



O.S.A. No.379 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.03.2026
Pronounced on	16.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A.Nos.379 of 2018 and 55 of 2019 and
C.M.P. No.16978 of 2018

O.S.A. No.379 of 2018

Sri Rajendran

...Appellant

Vs.

Tamil Nadu Central Excise and Customs
Employees Co-operative House Building Society Limited,
121, Nungambakkam High Road,
Chennai 600 034.
Represented by its Special Officer

...Respondent

O.S.A. No.55 of 2019

Tamil Nadu Central Excise and Customs
Employees Co-operative House Building Society Ltd.,
121, Nungambakkam High Road,
Chennai 600 034.
Represented by its Vice President

...Appellant



O.S.A. No.379 of 2018

Vs.

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Sri Rajendran

...Respondent

Prayer in O.S.A. No.379 of 2018: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letter Patent, against the judgment and decree dated 23.04.2018 passed in C.S. No.1059/1990 on the file of this Hon'ble Court.

Prayer in O.S.A. No.55 of 2019: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules and Clause 15 of the Letter Patent, to set aside the part of the judgment and decree dated 23.04.2018 passed in C.S. No.1059/1990 on the file of this Hon'ble Court.

Appearance in O.S.A. No.379 of 2018

For Appellant	:	Mr. V. Manohar
For Respondent	:	Mr. S. Mukunth, Senior Advocate for Mr. T.M.Pappiah

Appearance in O.S.A. No.55 of 2019

For Appellant	:	Mr. S. Mukunth, Senior Advocate for Mr. T.M.Pappiah
For Respondent	:	Mr. V. Manohar



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COMMON JUDGMENT

K. GOVINDARAJAN THILAKAVADI,J.

O.S.A. No. 379 of 2018 is filed to set aside the judgment and decree dated 23.04.2018 passed by the learned Single Judge of this Court in C.S. No.1059/1990.

2. O.S.A. No.55 of 2019 is filed to set aside the part of the judgment and decree passed in the same suit with regard to dismissal of the suit in respect of Item No.2 of the plaint schedule properties comprised in Survey No.212, Ramapuram Village, Saidapet Taluk, Kancheepuram District.

3. For the sake of convenience, the parties are referred to as per their ranking in the suit.

4. The above suit was originally filed by the appellant in O.S.A. No.55 of 2019 / plaintiff for specific performance seeking direction to the appellant in O.S.A. No.379/2018 / defendant to perform the agreement, dated 29.11.1987



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and in default of compliance, seeking direction for execution of the sale deed through Court. During the pendency of the suit, a memo of compromise dated 16.02.1997 was filed and therefore, the plaint was amended as per the order of this Court. As per the amended plaint, the plaintiff seeks direction to the defendant to perform the agreement, dated 29.11.1987 and subsequent memo of compromise, dated 16.02.1997 and in default of compliance for execution of sale deed through Court.

5.The sum and substance of the case of the plaintiff is that, the plaintiff society entered into an agreement of sale with the defendant for sale of land to an extent of 0.06 acres in S.No.233 and 0.58 acres in S.F. No.234/3, totally an extent of 0.64 acres, in Ramavaram village at Rs.3,400/- per cent and paid Rs.1,000/- as advance; the land was under acquisition. The defendant executed a power of attorney on 26.11.1987 enabling the plaintiff to pursue denotification, and also consented to withdraw writ proceedings, following which the Government issued a draft withdrawal order on 03.01.1989 subject to the land being conveyed to the plaintiff. Time was not treated as the essence of the contract.



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5.1. After exchange of notices in 1990 and the defendant's failure to perform, the plaintiff filed the suit. During the pendency of the suit, the defendant in the said suit and other defendants in another suit in C.S. No.783 of 1991 and the plaintiff agreed to settle disputes through a compromise dated 16.02.1997. As per the said term, the price was fixed at Rs.12,000/- per cent and the extent in this suit increased to 3.37 acres (in lieu of 0.64 acres), while the land in the connected suit was reduced from 13.50 acres to about 2.35 acres. The defendant agreed to convey the increased extent both in his capacity as owner and as power of attorney for partners of M/s. New Rathna Brick Industries. Although a compromise decree was passed in the connected suit, the defendant failed to honour the compromise in this suit, despite receiving Rs.15,00,000/- on 16.02.1997 and Rs.5,00,000/- lakhs on 25.02.1997. The plaintiff obtained amendment of the plaint in 2002 to include additional lands as per the compromise, remained ready and willing to perform, and even sent a pay order for Rs.20,44,000/-, which was returned undelivered due to the defendant's refusal. Hence, the plaintiff seeks specific performance.

5.2. The defendant, while admitting execution of the 1987 agreement and power of attorney, contends that the suit is false, fraudulent, and barred by



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limitation; that the agreement lacked enforceability and authority since the land belonged to M/s. New Rathna Brick Industries, a partnership firm of four partners, and was executed without consent of the others; and that it stood automatically cancelled due to the plaintiff's failure to pay 20% advance by 15.01.1988 as required. The defendant further argues that since acquisition proceedings were in force, title vested with the Government and he had no right to contract; that the writ proceedings were not withdrawn; and that any advance was returned. He challenges the validity of the 1997 compromise, claiming it altered the cause of action, property extent, and valuation, required separate court fee, and involved properties belonging to the partnership firm. He alleges that the compromise was signed under pressure from the plaintiff's officials without consent of other partners, who later refused to ratify it, and therefore seeks dismissal of the suit.

5.3. After framing necessary issues, recording the evidences of the parties, and upon perusing the submissions made by the respective counsel for the parties the learned Single Judge partly decreed the suit in respect of the plaint schedule properties except item No.2 in S.No.212 with costs.



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5.4. Aggrieved by this, the plaintiff society preferred the appeal in O.S.A.No.55 of 2019 and the defendant has preferred the appeal in O.S.A. No.379 of 2018.

6. The plaintiff had filed the suit for specific performance in C.S. No.1059/1990, wherein it is submitted that on, 25.11.1987, the plaintiff had entered into an agreement of sale with the defendant, for a land measuring to an extent of 0.64 acres. Further, it was submitted that, the said land under agreement had been notified by the State Government for acquisition and that a Power of Attorney was executed in favour of the plaintiff by the defendant to get the land denotified. When the land was denotified by the Government due to the efforts taken by the plaintiff, the defendant did not come forward to perform the agreement saying the sale transaction had become infructuous. It was further submitted that time was not the essence in the contract and that the defendant had deprived the plaintiff of their contractual dues and thereby, attempted to cheat the plaintiff. As the defendant did not come forward to execute the sale deed, despite repeated notices of reminders, the plaintiff was



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constrained to file the above suit. At one point of time, i.e., on 16.02.1997, a memo of compromise was entered into between the plaintiff, defendant and M/s. New Ratha Brick Works, of which the defendant was the Managing Partner. Later, the plaint was amended with regard to the suit property for an extent of 0.10 acres according to the compromise memo dated 16.02.1997 and 25.02.1997, respectively, and the defendant refused to receive the balance consideration and execute the sale deed. The plaintiff further averred that, the matter involved Government Employees for their housing needs and that equity was in favour of the plaintiff and hence prayed for specific performance of the agreement dated 25.11.1987 and subsequent memo of compromise dated 16.02.1997 and for grant of full possession of the property.

7. On the other hand, the defendant would submit that the suit was for specific performance of an agreement with respect to two items of land, S. No.233 which comprises and extent of 0.06 cents and S. No.243/3 measuring 0.58 cents. The defendant was a partner along with his two brothers and his deceased father in a partnership firm. When the plaintiff approached the defendant for buying the suit property, the defendant informed the plaintiff that his consent alone will not be sufficient and also that the land had been notified



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for acquisition. Thus, it was an agreement which was embedded with reservation as to the fulfillment of the agreement. Further, Clause 1(b) of the agreement had unambiguous and categorical declaration as to an automatic cancellation of the agreement on a certain condition. On the date of agreement, i.e., on 25.11.1987, the lands were under notification and thus, the title was vested with the Government and so, the defendant did not have any title to transact. All the three properties covered in the subsequent compromise deed dated 16.02.1997 were under acquisition proceedings and writs had been filed and pending in respect of those properties. Hence, the defendant would contend that the alleged agreement was *void ab initio* and unenforceable by law. Since the learned Single Judge found that the plaintiff was entitled for specific performance of all the suit properties except item No.2, the defendant has preferred the appeal in O.S. No.379 of 2018. The plaintiff has preferred an appeal in O.S.A No.55/2019 for the 2nd item of the suit property.

8. Mr.V. Manohar, the learned counsel for the defendant would contend that the documents relied upon by the plaintiff are related to the properties that belongs to New Rathna Brick Industries, which are not the individual properties of the defendant and therefore, the agreement dated 25.11.1987 and memo of

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compromise dated 16.02.1997 are not enforceable. His further contention is that, the amendment of plaint in pursuant to the memo of compromise dated 16.02.1997 is not maintainable either in law or on facts. The original cause of action before amendment and the amended plaint, which had introduced a new cause of action, are different and as such, the suit ought to be dismissed. The plaint was amended only with an intention to give fresh life to the claim which was already barred by limitation. The plaintiff, who cannot file a suit for specific performance of the alleged compromise dated 16.02.1997 due to the limitation aspect, has amended the plaint to overcome the limitation point. He would further submit that, the plaintiff with the help of officials threatened the defendant to enter into agreements and memo of compromise which is not valid in law. The learned Single Judge, without appreciating the above facts and circumstances of the case, partly decreed the suit, which warrants interference by this Court.

9. On the other hand, Mr. S. Mukunth, learned Senior Advocate, appearing for Mr. T.M.Pappiah, the learned counsel on record for the plaintiff would submit that, the contentions of the learned counsel for the defendant are devoid of merits. As long as the property stands in the name of the defendant, it



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cannot be termed as partnership property and it is the individual property of the defendant. The plaintiff was always ready and willing to perform his part of contract. It is further submitted that, though the suit land was under acquisition, the lands have been released from acquisition and therefore, the defendant cannot contend that the lands are under acquisition process. It is further submitted that the plaintiff had entered into two other sale agreements on 25.11.1987 with M/s. New Rathna Brick Industries and others in which the defendant is a partner to an extent of 13.50 acres. Since M/s. New Rathna Industries and others failed to perform their obligations as per the above agreements, the plaintiff was compelled to file a suit in C.S. No.783/1991 for specific performance of the agreement in respect of land measuring 13.50 acres. As far as the suit land measuring 0.64 cents is concerned, C.S. No.1059/90 was filed against the defendant. The present defendant and the other defendants in C.S. No.783/1991 along with the plaintiff decided to settle all the disputes in respect of the subject matters of the suits. A Memorandum of Compromise dated 16.02.1997 was entered into by the plaintiff, defendant and the partners of M/s. New Rathna Brick Works. It was agreed between the parties to reduce the extent of land to be conveyed from 13.50 acres to 2.35 acres under the said memo of compromise since the present defendant agreed to increase the extent



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of the land which is the subject matter of the suit in C.S. No.1059/1990.

Therefore, as per the memo of compromise dated 16.02.1997, instead of the suit land measuring about 0.06 acres comprised in S.No.233 and 0.58 acres comprised in S.No.234/3, the defendant agreed to sell the lands as owner and certain lands as power of attorney of the partners of M/s. New Rathna Brick Industries and they were included in the memo of compromise dated 16.02.1997, land measuring 1.02 acres comprised in S.No.215/1, 1.00 acre comprised in S.No.212, 1.08 acres comprised in S.No.234/2, 0.22 acres comprised in 234/3 and 0.05 acres comprised in S.No.234/4 in all 3.37 acres. Hence, the total area to be conveyed in this suit by the defendant to the plaintiff as per the Memo of Compromise is 3.37 acres. As per the original Agreement dated 25.11.1987, the rate agreed per cent was Rs.3,400/- and the extent of land agreed to be sold was 0.64 whereas as per the Memo of Compromise dated 16.02.1997, the sale price agreed per cent was Rs.12,000/- (Rs.12,00,000/- per acre) and the extent of land agreed to be sold was 3.37 acres. The total sale consideration for 3.37 acres is Rs.40,44,000/- (Rupees Forty lakhs and forty four thousand only). The plaintiffs crave leave of this Court to read and refer the Memo of Compromise dated 16.02.1997 wherever necessary.



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9.1. Since the defendant failed to act according to memo of compromise dated 16.02.1997 in respect of the suit properties and avoiding the plaintiff society, the plaintiff was compelled to take out an application in I.A. No.20111/2001 to amend the suit schedule property to include the other lands, which are agreed to be sold to the plaintiff by the defendant as per the memo of compromise dated 16.02.1997. While so, the learned Single Judge failed to note that in the absence of any document to show the partnership expressed or implied that the property comprised in S.No.212 and shown as item No.2 belongs to the firm it cannot be construed that the property belong to the firm, that too, the construction of Ex.P40 which shows that the defendant alone purchased the property and as such, he entered into the memo of compromise dated 16.02.1997. He would further contend that, when the defendant has signed in the memo of compromise dated 16.02.1997 in his individual capacity claiming that he is the absolute owner of the suit properties measuring 3.37 acres including item No.2 and agreed to sell all the properties and fixed the sale consideration at Rs.12,00,000/- per acre, cannot be permitted to contend that item No.2 belongs to the firm. The defendant has absolute authority to execute the sale deed as per the memo of compromise in favour of the plaintiff including the 2nd item of the suit properties. Therefore, the findings of the learned Single



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Judge that the property in Item No.2 was purchased by the defendant as Managing partner of the partnership firm and that the same belongs to the firm is erroneous, warrants interference by this Court. The learned counsel would further submit that property of partner will not be the property of partnership firm, unless agreed in express or implied terms. Whether the properties belongs to partnership or individual and when contradictory stands taken by the defendant, the burden is upon him to prove that the property belongs to partnership firm. To support his contention he has relied upon the judgment of this Court dated 06.09.2024 in A.S.(MD) No.38 of 2014 in the case of ***T.Rajmohan vs.T. Jayaraman***.

10. Heard on both sides. Records perused.

11. The first and foremost contention of the appellant / defendant is that, the plaint has been amended only with a view to give fresh lease of life to the claim which has already been barred by limitation. The cause of action, extent of the property and the value of the property differs. Admittedly, the plaint has been amended for passing a decree directing the defendant to specifically



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perform the agreement dated 25.11.1987 and subsequent memo of compromise dated 16.02.1997 and do all acts necessary to put the plaintiff in full possession of the property by execution of the sale deed. If a suit is filed within time, based on the first agreement, amending it to include a later 'supplemental agreement' relates back to the original filling date, preventing it from being barred by time, provided the supplemental agreement totally transform the suit and creates a fresh cause of action. In order to prevent multiplicity of proceedings, amendment to pleadings based on subsequent events are permissible provided that they must be in consonance with the original cause of action, or they will be disallowed if they change fundamental nature of the suit. In the present case, the amendment does not alter the fundamental cause of action and therefore, the same was allowed, reinforcing that the suit's time line remains robust. Even if the original agreement has issues, an amended suit incorporating subsequent developments is valid, provided the plaintiff establishes readiness and willingness throughout.

12. In the present case, there is no dispute as to the execution of the original agreement for sale dated 25.11.1987 and the execution of the memo of compromise dated 16.02.1997 during the pendency of the suit. The suit was



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originally filed for specific performance with respect to 0.64 cents of land and thereafter, the plaint was amended, to direct the defendant to perform the memorandum of compromise dated 16.02.1997 as well, and the extent of the properties were also been amended pursuant to the compromise memo. Admittedly, to settle the dispute between the parties, two memos of compromise were entered on 06.02.1997, one between the plaintiff's society and the partners of M/s. Ratna Brick Industries in C.S. No.783/1991 and another between the plaintiff and the defendant herein in C.S. No.1059 of 1990, the present suit. A compromise decree has been entered in the suit in C.S.No.783/1991 and the copy of the decree and memo of compromise were marked as Ex.D10 and Ex.P27 in C.S. No.1059/1990. Since the defendant failed to comply with the terms of compromise memo, the plaint has been amended to pass a decree directing the defendant to specifically perform the agreement dated 25.11.1987 and subsequent memo of compromise dated 16.02.1997 and do all acts necessary to put the plaintiff in full possession of the property by execution of the sale deed. The memo of compromise related to this suit was marked as Ex.P37. From the above documents, it could be inferred that, the parties to the lis after deliberations, entered into a compromise, not only for enhancing the rate but also reducing the extent of land and the lands mentioned in the



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memorandum of compromise dated 16.02.1997 was agreed to be sold to the plaintiff by the defendant. Therefore, the said amendment do not change the fundamental nature of the suit. It relates back to the original agreement and does not introduce a completely new contract. Moreover, the order passed in the amendment petition was not challenged by the defendant.

13. The next contention of the defendant is that the properties were purchased for the partnership firm, namely M/s. Ratna Brick Industries, having four partners. But, the defendant alone has signed in the original agreement dated 25.11.1987 and also in the memo of compromise dated 16.02.1997 and therefore, the same will not bind other partners. The sale deeds of the properties mentioned in the memo of compromise are marked as Ex.P39 to Ex.P41, in which, except Item No.2 in S.No.212, rest of the properties were purchased in the name of the defendant. Upon perusal of Ex.P40, it is seen that Item No.2 was purchased by the defendant as Managing Partner of the Partnership firm. With respect to other properties, the burden is upon the defendant to establish that the properties are belonging to the partnership firm, which he failed to do so. Hence, it is made clear that the other properties have been purchased in the name of the defendant in his individual capacity under Ex.P39 and Ex.P41.



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Therefore, the defendant, except for Item No.2 in S. No.212, measuring 1 acre, has got authority to execute the sale deed with respect to other properties mentioned in the memo of compromise dated 16.02.1997. Further, the defendant himself admitted during his cross examination about receiving payments as stipulated under Ex.P37, memo of compromise. Therefore, the memo of compromise has been acted upon by receiving the amount from the plaintiff. On perusal of records it is seen that the balance amount was also sent by the plaintiff to the defendant through 'pay order' and the same has been returned. The returned cover has been marked as Ex.P43. Therefore, the plaintiff has discharged all its obligations under the memorandum of compromise dated 16.02.1997.

14. Therefore, the learned single judge has rightly held that, the plaintiff is entitled to a decree of specific performance of memorandum of compromise dated 16.02.1997 with respect to all properties excepting Item No.2 of the plaint schedule property. Since, the plaintiff failed to establish that the item No.2 was purchased by the defendant in his individual capacity, the plaintiff is not entitled to a decree of specific performance of memorandum of compromise dated 16.02.1997. No infirmity is found in the said findings of the learned single



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judge, which warrants interference.

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15. Accordingly, the judgment and decree dated 23.04.2018 passed by the learned Single Judge in C.S. No.1059/1990 is confirmed and consequently, both the Original Side Appeals are dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

(P.V.J.) (K.G.T.J.)

16.04.2026

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

bga

To

Tamil Nadu Central Excise and Customs
Employees Co-operative House Building Society Limited,
121, Nungambakkam High Road,
Chennai 600 034.
Represented by its Special Officer



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**P.VELMURUGAN,J.
and
K.GOVINDARAJAN THILAKAVADI,J.
bga**

**Pre-delivery Common judgment made in
O.S.A.Nos.379 of 2018 and 55 of 2019 and
C.M.P. No.16978 of 2018**

16.04.2026