

C.M.S.A.(MD)No.17 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

DATED : 08.07.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.S.A.(MD)No.17 of 2025

and

C.M.P.(MD)No.9689 of 2025

S.Ramar

... Appellant

Vs.

1.B.Jeyaraman
2.A.T.Tharam Jai
3.Mahendran
4.Raman
5.Ganesan
6.Kalyanasundaram

... Respondents

Prayer : This Civil Miscellaneous Second Appeal filed under Section 108 r/w Order 42 C.P.C., against the decree and judgment dated 01.04.2025 passed in C.M.A.No.10 of 2018 on the file of the 5th Additional District and Sessions Judge, Madurai, confirming the fair and decretal order dated on 05.02.2018 in E.A.No.77 of 2016 in E.A.No.621 of 2009 in E.A.No. 710 of 2008 in E.P.No.4 of 2006 in O.S.No.18 of 2000 on the file of the I Additional Subordinate Judge, Madurai.



WEB COPY



C.M.S.A. (MD) No. 17 of 2025

For Appellant : Mr.T.Lajapathi Roy, Senior Counsel
for M/s.Roy and Roy Associates

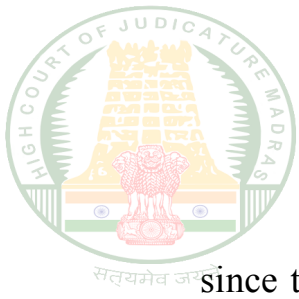
For Respondents : Mr.M.Thirunavukkarasu
for Mr.P.Suresh Kumar for R1

JUDGMENT

The Civil Miscellaneous Second Appeal is directed against the judgment dated 01.04.2025 passed in C.M.A.No.10 of 2018 on the file of the V Additional District and Sessions Court, Madurai, confirming the order dated 05.02.2018 passed in E.A.No.77 of 2016 in E.A.No.621 of 2009 in E.A.No.710 of 2008 in E.P.No.4 of 2006 in O.S.No.18 of 2000 on the file of the I Additional Sub Court, Madurai.

2. By consent of both sides, this appeal is taken up for final disposal at the admission stage itself.

3. The respondents 2 and 3 are the original owners of the property in dispute. The first respondent and the respondents 2 and 3 entered into a registered sale agreement dated 20.02.1995. The first respondent, after coming to know that 3 sale agreements were executed with respect to the same property by the respondents 2 and 3 to the respondents 4 to 6 and



C.M.S.A. (MD) No. 17 of 2025

WEB COPY

since the respondents 2 and 3 have committed breach of contract, filed a suit in O.S.No.18 of 2000 before the Subordinate Court, Madurai seeking specific performance on the basis of the sale agreement dated 20.02.1995. Pending suit, the respondents 2 and 3 sold the property to the appellant herein vide sale deed dated 12.02.2004 by suppressing the pendency of the suit. In the meanwhile, the suit in O.S.No.18 of 2000 was decreed *ex-parte* on 27.08.2004. On the basis of the said decree, the first respondent filed an execution petition in E.P.No.4 of 2006 in O.S.No.2000 and sale deed was executed on 24.04.2008 in favour of the first respondent and thereafter, the first respondent filed a petition in E.A.No.710 of 2008 in E.P.No.4 of 2006 in O.S.No.18 of 2000 under Order 21 Rule 35 C.P.C. to deliver the property. Pending the same, the appellant filed a petition in E.A.No.621 of 2009 in E.A.No.710 of 2008 in E.P.No.4 of 2006 in O.S.No.18 of 2000 making a claim under Section 47 C.P.C. When the case was posted to 23.03.2016 and 31.03.2016 for cross-examination of P.W.1, the appellant did not turn up and hence, the petition was dismissed for default on 31.03.2016. Aggrieved by the said order, the appellant filed a petition in E.A.No.77 of 2016 to set aside the *ex-parte* order and restore the same and the learned I Additional Sub Judge, Madurai, after enquiry, dismissed the

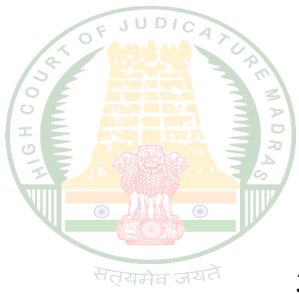


C.M.S.A. (MD) No. 17 of 2025

WEB COPY

petition on 05.02.2018, against which, the appellant filed an appeal in C.M.A.No.10 of 2018 before the V Additional District and Sessions Court, Madurai and the same was also dismissed confirming the order passed in E.A.No.77 of 2016 dated 05.02.2018. Challenging the said impugned judgment, the appellant has preferred the present appeal.

4. It is not in dispute that when the execution petition filed by the first respondent in E.P.No.4 of 2006 was pending, the appellant filed a comprehensive suit in O.S.No.505 of 2006 against the respondents herein and two others before the I Additional Sub Court, Madurai to declare that the sale agreement dated 20.02.1995, the entire legal proceedings in O.S.No.18 of 2000 and the execution proceedings in E.P.No.4 of 2006 in O.S.No.18 of 2000 as null and void and *void ab initio* and for permanent injunction restraining the first respondent from proceeding with the said execution proceedings. The said suit was decreed *ex-parte* on 21.08.2017. To set aside the said *ex-parte* decree, the first respondent filed a petition in I.A.No.1 of 2024 in O.S.No.505 of 2006 and was pending on the file of the I Additional Sub Court, Madurai, and in the said petition, the appellant has also filed a counter affidavit raising serious objections.

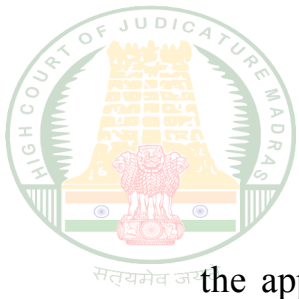


C.M.S.A.(MD)No.17 of 2025

WEB COPY

5. Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the appellant would submit that E.A.No.77 of 2016 for setting aside the *ex-parte* order was filed within 30 days and a detailed explanation was also furnished for non-appearance of the appellant before the Court on 23.03.2016 and 31.03.2016, that in the claim petition E.A.No.621 of 2009, chief examination of the witnesses were already over and the appellant did not enter the witness box and when the case was posted on 23.03.2016 and 31.03.2016 for cross-examination of P.W.1, the appellant who is a business man was unable to attend the court as he was on a long tour for marketing and collection of dues from the dealers and except the said hearings, the appellant has regularly appeared on all other hearings and his absence is neither willful nor wanton and that the appellant has no intention to evade the proceedings.

6. Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the appellant would further submit that the claim petition filed by the appellant in E.A.No.621 of 2009 was dismissed for default and to set aside the said order, the appellant filed the petition in E.A.No.77 of 2016 without any delay and the learned Additional Sub Judge, by observing that



C.M.S.A. (MD) No. 17 of 2025

WEB COPY

the appellant was attempting to protract the case, dismissed the petition and against which, the appellant filed the appeal in C.M.A.No.10 of 2018 but the learned judge dismissed the said appeal on going into the merits and hence, he seeks to set aside the impugned judgment. He would further submit that since the claim petition filed by the appellant is not decided on merits, the Courts below ought to have given an opportunity to the appellant to proceed the same on merits.

7. Mr.M.Thirunavukkarasu, learned counsel appearing for the first respondent would submit that even though the petition was filed within 30 days, the conduct of the appellant has to be taken into account and that the case was posted for examination of P.W.1 on two occasions and the appellant did not turn up and hence the learned Additional Sub Judge, considering the pendency of the decree without execution from 2004 onwards, has rightly dismissed the petition.

8. Both the Courts below have given a findings that the reason assigned by the appellant for his non-appearance was not *bonafide*. Hence, findings of the Courts below cannot be interfered with by this Court



C.M.S.A. (MD) No.17 of 2025

exercising the power under Section 100 C.P.C.

WEB COPY

9. The appellant has filed comprehensive suit in O.S.No.505 of 2006 on the file of the I Additional Sub Court, to declare the decree in O.S.No. 18 of 2000, E.P.No.4 of 2006 and agreement dated 20.02.1995. There was an ex parte passed against the respondents. To set aside the same, I.A.No.1 of 2024 has been filed by the respondents and the same is pending. The appellant's application under Section 47 of Cr.P.C., in E.A.No.621 of 2009 in E.P.No.4 of 2006 was dismissed for default. His application to restore the said EA.No. 621 of 2009 also dismissed by the impugned order. Once the ex parte decree in O.S.No.505 of 2006 had been passed, then the order passed in E.P.No.4 of 2006 had become nullity. At the same time, his application under Section 47 of Cr.P.C., in the E.P.No.4 of 2006 also was dismissed. At this stage, this Court feels that there would be no end to the litigation between the parties and therefore, after lengthy hearing, this Court asked the learned counsel on either side to get instructions from their parties for possibility of co-operating with the long pending trial proceedings and arrive at an amicable situation.



C.M.S.A.(MD)No.17 of 2025

WEB COPY

10. When the matter was taken up for hearing today, both the learned counsels get instructions from their parties and consented to dispose of the appeal on the following terms:-

11. Mr.M.Thirunavukkarasu, learned counsel appearing for the first respondent would submit that if the appellant agrees to set aside the *ex-parte* decree passed in O.S.No.505 of 2006, they are not having any objections to allow this appeal. He would further submit that recording of evidence in O.S.No.505 of 2006 was already commenced and P.W.1 was cross-examined on 29.10.2009 and 04.11.2009 and hence, he has no objections to continue the trial at this stage in considering the nature of the decree granted in the year 2004.

12. Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the appellant would also accept the said submission of the learned counsel appearing for the first respondent and submit that he has no objections to set aside the *ex-parte* decree passed in O.S.No.505 of 2006 by allowing I.A.No.1 of 2024. The same is also recorded.



C.M.S.A.(MD)No.17 of 2025

WEB COPY

13. In view of the said circumstances, the Civil Miscellaneous

Second Appeal is allowed on the following terms:-

- 1. The impugned judgment dated 01.04.2025 passed in C.M.A.No.10 of 2018 on the file of the V Additional District and Sessions Judge, Madurai and the order dated 05.02.2018 passed in E.A.No.77 of 2016 on the file of the I Additional Subordinate Judge, Madurai are hereby set aside. The appeal in C.M.A.No.10 of 2018 and the petition in E.A.No.77 of 2016 are allowed thereby setting aside the order dated 31.03.2016 passed in E.A.No.621 of 2009 and the petition in E.A.No.621 of 2009 is restored.*
- 2. The petition in I.A.No.1 of 2024 in O.S.No.505 of 2006 pending on the file of the I Additional Sub Judge, Madurai is allowed thereby setting aside the ex-parte decree passed in O.S.No.505 of 2006 and the suit in O.S.No.505 of 2006 is restored from the stage of continuation of examination of P.W.1.*
- 3. In view of the comprehensive suit in O.S.No.505 of 2006, the evidence recorded in the said suit can be treated as part and parcel of E.A.No.621 of 2009.*
- 4. The learned I Additional Sub Judge, Madurai is directed to conduct the trial in E.A.No.621 of 2009 in E.A.No.710 of 2008 in E.P.No.4 of 2006 in O.S.No.18 of 2000 and O.S.No. 505 of 2006 and conclude the same within a period of six months from the date of receipt of copy of this judgment.*



WEB COPY



C.M.S.A.(MD)No.17 of 2025

5. *There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.*

08.07.2025

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

To:

- 1.The V Additional District and Sessions Judge,
Madurai.
- 2.The I Additional Subordinate Judge,
Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)No.17 of 2025

K.K.RAMAKRISHNAN,J.

csn

Judgment made in
C.M.S.A.(MD)No.17 of 2025
and
C.M.P.(MD)No.9689 of 2025

Dated : 08.07.2025