

**IN THE COURT OF THE PRINCIPAL SUB JUDGE, PALANI.****Present : Tmt. K. Renugadevi,LL.M.,  
Principal Sub Judge, Palani.****Dated 23<sup>rd</sup> day of March 2026, Monday****O.S. No.395/2022****(CNR. No.TNDG07- 001012-2022)**

Mohammed Ali

--- Plaintiff

/Vs/

Velusamy

--- Defendant

This Suit was taken on file on 15.11.2022 and came before me for final hearing on 12.03.2026 in the presence of Mr.B.Abdul Nazar and Mrs.S.Nirmala Devi, Learned Counsels for the plaintiff, Mr.N.K.Selvakumar, Learned counsel for the defendant and upon hearing the arguments on both side and upon perusal of oral and documentary evidence adduced on both side and having stood over for consideration till this date, this court doth delivers the following:

**JUDGMENT**

The plaintiff has filed this suit seeking the relief of specific performance of contract and in alternative to refund an advance amount of Rs.2,25,000/- along with interest to the tune of Rs.3,35,250/- and also to create charge on the suit schedule property for the amount to be given by the defendant and also for permanent injunction restraining the defendant from causing encumbrances of the suit schedule property.

1. The plaintiff has filed the suit for specific performance of contract and in alternative to refund an advance amount of Rs.2,25,000/- along with interest to the tune of Rs.3,35,250/- and also to create charge on the suit schedule property for the

amount to be given by the defendant and also for permanent injunction restraining the defendant from causing encumbrances of the suit schedule property, on the allegation that the suit schedule property belonged to the defendant, and the defendant has come forward to sell the property to the plaintiff for the sale consideration of Rs. 2,50,000/- and executed Sale agreement on 08.10.2018 and received an advance amount of Rs.2,25,000/- and three years time was stipulated for the execution of the Sale deed to clear the encumbrances in respect of the suit schedule property. From the date of execution of the Sale agreement the plaintiff was ready and willing to perform his part and the defendant alone was protracting from executing the Sale Deed and on 07.10.2021 the date on which the three years period expires, the plaintiff approached the defendant, requested to execute the Sale deed in favour of the plaintiff, for which the defendant promised that he would execute the Sale deed in favour of the plaintiff after clearing all encumbrances. And whenever the plaintiff demanded the defendant to execute the Sale deed, the defendant demanded Rs.10,00,000/- for the execution of the Sale deed. And on 07.10.2021 a compromise talk was held in front of the elders in which the defendant promised to execute the Sale deed in favour of the plaintiff within a year i.e. before 08.10.2018 but till date the defendant has not come forward to execute the Sale deed and so the plaintiff issued notice dated 17.09.2022 calling upon the defendant to execute the Sale deed for which the defendant had not given any reply even though he received the notice on 22.09.2022 and the plaintiff heard that the defendant was taking attempts to sell the suit schedule property and left with no other option this suit is filed.

2. The defendant filed written statement stating that the sale agreement was executed only as a security for the loan amount borrowed by him from the plaintiff and it is false to say that the plaintiff demanded the defendant to execute the Sale deed on 07.10.2021 and on the said date the defendant demanded Rs.10,00,000/- for the execution of Sale Deed. After receipt of the Advocate notice dated 17.09.2022 the defendant approached the plaintiff and asked about the notice sent by him for which the plaintiff requested the defendant not to take any action and so this defendant does not give any reply notice nor taken any other legal steps against the plaintiff and it is also false to state that the plaintiff waited at Sub-Registrar's Office on 10.10.2022. And further contended that as per Partition Deed dated 12.12.2012 the suit schedule property fell into the shares of the defendant and on 24.07.2013 the defendant borrowed an amount of Rs.1,50,000/- from one Shanmugam for farming work and the same was registered in document No. 1352/2013 and as the defendant could not pay the amount, the defendant approached the plaintiff who is doing money lending business and he accepted to lend money on execution of Sale agreement and so the Sale agreement executed in favour of Shanmugam was cancelled on 10.09.2015 and another Sale agreement was executed for a sum of Rs.1,50,000/- in favour of the plaintiff on the same day and the same was also cancelled on 08.10.2018 and executed the suit Sale agreement on the same day only as a security. And therefore the allegation of the plaintiff seeking specific performance on the basis of the Sale agreement that has been executed for security is not legally sustainable and so sought to dismiss the suit.

**3. Based on the pleadings of both parties and documents the following issues were framed.**

1. Whether the suit Sale agreement executed by the defendant as a security for the loan amount as stated in the written statement ?
2. Whether the plaintiff is entitled for the relief of specific performance ?
3. Whether the plaintiff is entitled to alternative relief of refund of advance amount of Rs.2,00,000/- with interest as prayed for ?
4. To what other relief ?

**The following Additional issues are framed on 11.03.2026.**

1. Whether the plaintiff is entitled for charge of the property ?
  2. Whether the plaintiff is entitled for the relief of permanent injunction ?
4. The plaintiff to substantiate his case subjected himself as PW1 and through him Ex.A1 to Ex.A4 were marked and thereafter through cross examination of DW1 Ex.A5 was marked. And on the side of the defendant, the defendant himself was examined as DW1 and through him Ex.B1 to Ex.B5 were marked.
5. The learned Counsel for the plaintiff argued that the execution of Sale agreement is admitted and therefore the same need not to be proved by the plaintiff. And the defendant who had alleged that the Sale agreement was executed only as a security for the loan transaction has to establish the said fact, but there is no evidence to substantiate that Sale agreement was executed only for loan transaction. Further DW1 though alleged that the value of the property is high has not substantiated the same by producing appropriate documents. Further DW1 during his cross

examination admitted that he has not paid any interest to the plaintiff, and so if really the Sale agreement was executed as a security for the loan transaction, the defendant would have paid the interest to the plaintiff. And therefore non payment of interest to the plaintiff as admitted by the defendant would clearly establish that Ex.A1 Sale agreement was executed not as a security for loan transaction. Further the learned Counsel argued that the original title deed was with the defendant's wife and the same was admitted by the defendant during his cross examination and so the execution of the sale deed was postponed and the plaintiff was always ready and willing to perform his part. And the allegation that Sale agreement was executed only as a security for loan transaction is not true.

6. Further argued that DW1 during his cross examination admitted that he issued Ex.A5 notice, however he has not pleaded about the same in his written statement regarding the reply notice, rather given a different version in the written statement different from his Ex.A5 reply notice. And there is no specific pleadings as to the amount that the defendant alleged to have borrowed from the plaintiff and also its interest. And therefore the allegation that the execution of the Sale agreement only for the purpose of security for the loan transaction is nothing but a falsehood raised for the purpose of the suit and so sought to decree the suit for specific performance of contract. And referred to the Judgment of the Hon'ble High Court reported in ***“ S.A.No.1283 of 2011 and M.P.No.1 of 2011 M.Sekar /Vs/ P.Madeshwaran and in C.A.No.638/1980 Ram Sarup Gupta (dead) By Lrs /Vs/ Bishum Narain Inter College and Others”*** to support his arguments.

7. The defendant has not come forward to put forth his arguments, hence arguments of the defendant was closed.

8. Heard. Records perused.

**9. Issue Nos.1 to 3 :**

According to the case of the plaintiff the suit schedule property is situated in S.No. 508/2 having measurement of 72 cents, S.No. 508/4 having measurement of 2 cents along with 1/3rd share in the well and pathway available in S.No. 508/4 belonged to the defendant. The defendant has not disputed his right in the suit schedule property. Moreover Ex.B1 Partition Deed produced in which it is evident that "A" schedule property in the Partition Deed was allotted to the defendant and the said "A" schedule property comprises of suit schedule property also.

10. Further it is admitted that on 08.10.2018 a sale agreement was executed by the defendant. However it is a specific case of the defendant that the said Sale agreement was executed only as a security for the loan amount. Therefore even though the execution of Ex.A1 sale agreement is admitted, as the defendant has raised a specific plea that the sale agreement was executed only for the purpose of loan transaction, it is necessary to see as to whether Ex.A1 sale agreement was really intended to sell the property or executed for the purpose of loan transaction. As rightly argued by the Learned Counsel for the plaintiff that Ex.A1 Sale agreement being a registered document a legal presumption in favour of its solemn act is available and the burden is on the defendant who pleads that Ex.A1 Sale Agreement was executed only for the

purpose of loan transaction has to establish before this court that Ex.A1 Sale agreement was not really intended to sell the property rather it was given as a security for the loan amount borrowed by him from the plaintiff.

11. And therefore to ascertain the said fact mere admission of the execution of Ex.A1 Sale agreement is not suffice to hold in favour of the plaintiff rather careful scrutiny of the evidence put forth by either side is necessary to ascertain the surrounding circumstances so as to find out whether Ex.A1 Sale agreement was really executed for the purpose of loan transaction and for that purpose the defendant has taken steps by filing Ex.B1 to Ex.B5 documents to substantiate his defence.

12. Moreover, it is a specific defence of the defendant in his written statement that he borrowed money from one Shanmugam on 24.07.2013 and executed a Sale agreement for the same and as he was not in a position to repay the amount he borrowed money from the plaintiff who alleged to be a money lender for repaying the amount to the said Shanmugam on 10.09.2015 and cancelled the Sale agreement in the name of Shanmugam on 10.09.2015 and executed a fresh Sale agreement in favour of plaintiff for a sum of Rs.1,50,000/- on the same date. And the said Sale agreement executed on 10.09.2015 in favour of the plaintiff was subsequently cancelled on 08.10.2018 and executed the suit Sale agreement on 08.10.2018. And the perusal of the Ex.B2 to Ex.B5 filed on the side of the defendant clearly establishes that the defendant had executed a Sale agreement dated 24.07.2013 in favour of one Shanmugam and the same was cancelled on 10.09.2015 and on the same day a Sale agreement was executed in favour of the plaintiff and the same was

also subsequently cancelled on 08.10.2018. And on the same day the suit Sale agreement was executed. However there is no specific cross examination on the side of the plaintiff regarding regarding these documents specifically.

13. Above all the plaintiff has not filed any replication regarding the previous sale agreement and its cancellation and also during arguments there is no explanation as to why previous sale agreements was executed between the plaintiff and the defendant. And therefore this court is of the opinion that the pleadings put forth by the defendant regarding the execution of sale agreement in favour of the plaintiff for the purpose of loan transaction found to be believable in the absence of clarification on the side of the plaintiff regarding the previous sale agreements executed in favour of the plaintiff.

14. That apart the plaintiff himself in his plaint had alleged that the defendant has not issued any reply notice for the notice dated 17.09.2022 but contrary to the same during the cross examination of DW1 the plaintiff posed question as if Ex.A5 reply notice was given by the defendant. It is also pertinent to note here that the defendant himself in his written statement admitted that he has not issued any reply notice. In such circumstances, the evidence of DW1 admitting Ex.A5 reply notice found to be fishy. Even during the arguments of the plaintiff there is no clarification on the side of the plaintiff as to why Ex.A5 reply notice was not disclosed either in the plaint or in the evidence.

15. Above all as per the pleadings and documents the sale consideration amount is Rs.2,25,000/- out of which a major amount of Rs.2,00,000/- was alleged to be given as an advance amount. And the remaining meagre amount of Rs.25,000/- agreed to be payable within a period of three years. And no proper reason stated either in the agreement or in the pleadings or in the evidence, for stipulation of three years period for the payment of meagre amount of Rs.25,000/-. Even though the plaintiff has pleaded that to clear the encumbrances such period was stipulated, there is no specific pleadings as to the nature of encumbrances for stipulating three years time for clearance of the same. Further the above circumstances creates doubt in the mind of the court as to whether really sale agreement was executed with an intention to purchase the property.

16. That apart it is the duty of the plaintiff to establish that he was always ready and willing to perform his part from the date of agreement. The stipulation of three years time for the payment of remaining sale consideration of meagre amount of Rs.25,000/- in the absence of proper reason for such three years would impliedly go to infer that the plaintiff was not ready and willing to perform his part. The mere fact that the original Sale deed was with the wife and so the execution of the Sale deed was postponed is without pleading and moreover wife of defendant was not examined on that aspect. Above all no such specific recitals in the Sale agreement regarding the non-availability of original title deed with the defendant. In such circumstances, mere admission of the defendant during cross examination that the original title deed

is with the wife is not sufficient reason for the postponement of sale for the period of three years.

17. Further our Hon'ble *Supreme Court in Tejra /Vs/ Pati Rambhau reported in 1997(9) SCC 364 had observed that out of the sale consideration of Rs.50,000/-, Rs.48,000/- was received and one year time was given for payment of Rs.2,000/- and held that the agreement in reality was only a money transaction and therefore the respondent was not entitled for the relief of specific performance.*

*And our Hon'ble High Court in A.Palaniappan /Vs/ M/s. Giriram Finance and Leasing on 27<sup>th</sup> March 2024 had observed that “ this position of law makes it clear that where an unusally long period is given for paltry sum to be paid, the court can presume that agreement is a loan transaction”.*

*Further in Vijayalakshmi /vs/ A. Ganesan (died) and others 2023 SCC online Madras 5973 “ No prudent man will wait for a period of 2-1/2 years for a payment of Rs.25,000/- when the deceased 1<sup>st</sup> respondent/plaintiff paid a sum of Rs. 1,75,000/- as advance at the time of entering into Sale agreement. When the plaintiff approaches the court seeking equitable relief of specific performance he has to clarify as to why such long period of 2-1/2 years granted for payment of Rs.25,000/- and for the execution of Sale deed. However there was no specific pleadings in the plaint with regard to the reason for 2-1/2 years. In such circumstances, this court is of the view that Sale agreement is for the repayment of the hand loan alone and not execution of Sale deed. Such presumption is possible*

*under Section 114 of the Indian Evidence Act, owing to the existence of available facts in the present case.*

*And so the Judgments referred by the Learned Counsel for the plaintiff are not applicable to the present facts and circumstances of this case.*

18. And therefore for the above said reasons this court does not feel safe to grant the equitable relief of specific performance of contract. However as the defendant himself admitted that he received the amount from the plaintiff and executed Ex.A1 Sale agreement, the plaintiff is entitled for alternative relief. And therefore the defendant is directed to repay the amount of Rs.2,25,000/- along with 6% interest to the plaintiff within a period of one month.

**19. Additional Issue Nos.1 and 2:**

Further the plaintiff has sought for the relief of charge of the property towards the amount payable by the defendant and so this court inclined to create charge over the first item of the suit schedule property for the amount of Rs.2,25,000/- payable by the defendant. As far as relief of permanent injunction is concerned the plaintiff has no locus standi to seek such relief as he was granted with the relief of charge over the first item of the suit schedule property towards the liability, which is a secured one. Hence the relief of permanent injunction is dismissed.

**20. Issue No. 4:**

As the plaintiff is granted with an alternative relief, the plaintiff is not entitled for any other relief.

In the result the suit is decreed with cost directing the defendant to pay a sum of Rs.2,25,000/- along with 6 percent interest to the plaintiff within a period of one month and a charge in respect of first item of property situated in S.No.508/2, measuring 0.72 cents is ordered towards the decree amount. And the suit is dismissed in respect of the relief of specific performance of contract and also permanent injunction restraining the defendant from alienating the suit property.

Dictated to the steno-typist, transcribed and computerized by her, corrected and pronounced by me in the open court on this the 23<sup>rd</sup> day of March 2026.

sd./K.Renugadevi,  
**Principal Sub Judge,**  
**Palani.**

**Plaintiff side Witnesses :**

1. PW1. - Mr.Mohammed Ali (Plaintiff)

**Plaintiff side Exhibits :**

1. Ex.A1 - 08.10.2018 - Registered Sale Agreement entered between the plaintiff and the defendant.
2. Ex.A2 - 17.09.2022 - Copy of legal notice sent by the plaintiff to the defendant.
3. Ex.A3 - .. - Acknowledgment Card.
4. Ex.A4 - 17.10.2022 - Copy of notice sent by the Sub-Registrar, Keeranur to the Counsels of the plaintiff.
5. Ex.A5 - 19.11.2022 - Copy of the reply notice sent by the defendant to the plaintiff (during cross examination of DW1)

**Defendant side witnesses**

1. DW1. - Mr.Velusamy (Defendant)

**Defendant side Exhibits :**

1. Ex.B1 - 12.12.2012 - Certified copy of Partition Deed entered into between the defendant, one Mr.R.Rathinasamy, Mr.Palsamy (a) Mr.R.Ponnusamy and Mrs.Sumathy.
2. Ex.B2 - 24.07.2013 - Certified copy of Sale agreement entered into between one Mr.R.Shanmugam and Mr.R.Velusamy.
3. Ex.B3 - 10.09.2015 - Certified copy of Cancellation Deed of Sale agreement entered into between one Mr.R.Shanmugam and Mr.R.Velusamy.
4. Ex.B4 - 10.09.2015 - Certified copy of Sale agreement entered into between the plaintiff and the defendant.
5. Ex.B5 - 08.10.2018 - Certified copy of Cancellation Deed of Sale agreement entered into between the plaintiff and the defendant.

sd./K.Renugadevi,  
**Principal Sub Judge,**  
**Palani.**

PRINCIPAL SUB COURT,  
PALANI.

**O.S. No.395/2022**

DRAFT/FAIR JUDGMENT

Judgment dated : 23.03.2026

