



WEB COPY



A.S.(MD)Nos.34 of 2015 and 56 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.11.2024
PRONOUNCED ON : 31.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHIL KUMAR**

**A.S.(MD)Nos.34 of 2015 and 56 of 2016
and
C.M.P(MD)Nos.3798 of 2016**

A.S(MD)No.34 of 2015:

S.Sekar .. Appellant/1st Defendant

-Vs-

1.V.Shanmughasundaram .. 1st Respondent/Plaintiff

2.M.R.K.Siva .. 2nd Respondent /
2nd Defendant

Prayer: Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree dated 31.01.2014 made in O.S.No.3 of 2010, on the file of the learned Principal District Judge, Karur.

For Appellant : Mr.AK.Duraisamy
Senior Counsel
for Mr.Muthumani Doraisami

For Respondents : Mr.K.Suresh
for R1

: R2-Disd
vide Court order dated 04.07.2018



A.S.(MD)Nos.34 of 2015 and 56 of 2016

A.S(MD)No.56 of 2016:

S.Sekar

.. Appellant

WEB COPY

-Vs-

1.V.Shanmughasundaram

2.P.Subbarayan

3.Rajadurai

4.M.R.K.Siva

.. Respondents

Prayer: Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree dated 31.01.2014 made in O.S.No.32 of 2012, on the file of the learned Principal District Judge, Karur.

For Appellant : Mr.AK.Duraisamy
Senior Counsel
for Mr.Muthumani Doraisami

For Respondents : Mr.C.Jeen Felix
for R1 to R3

: R4 given up
vide Court order dated 22.08.2024

COMMON JUDGMENT

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

For the sake of convenience parties are referred to as per their ranking in A.S.No.34 of 2015.



A.S.(MD)Nos.34 of 2015 and 56 of 2016

2. The defeated 1st defendant in O.S.No.3 of 2010 is the appellant in A.S.No.34 of 2015. The very same person also filed O.S.No. 32 of 2012 for permanent injunction and the same was dismissed and hence, he filed the appeal in A.S(MD)No.57 of 2016.

3. The defeated first defendant in O.S.No.3 of 2010 has filed the above A.S.(MD) No.34 of 2015. The first respondent / plaintiff filed O.S.No.3 of 2010, before the Principal District Court, Karur, for specific performance of the agreement entered into between him and the appellant herein. The appellant herein is the owner of the suit property and he agreed to sell the same for Rs.23,50,000/- per acre. He received Rs.5,00,000/- towards advance on 01.11.2009 from the first respondent herein and thereafter, he failed to execute the sale deed in favour of the first respondent. Hence, the first respondent filed the suit for specific performance. Another suit in O.S.No.32 of 2012 was filed by the appellant herein for injunction against the first respondent herein and others. A joint trial was conducted in both the suits. The suit filed for specific performance was decreed and the suit filed for injunction was dismissed. Hence, the present appeals.



A.S.(MD)Nos.34 of 2015 and 56 of 2016

4. Mr.AK.Duraisamy, learned Senior Counsel appearing for the appellant would contend that the plaintiff has miserably failed to show his ready and willingness to perform his part of contract and this aspect has been overlooked by the Trial Court. He would further contend that if the amount is not paid by the plaintiff within the stipulated time, then the suit is to be dismissed. In support of his contentions, learned Senior Counsel relied upon the decisions in the case of ***Ramaswami Kone vs. Sundara Kone***, reported in ***1907 SCC Online Mad 57*** and ***Gopala Aiyar and another vs. Sannasi***, reported in ***AIR 1917 Mad 838*** and hence, he prayed for setting aside the Judgment passed by the Trial Court.

5. The following points arise for consideration in A.S.No.34 of 2015:

- (i) Whether there is an agreement of sale between the parties as pleaded by the plaintiff on 01.11.2009?
- (ii) Whether the plaintiff is ready and willing to perform his part of the contract?
- (iii) Whether the plaintiff is entitled to decree due to non-deposit of balance sale



WEB COPY



A.S.(MD)Nos.34 of 2015 and 56 of 2016

consideration pending suit?

- (iv) Whether the Trial Court's Judgment needs interference for non-compliance of the decree, namely, deposit of the balance sale consideration?

6. It appears that by order dated 26.06.2024, a telephonic information was directed to be received from the Trial Court as to whether the plaintiff had deposited any balance sale consideration as stipulated in the decree.

7. Hence, Registry was directed to get a report (in writing) from the Trial Court as to whether the plaintiff had deposited any balance sale consideration as stipulated in the decree dated 30.01.2014 passed by the Trial Court before the next hearing date.

8. Pursuant to the direction issued by this Court, the learned District & Sessions Judge, Karur, by communication dated 02.11.2024 submitted that the balance of sale consideration has not been deposited by the plaintiff as stipulated in the decree dated 02.11.2024.



A.S.(MD)Nos.34 of 2015 and 56 of 2016

9. The learned Senior Counsel Mr.K.Duraisamy appearing for the appellant/1st defendant would state that the ready and willingness of the alleged agreement holder was not at all discussed by the learned District Judge. In this regard, he relied upon the judgment of this Court in C.R.P.No.200 of 1915 dated 12th November 1915, wherein this Court has held that the First Court's decree fixed a particular date before which the money is to be paid. In this case, as is further pointed out, the money was not offered till long after one month from the date of the appellate decree.

10. Heard the learned Senior Counsel for the appellant and the learned counsel for the respondents.

11. Before the trial Court, the agreement holder examined himself as PW1 and another person was examined as PW2 and Ex.A1 to Ex.A10 were marked. On behalf of the defendant, land owner was examined as DW1 and marked Ex.X1 and Ex.X2 and Ex.C1 and Ex.C2. Pending suit, as the agreement holder alleged to trespass into the suit property, the land owner/appellant filed O.S.No.32 of 2012 for permanent injunction and the memo for joint trial was conducted.



A.S.(MD)Nos.34 of 2015 and 56 of 2016

12. After trial, it appears that the specific performance suit filed by the respondent in O.S.No.3 of 2010 was allowed and O.S.No.32 of 120 was dismissed and hence, A.S(MD)No.34 of 2015 and A.S(MD)No.56 of 2016 respectively, were filed.

13. In respect of A.S.(MD)No.56 of 2016, the point for determination in the appeal is whether the plaintiff therein, land owner is entitled for injunction or not?

14. After hearing the respective counsel, I find that the land to an extent of 6 acres 70 cents were subject matter of the suit and advance amount of Rs.5,00,000/- was received. The period for execution of sale deed is one month. Total sale consideration is Rs.1,52,45,000/-.

15. Ex.A1 is projected as an agreement of sale. Perused Ex.A1. The terms of the agreement are not disputed by the learned Senior Counsel seriously and the learned Senior Counsel insisted that the respondent/plaintiff has not proved his readiness and willingness to pay the balance of sale consideration either at the time of issuance of Ex.A3- legal notice (18.12.2009) or at the time of filing of the suit (12.01.2010) or during the pendency of the suit or even on the date of decree of the



judgment or on the date of filing of the appeal or on the date of final hearing taken up today. Hence, he also draw my attention to the admission of the PW1 in the cross-examination which reads as follows:

“வா.சா.ஆ.3ல் இருந்து ஒரு வாரத்திற்குள் நான் 1
கோடியே 55 லட்சம் வைத்திருந்தேன் என்பதை
காட்ட வேறு ஆவணம் எதுவும் இல்லை.

16. As per the judgment, one month time was granted to the plaintiff and the plaintiff was deposited the sale consideration. Date of the decree is 30.01.2014. Till date, the plaintiff has not deposited the amount as per the report of the learned Principal District Judge, Karur as mentioned earlier assumes significance.

17(a). It is relevant to state that Ex.A1 dated 01.11.2009 is alleged to be a token receipt. The last date for execution of sale was 31.01.2010. However, Ex.A3-legal notice was issued on 18.12.2009 even before the expiry of the time limit. No plausible explanation was given by PW1 in the witness box assumes significance. Further more, there is no evidence available on record as to the capacity of the plaintiff to pay the balance of sale consideration of Rs.1,52,45,000/- (Rupees one crore fifty two lakhs and forty five thousand only). However, the learned



A.S.(MD)Nos.34 of 2015 and 56 of 2016

Principal District Judge without appreciating the readiness, has rendered a finding that the plaintiff is entitled for specific performance. Such a finding is without any basis of legal evidence and hence, the same is hereby vacated.

17(b). Yet another point is that it is the specific case of the defendant that the plaintiff is a man without any means and he fraudulently manufactured another agreement and filed another suit at the time of certain disputed signature in the disputed in the agreement in the connected suit. That case was dismissed as withdrawn. In this aspect, the plaintiff does not offer any explanation in the cross-examination as pointed out by the learned Senior Counsel by the appellant/defendant assumes significance. It remains to be stated that O.S.No.4 of 2010 which was filed against the very same land lord with regard to the very same land, it is alleged by the appellant/defendant that the forged sale agreement was created on 20.07.2009 and hence they have taken the application and send the matter for Forensic expert. At that juncture the suit was allowed for dismissal also assumes significance.

18. The second defendant in O.S.No.32 of 2004 (injunction suit) filed by the land owner, it is the specific stand of the



A.S.(MD)Nos.34 of 2015 and 56 of 2016

plaintiff/appellant that the second defendant P.Subbarayan in collision with the 4th defendant/M.R.K.Siva has created a sale agreement said to have been executed on 20.07.2009 filed a suit in O.S.No.4 of 2010 before the District Court for the relief of specific performance. The said Suit was not pressed after an application filed by the plaintiff (in injunction suit), for referring the signature in the suit sale agreement for forensic expert opinion.

19(a). Except the notice, there is no positive evidence on the part of the respondent/plaintiff to show that he was ready with money and the plaintiff as PW1 has categorically admitted in the cross examination that on the date of issuance of notice (or) on the date of filing of the suit, he has no means to pay the sale consideration assumes significance and it is a fatal to the case of the plaintiff. This vital aspect has not been gone into by the trial Court.

19(b). For the grant of specific performance, the mandatory requirement is due compliance of Section 16(3) of the Specific Relief Act that the plaintiff should be ready and willing to perform his part of the contract and the readiness is relating to ready with money and willingness relating to willing to purchase the property.



A.S.(MD)Nos.34 of 2015 and 56 of 2016

19(c). As admitted by PW1, as extracted supra goes to show that the appellant has no means to complete the transaction.

19(d). This Court also taking note of the connected suit in O.S.No.4 of 2010 which is filed by some other person with connivance with the very same plaintiff in this suit on an alleged sale agreement for the very same property was also dismissed for non-prosecution, when an application for referring suit sale agreement is sought to be referred to Forensic Department. Hence, I find that the plaintiff has not demonstrated his ready and willingness to perform his part of the contract and hence he is not entitled for relief. Accordingly, A.S.No.34 of 2015 is **allowed** and O.S.No.3 of 2010 is dismissed.

A.S(MD)No.56 of 2016 (O.S.32/2012):

20. The plaintiff in the suit in O.S.No.32 of 2012 is one Dr.S.Sekar, who is the owner of the land. He filed the present suit against the plaintiff in the suit in O.S.No.3 of 2010 (A.S.No.34/2015) (seeking the relief of specific performance) that not to interfere with the peaceful possession and enjoyment of the suit property. Admittedly, the plaintiff in O.S.No.3 of 2010 is the owner of the land as per Ex.B1 filed before the trial Court and the 1st defendant, who is the plaintiff in O.S.No.32 of



A.S.(MD)Nos.34 of 2015 and 56 of 2016

2012 is only an agreement holder and he has produced Ex.A1 namely token receipt for payment of Rs.5,00,000/-. However, the trial Court without considering the fact that the agreement holder cannot have better title as against the admittedly original owner, rejected the relief of injunction to protect the possession of true owner.

21. There is no recital in Ex.A1 to indicate that the possession was handed over to the agreement holder/1st defendant pursuant to the said agreement assumes significance and hence there cannot be any injunction against the true owner which is axiomatic in law. Under Section 53 of the Transfer of Property Act, agreement holder cannot be allowed to trespass in the property in the absence of any recital as to possession in the alleged sale agreement. As stated supra, there is nothing in the Ex.A1 to indicate that the possession was handed over to the agreement holder, viz., the first defendant in the present suit. This vital aspect has not been considered by the learned District Judge.

22. In fact, the Advocate Commissioner was appointed and filed the report viz., Ex.C1 and Ex.C2. As per the Commissioner's Report-Ex.C1 and Ex.C2, the plaintiff in the said suit is the land owner who is in possession of the property and hence, he is entitled for



A.S.(MD)Nos.34 of 2015 and 56 of 2016

injunction against any third party including the agreement holder in the absence of any Clause for possession as a part performance of the contract. Hence, viewing from any angle, both on law and on facts, the judgment of the trial Court is totally unsustainable in law and the same is liable to be set aside.

23. In the result,

(i) A.S(MD)No.34 of 2015 is **allowed** and the judgment and decree dated 31.01.2014 passed by the learned Principal District Judge, Karur, in O.S.No.3 of 2010 is set aside and consequently O.S.No.3 of 2010 is dismissed. No Costs.

(ii) A.S(MD).No.56 of 2016 is **allowed** and the judgment and decree dated 31.01.2014 passed by the learned Principal District Judge, Karur, in O.S.No.32 of 2012 is set aside and consequently, O.S.No.32 of 2012 stands decreed. No Costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] [N.S., J.]
31.01.2025

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



WEB COPY



A.S.(MD)Nos.34 of 2015 and 56 of 2016

RMT.TEEKAA RAMAN, J.
AND
N.SENTHIL KUMAR, J.

PJL

Pre Delivery Judgment made in
A.S.(MD)Nos.34 of 2015 & 56 of 2016
and
C.M.P(MD)No.3798 of 2016

31.01.2025