

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 22.01.2026

Judgment pronounced on : 10.04.2026

CORAM

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

A.S.No.137 of 2023
& CMP.No.10705 of 2025
& CMP.No.5357 of 2023

A.S.No.137 of 2023:

Nallammal

.. Appellant

Vs.

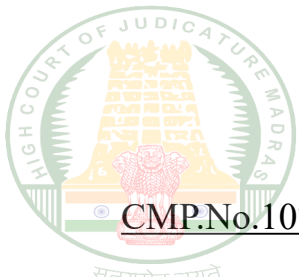
R.T.Shankar

.. Respondent

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the judgment and decree dated 04.08.2022 in O.S.No.2 of 2019 on the file of the III Additional District Court, Villupuram, Kallakurichi.

For Appellant : Mrs.AL.Gandhimathi
Senior Counsel
for Mr.L.Palanimuthu

For Respondent : Mr.R.Veeramani



CMP.No.10705 of 2025:

Nallammal

.. Petitioner

Vs.

R.T.Shankar

.. Respondent

Prayer: Civil Miscellaneous Petition filed under Order XLI Rule 27 of CPC, to permit the petitioner to file the additional document of whatsapp messages of conversation between the plaintiff and D.W.3 to adduce as additional evidence in this appeal.

For Petitioner : Mrs.AL.Gandhimathi
Senior Counsel
for Mr.L.Palanimuthu

For Respondent : Mr.R.Veeramani

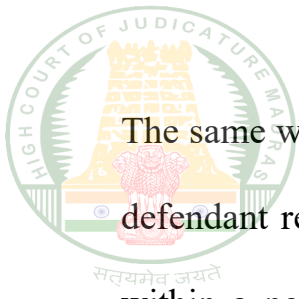
JUDGMENT

The defendant in a suit for specific performance, aggrieved by the decree for specific performance granted in O.S.No.2 of 2019, is the appellant.

2.Pleadings:

The plaint in brief:

The defendant offered to sell the suit properties to the plaintiff. The plaintiff accepted the defendant's offer and an agreement was drawn up in writing on 21.09.2016.



The same was also registered. The total sale consideration was fixed at Rs.10 lakhs. The defendant received Rs.9 lakhs towards advance and agreed to complete the transaction within a period of 9 months thereafter, on payment of balance consideration of Rs.1 lakh. The plaintiff has always been ready and willing to perform his part of the contract and get the sale deed executed in his favour. The defendant evaded the plaintiff by not producing the necessary documents. The plaintiff issued a notice on 16.08.2018, calling upon the defendant to comply with the terms and conditions and also to come forward to receive the balance sale consideration of Rs.1 lakh and execute a sale deed in favour of the plaintiff. The defendant, on receipt of the notice, met the plaintiff and assured that he would execute the sale deed in due course. Despite such assurance, the defendant remained evasive and suddenly demanded additional Rs.3 lakhs for execution of sale deed. In view of the unjust demand made by the defendant, the plaintiff has filed the suit.

3. Written statement in brief:

The defendant never offered to sell her lands and approached the plaintiff in that regard. The claims that an agreement was entered into on 21.09.2016 for a sale price of Rs.10 lakhs, out of which, Rs.9 lakhs was received by the defendant on the same day and that 9 months time was fixed are all false. The defendant also denies issuance of lawyer's notice and that the defendant met the plaintiff thereafter and subsequently



demanded further Rs.3 lakhs. The plaintiff is a money lender. The defendant approached the plaintiff for a loan and the plaintiff insisted that the defendant should execute a sale agreement as a pre condition for advancing the loan. It is only under such circumstances, the defendant executed the sale agreement. The property is worth Rs.5 crores. The defendant borrowed only Rs.9 lakhs and the interest agreed for the loan has been duly paid by the defendant, till the date of filing of the suit. The plaintiff has not issued the lawyer's notice within the period of 9 months, but issued the notice after the lapse of one year. The sale agreement was executed only as a security for the loan transaction and the defendant never agreed to sell her properties. The plaintiff is not entitled to the relief of permanent injunction as long as he has not attained the status of owner.

4. Issues framed by the trial Court:

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

1. Whether the plea that the suit agreement was executed as a security for repayment of the loan of Rs.9,00,000/- obtained by the defendant from the plaintiff is true?
2. Whether the sale agreement dated 21.09.2016 is true and valid?
3. Whether the plaintiff is always ready and willing to perform his part of contract?
4. Whether the plaintiff is entitled for the relief of specific performance?
5. To what other relief the plaintiff is entitled to?



5.Trial:

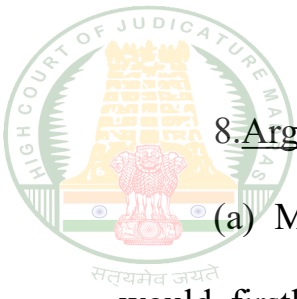
On the side of the plaintiff, the 1st plaintiff examined himself as P.W.1 and the witness to the agreement, Ex.A1 one Azhagappan was examined P.W.2 and Ex.A1 to Ex.A7 were marked and on the side of the defendant, D.W.1 to D.W.3 have been examined and no documents were exhibited.

6.Decision of the trial Court:

The trial Court, finding that the plaintiff had proved readiness and willingness and that the defence raised by the appellant that it was only a loan transaction was not probable or acceptable, granted the decree for specific performance. The trial Court however rejected the relief/prayer for permanent injunction.

7.The present appeal:

I have heard Mrs.AL.Gandhimathi, learned Senior Counsel for Mr.L.Palanimuthu, learned counsel for the appellant and Mr.R.Veeramani, learned counsel for the respondent.



8. Arguments of the learned counsel for the appellant:

(a) Mrs.AL.Gandhimathi, learned Senior Counsel appearing for the appellant would firstly attack the alleged agreement of sale, marked as Ex.A1, on the terms stipulated in the said agreement. According to the learned Senior Counsel, when the total sale consideration itself was only Rs.10 lakhs and the plaintiff was able to make a substantial advance of Rs.9 lakhs, then no prudent intending buyer would wait for close to one year for merely paying a sum of Rs.1 lakh, being the remaining balance sale consideration and postpone the purchase transaction. The learned Senior Counsel would further state that the lawyer's notice has also been issued beyond the period fixed under the agreement of sale, which clearly demonstrates that the plaintiff has not been ready and willing to perform his part of the contract.

(b) The learned Senior Counsel would also state that the whatsapp messages, that were sought to be relied on before the trial Court, were not considered by the trial Court, on the ground of the certificate not being made available as contemplated under Section 65-B of the Indian Evidence Act, and would contend that the certificate is now filed and the whatsapp messages can be looked into by this Court, which would clearly establish that the amount was only a loan transaction as the plaintiff has been repeatedly demanding for repayment of the money alone. The learned Senior Counsel would therefore state that when the property itself was worth Rs.5 crores and the appellant has



specifically pleaded about it even in the written statement and therefore, by no stretch of imagination, any property owner would throw it away for a mere Rs.10 lakhs. The learned Senior Counsel would also rely on the decision of the Hon'ble Division Bench of this Court in *T.Perumal Nadar (Died) and others Vs. T.Hariramakrishnan and others*, in *A.S.(MD).No.165 of 2018* dated 25.11.2025, where the Hon'ble Division Bench held that when the intending purchaser genuinely wanted to purchase the property, he ought to have at the very least deposited the balance sale consideration into Court either at least at the time of filing of the suit or during pendency of the suit and failure to deposit the balance sale consideration would imply that the plaintiff was not ready and willing to perform his part of the contract.

9.Arguments of the learned counsel for the respondent:

Per contra, Mr.R.Veeramani, learned counsel appearing for the respondent would state that time was not the essence of the contract and having not issued any reply to the lawyer's pre suit notice, it is not open to the defendant to take up a false defence that the agreement was only a loan transaction and not an intended agreement of sale. As regards whatsapp messages, the learned counsel would state that the requirement of law was very much known to the appellant and having not filed the certificate during trial and attempted to mark the whatsapp chat, it is not open to the appellant to rely upon the same before the Appellate Court. He would further state that the defendant herself had



sold another property, measuring about 10 acres for about Rs.23 lakhs and in substantiate the same, Ex.A7 was exhibited. Therefore, the learned counsel would contend that the defence theory that the property is worth Rs.5 crores stood falsified, especially in the absence of any other material evidence to establish the value of the property to be Rs.5 crores. Even with regard to the certificate, the learned counsel for the respondent would contend that the appellant was not competent to file the certificate. In support of his contentions, the learned counsel for the respondent has relied on the following submissions:

- 1.Laxman Tatyaba Kankarte and another Vs. Taramati Harishchandra Dhatrak, reported in 2010 (7) SCC 717.*
- 2.K.Prakash Vs. B.R.Sampath Kumar, reported in 2015 (1) SCC 597.*
- 3.P.Daivasigamani Vs. S.Sambandan, reported in 2022 (14) SCC 793.*
- 4.Lakshmi and others Vs. Kaliyavarathan in A.S.No.234 of 2022 dated 28.02.2025.*

10.I have carefully considered the submissions advanced by the learned Senior Counsel for the appellant and the learned counsel for the respondent.

11.Points for consideration:

Based on the submissions made by the learned counsel on either side, I frame the following points for consideration:



1. Whether the appellant/defendant is entitled to adduce additional evidence and whether the appellant has made out a case under Order XLI Rule 27 of CPC for this Court to accept the additional evidence?

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2. Whether Ex.A1, agreement of sale, was only a loan transaction and not an intended sale agreement?

3. Whether the plaintiff has been ready and willing to perform his part of the contract?

12.Point No.1:

It is contended by Mrs.AL.Gandhimathi, learned Senior Counsel that in order to establish that the transaction between the plaintiff and the defendant was only a financial/loan transaction, the petitioner wanted to rely on the whatsapp chat messages between the parties. According to the learned Senior Counsel, along with the proof affidavit, the defendant sought for receiving the whatsapp messages before the trial Court. However, the petition was returned, on the ground that Section 65-B of the Indian Evidence Act has not been complied with. According to the learned Senior Counsel, the defect is only curable and the documents having been attempted to be marked even before the trial Court and only on a technical objection, it was not received. The learned Senior Counsel would further state that the Appellate Court has powers to receive additional evidence, if this Court is of the opinion that such additional evidence will help



the Court to decide the questions that arise for consideration in the appeal. She would therefore pray for the CMP.No.10705 of 2025 to be ordered.

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13.Per contra, the learned counsel for the respondent would state that having attempted to mark the whatsapp chat messages through D.W.3 and thereafter, having abandoned the same, without representing the application, it is not open to the appellant to now seek to rely on the very same documents, by invoking Rule 27 of Order XLI of CPC. He would further state that when there is absolutely no pleading in the written statement with regard to the whatsapp chat, which is sought to be produced and relied upon, the evidence cannot be adduced. He would rely on the decisions of the Hon'ble Supreme Court in *Bachhaj Nahar Vs. Nilima Mandal*, reported in (2008) 17 SCC 491, *State of Orissa Vs. Brundaban Sharma*, reported in (1995) Supp (3) SCC 249 and *Union of India Vs. Ibrahim Uddin*, reported in (2012) 8 SCC 148. The learned counsel for the respondent would further state that the attempt is only to fill up the lacuna and get over the omission and negligence of the appellant before the trial Court. In this regard, he would on the decision of the Hon'ble Supreme Court in *K.Venkatramiah Vs. A.Seetharama Reddy*, reported in AIR 1963 SC 1526.

14.I have carefully considered the above arguments.



15.No doubt, an attempt was made to mark the whatsapp chat through D. W.3 and after several adjournments, for want of appearance of D.W.3 to subject himself to cross examination, evidence of D.W.3 was eschewed and hence, the whatsapp chat went unmarked before the trial Court. It is not denied even in the counter filed to the application for receipt of additional documents that the whatsapp chat is not true and that it is fabricated to suit the convenience of the appellant. The phone numbers, which are forming part of the chat, have been specifically set out in the application. The same is also not denied by the respondent on the ground that it is not the correct number of the appellant. Therefore, I do not see why this Court is precluded from receiving the additional document, especially when this Court finds that the additional documents now sought to be produced clearly point to the fact that the transaction between the appellant and the respondent could have been only a loan transaction and not an agreement of sale.

16.Order XLI Rule 27 of Code of Civil Procedure is extracted hereunder for easy reference:

“27.Production of additional evidence in appellate court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not



within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

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(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

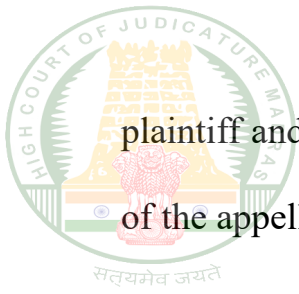
17. In view of the mandate of Order XLI of Rule 27 of CPC, as extracted herein above, it is seen that if the Appellate Court is of the opinion that the additional evidence is required to pronounce judgment or for any other substantial cause, then the Appellate Court in its discretion, can allow additional evidence. The facts of the present and also the nature of the additional documents will squarely fit in to the said category of the additional documents being required by the Appellate Court to pronounce judgment.

18. With regard to the lack of pleadings, in the written statement, no doubt, as rightly contended by the learned counsel for the respondent, there is no specific plea with regard to whatsapp chat. However, the defence taken by the appellant is consistently one that the defendant had borrowed Rs.9 lakhs from the plaintiff and that there was never an intention to sell the suit properties to the plaintiff. Therefore, when there is substantial plea that it is only a loan transaction, merely because there is no



specific reference to the exchange of messages or whatsapp chat, I do not see that how the defendant is estopped or impeded from relying upon the whatsapp chat to establish his defence in the written statement.

19. I do not dispute the ratio laid down by the Hon'ble Supreme Court in the various decisions, that have been relied on by the learned counsel for the respondent. However, each of those decisions have been rendered on particular fact situations and in view of the discussions made herein above and in view of my finding that the additional documents would assist this Appellate Court to come to a decision in the appeal, I am not persuaded to apply the ratio laid down in the various decisions that have been relied on by the learned counsel for the respondent, to the facts of the present case. If at least it was the case of the respondent that the whatsapp messages are fabricated and there was no such conversation between the plaintiff and D.W.3, who is none else than the defendant's son, then at least there is merit in the arguments of the learned counsel for the respondent that the additional evidence cannot be accepted, that too, in the pending first appeal. However, as already discussed, in the counter, there is not even a vague denial that there was no such exchange of messages between the plaintiff and D.W.3. Only technical objections that when evidence of D.W.3 was eschewed, document cannot be received in additional evidence have been raised. Therefore, for all the above reasons, CMP.No.10705 of 2025 is allowed and the whatsapp message conversation between the



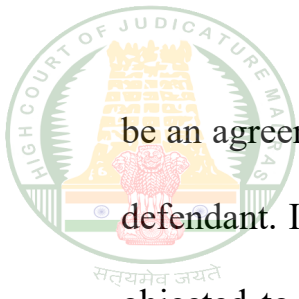
plaintiff and D.W.3 is received as additional evidence. Point No.1 is answered in favour of the appellant.

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20.Point No.2:

Coming to the question whether the agreement was an intended sale agreement or only a loan transaction, it is the specific case of the appellant that the appellant borrowed only a sum of Rs.9 lakhs from the defendant and has been servicing interest for the same, till the filing of the suit.

21.On the side of the appellant, there is no evidence to establish that there has been payment of interest, as contended, up to the date of filing of the suit, the defendant has been paying interest. However, in a suit for specific performance, the initial onus is on the plaintiff to establish that the parties have entered into a valid agreement of sale and further, the plaintiff has always been ready and willing to perform his part of the contract. At least, on receipt of the pre suit notice, the defendant could have sent a reply contending that there was no intention for sale and it was only a loan transaction. However, at the same time, it is evidently clear from the whatsapp chat messages between the plaintiff and the defendant's son, D.W.3 that the plaintiff, all along, has been demanding repayment of the monies lent by him. In such circumstances, by his own conduct, the plaintiff has clearly indicated that the agreement of sale was not intended to



be an agreement of sale, but only as security for repayment of the loan availed by the

defendant. It is probably one of the reasons as to why the respondent has tooth and nail

objected to the receipt of the additional evidence as well, since it clearly exposes the

falsity in the claims put forth by the respondent before the Court.

22. Though it is stated in the plaint and the written statement that the time fixed to complete the execution of the sale deed was 11 months, I find from the sale agreement in Ex.A1 dated 21.09.2016 that the time for execution of the sale deed was 9 months (20.06.2017). Further, yet another relevant circumstance to show that the agreement of sale was only a loan transaction is that having paid Rs.9 lakhs, out of the agreed sale consideration of Rs.10 lakhs, no prudent intending buyer would postpone the execution and registration of sale deed in his favour by 9 months, for payment of just Rs.1 lakh, which is just 1/10th of the total sale consideration. By such postponement of execution and registration of sale deed by close to one year, the intending buyer takes huge and potential risks, which no bonafide or prudent purchaser would invite or undertake. Therefore, the conduct of the parties in fixing a period of 9 months for payment of Rs.1 lakh, after having paid Rs.9 lakhs also only points out to the fact that the agreement was only a security for the loan transaction. For all the above reasons, I am inclined to hold that Ex.A1, sale agreement was only executed as security for the loan transaction



between the parties and never intended to be an agreement of sale. Point No.2 is also answered in favour of the appellant.

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23.Point No.3:

Though the issue of readiness and willingness, which is now rendered academic, in view of my finding to Point No.2, yet from the conduct of the plaintiff who is bound to establish readiness and willingness at all relevant points of time, right from the date of execution of the agreement of sale, I find that despite having paid Rs.9 lakhs and the obligation was to pay only Rs.1 lakh and curiously very long time period of 9 months being fixed for payment of the said Rs.1 lakh, the plaintiff has not chosen to issue the pre suit notice within the said period of 9 months. Ex.A1, agreement, was entered into on 21.09.2016. The time fixed for enforcement was 9 months which expired on 20.06.2017. The plaintiff chose to issue the first notice only on 16.08.2018, well beyond one year and after the expiry of 9 month period and even thereafter, despite there being no reply from the defendant, the suit came to be filed only in January 2019. Thus, it is clear that the plaintiff has not been ready and willing to perform his obligations under Ex.A1, even assuming Ex.A1 can be taken as an agreement of sale. Therefore, the plaintiff, by his own conduct, has only shown lack of readiness and willingness in approaching the Court in seeking the discretionary relief of specific performance. For all the above reasons, Point No.3 is also answered against the appellant.



24. The trial Court has unfortunately misdirected itself in examining the pleadings, oral and documentary evidence adduced by the parties in coming to an erroneous conclusion that the sale agreement had been proved and the plaintiff has always been ready and willing to perform his part of the contract. For all the above reasons, this Court is inclined to allow the appeal suit.

25. Result:

In fine, the Appeal Suit is allowed with costs and the judgment and decree dated 05.01.2024 passed in O.S.No.185 of 2011 on the file of the I Additional District and Sessions Judge, Tiruvallur, is set aside. Though there is no alternate prayer for refund of advance amount before the trial Court in the plaint, considering the fact that plaintiff has succeeded before the trial Court and now in this first appeal, the plaintiff is being non-suited, taking equity into consideration, it would only be fair and proper to direct the appellant to refund the said sum of Rs.9 lakhs. The reasons for this conclusion are that; it is the specific admission of the appellant/defendant that he borrowed Rs.9 lakhs; there is no proof to establish the payment of interest or the principal, though it has only been contended that interest has been paid up to the date of filing of the suit. Thus, while allowing the appeal, I hereby direct the appellant/defendant to refund the sum of Rs.9 lakhs to the respondent/plaintiff, together with interest 9% per annum, from the date of



agreement of sale, till the date of repayment, which shall be made within a period of three months from the date of receipt of a copy of this judgment.

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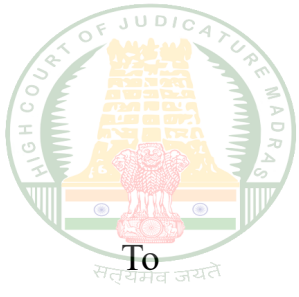
10.04.2026

Neutral Citation Case : Yes / No

Speaking / Non-speaking order

Index : Yes/No

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The III Additional District Court, Villupuram, Kallakurichi.



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
A.S.No.137 of 2023
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& CMP.No.5357 of 2023

10.04.2026