaintiff is doing lending business. The trial Court did not find



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anything in this aspects. As per evidence of D.W-1 he has paid Rs.3,85,750/-

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in favour of Respondent/Plaintiff and he sought for a prayer that the trial Court can order to pay the balance amount of loan after deducting above said amount. The trial Court did not appreciate this stand.

6. Also he submitted that the trial Court ought to have taken a stand that what is the necessity to accept or agree to sell the agricultural land when it is a fact that Appellant is regularly doing cultivation. It can be rightly presumed that amount was received by Appellant/Defendant only as loan and not to sell the land. Further, the usual course of getting loan from the person like the Respondent/Plaintiff farmers and villagers used to get the loan after made a sale agreement with the person who used to sanction loan amount. The trial Court ought to have come to the conclusion that the description of property as shown in the main plaint is the cultivating punja lands having worth of crores and this Appellant did not have any intention to sell the land. Even the Respondent/Plaintiff have made alternative prayer for directing the Appellant/Defendant to pay the Plaintiff Rs.15 lakhs with interest of 12% p.a. from the date of plaint, the trial Court ought to have taken stand that since the actual value of suit property land having value of crores and it is justifiable to order for alternative prayer instead of decreed the suit against the Appellant



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and the trial Court ordered the execution of sale of the suit property in the favour of the Plaintiff. But the trial Court failed to order for in favour of Plaintiff and that necessitated the Appellant to file this Appeal Suit seeking to set aside the judgment and decree of the trial Court and order for alternative stand taken in the plaint. No prejudice will be caused to Respondent /Plaintiff since he sought for alternative prayer in the plaint.

7. It is further submitted by the learned Counsel for the Appellant that the trial Court failed to consider the actual position and only relying upon the documents under Ex-A-1 alone and failed to verify the statement of accounts and money transactions made in favour of Plaintiff by the Appellant which are naturally any prudent man can come to the conclusion that even though Ex.A-1 show this sale Agreement that the conclusion of the purchase to the suit is not supported for sale of land due the fact that land is having several crores of value and only Rs.15 lakhs was received by Appellant/Defendant but loan amount is received only for cultivation purpose for his suit property. When that being so, the trial Court ought to have decreed the suit for alternative prayer instead of execution of sale in favour of Plaintiff. Therefore, he seeks indulgence of this Court to consider alternative prayer and to allow the Appellant to pay the balance amount with interest in favour of



Respondent/Plaintiff.

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8. The learned Counsel for the Respondent Ms. P. Srividhya invited the attention of this Court to the cross-examination of D.W-1 which reads as follows:

“வாதியும் நானும் கிரைய ஒப்பந்தம் செய்து கொண்டோம் என்றால் சரிதான் அது வா.சா.ஆ/1 ஆகும். அதில் அனைத்துப் பக்கங்களிலும் உள்ளது என்னுடைய கையெழுத்து தான். அந்த கையெழுத்தை நான் விருப்பப்பட்டு தான் போட்டேன். யாரும் என்னை வற்புறுத்தி கையெழுத்து வாங்கவில்லை. ஒப்பந்தத்தில் கண்டுள்ள சொத்தை அழகேசனுக்கு விற்க ஒப்புக் கொள்வதாக ஒப்பந்தத்தில் உள்ள விவரம் தெரிந்து தான் கையொப்பம் போட்டேன் என்றால் சரிதான்.”

9. The learned Counsel for the Respondent submitted that when admittedly the execution of the sale agreement is only for the purpose of sale of the property, the contention of the Defendant that the transaction is loan transaction is not acceptable. She also invited the attention of this Court to the cross examination the Defendant which reads as follows:

“அழகேசன் வங்கிக் கணக்கிலிருந்து இரண்டு காசோலைகளாக ரூபாய் 15 லட்சம் கடன் கொடுத்துள்ளார் என்றால் சரிதான். ரூபாய் 15 லட்சம் வாங்கியதற்கு தான் வா.சா.ஆ.1 ஒப்பந்தம் எழுதிக் கொடுத்தேன் என ஒப்புக்கொண்டுள்ளார்.”

10. Further, it is submitted that the Defendant had admitted the execution of the sale agreement dated 15.4.2016. The signature of the Defendant was also admitted by him. The contention of the Defendant is that



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the sale agreement was not executed for the purpose of selling the property and only as a security for the loan obtained for his business. The said statement was not proved by oral and the documentary evidence of the Defendant. Hence, the prayer for specific performance was decreed.

11. The learned Counsel for the Respondent submitted that the Defendant had admitted that he had received a sum of Rs.15,00,000/-. Therefore, at no stretch of imagination the contention that the loan amount was only Rs.7,00,000/- and sale agreement was written for Rs.15,00,000/- can be accepted. Further the Defendant contended that he had repaid Rs.30,0000/- towards principal and Rs. 30,000/- towards interest and in total a sum of Rs.2,40,000/- towards the said loan amount into account of the Plaintiff's in the State Bank of India. Whereas in his proof affidavit he had stated that on several dates, he had made payments and asked the Plaintiff to produce the Bank statement. The Statement of Account for the period from 01.04.2016 till 31.03.2017 was produced and the Defendant could not specifically state what are the amounts that were paid by him. It is pertinent to state that even in the reply notice dated 09.03.2017 the Defendant had taken a plea that a sum of Rs. 2,40,000/- was repaid during May, June, July 2016 and January 2017 and even in the written statement also the said amount was only shown as repaid by him



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towards the loan transaction. For the first time in the proof affidavit the Defendant has come up with this amount of Rs. 3,85,000/- which was also not supported by any document. The Defendant also was not in a position to say from the statement of account produced by the Plaintiff that these are the payments made from his account or by him. Such being the case, the said defence has no legs to stand.

12. The learned Counsel for the Respondent invited the attention of this Court to the cross-examination of P.W-1, where the Plaintiff had denied the repayment of loan by the Defendant and the same is as follows:

“Rs.3,85,000/- தொகைகளை பிரதிவாதி வழக்கு சம்பந்தப்பட்ட கடன் தொகைக்காக என்னிடம் வட்டி மற்றும் அசல் தொகைகளாக கட்டியுள்ளார் என்றால் சரியல்ல. பிரதிவாதி என்னிடம் கடனுக்கு பணம் வாங்கவில்லை மேற்சொன்ன தொகைகள் எனக்கு நான் செய்யும் கன்சல்டேஷன் தொகைக்காக என்னுடைய வாடிக்கையாளர்கள் என்னுடைய வங்கிக் கணக்கில் செலுத்திய தொகைகள்.”

Thus, by all means the Plaintiff had proved his case and the Defendant though had taken a stand that it is only a loan transaction and the property is given as security for the said loan failed to prove the same.

13. The learned Counsel for the Respondent submitted that it is the settled legal position that in a suit for specific performance of a registered sale



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agreement of the Defendant contends that the sale agreement was not executed with an intention to sell the property but altogether a different transaction, the burden is on the Defendant to prove the same. The Trial Court after elaborately considering the oral and documentary evidence had decreed the suit. The argument of the Appellant/ Defendant that the burden is on the Plaintiff to prove that it is not a loan transaction is not correct as stated supra. Further, in compliance with the provisions of the Specific Relief Act a notice was issued well before the expiry of the agreement date and suit was also filed well within the limitation period. Therefore, the Trial Court has rightly decreed the suit which does not warrant interference. Therefore, she prays for dismissal of this Appeal Suit as devoid of merits with exemplary costs.

Point for determination:

Whether the judgment of the learned Principal District and Sessions Judge, Ariyalur in O.S.No. 13 of 2018, dated 08.04.2022 is erroneous on appreciation of evidence in the light of the materials available before the trial Court and in the light of the provisions of Specific Relief Act?

14. Heard the learned Counsel for the Appellant Mr.V.Shanmugasundaram and the learned Counsel for the Respondent Ms.P.Srividhya.



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WEB COPY15. Perused the original records (certified photostat copy received as per the earlier circular of the High Court) and the judgment dated 08.04.2022 passed in O.S.No. 13 of 2018 by the learned Principal District and Sessions Judge, Ariyalur.

16. On perusal of the records, it is found that during trial the Plaintiff had proved the claim of the Plaintiff by marking the sale agreement dated 15.04.2016 as P.W-1 and the notice issued on behalf of the Plaintiff dated 27.02.2017 to the Defendant seeking execution of the sale deed as Ex.A-2 and the reply notice received from the Defendant dated 09.03.2017 disputing the claim of the Plaintiff under Ex.A-1. The Plaintiff was cross-examined on behalf of the Defendant. The defence of the Defendant that Ex.A-1 was not executed with an intention to sell the property. The property is an ancestral property of the Defendant who is a farmer had availed loan of Rs.7,00,000/- from the Plaintiff. As per the local practice prevailing in the village, where both the Plaintiff and Defendant are residing, the Plaintiff had obtained promissory note as well as registered sale agreement deed from the Defendant showing double the amount borrowed from the Plaintiff by the Defendant as Rs.16,00,000/-. Since the Defendant was the borrower he had no other option



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than to sing the sale agreement deed. Towards repayment of the loan, the Defendant had withdrawn amount from his Bank account in State Bank of India, Jeyankondamcholapuram and the amount was deposited in the account of the Plaintiff's Bank viz., State Bank of India, Kumbakonam Branch under Ex.B-1. The same was denied by the Plaintiff in his cross-examination. Ex.B-1 was marked in cross-examination of P.W-1 as he had admitted his Bank account but he had disputed the claim of the Defendant in the written statement towards repayment of the loan he had on various occasions paid part of the loan amount. As per Defendant, Ex.A-1 is the security for the loan availed by the Defendant. That part of the cross-examination was denied by the Plaintiff. No other witness was examined on behalf of the Plaintiff. The evidence of the Plaintiff was closed with Ex.A-1 to Ex.A-3. The Defendant was examined as D.W-1. The affidavit of the Defendant was filed as examination-in-chief of D.W-1 which had the averments in the written statement as it is. The defence of the Defendant that the Defendant availed the loan for Rs.7,00,000/- for which as per the local practice prevailing in the village, the Plaintiff had obtained registered sale agreement deed by showing double the amount instead of the amount actually borrowed by the Defendant and the sale agreement was executed. There was no intention on the part of the Defendant to part with the ancestral property since he depends on the suit



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property for his livelihood as a farmer. His intention was only to avail the loan and not for sale of the property which fetches huge amount whereas the Plaintiff is intent to exploit the situation and get a sale deed executed through the Court for a meagre amount. During the evidence of Defendant as D.W-1 the Bank Pass Book of the Defendant was marked as Ex.B-2. Already the statement of account of the Plaintiff was marked as Ex.B-1 during cross-examination of the Plaintiff as P.W-1 to prove that he had withdrawn amount from his account through ATM and paid the amount into the account of the Plaintiff in his Bank account. The Defendant had in the cross-examination admitted that Ex.A-1 sale agreement deed contains the Defendant's signature in all the pages. He had clearly stated that having understood the recitals in the sale agreement, he had signed the sale agreement and there was no compulsion or pressure extorted on him by the Plaintiff to obtain his signature. No other witness was examined on the side of the Defendant. The evidence of the Defendant was closed with D.W-1 and marking of Ex.B-2.

17. On appreciation of the evidence, the learned Principal District and Sessions Judge, Ariyalur arrived at a conclusion that since the Defendant had admitted in his cross-examination that he had signed on every page of the sale agreement under Ex.A-1 and he had understood the recitals in the sale



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agreement deed, since there was no compulsion or pressure extorted on him by the Plaintiff the execution of the registered sale agreement is a voluntary contract between both the parties, the learned Judge had answered the Issues 1 and 2 in favour of the Plaintiff and against the Defendant and in continuation of answering the issues 1 and 2 the learned Judge had decreed the suit in favour of the Plaintiff directing the Defendant to receive the balance of sale consideration of Rs.1,00,000/- and to execute the sale deed within a period of 90 days from the date of decree.

18. On independent appreciation of evidence before the trial Court through P.W-1 and D.W-1 and through Ex.A-1 to Ex.A-3 and Ex.B-1 and Ex.B-2, this Court on appreciation of the same materials is of the view that a contract between two parties the parties to the contract should be equally placed. Here as per the reply notice under Ex.A-3 the Defendant disputes the claim of the Plaintiff that he did not execute the sale agreement deed with an intention to sell the property. He had availed the loan of Rs.7,00,000/- for which as per the local practice prevailing in the village and surrounding villages, the Plaintiff have obtained sale agreement deed which was registered as security for the loan availed by the Defendant. Also in the reply notice he had stated that he had paid part payment through the Bank account of the



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Plaintiff and also directing the Plaintiff to hand over the unfilled cheques bearing Cheque Nos.830561 to 830565 and the unfilled promissory note. Also the claim that the Defendant had paid into the Bank account of the Plaintiff having Bank account bearing No.20286063612, as proof of his claim, the Defendant had moved the trial Court for production of the Bank account of the Plaintiff and marked it in the cross-examination of the Plaintiff as Ex.B-1. The Plaintiff disputed the amount claiming that those amounts were deposited by his clients for consultation work. As proof of the claim, the Defendant as D.W-1 had marked his Bank account as Ex.B-2 wherein amounts had been withdrawn from his Bank account.

19. As pointed out by the learned Counsel for the Respondent in the Appeal, there is clear admission in the cross-examination that understanding the recitals in Ex.A-1 sale agreement deed, the Defendant had signed in every page. It is to be noted that the Defendant had not claimed that Ex.A-1 is a fraudulent deed. It is his explanation that even sale agreement was executed, it was not executed for the purpose or with the intention to part with the valuable property which is the ancestral property of the Defendant. The Defendant being a farmer depending his livelihood on the suit property.



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20. It is to be noted that in every contract the parties to the contract shall be equally placed. Here accepting the contention of the Defendant, the Defendant had approached the Plaintiff for financial help of loan, towards security the Plaintiff had obtained sale agreement deed for valuable property as security, only then the Defendant will not be committing default in repayment. Till such time the Plaintiff had acted cautiously, when the Plaintiff attempted for execution of the sale deed by filing this suit, the Defendant had resisted the same on the ground that there was no intention to alienate the property.

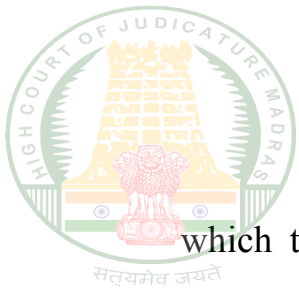
21. As per the judgment of the Hon'ble Supreme Court, as the value of the immovable property increases manifold over the years, instead of granting specific relief, the Court shall consider the consequences and exercise discretion judiciously. Here the Defendant disputes the claim of the Plaintiff seeking specific performance of contract. It is the defence of the Defendant that since he is a farmer depending on agriculture and the property was enjoyed by him as ancestral property he does not have intention to alienate it or encumber it which was lost sight by the learned Principal District and Sessions Judge, Ariyalur. The learned Principal District and Sessions Judge, Ariyalur had considered the admission made by the Defendant in the cross-examination that he had signed every page of the sale agreement deed under



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Ex.A-1 and he had understood the recitals in the sale agreement deed. That does not mean there was intention. It is to be considered by the Court that a person who seeks financial help is forced to execute security for the loan availed naturally it will be immovable property. It gives guarantee to the person who part with the amount that the party availing the loan will be forced to repay it as he had executed security for the amount claimed. That much contract is valid. At the same time, the person who had lent the amount is in a higher plane or a better position than the person who signs the document. The person who availed loan is at the mercy of the person who had extended the loan. Therefore, the Defendant claiming that he had availed the loan, at that time, he had executed the sale agreement deed on instruction of the Plaintiff. That cannot be ignored by the Court. Merely because the Defendant had admitted his signature and admitted that he had understood the the recitals it does not mean that he had an intention to sell the property. Ex.A-1 is not challenged by the Defendant. The only defence of the Defendant is that it was executed as a security for the amount borrowed from the Plaintiff. It is the case of the Defendant that the Plaintiff is not an acquaintance he was introduced by a broker in the village. Therefore, at the time of availing loan, he had given his Bank account without which the Defendant will not be able to summon the Bank transaction. The statement of Bank account of the Plaintiff



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which the learned Principal District and Sessions Judge failed to consider.

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From the normal human conduct, the Defendant approached the Court for summoning the Plaintiff's Bank account indicates there is some justification on the part of the Defendant claim that he had repaid part of the amount. As per the statement under Ex.B-1 there are payments made on various dates totaling Rs.2,40,000/- paid by the Defendant to the Plaintiff which the Plaintiff had denied in his cross-examination. It is to be noted that the Defendant who is a stranger to the Plaintiff was able to send for the Bank statement of the Plaintiff through the Court that indicates what had been stated by the Defendant is true. Therefore, towards repayment he had paid Rs.2,40,000/- into the Bank account of the Plaintiff. Therefore, the defence of the Defendant is probablised by the circumstances available in this case through Ex.B-1 and Ex.B-2 withdrawal of amount from the Account of the Defendant.

22. As per Section 20 of the Specific Relief Act,1963 the Court while exercising the discretion need not in all circumstances grant the decree for specific performance which is amended by the Specific Relief (Amendment) Act,2018 the discretionary power of the Judge under Section 20 is taken away. It is sufficient to grant the alternate relief and it was sought by the Plaintiff in the Plaint, the court can ordered for an alternative relief under Section 22 of



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the Specific Relief Act. In this case, the Plaintiff had sought alternate relief also for refund of the advance amount with interest at 12% per annum.

23. Ignoring the alternate relief sought by the Plaintiff in the plaint, the learned Principal District and Sessions Judge, Ariyalur, had granted the decree for specific performance. Aggrieved that the Defendant losing his livelihood by parting with his ancestral property on which his livelihood as a farmer depends, the Defendant had approached the Court seeking to modify the decree of the trial Court. That is the gist of the Appeal. Therefore, in the light of the evidence available before the Court, the suit having been decreed is modified.

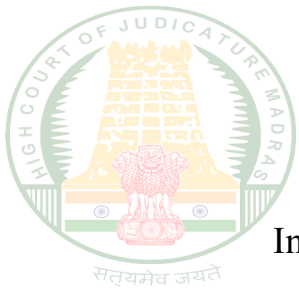
24. The learned Principal District and Sessions Judge, Ariyalur, by judgment dated 08.04.2022 in O.S. No. 13 of 2018 decreeing the suit for specific performance is found to have ignored the provisions of Specific Relief Act which grants the Civil Courts that in all circumstance the discretion shall not be mechanically exercised. It is sufficient that alternate relief can be granted. In this case, the Plaintiff himself had sought the alternate relief of refund of the amount already paid to the Defendant. On appreciation of evidence, the claim of the Defendant need not be accepted in toto. In which



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case the Plaintiff suffers after having granted loan to the Defendant, it is for the Defendant to prove his claim that he had only availed Rs.7,00,000/- and not Rs.15,00,000/- which the Defendant failed to prove. The defence of the Defendant that his intention was not to alienate the property is alone considered by the Court in Appeal. Under those circumstances, the learned Principal District and Sessions Judge ignoring the defence of the Defendant that his intention was not to encumber the property, he had availed loan could have been considered cautiously as per the provisions of Specific Relief Act. Therefore, that part of the decree granting specific relief directing the Defendant to receive Rs.1,00,000/- and execute sale deed within 90 days is found erroneous warranting interference by this Court to grant the alternate relief thereby modifying the decree. Therefore, the judgment dated 08.04.2022 in O.S.No. 13 of 2018 passed by the learned Principal District and Sessions Judge, Ariyalur cannot be treated as erroneous, it is erroneous only in respect of granting of decree for specific performance, instead of granting alternate relief. Therefore, the point for consideration is answered partly in favour of the Defendant/Appellant. The judgment is not wholly erroneous. It is partly erroneous regarding the granting of decree for specific relief. Accordingly the decree is modified.



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In the result, **this Appeal Suit is partly allowed** thereby the decree granted by the learned Principal District and Sessions Judge, Ariyalur is modified as Defendant is directed to repay the advance amount of Rs.15,00,000/- under Ex.A-1 after adjusting Rs.2,40,000/- already deposited in the Bank account of the Plaintiff under Ex.B-1, with interest at the rate of 12% per annum from the date of availing the amount i.e., 15.04.2016 till the date of decree in the Appeal and 6% per annum from the date of decree in the appeal till the date of recovery. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2025

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The Principal District and Sessions Court,
Ariyalur.
2. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

srm

Judgment made in
A.S.No. 77 of 2023

24.06.2025