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A.S.No.572 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.572 of 2025

&

Cross Objection No.24 of 2026

&

C.M.P.Nos.9911 & 9914 of 2025 and 5674 of 2026

A.S.No.572 of 2025

Yasodha

... Appellant

Versus

Aasaithambi

... Respondent

First Appeal filed under Section 96 of CPC to set aside the judgment and decree dated 12.12.2024 passed in O.S.No.357 of 2019 on the file of learned III Additional District Judge, Salem.

For Appellant : Mr.B.Arvind Srevatsa

For Respondent(s) : Mr.T.R.Rajagopalan
Senior counsel
for Mr.S.Saravanan



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Cross-Objection No.24 of 2026

Aasaithambi

... Petitioner

Vs.

Yasodha

... Respondent

Cross Objection filed under Order XLI Rule 22 of CPC to set aside the judgment and decree dated 12.12.2024 passed by III Additional District Judge, Salem in O.S.No.357 of 2019 and consequently dismiss the appeal suit in A.S.No.572 of 2025 filed by the appellant/plaintiff with exemplary costs.

For Cross Objector : Mr.T.R.Rajagopalan
Senior counsel
for Mr.S.Saravanan

for Mr.B.Arvind Srevatsa

COMMON JUDGMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

Aggrieved over the dismissal of the suit in respect of the relief of specific performance and granting the alternative relief, the plaintiff has filed the present appeal. The defendant has filed the cross-objection challenging the judgment and decree of the trial Court decreeing the suit for the alternative relief of refund of the advance amount.

2. The parties are referred to in accordance with their ranks in the suit and at appropriate places, their ranks in this appeal shall also be indicated.



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3. Brief facts leading to the filing of the suit is as follows:

It is the case of the plaintiff that defendant is the brother-in-law of the plaintiff. He married the plaintiff's younger sister. Being a close relative, the defendant used to borrow money from the plaintiff for the business he is running in the name and style of "New Novo Metal Coaters" in the name of his wife Jeevarathinam. That apart, the defendant also obtained loan from Syndicate Bank, Salem towards the working capital and machinery loan by mortgaging the suit property by depositing the original title deeds with the said Bank. As the loan was not paid, the Bank has initiated SARFEASI proceedings against the defendant. The defendant has already borrowed a sum of Rs.27,50,000/- from the plaintiff and he wanted to sell the suit property admeasuring 1,100 sq.ft for a total sale consideration of Rs.39,43,500/- and the plaintiff paid Rs.7,50,000/- to the defendant on 29.03.2019 for repaying the loan amount to the Syndicate Bank and the sale agreement was executed on the same day. The defendant agreed to pay the loan amount and get back the original title deeds from the Bank. As per the terms of the sale agreement, the balance sale consideration of Rs.4,43,500/- should be paid within four months from the date of agreement and the property should be registered in the name of the plaintiff. However, the



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defendant did not handover the original title deeds as agreed by him and on the other hand, he was trying to alienate and encumber the suit property.

The plaintiff was always ready and willing to perform the contract by paying the balance sale consideration of Rs.4,43,500/-, but the defendant was evading to execute the sale deed by receiving the balance sale consideration.

Hence, the suit for specific performance.

4. Admitting the relationship of the parties, the defendant has denied the borrowal of Rs.27,50,000/- from the plaintiff prior to the alleged agreement. It is the contention of the defendant that the plaintiff's sister Jeevarathinam was his second wife. In fact, the defendant and his wife Jeevarathinam borrowed a sum of Rs.2,90,000/- from one Kutty @ Palanikumar, who is known to his wife. At the time of said borrowal, the said Palanikumar obtained signed blank Rs.100/- stamp paper and a green sheet and thereafter, due to some misunderstanding between the defendant and his wife, they got separated and were living separately. While so, his wife has taken back the signed blank stamp papers from said Palanikumar by repaying the amount and fraudulently created the suit agreement. It is the case of the defendant that his second wife Jeevarathinam and his son also made an attempt on the life of the defendant on 09.06.2019 demanding the



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original deed of the property in respect of which a police complaint has also been registered in Crime No.363 of 2019. Thereafter, they have taken away the original sale deed of the suit property along with some other signed blank papers by attacking the defendant and in this regard, another complaint was also lodged in Pallapatti Police Station. Hence, the alleged sale agreement is totally denied by the defendant.

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

i) Is it true that the defendant executed the suit sale agreement on 29.03.2019 by agreeing to sell the suit property?

ii) Whether the suit sale agreement is a fraudulent document?

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

iv) Whether the plaintiff is entitled to the relief creating a charge over the suit property for the advance amount with interest?

v) Whether the plaintiff is entitled to the relief of injunction as prayed for?

vi) To what other relief the plaintiff is entitled?



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6. Before the trial Court, on the side of the plaintiff, two witnesses were examined as PWs 1 and 2 and Ex.A1 was marked and on the side of the defendant, one witness was examined as DW1 and Exs.B1 to B3 were marked.

7. The trial Court, after appreciation of evidence and materials, came to the conclusion that though the agreement is proved, the plaintiff has not deposited the balance sale consideration and has failed to prove the sufficient means to complete the sale transaction, thereby rejected the relief of specific performance, however, granted the alternative relief of return of advance amount of Rs.35,00,000/- together with interest at the rate of 12% per annum from the date of agreement till the date of passing of decree and thereafter 6% per annum from the date of passing of decree till the date of realization and charge was also created over the suit property for the above said decree amount.

8. Challenging the said judgment and decree rejecting the relief of specific performance, the plaintiff has filed the present appeal and aggrieved over the grant of alternative relief of return of advance amount of Rs.35,00,000/- with interest, the defendant has preferred the cross objection.



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9. It is the contention of the learned counsel appearing for the appellant/plaintiff that the suit agreement (Ex.A1) came to be executed by the respondent/defendant on 29.03.2019 for sale of an extent of 3585 sq.ft for a total sale consideration of Rs.39,43,500/-. Prior to the agreement itself, on various dates, the defendant has borrowed a sum of Rs.27,50,000/- from the plaintiff and later he decided to sell the property in order to clear the loan availed by him from the Syndicate Bank to avoid SARFEASI proceedings. Therefore, according to learned counsel, on the date of agreement, a sum of Rs.7,50,000/- was paid and earlier loan availed by them was adjusted towards the sale consideration. Hence, it is his contention that a sum of Rs.35,00,000/- was paid towards the sale consideration on the date of agreement (Ex.A1) and the remaining sale consideration of Rs.4,43,500/- alone is to be paid by the plaintiff. It was also agreed by the defendant that after clearing the loan availed from the Bank, the original document would be handed over to the plaintiff. Though four months time has been fixed to complete the transaction, the defendant did not hand over the original title deeds, but he tried to alienate the suit property to third parties. Hence, the suit has been filed immediately even without sending the pre-suit notice. The conduct of the plaintiff paying the substantial sale consideration itself



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indicate that she is ready and willing to purchase the property. According to the learned counsel, though the trial Court has accepted the case of the plaintiff that she was ready and willing to perform the contract, it refused to grant the relief of specific performance on the ground that the balance sale consideration was not paid. Hence, it is the contention of the learned counsel for appellant/plaintiff that deposit of sale consideration is not mandatory as per explanation to Section 16 of the Specific Relief Act, but what is required is only capacity of the agreement holder to complete the transaction and the trial Court has non-suited the plaintiff only on the ground that balance sale consideration has not been paid.

10. It is the further contention of the learned counsel for appellant/plaintiff that execution of the agreement has been clearly established and signature of the defendant is not disputed. PW1 has proved the execution of the agreement not only by adducing evidence, but also by examining one of the attesting witnesses (PW2). Therefore, the execution of the agreement has been proved. The defendant cannot take a contrary stand than the one in the written contract. According to the plaintiff, contention of defendant that he has handed over the signed stamp blank papers while borrowing the loan to one Palanikumar has not been established. When the



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Attesting Witness has clearly spoken about the execution, the plaintiff is certainly entitled to enforce the contract and the defence taken by the defendant that the blank signed stamp papers, which were given to said Palanikumar while borrowing loan has been misused has not been established. Therefore, the plaintiff is entitled to the relief of specific performance. It is his further contention that though the model code of conduct was in force on the date of agreement, there was no bar for carrying the amount with valid documents, therefore, the contention that the plaintiff would not have carried such huge amount when the model code of conduct was in force has no relevance at all. Hence, learned counsel submits that the plaintiff is certainly entitled to the relief of specific performance.

11. Per contra, the learned Senior counsel appearing for the respondent/cross-objector would submit that Ex.A1 is a fabricated document, which was created with the connivance of the estranged wife of the defendant. It is his contention that the defendant's second wife Jeevarathinam is none other than the sister of the plaintiff. Though it is the contention of the plaintiff that Rs.7,50,000/-was paid on the date of agreement only to clear the loan, the said factum is proved to be false. In fact, the loan has been cleared by the defendant's estranged wife. This fact



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has been clearly spoken to by DW1, which is not denied in the cross-examination. The plaintiff has feigned ignorance of the loan cleared by the defendant's wife and son. However, it is his contention that only when the relationship between the defendant and his wife Jeevarathinam, who is the sister of the plaintiff, strained and they separated, blank Rs.100/- stamp papers handed over to one Palanikumar by the defendant and his wife Jeevarathinam, while borrowing certain amount, has been conveniently misused by Jeevarathinam after paying the amount to said Palanikumar. The very evidence of PWs 1 and 2 clearly falsify the stand that agreement came to be executed on 29.03.2019. Further, there was no pre-suit notice whatsoever issued. This fact also cast a serious doubt on the very conduct of the plaintiff. The learned Senior counsel further submits that PW2 is none other than the plaintiff's own uncle's son. His evidence clearly show that apart from the plaintiff, defendant and plaintiff's husband and PW2, no other person was present at the time of execution of the agreement (Ex.A1) whereas in Ex.A1 agreement, one other person has signed as a witness. Plaintiff and defendant has never stated about the presence of other witness. This fact also creates a serious doubt about Ex.A1 agreement. Further, the plaintiff is only a housewife. Her contention that she has paid a sum of



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Rs.27,50,000/- as loan prior to the agreement has not been established. There

is no pleading in the plaint as to the date on which such amounts have been paid by her. In the absence of any material particulars in the plaint as to the alleged payments, the defendant's right to defend each facts will be lost. At any event, the defendant has denied the execution as well as the borrowal of the loan amount. Further, the evidence of PWs 1 and 2 with regard to the payment of Rs.7,50,000/- on the date of agreement is also highly doubtful since on the date of such alleged payment, the model code already came into force. Therefore, carrying such huge amount in a bus from Coimbatore to Salem without any valid document is highly impossible. Therefore, the very payment has not been proved. Blank signed stamp paper given to a third party has been received by the estranged wife of the defendant, who is the sister of the plaintiff, with the connivance of the plaintiff, suit came to be filed. Hence, as long as the payment has not been established, merely because PW2 was an interested witness who was examined, the execution and payment of huge amount cannot be presumed. The plaintiff has not produced any evidence to show that she had a source for parting with such huge amount of Rs.35,00,000/-. In the absence of evidence, the plaintiff's case is highly doubtful and defence theory has been clearly probablized. In



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support of his contentions, learned counsel drew the attention of this Court

paragraphs 19 to 21 of judgment of Hon'ble Supreme Court in ***Sopan***

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reported in ***CDJ 2004 SC 283*** and the same read as follows:

“19. There is distinction between 'material facts' and 'particulars'. The word 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. (1936) 1 KB 697 in the following passage :

The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "Material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127]); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts



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which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.

20. The dictum of Scott, L.J. in Bruce case (*supra*) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez (1969 (3) SCC 238), and the distinction between "material facts" and "particulars" was brought out in the following terms:

The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

21. Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even



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without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

The learned counsel also relied on the judgment of Hon’ble Surpeme Court in **Mayar (H.K.) Ltd., & Ors. Vs. Owners and Parties, Vessel M.V.Fortune Express and Others.** reported in **CDJ 2006 SC 120.** Relevant paragraph is paragraph 16 and the same reads as follows:

“16. As per law of pleadings under Order VI Rule 2 of the Code, every pleading should contain, and contain only, a statement in a concise form of the material facts on which the party relies for his claim or defence, as the case may be. Thus, the facts on which the plaintiff relies to prove his case have to be pleaded by him. Similarly, it is for the defendant to plead the material facts on which his defence stands. The expression ‘material facts’ has not been defined anywhere, but from the wording of Order VI Rule 2 the material facts would be, upon which a party relies for his claim or defence. The material facts are facts upon which the plaintiff’s cause of action or defendant’s defence depends and the facts which must be proved in order to establish the plaintiff’s right to the relief claimed in the plaint or the defendant’s defence in the written statement. Which particular fact is a material fact and is required to be pleaded by a party, would depend on the facts and circumstances of each case. In [A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies, Salem](#), (1989) 2 SCC 163, this Court has considered the ambit of the exclusion clause whereby the



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jurisdiction of one court is excluded and conferred upon another court by agreement of the parties and said that in a suit for damages for breach of contract, the cause of action consists of making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. When the court has to decide the question of jurisdiction pursuant to an ouster clause, it is necessary to construe the ouster expression or clause properly to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used, there may be no difficulty. Even without such words in appropriate cases, the maxim 'expressio unius est exclusio alterius' expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case, mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract, an intention to exclude all others from its operation may in such cases be inferred. It has, therefore, to be properly construed."

12. In the light of the above submissions, the following points arise for consideration in this appeal.

i) Whether the agreement dated 29.03.2019 is true and



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executed by the defendant for sale of the property?

- ii) Whether the plaintiff has established the payment of Rs.27,50,000/- on various dates?
- iii) Whether the trial court was right in granting the alternative relief of refund of advance amount?
- iv) If the agreement is true and valid, whether the plaintiff has proved her readiness and willingness to seek the relief of specific performance?
- v) What other reliefs, the parties are entitled?

Points 1 and 2

13. The suit has been laid on the basis of an unregistered agreement for sale (Ex.A1) dated 29.03.2019 said to have been executed by the defendant. The defendant denied the execution of the agreement. It is his specific contention that Rs.100 blank stamp paper and the green blank paper signed by him were handed over to one Palanikumar when he and his wife borrowed a sum of Rs.2,90,000/- from the said Palanikumar. After the marital dispute arose between the defendant and his wife Jeevarathinam, his wife Jeevarathinam has paid the said loan to said Palanikumar and received the blank sheets signed by the defendant and using those blank sheets



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fraudulently created the agreement with the help of her sister, the plaintiff herein and PW2, who is the uncle's son of the plaintiff and his wife signed as an attesting witness. Hence, it is the case of the defendant that Ex.A1 is a fabricated document and no consideration whatsoever has been passed. When the specific denial has been made by the defendant, the initial burden lies on the plaintiff to prove the execution of the document.

14. It is relevant to note that the relationship of the parties are not in dispute. The plaintiff's sister one Jeevarathinam was originally working as an Accountant with the defendant and subsequently married him as his second wife. In view of the same, first wife of the defendant has separated from him. Later, it is admitted by the parties in their evidence that there was a marital dispute between Jeevarathinam and defendant due to which they got separated and are living separately. Considering this peculiar facts, the burden is heavily on the plaintiff to establish not only the execution of the agreement but also the fact of passing of sale consideration of Rs.35,00,000/- in the agreement. Though the signature has been admitted by the defendant, his specific stand is that he signed in hundred rupees blank stamp paper and the blank green sheet while borrowing the loan amount of Rs.2,90,000/- from said Palanikumar and thereafter, due to the marital



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dispute, they got separated and his wife somehow or other got the papers from Palanikumar and prepared the sale agreement fraudulently. It is the contention of the plaintiff that the suit sale agreement came to be executed by the defendant on 29.03.2019 and prior to the agreement itself she has parted a sum of Rs.27,50,000/- on various dates. Though it is stated in the plaint that the said amount has been paid prior to the agreement for repaying the loan availed from the Bank, there is no pleadings in this regard. The material facts as to the date and the period from which those amounts have been paid is not even pleaded in the plaint. Only general averment has been made as if Rs.27,50,000/- has been paid prior to the agreement as a loan.

15. It is relevant to note that the plaintiff is only a house wife. She has not produced any evidence to show that she had a source to pay such huge amount. Though PW2, one of the attesting witness was examined to prove the so called agreement (Ex.A1), on careful perusal of evidence of PWs1 and 2, we are of the view that the defence theory that Ex.A1 has been created fraudulently with the help of the signed blank papers given for different transaction has to be accepted for the reasons which are set out in the following paragraphs.



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16. The plaintiff in the chief examination has stated that Ex.A1 came to be executed on 29.03.2019, but in her evidence in the cross examination she has clearly admitted that there was a misunderstanding between her sister and the defendant, they got separated and are residing separately from the year 2021. She has feigned ignorance to the police complaint lodged against her sister and her son by the defendant. According to the plaintiff, a sum of Rs.27,50,000/- was given in 20 installments, but in this regard there is no pleadings in the plaint. Having stated in the chief examination that Ex.A1 agreement came to be executed on 29.03.2019, in the cross examination she admitted that she does not know where the agreement was prepared and typed and from where the stamp papers have been purchased. She asserted in the cross-examination that at the time of execution of the document only the plaintiff, her husband, PW2 and defendant alone were present. She has also asserted in the cross examination that only PW2 has signed as a witness in Ex.A1. In her cross-examination, the plaintiff has also stated that on the date of agreement she has paid a sum of Rs.7,50,000/- in order to clear the loan availed by the first defendant from the Bank and only out of the amount paid on the date of agreement, the bank loan has been paid, but she has feigned ignorance to the suggestion that the amount of



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Rs.6,85,000/- has been paid by her sister to the Bank through OTS, which has not even been denied by her.

17. In the context of the above evidence, if evidence of DW1 is carefully perused, he has asserted in the chief examination that the Bank loan has been cleared from the joint bank account of his wife Jeevarathinam and their son Naveen. His evidence in the chief examination has not even been denied in the cross-examination. Therefore, once the facts spoken in the chief examination has not been denied in the cross examination, it is deemed to be an admission of the said fact. Therefore, the contention of the plaintiff that only from Rs.7,50,000/- paid on the date of agreement by the plaintiff, the bank loan has been cleared by the defendant is highly improbable and has not been established. Further, the plaintiff has also feigned ignorance about the suggestion that the documents pertaining to the properties have been taken away by his wife and son and in respect of which a police complaint has also been given.

18. It is relevant to note that PW1 asserted that at the time of agreement only five persons were present viz., the defendant, plaintiff, her sister Jeevarathinam, her husband and PW2 and PW2 alone has signed as



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attesting witness. PW2 is admittedly the plaintiff's uncle son. Though he claims to have seen the execution of the document, his evidence in the cross examination if carefully seen, he has stated that he is aware of the payment of Rs.7,50,000/- made on the date of agreement and he has no knowledge about the prior transaction of Rs.27,50,000/- and his evidence indicates that before he is going to the place, the document has already been prepared and when he went to that place casually, he was asked to sign as a witness. He has also asserted that only 5 people were present at the time of execution of Ex.A1. PWs 1 and 2 never stated anything about the presence of one other witness apart from PW2 at the time of execution of Ex.A1. In the light of the above positive assertion by PWs1 and 2 about the execution of Ex.A1, if Ex.A1 suit agreement is carefully seen, apart from PW2, one other attesting witness, whose name is not readable and whose father name is shown as Pownusamy residing at No.141, Narthampatti, Ammapet, Salem-3 has also signed. When the agreement holder and his close relative asserted that except them no third party was present at the time of agreement, but Ex.A1 clearly shows that some other third party has also signed in the Ex.A1 agreement as a witness, which creates serious doubt about the genuineness of the agreement and in fact probabalizes the defence theory that the blank



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papers have been used when the marital dispute between husband and wife arose i.e., the defendant and his first wife.

19. It is further to be noted that the agreement was executed on 29.03.2019 and at the relevant point of time, the proper stamp value was only Rs.20/-, as per Tamil Nadu Act 9 of 2001, which came into effect on 11.07.2001. Later the said value has been increased to Rs.200/- with effect from 03.05.2024 by virtue of Tamil Nadu Act, 13 of 2024. When such being the position, if really a person intended to execute the agreement, normal prudence would be to prepare the said document in a proper stamp paper. There was no explanation forthcoming as to why Rs.100/- stamp paper has been used in this case, which creates doubt about the very execution of the agreement and probabalizes the defence theory that in a loan transaction he has handed over Rs.100/- signed blank stamp paper to one Palanikumar.

20. Now coming to the alleged payment said to have been made by the plaintiff on the date of agreement and prior to the agreement, it is the case of the plaintiff that prior to the agreement, she has paid a sum of Rs.27,50,000/- on various dates. Absolutely there is no material evidence or pleadings in the plaint. However, in the evidence she has stated that the said amount was given to the defendant in 20 installments. There is no details as



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to the dates on which it was paid or the period during which it was paid.

There is also no pleadings in the plaint in this regard. Further, PW2, the so called attesting witness has also in his evidence has admitted that he has no personal knowledge about the previous payment of Rs.27,50,000/-. According to him, only on the date of execution of Ex.A1-agreement, he casually went there and signed as a witness and he does not have any personal knowledge about the payment of Rs.27,50,000/- made by the plaintiff. In such view of the matter, the burden is on the plaintiff to prove the said payment.

21. Absolutely, there is no evidence whatsoever on the side of the plaintiff to say that she had means or source from which she has paid such huge amount. The details of Bank account or other source of income to pay such huge amount has not been produced by the plaintiff to show that she had means to pay such huge amount of Rs.27,50,000/-. Her evidence would show that she was only a housewife and not working anywhere. Therefore, the plaintiff being a housewife and had not produced any evidence to show that she had other source of income, creates a serious doubt about her plea that she has paid Rs.27,50,000/-.



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22. Further, on the date of agreement, it is the contention of the plaintiff that she has paid a sum of Rs.7,50,000/-. It is admitted by the plaintiff in the cross-examination that she carried the said amount of Rs.7,50,000/- in a bus from Coimbatore to Salem on the date of agreement itself i.e., on 29.03.2019 and handed over the same to the defendant. It is relevant to note that PW2 in his evidence has stated that the plaintiff has reached on the previous day with Rs.7,50,000/-. The contradictory statements of PW1 and PW2 create serious doubt about handing over of Rs.7,50,000/- on the date of agreement. Further, how the amount has been made ready and from which Bank it was drawn, absolutely there is no evidence.

23. It is further to be noted that it is the specific admission of PW1 that she has carried that amount in a bus on the date of agreement. It is also relevant to note that at the relevant point of time, the model code of Conduct was in force due to parliamentary election of the year 2019. It is also not disputed by the parties that vide the Model Code of Conduct, which has been marked as Ex.B1, the Election Commission has cautioned people to have valid documents if they are carrying cash above Rs.50,000/- and new articles/gift worth Rs.10,000/-. It is also stated that unexplained cash above



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Rs.50,000/- will be seized. When such model code of conduct was in force without any valid document, the plaintiff carrying Rs.7,50,000/- without any valid document is also highly improbable and these aspects cannot be ignored altogether. Therefore, though the signature of DW1 in the document is not disputed, mere admission of signature in the blank paper and the same being spoken to by one of the attesting witnesses, which is contrary to the evidence of PW1, the execution cannot be presumed. The execution implies that reading the contents of the documents, understanding the contents and then signing the documents. Only when these three components is clearly established and spoken to by the party, the execution can be presumed. Therefore, merely on the basis of the signature of the person stated to be in the blank stamp paper, the execution cannot be presumed. When the defendant has brought out the probabilities as discussed above, the onus shifts on the plaintiff to prove the passing of consideration. Absolutely, there is no evidence whatsoever available on record to show that such huge amount has been paid by the plaintiff.

24. Admittedly, the plaintiff is none other than the sister of the estranged wife of the defendant. Though the defendant has not examined said Palanikumar, we are of the view that the same will not discharge the



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burden of the plaintiff to establish her case. The very introduction of a new witness in the agreement and the witness has not spoken about his presence at the time of execution of Ex.A1 and contradictory statements of PWs 1 and 2 with regard to the execution and their testimonies that they are not even aware of the details as to who has typed the document, where it was prepared etc., raise to a very serious doubt about the genuineness of Ex.A1.

25. Further it is to be noted that having alleged to have paid substantial amount of sale consideration of Rs.35,00,000/-, there was no need for the plaintiff to wait for another four months to make the balance sale consideration. It appears to be unnatural. Further, the plaintiff conduct that even after payment of Rs.7,50,000/-, she has not verified as to whether the loan amount has been cleared by the defendant or not is against the normal human conduct.

26. Yet another aspect which cannot be ignored altogether is, if the document is prepared by the first defendant at Salem, normally the stamp papers also will be purchased in the same place. When there are many number of stamp vendors available in Salem, it is against normal conduct of any person to go to Rasipuram, which is in Namakkal District to purchase the stamp paper. This fact also probabalize the defence theory that the blank



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stamp papers, which were handed over to third party has been misused by the estranged wife and the plaintiff, who is her sister. Therefore, the first defendant going to the other District for purchasing the stamp paper and preparing the agreement on his own is also highly improbable and creates serious doubt. Hence, this Court is of the view that the agreement has not been executed and proved by the plaintiff and the same cannot enforced. The points 1 and 2 are answered accordingly against the plaintiff.

Point Nos.3& 4

27. Since this Court has held that the agreement is not genuine and executed by the defendant, the plaintiff is not entitled to any relief. Even assuming that the plaintiff's case is true, having paid substantial amount, she has not even made any enquiry to find out whether the loan amount has been settled to the Bank, she has not even sent the pre-suit notice and hurriedly filed the suit after four months. Further, to pay the remaining sale consideration, her capacity has also not been established and therefore, readiness and willingness is also absent. At any event, the very agreement Ex.A1 is found to be a fabricated document and the same cannot be accepted in the court of law. Accordingly, Point Nos.3 and 4 are also answered against the plaintiff.



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28. In view of the fact that the passing of consideration of Rs.35,00,000/- has not been established as discussed in Point Nos.1 and 2, the trial Court granting the alternative relief merely on the basis of Ex.A1 without going to the validity of the document in our view is not correct. Hence, the judgment of the trial Court granting the alternative relief has to be set aside.

In the result, the cross-appeal filed by the defendant is allowed. The appeal filed by the plaintiff as against the judgment and decree of the trial Court dismissing the suit for specific performance is dismissed with costs. In other words, the suit filed by the plaintiff is dismissed in its entirety. Consequently, the connected miscellaneous petitions are closed.

[N.S.K.,J.] [R.S.V.,J.]
26.02.2026

Index: Yes/No
Neutral Citation: Yes
gpa



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To

1. III Additional District Judge
Salem

2. The Section Officer
VR Section
Madras High Court



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N.SATHISH KUMAR, J.,
AND
R. SAKTHIVEL, J.,

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