

S.A.(MD)No.186 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.04.2026

DELIVERED ON : 12.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.186 of 2018

and

C.M.P.(MD)Nos.9736 & 4908 of 2018

S.Rajagopal

... Appellant

Vs.

1.K.Chandrasekaran

2.M.Rasu Thevar @ Raju (Died)

3.R.Mookammal (Died)

4.R.Deivendran

5.R.Ravi

6.R.Jambu

7.R.Sumathi

... Respondents

[Respondents 3 to 7 are brought on record as LR's of the deceased R2 vide court order dated 04.08.2022 made in C.M.P.(MD).No. 11660/2018 in S.A.(MD)No.186 of 2018]

[Memo dated 25.04.2022 presented before the Court on 26.04.2022 is recorded, as R3 died and R4 to R7, who are already on record, are recorded as LR's of the deceased R3 vide court order dated 26.04.2022 made in C.M.P.(MD)No.11660/2018 in S.A.(MD).No.186/2018.]



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.61 of 2015 dated 25.01.2018 on the file of the Principal District Court, Dindigul, confirming the judgment and decree passed in O.S.No.490 of 2011 dated 08.09.2015, on the file of the Additional Sub-Court, Dindigul.

For Appellant : Mr.H.Arumugam
For Respondent No.1 : Mr.J.John
For Respondents 4 to 7 : Mr.D.Senthil
Respondents 2 & 3 : Died

JUDGMENT

The appellant in this Second Appeal is the second defendant in a suit for specific performance of contract. The second defendant suffered concurrently before the Trial Court as well as the First Appellate Court.

2.The Second Appeal was admitted by this Court on 10.07.2018 on the following substantial questions of law:

*1) Whether the Courts below are right
in accepting the alleged sale agreement
dated 13.05.1999 entered between*



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defendants 1 and 2 when the same has not been produced and marked as exhibit, but simple based upon the evidence given in criminal case, which is not permissible under law?

2) Whether the Courts below are right in treating Ex.B.1, the power of attorney executed by the second defendant in favour of the first defendant as a document of sale when there is no transfer of interest or title on the basis of power of attorney and when the General Power of Attorney will not come under the definition of sale as defined under Section 45 of the Transfer of Property Act, 1882?

3) Whether the lower Appellate Court is right in allowing the Cross Appeal holding that the first defendant alone entitle to the sale consideration deposited in the Court?

4) When the plaintiff has entered into an agreement of sale in Exhibit A1, knowing well that the first defendant has no title over



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the property and as per Section 17 of the Specific Relief Act, 1963, the contract is not enforceable whether the Courts below have committed serious error in decreeing the suit?"

3. At the time of final hearing of the appeal Mr.H.Arumugam, learned Counsel for the appellant would state that the appellant has also suggested additional substantial questions of law. I have examined the suggested questions of law and found that they are also arising for adjudication and hence, the following 4 additional substantial questions of law suggested additionally, on 01.04.2025, are framed:

"a) When admittedly the balance amount of Rs.1,00,000/- was not paid and the suit notice was sent only on 09.05.2011 ie., after 4 months from the expiry of one year time limitation under the sale agreement dated 28.12.2009, whether the Courts below are right in giving a finding that the plaintiff has proved his readiness and willingness as per Section 16(c) of Specific Relief Act, 1963?"



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b) When the 1st defendant did not subject himself for cross examination, whether the Courts below are right in not drawing adverse inference under Section 114(g) of Indian Evidence Act, 1872?

c) When there is no proof for payment of sale consideration by the 1st defendant to 2nd defendant and settlement of accoutn as contemplated under Section 202 and 207 of Contract Act, whether the lower appellate Court is right in holding that 1st defendant alone is entitled to sale consideration accepting the evidence of 1st defendant who is not competent to speak about the same?"

4.I have heard Mr.H.Arumugam, learned Counsel for the appellant, Mr.J.John, learned Counsel for the first respondent and Mr.D.Senthil, learned Counsel for the respondents 4 to 7.

5.Mr.H.Arumugam, learned Counsel for the appellant would contend that the suit property originally belonged to the appellant /



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second defendant and he had executed a registered power of attorney deed dated 19.07.2000 in favour of the first defendant.

The said power of attorney was subsequently cancelled on 12.04.2010. Thereafter, a settlement deed came to be fraudulently executed by the first defendant in favour of his son. However, the first defendant taking advantage of the power of attorney in his favour executed a sale in favour of the plaintiff, wherein he described himself as owner of the property and not as power of attorney agent of the appellant / second defendant. A suit was filed by the appellant in O.S.No.280 of 2011, on the file of the Additional Sub Court Dindigul for the relief of declaration and injunction as against the first defendant, in respect of the suit property. In the meantime, the plaintiff filed the suit for specific performance, claiming that he had paid the entire sale consideration and instead of execution of sale deed, the appellant had executed a power of attorney in favour of the first defendant and contended that the cancellation of the power of attorney was not valid in the eye of law, as it was coupled with interest and executed after receipt of the entire sale consideration.

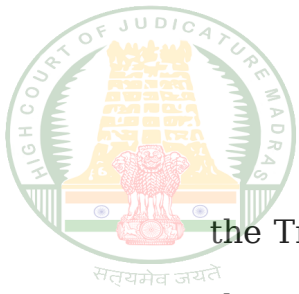
6.Mr.H.Arumugam, would state that firstly, the power of attorney did not mention the fact that entire sale consideration has



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been received from the plaintiff and in the absence of the same, it cannot be contended that the power of attorney was one which was coupled with interest, thereby disentitling the appellant from cancelling the said power of attorney. It is also his submission that the power of attorney had admittedly been cancelled and the first defendant could not have received the sale consideration from the plaintiff and executed the sale deed, as if he was the owner without even mentioning the fact that he was acting only as a power agent of the second defendant.

7.Mr.H.Arumugam, would also invite my attention to the stand of the power agent first defendant that he informed the plaintiff about the fact that the power of attorney had been cancelled and therefore, he was not in a position to execute the sale. It is therefore, the categorical submissions of Mr.H.Arumugam, learned Counsel for the appellant that despite knowing the fact that the power of attorney had been cancelled, the plaintiff did not rush to Court immediately and took his own sweet time to file the suit for specific performance. The plaintiff has never been ready and willing to perform his part of the contract and was clearly disentitled to the discriminatory relief under Section 16(c) of the Specific Relief Act. He would further state that

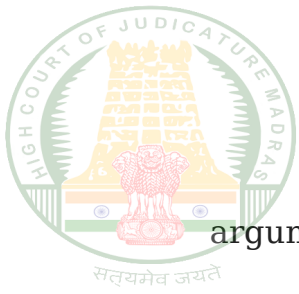


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the Trial Court had also, while directing specific performance, held that both the defendants were entitled to withdraw the sale consideration deposited by plaintiff in Court. The first defendant challenged the said portion of the judgment of the Trial Court by way of Cross Appeal, since according to the first defendant, second defendant was not entitled to withdraw the entire amount and it was only the power agent first defendant, who was entitled to receive the entire sale consideration.

8.Mr.H.Arumugam, would state that though the appeal filed by the second defendant was dismissed, the First Appellate Court erroneously allowed the Cross Appeal on an erroneous assumption that the second defendant has received the entire sale consideration and therefore, first defendant alone was entitled to get back the amount deposited in the Court.

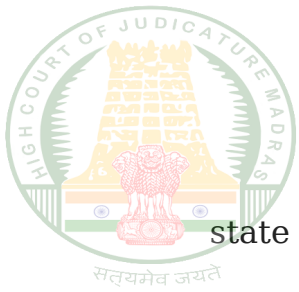
9.In the course of arguments, a technical objection with regard to maintainability of the Second Appeal was also argued by Mr.J.John, learned Counsel appearing for the first respondent contending that no Second Appeal has been preferred against the Cross Appeal being allowed and therefore, the Second Appeal is not maintainable in the eye of law. In order to meet the said



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arguments advanced by the learned Counsel for the first respondent, Mr.H.Arumugam, would state that non-filing of an independent appeal against the Cross Appeal being allowed is not fatal to the case of the appellant / second defendant, since the substantial relief of specific performance itself has been challenged by the appellant / second defendant and there is no requirement to file a separate or independent appeal against the Cross Appeal filed by the first defendant been allowed.

10.Mr.H.Arumugam, would also take me through the evidence and contend that the plaintiff has miserably failed to establish readiness and willingness, which is mandatory for decreeing the suit for specific performance. He would also state that the first defendant did not present himself for cross examination and disappeared after filing a proof affidavit and the Courts below ought to have drawn adverse inference. He would also point out that subsequently, the son of the first defendant alone was examined and in order to get over the lacuna in not presenting D.W.1 for cross examination, the son had deposed that his father was mentally unstable. However, Mr.H.Arumugam, contends that no shred of evidence in support of such contention was putforth or adduced before the Trial Court. He would further



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state that the plaintiff and the first defendant have colluded amongst themselves in order to knock off the valuable property of the appellant / second defendant.

11.In support of his submissions, Mr.H.Arumugam, has relied on the following decisions:

*1) The decision of the Hon'ble Supreme Court in the case of **Vidhyadhar Vs. Mankikrao and another**, reported in **AIR 1999 SC 1441**;*

*2) **A.Anand Vs. A.Perumalsamy and others**, reported in **2006 (1) CTC 112**;*

*3) My judgment speaking for the Division Bench in the case of **G.Sunil Panickar Vs. G.N.Gomathy and another**, reported in **2023 (2) CTC 1**.*

12.Per contra, Mr.J.John, learned counsel appearing for the first respondent would state that it is only in furtherance of the power of attorney deed which was admittedly executed by the second defendant that the first defendant entered into an agreement of sale with the plaintiff and has received the sale consideration. He would further state that the first defendant had entered into a sale agreement on 13.05.1999 for a total sale



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consideration of Rs.2,42,888/- and only after receipt of the entire sale consideration, the power of attorney was executed by the second defendant on 19.07.2000. He would further state that on 28.11.2009 the first defendant had entered into a contract of agreement of sale with the plaintiff for a total sale consideration of Rs.3 Lakhs and received advance as well. The time for completion of the sale transaction was one year and the balance sale consideration to be paid was Rs.1,10,000/-, the remaining amount having been paid to the first defendant.

13. Learned Counsel for the first respondent would further state that a pre-suit notice was sent to the first defendant power agent of the second defendant / appellant on 09.05.2011 and on receipt of a reply on 18.07.2011, from the first defendant that a suit has been filed by the appellant / second defendant against the first defendant, the plaintiff was constrained to approach the Court for specific performance. He would further state that power of attorney was admittedly cancelled only on 12.04.2010, by which time, the first defendant and second defendant had already entered into an agreement even on 13.05.1999 and therefore, the cancellation of the power of attorney will not in any manner, affect vested rights of the plaintiff. He would further state that power of



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attorney was coupled with interest, since the second defendant has received the entire sale consideration from the first defendant and he would also rely on the proof affidavit of the first defendant, wherein the first defendant had clearly admitted receipt of the entire sale consideration, before execution of the power of attorney.

14.He would further state that merely because the first defendant did not present himself for cross examination, his evidence should not be discarded *in toto*. Subsequently, the son of the first defendant has been examined and he has also spoken about the agreement between the defendants in pursuance of which alone, the suit sale agreement has been entered into by the first defendant with the plaintiff. Learned Counsel would further state that when the First Appellate Court has allowed the cross appeal filed by the first defendant, the plaintiff ought to have challenged the same by preferring a separate Second Appeal against the decree in the Cross Appeal and non-filing of such independent appeal according to the learned Counsel Mr.J.John, is fatal to the case of the appellant.

15.Learned Counsel for the first respondent has relied on the following decisions in support of his submissions:



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- 1) ***T.Sivaperumal Vs. S.Viswanathan and others***, reported in **2014 (1) CTC 447**;
- 2) ***M.Kalaiselvi & others Vs. K.Kannaiyan (Died) & others***, reported in **2025 (5) L.W. 967**;
- 3) ***Sarasu & others Vs. Lakshmi & another***, reported in **2019 (2) L.W. 663**;
- 4) Judgment of this Court in **S.A.No.565 of 2015** dated **29.04.2022**;
- 5) Judgment of this Court in **A.S.No.409 of 2014** dated **25.02.2022**;
- 6) Judgment of this Court in **S.A.No.1119 of 2021** dated **03.07.2024**.

16.I have carefully considered the submissions advanced by the learned Counsel appearing for the parties. I have also gone through the pleadings, the oral and documentary evidence adduced at trial, the judgments of the Trial Court as well as the First Appellate Court and the judgments on which reliance has been placed by the Counsel on either side.



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17.The fact that the second defendant was the original owner of the suit property is not in dispute. It is also not in dispute that as owner, the second defendant executed a power of attorney in favour of the first defendant, empowering him to deal with the suit property. However, it is the case of the appellant that the power agent started acting against the interest of the appellant and hence, the said power of attorney was cancelled on 12.04.2010 and the power agent was also duly informed about the said cancellation. It is also the further contention of the appellant that the first defendant had fraudulently created a settlement deed in respect of the suit property in favour of his own son on 30.12.2010 and the first defendant and his son attempted to encroach into the suit properties and destroy the crops. It is under such circumstances, the appellant had filed O.S.No.280 of 2011, for declaration of his title and for consequential permanent injunction and also for mandatory injunction for return of the original documents that were handed over to the first defendant. Relief of cancellation of the settlement deed dated 30.12.2010, was also sought for.



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18.The appellant has stoutly denied the alleged sale agreement dated 13.05.1999, entered into between the first defendant and the second defendant and that an advance of Rs.1 Lakh was received and subsequently, on 01.07.2000, the entire balance sale consideration was also paid by the first defendant. Even in the written statement, the appellant has specifically pleaded that the said sale agreement dated 13.05.1999, projected by the first defendant is a forged document. Curiously, the said document has not been exhibited before the Court. It is also the contention of the appellant that when the alleged settlement dated 13.05.1999, is itself denied, the first defendant would never have entered into a sale agreement with the plaintiff. At this juncture, the contention of Mr.H.Arumugam, that the suit sale agreement was entered into by the first defendant and the plaintiff was in the individual capacity of the first defendant assumes significance.

19.I have carefully perused the said agreement of sale entered into between the first defendant and the plaintiff. Though, the agreement mentions the fact that the appellant was the original owner and he had executed a power of attorney in favour of the first defendant and he had received the entire sale consideration,



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the first defendant proceeds to style himself as the absolute owner of the suit property. Admittedly, there is no registered instrument, conveying title or interest in the suit property in favour of the first defendant. In such circumstances, even on this limited ground, a big question mark arises over the validity of the said agreement of sale in respect of which, the plaintiff seeks specific performance.

20.Even otherwise, it is settled law that in a suit for specific performance, the reliefs being equitable and discretionary, the plaintiff has to establish not only readiness, but also willingness to perform the unfulfilled obligations on his part under the contract. The sale agreement between the first defendant and the second defendant is alleged to have been executed on 13.05.1999, for a total sale consideration of Rs.2,42,888/-. It is claimed that the entire sale consideration was paid by the first defendant to the second defendant and only in furtherance of the same, a power of attorney was executed by the second defendant in favour of the first defendant on 19.07.2000.

21.Strangely after a lapse of 10 years in November, 2009, the first defendant has entered into an agreement of sale with the plaintiff for a mere sum of Rs.3 Lakhs, as the total sale



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consideration that too, fixing one year time for payment of balance sale consideration of Rs.1,10,000/-, after receiving substantial advance, I am at wits' end to understand how a property which was worth 2 ½ lakhs in the year 1999 would be agreed to be sold by a willing vendor for a mere Rs.3 Lakhs with an appreciation of just Rs.50,000/- over a period of a decade and a little more.

22.Be that as it may, when the plaintiff was put on notice about the factum of the power of the attorney having been cancelled even on 12.04.2010 and inability of the first defendant to execute the sale deed in favour of the plaintiff, the plaintiff, if really been a prudent agreement holder would have immediately rushed to Court. However, plaintiff filed the suit only towards the end of October 2011. Yet another intervening circumstance, which certainly has a material bearing is the fact that when the first defendant has chosen to execute a settlement deed in favour of his son, it is not known how the plaintiff can seek performance of the agreement of sale between the plaintiff and the first defendant, without challenging the settlement deed executed by the first defendant in favour of his son. In fact, it is the second defendant who has challenged the said settlement deed in O.S.No.280 of 2011 and not the plaintiff.



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23.Coming to the aspect of readiness and willingness as rightly pointed out by Mr.H.Arumugam, both the Courts have not adverted themselves to a germane discussion with regard to the pleadings as well as evidence with regard to readiness and willingness on the part of the plaintiff. Admittedly, even according to the plaintiff, the agreement with the first defendant was entered into on 28.11.2009. One year time was fixed for completion of the sale transaction, after payment of the balance sale consideration. Last payment made by the plaintiff to the first defendant was on 10.11.2010, according to the plaintiff and the first defendant. Admittedly, therefore, balance sale consideration of Rs.1,10,000/- remain unpaid. The pre-suit notice sent to the first defendant has been issued only after a lapse of one year of the time contemplated under the alleged agreement entered into between the plaintiff and the first defendant.

24.Further, the plaintiff has also not challenged the cancellation of the power of attorney, by the second defendant despite knowing about the same. Admittedly, as already discussed, the first defendant could not have claimed to be the absolute owner, merely based on the power of attorney. The power of



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attorney was also cancelled even prior to the filing of the suit, which was also brought to the notice of the plaintiff. In such circumstances, the plaintiff ought to have challenged the cancellation of the power of attorney. As already discussed, the agreement of sale between the defendants 1 & 2 was also not exhibited. Matters have become worse for the plaintiff, in view of the conduct of the first defendant as well. First defendant, despite filing proof affidavit in lieu of chief examination, did not present himself for cross examination by the second defendant. Without any proof to substantiate the claim that first defendant was mentally unstable, his son was examined as a substitute for first defendant. The first defendant is the best person to speak about the agreement between the plaintiff and the first defendant and also payment of the entire sale consideration, the execution of the power of attorney pursuant to receipt of the entire sale consideration allegedly to be paid by the first defendant to the second defendant, instead of executing the sale deed. However, the first defendant admittedly, did not present himself for cross-examination and abandoned the witness box after filing the proof affidavit. In the above circumstances, the Courts below clearly erred in not drawing adverse inference against the first defendant.



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25.The relief of specific performance is admittedly not only an equitable relief, but also a discretionary one. The requirements of Section 16(c) as well as Section 20 of the Specific Relief Act, have to be scrupulously met by the plaintiff, who seeks such equitable and discretionary relief. In the instant case, the suit for specific performance has been admittedly filed to enforce an agreement of sale entered into between the plaintiff and the power agent of the original owner of the suit property. The said agreement between the power agent and the original owner is disputed even in the written statement. In such circumstances, it was the bounden duty of the defendants to have produced the agreement dated 13.05.1999, to establish that the second defendant had in fact entered into the said agreement dated 13.05.1999. As already discussed, the sale consideration reflected in Ex.A.1 sale agreement also raises serious doubt, since the value of the property would have increased multi-fold in a span of 10 years and the first defendant could not have certainly agreed to convey the property for a throw away price of Rs.3 lakhs, that too, when he was only the power agent accountable to the principal.

26.Pending the appeal, the suit filed by the second defendant in O.S.No.280 of 2011, came to be disposed of on 08.09.2015 and



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the additional documents were marked in the Cross Appeal as Exs.B.4 and B.5, namely the suit filed by the second defendant. It is seen from the said judgment and decree that a suit was decreed granting relief of cancellation of the settlement deed dated 30.12.2010. However, the suit in respect of the other reliefs came to be dismissed against the appellant / second defendant. It has not been brought to my notice by the learned Counsel on either side as to whether the said judgment in O.S.No.280 of 2011, was taken up on further appeal by either of the parties. However, I do not see the dismissal of the suit filed by the appellant granting the relief of declaration that the settlement deed executed by the first defendant in favour of his son alone to have any material bearing in the present suit for specific performance.

27.Unfortunately, the Trial Court as well as the First Appellate Court have been swayed away by the agreement entered into between the defendants which was not even exhibited in the first place and the registered power of attorney to deal with the property. The said power of attorney which has been marked as Ex.B.1, does not refer to the alleged sale agreement dated 13.05.1999 and it only proceeds on the footing that the second defendant is frequently travelling and he is unable to take care of



the properties and for such purposes, he has excluded the said power of attorney, empowering the power agent to sell and also lease and mortgage the suit property. One of the clauses in Ex.B.1 power of attorney also assumes great amount of significance, which is extracted hereunder:

*“ehd; fzf;F nfl;Fk; nghJ jhq;fs; vd;
ghh;itf;F fzf;F fhl;l ntz;oaJ. ,ijj; jtpu ntW
Mtzq;fs; gjpatpy;iy. vd;dhy; ifbaGj;jplg;gl;l
Mtzq;fis jhq;fs; jhf;fy; bra;a mjpfhuk; ,y;iy.
,jw;F gpujp gpunah\$dkhf ve;j bjhifa[k;
bgw;Wf; bfhs;stpy;iy.”*

28.The above clause in the power of attorney virtually demolishes the plea of the second defendant having executed an agreement of sale in favour of the first defendant on 13.05.1999. When the said agreement of sale has not been placed before the Trial Court by the plaintiff or the defendant, I am unable to see how the plaintiff can seek equity when an agreement of sale is with the power agent of the original owner. Further, though under Ex.B.2, the said power of attorney was cancelled by the second defendant and it was also duly intimated to the first defendant, the first defendant did not take any steps in furtherance of being informed about the cancellation of the power of attorney. If really the first



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defendant was a bonafide agreement holder cum power agent, the first defendant would have immediately questioned the unilateral cancellation of the power of attorney, contending that the property had already been transferred in favour of the first defendant, on payment of the entire sale consideration and that instead of executing the sale deed for reasons agreed between the defendants an agreement of sale and power of attorney alone has been executed. It was only the second defendant who came to challenge the settlement deed executed by the first defendant in favour of his son and not the first defendant. Thus, I do not see any bonafides on the part of the first defendant as well. The plaintiff is also not a bonafide agreement holder for value, for the various reasons already discussed hereinabove.

29.Coming to the decisions that have been relied on by the learned Counsel for the parties, learned Counsel for the appellant has relied on the oft quoted decision of the Hon'ble Supreme Court in ***Vidhyadhar's*** case, wherein it has been held that under Section 114 of the Evidence Act, when a party to the suit does not enter the witness box, then the Courts have to necessarily draw an inference adverse against the said parties. This position is pressed into service in support of the arguments of Mr.H.Arumugam, that first



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defendant, after filing proof affidavit did not present herself for cross examination.

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30.In **Anand's** case, this Court held that when in a civil suit an application is filed to produce deposition of witness in a criminal case conducted before the Sub Divisional Executive Magistrate, applying Section 114(e), this Court held that presumption could be drawn that all judicial and other acts are presumed to be rightly and regularly performed and recording of evidence is also one such official act and necessary presumption could be safely drawn on the grounds of public policy. This Court further held that Civil Court cannot ignore such presumption and doubt correctness of such deposition.

31.**Anantha's** case is relied on for the proposition that evidence adduced in a criminal case is not admissible, before the Civil Court, at best it can be received only for the limited purposes of contradicting or corroborating the evidence under Sections 145, 155 & 157 of the Evidence Act, that too of persons who are already dead. In the instant case, the parties are very much alive and in such circumstances, the Courts ought not to have placed any reliance on the deposition in the criminal case that was relied on by

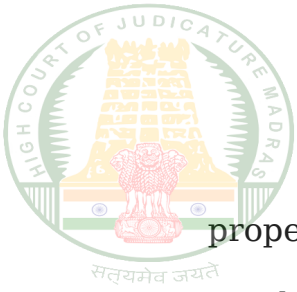


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the plaintiff. Therefore, the Courts have certainly fell in error in relying on the sole statement of the second defendant before the Judicial Magistrate Court, Nilakottai, in Crl.M.P.No.3873 of 99 in C.C.No.22 of 2003, marked as Ex.B.3.

32.In ***G.Sunil Panickar's*** case, the Division Bench of this Court held that when a specific time is stipulated for balance sale consideration and no steps were taken within the said period, mere affirmation in the plaint that the plaintiff was ready and willing would not be sufficient and the Court has to necessarily infer that in such circumstances, plaintiff has failed to establish continuous readiness and willingness.

33.Mr.J.John, learned Counsel for the first respondent has relied on certain judgments, which have been enumerated hereinabove. In ***T.Sivaperumal's*** case, this Court held that under Section 202 of the Indian Contract Act, when a power of attorney coupled with interest is executed even if the power of attorney does not state that it is one coupled with interest, when possession has been handed over and original title deeds have also been parted with and sale consideration has also been paid, power of attorney is one coupled with interest only and can be cancelled only after prior



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property notice to the agent. I do not have any quarrel with regard to the ratio. However, in the facts of the present case, the defendants have failed to establish that the entire sale consideration was paid under the agreement dated 13.05.1999, which was in fact not even accepted before the Trial Court, much less proved to be true and genuine.

34.Further as already discussed, the power of attorney does not even disclose the fact that the power of attorney is coupled with interest and also did not mention that the possession of the property has been handed over to the power of attorney. In fact, it appears from miscellaneous petitions filed pending Second Appeal that possession continue to remain only with the appellant and interim injunction was also granted by this Court and contempt petition has also been filed. In such circumstances, the ratio in ***T.Sivaperumal's*** case cannot be applied to the facts of the present case.

35.The Division Bench in ***M.Kalaiselvi's*** case held that when a common judgment is delivered, an appeal filed against only one decree, would have the effect of *res judicata* under Section 11 of CPC, entitling dismissal of the only appeal filed, without preferring



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a separate appeal against the other decree under a common judgment. This decision again in my considered opinion will not apply to the facts of the present case, for the simple reason that the suit filed before the trial Court was one for specific performance of the agreement of sale between the plaintiff and the first defendant. The suit was decreed and in the pending appeal, the first defendant filed a Cross Appeal only with respect to a direction regarding withdrawal of the sale consideration. In such circumstances, I do not see any necessity for a separate challenge to be made against the decision or decree passed in the Cross Appeal, when the substantial relief of specific performance granted by the Courts concurrently has been challenged in the present Second Appeal.

36.In *Lakshmi Ammal's* case, this Court held that once execution of an agreement of sale and receipt of substantial amount is established, then nothing more is to be proved by agreement holder to establish readiness and willingness to establish his part of the contract. The said decision was rendered on the peculiar circumstances and facts of that case. However, in the instant case, I have already doubted the agreement entered into between the defendants, in furtherance of which alone, the suit sale agreement was entered into between the plaintiff and first



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defendant. In such circumstances, the ratio laid down in ***Lakshmi Ammal's*** case cannot be of any relevance to the facts of the present case.

37.In ***A.M.K.Shahul Hameed's*** case, this Court on facts found that the power of attorney was coupled with consideration and therefore, the cancellation of power of attorney was not legal. In view of the discussion made hereinabove, I am unable to apply the ratio laid down in this case as well.

38.Lastly, reliance has been placed on the decision in ***Sampath's*** case. This Court again was dealing with the case where a power of attorney and a receipt evidencing payment of entire sale consideration were exhibited before the Court and in such circumstances, this Court held that merely because the interest was not recited in the power of attorney deed, it cannot be said that the power was not one coupled without interest. On facts of the present case, the ratio laid down in this case also are clearly distinguishable.



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39.In view of the foregoing discussion, in fine, I am inclined to allow the Second Appeal. The substantial questions of law are answered in the following manner:

1) Courts below ought not to have accepted the alleged sale agreement dated 30.05.1999, which has not been exhibited before the Trial Court merely based on the evidence adduced in a criminal case.

2) The power of attorney executed under Ex.B.1, was not only a power of attorney which was not coupled with interest and in the absence of any transfer of interest pursuant to the power of attorney in favour of the first defendant, the first defendant could not have legitimately proposed sale of the suit property, as if he had already become the owner of the same.

3) In view of the relief of specific performance, being set aside, the question of entitling the first defendant to withdrawal of the sale consideration does not arise. The question of law 3 is accordingly answered.



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4) I have already held that the plaintiff is not a bonafide purchaser for value and therefore, the agreement of sale in Ex.A.1 have been entered into by the plaintiff conscious of the fact that the first defendant is not the owner of the property having no title is hit by Section 17 of the Specific Relief Act and consequently, not enforceable.

5) Even according to the plaintiff, the balance sale consideration of Rs.1,10,000/- has not been paid and the first demand by way of pre-suit notice being sent only on 09.05.2011, after a lapse of four months from the expiry of the time period contemplated under Ex.A.1, sale agreement establishes lack of readiness and willingness on the part of the plaintiff.

6) In view of the foregoing discussion, the fact that the first defendant did not subject himself for cross examination after having filed a proof affidavit, I have already found that Courts ought to have drawn adverse inference, which they have failed to do and hence, this question of law is also answered in favour of the appellant.



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7) In view of the foregoing discussion, having already found that the agreement between the first defendant and the second defendant being not proved and there being no conclusive proof of payment of sale consideration by the first defendant to the second defendant, the Courts ought not to have been swayed by the evidence of the first defendant that too without testing the evidence in cross examination that entire sale consideration was paid by the first defendant to the second defendant.

40.In fine, this Second Appeal is allowed and the judgment and decree in A.S.No.61 of 2015, on the file of the Principal District Court, Dindigul dated 25.01.2018 and the judgment and decree in O.S.No.490 of 2011, on the file of the Additional Sub Court, Dindigul dated 08.09.2015 are set aside, with costs. Consequently, connected miscellaneous petitions are closed.

12.06.2026

Index : Yes / No

NCC : Yes / No

MR

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To

1.The Principal District Judge,
Dindigul.

2.The Additional Sub Judge,
Dindigul

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



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.186 of 2018

12.06.2026