



C.M.A.(MD) No.46 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.46 of 2025

and

C.M.P.(MD)No.656 of 2025

A.Raja

... Appellant/Petitioner/
Respondent/Plaintiff

vs.

M.Muthulaksmi

... Respondent/Respondent/
Petitioner/Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Order 43, Rule 1(d) of the C.P.C. against judgment and decree dated 16.11.2024 made in I.A.No.02 of 2024 in O.S.No.24 of 2022 passed by the Additional District and Sessions Judge, Periyakulam, Theni.

For appellant : Mr.N.Marimuthu
For Respondent : No appearance



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J U D G M E N T

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This Civil Miscellaneous Appeal has been preferred by the plaintiff against the order of dismissal passed in I.A.No.2 of 2024 in I.A.No.01 of 2024 in O.S.No.24 of 2022, dated 16.11.2024 by the Additional District and Sessions Judge, Periyakulam, Theni.

2. Heard the learned counsel for the appellant.

3. In the suit, the appellant is the plaintiff and the respondent is the defendant. The suit was filed for the relief of specific performance of sale in respect of the suit properties namely, punja lands in survey No.1003/2 extent acre 2.16 cents and in survey No. 1003/3 an extent of acre 1.35 cents out of total extent acre 2.70 cents eastern part/total extent acre 3.51 cents within the boundaries-north of the land belonging to Raju, west of the road, east of the land belonging to government package house, south of the government land.

4. The defendant/respondent herein moved an application



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before the Trial Court, seeking permission of the Court to deposit the advance sale consideration of Rs.1,00,000/- received from the plaintiff in I.A.No.1 of 2024. Despite after several the adjournments, the plaintiff/appellant herein did not chose to file the counter. Hence, the said I.A.No.01 of 2024 was ordered to be allowed in favour of the defendant on 01.03.2024. It appears that as per the said order, the defendant filed the lodgement schedule and deposited the advance amount into the Court.

5. Thereafter, I.A.No.2 of 2024 was moved by the plaintiff/appellant under Order IX Rule 13 C.P.C. to set aside the *ex parte* order passed against him in I.A.No.1 of 2024 dated 01.03.2024. The petitioner has averred that as he was unwell and he did not file the counter in I.A.No.1 of 2024 and the said interim application was allowed on 01.03.2024 in the absence of the appellant and prayed to set aside the *ex parte* order passed in I.A.No.1 of 2024 on 01.03.2024.

6. Per contra, the respondent, namely, the defendant contended that I.A.No.1 of 2024 was filed by her in order to deposit



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the advance sale consideration into the Court. Even after sufficient opportunities were given, the plaintiff did not choose to file his counter and on 01.03.2024, the said petition was ordered in her favour and she deposited the advance sale consideration by filing lodgement schedule. He would further contend that as she has deposited the advance sale consideration into the Court, the said petition has become automatically infructuous and prayed for dismissal of the petition.

7. In I.A.No.1 of 2022 filed by the respondent/defendant, permission was sought for to deposit the advance sale consideration. Though the plaintiff was given sufficient opportunities to file his counter, as he did not chose to file counter, order was came to be passed by the Trial Court allowing the application. Consequently, the defendant, as per the order of the Trial Court made in I.A.No.1 of 2024, deposited the advance sale consideration by filing lodgement schedule.

8. It is also relevant to note that as per the order of the Court as mentioned supra, as the consequent action of the defendant



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depositing the advance sale consideration. As per the pleadings in the plaint, the plaintiff has to prove his case. Despite the plaintiff was given opportunity to file the counter, it was not filed by him. In fact, the prayer sought for by the defendant is to permit her to deposit the sale consideration into the Court. In consideration of the said details, this Court does not find any perversity or illegality in the orders of the Trial Court and also this Court does not find any good reason to upset the finding of the Trial Court.

9. Based on the aforesaid observations and discussions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd



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1.The Additional District and Sessions Judge,
The Additional District and Sessions Court,
Periyakulam, Theni.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J

apd

Pre-delivery order made in
C.M.A.(MD) No.46 of 2025

22.01.2025