



S.A.No.1233 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No.1233 of 2014
and M.P.No.1 of 2014 and
CMP.Nos.16451 of 2022 & 18069 of 2023

Rajkumar
S/o.Selladurai
Kovai Road
Kundadam
Kundadam Village,
Dharapuram Taluk.

... Appellant/
Appellant/2nd defendant

Versus

1. S.Arumugam (died)
 2. Sambooranammal (died)
W/o.Karuppusamy
Sedapalayam
Kundadam
Kundadam Village,
Dharapuram Taluk,
Tiruppur District.
 3. A.Ramathilagam
W/o.Arumugam
 4. R.Kalaiselvi
 5. R.Subha (minor)
rep.by Natural Guardian and mother
R.Kalaiselvi
- 1/13



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6. R.Vikash (minor)
rep.by Natural Guardian and mother
R.Kalaiselvi
7. S.Nagarathinam
8. V.Kalaiselvi

...Respondents/
Respondent/1st defendant

R1 died, R3 to R6 are brought on records as legal heirs of R1 viz.,
S.Arumugam

R2 died, R7 brought on record as legal heirs of R2 viz.,
Sambooranammal vide order of Court dated 03.01.2023 made in
CMP.No.19062, 19063, 19143, 17047, 17048, 17049 of 2022 in
S.A.No.1233 of 2014 (PTAJ)

R1 died, R8 is brought on record as legal heir of the deceased R1 vide
Court order dated 04.09.2023 made in CMP.No.15448 of 2023 in
S.A.No.1233 of 2014 (TVTSJ)

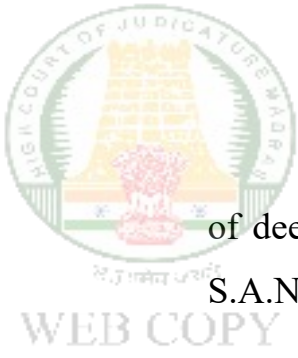
R7 – legal heirs of R2

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.3 of 2011
dated 31.01.2014 on the file of the Sub Court at Dharapuram in
confirming the judgment and decree made in O.S.No.184 of 2004 dated
15.12.2009 on the file of the District Munsif, Dharapuram.

PRAYER IN M.P.No.1 of 2014.: To stay all further proceedings of
judgment and decree made in A.S.No.3 of 2011 dated 31.01.2014 on the
file of the Sub Court at Dharapuram in confirming the judgment and
decree made in O.S.No.184 of 2004 dated 15.12.2009 on the file of the
District Munsif, Dharapuram.

PRAYER IN CMP.No.16451 of 2022: To pass an order of interim
injunction restraining the proposed respondents from registering any kind



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of deed in respect to the suit schedule property pending disposal of the
S.A.No.1233 of 2014.

PRAYER in CMP.No.18069 of 2023: To implead the petitioner as
respondents No.8 in the above S.A.No.1233 of 2014.

APPEARANCE OF PARTIES:

For Appellants : Mr.M.Guruprasad

For Respondents : Mr.Mohanakrishnan.K.
for Mr.R.Asokan for R4 to R6
R1 & R2 died
R3, R7 & R8 – no appearance

ORDER

Heard.

2. This Second Appeal is directed against the concurrent judgment
and decree of the Courts below, whereby the suit for specific performance
in O.S. No.184 of 2004 was decreed by the learned District Munsif,
Dharapuram, on 15.12.2009, and the said decree was confirmed by the
learned Subordinate Judge, Dharapuram, in A.S. No.3 of 2011, by
judgment dated 31.01.2014.



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3. The appellant herein is the second defendant / pendente lite purchaser. For the sake of convenience, the parties are referred to as they are arrayed in the suit.

4. The suit was filed by the plaintiff on 25.09.2002 against the first defendant for specific performance of an agreement of sale dated 28.11.2001 (Ex. A1) said to have been executed by the first defendant in respect of the suit property measuring 6.25 acres, for a total sale consideration of Rs.1,00,000/-. According to the plaintiff, a sum of Rs.90,000/- was paid as advance and only Rs.10,000/- remained to be paid, and despite readiness and willingness on his part, the first defendant failed to execute the sale deed.

5. The first defendant filed a written statement dated 20.12.2002, denying the execution of the agreement of sale. She alleged that the plaintiff, being her brother, took advantage of her loneliness and attempted to compel her to execute a settlement deed in his favour, which she refused. She further stated that the property had been leased out to her sister's son Rajkumar, (2nd defendant) who was in possession for several



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years. According to her, Ex. A1 is a forged document, the sale consideration mentioned therein is grossly inadequate, and the suit property was worth about Rs.6,50,000/-. Hence, she sought dismissal of the suit.

6. During the pendency of the suit, the second defendant filed I.A. No.776 of 2005 seeking impleading, which was allowed on 01.08.2006. Thereafter, the second defendant filed a written statement dated 15.02.2007 along with a counter-claim, after paying the requisite court fee under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

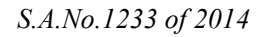
7. The case of the second defendant is that the suit agreement dated 28.11.2001 is not genuine but a collusive document created to defeat his alleged prior independent transaction with the first defendant. He contended that he entered into a lease agreement with the first defendant on 20.09.2002 (Ex. B1) and subsequently obtained a registered sale deed dated 23.03.2005 (Ex. B2) in respect of about 3.45½ acres of the suit property. Claiming to be a bona fide purchaser for value without notice,



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he pleaded ignorance of the plaintiff's suit. By way of counter-claim, he sought declaration of title in respect of the portion purchased by him under the sale deed dated 23.03.2005, along with permanent injunction.

8. The Trial Court, on appreciation of the oral and documentary evidence, held that the plaintiff had proved the execution and enforceability of Ex. A1. The Trial Court relied upon the testimony of PW2, who deposed about the execution of Ex. A1, payment of Rs.90,000/- as advance on the date of agreement, stipulation of ten months' time, and the manner of execution, namely, that the first defendant signed the typed agreement at three places and the attestors signed thereafter, PW2 having witnessed the execution. The Trial Court further noted that the first defendant, in cross-examination, admitted her signature in Ex. A1. The plea of fraud, though suggested, was not established and was accordingly rejected. On the aspect of readiness and willingness, the Trial Court found that the plaintiff had established continuous readiness and willingness to perform his part of the contract and was therefore entitled to the relief of specific performance.



10. The First Appellate Court re-appreciated the entire evidence on record and confirmed the decree of the Trial Court, concurring with the findings on execution of the agreement, readiness and willingness, and holding that the subsequent purchaser cannot defeat the plaintiff's prior actual right.

11. A perusal of the appellate court records reveals that the second defendant filed the appeal challenging both the decree passed in the suit and the dismissal of the counter-claim, but paid court fee only under



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Section 42(a) of the Tamil Nadu Court Fees and Suits Valuation Act 1955

i.e only in respect of the decree granting specific performance. No court fee was paid in respect of the decree dismissing the counter-claim.

12. The First Appellate Court, without noticing the defective presentation of the appeal and the non-payment of court fee in respect of the counter-claim decree, proceeded to dispose of the appeal in entirety and dismissed the same.

13. In law, when a composite appeal is filed against composite decree, payment of court fee for only one decree renders the appeal maintainable only to that extent. The decree for which no court fee is paid cannot be treated as having been appealed against. Consequently, the appeal before the First Appellate Court must be construed as an appeal only against the decree passed in the suit for specific performance and not against the decree dismissing the counter-claim.

14. The second defendant has preferred the present Second Appeal in the same manner, paying court fee only in respect of the suit decree and not in respect of the dismissal of the counter-claim.



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15. In the grounds of Second Appeal, the appellant questioned the validity of the agreement of sale, the passing of consideration, readiness and willingness, the alleged change of stand by the first defendant, and claimed to be a bona fide purchaser for value without notice. The appellant also raised contentions relating to burden of proof, alleged unclean hands of the plaintiff, grant of specific performance as an extraordinary relief, and rejection of the counter-claim.

16. In the present Second Appeal also, the appellant has paid court fee only in respect of the suit decree. Hence, the jurisdiction of this Court under Section 100 CPC is confined only to the decree granting specific performance.

17. The challenge raised by the appellant regarding proof of execution, burden of proof, and appreciation of evidence is purely an attack on concurrent findings of fact. The Courts below have relied upon admissions, testimony of the attesting witness, and surrounding circumstances. No perversity, misapplication of law, or substantial



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question of law is made out warranting interference under Section 100 CPC.

18. In law, a counter-claim is treated as a cross-suit, and adjudication thereon results in a separate and independent decree. In the absence of proper court fee and a specific challenge, the decree dismissing the counter-claim was not the subject-matter of appeal and has therefore attained finality.

19. Consequently, the dismissal of the counter-claim operates as res judicata under Section 11 CPC, and the appellant is precluded from reopening the same directly or indirectly in this Second Appeal. The present Second Appeal in which again only single court fee has been paid, is therefore confined only to the decree passed in the suit.

20. The contention of the appellant that he is entitled to declaration of title in respect of the portion purchased by him under Ex. B2 cannot be accepted. The appellant admittedly purchased the property during the pendency of the suit without obtaining leave of the Court. Further, the

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property was conveyed during the subsistence of an interim injunction order restraining alienation. The Madras High Court in **P. Chengaiah v. D. Chandra**, reported in 2008 (6) CTC 555, has held that a sale effected in violation of an order of injunction restraining alienation is null and void.

21. The purchase made by the second defendant is squarely hit by Section 52 of the Transfer of Property Act, 1882. Though a transfer pendente lite is not void, the transferee does not acquire any independent right and is bound by the decree passed in the suit. The second defendant therefore has no independent right higher than that of the first defendant. The Trial Court rightly noticed that the second defendant did not enter the witness box to prove his alleged sale deed in the manner known to law and dismissed the counter-claim.

22. The challenge raised relates purely to concurrent findings of fact on execution of the agreement and readiness and willingness. No substantial question of law arises for consideration.



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23. Accordingly, the Second Appeal is dismissed at the admission stage. No costs. Consequently, the connected miscellaneous petition, if any, is closed.

05.01.2026

dpq

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

To

1.The Sub Court,
Dharapuram.

2. The District Munsif,
Dharapuram.

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



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DR. A.D. MARIA CLETE, J

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