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S.A.No.165 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.165 of 2020

A.Raja

... Appellant

vs.

1.Thangaraj
2.P.Srinivasan
3.T.Jayakumar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 02.03.2019 passed in A.S.No.35 of 2016 on the file of the Principal Sub Judge, Salem and to reversing the Judgment and Decree dated 23.03.2015 in O.S.No.723 of 2010 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.S.Kalyanaraman

For Respondents :No Appearance

J U D G M E N T

The unsuccessful plaintiff is the appellant.



2. The appellant filed a suit for specific performance with alternative prayer for return of advance amount. The suit was decreed by the trial Court by granting the relief of specific performance. Aggrieved by the same, the second defendant/first respondent filed an appeal, the First Appellate Court reversed findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.

3. According to the appellant/plaintiff, the suit property belonged to second defendant and he executed a power of attorney in favour of first defendant on 06.12.2001 empowering him to deal with the agreement mentioned property on behalf of the second defendant in his capacity as power holder. The plaintiff and first defendant as power agent of second defendant entered into sale agreement on 29.06.2008, whereunder, the plaintiff agreed to purchase the agreement mentioned property for sale consideration of Rs.1,00,000/- and on the date of agreement, the plaintiff paid a sum of Rs.50,000/- to first defendant. As per the terms of agreement, the sale consideration had to be completed within a period of eleven months. Even before the expiry of said stipulated period on 27.05.2009, the plaintiff paid further sum of Rs.40,000/- and mutually extended the time by further eleven months. However, inspite of several demands made by the plaintiff, the first defendant failed to execute the sale agreement in favour of plaintiff.



Hence, the pre-suit notice was issued on 14.05.2010, calling upon him to complete the sale transaction. The said notice was returned. Hence, the above suit was filed for specific performance with alternative relief. Since the second defendant is the owner of the property, he was added as a necessary party in the suit. Subsequent to filing of the suit, the plaintiff acquired knowledge about the settlement deed executed by the second defendant in favour of third defendant/his son. Therefore, the third defendant was also impleaded as a party in the suit

4. The second defendant filed a written statement and resisted the suit claim on the ground that the suit sale agreement was an invalid document created by plaintiff and first defendant colluding with each other. According to the second defendant, during December 2001, he approached the plaintiff's Finance Company for borrowal of loan to meet family necessity and received a sum of Rs.30,000/- from the plaintiff. He stated to have executed a general power of attorney in favour of the first defendant as a security for the said loan transaction. As per the instructions of the plaintiff, the second defendant executed a general power of attorney in favour of first defendant only as a security for the loan by the second defendant never intended to authorise the first defendant to act as a power agent to deal with the agreement mentioned property.



5. The second defendant denied the knowledge about the suit sale agreement entered into between the plaintiff and the first defendant. It was also stated by the second defendant that after payment of the entire amount borrowed by the second defendant, he made a request for return of power deed executed by him. Since his request was not considered, the second defendant cancelled the power deed executed in favour of first defendant by way of cancellation deed dated 06.04.2009.

6. The newly impleaded third defendant settlee also filed a written statement supporting the case of the second defendant.

7. Before the trial Court, the plaintiff was examined as PW.1 and one attester to Ex.A1 suit sale agreement was examined as PW.2. On behalf of the plaintiff, four documents were marked as Exs.A1 to A4. The second defendant was examined as DW.1 and two documents were marked on his side as Exs.B1 and B2.

8. The trial Court on appreciation of evidence available on record came to the conclusion that the plaintiff was entitled to specific performance of the suit sale agreement and decreed the suit. Aggrieved by the same, the



second defendant filed an appeal in A.S.No.35 of 2016 on the file of the Principal Subordinate Judge, Salem. The First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come before this Court.

9. At the time of admission, this Court formulated the following substantial questions of law for consideration by order dated 20.12.2019:

a) Whether the Lower Appellate Court was right in reversing the judgment of the trial Court specifically when Ex.A1 was executed while the power of attorney Ex.A2 was alive and when in terms of the said power of attorney the agreement came to be executed by the 1st defendant in favour of the plaintiff, holding that the sale agreement itself is void agreement.

b) Whether the Lower Appellate Court below erred in law in holding that the sale agreement is not valid for want of consideration by overlooking the recital Ex.A1 which would clearly show that the power agent has received the advance from the plaintiff on the date of agreement.

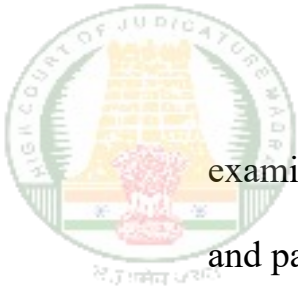
10. The learned counsel appearing for the appellant would submit that the execution of suit sale agreement and the payment of advance amount by the plaintiff has been proved by examining the attesor to Ex.A1 and the



evidence of PW.2 has not been properly considered by the First Appellate Court. The learned counsel also submitted that at the time of suit sale agreement, the power deed executed by second defendant in favour of first defendant was in force and therefore, the First Appellate Court committed serious error in coming to the conclusion that the plaintiff was not entitled to decree for specific performance.

11. It is seen from Ex.A1, the sale agreement was entered into between the plaintiff and first defendant in his capacity as power agent of second defendant. A perusal of Ex.A2 power deed executed by second defendant would show that the first defendant was authorized to sell the property of the second defendant. Ex.B1 is cancellation deed executed by second defendant and the same was registered on 06.01.2012. It is clear that the cancellation of power by second defendant is subsequent to the sale agreement between the plaintiff and first defendant. In order to prove execution of sale agreement and payment of advance amount by the plaintiff, one of the attestors to suit sale agreement was examined as PW.2. He clearly deposed that the sale agreement was executed in his presence and the plaintiff paid a sum of Rs.50,000/- to the first defendant on the date of agreement. In the cross examination of PW.2 nothing has been elicited in favour of second defendant. In such circumstances, the plaintiff by

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examining the attestor to the suit sale agreement proved its due execution and payment of advance amount of Rs.50,000/- on the date of agreement.

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12. It is the case of the plaintiff that even before expiry of eleven months period fixed in the suit sale agreement an endorsement was made on 27.05.2009 extending the time by another eleven months by making further payment of Rs.40,000/-. However, it is seen from Ex.B1 that power deed executed by second defendant in favour of first defendant was cancelled by him as early as 06.04.2009 and the cancellation deed was also registered.

13. In such circumstances, on the date of endorsement in Ex.A1 sale deed dated 27.05.2009, the power given to first defendant was cancelled by second defendant. The plaintiff is the person dealing with the agreement mentioned property and therefore, he is expected to know registered cancellation deed.

14. In the light of the above position, this Court comes to the conclusion that on the date of endorsement made in Ex.A1 extending the time, the first defendant had no authority to represent the second defendant in view of the cancellation of the power given to him in Ex.B1. This Court comes to the conclusion that subsequent endorsement made in Ex.A1, dated 7/10



27.05.2009 is invalid, in view of the cancellation of power given to first defendant. Further the extended time was also expired on 27.04.2010.

However, the plaintiff issued pre-suit notice calling upon the first defendant to execute the sale agreement only on 14.05.2010. First of all, benefit of extension of time by way of endorsement is not available to plaintiff as, on the date of endorsement, 1st defendant did not have valid power. Even assuming he had valid power, the extended period also expired even before pre-suit notice. There is no evidence available on record to prove continuous readiness and willingness of plaintiff. Therefore, the readiness and willingness on the part of the plaintiff is not at all proved.

15. In view of the same, this Court is not inclined to accept the contention made by the learned counsel appearing for the appellant that the plaintiff is entitled to specific performance of the suit sale agreement. On the other hand, the sale agreement was entered into on 29.06.2008 and the execution of the same and payment of advance amount by the plaintiff to first defendant was proved by examining one of the attestors namely PW.2. As discussed earlier, on the date of execution of suit sale agreement, the power was in force. However, the plaintiff failed to prove his readiness and willingness to perform his part of contract.



16. In such circumstances, this Court comes to the conclusion that the plaintiff is not entitled to main relief of specific performance. However, he is entitled to return of advance amount paid under Ex.A1 on 29.06.2008.

Accordingly, the questions of law framed at the time of admission are answered in favour of the appellant. Since the appellant/plaintiff failed to prove his continuous readiness and willingness to perform his part of agreement, from the date of agreement to the date of suit, he is only entitled to return of advance amount.

17. In view of the same, the second appeal is partly allowed. The Judgment and Decree passed by the First Appellate Court is set aside, insofar as, the prayer for return of the advance amount paid on the date of agreement is concerned. The suit is decreed by directing the defendants to return the advance of Rs.50,000/- paid on the date of agreement to the plaintiff with interest at the rate of 6% from the date of suit till the date of realization. The finding of the Court below with regard to the dismissal of the prayer for specific performance is confirmed. Consequently, the connected civil miscellaneous petition is closed. No costs.

08.04.2026

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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S.SOUNTHAR, J.

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To

1.The Principal Sub Judge,
Salem.

2.The Principal District Munsif,
Salem.

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