



A.S.(MD)No.145 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.11.2025

DELIVERED ON : 25.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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V.Sahaya Antony

... Appellant

-VS-

1.Vasuki

2.Vimi Alloy

... Respondents

PRAYER: Appeal Suit filed under Order 41 Rules 1 and 2 r/w Section 96 of CPC against the judgment and decree dated 18.12.2017 made in O.S.No.3 of 2012 on the file of District Court, Kanyakumari at Nagercoil.

For Appellant : Mr.M.Ajmalkhan,
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.J.Barathan for
Mr.V.Sasikumar for R1
Unserved R2



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JUDGMENT

(Judgment of the Court was delivered by ***C.V.Karthikeyan, J.***)

The plaintiff in O.S.No.3 of 2012 on the file of the District Court, Kanyakumari at Nagercoil is the appellant herein.

2. O.S.No.3 of 2012 had been filed seeking specific performance of an agreement of sale dated 04.02.2009 entered into between the plaintiff and the first defendant. In the alternate, the plaintiff had also sought that the first plaintiff should be directed to execute a sale deed to an extent of 16 ½ cents and to return back the proportionate amount received by her for 10 cents of land which stood in the name of second defendant/her daughter. By judgment dated 18.12.2017, the suit came to be dismissed, necessitating the plaintiff to file the present appeal.

**O.S.No.3/2012 [District Court, Kanyakumari,
Nagercoil]:**

3. The plaintiff contended that the suit schedule property totally measured 26 ½ cents of land in R.S.No.653/3, at Agasteeswaram



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Taluk. It is contended that the first defendant executed a settlement deed to an extent of 10 cents out of the said lands in favour her daughter, second defendant. The first defendant offered to sell the suit schedule property and entered into an agreement on 04.02.2009 with the plaintiff for a total sale consideration of Rs.25,00,000/- (Rupees Twenty Five Lakhs only). The plaintiff paid an advance of Rs.20,00,000/- (Rupees Twenty Lakhs only) on the date of the agreement. Subsequently, he also deposited the balance sale consideration of Rs.5,00,000/- (Rupees Five Lakhs only) in the account of the first defendant at Canara Bank on 18.12.2009. The first defendant, however, did not come forward to execute the sale deed.

3.1. On 17.04.2010, the plaintiff and his brother went to the residence of the first defendant and demanded registration of the sale deed. The first defendant stated that her daughter, the second defendant was residing in Bangalore and after she comes back, she would execute the sale deed. She however, permitted the plaintiff to take possession of her portion of the suit property. The plaintiff contended that therefore, he and his brothers constructed a house in the said portion. Thereafter, the plaintiff continuously demanded registration of the sale deed atleast to an



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extent of 16 ½ cents. The first defendant evaded. It is under those circumstances, the suit had been filed seeking specific performance of either entire area of 26 ½ cents or the limited area of 16 ½ cents and for return of proportionate balance sale consideration.

4. The first defendant filed a written statement claiming that she was misled into entering into an agreement in which her husband also signed as witness. She stated that the value of the property was far higher. The plaintiff had promised that the agreement was only for 16 ½ cents alone. It had been stated that the plaintiff had surreptitiously taken possession and also constructed a building. She also stated that without her knowledge, the amount of Rs.5,00,000/- (Rupees Five Lakhs only) had been deposited in her account. She alleged that the revenue officials had colluded with the plaintiff in granting permission for constructing the house. She stated that it was the brother of the plaintiff, who constructed a house and was living there. She stated that the agreement was not enforceable as no consideration was paid to her. She therefore, stated that the suit should be dismissed.



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5. On the basis of the pleadings, the following issues were framed for trial:

“1. Whether the plaintiff and first defendant entered into a sale agreement on 04.02.2009 in respect of the suit property ?

2. Whether the sale agreement dated 04.02.2009 will bind the second defendant ?

3. Whether the plaintiff paid a sum of Rs. 20,00,000/- towards sale consideration?

4. Whether the plaintiff constructed the building in the suit property with the knowledge of the defendants?

5. Whether the first defendant was misled to enter into a sale agreement with the plaintiff?

6. Whether the plaintiff is entitled for the relief of specific performance prayed for ?

7. Whether the plaintiff is entitled for the relief of permanent injunction prayed for?

8. To what relief, if any, the plaintiff is entitled?”



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6. During the trial, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. Ex.A1 was the agreement of sale. Ex.A3 was the Challan for deposit of Rs.5,00,000/- on 18.12.2009. Ex.A8 was the copy of the settlement deed executed by the first defendant in favour of the second defendant. During the cross examination of P.W.1, Ex.B1 and Ex.B3, photograph of the house and copy of the patta were marked. The first defendant examined herself as D.W.1 and apart from Ex.B1 and Ex.B2, the defendants marked Ex.B3 to Ex.B17. The defendants also examined the Executive Officer of Kanyakumari Town Panchayat as D.W.2 and the Junior Engineer of TANGEDCO as D.W.3 and a retired Sub-Inspector of Kanyakumari Police Station as D.W.4. Ex.B8 to Ex.B14 were copies of information given by the Executive Officer, Kanyakumair Special Grade Town Panchayat and by the Executive Engineer, TNEB at Nagercoil. Ex.B15 was a copy of the advocate notice.

7. The learned trial Judge while appreciating the evidence observed that the first defendant had retired as Professor of Zoology at St.Mary's Women College, Palayamkottai and was fluent in Tamil and English. He therefore, stated that her contentions about the facts



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surrounding the agreement cannot be accepted and held that the agreement had been entered into by her knowledge about the contents.

He also held that consideration had passed under the agreement. But, however, he took note of the evidence of D.W.2, Executive Officer of Kanyakumari Town Panchayat, who stated that the building in the said premises said to have been put up by the plaintiff, was not approved. The witness had also stated that from the coastal shore line for about 500 mts, there is a restriction by the Government of India that no building shall be put up and therefore, the local body cannot grant permission to put up such building. The learned trial Judge, therefore, held that the agreement was in violation of the existing laws for sale of land which were close to the coastal shore line. Holding as above, the learned trial Judge refused to grant the decree of specific performance and dismissed the suit. Challenging the same, the present appeal had been filed by the plaintiff.

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8. Mr.MAjmalkhan, learned Senior counsel for the appellant took the Court through the pleadings. He stated that the suit had been



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filed seeking specific performance of an agreement entered into between the appellant and the first respondent. The property in the agreement was a land measuring 26 ½ cents. The first respondent was entitled to 16 ½ cents and the second respondent was entitled to 10 cents. However, it was the first respondent alone who had entered into agreement. The total sale consideration was determined at Rs.25,00,000/- (Rupees Twenty Five Lakhs only). At the time of entering into agreement, an advance of Rs.20,00,000/- (Rupees Twenty Lakhs only) has been paid. The balance of Rs.5,00,000/- (Rupees Five Lakhs only) has also been deposited in the account of the first respondent. The learned Senior Counsel pointed out these facts and stated that the appellant had performed his part of the agreement in entirety and the onus was on the first respondent to come forward to execute the sale deed.

8.1. The learned Senior Counsel further pointed out that the trial Judge had also come to a conclusion that the agreement had been lawfully entered into. However, the learned trial Judge had then proceeded to hold that since the land was close to the coastal area, construction cannot be put up and therefore, specific performance of the agreement cannot be granted. The learned Senior Counsel stated that the



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learned trial Judge had erred in arriving at such a conclusion since, though the land may close to the costal zone, transfer of property is not prohibited. Learned Senior Counsel stated that in the building put up, the younger brother of the plaintiff was still in occupation. The learned Senior Counsel stated that if the trial Court was inclined to take up this issue, then necessary opportunity should have been granted by framing an issue and permitting additional evidence to be adduced on behalf of the appellant to rebut such an inference. The learned Senior Counsel stated that in view of the fact that the entire consideration had been paid, the suit should be decreed atleast to an extent of 16 ½ cents of land and sought refund of the balance proportionate to 10 cents of land.

9. Mr.J.Barathan, learned counsel for the respondents however disputed the said contentions. The learned counsel stated that the property was admittedly in the coastal regulatory zone and therefore, even if specific performance is granted, no building could be constructed. The learned counsel further pointed out that the value of the land had increased appreciably and that therefore, the appellant wanted to take advantage of the fact. The learned counsel argued that the agreement was for a total area of 26 ½ cents and performance was sought only for



16 ½ cents and not for the balance 10 cents. The learned counsel further stated that it was the brother of the appellant, who was in possession of the house. The learned counsel pointed out the contention of the first respondent that she was misled into entering into the agreement. Claiming that the agreement was vitiated by exercise of undue influence and coercion, learned counsel urged that the Court should dismiss the appeal.

10. We have carefully considered the arguments advanced on either side and perused the materials available on record.

11. The following points arise for determination:

(i) Whether the finding of the learned trial judge that specific performance cannot be granted since the property was within the costal regulatory zone, without framing such an issue and without granting opportunity to the parties to address the said issue could be upheld by the Court?



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(ii) *whether the agreement had been*

lawfully entered into by the first respondent?

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12. Since the discussion surrounding both the points revolved around the analysis of the evidence available on record, both the points are taken up for determination together.

13. The appellant had entered into an agreement of sale with respect to vacant land measuring 26 ½ cents with the first respondent. The agreement was dated 04.02.2009. The total consideration fixed under the agreement was Rs.25,00,000/- (Rupees Twenty Five Lakhs only). In the agreement, it had been stated that an advance of Rs.20,00,000/- (Rupees Twenty Lakhs only) had been paid. The balance sale consideration of Rs.5,00,000/- (Rupees Five lakhs) had also been deposited in the account of the first respondent on 18.12.2009.

14. It must be pointed out that the first respondent is the mother of the second respondent. The first respondent was entitled to an area of 16 ½ cents and the second respondent was entitled to an area of 10 cents. The agreement had been entered into only by the first



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respondent. It had not been signed by the second respondent. There is no evidence on record that she had concurred to the terms of the agreement or had ratified the same. There is also no evidence on record to show that she granted consent to the first respondent to enter into an agreement for the entire 26 ½ cents including her portion of 10 cents. There is also no evidence on record to show that the sale consideration was divisible into two separate parts reflecting the value of 16 ½ cents and 10 cents separately. There is also no evidence to show that the second respondent was paid by atleast part sale consideration. In the absence of evidence in this regard, we hold that the agreement can never be executed for the total area of 26 ½ cents, but only with respect of 16 ½ cents to the land over which the first respondent was a owner.

15. In (2019) 10 SCC 343, (Sirdar K.B.RAmachandra Raj URS (Dead) Through Legal Representatives Vs. Sarah C. URs and Others,) it was held by the Hon'ble Supreme Court where the share of the appellant/1st defendant was not covered by the agreement of sale executed by his father that specific performance has to be restricted only to the share of the father of the appellant/1st defendant.



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16. It was held as follows:

“...

23. *Thus, it is clear that there was no possibility of erroneous beliefs in the mind of the plaintiffs as to title position in the property. No doubt about it that defendant No.1 has acted as a power of attorney, but at the same time, did not act in his capacity as the owner of the property. The ownership of K.B. Ramchandra Raj Urs was known to the plaintiffs. In spite of that the plaintiffs have not set up the case to bind the share of K.B. Ramchandra Raj Urs. They have not pleaded in the plaint that K.B. Ramchandra Raj Urs owned the property. There is no whisper as to the title of K.B. Ramchandra Raj Urs in the plaint. They needed to plead the facts to attract the plea of estoppel. That has not been done. Thus, the agreement which had been executed was not concerning share of defendant No.1, but of late K. Basavaraja Urs as his power of attorney.*

24. *In view of the agreement and the admission made by the plaintiffs, we are of the opinion that it would be appropriate to modify the decree passed by the courts below to the extent of 50% of the shares of the deceased late K. Basavaraja Urs and to set it aside with respect to the remaining ½ share of K.B. Ramchandra Raj Urs (defendant No.1) in the property, since the property devolved under section 15 of the Hindu Succession Act.”*



17. It is the contention of the first respondent that she had

not voluntarily entered into the agreement Ex.A1, dated 04.02.2009.

However, her husband was also a signatory as a witness to the agreement.

She had not raised any protest that the property was within the coastal regulatory zone and that therefore, could not be conveyed to the appellant. In fact, it is not the case of either the appellant or the respondents that the property actually fell within the coastal regulatory zone. There is no evidence produced in this regard. There is no pleading in this regard. The only evidence is the evidence of D.W.2, who was not a party to the suit, but had been summoned to tender evidence, after notice had been issued to him. It fell from his mouth when he was asked whether the property was within the coastal regulatory zone. But documents in this regard had not been produced. The notification declaring the entire area as coastal regulatory zone had not been produced. It was only on the oral evidence of D.W.2 that the learned trial Judge was furnished with information that the property fell within the coastal regulatory zone. The trial Judge took that as a primary issue and dismissed the suit only on that ground.



18. We hold it was not open to the learned trial Judge to have taken up that particular aspect without informing the same to both the learned counsels for the plaintiff and the defendants and if required, they can take a decision to amend the pleadings or to file additional pleadings. If they had filed additional pleadings, then further issues would have to be framed. Further opportunity should have been granted to tender additional evidence on this aspect. It would have been a far appreciable steps taken, had the learned trial judge informed the counsels about this fact which had emanated during the evidence of D.W.2 and granted them opportunity to file additional pleadings and to adduce additional evidence in this regard. It does not augur well for the Court to step into the shoes of the litigant, it is for the parties to state a case by way of pleadings. If it is found that there are various other aspects to be considered, an opportunity should have been granted to put them in the form of pleadings and further opportunity should have been granted to adduce evidence on the said additional pleadings. Even otherwise, there is no document produced to show that the property fell within the coastal regulatory zone. There is no document produced to restrict conveyance of the suit schedule property. Unless specific documents were available with the trial Court that this particular property in R.S.No.653/3 of



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Agasteeswaram Taluk measuring 26 ½ cents fell within the coastal regulatory zone, the trial Court should not have taken up that issue to non-suit the plaintiff. We therefore hold with respect to issue No.1 that the learned trial Judge had failed to follow the proper procedure.

19. Admittedly, the first respondent was the owner of 16 ½ cents of land alone. The balance 10 cents belonged to the second respondent. The first respondent alone had entered into agreement of sale. She had conveyed only her holding of 16 ½ cents. The learned trial Judge had found that the first respondent was a retired Professor of Zoology in a College and was well-versed with both English and Tamil and therefore, cannot claim ignorance of the terms of the agreement. Her husband had also signed as witness to the agreement. The learned trial Judge had come to a definite finding that she had entered into the agreement with knowledge. There is no dispute raised about the payment of the sale consideration. There is no dispute raised about handing over possession to the appellant. There is no dispute raised that the appellant or his brother had put up a residential house in the property. The entire sale consideration had also been paid. But however, since the first respondent had committed herself only to 16 ½ cents, we hold that



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specific performance can be granted only to an extent of 16 ½ cents, out of the total area of 26 ½ cents, as described in the agreement under Ex.A1. The first respondent would necessarily have to refund the proportionate amount for the value of 10 cents viz., Rs.9,43,400/-, with interest at 9% p.a. from the date of suit, till the date of decree and thereafter at 6% p.a. from the date of decree, till the date of actual payment. The second point framed for consideration is answered accordingly.

20. In view of the reasons stated above, the Appeal Suit is partly allowed granting specific performance for 16 ½ cents of land out of the total area of 26 ½ cents as described in the suit schedule property and dismissing the suit with respect to the balance 10 cents, which 10 cents had been described in Ex.A8. We further direct the first respondent to return back the sum of Rs.9,43,400/- together with 9% p.a. from the date of suit, till the date of decree and thereafter at 6% p.a. from the date of decree, till the date of actual payment. The first respondent to execute the sale deed for the area of 16 ½ cents within a period of three months from this date, failing which, a direction is issued to the Principal District Court at Kanyakumari at Nagercoil to execute the sale deed.



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21. The Appeal Suit is partly allowed. There shall be no order as to costs.

[C.V.K., J.] [R.V., J.]
25.11.2025

NCC : Yes
Index : Yes
Internet : Yes

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To

1. The District Court, Kanyakumari at Nagercoil.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court.



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