



A.S.(MD) No.396 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 28.01.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

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&

C.M.P.(MD)Nos.14530 & 19548 of 2025

S.Revathi

... Appellant / Plaintiff

Vs.

Smt.Krishnabai (died)

1.S.Sudhakaran

2.S.Premkumar

... Respondents / Defendants

PRAYER: Appeal Suit filed under Section 96 of CPC praying this Court to partly set aside the Judgment and decree dated 04.06.2025 made in O.S.No.309 of 2020 on the file of the learned Principal District Judge, Dindigul by allowing the appeal suit.

For Appellant : Mr.I.Romeo Roy Alfred



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For Respondents : Mr.G.Gomathisankar for R1
: Mr.V.Baskaran for R2

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The plaintiff in O.S No.309 of 2020 on the file of the Principal District Judge, Dindigul is the appellant. The appellant filed the said suit seeking refund of the advance amount paid by her. The suit property belonged to late Krishnabai / mother of the respondents herein. The said Krishnabai and her son S.Sudhakaran / R1 agreed to sell the suit property to the appellant for a sum of Rs.1,72,59,068/-. On 17.08.2019, the appellant paid a sum of Rs.40,00,000/- to the said Krishnabai and the first respondent herein. According to the appellant, a sum of Rs.25,00,000/- was paid to Krishnabai and a sum of Rs.15,00,000/- was paid to the first respondent herein. However, the agreement was not reduced into writing. Ex.A1 dated 17.08.2019 was issued by way of receipt. The appellant subsequently came to know that the suit property was encumbered. The appellant was originally informed that the property was free of encumbrance. Hence, the appellant lodged a complaint before

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the jurisdictional police and the same was registered as Crime No.865 of 2020. Ex.A3 is the FIR registered at the instance of the appellant. The parties exchanged legal notices. Ex.A5 dated 18.10.2019 is the notice issued by the appellant's husband, while Ex.A6 dated 14.11.2019 is the reply. The appellant sought refund of the advance amount paid by her with interest. Krishnabai and her son Sudhakaran claimed that only a sum of Rs.25,00,000/- was received and sought to fasten the blame on the appellant for non-completion of the transaction. The appellant, therefore, filed O.S No.309 of 2020 before the Court below on 09.11.2020. Written statement was filed and based on the rival pleadings, the court below framed as many as four issues. During the pendency of the suit, the first defendant passed away and her other son Premkumar (R2 herein) was brought on record as the third defendant.

2.The appellant examined herself as PW.1 and marked Ex.A1 to Ex.A7. The defendants 2 & 3 examined themselves as D.W.1 & D.W.2 and no documentary evidence was adduced on their side. After consideration of the evidence on record, the trial Court dismissed the suit qua the third defendant. The second defendant was directed to refund the



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advance amount of Rs.40,00,000/- within three months without interest.

Aggrieved by the non-fastening of joint liability as against the second respondent / D3 and denial of interest amount, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and called upon this Court to grant relief as prayed for by modifying the impugned Judgment and decree passed by the trial Court.

4.Per contra, the learned counsel for the respondents submitted that the respondents have complied with the decree passed by the Court below and taking into account the said bona fide act, the appeal may be dismissed.

5.We carefully considered the rival contentions and went through the evidence on record. The points that arise for determination are whether the appellant is entitled to interest on the advance amount and if so, at what rate and whether the decree has to be passed against the second respondent also.



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6.It is not in dispute that Krishnabai and her son Sudhakaran (D2) had agreed to sell the property in question in favour of the plaintiff. It is true that the property was encumbered at the time of agreement. There is nothing on record to show that the appellant was put on notice about the encumbrance. While the defendants would claim that only a sum of Rs.25,00,000/- was received as advance, the Court below had rendered a positive finding that a sum of Rs.40,00,000/- was paid as advance. Ex.A1 dated 17.08.2019 signed by Krishnabai bears this out. The respondents herein have not filed any cross-appeal impugning the aforesaid finding of the Court below. On the other hand, they complied with the impugned decree by depositing the entire decretal amount. The finding that the appellant paid a sum of Rs.40,00,000/- to Krishnabai and the first respondent herein has become final.

7.The first question that calls for consideration is whether the appellant is entitled to interest ? While the agreement between the parties was entered into on 17.08.2019, dispute arose between them shortly thereafter. It became clear as daylight that the plaintiff was not interested in proceeding with the transaction. As per Section 55(1)(a) of the



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Transfer of Property Act, 1882, the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is and the buyer is not aware, and which the buyer could not with ordinary care discover. This Section as it originally stood referred only to any material defect in the property. It was however held that the material defect in the property would also include a defect of title and encumbrance in the property. The term “any material defect” in the property should not be restrictively construed. It included omission to disclose encumbrance which the purchaser had no apparent means of discovering (vide ***Gondu Ramasubba Iyer v. Muthiah Kone 1925 AIR Mad 968***). The section was amended vide Act 20 of 1929 and the words “or in the seller's title thereto” were incorporated in the provision. An encumbrance had been held to be an instance of a defect in title. It is true that the seller is not obliged to disclose what the buyer could with ordinary care discover. But the burden to show that the buyer could have discovered with ordinary care would lie only on the seller. The buyer cannot be expected to prove the negative. This obligation to disclose must be discharged at the time when the parties entered into the agreement. This is because Section 55(1)(g) of the Act cast liability on



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the seller to discharge all encumbrances on the property except where the property is sold subject to encumbrance. Where the property is not sold subject to encumbrance, only if the buyer is aware of the extent of encumbrance, he can make up his mind as to whether the seller can discharge the same at the time of sale. The Hon'ble Supreme Court in ***Moideenkutty v. Abraham George (2025 LiveLaw (SC) 1207)*** held that where the sale agreement is vitiated by suppression of prior encumbrance, the buyer would be entitled to refund of the advance amount with interest. The defendants did not established before the court below that the plaintiff entered into the transaction with full knowledge of the prior encumbrance. Nor was it their case that the plaintiff could have with ordinary case discovered its existence. The court below rightly awarded refund of the advance amount. But it erred in not awarding interest. When the seller is at fault and the buyer is free of blame, interest ought to be awarded along with refund of the principal amount. We, therefore, modify the decision of the court below by directing the respondents to pay interest @ 6% per annum from the date of sale agreement till the date of deposit of the advance amount before the court below.



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8.The advance amount was received by the mother of the respondents herein. It was she who issued the receipt. The property belonged to her. The mother is no more. The respondents have inherited the property. Therefore, they are under an obligation to clear the debt. This obligation is to be jointly discharged by the respondents. The court below erroneously passed the decree only against the first respondent. We modify the same. We hold that both the respondents are jointly liable.

9.Till the interest amount as directed herein is paid in full, there will be a corresponding charge over the suit property. The judgment and decree of the court below is modified accordingly. This appeal is allowed on these terms. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) (R.K.M., J.)
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To

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The Principal District Judge, Dindigul.



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AND
R.KALAIMATHI, J.

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