

I ADDITIONAL DISTRICT COURT, THOOTHUKUDI

Present:- Thiru. M.Thandavan, B.L.,
I Additional District Judge,
Thoothukudi

Saturday, the 1st day of August 2026

O.S.No. 154/2021

CNR No.TNTT01- 005379 - 2021

S. Amalan John Selvasingh

... Plaintiff

/Vs/

1. K. Samuel

2. K. Johnson

3. Josephin Vijaya Sarumathi

4. Dhanasingh

5. The Sub Registrar,

Thoothukudi Keelur Sub Registrar office,

Thoothukudi.

... Defendants

(4,5 defendants impleaded as per order in I.A.No.2/2023 dated 19.07.2024)

(Amended as per order in I.A.No.3/2025 dated 03.01.2025)

This suit has been originally filed before the Principal District Court, Thoothukudi and made over to this court, on 21.08.2024 this suit was dismissed for default and the same was restored as per order in I.A.No. 3/2024 dated 03.01.2025 and it came before this Court on 14.07.2026 for final hearing, in the presence of Thiru.Dhanasingh, Advocate for the Plaintiff, Thiru. N. Selvaraj, Advocate for the 1st defendant, Thiru.V.Perumal, Advocate for the defendants 2 and 3, Thiru. Ayyappan,

Advocate for the 4th defendant, Written statement of D5 not filed, D5 called absent set exparte and after hearing both side arguments and upon perusing available material records and having stood over for consideration till this day, this Court delivered the following...

J U D G M E N T

The plaintiff has filed this suit under Order 7 Rule 1 of Civil Procedure Code (i) for directing the defendants to execute the sale deed in favour of the plaintiff and hand over the same after receiving the balance of sale consideration of Rs.3 lakhs as per the sale agreement dated 16.10.2016 in default the Court execute the sale deed in favour of the plaintiff, alternatively (ii) for directing the defendants to pay the advance amount of Rs.47,00,000/- with subsequent interest of 12% to the plaintiff and for costs.

2) The averments of the amended plaint in short :-

The suit property belongs to the 1st defendant by virtue of a settlement deed dated 12.10.2007 in respect of which the plaintiff and the 1st defendant entered into a sale agreement dated 16.10.2016 whereby the sale price was fixed at Rs.50 lakhs and the plaintiff paid Rs.6 lakhs advance on the same day and the defendant agreed to execute the sale deed after discharging the bank loan and getting the original documents from the bank and have the suit in O.S.No.113/2014 dismissed. In

case of deciding the above suit against the 1st defendant, the 1st defendant agreed to receive the balance except Rs.3 lakhs till the disposal of appeal and the 1st defendant agreed to measure the property and execute the sale deed within 3 months in favour of the plaintiff. The 1st defendant received Rs.3 lakhs on 12.11.2016 and made endorsement in the rear page of the agreement. The 1st defendant received Rs.3 lakhs on 09.07.2017 and made endorsement in the rear page of the agreement. The 1st defendant received Rs.2 lakhs on 05.08.2017 towards the balance of sale consideration and made endorsement in the rear page of the agreement. The 1st defendant demanded Rs.26 lakhs for redeeming the mortgage from the bank and execute the sale deed. On 27.09.2017, the plaintiff paid Rs.26 lakhs to the 1st defendant and the 1st defendant endorsed the same in the rear page of the sale agreement. After the 1st defendant redeeming the property, the plaintiff approached the 1st defendant for completing the sale as the plaintiff was ready to perform his part of the contract and the 1st defendant evaded. The 1st defendant demanded Rs.8 lakhs for his business and the plaintiff refused as the plaintiff has to retain Rs.3 lakhs in the sale price till the disposal of the suit and the plaintiff paid Rs.7 lakhs to the 1st defendant on 05.01.2020. The 1st defendant assured that the above suit would be decided soon and execute the sale deed in favour of the plaintiff. The 1st defendant totally received Rs.47 lakhs from the plaintiff. The plaintiff is ready to perform his part of the contract. In spite of the repeated demand, the 1st defendant did not execute

the sale deed. On 01.08.2021 when the 1st defendant took the encumbrance certificate, the plaintiff came to know about the fraudulent sale deed dated 16.10.2016 by the 1st defendant in favour of the 2nd defendant being his own brother. On the basis of the same, the 1st defendant executed a fraudulent settlement deed in favour of his wife being the 3rd defendant to defraud the claim of the plaintiff. The possession of the property is with the 1st defendant himself. When the plaintiff questioned the 1st defendant as to the above fraudulent deeds, the 1st defendant replied that the above documents were executed to safeguard the property from attachment and the 1st defendant agreed to execute the sale deed in favour of the plaintiff. The sale agreement dated 16.10.2016 is binding on the defendants 2 and 3. The defendants 1 to 3 failed to execute the sale deed in favour of the plaintiff. Therefore the plaintiff has filed this suit for specific performance or for the alternate relief of refund of advance amount with subsequent interest and therefore and therefore the plaintiff has requested to decree the suit as prayed for.

3) The averments of the written statement by the 1st defendant in short :-

The 1st defendant admits receiving the advance amount on the basis of the sale agreement. Subsequent the agreement, the 1st defendant settled the suit property in favour of the 2nd defendant who in turn settled the same in favour of the 3rd defendant. Though the possession of the suit property is with the 1st defendant, the

1st defendant can not sell away the suit property to the plaintiff. Since the plaintiff is not in talking terms with the 1st defendant, the plaintiff colluded with the defendants 2 and 3 and filed this false suit to grab money from the 1st defendant. The cause of action is false. The suit is barred by limitation. The other averments in the plaint have been denied by the 1st defendant and therefore the 1st defendant has requested to dismiss the suit with costs.

4) The averments of the written statement by the defendants 2 and 3 in short :-

The 2nd defendant purchased the suit property on 12.07.1999. The defendants 1, 2 and their brother Ponnudurai established a lorry booking office and the 2nd defendant invested several lakhs. The property in which the lorry booking office was established was in the name of the 1st defendant and therefore the 1st defendant was getting 80% of the income from the business. The 1st defendant demanded the 2nd defendant in the year of 2007 to settle the suit property in favour of the 1st defendant to discharge his debts and out of love and affection, the 2nd defendant executed a settlement deed in favour of the 1st defendant as the 1st defendant assured to re-settle the same in favour of the 2nd defendant. The 1st defendant create problem that he has to inaugurate a Hyundai show room in the property given to the lorry booking office and the lorry booking office has to be shifted Mappillaiyoorani. The 2nd defendant and Ponnudurai objected for the same. The said Ponnudurai died in the year 2009 and the 2nd defendant without any other option shifted the lorry booking

office to Mappillaiyoorani. In 2013, the plaintiff demanded the title deed of the 2nd defendant's house for his business and the 2nd defendant handed it over to the 1st defendant. The 1st defendant mortgaged the same in TMB South branch and did not discharge the loan. The 1st defendant pledged his jewels in the name of the 2nd defendant in Bank of Baroda and did not discharge the debt. The 1st defendant alone was administering the lorry booking office after shifting the same to Mappillaiyoorani. In 2016, the 1st defendant told the 2nd defendant that there are several debts in respect of the building of the lorry booking office and therefore the office has to be shifted to some other place. Therefore the office was shifted to the suit property in the year of 2016. The 2nd defendant alone was looking after the office after shifting the same to the suit property. Since the 1st defendant told the 2nd defendant that the property of the 1st defendant can not be redeem unless the loan is discharged. Therefore without any other option, the 2nd defendant paid Rs.30 lakhs and subsequently Rs.40 lakhs totally Rs.70 lakhs to the 1st defendant for redeeming the property. Therefore the 1st defendant executed a settlement deed 17.10.2017 to the 2nd defendant. When the 2nd defendant was hospitalized in November 2020, the 1st defendant taking advantage of the same, proclaimed that the 1st defendant expelled the 2nd defendant from the office in the presence of the staff of the office. Therefore the 2nd defendant executed a settlement dated 31.12.2020 to the 3rd defendant being his wife. The plaintiff and the 1st defendant colluded together and filed this suit to

grab the suit property. The purchase of the suit property by the 2nd defendant has been suppressed in the plaint. The sale agreement dated 16.10.2016 is a fabricated one. The payments said to have been made by the plaintiffs as detailed in the plaint are not true ones. The other averments in the plaint have been denied by the defendants 2 and 3 and therefore the defendants 2 and 3 have requested to dismiss the suit with costs.

5) The averments of the written statement by the 4th defendant in short :-

The 4th defendant has taken all the defenses that are taken by the defendants 2 and 3 in their written statement. The other averments in the plaint have been denied by the 4th defendant and therefore the 4th defendant has requested to dismiss the suit with costs.

6) The following issues are framed on the basis of the pleadings in the plaint and written statement:-

1. Whether the plaintiff is entitled to the relief of specific performance or the alternate relief of refund of advance amount with subsequent interest ?
2. What relief the plaintiff is entitled to ?

7) For the purpose of proper adjudication, the following additional issue has been framed on the basis of the pleadings. Since the evidence and the arguments on the basis of the pleadings have already been put forth on both sides, there is no necessity to both parties to adduce same evidence and put forth same argument again.

Whether the plaintiff is ready and willing to perform his part of the contract ?

8) On side of the plaintiff, the PW.1 to PW.3 were examined and Ex.A1 to Ex.A10 have been marked. On the side of the defendant, DW1 to DW3 were examined and Ex.B1 to Ex.B6 have been marked.

9) Additional Issue :-

The case of the plaintiff is that the 1st defendant became entitled to the suit property under the Ex.A2 settlement deed executed by the 2nd defendant in respect of which the plaintiff and the 1st defendant entered into the Ex.A1 sale agreement whereby the sale price was fixed at Rs.50 lakhs and the 1st defendant paid Rs.47 lakhs in advance in different dates for which the 1st defendant made endorsement in the Ex.A1 sale agreement. The case of the plaintiff is further that the plaintiff is ready and willing to perform his part of the contract. The case of the 1st defendant is that the 1st defendant admits the Ex.A1 sale agreement and receiving the advance amount. The case of the 1st defendant is further that the 1st defendant settled the suit property in favour of the 2nd defendant under the Ex.A3 after the Ex.A1 and therefore the 1st defendant can not sell away the suit property to the plaintiff. The case of the defendants 2 to 4 is that the 1st defendant settled the suit property to the 2nd defendant under the Ex.A3 and the 2nd defendant settled the same in favour of the 3rd defendant under the Ex.A4 who in turn sold the same to the 4th defendant under the Ex.A6. Admittedly the plaintiff and the 1st defendant are the parties to the Ex.A1 sale agreement. The suit is for specific performance on the basis of the Ex.A1 against the

1st defendant alone. Therefore the scope of the suit is very limited between the plaintiff and the 1st defendant alone as the 1st defendant is the only person concerning the prayer sought for in the plaint.

10) If the suit is decreed, the 1st defendant alone can be directed to execute the sale deed in favour of the plaintiff. Though the rights of the defendants 2 to 4 have also been involved in the plaint schedule property, the rights of the defendants 2 to 4 in the suit property is out of scope of the relief sought for in the plaint. Hence the defendants 2 to 4 can not be considered to be the parties to the suit. The suit is against the 1st defendant alone for the relief of specific performance. It has to be decided whether the 1st defendant has to execute the sale deed in favour of the plaintiff as per the Ex.A1 sale agreement or not.

11) A careful perusal of the records and the pleadings reveals that the 1st defendant has admitted the execution of the Ex.A1 sale agreement in favour of the plaintiff and receiving the advance amount from the plaintiff. The case of the 1st defendant is that the 1st defendant has settled the suit property in favour of the 2nd defendant under the Ex.A3 settlement deed subsequent to the Ex.A1 sale agreement. Since the defendants 2 to 4 are not concerned with the relief in the plaint, the evidence of the DW2 and DW3 namely the defendants 2 and 4 can be treated only as the evidence on the side of the 1st defendant. A careful perusal of the evidence of the DW2 and DW3 reveals that the 1st defendant settled the suit property in favour of the

2nd defendant under the Ex.A3 who in turn settled the same under the Ex.A4 in favour of the 3rd defendant who in turn sold the same under the Ex.A6 in favour of the 4th defendant and the 4th defendant is in possession of the suit property. The case of the 1st defendant is that the 1st defendant is in possession of the suit property. The evidence of the DW2 and DW3 is that the DW3 namely the 4th defendant is in possession of the suit property.

12) The DW2 namely the 2nd defendant has deposed his cross examination as, "2007 ல் தாவா சொத்தை 1ம் பிரதிவாதிக்கு நான் தானமாக கொடுத்து விட்டேன். என்னிடம் காட்டப்படும் ஆவணம் தாவா சொத்திற்கு மாப்பிள்ளையூரணி ஊராட்சி அலுவலகத்தில் வழங்கப்பட்ட கட்டிடத்திற்கான அனுமதி என்றால் சரிதான். அது பி.சா.ஆ.3. என்னிடம் காட்டப்படும் ஆவணம் தாவா சொத்தில் கட்டிடம் கட்டுவதற்கான அங்கீகரிக்கப்பட்ட வரைபடம் என்றால் சரிதான். அது பி.சா.ஆ.4." Therefore the DW2 namely the 2nd defendant admits that the 1st defendant put up construction in the suit property. The 1st defendant is said to have settled the suit property in favour of the 2nd defendant on 14.10.2017.

13) But during 2019, the compensation was given to the 1st defendant for acquiring a portion of the suit property for laying road to the railway station as admitted by the DW2 during cross examination. Therefore the notice under Section

19(2) of the Land Acquisition Act was issued to the 1st defendant for compensation. Admittedly the Ex.A3 settlement deed has been executed by the 1st defendant in favour of the 2nd defendant on 14.10.2017. If really the Ex.A3 settlement deed is a genuine one, the 2nd defendant should have claimed the compensation for the acquisition of the portion of the suit property. Admittedly the 1st defendant has received the compensation. The DW2 has not even objected the fact as to receiving compensation by the 1st defendant. The failure on the part of the 2nd defendant to object receiving compensation by the 1st defendant has not been explained by the 2nd defendant. Therefore it can be easily presumed that the Ex.A3 settlement deed was not intended to be executed with an intention to settle the property by the 1st defendant to the 2nd defendant.

14) During further cross examination of the DW2, the DW2 namely the 2nd defendant has deposed as, "மாப்பிள்ளையூரணி சாலையில் 1ம் பிரதிவாதிக்கு பாத்தியப்பட்ட இடத்தில் நவபாரத் நிறுவனம் மாற்றப்பட்டது. பின்னிட்டு தாவா சொத்திற்கு நவபாரத் நிறுவனம் மாற்றப்பட்டு இன்றுவரையில் செயல்பட்டு வருகிறது என்றால் 2019 ல் இருந்து என்ன நடக்கிறது என்று எனக்குத் தெரியாது." Admittedly the 2nd defendant has settled the property to his wife namely the 3rd defendant in the year of 2020. But the 2nd defendant himself has deposed evidence that he does not know what is happening in the suit property even

from the year of 2019. Therefore it is evident that the Ex.A4 settlement deed in favour of the 3rd defendant has also be executed by the 2nd defendant nominally without intention to settle the property. Hence without knowing anything about the suit property even from the year of 2019, the defendants 2 and 3 sold the property to the 4th defendant under the Ex.A6 in the year of 2023 even without knowing the happenings in the suit property even from the year of 2019. Therefore it is evident that the Ex.A3, Ex.A4 and Ex.A6 have been executed nominally for the best reasons known to the defendants 1 to 4 alone.

15) During further cross examination of the DW2, the DW2 has deposed as,

"தற்போதும் தாவா சொத்தில் நவபாரத் நிறுவனம் இயங்கி வருகிறது என்றால் இந்த வழக்கிற்காக பெயர் பலகையை மட்டும் அங்கு வைத்திருக்கிறார்கள். தாவா சொத்தில் 1ம் பிரதிவாதி சொத்து தனக்கு பாத்தியப்பட்டது என்றும், சொத்து குறித்து இந்த வழக்கு நிலுவையில் இருப்பதாகவும் குறிப்பிட்டு ஒரு பலகை வைத்துள்ளார். அந்த பலகை வைத்து 2 ஆண்டு இருக்கும். அதை 4ம் பிரதிவாதி எதிர்த்து கேட்கவில்லை. அது குறித்து என்னிடம் 4ம் பிரதிவாதி கேட்கவில்லை."

Such an evidence given by the DW2 himself reveals that the 1st defendant is running a company in the name of Nava Bharath in the suit property and the name board has been erected in the suit property 2 years ago which was not questioned either by the

2nd defendant or by the 4th defendant. Therefore it is evident that the Ex.A3, Ex.A4 and Ex.A6 deeds were not created with bonafide intention.

16) During the cross examination of the DW1 namely the 1st defendant, the 1st defendant has deposed as, " 2016 ல் வாதிக்கு ஒப்பந்தம் போட்டேன். அதற்கு பிறகு 2 ம் பிரதிவாதிக்கு ஒப்பந்தத்தை மறைத்து செட்டில்மெண்ட் எழுதிக் கொடுத்தேன் என்றால் சரிதான். ஒப்பந்தம் பற்றி நான் பேசிக் கொள்கிறேன் என்று 2 ம் பிரதிவாதி சொன்னார். 2 ம் பிரதிவாதி அப்படி சொன்னதாக வழக்கிற்காக பொய் சொல்கிறேன் என்றால் சரியல்ல. ரூ.50 லட்சத்திற்கு ஒப்பந்தம் போட்டேன். நான் ரூ.47 லட்சம் முன்பணமாக வாங்கினேன்." Such evidence given by the 1st defendant himself reveals that the 1st defendant received Rs.47 lakhs in advance and executed the Ex.A1 sale agreement in favour of the plaintiff. The above evidence was given by the DW1 during the cross examination of the defendants 2 and 3. Therefore the defendants 2 and 3 themselves have elicited that the Ex.A1 sale agreement is a genuine document under which the 1st defendant received Rs.47 lakhs in advance in respect of the suit property.

17) During the cross examination of the DW1 by the plaintiff, the DW1 has deposed as, " 2 ம் பிரதிவாதி பெயரில் பெயரளவில் செட்டில்மெண்ட் எழுதி வைத்தேன். சொத்தை காப்பாற்றிக் கொள்ள செட்டில்மெண்ட் எழுதி

வைத்தேன். அதனால் சொத்தின் உரிமையாளர் நான்தான். " The DW1 has further deposed as, "தாவா சொத்தை கிரையம் முடிக்கும் வசதி வாதிக்கு உள்ளது. 2ம் பிரதிவாதி தாவா சொத்து குறித்து 3ம் பிரதிவாதி பெயரில் எழுதிக் கொடுத்த செட்டில்மெண்ட் செல்லாது. நான் நம்பிக்கையின் அடிப்படையில் பெயரளவில் 2ம் பிரதிவாதிக்கு எழுதிக் கொடுத்தேன்."

Hence all the evidences reveals that the suit property is in possession of the 1st defendant. The 1st defendant received the compensation for acquiring a portion of the suit property even after the settlement in favour of the 2nd defendant. Therefore it can be inferred that the Ex.A3, Ex.A4 and Ex.A6 are nominal documents and the plaintiff is ready and willing to perform his part of the contract. Admittedly the plaintiff has paid the advance amount adequate to the worth of the property. Therefore it is held that the plaintiff would not have paid the most of the sale price without readiness and willingness. Hence it is held that the plaintiff is ready and willing to perform his part of the contract and thus the additional issue is hereby answered.

18) Issue No. 1 and 2 :-

In view of the findings given to the additional issue, this Court further holds that the plaintiff is entitled to the relief of specific performance and the plaintiff is not entitled to the relief of return of advance amount and not to any other relief and thus the issue No.1 and 2 are hereby answered.

In the result, the suit is hereby decreed with costs directing the 1st defendant to execute the sale deed in respect of the suit property within 2 months from the date of this judgment after receiving the balance of sale consideration if any. The time of payment of balance of sale consideration if any is 30 days. The suit for the relief of return of the advance amount is hereby dismissed.

Dictated to the Steno-Typist, directly typed by her in the computer, corrected and pronounced by me in the open Court this the 1st day of August 2026.

I Additional District Judge,
Thoothukudi.

List of plaintiff's side witnesses :-

PW.1 Tr. Amalan John Selvasingh

PW.2 Tr. Subarajan

PW.3 Tr. Rajkumar

List of Plaintiff's side documents :-

Ex.A1	16.10.2016	Sale agreement entered between the plaintiff an the 1 st defendant
Ex.A2	12.10.2007	SRO copy of settlement deed doc. No.3548/2007 in favour of 1st defendant
Ex.A3	14.10.2017	SRO copy of settlement deed doc. No.2993/2017in favour 1st defendant
Ex.A4	31.12.2020	SRO copy of settlement deed doc. No.5793/2020 in favour of the 3rd defendant
Ex.A5	--	Copy of plaint in O.S.No.113/2014 before Principal District Munsif Court, Thoothukudi
Ex.A6	03.11.2023	SRO copy of Sale deed doc. No.5894/2023
Ex.A7	--	Details of GST for the business in NAVABHARATH METALS

Ex.A8	--	Forms GST REG - 06
Ex.A9	--	Statement of account in HDFC Bank
Ex.A10	--	Photos in respect of Lorry Transport

List of defendants' side witnesses :-

DW.1 Tr. Samuvel

DW.2 Tr. Johnson

DW.3 Tr. Dhanasingh

List of defendants' side documents :-

Ex.B1	--	Downloaded copy of decree in O.S.No.173/2014
Ex.B2	12.07.1999	Copy of sale deed executed by 1st defendant
Ex.B3	--	Approval issued by Mappillaiyoorani Panchayat
Ex.B4	--	Approved plan
Ex.B5	03.10.2017	Discharge receipt
Ex.B6	--	Copy of notice to the 1st defendant

I Additional District Judge,
Thoothukudi.

I Additional District Court,
Thoothukudi.
O.S.No.154/2021
Draft/ Fair Judgment
Date : 01.08.2026.