



A.S.No.924 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2025
PRONOUNCED ON : 02.01.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 924 of 2020

1. M.Mahesh
S/o.V.Mylsamy
5/245, Malarvizhi Nagar,
Extension, Makkonmpatti Village,
Pollachi Taluk,
Coimbatore District.

2. S.Gayathri
W/o.M.Mahesh
5/245, Malarvizhi Nagar,
Extension, Makkonmpatti Village,
Pollachi Taluk,
Coimbatore District.

... Appellants

Vs.

V. Kanagaraj

... Respondent

PRAYER in A.S.: Appeal Suit filed under Section 96 CPC read with Order 41 Rule 1 of Civil Procedure Code to set aside the judgment and decree of the learned IV Additional District and Session Judge of Coimbatore dated 24.06.2020 in O.S.No.408 of 2016 and allow the along appeal.

For Appellant : Mr.V.Nicholas

For Respondents : Mr.R.Nadhakumar



A.S.No.924 of 2020

JUDGMENT

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This appeal is directed against the judgment and decree dated 24.06.2020 passed by the learned IV Additional District & Sessions Judge, Coimbatore, in O.S. No.408 of 2016.

2. The plaintiffs instituted the suit seeking specific performance of the agreement of sale dated 07.10.2013, and in the alternative, refund of the advance amount of Rs.15,00,000/-. The trial Court declined to grant either of the reliefs and dismissed the suit in its entirety. Aggrieved thereby, the plaintiffs has preferred the present appeal. For the sake of convenience, the parties are referred to according to their ranking before the trial Court.

3. Brief facts of the plaintiff's case: The suit property belongs to the defendant. On 07.10.2013, the defendant entered into a registered agreement of sale with the plaintiffs, agreeing to sell the suit schedule property for a total consideration of Rs.15,50,000/-. A sum of Rs.15,00,000/- was paid as advance, and the time for completion of the transaction was fixed on 06.10.2016. Under the terms of the agreement, the defendant undertook to hand over the parent title deeds and revenue records and to execute the sale deed whenever called upon by the



A.S.No.924 of 2020

plaintiffs. According to the plaintiffs, he was always ready and willing to perform his part of the contract, the balance consideration being negligible; however, the defendant repeatedly delayed execution of the sale deed on the pretext of securing alternative accommodation. The plaintiffs issued a legal notice dated 09.02.2016 calling upon the defendant to execute the sale deed. The defendant, by reply notice dated 23.02.2016, made false allegations and refused to comply, necessitating the filing of the suit.

4. Brief facts of the written statement: The defendant contended that the plaintiffs had suppressed material facts. It was pleaded that the transaction was engineered by the defendant's own brother, Mysamy; that the first plaintiffs is Mysamy's son and the second plaintiffs is the wife of the first plaintiffs. According to the defendant, the agreement of sale dated 07.10.2013 was never intended to be acted upon as a genuine sale agreement. The alleged sale consideration of Rs.15,50,000/-, the payment of advance of Rs.15,00,000/-, and the stipulation of a three-year period for completion were all denied as false. It was further contended that the legal notice issued by the plaintiffs did not disclose the true state of affairs, and that a suitable reply notice had been sent.



A.S.No.924 of 2020

5. The defendant further pleaded that there was an earlier agreement of sale dated 02.05.2012 between the defendant and the 1st plaintiff. The suit property originally belonged to the defendant's father, namely Vadivel Chettiar, who had settled the property in favour of the defendant's son by a settlement deed dated 16.11.1992. Later defendant's son settled the properties in favour of defendant by means of document dated 06.12.2010. For the purpose of starting a hotel business, the defendant had borrowed a sum of Rs.7,00,000/- from one C.K. Kanagaraj and executed an agreement of sale only as security for the said loan. Thereafter, the defendant approached his brother Mylsamy for additional funds, pursuant to which Mylsamy discharged the loan due to C.K. Kanagaraj and advanced further sums of Rs. 3,00,00, aggregating to Rs.10,00,000/-. The earlier agreement was cancelled and the suit agreement came to be executed between the plaintiffs and the defendant . It was further stated that Mylsamy collected rents from the tenants towards interest on the loan amount. The unusually long period of three years stipulated for execution of the sale deed, according to the defendant, clearly demonstrated the absence of any intention to effect a sale. On these grounds, dismissal of the suit was sought.



A.S.No.924 of 2020

6. The trial Court, upon appreciation of the oral and documentary evidence on record, dismissed the suit in its entirety.

7. Grounds of Appeal: The appellant contended that, once the execution of Ex.A1 registered agreement was admitted, the trial Court ought to have decreed the suit. It was urged that the defendant was estopped from contending that the transaction was in the nature of a loan arrangement. Even assuming, that the transaction was a loan, the defendant was bound to refund the sum of Rs.15,00,000/-. The appellant further submitted that the trial Court failed to frame a specific issue on the alternative relief and erroneously rejected the claim for refund.

8. Upon consideration of the pleadings and the grounds raised in the appeal, the following points arise for consideration:

- i. Whether the suit sale agreement dated 07.10.2013 was executed with an intention to sell the suit schedule property?
- ii. Whether the suit agreement was executed as security for the loan advanced by the father of the 1st plaintiff?
- iii. Whether the plaintiffs is entitled to specific performance? Or, in the alternative, refund of advance amount?

Points Nos.(i) & (ii)



A.S.No.924 of 2020

9. The plaintiffs sought the relief of specific performance on the strength of Ex.A1. The defendant, however, contended that Ex.A1 was never intended to be acted upon as an agreement of sale, but was a sham document executed only as security for the loans advanced. Ex.A1 is a registered document and its execution is admitted. It is settled that oral evidence contradicting the contents of a document covered by Section 91 is barred by Section 92. However, there is no prohibition against adducing evidence to prove that the document was never intended to be acted upon, or that the true nature of the transaction was different from what is recited therein. This legal position has been recognised by the Hon'ble Supreme Court in **Gangabai v. Chhabubai (1982) 1 SCC 4**, and by this Court in **V.P. Murugesan v. P. Sheik Mideen (2016) 1 LW 332** and **P. Vaidyanathan v. K. Sundaram (2017) SCC OnLine Mad 1**.

10. In the case on hand, the defendant denied any intention to sell and asserted that Ex.A1 was executed only as security for earlier monetary transactions. The evidence on record discloses that, on 07.12.2010, the defendant borrowed a sum of Rs.7,00,000/- from one C.K. Kanagaraj under Ex.B2. In order to discharge the said liability, a fresh agreement of sale dated 02.05.2012 was entered into between the parties, fixing the sale consideration at Rs.12,50,000/-, out of which



A.S.No.924 of 2020

Rs.12,00,000/- was paid as advance. These facts are not in dispute.

Before the expiry of the said agreement, Ex.A1 came to be executed, enhancing the sale consideration to Rs.15,50,000/-. According to the plaintiffs, the increase in consideration was on account of escalation in the value of the property, as the defendant was unwilling to sell the property at the earlier agreed price. According to the defendant, however, the increase represented accumulated interest on the loan amounts. The records further indicate that Mysamy was permitted to collect rents from the tenants towards the interest dues.

11. On a cumulative appreciation of the entire evidence, it becomes evident that Ex.A1 was not intended to operate as a genuine agreement of sale, but was executed only as a security for the loan transactions between close family members. The substantial portion of the so-called sale consideration had been paid much prior to the execution of Ex.A1. A period of three years was stipulated for completion of the sale, despite the balance consideration being negligible. Although Ex.A1 recites that a sum of Rs.15,00,000/- was paid as advance on the date of execution, the plaintiffs has admitted that no such payment was made on that date. The sum of Rs.7,00,000/- was linked to the discharge of an earlier loan, and the amount of Rs.3,00,000/- was related to Ex.B1 agreement. Thus Ex.A1



A.S.No.924 of 2020

is proved to be intended only as a security document and not as an agreement of sale. Accordingly, Points Nos.(i) and (ii) are answered against the plaintiffs.

Point No.(iii)

12. The plaintiffs sought the alternative relief of refund. The trial Court rejected the said claim on the ground that the circumstances surrounding the alleged payment were suspicious. The appellant contended that, since the execution of the document and receipt of money were admitted, the relief of refund ought to have been granted.

13. The defendant admitted receipt of a sum of Rs.10,00,000/- from his brother, examined as PW2, and not from the plaintiffs. He further stated that the borrowing was solely for the purpose of discharging existing debts and for expansion of his hotel business, and not towards any sale of the suit property. PW1 also admitted that, on 07.10.2013, only a sum of Rs.3,00,000/- was paid.

14. Section 22 of the Specific Relief Act enables a claim for refund of advance only where a valid and enforceable agreement of sale is established and the plaintiffs proves readiness, willingness, and

8/10



A.S.No.924 of 2020

entitlement to relief. The provision does not transform every suit for specific performance into a suit for recovery of money. Its object is to avoid multiplicity of proceedings, and it cannot be invoked to convert a transaction found to be in the nature of a security or loan arrangement into a claim for refund premised on a sale agreement.

15. Once Ex.A1 is held to be not a genuine agreement of sale, the plaintiffs cannot seek refund by invoking Section 22 of the Specific Relief Act. The appropriate remedy, if any, would be to institute a separate suit for recovery founded on the alleged loan transactions and not to pursue relief under the Specific Relief Act. This Court in **V.P. Murugesan v. P. Sheik Mideen (2016) 1 LW 332**, held that refund of advance can be granted only where a valid agreement of sale is established. Hence the plaintiffs is not entitled to the relief of refund.

16. For the foregoing reasons, the judgment and decree of the trial Court are confirmed. The appeal fails and is accordingly dismissed with costs.

02.01.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

9/10



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A.S.No.924 of 2020

DR. A.D. MARIA CLETE, J

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To

1. The IV Additional District
and Session Judge
Coimbatore

PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 924 of 2020

02.01.2026

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