



A.S. No.255 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2025
PRONOUNCED ON : 30.01.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No.255 of 2019

K. Padmanabhan
S/o.Karumbayiram Pillai
South Main Street,
Therinthanthur, Perumal Kovil Village,
Kuttalam Taluk, Mayiladuthurai Munsifi,
Nagapattinam District.

...Plaintiff/Appellant

Vs.

R.Senkuttuvan
S/o.Rajasekar
South Street, Kokkur Village,
Kuttalam Taluk, Mayiladuthurai Munsifi
Nagapattinam District.

... Defendant/Respondent

PRAYER in A.S.: Appeal Suit filed under Section 96 of CPC to allow this appeal and to set aside the judgment and decree dated 02.11.2018 in O.S.No.22 of 2011 on the file of the District Court, Nagapattinam and decree the suit as prayed for.

For Appellant : Mr.B.Jawahar

For Respondent : Ms.V.Atchaya
for M/s.K.M.Vijayan Associates



A.S. No.255 of 2019

J U D G M E N T

WEB COPY

This Appeal Suit is directed against the judgment and decree dated 02.11.2018 passed by the learned District Judge, Nagapattinam in O.S. No.22 of 2011, whereby the suit for specific performance was dismissed and the suit was partly decreed granting alternative relief, directing the defendant to pay a sum of Rs.5,00,000/- (without interest) and directing the plaintiff to vacate the suit property on receipt of the said amount. Aggrieved by the Judgment and Decree, the plaintiff has preferred the present appeal.

2. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court.

3. The case of the plaintiff: The defendant entered into a sale agreement dated 23.03.2010 (Ex.A1) agreeing to sell the suit property for a total sale consideration of Rs.10,00,000/-. According to the plaintiff, a sum of Rs.3,50,000/- was paid on the date of agreement and a further sum of Rs.1,50,000/- already paid on 24.01.2010 under an unregistered mortgage deed was adjusted towards advance, thus making a total advance of Rs.5,00,000/-. The time for performance was fixed as on or before

30.11.2010. Alleging continuous readiness and willingness and failure on the

2/10



A.S. No.255 of 2019

part of the defendant, the plaintiff issued a pre-suit notice dated 22.09.2010 (Ex. A2) and thereafter filed the suit for specific performance, with an alternative prayer for refund of advance with interest and statutory charge under Section 55(6)(b) of the Transfer of Property Act.

4. The case of the Defendant : The defendant denied execution of Ex.A1 in toto and pleaded that the plaintiff was only a mortgagee in possession under an unregistered usufructuary mortgage for Rs.1,50,000/-. The defendant alleged that Ex. A1 is a rank forgery, denied receipt of Rs.3,50,000/-, and raised a specific plea that the vacant site belongs to Arulmigu Amuruvi Perumal Temple, Thereizhandur, and that his father was only a Paguthidar, rendering the suit for specific performance not maintainable.

5. On the side of the plaintiff, PW1 (plaintiff) and PW2 (attestor) were examined and Exs.A1 to A5 were marked. The defendant examined himself as DW1. The Trial Court held that Ex. A1 was not a rank forgery, but on an overall appreciation of evidence found that the transaction between the parties was essentially a loan transaction continuing from 2007 onwards through recurring usufructuary mortgages. The Trial Court further found that



A.S. No.255 of 2019

there was no genuine intention to sell, declined the discretionary relief of specific performance, but granted alternative relief of refund of Rs.5,00,000/- without interest and directed the plaintiff to vacate the suit property on receipt of the said amount.

6. Aggrieved, the plaintiff filed the present appeal contending that once Ex.A1 is held proved, specific performance ought to have been granted; readiness and willingness stands proved by issuance of notice before the time fixed and by the defendant's silence; the Trial Court erred on temple-title/maintainability and ought to have directed conveyance of whatever right the defendant has (superstructure/leasehold); direction to vacate amounts to granting possession to defendant without counter claim; and evidence was misread/ignored.

7. Points for Consideration: The following points arise for consideration in this appeal:

- (i) Whether the plaintiff has proved due execution of the sale agreement dated 23.03.2010 (Ex. A1) in accordance with law?
- (ii) Whether the plaintiff is entitled to the relief of specific performance?
- (iii) Whether the Trial Court was justified in granting alternative



WEB COPY



A.S. No.255 of 2019

relief of refund coupled with a direction to vacate the suit property?

(iv) To what relief, if any, the parties are entitled?

8. Points No.1 to 3: On execution and Proof of Ex. A1, when execution of a document is specifically denied and a plea of forgery is raised, the burden squarely lies on the plaintiff to prove execution in terms of Sections 101 to 103 of the Evidence Act. Mere marking of the document does not dispense with proof. Although one of the attestors was examined as PW2, his evidence does not inspire confidence, as he admittedly had no knowledge of the transaction or the property. The payment of advance of Rs.3,50,000/- on the date of Ex. A1 and adjustment of Rs.1,50,000/- said to have been paid earlier under the mortgage were also specifically denied by the defendant. No independent or contemporaneous evidence was produced to substantiate such payment.

9. In cases where signature itself is disputed, it is well settled that though the Court has power to compare signatures under Section 73 of the Evidence Act, such power is only ancillary, and the primary burden lies on the party relying on the document to establish genuineness by cogent evidence, including expert evidence where necessary. In the present case, the



A.S. No.255 of 2019

plaintiff did not take any steps to prove the signature through expert evidence, even when the defendant had raised serious doubts regarding variation in signatures. The failure of the plaintiff to discharge this burden is fatal to the case for specific performance.

10. It is also relevant to note that during the course of proceedings, the defendant had filed an interlocutory application seeking examination of the disputed signatures through a handwriting expert. Though the said exercise did not culminate in an expert opinion, the same does not advance the plaintiff's case. When execution of Ex. A1 was specifically denied, the primary burden remained on the plaintiff to establish the genuineness of the signature. Despite being aware of the dispute and having access to earlier admitted documents executed by the defendant, the plaintiff did not take effective steps to prove the execution of Ex. A1 in the manner known to law. The failure of the defendant's attempt to obtain expert opinion cannot substitute the plaintiff's obligation to prove his own document.

11. Even assuming Ex. A1 to be true for argument's sake, the surrounding circumstances, admitted course of dealings, and continuous possession of the plaintiff as mortgagee since 2007 clearly indicate that the



A.S. No.255 of 2019

document was intended only as a security for the loan transaction. The Trial Court has rightly appreciated that specific performance is a discretionary relief, and where the agreement is found to be a device to secure repayment of money, the Court is justified in refusing such equitable relief.

12. The Trial Court, having held that there was no genuine agreement of sale and having declined specific performance, proceeded to grant alternative relief of refund of Rs.5,00,000/- and directed the plaintiff to vacate the suit property. These two directions are inseparably interlinked. However, such a direction to vacate virtually amounts to granting recovery of possession to the defendant, without there being any counter-claim, without payment of court fee, and without a specific issue framed in that regard. The Trial Court thus exceeded the scope of the suit while moulding relief.

13. On a cumulative consideration of pleadings, evidence, and settled legal principles, this Court holds: The plaintiff has failed to prove due execution and genuineness of Ex. A1. The plaintiff is not entitled to the discretionary relief of specific performance. Once the foundational agreement



A.S. No.255 of 2019

itself is not proved and is found not to be a genuine agreement of sale, the grant of alternative relief by the Trial Court cannot be sustained.

14. It is true that the defendant has not preferred any independent appeal or cross-objection challenging the decree of the Trial Court. Ordinarily, in such circumstances, the appellate Court would be slow to place the appellant in a position worse than that under the impugned decree. However, this being a first appeal, which is a continuation of the suit and the final Court on facts, this Court is empowered under Order XLI Rule 33 CPC to pass such decree as the case may require to do justice between the parties. Having found that the very foundation of the suit, namely the alleged agreement of sale, is not proved and that the transaction itself is not a genuine sale transaction, this Court is of the considered view that the suit ought to have been dismissed in its entirety. Accordingly points 1 to 3 are answered against the appellant/ plaintiff.

15. Point No.4. In view of answers arrived to the points No.1 to 3, the plaintiff is not entitled for any relief.

16. Therefore, in fine invoking the power under Order XLI Rule 33 CPC, the decree of the Trial Court dated 02.11.2018 passed in O.S. No.22 of 8/10



A.S. No.255 of 2019

2011, is set aside in full and the suit O.S. No.22 of 2011 is dismissed. The appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

30.01.2026

dpq

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The District Court,
Nagapattinam



WEB COPY



A.S. No.255 of 2019

DR. A.D. MARIA CLETE, J

dpq

Pre-Delivery Judgment in

A.S. No.255 of 2019

30.01.2026