



SA(MD). No.103 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 02.06.2026

Delivered On : 15.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.103 of 2026
and
CMP(MD)No.3538 of 2026**

Gamapathiya Pillai (Died)

G.Subbulakshmi ... Appellant / Appellant / Defendant

Vs.

Abdul Ali ... Respondent / Respondent/ Plaintiff

PRAYER :- Second Appeal filed 100 of under Section Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.104 of 2004 dated 18.11.2024 on the file of the 2nd Additional District Munsif, Tirunelveli as confirmed on appeal by the Principal Sub Court, Tirunelveli in A.S.No.33 of 2025 dated 18.12.2025.

For Appellant : Mr.V.Vijayashankar,

For Respondent : Mr.P.Rajesh,



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JUDGMENT

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The defendant, in a suit for recovery of possession and for damages for use and occupation, is the appellant herein, aggrieved by the concurrent findings rendered by the trial Court as well as the first Appellate Court.

2. I have heard Mr.V.Vijayashankar, learned counsel for the appellant / defendant and Mr.P.Rajesh, learned counsel for the respondent / plaintiff.

3. I have admitted the above second appeal on 02.06.2026 on the following three substantial questions of law:

“ a) Whether the findings of the Courts below that to claim the statutory protection under Section 53-A of the Transfer of Property Act, the agreement for sale should be registered is correct?

b) Whether the Courts below failed to take note that the plaintiff (respondent herein) is barred from filing the present suit for recovery of possession, as all the ingredients of Section 53 -A of the Transfer of



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*Property Act are satisfied by the appellant (defendant)
in the present case?*

c) Whether the courts below were correct in dismissing the counter claim filed by the appellant (2nd defendant), as time barred without taking note that the 2nd defendant was impleaded in the suit only in the year 2023 and could thereafter only file the counter claim?"

4. I have heard the submissions of the learned counsel for the parties, revolving around the above three substantial questions of law.

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

6. Brief facts, that may be necessary for adjudicating the above substantial questions of law are as follows:

6.1. The respondent / plaintiff filed a suit for recovery of possession and also for damages for use and occupation. Admittedly, the defendants are only agreement holders under the vendor of the respondent / plaintiff. On 11.05.1971, the father of the appellant (the



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second defendant in the suit) had entered into a sale agreement with one Pitchaiya Chettiyar for purchase of the suit property for a total sale consideration of Rs.15,000/-. The plaintiff had paid an advance of Rs.9,000/- and in part performance, admittedly possession of the suit property was handed over to the second defendant's father, further advance of Rs.1,000/- was paid, subsequently leaving a balance of Rs.5,000/-. The father of the appellant (second defendant in the suit) filed a suit for specific performance in O.S.No.696 of 1985. However, after trial, the suit came to be dismissed on the ground that the suit was barred by limitation. The judgment and decree of the trial Court was unsuccessfully challenged in A.S.No. 152 of 1997 before the first appellate Court as well as in second appeal proceedings in S.A.(MD)No. 1915 of 2001 before this Court. Soon after the dismissal of the suit for specific performance in O.S.No.696 of 1985, the respondent / plaintiff filed O.S.No.104 of 2004 for recovery of possession and also claimed damages for use and occupation.

6.2. The case of the appellant was that the appellant was entitled to protection under Section 53-A of the Transfer of Property Act and



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further, soon after the sale agreement was entered into with the second defendant's father on 11.05.1974, Pitchaiya Chettiyar had clandestinely sold the property to the respondent / plaintiff and the sale was therefore not valid or binding on the defendants. In fact, the second defendant's father was originally arrayed as the sole defendant in the suit for recovery of possession and pending the suit, in view of his demise the appellant herein was impleaded as the second defendant. After impleadment, the second defendant filed an independent written statement along with a counter claim and challenged the very sale deed executed by Pitchaiya Chettiyar in favour of the respondent / plaintiff, by paying Court fee as well. In fact, prior to filing of the written statement cum counter claim, the petitioner challenged the very application for impleading him as defendant in the suit also. In fact, the impleading application came up to this Court in revision proceedings and in and by an order dated 18.07.2023, this Court, dismissed the revision, confirming the impleadment of the appellant as the second defendant, permitting the appellant to contest the suit on merits. Thereafter, the trial Court, after giving an opportunity to the appellant and after elaborate trial, decreed the suit.



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6.3. Aggrieved by the decision of the trial Court, the appellant preferred an appeal in A.S.No.33 of 2025 and the learned Principal Sub Judge, Tirunelveli, dismissed the appeal, confirming the findings of the trial Court.

7. As against the concurrent findings of the trial Court as well as the first appellate Court, the defendant has filed the present second appeal.

8.Arguments of Mr.V.Vijayashankar, learned counsel for appellant:

8.1. The primordial submissions of Mr.V.Vijayashankar, is two fold, viz., (i) the suit for recovery of possession is barred in view of the statutory protection available to the appellant under Section 53-A of the Transfer of Property Act and (ii) the Courts below have erroneously dismissed the counter claim on the ground of limitation, without noticing the fact that the very order of impleadment of the appellant as the 2nd defendant in the suit was put to challenge and attained finality, only in 2023, when the CRP.(PD)(MD)No.2317 of 2018 was disposed of and when the written statement cum counter claim was filed thereafter and



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therefore, the delay cannot be put against the appellant / second defendant.

8.2. Mr.V.Vijayashankar, learned counsel, taking me through Section 53-A of the Transfer of Property Act, would state that no distinction can be made, with regard to whether the suit for specific performance was never filed at all and the time for filing of the suit had lapsed and cases where a suit for specific performance had been filed and it had been dismissed. In support of his submissions, Mr.V.Vijayashankar placed strong reliance on the decision of the Aurangabad Bench of Bombay High Court in ***Balasaheb Manikrao Deshmukh v. Rama Lingoji Warthi***, reported in ***AIR-2000-BOMBAY-337***.

8.3. Mr.V.Vijayashankar also relied on the decisions of the Hon'ble Supreme Court ***Shrimant Sharmrao Suryavanshi v. Pralhad Bhairoba Suryavanshi***, reported in ***2002-3-SCC-676*** and ***Mahadev v. Tanabai***, reported in ***2004-5-SCC-8*** and ***S.S.Rathore v. State of Madhya Pradesh***, reported in ***1989-4-SCC-582***.



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9. Arguments of Mr.P.Rajesh, learned counsel for the respondent:

9.1. Per contra, Mr.P.Rajesh, learned counsel for the respondent would state that the Courts have concurrently found the plaintiff to be entitled to relief and there is no perversity or impropriety in appreciation of evidence adduced and available on record and therefore, no substantial questions of law arise for consideration in the second appeal. He would further state that Section 53-A of the Transfer Property Act cannot be pressed into service, in cases where the agreement holder has been unsuccessful in a suit for specific performance and the provision can be applied to cases only where suits for specific performance were never filed and the time for filing a specific performance suit has lapsed.

9.2. Mr.P.Rajesh, learned counsel would further submit that the counter claim seeking declaration challenging the respondent / plaintiff was clearly barred by limitation and infact, even in the suit for specific performance filed by the appellant's father, namely, first defendant, the plaintiff had been impleaded as a party defendant and therefore, the defendant's father had knowledge about the sale deed having been

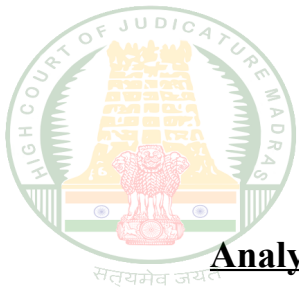


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executed in favour of the respondent / plaintiff and having not chosen to challenge the same, he would contend that the demise of the first defendant would not any avenue to to the appellant / second defendant to challenge the sale deed in favour of the respondent / plaintiff, when the appellant had only stepped into the shoes of the first defendant, his father and did not possess any independent right in the suit property, entitling him to file a counter claim and challenge the sale deed in favour of the respondent / plaintiff.

9.3. Mr.P.Rajesh, learned counsel would also relied on the decisions of this Court in ***Francis v. K.Madhavan Nair***, reported in ***2018-1-CTC-528*** and in ***V.Ranganathan v. N.Ramalingam***, reported in ***2000-3-MLJ-685***. Judgment of the Hon'ble Supreme Court ***Mool Chand Bakhru v. Rohan***, reported in ***2002-1-CTC-433***.

10. I have carefully considered the submissions advanced by the learned counsel for the parties.



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Analysis:

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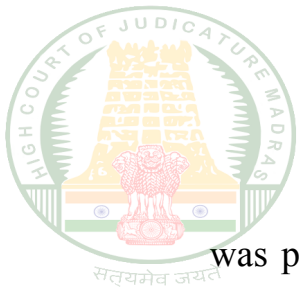
11. Let me first deal with the entitlement of the appellant to maintain the counter claim and as to whether the counter claim was within time. There is no quarrel with regard to the fact that the second defendant was sought to be impleaded in the suit, pending the trial and consequent to the demise of the then sole defendant, the father of the appellant / second defendant herein. Citing the grounds of delay and abatement, the appellant objected to his impleadment. However, the trial court allowed the application and ordered impleadment of the appellant as the second defendant. The order of the trial Court was put to challenge in revision before this Court in CRP(PD) (MD)No. 2317 of 2018 and this Court, by order dated 18.07.2023, dismissed the Civil Revision Petition and upheld the order of impleadment of the trial Court and directed the trial Court to dispose of the suit expeditiously. It is not in dispute that, it is thereafter the appellant filed the written statement along with a counter claim. In normal circumstance, I would not hesitate to accept the arguments advanced by Mr.Vijayashankar, learned counsel of the appellant that when the order of the trial Court had not become final and was put to challenge before the higher forum, limitation cannot be put

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against the appellant. However, the case projected by the learned counsel for the appellant is not as simple as it appears. As rightly pointed out by Mr.P.Rajesh, even the suit for specific performance filed by the first defendant in the present suit, that is, the father of the second defendant, he had consciously impleaded the respondent / plaintiff herein as one of the defendants. Therefore, the appellant's father was fully aware of the factum of sale executed by Pitchaiah Chettiar in favour of the respondent / plaintiff. The sale was never challenged by the father of the appellant herein in the suit for specific performance. Further, the appellant does not canvass any independent right available and he merely steps into the shoes of his father and therefore cannot get any better right than what his father possessed. When his father himself had filed a suit for specific performance and arrayed the respondent / plaintiff as one of the defendants and never choose to question the sale in favour of the respondent / plaintiff, I do not see how the appellant can project an independent right, which was never available to him in the first place. Therefore, eventhough the Courts below may have fell in error in rejecting the counter claim on the ground of limitation, without noticing the fact that the order of impleadment of the appellant / second defendant



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was put to challenge and attained finality, however, when the appellant does not possess any separate or independent right / claim, and his father did not choose to challenge the sale in favour of the respondent / plaintiff, despite arraying the plaintiff as a party defendant therein, I am unable to accept the submissions of Mr.Vijayashankar that the counter claim filed along with the written statement is to be held as maintainable.

12. For all the above reasons, the substantial question of law No. (c) is answered against the appellant and in favour of the respondent.

13. Now, coming to the other interesting aspect of whether the statutory protection can be claimed by the appellant, invoking Section 53-A of the Transfer of Property Act, for easy reference, the provision is extracted hereunder:

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee



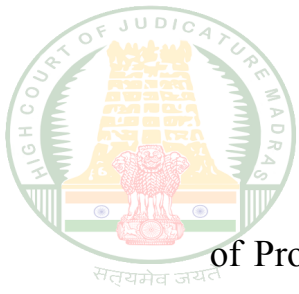
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has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof”

14. On a careful reading of the above provision, it is clear that the Section does not speak about whether the protection available to a transferee would still be available, despite dismissal of the suit for specific performance. In fact, a reading of Section 53-A of the Transfer



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of Property Act, indicates that it deals only with the scenario where the suit for specific performance has not been filed and even the time prescribed for filing for specific performance has lapsed.

15. Mr.Vijayashankar, contended that the Courts below had erroneously held that the provision cannot be applied on account of an agreement of sale, being an unregistered document.

16. With regard to the findings of the Courts below that Section 53-A of the Transfer of Property Act would be available only to registered agreement of sale, I am unable to sustain the said findings as it cannot be applied to the facts of the present case, for the simple reason that the amendment to Section 53-A requiring registration of the sale agreement for invoking Section 53-A of the Transfer of Property Act was brought into force only by Act 48/2001 with effect from 24.09.2001. Admittedly, the sale agreement in question is prior to the said date and therefore, non registration of the agreement of sale cannot be fatal to the case of the appellant, to invoke Section 53-A of the Transfer of Property Act. However, this does not mean that merely holding an agreement of

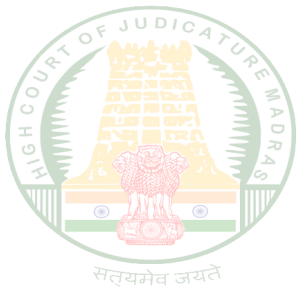


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sale would entitle the appellant to statutory protection under Section 53-A of the Transfer of Property Act.

17. The Hon'ble Supreme Court in ***Shrimant Shamrao Suryavanshi***'s case held that when the following conditions are fulfilled, then the transferee is entitled to defend and protect his possession under Section 53-A of the Act. The necessary conditions are:

- 1) there must be a contract to transfer for consideration any immovable property;
- 2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
- 3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- 4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;
- 5) the transferee must have done some act in furtherance of the contract; and
- 6) the transferee must have performed or be willing to perform his part of the contract.



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18. In *Mahadeva's case*, the ratio laid down in *Shrimant Shamrao Suryavanshi's case* was followed by the Hon'ble Supreme Court.

19. In *S.S. Rathore's case*, the Hon'ble Supreme Court held that the cause of action has to be taken to arise, not from the date of original adverse order, but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made.

20. The learned Single Judge of the Aurangabad Bench of Bombay High Court in *Balasaheb Manikrao's case*, interpreting Section 53-A of the Transfer of Property Act, held that protection under the factum of part performance is available to a purchaser, even if the suit for specific performance of the contract is time barred. The learned Single Judge, went on to hold that no distinction can be made between a case where the purchaser has filed a suit for specific performance and has failed on the point of limitation and a case where purchaser has not filed any case, but the claim has become time barred.



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21. With great respect to the learned Judge of the Bombay High Court, I am unable to subscribe to the view expressed, in this regard, Section 53-A of the Transfer of Property Act, from the language employed in the provision clearly indicates that it is available only in cases where the transferee has been put in possession of the property, in part performance of the contract and where the instrument of transfer has not been completed in the manner prescribed under law and then the transferor or a person claiming under the transferor is debarred from enforcing against the transferee, any right in respect of the property of which the transferee has taken possession, unless any other express right has been provided in the contract itself. As held by the Hon'ble Supreme Court in *Shrimant Shamrao Suryavanshi's* case, six conditions are to be fulfilled before the transferee can claim statutory protection under Section 53-A of the Transfer of Property Act. I have already extracted the above conditions hereinabove in paragraph No.17. In this case, there is absolutely no difficulty insofar as conditions 1 to 5 and the appellant has certainly fulfilled them. However, condition No.6, viz., requiring the transferee to have performed or being willing to perform the part of the



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contract cannot be held in favour of the appellant for the simple reason that the appellant's father had already filed a suit for specific performance and was unsuccessful in the said litigation up to this Court. Though it has been vehemently contended by Mr.Vijayakumar, learned counsel for the appellant, relying on the ratio laid down by the Bombay High Court that the suit for specific performance was dismissed only on the ground of limitation and therefore condition No.6 also will have to be applied only in favour of the plaintiff, I am unable to countenance the said submissions. In fact, this Court in *Fransis's* case, dealt with an identical situation, where an agreement holder having lost in a suit for specific performance, attempted to take shelter under Section 53-A of the Transfer of Property Act and this Court held that the character of possession of the agreement holder is only permissive in nature and it cannot tantamount to possession, pursuant to a sale under Section 54 of the Transfer of Property Act, vesting any right in the agreement holder and ultimately, this Court held that an unsuccessful plaintiff in a suit for specific performance is not entitled to take a defence of Section 53 of the Transfer of Property Act. In fact, even in *V.Ranganathan's* case, this Court following the decision of the Hon'ble Supreme Court in *Mohan*



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Lal v. Mizra Abdul Gaffar, reported in **1996-1-SCC-639** held that the entitlement to defend possession under Section 53 -A of the Transfer of Property Act is not available after dismissal of the suit for specific performance. Even in **Mool Chand Bahru's** case, the Hon'ble Supreme Court held, following the ratio laid down in **Nathula v. Phool Chand**, reported in **1969-3-SCC-120**, that unless the agreement holder fulfils the 4 conditions, viz.,

"(1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) that the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract;

(3) that the transferee has done some act in furtherance of the contract; and

(4) that the transferee has performed or is willing to perform his part of the contract."



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He is not entitled to invoke the doctrine of part performance and seek protection of his possession of the suit property. The decision of the Bombay high Court in **Balasaheb Manikrao Deshmukh's** case has been rendered without considering the ratio laid down by the Hon'ble Supreme Court in **Mohan Lal's** case. This Court has consistently held that when an agreement holder is unsuccessful in his attempt to specifically perform the agreement of sale, then he is not entitled to invoke Section 53-A and seek protection of his possession. I have already discussed in detail hereinabove, as to why and how I am not in respectful agreement with the decision of the Bombay High Court in **Balasaheb Manikrao Deshmukh's** case. The decision of this Court referred hereinabove only fortify my view, and I therefore do not see any merit in the arguments advanced by the appellant that even if the suit for specific performance had been dismissed, the agreement holder can still invoke Section 53-A of the Transfer of Property Act and seek to protect his possession.

22. Though an argument was advanced by Mr.Vijayashankar that as the suit for specific performance was dismissed only on the ground of



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limitation, when the competent Court has found that the plaintiff has approached the Court belatedly, it clearly implied that the plaintiff is not ready and willing to perform his part of the contract and that is the only basis and foundation on which the suit has been dismissed, though citing limitation. Therefore, the fact that the suit for specific performance filed by the appellant's father was dismissed on the ground of limitation, does not in any manner, improve the case of the appellant, entitling him to claim satisfaction of condition No.6 laid down in Hon'ble Supreme Court in ***Shrimant Sharmrao Suryavanshi***'s case. There is yet another strong reason for my not accepting the view of the Bombay High Court. If such a view that no distinction can be made to cases, where suit for specific performance has not been filed within the period of limitation and the cases where the suit for specific performance having been filed and dismissed on the ground of limitation then, it will enable every agreement holder who is put in possession in part performance to not seek specific performance at all.

23. For all the above reasons, substantial questions of law (a) and (b) are also answered against the appellant. The Second Appeal fails.



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Accordingly, the Second Appeal is dismissed with costs. The judgment and decree passed in O.S.No.104 of 2004 dated 18.11.2024 on the file of the 2nd Additional District Munsif, Tirunelveli, by confirming the judgment and decree in A.S.No.33 of 2025 dated 18.12.2025 on the file of the Principal Sub Court, Tirunelveli are hereby confirmed. The appellant shall vacate and hand over the vacant possession on or before 31.10.2026, subject to the appellant filing an affidavit of undertaking, within a period of 10 days from today, undertaking to handover vacant possession of the suit property, peacefully, without driving the respondent to resort to execution proceedings. Consequently, connected Miscellaneous Petition is closed.

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Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

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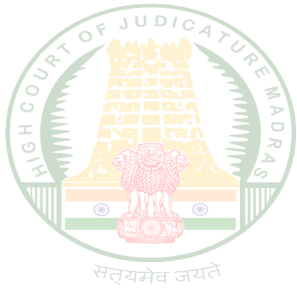
TO

1. The 2nd Additional District Munsif,
Tirunelveli.

2. The Principal Sub Court,
Tirunelveli.

3. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

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P.B.BALAJI,J

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**Pre-delivery Judgment made in
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