



S.A.No.566 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2026

Coram:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.566 of 2015

and

M.P.No.1 of 2015

1. Kasthuri (died)
2. Rajendran
3. Rajamanickam
4. Mani
5. Pushpa
6. Venugopal
7. Nirmala

(Appellants 2 to 7 are brought on record as the legal representatives of the deceased 1st appellant, vide Court order dated 03.03.2022 made in C.M.P.Nos.9493, 9496 and 9499 of 2019)

.. Appellants

Vs.

1. B.N.Devaraj (died)
2. R.Munisamy
3. Sasikala
4. Shanthamma
5. Gopi
6. Manjula
7. Vamshidev
8. Pavanraj
9. Sampath BDS Sampath
10. Balakrishna

(Respondents 4 to 10 brought on record as legal representatives of the deceased 1st respondent, vide order of Court,

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dated 18.07.2025 made in
C.M.P.Nos.9833, 9835 and 9826 of 2022
in S.A.No.566 of 2015)

.. Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.04.2015 passed in A.S.No.25 of 2012 on the file of the Subordinate Court, Hosur, in confirming the judgment and decree made in O.S.No.228 of 2001, dated 09.11.2010 on the file of the District Munsif Court, Hosur.

For appellants : Ms.M.Pavithra for M/s.Jayaprakash

For respondents: RR-1, 4 and 5 - died
RR-2 and 3 - Notice dispensed with
M/s.V.Nicholas for RR-6 and 8 to 10
R-7 - served with notice - No appearance

JUDGMENT

This Second Appeal has been preferred against the judgment and decree dated 22.04.2015 passed in A.S.No.25 of 2012 on the file of the Subordinate Court, Hosur, in confirming the judgment and decree made in O.S.No.228 of 2001, dated 09.11.2010 on the file of the District Munsif Court, Hosur.

2. The appellant and the second and third respondents are the defendants in the main suit and the plaintiff who is the first respondent herein has filed the

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main suit for the relief of specific performance of contract and the suit was decreed in favour of the plaintiff and aggrieved by the said judgment and decree, they have preferred First Appeal in A.S.No.25 of 2012 on the file of the Subordinate Court, Hosur and the first appellate Court dismissed the appeal and confirmed the judgment and decree of the trial Court. Aggrieved by the judgment and decree of the first appellate Court, the first defendant has preferred this Second Appeal.

3. For the sake of convenience and brevity, the parties will be referred to as plaintiff and defendant as referred to in the trial Court.

4. Brief facts of the plaint are as follows:

(a) The suit properties belong to the first defendant who purchased the same through sale deed, dated 18.06.1998 and the first defendant approached the plaintiff to sell the suit property for her family expenses and the plaintiff also agreed to purchase the property, for a total sale consideration of Rs.10,000/- and entered into sale agreement on 30.08.1999 and on the date of agreement itself, a sum of Rs.9,000/- was paid as advance and the balance amount of Rs.1,000/- was to be paid within two months from the date of agreement.



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(b) The plaintiff has been always ready and willing to perform his part of the contract and the first defendant is evading from executing the sale deed. Already, the first defendant also executed another sale agreement dated 30.08.1998 in respect of the entire property for a sum of Rs.1.5 lakhs and received advance amount of Rs.1,40,000/-.

(c) The first defendant did not execute the sale deed in respect of the property also. The plaintiff issued notice dated 25.08.2001 calling upon the first defendant to perform his part of the contract, but the first defendant failed to comply with the agreement and therefore, the plaintiff has filed the present suit for specific performance of the contract.

5. Brief averments of the written statement filed by the first defendant in the suit, are as follows:

(a) The suit is not maintainable either in law or on facts. The plaintiff is not entitled to any relief as prayed for in the plaintiff. The description of the property is not correct. The suit property does not belong to the first defendant and the suit filed by the plaintiff is not for the property standing in the name of the first defendant and the suit has been filed for the properties of third parties and the suit agreement is not in respect of the property standing in the name of the first defendant.



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(b) The first defendant, on 28.01.2009, executed a gift deed in favour of the third defendant and the said gift deed was accepted by the second defendant. The property gifted to the third defendant under the gift deed, is not the subject matter of the property whereby the third defendant is unnecessary party to the suit and therefore, the suit is liable to be dismissed.

(c) In fact, the suit agreement is not intended for sale of the suit property. The son of the first defendant, namely Ravindran was running tea stall and he borrowed money from the plaintiff in a sum of Rs.25,000/-, since the property stands in the name of the first defendant, the plaintiff insisted to execute the agreement at the time of payment of money. The plaintiff only paid a sum of Rs.25,000/- by deducting interest @ Rs.3,500/- and the defendants have to pay a sum of Rs.250/- out of 100 days. On 30.05.2000, the entire loan was settled and the same was entered into a note by the plaintiff to the son of the first defendant.

6. On the basis of the above pleadings, and after hearing both sides, the ***trial Court framed the following issues:***

(i) ***Whether the description of the property is correct ?***

(ii) ***Whether the sale agreement dated 30.08.1988 referred to in the plaint, is true?***



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(iii) Whether the plaintiff is entitled to the relief of specific performance of the contract ? and

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

7. Before the trial Court, on the side of plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-6 were marked. On the side of defendants, D.Ws.1 to 3 were examined and Exs.D-1 was marked. After analysing the evidence on both sides, the trial Court decreed the suit and granted the decree for specific performance of the contract. Aggrieved by the judgment and decree of the trial Court, the first defendant has preferred First Appeal in A.S.No.25 of 2012 on the file of Subordinate Court, Hosur, on various grounds. The first appellate Court framed the following ***points for determination:***

(i) Is it true that the first defendant executed sale agreement in favour of the respondent/plaintiff?

(ii) Whether the appellant had proved that they have executed the agreement for security for the loan obtained by them?

(iii) Whether the decree and judgment of the trial Court in O.S.No.228 of 2001, dated 09.11.2000 are liable to be set aside?

8. After analysing the evidence on both sides, the first appellate Court dismissed the First Appeal and confirmed the judgment and decree of the trial



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Court. Aggrieved by the same, the present Second Appeal is filed by the first defendant.

9. While admitting the Second Appeal on 06.07.2015, this Court framed the following ***substantial questions of law***:

(a) When the plaintiff himself has not proved the execution of the agreement, is it right on the Court below to misplace the burden on the defendant which is against Section 101 of the Indian Evidence Act, 1872 ?

(b) Whether the Courts below are right in decreeing the suit for specific performance, when the plaintiff had not come to the Court with clean hands ? and

(c) Whether the Courts below are right in invoking Section 92 of the Indian Evidence Act, 1872, when the intention behind the execution of Ex.A-1 is itself in question ?

10. Learned counsel for the appellant submitted that the plaintiff has filed the specific performance of contract alleging that the first defendant has entered into agreement with the plaintiff agreeing to sell the property for Rs.10,000/- and on the date of agreement itself, a sum of Rs.9,000/- was paid towards sale to the defendants and the remaining Rs.1,000/- has to be paid within two years. The fixation of time for payment of the meagre amount of Rs.1,000/- itself, creates



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serious doubt and probablise the defence of the appellant that her son borrowed money from the plaintiff a sum of Rs.25,000/- for security deposit, the suit agreement has been executed.

11. In order to prove the case of the defendants, they have examined D.Ws.1 to 3 and filed Ex.D-1 and they have categorically established their defence through proper evidence, but the Courts below have failed to consider the same. Merely because of existence of agreement, the plaintiff is not entitled to the equitable relief of specific performance. The plaintiff failed to prove the readiness and willingness and without considering the above aspect, the Courts below have decreed the suit, and therefore, the Second Appeal itself has to be allowed.

12. The learned counsel for the plaintiff submitted that the first defendant has offered to sell the property to the tune of Rs.10,000/- and she has executed the sale agreement and on the date of agreement itself, Rs.9,000/- was paid and the remaining amount will have to be paid within two years. However, in the plaint, it has been wrongly mentioned as two moths. The respondent/plaintiff was always ready and willing to perform his part of the contract, but the defendants are evading from executing the sale deed after receipt of the balance amount of sale consideration and therefore, the plaintiff issued notice dated 25.08.2000.

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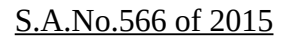


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Despite receipt of notice, neither they executed the sale deed, nor issued any reply and therefore, the plaintiff has filed the suit. The plaintiff during the course of trial, examined P.Ws.1 and 2 to show that the plaintiff was always ready and willing to perform his part of the contract and also proved his case by examining the witness and the plaint documents, the Courts below have correctly accepted the defence and rightly dismissed the suit. The concurrent findings of both the Courts below need not be interfered with and no substantial question of law would arise for consideration in this Second Appeal, and therefore, the Second Appeal is liable to be dismissed.

13. Heard both sides and perused the materials available on record.

14. In this case, the plaintiff has filed the suit for specific performance of the contract alleging that the first defendant has executed the sale agreement agreeing to sell the property for Rs.10,000/- and Rs.9,000/- was paid on the date of agreement itself and the remaining Rs.1,000/- has to be paid within two years. According to the appellant/first defendant, the agreement was not intended to sell the property. In fact, the son of the first defendant borrowed money from the plaintiff to the tune of Rs.25,000/- and for that, the suit agreement was executed. Therefore, when once the execution of the agreement is admitted by the first



15. In order to prove the said contentions on the side of the plaintiff, they have examined P.Ws.1 to 7 and they have deposed about the case and this Court also perused the entire records and evidence. The plaintiff himself has admitted that the time was fixed for two years for payment of remaining sale amount, the sale price was fixed at Rs.10,000/- and on the date of agreement itself, Rs.9,000/- as substantial part of the amount, was paid. While so, for the remaining payment of Rs.1,000/-, fixation of two years time itself creates a doubt over the genuineness of the agreement itself.

16. Therefore, on a careful perusal of the evidence on the defendant's side and the above said conduct of the parties in fixing the time for payment of the balance amount, probablises the defence of the first defendant that the agreement was executed as security for the loan amount borrowed, but the Courts below have failed to consider the same.

17. Moreover, the plaintiff has to aver and prove the readiness and willingness from the date of agreement till the date of execution of the sale deed. The plaintiff failed to prove the readiness and willingness and issued notice only



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on 25.08.2001. The date of agreement is 18.06.1998 and the plaintiff even for payment of Rs.1,000/-, had taken time for two years and there is no explanation by the plaintiff for fixing such huge time for payment of Rs.1,000/-. Therefore, the plaintiff failed to prove the readiness and willingness and the above said aspect has not been considered by the Courts below in proper perspective. Therefore, the judgments and decrees of both the Courts below, are liable to be set aside and the same are liable to be set aside.

18. As far as the substantial question of (a) "when the plaintiff himself has not proved the execution of the agreement, is it right on the Courts below to misplace the burden on the defendant, which is against Section 101 of the Indian Evidence Act", is concerned, in this case, the plaintiff filed the suit for specific performance based on the sale agreement. The first defendant herself admitted the execution of the agreement. According to her, the said agreement was not intended for sale of the property. While so, the first defendant has to prove the above said intention of the agreement and she has also proved the case. The Courts below have correctly placed the burden on the defendants and the same is not against Section 101 of the Indian Evidence Act. However, the defendants have probablised their defence. The substantial question of law (a) is answered accordingly.

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19. As far as substantial question of law (b) "Whether the Courts below are right in decreeing the suit for specific performance, when the plaintiff had not come to the Court with clean hands" is concerned, the plaintiff has filed the suit based on the agreement and already, this Court in the previous paragraphs, decided that the agreement was not intended for sale of the property and the same is executed only for the purpose of loan transaction between the parties. The agreement itself is highly doubtful, because of the time fixed as two years for payment of Rs.1,000/-. The sale price fixed for the property on the date of agreement is Rs.10,000/-, but even after nine years, the trial Court decreed the suit for same price without minding the escalation of price and thereby the plaintiff would get unfair advantage and the defendant would get hardship. Moreover, the plaintiff failed to prove his readiness and willingness. Therefore, the Courts below ought not to have granted the relief of specific performance without the plaintiff proving the readiness and willingness. However, there is no evidence that the plaintiff has not come to the Court with clean hands. The substantial question of law (b) is answered accordingly.

20. As far as the substantial question of law (c), "whether the Courts below are right in invoking Section 92 of the Indian Evidence Act, 1872, when the intention behind the execution of Ex.A-1 is itself in question", is concerned, the trial Court referred the judgment in respect of Section 92 of the Indian Evidence



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Act and held that after executing registered agreement without examining any witness to prove that the agreement was executed for loan, cannot be accepted.

But the trial Court failed to consider the time fixed for payment of Rs.1,000/-, is two years and the said conduct itself is unusual, whereas, the first appellate Court has not discussed about Section 92 of the Indian Evidence Act, but based on the evidence of D.Ws.2 and 3, the first appellate Court came to the conclusion that the defendants failed to prove the defence. As per proviso to the Section 92 of the Indian Evidence Act, the defendants can adduce evidence in respect of Ex.A-1 and they have also probablised the defence and the fixation of two years' time for payment of Rs.1,000/-, creates serious doubt over the genuineness of the agreement. Further, D.Ws.1 to 3 have categorically deposed about the loan transaction and their evidences are cogent and reliable. It is true that there are some minor discrepancies and the same no way affects the defendant's case. Thereby the defendants have probablised their defence. Therefore, the Courts below are not right in invoking Section 92 of the Indian Evidence Act, when an intention behind the execution itself is in question. Substantial question of law (c) is answered accordingly.

21. In view of the above discussion and the answers to the substantial questions of law are concerned, this Court is of the opinion that the Courts below have committed error in decreeing the suit and both the judgments and decrees



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of the Courts below are liable to be set aside. The first defendant herself has executed the sale agreement and there are money dealings between the parties. As per the agreement, Rs.9,000/- was paid and the first defendant though pleaded that her son had received Rs.25,000/- and repaid the same, there is no evidence in that regard. Therefore, the first defendant is liable to pay the advance amount of Rs.9,000/- and there is no contract between the parties in respect of interest. However, considering the nature of the suit and the defendant himself admitting the money transaction, the plaintiff is entitled to interest @ 9% per annum from the date of agreement till the date of realisation of the amount. Though the plaintiff has not prayed for recover of money as an alternative prayer, in view of the admission made by the first defendant and as per the judgment of the Honourable Supreme Court in Srinivas Ram Kumar Vs. Mahabir Prasad and others, reported in AIR 1951 SC 177, this Court can pass the money decree on equity.

22. In the result, the Second Appeal is allowed. The judgments and decrees of both the Courts below, are set aside. The suit in O.S.No.228 of 2001 is dismissed in respect of the specific performance of the contract and money decree is passed by directing the first defendant to re-pay the advance amount of Rs.9,000/- with interest @ 9% per annum from the date of agreement till the date



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of realisation. There shall be no order as to costs. Consequently, the
Miscellaneous Petition is closed.

23.02.2026

Index: Yes/no
Speaking Order: Yes/no
Neutral Case Citation: Yes/no
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To

1. The Subordinate Judge, Hosur.
2. The District Munsif, Hosur.
3. The Record Keeper, V.R.Section, High Court, Madras.

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