

**IN THE COURT OF I ADDITIONAL DISTRICT & SESSIONS JUDGE,
CUDDALORE.**

**Present : Tmt.G.Saraswathi, M.L,
I Additional District & Sessions Judge,
Cuddalore.**

Tuesday, the 07th day of April 2026

O.S. No.147 of 2014

(CNR No.TNCD01 – 001884 – 2014)

V. Loganathan ... Plaintiff

-Vs-

P. Shanmugham ... Defendants

This suit, presented on 24.03.2014, came before me for final hearing on 23.03.2026. Advocate Mr.K.Thamburasa appeared for the plaintiff. Advocate Mr.K.Kodeeswaran appeared for the defendant. Upon hearing both sides, perusing the entire case records, and having reserved the matter for consideration till this day, this Court delivered the following:

JUDGMENT

NATURE OF SUIT:

This suit has been filed by the plaintiff seeking a decree against the defendant for recovery of a sum of Rs.13,60,000/-, together with interest at 12% per annum on the principal sum of Rs.10,00,000/- from the date of suit till the date of decree, and thereafter subsequent interest at 6% per annum from the date of decree till the date of realization,

along with costs and such other reliefs as are just and necessary in the circumstances of the case.

2. PLAINTIFF CASE :

The defendant, being the owner of the suit schedule property, executed an unregistered agreement for sale on 25.03.2011 in favour of the plaintiff for a sale consideration of Rs.15,00,000/-. Under the terms of the said agreement, the defendant received an advance sale consideration of Rs.10,00,000/-, and the balance sale consideration of Rs.5,00,000/- was to be paid within one year. Ever since the date of the agreement, the plaintiff had been ready and willing to perform his part of the contract, whereas the defendant evaded execution of the sale deed. The plaintiff was not interested in undergoing the ordeal of filing a suit for specific performance so as to compel the defendant to execute the sale deed, or to have the sale deed executed through Court by spending further time, money, and energy. Therefore, the plaintiff issued a notice dated 26.02.2014 to the defendant through his lawyer, calling upon the defendant to return the advance sale consideration of Rs.10,00,000/- together with interest at 12% per annum. Though the defendant was served with the notice, he did not respond. Hence, this suit.

3. DEFENDANT CASE :

The entire allegations in the plaint are denied except those specifically admitted herein. The defendant admits that he is the owner of the suit properties. According to the defendant, the plaintiff had purchased from him a property worth about Rs.47,95,875/- on

13.09.2010, and in respect of the said property there was a partition dispute between the defendant and his brother. It is the defendant's case that the plaintiff did not pay the entire sale consideration, but retained a sum of Rs.8,95,875/- out of the total sale consideration amount of Rs.47,95,875/-, stating that he would pay the remaining amount after disposal of the civil dispute between the defendant and his brother. The plaintiff is also alleged to have executed an unregistered document in that regard and to have obtained a signed vakalath, some green blank papers, and non-judicial papers from the defendant for contesting the civil dispute between the defendant and his brother. The defendant further contends that the signature in the alleged sale agreement dated 25.03.2011 is part of a forged and concocted document fabricated by the plaintiff; that there was no agreement for sale at any point of time between the plaintiff and the defendant; that the defendant did not receive any sale consideration towards the sale of the suit property; and that the plaintiff has filed this false suit in an attempt to grab the suit property of the defendant. It is also contended that the suit is barred by limitation and that there is no cause of action for the suit. Hence, the defendant prayed for dismissal of the suit.

4. ISSUES :

On a careful reading of the allegations made in the plaint and written statement, on perusal of the documents, and after hearing the parties, this Court framed the following issues for proper adjudication:

1. Is the alleged Sale Agreement dated 25.03.2011 true and genuine?

2. Whether the Plaintiff is entitled to a decree for recovery of the advance sale consideration, as prayed for?

3. To what other reliefs the plaintiff is entitled?

5. EVIDENCE :

On the side of the plaintiff, the plaintiff was examined as PW1 and one Sathish, an attesting witness, was examined as PW2. Exs.A1 to A5 and Ex.B1 were marked through PW1. On the side of the defendant, the defendant was examined as DW1, one Senthilkumar was examined as DW2, and one Anandharaj was examined as DW3. Ex.B2 was marked through DW1.

6. FINDINGS ON ISSUES :

6.1 ISSUE No.1:

Is the alleged Sale Agreement dated 25.03.2011 true and genuine ?

6.1.1 The case of the plaintiff that the defendant is the owner of the suit schedule property is not denied. However, the defendant has denied the plaintiff's case that he agreed to sell the suit schedule property and executed an unregistered agreement dated 25.03.2011 in favour of the plaintiff after receiving Rs.10,00,000/- as advance and agreeing to receive the balance sum of Rs.5,00,000/- within one year. The defendant has alleged that the plaintiff had already purchased another property from him and, owing to a partition dispute between the defendant and his brother, had withheld a part of the sale

consideration, undertaking to pay the same after disposal of the civil dispute. According to the defendant, during that period the plaintiff obtained a signed vakalath and some green blank papers and non-judicial papers from him to contest the said civil dispute, and later concocted the said blank papers and filed the present suit.

6.1.2 By the above allegations, the defendant has effectively admitted the signature found in the sale agreement marked as Ex.A1. To prove the execution of Ex.A1, the plaintiff, while deposing as PW1, also examined Sathish, one of the attesting witnesses to Ex.A1 Sale Agreement, as PW2. In law, execution means proof of signing, such signature being made with knowledge and intention, and the document being complete and acted upon. Since the defendant admitted his signature in Ex.A1 Sale Agreement but alleged that he had signed certain blank papers (stamped papers and green papers) which were later forged and concocted by the plaintiff, the burden lies on the defendant to establish the same. PW2 Sathish has stated in his chief affidavit that the defendant signed Ex.A1 Sale Agreement and that he and one Kumar signed as attesting witnesses. The defendant failed to elicit in the cross-examination of PW2 Sathish that, at the time of his attestation, the document was either blank, or that it had already been signed by the defendant and PW2 had affixed his signature only in the absence of the defendant. PW2 Sathish categorically stated that he attested the document only after it had been fully written and drafted. Though a sale agreement need not be compulsorily attested, the above evidence of PW2 Sathish proves the execution of Ex.A1 Sale Agreement by the defendant.

6.1.3 The defendant examined the scribe of Ex.A1 Sale Agreement as DW2. However, in his chief affidavit, he did not state anything relating to Ex.A1 Sale Agreement and spoke only about Ex.B2, the alleged undertaking document said to have been executed by the plaintiff in respect of another property, wherein the plaintiff is alleged to have undertaken to pay the balance sale consideration after disposal of the civil dispute.

6.1.4 It is the case of the defendant that DW2 Senthilkumar, who scribed Ex.A1 Sale Agreement, had also drafted the undertaking document marked as Ex.B2. From the records, the drafting would explicitly show that it was DW2 Senthilkumar who scribed both Ex.A1 Sale Agreement and Ex.B2 Undertaking document. However, the defendant failed to explain the connection between Ex.B2 Undertaking, which is said to have been executed by the plaintiff while purchasing another property admittedly covered under Ex.B1 Sale Deed, and Ex.A1 Sale Agreement. DW2 Senthilkumar, in his cross-examination, admitted that he had drafted Ex.A1 Sale Agreement and also admitted that Ex.A1 was drafted only as per the instructions given by the defendant. In such circumstances, Ex.A1 Sale Agreement can safely be held to have been proved, especially when the defendant has failed to establish the handing over of signed blank papers and the alleged forgery on the part of the plaintiff. Hence, I conclude that Ex.A1 Sale Agreement dated 25.03.2011 is true and genuine.

This Issue is decided accordingly.

6.2. ISSUE No.2 :

Whether the Plaintiff is entitled to a decree for recovery of the advance sale consideration, as prayed for ?

6.2.1 Having concluded that Ex.A1 Sale Agreement is true and genuine, and that its contents show that a sum of Rs.10,00,000/- was paid as advance consideration thereunder, the burden lies upon the defendant to establish that no such consideration passed under Ex.A1 Sale Agreement. The plaintiff has sought recovery of the advance sale consideration paid by him under Ex.A1 Sale Agreement by alleging that the defendant evaded performance of his part of the contract, though the plaintiff was ready and willing to pay the balance amount. Hence, the plaintiff was not interested in undergoing the ordeal of filing a suit for specific performance and therefore issued Ex.A2 legal notice dated 26.02.2014 calling upon the defendant to return the advance sale consideration together with interest at 12% per annum from the date of the agreement. The defendant received the said legal notice, as evidenced by Ex.A3 Acknowledgment Card, on 08.03.2014, but sent a reply only on 07.04.2014, by which time the plaintiff had already filed the suit on 24.03.2014.

6.2.2 In Ex.A4 Reply Notice, the defendant reiterated the same case, namely that the plaintiff had purchased another property, withheld a part of the sale consideration in view of the civil dispute between the defendant and his brother, obtained signed blank papers from the defendant during that period, and that no consideration to the tune of

Rs.10,00,000/- had passed under Ex.A1. According to the defendant, such signed blank papers were handed over to the plaintiff for the purpose of contesting the civil case between himself and his brother. It was submitted on the side of the defendant that the plaintiff is a practising advocate and, therefore, such signed blank papers were handed over to him. In the cross-examination of the plaintiff as PW1, the plaintiff denied that the defendant was his client and stated that he had never appeared for the defendant in any civil suit. From the evidence of the plaintiff and the defendant, it could be seen that both of them were on good terms and that the plaintiff, as power agent of his brother, had purchased property under Ex.B1 Sale Deed from the defendant. PW1, however, denied execution of Ex.B2 Undertaking. He did not admit Ex.B2 in cross-examination and pleaded ignorance about one Kumar being the attesting witness to both Ex.A1 Sale Agreement and Ex.B2 Undertaking document. As stated above, DW2, the scribe of Ex.B2 Undertaking document, admitted in his cross-examination that he had scribed both documents; but no inference can be drawn from this alone that there is any link between Ex.A1 Sale Agreement and Ex.B2 Undertaking document, especially when it is his evidence that he is a licensed document writer. It is pertinent to note that DW2 Senthilkumar, the scribe, stated in his evidence that Ex.B2 Undertaking document was drafted by him only based on the instructions given by the defendant, who resides in his village, and that he had never seen the plaintiff and had not drafted Ex.B2 based on any instructions from the plaintiff. From the evidence of DW2 Senthilkumar, it is clear that

both Ex.A1 Sale Agreement and Ex.B2 Undertaking document were drafted by him only as per the instructions given by the defendant Shanmugham.

6.2.3 The plaintiff would submit that, if Ex.B2 Undertaking document had really been executed by him, it would have been executed on the date of Ex.B1 Sale Deed itself and not after one month, especially when it is the defendant's own case that part of the sale consideration under Ex.B1 Sale Deed had been withheld by the plaintiff. Admittedly, the defendant's case is that, due to the encumbrance arising from the civil dispute, the plaintiff retained a sum of Rs.8,95,875/- out of the total sale consideration of Rs.47,95,875/- mentioned in Ex.B1 Sale Deed. In such circumstances, if the plaintiff had intended to execute Ex.B2 Undertaking document, it would have been done on the very date of Ex.B1 Sale Deed and not nearly one month thereafter. Further, the sale consideration recited in Ex.B1 Sale Deed is only Rs.3,50,000/-, and it also shows that, out of Rs.3,50,000/-, a sum of Rs.1,75,000/- was paid towards the debt incurred by defendant Shanmugham with Indian Bank, Cuddalore O.T. The defendant has produced Ex.B1 Sale Deed and Ex.B2 Undertaking only as a defence in the present case to contend that, at the time of execution of those documents, blank signed stamped papers and green papers were obtained by the plaintiff and later misused as Ex.A1 Sale Agreement. Except for the above defence, there is no other basis for bringing those documents into the present case. Even assuming for a moment that the plaintiff, because of the said civil dispute, intended

to recover a part of the amount by getting Ex.A1 Sale Agreement executed, the burden lies on the defendant to plead and prove the same.

6.2.4 The learned counsel for the defendant relied upon the decision of the *Hon'ble High Court of Madras* reported in *2026(1) TNJL 109 (Civil)* in *M. Mahesh and another Vs. V. Kanagaraj* and submitted that Ex.A1 Agreement is not a genuine sale agreement and, therefore, the plaintiff cannot seek refund by invoking Section 22 of the Specific Relief Act, 1963. In the said decision, the Hon'ble High Court of Madras, in a suit for specific performance wherein the sale agreement was found to be a loan agreement, denied refund of the advance on the principle laid down in *V.P. Murugesan Vs. P. Sheik Mideen, 2016-1-LW 332*, and held that the appropriate remedy would be to institute a separate suit for recovery. In the present case, the plaintiff has not come forward with a suit for specific performance; instead, he has filed only a suit for recovery of the amount paid as advance under Ex.A1 Sale Agreement. Section 74 of the Indian Contract Act, 1872 provides for refund of the amount paid under an agreement, whether or not actual loss or damage is proved. When payment of advance is supported by the recitals in Ex.A1 Sale Agreement, and there is no substantial link between Ex.A1 and Ex.B2, refund of the advance amount under Ex.A1 Sale Agreement is the rule and not the exception. Though Ex.A1 Sale Agreement contains a forfeiture clause, the defendant has failed to establish that the failure was on the part of the plaintiff. Hence, the plaintiff is entitled to a decree for recovery of the advance sale consideration paid under Ex.A1 Sale Agreement.

6.2.5 It could be contended on behalf of the defendant that, without seeking the relief of specific performance, the plaintiff has approached this Court only for recovery of the advance amount and, therefore, the suit itself is not maintainable. According to the plaintiff, the defendant did not come forward to execute the sale deed despite the plaintiff being ready with the balance sale consideration amount. The plaintiff further states that, for several reasons, there was delay, and since the defendant was well known to him, he trusted him; however, he later came to know that the defendant was not willing to execute the sale deed. Section 52 of the Indian Contract Act, 1872 provides that when there are reciprocal promises in a contract, they shall be performed in that order, and where the order is not expressly specified, they shall be performed in the order which the nature of the transaction requires. The plaintiff's readiness and willingness were not seriously questioned by the defendant. Therefore, when the defendant failed to come forward to execute the sale deed, the plaintiff had the option to seek refund of the advance amount under Section 74 of the Indian Contract Act, 1872 on account of breach of contract by the defendant.

This Issue is decided accordingly.

6.3. ISSUE No.3:

To what other reliefs the plaintiff is entitled ?

As Ex.A1 Sale Agreement does not provide for payment of interest, this Court is inclined to award interest only from the date of filing of the suit, i.e., from 24.03.2014, at

9% per annum till the date of decree and thereafter at 6% per annum from the date of decree till realization.

This Issue is decided accordingly.

RELIEF :

In the result, this suit is decreed with costs, directing the defendant to pay the plaintiff a sum of Rs.10,00,000/- and the plaintiff is entitled to interest at 9% per annum from the date of suit till the date of decree and for further interest at 6% per annum from the date of decree till realization.

Dictated to the Steno-Typist, directly typed by her, corrected, and pronounced by me in open Court on this 07th day of April, 2026.

I Additional District and Sessions Judge,
Cuddalore.

Plaintiff side Witnesses :

PW1 Thiru.V.Loganathan (the plaintiff)

PW2 Thiru.Sathish

Plaintiff side Exhibits :

Ex.A1 25.03.2011 Original Sale Agreement between the defendant and

Ex.A2 26.02.2014 Legal Notice issued by plaintiff's counsel to the defendant.

