



S.A. No. 291 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07-04-2025**

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 291 of 2025

Rajeswari
rep. by her power agent/her
husband Mr.Kosalaraman

...Appellant

Vs

1. Amsammal
2. P.Paranthaman

...Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 28.09.2012 made in A.S.No. 59 of 2011 on the file of Subordinate Judge at Kancheepuram confirming the judgment and decree dated 31.08.2019 made in O.S.No.906 of 2008 on the file of District Munsif cum Judicial Magistrate, Sriperumbudur.

For Appellant:

Mr. P.Subba Reddy

For Respondents:

Mr.K.G.Senthilkumar for R2



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JUDGEMENT

The appellant herein is the plaintiff and he filed the suit in O.S.No.906 of 2008 on the file of District Munsif cum Judicial Magistrate, Sriperumbudur against the defendants seeking for the relief of direction directing the 1st defendant to execute the sale deed in favour of plaintiff in respect of suit property and consequential relief of declaration as well as permanent injunction. On hearing both sides, the trial judge partly dismissed the suit with regard to 1st and 2nd relief and partly allowed with regard to 3rd relief. Against which, the plaintiff preferred an appeal in A.S.No.59 of 2011 on the file of Subordinate Judge, Kancheepuram, wherein the first appellate judge independently analysed the facts and evidence on record, dismissed the appeal by confirming the findings of trial judge. Challenging concurrent findings of courts below, the plaintiff had preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the



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ranking in the suit.

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3. Before the trial court, the plaintiff filed a suit stating that the suit property was purchased by the 1st defendant under register sale deed dated 22.08.1956 and she entered into an agreement of sale with the plaintiff on 01.12.1990 and that the sale consideration was fixed at Rs.20,000/-. The plaintiff paid an advance amount of Rs.5,000/- on the date of agreement of sale. The original documents were handed over to plaintiff, thereby he was put in possession. Thereafter, the balance sale consideration was paid on various dates respectively and mutation of records was made in favour of plaintiff. Subsequently, the 2nd defendant purchased the property from the 1st defendant on 27.05.2005. After the purchase made by the 2nd defendant, the plaintiff lodged a complaint in the year 2005 and thereafter, the suit was filed nearly about 14 years later and he has not taken any steps to execute sale deed based on the alleged sale agreement, besides, the 1st defendant is disputing the sale agreement stating that he never intended to sell the property and D.W.1 and 2 have supported the claim of defendants. The plaintiff would also submit that possession was handed over to him,



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but the alleged sale agreement Ex.A1 is unregistered agreement, through which the plaintiff has claimed the relief of declaration, however, having known the sale deed executed in favour of 2nd defendant, the plaintiff had not asked for any consequential relief.

4. Both parties adduced their evidence before the trial court. The learned judge, on perusal of Ex.A1 alleged sale agreement, found that the document was not contained signature of both parties in all the pages. In page No.2 the 1st defendant only put his left thumb impression and the other endorsement of subsequent payment also not been properly attested. Three months time was fixed, but nearly about 14 years later, the plaintiff approached the court without sufficient materials and the delay was also not properly explained. It is very well known to the plaintiff that the alleged sale agreement was a fabricated one. Furthermore, the alleged sale agreement is unregistered one, through which he claimed possession of the suit property, it requires valid registration, thereby hit by Sec.53-A of Transfer of Property Act. Also considering the said legal proposition, the suit was dismissed. Against which, the plaintiff preferred an appeal, wherein the first appellate judge on analysing the facts and evidence,



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dismissed the appeal by confirming the findings of trial judge.

Challenging the concurrent findings, the plaintiff preferred this Second Appeal.

5. The learned counsel for appellant would submit that the 1st defendant admitted the receipt of entire sale consideration and also handed over the possession, but the same was not properly appreciated by the courts below. Further, he would submit that the courts below failed to appreciate the mutation of records in the name of plaintiff after the alleged sale agreement. Accordingly, he prayed to set aside the findings by raising the following grounds :-

- (a) The judgment and decree of the courts below are manifestly erroneous and materially defective.
- (b) The judgment and decree of the courts below are against the weight of evidence and probabilities of the case.
- (c) The courts below has erred in its very approach to the case ignoring the finding of the High Court and this has resulted in failure of justice.



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(d) The court below has also gone wrong in saying that there is no pleading regarding this.

(e) The lower court failed to consider that the first defendant boldly denied the execution of sale agreement inspite of admitting that she has agreed to sell the suit property to the plaintiff and that she has received the entire sale consideration.

(f) The lower court has erred in holding that the 23rd defendant is a bonafide purchaser and that the sale deed is valid and binding on the plaintiff.

By submitting the aforesaid grounds, he would submit that the following substantial question of law involved for consideration:-

(1) Whether the decree and judgment of the lower court is totally perverse and is contrary to the evidence on record?



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- (2) Whether the courts below were right in holding that the suit is barred by limitation inspite of the fact that the appellant has been in continuous possession and enjoyment of the suit property?
- (3) Whether the courts below were right in holding that the sale transaction is time barred inspite of the fact that the 1st defendant has admitted the receipt of the entire sale consideration and also handing over physical possession of the suit property to the appellant?
- (4) Whether the courts below were right in holding that the appellant herein has not perfected the title by way of adverse possession inspite of the fact that on the date of Ex.A1 sale agreement, physical possession of the suit property has been handed over to the appellant herein?
- (5) Whether the courts below erred in considering the fact that subject to the Ex.A1, mutation of revenue records have been done in the name of the appellant herein, which proves the factum that the physical possession of the suit property followed by title in Ex.A1 are in favour of the appellant herein?

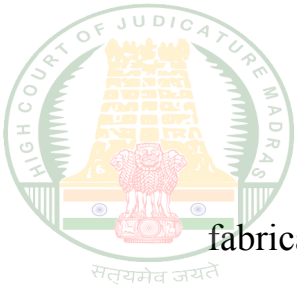


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6. Heard and considered rival submissions of both learned counsel for appellant as well as 2nd respondent and perused the materials available on record.

7. Considering the entire facts and circumstances, it reveals that the alleged sale agreement relied on by the plaintiff was dated 01.12.1990, but the suit was filed seeking for the relief of specific performance after issuance of notice in the year 2005, which itself shows that nearly about 14 years later, with inordinate delay, he approached the court and the same was rightly appreciated by the courts below. As required under Sec.16(c) of Specific Relief Act, the mandatory requirement on the side of plaintiff that he should prove that he was ready and willing to perform his part of contract even assuming that the sale agreement is not true and valid one. But, there is no reason assigned for the inordinate delay, which itself shows that the plaintiff never intended to perform his part of contract and the same was properly appreciated by the courts below, besides Ex.A1 alleged sale agreement not contained the signature of both parties in all the pages as observed by the courts below, which itself shows that it is



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fabricated one. Therefore the plaintiff has not approached the court with clean hands and in respect of possession of property, he has not adduced any documents to prove the same, evidence of parties reveals that defendant was in possession of property. Hence, this Second Appeal is liable to be dismissed as there is no question of law involved for consideration. Accordingly, this Second Appeal is dismissed. No costs.

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1. District Munsif cum Judicial Magistrate, Sriperumbudur.
2. Subordinate Judge, Kancheepuram.
3. Section Officer, VR Section, Madras High Court.



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