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A.S.NO.225 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 08 / 2025

JUDGMENT PRONOUNCED ON : 05 / 03 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S. NO.225 OF 2021

AND

C.M.P. NO.10923 OF 2021

K.Eswaran
S/o.T.R.Kaliaperumal
Main Road, Naduthittu Village,
Varadampattu Post,
Mayiladuthurai Taluk, Mayiladuthurai.

... Appellant /
Plaintiff

Versus

1.S.Janakiraman
S/o. Santhanam
Residing at Vellala Street,
Manalmedu Village, Mayiladuthurai Taluk,
Mayiladuthurai.

2.S.Santhi
W/o. Santhanam
Residing at Vellala Street,
Manalmedu Village, Mayiladuthurai,
Mayiladuthurai.

... Respondents /
Defendants

PRAYER: First Appeal filed under Section 96 read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated January 24, 2020 passed in O.S.No.27 of 2014 by the Additional District and Sessions Court, Mayiladuthurai.



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For Appellant : Mr.P.Gopalan
Mr.J.Ram
For Respondent-1 : Mr.A.Muthukumar
For Respondent-2 : Served – No appearance

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated January 24, 2020 passed in O.S. No.27 of 2014 by 'the Additional District and Sessions Court, Mayiladuthurai' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rules 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. Case of the plaintiff in brief is that the first defendant is the owner of the Suit Property by virtue of Settlement Deed dated May 22, 2011 executed in his favour by his mother, the second defendant. The first defendant agreed to sell the Suit Property to the plaintiff and entered into a Sale Agreement with the plaintiff on July 24, 2014. The sale price was fixed at Rs.14,00,000/-. On the same day, the plaintiff paid a sum of



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Rs.3,00,000/- to the first defendant as advance. Time for execution of Sale Deed was fixed as three months *i.e.*, on or before October 24, 2014.

3.1. Before the Sale Agreement, the first defendant had executed Power Deed dated April 3, 2014 in favour of his mother, the second defendant. At the time of Sale Agreement, the first defendant handed over a copy of the Power Deed dated April 3, 2014 along with a photo copy of other documents to the plaintiff agreeing to cancel the said Power Deed, in order to fulfil other conditions recited in the Sale Agreement.

3.2. The plaintiff has always been ready and willing to pay the balance sale consideration of Rs.11,00,000/- and complete the sale transaction. The plaintiff expressed the same to the first defendant on several occasions through messengers. The first defendant, not only failed to produce the original Title Deeds within three months as stipulated in the Suit Sale Agreement, but also kept on postponing the completion of sale transaction by giving false hopes and lame excuses.

3.3. Therefore, the plaintiff issued a legal notice dated October 11, 2014 calling upon the first defendant to perform his part of the contract. Accepting the execution of the Suit Sale Agreement, the first



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defendant falsely alleged in his reply notice dated October 20, 2014 as though the Suit Sale Agreement was executed only as security for repayment of loans. It is stated in the reply notice that the first defendant borrowed a sum of Rs.50,000/- from plaintiff's father and in turn, executed an unregistered Mortgage Deed dated August 16, 2012 in favour of the plaintiff's father. It is further stated that, then the first defendant borrowed a sum of Rs.2,50,000/- from the plaintiff and executed the Suit Sale Agreement only as a security to the total loan amount of Rs.3,00,000/- which includes the Rs.50,000/- borrowed under the Mortgage Deed from the plaintiff's father; it is false to state that the plaintiff paid Rs.3,00,000/-, as he paid only Rs.2,50,000/- and the remaining Rs.50,000/- was merely adjusted towards the Mortgage amount.

3.4. Those being the reply notice averments, the plaintiff denied the allegation that mortgage amount of Rs.50,000/- is adjusted or added in the advance amount under the Suit Sale Agreement; the plaintiff paid his own money of Rs.3,00,000/- as advance to the first defendant. The plaintiff is in no way connected with the above said Mortgage transaction of Rs.50,000/- between the plaintiff's father and first defendant, which is still due and not yet discharged.



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3.5. Further, the first defendant is indirectly making arrangement to sell the suit property to third parties. Hence, the Suit for Specific Performance and permanent injunction and an alternate relief of refund of advance amount with interest at 12% per annum from the plaint till realization.

DEFENDANTS' CASE

4. The first defendant filed written statement denying the allegations made in the plaint and the same was adopted by the second defendant. The relationship between the defendants is admitted. It was denied that the first defendant executed the Sale Agreement with the Plaintiff.

4.1. According to the defendants, plaintiff's father - Kaliyaperumal was the tenant of the Suit Property. He paid Rs.10,000/- as advance at the time of tenancy arrangement. Subsequently, the first defendant borrowed Rs.40,000/- from plaintiff's father and the total amount of Rs.50,000/- was converted into *Pokkiam* arrangement in respect of the Suit Property. Then the first defendant required more money and he informed the plaintiff's father about the same. The Plaintiff approached the first defendant and promised to provide Rs.2,50,000/-, for which the first defendant had to execute a Deed for Rs.3,00,000/- i.e., for Rs. 2,50,000/-



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given by him and Rs.50,000/- given by his father. Accordingly, the plaintiff obtained the signature of the first defendant on the document prepared and brought by plaintiff.

4.2. The allegation that the first defendant agreed to sell the Suit Property for a sale consideration of Rs.14,00,000/- was denied. The first defendant borrowed only Rs.3,00,000/- from the plaintiff and his father as loan. The plaintiff was is in possession of the Suit Property based on the arrangement made between the first defendant and the plaintiff, and the same is not a Sale Agreement.

4.3. Further, the plaintiff cannot enforce the un-registered agreement and claim specific performance and in that case, he cannot claim alternative relief for money as well. Hence, the Suit for specific performance is liable to be rejected as *void ab initio*. Stating so, the defendants sought to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- '1. *To say whether the 1st defendant had agreed to execute a sale agreement (sale deed) in favour of plaintiff or not?*



2. *To say whether the 1st defendant has borrowed only a sum of Rs.3,00,000/- as loan or not?*
3. *To say whether the plaintiff is entitled to get the relief of specific performance over the suit property or not?*
4. *To say whether the plaintiff is entitled to get alternate relief as required by this plaintiff or not?*
5. *What are all other relief?'*

6. At trial, plaintiff was examined as P.W.1 and one Arivazhagan was examined as P.W.2 and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiff. On the side of the defendants, first defendant was examined as D.W.1 and Ex-B.1 and Ex-B.2 were marked.

7. After full-fledged trial, the Trial Court concluded that the Suit Agreement is executed only as a security for the loan amount of Rs.3 Lakhs and as such, the plaintiff is not entitled to the relief of specific performance. Further, the Trial Court directed the defendant to repay the loan amount along with interest at the rate of 12% from the date of



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agreement till the date of decree and 6% thereafter until realization.

Accordingly, the Trial Court dismissed the Suit.

8. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XLI Rules 1 and 2 of the CPC.

ARGUMENTS

9. Mr.P.Gopalan, learned Counsel appearing for the Appellant/Plaintiff submitted that the Trial Court failed to consider Ex-A.2 - Notice dated October 11, 2014 sent to the 1st Defendant by the Plaintiff wherein the Plaintiff expressed his willingness and readiness to perform his part of the contract, and Ex-A.4 - Reply Notice dated October 20, 2014, wherein the first defendant has stated that Ex-A.1- Suit Sale Agreement was executed for a different transaction and not intended for sale of suit property, which is an afterthought. He would further submit that the Plaintiff is running a Fancy Store and he has sufficient means to pay the balance sale consideration and even the defendants did not raise a plea challenging the financial capacity of the plaintiff. The Trial Court's findings that the Plaintiff was not ready and willing to perform his part of the contract is erroneous. He relied upon a Judgment of this Court in ***R.Leela Ammal -vs- V.Gopal*** reported in ***2017 (5) CTC 154*** and would



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submit that the Plaintiff need not deposit the balance sale consideration unless the Court otherwise orders. Accordingly, he prayed to allow this Appeal Suit and to grant the relief of specific performance.

10. *Per contra*, Mr.A.Muthukumar, learned Counsel appearing for the 1st Respondent/1st Defendant would submit that the Plaintiff's father -Kaliyaperumal was a tenant of a portion of the Suit Property and the 1st Defendant borrowed a sum of Rs.10,000/- as advance. Later, he borrowed a sum of Rs.40,000/- and executed a *Pokkiam* Agreement in favour of Plaintiff's father. The Plaintiff's father was in possession and enjoyment of the suit property as a tenant in lieu of interest. Under Ex.A-1, the 1st Defendant borrowed money from the Plaintiff and executed Ex.A-1 - Suit Sale Agreement for security purposes. Ex.A-1 was not intended for sale; it was intended to stand as a security. After the Decree, the Defendant deposited the entire decree amount of Rs.6,93,000/- into the Court. Further, as per Section 16 (c) of the Specific Relief Act, 1963, dehors a plea from the defense side, the Plaintiff ought to have proved his readiness and willingness throughout the Agreement period as well as throughout the Suit. In this case, the Plaintiff did not produce any document to substantiate his readiness and willingness. The Trial Court rightly appreciated the facts and circumstances and ordered refund of advance



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money. There is no warrant to interfere with it and accordingly, he prayed to dismiss the Appeal Suit and sustain the Judgment and Decree of the Trial Court.

10.1. In support of his contention, learned Counsel appearing for the 1st Respondent / 1st Defendant would rely on the following judgments:

(i) Judgment of this Court in *Pappammal @ T.Pappa -vs- P.Ramasamy*, reported in 2012 (4) CTC 100 ;

(ii) Judgment of this Court in *K.R.Venugopal -vs- K.R.Srinivasan*, reported in 2009 (1) CTC 803 ;

(iii) Judgment of the Hon'ble Supreme Court in *Umabai -vs- Nilkanth Dhondiba Chavan*, reported in (2005) 6 SCC 243 ;

(iv) Judgment of this Court in *Fathima Majeed -vs- Subhapratha Ravikumar*, reported in 2008 (4) CTC 494 ;

(v) Judgment of this Court in *Seeni Ammal -vs- Veerayee Ammal*, reported in 1997 (I) CTC 360



DISCUSSION

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11. Heard on either side. Perused the evidence available on record. The following points arise for consideration in this Appeal Suit:

- (I) Whether Ex-A.1 - Sale Agreement is a Sale Agreement in respect of suit property in its true sense and nature, or was it merely executed for the purpose of security to loan transaction(s) ?
- (II) Whether the Plaintiff was ready and willing to perform his part of the contract?
- (III) Whether the Decree and Judgment of the Trial Court is to be interfered with?

Point-I:

12. Admittedly, the Plaintiff's father - Kaliyaperumal was running a Fancy Store in a portion of the Suit Property as a tenant. The Plaintiff's father - Kaliyaperumal paid a sum of Rs.10,000/- (Rupees ten thousand only) as an advance to the 1st Defendant. Thereafter, the 1st Defendant borrowed another sum of Rs.40,000/- (Rupees forty thousand only) and executed Ex.A-5 - *Pokkiam* Agreement. The Plaintiff's father is in possession and enjoyment of a portion of the Suit Property as a tenant in



lieu of interest. Thereafter, Ex.A-1 -Suit Sale Agreement was executed.

There is no serious dispute with the above facts.

13. According to the 1st Defendant, he borrowed a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) from the plaintiff and subsequently, a sum of Rs.50,000/- (Rupees fifty thousand only) from the plaintiff's father. Totally, he borrowed only a sum of Rs.3,00,000/- (Rupees three lakhs only). Further, only for the purpose of security to the aforesaid loan for Rs.3,00,000/-, Ex.A-1 -Suit Sale Agreement was executed. In Ex-A.4 - Reply Notice issued by the 1st defendant in reply to the plaintiff's pre-suit notice in Ex-A.2, the 1st Defendant has stated that he borrowed a sum of Rs.3,00,000/- (Rupees three lakhs only) from the Plaintiff and executed Ex.A-1 - Sale Agreement as a security. During the pendency of the Suit, the 1st defendant issued a notice to the plaintiff and his father, wherein contrary to his written statement and Ex-A.4 - Reply Notice, it has been stated that the plaintiff offered to purchase the suit property for Rs.14,00,000/-, that the 1st defendant agreed to the offer and received Rs.3,00,000/- as advance and that pursuantly, the Suit Sale Agreement in Ex-A.1 dated July 24, 2014 was entered into. The said notice has been marked during the cross-examination of P.W.1 as Ex-B.1. Relevant extract from Ex-B.1 reads thus:



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'2. No.2 of you approached my client and offered to purchase the property of my client fixing the sale price at Rs.14 lakhs. My client agreed for the proposal and executed an agreement for sale on 24.7.2014 after receiving from No.2 of you the advance of Rs.3,00,000/-. The time for the execution of sale deed after receiving the balance amount alone with my client's mother and sisters was fixed at 3 months that is on or before 24.10.2014, But in the said agreement for sale prepared by the writer of No.2 of you, the entire property as detailed below is inadvertently mentioned. As my client has failed to execute the sale deed within the stipulated time, No.2 of you has filed suit for specific performance of contract in O.S.No 27/2014 on the file of the District Court, Nagapattinam and same is pending trial.'

14. From Ex-B.1, the nature and purpose of Ex-A.1 as well as the intention of the parties are clear. It is pellucid that Ex-A.1 - Suit Sale Agreement was executed for the purpose of sale of suit property by the 1st defendant after receiving a sum of Rs.3,00,000/- (Rupees three lakhs only) as advance from plaintiff. It is clear that Ex.A-1 was executed with the intention to sell the Suit Property. When the first defendant's notice, which was marked in this case by the defendants' side itself, states so, the defendants cannot be permitted to turn around and assail the true nature of Ex-A.1. At this juncture, the defendants would contend that Ex-A.1 being an un-registered document, cannot be the basis for grant of relief of



specific performance. It is settled law that an un-registered document can be received as evidence of a contract in a Specific Performance Suit in view of the proviso to Section 49 (c) of the Specific Relief Act, 1963 as interpreted by Hon'ble Supreme Court in ***R.Hemalatha -vs- Kasture***, reported in **2023 SCC Online SC 381**. In *R.Hemalatha's Case*, it was held thus:

'26. Under the circumstances, as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act. It is not the case on behalf of either of the parties that the document/agreement to sell in question would fall under the category of document as per Section 17(1-A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon the proviso to Section 49 of the Registration Act that the unregistered document in question, namely, unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.'

15. Hence, without any hesitation, this Court concludes that Ex-A.1 - Sale Agreement is a Sale Agreement in respect of suit property in its true sense and nature executed after receiving an advance of



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Rs.3,00,000/- by the 1st defendant. ***Point No.I is answered accordingly in favour of the plaintiff.***

Point-II:

16. As per Section 16(c) of the Specific Relief Act, 1963 irrespective of whether the Defendant raises the plea of readiness and willingness or not, the Plaintiff has to plead and prove his/her readiness and willingness to perform his part of the contract. Admittedly, in this case, a reply notice was sent on October 20, 2014 (Ex.A-4) expressing the Plaintiff's readiness and willingness. But the Plaintiff did not produce any statement of account or bank passbook to prove that he was ready and willing to pay the balance sale consideration of Rs.11,00,000/- (Rupees eleven lakhs only). It is true that the Plaintiff need not deposit the Suit amount unless the Court otherwise ordered. But the Plaintiff has to prove that he had sufficient means in his hand to perform his part of the contract. In the absence of any proof, the readiness and willingness cannot be inferred. The Trial Court has rightly concluded that the Plaintiff was not ready and willing to perform his part of the contract. There is no warrant to interfere with it. ***Point No.II is answered accordingly.***



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Point No.III:

17. The Trial Court granted the alternative relief with 12% interest per annum on Rs.3,00,000/- from the date of agreement till the date of decree and 6% interest per annum till the date of realization. The Plaintiff himself in his prayer for alternative relief has prayed for interest only from the date of Suit till realisation. When there is no contract or agreed terms between the parties as to interest, the Trial Court is not justifiable in awarding interest from the date of Sale Agreement. Considering the facts and circumstances, this Court is of the view that the Plaintiff is entitled to alternative relief as prayed for, that is to say, the Plaintiff is entitled to the alternative relief of return of Rs.3,00,000/- with 12% interest per annum thereon from the date of Suit till realisation. The Judgment and Decree of the Trial Court is modified to that extent alone.

Point No.III is answered accordingly.

18. No quarrel with the case laws relied on by the learned Counsels on either side.



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CONCLUSION

19. In the result, the Appeal Suit is partly allowed. Alternative relief of return of money is granted in favour of the Plaintiff. The 1st Defendant shall pay a sum of Rs.3,00,000/- (Rupees three lakhs only) with subsequent interest at the rate of 12% per annum from the date of the plaint till the date of realization. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

05 / 03 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK/pam

To

The Additional District and Sessions Court
Mayiladuthurai.



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R. SAKTHIVEL, J.

TK/PAM

PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.225 OF 2021

05 / 03 / 2026