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S.A.No.992 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2025

PRONOUNCED ON : 02.01.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No.992 of 2014

S.Sambooranam
W/o.Subbaraya Chettiar
No.23, Santhai Medu,
Sivagiri,
Erode Taluk and District.

... Appellant

Versus

S. Rajasekaran
S/o.Shanmugha Chettiar
Nanjappa Road,
Thavuttupalayam
Anthiyur Village,
Bhavani Taluk,
Erode District.

... Respondent

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree made in A.S.No.35 of 2012 dated 04.04.2014 on the file of the Sub Court, Bhavani by reversing the judgment and decree in O.S.No.105 of 2011 dated 16.08.2012 on the file of the Principal District Munsif Court, Bhavani and allow the above second appeal.



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APPEARANCE OF PARTIES:

For Appellant : Mr.S.Kousik
for Mr.K.Sathish Kumar

For Respondents : Mr.A.Sundaravadhanan

JUDGMENT

This Second Appeal is directed against the judgment and decree dated 04.04.2014 passed by the learned Subordinate Judge, Bhavani, in A.S.No.35 of 2012, wherein the lower appellate court reversed the decree for specific performance granted by the learned District Munsif Court, Bhavani in O.S.No.105/2011 dated 16.08.2012 and in substitution thereof granted the plaintiff the alternative relief of refund of the advance amount with interest.

2. For the sake of convenience, the parties are referred to as arrayed before the trial court.

3. Brief facts of the plaintiff's case: The defendant is the owner of the suit schedule property. An agreement of sale dated 08.06.2009 was entered into between the defendant and the plaintiff's son, S.

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Santhereswaran, under which the plaintiff's son agreed to purchase the suit property for a total sale consideration of Rs.35,000/-. A sum of Rs.25,000/- was paid as advance, and it was agreed that the balance sale consideration would be paid and the sale completed within a period of one year.

4. The said S. Santhereswaran died on 29.01.2010, leaving behind his mother, the plaintiff, as his sole legal heir. After his demise, the defendant failed to come forward to execute the sale deed in favour of the plaintiff upon receipt of the balance sale consideration. The plaintiff thereupon issued a legal notice dated 29.05.2010 calling upon the defendant to execute the sale deed. The plaintiff was always ready and willing to perform her part of the contract; however, the defendant evinced no inclination to complete the sale, thereby necessitating the filing of the suit.

5. Brief facts of the defendant's case: The defendant contended that though a document dated 08.06.2009 was executed between the defendant and the plaintiff's son, the sum of Rs.25,000/- received thereunder was only a loan taken for urgent family expenses and not an advance towards sale. It was asserted that the value of the suit schedule



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property was more than Rs.15,00,000/-, and that there was never any intention on the part of the defendant to sell the property to the plaintiff's son. It was further contended that interest was paid for a certain period, though no receipt was obtained from the plaintiff's son. The defendant expressed readiness and willingness to repay the sum of Rs.25,000/- with nominal interest and prayed that only the alternative relief be granted and that the relief of specific performance be refused.

6. The trial court, after framing the necessary issues and conducting the trial, decreed the suit for specific performance. Aggrieved thereby, the defendant preferred an appeal. During the pendency of the appeal, the defendant filed additional documents, which were received in evidence by the appellate court and marked as Exs.B1 to B10.

7. The lower appellate court reversed the judgment of the trial court and granted the alternative relief by directing the defendant to refund the advance amount of Rs.25,000/- with interest.

8. The plaintiff has filed this Second Appeal on the following grounds: the lower appellate court, having found that the execution of the agreement of sale was admitted by the defendant, ought to have granted



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the relief of specific performance; the lower appellate court failed to follow the procedure prescribed for reception of additional evidence at the appellate stage; the additional documents were permitted to be marked under Order XLI Rule 27 CPC without assigning reasons; the admission of additional documents was contrary to law; and the findings of the lower appellate court are erroneous and unsustainable.

9. At the time of admission, this Court on 13.11.2014 framed the following substantial question of law and the same is extracted verbatim here below:

“Is the lower appellate court followed the procedure prescribed in Order 41 Rule 27 of the CPC for allowing to mark the additional evidence is the appellate stage and complied the conditions stipulated in the said Rule and also the dictum laid down by the Apex Court in the judgment reported in (2010) 13 SCC 487 [**Malayalam Plantations Limited vs State of Kerala and another**]?”

10. The learned counsel for the appellant contended that the agreement of sale dated 08.06.2009, a registered document relating to 30 cents out of a larger extent, was admittedly executed by the defendant in favour of the plaintiff's son for a total consideration of Rs.35,000/-, and that receipt of Rs.25,000/- thereunder is not in dispute. It was submitted that the plea of the transaction being a loan is a mere afterthought,

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unsupported by any recital in the agreement, and that upon the death of the plaintiff's son on 29.01.2010, the plaintiff, as his sole legal heir, was entitled to seek enforcement of the contract. The learned counsel argued that the trial court, on a proper appreciation of the pleadings and evidence, rightly decreed the suit for specific performance, and that the first appellate court erred in declining that relief on the ground that the property was ancestral and in substituting it with refund, particularly when the defendant himself admitted execution of the agreement and receipt of the amount. Reliance was placed on the decision reported in 2009 (6) CTC 301 to contend that once execution of a registered sale agreement is admitted, the burden lies heavily on the defendant to establish the plea of a loan transaction.

11. Per contra, the learned counsel for the respondent submitted that though the document dated 08.06.2009 is a registered agreement, the defendant never intended to sell the suit property, which comprises only 30 cents out of a larger extent of ancestral land measuring 3.15 hectares , in which there had been no division. The receipt of Rs.25,000/- was not disputed; however, it was contended that the amount was received only as a loan for urgent family expenses. With regard to the substantial question of law, it was submitted that the additional documents marked as Exs.B1

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to B9 were received without objection and therefore, no further evidence was necessary. It was contended that, in any event, the appellate court's decision to mould the relief by directing refund of the amount with interest was a proper exercise of discretion and does not call for interference under Section 100 CPC.

12. It is not in dispute that, during the pendency of the first appeal, the defendant produced documents for reception as additional evidence and that the same were marked as Exs.B1 to B10, subject to objection. A careful scrutiny of the appellate court record reveals that the lower appellate court neither passed a reasoned order recording its satisfaction of the statutory requirements under Order XLI Rule 27(1) CPC nor followed the procedure contemplated under Order XLI Rule 28 CPC. The Hon'ble Supreme Court, in **Malayalam Plantations Limited v. State of Kerala reported in (2010) 13 SCC 487**, has categorically held that the reception of additional evidence at the appellate stage is not a matter of routine and that strict compliance with the requirements of Order XLI Rule 27 CPC is mandatory. Thus, this Court has no hesitation in holding that the procedure adopted by the lower appellate court in receiving the additional evidence was irregular.



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13. A perusal of the appellate judgment makes it clear that the additional documents received in appeal were not relied upon for reversing the decree for specific performance. The reversal was founded on the pleadings, admitted facts, and, in particular, the admissions elicited during the cross-examination of the plaintiff. The appellate court exercised its discretionary jurisdiction in moulding the relief by granting refund of the advance amount with interest instead of enforcing the contract by way of specific performance.

14. It is a settled principle of law that a procedural irregularity which does not occasion a failure of justice or cause prejudice to the parties cannot, by itself, be a ground for setting aside an otherwise sustainable decree. Section 99 CPC expressly mandates that no decree shall be reversed or substantially varied on account of any error, defect, or irregularity that does not affect the merits of the case.

15. This Court, while exercising jurisdiction under Section 100 CPC, cannot reappreciate the evidence or substitute its discretion for that of the first appellate court, unless the findings are perverse or are founded upon inadmissible material.



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16. In the present case, the appellate decree is independently sustainable on the basis of the materials already available on record, even without taking the additional documents into consideration.

17. Accordingly, the substantial question of law is answered as follows: although the lower appellate court did not strictly comply with the procedure prescribed under Order XLI Rules 27 and 28 CPC and the dictum laid down by the Hon'ble Supreme Court in **Malayalam Plantation Limited v. State of Kerala**, such procedural irregularity has neither resulted in any prejudice to the appellant nor formed the basis of the appellate decree. Consequently, the said irregularity does not vitiate the judgment and decree of the lower appellate court.

18. In the result, the Second Appeal fails and is dismissed. The judgment and decree of the lower appellate court granting the alternative relief of refund of the advance amount with interest are confirmed, subject to modification of the rate of interest. The defendant is directed to refund the advance amount of Rs.25,000/- with interest at 15% per annum from the date of the sale agreement, i.e., 08.06.2009, till the date of payment. The permanent injunction restraining the defendant from alienating or encumbering the suit schedule property until payment is



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made to the plaintiff is also confirmed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions, if any, are closed.

02.01.2026

dpq

Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

To

1.The Sub Court, Bhavani

2. The Principal District Munsif Court,
Bhavani

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



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment in
S.A. No.992 of 2014

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