



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 28.01.2026

Judgment pronounced on : 30.03.2026

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

A.S.No.179 of 2024
& CMP.No.6391 of 2024

Abdul Sulaiman Khan

.. Appellant

Vs.

1.G.R.Devendrababu
2.The Sub Registrar,
Sub Registrar Office,
Uthukottai Taluk,
Tiruvarur District.

.. Respondents

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the judgment and decree dated 05.01.2024 passed in O.S.No.185 of 2011 on the file of the I Additional District and Sessions Judge, Tiruvallur.

For Appellant : Mr.S.T.Raja

For Respondents : Mr.M.Murali
Government Advocate for R2
No appearance for R1

JUDGMENT

The 1st defendant in a suit for specific performance is the appellant.



2.Pleadings:

The Complaint in brief:

The 1st defendant is the owner of the suit property. The plaintiff entered into an agreement of sale on 31.01.2018 with the 1st defendant for purchase of the suit property, which is a vacant house site. The sale consideration was fixed at Rs.15,00,000/-. The plaintiff has paid an advance of Rs.5,00,000/- on the date of execution of the said agreement of sale. The 1st defendant had come forward to sell the property to meet his urgent family expenses. The balance sale consideration was payable only at the time of execution of the sale deed. In March 2018, the plaintiff informed the 1st defendant that he was ready to execute the sale deed and that the balance sale consideration was also available. The plaintiff pleads that he was ready and willing to perform his part of the contract. The plaintiff issued a lawyer's notice on 31.03.2018. Despite receipt of notice, the 1st defendant has not come forward to honour his commitments. The plaintiff has also lodged the remaining sale consideration of Rs.10,00,000/-.

3.Written statement in brief:

The 1st defendant states that he knows only to speak Tamil and does not know to read and write in Tamil. The 1st defendant did not execute any sale agreement in favour of the plaintiff. The 1st defendant, in order to meet the educational expenses of his children, wanted financial assistance and therefore, he was in urgent need of money. The 1st defendant approached his wife's uncle at Uthukottai, who introduced to him, the



plaintiff. The plaintiff lent Rs.5,00,000/- in January 2018 as loan. At that point of time, the 1st defendant had subscribed his signatures in stamp papers, believing that it is only a loan document. The 1st defendant had agreed to repay the amount of Rs.5,00,000/- in two months. However, on 31.03.2018, he received a lawyer's notice. On receipt of the notice, 1st defendant approached the plaintiff with Rs.5,00,000/-. However, the plaintiff refused to receive the amount and threatened the defendant and also lodged a police complaint before the Superintendent of Police, Tiruvallur. An enquiry was conducted by the police officials. Though the 1st defendant approached the plaintiff several times, offering to repay Rs.5,00,000/-, the plaintiff did not receive the same and only evaded the 1st defendant. The sale agreement is compulsorily registerable on and from 01.12.2012 and hence, cannot be enforced. The 1st defendant's wife's maternal uncle has colluded with the plaintiff, taking advantage of the fact that the 1st defendant does not know to read and write Tamil.

4.Trial:

On the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Saravanan was examined as P.W.2 and Ex.A1 to Ex.A4 were marked and on the side of the defendants, the 1st defendant examined himself as D.W.1 and Ex.B1 and Ex.B2 were marked.



5. Issues framed by the trial Court:

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

1. Whether the sale agreement dated 31.01.2018 is a true and valid agreement?
2. Whether the sale agreement was executed only to secure the loan taken by the 1st defendant from the plaintiff?
3. Whether the plaintiff has proved his means and willingness to conclude the contract?
4. Whether the plaintiff is entitled to the relief as prayed for?
5. To what other relief?

6. Decision of the trial Court:

The trial Court decreed the suit and directed the 1st defendant to execute the sale deed within a period of two months and also granted an injunction, restraining the 2nd defendant from creating any encumbrance by way of sale, gift, settlement or otherwise in respect of the suit property.

7. The present appeal:

Aggrieved by the judgment and decree of the trial Court, the present appeal suit has been preferred.

8. I have heard Mr. S. T. Raja, learned counsel for the appellant and Mr. Murali, learned Government Advocate for the 2nd respondent.



9. Arguments of the learned counsel for the appellant:

(a) Mr.S.T.Raja, learned counsel appearing for the appellant/1st defendant would firstly contend that in Ex.A1 agreement, only the 1st defendant's signature is available and the plaintiff has not signed. He would therefore state that the defence theory projected that the agreement was only a loan transaction was strengthened by the very said fact of the plaintiff not joining the execution of the alleged agreement of sale. He would also state that in cross examination of P.W.1, he has admitted to the fact that the plaintiff did not even verify the title, which is not the normal conduct of any prudent property buyer. It is therefore contended that the transaction was only a loan transaction and not intended to be an agreement of sale.

(b) Pointing out to the default clause in Ex.A1 agreement, the learned counsel for the appellant would contend that the parties had agreed that, in the event of the 1st defendant refusing to receive the balance sale consideration, the plaintiff was entitled to deposit the balance sale consideration in Court and seek enforcement. In this regard, the learned counsel for the appellant would state that when the plaintiff had chosen to issue a lawyer's notice on 31.03.2018 and there was no reply to the said notice, then the plaintiff should have approached the Court immediately. However, pointing out to the fact that the suit has been filed only on 16.06.2018, the learned counsel for the appellant



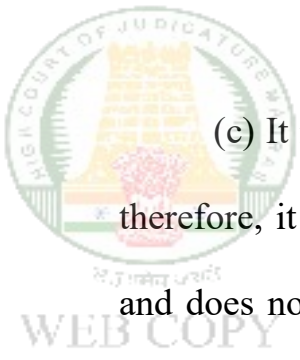
contends that the plaintiff cannot be said to be ready and willing and thereby entitled to a decree for specific performance.

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10. Arguments of the learned counsel for the respondents:

(a) Per contra, Mr. Ilavarasu, learned counsel appearing for the 1st respondent/plaintiff, though did not make any oral submissions. However, after seeking permission of the Court and after serving a copy on the counsel for the appellant, he has filed his written submissions, also relying upon the decisions of the Hon'ble Supreme Court in *Hemalatha Vs. Kashthuri*, reported in 2023 Livelaw (SC) 304 and *Muruganandam Vs. Muniyandi (Died) through LR's*, reported in 2025 INSC 652.

(b) It is seen from the written submissions that it is the case of the respondent/plaintiff that the trial Court has properly appreciated the oral and documentary evidence and decreed the suit. He would further state that in view of the dictum of the Hon'ble Supreme Court in *Hemalatha's case*, even in an unregistered agreement of sale can be admitted in evidence in a suit for specific performance. Similarly, in *Muruganandam's case* as well, the Hon'ble Supreme Court reiterated the said position. It is therefore contended that the argument with regard to the impermissibility of seeking enforcement of unregistered agreement of sale falls to the ground.



(c) It is also stated that the appellant's wife has signed as an attesting witness and therefore, it is not open to the appellant to contend that he knows only to speak Tamil and does not know to read or write and he did not understand the contents of the sale agreement. It is also stated that the defendant has not established by producing any acceptable evidence, that the amount of Rs.5,00,000/- was given as a loan for meeting personal expenses. Therefore, it is contended on the side of the 1st respondent that there is no merit in the appeal.

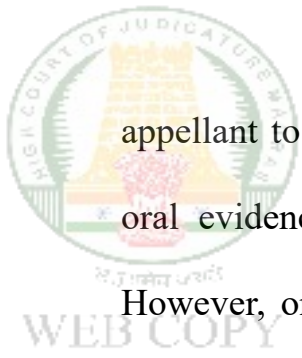
11.Points for consideration:

On careful consideration of the submissions advanced by the learned counsel for the parties, the following points for consideration is framed:

1.Whether the defendant has successfully established that the agreement was only a loan transaction and not an intended sale agreement?

12.Point 1:

The execution of Ex.A1 agreement is not disputed by the appellant. The only contention raised by the appellant is that he only borrowed Rs.5,00,000/- and he never intended to agree to sell his property to the plaintiff. When the execution of the agreement is admitted, the burden was heavily on the appellant's shoulder to establish that Ex.A1 agreement was a sham and nominal document. Therefore, it is for the



appellant to discharge the said onus upon him, by adducing sufficient and satisfactory oral evidence, which is permissible under Section 92 of the Indian Evidence Act.

However, on going through the evidence of D.W.1, I am unable to see how the said burden has been discharged by the appellant. The mere fact that the plaintiff has not signed the agreement of sale will not straight away compel the Court to imply that it is not an agreement of sale, but a loan transaction. The purchaser or intending buyer not joining the execution of the agreement of sale is not fatal to his case, as there is no hard and fast rule that the buyer must compulsorily sign the sale agreement. Something more had to be necessarily adduced by way of acceptable evidence on the side of the defendant to establish that he had borrowed only Rs.5,00,000/-. There is no evidence of any promissory note or letter of borrowing or even repayment of interest towards the alleged borrowing that has been placed before the trial Court, to establish that the transaction between the plaintiff and the 1st defendant was only a loan transaction.

13.Further, the plaintiff has acted diligently and within the time stipulated in the agreement of sale, by issuing a pre-suit notice, before the expiry of the time fixed for performance and admittedly, the appellant had not even replied to the said notice. The stand taken in the written statement that he approached the plaintiff and that the plaintiff threatened him does not go well with the further pleadings that even after such complaint, the defendant offered to repay Rs.5,00,000/-. Such a theory projected in the written statement is only amusing and totally unacceptable.



14. Further, the plaintiff has also filed a lodgement schedule and deposited the balance sale consideration of Rs.10,00,000/- before the Court. The plaintiff has established “readiness and willingness”, entitling him to a decree for specific performance. The trial Court has also rightly considered and appreciated the oral and documentary evidence in the right perspective and found the plaintiff to be entitled to discretionary relief of specific performance. I therefore do not find any merit, warranting interference in appeal. The point is answered against the appellant and in favour of the respondents.

15.Result:

In fine, the Appeal Suit is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

30.03.2026

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

- 1.The I Additional District and Sessions Judge, Tiruvallur.
- 2.The Sub Registrar, Sub Registrar Office, Uthukottai Taluk, Tiruvarur District.



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
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