

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, MADATHUKULAM**

Present: Thiru. M.DHEENADHAYALAN, B.A.,B.L., LL.M.,
District Munsif Cum Judicial Magistrate,
Madathukulam.

Monday, 16th day of March, 2026
(2056 Tiruvalluvarandu, Visuvaavasuv Varudam, 02nd day of Panguni)

O.S. No. 22 of 2019
{CNR NO.TNTI22-000021-2019}

A.L.Vijayaraj

...Plaintiff

Vs

1. K.Raju (Died)
2. Ponnammal (Died)
3. Prabhu
4. Mary
5. Amirtha
6. Revathi

...Defendants

(* Amended as per order of this court, in I.A.No.01/2024, dated 05.03.2024)

This suit, originally filed on 18.06.2015, taken on file of the Hon'ble District Munsif Court, Udumalpet as O.S. No. 302 of 2015 and then transferred to this court, as per G.O.Ms.No.978, dated 29.12.2015 and the order of the Hon'ble Principal District Judge, Tiruppur in D.No.8130/2019, dated 08.08.2019 and renumbered as O.S.No.22 of 2019, after trial, came up for final hearing before me, on this day, in the presence of Mr.C.Chidambarasamy, Advocate for the Plaintiff and Mr.R.Maheswaran, Advocate for the defendants, upon hearing the arguments of the counsels, perusing the pleadings, records, written arguments and having stood over till this day, for consideration, this court delivered the following

JUDGMENT

1. This suit has been filed by the plaintiff for the relief of specific performance, directing the 2nd to 6th defendants to receive the balance sale consideration of Rs.15,000/- and to execute the sale deed in favour of the plaintiff and in default, the court shall execute the same on behalf of the defendants and for the relief of permanent injunction, restraining the defendants from alienating or encumbering the suit property to persons other than plaintiff and for the cost of the suit.

2. **The encapsulated essence of the facts pleaded in the plaint is;**

a) The suit property belonged to the 1st defendant by virtue of a house plot patta no.699/93 issued by the Tahsildar, Udumalpet during October, 1983. The 1st defendant built a house and is in enjoyment of the same. A sale agreement, dated 31.01.2014, registered as Doc.No.364/2014 before Sub Registrar, Kaniyur was entered into between the plaintiff and 1st defendant, wherein it was agreed to sell the property to the plaintiff for a total sale consideration of Rs.75,000/- of which an advance of Rs.60,000/- was paid and the remaining sale consideration of Rs.15,000/- was agreed to be paid within 1 year that is 30.01.2015. The plaintiff was always ready and willing to pay the remaining sale consideration and get the sale deed executed. Though the plaintiff met the 1st defendant in person and sought for execution of sale deed, the 1st defendant evaded from the same. On 24.11.2014, the plaintiff issued a legal notice for execution of the sale deed, which was received by the defendant on 02.12.2014. Even after the receipt of the notice, the 1st defendant did not come forward to execute the sale deed. The 1st defendant is making arrangements to sell the suit property to third parties. The defendant is to be directed to execute the sale deed as per the sale agreement and in the event of failure on the part of the defendant inspite of a decree, the court shall execute the same. Hence this suit.

b) During the pendency of the suit, as the sole defendant demised, the 2nd to 6th defendants were ordered to be impleaded as per order in IA No.65 of 2020 dated 10.04.2019. Further, the 2nd defendant Ponnammal demised on 27.05.2022 and her legal heirs were already arrayed as 3rd to 6th defendants and necessary amendments were carried out as per order in IA No. 01 of 2024 dated 05.03.2024. The 3rd to 6th defendants are to be directed to execute the sale deed.

3. The encapsulated essence of the facts enumerated in the Written statement filed by the 3rd defendant and adopted by 4th to 6th defendants is;

a) The suit is not maintainable in law and facts. This defendants' father Raju availed a loan of Rs.60,000/- from the plaintiff and owing to the compulsion of the plaintiff, a sham and nominal sale agreement was executed in support of the same. The sale agreement was not executed with an intention to sell the property. The Raju was repaying the interest regularly and had repaid principal sum of Rs.35,000/- before he demised on 02.07.2015. After his demise, the plaintiff informed the 2nd defendant Ponnammal that if they repay the plaintiff as directed by him, he will withdraw the suit. But as the plaintiff sought for exorbitant amount the 2nd defendant could not repay the sum. Thereafter the 2nd defendant demised on 27.05.2022. The plaintiff even after the demise of the 2nd defendant, has been demanding exorbitant interest. This defendants are ready to pay the sum due, after detecting the sum already paid by the deceased Raju. The suit is to be dismissed with cost.

Issues;

4. Upon a thorough examination of the pleadings presented by both parties and the case records, this court, on 14.06.2024, has formulated the following issues for adjudication;

- I. Whether the defendant executed the sale agreement, dated 31.01.2014 with regard to the suit property in favour of the

plaintiff ?

- II. Whether the defendant did not come forward to execute the sale deed in spite of readiness of the plaintiff as per the sale agreement ?
- III. Whether the plaintiff was ready and willing to execute the sale deed?
- IV. Whether it is true that the sale deed was executed for the loan availed by the deceased 1st defendant from the plaintiff ?
- V. Whether the plaintiff is entitled to the relief of Specific performance by the 2nd to 6th defendants by receipt of balance sale consideration of Rs.15,000/- ?
- VI. Whether the plaintiff is entitled to the relief of permanent injunction with regard to the suit property ?
- VII. To what reliefs the plaintiff is entitled to ?

Witnesses and Documents;

5. The plaintiff have examined himself as P.W.1. Three documents – Exs.A1 to A3 were exhibited on the plaintiff's side. The Ex.A1 is the Sale agreement, dated 31.01.2014. The Ex.A2 is legal notice, dated 24.11.2014. The Ex.A3 is the postal acknowledgment card, dated 29.11.2014.

6. The 3rd defendant has examined himself as D.W.1. No documentary evidence has been filed by the defendants. Heard the plaintiff side arguments. The written arguments filed by the defendants perused.

Issues No. I to V;

7. Considering the issues framed, in order to avoid repetitions and overlap in the discussion of the facts of the case, and as all the issues are interconnected, this

court considers it appropriate to adjudicate the issues No. I to V jointly. As per the plaintiff, the suit property belonged to the 1st defendant and a sale agreement, dated 31.01.2014, registered as Doc. No.364/2014 before Sub Registrar, Kaniyur was entered into between the plaintiff and 1st defendant, wherein it was agreed to sell the property to the plaintiff for a total sale consideration of Rs.75,000/- of which an advance of Rs.60,000/- was paid and the remaining sale consideration of Rs.15,000/- was agreed to be paid within 1 year that is 30.01.2015. The plaintiff though was always ready and willing to pay the remaining sale consideration and get the sale deed executed, the 1st defendant evaded from the same and as such, on 24.11.2014, the plaintiff issued a legal notice for execution of the sale deed, which was received by the defendant on 02.12.2014 and even after the receipt of the notice, the 1st defendant did not come forward to execute the sale deed and the 3rd to 6th defendants, being the legal heirs of the 1st and 2nd defendants are to be directed to execute the sale deed as per the sale agreement.

8. The defendants have resisted the suit on the ground that the 1st defendant Raju availed a loan of Rs.60,000/- from the plaintiff and in support of the same, owing to the compulsion of the plaintiff, a sham and nominal sale agreement was executed. The sale agreement was not executed with an intention to sell the property and the 1st defendant during his lifetime was repaying the interest regularly and had repaid principal sum of Rs.35,000/- before he demised on 02.07.2015. After his demise, the plaintiff informed the 2nd defendant Ponnammal that if they repay the plaintiff as directed by him, he will withdraw the suit. But as the plaintiff sought for exorbitant amount the 2nd defendant could not repay the sum. Thereafter the 2nd defendant demised on 27.05.2022. The plaintiff even after the demise of the 2nd defendant, has been demanding exorbitant interest. This defendants are ready to pay the sum due, after detecting the sum already paid by the deceased Raju and the suit is to be dismissed with cost.

9. There is no dispute with regard to the title of the 1st defendant over the suit property and the suit property belonged to the 1st defendant by virtue of a house plot patta no.699/93 issued by the Tahsildar, Udumalpet during October, 1983. During the pendency of the suit, the then sole defendant demised and his legal heirs, the 2nd to 6th defendants have been impleaded and during the pendency of the suit, the 2nd defendant also demised. There is no dispute as to the fact that the 3rd to the 6th defendants are the only legal heirs of the deceased 1st and 2nd defendants.

10. The dispute, in essence, is that the plaintiff seeks for specific performance of the sale agreement, dated 31.01.2014 and the defendants contend that the sale agreement was not intended to acted upon and it was executed for the loan availed by the 1st defendant from the plaintiff.

11. At the outset, this Court considers it appropriate to ascertain whether the defendants can be permitted to raise a plea that the sale agreement was not intended to acted upon and it was executed for the loan availed by the 1st defendant from the plaintiff and adduce evidence for the same, in view of the bar laid down in Section 92 of the Evidence Act, 1872. The Hon'ble Supreme Court in "Gangabai Vs Chabubai" reported in 'AIR 1980 SC 20' and "Ishwar Dass Jain Vs Sohan Lal" reported in 'AIR 2000 SC 426', have held that with reference to Section 92(1) of Evidence Act, that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties.

12. Further, the Hon'ble High Court of Madras in "Kamireddi Sattiraju Vs Kamireddi Mangayamma (Died) and others", reported in '2007 (1) MLJ 499', in a

similar suit for specific performance with similar plea to the effect that agreement was not intended to be acted upon but was executed only as security for a loan transaction, after considering the decisions of the Hon'ble Supreme Court stated above, have held that the defendants can be permitted to adduce evidence regarding invalidating circumstance pleaded before this Court and cannot adduce evidence to vary the terms.

13. Now that it is clear that the defendants can adduce evidence in support of their pleading that the sale agreement was executed only for the loan transaction, this Court proceeds to evaluate the evidence adduced. The defendants have contended that even during the pendency of the suit, the defendants have made payments towards the repayment of the loan and the plaintiff have received the same. The defendants have not produced any documents to show that they have made payment to the plaintiff. Nevertheless, during the cross examination of the plaintiff, who examined himself as P.W.1, on 23.01.2025 (Para No.3), the plaintiff have stated

“1 ம் பிரதிவாதி ஊயிருடன் இருந்த காலத்தில் என்னிடம் வாங்கிய பணம் ரூ.60 ஆயிரத்தில் ரூ.25 ஆயிரம் திருப்பிக் கொடுத்தார் என்றால் 1 ம் பிரதிவாதி கொடுக்கவில்லை அவரது மகன் பிரபு தான் கொஞ்சம், கொஞ்சமாக நான்கு தவணைகளில் செலுத்தினார்.”

The plaintiff when asked that the 1st defendant during his lifetime has repaid Rs.25,000/- out of the total Rs.60,000/- availed from him, the plaintiff have categorically adduced that the 1st defendant did not pay any sum and its his son Prabhu who has made payment of Rs.25,000/-. The said Prabhu has been arrayed as 3rd defendant herein. This Court takes note of the fact of that the 3rd defendant have also stood as one of the witness to the sale agreement, which is admitted by the P.W.1 during his cross examination. The same assumes importance, as the 3rd defendant being a witness may have direct knowledge of the transaction between the plaintiff

and the 1st defendant.

14. Further, when the P.W.1 was asked as to the number of installments paid by the 3rd defendant and whether the same was paid towards the principal and the interest, the P.W.1 have adduced [Cross examination on 23.01.2025 (Para No.3)]

"ஒவ்வொரு தவணையிலும் பிரபு சுமார் எவ்வளவு கட்டினார் என்றால் 2 ஆயிரம், 3 ஆயிரம், 4 ஆயிரம் என்று செலுத்தினார். பிரபு வட்டிக்கும், அசலுக்கும் சேர்த்து தான் கட்டினார் என்றால் வட்டி மாதா மாதம் செலுத்த முடியாததால் அவர் கையில் இருப்பதை கொடுத்து வரவு வைக்கச் சொல்லி 6 மாதம் மற்றும் ஒரு வருடத்திற்கு ஒரு முறை கொடுத்தார்"

The plaintiff have adduced that the 3rd defendant has paid Rs.2,000/-, Rs.3,000/- and Rs.4,000/- and as he cannot pay the interest every month, the 3rd defendant have paid every 6 months or one year and has sought to keep accounts of the same. When the plaintiff was asked as to whether he issued a receipt for the sum paid he has adduced, during cross examination, as [on 23.01.2025 (Para No.4)]

"அவ்வாறு என்னிடம் பணம் கொடுக்கும் போது ரசீது கொடுக்கும் பழக்கம் உள்ளதா என்றால் நோட்டீஸ் எழுதிக் கொடுப்போம். 1ம் பிரதிவாதி இறக்கும் முன்பு வரை எவ்வளவு பணம் என்னிடம் செலுத்தினார்கள் என்றால் அவர் இறக்கும் வரை செலுத்தவில்லை. 1ம் பிரதிவாதி இறந்த பின்பு 16 ஆயிரம் செலுத்தியுள்ளார்கள்"

The plaintiff have adduced that he does not issue receipts for the payments but have noted the same in a notebook. This court takes note of the fact that endorsing the payments in a notebook is typical of a money lending transaction. Further, the plaintiff have adduced that the 1st defendant did not pay any sum during his lifetime and after his demise, the other defendants have paid Rs.16,000/- to the plaintiff.

15. The plaintiff who was examined as P.W.1 was partly cross examined on 23.01.2025 and upon request of the defendants, was adjourned and further cross examined on 21.07.2025. A comprehensive reading of the cross examination of the P.W.1, this court could infer that the P.W.1 has admitted, impliedly, to the fact that the transaction between him and the 1st defendant was a loan transaction during his cross examination on 23.01.2025 and yet, on 21.07.2025, when he was further cross examined he has changed his stance and have tried to portray the transaction as a sale transaction.

16. Though on 23.01.2025, the P.W.1 has admitted that he received Rs.16,000/- and on 21.07.2025, when he was questioned as to whether he accounted the Rs.16,000/- so received towards the principal or the interest, the P.W.1 has answered as

“1 ம் பிரதிவாதி இறந்த பின்பு செலுத்தப்பட்டதாக நான் சொல்லும் 16 ஆயிரத்தை அசலில் வரவு வைத்தேனா அல்லது வட்டியில் வரவு வைத்தேனா என்றால் பணத்தை வைத்துக்கொள்ளுங்கள் கிரையம் சமயத்தில் தொகை செட்டில்மெண்ட் செய்யும் போது பார்த்துக்கொள்ளலாம் என்று சொல்லிக் கொடுத்தார்கள்”

The P.W.1 has answered that the defendants gave the money and told the P.W.1 that the money shall be adjusted during the execution of the sale deed. Even assuming the case of the plaintiff as true, as per the sale agreement the plaintiff is the buyer and the 1st defendant and after his demise, his legal heirs are the vendors, there is no reason for the vendors to pay the buyer any sum as it is the buyer who pays the sale consideration and the evidence of the P.W.1 on 21.07.2015 only reveals his intent to cover up the admission which he has made during the previous cross examination.

17. Further, the P.W.1 was cross examined on 23.01.2025 and on that day (para 5) when he was asked as to whether he visited the suit property, the P.W.1 have adduced as

“நான் தாவாச் சொத்தை 2 மாதங்களுக்கு முன்பு சென்று பார்த்தேனா என்றால் பார்த்தேன். அப்போது நான் பிரதிவாதியிடம் பணத்தை திருப்பி கொடுக்குமாறு கேட்டேன் என்றால் 1ம் பிரதிவாதி இல்லை அவர் மனைவி தான் இருந்தார் அவரிடம் வந்தால் பணம் கொடுக்குமாறு சொல்லி வந்தேன்”

The P.W.1 have adduced that he visited the suit property about two months ago and he asked the 1st defendant's wife that is the 2nd defendant to repay the money.

18. The plaintiff who was examined as P.W.1 during his cross examination have categorically adduced about the receipt of payment from the 3rd defendant as repayment towards the loan availed by the 1st defendant and it is clear that the Ex.A1 sale agreement was not executed for the intention of the sale of the suit property and was executed as a part of the loan transaction.

19. For the reasons aforementioned, this Court is of the considered opinion that the sale agreement in question was not intended to be acted upon as agreement for sale and it was executed only for the purpose of securing loan transaction and as such, the question of whether the plaintiff was ready and willing to execute the sale deed and the 1st defendant and after his demise, the 3rd to 6th defendants did not come forward to execute the sale deed in spite of readiness of the plaintiff does not arise and in culmination of all this, the plaintiff is not entitled to the relief fo specific performance by the defendants by receipt of balance sale consideration and the issues are answered accordingly.

Issue No. VI

20. Now that this Court have held that the Ex.A1 sale agreement was not intended to be acted upon as agreement for sale and it was executed only for the purpose of securing loan transaction, the relief of permanent injunction sought by the plaintiff to restrain the defendants from alienating or encumbering the suit property cannot be granted and the plaintiff is not entitled to the same and the issue is answered accordingly.

Issue No. VII

21. Considering the decisions arrived for the other issues, this court is of the considered opinion that the plaintiff is not entitled to any other relief.

In fine, the suit is dismissed. Both parties shall bear the cost of the suit.

Typed by me in my laptop and pronounced in open Court, on this day, the 16th day of March, 2026.

**District Munsif cum Judicial Magistrate
Madathukulam**

Annexure:

List of plaintiff's side witnesses:

1. P.W.1. - 30.08.2024 - Vijayaraj (Plaintiff)

List of plaintiff's side documents:

No.	Date	Description	Copy
1.	31.01.2014	Sale Agreement	Original

2.	24.11.2014	Legal Notice	Original
3.	29.11.2014	Postal Acknowledgement card	Original

List of defendants' side witnesses;

1. D.W.1. - 01.12.2025 - Prabhu (3rd defendant)

List of defendants' side documents; - Nil

**District Munsif cum Judicial Magistrate
Madathukulam**

**O.S.No. 22/2019
Date : 16.03.2026
Fair/Draft Judgment
DM Cum JM
Madathukulam**