



S.A.(MD)No.334 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.08.2025

Pronounced on : 26.09.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

**S.A.(MD)No.334 of 2018
and
C.M.P.(MD)No.9358 of 2018**

Rajeswari,
W/o. Late Dakshinamoorthy,
No.44, Town Police Station Road,
East Gate,
Thanjavur District. ... Appellant / 1st Respondent / 1st Defendant

Vs.

P.Mariappan,
S/o. Palanivel,
Town Police Station Road,
East Gate, Thanjavur District.
... 1st Respondent / Appellant / Plaintiff

2.Solaiammal,
W/o. Late. Panneerselvam,
Old No.4186/67, Kayathukkara Street,
Thanjavur District ... 2nd Respondent/2nd Respondent /
2nd Defendant

PRAYER in SA: The Second Appeal filed under Section 100 C.P.C., to set aside the judgment and decree dated 28.03.2018 made in A.S.No. 1 of 2014 on the file of II Additional District Judge Thanjavur, confirming



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the judgment and decree dated 30.10.2013 made in O.S.No.37 of 2010 on the file Additional Sub Judge Thanjavur and thus render justice.

PRAYER in CMP:

To grant interim stay in the further proceedings of decree and Judgment passed in A.S.No.1 of 2014 dated 28/03/2018 on the file of II Additional District Judge Thanjavur reversing the decree and judgment made in O.S.No.37 of 2010 on the file of Additional Sub Judge Thanjavur dated 30.10.2013 till the disposal of the above said SA(MD)No.334 of 2018 and thus render justice.

APPEARANCE OF PARTIES:

For Appellant : M/s.K.Abiya, Advocate
Mr.K.Marimuthu, Advocate

For Respondents : Mr.A.Senthilkumar , Advocate
for Mr.Sesu Balan Raja, Advocate for R1

: No appearance for R2

JUDGMENT

Heard.

2. This Second Appeal challenges the judgment and decree of the First Appellate Court, which reversed the Trial Court's dismissal of the plaintiff's suit for specific performance.



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3. For convenience, the parties will be referred to by their ranks as in the trial court.

4. **The Facts in Brief:** The suit property forms part of a larger extent of land originally purchased by the first defendant through a registered sale deed dated 17.07.1985. Subsequently, on 04.12.2003, she executed a registered power of attorney in favour of her relative, Panneerselvam. The plaintiff asserts that this power of attorney conferred authority upon Panneerselvam to sell the property. In support of this claim, the plaintiff relies on Ex.A3 (agreement dated 02.01.2008), Ex.A4 and Ex.A5(endorsements dated 25.04.2008 and 27.02.2008 respectively), and Ex.A6 (renewal agreement dated 06.10.2008). He further contends that he paid Rs. 2,20,000/- out of the agreed total sale consideration of Rs. 2,28,000/-, leaving a balance of only Rs. 8,000/-, and that he was put in possession of the property.

5. The defendant, in contrast, contends that the plaintiff entered the property solely as a tenant under Ex.B1, (rent deed dated 14.12.2007),



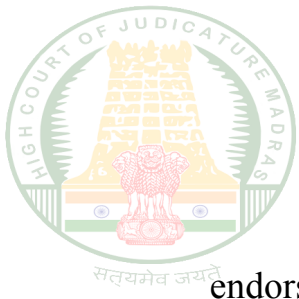
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agreeing to a monthly rent of Rs.1,250/-. She alleges that the plaintiff defaulted in rent payments and unlawfully sublet a portion of the premises. The defendant categorically denies the existence of the alleged sale agreements, characterizing them as concoctions created after the death of the power agent on 12.11.2008.

6. The Trial Court held that Ex.B1 established the defendant's plea of tenancy, further noting that the plaintiff himself had admitted to having entered the property as a tenant. Although Ex.A1 (the power of attorney deed) contained a recital authorizing the sale, the series of documents marked as Ex.A3 to Ex.A6 were deemed unilateral, unregistered, and tainted with suspicion.

7. The Trial Court noted that Ex.A2, a registered agreement dated 23.12.2005 executed in favour of one Maheshwari, had not been validly cancelled. The plaintiff's plea of "implied cancellation" based on the attestation of Ex.A3 was found to be untenable. Ex.A3 included a default clause stipulating that the transaction be completed by 02.03.2008—a deadline the plaintiff failed to meet. Instead, he relied on subsequent



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endorsements and a renewal agreement, Ex.A6 dated 06.10.2008, which was executed when the power agent was already in poor health.

8. The Court further held that possession had not been proved, as there was no recital to that effect in Ex.A3 to Ex.A6, and Ex.B1 corroborated the existence of a tenancy. Upon comparing the signatures in Ex.A2 with those found in Ex.A3 to Ex.A6, the Trial Court concluded that the latter were forged. Accordingly, the suit was dismissed.

9. The First Appellate Court disapproved the Trial Court's approach of comparing signatures on its own, observing that a court cannot assume the role of a handwriting expert, and that allegations of forgery must be established through strict proof by the party making such a claim. As the defendant had neither produced expert testimony nor examined individuals familiar with the purported signatures, the plea of forgery was rejected. Accepting the testimony of PW2 (the husband of Maheshwari) and PW3, the Court found Ex.A3 to Ex.A6 to be genuine and treated Ex.A2 as cancelled.



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10. The Appellate Court further took into account that, during court-referred mediation proceedings, the defendant received a sum of Rs. 3,00,000/- from the plaintiff. Although the mediation ultimately failed, the Court considered this payment as indicative of the plaintiff's readiness and willingness to perform his part of the contract. Coupled with the earlier payments, this amount was treated as constituting the full sale consideration. On this basis, the Court decreed the suit for specific performance.

11. At time of admitting the Second Appeal on 04.10.2018, this Court framed the following substantial questions of law for consideration, which are extracted verbatim below:

1. Whether the failed mediation can be taken into account in appeal stage as subsequent events to decree the suit for specific performance?

2. Whether the Appellate Court is right in deciding the suit without considering the point for consideration as to whether the documents have been forged or not?



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3. Whether the judgment and decree passed by the Appellate Court, without considering the point for consideration as to ready and willingness on the part of the Plaintiff is correct?

12. It is a well-established principle that once mediation fails, no court is permitted to consider any proceedings or communications that took place before the mediator. The cornerstone of mediation and conciliation is the principle of confidentiality. Any interactions or disclosures made by the parties during the course of mediation are inadmissible as evidence in subsequent legal proceedings if the mediation does not result in a settlement.

13. In the present case, the First Appellate Court took into account an alleged cash transaction said to have taken place during the course of mediation, treated the amount as part of the sale consideration, and consequently decreed the suit. This approach runs counter to the fundamental principle of confidentiality that underpins the mediation process.



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14. Section 23 of the Indian Evidence Act, 1872, stipulates that any admission made by a party during the pendency of a suit, under the belief that it will not be used as evidence, is inadmissible in subsequent proceedings. This principle is further reinforced by Section 75 read with Section 81 of the Arbitration and Conciliation Act, 1996, which mandates that all matters pertaining to conciliation proceedings—including proposals, admissions, and statements—shall remain confidential and shall not be relied upon as evidence in any judicial proceedings.

15. The Hon'ble Supreme Court, in *Moti Ram (Dead) through LRs and Another v. Ashok Kumar and Another* reported in *[(2011) 1 SCC 466]*, underscored that confidentiality is the cornerstone of the mediation process. Likewise, in *Salem Advocate Bar Association (II) v. Union of India* reported in *[(2005) 6 SCC 344]*, the Court reaffirmed that mediation is founded upon the principles of confidentiality and voluntary participation.



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16. In this circumstances, the reliance placed by the First Appellate Court on events that transpired during mediation proceedings is legally unsustainable in law.

17. Next, the burden of establishing the genuineness of a document rests upon the party who seeks to rely on it. In the present case, the First Appellate Court erroneously shifted this burden onto the defendant, who had merely raised a plea of forgery. Given that a sale agreement is not a compulsorily attested document, it was incumbent upon the plaintiff to prove its due execution by the deceased power agent, including the examination of witnesses who were present at the time of execution. Once the defendant specifically denied the signature of the deceased executant, the onus lay on the plaintiff to subject the disputed signatures to expert analysis, which he failed to do.

18. While the Trial Court is not expected to act as a handwriting expert, it was constrained to compare the signatures due to the plaintiff's failure to take appropriate steps to prove their authenticity. The First Appellate Court, without finding that the agreements were established



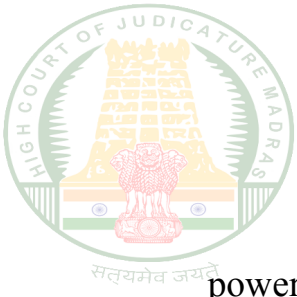
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through the testimony of attesting witnesses or expert evidence, erroneously concluded that the documents were genuine solely on the ground that the defendant did not subject them to expert examination. Such reasoning is legally flawed.

19. In a suit for specific performance, it is incumbent upon the plaintiff to demonstrate continuous readiness and willingness to perform his obligations under the contract. In the present case, Ex.A6, dated 06.10.2008, stipulated 10.02.2009 as the date for completion of the transaction. Notably, the power agent passed away on 12.11.2008. Despite this, the plaintiff issued a legal notice only on 19.01.2010 and instituted the suit on 24.02.2010—more than a year after the stipulated date under Ex.A6. Although the outstanding balance was merely Rs. 8,000/-, the Plaintiff delayed for over a year, thereby failing to establish readiness and willingness.

20. Furthermore, while the plaintiff asserted that possession was delivered to him under Ex.A6, Ex.B1 clearly establishes that he was already in possession of the property as a tenant under the deceased



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power agent. This contradictory stance casts serious doubt on his credibility and indicates that he has not approached the Court with clean hands.

21. In view of the foregoing, the plaintiff has failed to establish continuous readiness and willingness to perform his part of the contract and, therefore, is not entitled to a decree for specific performance.

22. As the plaintiff has failed to establish the execution of the sale agreement by the power agent of the first defendant, has not substantiated the alleged payments, and has also not proved his continuous readiness and willingness to perform the contract, the judgment and decree passed by the First Appellate Court cannot be sustained.

23. Accordingly, the judgment and decree of the First Appellate Court are hereby set aside, and the judgment and decree of the Trial Court stand restored.



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24. The Second Appeal is allowed, with costs. Consequently, connected miscellaneous petition is closed.

26.09.2025

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

1.The II Additional District Judge
Thanjavur.

2.The Additional Sub Judge
Thanjavur.

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



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DR.A.D. MARIA CLETE,J.

LS

Pre-delivery Judgment made in
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