



A.S.No.497 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 15.07.2025

Pronounced on: 25.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.497 of 2022

and

C.M.P.No.18052 of 2022

Jose Daniel,
S/o.Oomen Daniel
Door No.12/5, Old No.26/5,
Perumal Koil Street,
Aminjikarai, Chennai-600 029.

... Appellant/Plaintiff

/versus/

1. Dr.Ranjana,
W/o.S.Sankar,
Door No.123, 4th Street,
Gyam Sandesh Apartments,
Secretariat Colony, Kilpauk,
Chennai-600 010.

2. S.Sankar
S/o.Subramani,
Door No.123, 4th Street,
Gyam Sandesh Apartments,
Secretariat Colony, Kilpauk,
Chennai-600 010.

... Respondents/Defendants



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Prayer:- Appeal Suit has been filed under Section 96 r/w Order XLI & XLI-A of the Civil Procedure Code, pleaded to set aside the judgement and decree dated 16.06.2022, made in O.S.No.4268 of 2018, by the Hon'ble II Additional Judge, City Civil Court at Chennai, by allowing the above first appeal with costs.

For Appellant : Mr.M.Dwarakanath

For Respondents : No Appearance

J U D G M E N T

Suit for performance of the sale agreement dated 14.07.2015, executed by the first defendant in favour of the plaintiff, after receiving the balance sale consideration of Rs 1,00,000/-.

2. According to the plaintiff, the suit land is jointly owned by the defendants 1 and 2, which they purchased on 03.03.2004. The plaintiff, the owner of the neighbouring land, came into the possession of the suit property through one Rizwan Khan, the Manager of the first defendant on lease after paying Rs. 4,00,000/-. Later, the Manager of the first defendant came forward to sell the property for Rs.20,00,000/-. Sale agreement was entered with the first respondent and further sum of Rs.7,00,000/- paid on the date of agreement i.e., 14.07.2015.



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Three months time was fixed for completing the agreement. Though the plaintiff was ready to pay the balance and get the sale deed registered, the first defendant citing her health reason wantonly delayed the execution of the sale deed. She demanded money for her treatment and promised to register the deed after her return from treatment. The plaintiff paid a further sum of Rs.7,00,000/- and waited for the first defendant. After a long delay, the first defendant instructed the plaintiff to purchase the required stamp paper for registration. Accordingly, he purchased stamp paper for Rs.1,30,000/-. At last, the plaintiff sent a notice to the defendant on 07.03.2016 to come forward to execute the sale deed. The defendant after receiving the notice came for discussion and sought 3 months time to register the document. The first defendant did not keep her promise. Rizwan Khan, the Manager of the first defendant met the plaintiff and assured that the sale deed will be registered within a months time and took Rs.1,00,000/- lakh for treatment of the first defendant. However he also did not turn up again. Hence notice dated 05.05.2017 was sent which has not evoked any reply from the defendant.

3. Written statement by the first defendant adopted by the second defendant reads as below:-

It is true that the suit property was purchased by the defendants 1 and 2



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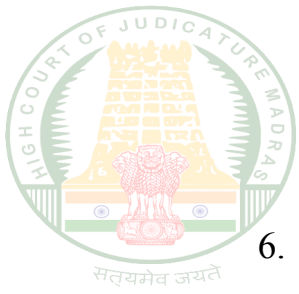
jointly from one R.Shekar on 03.03.2004. From the date of purchase, the property is in possession and enjoyment of the defendants without any let or hindrance.

Through Rizwan Khan, the property was leased out to the plaintiff for two years and the lease amount was fixed as Rs.4,00,000/-. The parties agreed to sell the property for Rs.35,00,000/- and not for Rs.20,00,000/- as averred by the plaintiff. Rs.20,00,000/- as per document and balance Rs.15,00,000/- was agreed to be paid separately. The first defendant receiving Rs,7,00,000/- and signed the agreement dated 14.07.2015. When the defendant asked about the Rs.15,00,000/-, the plaintiff was not ready to pay it. The defendants are ready and will to execute the sale deed if the balance money is paid including the money agreed to pay in black.

4. Based on the pleadings , the following issues were framed:

- 1) Whether the plaintiff is entitled for the relief of Specific Performance of agreement for sale dated 14.07.2015 against the defendants?
- 2) Whether the plaintiff is entitled for the relief of injunction as prayed for?
- 3) To what other relief, the plaintiff is entitled to?

5. The plaintiff examined himself as PW-1. Ex A-1 to Ex A-14 marked. The defendant failed to appear and cross examine the witness. Hence called absent and set exparte.



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6. The trial court after appreciating the evidence adduced by the plaintiff, dismissed the suit for specific performance on the ground that the suit property belongs to both the defendants. However the sale agreement Ex A-2 is only with the first defendant and not with second defendant who is the co-owner of the property, Therefore when the property is owned by two persons, the agreement for sale with one owner cannot be enforced. However considering the admission of the defendants about the receipt of Rs.18,00,000/- from the plaintiff, though the plaintiff had not sought for the alternate relief granted decree of alternate relief to recovery of Rs.18,00,000/- with 6% interest p.a., from the date of filing of the suit till the date of realisation.

7. The learned counsel for the appellant submitted that, the trial court erred in considering the plea of the defendants that the sale consideration agreed was higher than the sale price mentioned in Ex A-2. No parole evidence is admissible contrary to the terms of the written agreement. The plaintiff has proved payment of Rs.19,00,000/- as against the agreed amount of Rs.20,00,000/-. After making payment of 95% of the total sale consideration, the defendants have invented a new story of inadequacy of price and additional payment of Rs.15,00,000/- in black i.e., unaccounted money.

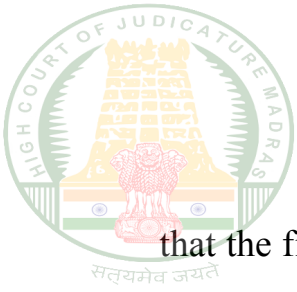


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8. The trial court taking note of the failure on the part of the defendants to prove the pleading in the written statement, ought to have drawn adverse inference. Instead erroneously dismissed the plea of specific performance on the ground that the agreement is signed only by the first defendant and not by the other co-owner who is the second defendant.

9. The learned Counsel for the appellant submitted that , though the second defendant is one of the owner of the property and he had not signed the agreement, he has adopted the written statement of the first defendant in the written statement, the agreement is accepted and receipt of part sale consideration is also accepted. Therefore, the suit ought not to have been dismissed.

10. The plaintiff had relied on 14 documents and his oral testimony. Ex A-1 is the sale deed of the suit property which stands in the name of the defendants 1 and 2. This deed is dated 31.03.2004. The plaintiff claims that he got the lease of the property through Ex A-10 which is dated 24.06.2014 and thereafter entered in the sale agreement Ex.A-2 on 23.07.2015. Both in the lease deed and sale agreement, the second defendant who is the co-owner of the property is not a party. It is further case of the plaintiff that the first defendant entered into a MOU with him on 06.04.2016 which is marked as Ex A-7. The MOU is filed to show



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that the first defendant acknowledging the purchase of stamp paper by the plaintiff for Rs.1,30,000/- and it became stale due to elapse of time so she agree to compensate the loss and execute the sale deed after completing her family partition.

11. Examination Ex A-2 the agreement for sale dated 23.07.2015, the deed which sought to be enforced specifically, the recital says it is executed by both the defendants as vendors. However only the first defendant has signed. The payment details mentioned in clause 1(e) of the covenant, after referring payments of Rs.3,00,000/- on 24.06.2014 , Rs 50,000/- each on 17.07.2014 and 24.07.2014, a sum of Rs.7,00,000/- on 14/07/2014 is mentioned. Thereafter, a payment of Rs.7,00,000/- on 24.07.2015 is written. This payment of Rs.7,00,000/- on a future date is a clear proof of fabrication and collusion with the first defendant. Again examining Ex.A-7 the MOU, the date of the deed is 06.04.2016. Whereas the plaintiff had affixed his signature with date as 25.05.2016. Even in this document which is named as MOU, it is only the first defendant signed and not the second defendant. Ex A-8 is a stamped receipt for Rs.1,00,000/- on 07.09.2016. This receipt is signed by first defendant acknowledging of receiving Rs.1,00,000/- towards sale consideration along with promise to execute the sale deed within 15



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days. Below this stamp and signature, acknowledgement of receiving another sum of Rs.5000/- on 10.11.2016 is made by the first defendant. The reason for creating these documents from the first defendant as and when suits the plaintiff is easy to guess. These documents signed by one of the owners without the consent or knowledge of the co-owner cannot bind the co-owner who is not party to the documents.

12. It is highly doubtful the adoption memo filed on behalf of the second defendant adopting the written statement of the first defendant, whether it was with knowledge and consent of the second defendant. The notices sent to the respondents served through Nazir Section but they have not chosen to appear.

13. The sale agreement Ex.A-2 is unenforceable due to absence of consensus ad idem between the buyer and the vendors. The sale agreement, MOU and the receipt for payment are only by the first defendant and not by the second defendant. Court cannot compel a person to sell the property based on a agreement to which he is not a party.

14. In view of the recent judgement of the Supreme Court in ***K.R.Suresh vs. R.Poornima (2025 INSC 617)*** the grant of alternate relief of refund of money advance also cannot be granted without specific prayer. However, the trial court



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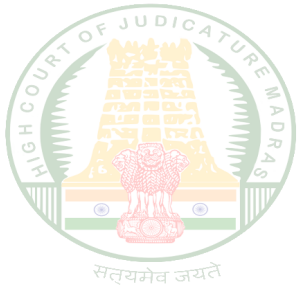
has granted the alternate relief without prayer. Since there is no appeal against the order of refund, this Court dismiss the appeal without disturbing the trial court order. No order as to costs. Consequently, the connected miscellaneous petition is closed.

25.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
Vv

To,

1. The II Additional Judge, City Civil Court at Chennai
- 2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

Pre-delivery Judgement made in
Appeal Suit No.497 of 2022

25.07.2025