



S.A.(MD)No.82 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.82 of 2026

and

C.M.P.(MD)No.2874 of 2026

A.Prabhakar

... Appellant

Vs.

R.Vijaya (Died)

1.Ravi

2.Srifun Raj

3.Uthireswaran

... Respondents

[Cause title is accepted vide order dated 07.01.2026 made in CMP(MD)No.20107 of 2025 in S.A.(MD)SR.No.101856/25]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to pass a judgment and decree, setting aside the judgment and decree dated 03.04.2025 passed in the appeal in A.S.No.63 of 2022 on the file of the Additional District Court (Fast Track), Theni, confirming the judgment and decree dated 12.09.2022 passed in the suit in O.S.No.199 of 2017, on the file of



S.A.(MD)No.82 of 2026

the Subordinate Court, Theni and thus, allowing the suit throughout and thus allow the appeal with costs throughout.

For Appellant : Mr.J.Barathan

For Respondents : Mr.K.Sudalaiyandi

for Mr.N.Vallinayagam

JUDGMENT

The plaintiff in the suit for specific performance is the appellant, aggrieved by the concurrent findings rendered by the trial Court as well as the appellate Court, dismissing the suit for specific performance.

2.The brief facts that are necessary for disposal of the Second Appeal are as hereunder:

2.1.The plaintiff entered into a registered agreement of sale with the deceased sole defendant on 23.01.2017, for purchase of the suit property, for a total sale consideration of Rs.7,60,000/-. A sum of Rs.4,91,000/- was paid as advance on the date of agreement of sale. The balance sale consideration of Rs.2,69,000/- was agreed to be paid at the time of execution of the sale. The agreement stipulated 22.06.2017 as the date within which the agreement was to be performed, by executing / registering necessary sale deed in

2/17



S.A.(MD)No.82 of 2026

favour of the plaintiff. As the defendant did not come forward to execute the sale deed, plaintiff issued pre-suit notice on 06.06.2017, which was received by the defendant on 08.06.2017. Though the plaintiff was waiting at the Sub-Registrar's office at Theni, with balance sale consideration of Rs.2,69,000/- as indicated in the pre-suit notice dated 06.06.2017, the defendant did not turn up. Plaintiff, expressing readiness and willingness, filed the suit for specific performance.

2.2.The defendant though admitted to the execution of the registration of the sale agreement, took up a plea that the agreement of sale was executed only as security for loan transaction. The defendant also contended that the plaintiff was not ready and willing to perform his obligations under the agreement of sale and sought for dismissal of the suit.

3.Before the trial Court, plaintiff examined himself as P.W.1 and one Senthil Kumar as P.W.2 and Exs.A1 to A7 were marked. On the side of defendants, defendant examined herself as D.W.1 and one Ravi as D.W.2 and Exs.D1 to D4 were marked.



S.A.(MD)No.82 of 2026

4.The trial Court as well as the first appellate Court non-suited the plaintiff on the ground that the plaintiff had suppressed the mortgage deed which had been executed in respect of the suit property by the defendant in favour of the third party and the Court below found that in view of the earlier transaction, namely loan availed of by the defendant, the agreement could have only been a loan transaction and not an intended sale transaction. On this sole ground, the Courts below have dismissed the suit for specific performance.

5.I have heard Mr.J.Barathan, learned Counsel appearing for the appellant and Mr.K.Sudalaiyandi, for Mr.N.Vallinayagam, learned Counsel for the respondents.

6.The second appeal is admitted on the following substantial questions of law:

“1) Whether the non-disclosure of the earlier mortgage transaction would amount to plaintiff approaching the Court with unclean hands when the registered sale agreement which is subject matter of the suit was totally an independent contract?”



S.A.(MD)No.82 of 2026

2) Whether the Courts below were right in finding the subject suit sale agreement to be a loan transaction based on oral and documentary evidence alone, contrary to Sections 91 and 92 of the Indian Evidence Act?"

7.Mr.J.Barathan, learned Counsel for the appellant would submit that the plaintiff, has not only pleaded readiness and willingness, but has also proved the same by examining P.W.1 and P.W.2 and also by marking Exs.A1 to A7. He would further contend that the pre-suit notice, calling upon the defendant to come to the Sub-Registrar's office to receive the balance sale consideration and execute the sale deed, was not even replied to by the respondent and in such circumstances, the Courts below ought to have drawn adverse inference against the respondent / defendant.

8.It is also the contention of Mr.J.Bharathan, that earlier mortgage availed of by the respondent / defendant had absolutely no bearing on the suit sale agreement. Merely because the plaintiff had not averred about the said transaction in the plaint, it would not be fatal to the case of the plaintiff which was concerning the



S.A.(MD)No.82 of 2026

sale agreement entered into by the plaintiff with the defendant alone. He would therefore state that the Courts below ought to have seen that the plaintiff had established readiness and willingness throughout and had even deposited the balance sale consideration pending trial and decreed the suit.

9.Per contra, Mr.K.Sudalaiyandi, for Mr.N.Vallinayagam, learned Counsel for the respondents / defendants would firstly contend that the plaintiff has not established readiness and willingness. In this regard, he would take me through the findings of the first appellate Court regarding belated deposit of the balance sale consideration. He would also take me through the pleadings and discussion of the Courts below regarding the mortgage deed executed by the defendant and contends that the defendant had established that the suit sale agreement was not an intended sale transaction, but only a security for the loan availed of and rightly the trial Court and first appellate Court have non-suited the plaintiff and the same does not warrant interference under Section 100 CPC.

10.Learned Counsel for the respondents has also relied on the following decisions of this Court:



S.A.(MD)No.82 of 2026

(i) *P.Samiappan and another Vs. Rukmani (died) and others* reported in 2014 (4) CTC 330.

(ii) *M.Johnson Vs. E.Pushpavalli* reported in 2016 (2) MWN (Civil) 628.

(iii) *Parvathi Vs. Gowri Meena* reported in (2017) 3 CTC 657.

(iv) *Rajeswari Vs. T.Kannan* reported in (2020) 2 MLJ 339.

11.I have carefully considered the submissions advanced and have also gone through the judgments of the Courts below and the pleadings and oral and documentary evidence on record.

12.The factum of the agreement of sale having been executed and registered is not in dispute. However, the defendant has taken a plea that the document is a sham and nominal document and was not intended to be acted upon as an agreement of sale. According to the defendant, the defendant had earlier executed a mortgage in favour of one Senthil Kumar and in order to redeem the same, the defendant approached the plaintiff and borrowed money, in respect of which alone, the suit sale agreement came to be executed. The



S.A.(MD)No.82 of 2026

Court below finding that from and out of the advance amount, the earlier mortgage availed of by the defendant had been redeemed and a receipt has also been registered on the same day, non-suited the plaintiff for not coming to court with clean hands. In my considered opinion, the trial Court as well as the appellate Court have misdirected themselves to the moot point in question to be decided in the suit for specific performance.

13.No doubt, the defendant in such cases is entitled to plead that the document was a sham and nominal document and not entitled to be acted upon. The burden in such cases is heavily on the shoulders of the defendant. However, in the facts of the present case, the defendant has not even chosen to send a reply notice when the plaintiff issued a notice prior to the filing of the suit. In fact the said pre-suit notice was issued before the expiry of the time contemplated under the suit sale agreement and the plaintiff has also established that, as indicated in the said pre-suit notice, the plaintiff was available in the Sub-Registrar's office, for concluding the sale agreement. It is in this regard that he has marked Exs.A5 and A6. Without even replying to the said notice the defendant has taken a stand in the written statement that the agreement was entered into only as a security for the amount borrowed by the



S.A.(MD)No.82 of 2026

defendant from the plaintiff, to redeem an earlier mortgage that was existing over the suit property.

14.Merely because the plaintiff has not stated about the redemption of the mortgage in favour of Senthil Kumar in the plaint, I do not see how it has any material bearing on the suit for specific performance. Redemption of the earlier mortgage in favour of Senthil Kumar from whom the defendant had availed of a loan is only a part dealing with the sale consideration portion and it does not have any serious bearing on the claim of the plaintiff for specific performance. The plaintiff is not expected or required to plead about the earlier encumbrance over the suit property. Admittedly, the said encumbrance has been cleared from and out of the advance paid by the plaintiff.

15.On the contrary, it is the case of the defendant that he borrowed money from the plaintiff only in order to clear the mortgage that she had availed of from the said Senthil Kumar. The defendant has not even pleaded as to what was the rate of interest for which the amount was borrowed from the plaintiff and how the defendant was benefited by such borrowing from the plaintiff, especially when the earlier mortgage in favour of Senthil Kumar



S.A.(MD)No.82 of 2026

was containing terms of repayment of the principal amount together with interest at 12% p.a. It is not the case of the defendant that the defendant was better on borrowing money from the plaintiff, as she was servicing huge interest component in respect of the mortgagee in favour of Senthil Kumar. In such circumstances, merely because the plaintiff had not pleaded about the mortgage availed of by the defendant from the Senthil Kumar cannot come in the way of plaintiff seeking specific performance of the suit agreement. Both the Courts have lost sight of the fact that in a suit for specific performance, the Courts are bound to test the agreement of sale between the parties and see whether the plaintiff was always ready and willing to perform his part of the contract. Without doing so, the courts below have given undue weightage to a totally unconnected transaction and dismissed the suit for specific performance.

16.The fact remains that the plaintiff and the defendant under the sale agreement, had agreed for payment of the balance sale consideration and completion of the transaction within a period of five months. The pre-suit was admittedly issued before the expiry of the five months period and on noticing that there is no reply to the said notice, plaintiff has approached the Court seeking



S.A.(MD)No.82 of 2026

specific performance without any undue delay. Though it is not obligatory for the plaintiff to deposit balance sale consideration, still the plaintiff has deposited the balance sale consideration even on 17.07.2017. In fact, I find that the first appellate Court has even rendered a finding that the said deposit was only on 13.06.2018 and that it is belated. In the preceding paragraphs of the judgment of the first appellate Court, the appellate court rightly records that the balance sale consideration of Rs.2,69,000/- was deposited before the Court even on 17.07.2017. However, for reasons not known, the first appellate Court proceeds to non-suit the plaintiff on the ground that deposit was made belatedly on 13.06.2018, which is admittedly not a correct finding. The Courts also, without even discussing the material documents have vaguely come to the conclusion that the plaintiff has not established readiness and willingness, by filing relevant documentary evidence, ignoring the pre-suit notice as well as the registered documents filed in support of the plaintiff's claim that he was present at the sub-Registrar's office to conclude the transaction as set out in the pre-suit notice.

17.From the above discussion, it is clear that the Courts below have rendered perverse findings and contrary to the requirements of Section 16 (c) r/w. Section 20 of the Specific Relief



S.A.(MD)No.82 of 2026

Act, 1963.

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18.Coming to the decisions on which the learned Counsel for the respondents has relied on, in **Johnson's** case, this Court held that:

- 1.Plaintiff has to plead and prove a valid agreement between the parties;*
- 2.readiness and willingness of the plaintiff;*
- 3.Filing of the suit within limitation;*
- 4.No inordinate delay in filing the suit from the date of expiry of the time period.*

All these 4 determination factors have been established by the plaintiff / appellant in the present case and I do not see how this decision will come to the aid of the respondent.

19.In **Samiappan's** case, the Court non-suited the plaintiffs on the ground that the plaintiffs have not disclosed the fact that there was a pre-condition to deposit the money and found the plaintiff itself entitled to even the relief of alternate relief. This decision is also not relevant to the facts of the present case, as the suppression in the said case was found to be material



S.A.(MD)No.82 of 2026

WEB COPY

20.In *Parvathi's* case, this Court only held that to refuse the discretionary jurisdiction, suppression must be shown to be material. Though it is contended by the learned Counsel for the respondent that suppression of the earlier mortgage was material to the suit sale agreement, I have already elaborately discussed as to how the non-disclosure of the mortgage executed by the defendant in favour of Senthil Kumar and same having been redeemed from and out of the advance paid by plaintiff, would not be relevant to test the readiness and willingness of the plaintiff, in a suit for specific performance. Hence, I am unable to rely on this decision as well.

21.In *Rajeswari's* case, this Court finding that the property worth more than Rs.1 crore was sought to be sold for a throwaway price of Rs.12 Lakhs, accepted the defence that the agreement was signed between the parties only in view of the loan borrowed and as a security. In the present case, there is absolutely no evidence on the side of the respondent to establish the plea that the agreement was only intended as a security for the loan. No prudent property owner would substitute the subsisting mortgage with a



S.A.(MD)No.82 of 2026

fresh mortgage, for the purposes of clearing the earlier mortgage in respect of which the amount borrowed was to be re-paid with a nominal interest rate of 12% p.a. There is nothing brought on record by the respondents to show that the alleged subsequent loan was necessary for any particular or specific reason or for any benefit that would be bestowed on the respondent. In the light of the above, I do not see this decision also applying to the present case.

22.For all the above reasons, I am inclined to set aside the findings of the trial Court and the first appellate Court.

23.Accordingly, this Second Appeal stands allowed. The substantial questions of law are answered in favour of the appellant / plaintiff. The respondents / defendants are directed to execute the sale deed in favour of the appellant / plaintiff within a period of two [2] months from the date of receipt of a copy of this judgment and decree, failing which it shall be open to the appellant / plaintiff to file appropriate execution petition to seek for necessary relief. It is made clear that as the entire sale consideration has already been deposited before the trial Court, it shall be open to the respondents / defendants to seek payment of the said amount. There shall be no



S.A.(MD)No.82 of 2026

order as to costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

09.03.2026

Index : Yes / No

NCC : Yes / No

MR



WEB COPY



S.A.(MD)No.82 of 2026

To

1.The Additional District Court [Fast Track],
Theni.

2.The Subordinate Court,
Theni.

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



WEB COPY



S.A.(MD)No.82 of 2026

P.B.BALAJI, J.

MR

**JUDGMENT MADE IN
S.A.(MD)No. 82 of 2026**

09.03.2026