



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-02-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 148 of 2021
AND
CMP No. 3144 of 2021**

P.Manoharan
S/o.Padmagounder, Majjid Street,
Madhikonpalayam, Dharmapuri Taluk And
District.

..Appellant(s)

Vs

Kandhasamy
S/o.Sivalingam, Muthampatti Village,
Eechampaadi Post, Dharmapuri Taluk And
District.

..Respondent(s)

SA No. 148 of 2021

This Second Appeal is filed against the judgment and decree of the Subordinate Judge Court at Dharmapuri, dated 18.09.2019 in AS.No.35 of 2016 confirming the Judgment and decree of the District Munsif Court at Dharmapuri, dated 21.03.2016 in O.S.No.136 of 2004.

SA No. 148 of 2021

For Appellant(s):	Mr.P.Valliappan Senior Counsel Assisted.by Mr.T.Deeraj For M/s.PV Law Associates
For Respondent(s):	V.Sakkarapani



JUDGMENT

This Second Appeal has been filed against the judgment and decree of the Subordinate Judge Court at Dharmapuri, dated 18.09.2019 in A.S.No.35 of 2016 confirming the Judgment and decree of the District Munsif Court at Dharmapuri, dated 21.03.2016 in O.S.No.136 of 2004.

2. For the sake of convenience, the parties are referred to as per the rank cited in the suit. The Appellant is the Plaintiff and the Respondent is the Defendant.

3. The case of the appellant is in brief:

(i) The defendant is the owner of the suit property. Due to urgent expenses, the defendant agreed to sell the suit property to the Plaintiff for a sum of Rs.1,00,000/-. Accordingly, the plaintiff entered into the Sale Agreement dated 20.04.2000 with the defendant wherein the plaintiff paid an advance of Rs.95,000/- and the balance of Rs.5,000/- was agreed to be paid within a period of one year failing which the advance amount paid by the plaintiff shall be forfeited. Thereafter, the defendant entered into a fresh registered Sale agreement dated 12.04.2001 with the plaintiff for sale of the same suit property for a sale consideration of Rs.1,00,000/- out of which Rs.95,000/- was paid and



the balance of Rs.5,000/- was agreed to be paid within a period of two years.

Even though the plaintiff had always been ready and willing to perform their part of contract, by paying the balance sale consideration, the defendant refused to execute the sale deed. Consequently, after exchange of notices, the plaintiff has filed the suit in O.S. No.136 of 2004 on the file of the District Munsif Court, Dharmapuri, seeking for the relief of Specific performance and for alternate relief against the defendant.

(ii) In the Written Statement, the defendant has denied the averments of the plaint and stated that the Sale agreement was executed merely as security for the loan amount of Rs.3,00,000/- with monthly repayment of Rs.12,000/- for 25 months. Since the plaintiff could not pay monthly instalment for four months, the plaintiff has filed the suit and he never intended, nor agreed to sell the suit property.

(iii) Based on the aforesaid pleadings, the Trial Court has framed the following Issues:

1. *Whether the plaintiff is entitled to the relief of Specific performance?*
2. *Whether the plaintiff is entitled to have the Sale Deed to be executed by the defendant?*
3. *Whether the Sale Agreement was executed as collateral security to the loan amount to have been borrowed from the plaintiff?*
4. *To what other relief the plaintiff is entitled?*



(iv) During the Trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex.A1 to Ex.A6 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Ex.B1 was marked.

(v) The Trial Court partly decreed the suit by granting the alternate relief of refund of advance amount together with interest. Feeling aggrieved, both the plaintiff and the defendant separately filed First Appeals ie. A.S. No.35 of 2016 and A.S. No.19 of 2017 on the file of the Subordinate Judge Court, Dharmapuri respectively. Both the First Appeals were dismissed by the Lower Appellate Court. The plaintiff in the suit aggrieved by the findings of the Courts below has filed the present Second Appeal. However, the defendant has not filed against the aforesaid Judgment.

4. The Second appeal has been admitted on the following substantial question of law:

“(i) When the suit notice was issued prior to the expiry of the time fixed for performance of the contract and suit for specific performance itself had been filed before the conclusion of the period fixed under the Ex.A2 registered Sale Agreement, whether the Courts below are correct in law in non-suiting the appellant, by misreading the provisions of Section 16(C) of the Specific Relief Act, 1963?”



(ii) When the execution of Ex.A2 registered sale agreement is admitted and the readiness and willingness of the appellant is not in serious dispute, are the Courts below correct in law in denying the relief of specific performance on filmsy reasons, in contravention of the provisions of Section 16(C) and 20 of the Specific Relief Act, 1963?"

5. The learned counsel for the appellant would submit that Ex- A.2 Sale Agreement dated 12.04.2001 was established beyond all reasonable doubt entered into between the plaintiff and the defendant. Hence, no question can be raised as to why a time of two years was fixed to pay the balance sale consideration of Rs.5,000/-. While the legal notice was sent within the time fixed for performance of the contract and suit was filed within time without any delay, thereby the plaintiff has established the readiness and willingness to perform his part of contract. Further, the defendant failed to prove the loan transaction and the repayments.

6. It has been further submitted that the plaintiff was always ready and willing to perform his contract based on Ex.A2-Sale Agreement dated 12.04.2001. However, the Courts below without considering the oral and documentary evidence erred in concluding that the plaintiff cannot be said to



have been ready and willing to perform his part of the contract at all times. The said findings is perse absurd and preposterous, oblivious of the fact that the suit itself was filed within the period fixed under the registered sale agreement.

Hence, he prays to set aside the concurrent findings of the Courts below.

7. The learned counsel for the respondent would submit that the sale agreement was executed for the collateral purpose and not for the sale of the suit property. He further submitted that, even if Ex-A.1 - Sale Agreement, had truly been executed with the intention to sell the Suit Property, and if the plaintiff had genuinely intended to purchase it, he would have paid the balance amount of Rs. 5,000/- within a period of one year as stipulated in the Sale Agreement dated 20.04.2000 to have get Sale Deed in his favour. But, the plaintiff had entered into another fresh Sale Agreement on 12.04.2001 before the termination of the earlier agreement dated 20.04.2000 for a period of two years since the loan amount was partly paid by the defendant and the balance amount was pending to be paid at the time of the execution of the Sale Agreement dated 12.04.2001. Further, the plaintiff has not mentioned anything about the earlier sale agreement dated 20.04.2000 in the subsequent Sale Agreement dated 12.04.2001 thereby the defendant has proved that the Sale agreement was executed for the collateral purpose and not for the intention to sell the suit property.



8. It has been further submitted that having relied upon the provisions of Sections 16(C) and 29 of the Specific Relief Act, 1963, the Courts below categorically held that the plaintiff has not proved his readiness and willingness to perform his part of contract from the date of execution of the contract till the date of the decree. Hence, the Courts below, after considering the facts and circumstances of the case, rightly dismissed the Suit and First Appeal and there is no reason to interfere with the same. Accordingly, he prays to dismiss the Second appeal.

9. Heard both sides and perused the materials available on record.

10. On perusal of the records, it is seen that while Ex.A1 -the Sale Agreement dated 20.04.2000 entered into between the parties, was in force to pay the balance sale consideration of Rs.5,000/-, subsequently Ex.A2- another fresh sale agreement dated 12.04.2001 had been entered between the parties for two years to pay the remaining sale consideration of Rs.5,000/- by extending the terms of the years. Even if Ex.A1- Sale Agreement dated 20.04.2000 had been executed with the intention to sell the suit property, and if the plaintiff wanted to purchase it, he would have paid the balance of Rs.5,000/- during the stipulated time as mentioned in Ex.A1 or given notice to the defendant to have executed the Sale Deed in his favour. Per contra, the plaintiff has entered into another Sale Agreement dated 12.04.2001 with the defendant extending further



two years for the payment of remaining sale consideration of Rs.5,000/- without recording the earlier agreement dated 20.04.2000 therein. The plaintiff has not proved before the Trial Court whether he was ready and willing to perform his part of contract before executing another Sale Agreement dated 12.04.2001 and failed to produce the oral and documentary evidence before the Trial Court in this regard. Further, there is no explanation for having entered into another fresh agreement dated 12.04.2001 before the termination of the earlier agreement dated 20.04.2000 which was in force. In this regard, witnesses in the Sale Agreement dated 20.04.2000 was not examined thereby not proved which was executed for sale of the suit property.

11. Further, the plaintiff has issued legal notice on 09.10.2002 to the defendant. The defendant has received the same on 11.10.2002 and replied reputing the averments for the notice dated 09.1.2002 of the plaintiff on 16.11.2002. But, the plaintiff has not sent any rejoinder for the aforesaid notice denying their averments. If the plaintiff was ready and willing to perform his contract, he ought to have filed the suit before terminating the earlier agreement dated 20.04.2000 after issuing notice to the defendant. However, the defendant had entered into another agreement dated 12.04.2001 without any reference of the earlier agreement dated 20.04.2000. Further, if the plaintiff really intended to perform his part of contract, he would have approached the Trial Court for his remedy immediately after receiving the reply notice dated 16.11.2002 from



the defendant whereas he filed the suit only in the year 2004. Hence, the Courts below has rightly held that the readiness and willingness to perform the contract was not proved by the plaintiff and accordingly rightly dismissed the First Appeal filed by the plaintiff in accordance with the provisions of Section 16(c) and 20 of the Specific Relief Act, 1963. Accordingly issue no.1 and 2 are answered against the plaintiff.

12. In view of the aforesaid observations and discussions, this Court is not inclined to interfere with the concurrent findings of the Courts below and confirms the Judgment and decree passed by the Courts below. Hence, the defendant/respondent is hereby directed to pay the amount of Rs.95,000/- to the plaintiff within a period of two months from the date of receipt of copy of this Judgment along with the accrued interest as held in the Judgment of the Trial Court.

13. In the result, the Second Appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

23-02-2026

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

Lbm



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