



AS.(MD)No.139 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.02.2025

Pronounced On : 29.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.139 of 2024
and
C.M.P.(MD)No.7268 of 2024

C.Chellan Nadar (Died)

1.H.Sobhanabai

2.Dr.C.S.Sheepa

3.Dr.Peeceeyen Sheejith Hari

4.Dr.P.C.N.Sheen

5.T.G.Madhuri

... Appellants/Defendants 2 to 6

Vs.

R.Manmadhan (Died)

D.Leela Kumari (Died)

1.M.L.Bhamini



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2.M.L.Ramprasad

... Respondents/Plaintiffs 3 & 4

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PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 01.02.2024 passed in O.S.No.15 of 2007 on the file of the Additional District Court (Fast Track), Nagercoil, Kanyakumari District.

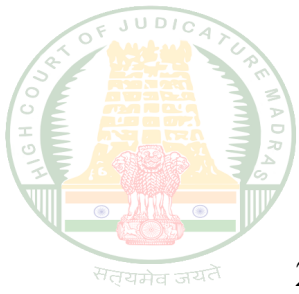
For Appellants : Mr.V.Ragavachary,
Senior Counsel
for Mr.M.P.Senthil

For Respondents : Mr.V.Meenakshi Sundaram

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful defendants 2 to 6 have preferred the appeal. The suit in O.S.No.15 of 2007 has been filed for specific performance of contract and the alternative prayer for recovery of advance amount. The suit for specific performance is dismissed and the alternative relief of recovery of an advance amount has been decreed. For the shake of convenience, the parties are referred to as per their rank before the trial Court.



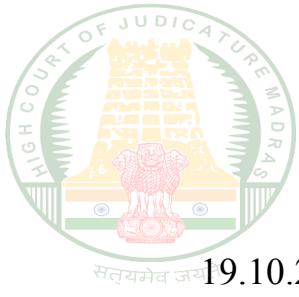
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2.Originally Thiru.Manmathan had filed the suit against the Chellan Nadar. Pending suit, the said Manmathan died and his legal heirs were impleaded as plaintiffs. Similarly, the defendant Chellam Nadar died and his legal heirs were impleaded as defendants.

3.The brief Case of the plaintiff is as follows:-

The plaintiff is an agriculturalist and owner of so many acres of agricultural land. The suit schedule property belonged to the defendants. The defendants approached the plaintiff and offered to sell the suit schedule property. Out of suit schedule property, they are having title over 9.75 acres of patta land and having B memo and possession over 60.10 acres of land. The defendants agreed to sell the entire land to the plaintiff with an agreement for sale on 17.08.2004 at the rate of Rs.35,50,000/- and received an advance amount of Rs.5,000/-. The first defendant executed an agreement for and on behalf of other defendants as a power holder. The defendants handed over the copy of the title deeds and other documents. It was specifically provided in the agreement that the sale has to be completed within 30.09.2004. Subsequently, they extended the period 10.11.2004, as per extension agreements 10.10.2004. While so, on



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19.10.2004, the plaintiff approached the defendants to execute the sale deed, but the first defendant requested time and demanded additional advance. As such, the plaintiff paid a sum of Rs.17,55,000/- by way of Demand Drafts. With knowledge and permission of the defendants, he had obtained agriculture loan and spent huge amount to the tune of Rs.30,00,000/- in the suit schedule property. The plaintiff was and is always ready and willing to perform his part of contract. The plaintiff also sent an Advocate notice. But the defendants sent neither any reply nor executed the sale deed. Hence, the suit.

3.1.As per the order passed in I.A.No.5 of 2023 dated 06.11.2023, the plaint has been amended adding the alternative relief of refund of advance amount.

4.The brief case of the first defendant is as follows:-

It was only the plaintiff who offered to purchase the suit schedule property. The plaintiff executed the sale agreement on 17.08.2004 only after being convinced with the defendants title and actual measurement of the property. The averment that the parties to the agreement extended the period to 10th November 2004 and mutually executed an extension



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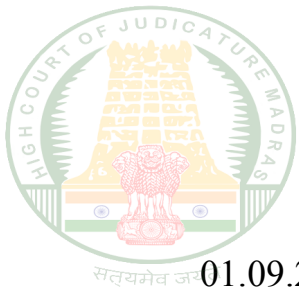
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agreement on 10.10.2004 is nothing but, blatant falsehood. On 30.10.2004 the plaintiff paid Rs.17,50,000/- by Demand Draft and Cheque and obtained the original title deeds. On the request made by the plaintiff the time limit for execution of the sale deed was fixed on 15.11.2004. but even then, the plaintiff was not able to perform his part of contract, even though the first defendant was ready and willing to perform his part of contract. On the contrary, the plaintiff expressed his inability to conclude the sale by paying the balance sale consideration and received back the amount of Rs.17,55,000/- on 04.02.2005 and executed a consent deed and has waived the agreement. The plaintiff sent an Advocate notice dated 30.01.2006 stating false and frivolous averments. The first defendant sent a detailed reply and demanded written of his original title deeds through is Advocate on 20.02.2006.

4.1.After amendment made in the plaint, the second defendant filed additional written statement.

5.The brief case of the second defendant is as follows:-

The trial of the case commenced in the year 2011 and after completion of the evidence, the plaintiff's side arguments completed on



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01.09.2023. Thereafter, the case was posted on 20.09.2023 for defendants' side arguments. After their arguments, the Court orally directed the plaintiffs to amend the plaint and only on that direction, they amended the plaint and the same is time barred claim.

6. Based on the above pleadings, the trial Court framed the following the issues:-

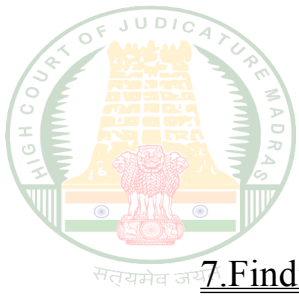
i) Whether the extension of time agreement dated 10.10.2004 is valid?

ii) Whether the plaintiff is always ready and willing to perform his part of contract?

iii) Whether the plaintiff is entitled for the relief of specific performance?

iv) What other the plaintiff is entitled?

On the side of the plaintiffs, first plaintiff Manmathan himself examined as P.W.1, fourth plaintiff Ramaprasath himself examined as P.W.2, the third plaintiff Bamini herself examined as P.W.3 and Branch Manager one Ratheesh examined as P.W.4 and Ex.A1 to Ex.A10 were marked. On the side of the defendants, the second defendant Harikesavan examined as D.W.1 and Ex.B1 to Ex.B3 were marked.



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7.Findings of the trial Court:-

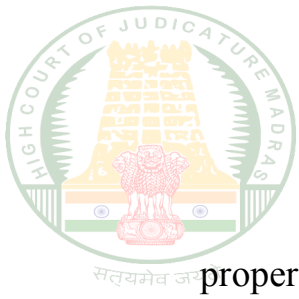
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The plaintiff has failed to prove his case that he was and is always ready and willing to perform his part of contract and he is not entitled for the relief of specific performance. The plaintiff has proved that he has paid a sum of Rs.17,55,000/- for an additional advance amount to the defendants. The defendants failed to prove their case that they have been repaid the additional advance amount of Rs.17,55,000/- to the plaintiff under Ex.B3. The plaintiff is entitled to get the advance amount paid to the defendants and decreed the suit in alternative relief.

8.Points for determination arises in this appeal are as follows:-

i)Whether the defendants repaid the additional advance amount of Rs.17,55,000/- to the plaintiffs under Ex.B3?

9.The learned Senior Counsel appearing for the appearing for the defendants 2 to 6 would submit that the repayment of advance amount was disclosed even in the reply notice as early on 20.02.2006, which is within 30 days from the date of Ex.A4. The trial Court committed an error in granting alternative relief of refund of advance amount, without



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properly appreciating the oral and documentary evidences, which clearly shows that the said advance amount has been repaid as early as on 04.02.2005 which is also been acknowledged by the deceased first plaintiff by virtue of Ex.B3. The learned senior counsel further would submit that there is no issue was framed with regard to granting an alternative relief of refund of advance amount. Hence, there is no evidence adduced in this regard. Therefore, this appeal may be remanded back to the trial Court with a direction to frame a necessary issue with regard to the granting an alternative relief and to adduce evidence.

10.Per contra, the learned counsel appearing for the plaintiffs would submit that the issue with regard to readiness and willingness of the plaintiff was framed and in which, both side evidences were adduced and defendant side documents were also marked. He would submit that in the written statement, the refund of advance amount has been pleaded and the defendants have relied upon the consent letter of Ex.B3. There is no valid grounds raised in the appeal to interfere with the decree and judgment of the trial Court and there is no circumstances warranted to remand back the matter to the trial Court.

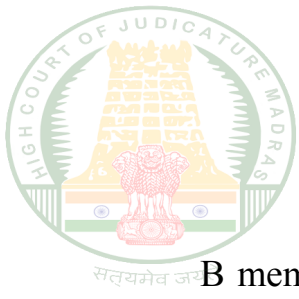


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11.The defendants have admitted that they have entered into a sale agreement dated 17.08.2004 with deceased first plaintiff and total sale consideration was fixed at Rs.35,50,000/-. It is also admitted that they have received an advance amount of Rs.5,000/- on the date of agreement of sale and Rs.17,50,000/- received on 20.10.2004 through Bank Demand Drafts. Admittedly, the plaintiffs have not preferred any appeal challenging the dismissal of the suit to the relief of specific performance. The only point for consideration arises in this appeal whether the defendants have repaid the advance amount of Rs.17,55,000/- on 04.02.2005 under Ex.B3. The first plaintiff borrowed money from Bank and he has paid the amount of Rs.17,50,000/- through Bank drafts directly to the defendants.

12.As per proviso to Section 22(2) of Specific Relief Act, the alternative relief of refund of advance amount can be incorporated in the plaint by way of an amendment at any stage of the suit. It is stated in the plaint that the suit schedule property belonged to the defendants and the defendants are having title over 9 acres 75 cents of patta land and having



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B memo and possession over 60 acres 10 cents. The defendants have not specifically denied the above said facts.

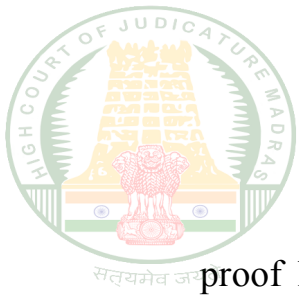
13.It is the specific case of the defendants in the written statement that the plaintiff received back the amount of Rs.17,55,000/- on 04.02.2005 and executed a consent deed and has waived the agreement.

11.It is requisite to cite the sections 101 and 103 of the Indian Evidence Act -

Section 101 – Burden of Proof – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 103 – Burden of proof as to particular fact - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

The decision of the Hon'ble Supreme Court reported in **AIR 2011 SC 2344** – **Ranammal v. Kuppuswami** wherein it has been held that “when a person is bound to prove the existence of any fact, it is said that burden of

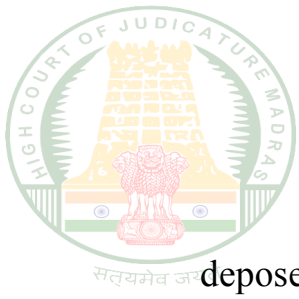


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proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case.”

14.Ex.B2 is the copy of reply notice sent by the first defendant addressed to the first plaintiff's Advocate one Thiru.Kiurbakaran. Ex.B1 is the copy of postal acknowledgement card. Ex.B3 is the unregistered consent deed dated 04.02.2005. A reasonable doubt arises in this case that if really the defendants have repaid the advance amount under Ex.B3, they would have get back the original title deeds from the first plaintiff. On the contrary, in Ex.B2 reply notice and their written statement and D.W.1 in his evidence stated that the plaintiffs have not returned the original title deed. It is not the case of the defendants that they have taken legal steps to get back the title deed from the plaintiffs. D.W.1 in his cross examination, states that the original deeds were not given to the plaintiff and the same under the custody of D.W.1 and the same have been handed over to the purchaser at the time of execution of sale deeds. D.W.1 in his cross examination admits that the advance amount has not been repaid by way of cheque and the same is not mentioned in Ex.B2 reply notice. D.W.1



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deposed that three persons who are mentioned as witnesses in Ex.B3 does not know. D.W.1 admits that except Ex.B3 no other documents have been filed to substantiate that the advance amount has been repaid. Admittedly in this case, the deceased first defendant Chellanadar did not enter into witness box to substantiate that Ex.B3 has been duly executed. Except the evidence of D.W.1 (4th defendant) no other independent witnesses have been examined. The attesting witnesses said to have been mentioned in Ex.B3 have also been not examined. A perusal of Ex.B3 would go to show that there are corrections made in the amount. D.W.1 admits that the suit schedule property already been sold in the year 2007 and the same has not been denied by the plaintiffs. More over, in the plaint, came to be amended by the plaintiff in amended plaint in para No.9(d), it has been stated that during the course of cross examination, D.W.1 deposed that the plaint schedule property has been sold to the stranger by them. Further, it has been stated that the plaintiffs reserved their right to seek an alternative relief of recovery of advance of Rs.17,55,000/- with interest.

15.In view of the above, the burden heavily lies on the defendants have not been discharged. With regard to repayment of advance amount



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though there is no specific issue has been framed by the trial Court, however, sufficient evidence has been adduced on the side of the defendants by placing Ex.B1 to Ex.B3 documents. Therefore, the question of remanding matter back to the trial Court does not warranted. We are of the view that there is no reasons to interfere with the impugned judgment and decree. The point is answered, accordingly.

16.In the result, this first appeal is dismissed and the judgement and decree dated 01.02.2024 passed in O.S.No.15 of 2007 on the file of the Additional District Court (Fast Track), Nagercoil, Kanyakumari District is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
29.04.2025

NCC : Yes / No
Index : Yes / No
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To

The Additional District Court (Fast Track),
Nagercoil, Kanyakumari District.



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G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)No.139 of 2024

29.04.2025