IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-01-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

AS No. 582 of 2023

and

CMP No.19645 of 2023

A.S.Vetrivel
S/o. Shanmugasundaram,

..Appellant(s)

Vs

1. K. Palanisamy
   S/o. Krishnasamy Goundar
2. P. Deepa
   W/o. Praveen Kumar
3. P. Kavipriya
   D/o. K. Palanisamy,
4. P. Baby Shalini
   D/o. K. Palanisamy

..Respondent(s)

PRAYER :-

This appeal has been filed under Order 39 Rule 1 & 2 of CPC to modify the Judgement and Decree in OS No.85 of 2015 dated 08.03.2023 on the file of the I Additional District and Session Judge, Tiruppur and allow the suit for specific performance of contract.

For Appellant(s): Mr. K.P. Prabhuraj
for Mr. A.K.Mylsamy and Associates

For Respondent(s): Mr. K. Govi Ganesan, For R1
Mr. K Sudhakar, for R3

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

The present appeal has been filed challenging the decree and judgment of the Trial Court granting alternative relief of refund of advance amount of Rs.50,00,000/-with interest at the rate of 10% per annum from the date of sale agreement till the date of realisation. A charge has also been created over the plaint schedule property for recovery of decree amount and costs.

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

3. The unsuccessful plaintiff has preferred this appeal challenging the decree and judgment of the Trial Court, insofar as it refused the relief of Specific Performance.

4. The case of the plaintiff is that the first defendant, being a father and the other defendants, being his daughters, agreed to sell the suit property for a total sale consideration of Rs.55,00,000/- and executed a registered sale agreement on 14.08.2012, after receiving a sum of Rs.50,00,000 as advance. It was agreed between the parties that the balance sale consideration should be paid within a period of 23 months from the date of agreement. According to the plaintiff, the said period of 23 months was stipulated to enable the defendants to vacate the dyeing factory situated in the property. Though the plaintiff has always been ready and willing to perform the part of contract, the defendants did not come forward to execute the sale agreement. Therefore, the plaintiff has issued a legal notice dated 12.07.2014, to which the defendants sent a reply

dated 24.07.2014 containing false allegations. Hence, the suit for specific performance and also alternative relief.

5. Per contra, it is the contention of the defendants that they had borrowed a sum of Rs.50,00,000/- as a loan from one Anand at the rate of 12% per annum. As the said Anand insisted to execute the sale agreement, the sale agreement came to be executed in favour of the plaintiff for a security purpose. That apart, the said Anand also obtained signed blank promissory notes and cheques as security. According to the defendants, the said Anand was carrying on finance business and the entire transaction was only a loan transaction. The defendants never agreed to sell the property to the plaintiff at any point of time. After the alleged borrowing, the first defendant was paying monthly interest regularly.

6. In the additional written statement, it is contended that there was no necessity to vacate the dyeing factory and that the same is still in operation. That apart, more than four shops in the property had been let out to the third parties. According to the defendants, the entire sum of Rs.50,00,000/- was paid by the said Anand through cheque to the first defendant and there was no agreement for sale.

7. Based on the above pleadings, the Trial Court has framed the following issues :-

I) Whether the suit sale agreement intended for sale or loan ?

2) Whether the plaintiff is entitled for specific performance ?

3) To what relief the plaintiff entitled for ?

8. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Anand was examined as P.W.2 and four documents were marked as Ex.A1 to Ex.A4. On the side of the defendants, the first defendant examined himself as D.W.1 and the fourth defendant was examined as DW2 and seven documents were marked as Ex.B.1 to Ex.B.7.

9. On appreciation of oral and documentary evidence, the Trial Court has found that the plaintiff was not entitled to the relief of specific performance. However, the Trial Court granted alternative relief directing the defendants to return the advance amount of Rs.50,00,000/- with interest at the rate of 10% per annum. Aggrieved by the refusal to grant specific performance, the plaintiff has preferred the present appeal.

10. The main contention of the learned counsel appearing for the appellant/plaintiff is that the defendants have not disputed the execution of the agreement of sale. When there exists a written contract clearly stipulating that the parties intended a sale of the property, the defendants cannot be permitted to take a contrary stand that the transaction was only a loan transaction. It is also further contended that 23 months was stipulated only to enable the defendants to vacate the dyeing unit from the suit property and the time was agreed only in that particular context. At any event, it is his contention that when the parties have entered into a written contract, no oral evidence contrary to the terms of the written contract is admissible in law. Therefore, the prevaricating statements made by the first defendant in the written statement and the additional written statement makes it clear that the evidence relied upon is unreliable. Whereas the plaintiff has established his readiness and willingness by paying a substantial portion of the sale consideration from the date of the agreement and was always ready to pay the remaining sale consideration. Therefore, it is submitted that the Trial Court refusing to grant specific performance is liable to be set aside and the plaintiff is entitled to a decree for specific performance.

11. Per contra, the learned counsel for the respondents/defendants would submit that the entire transaction is nothing but clearly a loan transaction and that the entire amount has been paid by P.W.2. The plaintiff is none other than

an employee of P.W.2 and the said fact itself fortifies the contention of the defendants that it is only a loan transaction. Even assuming that no oral evidence is permissible contrary to the terms of the agreement, the very conduct of the plaintiff would clearly indicate that the transaction was purely a loan transaction and that the plaintiff has not exhibited the readiness and willingness from the very inception of the agreement. He would further submit that the suit itself was filed belatedly. All these facts clearly establish that the plaintiff was never ready and willing to perform his part of the contract.

12. In the light of the submissions made on either side, the following points arise for consideration in this appeal:-

1) Whether the agreement dated 14.08.2002 was intended for sale or only the result of loan transaction?

2) Whether the plaintiff has always been ready and willing to perform his part of the contract dated 14.08.2012 ?

3) Whether the Trial Court was right in refusing to grant the relief of specific performance being the equitable relief ?

4) To what other relief?

13. We have perused the matter in the light of the submissions made on either side and have carefully examined the materials available on record.

14. **POINT No.1**

It is not in dispute that the registered Sale Agreement(Ex.A1), dated 14.08.2012 was executed by the first defendant for sale of the suit property for a total sale consideration of Rs.55,00,000/-. It is also not in dispute that as per the agreement, a sum of Rs.50,00,000/- was paid by the plaintiff towards the sale consideration. However, the parties have agreed to complete the sale within a period of 23 months from the date of agreement.

(ii) It is relevant to note that though the parties are normally not permitted to take a contrary stand to the terms of a written agreement, the conduct of the parties and the surrounding circumstances established on record cannot be ignored altogether while assessing whether the registered agreement was, in fact, intended only as a security for a loan transaction or as an agreement for sale.

(iii) It is further relevant to note that the plaintiff is stated to be only an employee of PW.2,Anandan. On appreciation of the entire evidence of P.W.1 and P.W.2 in the light of the defence set up by the defendants, it has been clearly established that on the date of agreement itself, the substantial amount of Rs.50,00,000/- has been paid only by P.W.2 through cheque.

(iv) Though oral evidence is not permissible between the parties for the purpose of contradicting, varying, adding to, or subtracting from the terms of a written contract, it is well settled that where there is a want of capacity in any contracting party or a want of consideration or want of due execution, the same can be proved by way of oral evidence, as per first proviso to Section 92 of the Indian Evidence Act, 1872. Therefore, when the plaintiff himself admits that he was an employee of PW2, and the entire amount has been paid by PW2 by way of cheque, the defence set up by the plaintiff becomes more probable.

(v) Further, the evidence of plaintiff(P.W.1)also indicates that he was drawing a monthly salary of Rs.39,000/- at the relevant point of time. Therefore, though oral evidence contrary to the terms of a written contract is ordinarily impermissible, the fact remains that the plaintiff was only an employee of P.W.2 at the relevant point of time and further P.W.2 had advanced the sum of Rs.50,00,000/-. These facts clearly probabilise the defence that the agreement was not intended for sale and it is only a loan transaction and the point no.1 is answered accordingly.

15. POINT Nos. 2 to 4

Even assuming that Ex.A1 is a sale agreement, it has to be analysed whether the plaintiff had exhibited readiness and willingness from the very inception of the contract till the culmination of the contract into a sale deed.

(ii) Though it is the case of the plaintiff that a substantial amount of Rs.50,00,000/- constituting the major portion of the sale consideration was paid on the date of agreement, there is no explanation as to why such a long period of 23 months was agreed upon to complete the sale. In the entire agreement, there is no whisper whatsoever explaining the necessity for granting such a long period to pay the paltry sum of Rs.5,00,000/-.

(iii) Whereas for the first time, in the plaint, it is stated that the period of 23 months was agreed upon to enable the defendants to vacate the dyeing unit. This reason is also introduced only for the first time in the plaint. Even in the legal notice dated 12.07.2014(Ex.A2), the said reason for stipulating 23 months is absent. Thus, for the first time in the suit filed after considerable delay, such a reason has been assigned. These facts clearly exhibited that the transaction was never intended to be a genuine sale transaction. It is also relevant to note that if the parties had truly intended to complete the sale, having already paid a substantial sale consideration, a prudent purchaser would not have waited for another 23 months to pay a paltry sum of Rs.5,00,000/-. This fact cannot be ignored altogether .

(iv) It is also relevant to note that even during the entire cross examination, P.W.1 was not in a position to state the exact value of the stamp papers purchased for typing the document. According to him, only stamp papers worth Rs.50/- each were purchased, totalling four papers. Whereas the document is otherwise typed on stamp papers of Rs.100/- denomination, the plaintiff has stated that the stamp papers of lesser value were purchased. This circumstance also creates doubt regarding the genuineness of the agreement for sale.

(v) Though the plaintiff contended that the period of 23 months was agreed only to enable the defendants to vacate the dyeing unit alone, the evidence on record clearly shows that six shops had already been constructed by the defendants and that the said shops had been let out to various tenants. From the evidence of P.Ws.1 and 2, we are not in a position to find out that P.W.1 has taken any steps to ascertain who the tenants were, what portions were in their occupation, or the exact nature of the structures available in the suit property. Except stating that there was dyeing unit, he has not even made any effort to know the exact nature of the suit property. This fact clearly indicate that even assuming the registered agreement is taken as a sale agreement, the plaintiff was never genuinely interested in purchasing the property in terms of the contract. His readiness and willingness are totally absent.

(vi) The evidence of P.W.1 further indicates that he was not even aware of the existence of two borewells in the suit property or of the true nature of the property. If he had genuinely intended to purchase the suit property with the buildings and a dyeing unit, the same would have been reflected in the agreement itself. However, in the schedule of the property set out in Ex.A1 Agreement, absolutely there is no mention to any building or dyeing unit and the property is described only as agricultural land. This fact also creates a serious doubt about the very agreement for sale.

(vii) Further, the plaintiff was unaware of the nature of the property and the amenities available therein. These aspects clearly proves the fact that he never intended to purchase the property. Readiness and willingness is a continuous requirement. Readiness refers to the financial capacity to mobilise funds, whereas willingness denotes the mental attitude to complete the transaction. When a person claims to have paid Rs.50,00,000/-, being a substantial portion of the sale consideration, but remains a mute spectator without even knowing the nature of the property and having to pay only a paltry sum of Rs.5,00,000/-, it cannot be said that he had exhibited readiness and willingness from the very inception.

(viii) Yet another aspect cannot be ignored altogether. During the entire period of 23 months from the date of agreement till the expiry of the stipulated period, absolutely there is no evidence to show that the plaintiff has taken any steps to demonstrate his readiness and willingness. Except for issuing the legal notice, dated 12.07.2014,(Ex.A2), there is no other material or evidence available on record to prove his readiness and willingness. It is also relevant to note that under Ex.A3 the defendants has disputed the agreement itself by reply dated 24.07.2014, wherein the defendants had disputed the very agreement. Even thereafter, the plaintiff has not approached the Court immediately. The plaint was presented only on 28.04.2015, and numbered on 30.04.2015. These facts clearly show that the delay in filing the suit is also a relevant factor to be considered while assessing readiness and willingness.

(ix) Though the law does not mandate deposit of the balance sale consideration at the time of filing the suit, however such deposit would have been a strong circumstance to show his bonafides. In the present case, despite claiming to have paid a substantial portion of the sale consideration, the plaintiff did not deposit even the paltry sum of Rs.5,00,000/- either at the time of filing the suit or during the pendency of the proceedings. There is no evidence on record to show that such payment was ever tendered. These circumstances clearly established the fact that the plaintiff had not exhibited readiness and willingness from the very inception of the agreement.

(x) It is also established on record that the entire advance amount of Rs.50,00,000/- was paid only by P.W.2. However, considering the admitted written contract between the parties, the Trial Court granted alternative relief directing refund of Rs.50 lakhs with interest at the rate of 10% per anum and also created a charge over the property till payment.

(xi) Considering all the above aspects, this Court does not find any infirmity in the judgment and decree of the Trial Court and the points 1, 2, and 4 are answered accordingly.

16. It is submitted by the learned counsel for the respondents/defendants that refund of the amount ordered by the Trial Court, together with interest upto 03.05.2023, has already been deposited, and that a sum of Rs.1,04,19,878/- was deposited before the Trial Court on 04.05.2023.

17. In the result, the appeal stands dismissed and the judgment and decree of the Trial Court are confirmed. No costs. Consequently connected miscellaneous petition is closed. The plaintiff is entitled to withdraw the entire amount deposited before the trial Court, along with accrued interest, and the Trial Court is directed to refund the said amount to the plaintiff immediately upon filing of an appropriate application.

(N.S.K.,J.) (R.S.V.,J.)

20-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

mrp

To

I Additional District and Sessions Court,

Tiruppur.

N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

MRP

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