



S.A.(MD)No.239 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.06.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.239 of 2025
and
C.M.P.(MD)No.8869 of 2025

Duraisamy

... Appellant

-vs-

1.Vasantha Devi

2.Suseela

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the Judgment and Decree dated 29.08.2024 made in A.S.No.10 of 2023 on the file of the Principal District Judge, Dindigul, reversing the Judgment and decree dated 30.11.2022 made in O.S.No.92 of 2016 on the file of the Sub Court, Veda sandur.

For Appellant

... Mr.S.M.Arun Kumaar



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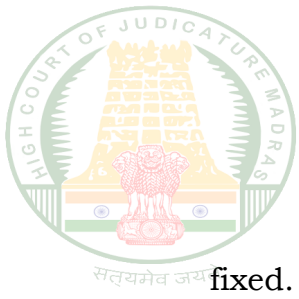
JUDGMENT

The plaintiff is on appeal.

2. The second appeal is filed challenging the judgment and decree dated 29.08.2024 passed in A.S.No.10 of 2023 on the file of the Principal District Judge, Dindigul, reversing the judgment and decree dated 30.11.2022 passed in O.S.No.92 of 2016 on the file of the Sub Court, Vendasandur, by granting an alternative relief of refund of the advance with interest.

3. The parties are referred to as per their litigative status before the trial Court.

4. It is the case of the plaintiff that one Muthulakshmi, who is the mother of the defendants, was the absolute owner of the suit property, having obtained it through a settlement deed dated 15.11.1994. The plaintiff claims to have entered into a sale agreement with the said Muthulakshimi on 04.08.2014 in Ex.A1, agreeing to purchase the suit property for a total sale consideration of Rs. 4,00,000/-, for which an advance of Rs.3,50,000/- was paid on the same day, and for the payment of the balance sale consideration of Rs.50,000/- and for completion of the sale, a period of two years was

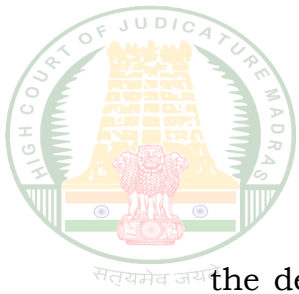


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fixed. It is the further claim of the plaintiff that he had approached the said Muthulakshmi to complete the sale and to pay the balance sale consideration. However, without completing the sale, the said Muthulakshmi died intestate, leaving behind the defendants, who are her legal heirs, to succeed to the estate. Since the defendants did not come forward to complete the sale as per the sale agreement in Ex.A1, the plaintiff issued a legal notice on 06.06.2016 in Ex.A2, and the legal notice was returned unserved in Ex.A3. Hence, the plaintiff has come up with the said suit for specific performance of the sale agreement in Ex.A1.

5. The defendants resisted the suit by filing a written statement denying the sale transaction in Ex.A1. It is the further case of the defendants that the plaintiff was indulged in finance, giving loan amounts, and the mother of the defendants had never entered into any sale agreement with the plaintiff. It was also pleaded that they have received the loan from one Rasappan, and the said loan was discharged on 04.08.2014, which is evidenced by Document Nos. 2032/2014 and 2035/2014. It is the specific case of the defendants that the document writer, who had prepared these two documents, had signed as a witness, and the papers have been misused for preparation of the sale agreement in Ex.A1. It is the further case of



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the defendants that the plaintiff defrauded the defendants and came up with the present suit by manipulating the documents, and the defendants denied the sale agreement and sought for dismissal of the suit.

6. During the trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and examined one Palanichamy as P.W.2 and three documents were marked as Exs. A1 to A3. On the side of the defendants, the first defendant was examined as D.W.1, and two other witnesses were examined as D.W.2 and D.W.3, and five documents were marked as Exs.B1 to B5.

7. The trial Court, after analyzing the evidence and documents, concluded that the sale agreement in Ex.A1 stood proved and granted a decree of specific performance. Aggrieved over the same, the defendants filed the appeal suit. Before the lower appellate Court, during arguments, a consensus was reached, and it was agreed that the plaintiff was willing to accept the refund of the sale advance with interest, and the lower appellate Court recording the consensus expressed by the learned counsel appearing on either side, by judgment and decree dated 29.08.2024, had allowed the appeal and set aside the judgment and decree of the trial Court, and granted an



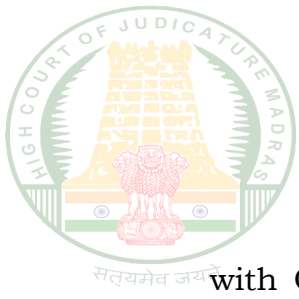
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alternative relief of refund of the sale advance of Rs.3,50,000/- with interest at the rate of 6% per annum from the date of the agreement, viz., 04.08.2014. The lower appellate Court has also recorded that even in the absence of alternative prayer, in view of the consensus arrived at, the relief of refund of the sale advance is granted.

8. Unfortunately, the plaintiff, assailing the judgment and decree of the lower appellate Court passed on the consensus arrived at, is before this Court on appeal.

9. The learned counsel for the appellant/plaintiff contended that the plaintiff had only contested the appeal on merits, and when the appellant was already favoured with the decree and judgment by the trial Court, in the appeal preferred by the defendants, there was no necessity for the appellant to agree to the return of the sale advance amount. It is the specific contention that in the absence of any such consensus, the lower appellate Court has recorded the same and allowed the appeal by granting an alternative relief. It is the further submission of the learned counsel for the appellant that when the decree has been passed and the vendor preferred an appeal, it is the duty of the lower appellate Court to consider the issue on its merits and arrive at its conclusion and pass the judgment in consonance



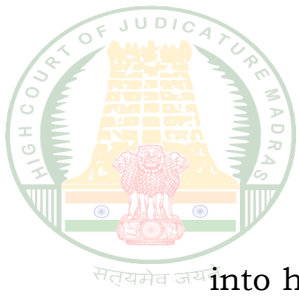
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with Order 41 Rule 31 of C.P.C. As the lower appellate Court had disposed of the appeal by setting aside the judgment and decree, which are not based on the materials available and on the alleged submission made by the parties, the decision rendered by the lower appellate Court is perverse and sought for interference of this Court.

10. Heard the learned counsel appearing for the appellant and perused the materials available on records.

11. Admittedly, one Muthulakshmi was the absolute owner of the suit property. The plaintiff had come up with the suit for specific performance based on the sale agreement dated 04.08.2014 in Ex.A1. As per the sale agreement, the sale consideration was fixed at Rs. 4,00,000/-. Even on the date of the sale agreement itself, the plaintiff had paid a sum of Rs.3,50,000/- as an advance towards the sale consideration. For payment of the balance sale consideration of Rs. 50,000/-, the period of two years has been fixed. At this juncture, it is to be noted that the parties are free to enter into an agreement in respect of the purchase of the property on their own terms. However, when a dispute has arisen and a suit for specific performance has been filed for the grant of a decree of specific performance, which is discretionary relief, necessarily, the clauses agreed upon and entered



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into have to be looked into. In the instant case, when admittedly, the sale agreement was entered into for the sale consideration of Rs. 4,00,000/- and an advance of Rs.3,50,000/- had been paid on the same day, then no reason has been spelled out in the sale agreement for fixing a time period of two years for completion of the sale by making the balance sale consideration of Rs.50,000/-. When there was no specific reason or any explanation offered in this regard, in the natural circumstances, the person intending to purchase the property, who had parted with a sum of Rs.3,50,000/-, which is almost more than 90% of the sale consideration, will be only interested in making the balance amount and completing the sale transaction. Whereas, the plaintiff, even after making 90% of the sale consideration, chose to enter into an agreement by fixing the period of two years to complete the sale without offering any plausible reason or explanation.

12. It is also to be noted that the plaintiff had not issued any communication or legal notice till the said Muthulakshmi was alive, and only after the death of the said Muthulakshmi, for the first time, the plaintiff had issued the legal notice on 06.06.2016 in Ex.A2 to the defendants, who are the legal heirs of the said Muthulakshmi.

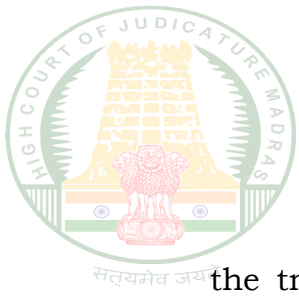


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13. It is the specific defence of the defendants that there has been no sale transaction entered into with the plaintiff and he is only a financier of the loan. The defendants had also marked documents in Ex.B2 and Ex.B.3 to evidence the mortgage executed by the said Muthulakshmi in favour of one Muthusamy, and the mortgage entered into by her on 27.12.2013 has been discharged through the receipt (Ex.B3) dated 04.08.2014. The defendants, by filing the documents in Exs.B3 to B5 were able to successfully establish before the Court that the loan was received from one Muthusamy and it was discharged, and there had been transactions with other third parties. In such circumstances, the plaintiff, having come forward for the relief of the specific performance, had failed to prove that the above sale transaction is supported by the sale consideration in Ex.A1.

14. It is to be noted that when the documents and materials available on record suggest and make it explicitly clear that the sale transaction entered into (Ex.A1) is doubtful, the plaintiff has not explained the time period of two years fixed for the sale agreement, and the legal notice was also issued only after the death of the said Muthulakshmi, the mother of the defendants, in the year 2016. The lower appellate Court probably was inclined to set aside the decree of



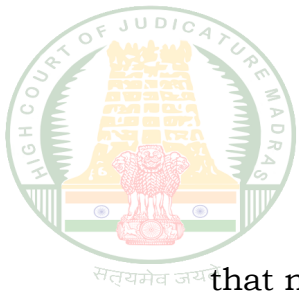
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the trial Court, and at this juncture, the plaintiff has accepted the offer of the defendants' counsel, who had submitted that they are ready to refund the sale advance of Rs.3,50,000/- along with interest.

15. The lower appellate Court specifically recorded that even in the absence of the alternative relief of the refund of the advance amount, since a consensus had been arrived at between the parties and the defendants were willing to refund the sale advance of Rs. 3,50,000/- and the counsel, who appeared for the plaintiff, was also willing to receive the sale advance of Rs.3,50,000/- along with the interest, the lower appellate Court had set aside the decree of the specific performance and had granted alternative relief of the refund of the sale advance of Rs.3,50,000/- along with interest at the rate of 6% per annum from the date of execution of Ex.A1.

16. Even though the learned counsel for the appellant sought to argue that this consensus had not been specifically given by the counsel who had appeared for the appellant/plaintiff before the lower appellate Court and the lower appellate Court had gone and recorded the same, this Court is not able to appreciate the said contention for the simple reason that even in the affidavit filed before this Court, the appellant had not come forward or whispered even a single averment



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that no consensus was given by the plaintiff's counsel before the lower appellate Court and therefore, the finding arrived at on the decision of the lower appellate Court is bad on this ground.

17. It is also to be noted that the grounds sought to be raised in the appeal that the discretionary relief available with the Courts has been taken away in view of the amended provision of the Specific Relief Act, once an agreement is proved, the plaintiff is entitled to the relief, cannot be accepted, for the simple reason that the sale agreement Ex.A1 has been executed in the year 2015 and the amendment has been carried out in the year 2018, and all the agreements entered into prior to the amendment would be governed by the provision under the unamended Act.

18. In view of the above, this Court does not find any illegality or perversity in the findings arrived at by the lower appellate Court in reversing the judgment and decree of the trial Court and granting an alternative relief of refund of the sale advance. No substantial question arises for consideration. Hence, this second appeal is liable to be dismissed.



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19. In the result, the Second Appeal stands dismissed. There is no order as to costs.

20.06.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

- 1.The Principal District Judge, Dindigul.
- 2.The Sub Judge, Vendasandur.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in

Second Appeal (MD)No.239 of 2025

20.06.2025