IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-07-2026

CORAM

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

AS No. 623 of 2008 & AS NO. 101 OF 2021
and
MP No.1 of 2008

AS No. 623 of 2008

Dr.R.Jegan

..Appellant(s)

Vs

1. R.Jayanthi

2. S.V.Jayakumar

3. J.Vijayalakshmi

4. J.Arunkumar
*[Mentally retarded person -
Represented by his father and mother
2nd and 3rd respondents]*

5. The Branch Manager
Indian Overseas Bank
Peelamedu Branch
1433, Avanashi Road, Peelamedu,
Coimbatore 641 004.

..Respondent(s)

AS No. 101 of 2021

Dr.R. Jagan

..Appellant(s)

Vs

1. S.V.Jayakumar (died)

2. J. Arun
[R2 represented by his Mother (natural Guardian) viz, J.Vijayalakshmi, vide Order of Court dated 13.12.2022 made in C.M.P.No.20214 of 2022 in A.S.No.101 of 2021]

3. R. Jayanthi

4. K. Arulmozhi

5. T. Karuppusamy

6. S. Selvaraj

7. C. Velusamy

8. M. Narayanasamy

9. Maheswari

[R4 to R9 impleaded as per order in C.R.P.No.900 of 2014 dated 14.03.2014 and in I.A.No.772 of 2014 dated 17.10.2014]

10. S.P.Mylsamy

11. Bagyammal

12. Navaneethakrishnan

13. Sudha
[R10 to R13 impleaded as per the order in I.A.No.7 of 2016 dated 11.12.2019]

14. J.Vijayalakshmi
[R14 impleaded as per order in I.A.No.5 of 2019 dated 24.09.2019]

[Vijayalakshmi who was impleaded as R10 vide order of Court dated 28.11.2022 made in

C.M.P.No.20215 of 2022 in A.S.No.101 of 2021 was recalled vide order of Court dated 09.11.2023 made in A.S.No.101 of 2021]

[Cause title amended vide order of Court dated 09.11.2023 made in A.S.No.101 of 2021]

..Respondent(s)

AS No. 623 of 2008

Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 13.06.2006 in O.S.No.476 of 2004 passed by the learned Additional District Judge (Fast Track Court-III), Coimbatore.

AS No. 101 of 2021

Appeal Suit filed under Order 41 Rule 1 r/w. Section 96 of Code of Civil Procedure against the judgment and decree in O.S.No.363 of 2002 dated 06.11.2007 passed by the learned Subordinate Judge, Pollachi.

AS No. 623 of 2008

For Appellant(s):	Mr.K.Sivasubramanian for Mr.T.M.Hariharan
For Respondent(s):	Mr.J.Arokhiaraj for Mr.V.Sivakumar for R1
	Mr.G.Ponnambala Thyagarajan for R3 and R4
	Mr.D.Ambarish for Ms.N.Geetha Standing Counsel for R5
	R2-died

AS No. 101 of 2021

For Appellant(s):	Mr.K.Sivasubramanian for Mr.T.M.Hariharan
For Respondent(s):	Mr.G.Ponnambala Thiyagarajan for R2 and R14 Mr.J.Arokhiaraj for Mr.V.Sivakumar for R3 Ms.M.Krishnaveni for R4 to R6 R1 – died R7 and R9 - died

COMMON JUDGMENT

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the judgment and decree passed by the learned Additional District Judge (Fast Track Court-III), Coimbatore, in O.S.No.476 of 2004, dated 13.06.2006, granting a preliminary decree allotting 1/3rd share to the plaintiff, the 5th defendant in the suit has filed the Appeal in A.S.No.623 of 2008.

2.Challenging the judgment and decree passed by the learned Subordinate Judge, Pollachi, in O.S.No.363 of 2022, dated 06.11.2007, dismissing the suit for specific performance, the unsuccessful plaintiff had originally filed the Appeal before the District Court, Coimbatore in A.S.No.135 of 2008, which was later transferred to this Court and re-numbered as A.S.No.101 of 2021.

3.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

<u>O.S.No.476 of 2004 (Suit for Partition)</u> :

4.The plaintiff is the daughter of the defendants 1 and 2. The 3rd defendant is the brother of the plaintiff and he is a mentally retarded person.

5.It is the case of the plaintiff that the suit properties are ancestral properties and she is also a coparcener along with the 1st defendant in respect of the suit properties. However, without the consent of the plaintiff and the 3rd defendant, who is a mentally retarded person, the defendants 1 and 2 have mortgaged the suit properties to the 4th and 5th defendants for a sum of Rs.15 Lakhs and Rs.2 Lakhs respectively. The 5th defendant, claiming that the 1st defendant had executed a sale agreement, dated 28.10.1998, agreeing to sell a portion of the suit properties in his favour, has filed a suit in O.S.No.363 of 2022 before the Sub-Court, Pollachi, for specific performance of sale of portion of the suit properties. In both the transactions, neither the plaintiff nor the 3rd defendant are parties. Therefore, it is the contention of the plaintiff that the sale agreement, dated 28.10.1998, is not binding on the plaintiff. According to the plaintiff, the 3rd defendant, who is a mentally retarded person, has equal share as that of the plaintiff. Hence, the plaintiff has filed the present suit for partition claiming her 1/3rd share in the suit properties.

6.The defendants 1 to 3 filed a written statement admitting that the 5th defendant has filed a suit for specific performance. According to them, the sale agreement relied upon by the 5th defendant, is a forged one. Whereas, they are bound to pay only a sum of Rs.50,000/- to the 5th defendant. They borrowed money from the 4th defendant Bank for their business transactions. The mortgage is done only in their personal capacity and hence, they have no objection for dividing the suit properties.

7.The 4th defendant Bank have filed their written statement. According to them, they are a Nationalised Bank and they advanced a loan to the 1st defendant and the 4th defendant is entitled to take all necessary proceedings to recover the dues. Further, the property in question is a separate property of the 1st defendant and the plaintiff cannot claim any right over the property. Hence, they objected the suit claim of partition.

8.The 5th defendant filed a detailed written statement denying the contentions in the plaint. According to him, the 1st defendant, as the karta of the family, on 28.10.1998, entered into a sale agreement with the 5th defendant to sell the property in T.S.No.459/2 in Town Survey Ward 7 of Pollachi Town, measuring an extent of 15,336 sq.ft., equivalent to 35.20 cents, for a sum of Rs.4,50,000/-. On the date of agreement itself, the 1st defendant paid a sum of Rs.1,00,000/- as advance by way of Demand Draft towards a part of sale consideration. Prior to that, on 11.06.1996, the 1st defendant had borrowed a sum of Rs.2,00,000/- from the 5th defendant by mortgaging the aforesaid property. While executing the sale agreement dated 28.10.1998, it was agreed by the 1st defendant to adjust the mortgage loan and interest to the tune of Rs.2,85,500/- towards the balance sale consideration payable to the 5th defendant. Therefore, after adjusting the above amount of Rs.2,85,500/-, the balance sale consideration payable by the 1st defendant was Rs.64,500/-. The period of agreement was one year from the date of agreement. It is the contention of the 5th defendant that he was always ready and willing to pay the balance sale consideration and get the sale deed executed as per the terms of the agreement, however, the defendants 1 to 3 did not come forward to perform their part of the agreement. When the 5th defendant expressed his displeasure, the 1st defendant gave a letter to the 5th defendant, dated 22.10.1999, stating that there is a difference of opinion between him and the plaintiff and promised that the difference between them will be settled and the sale deed will be executed soon. According to the 5th defendant, the plaintiff has signed as one of the witnesses to the mortgage deed, dated 11.06.1996, executed by the 1st defendant in favour of the 5th defendant and also in the sale agreement dated 28.10.1998. Therefore, the plaintiff is estopped from denying the binding nature of the agreement. Further, the sale agreement has been signed on behalf of the 3rd defendant also. Since the defendants 1 to 3 and the plaintiff did not come forward to execute the sale deed as per the terms of the agreement, the 5th defendant filed a suit for specific performance in O.S.No.363 of 2022 before the Sub-Court, Pollachi. As a counter-blast, the present suit for partition has been filed by the plaintiff, claiming that she has 1/3 share in the suit properties only in order to defeat the rights of the 5th defendant seeking specific performance. Hence, he opposed the suit for partition.

9.Based on the pleadings of the parties, the trial Court framed the following issues in the suit for partition :

i. *Whether the plaintiff is entitled to the relief of partition as claimed for ?*
ii. *Whether the plaintiff is entitled to the permanent injunction as prayed for ?*
iii. *To what relief ?*

10.On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A12 marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B8 marked.

11.Based on the evidence and materials on record, the trial Court, by its judgment and decree dated 13.06.2006, decreed the suit as prayed for.

12.Challenging the decree and judgment of the trial Court, the 5th defendant/agreement holder has alone filed the Appeal in A.S.No.623 of 2008.

13.Learned counsel for the appellant/5th defendant would submit that there is a valid sale agreement in favour of the 5th defendant and therefore, the partition suit has been filed only in order to defeat the rights of the 5th defendant, who has already filed a suit for specific performance in O.S.No.363 of 2022. Further, the learned counsel challenges the judgment and decree of the trial Court on the ground that the suit properties are not ancestral properties, but absolute properties of the father/1st defendant and therefore, the plaintiff cannot claim a share in the properties. There is a mortgage in favour of the appellant in the year 1996, followed by sale agreement. He would further submit that the appellant is always ready and willing to pay the balance sale consideration and get the sale deed executed in his favour. Hence, he prayed for setting aside the preliminary decree of partition.

14.Heard the learned counsel on either side and perused the entire materials available on record.

15.Though the 4th defendant Bank is a mortgagee of the suit property, it is now stated that the amount due to the 4th defendant Bank has been settled. In any event, the trial Court has also clearly held that the shares of the mortgagor can be proceeded with by the Bank. Hence, now, the *lis* is only between the agreement holder and the parties.

16.Therefore, the points that arise for consideration in the Appeal in A.S.No.623 of 2008 pertaining to the suit for partition, are as follows :

i. *Whether the 5th defendant, being the agreement holder, can challenge the decree and judgment of the trial Court granting partition ?*
ii. *Whether the plaintiff is entitled to 1/3 share in the property as a coparcener ?*
iii. *Whether the sale agreement, dated 28.10.1998, is binding on the plaintiff ?*
iv. *To what other relief, the parties are entitled to ?*

O.S.No.363 of 2022 (Suit for Specific Performance) :

17.The 5th defendant in O.S.No.476 of 2004 (partition suit) has filed the suit in O.S.No.363 of 2022 to enforce the sale agreement dated 28.10.1998.

18.In this suit, the 1st defendant is the father and the 2nd defendant is the mentally retarded brother of the plaintiff in the other suit for partition. The 3rd defendant is the plaintiff in the partition suit.

19.According to the plaintiff in the suit for specific performance, the 1st defendant, for himself and as karta of the family and in the capacity as guardian of the 3rd defendant who is his mentally retarded son, has entered into a sale agreement dated 28.10.1998 to sell the suit property for a total sale consideration of Rs.4,50,000/- and received a sum of Rs.1,00,000/- as advance by way of Demand Draft on the date of agreement itself. It is further contended that, already on 11.06.1996, the 1st defendant had borrowed a sum of Rs.2,00,000/- by way of mortgage. The said amount of Rs.2,00,000/- along with interest amounting to Rs.2,85,500/- was agreed to be adjusted towards the sale consideration. After adjustment, the remaining sale consideration payable by the 1st defendant was only Rs.64,500/- under the sale agreement. The period of agreement was one year from the date of agreement. Further, it is the contention of the plaintiff that, prior to the sale in his favour, the property has to be measured by the defendants and thereafter, the sale deed has to be executed free of all encumbrances. It is the case of the plaintiff that he was always ready and willing to pay the balance sale consideration and therefore, insisted the defendants to measure the property and fix the boundaries, so that he can pay the balance sale consideration and get the sale deed executed as per the terms of the agreement. However, the defendants had not measured the property as agreed. When the plaintiff expressed his displeasure, the 1st defendant gave a letter, dated 22.10.1999, stating that there is a difference of opinion between the defendants 1 and 3 and further promised that the difference between them will be settled and the sale deed will be executed soon. That apart, before the execution of the sale deed, the defendants have to pay the tax payable to the Municipality in respect of the property agreed to be sold and produce the receipts to the plaintiff to enable him to get the sale deed drafted. Inspite of repeated requests made by the plaintiff, the defendants have not given the receipts to the plaintiff. The daughter of the 1st defendant, namely the 3rd defendant, who is the plaintiff in the other suit for partition, has also signed as one of the witnesses in the agreement. The plaintiff was always ready and willing to perform his part of the contract. Therefore, he sent a legal notice on 16.10.2002 and the same has been received by the defendants. However, they have not come forward to execute the sale deed as per the terms of the agreement. Hence, the suit for specific performance.

20.The defendants 1 and 3 filed a written statement stating the following :

20.1.The suit agreement is nothing but fabrication and falsification of valuable securities entrusted with the plaintiff. It is denied that the 1st defendant, for himself and as a karta of the family and also on behalf of the 2nd defendant, who is mentally retarded, has entered into an agreement, dated 28.10.1998, for sale of the suit property for a total consideration of Rs.4,50,000/-. Though it is admitted that the 1st defendant had borrowed a sum of Rs.2,00,000/- from the plaintiff by mortgaging the suit property, it is denied that he agreed to adjust the said amount towards the sale consideration. The defendants have also sent their reply on 07.11.2002 to the legal notice sent by the plaintiff and a rejoinder notice was also sent by the plaintiff.

20.2.It is the contention of the defendants 1 and 3 that the plaintiff is running a clinic in the name and style of J.P.Hospital. In addition to that, he is doing finance business in the name and style of South India Finance. The plaintiff is cultivating sugarcane for the past 15 years. The plaintiff was supplying sugarcane to the Co-operative Sugars Ltd., Chittur (Sugar Factory) by entering into an agreement with it. The 1st defendant was working in the said factory as Chief Cane Officer. Therefore, both got acquainted with each other and the 1st defendant helped the plaintiff in getting his crops harvested in time and payment being effected without any delay and difficulty.

20.3.The 1st defendant had borrowed a sum of Rs.2,00,000/- from the plaintiff on 11.06.1996 executing a Deed of Mortgage of the suit property. During the said money transaction, the plaintiff obtained three signed blank promissory notes each from the 1st defendant and his wife Vijayalakshmi separately and signatures of both of them jointly and separately in number of blank stamp papers and blank papers. In addition to that, the plaintiff received two signed blank cheques bearing Nos.905259 and 905260 relating to Vijayalakshmi's Canara Bank Account and three signed blank cheques bearing

Nos.046606, 046607 and 046608 relating to 1st defendant's State Bank of India Pollachi account. The 1st defendant, again, borrowed a sum of Rs.2,00,000/- from the plaintiff through his South India Finance on 26.08.1996 by executing three promissory notes and affixing his signature in number of blank stamp papers and white papers. The agreed rate of interest for the said borrowal was 36% per annum. Again, the 1st defendant borrowed a sum of Rs.1,00,000/- from the plaintiff on 24.12.1996 by executing another set of promissory notes and affixing signature in number of blank stamp papers and white papers.

20.4.The 1st defendant has paid a sum of Rs.1,50,000/- to the plaintiff on 14.02.1997 towards the principal for the loan obtained from the plaintiff on 26.08.1996 and the said amount was credited to the plaintiff's South India Finance Account. Further, the 1st defendant paid a sum of Rs.1,00,000/- in cash to the plaintiff on 10.03.1997 towards the principal for the loan obtained on 24.12.1996 and thereby, settled the said loan account. The 1st defendant further paid a sum of Rs.50,000/- on 15.04.1997 towards the principal for the loan obtained from the plaintiff on 26.08.1996 and the said amount was credited in the plaintiff's South India Finance account. Thereby, the 1st defendant has settled the entire loan amounts borrowed from the plaintiff on 26.08.1996 and 24.12.1996.

20.5.Further, the 1st defendant has also paid a sum of Rs.1,00,000/- to the plaintiff on 24.04.1997 towards the principal for the loan obtained from the plaintiff under mortgage deed and the said amount was credited to the plaintiff's South India Finance account. Again, the 1st defendant has paid a sum of Rs.50,000/- to the plaintiff on 24.04.1997 towards the principal for the loan obtained under mortgage and the said amount was credited in the plaintiff's account. Therefore, in total, the 1st defendant has paid a sum of Rs.1,50,000/- towards the amount received on 11.06.1996 under the mortgage deed. After the said payments, the outstanding amount in the loan secured under the mortgage deed was only Rs.50,000/-. The 1st defendant was also paying interest at the rate of 36% p.a. for the remaining amount without fail until March, 2002.

20.6.After the said transactions, the 1st defendant's wife borrowed a sum of Rs.1,00,000/- from the plaintiff each on 11.02.1998 and 12.03.1998 from the plaintiff's South India Finance account under two Demand Drafts. At that time also, the plaintiff obtained four promissory notes and signature of the 1st defendant, his wife and daughter in number of stamp papers and blank papers. In addition to that, the plaintiff obtained two signed blank cheques of State Bank of Mysore relating to 1st defendant's wife account and three signed cheques of State Bank of India, Pollachi Branch, relating to the 1st defendant's account for security purpose. The 1st defendant's wife has paid the entire amount with interest on 05.03.2001 itself. At that time of final settlement, the plaintiff promised to return all the documents after the close of the defendant's mortgage transaction with him. Believing him, the 1st defendant and his wife had not insisted upon the return of all the valuable securities entrusted with the plaintiff for security purposes.

20.7.Thereafter, the 1st defendant obtained a fresh loan of Rs.1,00,000/- each on 20.09.1998 and 28.10.1998 from the plaintiff. At that time, the plaintiff obtained signatures of the 1st defendant on several stamp papers and blank papers and claimed interest at the rate of 48% per annum. The 1st defendant paid the interest to the said loan regularly. He has paid a sum of Rs.1,00,000/- on 20.11.1999 and Rs.1,00,000/- on 28.01.2000, thereby, settled the above amount.

20.8.After the bomb blast in Coimbatore, the business done by the 1st defendant had come down and therefore, the defendant could not pay the interest to the Banks. Therefore, the plaintiff demanded the 1st defendant to enter into a partnership deed to run a real estate business. The suit property, worth Rs.1.5 Crores as per the market and guidelines values, had been valued at Rs.6,00,000/- in the partnership deed. Hence, the 1st defendant did not agree for the share of profit in the said ratio, because of his very heavy contribution in the said real estate business.

20.9.After the proposal fell apart, the plaintiff, by misusing the signed blank stamp papers and white papers, has fabricated the suit agreement dated 28.10.1998 as if the 1st defendant agreed to sell the suit property to the plaintiff for a paltry sum of Rs.4,50,000/- after adjusting the mortgage loan along with interest. Therefore, the defendants disputed the suit agreement by contending that the blank papers entrusted to the plaintiff as security in the finance transactions have been fabricated as an agreement and hence, the same cannot be enforced. Further, the defendants contended that the plaintiff was never ready and willing to perform his part of the contract. Hence, they objected to the suit relief of specific performance.

21.In the reply statement given by the plaintiff, it is admitted that the 1st defendant borrowed a sum of Rs.2,00,000/- from the plaintiff through South India Finance account on 26.08.1996 with interest at the rate of 12% p.a. However, the interest for the said amount was waived later. It is also admitted by the plaintiff that the 1st defendant borrowed another sum of Rs.1,00,000/- from the plaintiff on 24.12.1996 by executing one promissory note, but not a set of promissory notes and that he had not obtained any blank papers. For the said promissory note, the 1st defendant has paid Rs.1,000/- each on 09.11.1999 and 12.09.2001. The balance amount has not yet been settled by the 1st defendant. It is also admitted by the plaintiff that the 1st defendant has paid a sum of

Rs.1,50,000/- to the plaintiff on 14.02.1997 towards the amount borrowed from the plaintiff on 26.08.1996. However, it is denied that, on 10.03.1997, the 1st defendant had paid a sum of Rs.1,00,000/- in cash. According to the plaintiff, the 1st defendant has not settled the loan amount. It is also admitted by the plaintiff that the 1st defendant has paid a sum of Rs.50,000/- on 15.04.1997 towards the principal for the loan obtained on 26.08.1996. The plaintiff admits that the 1st defendant has fully settled the loan amount of Rs.2,00,000/- borrowed on 26.08.1996, whereas, the sum of Rs.1,00,000/- borrowed on 24.12.1996 has not yet been settled. Further, it is stated by the plaintiff that the amounts of Rs.1,00,000/- and Rs.50,000/- said to have been paid by the 1st defendant were not for the loan obtained under the mortgage. It is also admitted that the 1st defendant's wife borrowed a sum of Rs.1,00,000/- each on 11.02.1998 and 12.03.1998 from South India Finance account under two Demand Drafts, however, it is denied that the entire amount has been settled. It is also admitted that the 1st defendant borrowed another sum of Rs.1,00,000/- on 20.09.1998, but it is denied that the 1st defendant borrowed a sum of Rs.1,00,000/- on 28.10.1998. It is stated that the said sum of Rs.1,00,000/- was paid as an advance towards the sale consideration. It is also denied that the 1st defendant has paid interest. The alleged partnership business agreement is also denied. The contention that the suit agreement is fabricated, is also denied.

22.An additional written statement was also filed by the defendants denying the reply statement of the plaintiff.

23.Based on the above pleadings, the trial Court framed the following issues :

i. *Whether the plaintiff is entitled for the relief of specific performance ?*
ii. *Whether the plaintiff is entitled for the relief of return of advance amount ?*
iii. *To what relief, if any, the plaintiff is entitled ?*

24.Thereafter, the issues have been re-casted as follows :

i. *Whether the 1st defendant executed a sale agreement dated 28.10.1998 in respect of the suit property in favour of the plaintiff?*
ii. *Whether the sale agreement is supported by consideration ?*
iii. *Whether the plaintiff fabricated and forged the stamp papers and blank papers and created the sale agreement and the letter dated 22.10.1999 ?*
iv. *Whether the sale agreement binds the share of the defendants 2 and 3 in the suit property ?*
v. *Whether the plaintiff was ready and willing to perform his part of the contract ?*
vi. *Whether the plaintiff is entitled for the relief of specific performance as prayed for ?*

vii. *Whether the plaintiff is entitled for the alternative relief of return of advance amount and damages ?*

viii. *Whether the plaintiff is entitled for the charge for the recovery of the amount ?*

ix. *To what relief, if any, the plaintiff is entitled ?*

25.On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A10 marked. On the side of the defendants, D.W.1 to D.W.5 were examined and Exs.B1 to B19 marked.

26.Based on the evidence and materials and on analysing the entire facts, the trial Court, by its judgment and decree dated 06.11.2007, dismissed the suit for specific performance in all aspects.

27.Challenging the decree and judgment of the trial Court dismissing the suit for specific performance, the plaintiff in the said suit has filed the Appeal in A.S.No.101 of 2021.

28.During the pendency of the Appeal, the 1st defendant/father died and his legal heirs have been brought on record.

29.The main contention of the learned counsel for the appellant is that the suit agreement has been executed by the 1st defendant on his behalf and also on behalf of the 2nd defendant who is a mentally retarded person. It is also specifically agreed that the sale shall be completed within a period of one year. However, the defendants, taking advantage of the other loan transactions, have taken a plea as if the suit agreement has been fabricated. According to the learned counsel, when Ex.A1 suit agreement is not disputed and once the signature in Ex.A1 is admitted, the defendants cannot take a contradictory stand than the recitals found in the agreement. The agreement itself clearly shows that, as on the date of the agreement, a sum of Rs.1,00,000/- has been paid as advance and earlier mortgage amount is also adjusted towards the sale consideration and the remaining amount is agreed to be paid within one year. The learned counsel would further submit that the plaintiff is always ready and willing to perform his part of the contract. Also, he has the capacity to mobilise the funds. Therefore, the learned counsel would submit that the trial Court is not right in negativing the relief.

30.Whereas, the learned counsel for the respondents would submit that the very pleadings of the plaintiff would clearly show that the suit agreement is nothing but fabricated one. Admittedly, the 2nd defendant is a mentally retarded person. The said fact has been admitted even by the plaintiff. Such being the position, without the permission of the Court appointed guardian in this regard, the sale is not permissible. That apart, the very documents produced by the defendants clearly prove that it is nothing but loan transactions. Therefore, it is his contention that there is every possibility of the suit agreement being fabricated and the same has been clearly held by the trial Court. Further, even assuming that the agreement is valid and true, the plaintiff has not shown his readiness and willingness. Though one year time is fixed for paying the remaining sale consideration of Rs.64,500/- the same has not been paid and the suit has been filed only on 25.10.2002 after four years from the date of the agreement. The legal notice was issued for the first time only on 16.10.2002, which has been replied. It is his contention that the entire suit agreement is a fabricated one, misusing the blank stamp papers and white papers entrusted with the plaintiff during the financial transactions as security. Therefore, the trial Court has rightly concluded that the plaintiff is not entitled to the relief of specific performance nor any other relief. Hence, the learned counsel prayed for dismissal of the Appeal.

31.In the light of the above submissions, the points that arise for consideration in the Appeal in A.S.No.101 of 2021 pertaining to the suit for specific performance, are as follows :

i. *Whether the suit agreement, dated 28.10.1998, is executed for the sale of the suit property ? Is there any consensus ad idem between the parties ?*
ii. *If so, whether the plaintiff has shown his readiness and willingness to seek equitable relief of specific performance ?*
iii. *To what other relief, the parties are entitled to ?*

32.Since the issues in both the Appeals revolve around the enforceability of the sale agreement dated 28.10.1998, we are inclined to dispose of both the Appeals by this common judgment, by first answering the points arising for consideration in the Appeal against the suit for specific performance.

***Point No.(i)* :**

33.The suit in O.S.No.363 of 2002 has been laid to enforce the contract Ex.A1 (sale agreement). On perusal of Ex.A1 agreement, it proceeds as if, on 28.10.1998, the 1st defendant, on his behalf and on behalf of the 2nd defendant, who is a mentally retarded person, has entered into an agreement to sell the suit property for a total consideration of Rs.4,50,000/- and received a sum of Rs.1,00,000/- on the date of the agreement and agreed that the mortgage loan of Rs.2,00,000/- borrowed from the plaintiff on 11.06.1996 be adjusted with interest to the tune of Rs.2,85,500/- towards the sale consideration and the remaining amount to be paid within a period of one year from the date of the agreement.

34.It is relevant to note that it is not disputed by both sides that, prior to the agreement Ex.A1 coming into existence, there were several loan transactions between the parties. The pleadings of the plaintiff in the plaint and reply statement clearly show that there were numerous loan transactions between the parties. On 11.06.1996, the 1st defendant executed a mortgage deed after receiving a sum of Rs.2,00,000/-. This aspect is admitted in the plaint itself. In the reply statement filed by the plaintiff, he has admitted that, apart from his medical profession, he is also doing finance business in the name and style of South India Finance. He has also admitted in the reply statement that, apart from the mortgage loan of Rs.2,00,000/- borrowed on 11.06.1996, the 1st defendant has also borrowed another Rs.2,00,000/- from the plaintiff through his South India Finance account on 26.08.1996. The agreed interest was 12% p.a. at that time. Again, it is admitted by the plaintiff that the 1st defendant has borrowed another Rs.1,00,000/- from the plaintiff on 24.12.1996 and executed one promissory note, but not set of promissory notes and signature in number of blank stamp papers. Further, it is also admitted that the 1st defendant has paid a sum of Rs.1,00,000/- each on 09.11.1999 and 12.09.2001, but the balance amount has not been settled by the 1st defendant. It is further admitted that the 1st defendant paid a sum of Rs.1,50,000/- on 14.02.1997 towards the amount borrowed from the plaintiff on 26.08.1996. It is also admitted that another sum of Rs.50,000/- was paid by the 1st defendant on 15.04.1997 towards the principal for the loan obtained on 26.08.1996. Therefore, the plaintiff has admitted that the 1st defendant has fully settled the loan of Rs.2,00,000/- borrowed on 26.08.1996, whereas, it is the stand of the plaintiff that the sum of Rs.1,00,000/- borrowed on 24.12.1996 has not yet been settled. Though it is admitted that the 1st defendant has paid a sum of Rs.1,00,000/- on 24.04.1997, it is the stand of the plaintiff that the same is not towards the loan obtained under the mortgage deed as alleged by the 1st defendant and the same has not been credited to the plaintiff's personal account, but has been credited to the South India Finance account. Similarly, the sum of Rs.50,000/- paid by the 1st defendant was not towards the mortgage loan. It is also admitted by the plaintiff that the 1st defendant has also borrowed another Rs.1,00,000/- each on 11.02.1998 and 12.03.1998 from the South India Finance under two Demand Drafts. However, it is denied that he has obtained any signed blank papers. Similarly, it is also admitted by the plaintiff that the 1st defendant has borrowed another sum of Rs.1,00,000/- on 20.09.1998. But it is stated by the plaintiff that the another sum of Rs.1,00,000/- paid to the 1st defendant on 28.10.1998 is not towards loan, but only towards the sale consideration under Ex.A1.

35.The very pleadings of the plaintiff make it very clear that there were several money transactions between the parties, and amounts were borrowed and repaid by the 1st defendant on several times. Though it is stated by the plaintiff that the mortgage amount of Rs.2,00,000/- with interest is adjusted towards the sale consideration under Ex.A1 and further, a sum of Rs.1,00,000/- has been paid as advance towards the sale consideration on the date of the agreement, it is relevant to note that, if really the sum of Rs.1,00,000/- mentioned under Ex.A1 was paid towards sale consideration, the Income Tax Returns of the plaintiff would not reflect the said amount as loan amount.

Exs.X1 and X2 summoned from the Income Tax Department, when carefully perused, it is seen that the sum of Rs.2,00,000/- (Rs.1,00,000/- paid on 20.09.1998 and Rs.1,00,000/- paid on 28.10.1998) paid to the 1st defendant are shown under the head "money lent out". It is very clear that, if Rs.1,00,000/- paid on the date of agreement under Ex.A1 was only towards the sale consideration, that amount should not have been reflected as "loan amount" in the Income Tax Returns of the plaintiff.

36.Similarly, Exs.B1 to B4 and B16 also clearly prove that the 1st defendant has repaid the loan amount of Rs.2,00,000/- borrowed on 26.08.1996 and repaid a sum of Rs.1,50,000/- towards the mortgage loan dated 11.06.1996.

37.Further, it is also relevant to note that, though Ex.A2-mortgage deed is admitted, the fact remains that the stamp papers are purchased in two different dates from two different stamp vendors. This also probabilises the defence theory that, at the time of earlier finance transactions, several blank papers were obtained. This is also more probabilised on seeing Ex.A1 suit agreement. On careful perusal of Ex.A1, which is also marked as Ex.B6 in the other suit, at Page Nos.2, 3 and 4, the 'x' marks where the 1st defendant has put his signature, are very much visible. This clearly indicates that the signatures were obtained earlier and later, page numbers were given.

38.Further, Exs.B1 to B4 and B16 to B19 vouchers clearly show that the 1st defendant has deposited the amounts in the plaintiff's account. These documents clearly show that, towards the loan transactions, several amounts have been paid and repaid. This fact clearly shows that Ex.A1 is not a result of *consensus ad idem* between the parties for sale of the suit property for a sum of Rs.4,50,000/-.

39.Further, Ex.B5 has been filed to show that similar property in the same locality is valued at Rs.52,40,000/-, i.e., one cent was sold at Rs.1,31,000/-. Similarly, the property under Ex.B6 is valued at Rs.11,45,420/- admeasuring an extent of 3.95 cents, i.e., one cent was sold at Rs.2,89,980/-. The guideline value as per Ex.B9 in Ward No.4 in Palakkad Road is Rs.1,185/- per sq.ft., i.e., Rs.5,17,845/- per cent. Therefore, it is hard to believe that a valuable property, whose guideline value is more than Rs.5 Lakhs, having an extent of 35.20 cents, is agreed to be sold at a paltry sum of Rs.4,50,000/-. This also creates serious doubt about the genuineness of the suit agreement. Even though the plaintiff has made an attempt to prove the execution of the suit agreement by examining P.W.2, and even assuming that the execution has been proved, when the Court entertains a genuine doubt about the document, it cannot be enforced. When the Court entertains even a slightest doubt, the document in question cannot be enforced in a suit for specific performance.

40.It is further to be noted that the plaintiff is also aware of the fact that the 2nd defendant is a mentally retarded person. Though the 1st defendant is the natural guardian, when a person is suffering from mental retardation, the plaintiff ought to have been very careful in dealing with the property only with the permission of the Court appointed guardian. This aspect also clearly shows that the plaintiff cannot seek specific performance under by Ex.A1 agreement.

41.It is also further to be noted that, even assuming that the entire document has been proved and the parties cannot go beyond the contents of the document, the fact remains that, still the parties can prove that the document was never intended for the purpose for which it is executed, but it came into existence in some other circumstance. The oral evidence is also permissible to invalidate such document which is a result of fraud or intimidation or illegality or for want of due execution or for want of capacity in any contracting party or for want or failure of consideration or mistake or in fact or law as per proviso (1) to Section 92 of the Evidence Act/Section 95 of Bharatiya Sakshya Adhiniyam, 2023. But the fact remains that, in this case, the very pleadings of the plaintiff itself clearly indicate that there were many loan transactions prior to the agreement and several amounts have been repaid. Therefore, possibility of obtaining blank papers in the loan transactions is more probable, which is fortified by the 'x' marks put in the documents before signature and the numbers being typed later. All these factors clearly probabilise the defence theory that Ex.A1 is a result of fabrication using the blank papers given during the loan transactions. Further, the Income Tax Returns Exs.X1 and X2 clearly show that the so-called advance amount of Rs.1,00,000/- is shown as "loan amount" in the Income Tax Returns of the plaintiff and the vouchers Exs.B1 to B4 and B16 to B19 filed by the defendants clearly show that several amounts have been repaid by the 1st defendant towards loan borrowed on different dates. Therefore, the defence theory is more probable than the plaintiff's case. Hence, this Court finds that the suit agreement Ex.A1 is not executed for the sale of the property and there is no *consensus ad idem* between the parties for sale of the property. ***Point No.(i) is answered as against the appellant.***

<u>Point No.(ii)</u> :

42.Even assuming that Ex.A1 came into existence for sale of the property, the conduct of the plaintiff, who seeks specific performance, assumes significance. According to the plaintiff, after adjusting the mortgage loan and payment of further Rs.1,00,000/- as advance on the date of agreement, the remaining amount to be paid was only Rs.64,500/-, for which, one year time has been agreed. The agreement also clearly stipulates the penalty clause for breach of the obligation within the time. Making the forfeiture clause in the agreement also clearly shows that the parties are intended to make time as essence of the contract. Having agreed to pay the remaining sale consideration of Rs.64,500/- within one year, the plaintiff has not taken any steps, and the one year period, as per the alleged agreement, expired on 27.10.1999. Whereas, the legal notice was issued for the first time only on 16.10.2002 and the suit has been laid only on 25.10.2002, just few days prior to the expiry of the period of limitation of three years from the date of expiry of original time agreed. These facts clearly indicate that the plaintiff was never ready and willing to perform his part of the contract and that Ex.A1 is nothing but a result of loan transaction and is never intended for sale of the property. The very conduct of the plaintiff in filing the suit at the fag end of the limitation, without taking any action to perform his part of the obligations for all the years from 1998 till 2002, clearly exhibits that he was never ready and willing to perform his part of the contract to seek equitable relief of specific performance. ***Point No.(ii) is answered against the appellant.***

Point No.(iii) **:**

43.Considering all these aspects, this Court is of the view that the plaintiff is not entitled to the relief of specific performance. That apart, it is the admitted case of the plaintiff that the mentally retarded person has also interest in the property. In such case, this Court is of the view that such agreement, without any permission of the Court appointed guardian, cannot be enforced and it will, in fact, adversely affect the interest of the mentally retarded person. It is also one of the reasons why the suit agreement cannot be enforced. Further, as it is seen that various amounts have been repaid, but the accounts have not been properly maintained, and the so-called mortgage deed under Ex.A2 has also not been enforced, we are of the view that the trial Court is right in even negativing the alternative relief of refund and dismissing the suit in entirety. ***Point No.(iii) is answered against the appellant.***

44.In fine, the suit for specific performance fails and the appeal thereon in **A.S.No.101 of 2021 is dismissed.** No costs.

45.In the above backdrop, we proceed to answer the issues in the suit for partition.

Point Nos.(i) and (iii) :

46.Since the Appeal against the decree of partition has been filed by the agreement holder, it is relevant to note that, on the basis of an agreement, one cannot challenge the decree, unless the agreement is proved and established and a right and interest is created over the property. An agreement, even if true, will not create any interest or right over the immovable property. At the most, the agreement is only capable of enforcement. As this Court, after elaborate discussion in the other Appeal, has found that the sale agreement cannot be enforced, the agreement holder cannot challenge the decree and judgment of the trial Court and the alleged sale agreement dated 28.10.1998 is not binding on the plaintiff. ***Point Nos.(i) and (iii) are answered against the appellant.***

Point No.(ii) **:**

47.Though it is projected as if the suit property is the ancestral property, on a careful perusal of Ex.A8-Will dated 03.01.1957 filed by the plaintiff herself, it is seen that the properties originally belonged to the grandfather of the plaintiff and he has executed the Will under Ex.A8 giving life interest to his wife and vested remainder to his legal heirs equally, including the 1st defendant herein. Thereafter, the 1st defendant and his brothers executed Ex.A1-partition deed, dated 22.11.1979, which clearly shows that the property originally belongs to the 1st defendant's father and mother and under Ex.A1, the 1st defendant and his brothers had partitioned the properties among themselves. However, the plaint proceeded as if the suit properties are ancestral properties, whereas, the documents filed by the plaintiff herself clearly show that the suit properties are the absolute properties of the 1st defendant. In such case, the trial Court granting partition as ancestral property, in our view, is not correct. ***Point No.(ii) is answered accordingly.***

Point No.(iv) **:**

48.However, now, the 1st defendant has died intestate during the pendency of the proceedings. In such view of the matter, as a legal heir, the plaintiff is certainly entitled to succeed to the absolute property of her father as per Section 8 of the Hindu Succession Act, 1956, and therefore, the plaintiff, and the defendants 2 and 3 are each entitled to 1/3 share in the properties of the

1st defendant. Therefore, though the trial Court has granted partition of 1/3 share on the ground of ancestral property, we are of the view that the plaintiff is entitled to 1/3 share as per Section 8 of the Hindu Succession Act, since the property is found to be the absolute property of her father/1st defendant. Therefore, the decree of the trial Court allotting 1/3 share to the plaintiff does not require any interference. However, since the defendants 2 and 3 are also entitled to 1/3 share each, this Court is inclined to modify the decree and judgment of the trial Court to that effect. ***Point No.(iv) is answered accordingly.***

49.Accordingly, the **Appeal in A.S.No.623 of 2008 is dismissed,** however, the decree and judgment of the trial Court in O.S.No.476 of 2004 is modified to the effect that :

(a) the plaintiff is entitled to 1/3 share in the suit properties.

(b) Similarly, the defendants 2 and 3 are each entitled to 1/3 share in the suit properties.

No costs. Consequently, connected miscellaneous petition is closed.

(N.S.K.,J.) (M.J.R.,J.)
07-07-2026

MKN

Index: Yes / No

Speaking / Non-speaking order
Neutral Citation: Yes

To

1.The Additional District Judge
(Fast Track Court-III),
Coimbatore.

2.The Subordinate Judge,
Pollachi.

3.The Section Officer,
VR Section,
High Court, Madras.

N.SATHISH KUMAR J.
AND
M.JOTHIRAMAN J.

MKN

AS No. 623 of 2008
AND
AS NO. 101 OF 2021

07-07-2026