IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No.91 of 2022
and CMP.No.2020 of 2022

Muruganandam

Appellant/Plaintiff

Vs

1. Kumaran
2. Ravy Elisabeth Gourand
3. Ravy Sejiyane Babou
4. Ravy Ejilane Radjane
5. Ravy Pradabe

Respondents/defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.11.2021 made in A.S.No.26 of 2019 by the II Additional District Judge, Puducherry, reversing the judgment and decree dated 11.12.2017 passed in O.S.No.64 of 2007 on the file Additional Sub Judge, Puducherry.

For Appellant : Mr.T.S.Baskaran

For Respondent(s): No appearance

JUDGMENT

Challenging the reversal findings of the 1st appellate court, the plaintiff filed this Second Appeal. The plaintiff is the appellant and the defendants are the respondents herein.

2. The plaintiff filed original suit before the trial court. He filed the suit for the following reliefs:-

(i) to direct the first defendant to execute the register sale deed to and in favour of the plaintiff, after receiving the balance sale consideration of Rs.50,000/- and in case the first defendant fails to execute and register the sale deed to and in favour of the plaintiff on deposit of balance sale consideration of Rs.50,000/- into court,

(ii) to direct the defendants to deliver the possession of the suit schedule mentioned property to the plaintiff,

(iii) to declare the alleged sale deed was executed by the first defendant's power agent Ravi Elisabethgrow to and in favour of her husband, 2nd defendant for and on behalf of her principal, 1st defendant herein on 31.03.2011 and the same was registered on the same day in Book 1 as document No.2193 of 2011 on the file of Sub Registrar, Bahour, Puducherry is null and void ab-initio and non-est in eye of law, it is not binding the plaintiff and it is not enforceable under the law.

(iv) to direct the defendants to pay the costs of the suit.

The 1st defendant is the owner of the property. The 2nd defendant is the subsequent purchaser impleaded as per the order passed in I.A.No.100 of 2016 dated 05.11.2016.

3. Originally the suit was filed and assigned O.S.No.64 of 2007. Thereafter, transferred to Additional Sub Judge. The plaintiff filed suit against the 1st defendant Kumaran in the year 2007. Subsequently, the property was sold to the 2nd defendant who is the subsequent purchaser. Pending proceedings, thereafter, he was added as 2nd defendant as per the order in I.A.No.100 of 2016.

4. Before the trial court, the plaintiff, both defendants contested the suit. Both the parties adduced evidence. On hearing both sides, the trial Judge framed issues and finally held that the sale agreement relied on by the plaintiff is true and valid and directed the 1st defendant to execute the sale deed by receiving the balance sale consideration and also held that the

sale deed stand in the name of the 2nd defendant executed by D-1's power agent is null and void not binding on the plaintiff.

5. Aggrieved by the said judgment, the 1st defendant preferred first appeal in A.S.No.26 of 2019. Pending proceedings, the 2nd defendant died and his legal heirs were brought on record as Respondents 3 to 6.

6. The 1st appellate court after analysing the facts and circumstances of the case and evidence and on framing separate points for consideration, given findings and held that the plaintiff is not entitled for the relief. The 1st appellate Judge further held that the 1st defendant borrowed a loan for Rs.1,00,000/- from the plaintiff and as security for the loan, alleged sale agreement came into force. Therefore, the plaintiff is entitled to only the amount of Rs.1,00,000/- with interest. Accordingly, the findings of the trial court was set aside. The 1st appeal was allowed.

7. Aggrieved by the said judgment, the plaintiff has preferred this Second appeal.

8. Notice was issued to the respondents/defendants. None appeared.

9. Learned counsel for the parties are denoted as per the ranking before the trial court. Brief facts of the case is as under:-

9.1. The 1st defendant is the owner of the property who consented to sell the property to the plaintiff for a sale consideration of Rs.3 lakhs and plaintiff also agreed with the same and paid Rs.2,50,000/- as advance and remaining balance is Rs.50,000/-; on payment of the same, the 1st defendant agreed to sell the said property for Rs.3 lakhs and the sale will be fulfilled within 3 months from the date of the sale agreement dated 14.10.2006 in the presence of the witnesses. Plaintiff has paid Rs.2,00,000/- as part of the sale consideration and he expressed his readiness and willingness by which the balance of Rs.50,000/- is to be paid to the 1st defendant. But the 1st defendant is not inclined and also not inclined to show the original documents along with encumbrance certificate. However, the plaintiff showed his readiness by sending a legal notice dated 03.12.2006. Though the 1st defendant received, not chosen to give any reply. But he lodged a false complaint on 12.12.2006 for offences under Sections 507, 506(i) and 294(b) of IPC. The 1st defendant was not inclined to execute the sale deed. Therefore, the suit was filed. The plaintiff deposited the balance sale consideration into the court and obtained order of injunction against the 1st defendant not to alienate the property in I.A.No.359 of 2007 on 23.04.2007. Pending proceedings, the plaintiff came to know that the 1st defendant executed Power of Attorney in favour of his wife; through the said Power of Attorney, the property was sold to D2 on 31.03.2010 inspite of injunction order. Therefore, the purchaser also added as party and the prayer is amended to declare that the document would not bind the plaintiff.

9.2. The 1st defendant contested the suit by filing the written statement stating that the plaintiff has not proved the sale of property to him as he alleged. Nor he agreed for selling the property for Rs.3 lakhs and also disputed the sale agreement and that it was not executed between them as alleged by the plaintiff. He submitted that the plaintiff is working as Mazdoor in PWD, Pondicherry contractor and since he happened to be P.WD contractor, he became the friend of the plaintiff and as hand loan he borrowed Rupees One lakh for interest from the plaintiff as he was in need of financial assistance and borrowed the amount in the year 2004. As security, he signed in blank papers as well as revenue stamp papers. Three cheque leaves also given. Promissory Note also given. The plaintiff also informed that he handed over the document to him. The amount was arranged. He also submits that the plaintiff using his influence, was doing Real Estate business with his help as the plaintiff is a Government servant. In such circumstances, he happened to give a donation-cum-settlement deed of the suit property dated 12.06.2003 to the plaintiff. Abusing the same, plaintiff created the sale agreement. The plaintiff also purchased the house and plot from his brother. When he refused to sell his plot, the plaintiff abused the blank signed papers and prepared the suit sale agreement. He averred about the conduct of the plaintiff. He given complaint to the police. He executed the Power of Attorney in favour of Ravi Elisabeth Krow in respect of the suit property and also handed over the original parent title deed document to the Power of Attorney in the year 2005 in Document No.110/2005. Therefore, he is not interested to execute the sale agreement in 2006 as alleged by the plaintiff. He falsely claimed always about the readiness and willingness of part performance. He would also submit that since the suit schedule mentioned property has already been sold prior to the alleged suit sale agreement, the filing of the case in respect of the suit property, is also not correct, Possession also already given to the Power Agent, Hence, prayed to dismiss the suit.

10. After filing the written statement, the 1st defendant claimed that the sale agreement is a false and fake agreement and also contended that using Rs.5 stamp white paper with the revenue stamp affixed, utilised by the plaintiff to create the sale agreement and the same is not true and valid. Already this defendant gave a complaint on 12.12.2006 to the Superintendent of Police, Pondicherry after that he issued a notice expressing his readiness and willingness.

11. Further stated in the written statement that the suit is bad for non joinder of Power Agent as necessary party. He also contended that suit is barred by limitation. Already the suit property was handed over to the Power Agent. Further he would submit the Power agent executed the sale deed for and on behalf of him in the office of Sub-Registrar, Bahour, Puducherry in Document No.2193 of 2011 on 31.03.2011. But the prayer sought by the plaintiff is to cancel the said document. The relief sought by the plaintiff is also not sustainable. Hence, he prayed to dismiss the suit.

12. The 2nd defendant contested the case stating that the alleged sale agreement was forged and fraudulently created by the plaintiff and the sale agreement was also not properly stamped; only with a malafide intention plaintiff created the document. It is further stated that 1st defendant gave Power of Attorney to the 2nd defendant's wife on 05.09.2005 and it is he who paid the entire sale consideration to the 1st defendant and the power agent sold the property to this defendant by receiving Rs.1,08,000/- and handed over the possession also. Therefore, he is having absolute claim over the suit property.

13. Before the trial court, both parties adduced evidence. The trial court framed three issues. On the side of the plaintiff, P.W.1/plaintiff was examined and P.W.2-Madhivanan and P.W.3-Rangasamy viz., independent witnesses were also examined and 13 documents Ex.A.1 to Ex.A.13 were marked; Suit sale agreement was marked as Ex.A.1 dated 14.10.2006. On the side of defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.7 were marked.

14. According to the plaintiff, 1st defendant is the owner of the suit property. He agreed to sell the property; he received Rs.2,50,000/- and executed sale agreement Ex.A.1. P.W.2 and 3 are the witnesses through whom he proved Ex.A.1. Further, he submitted that within 2 months from the sale agreement, he expressed his readiness and willingness; further plaintiff sent notice dated 03.12.2006 to the 1st defendant, however, no reply from the 1st defendant. Notice is marked as Ex.A.2. The evidence of P.W.2 and 3 who are attestors of Ex.A.1 agreement deposed that they are the witnesses of the document and the sale terms was fixed as Rupees 3 lakhs and advance of Rs.2,50,000/- was paid on the same day to 1st defendant.

15. The trial court on taking note of the pleadings of the plaintiff, held that the plaintiff discharged his burden and the validity of the sale deed and thereby, the burden is shifted on the 1st defendant who alleged that the sale agreement was fraudulently created by the plaintiff and the same is only a security for the loan. The 1st defendant claimed that he issued a signed blank papers and the same was misused by the plaintiff.

Therefore, the trial Judge shifted the burden on the 1st defendant to prove the same.

16. The 1st defendant examined himself and also adduced documentary proof. The 1st defendant took a contradictory plea before the trial court and stated that he lodged a complaint with the police stating that the plaintiff threatened him to sell the property as he purchased the adjacent property from his brother. On the contrary, it is admitted by the 1st defendant that he and the plaintiff were already known to each other and therefore, he signed in blank papers and given to plaintiff. Further, signature of D1 is admitted by 1st defendant; but the sale agreement produced by the plaintiff which is attested by P.W.2 and 3 and their evidence has not been shattered by the 1st defendant. Further, no reply was given by the 1st defendant to the notice already issued by the plaintiff and for that matter, sufficient reason was also not offered. If at all the document is a fabricated one, the plaintiff ought to have raised his objection at the time of the issuance of the notice, but he has not given any reply. Pending proceedings, he gave a power of attorney to Ravi Elisabethgrow, who is the wife of the 2nd defendant. Based on the power

deed, the power agent had executed sale in favour of the 2nd defendant; besides that Power of Attorney is the mother-in-law of 1st defendant's sister Rajeswari alias Sudha. Therefore the 1st defendant/D.W.1 is a close associate and relative of the Power Agent who created the alleged sale deed in order to defraud the plaintiff, thereby, the learned Trial Judge held that the sale deed was created by the 1st defendant in order to avoid execution of the sale deed in favour of the plaintiff and the same is not binding the plaintiff and such execution of sale deed in favour of the 2nd defendant is sham and nominal. Accordingly, the issue was answered in favour of the plaintiff and suit decreed as prayed for.

17. Aggrieved by the said findings, the 1st defendant filed first appeal. The 1st appellate Judge framed separate points for consideration. The 1st appellate Judge held that 1st defendant and his brother and sister having six plots including the suit property in the same place. In the year 2006, the plaintiff asked for outright purchase of 6 plots for which D1's brother accepted and sold his property to the plaintiff. Therefore, the plaintiff insisted the 1st defendant to sell his property for which he gave a police complaint on 02.12.2006 to the Superintendent of Police. Based on

the complaint, the plaintiff was called for inquiry by the Police officials. Knowing the same, the plaintiff as a counter attack, has issued a notice dated 03.12.2006 on the 1st defendant, as if he executed the sale agreement. Even after that, the 1st defendant has paid the borrowed loan amount of Rs.1 lakh and got back revenue stamp papers. But the plaintiff retained some papers and used the same and prepared the sale agreement dated 14.10.2006. The 1st defendant executed POA in favour of 2nd defendant's wife viz., Ravi Elisabeth Krow. Therefore the alleged sale agreement is not a true and valid document but created in order to grab the property. The plaintiff himself filed the sale agreement but the 1st defendant not consented to sell the property. In respect of Ex.A.1, the sale deed, 1st appellate Judge held that the stamp paper for Rs.5 was purchased in the name of one Raj on 22.04.2004 and the seal in the stamp was dated 09.03.2004. But while executing the agreement, the plaintiff not raised any objection about the stamp paper which is said to be more than two years before the alleged agreement of sale deed and not objected for using the stamp paper in the name of different person and he has not proved he is a bonafide purchaser. Indisputably to purchase the property he ought to have verified the records before entering into sale agreement and he being a

Government Servant, working as Mazdoor in Public Works Department and the service rules would show that the said person cannot enter into sale agreement or purchase the property without prior permission from the competent authority and no such proper permission was obtained by the plaintiff from the competent authority. Therefore, the alleged sale agreement was created for the purpose of the suit but the second defendant purchased the property for valid sale consideration. The 1st Appellate Judge relied on judgment in ***Vallithai and others Vs. Arul raj -2-7(4)-TLNJ 1 (Civil)*** wherein it is held that

> "mere execution of sale agreement is not sufficient and the circumstance in which it was executed has to be proved to get a decree for specific performance. The Government servant did not get the required permission to purchase the property prior to the filing of the suit, proves that he was not "ready and willing purchaser" on the date of the suit".

18. The 1st Appellate Judge, thus finally concluded that the plaintiff has not established the case consequently the appeal was allowed; suit was dismissed. Considering the alleged transaction period between the plaintiff and the 1st defendant, directed the 1st defendant to pay Rs.1,00,000/- and the appeal was disposed of.

19. Challenging the said finding, the present Second Appeal is filed.

20. This Second Appeal is admitted on the following substantial question of law.

1.Whether the First Appellate Court justified in refusing the relief of Specific Performance when the 1" respondent admitted his signature in the Ex Al sale agreement and further the transaction is proved by the evidence of PW2 & PW3.

2. Whether the First Appellate Court right in accepting the contention of the 1st respondent with regard execution of Ex Al sale agreement as 1" respondent failed to discharge his burden of proof.

3. Whether the First Appellate Court right in reversing the judgment of Trial Court without reference to contrary and different version of 1st respondent with regard to execution of Ex Al sale agreement.

21. Learned counsel for the appellant/plaintiff argues that the 1st appellate court erred in holding that the plaintiff evidence is not corroborated with the evidence of P.W.2 and P.W.3 with respect to the

execution of Ex.A.1 suit sale agreement which is incorrect and is made without reference to the deposition of P.W.3. The 1st appellate Judge rejecting the relief of specific performance of the suit sale agreement is unsustainable and the dismissal of the suit as such is illegal and it is to be set aside.

22. He would also submit that the 1st appellate Judge failed to take note of the fact that signature in the sale agreement is admitted by the 1st defendant but the learned Judge instead of holding that the 1st respondent failed to prove the allegation that Ex.A.1 was executed only as security and not as sale agreement, has erroneously held that sale agreement was not true and valid. Further the observation regarding the stamp paper is unwarranted. The said finding is to be set aside. He would also submit that the plaintiff was always ready and willing to pay the balance sale consideration and to obtain the sale deed in his favour. As the substantial sale consideration was paid on the very date of execution of the agreement, the plaintiff sufficiently proved his readiness and willingness which is the mandatory requirement to file the suit for specific performance inspite of which suit was dismissed, hence, the findings of the 1st appellate Judge is

to be set aside.

23. Notice issued to the respondents but none appeared.

24. Based on Ex.A.1 sale agreement, the plaintiff filed suit for specific performance. Admittedly, the suit property belonged to the 1st defendant; the plaintiff approached D1 to sell the suit property for Rs.3 lakhs. He executed the said proposal and paid Rs.2,00,000/- and entered into Ex.A-1 sale agreement; as per which, within two months he is bound to pay the balance sale consideration. The plaintiff issued notice within two months period. However, the 1st defendant contended that he borrowed a loan from the plaintiff for a sum of Rs.1,00,000/- and for the amount received, he had handed over signed five rupees stamp papers, later the plaintiff used it in order to grab the property. The plaintiff however issued legal notice which shows that within stipulated time, he expressed his readiness and willingness; further when the signature is admitted, then a contrary stand cannot be taken as per Section 92 of Evidence Act. Since the sale agreement was executed between the plaintiff and the first defendant, the burden lies upon the first defendant to prove the allegations

regarding the recitals of the agreement. The burden is upon the 1st defendant to prove the allegation that the plaintiff had manipulated the signed blank stamp papers obtained at the time of borrowal of the loan. But except this allegation, there is no materials on the side of the 1st defendant to prove the alleged sale transaction was not valid. The 1st defendant gave complaint to the police stating that the plaintiff threatened him to sell the property. If at all he borrowed the loan from the plaintiff he ought to have stated the same to the police at the time of giving the complaint. But the version of the 1st defendant is totally contradictory. Though the trial court appreciated these facts, the 1st appellate court failed to take note of the readiness and willingness established by the plaintiff and the signature in the agreement was admitted by the 1st defendant and the advance sale consideration of Rs.2,50,000/- was paid to the 1st defendant. But the 1st defendant failed to discharge his burden cast upon him about the loan transaction. Therefore, the trial Judge has held that the plaintiff filed suit for the relief of specific performance and obtained interim injunction. However, pending proceedings, in the year 2011, the 1st defendant by virtue of the Power of Attorney given to his close relative [mother in law of the sister] on 05.09.2005, sold the suit property to the

2nd defendant. The trial Judge held that the 1st defendant gave power of attorney to Ravi Elizabeth Krow, through whom, the 2nd defendant has purchased the suit property by paying Rs.1,08,000/- to the 1st defendant.

25. The 2nd defendant contended that he paid the entire sale consideration to the Power of Attorney of the 1st defendant who is his wife and in the capacity as power agent. Thereafter, sale deed was executed in the year 2011 in the name of 2nd defendant. Therefore, he is the absolute owner of the suit property. As per the guideline value Register, the value of the property is Rs.3 lakhs, but the 2nd defendant purchased the property for Rs.1,08,000/-. There is substantial disparity between the guideline value and the sale consideration. The defendants have not produced any cogent or clinching evidence to sustain the undervaluation of the property. The 1st defendant contended that he had already executed a Power of Attorney in favour of the 2nd defendant, therefore, there was no necessity to enter into the sale agreement in favour of the plaintiff. Admittedly, the Power Agent is a close relative of the 1st defendant and she is the wife of the 2nd defendant and close relationship between the parties shows that the sale transaction to 2nd defendant is sham and nominal.

26. In respect of the observation made by the 1st Appellate Court regarding the stamp papers, it is submitted that, as rightly pointed out by the learned counsel for the appellant it is not in dispute that the 1st defendant handed over the stamp papers for the borrowal of the loan amount. According to the pleadings of the 1st defendant, he had handed over the signed blank stamp papers to the plaintiff at the time of the loan transaction and the plaintiff subsequently manipulated the same by creating the sale agreement. Therefore, the observation of the 1st appellate Judge that there is variation in the stamp papers is unwarranted one. Once the execution and handing over of the signed blank stamp papers are admitted, the burden rests upon the 1st defendant to establish the manipulation by adducing evidence. In the absence of such proof, the findings rendered by the 1st appellate Judge is unwarranted and therefore, the same is set aside. Accordingly substantial question of law Nos.1 and 2 are answered.

27. The execution of Ex.A.1 document was proved by P.W.2 and 3 but the 1st appellate judge, failed to appreciate these aspects. Therefore,

rejecting the relief of the plaintiff for specific performance as such is illegal and is liable to be set aside. Accordingly, Substantial Question of Law No.3 is answered.

28. On the above reasonings, the findings of the 1st Appellate Judge is set aside. The Second Appeal is allowed. Findings of the Trial Judge is confirmed. Suit decreed as prayed for. No costs.

03.06.2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
nvsri

To

1. The II Additional District Judge, Puducherry.

2. The Additional Sub Judge, Puducherry.

3.The Sub Registrar
Ambur

4.The Section Officer, V.R.Section, High Court, Madras.

T.V.THAMILSELVI J.

nvsri

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