



C.M.A.No.2520 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.01.2026

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2520 of 2025

and

C.M.P.No.21364 of 2025

E.Thangamani

...Appellant/Respondent/Plaintiff

VS.

T.Mani

...Respondent/Appellant/Defendant

PRAYER: Civil Miscellaneous Appeal is filed under Section 104 r/w Order XLIII Rule 1(u) of CPC., to set aside the judgment and decree dated 24.02.2025 made in A.S.No.70 of 2024 on the file of the Principal District Court, Vellore, setting aside the judgment and decree dated 19.09.2024 in O.S.No.155 of 2007 on the file of the Additional Sub Court, Vellore.

For Appellant : Mr.M.Venkatakrishnan

For Respondent : Mr.V.Sundar Raman

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment dated 24.02.2025 passed in A.S.No.70 of 2024 by the Principal District



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Judge, Vellore by the plaintiff herein.

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2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, Thangamani, on 15.10.2004, the defendant entered into registered sale agreement with the plaintiff to sell the suit scheduled property for sale consideration of Rs.1,50,000/- and the defendant received a sum of Rs.1,00,000/- as a part of sale consideration on the aforesaid date. The balance sale consideration has to be paid within three years and the defendant has to execute the sale deed in favour of the plaintiff, as per the terms of the sale agreement. At the time of execution of the agreement for sale, the defendant handed over the original sale deed dated 29.01.2001 pertaining to the suit property to the plaintiff herein. The plaintiff has always been ready and willing to perform his part of the contract and demanded the defendant to receive the remaining sale consideration of Rs.50,000/- and to execute the sale deed in his favour. But, the defendant had been evading to perform his part of contract. Hence, a legal notice was caused to be issued by the plaintiff on 16.07.2007 calling upon the defendant to receive the balance sale consideration and to execute the sale deed in his favour. The defendant,



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despite the receipt of notice, did not send reply to the plaintiff herein.

Hence, the suit for the relief of specific performance of contract was filed by the plaintiff.

4. *Per contra*, the sole defendant would *inter alia* contend that the defendant approached the plaintiff for grant of loan for a sum of Rs.1,00,000/- with interest at Rs.1.50 per Rs.100/-. For the loan, the plaintiff obtained signatures of the defendant in the blank papers and on compulsion of the plaintiff, the defendant went to the Registrar Office to execute the sale agreement for security purpose. As per the loan agreement, the defendant had been regularly paying the interest of Rs.1,500/- every month till June 2007. Due to his ill health, he stopped the payment towards loan obtained.

4.1. The plaintiff has not deposited balance sale consideration, which shows that the suit transaction is only a loan transaction. For paying meagre amount of Rs.50,000/- fixing of three years' time is not acceptable one. The suit property is worth about more than Rs.10,00,000/-. Hence, the defendant sought for dismissal of the suit.

5. The Trial Court framed relevant issues. At trail, to substantiate the



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plaint details, three witnesses were examined and thirteen documents were marked. Ex.A1 is the registered sale agreement dated 15.10.2004 executed by the defendant in favour of the plaintiff. On the defendant's side, four witnesses have been examined and three documents have been marked.

6. Upon consideration of oral and documentary evidence and after hearing the arguments by either side, the Trial Court has concluded that the plaintiff is entitled for the relief of specific performance granting one month to pay balance sale consideration of Rs.50,000/- and within two months from then, the defendant was directed to execute the sale deed in favour of the plaintiff.

7. Aggrieved, the defendant preferred appeal in A.S.No.70 of 2024 before the Principal District Judge, Vellore. Upon consideration of the entire records and after hearing the arguments advanced by either side, the First Appellate Court allowed the appeal by set aside the judgment and decree of the Trial Court by remitting back the same to the Trial Court for reconsideration of the suit by following observations found in that judgment.



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8. The learned counsel for the appellant/plaintiff would vehemently argue that the First Appellate Court had failed to peruse oral and documentary evidence of the respective parties in a proper perspective while setting aside the well considered judgment of the Trial Court. He would further contend that order of the First Appellate Court remitting the case back to the Trial Court would allow the defendant to reopen the case further. Hence, it would cause serious prejudice to the appellant/plaintiff.

9. Whereas, the learned counsel for the respondent/defendant would contend that the Trial Court, after closure of evidence, has amended the issue without giving an opportunity to the parties and judgment was pronounced. Thereby, the parties were denied to let in evidence suitably.

10. The relevant provision is Order XIV Rule 5 of CPC. In order to have better understanding, the same has been extracted as given hereunder:

"5. Power to amend and strike out, issues.

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.



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(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

11. The Trial Court may amend the issues or frame additional issues at any time before passing the decree. But all it has to do is that while amending issues or framing of additional issues, if it is necessary for the parties to let in evidence, opportunity must be given to the parties accordingly.

12. The main contention of the defendant before the First Appellate Court is that after framing an additional issue, opportunity to have been afforded to the parties and therefore, the judgment and decree passed by the Trial Court has to be set aside.

13. The First Appellate Court has adverted to the said issue and given a finding that the Trial Court has come to the conclusion that no additional evidence is required and the evidence already recorded in the case is enough. Very specifically, in the observation made by the Trial court, it is stated that already both sides led in evidence on the point of additional issues also. Hence, question of additional evidence will not arise at this stage.



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14. Whereas, the counsel for the appellant/plaintiff would contend that the Trial Court, in consideration of both side evidence and arguments, came to a correct conclusion that the plaintiff is entitled to a relief of specific performance. He would further contend that the First Appellate Court has ordered to eschew further evidence of P.W.1, evidence of P.W.3 and further evidence of D.W.1 and evidence of D.W.4 and in Ex.A8 to A13 and B1 on the ground that during the pendency of the suit, out of Court, settlement was going on and on those terms, evidence was recorded that the said details of evidence have prejudiced the trial. The First Appellate Court has held that the aforestated evidence of witnesses have to be eschewed and hence, Exs.A8 to A13 and Ex.B1 have to be eschewed and it has to proceed further. Of course, some of the witnesses on either side have spoken about the settlement arrived at between the parties and it was not fructified.

15. Based on the said observations, the Trial Court decreed the suit. Such an observation by the First Appellate Court is totally incorrect. The Trial Court, having discussed the both sides evidence and in tune with the documents, has come to the conclusion that the plaintiff had been ready and willing to perform his part of contract and it is only for the defendant,



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who did not come forward to execute the sale deed and decreed the suit.

As the Trial Court decreed the suit not on the basis of the evidence pertaining to the settlement process, the observation of the First Appellate Court is, in fact, misconceived and misdirected.

16. On a careful perusal of the issues framed by the Trial Court, it is seen that comprehensive issue No.1 was subsequently re-casted as issue Nos.1, 2, and 3. The observation of the Trial Court, in such circumstances, cannot be termed as incorrect. It is not the case of the defendant that the conclusion of the Trial Court is incorrect. Therefore, this Court is of the considered view that as the finding of the First Appellate Court suffers from perversity and stands set aside.

17. Above being the position, based on the aforestated observations and discussions, this Civil Miscellaneous Appeal stands allowed. Sequel to this, judgment and decree dated 24.02.2025 in A.S.No.70 of 2024 passed by the Principal District Judge, Vellore, stands set aside. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No



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1.The Principal District Judge,
Vellore.

2. The Additional Sub Judge,
Vellore.

3. The Section Officer,
VR Section,
High Court, Madras.

R.KALAIMATHI, J.

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