



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 09.01.2026

Judgment pronounced on : 13.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.56 of 2024
& CMP.No.1593 of 2024

V.Jayabalan

..Appellant

Vs.

D.Ezhumalai

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the order and decretal order dated 27.04.2023 made in O.S.No.6 of 2015 on the file of the Court of the II Additional District Judge, Tindivanam.

For Appellant : Mr.S.Mukunth
Senior Counsel for Mr.T.Dhanasekaran

For Respondent : Mr.U.Manish Kumar

JUDGMENT

The appellant is the defendant in O.S.No.6 of 2015 before the II Additional District Judge, Tindivanam. Challenging the decree in the said suit, directing refund of



Rs.14 lakhs, together with interest at 9% per annum, from the date of plaint and thereafter, at the rate of 6% per annum on Rs.14 lakhs, the present appeal has been filed.

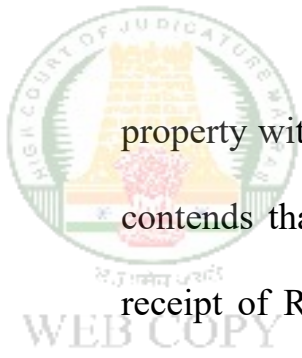
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2.Pleadings: The plaint in brief:

The plaintiff entered into an agreement of sale with the defendant for purchase of the suit property, for a total sale consideration of Rs.15 lakhs. An agreement was entered into on 12.11.2012 and out of the agreed sale consideration, the plaintiff already paid Rs.13 lakhs. The remaining consideration was agreed to be paid in two years time. The defendant again approached the plaintiff on 20.03.2013, stating that he needs money urgently and the plaintiff advanced a sum of Rs.50,000/-, which was recorded by way of an endorsement on 20.03.2013. Yet again on 17.10.2013, further Rs.50,000/- was also borrowed from the plaintiff. The plaintiff is liable to pay only Rs.1 lakh towards balance sale consideration. The plaintiff pleads that he is ready and willing to perform his part of the contract and that the defendant is trying to encumber the property and has filed the suit for specific performance, with an alternative prayer for refund of the advance amount of Rs.14 lakhs, together with interest at 9% per annum.

3.Written statement of the defendant in brief:

The defendant is the owner of the suit property. However, he never intended to sell the property to the plaintiff for a sum of Rs.15 lakhs and that he has received Rs.13 lakhs as advance towards sale price. The defendant denies that he agreed to sell the



property within a period of two years from the date of agreement of sale. The defendant contends that the sale agreement is a fabricated document. The defendant also denies receipt of Rs.50,000/- on two occasions, as claimed and alleged by the plaintiff. The defendant's further contention is that one Vadapalani S/o. Maria Gounder is the employer of the plaintiff, who is a money lender. The defendant admits to have had money dealing with the said Vadapalani over the last five years. The said Vadapalani lent money on security of immovable properties and thereafter, used to coerce the debtors to repay the loan with high rate of interest. The defendant borrowed only Rs.5 lakhs, that too, from the said Vadapalani by depositing his original sale deed with him. At that time, Vadapalani exercised undue influence and obtained the defendant's signature in blank papers, as security for repayment of the said Rs.5 lakhs. The defendant was not in a position to repay the amount borrowed from Vadapalani, though he had paid exorbitant interest for 22 months. The suit sale agreement has been fabricated by the plaintiff and the said Vadapalani, in order to deprive the defendant of his valuable property. The suit property is worth more than Rs.45 lakhs and therefore, by no stretch of imagination, the defendant would have agree to sell the suit property for a mere Rs.15 lakhs. The defendant has settled the loan amount borrowed from Vadapalanai and when the defendant demanded return of the original sale deed, the said Vadapalani has joined hands and colluded with the plaintiff to file the suit for specific performance. The alleged endorsements have been brought about, taking advantage of signatures obtained from the defendant in blank papers. The plaintiff, in any event, has not been ready and



willing to perform his part of the contract. The defendant also contends that the suit is barred by limitation. The defendant therefore prays for dismissal of the suit.

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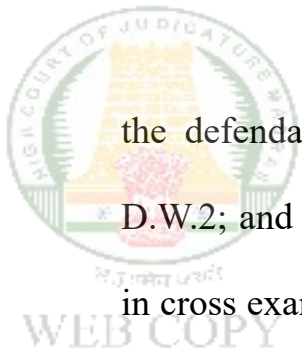
4. Issues framed by the trial Court:

Based on the above pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is prosecuting the suit under the guise of his employer Vadapalani?
2. Whether the sale agreement dated 12.11.2012 is true?
3. Whether the endorsements dated 20.03.2013 and 17.10.2013 are true?
4. Whether the suit is barred by limitation?
5. Whether the plaintiff was ready and willing to perform his part of his contract?
6. Whether the plaintiff is entitled for the relief of specific performance of the sale agreement dated 12.11.2012?
7. Whether the plaintiff is entitled for the alternative prayer for the amount of Rs.17,30,125/- with subsequent interest?
8. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
9. To what other relief the plaintiff is entitled to?

5. Trial:

At trial, on the side of the plaintiff, the respondent examined himself as P.W.1 and Ex.A1 to A9 were marked; Ex.B1 to B3 were marked in cross examination of P.W.1; One Mr.Selvam was examined as P.W.2 and Ex.B4 was marked during his cross examination; and one Kandasamy was examined as P.W.3. On the side of the defendant,



the defendant examined himself as D.W.1; one Govinda Perumal was examined as D.W.2; and one Murugan was examined as D.W.3. Apart from Ex.B1 to Ex.B4 marked in cross examination of P.W.1 and P.W.2, no other documents were exhibited on the side of the defendant.

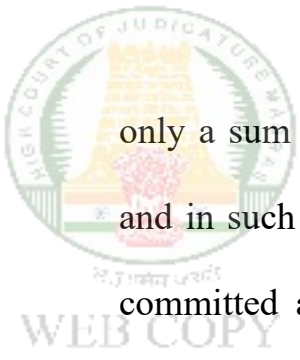
6.Decision of the trial Court:

The trial Court, finding that the plaintiff was not ready and willing to perform his part of the contract, disallowed the relief of specific performance. However, the alternate relief of refund of Rs.14 lakhs, together with interest at 9% per annum, as prayed for, with future interest at 6% per annum was granted by the trial Court. Challenging the said decree, the defendant is on first appeal.

7.I have heard Mr.S.Mukunth, learned Senior Counsel for Mr.T.Dhanasekaran, learned counsel for the appellant and Mr.U.Manish Kumar, learned counsel for the respondent. I have gone through the pleadings, oral and documentary evidence and I have also gone through the judgment of the trial Court.

8.Arguments of the learned counsel for the appellant:

(a) Mr.S.Mukunth, learned Senior Counsel would contend that as against the disallowing relief of specific performance, the respondent has not preferred any appeal. He would further contend that the defendant's categorical case was that he borrowed



only a sum of Rs.5 lakhs, that too, from one Vadapalani, the employer of the plaintiff and in such circumstances, according to the learned Senior Counsel the trial Court has committed a grave error in decreeing the suit, granting the alternate relief directing refund of the entire Rs.14 lakhs, which sum was never admitted to have been received by the appellant, either in the pleadings, or in the evidence. He would further invite my attention to the agreement of sale dated 12.11.2012 and stated that the second and third pages of the agreement have been subsequently attached and the entire document itself is fabricated and the burden was very heavily on the plaintiff's shoulder to establish the genuineness of the said agreement.

(b) It is also the submission of the learned Senior Counsel for the appellant that if really the plaintiff has paid a sum of Rs.14 lakhs, out of the total sale consideration of Rs.15 lakhs, no prudent agreement holder would wait for more than two years for claiming the relief of specific performance, which delay and conduct only evidences the fact that the plaintiff was not a bonafide agreement holder and the case of the defendant ought to have been accepted. The learned Senior Counsel further contends that the plaintiff has miserably failed to establish the payment of Rs.13 lakhs in the first instance and the subsequent payment of Rs.50,000/- each, totalling in all Rs.14 lakhs to become entitled to the return of the alleged advance and in such circumstances, the trial Court clearly fell in error in granting even the alternate relief of refund of advance, that too, for



Rs.14 lakhs, when the admission, at best, could have been taken as Rs.5 lakhs, considering the written statement filed by the appellant/defendant.

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9.Arguments of the learned counsel for the respondent:

Per contra, Mr.U.Manish Kumar, learned counsel for the respondent would submit that the plaintiff had examined P.W.2, one of the witnesses to the agreement of sale, Ex.A1 dated 12.11.2012 and through P.W.2, the plaintiff had established the payment of the advance amount under the agreement of sale. He would therefore state that in the absence of any contra evidence, by way of rebuttal, the trial Court cannot be found fault with for granting the alternate relief of refund of advance, having come to a finding that the plaintiff had not established readiness and willingness to have become entitled to a decree for specific performance. The learned counsel for the respondent therefore prays for the appeal being dismissed.

10.I have carefully considered the submissions advanced by Mr.S.Mukunth, learned Senior Counsel and Mr.U.Manish Kumar, learned counsel for the respondent.

11.On considering the above submissions, I proceed to frame the following point for consideration:

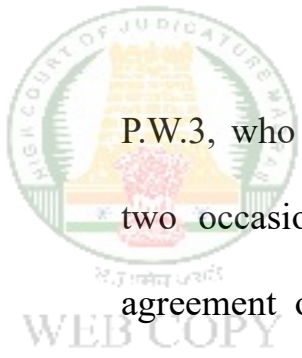


1. Whether the plaintiff had made out a case for the alternate relief of refund of advance and if so, whether the trial Court was justified in granting a decree, directing refund of a sum of Rs.14 lakhs.

12.Point No.1:

The suit agreement dated 12.11.2012 has been denied by the defendant. The endorsements recording payment of further Rs.50,000/- each on 20.03.2013, as well as 17.10.2013 are also disputed by the defendant. According to the plaintiff, the defendant came forward to sell the suit schedule property for a total sale consideration of Rs.15 lakhs and on the date of agreement, a major portion of sale consideration, namely Rs.13 lakhs had been paid. Subsequently, the defendant again approached the plaintiff, citing financial emergencies and borrowed further Rs.50,000/- each on two occasions and therefore, the remaining sale consideration payable by the plaintiff is only Rs.1 lakh.

13.The trial Court, after analyzing the oral and documentary evidence, held that the defendant had not established even the fact that the plaintiff was working under the said Vadapalani with whom alone, the defendant had admitted the loan transaction and even the suggestions put to the witnesses examined on behalf of the plaintiff had been denied by the witnesses. The trial Court rightly placed the burden on the plaintiff to establish the truth and genuineness of Ex.A1 agreement and taking note of the evidence of P.W.2, who was a witness to Ex.B1, Ex.B4, as well as Ex.A1, suit agreement and



P.W.3, who has spoken about the endorsements regarding payment of Rs.50,000/- on two occasions, found that the defendant's case that he had not entered into any agreement of sale with the plaintiff was unacceptable. However, at the same time, insofar as Section 16 of the Specific Relief Act, the trial Court found that the plaintiff has not been ready and willing to perform the obligations pending on the side of the plaintiff to entitle him to a decree for specific performance. Therefore, while refusing the discretionary relief of specific performance, the trial Court finding that the plaintiff had proved passing of consideration by examining the witnesses, more specifically, the evidence of P.W.3, has granted the alternate relief for refund of advance of Rs.14 lakhs.

14.I have scanned the evidence of P.W.3, the witness who is having first hand information with regard to not only the execution of the agreement of sale, but also the endorsements made, acknowledging the receipt of Rs.50,000/- on two occasions. In his proof affidavit, he has stated that the suit property belongs to the defendant and that he came forward to sell the same to the plaintiff for an agreed sale consideration of Rs.15 lakhs, in respect of which, an agreement was drawn up and executed on 12.11.2012. He has specifically stated that the plaintiff paid a sum of Rs.13 lakhs on the said date which was received by the defendant. He has also spoken about the two endorsements, acknowledging receipt of Rs.50,000/- each on 20.03.2013 and 17.10.2013. In fact, he has even stated that the endorsement dated 17.10.2013 was made by him. He also



affirmed the statement of the plaintiff that the original sale deed of the suit property was handed over by the defendant to the plaintiff on the date of Ex.A1 agreement.

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15.It has come out in his cross examination that the advance of Rs.13 lakhs has been paid in cash at his office. He has denied the suggestion questioning the genuineness of two endorsements. Not even a suggestion is put to P.W.3 that the plaintiff did not pay any money, much less Rs.13 lakhs or further payment of Rs.50,000/- each in two occasions, despite the specific assertion of the same in the proof affidavit of P.W.3. The trial Court has also rightly found that the defendant failed to prove his alleged transactions with the Vadapalani, whom he claim to be the employer of the plaintiff, which factum was also not established at trial. In such circumstances, the case projected by the defendant that he borrowed only Rs.5 lakhs from Vadapalani and the trial Court ought not to have granted a decree for Rs.14 lakhs cannot be countenanced. The trial Court has rightly factored the oral and documentary evidence in coming to the conclusion that the plaintiff, though not ready and willing to perform the agreement of sale, was entitled to refund of the advance amount paid to the defendant. I do not see any infirmity or perversity in the appreciation of pleadings and evidence in this regard, warranting interference in first appeal. The point for consideration is answered against the appellant and in favour of the respondent.



16.Result:

In fine, the Appeal Suit is dismissed with costs. Connected Civil Miscellaneous
Petition is closed.

13.02.2026

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

The II Additional District Court, Tindivanam.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S.No.56 of 2024
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