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S.A(MD)No.44 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2026

Delivered on : 27.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.44 of 2026
and
C.M.P(MD)No.1894 of 2026

M.K.Kandasamy

: Appellant

/Vs./

1.C.Ramasamy

2.R.Ramasamy

3.P.Lakshmi

: Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 15.06.2024 made in A.S.No.12 of 2022 on the file of the Principal District Court, Karur, confirming the judgment and decree, dated 05.04.2022 made in O.S.No.229 of 2010 on the file of the Principal Subordinate Court, Karur.

For Appellant : Mr.K.Suresh

For Respondents : Mr.S.Gokulraj, for R1 and R3.



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JUDGMENT

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The second appeal is directed against the judgment and decree made in A.S.No.12 of 2022, dated 15.06.2024 on the file of the Principal District Court, Karur, confirming the judgment and decree passed in O.S.No.229 of 2010, dated 05.04.2022 on the file of the Principal Subordinate Court, Karur.

2. The appellant is the plaintiff. He filed a suit in O.S.No.229 of 2010 before the Principal Subordinate Court, Karur, seeking specific performance of agreement, dated 16.12.2009 or in alternative, to refund the advance amount with interest and cost.

3.Originally, the suit was filed against the first respondent and he filed the written statement and contested the suit. Pending suit, his son and daughter were impleaded as defendants 2 and 3, but they remained ex-parte. The learned Principal Subordinate Court, Karur, after framing necessary issues and after full trial, passed a judgment and decree, dated 05.04.2022, dismissing the suit with regard to the relief of specific performance, but granted the alternative relief directing the first defendant to return the advance amount of Rs.1,10,000/- with interest and costs. Aggrieved by the rejection of the specific performance relief,



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the plaintiff preferred an appeal in A.S.No.12 of 2022 and the learned Principal District Judge, Karur, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree, dated 15.06.2024, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has filed the present second appeal.

4. At the outset, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of **Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.**, reported in **AIR 2019 SC 1441**, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First



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Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

5. The Hon'ble Supreme Court in the case of ***Chandrabhan Vs. Saraswati and others*** reported in **2022 SCC OnLine SC 1273** has specifically held that right of appeal is not automatic and right of appeal is conferred by statute and when statute confers a limited right of appeal restricted only to cases which involve substantial questions of law, it is not open to the High Court to sit in appeal over the factual findings arrived at by the First Appellate Court and the Hon'ble Supreme Court summarized the principles relating to Section 100 C.P.C., which are as follows;

“(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of



a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or



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acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

6. Bearing the settled legal position in mind, let us proceed with the present case.

7. The case of the plaintiff in brief is as follows :

a) The suit property belongs to the first defendant ancestrally. The first defendant offered to sell the suit property to the plaintiff and the plaintiff agreed to purchase the same and both of them entered into a sale agreement, dated 16.12.2009 , fixing the sale price at Rs.6,10,000/-. The plaintiff paid Rs. 1,10,000/- as advance and the same was received by the first defendant on the date of sale agreement itself.

b) The plaintiff had agreed to pay the balance sale price within three months and the first defendant had agreed to effect name changes in the revenue records and to execute the sale deed. The plaintiff approached the defendant on 23.01.2010, 12.02.2010, 26.02.2010, 02.03.2010 and 12.03.2010 and requested to



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receive the balance sale price and to execute the sale deed. But the first defendant was postponing the same on some pretext or the other.

(c) On 13.03.2010, the plaintiff once again approached the first defendant and requested him to execute the sale deed. The first defendant agreed that he would first obtain a separate patta in his favour and thereafter execute the sale deed. However, upon coming to know that the first defendant was attempting to alienate the suit property in favour of third parties, the plaintiff issued a public notice in the 'Dinamalar' daily dated 09.04.2010, cautioning the general public against dealing with the suit property through the first defendant.

(d) In the meanwhile, one Rasayee filed a suit in O.S. No.120 of 2010 before the Sub Court, Karur, seeking partition and separate allotment of $\frac{1}{4}$ share in the suit property. When questioned about the said suit, the first defendant informed the plaintiff that he had two daughters, namely Rasayee and Lakshmi. Thereupon, the plaintiff requested the first defendant to execute the sale deed after obtaining consent from his daughters. As the first defendant was not amenable to the said request, the plaintiff caused a legal notice dated 17.05.2010 to be issued. Though the first defendant received the said notice, he did not take any steps in response. However, on 04.06.2010, the first defendant met the plaintiff and agreed to execute the sale deed.



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e) When the plaintiff again approached the first defendant on 15.07.2010 to execute the sale deed, the first defendant has refused to accept the plaintiff's request. The plaintiff came to know that the defendant had created bogus release deeds among themselves with sole intention to cheat the plaintiff. Hence, the plaintiff was constrained to file the above suit claiming the relief of specific performance of agreement, dated 16.12.2009 or in alternative to refund the advance amount with interest and cost.

8. The defence of the first defendant is that he has never entered into any sale agreement with the plaintiff nor received any amount as advance; that the plaintiff being his friend, the first defendant obtained a loan of Rs.20,000/- for his urgent expenses and at that time, the plaintiff had taken signatures in the blank promissory notes and blank stamp papers and that the value of the suit property would be more than Rs.20,00,000/-; that the plaintiff with intention to grab the property, fabricated the sale agreement and filed the above suit; that the plaintiff suppressed the material facts and filed the false and fraudulent suit and that therefore, the suit is liable to be dismissed.



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9. As already pointed out, it is the specific stand of the first defendant that there existed loan transaction between him and the plaintiff and while advancing the loan, the plaintiff had obtained signatures in the blank stamp papers and promissory notes and that the same was utilized for fabricating the sale agreement Ex.A.1. But the learned trial Judge, by referring to the written statement and the chief examination affidavit and the answers elicited during the cross examination, has observed that the first defendant had taken inconsistent plea with regard to his signatures found in Ex.A.1 agreement. Moreover, the first defendant in his evidence went to the extent of denying the signatures in his vakalat, written statement and chief examination affidavit and suit summons.

10. The plaintiff in his evidence would reiterate the execution of suit sale agreement by the first defendant. P.W.2, one of the attesting witnesses to the suit sale agreement, has also categorically deposed about the execution of Ex.A.1 sale agreement, in tune with the evidence of the plaintiff. Considering the evidence available on record, the learned trial Judge has come to a finding that the suit sale agreement is genuine one and the same came to be executed by the first defendant and that the said finding came to be confirmed by the first appellate Court.



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11. The learned trial Judge, upon observing that the plaintiff had neither deposited the balance sale consideration of Rs.5,00,000/- before the Court nor produced any evidence to demonstrate that he possessed the said amount or had the financial capacity to mobilise the same, and further taking note of the delay in approaching the defendant either directly or through issuance of a legal notice, held that the plaintiff had failed to establish his continuous readiness and willingness to perform his part of the contract. On that basis, the suit came to be dismissed.

12. Aggrieved by the same, the plaintiff, before the first appellate Court, filed an application seeking reception of additional evidence, namely, sale deeds standing in his favour, in order to establish that he had the requisite financial capacity and wherewithal to pay the balance sale consideration of Rs.5,00,000/-.

13. As rightly observed by the learned first appellate Judge, though the first defendant had denied the averment in the plaint that the plaintiff was always ready and willing to perform his part of the contract, he had not specifically disputed the financial capacity of the plaintiff. On the contrary, in the written statement, the first defendant has admitted that he had obtained a loan from the plaintiff, which, to an extent, indicates the financial capability of the plaintiff.



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14. Considering the above, the learned appellate Judge has recorded a finding that the plaintiff possessed the necessary financial wherewithal to pay the balance sale consideration. However, as rightly observed by the learned appellate Judge, such financial capacity, by itself, is not sufficient to establish that the plaintiff had been continuously ready and willing to perform his part of the contract.

15. As already pointed out, the suit was originally instituted against the first defendant, and during the pendency of the suit, the plaintiff impleaded the son and daughter of the first defendant as defendants 2 and 3. Admittedly, the plaintiff has not entered into any agreement with defendants 2 and 3. Even according to the plaintiff, the agreement was only to purchase an undivided extent of one acre out of the 5.26 acres owned by the first defendant, forming part of the larger extent of 24.25 acres in Survey No.1118.

16. It is the specific case of the plaintiff that the first defendant had agreed to obtain a separate patta in respect of the one acre of land agreed to be sold and had also undertaken to measure and identify the said property. However, the first defendant failed to fulfil the same. As rightly observed by the learned trial Judge, these stipulations were not incorporated as conditions in Ex.A1 sale agreement.



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17. It is pertinent to note that the sale agreement is dated 16.12.2009, and three months period fixed for performance expired on 16.03.2010. But the first defendant issued notice in Dinamalar Newspaper on 09.04.2010 and issued legal notice on 17.05.2010. As already pointed out, according to the plaintiff after coming to know about the suit filed by the third defendant in O.S.No.120 of 2010, claiming $\frac{1}{4}$ share in the suit property, he approached the defendant immediately in person and requested him to execute the sale with consent of other sharers, after receiving sale price.

18. The plaintiff, in the plaint, has further stated that subsequent to the issuance of the legal notice, the first defendant met him in person on 04.06.2010, requested one month's further time for execution of the sale deed, and assured that he would obtain the consent of his son and daughters for completing the transaction pursuant to the sale agreement. Bona fide believing the said representation, the plaintiff did not initiate immediate legal action. It is also pertinent to note that the agreement was entered into only with the first defendant and not with defendants 2 and 3.

19. Considering the above averments in the plaint and the evidence adduced, the learned appellate Judge has observed that the plaintiff was not willing to purchase the one acre of land from the first defendant alone.



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20. It is well settled that in a suit for specific performance, the plaintiff must not only plead, but also prove, that he has always been ready and willing to perform his part of the contract throughout the relevant period.

21. Readiness pertains to the capacity of the plaintiff to perform the contract, which would include his financial position, whereas the willingness refers to the conduct of the plaintiff in taking necessary steps to complete his transaction.

22. In the case on hand, though the financial capacity of the plaintiff has been accepted by the First Appellate Court, both the Courts below have concurrently held that the plaintiff has failed to establish the requisite willingness by not taking appropriate steps to tender the balance sale consideration, or at least within a reasonable time. Moreover, the materials on record further indicate that the plaintiff was not willing to purchase the undivided one acre from the first defendant alone, thereby exhibiting hesitation and a conditional approach towards the performance of the contract. The said findings, being pure findings of fact arrived at upon proper appreciation of the evidence on record, do not give rise to any substantial question of law warranting interference by this Court under Section 100 of the Code of Civil Procedure.



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23. Considering the entire evidence available on record, the Courts below have concurrently come to a conclusion that the plaintiff is not entitled to get the equitable and discretionary relief of specific performance, but granted the alternative relief of refund of advance amount with interest and cost and hence, the same cannot be faulted.

24. The appellant has not shown that the material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. The appellant has also not shown any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The appellant has also not canvassed any stand that the Courts below have wrongly placed the burden of proof.

25. It is pertinent to note that the first appellate Court, on appreciating and re-appreciating the evidence available on record, has come to a definite decision that the plaintiff is not entitled to get the equitable and discretionary relief of specific performance, but granted the alternative relief of refund of advance amount with interest and cost.



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26. Considering the judgments of the Courts below, this Court is of the clear view that no question of law much less Substantial Question of Law is made out.

It is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no substantial question of law is made out in the second appeal, the same is liable to be dismissed.

27. In the result, the Second Appeal is dismissed, confirming the concurrent judgments of the trial Court made in O.S.No.229 of 2010 on the file of the Principal Subordinate Court, Karur and in A.S.No.12 of 2022 on the file of the Principal District Court, Karur. Consequently, connected Miscellaneous Petition is closed. No costs.

27.02.2026

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To:

1. The Principal Subordinate Court.

2. The Principal District Court, Karur.

3. The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.44 of 2026
and
C.M.P(MD)No.1894 of 2026

Dated: 27.02.2026