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A.S.(MD)NO.288 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

A.S.(MD)No.288 of 2023 AND

C.M.P.(MD)No.15482 of 2023

Govindan

... Appellant / Plaintiff

Vs.

Vanaja (died)

1. Chandru
2. Karthick
3. Suganthi
4. Santhi
5. Vasanthi
6. K.K.Balaji

(R-6 for himself and as power agent
of other respondents.)

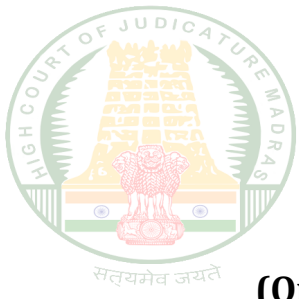
... Respondents /Defendants 2 to 7

Prayer: Appeal suit filed under Section 96 CPC., to set aside the decree and judgment dated 31.03.2023 passed in the suit in O.S.No.1 of 2013 on the file of IV Additional District Court, Madurai and allow the appeal with costs throughout.

For Appellant : Mr.J.Barathan,
for M/s.T.R.Jeyapalam.

For R-1 & R-6 : Mr.S.C.Herold Singh

* * *

**J U D G M E N T****(Order of the Court was delivered by G.R.SWAMINATHAN, J.)**

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Govindan, appellant herein filed O.S.No.1 of 2013 on the file of the IV Additional District Court, Madurai for specific performance.

2. The suit property admittedly belonged to defendants 1 to 7. During the pendency of the suit, the first defendant passed away. But the other defendants are the legal heirs.

3. Defendants 1 to 6 had executed a power of attorney in favour of the seventh defendant K.K.Balaji to deal with the suit property. The plaintiff and the seventh defendant Balaji entered into a sale agreement dated 22.07.2011 (Ex.A.1). As per the terms of the sale agreement, sale consideration was fixed at Rs.97 Lakhs. A sum of Rs.27 Lakhs was paid upfront to the seventh defendant. The seventh defendant received the same on his behalf and on behalf of the other defendants. The sale transaction was to have been concluded within three months. According to the defendants, the plaintiff was not ready and willing to conclude the sale transaction within the said period. In these circumstances, the aforesaid suit came to be instituted.



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4. The learned trial Judge framed relevant issues. The plaintiff examined himself as P.W.1 and Thomas Daniel Balakumar was examined as P.W.2. Ex.P.1 to Ex.P.16 were marked. The seventh defendant examined himself as D.W.1 and Pitchaipandi was examined as D.W.2. Ex.B.1 to Ex.B.5 were marked. After considering the evidence on record, the trial Court came to the conclusion that the plaintiff did not prove his readiness and willingness and hence, denied the relief of specific performance. The suit came to be dismissed vide judgment and decree dated 31.03.2023. Challenging the same, this appeal suit came to be filed.

5. Even though the trial Court had given a categorical finding that the defendants had not returned the advance amount to the plaintiff, it did not order refund. Because there was no prayer to that effect.

6. To make good the said lacuna in this appeal, the appellant filed C.M.P.(MD)No.17504 of 2023 for including the prayer for refund of the advance amount. This CMP was allowed by us on 25.02.2025.



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7. The learned counsel for the appellant made it clear that he would not insist on the primary relief of specific performance and that the appellant would be satisfied, if the alternative relief of refund of the advance amount is ordered.

8. When once the primary relief of specific performance is denied, in normal circumstances, the decree for refund of the advance amount ought to be made. In the case on hand, the defendants had taken a plea that after admitting that they had received a sum of Rs.27 Lakhs and took a plea that it was returned to one auditor by name Balakumar who had been authorised to receive the same. The plaintiff not only denied having authorised Balakumar and he received the advance amount also. He contended that this plea was false. In other words, the plaintiff argued that the defendants never made any payment to Balakumar. Balakumar was examined as P.W.2. After considering the entire evidence on record, the learned Judge gave a categorical finding that the plaintiff did not take back the amount of Rs.27 Lakhs.



9. After a careful consideration of the evidence on record, we are of the view that this finding is well justified.

10. The learned counsel for the respondents contended that in Ex.A1 sale agreement, there is forfeiture clause. This contention cannot be accepted for the simple reason that in view of the statutory mandate set out in Section 74 of the Indian Contract Act, 1872, if a party to a contract had breached the terms of the contract, then he would be liable to pay compensation to the aforesaid period for the loss suffered by the opposite party. But then, in this case the defendants have not established that as a result of breach in contract by the plaintiff, they had sustained loss. This clause is in terrorem.

11. The ground floor portion is with the tenants. The appellant as well as the sixth respondent independently filed eviction proceedings against the tenants. The appellant admitted that he is in possession of the remaining property. The appellant is directed to hand over possession to the sixth respondent within a period of two months from today.



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12. We are of the view that no exception can be taken to the prayer for refund. Therefore, even while sustaining the denial of the primary relief of specific performance, we direct the respondents to return the advance amount of Rs.27 Lakhs to the plaintiff / appellant. The respondents are directed to return the same within a period of three months from today. If the respondents fail to do so, they will have to pay the interest @ 12% p.a. from the said date. Since we have already given a direction for refund of the advance amount, there will be charge on the suit property till the advance amount is refunded with interest as directed by us. The appellant is at liberty to present this judgment and decree for registration before the jurisdictional registering authority. This appeal suit is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
21st March 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/IAS



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To:
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1. The IV Additional District Judge,
Madurai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

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