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A.S.Nos.87 and 368 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2025

PRONOUNCED ON : 28.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. Nos. 87 and 368 of 2018

and C.M.P.No.9322 of 2020

A.S.No.87 of 2018

K.Soundarrajan

... Appellant

Versus

1.K.Balasubramaniam

Rep. by his guardian Indira, 4th Defendant
(Amended as per order in I.A.No.544 of 2017
dated 06.09.2017)

2.K.Velumani

3.K.Rathinam

4.Indira

... Respondents

PRAYER in A.S.No.87: Appeal Suit filed under Section 96 r/w. Order 41, Rule 1 of the Code of Civil Procedure, 1908 seeking to set aside the Judgment and decree dated 20.09.2017 made in O.S.No.115 of 2014 on the file of the V Additional District Judge, Coimbatore.

PRAYER in C.M.P. No. 9322 of 2020 in A.S 87 of 2018: This Civil Miscellaneous Petition is filed under Order XXXXI, Rule 27 of CPC, praying to permit the petitioner to file the additional documents and receive the same which are given in the list of documents mentioned in schedule given below in the pending appeal in A.S.No.87 of 2018 filed against O.S.No.155 of 2014.

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For Appellant - 1 : Died
For Appellants 2 to 4 : Mr.R.Mubarak Basha
For Respondent : Mr.S.Venkatesan

A.S.No.368 of 2018

1.K.Balasubramaniam (Deceased)
Rep. by his guardian Indira, 4th Defendant
2.K.Velumani
3.K.Rathinam
4.Indira

... Appellants

Versus

K.Soundararajan

... Respondent

[Cause title accepted vide order of this Court dated 25.04.2018 made in C.M.P.No.7881 of 2018 in A.S.SR.No.13563/2018 by VMVJ]

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908 seeking to set aside the Judgment and decree dated 20.09.2017 made in O.S.No.115 of 2014 on the file of the V Additional District Judge, Coimbatore.

For Appellant - 1 : Died
For Appellants 2 to 4 : Mr.R.Mubarak Basha
For Respondent : Mr.S.Venkatesan

COMMON JUDGMENT

The present appeals arise from the judgment and decree dated 20.09.2017 passed in O.S. No. 155 of 2014 on the file of the V Additional District Judge, Coimbatore, whereby the suit for the specific performance

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was dismissed and granted decree for the refund of the advance amount with interest.

2. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court. The plaintiff has preferred A.S. No.87 of 2018 challenging the dismissal of specific performance, while the defendants have preferred A.S. No.368 of 2018 challenging the decree insofar as refund of the advance amount with interest.

3. The Plaintiff's case is that ,the suit property originally formed part of the family properties of Govindappa Gounder and Nanjammal. Under a settlement deed dated 25.08.1962, the properties were divided into six schedules, of which the A-schedule fell to Nachimuthu Gounder who is the maternal grandfather of defendants. It is his further case that Nachimuthu Gounder also purchased 4.05 acres in S.F. No.41/2 under a sale deed dated 11.06.1967, and that both items were his separate and self acquired properties. After Nachimuthu Gounder died intestate on 08.06.1993, his legal heirs succeeded to the properties and remained in joint possession. The plaintiff claims to have purchased the two-thirds share of the other co-sharers of the defendants under registered sale deeds dated 22.03.2012,



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bearing Document Nos.4338 of 2012 and 4339 of 2012, and states that possession, patta and revenue records were thereafter transferred in his favour. The present suit, according to him, concerns only the remaining one-third share belonging to the defendants.

4. The plaintiff further states that defendants 1 to 4 entered into an unregistered sale agreement with him on 18.01.2012 agreeing to sell their one-third share for a total sale consideration of Rs.13,09,000/-, of which Rs.4,00,000/- was paid as advance, leaving a balance of Rs.9,09,000/-. It is his case that he was always ready and willing to perform his part of the contract, but the defendants failed to execute the sale deed. Though he issued a legal notice dated 19.02.2013 calling upon the defendants to complete the sale, they sent a reply dated 08.03.2013 with untenable reasons, while admitting the agreement. He would further allege that the defendants thereafter demanded more money, lodged complaints before the police and the District Registrar, and filed O.S. No.460 of 2013 challenging his earlier purchase deeds and seeking partition, all with a view to evade the agreement. On these pleadings, the plaintiff sought specific performance of the agreement dated 18.01.2012, and in the alternative, refund of the advance amount with interest 15% per annum from the date of suit filed till



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the date of realization.

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5. **Defendants' case:** The fourth defendant filed the written statement, which was adopted by defendants 1 to 3. The defendants admitted the relationship of parties and that the property originally belonged to Nachimuthu Gounder, but contended that no partition had taken place among his heirs after his death. According to them, the defendants, being the heirs of Ramathal who is the daughter of Nachimuthu Gounder, were entitled to one-third share, while the remaining two-thirds belonged to the other legal heirs of Nachimuthu Gounder. They would state that, when they demanded partition, the same was refused, and they later came to know that the other co-sharers had executed sale deeds in favour of the plaintiff under Document Nos.4338 of 2012 and 4339 of 2012 without their knowledge or consent. Challenging the said alienations, they issued legal notice dated 16.08.2013 and also filed O.S. No.460 of 2013 seeking declaration that the sale deeds were null and void, partition and separate possession of their share, and consequential injunction.

6. Insofar as the suit agreement dated 18.01.2012 is concerned, the defendants specifically denied execution of any agreement in favour of the



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plaintiff and denied receipt of the alleged advance amount of Rs.4,00,000/-.

Their categorical case was that the unregistered sale agreement relied on by the plaintiff was a fabricated and forged document created by forging their signatures. They also denied receipt of the plaintiff's notice dated 19.02.2013 and the alleged reply notice dated 08.03.2013. The defendants further contended that even assuming such an agreement existed, the stipulated time for performance was only one month, and the plaintiff's failure to act within time, coupled with the delay in issuing notice and filing the suit, clearly showed absence of readiness and willingness. On these grounds, they sought dismissal of the suit.

7. Before the trial court, the plaintiff examined himself as PW1 and other witnesses as PW2, PW3 and marked Exs.A1 to A13. On the side of the defendants, the 4th defendant was examined as DW1 and another witness as DW2, and Exs.B1 to B3 were marked.

8. On appreciation of oral and documentary evidences, the Trial Court held that Ex.A5 sale agreement was true and valid, accepted the plaintiff's purchase of the remaining two-thirds share under Exs.A1 and A2, and found that the plaintiff had proved payment of Rs.4,00,000/- as advance,



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while rejecting the defendants' plea of forgery. However, it found that the plaintiff had failed to establish continuous readiness and willingness, in view of the long delay in issuing notice and filing the suit, absence of supporting documentary evidence, and lack of proof regarding the alleged mediation efforts. Accordingly, the Trial Court dismissed the relief of specific performance, but directed defendants to refund the advance amount of Rs.4,00,000/- with interest at the rate of 12% per annum from the date of sale agreement i.e. 18.01.2012 till the Judgment date i.e. 20.09.2017 and subsequently at the rate of 6% per annum till the date of realization with cost.

9. Aggrieved by dismissal of the relief of specific performance, the plaintiff preferred A.S. No.87 of 2018 contending that, having upheld Ex.A5 sale agreement, the payment of advance, and the defendants' reply notice admitting the agreement, the Trial Court ought to have granted specific performance. According to him, the finding that he lacked readiness and willingness was erroneous, since the delay was occasioned by the defendants' conduct in lodging complaints and instituting O.S. No.460 of 2013. He further contended that time was not the essence of the contract, that he had the means and had even deposited the balance sale consideration



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before Court, and that the refusal of specific performance was contrary to the evidence and the Trial Court's own findings.

10. Aggrieved by grant of refund of the advance amount with interest, the defendants preferred A.S. No.368 of 2018 contending that the Trial Court, having held that the plaintiff failed to prove continuous readiness and willingness to perform his part of the contract, ought to have dismissed the suit in its entirety and erred in nevertheless granting refund of the advance amount. They further disputed the plaintiff's claim that a sum of Rs.4,00,000/- had been paid as advance and contended that such payment had not been satisfactorily proved. Placing reliance on the forfeiture clause contained in Ex.A5, they argued that, upon the plaintiff's default in completing the transaction within the stipulated time, the advance amount stood forfeited and no decree for refund could have been passed. The appellants also questioned the reliance placed by the Trial Court on Ex.A7 reply notice and the evidence of P.W.3 in that regard. They further assailed the award of interest and costs, contending that, once the plaintiff had been found at fault on the question of readiness and willingness, the grant of refund with interest was unsustainable in law. On the above grounds, they sought setting aside of the judgment and decree insofar as it directed refund



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of the advance amount, and prayed for dismissal of the suit in toto.

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11. Learned counsel for the plaintiff submitted that the delay in seeking execution of the sale deed has been satisfactorily explained, since it was occasioned only by the complaints lodged and proceedings initiated by the defendants against the plaintiff. It was further contended that the plaintiff has proved the sale agreement and that the finding rendered in O.S. No.460 of 2013 has not been challenged. According to the learned counsel, specific performance being a discretionary relief, the same ought to have been granted in favour of the plaintiff.

12. Learned counsel for the defendants submitted that they had consistently denied receipt of the alleged advance amount and that the Trial Court erred in directing repayment of the same with interest. It was further contended that Ex.A5 is a fraudulent sale agreement and that the stipulations contained therein cannot be relied upon against the defendants. According to the learned counsel, O.S. No.460 of 2013 was only a suit for partition, and no independent finding was rendered therein regarding the validity of the sale agreement. It was therefore argued that, in the absence of satisfactory proof of payment of consideration, the decree for refund could not have been



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granted. In support of his submission , he relied on ***Farooque Dadabhoy vs Dr. Usha S. Bhat*** reported in **2014 (4) CTC 290**, ***Surendran vs G.Selladurai and Others*** reported in **(2022) 8 MLJ 225**, ***Thiruvengada Pillai vs Navaneethammal*** reported in **AIR 2008 SC 1541**.

13. During the pendency of appeals, the plaintiff/appellant filed C.M.P. No.9322 of 2020 in A.S. No.87 of 2018 under Order XLI Rule 27 CPC seeking to produce additional documents, including complaints given by the defendants, revenue proceedings, depositions in O.S. No.460 of 2013, and the judgment therein, contending that those documents would establish that the delay was caused by the defendants and that he had always been ready and willing to perform his part of the contract.

Points for Determination

14. The following points arise for determination:

1. Whether the appellant is entitled to receive the additional documents in evidence under Order XLI Rule 27 CPC?
2. Whether the plaintiff has proved due execution of Ex.A5 dated 18.01.2012 and payment of Rs.4,00,000/- as advance thereunder?
3. Whether the plaintiff has proved continuous readiness and willingness to perform his part of the contract?



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4. Whether the plaintiff is entitled to the relief of specific performance?

5. Whether the court below had rightly exercised its discretion while decreeing the relief of refund of advance amount Rs.4,00,000/- with interest in favour of plaintiff?

Point No.1

15. The petition has been filed under Order XLI Rule 27 CPC to receive additional documents, namely, copies of the complaints said to have been given by the defendants before various authorities, revenue proceedings, depositions in O.S. No.460 of 2013, and the judgment rendered therein. According to the appellant, those documents are necessary to establish that the delay in completion of the sale was occasioned only by the conduct of the defendants and that he was always ready and willing to perform his part of the contract.

16. It is well settled that additional evidence at the appellate stage cannot be permitted as a matter of course and that Order XLI Rule 27 CPC is not intended to enable a party to fill up omissions or lacunae in the case already presented before the Trial Court. Such evidence can be received only when the party, despite due diligence, could not produce it before the Trial Court, or when the appellate court finds such evidence necessary to enable it

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to pronounce judgment in an effective manner. In the present case, most of the documents now sought to be produced relate to complaints, revenue proceedings and connected matters, which were either already within the knowledge of the appellant or were available even during the pendency of the suit. The question of readiness and willingness was directly in issue before the Trial Court, and the plaintiff had sufficient opportunity to adduce evidence on that aspect. Mere production of further documents at the appellate stage to strengthen the same plea cannot be permitted.

17. The subsequent judgment in O.S. No.460 of 2013 lends support to the plaintiff's case only to the limited extent of corroborating the existence of the agreement between the parties and the payment of advance thereunder. However, as the said suit was one for declaration, partition and injunction, and as the finding therein was not an independent adjudication of the plaintiff's entitlement to specific performance, the same cannot by itself conclude the issue of readiness and willingness or compel a decree for specific performance in the present proceedings, those issues can be adjudicated on the basis of the evidence already available on record. Hence, this Court is not satisfied that the appellant has made out any sufficient ground under Order XLI Rule 27 CPC to receive the additional documents.



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Accordingly, C.M.P. No.9322 of 2020 is liable to be dismissed. This point is answered accordingly.

Point No.2

18. The initial burden is undoubtedly on the plaintiff to prove due execution of Sale agreement (Ex.A5) and the payment of the advance amount thereunder. In a suit for specific performance, where execution is specifically denied, the plaintiff must succeed on the strength of his own evidence and not on the weakness of the defence. In the present case, however, that burden has been satisfactorily discharged. The evidence of P.W.1 is clear that Ex.A5 dated 18.01.2012 was executed by defendants 1 to 4 in respect of their one-third share for a total sale consideration of Rs.13,09,000/-, and that a sum of Rs.4,00,000/- was paid on the date of agreement as advance. His version is not left uncorroborated. It stands materially supported by P.W.2, one of the attestors to Ex.A5, who has spoken not only to the execution of the document, but also to the actual payment of Rs.4,00,000/- in cash and to the defendants signing each page of the agreement after receipt of the amount. The evidence of P.W.2, being that of an attesting witness acquainted with both parties, lends substantial assurance to the plaintiff's case.



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19. The significance of Ex.A7 which is reply notice issued by the defendants to the plaintiff also cannot be lost sight of. Though the defendants took a categorical stand in the written statement that Ex.A5 sale agreement was a fabricated and forged document, the plaintiff examined P.W.3, Advocate Ramakrishnan, to prove that Ex.A7 reply notice had in fact been issued from the office of Senior Counsel J.D. Socrates on instructions emanating from the defendants' side. P.W.3 has spoken to the receipt of Ex.A6 which is the legal notice issued by the plaintiff to the defendants and to the issuance of Ex.A7 reply notice under his signature. Significantly, Ex.A7 reply notice does not contain a total denial of the agreement; on the contrary, it proceeds on the footing that an agreement had been entered into and raises a defence of failure on the part of the plaintiff to complete the sale within the stipulated time. Such a stand is wholly inconsistent with the later plea that Ex.A5 sale agreement itself is a forged document. This contemporaneous reply notice therefore constitutes an important circumstance corroborating the plaintiff's case regarding execution.

20. The service of Ex.A6 legal notice is also established by Ex.A10 postal acknowledgment cards. D.W.1, while denying receipt of notice in

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chief, admitted in cross-examination that the signatures found in the acknowledgment cards were hers and that of the second defendant, and also admitted the correctness of the addresses found therein. Once such admission is available, the defendants' denial of service loses all force, and the statutory presumption regarding due service also stands attracted. If Ex.A6 legal notice was duly served and Ex.A7 followed in reply thereto, the defence plea that the plaintiff fabricated both the agreement and the reply notice becomes inherently improbable.

21. The defence criticism based on the absence of the fourth defendant's signature on the last page of Ex.A5 also does not advance their case. The record shows that Ex.A5 consists of several pages and the fourth defendant's signatures are found in the earlier pages. Merely because one signature is absent in the last page, the document cannot be rejected in toto, particularly when the oral evidence of P.W.1 and P.W.2 speaks consistently to execution by all the defendants and when the surrounding circumstances, especially Ex.A7, support the plaintiff's version. The Court must assess the document as a whole and in the light of the entire evidentiary matrix, and not by isolating one irregular feature.



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22. The plea of forgery set up by the defendants also does not inspire confidence. D.W.1's evidence who is 4th defendant, as noticed from the record, suffers from serious infirmity. She admitted the signatures in Ex.A10 acknowledgment card, yet denied receipt of notice; more importantly, when shown her own signature in the written statement, she initially denied it and later admitted the same after the nature of the document was explained. This conduct was rightly treated as indicative of a tendency to deny signatures whenever the document was adverse to the defence. In these circumstances, 4th defendant denial of the signatures in Ex.A5 sale agreement cannot be accepted as trustworthy. Significantly, apart from such bare denial, the defendants did not place any convincing material to probabalise the theory of fabrication.

23. Thus, on an overall appreciation of Ex.A5, the oral evidence of P.W.1 and P.W.2, the corroborative testimony of P.W.3 regarding Ex.A7, the admitted acknowledgment cards under Ex.A10, and the unsatisfactory nature of the defence evidence, this Court is of the considered view that the plaintiff has proved, on the standard of preponderance of probabilities applicable to civil proceedings, the due execution of Ex.A5 dated 18.01.2012 by the defendants and the payment of Rs.4,00,000/- as advance



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thereunder. The finding of the Trial Court on this aspect, therefore, warrants affirmation. Thus, this point is answered accordingly.

Point No. 3 and point No.4

24. In a suit for specific performance, the plaintiff is bound to plead in the plaint and also prove in evidence that he has always been ready and willing to do his part of the contract, as mandated by Section 16(c) of the Specific Relief Act. This readiness and willingness must continue from the date of the agreement up to the date of the decree. It is not a mere formality; it is a substantive statutory requirement. Though, in transactions relating to immovable property, time is not ordinarily of the essence, the stipulation in Ex.A5 sale agreement fixing one month for performance is still a relevant circumstance while testing the plaintiff's conduct. On perusing the records it shows that, despite such stipulation, the plaintiff did not issue any written demand within the contractual period. His first notice, Ex.A6, came to be issued only on 19.02.2013, more than one year after the agreement dated 18.01.2012.



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25. What is more significant is the plaintiff's own admissions in cross-examination. As noticed in the record, P.W.1 admitted that he had not issued any notice during the agreed period expressing his readiness, availability of funds or willingness to complete the purchase. He further admitted that he had no documentary proof to show readiness and willingness during the relevant period. Though he claimed that oral demands had been made, the same remained wholly unsubstantiated. These admissions go to the root of the requirement under Section 16(c) of the Specific Relief Act and materially weaken the plaintiff's case.

26. The defendants' reply notice, Ex.A7, also assumes significance on this aspect. While Ex.A7 supports the plaintiff insofar as it acknowledges the agreement, it simultaneously states that the plaintiff had failed to pay the balance sale consideration within the stipulated time and specifically disputes his readiness and willingness. Yet, the plaintiff did not choose to send any rejoinder controverting that stand or asserting his immediate preparedness to perform. The absence of any such prompt response, viewed in the background of the long silence after the agreement, is a circumstance that weighs against the plaintiff.



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27. The subsequent conduct of the plaintiff shows that, even after receipt of Ex.A7 dated 08.03.2013, the plaintiff did not immediately institute the suit for specific performance, but filed the suit only on 29.04.2014, that too after more than one year. The explanation now offered is that the defendants were giving complaints before various authorities and that the plaintiff was making attempts for amicable settlement through mediators and well-wishers. This explanation cannot, by itself, establish continuous readiness and willingness. Administrative complaints did not legally disable the plaintiff from approaching the Court. Further, no mediator or independent witness was examined to substantiate any genuine and continuing settlement efforts. On the contrary, by then the defendants had already issued legal notice Ex.B2 challenging the plaintiff's earlier sale deeds and had instituted O.S. No.460 of 2013, thereby showing that the relationship between the parties had already become openly adversarial. In such circumstances, the plea of ongoing amicable settlement does not inspire confidence.

28. No doubt, the plaintiff contended in appeal that the delay was occasioned by the defendants' conduct in lodging complaints and initiating



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proceedings before the District Registrar and in O.S. No.460 of 2013. Those circumstances may explain the hostile background between the parties, but they cannot substitute for proof of the plaintiff's own continuous preparedness to pay the balance sale consideration and obtain the sale deed. Readiness and willingness must be manifested by the plaintiff's own conduct, and not merely inferred from the alleged obstruction by the defendants.

29. The fact that the plaintiff later deposited the balance sale consideration when the suit had earlier been decreed *ex parte* also does not carry the matter any further. Such subsequent deposit may show a later capacity to pay, but it cannot retrospectively prove that the plaintiff had remained continuously ready and willing from the date of agreement onwards. The requirement of law is one of continuity, and that continuity is absent in the present case.

30. In ***K.S. Vidyadnam v. Vairavan*** reported in ***1997 (3) SCC 1***, the Supreme Court held that, though time may not ordinarily be of the essence in contracts relating to immovable property, the time stipulations in the agreement cannot be ignored and the plaintiff must still perform his part



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within a reasonable time. Mere filing of the suit within limitation is not sufficient. Prolonged inaction and escalation in property values are relevant considerations for refusing specific performance as an equitable relief.

31. Therefore, on an overall appreciation of the evidence, particularly the long delay between Ex.A5 sale agreement and Ex.A6 legal notice , the further delay in filing the suit after Ex.A7 reply notice , the admissions of P.W.1 in cross-examination, the absence of documentary proof during the contractual period, the lack of corroboration for the alleged oral demands and mediation efforts, and the plaintiff's omission to respond to Ex.A7 reply notice, this Court is unable to hold that the plaintiff has proved continuous readiness and willingness to perform his part of the contract.

32. It is well settled that the relief of specific performance is discretionary and equitable in nature, and the Court is not bound to grant it merely because execution of the agreement is proved. Though the plaintiff has succeeded in proving Ex.A5 and the payment of Rs.4,00,000/- as advance, he has failed to establish the further and mandatory requirement of continuous readiness and willingness under Section 16(c) of the Specific



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Relief Act. Therefore, the plaintiff is not entitled to specific performance.

Thus, these Points are answered accordingly.

Point No.5

33. Once the sale agreement under Ex.A5 is found to be proved, refusal of the relief of specific performance on the ground of want of readiness and willingness does not entitle the defendants to retain the amount received under the agreement. In the facts of the present case, the plea of forfeiture cannot be accepted. The defendants have denied the very execution of the agreement as well as the receipt of money. Having taken such a stand, they cannot fall back upon the forfeiture clause contained in the same agreement. Such pleas are mutually destructive pleas. Forfeiture presupposes the existence of a contractual relationship, receipt of money under the contract, and default by the other party. A party who denies the contract and the receipt of money cannot claim the benefit of forfeiture under that very contract. Where the contract itself is denied, forfeiture has no foundation.

34. In **V.P. Murugesan v. P. Sheik Mideen**, reported in 2015 (6) CTC 810, this Court held that refund of advance money may be directed where the Court finds the sale agreement to be genuine, but declines the

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relief of specific performance. Therefore, the plaintiff is entitled to refund of the amount proved to have been paid under Ex.A5. This point is answered accordingly.

35. In the result, the A.S. No.87 of 2018 and A.S. No.368 of 2018 are dismissed confirming the Judgment and Decree dated 20.09.2017 passed in O.S. No.155 of 2014 on the file of the V Additional District Judge, Coimbatore. C.M.P. No. 9322 of 2020 in A.S 87 of 2018 is dismissed. No order as to costs. Consequently, all the miscellaneous petition is closed, if any.

28.04.2026

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

SRM

To

1. The V Additional District Judge,
Coimbatore.

2. The Section Officer,
V.R.Records,
Madras High Court.

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DR. A.D. MARIA CLETE, J

SRM

Common Judgment
made in A.S. Nos. 87 and 368 of 2018

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