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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 20-11-2026**

Case QR

CORAM

**THE HON'BLE MR.JUSTICE P. DHANABAL**

**SA No. 997 of 2011** and M.P. No.1 of 2011

*CNR: {HCMA010362202011}*

Pushpa W/o Chelladurai

..Appellant(s)

Vs

Haji Mohammed S/o Mohammed Kasim

..Respondent(s)

**PRAYER**: The Second Appeal has been preferred under Section 100 of Civil Procedure Code as against the decree and judgment passed in A.S No.21 of 2010 dated 04.03.2011 on the file of the Subordinate Judge, Tiruvarur reversing the decree and judgment of the trial Court passed in O.S. No.122 of 2008 dated 28.10.2010 on the file of the District Munsif, Tiruvarur.

For Appellant(s): M/s. S. Ashwin Prashanth
for Mr. K. Harishankar

For Respondent(s): Mr. G. Govarthanan for Mr. B.Ramamoorthy

**JUDGMENT**

The Second appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Tiruvarur in A.S No.21 of 2010 dated 04.03.2011. The appellant herein is the defendant, and the respondent herein is the Plaintiff, who filed a Suit in O.S. No.122 of 2008 on the file of the District Munsif, Tiruvarur for the relief of specific performance of contract. The said Suit was dismissed. Aggrieved by the said decree and judgment, the Plaintiff



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has preferred an appeal in A.S. No.21 of 2005 on the file of the Subordinate Court, Tiruvarur and the said appeal was partly allowed and the defendant was directed to return the advance amount of Rs.50,000/- with interest at 9% per annum from 14.03.2007 till the date of trial Court decree and after decree, 6% interest till the date of realisation. The Plaintiff was permitted to take Rs.10,000/- deposit amount. Aggrieved by the said decree and judgment, the appellant / defendant has preferred this second appeal.

2. The ***case of the Plaintiff*** before the trial Court is that the Suit property, originally belonged to the defendant and she agreed to sell the property to the Plaintiff for a sum of Rs.60,000/- on 14.03.2007. A sum of Rs.50,000/- was paid by the Plaintiff to the defendant as advance amount on the same day i.e., on 14.03.2007. The balance amount has to be paid within 6 months. The Plaintiff was always ready and willing to perform his part of contract, but the defendant was evading from executing the Sale Deed. Therefore, the Plaintiff issued a notice dated 24.08.2008 calling upon the defendant to execute the Sale Deed within 10 days from the date of receipt of the notice, but the defendant refused to receive the notice. Even after the notice, the defendant was not ready to execute the Sale Deed. Therefore, the Plaintiff filed the Suit for specific performance of contract.


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3. The ***case of the defendant before the trial Court*** is that the Suit is not maintainable and the same is liable to be dismissed. The Suit agreement was executed for the loan received by the Power Agent Jayaraman for security purpose. In fact, the agreement was not intended to sell the property. Taking advantage of the same, now the Plaintiff has filed the Suit with malafide intention. The Plaintiff has not approached the Court with clean hands. When Power Agent Jayaraman approached the Plaintiff for loan, he was insisted to pay 5% interest per 100 per month and also to execute unfilled Promissory Note and two cheque leaves. Thereby, he also handed over unfilled Promissory note, two cheque leaves and also handed over the Registration Copy of the vehicle bearing Registration No.TN50 N 2810 of a load auto and also executed Sale Agreement. He paid interest for the principal amount of Rs.30,000/- and lastly paid the entire loan amount. After making repayment, when the defendant asked to return the documents which were already handed over to the Plaintiff, the Plaintiff told that he will return the documents in two days and thereafter, he failed to return the documents. The Suit property was allotted to the Principle Pushpa and as per the assignment conditions, for a period of 10 years, she was restricted to alienate the property. With the consent of the defendant, Jayaraman has constructed a property and is residing thereon. Therefore, the loan obtained by Jayaraman is noway relevant to the principal Pushpa and the agent has not obtained the loan on behalf of the Principal. Therefore, the Suit is liable to be dismissed.



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4. Based on the above said pleadings and after hearing both sides, the trial court has framed the following ***issues*** for trial:-

***Issues:***

***1. Whether the Plaintiff is entitled to specific performance as prayed for?***

***2. Whether the Plaintiff is entitled to the alternate relief as prayed for?***

***3. Whether the Plaintiff is entitled to cost of the Suit?***

***4. To what other reliefs?***

5. Before the trial court, on the side of the plaintiff, witness PW1 was examined and Ex.A.1 to Ex.A.3 were marked. On the side of the defendant, DW1 was examined and Ex.B.1 to Ex.B.4 were marked. The trial court, after evaluating the oral and documentary evidences adduced on both sides and perusing the records, dismissed the Suit through its judgment and decree dated 28.10.2010. Aggrieved by the said decree and judgment, the Plaintiff has preferred an appeal in A.S. No.21 of 2010 on the file of the Subordinate Judge, Tiruvarur on various grounds.

5.1. The First Appellate Court has framed the ***points for determination as follows:-***

***(i)Whether the finding of the trial Court that Ex.A.2 has not been proved, is correct?***


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***(ii) Whether the finding of the trial Court that Ex.A.1 was executed for the loan, is correct?***

***(iii) Whether the finding of the trial Court that the Plaintiff was not willing and has not taken any steps to get the Sale Deed executed, is correct?***

***(iv) Whether the finding of the trial Court that the Sale Agreement is barred by limitation, is correct?***

***(v) Whether the appeal is liable to be allowed or not?***

6. After hearing both sides and perusing the records, the First Appellate Court has modified the judgment and decree passed by the trial Court and passed a Money decree by directing the defendant to pay a sum of Rs.50,000/- with interest at 9% per annum from the date 14.03.2007 till the date of decree. Thereafter 6% interest till the date of realization and the Plaintiff was permitted to receive Rs.10,000/- deposited by him before the Court. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellant / defendant.

7. ***This Court, at the time of admitting the second appeal, formulated the following Substantial Question of Law.:-***



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***Whether the Lower Appellate Court was right in holding that the transaction between the parties is not a loan transaction, the respondent / Plaintiff is entitled to the relief of specific performance?***

***8.*** For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial Court.

9. The learned counsel appearing for the appellant would submit that the original owner was not impleaded in the main Suit and the Suit was filed in the name of Power Agent Jayaraman. The Power Agent himself admitted that he borrowed loan from the Plaintiff and thereby, executed an agreement. The trial Court after considering the admission made by PW1 about the existence of house and about the borrowal of money by the Power Agent, came to a conclusion that Ex.A.1 was not entered into with an intent to sell the property and the Plaintiff also admitted that the Power Agent borrowed money for his own use and thereby, Ex.A.1 was executed by the Power Agent as security for the loan amount borrowed by him and not executed for the sale of the property and thus, declined to grant specific performance of contract. However, the First Appellate Court erroneously held that the Plaintiff deposed that the entire amount was handed over to the agent of the defendant and the Power Agent has also admitted the receipt of money, thereby it is the matter between the principal



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and the power agent. Once the defendant had admitted the receipt of money, it is the duty of the principal to pay the money and further held that the Plaintiff proved that the agreement was executed for sale of the property. Thereafter, rendered findings that as per Ex.A1, the house situated in the property was not mentioned and thereby, the Plaintiff is not entitled to specific performance of contract and passed money decree. Once the First Appellate Court came to a conclusion that the house property was not mentioned in Ex.A.1 agreement, the Court ought to have held that the agreement was not intended to sell the property and after admission made by the power agent that he obtained loan for his own purpose, the Court ought to have granted money decree as against the agent only. But erroneously decreed the Suit as against the Principal. The above said findings of the First Appellate Court are perverse and therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.

10. The learned counsel appearing for the respondent would submit that the Plaintiff filed the Suit for specific performance of contract. As per the agreement Ex.A1, the defendant agreed to sell the property for a sum of Rs.60,000/- and executed an agreement dated 14.03.2007. The Power Agent of the defendant has executed an agreement for sale and on the same day of agreement itself, a sum of Rs.50,000/- was paid towards advance and the


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remaining amount has to be paid within 6 months. The Plaintiff was always ready to perform his part of contract, but the defendant evaded from executing the sale deed. Therefore, he issued a notice and thereafter, filed the Suit. The defendant also admitted the execution of agreement. But according to him, it was executed only as security for the loan obtained by the defendant. Once the defendant admitted the execution of agreement, it is for him to prove that the agreement was not executed for sale and it is for the loan purpose, but there is no proper evidence adduced by the defendant. However, the trial Court dismissed the Suit by holding that the agreement was not executed intending to sell the property and it is executed for the loan obtained by the Power Agent of the defendant. The First Appellate Court, after considering the evidence, has correctly held that the agreement was executed for sale of the property, however, since the house property was not mentioned in the Suit property, declined to grant specific performance of contract, but granted money decree as against the defendant. Therefore, the judgment and decree passed by the First Appellate Court are in order and the second appeal is liable to be dismissed.

11. This Court heard both sides and perused the entire materials available on record.



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12. In this case, there is no dispute that the Suit property belonged to one Pushpa and the said Pushpa appointed one Jayaraman as her Power Agent and the said Jayaraman, as a Power Agent, entered into an agreement with the Plaintiff on 14.03.2007. The Plaintiff has filed the Suit in the name of Power Agent Jayaraman and the said Pushpa has not been added as a party at her individual capacity and no notice has been served on the original owner Pushpa and the Power Agent of Pushpa namely Jayaraman has alone entered his appearance. According to him, he entered into an agreement with the Plaintiff, but the said agreement was not intended for sale of the property, but for the borrowal of money from the Plaintiff to the tune of Rs.30,000/- and for the said borrowed loan amount, he executed an agreement as a security for the said amount. In order to prove the case of the Plaintiff, on the side of the plaintiff, witness PW1 was examined and Ex.A.1 to Ex.A.3 were marked. On the side of the defendant, DW1 was examined and Ex.B.1 to Ex.B.4 were marked. Now the question arises as to whether the agreement was executed for the sale of the property or it was executed as security for the loan obtained by the Power Agent Jayaraman.

13. In this context, though the Plaintiff filed Proof affidavit stating that the agreement Ex.A.1 was intended for sale of the property and he paid advance amount of Rs.60,000/-, in his cross examination, he deposed that he does not


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know about the four boundaries and also about the availability of the house in the property. He was unable to say as to whether any house is situated at present and he also admitted that he came to know that Jayaraman was the owner of the property and he did not know that for whom, the said Jayaraman is acting as a Power Agent. Further PW1 in his cross examination, for the question as to whether he perused the documents of the Suit property before entering into the Sale agreement, answered that he did not see the documents at the time of entering into agreement and only at the time of registration of the agreement, he saw the documents. Also he admitted that except the Power Deed, no other documents were shown to him. Therefore, from the above said evidence of PW1, it is clear that the Plaintiff has not even verified the parental deeds of the Suit property and not even know about the existence of house in the Suit property and apart from Power Deed, he has not verified any document. The above said conduct of the Plaintiff would show that the agreement was not intended to sell the property.

14. An ordinary prudent man cannot enter into an agreement for sale, without verifying the parental documents and without inspecting the property. Even according to the Plaintiff, he came to know that Jayaraman was the owner of the property. Once the Plaintiff entered into an agreement as if the said Jayaraman was the owner of the property, he cannot make claim against the



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Principal and the principal is not liable for the activities of the Power Agent Jayaraman. Further the Plaintiff in his cross examination admitted that the said Jayaraman has borrowed money for his own benefit. Therefore, from the above said evidence, it is clear that Ex.A.1 was not intended to sell the property. Further PW1 admitted that within 6 months, as per the agreement, he has not issued any notice. Further at the time of filing the Suit, the description of the house, has not been mentioned, and there are no pleadings in the Plaint about the existence of house. Whereas the defendant produced the house tax receipts to show the existence of house. Further the defendant has also produced the order of Tahsildar, Tiruvarur, Ex.B.1 dated 18.09.1997. As per the said Ex.B.1, there are some conditions. As per Condition No.2, within 6 months, building should be constructed. Therefore it is a presumption that within 1 year, the construction was made, as there was no action was taken by the Government. The alleged agreement is dated 14.03.2007 and the defendant also in the written statement stated that Jayaraman constructed a house and the same is under his possession and enjoyment. While so, the said house has not been mentioned in the agreement. Therefore, the above said conduct of the parties would show that Ex.A.1 agreement was not executed intending to sell the property. Thereby, the defence of the defendant is probabilised through the evidence. Therefore, the Plaintiff is not entitled to the relief of specific performance of contract.



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15. However the defendant himself admitted the receipt of money to the tune of Rs.30,000/-. When the defendant denied that the execution of agreement was not for sale of the property, but it is executed for the loan obtained by him and the defence of the defendant has been probabilised, it is the duty of the Plaintiff to rebut the said evidence and to prove that the consideration was passed through the said Ex.A.1 agreement. In this context, the Plaintiff has not examined any other witness except PW1 and he failed to examine the attesting witness in the agreement to prove the advance of sale price. However, the defendant who borrowed money and executed agreement namely Jayaraman, has himself admitted the receipt of money. Thereby, he is liable to pay money as admitted by him. The defendant has admitted that he borrowed money to the tune of Rs.30,000/-. Therefore, for the above said admitted amount, the Plaintiff is entitled to decree. In this context, the trial Court, after considering the evidences, came to a fair conclusion that the agreement has not been executed intending to sell the property, thereby, declined to grant specific performance of contract. At the same time, failed to consider the admission made by the defendant Jayaraman, who borrowed loan from the Plaintiff, thereby, the trial Court failed to consider the above said aspects. The trial Court ought to have granted money decree at least for the admitted amount.



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16. The First Appellate Court without any evidence, has erroneously rendered findings that the Plaintiff has proved that the agreement was executed for sale of the property. Once the First Appellate Court came to a conclusion that the house situated in the property has not been mentioned in the agreement, it ought to have stated that the agreement was not executed intending to sell the property and it is executed only for the purpose of loan. Thereby, the findings of the First Appellate Court in respect of the purpose of agreement and grant of decree for specific performance of contract are without evidence and perverse and the same are liable to be set aside and accordingly, set aside.

17. The learned counsel appearing for the appellant has relied upon a judgment of this Court in ***Rajammal and another v. M. Senbagam reported in 2016-5-L.W. 425.*** On a careful perusal of the said judgment, it is clear that in a Suit for 'Specific Performance of Contract', when the defendant has taken a plea that the agreement was executed in respect of loan transaction and not for sale, after admitting the execution of agreement, such defense is not hit by Section 92 of the Indian Evidence Act. The Plaintiff should plead and prove the readiness and willingness, right from the date of agreement till the decree is passed. In the case on hand, the defendant has taken a plea that the agreement was not intended to sell the property and it is for the security of the loan borrowed by the defendant, thereby his oral evidence is permissible as per the


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provisions of Section 92 of the Indian Evidence Act. Further the Plaintiff has not issued notice immediately within the limitation period of agreement and has not taken any steps to get the Sale Deed executed in his favour and notice was also issued belatedly. Therefore, the Plaintiff has failed to prove his readiness and willingness to perform his part of contract.

18. As far as money decree granted by the First Appellate Court for the Suit amount of Rs.50,000/- is concerned, once the defendant denied the character and purpose of agreement and he probabilised his defence, it is the duty of the Plaintiff to prove that the sale consideration was passed through the said agreement. But the Plaintiff failed to examine the attesting witness of the agreement to prove the same and only examined PW1 and no other witness has been examined on the side of the Plaintiff. The Plaintiff was unable to explain as to why the house was not mentioned in the agreement and non-mentioning of house in the agreement itself would show that the agreement was not executed between the parties intending to sell the property. Once the agreement has not been executed intending for sale of the property, the Plaintiff is not entitled to specific performance of contract. However, based on the admission made by the defendant that he borrowed money to the tune of Rs.30,000/- and he is always to ready to return the same, the First Appellate Court ought to have granted decree for the said admitted amount of Rs.30,000/-, instead of



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Rs.50,000/-. Though the defendant Jayaraman pleaded that he repaid the borrowed money, there is no evidence for the said repayment and thereby, the defendant failed to prove his contention. Therefore, the Plaintiff is entitled to Rs.30,000/- from the defendant Jayaraman.

19. The Plaintiff, who filed the Suit, has not impleaded the original owner Pushpa and he has filed the Suit against the Principal Pushpa represented by her Power Agent Jayaraman. The Power Agent himself admitted that he only borrowed money and the Plaintiff also admitted that the Power Agent borrowed money for his own expenses and thereby, the said Jayraman, Power Agent alone is liable to pay the said money. However, the First Appellate Court directed the principal to pay the amount borrowed by the Power Agent. The Power Agent Jayaraman, has not borrowed money as a Power Agent of the defendant, and he has borrowed money on his individual capacity. The Plaintiff also stated that he came to know that the Jayaraman is the owner of the property. Therefore, the Power Agent alone is liable to pay money. The Principal namely Pushpa is noway liable to pay money.

20. In this context, the First Appellate Court rendered findings that once the agent of the Principal borrowed money, it is between the Principal and the agent and noway, the claim of the Plaintiff will affect. However, the Plaintiff


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himself admitted that the said Jayaraman approached him and borrowed money and after knowing that the property is in the name of Jayaraman, the Plaintiff paid money and thereby, the Plaintiff after knowing that the said Jayaraman has approached him for the borrowal of money for his personal use, lent money and thereby, the original owner Pushpa is noway liable to pay money. Therefore, the First Appellate Court is not right in holding that the transaction between the parties is not a loan transaction, however, not granted the relief of specific performance of contract, on the ground that the house has not been mentioned in the agreement and only granted money decree. Therefore, the decree and judgment passed by the First Appellate Court are to be modified to the effect that the 'Plaintiff is entitled to the relief of money decree for a sum of Rs.30,000/- from the Power Agent Jayaraman, who has borrowed money on his individual capacity, with interest at 9% from the date of agreement i.e., 14.03.2007 till the date of decree and thereafter 6% interest per annum". The other aspects of the judgment and decree passed by the First Appellate Court are in tact.

21. With the above said observations and modifications, this ***Second Appeal is partly allowed. The judgment and decree passed by the First Appellate Court in A.S No.21 of 2010 dated 04.03.2011 on the file of the Subordinate Judge, Tiruvarur are modified*** to the effect that the 'Plaintiff is



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entitled to the relief of money decree for a sum of Rs.30,000/- from the Power Agent Jayaraman, who has borrowed money on his individual capacity, with interest at 9% from the date of agreement i.e., 14.03.2007 till the date of decree and thereafter 6% interest per annum". There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

**20-11-2026**

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

MJS

To

1. The Subordinate Judge, Tiruvarur.
2. The District Munsif, Tiruvarur.



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**P.DHANABAL, J.**

**MJS**

**SA No. 997 of 2011**

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