

In the court of the Principal District Judge, Cuddalore District, Cuddalore

Present: Tmt.G.Subathira Devi, M.L.,
Principal District Judge, Cuddalore.

Friday, the 17th day of July, 2026

Appeal Suit No.46/2023

(TNCD-01-006373-2023)

Shanmugasundaram ...Appellant/Defendant

/Versus/

Savithri ... Respondent/Plaintiff

Appeal against the judgment and decree passed by the II Additional Sub Judge, Cuddalore in O.S.No.568/2017, dated 27.03.2023.

BETWEEN

Savithri ...Plaintiff

/Versus/

Shanmugasundaram ... Defendant

This appeal is coming on 02.07.2026 before me for final hearing in the presence of Tvl.R.Subramani and S.Manivel, Advocates for the Appellant and of Tvl.P.Sathiyaraj and S.Suganya, Advocates for the Respondent and upon hearing the arguments of both sides and upon perusing the case records and having stood over for consideration till this day, this court delivered the following:-

JUDGMENT

This appeal suit is filed by the defendant seeking to set aside the judgment and decree dated 27.03.2023 passed in O.S.No.568/2017 on the file of II

Additional Sub Judge, Cuddalore and to allow the appeal suit with costs.

2. The respondent herein as plaintiff has instituted the suit in O.S.No.568/2017 praying to pass a decree for Specific performance of the sale agreement dated 22.05.2017, directing the defendant to execute the sale deed in favour of the plaintiff for the suit property within the time stipulated by the Court, the defendant fails to execute a sale deed as per the direction of this Court, then the Court may execute the sale deed on behalf of the defendant and alternatively direct the defendant to pay back of Rs.7,70,000/- paid by the plaintiff with interest at the rate of 12% p.a. and for Costs.

3. **The plaint averments in the trial court are as follows:**

The defendant is the owner of the suit property. The defendant came forward to sell the suit property for a sum of Rs.8,10,000/- and the defendant has received a sum of Rs.7,70,000/- on 22.05.2017 as advance. The agreement for the three months from 22.05.2017 to 21.08.2017. If the plaintiff fails to pay the balance amount of Rs.40,000/- with three months and register the sale deed, she has to loose the sum of Rs.7,70,000/- paid as advance. She have always been ready and willing to perform her part of contract by paying the balance amount of Rs.40,000/- and got the sale deed executed, but the defendant did not execute the sale deed evading any one reason every day. She personally went to the defendant's residence and asked the defendant to fulfill the part of contract out of the defendant taking time unnecessarily. The defendant did not act in true pursuance of the agreement executed by the defendant. The plaintiff sent a legal notice through her counsel on 26.10.2017 calling upon he receive the balance sale consideration and execute the sale deed, but the defendant has returned the notice. Again the plaintiff personally met the defendant and requested the defendant to receive the balance amount and execute the sale deed. But the defendant has not executed the sale deed till today and is evading. Hence, the

plaintiff is constrained to file the suit for Specific performance of contract and in the alternative for refund of advance amount with interest. Hence the suit.

4. **The written statement averments of the defendant in the trial court are as follows:**

This defendant's wife one Bharathi seems to have borrowed Rs.50,000/- from the plaintiff during the year 2015 to meet her family expenses without the knowledge of this defendant and it is learnt that she had no means to repay the debt of the plaintiff and hence she has filed insolvency petition against the plaintiff and other creditors in file of the Principal District Judge, Cuddalore and it is pending. This defendant is not in good terms with his wife and he does not know her whereabouts. This defendant submits that he left Cuddalore with his daughter and other family members during the mid of year 2017 seeking employment and his residence is shifted to Chennai for the past more than 1-½ years. Only very recently the defendant came to know about the above suit through his neighbors, when the Court Amin came to his Cuddalore house to serve summons in execution proceedings. Only thereafter this defendant met his Advocate and gathered information about the above suit and gave instructions for preparing this written statement. The loan borrowed by Bharathi, it seems the plaintiff has concocted the suit sale agreement by forging this defendant's signature in it. If the signature in the suit sale agreement is verified with the defendant's actual signature, it will prove the very fact that defendant's signature has been forged by the plaintiff. Therefore this defendant denies the signature affixed in the suit sale agreement i.e document No.1 filed along with the plaint is an unregistered document, which is not validly executed, properly attested and it is not registered as contemplated by law and it was not accepted and acted upon by the manner known to law and the concocted suit sale agreement has been falsely attested by friends of the plaintiff with ulterior motive who are none other than money lenders, lending money against debt laws and hence it cannot hold good in law. It is

to be noted that the suit notice was returned to plaintiff with postal endorsement. So, for the above said bonafide reason this defendant was not able to issue reply notice to the plaintiff, setting forth his defence. The suit property was never intended to be sold to anyone, much less the plaintiff. This defendant never received any amount as advance from the plaintiff agreeing to sell the property much less for Rs.7,70,000/- as falsely mentioned in the notice as well as in the plaint. Even assuming if the defendant received Rs.7,70,000/- as advance amount which is denied, the plaintiff having capacity to pay such huge amount as advance, could have paid the balance sale consideration of Rs.40,000/- on the same day and could have got the sale deed executed in her favour. No reason has been stated either in the sale agreement or in the notice or in the plaint as to why three months time was fixed in the sale agreement for payment of balance consideration of Rs.40,000/-. The defendant prays to dismiss the suit with costs.

5. On the basis of above pleadings, the trial court has framed the following issues:

- (1). Whether the sale agreement dated 22.05.2017 is true and genuine one and valid in law?
- (2). Whether the Plaintiff is entitled to the relief of Specific performance as prayed for?
- (3). To what other relief the plaintiff is entitled for?

The following issue has been framed at the time of judgment in the trial court:

- (4). Whether the Plaintiff is entitled for the alternative relief?

6. Before the trial court, the Plaintiff examined herself as PW1 and one Parvathi was examined as PW2 and one Jeyakodi was examined as PW3 and Ex.A1 to A3 were marked and on the side of the defendant, the defendant examined himself as DW1 and Ex.B1 to Ex.B4 were marked.

7. After analyzing the oral and documentary evidence and after hearing both side arguments, the trial court dismissed the suit for the relief of specific performance of the contract of sale agreement, but decreed the suit with costs for the alternative relief to return the sale advance amount of Rs.7,70,000/- with interest at the rate of 12% p.a. from the date of sale agreement i.e. 22.05.2017 to till the date of realisation within three months from the date of order to the plaintiff, failing which the plaintiff is entitled to recover the due amount till the date of realisation by sale of the suit property. Aggrieved by the decree and judgment passed by the trial court, the appellant/defendant has preferred this appeal suit.

8. **Grounds of appeal are as follows:**

The trial court has erred in decreeing the suit granting the alternative relief. The trial court has failed to see that alternative relief could be granted only when the court comes to the conclusion that the agreement was true, genuine and the relief of specific performance of agreement could not be granted to the plaintiff considering the facts and circumstances. The trial court has failed to properly appreciate the defence taken by the defendant. The trial court has grossly erred in not appreciating the fact that the signature in Ex.A1 has been denied by the defendant. The trial court has failed to see that the plaintiff has not discharged the burden of proving the due execution of Ex.A1 and also passing of consideration under Ex.A1. The trial court has not at all considered the vital discrepancies of oral evidence of Pws.1 to 3 regarding execution and passing of consideration under Ex.A1. The trial court has failed to see that Ex.A1 is an unregistered document and the same has not been examined for proving execution. The trial court has failed to consider that the plaintiff has not taken any steps for obtaining expert opinion with regard to the signatures found in the disputed document Ex.A1 especially when the defendant has denied signatures. The trial court has failed to see that the plaintiff and Pw2 & Pw3

had colluded together and concocted Ex.A1 to settle their money transactions allegedly they had with the defendant's wife. The trial court has failed to see that Ex.A1 is a forged document, concocted and fabricated by PW1 by forging the signature of the defendant with the help of PW2 & PW3. The trial court has failed to consider the vital evidence that he had not even seen PW2 & PW3 and he had not gone to the Registrar's office on 22.05.2017. The trial court has grossly erred in considering the admitted signatures in Ex. B1 to B4. The trial court has failed to see that the property described in Ex.A1 was worth more than Rs.20 lakhs in 2017. The trial court has failed to see that the so called agreement of sale Ex.A1 is dated 22.05.2017 and the suit has been filed on 20.11.2017. The trial court has failed to see that the defendant had left Cuddalore in middle of 2017 and his aged parents are residing in the property. The trial court has failed to consider the evidence that the defendant's wife had left the defendant and Thiruvandhipuram village on account of non-payment of money to several subscribers due on unauthorized chit transactions. The trial court has failed to see that the defendant's wife has filed an Insolvency Petition before this court and the same is pending adjudication which fact has been admitted by PWs.2 & 3. The trial court has failed to see that the PWs. 1 to 3 had admitted that they were all arrayed as respondents in the insolvency petition. The trial court has failed to see that the evidence let in by PWs. 1 to 3 that Ex.A1 was executed by the defendant only to discharge the loan due by Bharathi, this defendant's wife to various persons including PWs. 1 to 3. If that is true, P.W.1 could not have paid money that too Rs. 7,70,000/ to the defendant under Ex. A1, PW2 & PW3 in that event should also had their chit transaction settled on the date of Ex.A1 itself. The trial court has failed to see that the plaintiff is guilty of suppression of facts and has come to court with deliberate false case. She is not at all entitled to the discretionary relief of specific performance or the alternative relief. The trial court ought to have held that Ex.A1 is a forged document, brought about by P.Ws. 1 to 3 and lacks consideration. The trial court has not properly appreciated the oral and documentary

evidence and the question of law arising in this case. For the foregoing reasons, the appeal suit is to be allowed.

9. **Points for consideration in this appeal suit are:**

1. Whether the suit sale agreement dated 22.05.2017 is rank forgery as pleaded by the appellant/defendant?
2. Whether the suit sale agreement dated 22.05.2017 is true, valid and binding on the appellant/defendant?
3. Whether the suit sale agreement is supported by consideration?
4. Whether the respondent/plaintiff is entitled for the relief of specific performance as prayed for?
5. Whether the respondent/plaintiff is entitled for the alternative relief of refund of advance sale consideration?
6. Whether the appeal suit is to be allowed or not?

10. **Point Nos.1 to 3:**

For easy reference the parties are referred to hereunder according to their ranking and status before the trial court.

11. The case of the plaintiff is that the plaintiff and the defendant are entered into an unregistered agreement for sale on 22.05.2017, for the sale price of Rs.8,10,000/-, for that the defendant received Rs.7,70,000/- as advance amount and the remaining amount of Rs.40,000/- to be paid within 3 months and sale to be concluded. The property survey number is 137 - 1800 sq. ft. plot and building. Then the defendant has not come forward to execute the sale deed by receiving the balance sale consideration, hence the plaintiff issued a legal notice dated 26.10.2017 to the defendant and the same was not served.

12. The case of the defendant is that the defendant never seen the plaintiff at any point of time. Without knowledge of the defendant, his wife Bharathi borrowed Rs.50,000/- from the plaintiff and borrowed several other loans from some other persons, during the year 2015. The defendant was ill during the year 2014. The defendant employed at Chennai and so he left Cuddalore with his family during the year 2017 and very recently he came back to Cuddalore. Because of his wife Bharathi's loans this sale agreement was concocted and his signature was forged. The defendant never intended to sell the suit property and did not receive any advance amount from anybody including the plaintiff. Thus the defendant denied the execution of Ex.A1 sale agreement and passing of consideration under it. It is the duty of the plaintiff to take steps to compare the alleged signatures of the defendant in Ex.A1 sale agreement with that of his admitted signatures of contemporary period through Forensic Science Lab.

13. On perusal of the alleged signature of the defendant Shanmugasundaram in Ex.A1, it differs from his admitted signatures in Ex.B3 to Ex.B5 and his vakalat, written statement and deposition as DW1. But vakalat, written statement and deposition of DW1 are documents which came into existence after Ex.A1 period. Whereas Ex.B3, Ex.B4 and Ex.B5 are the documents which came into existence before Ex.A1. They also resemble the signatures of defendant similar to a signature in vakalat, written statement and the deposition of DW1. Hence, it is evident that he had not changed his signatures earlier to Ex.A1 and later to Ex.A1. Hence, it is for the plaintiff to compare the signatures of the defendant in Ex.A1 which is not similar to the admitted signatures, that it is signed only by the defendant, but with malafide intention, some other style, to defraud the plaintiff. Even if Ex.A1 signature is put by the defendant in such a manner to defraud the plaintiff, the strokes and the manner of writing the alphabets can be checked out with the admitted signature by the Forensic Science Lab Experts. Hence, the document Ex.A1 in which the defendant denied his

signatures and called it to be a forged document, ought to have been sent to expert for expert opinion. The plaintiff miserably failed to do it. With the naked eye this court is not able to compare the strokes of the signatures of the defendant in the alleged Ex.A1 document with that of his admitted signatures in Ex.B3, Ex.B4 and Ex.B5 and vakalat, written statement and the deposition of DW1.

14. The evidence of PW1 in her cross examination reveals that, “வா.சா.ஆ.1 பத்திரத்தில் உள்ள பிரதிவாதியின் கையெழுத்தின் அளவு ஒவ்வொரு பக்கமும் வேறுபட்டுள்ளது என்றால் அதை பிரதிவாதியிடம் தான் கேட்க வேண்டும். என் முன்னிலையில் தான் அவர் பத்திரத்தில் கையெழுத்து போட்டார், வா.சா.ஆ.1 ஒப்பந்தத்தில் உள்ள கையெழுத்து பிரதிவாதியுடையது இல்லை என்றாலும் அவ்வாறு அவர் கையொப்பம் இடமாட்டார் என்றால் சரியல்ல.” Further the evidence of PW2 in her cross examination reveals that “கிரைய ஒப்பந்தத்தில் உள்ள கையெழுத்து பிரதிவாதியின் கையெழுத்து இல்லை என்றால் சரியல்ல. அவர் கையெழுத்து போட்டதை நான் பார்த்தேன்.....வீட்டை விற்பனை செய்து பணத்தை பெற்றால் எனக்கு பாரதி கொடுக்க வேண்டிய கடன் தீர்ந்துவிடும் என்று பாரதி சொன்னார். அந்த எண்ணத்தில் தான் நானே சாட்சி கையெழுத்து போட்டேன்.” Further the evidence of PW3 in her cross examination reveals that, “பிரதிவாதியும், அவருடைய மனைவியும் என்னிடம் கடன் வாங்கியிருக்கிறார்கள். அதேபோல் அவர்கள் சாவித்திரி மற்றும் பார்வதியிடமும் கடன் வாங்கி இருக்கிறார்கள். பாரதி என்பவர் என்னிடம் வாங்கிய கடன், சாவித்திரியிடம் வாங்கிய கடன், பார்வதியிடம் வாங்கிய

கடன் ஆகியவைகளை திரும்ப செலுத்துவதற்காக தான் கிரைய ஒப்பந்தம் எழுதப்பட்டது என்றால் சரிதான்.”

15. All these piece of evidence would reveal that the defendant has already indebted to PW1, PW2 and PW3. Under such a circumstances, there is no chance for PW1 to lend a huge amount of Rs.7,70,000/- and in getting Ex.A1 sale agreement executed in her favour. Indeed, if at all the defendant had come forward to sell his property to PW1, he would have mentioned that he had already paid the suit sale agreement amount as advance, as loan to the defendant and would have deducted it as amount paid already as loan. Since the evidence of plaintiff's side establishes that the defendant had borrowed money from the plaintiff already, and it is also the defendant's wife had borrowed money from the plaintiff already, for which the defendant's wife filed Insolvency Petition even against the plaintiff. Under such circumstances, the plaintiff is to prove passing of advance sale consideration on the date of Ex.A1 as pleaded. The learned counsel for the respondent/plaintiff in support of his contention cited a decision case reported in 2025 (3) MWN (Civil) 593, High Court of Madras, K.K.Ganesh @ Kaliyannan (died) vs. K.S.Subramaniyan, wherein the Hon'ble High court held that,

“Evidence Act, 1872, Sections 101 to 103 – Suit based on promissory note – Denial of signature – Defendant pleaded forgery – Plaintiff examined scribe – Proof of execution, signature of Defendant and passing of consideration adduced – Burden shifted to Defendant to disprove execution – No steps taken by defendant to obtain Expert Opinion or lead evidence to rebut execution – Held, Defendant failed to discharge burden – Promissory Note proved.”

This court is of a considered view that there is no passing of consideration on Ex.A1 sale agreement, as discussed above, it is not binding on the defendant and it is a rank forgery and hence, the decided case relied on by the learned counsel for the

respondent/plaintiff is not applicable to the present facts of the case and answering these points in favour of defendant.

16. Point Nos.4 to 6:

Ex.A1 sale agreement is found to be rank forgery as per the discussions made in Point Nos.1 to 3. Passing of consideration is not established through establishing the means of the plaintiff as on the date of Ex.A1 sale agreement. Upon the evidence of plaintiff's side, namely PW1 to PW3, it is able to understand that it is the defendant's wife who borrowed money from PW1 to PW3 and unable to repay, had filed I.P.No.9/2017 before the Principal District Judge, Cuddalore and subsequently transferred to the file of Principal Sub Judge, Cuddalore. The respondents 7, 8 and 9 in it are PW1 to PW3. Hence unable to get discharged the loan amount from the defendant's wife and knowing it could be recovered from the property of the defendant, this Ex.A1 sale agreement is forged in the name of the defendant. Hence, the plaintiff is not entitled neither for specific performance of suit contract nor for the alternative relief of refund of advance sale consideration. The trial court discussed about the debt borrowed by the defendant's wife and the defendant from the PW1 to PW3. But when the execution of Ex.A1 is completely denied by the defendant, had come to unlogical conclusion that the evidence of PW1 to PW3 reveals the sale agreement was executed on receipt of Rs.7,70,000/- for repayment of loan availed by Bharathi, and the same was not disproved by the defendant. The trial court miserably believed without the proof of the plaintiff, the due execution of Ex.A1 sale agreement when the signature in it is denied and appears to be in different pattern from the admitted signatures of the defendant. The trial court in refusing to grant specific performance of suit contract is found wrong in decreeing the suit for alternative relief of refund of advance amount. It cannot be way to decide a matter. Only on the proof of due execution of suit sale agreement, when the forgery is pleaded by sending the disputed signatures to the handwriting experts for comparison with the admitted

signatures of contemporary period could be the best way to come to the conclusion that whether the suit deserves to be decreed for main relief of specific performance, nor for alternative relief of refund of advance sale consideration. Hence, this court is of a considered view that the respondent/plaintiff is not entitled to any relief and the judgment and decree passed in O.S.No.568/2017 on the file of II Additional Sub Judge, Cuddalore, dated 27.03.2023 are found to be set aside and the appeal suit is found to be allowed and answering these points accordingly.

17. In the result, the judgment and decree passed by the II Additional Sub Judge, Cuddalore in O.S.No.568/2017 dated 27.03.2023 are hereby set aside and the suit is dismissed and the appeal suit is allowed. No costs.

Dictated to the Steno typist and typed by her directly, corrected and pronounced by me in open court this the 17th day of July 2026.

Principal District Judge.
Cuddalore.

Copy to

The II Additional Sub Judge,
Cuddalore.

Draft/Fair Judgment
A.S.No.46/2023
Dated: 17.07.2026.
C.I.A.