



S.A.No.1268 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2025

CORAM

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Second Appeal No.1268 of 2019

K.Viswanathan

... Appellant/Plaintiff

-Vs-

A.Ramesh

... Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 13.06.2017 made in A.S.No.07 of 2017 on the file of the District and Sessions Court, Thiruvannamalai confirming the Judgment and Decree dated 30.03.2007 made in O.S.No.388 of 2003 on the file of the Principal Subordinate Court, Thiruvannamalai.

For Appellant : Mr.M.Selvam

For Respondent : Mr.K.Balakrishnan

JUDGMENT

This appeal has been filed by the plaintiff challenging the Judgment and Decree of the Appellate Court confirming the Judgment and Decree of Specific Performance passed by the Trial Court.

2. For the sake of convenience, the parties are referred to hereunder



S.A.No.1268 of 2019

according to their litigative status and ranking before the trial Court.

WEB COPY

3. The case of the plaintiff is that he entered into a Registered Agreement of Sale dated 07.04.2003, with the defendant, under which he agreed to purchase the suit property for a total sale consideration of Rs.1,25,000/- and Rs.1,00,000/- was paid as an advance at that time. The plaintiff was at all times ready and willing to perform his part of contract, but the defendant has failed to execute the sale deed. Hence, the plaintiff issued legal notice dated 03.10.2003 and thereafter, he has come forward to file a suit for Specific Performance.

4. The defendant contested the suit on the ground that the Agreement of Sale was entered only as security for a loan of Rs.1,00,000/- which was advanced by the plaintiff to the defendant. According to the defendant, the plaintiff has demanded interest at the rate of 60% for a sum of Rs.1,00,000/-. Hence, it was agreed between the parties that, in case of the defendant failed to execute the sale deed, he would repay Rs.2,00,000/-. The defendant further submitted that since the agreement regarding only to the loan transaction, the suit is liable to be dismissed.

5. The Trial Court, after considering the pleadings framed the following substantial question of law:

“1. Whether the suit agreement is true and valid?”



S.A.No.1268 of 2019

2. Whether the agreement came into existence as alleged by the defendant?

3. Whether the alleged payment of interest till September 2003 is true?

4. Whether the plaintiff is entitled to the relief of specific performance?

5. To what relief? ”

6. Based on the pleadings, evidence and records, the Trial Court has dismissed the suit.

7. Aggrieved over the same, an appeal in A.S.No.7 of 2017 was filed on the file of the District Court, Tiruppur. The Appellate Court also dismissed the suit. Aggrieved over the same, the Second Appeal has been filed. Since the Second Appeal has been filed challenging the concurrent finding, this Court ordered notice before Admission.

8. The learned counsel for the appellant submitted that both Courts below accepted the case of the plaintiff that the Agreement of sale was executed between the parties only for the purpose of selling the land and was not a loan transaction. Having accepted the case of the plaintiff that the agreement was for the purpose of alienating the properties, both Courts erroneously invoked Section 20 of the Specific Relief Act, and rejected the prayer for Specific Performance. The same is not proper since there is no impediments under Section 20 of the



S.A.No.1268 of 2019

Specific Relief Act for granting the relief of Specific performance as prayed for by the plaintiff. He further contended that the Courts have misread the order passed in E.P.No.186 of 2005. The plaintiff had filed the Execution Petition to enforce the ex-parte decree dated 11.03.2005 passed in O.S.No.388 of 2003, dated 03.03.2007 and not merely to recover money. Due to this misinterpretation of the E.P. proceedings, both Courts have wrongly inferred that the plaintiff was interested only in recovering of money, treating the transaction as a loan transaction. The learned counsel prays to set aside the concurrent findings of the Court and allow the Judgment and Decree passed by the suit for Specific Performance.

9.The learned counsel for the respondent submitted that, based on the evidence placed on record, both Courts below have held that allowing the Specific Performance would cause undue hardship and prejudice to the defendant. Hence, the Courts have rightly dismissed the suit for Specific Performance and he prays to confirm the orders of the Courts.

10.I have considered the submissions of both sides and also perused the records.

11.Though both Courts below accepted the case of the plaintiff that the parties had entered into Agreement of Sale for the suit property at a total sale consideration of Rs.1,25,000/- by invoking Section 20 of (old) Specific Relief



Act to deny specific performance on the ground that it would cause hardship to the defendant.

12. I have also gone through the reasons recorded by both Courts below, as well as recitals in Ex.A1 (the Agreement of Sale). It is also an evidence of P.W.1 that, at the time of execution of Agreement of Sale, the value of the property was shown as between Rs.400/- to Rs.500/- per sq.ft. The defendants have also marked as Ex.D1, which is a guideline valuation shows that the guideline value of property at Rs.6,39,000/- at the time of agreement. This was considered by both the Courts. According to the plaintiff, the value of the property fixed under Ex.A1 is less than Rs.200/- per sq.ft. This was found to be very lesser value than the value of the land proposed to be purchased by the plaintiff. Based on this, both Courts have held that directing the Specific Performance of the contract would cause great prejudice to the case of the defendants.

13. Section 20 of the Specific Relief Act, reads as follows:

“20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the



WEB COPY



S.A.No.1268 of 2019

parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

14. Though the variations in guideline values could not be a valid grounds for considering hardship to the defendant. On perusal of the evidence reveals that the defendant was not having any other property apart from the suit schedule



S.A.No.1268 of 2019

property, which measures only 624 sq.ft. Since both the Courts below have exercised their discretion under Section 20 of the Specific Relief Act to deny specific performance in favour of the defendant, and have provided reasoned grounds for denying the claim for specific performance, this Court finds that it is not appropriate to substitute its opinion exercised by the Trial Court as well as the Appellate Court in this regard.

15.This Court has also noted that the Agreement of Sale itself contains a specific clause which empowered the defendant to deny the enforcement. It stipulates that if the plaintiff was ready to pay the balance sale consideration for registration, and the defendant refused to register the same, the defendant must pay Rs.2,00,000/- to the plaintiff. This clause was also considered by the both Courts and held that it provides an impediment to specific performance, entitling the defendant to deny or refuse enforcement subject to payment of Rs.2 lakhs. This was one of the aspect considered both Courts in denying specific performance, without directing payment of the agreed sum by the defendant. However, the trial Court awarded interest at the rate of 18% per annum, which the Appellate Court confirmed, I am of the view that the same is appropriate. Accordingly, this Court finds no merit in the appeal and no substantial question of law involved in the case.



S.A.No.1268 of 2019

16. In the result, the Second Appeal is dismissed. The Judgment and Decree dated 13.06.2017 made in A.S.No.07 of 2017 on the file of the District and Sessions Court, Thiruvannamalai confirming the Judgment and Decree dated 30.03.2007 made in O.S.No.388 of 2003 on the file of the Principal Subordinate Court, Thiruvannamalai, is hereby confirmed. No order as to costs.

08.09.2025

ssi

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation Case : Yes/No

To:

1. The District and Sessions Judge,
Thiruvannamalai.
2. The Principal Subordinate Judge,
Thiruvannamalai.
3. The Section Officer,
VR Section,
High Court of Madras.



WEB COPY



S.A.No.1268 of 2019

K.RAJASEKAR.J.

ssi

S.A.No.1268 of 2019

08.09.2025