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A.S. No.68/2025

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI

**Present: Thiru.Swarnam J. Natarajan, M.L.,
Principal District Judge, Theni**

Monday, this the 20th day of April, 2026

Appeal Suit No.68/2025

C.N.R. No.TNTH01-004769-2024

M. Pushpam

... Appellant/Plaintiff

/Versus/

1. V. Sivamurugan

2. Minor. Pranesh

Represented through his
nature Guardian / father

1st Respondent

... Respondents/Defendants

Appeal against the Judgment and Decree passed in O.S. No.82 of 2022 dated
19.10.2024 on the file of Subordinate Court, Theni.

Between:-

M. Pushpam

...Plaintiff

/Versus/

1. V. Sivamurugan

2. Minor. Pranesh

Represented through his
nature Guardian / father

1st Respondent

...Defendants

This Appeal suit was coming up for final hearing on 06.04.2026 in the
presence of Thiru. Vallinayagam, Advocate for the Appellant and of
Thiru. K. Rajasekaran, Advocate for the 2nd Respondent/Court Guardian and the 1st

20.04.2026

Principal District Judge, Theni



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Respondent was called absent and set exparte and upon hearing both sides' arguments, after perusing the documents, the case having stood over for consideration till this date, this Court delivered the following :

J U D G M E N T

The un-successful plaintiff in O.S. No.82 of 2022 had suffered a judgment and decree on the suit seeking the relief of specific performance of the sale agreement dated 29.01.2020, after receiving the balance sale consideration and to execute the sale deed in favor of the plaintiff. By judgment dated 19.10.2024, the suit was dismissed in entirety, negating the prayer of specific performance as well as the relief of refund of advance amount. Being aggrieved and dissatisfied with the judgment dated 19.10.2024 from the learned Subordinate Judge, Theni, the present appeal is preferred.

2. The facts stated in the plaint in brief is as follows:-

i. The suit property belongs to the first defendant, situated in Andipatti Sub-Registrar limit, and was succeeded by the defendant by virtue of Settlement Deed Document No.550 of 2014. The first defendant, after the said settlement deed, was in independent possession and enjoyment of the suit property. When the first defendant expressed his willingness to sell the suit property, the plaintiff had agreed to purchase the suit property from the defendant. In this regard, terms and conditions were sorted out on 29.10.2020. The property was valued at Rs.4,00,000/-, and the



first defendant agreed to sell the suit property for a value of Rs.4,00,000/- and received an advance amount of Rs.3,50,000/- on 29.01.2020.

ii. The balance sale consideration of Rs.50,000/- was agreed to be paid by the plaintiff within a period of two years, and the defendant agreed to execute the sale deed in favor of the plaintiff on receipt of the said balance sale consideration. The first defendant is the guardian, and the second defendant is the minor, and on his behalf also, the agreement was executed. The plaintiff was all along ready and willing to perform his part of the contract by paying the balance sale consideration of Rs.50,000/- and to execute the document in favor of the plaintiff.

iii. However, the defendant was postponing and delaying the execution of the sale deed. Contrary to the terms and conditions of the sale agreement, the plaintiff had issued a legal notice to the defendant on 15.12.2021, calling upon the first defendant to report before the Andipatti Sub-Registrar office for execution of the document. The legal notice was issued on 30.11.2021 for the defendant to appear and execute the document on 15.12.2021. The said notice was issued and received by the defendant on 08.12.2021. After receipt of the notice, the defendant failed to appear and execute the document and sent a rejoinder on 29.01.2020. Hence, the present suit was filed.

3(i). The defendants filed their written statement, denying the allegations made in the plaint and admitted the ownership of the suit property in the name of the first



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defendant. It is stated that the first defendant is working in the Tamil Nadu State Transport Corporation, and the plaintiff's husband, Sudalaimadan, is working in the Tamil Nadu Police Department. There were no connections whatsoever between the first defendant and the plaintiff, whereas the plaintiff's husband is a friend of the first defendant from their childhood.

3(ii). Due to the financial transaction between the first defendant and the plaintiff's husband with regard to the barred loan amount, the plaintiff's husband thought that in the event if the promissory note or any loan document was obtained in his name, as he was in service, the same would create problems. Thereby, he had obtained a sale agreement in favor of the plaintiff on 29.02.2020, as if the sale price for the property was fixed at Rs.4,00,000/-, an advance amount of Rs.3,50,000/- was paid, and the balance amount of Rs.50,000/- is due and liable to be paid.

3(iii). In fact, the sale agreement was executed only towards the loan transaction, and there were no sale transactions that had taken place between the plaintiff and the defendant as alleged. In fact, as per the dictation of the plaintiff's husband, Sudalaimadan, in whose father Madasamy's name a sale agreement was executed on 07.10.2019 for a sale consideration of Rs.3,00,000/-, with Rs.2,50,000/- paid and the balance of Rs.50,000/- fixed. Due to the same, the sale agreement was cancelled on 20.01.2020, and the next day, on 29.01.2020, the sale agreement was executed for an enhanced price of Rs.4,00,000/- by fixing the advance amount of Rs.3,50,000/- and



balance sale consideration of Rs.50,000/-. No specific reasons were prescribed in the agreement for providing a two-year period for completion of the transaction.

3(iv). While the two-year period was about to lapse without taking steps, the notice was issued by the plaintiff. The defendants have sufficient amount in their account and have more than Rs.10,00,000/- cash available in hand; thereby, there is no necessity for the defendant to sell the property for a throwaway price. Hence, the defendant prays for the dismissal of the suit.

4. Based on the above pleadings, the following issues were framed for trial:-

- 1) Whether the suit sale agreement dated 29.01.2020 is time-barred one ?
- 2) Whether the plaintiff's sale agreement has been obtained as security for the loan transaction amount by the defendant as alleged ?
- 3) Whether the plaintiff is ready and willing to perform his part of the contract ?
- 4) Whether the plaintiff is entitled to get the relief of specific performance of the contract as prayed for ?
- 5) Whether the plaintiff is entitled to get the alternative relief of recovery of advance amount with interest as prayed for ?
- 6) To what other relief is the plaintiff entitled ?

5. On the side of the plaintiff, PW1 was examined, and Ex.A1 to Ex.A7 were marked. PW2, one Manivasagam, was examined, through whom Ex.A8 was marked.



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No witnesses were let in on the side of the defendant, and no documents were marked.

6. The findings of the Trial Court are:-

Ex.A1 is the original sale agreement dated 29.01.2020 between the 1st defendant and 2nd defendant infavour of the plaintiff. Ex.A2 is the legal notice dated 30.11.2021. Ex.A3 is the legal notice acknowledged by the first defendant through an acknowledgment card. Ex.A4 is the reply notice dated 08.12.2021. Ex.A5 is the rejoinder dated 24.12.2021. ExA6 is the postal receipt for the rejoinder dated 24.12.2021. The Trial Court was pleased to give a finding that there is no indication in the agreement justifying the period of executing the document for two years when the balance sale consideration was only Rs.50,000/- to be paid. No steps have been effectively made by the plaintiff to prepare the document by purchasing stamp paper, and in the absence of the document being produced to prove readiness and willingness, the Trial Court was pleased to disbelieve the plaintiff's case and dismissed the relief of specific performance as well as the relief of refund of advance amount.

7. The points raised in the grounds of appeal are:-

a. The Trial Court had not properly considered the pleadings, evidence, and exhibits and failed to note that when the execution of the sale agreement was admitted by the first respondent, it is for him to establish that Ex.A1 is for a different



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purpose. The Trial Court failed to note that the first respondent had not disputed the evidence of the appellant by cross-examination, and the respondent had not chosen to enter the witness box to establish his pleadings set out in the written statement. When the first respondent admitted the execution of Ex.A1 and failed to prove that Ex.A1 is only a loan document, it must have been concluded that Ex.A1 is a sale agreement as contended by the appellant.

b. The Trial Court failed to note that the first respondent cannot make a plea contrary to the terms of the written registered document, Ex.A1. The reasoning assigned by the Trial Court for discarding the evidence of PW2, as he is the father of the appellant, is not correct. The Trial Court failed to note that the appellant has established his readiness and willingness by way of pleadings and evidence and by insisting the respondent to complete the sale, sending notice, and also filing an allotment schedule for depositing balance sale consideration, which had not been considered by the Trial Court.

8. The points for consideration in the appeal are:

1) Whether the appellant had proved his readiness and willingness by sending notice and filing an lodgement schedule before the court for deposit of the balance sale consideration to prove his readiness and willingness, which had been overlooked by the Trial Court ?



2) Whether the Trial Court erred in dismissing the appeal, ignoring the fact that the defendant had failed to enter into the witness box to prove their case ?

3) Whether the Trial Court failed to consider the fact that the appellant was all along ready and willing to perform his part of the contract and erred in dismissing the suit ?

4) Whether the appeal suffers from illegality or perversity and whether the appeal is to be allowed for the points raised in the grounds of appeal ?

9. The learned counsel for the appellant contended that even in the appeal, the respondent remained ex-parte, and only the court guardian was appointed to protect the interest of the minor and the respondent failed to convincingly establish the fact that why evidence was not let in on the side of the defendant and why the plaintiff's side witness was not cross-examined. Ignoring the above aspects and the plaintiff witnesses was controverted by the defendant through cross examination and the trial court erred in rejecting the plaintiff's case and erred in ordering for dismissal of the suit. Hence the appellant counsel prays for allowing the appeal.

10. The learned counsel for the appellant relied upon several judgments of the Hon'ble Supreme Court and Hon'ble High Court. **AIR 1999 SCW 1129 Vidhyadhar vs. Manikrao and Another** – with regard to that when a party to a suit does not appear in the witness box and state its own case on oath, and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up



by him is not correct. **1978 AIR (Patna) Page No.48 Ramji Jankiji and Another vs. Mauni Baba Kale Kambalwala Jai Siyaram Dasji and Others** – with regard to failure on the part of the party to enter the witness box. The facts deposed by the defendant shall be disbelieved. **2007 3 CTC 456 T. Tamilarasan vs. Arokkiasamy, Thomas and Devasagayam** Paragraph Nos.18 and 19 - the effect of party not appearing in the witness box, offering himself to be cross examined but only filing a statement of oath has been held to be case of adverse inference to be drawn against him as per Section 114 of the Evidence Act. **2015 6 CTC 593 R. Aravindhana vs. K.R.S. Janakiraman (A.K.A.) and Other** - on the same point and also on the point that legal notice shows that the plaintiff was all along ready in billing to perform as part of contract.

11. 2004 4 CTC 596 Kanagambaram Ammal vs. Kakammal and Others - by relying upon Section 114 of the Indian Evidence Act, the Hon'ble Division Bench of High Court, Madras was pleased to held that where a party who failed to produce such principle witness or who failed himself to be examined as a witness when he is a party. He did not state the facts stated in the written statement on oath in the trial court and avoided the witness box so that he may not be cross examined. This by itself is enough to reject the claim that the transaction of sale between 2nd defendant and the plaintiff was a bogus transaction.



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12. 2005 3 CTC 344 Kandavel and 2 Others vs. Chidambara Padayachi (Died)

and Others - It is held that in view of provision 114 of the Evidence Act and the principle inaugurated by the Supreme Court in decision **Vidhyadhar versus Manikrao and Another** necessarily an adverse inference has to be drawn against the case set out by the 3rd defendant as she did not appear and state her own case on oath and subject herself to the cross examination by the plaintiff with reference to Ex.A-9 as she had initiated the said proceedings as evident by the said document. Hence the finding rendered by the trial court and the first appellate court that the suit property fell to the share of Singaravelu in the partition between him and his brother Dharmalingam has to be confirmed.

13. 2009 6 MLJ 332 Mannarsamy Naicker vs. Nagammal and Others Para

No.13 - A perusal of the opposite provision would clearly show that when a party to a document admits its due execution, then he cannot turn around and challenge the terms contained therein. However, it is still open to the person to contend that the document is sham and nominal and initiated by fraud. In other words, if the above said party who executes the document is able to satisfy the proviso. The said party is entitled to succeed in his contention. While making such a plea, the party concerned who speaks against the registered document will have to make out a strong case in support of his contention. In such a situation, the onus is heavily on the party who speaks against the document. Therefore, it is permissible to a party to a document to



contend and prove that the plead was intended to act upon but only shaman nominal document. Hence the learned counsel for the appellant prays for allowing the appeal.

14. On the other hand, the court guardian had contended that 24 months have been prescribed for execution of the document for payment of balance in consideration of Rs.50,000/- and at the end of the 22nd month, the notice was sent. So it reveals that the earlier sale agreement was executed and cancelled subsequently for an enhanced price. The second document was executed in favour of the plaintiff, which would prove that the transaction is nothing but a civil transaction for recovery of money and not relating to specific performance. Hence the Second Respondent counsel prays for dismissal of the suit.

15. I have given my anxious consideration to the submissions made by both parties. Even though the defendants filed written statement before the trial court, conspicuously, the defendants had not appeared before the trial court nor contested the suit. They have not chosen to cross examine the plaintiff fitness. PW1, PW2 and remained exparte including the court guardian. Though court guardian cannot be set exparte, the trial court had ignored the principles and failed to appoint a fresh court guardian for contesting the matter. However, was pleased to set exparte the second defendant and was pleased to proceed to the matter and dismiss the suit in entirety, even though the defendant had not chosen to cross examine the plaintiff's witnesses, nor chosen to let in evidence on their side.



16. In the absence of the defendant appearing before the trial court to prove their case or even to disprove the case of the plaintiff, the trial court had taken all defenses available to the defendant and cast doubt upon the plaintiff's case and was pleased to dismiss the suit. This approach by the trial court is unacceptable, as the court cannot step into the shoes of the defendant to find fault with the plaintiff's case when the defendant herself had not appeared before the Trial Court to cross-examine the plaintiff's witnesses. The trial court has to see the evidence let in on the side of the plaintiff and the defendant and to appreciate the case independently.

17. The defendant, having taken the stand that the agreement was executed only purely towards a money transaction, without proving the said fact and without producing documents with regard to the earlier sale agreement, which was executed for a lesser price and subsequently enhanced along with the interest rate without production of the document, the plea taken by the defendant cannot be accepted in whole by doubting the plaintiff's case.

18. This court finds that the plaintiff had entered into an agreement with the defendant, and the period of execution of the agreement was specified as two years, and within that time, the suit was filed. The sale agreement is relating to the purchase of immovable property; thereby, the court cannot insist on the parties that they should have the transaction completed within a period of one month or three months. Such a



specification cannot be made by the court, and the transaction relates to immovable property. Unless the defendant is examined, the reason for fixing the time for two years cannot be presumed.

19. Within the period, the plaintiff had issued a legal notice calling upon the defendant to execute the document, for which a reply was sent and a rejoinder was also sent. This court finds that the plaintiff was all along ready and willing to perform his part of the contract, and the defendant failed to execute the document. Based on the judgments relied upon by the appellant's counsel, this court finds that the Trial Court erred in disbelieving the case of the plaintiff and erred in dismissing the suit. Hence, the plaintiff is entitled to specific performance. The defendant is directed to receive the balance sale consideration deposited and to execute the document in favor of the plaintiff, failing which the plaintiff is entitled to execution of the document through the court.

In the result, the Appeal Suit is allowed with cost throughout the proceedings and the judgment and decree passed by the learned Subordinate Judge, Theni in O.S. No.82/2022 dated 19.10.2024 is hereby set aside in the appeal.

The suit in O.S. No.82/2022 on the file of the Subordinate Judge, Theni is decreed as prayed for in the appeal by directing the defendant to receive the balance



sale consideration deposited and to execute the document in favor of the plaintiff, failing which the plaintiff is entitled for execution of the document through the court.

Dictated to the Steno-Typist, taken by him in shorthand, transcribed and typed by him with the help of voice recorder, and Microsoft 365, corrected and pronounced by me, in the open court, this the 20th day of April - 2026.

**Principal District Judge,
Theni.**

Appellant side witness and documents :-

-Nil-

Respondent side witness and documents:-

-Nil-

**Principal District Judge,
Theni.**

The Principal District Court,
Theni.

A.S. No.68/2025

Copy of JUDGMENT

Dated: 20.04.2026