



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 11.12.2025

Judgment pronounced on : 13.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.284 of 2022
& S.A.No.1060 of 2022
& CMP.Nos.10409, 22727 of 2022

A.S.No.284 of 2022:

1.R.Kannan
2.K.Jothilakshmi

..Appellants/Defendants 1 & 2

Vs.

1.G.Amsaveni
2.The Sub-Registrar,
Sub-Registrar Office,
Ganapathy, Coimbatore.

...1st Respondent/Plaintiff

..2nd Respondent/3rd defendant

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 07.09.2021 in O.S.No.565 of 2013 on the file of the learned V Additional District Judge, Coimbatore and dismissing the original suit with costs.

For Appellants : Mr.N.Manoharan
for Mr.N.Somasundar

For Respondents : Mr.N.Krishnakumar
for M/s.Sarvabhauman Associates for R1
Mr.G.Nanmaran
Special Government Pleader for R2



S.A.No.1060 of 2022:

R.Kannan

..Appellant/Defendant

Vs.

K.Govindaraj

..Respondent/Plaintiff

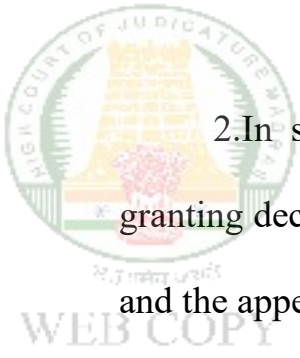
Prayer: Second Appeal filed under filed under Section 100 of CPC, to set aside the judgment and decree dated 23.03.2022 in A.S.No.14 of 2020 on the file of the I Additional District Judge, Coimbatore, confirming the judgment and decree dated 19.06.2018 in O.S.No.110 of 2014 on the file of the III Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.N.Manoharan
for Mr.N.Somasundar

For Respondent : Mr.K.Govi Ganesan

COMMON JUDGMENT

The Appeal Suit arises out of the judgment and decree in O.S.No.565 of 2013 before the V Additional District Court, Coimbatore, in a suit for specific performance filed by the 1st respondent. The trial Court decreed the suit and granted a decree for specific performance, aggrieved over which, A.S.No.284 of 2022 has been filed.



2. In so far as S.A.No.1060 of 2022, it arises out of the concurrent findings, granting decree in O.S.No.110 of 2014 in favour of the respondent in the Second Appeal and the appellant in the Second Appeal is the 1st appellant in the First Appeal.

3. By order of the Hon'ble Chief Justice, the matters were tagged together, for joint disposal.

4. I have heard Mr.N.Manoharan, learned counsel for Mr.N.Somasundar, learned counsel for the appellants in A.S.No.284 of 2022 and S.A.No.1060 of 2022 and Mr.N.Krishnakumar, learned counsel for M/s.Saravabhauman Associates for the 1st respondent and Mr.G.Nanmaran, learned Special Government Pleader for the 2nd respondent in A.S.No.284 of 2022 and Mr.K.Govi Ganesan, learned counsel for the respondent in S.A.No.1060 of 2022.

5. The Second Appeal was admitted by this Court on 03.01.2023 and the following substantial questions of law have been framed:

a) Whether the Courts below on a proper consideration and appreciation of the oral and documentary evidences found Ex.A1 promissory note to be a true, valid and genuine document?

b) Whether Ex.A1 promissory note is not rendered unenforceable in view of the glaring material alteration contained thereon and absence of consideration as stated thereon?



c) Whether the Courts below were right in decreeing the suit in the light of Ex.B19 undertaking letter of the respondent containing his admitted signature in the form of Ex.B7?

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6. In order to appreciate the commonality of facts in both the Appeal Suit, as well as the Second Appeal, it would be necessary to cull out the respective pleadings in the two suits from which these proceedings arise.

7. Pleadings in O.S.No.110 of 2014 (S.A.No.1060 of 2022):

The plaintiff submits that the defendant is known to him for the last two years and he had borrowed a sum of Rs.5 lakhs from the plaintiff, by a cheque on 21.01.2013 for which the defendant executed a promissory note in favour of the plaintiff, undertaking to repay the same on demand, together with interest at 24% per annum. After repeated demands, the defendant paid Rs.1 lakh in part payment by a cheque dated 15.05.2013, out of which, the plaintiff adjusted Rs.40,000/- towards interest and Rs.60,000/- towards the principal. The plaintiff has filed a suit for recovering the principal amount of Rs.4,40,000/-, together with interest at 24% per annum. As the defendant did not come forward to pay the same, despite repeated requests made by the plaintiff, inclusive lawyer's notice dated 09.12.2013, which was acknowledged by the defendant on 10.12.2013, despite which not even a reply notice was sent.



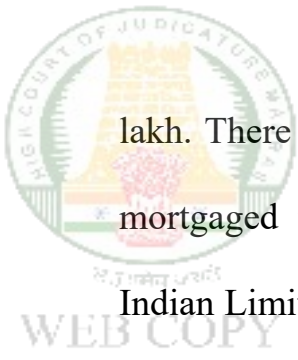
8. Written statement filed by the defendant:

(a) The defendant had borrowed Rs.10,16,000/- from the plaintiff and in respect of the said borrowing, he has already repaid Rs.13 lakhs by way of cheques, as well as in cash. However, the plaintiff has filed two cases, one based on the promissory note and another through his wife, based on an alleged sale agreement entered into between the plaintiff's wife and the defendant. The defendant denies the execution of promissory note, as well as the sale agreement and more specifically, the existence of any loan due to the plaintiff in the first place. In mid 2012, the defendant and the wife purchased a house from one Selvaraj for their residential use, in respect of which purchase, they had availed of a housing loan from Aptus Value Housing Finance India Limited, Coimbatore. Subsequent to the construction, the defendant and his wife were residing in the said house for few months. However, they felt that the house was unlucky and therefore, they have decided to sell the property to prospective purchasers. They have approached their own vendor, Selvaraj, who undertook to sell it to third parties, who also identified a purchaser and fixed the sale consideration of Rs.37,10,000/-. The purchaser also availed of a housing loan. From and out of the sale consideration, the defendant and his wife were desirous of purchasing a new property and they have purchased the suit property, which is subject matter of O.S.No.565 of 2013, in their joint names on 27.09.2012.



(b) The property was a vacant site and the consideration was Rs.18,50,000/-, inclusive of stamp duty and registration, expenses, as well as broker commission, in all Rs.19,70,000/-. However, the sale deed was registered reflecting the guideline value alone. At the time of borrowing Rs.10 lakhs from the plaintiff, the defendant and his wife signed blank papers and cheques and as against Rs.10 lakhs requested, the plaintiff paid only Rs.9,50,000/-, after deducting one month's interest at Rs.50,000/-. The cheques were issued in favour of the appellant in the manner following; on 15.10.2012, Rs.3,50,000/-, Rs.16.10.2012, Rs.5,00,00/- and 16.10.2012, Rs.1,00,000/-, totalling in all Rs.9,50,000/-. As the amount of Rs.9,50,000/- was not sufficient for the defendant to clear his dues, he again approached the plaintiff for an additional loan of Rs.70,000/-. On 03.11.2012, the plaintiff issued an uncrossed cheque in favour of the defendant for Rs.66,000/-, after adjusting Rs.4,000/- towards interest for one month.

(c) The alleged agreement of sale dated 31.01.2012 is not a genuine document and has been brought about misusing blank stamp papers and green papers signed by the defendant and his wife at the time of availing loan from the plaintiff. The defendant does not know the alleged witnesses, who have attested the promissory note. The plaintiff is in the business of construction and he is in the habit of enquiring about houses which are coming up for sale in the locality and misusing the signatures on the blank papers obtained from the defendant, the plaintiff has fabricated the promissory note, as if the defendant has borrowed Rs.5 lakhs and as if the defendant has subsequently repaid Rs.1



lakh. There is no cause of action for the suit. The defendant and his wife have already mortgaged the property where they are residing with Aptus ValusHousing Finance Indian Limited and they are regularly repaying the installments. The defendant therefore prays for dismissal of the suit.

9. Gist of the reply statement filed by the plaintiff:

The defendant is not aware of the self-serving statements regarding the house not being lucky and that they have approached their vendor, Selvaraj, who brought a buyer for Rs.37,10,000/-. The plaintiff however admits that the defendant and his wife purchased the suit property comprised in 2 cents 98 sq.ft of vacant site, though the claim of total sale price of Rs.19,70,000/- being not within the knowledge of the plaintiff. The allegation of fabrication of the promissory note is denied. In fact, the defendant repaid Rs.1 lakh by RTGS on 15.05.2013 which was inadvertently mentioned as by cheque in the pre suit notice. The allegations made against the plaintiff are with malafide intention and to tarnish the image and reputation in the public.

10. Based on the pleadings, the trial Court framed the following issues:

01. Whether it is true that the defendant had borrowed a sum of Rs.5,00,000/- from the plaintiff and had executed the suit promissory note dated 21.01.2013 to the plaintiff?
02. Whether the plaintiff is entitled to the suit amount?
03. To what other relief?



11. At trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one G.Muthusamy was examined as P.W.2 and Exs.A1 to A10 were marked and on the side of the defendant, the defendant examined himself as D.W.1 and one N.Krishnamoorthy was examined as D.W.2 and Exs.B1 to B19 were marked.

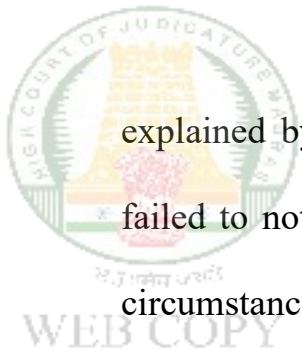
12. The trial Court decreed the suit as prayed for, as against, which the defendant has preferred A.S.No.14 of 2020. The First Appellate Court, on re-appreciation of the oral and documentary evidence and the pleadings, concurred with the findings of the trial Court, has dismissed the appeal. Challenging the concurrent findings, the defendant has preferred the Second Appeal.

13. Mr.N.Manoharan, learned counsel appearing for the appellant would contend that the trial Court has been carried away by the non-issuance of the reply notice to the pre-suit notice and consequently raised a presumption under Section 118 of the Negotiable Instruments Act. He would attack the erroneous findings arrived at by the trial Court, especially relating to Ex.B19, receipt. He would contend that in terms of Order VI Rule 2(1) of CPC, evidence to be adduced need not be pleaded and Ex.B19, undertaking letter of the plaintiff containing his admitted signature has not been taken into account in a proper perspective by both the Courts. He would further state that the Courts below have failed to appreciate that there was no passing of consideration for the



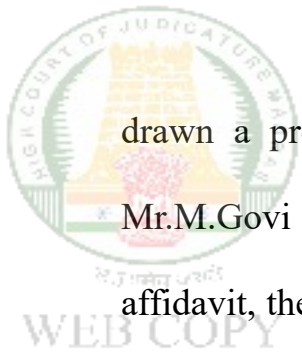
suit promissory note and it had come out in evidence that the defendant had written and handed over the amount required by the plaintiff for the North Indian tour, without suspecting any ulterior motives.

14. Consequently, according to the learned counsel the appellant, Mr.N.Manoharan, the trial Court has disbelieved the probable version adduced by the defendant, especially in the light of the plaintiff's admission in cross-examination with regard to his North India tour. He would further contend that when the execution of the promissory note has been disputed, the plaintiff ought to have examined his wife and adverse inference has to be necessarily drawn against the plaintiff. He would also state that there is serious material alteration in the promissory note which also says that the alleged amount has been lent as cash. However, the plaintiff claims that he gave it by way of cheque. He would also state that the Courts below have not appreciated the explanation offered by the defendant that the issuance of cheque was only in respect of helping the plaintiff for meeting the cost of his North India tour. He would further state that the evidence of P.W.2 has also not been rightly appreciated by the Courts below, who failed to note that P.W.2 had admitted in the proof affidavit that the promissory note has been executed by the person who accompanied the plaintiff which is not the case of P.W.1, the plaintiff. Mr.N.Manoharan, learned counsel would also state that in Ex.B7, the plaintiff has not denied the signature and has failed to satisfactorily explain as to how the signature of the plaintiff went into the defendants possession which has never been



explained by the plaintiff. He would further contend that the Courts below have also failed to note that the first witness is only a stock witness of the plaintiff and in such circumstances, the plaintiff ought to have examined the scribe.

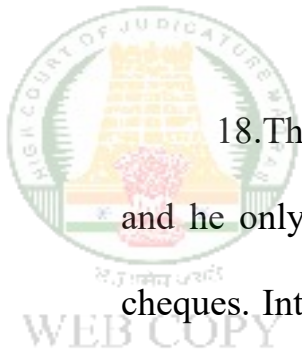
15.Per contra, Mr.M.Govi Ganesan, learned counsel for the respondent/plaintiff would contend that the defendant admits the issuance of Rs.5 lakhs through ICICI Bank and also his signature. The repayment of Rs.1 lakh, out of which, Rs.40,000/- has been adjusted towards principal has been established by the plaintiff towards discharge of the promissory note. Referring to the written statement filed by the defendant, the learned counsel for the respondent would state that the defendant has admitted the transaction of Rs.1 lakh by RTGS in favour of the plaintiff. Also, with regard to the alleged claim of the defendant for return of documents, bond papers, promissory notes, cheques, etc., the defendant has vaguely stated that he has demanded for the return of the same and despite receipt of the pre-suit notice, the defendant has not even chosen to sent a reply. The learned counsel would therefore contend that the plea in the written statement is invented for the purpose of the defence and nothing more. He would further state that the promissory note and the agreement of sale were totally independent transactions with no connection whatsoever and therefore any and all reliance placed on the said agreement of sale between the defendant's wife and the plaintiff is not related or relevant for the purposes of the suit for promissory note. He would further state that by examining P.W.2, the plaintiff has proved execution and rightly the Courts below have



drawn a presumption under Section 118 against the defendant. Insofar as Ex.B17, Mr.M.Govi Ganeshan would state that neither in the written statement nor in the proof affidavit, there is any reference to Ex.B19 and therefore, no amount of evidence without pleading can be looked into by the trial Court. He would therefore pray for dismissal of the Second Appeal.

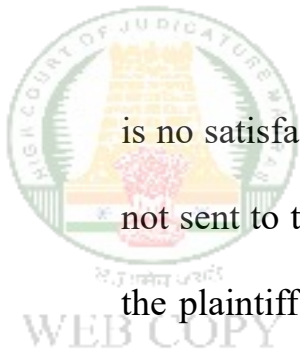
16.I have carefully considered the submissions advanced by the learned counsel on either side.

17.Under Ex.A1, promissory note dated 21.01.2013, the defendant has executed the said promissory note for a sum of Rs.5 lakhs. Though the defendant denied the borrowing of such a sum of Rs.5 lakhs from the plaintiff and in respect of which, the suit promissory note in Ex.A1 was executed, by examining the witness to the promissory note, one G.Muthusamy as P.W.2, the plaintiff has proved due execution of the promissory note and also passing of consideration. Though in order to counter the case of the plaintiff, D.W.2, N.Krishnamoorthy has been examined, who has stated that the cheque dated 02.05.2013 was given only as a security, it is seen from Ex.A10, the bank statement of the plaintiff with ICICI bank that on 21.01.2013, a sum of Rs.5 lakhs has been withdrawn and paid to the plaintiff.



18.The defendant does not dispute the signature in the promissory note as well and he only contends that signatures were obtained in blank promissory note and the cheques. In the light of the evidence adduced by the parties, I do not find any infirmity in the concurrent findings arrived by the Courts below, holding that the plaintiff has proved execution as well as passing of consideration and consequently, the plaintiff is entitled to the decree as prayed for. Insofar as Ex.B7, which refers to the settlement of the claim of the plaintiff, the signature in the document having been accepted by the plaintiff, the defendant himself admits to the fact that he did not plead about Ex.B7 and Ex.B19 in the written statement. Even insofar as material alterations, the Courts below have rightly found that though there is *prima facie* merit in the claim of over writing, the fact that the alteration is found only in the numerical No.5 and not words and therefore, there is no basis to contend that the document itself has to be rejected on the ground of material alteration. The findings of the Courts below in this regard are justified and do not warrant any interference in Second Appeal.

19.Assuming Ex.B19 is a true and genuine document and the entire monies borrowed by the defendant had been repaid, at least, when the plaintiff issued a lawyer's notice claiming that the defendant was due and payable monies under the promissory note executed by the defendant, no prudent person who claims to have paid more than Rs.10 lakhs and had even earlier demanded for return of the unfilled promissory notes, cheques and blank papers would remain idle, without even sending a reply notice. There



is no satisfactory explanation on the side of the appellant as to why the reply notice was not sent to the pre-suit notice. Even with regard to the explanation of the defendant that the plaintiff wanted to go for a North India tour and he has requested the defendant to withdraw the money and pay it to him, there is no acceptable evidence on the side of the defendant to establish such contentions. The Courts below have rightly found that the initial presumption under Section 118(a) of the NI Act has not been rebutted by the defendant and the plaintiff was consequently entitled to the decree as prayed for.

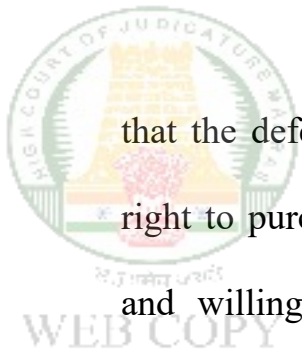
20. Sitting in Second Appeal, the power of this Court to interfere with concurrent finding is limited in the absence of any perversity in the appreciation of evidence and pleadings and even if another view is possible, then this Court cannot interfere with concurrent findings, exercising power under Section 100 of CPC. In the light of the above, I do not find that any substantial questions of law, much less, the questions projected by the appellant and framed by this Court arising for consideration in Second Appeal. The Second Appeal is therefore dismissed.

21. Coming to A.S.No.284 of 2022, the case of the 1st respondent is that the defendants have agreed to sell their property to the plaintiff.



22. The case projected in the plaint is as follows:

The defendants 1 and 2 are husband and wife and are known to the plaintiff for the past two years. The defendants are dealing with real estate business and construction work. They represented to the plaintiff that they are in the habit of purchasing vacant plot, construct residential houses and sell the same for consideration. The 1st defendant was in the habit of obtaining financial assistance from the plaintiff's husband, Govindaraj for his real estate business. The plaintiff intended to purchase a house and the defendants 1 and 2 informed the plaintiff about their intention to construct a residential house in the property purchased by them under a registered sale deed dated 27.09.2012. The plaintiff agreed to purchase the said house and after negotiations. An agreement of sale was entered into 31.10.2012, in and whereby, the plaintiff and the defendants 1 and 2 have agreed to complete the construction of the house within 15 months from the date of the agreement. The sale consideration was fixed at Rs.27 lakhs. The plaintiff advanced Rs.14 lakhs on the date of execution of the agreement of sale in the presence of the witnesses. The balance sale consideration of Rs.13 lakhs was payable at the time of registration, after taking delivery of the constructed house. After the execution of the agreement, the defendants went ahead with the construction and the plaintiff also suggested modification to the plan. However, the attitude of the defendants changed in the recent past and they avoided having any oral discussions with the plaintiff. The plaintiff came to know that third parties were visiting the suit property and



that the defendants were trying to alienate the same and thereby defeat the plaintiff's right to purchase the property under the subject sale agreement. The plaintiff is ready and willing to pay the balance sale consideration of Rs.13 lakhs. However, the defendants have not come forward to comply with the obligations on their part. The plaintiff issued lawyer's notice on 21.10.2013. The said notices were returned with an endorsement 'intimation served'. Hence, the suit for specific performance, together with an alternate relief of refund of advance of Rs.14 lakhs.

23. Written statement filed by the defendant 1 and 2, briefly:

(a) The defendants have purchased the suit property under a sale deed dated 27.09.2012 and in order to construct a residential house for themselves, they have put up a construction. The defendants have not entered into any agreement of sale with the plaintiff and they have also not received Rs.14 lakhs as advance, as claimed by the plaintiff. The defendants denied the allegations that the plaintiff suggested modifications to the construction and that the defendants also obliged. The defendants denied that the plaintiff was always ready and willing to perform his part of the contract and get the sale deed executed and that the defendants are avoiding the plaintiff and instead, trying to deal with third parties. The defendants were very much residing in the address to which the notice dated 21.10.2013 was sent and they have never avoided receipt of the notice, prior to filing of the suit. The question of even granting the alternate relief does not



arose, as the defendants have not received any advance and the agreement was never executed by them in the first place.

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(b) The defendants were in compulsion to clear the housing loan obtained by them from Aptus Housing Finance Limited and hence, they decided to borrow money from the plaintiff's husband, though he claimed exorbitant interest. At that time, the plaintiff's husband had obtained signatures of both the defendants in blank promissory notes, stamp papers and also took custody of the original sale deed and the parent documents from the 1st defendant, along with blank signed cheques. The plaintiff's husband released only Rs.9,50,000/- as against Rs.10 lakhs requested. The 1st defendant sought for further loan of Rs.70,000/- from the plaintiff's husband, which was released on 03.11.2012, after deducting Rs.4,000/- towards interest for one month. The loan from Aptus Housing Finance Limited was settled and a sum of Rs.10 lakhs borrowed from the plaintiff's husband has been repaid on 28.11.2012, 29.11.2012 and 30.11.2012 and though the 1st defendant requested the plaintiff's husband to return the original title deeds and other documents, the plaintiff's husband returned the original title deeds alone, stating that on payment of the balance amounts, he would return the promissory notes, cheques, stamp papers, etc. The 1st defendant paid Rs.1,40,000/- to the plaintiff's husband in lump sum.



(c) However, on 01.05.2013, the plaintiff's husband suffered a massive heart attack and was admitted to the hospital. To meet medical expenses, the plaintiff's husband wanted monies and therefore, the 1st defendant withdrew Rs.60,000/- on 10.05.2013 through six withdrawals from ATM at Rs.10,000/- each and gave it to the plaintiff's husband. A further sum of Rs.1 lakh was also transferred through RTGS to the plaintiff's husband. With the said payment, the entire dues of the plaintiff's husband was settled. However, the plaintiff's husband did not return the blank stamp paper, pro notes, cheques, etc. The agreement of sale is fabricated and the defendants never had any intention to sell the property as it was purchased only for constructing a residence for themselves. Using the blank pro notes, the plaintiff's husband has fabricated a claim and has also filed a suit in O.S.No.110 of 2014 which has been defended by the 1st defendant. There is no cause of action for filing the suit.

24.The plaintiff filed a reply statement, which is set out in brief:

The plaintiff denies that the defendants never agreed to sell the suit property to the plaintiff. The plaintiff reiterates the averments in the plaint and the claims of the defendants that the entire outstanding dues have been repaid, together with exorbitant interest. The plaintiff also denies that the defendants requested for return of the signed blank promissory notes and other papers and that the plaintiff's husband evaded the same. The agreement of sale is a genuine transaction and the defendants are trying to



confuse the borrowing of Rs.5 lakhs from the plaintiff's husband which has nothing to do with the agreement of sale. It is totally a different transaction.

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25. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1. வாதி, பிரதிவாதிகளுக்கிடையில் உள்ள கிரைய ஒப்பந்தமானது கடனுக்காக எழுதிக் கொடுக்கப்பட்டதா? எனில் அந்த கடனும் கட்டி முடிக்கப்பட்டதா?
2. வாதி தான் கேட்கும் ஏற்றதை ஆற்றுக பரிகாரமும் அல்லது மாற்றுப் பரிகாரமாக முன் தொகையும் பெற அருகரா?
3. வாதி தான் கேட்கும் உறுத்துக் கட்டளை பரிகாரங்கள் பெற அருகரா?
4. வாதி அடையும் வேறு பரிகாரம் யாது?

26. Trial:

At trial, on the side of the plaintiff, the plaintiff's husband was examined as P.W.1 and G.Muthusamy was examined as P.W.2 and Ex.A1 to Ex.A15 were marked and on the side of the defendants, the 1st and the 2nd defendants have examined themselves as D.W.1 and D.W.2 and Ex.B1 to Ex.B43 were marked.

27. The decision of the trial Court:

The trial Court, on appreciation of oral and documentary evidence, found that the plaintiff was not ready and willing to perform her part of the agreement of sale, finding

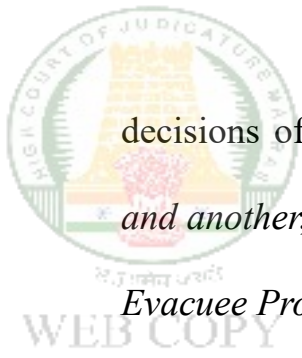


that the agreement was true and genuine and hence, granted the alternate relief of refund of advance, together with interest at 6% per annum.

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28.Arguments of the learned counsel for the appellant:

Mr.N.Manohara, learned counsel appearing for the plaintiff would contend that the trial Court, having rightly come to the conclusion that the plaintiff has not established readiness and willingness, ought not to have granted the alternate relief of refund of advance when it was the specific case of the appellant that she has not signed any agreement of sale in the first place and the entire transactions were money transactions between the parties, including the husband of the plaintiff and further, the monies were admittedly repaid and also established at trial. In such circumstances, Mr.N.Manoharan, would contend that trial Court clearly fell in error in even granting refund of advance. He would also take me through the pleadings and evidence adduced before the trial Court. His submissions that were advanced in the Second Appeal have also been reiterated in the course of arguments in the First Appeal as well. He would further state that the plaintiff did not enter into the witness box and the trial Court ought to have drawn adverse inference. Further, contending that the plaintiff in the pro note suit being none else than the husband of the plaintiff in the suit for specific performance was examined in the present suit as well, it clearly established the defence that the transaction is only a loan transaction and the blank papers have been misused for bringing about the alleged agreement of sale. He would rely on the decision of the



decisions of the Hon'ble Supreme Court in *R.Radhakrishna Prasad Vs. Swaminathan and another*, reported in (2024) 7 SCC 240 and *Kundan Lal Rallaram Vs. the Custodian, Evacuee Property Bombay*, reported in 1961 SCC Online SC 10.

29.Arguments of the learned counsel for the respondents:

Per contra, Mr.N.Krishnakumar, learned counsel appearing for the 1st respondent/plaintiff would state that with the examination of P.W.2, the plaintiff has corroborated the evidence of P.W.1, the husband of the plaintiff, with regard to the due execution of the agreement of sale and also payment of Rs.14 lakhs as advance. He would invite my attention to the admissions made by the defendants with regard to the attestation of the document by the witnesses. It is also contended by the learned counsel for the respondents that no witnesses has been examined on the side of the defendants to establish their case and the trial Court has rightly found that there was no connection between the pro note and the suit agreement of sale. He would further state that though the agreement of sale was found to be true, the trial Court did not grant the equitable relief of specific performance and has only granted the alternate relief of refund of advance of Rs.14 lakhs, together with nominal interest at 6%. He would contend that P.W.2 has clearly spoken about the manner in which the execution of sale agreement was brought about and also passing of consideration. In such circumstances, the learned counsel for the respondents would contend that the defendants have not been able to



establish the defence set up and rightly, the trial Court decreed the suit for return of advance. He would pray for dismissal of the Appeal Suit.

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30.Point for consideration:

On careful examination of pleadings, oral and documentary evidence on record and after analyzing the arguments advanced by the learned counsel on either side, the point to be considered in the Appeal Suit is as follows:

1.Whether the plaintiff had established the suit sale agreement and payment of advance of Rs.14 lakhs?

31.Point No.1:

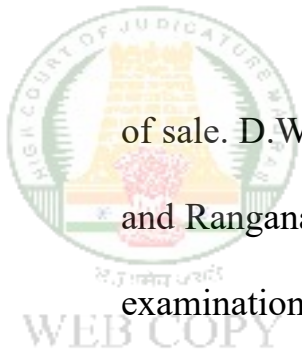
The categorical case of the appellant is that no agreement of sale was entered into. The house was purchased by the defendants, only for putting up a residence for their family and in respect of a borrowing made by the defendants from the plaintiff's husband and in the course of the said transaction, various blank papers have been signed, including the pro notes and stamp papers, which have been misused to bring about the suit sale agreement. On the side of the plaintiff, the plaintiff's husband was examined as P.W.1 and the witness to the agreement of sale was examined as P.W.2.

32.The evidence of G.Muthusamy, P.W.2, is found believable and satisfactory to prove due execution of the agreement of sale and also passing of consideration. In his cross examination, P.W.2 has stated that he knows the 1st defendant, R.Kannan about



four to five years. He has spoken about the avocation of the 1st defendant, R.Kalimuthu. He has clearly deposed that the suit sale agreement was prepared at the advocate's office. He has also deposed that he and one Ranganathan have signed as witnesses to the agreement of sale. Though P.W.2 has been elaborately cross examined, the appellant has not been able to obtain any favourable admissions or make a dent with regard to the chief examination pertaining to execution of the agreement of sale as well as payment of Rs.14 lakhs as advance.

33. In fact, the 1st defendant, who was examined as D.W.1, in cross examination, has stated that on the date of the agreement of sale, the entire loan of Aptus Housing Finance Limited has been discharged, though he adds that he has not signed the agreement of sale. He has also stated that he has experience with execution of agreements of sale and he was also aware that he should not sign blank papers. He also admits that he never made any demand for return of the documents, despite having settled the entire dues of the plaintiff's husband. He also admits that no reply notice was sent to the pre suit notice. In fact, D.W.1 has further admitted that the stamp paper on which the agreement of sale is typed, was purchased by him. He also admits that he has the photostat copy of the agreement of sale. If really it is the case of the defendants that they only signed blank papers, there could have been no occasion for the defendants to have the photostat copy of the typed and concluded agreement of sale. This virtually demolishes the defence raised by the defendants that they never executed any agreement



of sale. D.W.1 also admits that in the agreement of sale dated 31.10.2012, G.Muthusamy and Ranganathan have attested the document as witnesses. Though D.W.1 states in cross examination that he is going to examine Ranganathan, no steps have been taken to examine the said witnesses on the side of the defendants.

34.D.W.2 in her cross examination, states that she signed in the presence of two witnesses, but does not know the identity of the witnesses. The trial Court has rightly appreciated the oral and documentary evidence and came to the conclusion that the agreement of sale had been duly executed between the parties. The said finding is based on the oral and documentary evidence adduced before the trial Court and I do not see any infirmity or illegality in the said findings. However, the trial Court did not accept the case of the plaintiff as projected. The trial Court found that the plaintiff has not established readiness and willingness which alone would entitle the plaintiff to the discretionary relief of specific performance and rightly denied the said relief of specific performance and granted the relief of refund of advance alone. The prayer for refund of advance was made by way of an alternate relief in the suit itself. In such circumstances, having found that the agreement of sale had been entered into between the plaintiff and the defendants and that it had no relevance to the promissory note executed separately for a sum of Rs.5 lakhs, the trial Court came to the conclusion that the amount of Rs.14 lakhs was proved to have been paid as advance and therefore the plaintiff was entitled to refund of the same. The trial Court has also ordered refund at a very nominal rate of 6%



per annum interest. Therefore, I do not see any grounds warranting interference with the well considered the judgment of the trial Court, in first appeal.

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35. In *Kundan Lal Rallaram's case*, referred herein supra, the Hon'ble Supreme Court held that Section 118 of Negotiable Instruments Act lays down a special rule of evidence, a presumption arising under the said Section is one of law and the Court shall presume that the negotiable instrument or the endorsement was made or endorsed for consideration and the burden of proof is thrown on the maker of the note to prove failure of consideration. The initial burden vests on the plaintiff, who has to prove the promissory note was duly executed for the presumption to shift to the other side, namely the defendant. The defendant thereafter has to adduce direct evidence to prove that the promissory note was not supported by consideration and if acceptable evidence is adduced, then the burden would again shift to the plaintiff and so on.

36. In *R. Radhakrishna Prasad's case*, referred herein supra, the Hon'ble Supreme Court held that when the relief of specific performance of an agreement of sale is declined and there is no challenge by the plaintiff by preferring an appeal, then the same would become final. The Hon'ble Supreme Court further held that in the pre-suit notice, there was no mention of payment of any definite sum of advance as advance sale consideration and the payment of the alleged advance was held to be not established by



positive evidence. I do not see how these two decisions would apply to the facts of the present case.

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37. Insofar as *Kundan lal Rallaram's case*, it relates to the promissory note suit, which is subject matter of the Second Appeal, the Appellate Court held that where two Courts have concurrently found that the defendant having admitted the signature in the promissory note and the witness to the promissory note having been examined to positively established not only execution of promissory note, but also passing of consideration, I do not see this decisions being applicable to the facts of the present case.

38. Even insofar as *R. Radhakrishna Prasad's case*, that was a case where the Hon'ble Supreme Court held that in the pre suit notice, there was no mention about the advance amount paid and in such circumstances, the Hon'ble Supreme Court held that the payment cannot be accepted as made, as claimed in the plaint. However, in the present case, in the pre-suit notice, the plaintiff has categorically asserted that out of total sale consideration of Rs.27 lakhs, the plaintiff has paid an advance of Rs.14 lakhs and the remaining balance sale consideration is Rs.13 lakhs. In such circumstances, I do not see how this decision would help the appellants.



39. In the light of all discussions made herein above, I do not find any justifiable grounds to interfere with the well considered judgment of the trial Court, warranting interference. The point for consideration is answered accordingly.

41. Result:

In fine, the Appeal Suit is dismissed and consequently, the Second Appeal is also dismissed. No costs. Connected Civil Miscellaneous Petitions are closed.

13.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

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- 1.The I Additional District Judge, Coimbatore.
- 2.The V Additional District Judge, Coimbatore.
- 3.The Sub-Registrar, Sub-Registrar Office, Ganapathy, Coimbatore.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S.No.284 of 2022
& S.A.No.1060 of 2022
& CMP.Nos.10409, 22727 of 2022

13.02.2026