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SA(MD)No.142 of 2025

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.06.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

S.A.(MD).No.142 of 2025

and

C.M.P.(MD)No.5196 of 2025

Sridhar

... Appellant/Appellant/Plaintiff

Vs

1. Kumar

2. Jeganathan

3. Marimuthu

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 20.01.2022 passed in A.S.No.23 of 2020 on the file of the Principal Sub Judge, Kumbakonam, confirming judgment and decree dated 30.01.2020 passed in O.S.No.392 of 2013 on the file of the Additional District Munsif, Kumbakonam.



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For Appellant : Mr.M.Arjun Varman
For M/S.T.Lajapathiroy

For R-2 : Mr.G.Gomathi Sankar

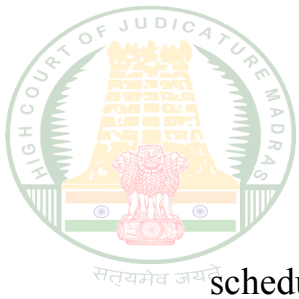
JUDGMENT

This second appeal has been filed challenging the judgment and decree dated 20.01.2022 passed in A.S.No.23 of 2020 on the file of the Principal Sub Judge, Kumbakonam, confirming the judgment and decree dated dated 30.01.2020 passed in O.S.No.392 of 2013 on the file of the Additional District Munsif, Kumbakonam.

2. The unsuccessful plaintiff had filed the suit for bare injunction.

3. The parties are referred, as per the litigative status before the trial Court.

4. According to the plaintiff, he entered into a sale agreement with the first defendant on 15.05.2012 in Ex.A.1 for the purchase of the suit

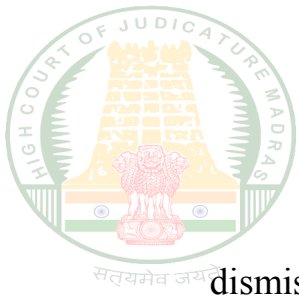


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schedule property for a sum of Rs.2,00,000/-, and paid the advance amount of Rs.25,000/-. Subsequently, on 13.06.2012, he entered into another agreement in Ex.A.2, whereby the balance sale consideration of Rs. 1,75,000/- was also paid. It is an admitted case of the plaintiff that though the third defendant is the owner of the property, the first defendant was in possession of the property, and therefore, the plaintiff had entered into the sale agreement with the first defendant. According to the plaintiff, since the first defendant failed to respond to his demand to execute the sale deed by involving the third defendant and was instead attempting to enter into a fresh agreement with the second defendant, the plaintiff, who claims to be in possession of the property, filed the present suit for bare injunction in order to safeguard his possession, rather than seeking specific performance.

5. The defendants resisted the suit by filing a written statement disputing the claim made by the plaintiff. In fact, the first defendant had filed a statement specifically disputing the agreements and the alleged handing over of possession of the property to the plaintiff and sought



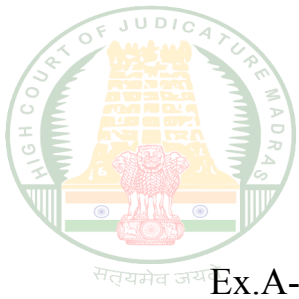
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dismissal of the suit.

6. During trial, the plaintiff examined himself as P.W.1 and one Mathiyalagan as P.W.2 and marked Ex.A.1 to Ex.A.5. On the side of the defendants, all three defendants gave evidence and were examined as D.W.1 to D.W.3 and marked Ex.B.1. Additionally, through the witnesses, document Ex.C.1 was marked.

7. After considering the documents and evidences, the trial Court dismissed the suit concluding that the plaintiff had not filed a suit for specific performance, and that the limitation period for filing such a suit had already expired. Therefore, the plaintiff had only sought a bare injunction. In the appeal, the appellate Court also held that, since it was an admitted fact that the third defendant is the owner of the suit property and the plaintiff had not entered into any sale agreement with the third defendant, the plaintiff failed to prove the valid sale transaction. It was also noted that the plaintiff had lodged a complaint against the first defendant, who had specifically refuted the sale agreement Ex.A.1 and



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Ex.A-2. Despite this, the plaintiff failed to file a suit within a period of three years and therefore, the suit is also barred by limitation and dismissed the appeal. Assailing the judgment and decree of the Courts below, the plaintiff has preferred this appeal.

8. The learned Counsel appearing for the appellant submitted that the sale agreement was entered into with the first defendant because he had been put in possession of the suit property by the third defendant. Further, since the first defendant had assured that he would bring the third defendant for registering the sale deed on payment of the sale consideration, the plaintiff proceeded to make the entire payment through both agreements Ex.A.1 and Ex.A.2. It was only because the first defendant did not honour his promise and instead proceeded to sell the property to the second defendant, the plaintiff filed the suit for permanent injunction to safeguard his possession. The learned Counsel for the appellant also submitted that the appellant is in the process of negotiating with the third defendant for completing the sale transaction. It was further argued that the Trial Court mainly placed reliance on the non-



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registration of the sale agreement and contended that at the time of execution of sale agreements, the amendment was not carried out and hence, the unregistered sale agreements would suffice to enter into a sale transaction. Therefore, the ground on which the suit came to be dismissed cannot be sustained and the decision of the Courts below are perverse and sought for interference.

9. Heard the learned Counsel for the appellant and perused the materials available on record.

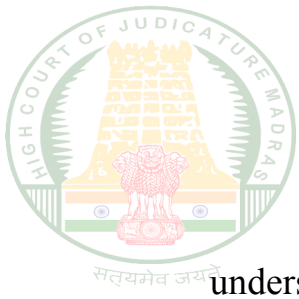
10. Admittedly, the suit property belongs to the third defendant. The plaintiff has not entered into any sale agreement with the admitted owner of the property i.e., the third defendant. The plaintiff claims that he had entered into a sale agreement in Ex.A.1 with the first defendant in respect of the suit property, which even according to him belongs to the third defendant. The only claim made by the plaintiff for entering into the sale agreement with the first defendant is that the first defendant was put in possession of the property by the third defendant and the first



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defendant assured that he is entitled to enter into a sale agreement and that upon payment of the entire sale consideration, he would bring the third defendant for the registration of the sale deed. This Court is at a loss to understand as to how the plaintiff, who claims to have parted with a sum of Rs.2,00,000/- through two agreements in Ex.A.1 and Ex.A.2 chose to transact with a third party, namely, the first defendant, who is admittedly not the lawful owner of the property. According to the plaintiff, the third defendant, who is the lawful owner of the property is also available. In the instant case, it is further noted that even though the plaintiff chose to enter into a sale agreement in Ex.A.1 for a sum of Rs.2,00,000/- and paid an advance of Rs.25,000/-, he still did not choose to enter into an understanding or agreement with the third defendant, who is the lawful owner of the property. Instead, he proceeded to pay the entire balance sale consideration of Rs.1,75,000/- and again entered into a second agreement in Ex.A.1. According to the plaintiff, the entire sale consideration for the suit property was paid and there was no occasion for the plaintiff to enter into a second agreement that too with the non-owner of the property i.e., the first defendant, without even having an



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understanding or agreement with the lawful owner of the property, i.e., the third defendant.

11. It is also to be noted that it is the claim of the plaintiff that since the first defendant did not honour the commitment of completing the same, he had given a complaint as against the first defendant, marked as Ex.A.4, on 30.09.2013. However, in response to his complaint, the first defendant had taken a categorical stand disputing the sale agreements in Ex.A.1 and Ex.A.2. Therefore, even the first defendant did not support the case of the plaintiff. At this juncture, even when the agreements in Ex.A.1 and Ex.A.2 were denied by the first defendant, who according to the plaintiff has entered into a sale agreement in Ex.A.1 and Ex.A.2, still the plaintiff did not choose to file a suit for specific performance based on those agreements till the expiry of three years. i.e., by 30.09.2019. Instead of seeking specific performance of the alleged agreements, the plaintiff filed a suit for bare injunction against the defendants, claiming that he is in possession of the property and that the defendants ought to be restrained from interfering with such possession.



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When the plaintiff claims right through the agreements in Ex.A.1 and Ex.A.2 that too with the first defendant, then it was incumbent upon the plaintiff to seek specific performance of those agreements which he admittedly failed to do so. Moreover, Ex.A.1 and Ex.A.2 cannot put the plaintiff in possession of the property particularly when both documents were not executed by the lawful owner, namely the third defendant. Further, the plaintiff while seeking a suit for bare injunction, had not established the factum of possession of the suit property except producing the document in Ex.A3, which is the tax receipt paid which stands in the name of the third defendant. No other documents have been produced on the side of the plaintiff to establish his possession over the suit property.

12. In the circumstances, the Courts below have rightly found that the plaintiff had entered into an agreement with the first defendant, who is not a lawful owner of the suit property. Further, the plaintiff failed to institute a suit for specific performance within a period of three years, even after the first defendant categorically denied the execution of the



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agreements. The Courts below also rightly concluded that the plaintiff, having filed a suit for bare injunction, failed to establish his possession over the suit property and thereby, had dismissed the suit.

13. In view of the findings of the fact arrived at by both the Courts below, this Court does not find any illegality or perversity in the decision arrived at. There is no question of law, much less substantial question of law that arises for the consideration in this Appeal.

14. In fine, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
NCC : Yes / No
jbr

03.06.2025



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WEB COTO:

1. The Principal Sub Judge, Kumbakonam,
2. The Additional District Munsif, Kumbakonam
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

jbr

Judgment made in
S.A.(MD)No.142 of 2025

Dated:
03.06.2025