

*S.A.(MD) No.363 of 2025*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 29.08.2025**

**CORAM:**

**THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**S.A.(MD) No.363 of 2025  
and  
CMP(MD)No.12690 of 2025**

1. Perumal  
S/o.Mookkapoyan,  
Mottanampatti,  
Vadamadurai Village,  
Vedasandur Taluk,  
Dindigul.
2. Boominathan  
S/o.Perumal,  
Mottanampatti,  
Vadamadurai Village,  
Vedasandur Taluk, Dindigul.
3. Mahalakshmi  
D/o.Perumal, Mottanampatti,  
Vadamadurai Village,  
Vedasandur Taluk,  
Dindigul.

... Appellants 1 to 3/Respondents 1 to 3/  
Defendants 1 to 3  
Vs.

Pasubathi  
W/o.Parames. V.Pudur,  
Agaram Village,  
Dindigul District.

... Respondent/Appellant/Plaintiff



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**PRAYER in SA:** Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and decree by the first appellate court in A.S.No.19 of 2020 by Additional District Judge Dindigul dated 04.12.2021 partly allowing the impugned judgment and Decree passed by Sub Court Vendasandur in O.S.No.127 of 2014 dated 04.11.2019 with costs and may please do reverse the above Judgment and Decree of the 1st appellate court and trial and may be please to dismiss the claim of the plaintiffs and thus to render justice.

**PRAYER in CMP:**

To grant an ad-interim injunction against the Judgment and decree passed in A.S.No.19 of 2020 by Additional District Judge Dindigul dated 04.12.2021 which reversing the judgment and Decree passed by Sub Court Vendasandur in O.S.No.127 of 2014 dated 04.11.2019, till the disposal of the appeal filed by the petitioner and pass such further other orders that may deem fit and necessary and thus render justice.

For Appellants : Mr.A.P.Muthupandian, Advocate

**JUDGMENT**

Heard.



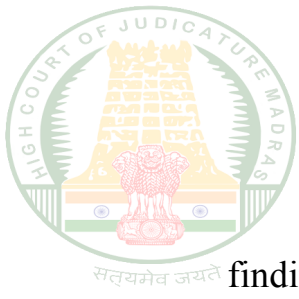
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2. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.

3. The plaintiff filed O.S. No. 127 of 2014 before the Subordinate Court, Veda sandur, seeking specific performance of an agreement dated 29.04.2011. The suit was based on an agreement to sell executed by the first defendant for the sale of the suit property at a price of Rs.7,25,000/-. According to the plaintiff, he had already paid Rs. 6,90,000/- as advance, leaving only Rs. 35,000/- outstanding. The defendants, however, contested the claim, asserting that the document marked as Ex.A1 was not a sale agreement but merely a security for a loan of Rs. 6,90,000/- taken to meet agricultural and family expenses, with interest payable at 2% per month.

4. The trial court accepted the defendants' contention that the transaction was merely a loan arrangement and, by judgment dated 04.11.2019, dismissed the suit. On appeal, in A.S. No. 19 of 2020, the Additional District Court, Dindigul, concurred with the trial court's



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finding that the transaction was only a loan. While upholding the denial of specific performance, the appellate court, by judgment dated 04.12.2021, granted the alternative relief of refund of the advance amount with interest.

5. The present second appeal has been filed by the defendant seeking dismissal of the suit in its entirety. However, there is no necessity to interfere with the concurrent findings of the courts below that the transaction was only a loan. With regard to the refund of the advance amount, the defendant has admitted receipt of the sum under Ex.A1, and the plaintiff, by amending the plaint, has sought an alternative relief. Once the defendant acknowledged receipt of the amount under Ex.A1, the order directing refund of the said sum stands valid.

6. It is observed that the appellate court had granted a permanent injunction restraining the defendants from encumbering the suit property until repayment was made. However, once the refund of the advance amount has been ordered, it is for the plaintiff to recover



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the same as a money decree by initiating appropriate execution proceedings within the period prescribed by law. By granting an injunction, the rights of the true owner to deal with the property stand unduly restricted. Since an efficacious remedy is otherwise available, such an injunction cannot be sustained in view of the bar under Section 41(h) of the Specific Relief Act, 1963. Accordingly, the injunction granted by the appellate court is set aside, and in its place, a charge is created over the suit property. As no substantial question of law arises under Section 100 CPC, this Court finds no ground to admit the second appeal and the Second Appeal deserves to be dismissed. The order of the appellate court shall stand modified and ordered as follows:

**The plaintiffs in O.S. No. 127 of 2014 are entitled to the alternative relief of recovery of a sum of Rs.6,90,000/- (Rupees Six Lakhs Ninety Thousand only) together with interest at the rate of 9% per annum from the date of the suit. A charge is hereby created over the suit property for the said decretal amount.**



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7. Accordingly, the Second Appeal is dismissed at the admission stage itself, and the order is passed as stated above. Consequently, the connected civil miscellaneous petition stands closed.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No

**29.08.2025**

LS

Copy to:

- 1.The Additional District Judge  
Dindigul
- 2.The Sub Court  
Vedasandur
- 3.The Section Officer (2 Copies),  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.A.D.MARIA CLETE, J.**

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