



SA No. 388 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 388 of 2015 and
M.P.No.1 of 2015 and C.M.P.No.27279 of 2025**

Murugan

..Appellant(s)

Vs

Manthirikumar

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree of the learned I Additional Subordinate Judge, Cuddalore dated 06.01.2015 passed in A.S.No.36 of 2014 allowing the appeal and setting aside the Judgment and Decree of the learned Additional District Munsif, Cuddalore dated 28.03.2014 and in O.S.No.484 of 2007

For Appellant(s): Mr.R.Gururaj

For Respondent(s): Mr.V.R.Kamalanathan for
Mr.T.Sivaprakasam

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the First Additional Subordinate Judge, Cuddalore in A.S.No.36 of 2014 dated 06.01.2015.



2. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendant, as referred before the trial court.

3. The appellant/plaintiff herein has filed the suit before the trial court for the relief of mandatory injunction directing the defendant to abide by the terms and conditions of the agreement dated 05.03.2007 and permanent injunction from leasing out the property to any body else than the plaintiff along with suits and for other reliefs. The said suit was decreed by the trial Court, aggrieved by the said Decree and Judgment, the defendant has preferred the Appeal Suit in A.S.No.36 of 2014 on the file of the First Additional Subordinate Court, Cuddalore, and the First Appellate Court had set aside the decree and Judgment passed by the trial Court by allowing the appeal. Aggrieved by the said judgment and decree, the plaintiff has preferred the Second appeal.

4. The brief averment of the plaint are as follows:-

4.1. The suit property belongs to the defendant and the same is a vacant site, in which, the defendant has constructed a terraced shop. The plaintiff and defendant entered into an agreement dated 05.03.2007 under which, the defendant agreed to construct a shop measuring 33X55 feet, in total, to an extent of 1815 sq. ft., north facing shop and to deliver the possession of the same to the plaintiff for running textile shop and also



SA No. 388 of 2015

defendant received a sum of Rs.10 Lakhs from the plaintiff as advance. The defendant agreed to complete the construction within four months from the date of agreement and after receipt of the advance amount from the plaintiff, the defendant was not interested in speedy construction of the shop and delivering the possession of the same to the plaintiff. The four months period stipulated in the agreement was expired on 05.07.2007 and the plaintiff has invested huge money and has been expecting the defendant to abide by the terms of the contract and handover the possession, but the defendant failed to construct building and handover the possession and therefore, the plaintiff issued notice dated 26.07.2007 calling upon the defendant to complete the building and to comply with the terms of the agreement. After receipt of the notice, the defendant has not issued any reply and now the plaintiff learns that the defendant is about to lease out the property to some other persons. Therefore, the plaintiff has filed the suit

5. The brief averments of the written statement filed by the defendant are as follows:-

5.1. The suit is false and liable to be dismissed. The plaintiff has not come to this Court with clean hands. It is true that the property belongs to the defendant and he entered into an agreement with the plaintiff dated 05.03.2007. The defendant has started construction of the property in the



year 2007 and the plaintiff approached the defendant and asked him to allot a shop on monthly rental basis so as to enable him to run the textile shop. The defendant informed the plaintiff that it will take 8 to 10 months time to complete the construction. The plaintiff also agreed for the same and paid the advance amount of Rs.10 Lakhs and requested the defendant to complete the construction as early as possible.

5.2. From the date of agreement, the plaintiff was interfering with the construction of shops and unnecessarily picked up quarrel with the engineers and mason. There was a quarrel between the civil engineer and the plaintiff and a criminal case was registered as against the plaintiff for the assault made to the said Engineer. As the character and conduct of the plaintiff is unlawful, at the intervention Mr.Parameswaran, Chartered accountant, who is looking after the affairs of the plaintiff, the mediation took place and he advised the plaintiff to take back the advance and treat the agreement as cancelled and it was agreed by both the parties and defendant has handed over the advance amount of Rs.10 Lakhs along with Rs.3 lakhs as interest to Mr.Parameswaran in the presence of one Ravindran, Proprietor of M/s Karthikeya Transports, Vridhachalam and Mr.Balasubramanian, Senior Advocate and Mr.S.Rajendran, Advocate, Cuddalore. The said Parameswaran received the said amount and agreed to handover the original



agreement to the defendant, later, the said Parameswaran called the defendant and handed over the agreement claiming to be the original agreement dated 05.03.2007 and deed of cancellation of the lease agreement. Thereafter, the defendant came to know that both the documents are concocted forging the signature of the defendant. When the defendant insisted the said Parameswaran to return back the money, he persuaded the defendant and he assaulted the defendant that he will get back the original agreement within few days. Instead of returning the original document to the defendant, the plaintiff has filed the original document in the suit to defraud the defendant, therefore, the suit is liable to be dismissed.

6. The brief averments of the reply statement filed by the plaintiff are as follows:-

6.1. The plaintiff denied the cancellation of agreement and handover the advance amount and the defendant has handed over the advance amount of Rs.10 Lakhs along with Rs.3 Lakhs as interest to Parameswaran in the presence of the above said witnesses. The plaintiff never agreed for such terms and never authorised or engaged the said auditor to act on his behalf. The plaintiff was not present in the alleged mediation and the plaintiff has not signed any such mediation papers. The agreement between the plaintiff and the defendant is still subsisting.



7. Based on the above said pleadings and after hearing both sides and analysing the evidences, the trial Court framed the following issues for trial:-

- "1. Whether the lease agreement dated 05.03.2007 is executable?*
- 2. Whether the lease agreement dated 05.03.2007 has been cancelled by the parties?*
- 3. Whether the plaintiff is entitled for the relief sought for?*
- 4. What are the other reliefs that the plaintiff is entitled to?*

Before the trial court, on the side of the plaintiff, the plaintiff, Murugan was examined as P.W.1 and marked Exhibits, A.1 to A.4. On the side of the defendants, the defendant, viz., Mandhiri Kumar was examined as D.W.1 and Ravindran was examined as D.W.2 and Exhibits B.1 to B.9 were marked. The trial Court after hearing both sides and perusing the records, decreed the suit. Aggrieved by the said Decree and Judgment, the defendant has preferred the First Appeal in A.S.No.36 of 2014 on the file of First Additional Subordinate Judge, Cuddalore on various grounds. The First Appellate Court framed the following points for determination:-

- "1. Whether the prayer for a mandatory and permanent injunction claimed by respondent / plaintiff can be granted?*
- 2. Whether the respondent is entitled to the alternate relief of claiming Rs.10,00,000/- with interest?*



3. *Whether the appeal is to be allowed or not?"*

Thereafter, the First Appellate Court set aside the decree and judgment passed by the trial Court and allowed the Appeal Suit and the suit was dismissed. Aggrieved by the said decree and judgment passed by the First Appellate Court, the present Second Appeal has been filed by the plaintiff.

8. At the time of admitting the Second Appeal, on 15.06.2015, this Court formulated the following Substantial Questions of Law:-

"a. Was not the lower appellate court at gross error in not enforcing an agreement which is lawful and whose execution is admitted?"

b. Did not the lower appellate court commit grave error in overlooking the admissions of DW1 entitling the plaintiff to a decree?"

c. Was not the lower appellate court wrong in not granting the alternate relief especially when DW1 admits that he is bound to repay the advance amount received?"

9. The learned counsel appearing for the appellant would submit that the appellant is the plaintiff in the main suit and the defendant is the owner of the property. When the construction work was going on, in the bus stand of Cuddalore, at that time, the plaintiff approached the defendant for leasing out the property and they entered into a lease agreement dated 05.03.2007. As



SA No. 388 of 2015

per the lease agreement, the defendant has to construct the building within four months and handover the possession of the property to the plaintiff, for that, the plaintiff has paid a sum of Rs.10 Lakhs towards advance and thereafter, the defendant failed to handover the possession after construction and the plaintiff also admitted receipt of Rs.10 lakhs as advance, while so, the defendant pleaded in the written statement that he paid the money to one Paramewaran in the presence of witness and also the said Parameswaran produced the original agreement and the cancellation deed and thereafter, he came to know that the said deeds are not genuine and the same are forged. While so, the defendant has to pay the amount, still the defendant has not completed his construction and thereby it is not possible to handover the possession of the property, therefore, the plaintiff is entitled for return of advance money paid by him. Though the plaintiff has filed the suit for mandatory injunction directing the defendant to comply the terms and conditions of the agreement dated 05.03.2007, now he has restricted his claim only to return of advance money and ready to pay the court fee for that.

9.1. The trial court after analysing the evidences adduced on both sides, correctly decreed the suit. However, the First Appellate Court failed to consider the case in a proper perspective manner and allowed the appeal by dismissing the suit. The First Appellate Court failed to frame proper point for



consideration and not properly appreciated the oral and documentary evidences. D.W.1 himself admitted the receipt of advance amount and also admitted that he paid money to Parameswaran and later he came to know that the said Parameswaran cheated the defendant. The First Appellate Court also brushed aside the available evidence and without assigning any valid reasons, set aside the decree and Judgment passed by the trial Court. When the agreement is lawful and enforceable and the same was admitted by the defendant, the First Appellate Court committed a grave error by over looking the admission made by DW1 and not granted an alternative relief especially when DW1 admitted that he is bound to pay the advance amount received by him. Therefore, the decree and judgment passed by the First Appellate court are liable to be set aside.

10. The learned counsel appearing for the respondent would submit that the appellant/plaintiff has filed the suit for mandatory injunction and failed to seek relief for return of advance amount. Though the agreement was executed between the parties, after the agreement, the plaintiff, taking advantage of the same, interfered with the construction and thereby the defendant was unable to complete the construction within a stipulated time. Thereafter both the parties agreed to cancel the agreement and through mediator namely, Parameswaran, the entire advance amount was repaid to



SA No. 388 of 2015

the plaintiff through the said Parameswaran. The principal amount of Rs.10 Lakhs along with interest of Rs.3 Lakhs was given to Parameswaran, in turn, the said Parameswaran handed over the cancellation deed and thereafter, the defendant came to know that the said Parameswaran cheated the defendant, therefore, the defendant is not able to give any amount to the plaintiff and the plaintiff is not entitled to any relief. Further the trial Court without appreciating the evidence in a proper perspective manner decreed the suit, whereas the First Appellate Court after considering the evidences came to a fair conclusion and allowed the appeal by dismissing the suit. There is no illegality or perversity in the judgment passed by the First Appellate Court and there is no Substantial Questions of Law involved in this case, therefore, the Second Appeal is liable to be dismissed. The respondent also filed a Petition to send the Exhibits A, B1 to B3, B6 and B7 for expert opinion and the same may be allowed.

11. Heard the learned counsel appearing on both sides and perused the entire documents placed on record.

12. In this case, the execution of agreement dated 05.03.2007 and the receipt of sum of Rs.10 Lakhs were admitted by both sides and it is also admitted by both the parties that so far construction has not been completed.



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The plaintiff filed the suit for mandatory injunction to comply the terms and conditions of the agreement dated 05.03.2007 and the defendant is unable to complete the construction and the plaintiff also admitted that construction has not been completed. Therefore, it is not possible of handing over possession of the property, as per the agreement and the agreement has become inexecutable in respect of the construction. While so, the defendant has to pay the advance amount received by him. The defendant also admitted the receipt of advance of Rs.10 Lakhs, but however, according to him, after some time, he repaid the money, through mediator, Parameswaran in the presence of witnesses and the said Parameswaran also gave a cancellation deed and thereafter, the defendant came to know that the said cancellation deed is forged one and the said Parameswaran cheated him.

13. Therefore, from the admission made by the defendant, it is clear that the defendant has not repaid the money to the plaintiff. There is no evidence that the plaintiff insisted the defendant to pay money to the Mediator, Parameswaran. The trial Court decreed the suit after analysing the evidence adduced on both sides, but the First Appellate Court set aside the decree and judgment passed by the trial Court and dismissed the suit by allowing the appeal. While allowing the appeal, the First Appellate Court has not given any cogent reasons and the judgment of the First Appellate Court is not in



SA No. 388 of 2015

consonance with Order 41 Rule 31 of CPC. Further, on a perusal of the Judgment passed by the First Appellate Court, this Court unable to understand the Judgment of the First Appellate Court and without assigning any reasons and without framing proper points for determination, the Judgment and Decree of the trial Court was set aside. Once the defendant admitted the receipt of advance money paid by the plaintiff, it is his duty to repay the said advance money. The plaintiff also not sought for relief for return of advance money by paying proper Court fee. Though the plaintiff has not sought for any alternative relief in respect of payment of advance money, once the parties admitted the receipt of advance money, instead of granting main relief of mandatory injunction, in order to avoid multiplicity of proceedings and to save time of the Court, it is appropriate to pass money decree based on admission made by the other side. Though the trial court granted decree as prayed for, there is no specific direction to comply the particular condition and when the said Contract itself is not executable due to non construction of the building, it is appropriate to direct the defendant to pay the money to the plaintiff.

14. At this juncture, the learned counsel appearing for the appellant would submit the following Judgments:-

(I) AIR 1974 (2) SCC 393 [Smt.Ganga Bai Vs. Vijay Kumar and Others]



SA No. 388 of 2015

(ii) AIR 1990 SC 1828 [Chinnamal and Others Vs. P.Arumugham and another]

(iii) AIR 2009 SC 479 [Mohammed Vs. Pushpalatha]

(iv) AIR 1985 SC 577 [Abdulla Bin Ali and Others Vs. Galappa and Others]

(v) AIR 1951 SC 177 [Firm Srinivas Ram Kumar Vs. Mahabir Prasad and Others]

(vi) AIR 1993 Supp(4) SCC 743 [B.R.Mulani Vs. Dr.A.B.Aswathanarayana and Others]

(vii) AIR 1995 Supp (2) SCC 680 [Pasupuleti Venkateswarlu Vs. The Motor and General Traders]

(viii) AIR 1975 SC 1409 [S.Rangaraju Naidu Vs. S.Thiruvarakkarasu]

(ix) 98 LW 25 (SC) [M/s Variety Emporium Vs. V.R.M.Mohd. Ibrahim Naina]

(x) 1975(2) SCC 530 [M/s Supreme General Films Exchange Ltd., Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others]

(xi) 1998 Supreme SC 916 [Mohan Singh Vs. Late Amar Singh Thr. The Lrs]

(xii) 1997 (4) SCC 713 [Panchugopal Barua & Ors Vs. Umesh Chandra Goswami and Ors.]

On a careful perusal of the above said Judgments, it is clear that the Civil Procedure Code is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing punishments and penalties, the Laws of Procedure should be so construed as to render justice whenever reasonably possible, the ordinary is that the Court will not grant a relief to the plaintiff on a case for which there is no foundation in the pleadings and which the other side was not



SA No. 388 of 2015

called upon or had an opportunity to meet, but when the alternative case which the plaintiff could have made was not only admitted by the defendant in his written statement but was expressly put forward an answer to the claim which the plaintiff made in the suit there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. Further, it is clear that when the specific performance of agreement for sale was refused the court can adjust in moulding the relief.

15. The learned counsel appearing for the respondent relied on the following judgments:-

(I) (1994) 5 Supreme Court Cases 549 [Premji Ratansey Shah and Others Vs. Union of India and Others

(ii) (2004) 6 Supreme court Cases 71 [Yeshwant Sakhalkar and Another Vs. Hirabat Kamat Mhamai and Another]

(iii) (2017) 4 Supreme Court Cass 243 [Haryana Urban Development Authority and Others Vs. Orchid Infrastructure Developers Pvt, Ltd.,]

(iv) (2021) 5 Supreme Court Cases 459 [Madan Mohan Singh Vs. Ved Prakash Arya]

(v) (2023) 3 Supreme Court Cases 714 [Desh Raj and Others Vs. Rohtash Singh]

(vi) (2024) 7 Supreme Court Cases 183 [State of Kerala Vs. Union of India]

(vii) 2025 SCC Online SC 1409 [Estate Officer, Haryana Urban Development Authority and Others Vs. Nirmala Devi]



SA No. 388 of 2015

(viii) A.S.No.223 of 2021 [Jayanthi Vs. Murugan]

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On a perusal of the above judgments, it is clear that without any specific prayer, alternative relief of advance amount in a suit for specific performance, cannot be granted. In a suit for specific performance, as per Section 22 of Specific Relief Act, there should be prayer for return of advance, but in the case on hand, the suit is filed for mandatory injunction and though there is no any specific prayer for return of advance money, as per the dictum laid down by the **Hon'ble Supreme Court** in the case laws referred by the Appellate Court, the court can grant money decree under the claim when specific admission made by other side. As far as the Judgments relied on by the respondents are concerned, where there was a denial by the other side and there was no admission in respect of the receipt of the advance money, thereby no question of grant of equitable relief would arise, therefore, those Judgments are not applicable to the case on hand.

16. Since the defendant himself admitted the receipt of money through pleadings and admitted the liability at the time of cross examination, it is appropriate to grant the money decree, but the First Appellate Court has failed to consider the same, therefore, the decree and judgment of the First Appellate Court is liable to be set aside.



17. As far as the Substantial Questions of Law formulated by this Court are concerned, it is admitted fact that agreement was executed and advance of money of Rs.10 Lakhs was received and thereafter, the defendant unable to complete the construction and handover the possession, as per the agreement and till date, the suit property is a vacant site and the defendant is unable to construct the shop and therefore, the agreement cannot be enforced. The defendant himself admitted in his evidence that he paid the advance money to one Parameswaran and thereafter, he came to know that Parameswaran cheated him, therefore, the amount paid to Parameswaran is between the defendant and the said Parameswaran. Even according to the defendant, the said money was not paid in the presence of the plaintiff and it is admitted fact that the plaintiff has not received any money either directly from the defendant or through the said Parameswaran. Once the defendant received money from the plaintiff, it is the duty of the defendant to repay the money to the plaintiff. It is not the case of the defendant that as per the request made by the plaintiff, money was paid to Parameswaran. Moreover, DW1 in his cross examination admitted that since the said Parameswaran cheated him, he is liable to pay money to the plaintiff and also he admitted that a criminal case is pending as against the said Parameswaran. Therefore, as admitted by D.W.1, he has to repay the money to the plaintiff.



18. As far as the alternative relief is concerned, when DW1 categorically admitted that he has received the advance money paid by the plaintiff and he admitted his liability. Once the liability is admitted, the parties need not go for another round of litigation for the admitted claim. As per law laid down by the **Hon'ble Supreme Court in AIR 1951 SC 177 [Firm Srinivas Ram Kumar Vs. Mahabir Prasad and Others]**, the Court can grant money decree under equity based on the admission made by the other side, the First Appellate Court failed to consider the above said aspects, therefore, the decree and judgment passed by the First Appellate Court is liable to be set aside by allowing the present Second Appeal.

19. During the pendency of the Second Appeal, the defendant / respondent has filed a petition under Order 41 Rule 27 C.P.C., to permit him to take further steps to send the documents marked as exhibits Ex.A.1, B.1 to B.3, B.6 and B.7 in O.S.No.484 of 2007 for expert opinion.

19.1. According to the applicant in C.M.P.No.27279 of 2025, he is the defendant in the main suit and the respondent in the Second Appeal. The plaintiff has filed the suit for mandatory injunction and permanent injunction based on the agreement dated 05.03.2007 and paid a sum of Rs.10 Lakhs as advance and the said advance money was repaid to him through one Parameswaran, thereafter, the defendant came to know that the said



SA No. 388 of 2015

Parameswarn cheated the defendant and thereby he filed a criminal complaint and the same is now pending in C.C.No.241 of 2013. During the pendency of this Second Appeal, original agreement was sought to be sent for expert opinion and the documents filed before the trial court are material documents to be produced before the Magistrate Court to prove the guilt of the accused, therefore, the documents marked as Ex.A.1, B.1 to B.3, B.6 and B.7 have to be sent for expert opinion and therefore, filed this petition.

19.2. Though the petitioner has filed a petition under Order 41 Rule 27 C.P.C., the prayer is not to receive the additional documents and the prayer is, to send the documents for expert opinion and the same has no merits for the simple reason that the petitioner has not taken any steps at the earlier point of time and now, after completion of appellant's side arguments, they filed this petition and the said conduct of the defendant, shows that only to delay the proceedings, this petition has been filed and if the documents are very essential to prove the criminal case, in that case, the defendant can take appropriate steps in accordance with law and not through this petition and therefore, the application has no merits and deserves to be dismissed.

20. In view of the above said discussions, the Second Appeal is allowed and the Judgment and Decree passed by the First Appellate Court in



SA No. 388 of 2015

A.S.No.36 of 2014 dated 06.01.2015 is set aside and the decree and Judgment passed in O.S.No.484 of 2007 dated 28.03.2014 on the file of the learned 1st Additional Subordinate Court, Cuddalore is modified to the effect that the plaintiff is entitled to money decree and the defendant is directed to pay a sum of Rs.10,00,000/- [Rupees Ten Lakhs only] with interest at the rate of 6% per annum from the date of receipt of advance money till the date of realisation. The appellant is directed to pay the requisite Court Fee within a period of one month. C.M.P.No.27279 of 2025 is dismissed. Consequently, connected miscellaneous petition No.1 of 2015 is closed. No costs.

25-02-2026

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

ssd

To

1. The First Additional Subordinate Judge, Cuddalore
2. The Additional District Munsif, Cuddalore



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SA No. 388 of 2015

P.DHANABAL, J.

ssd

SA No. 388 of 2015

25-02-2026