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AS No. 181 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 20-01-2026**

CORAM:

**THE HON'BLE MR JUSTICE N. SATHISH KUMAR  
AND  
THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

**AS No. 181 of 2021  
and  
C.M.P.No.8400 of 2021**

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Ranganathan(died)

1. Murugan, S/o.Govindasamy
2. Saraswathi, W/o Ranganathan
3. Thamarai Selvi, D/o Ranganathan
4. Kavitha, D/o Ranganathan
5. Raghul Kanna, S/o Ranganathan

..Appellant(s)

Vs.

1. P.Govindhan, S/o Palani Mudaliyar
2. G.Prakash, S/o P.Govindhan

.. Respondents

First Appeal (Appeal Suit) filed under Section 96 of CPC praying to set aside the Judgment and Decree dated 29.01.2021 made in O.S.No.45 of 2014 on the file of the Additional District Judge,

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For appellants: M/s.V.Sakkarapani

For respondents: Mr.R.Rajaramani, for R-1

No appearance for R-2

### **JUDGMENT**

**(The Judgment of the Court was delivered by N.Sathish Kumar, J)**

Challenging the judgment and decree of the trial Court in dismissing the suit filed for specific performance, the plaintiff is before this Court by way of this First Appeal.

2. The parties are stated herein as they are ranked before the trial Court.

3. Brief facts of the case of the plaintiffs, are as follows:

The defendants agreed to sell the suit property for a total consideration of Rs.27 lakhs, out of which, they had received Rs.25 lakhs as advance amount and the agreement for sale, dated 10.08.2014, was executed. It is also agreed between the parties that the sale shall be completed within 24 months from the date of agreement. The plaintiffs

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were always ready and willing to perform their part of the contract. The plaintiffs have also informed their readiness and waited in the Sub-Registrar Office from 10 am to 5 pm, but the defendants did not come to the Sub-Registrar Office to execute the sale deed. Even prior to that, the plaintiffs sent a legal notice, dated 25.07.2014. The defendants sent reply notice with false allegations. Hence, the suit has been filed by the plaintiffs.

4. It is the contention of the defendants that they never intended to sell the property at any point of time. In fact, at the instance of the first defendant's brother-in-law, the defendants had borrowed Rs.20 lakhs for the purpose of quarry business and borrowed Rs.5 lakhs on 23.09.2010 from the first plaintiff. Towards such loan, the sale agreement was also executed by the wife of the first defendant. Thereafter, once again, as the first defendant required another Rs.5 lakhs from the plaintiffs, the plaintiffs advanced Rs.5 lakhs and by cancelling the earlier agreement executed in favour of the wife of the first defendant, the suit agreement came to be executed. Hence, it is the contention that the loan amount which was borrowed @ 30% interest, the defendants have paid interest at the said rate till 08.02.2014. As the business of the defendants also is not



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yielding any income, they have not paid the interest thereafter. Hence, the suit has been filed by the plaintiffs.

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

- (i) Whether the plaintiffs are entitled to the relief as prayed for in the plaint ? and
- (ii) To what other relief the plaintiffs are entitled to ?

6. On the side of the plaintiffs, P.W.1 was examined and Exs.A-1 to A-6 were marked. On the side of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-5 were marked.

7. On appreciation of the evidence, the trial Court found in paragraph 10 that the agreement is not intended for sale and it came to be executed in a loan transaction and it was also held that the defendants are liable to pay the amount of Rs.25 lakhs with interest @ 18% p.a. and the trial Court refused to grant the specific performance relief. Having held that the defendants are liable to pay the amount received in the agreement and not granted an alternative relief, on the only ground that no prayer for



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return of advance is sought for in the plaint. However, the trial Court granted an opportunity to the plaintiffs to file fresh suit for recovery of the amount. Challenging the said findings, the present First Appeal came to be filed by the unsuccessful plaintiffs.

8. Though the appeal has been filed challenging the judgment and decree of the trial Court in refusing to grant specific performance relief, learned counsel for the appellants fairly submitted that it would suffice if the appellants are granted an alternative relief of refund of the advance amount, as held by the trial Court.

9. Learned counsel for the respondents/defendants submitted that though the trial Court found that the respondents are liable to pay the amount, there is no decree directing refund of the advance amount. But the trial Court has granted liberty to the appellants to file a fresh suit and the appellants have not filed any fresh suit so far.

10. However, the learned counsel for the defendants fairly submitted that in the written statement, they have stated that they have received Rs.25 lakhs which has been clearly admitted. Hence, it is



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submitted that though the trial Court has come to the conclusion that 18% interest is liable to be paid, according to the learned counsel, the interest is already in excess which had been paid, and therefore, reasonable interest may be fixed by this Court.

11. In the light of the above submissions, and since the enforceability of the agreement has not been sought for before this Court by the appellants, now the only question that remains to be answered is as to whether the defendants are liable to pay the advance amount received for the agreement, though there is no specific prayer for the same in the suit.

12. It is not in dispute that the defendants have executed the agreement dated 10.08.2014. It is the case of the plaintiffs that the agreement is only for sale of the suit property. According to the plaintiffs, they have paid Rs.25 lakhs on the date of agreement and for the remaining Rs.2 lakhs, 24 months' time has been agreed by the parties. The very conduct of the parties in extending time for two years to pay the paltry sum, is in fact probablise the case of the defendants that the agreement was never intended for sale of the property. If the plaintiff has



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intended to purchase the property, having parted a substantial sale consideration waiting to pay another Rs.2 lakhs for two years is against the normal human conduct. Therefore, the contention of the plaintiffs is that the agreement is actually intended to sell the property, cannot be countenanced. The contention of the defendants that it is only a loan agreement. Such contention is fortified by Ex.B-1, dated 23.09.2010. The earlier agreement executed in favour of the wife of the first defendant in favour of the plaintiffs, the same has been cancelled and later, the suit agreement came to be in existence. This fact is in fact probablised in the defendants' theory and it is only the loan transaction. Ex.B-2 cancellation agreement is filed to probablise the defence theory.

13. Though it is the contention of the defendants that they have paid interest regularly, to support the same, Exs.B-3 to B-5 have been filed. Those documents are only self-serving documents and the same had not been proved to substantiate the contentions of the defendants. Therefore, in the absence of any proof for payment of interest, it is to be necessarily held that as agreed in the agreement, the defendants received the amount. In fact, the defendant admitted receipt of Rs.25 lakhs. Therefore, they are liable to return the said amount. The trial Court, in



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paragraph 10 of the judgment, has rightly come to the conclusion that the defendants are liable to pay the amount back with interest. However, the trial Court is of the view that since no alternative relief is sought for in the plaint for return of the advance amount, the trial Court directed the plaintiffs to file fresh suit for recovery of money. Though we are also not oblivious of the fact that in a suit for specific performance for return of the advance amount, specific prayer has to be made, however, no such specific prayer is made by the plaintiffs.

14. As the parties are not in issue with regard to the borrowal of the amount, and the Court fees are also paid on the value of the property, we are of the view that as the parties are not in issue, in order to give a quietus to the litigation and the finding of the trial Court that the defendants are liable to return Rs.25 lakhs with 18% interest as held in paragraph 10 of the judgment by the trial Court, which is also not challenged by the defendants. In order to give quietus to the matter, we are of the view that the plaintiffs need not be once again driven to the Civil Court for recovery of the amount as directed by the trial Court. Hence, in view of the admitted pleadings of the parties, we are of the view that in order to give a quietus to the issue and the litigation among



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the parties, despite there is no prayer made for specific performance, in order to end the litigation and give a quietus to the dispute between the parties, we are of the view that in the given case, as there is no dispute with regard to the receipt of Rs.25 lakhs as per the suit agreement, we are inclined to grant the alternative relief to the appellants herein for a sum of Rs.25 lakhs with reasonable interest @ 9% p.a. from the date of agreement till the date of realisation.

15. With regard to the aspect of not seeking alternative relief, it is useful to refer a judgment of this Court (Madurai Bench) in A.S. (MD).No.102 of 2013, dated 10.11.2022 (J.Dhanapal Vs. V.Manimala and another), wherein, in paragraph 25, it was held as under:

"25. The learned counsel for the appellant submitted that though the plaintiff had not sought for an alternate relief for refund of the advance amount paid under Ex.A1, he would be entitled for refund of the advance sale amount. This argument has been answered by a coordinate Bench of this Court in the case of *N.Sekaran and another Vs. C.Rajendran* reported in AIR 2018 Mad 67, in which, reliance was placed on a decision of the Hon'ble Supreme Court in the case of *Thiruveedhi*



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*Channaiah Vs. Gudipudi Venkata Subbarao (D) by LR*s, reported in (2009) 17 SCC 341, wherein it was held that even though the plaintiff has not asked for alternate relief for the return of advance sale amount, the Court is empowered to mould the relief to render complete justice between the parties. The relevant portion of *N.Sekar's case* (supra) reads as follows:

"13. The legal position enumerated above would only indicate that in an agreement of sale, where money is paid only as part of sale price, the forfeiture clause will be treated as having the effect of penalty. Further, even in the absence of a prayer for refund of the advance sale amount by the plaintiff, with a view to render complete justice, the Court is empowered to mould the relief and to issue appropriate direction to the defendant for refund of the advance sale price."

16. It is relevant to note that the rights of the parties are determined by the facts pleaded by both sides. On the date when the suit was filed and the written statement filed by the parties, both sides are not disputing with regard to the payment of Rs.25 lakhs in this



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case and since the said payment is not in dispute, though the alternative relief is not sought for by the plaintiffs, we are of the view that the defendants cannot be allowed to go scot-free, without making any payment that they had actually received from the plaintiffs. The ends of justice would be met by directing the defendants to pay the amount of Rs.25 lakhs as the alternative relief to the plaintiffs. Further, while exercising Order 41 Rule 33 CPC, the appellate Court can exercise the power and pass any decree and as may be required to meet the ends of justice.

17. Accordingly, this Appeal Suit is partly allowed, granting the alternative relief for return of the advance amount of Rs.25 lakhs with interest @ 9% p.a. from the date of agreement till the date of realisation. Till such time, a charge will be created over the property in question. The moment the entire amount is disbursed of, the charge would be automatically raised without reference to any further order. Considering the nature of the suit and the dispute between the parties, we are not inclined to award any costs in this appeal.

18. As far as the judgment and decree of the trial Court in refusing



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to grant the specific performance relief, the same are hereby confirmed.

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C.M.P.No.8400 of 2021 is closed.

(N.S.K.,J.) (R.S.V.,J.)  
20-01-2026

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To

1. The Additional District Judge, Dharmapuri.
2. The Record Keeper, V.R. Section, High Court, Madras.



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N.SATHISH KUMAR, J

and

R.SAKTHIVEL, J

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