



S.A. No. 950 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.11.2025
Pronounced on	10.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

S.A.No.950 of 2021 and
C.M.P. Nos.18024 of 2021, 2097 of 2022 and 4461 of 2022

P. Dharmichand

...Appellant

Vs.

1. C.M. Kamal
Kamala Bai (since deceased on 02.07.2021)
2. N. Pinky

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 15.03.2021 passed in A.S. No.25 of 2018, on the file of the II Additional District Court, Vellore @ Ranipet, confirming the Judgment and decree dated 23.07.2018 passed in O.S. No.168 of 2010, on the file of the Sub Court, Ranipet, Vellore.

For Appellant : Mr.E.Om Prakash, Senior Advocate
for Mr. E. Senthilkumar
of M/s. Sampathkumar and Associates

For Respondents: Mr.K.V. Ananthakrushnan for R1
R2 – No appearance.



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JUDGMENT

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This Second Appeal is preferred as against the decree and judgment dated 15.03.2021 passed in A.S. No.25 of 2018, on the file of the II Additional District Court, Vellore @ Ranipet, confirming the Judgment and decree dated 23.07.2018 passed in O.S. No.168 of 2010, on the file of the Sub Court, Ranipet, Vellore.

2. The present Second Appeal is preferred by the 2nd defendant in the above suit. The 1st respondent as plaintiff filed the above suit for specific performance of contract of sale agreement and alternatively to refund the advance amount of Rs.2,75,359/- to the plaintiff by the defendants together with future interest at 18% per annum and for costs.

3. The facts leading to filing of the above suit are as follows:

3.1. The 1st defendant is the absolute owner of the suit property. She entered into a sale agreement with the plaintiff to sell the suit property for a valid consideration of Rs.7,70,000/- on 18.04.2008 to meet out her medical expenses. On the date of agreement, the 1st defendant received a sum of



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Rs.2,70,000/- and agreed to receive the balance amount of Rs.5,00,000/- at the time of registration of sale deed. Since the 1st defendant had to undergo heart surgery, no time was stipulated for the execution of the sale deed. The plaintiff is always ready and willing to perform his part of contract to pay the balance consideration of Rs.5,00,000/- and to get the sale deed in his favour. But the 1st defendant evaded to perform her part of contract. Hence, a legal notice was issued on 25.05.2009 calling upon the 1st defendant to execute the sale deed on receipt of the balance sale consideration on or before 10.06.2009. The 1st defendant sent a reply on 28.05.2009 with false allegations and also stated that she had sold the property to the 2nd defendant. Both the defendants colluded together and brought out the alleged sale deed in favour of the 2nd defendant to avoid the sale agreement in favour of the plaintiff and to defeat his valuable rights. Hence, the suit.

3.2. The claim of the plaintiff is resisted by the defendants stating that, the 1st defendant never executed the suit sale agreement in favour of the plaintiff and received any amount as advance. The plaintiff is in possession of the suit property only as a tenant under the defendant. The alleged agreement is a forged and created with an intention to grab the property from the defendants.



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The 1st defendant has already sold the property to the 2nd defendant in the month of January 2009 and therefore, the question of execution of any sale deed in favour of the plaintiff does not arise. The 2nd defendant is a bonafide purchaser for valid consideration and without notice of the alleged fraudulent agreement dated 18.04.2008. The 2nd defendant is not liable to execute any sale deed in favour of the plaintiff, since there is no contract between them. Hence, the sale agreement cannot be enforced as against the 2nd defendant. Hence, prayed for dismissal of the suit.

4. Based upon the materials on record, the trial court granted the decree of specific performance of contract in favour of the plaintiff. Aggrieved by this, the 2nd defendant preferred the appeal suit in A.S. No.25/2018 and the 1st defendant preferred the appeal suit in A.S. No.14/2019. The first appellate court dismissed the above appeal suits. Challenging the judgment and decree passed in A.S. No.25/2018, the present Second Appeal is preferred by the 2nd defendant.

5. The Second Appeal has been admitted on the following substantial question of law:



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“Whether decreeing the suit for specific performance by the courts below, without considering the fact that appellant/2nd defendant was bonafide purchaser for value without notice of the alleged sale agreement between 1st respondent and Kamala Bai, is right?”

6. The 1st defendant Kamala Bai, died on 02.07.2021. Her alleged adopted daughter N. Pinki has been made as 2nd respondent in the Second Appeal. However, the 1st respondent / plaintiff dispute that the said 2nd respondent is not the legal representative of the 1st defendant and submitted that Execution proceedings are initiated in E.P. No.114/2021, in which, an application is filed to bring on record the brother of Kamala Bai, namely, Kushalchand Mutha Porwal as class II legal heirs of deceased Kamala Bai.

7. Mr.E.Om Prakash, learned Senior Advocate, appearing for E.Senthilkumar learned counsel on record for the appellant / 2nd defendant would submit that, the 1st respondent / plaintiff failed to prove that the appellant / 2nd defendant had knowledge about the earlier agreement. The appellant / 2nd defendant is a bonafide purchaser without notice of earlier agreement. The Income Tax returns filed by the plaintiff are not pertaining to the period of the



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suit agreement. The findings of the courts below that the sale deed in favour of the appellant / 2nd defendant is a sham and nominal document is incorrect. The courts below failed to appreciate the materials on record in a right perspective manner. The 1st defendant never entered into a sale agreement with the plaintiff. Ex.A1 sale agreement is a fabricated document. The plaintiff failed to prove the execution of the above sale agreement. The plaintiff has not approached the court with clean hands in asking for equitable relief. He also contended that the pleadings in a suit for specific performance must be in conformity with Order VI Rule 3 of the Code of Civil Procedure, 1908, read with Form Nos. 47 and 48 in Appendix A, which the plaintiff in the present suit failed. He would further contend that, the suit for specific performance was filed only in the year 2009 and therefore, the same is barred by limitation. He would also contend that, in a suit for specific performance, the readiness and willingness to perform has to be judged with reference to conduct of parties and attendant circumstances. Equitable relief of specific performance cannot be granted to the plaintiff who came forward with false case and facts. Persons seeking specific performance of contract should manifest blemishless conduct throughout to entitle him to specific relief. The 2nd defendant who was a subsequent purchaser can raise any ground that is available to the 1st defendant, owner of



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the property. No effective steps were taken by the plaintiff to prove the signature of the 1st defendant in the alleged sale agreement. The 2nd defendant is protected under Section 19(b) of the Specific Relief Act, as he being the bonafide purchaser. Since, both the courts below have omitted to consider the above facts, pleadings and materials on record, the concurrent findings recorded on the contentious issues, the same is liable to be set aside. He would further contend that even if question of law has not been framed at the stage of admission, at least before deciding the case, the said question of law can be framed. While so, the courts below ought not to have granted the relief of specific performance of contract in favour of the plaintiff and the same warrants interference by this Court. To support his contentions, he has relied upon the following judgments.

1. Nallaya Gounder and another vs. P. Ramaswami Gounder and another reported in AIR 1993 MADRAS 275.

2. K. Krishnan Nair and others vs. K. Parameswaran Pillai (died) and others reported in 1993 Supreme(Mad) 493

3. Amirtham vs. Subbian and 3 others reported in 1997 (II) CTC 417

4. Arunachala Mudaliar vs. Jayalakshmi Ammal and another reported in AIR 2004 Madras 180.



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5.Sita Ram and others vs. Radhey Shyam reported in 2008 (1) CTC

86.

6. Padmakumari and others vs. Dasayyan & others reported in Aironline 2015 SC 213.

7. Seethakathi Trust Madras vs. Krishnaveni reported in 2022 LiveLaw (SC) 58

8. Janaki Ammal alias Pattammal & others vs. Premchand (died) and others reported in 2022-4-LW 461

8. On the other hand, Mr.K.V.Ananthakrushnan learned counsel for the 1st respondent / plaintiff would submit that, the execution of the suit sale agreement by the 1st defendant in favour of the 2nd defendant was extensively proved by the plaintiff. He would further submit that, since the 1st defendant failed to enter the witness box and state her own case on oath and does not offer herself to be cross examined by the other side, a presumption would arise that the case set up by her is not correct and would give rise to an inference adverse against her. The courts below have well considered the materials on record and decreed the suit in favour of the plaintiff, which warrants any interference by this Court. To support his contentions, he relied upon ***Vidhyadhar Vs. Manikrao & another reported in AIR 1999 SC 1441.***



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9. Heard on both sides. Records perused.

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10. The plaintiff has filed the above suit for the relief of specific performance of contract of sale agreement dated 18.04.2008 for Rs.7,70,000/- allegedly executed by the 1st defendant in favour of the plaintiff to sell the suit property to the plaintiff. Admittedly the 1st defendant is the owner of the property. But, she refrained herself from entering into the witness box and adduce evidence in respect of the suit agreement. Even the legal notice sent by the plaintiff was not replied by the 1st defendant. However, she has executed a sale deed in favour of the 2nd defendant, who is running a pawn business in the shop, which is adjacent to the suit property. It is not in dispute that the plaintiff is conducting a pawn broker business in the suit property as a tenant under the 1st defendant. According to the 2nd defendant, he has purchased the suit property from the 1st defendant under Ex.A8 sale deed, where the sale consideration is mentioned as Rs.2,10,000/- . Whereas, in the plaintiff's sale agreement marked as Ex.A1, the sale consideration is shown as Rs.7,70,000/-. There is no explanation on the side of the defendants, for executing the sale deed under Ex.A8 for a meagre sale consideration. It only goes to show that the said sale deed is only a sham and nominal document . The defendants failed to establish



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that Ex.A8 sale document is a genuine one and that the 2nd defendant is a bonafide purchaser without notice of the earlier agreement. Since, the 2nd defendant is an adjacent shop owner, it cannot be believed that he had no knowledge about the sale agreement entered between the plaintiff and the 1st defendant. On the other hand, the plaintiff has clearly proved the genuineness, execution and validity of suit sale agreement and also proved his readiness and willingness to perform his part of contract by tangible evidence. Whereas, the defendants failed to prove that the signature found in Ex.A1 sale agreement is forged. If really, the sale agreement is a forged document, the 1st defendant would have replied to the legal notice sent by the plaintiff. Moreover, one Pinky, examined as D.W.1, failed to establish that she is the adopted daughter of the 1st defendant. Further, she has categorically admitted that she does not know anything about the contents of Ex.A1 sale agreement. She has not deposed about having direct knowledge about the transaction between the plaintiff and the 1st defendant. Further, the contention of the defendants that the signature of the 1st defendant is found in the middle portion of Ex.A1 sale agreement, is immaterial, since the defendants failed to prove that the alleged sale agreement is fabricated. On the other hand, the evidences of P.W.1 and P.W.2 amply proves the execution of the suit sale agreement and receipt of



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Rs.2,70,000/- as advance by the 1st defendant from the plaintiff on the date of sale agreement. As rightly pointed out by the first appellate court, it is well settled law that, the burden is upon the person to prove the factum of forgery one who raise such a plea of forgery. The 1st defendant did not examine herself as a witness and subject herself for cross examination by the plaintiff. Moreover, the plaintiff had clearly proved his readiness and willingness by issuing a legal notice under Ex.A2 and Ex.A5 calling upon the 1st defendant to come forward to execute the sale deed in his favour after receiving the balance sale consideration of Rs.5,00,000/- from him. This fact is averred and pleaded in the plaint. The materials on record is apparent that the defendant had properly understood the pleading relating to readiness and willingness, in such a case, he cannot be allowed to contend that the pleadings do not satisfy the requirements as illustrated in Form 47 and 48 of the Schedule 1 of CPC. The receipt of advance amount of Rs.2,70,000/- from the plaintiff is also established through Income Tax records marked as Ex.A10 and Ex.A11 respectively. The same is not rebutted by the defendants. There is no reason to discard the above documents. The courts below, after considering the materials on record, came to the correct and proper conclusion that, the plaintiff has proved the execution of Ex.A1 sale agreement by the 1st defendant with intention to sell the suit



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property to the plaintiff and that the 2nd defendant is not a bonafide purchaser and rightly granted the decree in favour of the plaintiff for the relief of specific performance of contract and hence, no perversity or infirmity is found in the findings of the courts below, which warrants any interference by this Court.

11. In the result,

i.the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

ii.The decree and judgment dated 15.03.2021 passed in A.S. No.25 of 2018, on the file of the II Additional District Court, Vellore @ Ranipet, confirming the Judgment and decree dated 23.07.2018 passed in O.S. No.168 of 2010, on the file of the Sub Court, Ranipet,Vellore, is upheld.

10.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

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1. The II Additional District Judge, Vellore @ Ranipet
2. The Sub Judge, Ranipet, Vellore.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre delivery judgment in
S.A.No.950 of 2021 and
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