



S.A. No.76 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 13.02.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.76 of 2025

1.T.Duraisamy
2.A.S.Mylsamy

... Appellants

Vs

P.Rajasingh

... Respondent

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 18.07.2023 in A.S.No.27 of 2022 on the file of the Principal District Judge, Tiruppur, confirming the judgment and decree dated 29.09.2020 in O.S.No.370 of 2018 on the file of the Additional Subordinate Court, Tiruppur.

For Appellants : Mr.R.Sunilkumar

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 18.07.2023 in A.S. No. 27 of 2022 on the file of the Principal District Judge, Tiruppur, confirming the judgment and decree dated 29.09.2020 in O.S. No. 370 of 2018 on the file of the Additional Subordinate Court, Tiruppur.



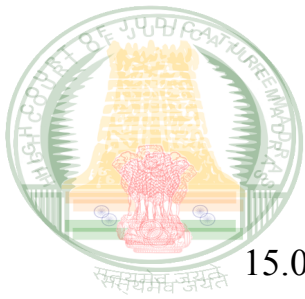
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2. Heard Mr.R.Sunilkumar, learned counsel for the appellants, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. The appellants are the plaintiffs in O.S. No. 370 of 2018 on the file of the Additional Subordinate Court, Tiruppur, filed for the relief of specific performance, directing the defendant to execute the sale deed as per the sale agreement, with an alternative prayer for refund of the advance amount paid.

5. The case of the plaintiffs is that the suit property absolutely belongs to the defendant, who agreed to sell the same for valid consideration for a sum of Rs. 8 lakhs. Accordingly, the plaintiffs paid Rs. 7 lakhs as advance, and a sale agreement was executed on 07.08.2017. As per the agreement, the sale deed was to be executed within one year upon payment of the balance amount. The plaintiffs issued a notice on



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15.05.2018, expressing readiness to pay the balance and calling upon the defendant to execute the sale deed. As the defendant evaded execution, the suit was filed.

6. The defendant/respondent contested the case, stating that he had borrowed Rs. 5 lakhs from the plaintiffs for business purposes and agreed to repay the same with 3% interest. According to him, the sale agreement was executed only as security for the loan and not with the intention of selling the property. He further claimed the property was worth about Rs. 25 lakhs, and the agreed sale amount of Rs. 8 lakhs was only a notional figure mentioned for security purposes, thereby disputing the validity of the sale agreement.

7. Before the trial court, both parties adduced oral and documentary evidence. On the plaintiffs' side, the 2nd plaintiff was examined as PW-1, and another witness was examined as PW-2. Exhibits A1 to A4 were marked. On the defendant's side, he was examined as DW-1, and no documents were marked.



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8. Upon considering the evidence on record, the learned trial judge framed the main issue: whether the plaintiffs were entitled to the relief of specific performance as prayed for? It was found that the plaintiffs issued notice before the expiry of the stipulated one-year period, claiming readiness to perform their part. However, the evidence of PW-1 (2nd plaintiff) contradicted that of PW-2 (attesting witness), casting doubt on the execution of the sale agreement. Furthermore, the plaintiffs claimed the one-year time period was to allow the defendant to remove vehicles from the property, but no such term was included in the sale agreement, and it was admitted to be a vacant site. Therefore, the trial court held that the plaintiffs had not proved themselves to be bona fide purchasers, nor did they prove their readiness and willingness to perform their part of the contract. The trial court concluded that the sale agreement was not genuine. Nevertheless, since the defendant did not produce any evidence to prove that only Rs. 5 lakhs was borrowed, the trial court directed him to refund Rs. 7 lakhs with interest at 6%. Aggrieved by this finding, the plaintiffs preferred an appeal in A.S. No. 27 of 2022.

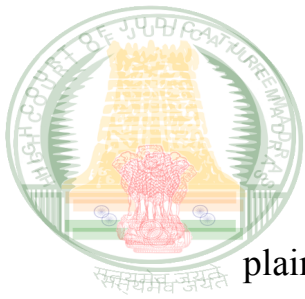


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9. The learned first appellate judge independently analyzed the facts and evidence and also received additional documents marked as Ex.A5 (Encumbrance Certificate), Ex.A6 (Patta), and Ex.A7 (Passbook of the 2nd plaintiff) to show that the plaintiffs acted as bona fide purchasers. The defendant claimed that the 1st plaintiff was a financier and the 2nd plaintiff was his employee, a fact not seriously denied by the plaintiffs.

10. The 1st plaintiff did not enter the witness box to testify regarding the execution of the sale agreement or to prove his readiness and willingness under Section 16(c) of the Specific Relief Act. Only the 2nd plaintiff gave evidence. The 1st plaintiff neither denied the allegation that he was involved in the finance business nor offered any explanation for fixing a one-year period to complete the sale when 90% of the sale consideration was allegedly paid.

11. The appellate court found that the reasons provided by the plaintiffs were not convincing. It concluded that the sale agreement was executed by the defendant as a security for the loan obtained from the



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plaintiffs, particularly the 1st plaintiff, and that this was supported by the plaintiffs' own evidence. Therefore, the appellate court confirmed the findings of the trial court and dismissed the appeal. Challenging these concurrent findings, the plaintiffs have now filed the present Second Appeal.

12. The learned counsel for the appellants challenged the findings of the courts below on the following grounds:

"(i) The courts below ought to have considered the fact that the defendant had purchased the suit property being 3,200 Sq.Ft., by Exhibit A2 on 07-04-2016 for Rs.4,80,200/- and paid a sale consideration by way of cheque.

(ii) The courts below ought to have considered the fact that the plaintiffs/appellants have agreed to purchase the suit property for a sum of Rs.8 Lakh on 07-08-2017, which is almost double the price for which the defendant/respondent had purchased on 07-04-2016.

(iii) The courts below ought to have considered the fact that a substantial hike in the price was gained by the defendant within a short



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period of 16 months after his purchase on 07-04-2016 for Rs.4,80,200/-.

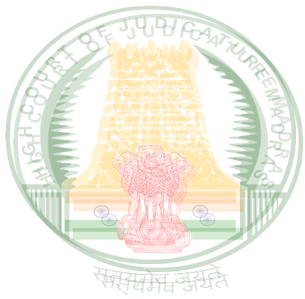
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(iv) The courts below ought to have considered the fact that the act of sending legal notice (Exhibit A3) requesting the defendant/respondent to come to the office of SRO, for executing the sale deed can certainly be considered as an expression of readiness and willingness by the plaintiffs/appellants.

(v) The courts below ought to have considered the fact that marking of Exhibit A7 Bank pass book of 2nd plaintiff showing the balance of more than Rs.2 Lakh indicates plaintiffs' capacity to pay the remaining sale consideration of Rs.1 Lakh.

(vi) Despite the examination of 2 plaintiff as PW-1, insisting the examination of 1st plaintiff also as witness is nothing but a repetitive and duplication of evidence.

(vii) The courts below ought to have considered that the compliance of readiness and willingness has to be in spirit and substance and not in letter and form. The overall circumstance and conduct of the parties shall be taken in to consideration."



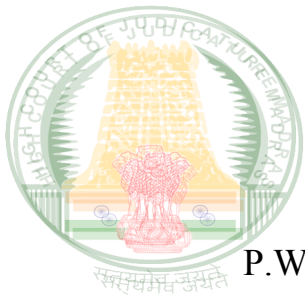
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13. Upon perusal of the records, it clearly reveals that the 1st plaintiff was claimed as a financier by the defendant before the Trial Court, and the 2nd plaintiff is a name lender working under the 1st plaintiff. At the time of borrowing the loan, at the instance of the 1st plaintiff, the alleged sale agreement was created by him, thereby defendant has totally denied the alleged sale agreement entered into with the plaintiffs.

14. The 1st plaintiff did not enter the witness box, nor did he deny the allegations levelled against him. Therefore, the Court is entitled to draw an adverse inference. Accordingly, the 1st Appellate Judge rightly observed that the 1st plaintiff is a financier by profession. If at all the 1st plaintiff was a real bona fide purchaser, he ought to have entered the witness box and denied the allegations made against him by the defendant.

15. Eventually, the evidence adduced by P.W.1 and the alleged attester, P.W.2, is also not cogent and consistent with respect to the execution of the sale agreement. As per the evidence of P.W.1, the agreement was executed within a day; however, as per the evidence of



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P.W.2, the proposal was arrived at one month prior. Apart from that, P.W.1 states that to remove the vehicle kept in the suit property, a time period of one year was fixed. As rightly observed by the Courts below, the suit property is a vacant site, and no such terms were incorporated in the sale agreement.

16. Hence, the plaintiffs have not established that they are bona fide purchasers who entered into a valid sale agreement with the defendant. Before the Trial Court, in order to prove their readiness and willingness to pay the balance amount, they failed to produce the passbook. However, during the first appeal, they attempted to fill this lacuna by submitting the said passbook. Such action is not acceptable and was rightly concluded as such by the 1st Appellate Judge, which needs no interference.

17. Considering all the lacunae on the side of the plaintiffs, the Courts below rightly held that the plaintiffs are not entitled to the relief of specific performance. At the most, they are entitled to the alternative remedy of refund of Rs. 7 lakhs with 6% interest from the date of the suit



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till realization. Therefore, no substantial question of law arises.

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18. The concurrent findings of the Courts below, in respect of not granting the relief of specific performance, are well-reasoned and need no interference. Accordingly, the appeal is dismissed as no substantial law emerged.

19. The defendant is directed to refund the advance amount of Rs.7 lakhs with interest at 6% from the date of filing of the suit till the date of realization, within a period of 12 weeks from the date of receipt of a copy of this order, by deposit in Suit O.S. No. 370 of 2018, on the file of Additional Subordinate Court. There shall be no order as to costs.

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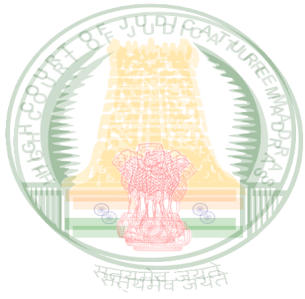
Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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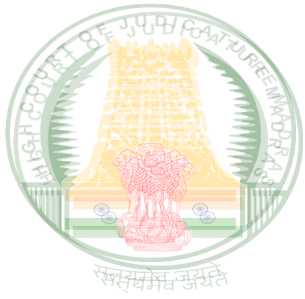


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To

1. The Principal District Judge, Tiruppur.
2. The Additional Subordinate Judge, Tiruppur.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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