

SA(MD). No.237 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2026

Delivered on : 05.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.237 of 2024
and
CMP(MD)No.4666 of 2024**

Pambaiyan,

... Appellant / Appellant / Plaintiff

Vs.

1. V.Sethuraman,

2. Ayyammal,

... Respondents / Respondents / Defendants

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the decree and the judgment dated 23-08-2023 passed in A.S.No.56 of 2017, on the file of the IV Additional District Judge, Madurai confirming the decree and the Judgment dated 28-07-2017 passed in O.S.No.1074 of 2012, on the file of the I Additional Sub Court, Madurai (Camp at Melur), by allowing this second appeal.

For Appellant : Mrs.P.Jessi Jeeva Priya,

For Respondents : Mr.S.M.Arun Kumar, for R1

: No appearance for R2



SA(MD). No.237 of 2024

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JUDGMENT

The plaintiff, in a suit for specific performance is the appellant, aggrieved by the concurrent findings rendered by the trial Court as well as the first appellate Court.

2. The second appeal was admitted on 05.12.2024 on the following substantial questions of law:

“(i) Whether the Courts below are correct in law in not accepting Exhibit A1, the Power of Attorney, when the first respondent himself has admitted his signature and its execution failed to prove that the Power of Attorney has been obtained by undue influence and created by fraud?”

“(ii) Whether the Court below is justified in dismissing the suit especially when the first respondent failed to rebut the presumption under Section 114(e) of the Indian Evidence Act as to the genuineness of the registered documents Exhibits A1 and A2?”



SA(MD). No.237 of 2024

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(iii) Whether the Judgements of the Courts below are justified in declining the decree of specific performance of a legal and valid registered agreement to sale executed in favour of the plaintiff contrary to the provisions of the Specific Relief Act, 1963 and the law laid down by the Apex Court?"

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. I have heard Mrs. P.Jessi Jeeva Priya, learned counsel for the appellant and Mr.S.M.Arun Kumar, learned counsel for the first respondent.

5. Brief facts that are necessary for deciding the second appeal are as hereunder:

The plaintiff entered into a registered agreement of sale with the second defendant on 13.01.2011 for purchasing the suit property for a total sale consideration of Rs.2,60,000/-. The plaintiff had advanced a sum of Rs.75,000/- towards part payment to the second defendant. The

3/20



SA(MD). No.237 of 2024

agreement was to be concluded within 2 ½ years, on receipt of balance sale consideration of Rs.1,85,000/-. The plaintiff contending that the plaintiff is always ready and willing to perform his part of the contract and despite demands, including lawyer's notice dated 19.06.2012, the defendants have neither come forward to execute the sale deed nor issued any reply and hence, the plaintiff was constrained to institute the present suit, particularly in view of the fact that third parties are attempting to alienate the suit property.

6. The suit was resisted by the first defendant stating that the first defendant is the owner of the property and the second defendant is the sister of the first defendant. The plaintiff's claim is that the first defendant has denied the plaintiff's contention that he executed a power of attorney on 26.08.2004, appointing the second defendant as his General Power of Attorney. He would further state that the second defendant is none other than the wife of the plaintiff. It is alleged that, on imaginary and untenable grounds, the plaintiff and the second defendant claim to have obtained a General Power of Attorney, and that the same was registered, though the first defendant had no occasion to appoint his



SA(MD). No.237 of 2024

sister as his power of attorney agent and the first defendant has not received any advance as alleged by the plaintiff. Any sale agreement executed by the second defendant in favour of the plaintiff, will not bind the first defendant. The first defendant had originally married the plaintiff's daughter, however, the marriage was not a happy one. Subsequently, the first defendant married another woman and begot four children. It is alleged that, only in order to wreak vengeance, the present suit has been filed.

7. The second defendant has filed a written statement supporting the plaintiff's case; however, she additionally contends that an advance amount of Rs.75,000/- was received from the plaintiff and handed over to the first defendant and that the first defendant had promised to execute the sale deed in favour of the plaintiff; hence, the second defendant did not hesitate to exercise the power of attorney for executing the sale deed in favour of the plaintiff, her husband.

8. Based on the above pleadings, the parties went to trial. The plaintiff examined himself as P.W.1 and one Kallanai examined as P.W.2



SA(MD). No.237 of 2024

and five documents were marked as Ex.A1 to Ex.A5. On the side of the defendants, the first defendant examined himself as D.W.1 and marked original power of attorney deed, dated 04.02.2011 as Ex.B1.

9. Upon consideration of the evidence adduced by the parties, the trial Court came to the conclusion that the plaintiff is not entitled to the discretionary relief of specific performance and also the relief of permanent injunction, as he has not substantiated his claim of having been put in possession of the suit property. The plaintiff preferred in A.S. No.56 of 2017, before the IV Additional District Court, Madurai and the first appellate Court by judgment and decree dated 23.08.2023 confirmed the findings of the trial Court and dismissed the appeal. As against the concurrent findings of the Courts below, the present second appeal has been filed.

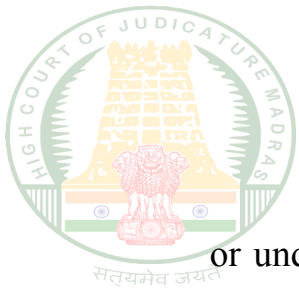
10. Mrs.P.Jessi Jeeva Priya, learned counsel for the appellant/ plaintiff would state that the first defendant had categorically admitted to the factum of execution and registration of the power agent and in such circumstances, the second defendant was well within her rights to enter



SA(MD). No.237 of 2024

into the agreement of sale in favour of any person, including her husband, the plaintiff and the same cannot be found fault with. The learned counsel would also state that even though the agreement of sale was entered into on 13.01.2011 and a period of 2½ years was fixed for completion of the sale deed, even on 19.01.2012, the plaintiff issued Ex.A2 legal notice calling upon the defendants to perform their part of the contract. Despite receipt of the said notice, there was no reply from the first defendant. After waiting for some time, the suit came to be filed in November 2012 itself. Mrs.P.Jessi Jeeva Priya, learned counsel would contend that both the Courts below have erred in deciding the matter on irrelevant considerations relating to the relationship between the parties and have failed to adjudicate the vital issue of readiness and willingness, which is the sole determinative issue in a suit for specific performance.

11. Inviting my attention to the written statement, Mrs. P. Jessi Jeeva Priya, learned counsel, would submit that the first defendant has categorically made admissions in his written statement. She would further contend that, though the power of attorney under Ex.B1 was subsequently cancelled, the first defendant has not alleged any foul play



SA(MD). No.237 of 2024

or undue influence, which are merely set up in the plaint with a view to non-suit the plaintiff to the relief of specific performance. She would also state that the revocation of the power of attorney was not even communicated to the power agent and, therefore, it did not take effect. It is, therefore, her argument that the Courts below failed to appreciate that the plaintiff was always ready and willing to perform his part of the contract and that the first defendant had, in fact, made admissions relating to the transaction itself, including receipt of an advance amount of Rs.75,000/-. “The learned counsel further submits that the burden was therefore heavily cast upon the first defendant, particularly to establish that the power of attorney was obtained by undue influence or misrepresentation.

12. In support of her submissions, the learned counsel for the appellant relied on the following decisions:

(i) Judgment of the Division Bench of this Court in **Gopamma v. Murugesan** reported in **2026-1-MWN(Civil)-530**;

(ii) Judgement of the Hon'ble Supreme Court in **Arunima Baruah v. Union of India** reported in **2007-6-SCC-120**; and



SA(MD). No.237 of 2024

(iii) Judgment of the Hon'ble Supreme Court in ***Bishundeo Narain***

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v. seogeni Rai reported in ***1951-SCC-447***.

13. Per contra, Mr.S.M.Arun Kumar, learned counsel for the first respondent / first defendant would state that the plaintiff did not even come to Court with clean hands and has suppressed that the plaintiff is the husband of the second defendant, who is the power of attorney of the first defendant. He would therefore submit that the plaintiff and the second defendant have colluded in relation to the transaction concerning the plaintiff's valuable property. He would further state that the first defendant had married the plaintiff's daughter and that disputes arose within the family, which ultimately resulted in separation and he would therefore contend that it was only because of the said disputes that the second defendant, who happens to be the sister of the first defendant, with the active assistance and in collusion with the plaintiff, brought about the execution of the power of attorney. He would therefore state that in fact, there was no necessity for executing a power of attorney in favour of his sister, the second defendant. He would further state that the plaintiff has also not been ready and willing to perform his part of the



SA(MD). No.237 of 2024

contract and rightly the Courts below have denied the relief of specific performance.

14. In support of his submissions, Mr.S.M.Arun Kumar, learned counsel relies on my decision in *N.Basuvaraj v. Gullamma*, reported in **2024-1-LW-620** and the decision of the Hon'ble Division Bench of this Court in *P.Varadharajan v. Senthilkumar in A.S.No.330 of 2011*, dated 12.01.2023.

15. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the pleadings, deposition of the witnesses, documentary evidence as well as the judgments of the trial Court and the first appellate Court. I have also kept the principles laid down in the various judgments referred herein above in mind, while deciding the substantial questions of law that have been framed at the time of admission.

16. The plaintiff sought for enforcement of an agreement of sale entered into with him, by his wife as power agent of his brother-in-law.

10/20



SA(MD). No.237 of 2024

Though the brother-in-law as first defendant denied the validity of the said power agent, contending that it was obtained by undue influence and that it is not binding on him, both the Courts have rightly found that the first defendant has not been able to establish the plea of undue influence, and therefore the first defendant is bound by the consequences of the execution of the power of attorney. It is also relevant to note that, during the subsistence of the power of attorney, the power agent entered into an agreement of sale with her husband for the sale of the suit property for a total sale consideration of Rs.2,60,000/- and a sum of Rs.75,000/- was received as advance, and a period of 2½ years was fixed under the said agreement for completion of the transaction.

17. The plaintiff, admittedly within the said period of 2 ½ years, has issued a lawyer's notice on 19.06.2012 under Ex.A3, calling upon both the defendants, viz., brother-in-law (principal) as well as the power agent to execute the sale deed, on receipt of the balance sale consideration. The said lawyer's notice was served on the first defendant personally on 20.06.2012. However, the first defendant did not come forward to even reply to the said notice. It is therefore the contention of



SA(MD). No.237 of 2024

the learned counsel for the appellant, Mrs.P.Jessi Jeeva Priya, that when the Courts below have disbelieved the theory of undue influence set up by the first defendant, the Courts ought to have granted the relief of specific performance. She would further state that the Courts have not dealt with the aspect of readiness and willingness, which is the core issue to be considered in a suit for specific performance.

18. Merely because the agreement is held to be binding on the first defendant, it does not automatically follow that a decree for specific performance of the agreement of sale is to be granted. No doubt, the Courts have not dealt with the issue of readiness and willingness at all. Their focus has been diverted to the fact that the plaintiff and the second defendant are husband and wife, and that neither the agreement nor the pre-suit notice discloses this relationship. It is further pointed out that the plaint also does not disclose the fact that the power agent of the first defendant is none other than the wife of the plaintiff. The Courts, under such pretext, have disbelieved the case of the plaintiff regarding the transactions between the plaintiff and the second defendant.



SA(MD). No.237 of 2024

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19. Once the Courts had held that the power of attorney was binding on the first defendant, they ought to have accepted the agreement of sale. The Courts have, in effect, rejected the contention of the first defendant, but at the same time erred in disbelieving the agreement of sale on the ground of collusion.

20. Be that as it may, the plaintiff has suffered concurrent findings before the Courts below, which have taken serious note of the fact that the advance sale consideration of Rs.75,000/- was paid to the wife of the plaintiff himself and the further plea that the transaction was entered into with the consent of the first defendant, the owner of the property, has also not been established . The Courts below also found that the plaintiff was not put in possession of the property, pursuant to the agreement of sale and the power agent also did not deal with the possession of the suit property. Therefore, the power agent could not have handed over possession of the suit property to the agreement holder. The agreement also does not deal with the factum of possession. This aspect has not been considered by both the Courts while arriving at the conclusion that



SA(MD). No.237 of 2024

the plaintiff was not in possession and is, therefore, not entitled to the relief of permanent injunction

21. Even though the Courts below had not gone into the issue of readiness and willingness, I have also considered whether the matter should be remanded for the purpose of rendering a finding on readiness and willingness. However, from the available evidence on record, I find that, except for the plea in the plaint that the plaintiff was ready and willing to perform his part of the contract, viz., to pay the balance sale consideration and complete the transaction, there is nothing to establish readiness and willingness. There is not a single document exhibited on the side of the plaintiff to show that he was possessed of sufficient funds at all relevant points of time to meet the balance sale consideration. Under these circumstances, there is no scope even for remanding the matter for the purpose of recording a finding on readiness and willingness, in view of the total absence of evidence in that regard. The Courts have already non-suited the plaintiff on the ground of lack of proof of the essential requirements for equitable relief. Even if the plaintiff's claim is to be tested on the ground of readiness and



SA(MD). No.237 of 2024

willingness, no useful purpose would be served by such examination, in view of the facts already discussed. In the light of the above, I do not find any justifiable or substantial grounds arising in the present second appeal to interfere with the concurrent findings rendered by the Courts below.

22. Coming to the decisions that have been relied on, the Hon'ble Supreme Court in ***Bishundeo Narain***'s case, held that undue influence and coercion are separate and separable categories in law and there must be separately pleaded and also proved at trial. The Hon'ble Supreme Court ***Arunima Baruah***'s case, dealt with what is suppression of material fact and held that for the Court to refuse to exercise its discretionary jurisdiction, suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Here, the plaintiff has suppressed the relationship between the parties; however, I do not find such non-disclosure amounting to suppression of a material fact. It is not the case of the first defendant that the plaintiff obtained an order behind the back of the first defendant, suppressing the fact that the parties are closely



SA(MD). No.237 of 2024

related. In such circumstances, as held by the Hon'ble Supreme Court *Arunima Baruah*'s case, I am unable to countenance the argument of the learned counsel that non-mentioning of the fact that the power agent is the wife of the plaintiff amounts to material suppression, on the basis of which alone the discretionary relief of specific performance should be denied.

23. In *Gopamma*'s case, the Hon'ble Division Bench held that when there is a revocation of agency, reasonable notice of such revocation must be given to the agent and in the absence of the same, the revocation itself would be fatal. In the present case also, no evidence was brought on record by the first defendant that he has cancelled the power agent after informing the power agent. However, I do not find it necessary to dwell further on this issue, for the simple reason that I have already held that the agreement was entered into during the subsistence of the power of attorney, and therefore the first defendant is bound by the acts of the power agent in executing the sale agreement even in favour of her husband.

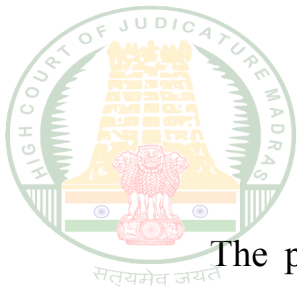


SA(MD). No.237 of 2024

24. The Hon'ble Division Bench of this Court in **P.Varadharajan's**

case, this Court held that when the suit agreement is merely a product of collusion between the plaintiff and the fourth defendant, it cannot be specifically enforced

25. In **N.Basavaraj's** case, I held that in a suit for specific performance, the relief sought is only an equitable relief but, also a discretionary, the plaintiff has to firstly establish the factum of an enforceable agreement of sale between the plaintiff and the defendant and additionally is also bound to satisfy the Court that the plaintiff was always ready and willing to perform his or her part of the said agreement of sale at all relevant points of time and only if these twin factors are satisfied, the plaintiff would become entitled to the relief of specific performance. Applying the recent judgment laid down in **Basuvaraj's** case to the facts of the present case, even if the plaintiff may have succeeded in establishing the conditions for enforcement of the sale agreement, inso far as readiness and willingness are concerned, the plaintiff has miserably failed to bring on record any cogent or satisfactory evidence to show that he was possessed of sufficient funds.



SA(MD). No.237 of 2024

The plaintiff has also not taken any steps to deposit the balance sale consideration either at the time of filing of the suit or during the pendency of the suit.

26. In the light of the above, I do not see any justifiable grounds to interfere with the findings rendered by the Courts below. The substantial questions of law are answered against the appellant.

27. In fine, the second appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

.05.06.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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SA(MD). No.237 of 2024

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TO

1. The IV Additional District Judge,
Madurai.
2. The I Additional Sub Court,
Madurai (Camp at Melur).
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD). No.237 of 2024

P.B.BALAJI,J.

LS

**Pre-delivery judgment made in
SA(MD) No.237 of 2024**

05.06.2026