



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 10.12.2025

Judgment pronounced on : 30.01.2026

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

A.S.No.135 of 2023
& CMP.No.5287 of 2023

K.A.Shanmugham

..Appellant

Vs.

M.K.Basheer

..Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree dated 01.09.2022 passed in O.S.No.534 of 2017 on the file of the III Additional District Court, Coimbatore.

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.K.Sudhakar

JUDGMENT

The plaintiff in a suit for specific performance, is the appellant in the above appeal suit.



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2.Pleadings:

The plaint in brief:

The plaintiff entered into a registered agreement of sale on 07.12.2015 to purchase the properties belonging to the defendant, for a total sale consideration of Rs.10,50,000/-. The agreement was registered in Doc.No.13846 of 2015. On the date of the agreement, the plaintiff paid Rs.10,00,000/- as advance. It was agreed that the balance Rs.50,000/- would be paid within 24 months from the date of agreement and the sale deed would be registered thereafter. The plaintiff has always been ready and willing to perform his part of the contract. On 07.11.2017, the plaintiff sent a lawyer's notice, expressing readiness and willingness and also calling upon the defendant to come to the SRO, Avinashi, to conclude the sale deed to execute and register the sale deed. Despite receipt of the said notice, the defendant turned a deaf ear. As the defendant is trying to defeat and defraud the lawful rights of the plaintiff and making hectic arrangements to alienate the suit properties to third parties, the plaintiff has come forward seeking specific performance of the agreement of sale.

3.The written statement in Brief:

The defendant never agreed to sell the suit properties to the plaintiff. The defendant used to regularly borrow money from moneylenders and it was the usual practice to register documents like sale agreements and mortgages,



besides also powers of attorney in favour of the moneylenders as security for the borrowing and after repayment, the moneylenders used to cancel the agreements, mortgages and powers of attorney. The defendant, in order to settle his previous creditor, one Vivekanandan, to whom he was due Rs.5,00,00/-, approached two brokers, who introduced the plaintiff to the defendant. The plaintiff lent only Rs.5,00,000/- on 07.12.2015 and on the same day, the defendant has settled the claim of the previous creditor, Vivekanandan. The mortgage deed in his favour was cancelled by receipt No.13845 of 2015. The plaintiff demanded 24% interest for the sum of Rs.5,00,000/- lent by the plaintiff and the defendant was compelled and forced to execute the registered sale agreement for Rs.10,50,000/-, which was the very next document registered after the cancellation of the mortgage deed. The defendant, who was in urgent need of money, had no other option, but to accept the plaintiff's unlawful demands. The defendant has been paying the interest regularly for which the plaintiff has not issued any receipts. The entire transaction was only a loan transaction and the parties never intended the document to be a sale agreement. The suit property is worth more than Rs.50,00,000/- and as a prudent owner, the defendant would have never agreed to part with the same for a throw away consideration of Rs.10,50,000/-. The defendant has sent an elaborate reply notice on 07.12.2017, which has been received by the plaintiff's counsel on 11.12.2017. The defendant therefore prayed for dismissal of the suit.



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Based on the pleadings, the trial Court framed the following issues on 10.12.2019:

1. Whether the sale agreement dated 17.12.2015 was intended for sale or towards loan transaction?
2. Whether the payment of advance amount is proved?
3. Whether the plaintiff was ready and willing to execute the part of contract?
4. Whether the plaintiff is entitled to the relief of specific performance of contract?
5. Whether the plaintiff is entitled to the relief of permanent injunction?
6. To what other relief the plaintiff is entitled to?

5. Trial:

At trial, the plaintiff examined himself as P.W.1 and one Raju, one of the witnesses to the agreement was examined as P.W.2. Ex.A1 to Ex.A3 were marked on the side of the plaintiff. On the side of the defendant, the defendant examined himself as D.W.1 and Mr.Mohamed Myideen as D.W.2 and marked Ex.B1 to Ex.B4.



6. Decision of the trial Court:

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The trial Court found that the transaction was only a money transaction and not intended to be a sale transaction. The trial Court also found that the plaintiff had not established readiness and willingness to perform his part of the contract. However, despite there being no relief for refund of the advance money, the trial Court proceeded to direct payment of the admitted sum of Rs.5,00,000/-, together with interest at 24% per annum as the defendant has not pleaded discharge. The suit was ultimately decreed for a sum of Rs.5,00,000/-, together with interest at 24% per annum from the date of the sale agreement till the date of the decree and thereafter, at the rate of 6% on Rs.5,00,000/-, till the date of realization.

7. Arguments of the learned counsel for the appellant:

(a) Mr.K.Govi Ganesan, learned counsel for the appellant would submit that the defendant has not disputed the execution and registration of the sale agreement which has been exhibited as Ex.A1. In such circumstances, the burden was heavily on the defendant's shoulders to establish that the said document did not reflect the true nature of transaction. Pointing out to the evidence on record, the learned counsel for the appellant would contend that though both the witnesses to the sale agreement were examined, one on the side of the plaintiff and the other on the side of the defendant, the said witnesses



have spoken about the respective versions of the plaintiff and the defendant alone and in such circumstances, the trial Court clearly fell in error in finding that the parties did not enter into an agreement of sale and that the transaction was only a loan transaction.

(b) The learned counsel for the appellant would further contend that it was the plaintiff who issued the notice within the agreed period of two years, calling upon the defendant to come forward to execute and register the sale deed in his favour. He would also state that out of the total agreed sale consideration of Rs.10,50,000/-, Rs.10,00,000/- has already been paid and what was remaining was only Rs.50,000/- and therefore, the trial Court ought not to have rendered a finding that the plaintiff was not ready and willing to perform his part of the contract. The learned counsel for the appellant also states that the defendant has miserably failed to discharge the burden upon him to establish that the document was executed only as security for the said borrowing made by the defendant from the plaintiff. The learned counsel for the appellant prays for the judgment and decree of the trial Court to be set aside.

8.Arguments of the learned counsel for the respondent:

Mr.K.Sudhakar, learned counsel for the respondent would firstly contend that the very nature of the agreement evidences the fact that it was not an



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intended sale agreement since for payment of a mere Rs.50,000/-, two years time has been given. He would further contend that admittedly the plaintiff did not take any steps to have the agreement enforced and at the fag end of the two year period, the plaintiff issued the notice and thereafter has filed the suit. He would therefore state that the trial Court has rightly found the agreement to be a loan transaction and not an intended sale agreement. He would further state that though the plaintiff had not sought for the relief of refund of advance, the trial Court had directed refund of Rs.5,00,000/-, together with interest at 24% per annum, which too has been complied with by the defendant by depositing the same before the trial Court. The learned counsel for the respondent would therefore state that there is absolutely no infirmity in the findings of the trial Court, warranting interference in the first appeal.

9. Point for consideration:

After hearing the learned counsel on either side, the following points that arise for consideration in this appeal:

(1) Whether Ex.A1, agreement is an intended sale agreement or was entered into as security for repayment of amounts borrowed by the defendant?

(2) If the agreement in Ex.A1 is held to be an intended sale agreement, whether the plaintiff has been ready and willing to perform his part of the contract, entitling him to a decree of specific performance.



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(3) Whether the plaintiff is entitled to any other relief.

10. Point No.1:

The execution of the document and registration of the same on 07.12.2015 is not in dispute. It is the case of the defendant that the defendant used to borrow monies and it was customary for the defendant to enter into a sale agreement or mortgage deed or even give a power of attorney as security for the amounts borrowed and that upon repayment, the document would be cancelled. It is in similar circumstances that the suit agreement in Ex.A1 also came to be executed by the defendant in favour of the plaintiff. In short, the defence raised by the respondent before the trial Court was that Ex.A1, sale agreement was a sham and nominal transaction. The said plea would fall under proviso (1) to Section 92 of the Indian Evidence Act. The burden, in such circumstances, was clearly on the defendant to establish that Ex.A1, sale agreement was a sham and nominal transaction.

11. Firstly, the agreement records that the sale consideration is Rs.10,50,000/- and an advance of Rs.10,00,000/- has been paid even under the agreement of sale. For payment of the balance sale consideration, a period of 24 months has been fixed. No reasons have been recorded for such a long period of time to pay the small sum of Rs.50,000/-. In fact, in cross-examination, as



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rightly found by the trial Court, P.W.1 admitted that he is earning not less than Rs.30,000/- per month from rental income alone. However, when confronted with the two year period fixed for completion of the sale transaction, P.W.1 has stated that it was a typographical mistake and the transaction was intended to be completed within a period of three months. If that be really true, the plaintiff would not have waited until the agreement was about to expire and in the 24th month alone, call upon the defendant to come forward to specifically perform the said agreement. The trial Court has rightly considered the evidence of P.W.1 and rendered an adverse finding against the plaintiff. D.W.1 has not admitted in his oral evidence that Ex.A1 is an intended sale agreement and the plaintiff has not been able to extract any admission with regard to the transaction not being a loan transaction. The trial Court has also found that for settling the borrowing of Rs.5,00,000/- which was to be paid together with 18% interest, no prudent person would borrow the same amount at higher rates of interest, especially when there was no demand for repayment by the earlier mortgagor.

12.On an overall assessment of the oral and documentary evidence, the trial Court came to the conclusion that Ex.A1 was executed only as security for the loan transaction. I do not find any infirmity in the finding rendered by the trial Court. For a partly balance sale consideration of Rs.50,000/-, no prospective purchaser who has parted with Rs.10,00,000/- would postpone the



execution of the sale deed which has his own risk factors. The defendant also also been able to show that in earlier instances as well there have been similar sale agreements entered into and subsequently cancelled, upon repayment of the amounts borrowed. I am therefore inclined to answer the point No.1 in favour of the respondent, holding that Ex.A1 was entered into only for the purposes of security for repayment of the amounts borrowed by the defendant.

13.Point No.2:

The trial Court has found that the plaintiff has also not been ready and willing to perform his contractual obligations. When P.W.1 deposed in cross-examination that the parties intended to complete the transaction within a period of three months, then the plaintiff ought to have taken steps to pay the balance consideration of Rs.50,000/- and conclude the transaction within the said period of three months. However, the plaintiff has not taken any steps until the last month and just prior to the expiry of the period fixed under Ex.A1, sale agreement, the plaintiff has chosen to issue a lawyer's notice. The plaintiff has also not been able to demonstrate that he was ready with the remaining Rs.50,000/- to be paid to the defendant. The plaintiff has also not attempted to deposit the balance sale consideration of Rs.50,000/- before the trial Court. Even though the finding in respect of point No.1 is answered against the appellant, even if the agreement was an intended sale agreement, even then the



plaintiff has not established readiness and willingness to perform his obligations under Ex.A1. Therefore, the findings regarding lack of readiness and willingness are also confirmed. Point No.2 is answered against the appellant and in favour of the respondent.

14.Point No.3:

The trial Court, taking note of the fact that the defendant had admitted receipt of Rs.5,00,000/- and despite there being no for refund of advance by way of an alternate prayer, yet proceeded to direct the defendant to pay Rs.5,00,000/-, together with interest at 24% per annum. In fact, subsequent to the decree, the defendant has also paid the entire decretal amount by deposit into Court. The trial Court has however failed to consider the fact that when the defendant had admitted to the execution, as well as registration of Ex.A1, it was not open to the defendant to deviate from the terms and conditions stipulated under the said agreement. The trial Court has however erroneously relied on the proviso (1) to Section 92 of the Indian Evidence Act. In terms of proviso (2) to Section 92 of the Indian Evidence Act, it is open to the defendant to have established or proved existence of a separate oral agreement as to any matter on which the agreement of sale was silent and which is not inconsistent to its terms.



15.The defence taken by the respondent, as defendant, was only under proviso (2) to Section 92 of the Act to contend that though the agreement of sale was entered into between the parties, it was only as a security for the borrowing made by the defendant. If the defendant intended to take advantage of the proviso (2) to Section 92 of the Act, then he cannot plead or raise any defence which is inconsistent with the terms of the agreement. Therefore, the defendant has to agree to the terms as found in Ex.A1. Once the defendant admits execution of Ex.A1, sale agreement, it is not open to the defendant to contend that he did not receive the amount of Rs.10,00,000/- stated thereunder, but he received only Rs.5,00,000/-. The trial Court therefore clearly fell in error in applying wrong proviso to Section 92 of the Act to direct repayment of only Rs.5,00,000/- which was admitted by the defendant, instead of the entire sum of Rs.10,00,000/-.

16.In fact, in cross-examination, D.W.1 has categorically admitted that as advance, he has received Rs.10,00,000/-, out of the total sum of Rs.10,50,000/- mentioned as “நான் வாதியுடன் செய்து கொண்ட கிரைய ஒப்பந்தத்தின்படி கிரைய தொகை ரூ.10,50,000/- கிரைய முன்பணமாக ரூ.10 இலட்சம் பெற்றுக்கொண்டுள்ளேன்”. Therefore, the trial Court failed to note the admission of D.W1 regarding receipt of Rs.10,00,000/-. In any event, if the defendant was desirous of taking umbrage under the second



proviso to Section 92 of CPC, the defendant should first and foremost agree and admit to the terms mentioned in the agreement. The defendant cannot taken an inconsistent stand which is different from what the terms and conditions of Ex.A1 agreement set out. Only in such circumstances, the defendant would be entitled to attack Ex.A1, sale agreement as sham and nominal. Point No.3 is answered accordingly in favour of the appellant.

17.In the light of the above, the trial Court, having rightly found that the parties cannot be forced into multiple rounds of litigation, ought to have directed refund of the entire sum of Rs.10,00,000/- and not Rs.5,00,000/- alone. However, considering the fact that Rs.5,00,000/- was directed to be refunded together with interest at 24% per annum and the same has also been deposited by the defendant, I am inclined to direct the respondent to pay the remaining sum of Rs.5,00,000/-, without any interest, within a period of six months from the date of receipt of the copy of the judgment in the first appeal.

18.Result:

In fine, the Appeal Suit is partly allowed, by directing the respondent to pay a sum of Rs.5,00,000/-, without interest, within a period of six months from the date of receipt of the copy of the judgment and decree being made ready in this first appeal. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.



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30.01.2026

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

The III Additional District Court, Coimbatore.

P.B.BALAJI.J,

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Pre-delivery judgment made in
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