

SA(MD).No.521



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on 16.04.2026 | Judgment pronounced on 05.06.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.521 of 2017 and CMP(MD).No. 11266 and 2017

1.Karuppaiah (died)
2. Ganesan

... Appellants / defendants

Vs.

1. Mani
2. Pandiammal
(2nd respondent is brought on record
as LR of the deceased 1st appellant vide orer, dated
30.11.2023 made in CMP(MD).No.2662 of 2021) .. 1st respondent/ plaintiff
.. 2nd respondent / respondent

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 11.08.2017 made in A.S.No.31 of 2014 on the file of the Additional District and Sessions Court, Theni at Periyakulam, confirming the Judgment and decree dated 04.08.2014 made in O.S.No.2 of 2010 on the Sub Court, Theni.

For Appellant : Mr.H. Lakshmi Sankar
for Mr.V. George Raja
For respondent No. 1 : Mr.R. Suriya Narayanan



JUDGMENT

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The appellants are the unsuccessful defendants in a suit for specific performance of an agreement of sale. The appellants suffered concurrent findings before both the trial Court as well as the first appellate Court.

2. The Second Appeal was admitted by this Court on 06.01.2025 on the following substantial questions of law:

1. Based on the deposition of PW.1 whether readiness and willingness is proved so that the alleged sale agreement can be enforced under Section 20 of Specific Relief Act?

2. Whether the transaction between the parties is only sale a loan transaction and not sale agreement, whether the plaintiff is entitled to enforce the sale agreement despite clear statutory provision contained in Section 92 of Indian Evidence Act, 1972?

3) When the defendants have raised a counter claim and has filed Court fees for the decree and the plaintiff has not filed any written statement for the same whether the Trial Court is right in



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granting specific relief? Whether the Court is right in granting decree?

4) Whether the failure of the Trial Court to not framing any particular issues as regards the discharge receipt is vitiated the trial of suit leading to the decree of the suit?

5) Whether the Courts below have followed the letter and spirit and scope of Section 45 and 73 of Indian Evidence Act, 1872, in the matter of evaluating the evidence of expert?

3. I have heard Mr. H. Lakshmi Sankar, learned counsel appearing for Mr. V. George Raja, learned counsel for the appellants, and Mr. R. Suriya Narayanan, learned counsel appearing for the first respondent. There has been no appearance on behalf of the second respondent.

4. The brief facts that are necessary for deciding the Second Appeal are as follows:

(i) The first respondent/plaintiff entered into an agreement of sale with



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the first defendant in the suit, in and by a sale agreement dated 12.09.2008, agreeing to sell the suit property to the first respondent/plaintiff. The plaintiff had also paid an advance amount of Rs.1,00,000/-. It is the further case of the plaintiff that, under the said agreement, he was obliged to pay the remaining sale consideration of Rs.3,18,000/-. A period of 18 months was fixed for completion of the sale transaction. Though the plaintiff was always ready and willing to perform his part of the contract, the first defendant was evading completion of the sale transaction. The plaintiff had deposited the balance sale consideration of Rs.3,18,000/- in his bank account in order to demonstrate that he was ready and willing to perform the obligations cast upon him. Therefore, the plaintiff sought specific performance of the agreement of sale. However, in view of the alienation effected by the first defendant in favour of the second defendant on 17.11.2008, the plaintiff also sought a declaration that the said sale deed was null and void and not binding on him.

(ii) The suit was resisted by the purchaser, namely, the second defendant. Curiously, the first defendant chose to adopt the written statement filed by the second defendant. In fact, the second defendant also filed a counterclaim seeking a mandatory injunction directing the plaintiff to cancel the agreement dated 12.09.2008. The second defendant had also paid the necessary court fee



on the said counterclaim.

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(iii) The parties went to trial. It was contended by the second defendant that the agreement entered into between the plaintiff and the first defendant was only a loan transaction and that the first defendant never intended to convey the suit property to the plaintiff. The second defendant further contended that, on 15.11.2009, a sum of Rs.1,10,000/- was paid towards discharge of the loan transaction, and a receipt was also executed by the plaintiff, who had promised to execute the necessary documents for cancellation of the agreement of sale. However, according to the second defendant, despite receipt of the amount of Rs.1,10,000/-, the plaintiff went back on his promise. Hence, the second defendant contended that the plaintiff was not entitled to seek specific performance of the said agreement of sale and therefore sought dismissal of the suit.

(iv) The Trial Court, upon appreciation of the oral and documentary evidence, found that the defendants had failed to prove their case that the agreement was merely a loan transaction and not an intended agreement of sale. On the contrary, the trial Court held that the plaintiff had established, through oral and documentary evidence, that the parties had genuinely intended to enter into an agreement of sale and that the plaintiff had always been ready and



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willing to perform his part of the contract. Accordingly, the trial Court proceeded to decree the suit and dismissed the counterclaim. Aggrieved by the judgment and decree of the trial Court, the defendants preferred an appeal in A.S. No.31 of 2014 challenging the decree granted in the suit for specific performance. No independent appeal was preferred as against the dismissal of the counterclaim. The first appellate Court concurred with the findings of the trial Court and held that the plaintiff was ready and willing and was entitled to the discretionary relief of specific performance. The first appellate Court also found that the agreement of sale was not intended as security for any loan transaction, as alleged by the defendants / appellants. Aggrieved by the said concurrent findings, the present Second Appeal has been preferred.

5. Mr. H. Lakshmi Sankar, learned counsel appearing for the appellant / second defendant, would submit that the parties had entered into two agreements, one being a registered agreement and the other an unregistered agreement, and that an advance amount of Rs.1,00,000/- alone had been paid, leaving a balance sale consideration of Rs.3,18,000/- to be paid within a period of 18 months. Mr. H. Lakshmi Sankar, learned counsel appearing for the appellant/second defendant, would further submit that the plaintiff chose to deposit the balance sale consideration in his own bank account only on 17.12.2009 and that there is not even a pleading, much less any evidence, to



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establish that the plaintiff had always been ready and willing to perform his part of the contract from the date of the agreement of sale.

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6. He would further submit that, after issuing a notice on 24.12.2009, the plaintiff filed the suit on 07.01.2010. He would place reliance on Ex.B1, namely, the loan discharge receipt. He would also contend that, though a counterclaim was filed, no reply statement was filed in respect of the said counterclaim and, therefore, there was no denial of the allegations made therein. Hence, according to him, the trial Court ought to have decreed the counterclaim. However, erroneously, the counterclaim came to be dismissed and the suit was decreed. He would further submit that, though the counterclaim was dismissed, only a single appeal was preferred. He would also refer to Section 55 of the Indian Contract Act, which requires the order of performance to be carried out in the manner contemplated by the contract entered into between the parties.

7. Referring to the facts of the present case, Mr. H. Lakshmi Sankar, learned counsel, would contend that the agreement contemplated payment of the balance sale consideration in the manner agreed between the parties. According to him, the plaintiff ought not to have voluntarily and arbitrarily deposited the balance sale consideration in his own bank account, and such deposit would not

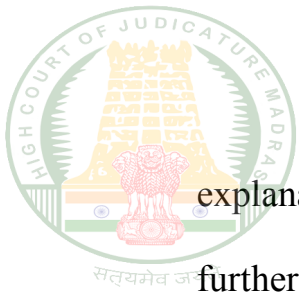


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amount to compliance with the obligations arising under the agreement of sale.

Mr. H. Lakshmi Sankar, learned counsel would further submit that the trial Court had not properly discussed the evidence adduced by the parties and had failed to consider the crucial aspect of readiness and willingness, which is a fundamental requirement in a suit for specific performance. He would also refer to the evidence of P.W.1 to the effect that he was not possessed of sufficient funds between September 2008 and December 2009, when he deposited the balance sale consideration amount of Rs.3,18,000/-.

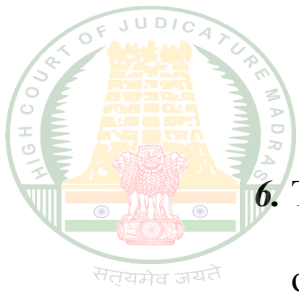
8. He would further refer to the conduct of the plaintiff, who had denied his signatures not only in Ex.A1 sale agreement but also in the plaint as well. According to the learned counsel, such a stand was taken by the plaintiff only in order to evade the effect of Ex.B1 discharge receipt. Referring to such conduct of the plaintiff, Mr. H. Lakshmi Sankar would contend that the relief of specific performance being an equitable and discretionary relief, the plaintiff ought to approach the Court with clean hands, and a person who had gone to the extent of denying his own signature in the plaint as well as in the agreement admittedly entered into by him does not deserve any equity in law. He would further submit that the first defendant, with whom alone the plaintiff had entered into the agreement of sale, was not even examined, and there is also no



explanation forthcoming on the side of the plaintiff in that regard. He would further contend that, even assuming that the discharge receipt Ex.B1 is held not to have been proved, even then the plaintiff has not established that he is entitled to the discretionary relief of specific performance.

9. In support of his contentions, Mr. H. Lakshmi Sankar, learned counsel, relied upon the following decisions:

1. The judgment of the Hon'ble Supreme Court reported in **1999 (6) Supreme Court Cases 104** in the case of ***K.S. Satanarayana Vs. V.R. Narayana Rao.***
2. The judgment of the Hon'ble Supreme Court reported in **1999 (4) Supreme Court Cases 596** in the case of ***S.Gopal Reddy Vs. State of A.P.***
3. The judgment of this Court reported in **2009-5-LW-211** in the case of ***Renganayagi and five others Vs.s K.R. Renganathan Mudaliar.***
4. The judgment of this Court reported in **1976 (1) MLJ 243** in the case of ***Ramaswamy Gounder Vs. K.M. Venkatachalam and others.***
5. The judgment of this Court reported in **2010 (2) MLJ 253** in the case of ***R.Rajaram and another Vs. T.R. Maheswaran.***



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6. The judgment of this Court reported in **2009 (1) CTC 803** in the case of ***K.R. Venugopal Vs. K.R. Srinivasan and 4 others.***

7. The judgment of the Hon'ble Supreme Court made in **SLP © D.No. 59467 of 2024** in the case of ***Charan Singh Vs. Ram Saroop***

8. The judgment of this Court reported in **2024 SCC Online Mad 5588** in the case of ***Chidambaram and others Vs., Kannan (died) and others.***

10. Per contra, Mr. R. Suriya Narayanan, learned counsel appearing for the first respondent / plaintiff, would firstly contend that there is no necessity to interfere with the concurrent findings of fact arrived at by the Courts below, particularly when there is no perversity or illegality in the appreciation of the oral and documentary evidence. He would further submit that the first defendant, with whom the plaintiff had entered into the agreement of sale, did not dispute the same in the written statement and also did not adduce any evidence during trial. According to him, the first defendant having not denied the execution of Exs.A1 and A2, namely, the two agreements of sale, it is not open to the appellant/second defendant to contend that the agreements are not true or valid. Mr. R. Suriya Narayanan, learned counsel would further submit that the second defendant is none other than the son-in-law of the first defendant and that he had obtained the sale deed within a period of two months



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from the date of the agreement of sale entered into between the plaintiff and the first defendant. He would therefore contend that the appellant / second defendant is not a bona fide purchaser, but a person who was fully aware of the subsisting agreement of sale between the plaintiff and the first defendant.

11. Mr. R. Suriya Narayanan, learned counsel appearing for the first respondent, would further submit that the second defendant had also not specifically denied Ex.A2 agreement and, in this regard, he invited my attention to paragraph 4 of the written statement filed by the appellant/second defendant. It is his submission that the mandatory requirement under Order VIII Rule 3 CPC has not been complied with in the present case. As regards the plea that the transaction was only a loan transaction, Mr. R. Suriya Narayanan, learned counsel, would further submit that, by examining P.W.1 and P.W.2, who are the witnesses to Exs.A1 and A2 agreements, the plaintiff had discharged the burden of proof with regard to the due execution of the said agreements, and thereafter the burden shifted to the appellants to disprove the said documents. With regard to the alleged receipt marked as Ex.B1, Mr. R. Suriya Narayanan, learned counsel, would contend that even the amounts mentioned in the said receipt do not tally with the case put forth by the defence. He would further submit that Ex.B1 is un-stamped and inadmissible in evidence and that, despite



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such legal embargo, the Courts below had nevertheless discussed the merits of the document and ultimately disbelieved the defence case. He would also invite my attention to the evidence of D.W.2 in cross-examination as well as the evidence of C.W.1, the handwriting expert, who had spoken about the comparison of signatures in the disputed documents. He would further submit that, when the defendants, upon whom the burden had shifted, failed to establish the alleged loan transaction, Section 92 of the Indian Evidence Act would apply in full force and it is not open to the appellants to deny the agreement of sale. The learned counsel therefore prayed for dismissal of the Second Appeal.

12. I have carefully considered the submissions made by the learned counsel appearing for the respective parties.

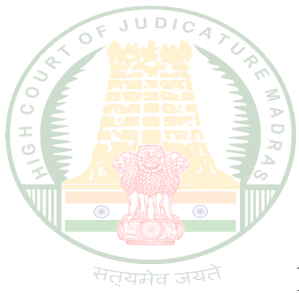
13. In a suit for specific performance, the plaintiff is required to discharge the burden of proof by establishing that he has always been ready and willing to perform the obligations cast upon him under the agreement. However, in a case of this nature, where the defendants dispute the character of the agreement and set up a defence that the transaction was only a loan transaction and that the agreement was executed merely as security, it is for the plaintiff to first



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establish that there was a valid agreement of sale between the parties. In this regard, the plaintiff has examined the witnesses to the agreement, namely, P.W.2 and P.W.3, who have spoken about the execution of the agreement of sale between the plaintiff and the first defendant. According to the plaintiff, a sum of Rs.1,00,000/- was paid as advance and the remaining sale consideration of Rs.3,18,000/- was to be paid within a period of 18 months from the date of the agreement. In the plaint, the plaintiff has specifically stated that he had always been ready and willing to pay the balance sale consideration of Rs. 3,18,000/-.

14. Even prior to filing of the suit, the plaintiff had deposited a sum of Rs.3,18,000/- in his Indian Bank account in order to demonstrate his readiness and willingness to complete the transaction and to facilitate execution of the sale deed. The plaintiff had also issued a pre-suit notice calling upon the first defendant to come forward and execute the sale deed. It is the further case of the plaintiff that, upon applying for an encumbrance certificate on 21.12.2009, he came to know about the sale deed executed by the first defendant, in favour of the second defendant, behind his back. Alleging that the said transaction between the father-in-law and son-in-law was collusive and intended to defeat the rights of the plaintiff under the agreement of sale, the suit came to be filed.

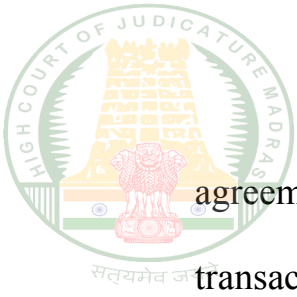


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15. From the evidence of the witnesses to the agreement, it is seen that both the witnesses have spoken about the execution of the agreement of sale and the intention of the parties to convey the suit property to the plaintiff. On the side of the appellants/defendants, there has been no acceptable evidence to rebut the cogent evidence of the attesting witnesses with regard to the due execution of the agreement of sale between the plaintiff and the first defendant. As rightly contended by Mr. R. Suriya Narayanan, learned counsel appearing for the first respondent/plaintiff, the best person who could have refuted the genuineness of the agreement of sale was the first defendant himself. The first defendant had conveniently executed the sale deed in favour of his son-in-law, namely, the second defendant, and thereafter chosen to stay away from the proceedings, except for joining hands with the appellant while preferring the first appeal. Even the present Second Appeal has been filed by the appellants/defendants, while the legal representatives of the first appellant, who died pending the Second Appeal, have merely been arrayed as the second respondent and had not chosen to contest the Second Appeal as well.

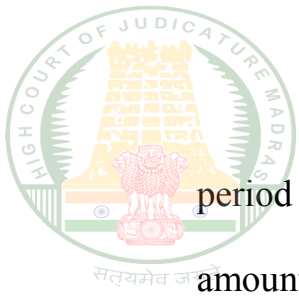
16. In the light of the above, the trial Court as well as the first appellate Court cannot be said to have committed any error in holding that Ex.A1 sale



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agreement was only an intended and genuine sale transaction and not a loan transaction, as contended by the defendants. The discussion with regard to Ex.B1, namely, the alleged discharge receipt, and the finding that there were variations between the admitted signatures of the plaintiff found in the agreement of sale and the disputed signatures found in Ex.B1 are also based on the evidence available on record, particularly the report of the handwriting expert, who had also been examined as C.W.1. Though the defendants had taken a plea that the transaction was only a borrowing of money and that there was no intended agreement of sale, there is absolutely no evidence on the side of the defendants to substantiate such a contention. There is also no proof whatsoever with regard to the alleged payment of interest, though such a plea had been raised in the written statement.

17. Thus, in the light of the above discussion, I am unable to point out any error committed by the Courts below in holding that the agreement of sale was not a loan transaction or a document executed merely as security for a loan transaction, but was in fact a genuine agreement of sale. As regards readiness and willingness, once the agreement has been proved by the plaintiff, the parties are bound by the terms and conditions contained therein. The agreement contemplated payment of the balance sale consideration within the stipulated



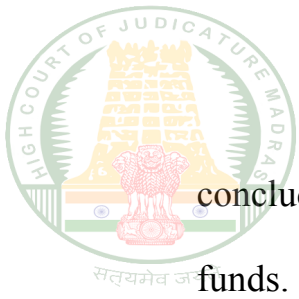
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period of 18 months fixed for completion of the sale transaction. An advance amount of Rs.1,00,000/- had been paid under the agreement and the remaining balance sale consideration of Rs.3,18,000/- was to be paid within the said period of 18 months.

18. Admittedly, the plaintiff has been able to demonstrate that, on 17.12.2009, he deposited the entire balance sale consideration of Rs.3,18,000/- in his bank account. The said deposit was well within the stipulated period of 18 months. The pre-suit notice was also issued on 24.12.2009, which again fell within the said period of 18 months reckoned from 12.09.2008, and the suit itself had also been filed within the said period. Therefore, I am unable to countenance the argument advanced by Mr. H. Lakshmi Sankar that the plaintiff had not been ready and willing to perform his part of the contract.

19. Though an argument was advanced that the agreement contemplated deposit of the balance sale consideration into Court prior to filing of the suit and that the plaintiff had not complied with the same and therefore ought to be non-suited, this Court is unable to accept the said line of argument.

20. According to the plaintiff, he was always ready and willing to



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conclude the transaction and had also demonstrated availability of sufficient funds. However, during the interregnum period, the first defendant sold the suit property to his own son-in-law, namely, the second defendant, within a period of two months from the date of the agreement of sale entered into between the plaintiff and the first defendant. The second defendant therefore clearly cannot be said to be a bona fide purchaser for value. He cannot plead ignorance of the fact that his father-in-law had entered into an agreement of sale with the plaintiff and had received an advance amount as well, agreeing to sell the property to the plaintiff within the stipulated period of 18 months on receipt of the balance sale consideration of Rs.3,18,000/-. In such circumstances, upon coming to know of the sale transaction executed between the defendants, in an attempt to defeat his rights under the agreement of sale, the plaintiff had rushed to the Court seeking not only the relief of specific performance but also a declaration that the sale deed executed by the first defendant in favour of the second defendant was null and void and not binding upon him.

21. In such circumstances, I am unable to accept the argument of Mr. H. Lakshmi Sankar that, on account of non-compliance with the alleged pre-condition, namely, deposit of the balance sale consideration into Court, the plaintiff ought to be denied the discretionary relief of specific performance.



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When an agreement holder is put on notice that the property which he had agreed to purchase has already been alienated in favour of a third party, such an agreement holder, who approaches the Court seeking enforcement of the agreement of sale while simultaneously challenging the alienation, cannot be expected to deposit the entire balance sale consideration into Court at the threshold. The plaintiff had already been placed in a disadvantageous position by the conduct of the first defendant in executing the sale deed in favour of the second defendant, who was not a stranger, but his own son-in-law. In such circumstances, I am unable to hold that the alleged non-compliance with Section 55 of the Indian Contract Act, namely, non-deposit of the balance sale consideration before filing the suit for specific performance, is fatal to the case of the plaintiff on the facts of the present case.

22. Though it is contended by Mr. H. Lakshmi Sankar that the plaintiff has not been able to prove his readiness and willingness from the date of the agreement, when the agreement itself stipulated a period of 18 months for payment of the balance sale consideration and the plaintiff has shown that he was possessed of the entire balance sale consideration within the said period of 18 months, I am unable to hold that the plaintiff had not been ready and willing from the date of the agreement till the date of deposit made in the plaintiff's



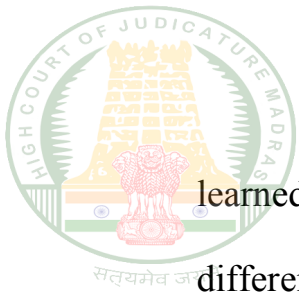
bank account on 17.12.2009.

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23. The trial Court as well as the first appellate Court therefore cannot be faulted for holding that the plaintiff was ready and willing and consequently entitled to the discretionary relief of specific performance under Section 16(c) r/w. Section 20 of the Specific Relief Act. As long as the appellants had failed to establish that the sale agreement was only a security for a loan transaction, I do not see how the provisions of Section 92 of the Indian Evidence Act can be applied to the factual matrix of the present case so as to non-suit the plaintiff.

24. Even though the Courts below had endeavoured to compare the signatures by exercising the power available under Section 73 of the Indian Evidence Act, the disputed signature of the plaintiff found in Ex.B1 — the alleged discharge receipt was also referred to a handwriting expert under Section 45 of the Indian Evidence Act. The expert's report also concurred with the opinion arrived at by the Courts below that the signatures found in Ex.B1 differed from the admitted signatures of the plaintiff found in the agreement of sale.

25. Though an argument was advanced by Mr. H. Lakshmi Sankar,



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learned counsel for the appellant, that the plaintiff was in the habit of signing differently even in the same agreement, I do not see how the agreement of sale can be disbelieved, particularly when the defendants themselves had admitted the factum of the agreement of sale having been entered into, except for contending that it was intended only as security for a loan transaction. The burden lay heavily on the defendants to prove Ex.B1 discharge receipt, which they failed to discharge. In this context, the findings of the Courts below cannot be termed either perverse or improper so as to warrant interference in a Second Appeal.

26. Coming to the decisions relied upon by the learned counsel appearing for the appellant, in the case of **Mr. K.S. Satyanarayana**, the Hon'ble Supreme Court held that when the defendant had denied the signature found in the written statement, the Court ought to have probed into the matter and recorded the statement of the counsel in order to ascertain the genuineness of such a claim and to ensure that the defendant was not attempting to evade the situation after being confronted with inconvenient facts. This decision was relied upon by Mr. H. Lakshmi Sankar on the ground that the plaintiff in the present case had chosen to dispute even his signature found in the plaint as well as in the agreement of sale. However, before the Hon'ble Supreme Court, in the said

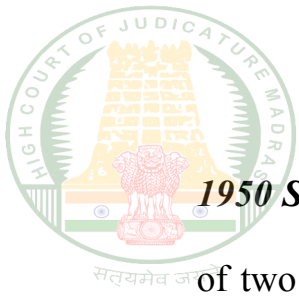


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case, the Courts did not have the benefit of expert opinion. In fact, the Hon'ble Supreme Court had observed that the trial Court, in those circumstances, could have compared the signatures by exercising its power under Section 73 of the Indian Evidence Act. In the present case, not only had the Court compared the signatures, but it had also obtained the opinion of the handwriting expert. Hence, in the given factual situation, I am unable to hold that the said decision can be applied to the present case.

27. In *S. Gopal Reddy's case*, the Hon'ble Supreme Court held that the evidence of an expert is only a weak type of evidence and that Courts should not ordinarily treat such evidence as conclusive proof without seeking independent and reliable corroboration. However, in the facts of the said case, the Hon'ble Supreme Court had doubted the evidence of the plaintiff's witnesses, who were unsuccessful in offering any corroboration. The opinion of the expert was also found to be indefinite and inconclusive. In such circumstances, the Hon'ble Supreme Court held that the prosecution had failed to establish the genuineness and authorship of the disputed letters.

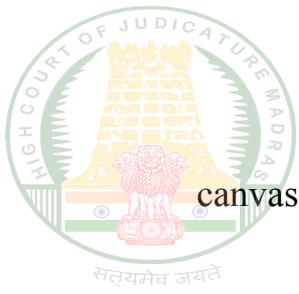
28. In *Ranganayagi's case*, the Division Bench of this Court, following the judgment of the Hon'ble Supreme Court in *Narhari v. Shankar*, reported in



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1950 SCR 754, held that when an appellant challenges the decree passed in one of two suits tried together, merely because he had not chosen to file an appeal against the decree in the other suit, the appeal cannot be held to be barred by the principles of *res judicata*. As long as the controversy involved was one and the same and there was only one common judgment, the principle of *res judicata* would not apply.

29. In the facts of the present case as well, though the dismissal of the counterclaim was not independently challenged by preferring a separate appeal, the defendants had nevertheless challenged the very decree for specific performance of the agreement of sale, as well as the declaration granted in favour of the plaintiff that the sale deed executed by the first defendant in favour of the second defendant was null and void and not binding upon the plaintiff. The issues involved and the controversy between the parties were essentially one and the same. Applying the ratio laid down by the Division Bench, I do not see how the non-filing of an independent appeal against the dismissal of the counterclaim can operate as *res judicata* or prove fatal to the case of the second defendant. In this regard, I am unable to accept the argument advanced by Mr. R. Suriya Narayanan that the non-filing of an independent appeal against the dismissal of the counterclaim would bar the appellants from



canvassing any relief in the appeal preferred against the decree in the suit.

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30. In **Ramaswamy Gounder's case**, this Court held that when a plaintiff approaches the Court with false allegations, such plaintiff would not be entitled to the discretionary relief of specific performance. The ratio laid down therein was based upon the peculiar facts and circumstances of that case, where the Court was directly concerned with the false allegations on the basis of which the plaintiff had sought the relief of specific performance. However, in the present case, I do not find any such suppression or falsity in the case projected by the plaintiff which directly affects the relief sought for before this Court. The inconsistencies pointed out in the evidence adduced on the side of the plaintiff are only ancillary or incidental in nature and do not go to the root of the plaintiff's case. Therefore, such inconsistencies cannot be put against the plaintiff so as to deny the discretionary relief of specific performance.

31. In **B. Raja Ram's case**, this Court held that when there is a specific condition in the agreement regarding payment or deposit of the balance sale consideration before initiating an action for specific performance, and if such mandatory condition is not complied with, then the plaintiff, merely by contending that he possessed the balance amount, would not be entitled to the



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relief of specific performance. I have already discussed this aspect in detail and have held that, in the peculiar facts and circumstances of the present case, non-compliance with the said condition in the agreement of sale cannot be put against the plaintiff. Hence, I am unable to apply the ratio laid down in Raja Ram's case to the facts of the present case.

32. In ***K.R. Venugopal's case***, this Court held that, in a suit for specific performance, even if the defendant does not appear and contest the proceedings, the mandate of Section 16(c) of the Specific Relief Act is mandatory in nature and the issue relating to readiness and willingness must nevertheless be strictly scrutinized by the Court irrespective of whether the defendant contests the suit or not. The issue regarding readiness and willingness must therefore be independently and carefully examined by the Court in every case seeking the relief of specific performance. On going through the judgments of the trial Court as well as the first appellate Court, I am unable to find that there has been any violation of the mandate contained under Section 16(c) of the Specific Relief Act.

33. In ***Charan Singh's case***, the Hon'ble Supreme Court held that when a composite appeal is filed within the period of limitation, the mere fact that a



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separate memorandum of appeal had not been filed would not constitute a serious defect warranting dismissal of the appeal itself and that such technical objections should not outweigh the cause of substantial justice. This decision also fortifies the conclusion arrived at by me herein above that the non-filing of a separate appeal against the dismissal of the counterclaim would not be fatal to the case of the defendants.

34. In *Chidambaram's case*, this Court again held that the plea regarding non-filing of a separate appeal against the decree in the counterclaim should be raised at the earliest point of time, namely, immediately upon receipt of notice in the first appeal, by specifically raising the plea of *res judicata*. A party who had failed to raise such a plea in the first appeal and had invited a decision on merits cannot thereafter be permitted to turn around and raise the said plea at the stage of Second Appeal. This decision also comes to the aid of the appellants.

35. It is settled law that this Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, cannot interfere with the appreciation of evidence merely because another view is possible on the facts. A Second Appeal lies only when it involves a substantial question of law. Mere



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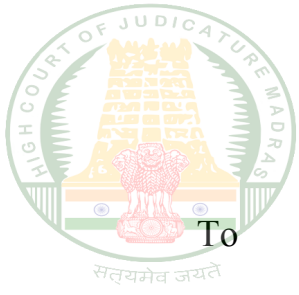
questions of fact, or concurrent findings rendered by the Courts below on appreciation of evidence, are not sufficient to warrant interference under Section 100 CPC unless such findings are shown to be perverse or contrary to settled legal principles. I do not find that the Courts below have either ignored material evidence or acted contrary to well-settled legal principles, and it cannot be said that the findings have been rendered on no evidence also.

36. The findings concurrently rendered by the Courts below are fully supported by the pleadings as well as the oral and documentary evidence adduced by the parties during the trial. In such circumstances, I am constrained to hold that the appellants are not entitled to any relief in the present Second Appeal. Accordingly, the substantial questions of law are answered against the appellants.

37. In the result, the Second Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is closed.

05.06.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
trp



SA(MD).No.521



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1. The Additional District and Sessions Court, Theni at Periyakulam.
2. The Sub Court, Theni.



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SA(MD).No.521

P.B.BALAJI.J.

trp

Pre-delivery Judgment made in
SA(MD) No.521 of 2017 and
CMP(MD).No. 11266 and 2017

05.06.2026