BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)Nos.147 and 148 of 2019
and
C.M.P.(MD)Nos.3454 and 3455 of 2019

S.A.(MD)No.147 of 2019:

Sathiyanarayanan ... Appellant/Respondent/1st Defendant

vs

1.Balasubramanian ... 1st Respondent/Appellant/Plaintiff

2.The bank of Baroda,
Veppathur Branch,
represented by the Branch Manager,
Veppathur,
Thiruvidaimaruthur Taluk,
Thanjavur. ... 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the decree and judgment passed dated 27.09.2018 made in A.S.No.15 of 2017, on the file of the Additional District Court (Fast Track Court), Kumbakonam, Thanjavur District, reversing the judgment and decree passed dated 14.09.2016 in O.S.No.46 of 2014, on the file of the Additional Subordinate Court, Kumbakonam, Thanjavur District.

S.A.(MD)No.148 of 2019:

Sathiyanarayanan ... Appellant/Respondent/1st Defendant

vs

1.Balasubramanian ... 1st Respondent/Appellant/Plaintiff

2.The Bank of Baroda,
Veppathur Branch,
represented by the Branch Manager,
Veppathur,
Thiruvidaimaruthur Taluk,
Thanjavur. ... 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the decree and judgment passed dated 27.09.2018 made in A.S.No.51 of 2017, on the file of the Additional District Court (Fast Track Court), Kumbakonam, Thanjavur District, reversing the judgment and decree passed dated 14.09.2016 in O.S.No.46 of 2014, on the file of the Additional Subordinate Court, Kumbakonam, Thanjavur District.

For Appellant in both appeals	: Mr.G.Gomathi Sankar
For Respondents in both appeals	: Mr.P.Thiyagarajan for R.1
	: Mr.M.Prakash for R.2

COMMON JUDGMENT

The first defendant is before this Court on appeal.

2. S.A.(MD)No.147 of 2019 is filed challenging the judgment and decree, dated 27.09.2018 in A.S.No.15 of 2017, on the file of the Additional District Court (Fast Track Court), Kumbakonam, Thanjavur District, reversing the judgment and decree dated 14.09.2016 in O.S.No.46 of 2014, on the file of the Additional Subordinate Court, Kumbakonam, Thanjavur District.

3. S.A.(MD)No.148 of 2019 is filed challenging the judgment and decree, dated 27.09.2018 in A.S.No.51 of 2017, on the file of the Additional

District Court (Fast Track Court), Kumbakonam, Thanjavur District, reversing the judgment and decree dated 14.09.2016 in O.S.No.46 of 2014, on the file of the Additional Subordinate Court, Kumbakonam, Thanjavur District.

4. Since both the appeals arise out of the common judgment and decree, the appeals are heard together and disposed of by this common judgment.

5. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

6. It is the case of the plaintiff that the suit property belongs to the first defendant. The plaintiff is related to the first defendant. The first defendant was doing business at Chennai. On many occasions where the first defendant required financial assistance, the plaintiff helped by giving money. The first defendant had availed credit facility with the second defendant bank by creating mortgage over his properties. The house in the suit property became old and dilapidated. Since the building got damaged,

the first defendant sought permission from the second defendant on 23.01.2002 to sell the same. The bank had appointed an Engineer to value the property. As per the valuation report, the value for the suit property was fixed at Rs.99,000/-. The plaintiff being the close relative of the first defendant, he was persuaded to help him. No one else was willing to purchase the suit property from the first defendant. The first defendant took the plaintiff to the bank. One Swaminathan – Manager of the bank informed that he would get release of the suit house from the bank on payment of money as fixed by the valuer. Pursuant to several visits to the bank by the plaintiff along with the first defendant, on 10.10.2002, there was an oral agreement between the plaintiff and the first defendant to purchase the suit property for the valued amount of Rs.99,000/-. The plaintiff agreed to purchase the property for Rs.99,000/-. Based on the agreement, the plaintiff had paid the entire amount to the bank and requested the defendants to release the property and complete the sale. The plaintiff had withdrawn the amount from his bank account having SBI A/c No.6677, which was remitted to the loan account of the first defendant in the second defendant bank for releasing the suit property. In view of the relationship between the plaintiff and the first defendant, he did not insist upon a written agreement. The suit property is nearer to the plaintiff's property. After the payments were made, the first defendant had also written a letter to the bank on 20.09.2003 to give approval to transfer the suit property to the plaintiff. Again letter was sent on 29.03.2004 by the first defendant to the bank seeking reason as to why permission was not yet granted for transfer of the property. Further the bank filed a suit in O.S.No. 110 of 2006 for recovery of the balance amount from the first defendant. He was informed that the Head Office did not agree for releasing the suit property. As such, the plaintiff filed I.A.No.2006 of 2010 to implead himself as a party to the suit. In the application, the first defendant strangely denied the agreement. Before I.A. could be decided, the second defendant bank withdrew the suit and the suit came to be dismissed on 04.12.2012 as settled out of Court. The plaintiff had earlier filed O.S.No.65 of 2009 for permanent injunction against the first defendant from making any alienation till the bank release the property from security. In view of the suit filed by the bank, the plaintiff was not able to seek for specific performance. Only after the suit came to be dismissed on 04.12.2012, the cause arose for the plaintiff to seek for specific performance by withdrawing the suit in O.S.No.625 of 2009. The plaintiff had come up with the present suit for specific performance, based on the oral agreement entered into with the first defendant.

7. The first defendant resisted the suit disputing the claim of the plaintiff. It is the contention of the first defendant that there is no written agreement between the parties. The first defendant was asked to write letter by the plaintiff supporting his contentions. Due to the relationship and connection between them, the first defendant acted as ordered by the plaintiff, as the first defendant was in the state of precarious condition. There is no agreement and thereby there is no concluded contract. It is the specific case of the first defendant that the plaintiff asked him to give only the superstructure in the mortgaged property for sale. Since the property was weathering, the first defendant decided to give away the superstructure, as the sale amount could be adjusted to the bank which would reduce the burden. The first defendant was informed that the plaintiff will remove the superstructure alone and its value will be paid to the bank, which would be adjusted in the loan account. But however, the plaintiff, after making the payment and removing the logs of wood which were teak, much later with an intention of grabbing the property, had come up with the suit contending

that there is an oral agreement, which is not maintainable and sought for dismissal of the suit.

8. During trial, the plaintiff examined himself as P.W.1 and the erstwhile Manager of the second defendant – Swaminathan as P.W.2 and marked Exhibits A.1 to A.9. On the side of the defendants, no oral or documentary evidences were let in.

9. The trial Court, after analysing the evidences, came to the conclusion that since the valuation report in Ex.A.1 was in the year 2001 and the agreement is claimed by the plaintiff based on the payment in the year 2002, there is a doubt and suspicion as to how when only the plaintiff came forward to make payment in the year 2002, the valuation was made in the year 2001 itself. The trial Court further observed that even though, through the letters in Exs.A.4 to A.6, the first defendant had written letters to the bank conveying his intention seeking permission to transfer the property to the plaintiff, but however, the plaintiff has not issued any notice or sought for specific performance, as such, he was not ready and willing to perform his part of the contract and thereby dismissed the suit for specific

performance. However, the trial Court, on coming to the conclusion that an alternative relief seeking for refund of amount was within the period of limitation, decreed the suit for alternative relief. The plaintiff filed an appeal in A.S.No.15 of 2017 as against the dismissal of the specific performance relief. The first defendant filed a separate appeal in A.S.No.51 of 2017 as against decree granting the alternative relief. The lower appellate Court, heard both the appeals together and on coming to the conclusion that the essential ingredients of the oral agreement is established even through the documents in Exs.A.4 to A.6, which are written by the first defendant and also on coming to the conclusion that the plaintiff had come up with the suit relief within three years from the date of disposal of the suit filed by the bank as against the first defendant, allowed the appeal filed by the plaintiff and granted the decree of specific performance and since the specific performance was granted, dismissed the appeal filed by the first defendant as infructuous. Assailing the reversal of the findings by the lower appellate Court, the first defendant had preferred the above two Second Appeals.

10. The Second Appeals have not been admitted and this Court, by order dated 04.04.2019 has issued only notice before admission.

11. The learned Counsel for the appellant argued that the suit filed by the plaintiff is barred by limitation as when the first defendant had denied the agreement even in the year 2010, the plaintiff had filed the suit only in the year 2014. The plaintiff has not proved his readiness and willingness to seek for the discretionary relief of specific performance by satisfying Section 16(c) of the Specific Relief Act. It is his further contention that when the plaintiff admittedly filed the suit in O.S.No.625 of 2009, the present suit cannot be maintained in view of Order 2 Rule 2 C.P.C. There is no written agreement between the parties and there is no concluded contract for the plaintiff to seek for specific performance. It is the vehement contention of the learned Counsel for the appellant that it is for the plaintiff to plead and prove his case to succeed in the suit, as the burden was on him as per Section 101 of the Evidence Act and he cannot rely on any of the weakness on the defence of the first defendant. The plaintiff has not established that there was an agreement for selling the suit property and when the trial Court had rightly dismissed the suit, while erroneously

granting an alternative relief, the lower appellate Court without considering the evidences in a proper perspective and against the provisions and settled decisions, had reversed the decree and allowed the appeal decreeing the specific performance on an oral agreement, which is perverse and erroneous and sought for interference of this Court.

12. The learned Counsel for the appellant in support of his contentions relied on the decision of the Hon'ble Supreme Court in the case of ***V.R.Sudhakara Rao and Others Vs. T.V.Kameswari*** reported in ***2007(6) SCC 650*** and also the decision of this Court in ***Govindasami Naidu Vs. Shanmuga Nattar and another*** reported in ***2007(2) CTC 553***.

13. Contending contra, the learned Counsel for the first respondent argued that when the plaintiff had filed documents and let in evidence to prove the oral agreement between the parties and had established the contract, the plaintiff is entitled for the relief of specific performance. When the first defendant by letters Exs.A.4 to A.6, had categorically requested and even demanded the bank to accord permission to transfer the suit property in favour of the plaintiff, on payment of the valued amount as

fixed by the bank by the plaintiff, the first defendant has not come forward to let in any evidence, contrary to the same, contending that it was only for purchase of materials in the house or a loan transaction. The first defendant has not even chosen to enter into the witness box and had filed the documents which he has been entered into with the bank, when the suit was withdrawn, over which an adverse inference is to be drawn by the Court. It is his further contention that when the plaintiff has proved all the essential ingredients in respect of the contract based on the oral agreement, the lower appellate Court had rightly decreed the suit which needs no interference and sought for dismissal of the appeals.

14. Heard the rival submissions and perused the materials available on record.

15. The first defendant is admittedly the owner of the suit property. Further admittedly, the first defendant had mortgaged the suit property in favour of the second defendant bank for availing credit facilities in respect of the business run by him. The first defendant apart from the suit property had also mortgaged other lands and properties as security for the entire loan

amount availed by him.

16. It is the case of the plaintiff that the first defendant was not able to repay the loan amounts and there were defaults committed in repayment. The second defendant bank was pressurising the first defendant to settle the loan amounts, failing which the properties would be sold and the loan amounts would be realised. Admittedly, the building in the suit property was very old and in a dilapidated condition. The first defendant had requested the plaintiff to purchase the suit property and make the payment directly to the second defendant bank, pursuant to which, the property would be released from the mortgage and the sale deed would be executed. According to the plaintiff, since the suit property is nearer to the plaintiff's property and further the first defendant is related and belongs to the same village and since the plaintiff had always been helping the first defendant by giving money whenever he was in need for his business, the plaintiff came forward to purchase the suit property.

17. The first defendant had taken the plaintiff to the second defendant bank where there had been several rounds of discussions. Atleast thrice the

plaintiff had visited the bank along with the first defendant. Since the valuation of the property was fixed at Rs.99,000/-, the plaintiff agreed to purchase the suit property for Rs.99,000/- and make the payment to the second defendant bank in the loan account. The manager of the second defendant bank one Swaminathan had confirmed the position that on payment of this amount, the suit property will be released from mortgage and permission would be accorded for transfer of the suit property by the first defendant in favour of the plaintiff. According to the plaintiff, he accepted the same and there was an oral agreement on 10.10.2002 with the first defendant in respect of purchasing the suit property for the consideration of Rs.99,000/-.

18. As per Section 10 of the Indian Contract Act, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void. Nowhere, it is contemplated that an agreement is required to be in writing. As such, oral agreement is permissible, valid and binding between parties, if the agreement has a valid offer and acceptance, entered into by free consent of parties, who are

competent to contract, for lawful consideration and with a lawful object. The plaintiff claims to have entered into an oral agreement with the first defendant on 10.10.2002. Now it is to be seen as to whether there was any oral agreement with a valid offer and acceptance by free mutual consent of the parties, who are competent to contract and there was a concluded contract.

19. The first defendant, who is running a business, had already mortgaged the property with the second defendant bank and the plaintiff who had come forward to purchase, are all major and competent to enter into an agreement. The consideration that has been entered into between the plaintiff and the first defendant could be assessed from the valuation report that is filed in the suit in Ex.A.1. A perusal of the valuation report in Ex.A.1 would go to show that the valuer of the second defendant bank had prepared the valuation report dated 27.03.2001 and submitted to the bank. As per the valuation report, the value of the land in the suit property has been fixed at Rs.47,000/- and the value of the building, which was in a dilapidated condition, was fixed at Rs.52,000/-. The total value of the land and building of the suit property was fixed at Rs.99,000/- by the valuer in

the valuation report in Ex.A.1. From the document in Ex.A.1, it could be seen that the value of the suit property has been fixed at Rs.99,000/- by the approved valuer of the second defendant bank. In view of the assessed value at Rs.99,000/- the plaintiff and the first defendant cannot agree to deal with the suit property below this price, as the second defendant bank will not approve the same. Therefore, the sale consideration has been validly fixed at Rs.99,000/- by the plaintiff and the first defendant based on the valuation report in Ex.A.1.

20. Now it has to be seen whether this consideration has been paid by the plaintiff. The plaintiff has filed the documents in Exs.A.2 and Ex.A.3. The valuation as fixed in the report in Ex.A.1 at Rs.99,000/- has been paid in entirety by the plaintiff to the second defendant bank in the loan account of the first defendant, for which the second defendant had issued the receipt. The original receipt has been produced by the plaintiff and filed in Ex.A.2. Further the plaintiff had filed the SB A/c passbook of the plaintiff to show that on the said date, a sum of Rs.1,00,000/- has been withdrawn by the plaintiff from his bank account, which has been paid in the loan account of the first defendant, as evidenced by the receipt in Ex.A.2. As such, the

plaintiff has paid the entire consideration for the suit property.

21. Now it has to be seen as to whether free consent was there between the parties ie., the plaintiff and the first defendant. Admittedly, since the first defendant was a defaulter and was not able to make payment to the bank, he has written a letter to the bank on 23.01.2002 in Ex.A.6. As per the communication, the first defendant had sought permission from the second defendant bank to allow him to sell the suit property, as the building is in a dilapidated condition and there is a urgent need to be sold immediately for obtaining a good price. The first defendant had further stated that the suit property could fetch a price between Rs.90,000/- to Rs.1,00,000/- and if the bank accords permission, he would sell the suit property and settle that amount within 15 days from the permission. After this letter, the first defendant had taken the plaintiff to the bank and discussions were held with the second defendant bank presided by the erstwhile manager Swaminathan. Pursuant to the oral agreement between the parties, the plaintiff had made the entire payment as referred above.

22. After the payments have been made by the plaintiff and since the second defendant bank delayed to grant permission for transferring the suit property, the first defendant had further written a letter on 29.03.2004 in Ex.A.5. As per the communication, the first defendant had stated that in the earlier letter, he had given the proposal to settle the loans by selling the property. He had further referred that believing the promises made by the erstwhile manager Swaminathan, the plaintiff had deposited a sum of Rs.99,000/- towards the cost of the house, but till date, no permission has been given to transfer the property in his name. The house is completely damaged and even wooden pieces cannot be taken away from the house for use and as such, the plaintiff – Balasubramanian is put to a total loss. Again the first defendant had written a letter to the bank on 20.09.2003, intimating the bank that the plaintiff – Balasubramanian had deposited Rs.99,000/- with the bank and is awaiting for the approval of the bank for transfer of the house property. The first defendant hopes that he will get the approval of the second defendant bank so that he can transfer the suit property in favour of the plaintiff. Further the first defendant records that after paying this amount of Rs.99,000/-, the balance amount could also be settled if the second defendant bank grants permission to sell the other properties in

favour of the tenants who are in those properties.

23. From the above communications, which are not disputed by the first defendant, in Exs.A.4, A.5 and A.6, the first defendant categorically makes it clear that he is intending to sell the suit property and he has sought approval of the second defendant bank to sell the property and he has brought in the plaintiff, who had on agreeing to purchase the suit property, had paid a sum of Rs.99,000/- which has been adjusted in the loan account of the first defendant and the first defendant had repeatedly requested and demanded the second defendant bank to grant permission by releasing the suit property from mortgage and allowing him to transfer the property in favour of the plaintiff. The communications make it very clear and candid that the first defendant was freely and willingly had entered into an agreement with the plaintiff in respect of the sale of the suit property for the consideration that was fixed by the bank through the valuation report in Ex.A.1. The plaintiff had also come forward and made the payment ie., total sale consideration as indicated above.

24.From the above, it is clear that there was an offer, acceptance and consideration that was fixed and the parties who are competent to enter into an agreement had entered into the agreement and thereby there was a *consensus ad idem* between the parties for the valid contract entered into on 10.10.2002. The plaintiff had also written to the bank in Ex.A.7 requesting the second defendant to take steps immediately to release the suit property from the mortgage thereby allowing the first defendant to complete the sale in favour of the plaintiff. In view of the ample materials filed in Exs.A.1 to A.7, it is clear that the plaintiff and the first defendant had entered into an agreement in respect of the purchase of the suit property and the first defendant had also confirmed the contract in view of the categorical communications made by him in Exs.A.4 to A.6.

25. It is the only contention of the learned Counsel for the appellant that when the first defendant had denied the agreement in the year 2010 itself, the suit filed by the plaintiff in 2014 is barred by limitation. It is to be noted that even though the agreement had been entered into between the plaintiff and the first defendant, when admittedly the suit property was under mortgage with the second defendant bank, the plaintiff cannot make

any claim till the properties are released from the mortgage of the second defendant. Even though, the erstwhile manager Swaminathan had participated in the discussions and based on which, the plaintiff had made payments to the bank, unless the proposals are approved by the head office, the second defendant will not be in a position to release the suit property. Unless the suit properties are released from the mortgage, the plaintiff will not have any cause of action or right to seek for specific performance. Further in this regard, the plaintiff had examined the erstwhile manager of the second defendant bank – Swaminathan, as PW-2, who had clearly deposed that he had informed the plaintiff that on payment of the valuation amount of Rs.99,000/- in Ex.A.1, the bank would give approval for relase of the suit property from the mortgage and the plaintiff will be able to get the sale deed in his favour. Therefore, the plaintiff had admittedly filed the suit within the period of three years from the date of withdrawal of the suit by the bank, which was dismissed on 04.12.2012.

26. The earlier suit filed by the plaintiff in O.S.NO.625 of 2009 was completely in respect of separate cause of action. That suit will not be any impediment for the present suit filed by the plaintiff for specific

performance. As the relief sought for in the present suit is based on the oral agreement entered into in respect of the purchase of the suit property and the cause of action for the plaintiff to seek for specific performance arose only after the withdrawal of the suit by the bank. As such, the earlier suit would not be a bar or the present suit would not get affected by the earlier proceedings as the cause of action in both suits are completely different.

27. The decision relied on by the learned Counsel for the appellant in the case of ***V.R.Sudhakara Rao*** is in respect of where a part performance was sought for under Section 53A of the Specific Relief Act, wherein the Hon'ble Supreme Court held that when the essential conditions in respect of oral agreement were not proved, in that case the party will not be entitled to the relief of specific performance. Even in the other case relied on by the learned Counsel for the appellant in the case of ***Govindarasami Naidu***, wherein it is held that the burden was on the plaintiff to prove his case as per Section 101 of the Indian Evidence Act. There is no quarrel in respect of the above proposition. It is settled law that the onus is on the plaintiff to prove his case as per Section 101 of the Indian Evidence Act and the plaintiff cannot rely on the weakness in the defendant's case. However, in

the instant case, the plaintiff by filing documents in Exs.A.1 to A.8 and also by examining himself and the erstwhile Manager Swaminathan, as PW-1 and PW-2 had let in both oral and documentary evidences and thereby proved his claim. When the plaintiff had proved his claim, even with the communication of the first defendant himself, which has been admitted by the first defendant to the effect that he has sought permission to complete the sale in favour of the plaintiff and the burden shifts on to the first defendant. When he had contended that it was only in respect of selling the furnitures in the house, the first defendant failed to let in any evidence to that effect.

28. It is to be noted that the first defendant had not chosen to enter into the witness box and he has not let in any oral or documentary evidence in respect of the claim made by him. When the loan amounts were paid and a compromise was entered into with the bank, which lead to withdrawal of the suit, the compromise entered into would reveal all the details of the payments made by the plaintiff and other parties in respect of the loans. The first defendant, who was having that document, which would bring to light the entire issues that arose in this case, had wantonly withheld and avoided

from filing of such documents before the Court, which was in his possession. The absence of the first defendant in entering into the witness box and withholding of the document, which is available with him from filing in the Court would only lead to an adverse interference to be drawn against him under Section 114 of Indian Evidence Act.

29. The trial Court had merely relying on Ex.A.1 – valuation report and further on coming to the conclusion that the plaintiff was not ready and willing since no notice was issued, was completely erroneous, when the plaintiff had paid entire payment, which has also been evidenced by the receipt and the communication sent by the first defendant and such a finding was perverse. However, the lower appellate Court had rightly interfered with such findings and on coming to the conclusion that the agreement between the parties stands proved, had rightly decreed the suit for specific performance.

30. The lower appellate Court had rendered the findings based on the oral and documentary evidences let in by the parties. This Court does not find any illegality or perversity in the findings rendered by the lower

appellate Court. No question of law, much less a substantial question of law arises for consideration in these Second Appeals.

31. Accordingly, both the the Second Appeals stand dismissed. However, there is no order as to costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

07.08.2025

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

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To

1. The Additional District Court (Fast Track Court), Kumbakonam, Thanjavur District.

2. The Additional Subordinate Court, Kumbakonam, Thanjavur District.

3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)Nos.147 and 148 of 2019

07.08.2025