



S.A(MD)No.609 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 09.12.2025

Delivered on : 19.12.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.609 of 2025

1.Gunasundari

2.Mukundavasan

3.Ramkumar

: Appellants

/Vs./

R.Velumani

: Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 18.09.2025 made in A.S.No.9 of 2025 on the file of the Principal District Judge, Theni, confirming the judgment and decree, dated 12.11.2024 made in O.S.No.223 of 2024 on the file of the Sub Court, Bodinayakanur.

For Appellants : Mr.R.Suriya Narayanan

For Respondent : Mr.N.Vallinayagam

JUDGMENT

The Second appeal is directed against the judgment and decree passed in A.S.No.9 of 2025, dated 18.09.2025 on the file of the Principal District



S.A(MD)No.609 of 2025

Court, Theni, confirming the judgment and decree, made in O.S.No.223 of 2024, dated 12.11.2024 on the file of the Sub Court, Bodinayakanur.

2. The appellants are the defendants 2 to 4. The respondent/plaintiff filed a suit claiming specific performance of the sale agreement, dated 21.03.1997 and for permanent injunction restraining the original defendant from alienating the suit property originally.

3. The sole defendant filed a written statement and contested the suit. Pending suit, the sole defendant died and his wife and sons were impleaded as defendants 2 to 4 and they have also filed written statement and proceeded with the suit. The learned Subordinate Judge, framing necessary issues and after filing written statement of defendants 2 to 4, additional issues were framed. After full trial, the learned Subordinate Judge passed a judgment and decree, dated 12.11.2024, granting the relief of specific performance and permanent injunction as sought for. Aggrieved by the said judgment and decree, the defendants 2 to 4 preferred an appeal in A.S.No.9 of 2025 and the learned Principal District Judge, Theni, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment, dated 18.09.2025, dismissing the



S.A(MD)No.609 of 2025

appeal and thereby confirming the judgment and decree of the trial Court.

Challenging the dismissal of the appeal, the defendants 2 to 4 have filed the present second appeal.

4. When the above second appeal was taken for admission, I have heard the learned counsel for the appellant and also the learned counsel for the respondents.

5. At the outset, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not



S.A(MD)No.609 of 2025

permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

6. The Hon'ble Supreme Court in the case of **Chandrabhan Vs. Saraswati and others** reported in **2022 SCC OnLine SC 1273** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as follows;



“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.



S.A(MD)No.609 of 2025

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

7. Bearing the settled legal position in mind, let us proceed with the present case.

8. The case of the plaintiffs is as follows :

a) The suit property was originally owned by the first defendant, who entered into a sale agreement in respect of the suit property with the plaintiff on 21.03.1997, fixing the sale price at Rs.2,30,000/- and period of performance as two years. The plaintiff paid an advance amount of Rs.2,00,000/- to the first defendant on the date of agreement and agreed to pay balance amount of Rs.30,000/- on or before 20.03.1999 and upon



S.A(MD)No.609 of 2025

receipt of the balance amount, the first defendant agreed to execute the sale

deed.

b) The plaintiff has always been ready and willing to pay the balance sale price and ready to execute the sale. In spite of several demands, the first defendant by giving evasive reply. Hence, the plaintiff issued a legal notice, dated 11.03.1999 calling upon the first defendant to receive the balance sale price and execute the sale deed. The first defendant having received the notice, sent a reply notice, dated 17.03.1999 with false and untenable allegations. Thereafter, the plaintiff sent a telegram on 18.03.1999 to the first defendant, followed by another legal notice, dated 24.03.1999. The plaintiff has already part performed the contract. Since the sale agreement is not honoured by the defendants, the plaintiff has filed the above suit for specific performance.

9. The defence of the first defendant is that the plaintiff's husband Radhakrishnan is a money lender and the first defendant had never seen the plaintiff. The first defendant used to borrow loan amount from the plaintiff's husband and returned the same. He borrowed a sum of Rs.30,000/- from the plaintiff's husband and agreed to pay the interest at 12% per annum and as a security for the above loan transaction, the plaintiff's husband had created a



S.A(MD)No.609 of 2025

sale agreement and obtained the signature of the first defendant under coercion. The plaintiff's husband upon settling the loan amount with interest had agreed to cancel the sale agreement and hence, the suit sale agreement is not enforceable. Though the first defendant had repaid the loan amount of Rs.30,000/- to the plaintiff's husband, he has been delaying the execution of the deed cancelling the sale agreement. The contention of the plaintiff is that she has always been ready and willing to perform his contract is incorrect and is denied. The sale agreement is fabricated and since there is no cause of action to file the suit, the same is liable to be dismissed.

10. The defence of the defendants 2 to 4 is that the first defendant had repaid the loan amount to the plaintiff's husband in October 1998. But the plaintiff had informed that the sale agreement is misplaced and after searching the same, she assured that she will take steps to cancel the sale agreement. The suit property is not absolutely belonged to the first defendant and as such, the suit is liable to be dismissed.

11. The main defence of the defendant is that there existed loan transaction between the plaintiff's husband and the first defendant and as demanded by the plaintiff's husband, suit sale agreement was executed as a security for the loan transaction.



S.A(MD)No.609 of 2025

WEB COPY

12. Admittedly, Ex.A.1 sale agreement is a registered agreement.

According to the defendants, the first defendant had repaid the loan amount of Rs.30,000/- to the plaintiff's husband, but the plaintiff's husband by giving evasive reply, has been postponing the cancellation of the sale agreement. According to the defendants, the first defendant at the time of executing the sale agreement had also handed over the original sale deed in respect of the suit property. Though the loan amount was allegedly repaid in October 1998, the first defendant has not sent any letter or legal notice to the plaintiff's husband demanding him to execute the document cancelling the sale agreement and for returning of original sale deed.

13. But on the other hand, the plaintiff sent a legal notice, dated 11.03.1999 for which, reply notice, dated 05.04.1999 was sent by the first defendant. As rightly observed by the learned appellate Judge, the first defendant in reply notice has specifically stated that after receiving the telegram sent by the plaintiff, he went to Bodinaickanur, Sub Registrar Office on 19.03.1999 and was waiting there from 09.00 am till 05.30 pm, but the plaintiff has not turned up and that the plaintiff neither brought the balance amount nor demanded the first defendant to execute the sale deed.



S.A(MD)No.609 of 2025

WEB COPY

14. But as already pointed out, the first defendant and the defendants 2 to 4 have taken a stand that Ex.A.1 sale agreement was executed as a security for the loan transaction. Moreover, as rightly pointed out by the Courts below, the first defendant in his reply notice or his written statement has not stated that after repayment of the loan amount, the plaintiff's husband had informed that the agreement was found misplaced and after tracing of the same, necessary cancellation deed will be executed. But such a plea was taken by the defendants 2 to 4 in their written statement.

15. The main contention of the defendants is that after paying advance amount of Rs.2,00,000/- keeping Rs.30,000/- as balance amount and by fixing two years period for payment of the said amount is very unusual and the above aspect would only go to show that it was only a loan transaction. Fixation of two years as period of performance, according to the plaintiff, it was only to facilitate to the defendants to vacate the property by finding out an alternative accommodation and as rightly observed by the Courts below, the above explanation appears to be convincing. The defendants 2 to 4 have also taken a stand that the property is not the absolute property of the first defendant and it is the joint family property.



S.A(MD)No.609 of 2025

WEB COPY

16. Admittedly, there is absolutely no evidence to show that the suit property is a joint family property. Moreover, the third defendant earlier had taken a plea that he had 1/3 undivided share in the suit property, but during his cross examination as D.W.3, he would say that he was aged around 25 years when the sale agreement was entered and as such, he would be around 17 years, when the first defendant purchased the property in 1991. The third defendant has not produced any iota of evidence to substantiate his claim.

17. The learned counsel for the appellants would mainly contend that in a suit for specific performance, the plaintiff is duty bound to plead and proved that she has always been ready and willing to perform her part of the contract as contemplated under Section 16 (c) of the Specific Relief Act, but in the case on hand, neither the trial Court nor the appellate Court have considered the issue regarding the readiness and willingness on the part of the plaintiff and that since the trial Court has not framed any issue touching the readiness and willingness of the plaintiff to perform her part of the contract, the finding of the trial Court is liable to be set aside.



S.A(MD)No.609 of 2025

WEB COPY

18. The learned counsel for the appellant would rely on the decision of the Hon'ble Supreme Court in ***V.S.Ramakrishnan Vs. P.M.Muhammed Ali (Civil Appeal No.8050-8051 of 2022)*** dated 09.11.2022, wherein also any suit for specific performance, the trial Court failed to frame any issue touching the readiness and willingness and the Hon'ble Apex Court has observed as follows :

4.1 Now the findings and the reasoning given by the learned Trial Court refusing to pass a decree for specific performance is concerned it appears that though there was no specific issue framed by the learned Trial Court on readiness and willingness on the part of the plaintiff, the Trial Court has given the findings on the same and has nonsuited the plaintiff by observing that the plaintiff was not having sufficient funds to make the full balance consideration on or before 12.01.2006. Such a finding could not have been given by the learned Trial Court without putting the plaintiff to notice and without framing a specific issue on the readiness and willingness on the part of the plaintiff. There must be a specific issue framed on readiness and willingness on the part of the plaintiff in a suit for specific performance and before giving any specific finding, the parties must be put to notice. The object and purpose of framing the issue is so that the parties to the suit can lead the specific evidence on the same. On the aforesaid ground the judgment and



S.A(MD)No.609 of 2025

order passed by the learned Trial Court dismissing the suit and refusing to pass the decree for specific performance of the agreement to sell confirmed by the High Court deserves to be quashed and set aside and the matter is to be remanded to the learned Trial Court to frame the specific issue with respect to the readiness and willingness on the part of the plaintiff. On remand the parties be permitted to lead the evidence on the readiness and willingness on the part of the plaintiff to perform his part of the contract, more particularly, whether the plaintiff was ready and willing to pay the full consideration and whether the plaintiff was having sufficient funds and/or could have managed the balance sale consideration.”

19. But in the case on hand, the trial Court framed a specific issue while framing additional issues after filing of written statement by the defendants 2 to 4 and the same is extracted hereunder :

- i) Whether the sale agreement, dated 20.03.1997 is true and genuine one ?*
- ii) Whether the alleged sale agreement has been obtained as a security for the loan obtained by the first defendant.*
- iii) Whether the plaintiff is ready and willing to perform his part of contract?*



S.A(MD)No.609 of 2025

WEB COPY

20.The learned trial Judge, considering the evidences available on record has come to a decision that the plaintiff has proved her readiness and willingness to perform her part of the contract. Moreover, the learned Appellate Judge, while framing the points for determination has specifically framed the following point.

“Whether the plaintiff has proved the case before the trial Court that she is always ready and willing to perform her part of the contract.

21.The learned appellate Judge, also taking note of the evidence available on record has come to a finding that the plaintiff through her evidence had established that she is always ready and willing to perform her part of the contract within stipulated period.

22. As rightly observed by the Courts below, since two years period was fixed for performance period, there was no need in issuing notice to the first defendant expressing his intention to perform his part of the contract earlier. Admittedly, before the expiry of stipulated period, the plaintiff sent the legal notice on 11.03.1999.



S.A(MD)No.609 of 2025

WEB COPY

23. No doubt, originally the suit was filed in the year 1999 and the trial Court pronounced the judgment on 12.11.2024, after the lapse of 25 years. The learned trial Judge as well as the first appellate Judge in their judgments have narrated the sequence of events and the reasons for the delay and who was at fault.

24. It is evident from the records that the first defendant earlier allowed the suit to be decreed ex-parte on 16.03.2001 and he filed a petition to set aside the ex-parte decree along with application to condone the delay in filing the ex-parte set aside petition, but the petition filed under Section 5 of the Limitation Act in I.A.No.44 of 2006 was dismissed for default. The first defendant filed another application in I.A.No.394 of 2006 to restore the petition and the same was also dismissed for default. In order to restore the petition in I.A.No.394 of 2006, he filed another application in I.A.No.9 of 2008 under Section 5 of the Limitation Act to condone the delay of 451 days.

25. In the meanwhile, the plaintiff initiated the execution proceedings and the Court had executed the sale deed in favour of the plaintiff on



S.A(MD)No.609 of 2025

17.11.2006 and the document was registered on 23.11.2006. The first defendant's petition in I.A.No.9 of 2008 was subsequently dismissed on 10.09.2008 and challenging the same, he filed a revision before the High Court and the same was allowed on 09.10.2012. In the meanwhile, the first defendant's son Ramkumar/third defendant herein filed a petition in I.A.No.4 of 2003 under Order 1 Rule 10 of C.P.C to get him impleaded stating that the suit property was joint property and he was having undivided 1/3 share in the property. Since that petition was dismissed, he filed the revision in C.R.P.(PD)(MD)No.293 of 2016, after the lapse of 12 years and the same was dismissed on 27.08.2018.

26. Considering the above, the Courts below have rightly held that the defendants were responsible for the delay of more than 2 ½ decades and hence, they cannot take advantage of the delay and claim that since the value of the property had arisen, the plaintiff is not entitled to get the discretionary relief of specific performance.

27. The learned trial Judge has specifically observed that if the relief of specific performance is rejected by citing the reason of delay, the defendant hidden goal will be achieved and the same will cause prejudice to



S.A(MD)No.609 of 2025

the plaintiff. The learned trial Judge has also observed by mere passage of time, that too on the default committed by the defendant, the discretionary relief of specific performance cannot be rejected when there is no delay on the part of the plaintiff.

28. Considering the evidence available on record, the Courts below have rightly come to a decision that the plaintiff is entitled to get the relief of specific performance and also granted permanent injunction restraining alienation till the execution of the sale deed.

29. Considering the judgments of the Courts below, as rightly contended by the learned counsel for the respondents no question of law much less Substantial Question of Law is made out. It is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are directed to bear their own costs.



S.A(MD)No.609 of 2025

WEB COPY

30. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.223 of 2024 on the file of the Subordinate Court, Bodinayakkanur, and in A.S.No.9 of 2025 on the file of the Principal District Court, Theni. Parties are directed to bear their own costs.

19.12.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To:

1. The Principal District Court, Dindigul.
2. The Principal Sub Court, Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.609 of 2025

K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.609 of 2025

Dated: 19.12.2025