



WEB COPY

AS No. 997 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-02-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

AS No. 997 of 2025

and

CMP No.23555 of 2025

K.Subbamani
S/o.Late Kanthasamy Gounder

..Appellant(s)

Vs

K.M.Arumugam
S/o.Meyyanda Gounder

..Respondent(s)

PRAYER :-

This Appeal has been filed under Section 96 of the CPC to set aside the decree and judgment dated 5.2.2025 rendered in OS.NO. 491/2021, on the file of First Additional District Judge, Coimbatore by allowing this appeal.

For Appellant(s): Mr. R. Susendhiran

For Respondent(s): Mr. S.Arjun



JUDGMENT

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

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Challenging the judgment and decree of the Trial Court, decreeing the suit for specific performance, the present appeal has been filed by the unsuccessful defendants.

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

3. It is the case of the plaintiff that the defendant agreed to sell the suit property for a total sale consideration of Rs.25,00,000/- and executed a registered agreement of sale on 08.03.2019 after receiving Rs.1,00,000/- as advance. It was agreed between the parties that the sale shall be completed within a period of 11 months, i.e. on or before 07.02.2020. The defendant also agreed to vacate the tenants from the suit premises. As the defendant could not vacate the tenants within the stipulated in time, he sought extension of time to perform his part of contract. Though the plaintiff suggested extension of time, the defendant requested a further advance of Rs.3,20,000/-. Later, the defendant came with a proposal that the earlier agreement be cancelled and a fresh agreement be executed. Accordingly, the earlier agreement dated 08.03.2019



was cancelled on 01.06.2020 and a fresh agreement of sale in respect of the suit property was entered into, wherein the defendant agreed to complete the sale within a period of 11 months. Though the plaintiff called upon the defendant on several occasions to execute the sale deed, the defendant evaded performance. Hence, a legal notice was issued on 22.04.2021, and the defendant sent a reply notice dated 28.04.2021 containing false allegations. Hence, the plaintiff filed the suit.

4. It is the contention of the defendant in the written statement that he never intended to sell the property at any point of time. The plaintiff and the defendant belong to the same village and have known to each other for more than 50 years. The plaintiff is a financier. The defendant states that he received a sum of Rs.2,50,000/- as a loan from the plaintiff at the rate of interest at 12% per annum. According to the defendant, the plaintiff obtained two documents by misrepresenting that they were mortgage deeds. Therefore, it is the case of the defendant that he never executed any sale agreement and that the documents relied upon by the plaintiff are only security documents relating to the loan transaction.



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

- 1) Whether the sale agreement dated 08.03.2019 is true and valid?
- 2) Whether the plaintiff is entitled to the relief of specific performance ?
- 3) Whether the sale agreement is intended for money transactions?
- 4) To what relief ?

6. On the side of the plaintiff, P.W.1 and P.W.2 were examined and nine documents were marked as Ex.A1 to Ex.A9. On the side of the defendants, D.W.1 and D.W.2 were examined and three documents were marked as Ex.B.1 to Ex.B.7.

7. The learned counsel for the appellant/defendant would submit that though the plaintiff has projected sale agreements (Exs.A1 & A3), the very nature of the suit agreement dated 01.06.2010 itself probabilises the defence theory that the transaction was, in substance, only a loan transaction. According to the appellant, the agreement came to be executed only due to misrepresentation. Even assuming that the suit agreement is a sale agreement, the plaintiff/respondent has failed to establish his readiness and willingness to perform his part of the contract. The very contents of both the agreements,



according to the appellant, clearly probabilise the defence theory, which the Trial Court failed to appreciate properly. It is also contended that only certain deposits made in the year 2003 have been produced, whereas no evidence has been placed to show that, in the years 2019 and 2020, the petitioner had the financial capacity to mobilise the balance sale consideration. Hence, readiness and willingness cannot be inferred in this case merely on the basis of the registered agreement and the issuance of a legal notice.

8. Per contra, the learned counsel appearing for the respondent/plaintiff would submit that the earlier agreement(Ex.A1) was entered into on 08.03.2019, with stipulation to complete the sale within a period of 11 months. As the defendant could not vacate the tenants in time, the period was extended at his request, and subsequently a fresh agreement came to be executed, i.e., suit agreement. Therefore, now having admitted execution of the agreement, the defendant cannot take a contrary stand. P.W.2 was also examined to prove the execution of the suit agreement (Ex.A3). A legal notice was also issued within time, which itself proves the readiness and willingness. It is further contended that the original partition deed was handed over to the plaintiff by the defendant at the time of agreement. All these facts, according to the respondent/plaintiff, clearly establish that the respondent/plaintiff was always ready and willing to perform his part of the contract. Ex.A9 also proves the plaintiff's financial



capacity. Therefore, it is submitted that the Trial court has rightly decreed the suit.

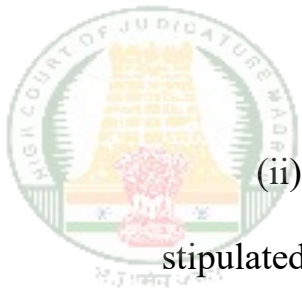
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9. In the light of the above submission, now the following points arise for consideration in this appeal:-

1. Whether Ex.A3 dated 01.06.2020 is not intended for sale ?
2. If Ex.A3 is sale agreement whether the plaintiff has proved the readiness and willingness from the very inception ?
3. To what other reliefs the parties are entitled ?

10. **POINT Nos.1 to 3:-**

The suit has been laid on the basis of Ex.A3, dated 01.06.2020 seeking enforcement of the sale of the property. It is the specific case of the plaintiff that the defendant had agreed to sell the property for a total sale consideration of Rs.25,00,000/- and received a sum of Rs.1,00,000/- as advance and executed a registered agreement of sale (Ex.A1) dated 08.03.2019.



(ii) According to the plaintiff, though a period of 11 months has been stipulated for completion of the sale, the defendant sought extension of time as he could not vacate the tenants from the premises. It is the further case of the plaintiff that there was a term agreed between the parties that the defendant would vacate the tenants. However, a perusal of Ex.A.1 shows that there is no whisper whatsoever with regard to the existence of tenants in the suit property. Even assuming that there were tenants, if the plaintiff had genuinely intended to purchase the property, he ought to have been aware of the nature of the tenancy and the persons in occupation.

(iii) On perusal of the entire evidence and pleadings, we are unable to find any material to show that the plaintiff has made any attempt even to ascertain the nature of the property or the status of the alleged tenants. On the other hand, the cross-examination clearly indicates that the defendant himself is residing in the suit property.

(iv) Further, the main contention of the plaintiff is that, at the request of the defendant, time was extended and the earlier agreement was cancelled. Pursuant to which, the subsequent agreement (Ex.A3) came to be executed between the parties on 01.06.2020. If really time had been extended by mutual



consent, there was no necessity to cancel the earlier registered agreement dated 08.03.2019 and to enter into a fresh agreement containing similar terms. Such cancellation and execution of a fresh agreement on the same day create an element of artificiality in the entire transaction. All these factors, in fact, probabilise the defence theory that the agreement is never intended for sale of property.

(v) Admittedly, the suit agreement marked as Ex.A3 is a registered agreement. We are also aware of the legal impediment, which prevent the parties from taking the contrary view other than the terms set out in the written contract. Section 95 of the Bharatiya Sakshya Adhiniyam, 2023 clearly stipulates that no evidence of any oral agreement or statement shall be admitted beyond the terms agreed between the parties in respect of any contract executed between them. However, the proviso to Section 95 makes it very clear that any facts such as fraud, misrepresentation, intimidation and illegality, want of due execution, want of capacity of a party, want of failure of consideration, or mistake in fact or law may be proved by way of oral evidence.

(vi) When the parties never intended to effect a sale and one of them, being in financial distress, executed the document at the instance of a financier,



who was in a dominant position, such execution cannot be treated as a valid and voluntary execution in the true legal sense. If a document is executed by a person, who was in adversity and under the financial crisis, at the instance of a financier occupying a dominant position, it cannot automatically be presumed that the document reflects the real intention of the parties and that the execution was not the result of free consent. Where a document is executed by a person, who is in financial adversity and the other party occupies a dominant position, the Court is required to examine whether there was true consensus ad item. In such circumstances, oral evidence is permissible to establish the real nature of the transaction. In the present case, the conduct of the parties also clearly probabilises the defence theory that the transaction was, in substance, only a loan transaction.

(vii) Admittedly, there were tenants in the property, and they were required to be vacated. A normal prudent person, who intended to purchase the property atleast to have an minimum idea about the property, its location and the persons, who are in occupation and what are the nature of the rent they are paying, etc. However, the evidence adduced by the plaintiff does not disclose any such steps taken by him to ascertain these aspects.



(viii) Though reliance is placed on Ex.A.1 dated 08.03.2019 to contend that the plaintiff was always ready and willing to perform his part of the contract, there is no convincing evidence to substantiate continuous readiness and willingness. First Time, the so-called deposit receipt marked as Ex.A.9, dated 08.06.2023, has been produced to show that he has financial capacity to pay the amount. It is relevant to note that readiness and willingness must be present from the very inception of the contract and it must be a continuous process. A Person, who seeks specific performance should prove the readiness and willingness from the very inception and continuously.

(ix) Further, even according to the plaintiff, time was extended on account of the tenants not being vacated. However, neither in the pleadings nor in the evidence has the plaintiff expressed willingness to purchase the property with the tenants in occupation. These circumstances cumulatively indicate not only that the defence theory of a loan transaction is probable, but also that the plaintiff has failed to establish continuous readiness and willingness required under law.

(x) The plaintiff has failed to establish the essential requirement of readiness and willingness, which encompasses both mental attitude and



financial capacity. Hence, this Court is of the view that granting the relief of specific performance of contract is not warranted. However, since an advance amount of Rs.4,20,000/- has been received by the defendant under the agreements, the plaintiff is entitled to the alternative relief of refund of the said advance amount and the points are answered accordingly.

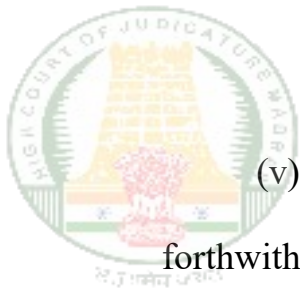
11. In the result, this Appeal is allowed and the judgment and decree passed by the Trial Court are set aside. Accordingly,

(i) the suit is decreed for the alternative relief of refund of a sum of Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand only) together with interest at the rate of 12% per annum.

(ii) The defendant shall pay a sum of Rs.3,20,000/- with interest at the rate of 12% per annum from 01.06.2020 till the date of realisation. In respect of the remaining sum of Rs.1,00,000/- interest at the rate of 12% per annum shall run from 08.03.2019 till the date of realisation.

(iii) The principal amount along with accrued interest shall constitute a charge over the suit property until full satisfaction of the decree.

(iv) The plaintiff is permitted to withdraw the sale consideration amount deposited before the Trial Court together with the accrued interest, if any.



(v) The Trial Court is directed to refund the said amount to the plaintiff forthwith , on an application being filed in that regard.

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(vi) There shall be no order as to costs. Consequently connected civil miscellaneous petition is closed.

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

02.02.2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes

MRP

To

The I Additional District Court,
Coimbatore.



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