BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.03.2025

Pronounced on : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S.(MD)No.81 of 2022
and
C.M.P.(MD)No.3063 of 2022
and
C.M.P.(MD)No.516 of 2025

T.Balasubramanaian ... Appellant

Vs.

1.C.Thanga Pandian

2.T.Thirumalairaj (Died)

3.T.Umadevi (Died)

4.T.Vijayalakshmi

5.T.Radhika

6.T.Thiruvikash
(R5 & R6 / LRs of the deceased second respondent are brought on record vide order dated 20.11.2024 in C.M.P.(MD)No.8207 of 2024 in A.S.(MD)No.81 of 2022 by TKRJ & NSJ)

7.U.Prema

8.Chitra Murugesan

9.Muthulakshmi ... Respondents

(R7 to R9 / LRs of the deceased third respondent are brought on record vide order dated 09.01.2025 in C.M.P.(MD)No.17831 of 2024 in A.S.(MD)No.81 of 2022 by TKRJ & NSJ)

Prayer : Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 24.09.2021 made in O.S.No.48 of 2016 on the file of the Additional District Judge at Dindigul and allow the above First Appeal.

For Appellant : Mrs.N.Krishnaveni, Senior Counsel,
For Mr.M.Kumar.

For Respondents : Mr.R.Ganesh,
For Mr.D.Venkatesh for R1.
Mr.S.Meenakshmi Sundaram, Senior Counsel,
For Mr.A.Senthil Kumar for R4 to R6.
Mr.M.Perumal for R7 to R9.

JUDGMENT
(By G.R.Swaminathan, J.)

This appeal is directed against the judgment and decree dated 24.09.2021 made in O.S.No.48 of 2016 on the file of the Additional District Court, Dindigul. The third defendant is the appellant herein. It was a suit for specific performance. The Court below by the impugned judgment and decree directed the plaintiff to deposit the balance sale consideration of Rs.26,50,000/- and on receipt of the same, the defendants 1 to 3 were directed to execute a sale deed in favour of the plaintiff in respect of their 2/3rd share in the suit property as per the sale agreement.

2.The case of the plaintiff is as follows:-

The suit property belonged to Thirumalaisamy Gounder. He passed away intestate in the year 2009 leaving behind seven legal heirs (second defendant [wife], defendant 1 and 3 [sons] and four daughters). On 24.12.2009, vide document No.2243/2009, the daughters of Thirumalaisamy Gounder released their undivided 4/7th share in favour of the other sharers. The share of defendants 1 and 3 enlarged to 2/3rd undivided share in the suit property. The plaintiff is none other than the son-in-law of the second defendant. The defendants 1 and 2 agreed to convey their undivided share for a sum of Rs.27,00,000/-. The defendants 1 and 2 executed a power of attorney in favour of the plaintiff's wife / Vijayalakshmi (D4) vide Document No.876/2013 on the file of the Sub Registrar, Chatrapatti. Based on the same, the suit sale agreement dated 27.05.2013 came to be registered as Document No. 1006/2013. Under the sale agreement, advance amount of Rs.50,000/- was paid and the balance amount of Rs.26,50,000/- was to be paid within a period of three years. The plaintiff came to know in December 2015 that documents have been created to his prejudice. The power of attorney executed in favour of the fourth defendant was cancelled. The defendants 1 and 2 relinquished their 2/3rd share in favour of the third defendant / appellant herein. Power of Attorney was executed in favour of one Natachimuthu. Hence, the plaintiff issued the suit notice / Ex.A5 dated 17.12.2015 calling upon the defendants 1 and 2 to act in terms of the agreement. The defendants 1 and 2 declined to comply with the demand and issued reply notice / Ex.A7 dated 04.01.2016. Left with no other option, the plaintiff filed the suit for specific performance on 20.04.2016.

3.The first defendant filed written statement controverting the plaint averments. It was pleaded therein that the plaintiff, serving as Inspector of Police in SB-CID Wing of Tamil Nadu Police Department, could not have entered into the suit transaction without getting permission from the government. The market value of the suit property was Rs.2 Crores when the agreement was entered into. Since Thirumalaisamy Gounder had incurred huge debts on account of giving the four daughters in marriage, it was proposed to sell the share of defendants 1 and 2 and that it was for that purpose, power of attorney was executed in favour of the plaintiff's wife (fourth defendant) / one of the daughters of Thirumalaisamy Gounder. The understanding was that the power agent would obtain prior approval from the principal before fixing the sale price and identifying the purchaser. When the defendants 1 and 2 realized that the power agent had entered into a collusive transaction with her husband / plaintiff for selling their undivided share for a throwaway price, they cancelled the power of attorney itself.

4.The third defendant also filed written statement adopting the same defence. In addition, he pleaded that since he cleared all the debts of the father and the defendants 1 and 2 have relinquished their 2/3rd share in his favour, he had become the absolute owner of the property. But the plaintiff had not issued any notice calling upon the third defendant to convey the suit property pursuant to the suit agreement. He reiterated his contention that the suit agreement dated 27.05.2013 is a sham.

5.Based on the rival pleadings, the court below framed the necessary issues. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A8. The third defendant / appellant herein examined himself as D.W.1 and marked Exs.B1 to B6. After considering the evidence on record, the trial Court by the impugned judgment and decree dated 24.09.2021 decreed the suit. Challenging the same, this first appeal came to be filed.

6.In this appeal, the plaintiff's wife / Vijayalakshmi/fourth defendant, who remained *ex parte* before the Court below filed C.M.P.(MD)No.516 of 2025 seeking permission to file written statement. The learned senior counsel for the fourth defendant / fourth respondent herein submitted that she was pressurized to stay away from the suit proceedings. She now states that the suit agreement dated 27.05.2013 was obtained under duress and coercion.

7.We are not persuaded to allow this miscellaneous petition. The suit was filed in the year 2016 and it concluded only in September 2021. Thus, it went on for close to 5 ½ years. A person who chose to keep quiet during the entirety of the suit cannot be permitted to re-enter the scene when the appeal is being taken up for final disposal. There is absolutely no justification to permit the fourth defendant / power agent of the defendants 1 and 2 to file her written statement. There is also no purpose in allowing her to file a written statement at this point of time. Hence, C.M.P(MD)No.516 of 2025 stands dismissed.

8.The learned senior counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of first appeal. She pointed out that the market value of the suit property was far more than what was set out in the Ex.A1 / sale agreement dated 27.05.2013. She also wanted us to take into consideration the surrounding circumstances. No sale agreement would provide for such a long period of three years for concluding the transaction. Even though the sale price was fixed at a throwaway price of Rs.27,00,000/-, the plaintiff had paid only a sum of Rs.50,000/-. This itself indicated that the plaintiff did not have the wherewithal or capacity to pay the sale consideration. That is why, a long period of three years was provided in the sale agreement. The defendants 1 and 2 had appointed the fourth defendant who is a daughter of the second defendant and sister of the first defendant as their power agent. But the fourth defendant had betrayed the trust reposed in her and entered into a fraudulent sale agreement with her husband /first respondent herein. The plaintiff is in the police department and he was obliged to have obtained permission from his department for entering into the transaction. Since he did not obtain any such permission, it was not open to him to seek the relief of specific performance.

9.Per contra, the learned counsel for the first respondent submitted that the order of the trial Court decreeing specific performance was well-reasoned and that it did not warrant interference.

10.We carefully considered the rival contentions and went through the evidence on record. The primary point that arises for consideration is whether Ex.A1 / sale agreement dated 27.05.2013 is a valid document. The next point which arises for consideration is whether the plaintiff has made out a case for granting the relief of specific performance.

11.It is admitted that the suit property belonged to Thirumalaisamy Gounder who died intestate on 26.07.2009. The four daughters who were among the legal heirs had already relinquished their 4/7th undivided share in favour of their brothers and mother. The defendants 1 and 2 executed power of attorney dated 02.05.2013 in favour of the fourth defendant in respect of their 2/3rd share in the suit property. The fourth defendant entered into a sale agreement on 27.05.2013 with the plaintiff. It is a registered document. If according to the defendants, the said agreement was a sham and nominal document, the only person who could have spoken about it was the fourth defendant. The defendants 1 and 2 did not deny the execution of power of attorney in favour of the fourth defendant. The fourth defendant did not file any written statement. She remained *ex parte*. She was not even examined as a witness by the third defendant in the suit. A duly executed and registered document cannot casually be characterized as sham and nominal. Convincing evidence must be adduced in support of such an allegation. There is zero evidence in support of the contention that the suit agreement is a sham and nominal document.

12.Once it is held that Ex.A1 sale agreement is a valid document, the contention that the sale consideration set out therein is inadequate would be of no relevance. This is because the agreement merely reflects the consensus between the parties regarding sale consideration. The rationale behind fixing the sale consideration is something which is within the exclusive knowledge of the parties who entered into the contract. There could be a myriad of justifiable reasons to agree for a lesser consideration of a particular land. It is the choice of the parties. One cannot lose sight of the fact that the plaintiff is none other than the son-in-law of the family. It is highly probable that the contribution made by him towards settling the family debts and other issues were taken into account while fixing the consideration. The record indicates that D1 and D2 filed memo submitting to decree. The fourth defendant who was the power agent and who executed the suit agreement remained exparte and kept away from the witness box. It is well settled that inadequacy of consideration is not a ground to deny the relief of specific performance. Explanation 1 to Section 20 of the Specific Relief Act bars a defence on plea of inadequacy of consideration. The Hon'ble Supreme Court in the decision reported in ***ICL 2020 (10) SC 825 (Ferrodous Estates (Pvt)***

Ltd. vs. P.Gopirathnam (Dead) and ors) reiterated that inadequacy of consideration cannot be a valid defence for the relief of specific performance. The appellant who questions the sale agreement on the ground that the true market value of the property was not reflected therein had taken a release deed (Ex.A3 dated 13.08.2014) from defendants 1 and 2 after paying them a sum of Rs.10.00 lakhs.

13.It is true that power of attorney was cancelled vide Ex.A4 dated 13.08.2014. But the sale agreement was entered into 27.05.2013 itself and therefore, the subsequent cancellation of power of attorney cannot have any bearing on the enforcement of Ex.A1. This is because the agency was valid till it was terminated.

14.One another interesting development took place during the pendency of the suit. The defendants 1 and 2 filed a memo before the court below stating that they are submitting to the prayer sought for by the plaintiff.

15.It is true that as per the Conduct Rules, no government servant shall acquire any immovable property either in his name or in the name of family member without previous sanction of the prescribed authority. The learned Senior Counsel for the appellant relied on ***Lakha Singh v. Balwinder Singh (2024) INSC 744*** for the proposition that a member of a police force was mandatorily required to seek permission from his department before entering into an agreement to purchase property of a high value. No doubt in para 28 of the said decision, there is such an observation. But the said case arose from the State of Punjab and Haryana. The Conduct Rules applicable to a member of a police force have not been placed before us. As far as Tamil Nadu is concerned, there are Conduct Rules. Rule 7(1)(a) of the Tamil Nadu Government Servants Conduct Rules and it reads as follows : Rule 7(1)(a) of the Tamil Nadu Government Servants Conduct Rules is as follows :

> "7.**Movable, immovable and valuable property** -, (1) (a) No Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member his family. Such a notice will be necessary even where any immovable property is

> acquired by any member of the family of the Government servant out of the resources of the Government servant:
>
> Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Government servant.
>
> Provided further that the previous sanction of the prescribed authority shall not be necessary for the acquisition of immovable property in respect of house-site assigned by the Government to the Government servant."

As per Section 54 of the Transfer of Property Act, 1882, a contract for the sale of immovable property does not, of itself, create any interest in such property. An agreement to sell by itself would not be acquisition of property though it is a definite step towards that. But Rule 7 may not come into play at the time of entering into a sale agreement. No permission is required for entering into a sale agreement. If the decision of the Hon'ble Supreme Court pertains to the State of Tamil Nadu, we would have been obliged to follow the same. Since it is a case arising from another State whose Conduct Rules have not been placed before us, we in all humility, distinguish the said case on facts. It would be required only at the time of purchase/sale.

16.The third defendant admitted the execution of power of attorney in favour of the plaintiff's wife who is none other than the third defendant's sister. As already held above, merely because the true market value is not reflected in the agreement, that would not be a ground for holding that it is a sham and nominal document. When the sale agreement provides for three years as a period for concluding the sale transaction and the suit had been filed before the expiry of the said period, it cannot be stated that the plaintiff was not ready and willing to conclude the transaction. The Court below noted that the defendants 1 and 2 merely cancelled the power of attorney executed in favour of the fourth defendant and they did not choose to cancel Ex.A1 / sale agreement. If they had cancelled the sale agreement on the ground that it was fraudulent or sham and nominal document, then the plaintiff would have been obliged to seek the relief of declaration that the cancellation was bad in law. When the defendants did not cancel the sale agreement, the plaintiff was justified in proceeding on the premise that Ex.A1 sale agreement is a valid document and he was not obliged to seek any declaratory relief.

17.The learned Senior Counsel for the appellant contended that the Court below had forgotten the statutory mandate set out in Section 16 of the Specific Relief Act which states that the plaintiff must exhibit his readiness and willingness. She relied on the decision of the Hon'ble Supreme Court reported in ***2024 INSC 927 (R.Shama Naik Vs. G.Srinivasiah)*** in support of this contention.

18.We are not swayed by this objection. When the plaintiff had filed the suit before the expiry of the period specified in the sale agreement, this contention cannot be pressed into service. The plaintiff has averred that he was always ready and willing to conclude the transaction. If any demand had been made by D1, D2 and D4 calling upon the plaintiff to pay the balance amount and he was unable to do so, then the defendants could have argued that the plaintiff did not fulfil the statutory mandate set out in Section 16 of the Act. Such is not the case here.

19.The learned counsel for the appellant contended that the plaintiff never deposited the balance sale consideration to prove his readiness and willingness. There is no merit in this contention. Explanation to Section 16 (c) reads that it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court. In this case, no such direction was given to the plaintiff to deposit the balance sale consideration till the passing of the decree. Therefore, it cannot be contended that the plaintiff was not ready and willing to perform his part of the contract. The non-formulation of the issue in this regard can also not be put against the plaintiff. Nothing stopped the defendants from applying to the court below for framing additional issues or recasting the issues. Both the parties have adduced their evidence. The prime defence of the appellant is that the sale agreement itself is unenforceable. Therefore, the appellant cannot be heard to contend that the plaintiff was not ready and willing his obligations under the agreement.

20.The learned counsel for the plaintiff raised yet another contention. The defendants 1 and 2 have not filed any appeal challenging the impugned judgment and decree. It was only the third defendant who has preferred this appeal. The learned counsel for the plaintiff questioned the very maintainability of this appeal at the instance of the third defendant. The appellant concedes that he is a Non-Resident Indian. He has originally inherited 1/3rd share in the suit property. The third respondent relies on the release deed dated 13.08.2014 executed by defendants 1 and 2 in his favour. Regulation No.3 of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000 reads as follows:-

> *"3.Acquisition and Transfer of Property in India by an Indian Citizen resident outside India:-*
>
> *A person resident outside India who is a citizen of India may-*
>
> *a) **acquire any immovable property in India other than agricultural / plantation / farm house,** and*
>
> *b) transfer any immovable property in India to a person resident in India.*
>
> *c) transfer any immovable property other than agricultural or plantation property or farm house to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India."*

Even a bare reading of the above provision would show that the law prohibits acquisition of an agricultural land/farm house by an NRI.

There is distinction between inheritance and acquisition. An NRI can inherit a property. That would not fall foul of law. But acquisition is forbidden. The suit land is an agricultural land. Therefore, the appellant's *locus standi* to maintain this appeal is doubtful.

21.The plaintiff is present in person before this Court. The plaintiff is mindful of his relationship with the appellant and others and hence he, in the presence of his counsel, agreed before us that after obtaining sale deed, when he files a suit for partition for his $2/3^{rd}$ share, he would not claim more than 4.12 acres on the southern side. The plaintiff filed a rough sketch of the suit property. He shall confine his claim at the time of execution to the pink crossed portion. The appellant can have the blue crossed portion which includes the farm house. This sketch shall form part of the decree.

22.Recording the undertaking of the plaintiff, this first appeal is dismissed and the impugned judgment and decree passed by the Court below are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.,) & (M.J.R. J.,)
30.04.2025

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

The Additional District Court,
Dindigul.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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

ias

Pre-Delivery Judgment in A.S.(MD)No.81 of 2022

30.04.2025