



WEB COPY

SA No. 173 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 173 of 2015

and

M.P.No.1 of 2015

1. P.Marappan (died)
2. Poramayi
3. Valarmathi
4. M. Mohanraj
5. M. Rajeswari
(sole appellant died, and appellants 2 to 5 are
brought on record as LR's of the deceased sole
appellant - vide Court order dated 18/11/2025
made in C.M.P.No.23225 of 2025 in
S.A.No.173 of 2015)

..Appellant(s)

Vs.

1. S.Balakrishnan
2. S.Velliangiri
3. A.Subramaniam

..Respondent(s)

For Appellant(s):

M/s. N. Manokaran

For Respondent(s):

R-1 - notice served - No appearance

R-2 - Not ready in notice

R-3 Mr.M.Guruprasad



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SA No. 173 of 2



JUDGMENT

This Second Appeal has been preferred against the judgment and decree passed by the Second Additional District Judge, Erode in A.S.No.68 of 2012, dated 21.08.2013.

2. Originally, the appellant herein filed the suit before the trial Court in O,S.No.214 of 2010 on the file of Subordinate Judge, Perundurai, for the relief of specific performance of the contract and the said suit was dismissed on 09.11.2011 by the trial Court. Aggrieved by the same, the plaintiff has preferred First Appeal in A.S.No.68 of 2012 before the Second Additional District Judge, Erode in A.S.No.68 of 2012 and the said First Appeal was also dismissed by confirming the judgment and decree passed by the trial Court. Aggrieved by the judgment and decree passed by the first appellate Court, the present Second Appeal is preferred by the plaintiff.

3. The parties are referred to herein as per their rank in the trial Court as plaintiff and defendant.

4. The case of the plaintiff is that the defendants 1 and 2 are the absolute



owners of the suit property and the plaintiff and defendants 1 and 2 entered into a sale agreement, dated 30.11.2006 and the sale consideration was fixed at Rs.2,000/- per cent, i.e. Rs.1,87,000/-. On the same day of the agreement itself, the plaintiff paid Rs.30,000/- towards advance and part of sale consideration and time were fixed within next Vaigasi month of Tamil calendar, i.e. on or before 14.06.2007. In the first week of December 2006, the plaintiff approached the defendants 1 and 2 with the balance sale amount to get the sale deed executed, but the defendants 1 and 2 postponed the same and assured to execute the sale deed after two weeks. In the meantime, the plaintiff came to know that the property was sold to the third defendant through sale deed dated 14.12.2006 for total consideration of Rs.77,000/-. The sale deed between the defendants, is not valid and the plaintiff has right to enforce the sale agreement. The plaintiff was ready and willing to perform his part of the contract, but the defendants 1 and 2 failed to execute the sale deed. Thereafter, the plaintiff caused notice dated 23.12.2006 and the defendants 1 and 2 managed to return the notice and the third defendant received the notice and not sent any reply till filing of the suit. Therefore, the plaintiff has filed the present suit for specific performance of the contract.

5. The defendants 1 and 2 were set ex-parte before the trial Court.

6. The case of the third defendant is that the defendants 1 and 2 are



brothers. The suit property originally belonged to the first defendant, his minor sons Lingeswaran and Kogue Aanand and the second defendant. While so, the first defendant, along with his minor son and the second defendant, sold the suit property to the third defendant on 14.12.2006 for a valuable consideration of Rs.7,000/- and executed a registered sale deed in favour of the third defendant and put him in possession on the date of sale itself. In fact, the first defendant, for himself and on behalf of the minor sons, and the second defendant, had entered into a written sale agreement on 20.06.2006 to sell the suit property to the third defendant for a total consideration of Rs.77,000/- and on the date of agreement itself, they have received Rs.20,000/- from the third defendants towards advance and part of the sale consideration and agreed to complete the sale within 6 months. Accordingly, the third defendant paid the balance amount and got the sale deed executed in his favour.

6.1. Now, the plaintiff has filed the present suit alleging that he entered into sale agreement and paid Rs.30,000/- towards advance and with false allegations. After receipt of notice from the plaintiff, the third defendant sent reply dated 20.01.2007 to provide copy of the sale agreement, but he failed to produce the same. After permission of the Court, the third defendant perused the agreement and the signatures therein are forged and fabricated. The third defendant purchased the property from the lawful owners, i.e. the first defendant, his minor son and the second defendant. Therefore, before filing of



the suit itself, the property was purchased by the third defendant based on the agreement, dated 20.06.2006, i.e. prior to the alleged sale agreement to the plaintiff. Therefore, the suit is liable to be dismissed.

7. Based on the above pleadings, after hearing both sides, the trial Court framed the following issues:

(i) Whether the alleged sale agreement, dated 30.11.2006 entered between the plaintiff and the first and second defendants, is fraudulent and not true and signatures therein do not belong the first and second defendants ?

(ii) Whether the plaintiff is entitled to the relief of specific performance as prayed for ? and

(iii) To what other relief the plaintiff is entitled to ?

8. Before the trial Court, on the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A-1 to A-6 have been marked and on the side of the defendants D.Ws.1 and 2 have been examined and Exs.B-1 to B-11 have been marked. After analysing the evidence adduced by both sides, the trial Court dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiff has preferred First Appeal in Appeal Suit No.68 of 2012 before the II Additional District Court, Erode on various grounds. The first appellate Court framed the following points for determination:

(i) Whether the sale agreement dated 30.11.2006 is true ?



(ii) Whether the plaintiff is entitled to the relief of specific performance of contract based on the agreement dated 30.11.2006 ?

(iii) Whether the plaintiff is entitled to the decree of permanent injunction as against the defendants ?

(iv) whether the appeal is to be allowed or not ?

9. Thereafter, the first appellate Court, after perusal of the records and evidence adduced, including the trial Court's judgment and decree, dismissed the First Appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the said judgment and decree of the first appellate Court, the present Second Appeal is filed by the plaintiff.

10. This Court, at the time of admitting the Second Appeal on 23.03.2015, formulated the following substantial questions of law:

(1) Whether the Courts below erred in law in dismissing the suit for specific performance filed by the appellant in the absence of any dispute as to the execution of the sale agreement, payment of advance, readiness and willingness on the part of plaintiff in performing his part of the contract under Ex.A-1, dated 30.11.2006 ?

(2) Whether the Courts below erred in law in upholding the claim of the third defendant as a bona-fide purchaser under Ex.B-2 dated 14.12.2006, particularly when the defendants 1 and 2 were set ex-parte and no other legal



evidence has been let in to prove the bonafideness of the transaction ?

(3) Whether the third defendant being the purchaser of the suit property subsequent to the suit sale agreement is legally competent to step into the shoes of defendants 1 and 2 who were set ex-parte, to take all the defences available to defendants 1 and 2 ?

11. Learned counsel for the appellant/plaintiff submitted that defendants 1 and 2 are the owners of the suit property and they have entered into sale agreement with the plaintiff dated on 30.11.2006. The sale price was fixed at Rs.1,87,000/- and on the date of agreement itself, Rs.30,000/- was paid as advance amount of sale consideration. The time was also fixed for payment of balance sale in the next Vaigasi Tamil month. The plaintiff was always ready and willing to perform his part of the contract, but the defendants 1 and 2 evaded from executing the sale deed as per the agreement.

11.1. Learned counsel further submitted that the defendants 1 and 2 sold the suit property to the third defendant through sale deed, dated 14.12.2006 for consideration of Rs.77,000/- which is lesser than the sale price fixed by the plaintiff. When the agreement of sale is pending in favour of the plaintiff, in order to defeat the rights of the plaintiff, the defendants colluded together and sold the property to the third defendant. Therefore, the plaintiff is entitled to the decree of specific performance of the contract. However, the Courts below



failed to consider the case of the plaintiff in proper perspective and dismissed the suit on the ground that the first defendant is not the true owner of the property and his minor sons are entitled to share over the suit property. When once the defendants executed agreement, they cannot deny that the property does not belong to them and some other parties are also having share over the property. They committed breach of their promise and conveniently the defendants 1 and 2 were set ex-parte. Even in their absence, the suit was dismissed, when there is no specific denial and dispute in respect of the execution of Ex.A-1 agreement. There is no denial with regard to the readiness and willingness on the part of the plaintiff in getting the sale deed after payment of balance of the sale consideration. Despite that, the Courts below dismissed the suit erroneously. The defendants 1 and 2 are the original owners and they have every right to enter into agreement to sell the suit property by themselves and also on behalf of the minor sons. The plaintiff's side witness categorically deposed about the case of the plaintiff and no contra evidence was let in at the instance of the defendants. But the Courts below failed to consider the above aspects of the matter and dismissed the suit.

11.2. The third defendant has claimed that he is the bona-fide purchaser, but he failed to prove his bona-fides and genuineness of the sale deed through independent evidence. Therefore, the Courts below erred in law in dismissing the suit for specific performance filed by the appellant, in the absence of any



dispute as to the execution of the sale agreement, payment of advance, readiness and willingness of the plaintiff in performing his part of the agreement and also upheld the claim of the third defendant as a bona-fide purchaser to the defendants 1 and 2, who were set ex-parte. The third defendant being the purchaser of the suit property subsequent to the suit agreement and he is legally competent to step into the shoes of the defendants 1 and 2, who were set ex-parte and to take all the defences available to defendants 1 and 2. But the defendants 1 and 2 themselves did not appear even before the Court and the Courts below have not considered the said aspect and erroneously dismissed the suit and therefore, the judgment and decree passed by the Courts below are liable to be set aside and the Second Appeal may be allowed.

12. Despite service of notice to the respondents herein, they have chosen not to appear before this Court to argue the matter and already, ample chances have been given to them, but none appeared on their behalf and therefore, this Court is inclined to pass orders based on the available records and the arguments advanced by the learned counsel for the appellant.

13. In this case, the appellant filed the suit for specific performance of the contract. The suit property belonged to defendants 1 and 2 and they entered into agreement on 30.11.2006 and by fixing the sale price at Rs.1,87,000/- and the time fixed for completion of contract is next Vaigasi Tamil month at that time.



The defendants 1 and 2 who are the agreement holders, are said to be the owners of the suit property and have not appeared and contested the suit. The third defendant, who is the purchaser alone, has contested the suit and filed written statement alleging that he has entered into sale agreement with the first defendant and his minor sons and the second defendant on 20.06.2006 and thereafter, the sale price was fixed at Rs.77,000/-. The time fixed is six months and thereafter, he got the sale deed from the original owners on 14.12.2006. The plaintiff admitted the sale deed executed by the first defendant along with his minor sons and the second defendant, in favour of the third defendant.

14. According to the plaintiff, the agreement is dated 30.11.2006 and the sale deed executed in favour of the third defendant, is subsequent to his agreement and only to defeat the rights of the plaintiff, the said agreement has been executed, therefore, the plaintiff is entitled to get the decree of specific performance. When once the plaintiff filed the suit for specific performance of the contract, he has to prove the execution of the agreement and passing of consideration and his readiness and willingness to purchase the property. To prove the case of the plaintiff, on his side, they have examined P.Ws.1 to 3 and on the side of defendant, D.Ws.1 and 2 have been examined and marked their respective documents. The trial Court, after elaborate discussion, came to the conclusion that since Ex.A-1 agreement is an unregistered one and not only the third defendant, but also an ordinary prudent man, could not have knowledge



about the same, because, it would not have been referred to in the Encumbrance Certificate. The third defendant also was already in possession and enjoyment of the property as a cultivating tenant and the same was also admitted by P.W.1 and therefore, there are every reasons and possibility for the third defendant to purchase the suit property from the defendants 1 and 2 who are the legal heirs of the deceased A.Subramaniam. The third defendant also, after obtaining the sale deed executed in his favour, mutated the Revenue Records also in his favour and he is possession and enjoyment of the suit property, thereby, he is the bona-fide purchaser. Since the suit agreement is an unregistered one, it cannot be said that the third defendant has notice of Ex.A-1 sale agreement on the date of his sale deed. Ex.A-1 sale agreement itself creates doubt and those doubts have not been clarified by the plaintiff and he cannot question the sale price fixed in the sale deed in favour of the third defendant. Therefore, for the said reasons, the trial Court disbelieved the case of the plaintiff and dismissed the suit. The above said findings of the trial Court are based on the available evidence.

15. The first appellate Court also, in the First Appeal Judgment, had elaborately discussed and observed that P.W.1 admitted that the third defendant is a lessee with the father of defendants 1 and 2 prior to the death of his father and also admitted that the property is ancestral property of the defendants 1 and 2. The evidence of P.W.2 is also not cogent and not trustworthy. The plaintiff, after knowing that the property is the ancestral property of the defendants 1 and



2, entered into the agreement only with defendants 1 and 2. However, the third defendant purchased the property from all the owners including the minor sons of the first defendant and came to the conclusion that the plaintiff is not entitled to the relief of specific performance. The above said findings of the first appellate Court are also based on the available evidence and both the Courts below have rendered concurrent findings on the factual aspects of the matter and hence, this Court need not interfere with the concurrent findings of the Courts below without any valid ground.

16. As far as the first substantial question of law, namely whether the Courts below erred in law in dismissing the suit for specific performance filed by the appellant in the absence of any dispute as to the execution of the sale agreement, payment of advance, readiness and willingness on the part of the plaintiff in performing his part of the contract under Ex.A-1, dated 30.11.2006, is concerned, the plaintiff has filed the suit for specific performance of the contract based on the agreement and the defendants 1 and 2 have allegedly executed the sale agreement, and they have not filed the written statement and they were set ex-parte. However, it is the duty of the plaintiff to prove the execution of agreement and passing of consideration and the readiness and willingness. It is well settled law that even in the absence of any denial for the readiness and willingness, it is the duty of the plaintiff to aver and prove the readiness and willingness to perform his part of the contract. The date of



agreement is 30.11.2006 and the time has also been fixed for specific performance of the contract as within next Vaigasi Tamil month, i.e. on or before 14.06.2007. The plaintiff came to know about the sale deed in favour of the third defendant on 22.11.2006. But the plaint was presented before Court on 15.02.2007. The plaintiff issued notice on 23.12.2006 and 14.06.2007. Though the plaint has been presented on 15.02.2007 before the Court, even before expiry of the time fixed in the agreement, the plaintiff has to prove his case and mere pleadings are not sufficient to prove the plaintiff's readiness and willingness. Apart from the notice, no other evidence is adduced by the plaintiff to prove his readiness and willingness in performing his part of the contract.

17. It is settled law that the plaintiff has to aver and prove the readiness and willingness. In this case, since the agreement itself has not been proved, as the plaintiff's side evidences are not cogent and reliable, the question of readiness and willingness will not arise. Therefore, the Courts below have not erred in law in dismissing the suit for specific performance filed by the appellant, in the absence of any dispute as to the defence and readiness and willingness on the part of the plaintiff. Substantial question of law (i) is answered accordingly.

18. As far as the substantial question of law (ii), namely whether the Courts below erred in law in upholding the claim of the third defendant as a



bona fide purchaser under Ex.B-2 dated 14.12.2006, particularly when the defendants 1 and 2 were set ex-parte and no other legal evidence has been let in to prove the bonafideness of the transaction, is concerned, it is to be noted that the plaintiff relied upon Ex.A-1 agreement alleging that the same was executed by the defendants 1 and 2 on the day they were set ex-parte. The third defendant has purchased the property and prior to that, there was agreement between the parties and he has also produced the agreement as Ex.B-1, i.e. prior to the date of the plaintiff's side agreement Ex.A-1. The plaintiff who was examined as P.W.1, also admitted that the third defendant was the lessee under the father, namely defendants 1 and 2, thereby there are more chances to execute the sale deed in favour of the third defendant and the plaintiff has also not disputed the genuineness of the sale deed in favour of the third defendant and his contention is when the agreement is in existence in favour of the plaintiff, the third defendant purchased the property. On a perusal of Ex.B-1, it reveals that the date of sale agreement in favour of the third defendant by the first defendant and his son and the second defendant, is dated 22.12.2006 and therefore, that agreement is prior to the date of sale agreement in favour of the plaintiff.

19. Therefore, sufficient evidence is available to hold that the third defendant is the bona-fide purchaser and therefore, the Courts below have not committed any error in law in upholding their claim as a bona-fide purchaser under Ex.B-2, dated 14.12.2006, particularly, when even the defendants 1 and 2



were set ex-parte and there are legal evidence available to prove the bona-fide of the transaction. Further, the third defendant has purchased the suit property and as far as the right of the third defendant, who purchased the suit property, is concerned, it is his statutory right. As far as the right of the plaintiff who is the agreement holder, is concerned, it is the equitable right and the statutory right will prevail over the equitable right and therefore, after sale of the property in favour of the third defendant, who is the bona-fide purchaser, the plaintiff is not entitled to the relief of specific performance of the contract. Moreover, both the Courts below have rendered concurrent findings on factual aspects and those findings need not be interfered with by this Court. The second substantial question of law is answered in the above terms.

20. As far as the third substantial question of law, namely whether the third defendant being the purchaser of the suit property subsequent to the suit sale agreement is legally competent to step into the shoes of defendants 1 and 2 who were set ex-parte to take all the defences available to defendants 1 and 2, is concerned, it is to be noted that the plaintiff is relying upon the sale agreement dated 31.07.2006 and the third defendant is relying upon Ex.B-1 sale agreement, dated 20.06.2006. The sale agreement in favour of the third defendant is prior to the sale agreement executed in favour of the plaintiff. The plaintiff has also admitted that the third defendant was a lessee under the father of the defendants 1 and 2. Therefore, he purchased the suit property. Since the



suit property was purchased from the defendants 1 and 2 and the minors sons of the first defendant, the third defendant being the purchaser of the suit property, is legally competent to step into the shoes of defendants 1 and 2 who were set e-parte, to take all the defences available to the defendants 1 and 2. The third substantial question of law is answered accordingly.

21. In view of the above discussion and the answers given to the substantial questions of law, this Second Appeal has no merits and deserve to be dismissed. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, the Miscellaneous Petition is closed.

25-02-2026

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

1. The Second Additional District Judge, Erode.
2. The Subordinate Judge, Perundurai, Erode District.
3. The Record Keeper, V.R.Section, High Court, Madras.



WEB COPY

SA No. 173 of 2





WEB COPY

SA No. 173 of 2



P.DHANABAL, J

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SA No. 173 of 2015

25-02-2026