

AS.(MD)Nos.53 of 2016 & 164 of 2024 and CRP.(MD)No.1372 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 21.02.2025

Pronounced On : 20.03.2025

CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S.(MD)Nos.53 of 2016, 164 of 2024 and CRP.(MD)No.1372 of 2024
and
CMP.(MD)Nos.3649 & 3650 of 2016 & 8397 of 2024

AS.(MD)No.53 of 2016

Dinakaran(Died)

1.Manimekalai

2.Rajkumar

3.Jeyamani

... Appellants

Vs.

Murugan(Died)

1.Parameshwari

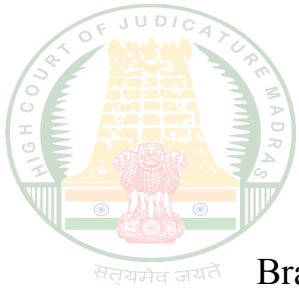
2.Maruthamuthu Pandu

3.Pandiyammal

4.Rajalakshmi

5.The Central Bank of India,
Seelayampatty, Theni,
Rep.by its

1/33



AS.(MD)Nos.53 of 2016 & 164 of 2024 and CRP.(MD)No.1372 of 2024

Branch Manager. ... Respondents
(Minors R2 & R3 are declared as major and the guardianship of their mother R1-Parameshwari is discharged vide common order dated 05.04.2024 made in CMP.(MD)Nos.3627 & 3629 of 2024 in AS. (MD)No.53 of 2016)

PRAYER : Appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 26.08.2015 passed by the learned Additional District Judge, Theni, Theni District made in O.S.No.18 of 2006.

AS.(MD)No.164 of 2024

Dinakaran(Died)

Rajkumar

... Appellants

Vs.

Murugan(Died)

1.Parameshwari

2.Maruthamuthu Pandey

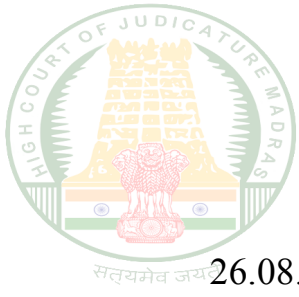
3.Pandi Ammal

4.Rajalakshmi

... Respondents

(Minors R2 & R3 are declared as major and the guardianship of their mother R1-Parameshwari is discharged vide common order dated 14.02.2025 made in CMP.(MD)Nos.2455 & 2456 of 2025 in AS. (MD)No.164 of 2024 & CRP.(MD)No.1372 of 2024)

PRAYER : Appeal is filed under Order 41(i) & 2 r/w Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated



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26.08.2015 passed by the learned Additional District Judge, at Periyakulam, Theni District made in O.S.No.48 of 2006.

CRP.(MD)No.1372 of 2024

Dinakaran(Died)

Jeyamani(Died)

1.Manimekalai

2.Rajkumar

... Petitioner

Vs.

1.Sikkandar

Murugan(Died)

2.Parameshwari

3.Maruthamuthu Pandu

4.Pandi Meena

5.Rajalakshmi

... Respondents

(Minors R2 & R3 are declared as major and the guardianship of their mother R1-Parameshwari is discharged vide common order dated 05.04.2024 made in CMP.(MD)Nos.3627 & 3629 of 2024 in AS.(MD)No.53 of 2016.)

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order passed in O.P.No.1 of 2010 on the file of the learned Additional District Judge, Theni dated 26.08.2015.

For Appellant : Mr.R.Suriyanarayanan,
in A.S.(MD)No.164 of 2024
and for petitioners
in CRP.(MD)No.1372 of 2024.



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For R1 & R4 : Mr.Anand Chandrasekar,
in AS.(MD)No.53 of 2016 for M/s.Sarvabhauman Associates
and AS.(MD)No.164 of 2024.

For R2 & R4 : Mr.Anand Chandrasekar,
in CRP.(MD)No.1372 of 2024 for M/s.Sarvabhauman Associates

For R5 : Mr.B.Rajesh Saravanan
in AS.(MD)No.53 of 2016.

COMMON JUDGMENT

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

The unsuccessful defendants Nos.2, 3 and 5 have preferred the appeal in A.S.(MD)No.53 of 2016 against the judgement and decree dated 26.08.2015 in O.S.No.18 of 2006 on the file of the Additional District Court, Theni.

2.The unsuccessful second defendant has preferred the appeal in A.S.(MD)No.164 of 2024 against the judgement and decree dated 26.08.2015 in O.S.No.48 of 2006 on the file of the Additional District Court, Theni.

3.The unsuccessful petitioners have preferred civil revision petition in CRP.(MD)No.1372 of 2024 against the order passed in O.P.No.1 of 2010 on the file of the Additional District Court, Theni.



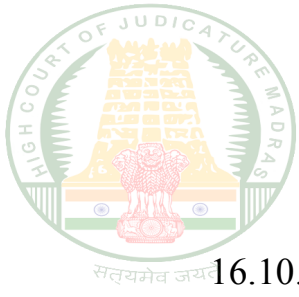
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4.For the sake of convenience, the parties are referred as per their rank before the trial Court.

5.Brief case of the plaintiffs in O.S.No.18 of 2006 is as follows:-

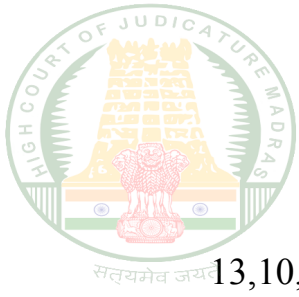
The suit has been filed for specific performance and for permanent injunction. The defendants 1 to 3 have purchased suit schedule property from one Mahendren on 16.09.1997 in the name of the first defendant. The defendants 1 to 3 have agreed to sell the suit property for a sum of Rs.17,06,000/- and received a sum of Rs.2,00,000/- as advance and entered into agreement on 26.12.2005. On the request made by the first and third defendants, the first plaintiff has paid a sum of Rs.50,000/- and an endorsement was made on the back side of the sale agreement. Therefore, the defendants have received totally a sum of Rs.2,50,000/- from the first plaintiff and the terms of the sale agreement is that within three months time, they have to execute sale deed, after receiving balance sale consideration of Rs.15,10,000/-. It is mentioned in the sale agreement that the first defendant has received loan for a sum of Rs.25,000/- on 15.10.2002 from one M.A.Chikkandar. Further, the first defendant has also executed two pro-notes dated 15.10.2002 and



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16.10.2002 for a sum of Rs.75,000/- and Rs.1,00,000/- respectively. In total, for a sum of Rs.2,00,000/-, the first defendant has handed over the possession of the suit property. Further, it is also mentioned that the loan obtained from the Bank also to be settled, after survey the lands, the balance sale consideration of Rs.13,10,000/- has to be received. If the plaintiffs failed to perform his part of contract, then the advance amount paid by the plaintiffs will be forfeited. If the defendants failed to perform their part of contract, then, the plaintiffs are entitled to seek remedy before the Court of law. As per the Varthamana agreement from the said Chikkandar and as per the agreement of sale, the plaintiffs are in possession of the suit schedule property. The plaintiffs were ready and willing to pay the balance amount of sale agreement and approached the defendants in person. But the defendants did not turn to perform their part of contract. The plaintiff issued legal notice dated 20.03.2006. The plaintiff has also sent telegram notice dated 13.03.2006 and 20.06.2006. The defendants have chosen to come to the Sub Registrar Office, but not executed the sale deed. The plaintiffs approached the first defendant requested to redeem mortgage from Bank and thereafter, execute the sale deed. The plaintiffs have submitted lodgement schedule for a sum of Rs.



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13,10,000/- since the plaintiffs are in possession of the suit property and seeks for relief of specific performance of the contract. Hence, the suit.

6.Brief Case of the defendants is as follows:-

The first defendant has filed written statement adopted by the defendants 2 & 3. The properties mortgaged to one Chikkandar for a sum of Rs.25,000/- is different property and the claim made by the plaintiffs is different property. It is denied the made over received from one Chikkandar. The defendants were waited in the Sub Registrar Office, but the plaintiffs were not ready with the balance consideration to perform their part of contract.

7.Brief case of the fourth respondent is as follows:-

The fourth defendant is not a party to the impugned sale agreement dated 26.12.2005. The plaintiffs have got knowledge about the title deeds deposited with the Bank. The plaintiffs ought to have taken steps to get back the original title deeds under the custody of the fourth defendant by way of equitable mortgage. Hence, the agreement for sale of the suit property, without discharging of mortgage loan is against the provisions of law.



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8. Brief case of the fifth defendant is as follows:-

The first defendant died and the fifth defendant impleaded as per the order in I.A.No.294 of 2014 dated 08.09.2014. It is admitted that the first respondent had mortgaged the suit properties for a sum of Rs.75,000/- and for a sum of Rs.1,00,000/-, after executing promissory note dated 15.10.2002 and 16.10.2002 respectively from the said Chikkandar. The first defendant is the Kartha of the family and they are in the possession of the suit property. It is denied that the first defendant has not executed another agreement dated 05.05.2005 in favour of the said Chikkandar. It is admitted that the defendants 1 to 3 have entered into agreement dated 26.12.2005 with the first plaintiff. It is denied that the possession of the suit property was not handed over to the first plaintiff. The first plaintiff was not ready and willing to perform his part of contract, within the time stipulated in the sale agreement. The first plaintiff or his legal heirs have no right based on the sale agreement or any other agreements. It is denied that the defendants tried to evict the first plaintiff from the suit property. The first defendant has deposited a sum of Rs.2,00,000/- before the Court and the plaintiffs can withdraw the



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amount after succeeding their case in O.P.No.1 of 2010. The plaintiffs failed to implead the said Chikkandar as a party to the suit and therefore, the suit is bad for non-joinder of necessary party.

9.The suit in O.S.No.48 of 2006 has been filed for restraining the defendants and their men and agent from interfering with the plaintiffs peaceful possession and enjoyment of the suit property till the mortgage amount is fully discharged by the defendants.

10.Brief Case of the plaintiffs in O.S.No.48 of 2006 is as follows:-

The suit property is originally belonged to the first defendant. He borrowed a sum of Rs.25,000/- from one M.A.Chikkandar on 14.10.2002 for which he has executed simple mortgage registered deed in respect of half portion in the suit property on 14.10.2002. Further, the first defendant borrowed a sum of Rs.75,000/- and Rs.1,00,000/- by executing pro-note from the Chikkandar on 15.10.2002 and 16.10.2002 respectively. Though the first defendant borrowed a sum of Rs. 2,00,000/-, he is not in a position to pay the monthly interest, thus, he has executed another Varthamana agreement on 16.10.2002 in favour the said



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Chikkandar. As per terms of the said agreement, Chikkandar permitted to enjoy half portion of the suit property in-lieu of interest for the period of 2 ¼ years or till mortgage is fully discharged. Since the first defendant is not in a position to repay his mortgage loan, he allowed Chikkandar to take the entire possession of the property, as such, on 05.05.2005, the first defendant executed another agreement for a period of three years, in respect of the entire suit property. The said Chikkandar with the consent of the first defendant has made over registered simple mortgage deed dated 14.10.2002 to the plaintiffs on 26.12.2005. The said Chikkandar borrowed a sum of Rs.1,75,000/- from the plaintiffs and made over two pro-notes, which was executed by the first defendant. The said Chikkandar has also made over the Varthamana agreement dated 05.05.2005 in favour of the plaintiffs and also surrender possession of the suit property. Prior to the made over of the agreement, the plaintiffs agreed to purchase the suit property. As per the terms of sale agreements, the possession of the suit property vested with the plaintiffs. As proposed purchaser, the plaintiffs invested huge amount for developing the suit property. However, the defendants delayed the execution of sale deed as per the terms of the sale agreement. The



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plaintiffs are taking steps to seek help of the Court for specific performance of the contract. Till the expiry of the mortgage period, their possession from the suit property should not be disturbed. Hence, the suit.

11. Brief Case of the defendants is as follows:-

In the sale agreement, there is no mention about the possession and handing over of about the made over agreement.

12. The first defendant ie., Late.Dinakaran in O.S.No.18 of 2006 as well as in O.S.No.48 of 2006 has filed a petition under Section 83 of the Transfer of Property Act in O.P.No.1 of 2010 seeking for the relief to redeem a mortgage as against one M.A.Chikkandar and plaintiffs.

13. The third respondent has filed a counter and the respondents 4 to 6 were adopted the same. The petitioner suppressed the fact that the suit in O.S.No.18 of 2006 has been filed for seeking relief of specific performance and the same is pending for adjudication. The debt amount mentioned in the petition has been included in the sale agreement entered



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by the second respondent. The petitioner was permitted to enjoy the suit property and to avail crops in lieu of paying rent. There is no necessity to deposit a sum of Rs.58,000/- by way of two Demand Draft before the Court.

14. Based on the above pleadings, the trial Court has framed the following issues in O.S.No.18 of 2006:-

- i) Whether the agreement of sale dated 26.12.2005 is executed and the same is binding on the defendants?
- ii) Whether the plaintiffs are ready and willing to perform their part of contract?
- iii) Whether the mortgage deed executed in favour of the fourth defendant is binding on the plaintiffs?
- iv) Whether the plaintiffs are entitled for the relief of specific performance?
- v) What other reliefs the plaintiffs are entitled?

14(ii).O.S.48 of 2006:-

- i) Whether the plaintiffs are entitled for the relief of permanent



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injunction?

ii)Whether the plaintiffs are in possession and enjoyment of the suit property

iii)What other reliefs the plaintiffs entitled?

14(iii).O.P.No.1 of 2010:-

i)Whether the petition has to be allowed or not?

15.On the side of the plaintiffs, the wife of the first plaintiff Mrs.Parameshwari was examined as P.W.1, one Mr.Palanichamy was examined as P.W.2, one Mr.Muthu was examined as P.W.3 and the first respondent in O.P.No.1 of 2010, Mr.Chikkandar was examined as P.W.4 and Ex.A1 to Ex.A25 were marked. On the side of the defendants, one Mr.Rajkumar was examined as D.W.1 and Ex.B1 to Ex.B11 were marked.

16.Findings of the trial Court:-

i)The plaintiffs have established that the first plaintiff was ready and willing to perform his part of contract. The plaintiffs have also deposited the balance sale consideration of Rs.13,10,000/-, after filing the suit.

ii)The defendants have not taken any steps to cancel the agreement



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of sale. The defendants did not say anything about the loan borrowed from the Bank and therefore, the loan borrowed from the fourth defendant Bank is not binding on the plaintiffs.

iii) Though the defendants have taken a plea that Ex.A2 is not a sale agreement and the same has been executed for the purpose of getting loan from the plaintiffs, the defendants have failed to prove the same.

iv) The first defendant has filed O.P.No.1 of 2010 in which the first defendant had admitted that a sum of Rs.2,50,000/- has been borrowed from one Chikkandar. The plaintiffs are entitled for relief of the specific performance and also entitled for the permanent injunction. As per Ex.A2, the possession of the suit properties was handed over to the first plaintiff. The first defendant is not entitled for the relief of redemption of mortgage.

17.Points for determination arises in these appeals and civil revision petition:-

i) Whether the first plaintiff was ready and willing to perform his part of contract?

ii) Whether the plaintiffs are entitled for the relief of specific performance as prayed for the suit?



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iii)Whether the plaintiffs are entitled for permanent injunction as prayed for?

iv)Whether the petition filed under Section 83 of the Code of Civil Procedure is to be allowed?

18.The learned counsel appearing for the appellants / defendants 2 and 3 would submit that the plaintiffs have not proved that the defendants are bound by certain unregistered documents, as an agreement of sale, on which the suit for specific performance could be enforced in the Court of law. The Court below had erroneously applied the principle of burden of proof. The Court below erred in taking into consideration the unregistered document particularly Ex.A2 which cannot be made over upon the legal heirs of the deceased C.Murugan / plaintiff. He would submit that petition in O.P.No.1 of 2010 has been filed by the legal heirs of the deceased first defendant for redemption of mortgage ought to have held that there is no binding for specific agreement. Instead allowing the petition and decreeing the suit for specific performance is not sustainable under law. The suit properties are primarily subjected to the mortgage and in the said circumstances, Ex.A2



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is only a mortgage deed, which had been made over to the plaintiffs. The Court below ought to have found that Ex.A2 and Ex.A18 to Ex.A21 were made over on the same day, ie, 26.12.2005, which would clearly shows the intention of the plaintiffs. The value of the suit property has been substantially increased since the initiation of the suit till the date of trial. Further, the learned counsel also reiterated the grounds raised in the appeals as well as in the revision petition.

19.Per contra, the learned counsel for the respondents / plaintiffs would submit that the plaintiffs were always ready and willing to discharge their part of obligation as per the terms mentioned in the sale agreement. The plaintiffs established their continuous readiness and willingness. Through the evidence of P.W.4, it has been clearly established as to how the possession was handed over to the first plaintiff and the loan borrowed by the first defendant has also been clearly established. There is no reason to interfere with the judgment and decree passed by the trial Court.

20.It is the specific case of the plaintiffs is that the suit property is



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originally belonged to the first defendant Thiru.R.Dinakaran. He borrowed Rs.25,000/- from one M.A.Chikkandar on 14.10.2002, for which he executed a simple mortgage deed in respect of half of the suit property on 14.10.2002 in favour of the said Chikkandar. The first defendant borrowed Rs.75,000/- and Rs.1,00,000/- and executed two pro-notes dated 15.10.2002 and 16.10.2002 respectively in favour of the said Chikkandar. The first defendant executed another Varthamana agreement on 16.10.2002, in which, the said Chikkandar is permitted to enjoy the half portion of the suit property in the interest of lien for the period of 2 ¼ years. Accordingly, the said Chikkandar took possession and enjoyment.

21.According to the plaintiffs, the first defendant is not in a position to repay his mortgage debt, he allowed the Chikkandar to take entire suit property. As such on 05.05.2005 the first defendant executed another agreement for a period of three years, in respect of entire suit property. According to the plaintiffs, the defendants 1 to 3 have entered and agreement of sale with the the first plaintiff on 26.12.2005, for a total sale consideration of Rs.17,60,000/- and revealed a sum of Rs.2,00,000/-



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as advance. The said Chikkandar with consent of the first defendant has made over the simple mortgage dated 14.10.2002 to the plaintiffs on 26.12.2005. Further, the Chikkandar borrowed Rs.1,75,000/- from the plaintiffs and made over the two pro-notes, which were executed by the first defendant. He has made over the Varthamana agreement in favour of the the plaintiffs on 26.12.2005 and also surrender possession of the suit property with the plaintiffs. On 15.01.2006, the defendants 1 to 3 received a sum of Rs.50,000/- from the plaintiffs and made an endorsement in the back side of the agreement.

22.The transactions held between the first defendant and M.A.Chikkandar, the first defendant and the first plaintiff & the first plaintiff and M.A.Chikkandar are as follows:-

14.10.2002 - The first defendant borrowed a sum of Rs. 25,000/- from one M.A.Chikkandar, for which, he has executed simple mortgage deed.

15.10.2002 - The first defendant borrowed a sum of Rs.75,000/- from the said M.A.Chikkandar and executed a pro-note.



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16.10.2002 - The first defendant borrowed a sum of Rs.1,00,000/- and executed a pro-note in favour of the said M.A.Chikkandar.

16.10.2002 - The first defendant executed another Varthamana agreement in favour of the said M.A.Chikkandar. As per the terms of the said agreement, Ex.A21, the said M.A.Chikkandar is permitted to enjoy the $\frac{1}{2}$ portion of the suit property, in lieu of interest, for the period of $2 \frac{1}{4}$ years, till the mortgage deed is fully discharged by the first defendant.

05.05.2005 - The first defendant executed another agreement for a period of three years in favour of the said M.A.Chikkandar in respect of the entire portion of the suit property. As per the terms of the said agreement, M.A.Chikkandar has to enjoy the suit property in lieu of interest, for the further period of three years.



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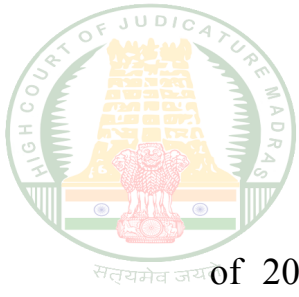
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26.12.2005 - M.A.Chikkandar, with a consent of the first defendant, has made over the registered simple mortgage deed dated 14.10.2002 in Ex.A14 to the plaintiffs. The said M.A.Chikkandar borrowed a sum of Rs.1,75,000/- and made over two pro-notes, which was executed by the first defendant.

26.12.2005 - the first plaintiff and the defendants 1 to 3 entered into an agreement.

26.12.2005 - M.A.Chikkandar further has made over the Varthamana agreement dated 05.05.2005 in Ex.A22 in favour of the plaintiffs and also surrender the possession of the suit property with the plaintiffs.

24.The defendants 1 to 3 have contended that the total sale consideration has been shown as lesser amount. The fifth defendant has chosen to file written statement on 28.05.2015, wherein it has been admitted that the agreement of sale entered into between the parties in Ex.A2 dated 26.12.2005. The first defendant has chosen to file O.P.No.1



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of 2010 wherein it has been admitted the existence of Ex.A2 sale agreement and it has been contended that the defendants were ready and willing to perform their part of contract and the first plaintiff has failed to perform his part of contract. As per Ex.A2 agreement of sale, suit schedule properties originally belonged to the first defendant Thiru.R.Dinakaran. The first defendant's daughter Manimegalai, who is the second defendant and the first defendant's son Rajkumar, who is the third defendant have also signed in the agreement of sale. The recitals found in Ex.A2 shows that the total sale consideration was fixed for a sum of Rs.17,60,000/-. A sum of Rs.2,00,000/- has been received as advance. Sale should be completed within three years. It is also mentioned that the first defendant has borrowed a sum of Rs.25,000/- from M.A.Chikkandar on 14.10.2002 for which he has executed simple mortgage deed. The first defendant borrowed a sum of Rs.75,000/- on 15.10.2002 and also borrowed a sum of Rs.1,00,000/- on 16.10.2002 and executed two pro-notes in favour of the said M.A.Chikkandar. Thus, the first defendant has borrowed Rs.2,00,000/- from the said M.A.Chikkandar. The said M.A.Chikkandar handed over the possession of the suit property in favour of the plaintiffs. The defendants have to



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clear the debt availed from the Bank and on receiving the balance amount of Rs.13,60,000/-, they have to execute the sale deed. A perusal of Ex.A2 reveals that the first and third defendants has received a sum of Rs.50,000/- on 15.01.2006 from the first plaintiff and an endorsement has also been made on the back side of the sale agreement-Ex.A2 to that effect. The recitals of Ex.A2 shows that the terms and conditions have also been incorporated in the agreement. As per the terms of the sale agreement, the possession of the suit property vested with the plaintiffs. According to the plaintiffs, from the execution of sale agreement, they are ready and willing to purchase the suit property. The plaintiffs issued legal notice in Ex.A3 dated 02.03.2006 to the defendants and the sane has been received by the first and third defendants on 03.03.2006 in Ex.A4. In Ex.A3, it has been stated that the plaintiffs are ready and willing to perform their part of contract by paying balance consideration of Rs.13,10,000/-, after deducting the amount payable to M.A.Chikkandar and the plaintiffs are ready to come to the Sub Registrar Office on 13.03.2006 at 10.00 am with balance consideration and they have also requested the defendants to execute the sale deed, after receiving the sale consideration. Ex.A6 dated 10.03.2006 is Telegram



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issued by the plaintiffs to the defendants 1 to 3. Ex.A9 is the gist receipt dated 14.03.2006 paid in the name of the first defendant by the first plaintiff. Ex.A11 is the rejoinder notice dated 27.03.2006 issued by the first plaintiff to the defendants 1 to 3 informing the typographical error with regard to the survey number extent in the earlier notice Ex.A3.

25.It is not in dispute that the defendants 1 to 3 did not give any reply to the first plaintiff and did not execute the sale deed. The time stipulates in the sale agreement expires on 26.03.2006. The defendants contended that the first plaintiff has not come to the Sub Registrar Office with the balance sale consideration. It is seen from Ex.B2 and Ex.B3 sale deeds dated 13.03.2006, the second defendant Manimegalai has signed as one of the witnesses in the above said documents. Similarly, in Ex.B6 sale deed dated 13.03.2006, the defendants 1 and 2 have signed as witnesses in the documents. Therefore, the contention of the plaintiffs is that the defendants 1 & 2 were in the Sub Registrar Office on 13.03.2006 is acceptable one, since the plaintiff was in the capacity of the paying balance sale consideration on 13.03.2006. It is seen from Ex.A25, Laxmivilas Bank statement in the name of first plaintiff that a sum of



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Rs.13,21,211/- is available in his account. D.W.1 D.Rajkumar in his cross examination categorically admits that as per the sale agreement, within three months, the defendants have to execute sale deed and also he admits that legal notice received by them. He also admits that he went to the Sub Registrar on 13.03.2006, but not intended to executed sale deed. He also admits he did not sent any reply notice to the plaintiffs. He also admits that the defendants did not sent notice saying that the plaintiffs were not ready and willing to perform his contract. He admits that after filing the suit, the plaintiffs deposited the balance consideration of Rs.13,10,000/- in the Court. From the evidence of D.W. 1 clearly shows that he was in Sub Registrar Office, Periyakulam on 13.03.2006. The plaintiffs was always ready and willing to discharge his obligation to perform his part of agreement.

26.It is pertinent to mention that the requirements of Section 16(c) of the Specific Relief Act enumerates that continuous readiness and willingness on the part of the plaintiffs is a condition precedent to grant relief of specific performance. Right from the date of execution till the dated of decree, he must be prove that he is ready and has always been willing to perform his part of contract.



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WEB COPY 27.It is seen from Ex.A2 sale agreement that the defendants 1 and 2 have to repay the Bank loan and they have to submit the parental document of the suit property before registration. The fourth defendant filed written statement, wherein it has been stated that the Bank is not a party to the impugned sale agreement dated 26.12.2005 and the plaintiffs has got knowledge about the title deeds deposited with the Bank. It has also been stated that there is a mortgage loan, which was subsisting and loan has become over due, more than Rs.5,00,000/-. It is seen from Ex.A2 sale agreement that there is recitals about the title deeds deposited with the Bank by the defendants 1 to 3.

28.P.W4 Chikkandar had deposed in his chief examination about the simple mortgage deed executed by the first defendant on 14.10.2002 for a sum of Rs.25,000/-. Two pro-notes executed by the first defendant have also been mentioned. The first defendant also borrowed totally a sum of Rs.2,00,000/- and he was not in a position to pay monthly interest, thus, the first defendant executed another Varthamana agreement on 16.10.2002 in favour of him. As per the said terms, he was permitted to enjoy three acres four cents of the suit property in lieu of interest.



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Since the first defendant was not in a position to repay his mortgage debt, the first defendant allowed him to take the entire portion of the suit property by executing another agreement dated 05.05.2005. As per the above said agreement, he was in possession and enjoyment of the property in lieu of the interest. It has also been stated that the first defendant informed him that he is going to sell the suit property in favour of the plaintiffs and he has reserved his right to sell the suit property. Therefore, P.W.4, with the consent of the first defendant, has made over the registered simple mortgage deed to the plaintiffs on 26.12.2005, after borrowing a sum of Rs.2,00,000/- from the plaintiffs. He has also surrendered the possession of the suit property with the plaintiffs. P.W.4 in his cross-examination has deposed that the first defendant has permitted to enjoy to an extent of three acres and 47 cents, in lieu of interest. Ex.A23 made over agreement dated 26.12.2005 relates to three acres and 4 cents and Ex.A22 Varthamana agreement dated 05.05.2005 speaks about three years period.

29.The learned counsel appearing for the appellants/defendants 1 to 3 would submit that Ex.A2 is not a sale agreement and it has been executed for the purpose of obtaining loan from the plaintiffs. It is



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pertinent to mention that the onus of proving that the sale agreement is only with regard to some money transaction and that there is no intention to sell the suit property is upon the defendants, who were made contention that once execution of sale is admitted. There is no evidence adduced on behalf of the appellants/defendants to sustain such claim. The appellants also did not take any steps for cancelling the sale agreement, even though, it has been contended that the sale agreement was executed only with regard to some money transaction and they were not pleaded that they discharged their liability in respect of the money said to have been borrowed from the plaintiffs. The appellants/defendants have not examined any independent witnesses to show that the sale agreement was executed only with regard to the money transaction and there is no intention to sell the suit property. It is also pertinent to mention that after execution of Ex.A2, on 15.01.2006, the first and third defendants had received a sum of Rs.50,000/- and made an endorsement on the back side of the document. Evidence adduced by P.W.4 Chikkandar in his chief examination, has been admitted by the fifth respondent in her written statement.



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30.It is pertinent to mention that plea of material alteration on the negotiable instruments is an important aspect, because, it leads to root of the matter. So far as Section 87 of the Negotiable Instruments Act, which deals with the material alteration, is it is so the alteration would change the legal character of the instrument. D.W1 in his proof affidavit and the fifth defendant in her written statement have categorically admitted the above said two pro-notes executed by the first defendant and borrowal of Rs.75,000/- and Rs.1,00,000/- respectively and also admitted the factum of receiving Rs.25,000/- from P.W.4 Chikkandar. It is seen from the petition filed in O.P.No.1 of 2010 that the first defendant has stated about the borrowal of the money based on two pro-notes and about execution of simple mortgage deed for a sum of Rs.25,000/- to the said Chikkandar P.W.4. It is pertinent to mention that according to the plaintiffs, they were in possession as per the terms of the agreement of sale and when one such part of performance as pleaded in terms of the sale agreement, it has to be duly registered otherwise they cannot seek relief based on the sale agreement. It is pertinent to mention that as to whether an agreement of sale has to be discorded in a suit for specific performance on the ground that the same is not a registered document. In



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view of the specific provision made under the proviso to the Section 49 of the Registration Act, 1908, allowing unregistered document affecting immovable property to be registered may be received as evidence of a contract in a suit for specific performance. Therefore, the trial Court has rightly answered the issue.

31.It is pertinent to mention that under Section 20 of the Specific Performance Act, grant of specific performance on contract is discretionary and it depends upon facts and circumstances of each case. The Court would taken into consideration of the facts and circumstances conduct of the party, recitals in the sale agreement. In the instant case, Ex.A2 agreement for sale was executed on 26.12.2005 and the suit was filed on 03.04.2006 and also balance sale consideration has been deposited before the trial Court. A perusal of recitals in the agreement of sale Ex.A2 reveals that after discharging the Bank loan the defendants 1 to 3 have to receive the parental document from the Bank and they have to execute the sale deed. In Ex.A2, it is stated that the defendants 1 to 3 / vendors have undertaken to discharge the loan and hand over the parental deeds of the suit property to the plaintiffs, within the time stipulated in



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the agreement. It is pertinent to mention that in case the defendants failed to comply with the said terms in executing sale deed, the trial Court can very well direct to execute the sale deed, taking into consideration of the Bank loan. The defendants have categorically admitted the fact that the possession was handed over to the first plaintiff based on Ex.A2 sale agreement dated 26.12.2005 and made over agreement Ex.A21 dated 16.10.2002. The defendants did not choose to examine any witness to prove that the first plaintiff was permitted to enjoy the crops alone and the possession was not handed over. The grounds raised in these appeals and the civil revision petition are clearly answered by the trial Court. We are of the considered opinion that there is no reason to interfere with the common judgment and decree of the learned trial Court. The points are answered, accordingly.

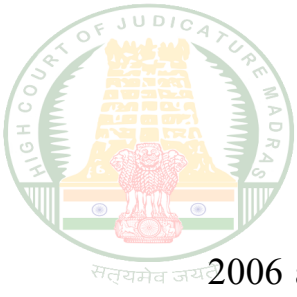
32.In the result,

i)the first appeal in AS.(MD)No.53 of 2016 is dismissed,

ii)the first appeal in AS.(MD)No.164 of 2024 is dismissed,

iii)the civil revision petition in CRP.(MD)No.1372 of 2024 is dismissed and

iv)the common judgment & decree passed in O.S.Nos.18 & 48 of



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2006 and O.P.No.1 of 2010 on the file of the learned Additional District Judge, Theni, Theni District dated 26.08.2015 is hereby confirmed.

There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) & (M.J.R., J.)
20.03.2025

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

The Additional District Judge, at Periyakulam, Theni District



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

gns

Pre-Delivery Judgment made in
A.S.(MD)Nos.53 of 2016, 164 of 2024
and CRP.(MD)No.1372 of 2024

20.03.2025