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SA No. 423 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-01-2026

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 423 of 2023
and
CMP.No.12871 of 2023**

1. V.Usha
w/o Vetrivel, Velvimangalam village,
Keelaperambalur Majura, Kunnam
Taluk, Perambalur district

Appellant(s)

Vs

1. K.Sundarambal
w/o L.Krishnaraj, New Colony,
Thirumangalam, Perambalur Taluk and
district now residing at Door No.B86,
Rajeevnagar 4th street, Ariyalur Taluk
and District

Respondent(s)

PRAYER

Second Appeal filed under Section 100 of Code of Civil Procedure, prays to set aside the judgment and decree made in AS No.2 of 2022 dated 16.03.2023 on the file of the learned Principal District Judge, Perambalur reversing the judgment and decree dated 01.04.2022 made in OS No.134 of 2016 on the file of the learned Subordinate Judge, Perambalur.



For Appellant(s): Mr.G.Jeremiah Gregory John

For Respondent(s): Mr.G.Ilamurugu

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JUDGEMENT

The plaintiff / appellant has filed this appeal to set aside the judgment and decree made in AS No.2 of 2022 dated 16.03.2023 on the file of the learned Principal District Judge, Perambalur whereby the judgment and decree dated 01.04.2022 made in OS No.134 of 2016 on the file of the learned Subordinate Judge, Perambalur, was reversed.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. The plaintiff filed a suit against the defendant seeking the relief of specific performance, alleging that the suit property belongs to the respondent/defendant, who had offered to sell the same for a total consideration of Rs.2,25,000/-. Accordingly, on 14.05.2014, a registered sale agreement was entered into between the parties, under which a sum of Rs.2,00,000/- was paid as advance, and the balance amount of Rs.25,000/- was agreed to be paid within two years, during which period the sale was to be completed. He further pleaded that the plaintiff had always been ready and willing to perform her part of the contract and expressed her readiness to have the sale deed executed. However,



the defendant refused to execute the sale deed, compelling the plaintiff to file the suit for specific performance.

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4. The defendant, on the other hand, denied the execution of the sale agreement as alleged by the plaintiff. She contended that due to family necessity, she had borrowed a loan from the plaintiff and, as security for the said loan transaction, she was compelled to execute the sale agreement. According to the defendant, she regularly paid interest on the loan amount, but with an intention to grab the suit property, the plaintiff issued a legal notice with false allegations and thereafter filed the suit. The defendant sent a reply notice explaining the true facts and denied the plaintiff's claim in entirety.

5. Before the Trial Court, both parties adduced oral and documentary evidence. The Trial Court framed two principal issues, namely:

- (i) whether the alleged sale agreement was executed only as a security for the loan transaction and
- (ii) whether the plaintiff is entitled to the relief of specific performance.

6. Upon appreciation of the evidence and documents on record, the Trial Court held that the plaintiff had prima facie established the execution of the sale agreement and had also proved her readiness and willingness by issuing notice. The Trial Court further observed that the defendant had not adduced any contra



evidence to disprove the plaintiff's case. Relying upon Sections 91 and 92 of the Indian Evidence Act, the Trial Court held that the recitals contained in the document itself are sufficient proof of the contract. The Trial Court found that Exhibit A1 clearly establishes the contract between the parties and, in the absence of contrary evidence, held that Exhibit A1 is a valid sale agreement. Consequently, the Trial Court held that the plaintiff is entitled to the relief of specific performance and decreed the suit as prayed for.

7. Aggrieved by the said findings, the defendant preferred an appeal in A.S. No. 2 of 2022 before the learned District Judge, Perambalur. The First Appellate Court independently analysed the facts and circumstances of the case, framed separate points for consideration, and rendered findings without being influenced by the conclusions of the Trial Court.

8. The learned First Appellate Judge relied upon the cross-examination of P.W.1, wherein she admitted that the defendant had demanded money for her daughter's marriage and that, for such purpose, some guarantee was required. He further admitted that the amount was given on that basis and that the agreement came to be executed thereafter. The First Appellate Court also relied upon the evidence of P.W.2, the attestor of Exhibit A1, who deposed that the defendant had borrowed money from the plaintiff for her daughter's marriage and that the amount was neither repaid nor was the sale deed executed. Further



reliance was placed on the evidence of P.W.3, who stated that he signed the document without knowing the purpose for which it was executed.

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9. On appreciation of the above evidence, the First Appellate Court held that the testimonies of P.Ws.1 to 3 clearly support the defence of the defendant that the transaction was a loan taken for family necessity and that the sale agreement was executed only as a security for the said loan. The Appellate Court further relied upon the evidence of P.W.3, who was one of the panchayatdars involved in the panchayat convened after issuance of the legal notice by the plaintiff, which related to the alleged borrowal and repayment of the loan.

10. The First Appellate Court also observed that in Exhibit A2 notice, the plaintiff had not specifically mentioned the date and time on which she was ready to pay the balance amount and get the sale deed executed. Considering the deposition in Cross examination, the First Appellate Court held that the plaintiff, by her own admissions, had established that the transaction was a loan and that the sale agreement was obtained only as security. He further held that these aspects were not properly appreciated by the Trial Court.

11. Accordingly, the First Appellate Court allowed the appeal, set aside the decree for specific performance, and dismissed the suit. However, by



modifying the relief, the defendant was directed to refund the advance amount with interest at the rate of 9% per annum. Aggrieved by the said judgment and decree, the present appeal has been filed.

12. The learned counsel for the appellant contends that the First Appellate Court miserably failed to appreciate Exhibit A1, the sale agreement, and erroneously concluded that the same was executed as security for a loan transaction. According to the learned counsel, the Trial Court had rightly appreciated the evidence and the recitals contained in the document. However, the learned First Appellate Judge, without properly considering the recitals of the registered sale agreement, erroneously held that the document was executed as security for a loan, solely based on oral evidence. It is submitted that such a conclusion amounts to gross misappreciation of both law and facts, and therefore, the findings of the First Appellate Court are liable to be set aside.

13. The learned counsel for the appellant would further submit that the evidence of P.W.1 was not considered in its entirety and that the First Appellate Court failed to take note of the provisions under Section 92 of the Indian Evidence Act, which specifically prohibit adducing oral evidence contrary to the recitals contained in a registered document. He further contended that the evidence of P.Ws.2 and 4 was also not properly appreciated and that the First Appellate Court grossly erred in holding that a panchayat was convened for the



purpose of returning the loan amount, in the absence of any such specific averments in the written statement. The learned counsel further argued that since the husband of the plaintiff was working abroad, a period of two years was fixed for completion of the sale, and that the plaintiff was always ready and willing to perform her part of the contract. He submitted that the plaintiff had expressed such readiness by issuing notice, which aspect was not properly considered. On these grounds, the learned counsel prayed for setting aside the findings of the First Appellate Court.

14. This Court admitted the Second Appeal on 03.03.2025, on the following substantial question(s) of law:

(A) Whether the Lower Appellate Court is correct in law disregarding Ex.A1 registered agreement of sale only on the basis of the oral evidence?

(B) Whether the Lower Appellate Court is correct in law placing reliance on the oral evidence of PW1, D.W.1 and D.W.3 contrary to the mandate of Section 92 of the Indian Evidence Act to reject Ex.A1 registered instrument?

(C) Whether the Lower Appellate Court is correct in law in placing reliance on the judgment in S.A.No.1258 of 2009 dated 28.09.2021, while arriving at its finding Ex.A1 had been executed as security, when the appellant / plaintiff had discharged her burden of proving the validity and genuineness of Ex.A1, the execution of which had not been denied?”



15. By way of reply, the learned counsel for the respondent/defendant submits that for the purpose of conducting her daughter's marriage, the defendant approached the plaintiff and borrowed a loan of Rs.2,00,000/- on interest. He contended that, at the insistence of the plaintiff, the alleged sale agreement was executed only as security for the said loan transaction. He further submitted that this fact was clearly admitted by the plaintiff during her cross-examination before the Trial Court.

16. The learned counsel further submits that though the Trial Court failed to properly appreciate the evidence, the First Appellate Court rightly analysed and appreciated the same. It is pointed out that the witnesses examined on the side of the plaintiff had clearly stated that the amount was borrowed for the marriage expenses of the defendant's daughter. He also contended that a panchayat was convened after issuance of the legal notice, and the same was spoken to by D.W.1 and D.W.3. The evidence of these witnesses, particularly the admission of P.W.1 regarding the loan transaction, was rightly appreciated by the First Appellate Court. He therefore submitted that the learned First Appellate Judge rightly held that the alleged sale agreement came into existence only as security for the loan transaction. The learned counsel further contends that the Trial Court erroneously granted relief in favour of the plaintiff by mechanically relying upon Section 91 of the Indian Evidence Act, without



considering the contradictory evidence adduced by the plaintiff herself. Hence, it is prayed that the Second Appeal be dismissed as devoid of merits.

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17. Considering the submissions made on either side, it is seen that the suit property admittedly belongs to the defendant. The plaintiff contended that the defendant agreed to sell the suit property for a sum of Rs.2,25,000/-, received an advance amount of Rs.2,00,000/-, and agreed to execute the sale deed within a period of two years by receiving the balance consideration of Rs.25,000/-.

18. The said two-year period was from 14.05.2014 to 14.05.2016. Before the expiry of the said period, on 05.05.2016, the plaintiff issued a legal notice, to which the defendant sent a reply notice marked as Exhibit A3. Thereafter, within the stipulated period, the suit was filed seeking the relief of specific performance.

19. The contention of the defendant is that she was in need of money to conduct her daughter's marriage and therefore borrowed a loan of Rs.2,00,000/- from the plaintiff. According to her, the sale agreement was executed only as security for the said loan transaction.



20. The learned counsel for the appellant argued that the execution and signature in the agreement were not disputed and that the recitals contained in the registered sale agreement prima facie establish a sale transaction between the parties. He further argued that if the agreement was indeed executed only as security for a loan, the burden lies upon the defendant to prove the same, since the plaintiff had initially discharged her burden of proof. Reliance was placed on Sections 91 and 92 of the Indian Evidence Act, and it was contended that admittedly the sale agreement is a registered document.

21. Admittedly, Section 92 of the Indian Evidence Act excludes oral evidence to contradict the terms of a written document. However, the provisos to Section 92, namely provisos (1) to (6), carve out exceptions to the general rule.

22. In the present case, since the defendant pleaded that the alleged agreement was executed as security for a loan, she is entitled to contradict the contents of the written document by adducing material evidence under the provisos to Section 92 of the Indian Evidence Act.

23. The evidence of P.W.1, when carefully considered, clearly shows that during cross-examination, the plaintiff herself admitted the loan transaction. The



evidence of P.W.2 and the attesting witnesses also supports the case of the defendant that the amount was borrowed for family necessity and that the agreement was executed only as security.

24. Thus, the evidence of the plaintiff and her own witnesses is sufficient to conclude that the alleged agreement was executed only as security for the loan and not with an intention to sell the property. The First Appellate Court has properly appreciated this evidence, whereas the Trial Court failed to do so. Hence, no interference is warranted.

25. Further, fixing a period of two years for payment of a meagre balance amount of Rs.25,000/- itself creates serious doubt about the genuineness of the sale transaction. This circumstance also supports the conclusion that the agreement was not intended to be acted upon as a genuine sale agreement.

26. Though it was contended that the two-year period was fixed since the plaintiff's husband was working abroad, no such condition finds place in the agreement. Therefore, the fixation of an unusually long period also strengthens the conclusion that the transaction was only a loan transaction and not a real sale agreement.



27. Accordingly, the substantial question(s) of law A, B and C are answered, against the appellant, and the findings of the First Appellate Court do not warrant interference. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

22-01-2026

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

1.K.Sundarambal
w/o L.Krishnaraj, New Colony,
Thirumangalam, Perambalur Taluk and
district now residing at Door No.B86,
Rajeevnagar 4th street, Ariyalur Taluk
and District.

2.The Principal District Judge,
Perambalur.

3.The Subordinate Judge, Perambalur.

4.The Section Officer,
VR Section, High Court of Madras,
Chennai.



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T.V.THAMILSELVI J.
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