

S.A(MD)No.589 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON :06.02.2026

DELIVERED ON : 17.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.589 of 2019

and

C.M.P.(MD)No.11939 of 2019

M.Manthaiyan : Appellant/Appellant/Defendant

Vs.

C.Savarimuthu : Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.24 of 2018, dated 22.01.2019, by the Additional District Judge (FTC), Theni partly confirming the judgment and decree, passed in O.S.No.96 of 2013, dated 22.01.2015 by the Sub Court, Uthamapalayam, Theni District.

For Appellant : Mr.S.C.Herold Singh

For Respondent : Mr.K.Prabhu



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JUDGMENT

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The Second Appeal is directed against the judgment and decree made in A.S.No.24 of 2018, dated 22.01.2019, on the file of the Additional District Court (FTC), Theni, confirming the judgment and decree passed in O.S.No.96 of 2013, dated 22.01.2015, on the file of the Subordinate Court, Uthamapalayam.

2. The appellant is the defendant. The respondent/plaintiff filed a suit in O.S.No.96 of 2013 before the Subordinate Court, Uthamapalayam seeking the relief of specific performance of the sale agreement dated 03.06.2011.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff in brief is as follows:

The suit property is owned by the defendant. The defendant offered to sell the suit property and the plaintiff agreed to purchase the same and both of them entered into a sale agreement on 03.06.2011, whereunder they have fixed the sale consideration at Rs.3,10,000/- and the period of performance as two years. The plaintiff paid an advance amount of Rs.3,00,000/- to the defendant and agreed to



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pay the balance sale price of Rs.10,000/- before 02.06.2013. The defendant has

handed over the original sale deed in respect of the suit property to the plaintiff.

The plaintiff has always been ready and willing to pay the balance sale price and to get the sale deed executed. But the defendant was postponing the same on some pretext or the other. Hence, the plaintiff sent a legal notice dated 25.05.2013 to the defendant directing him to receive the balance sale price and to execute the sale deed. The defendant having received the notice on 28.05.2013, has neither sent any reply nor complied with the notice demand. Hence, the plaintiff was constrained to file the above suit seeking the relief of specific performance.

5. The defence of the defendant in brief is as follows:

The defendant borrowed a sum of Rs.3,00,000/- from the plaintiff on 03.06.2011 and executed a sale agreement as demanded by the plaintiff and also handed over the original sale deed to the plaintiff. The plaintiff is doing money lending business. The defendant has paid the interest at Rs.9,000/- per month till 03.12.2012. The defendant executed the sale agreement only as a security for the loan transaction. The plaintiff and his wife are in the habit of obtaining sale agreements as security for loan transaction. After the receipt of the legal notice, the defendant met the plaintiff and at that time, the plaintiff informed that it was



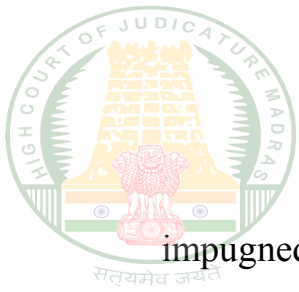
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only a formal notice and the agreement will be cancelled upon the receipt of the loan amount. Believing the words of the plaintiff, the defendant did not send any reply. The defendant is ready to pay the loan amount, but the plaintiff in an attempt to snatch the suit property filed the above suit. Hence, the suit is liable to be dismissed.

6. The learned trial Judge, upon considering the pleadings of both sides, framed the following issues:

- (i) Whether the plaintiff is entitled for the relief sought in the plaint?
- (ii) Any other relief, the plaintiff is entitled to?

7. During trial, the plaintiff examined himself as P.W.1 and his wife as P.W. 2 and exhibited 4 documents as Exs.A.1 to A.4. The defendant examined himself as D.W.1 and exhibited four documents as Exs.B.1 to B.4. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment and decree dated 22.01.2015 granting the relief of specific performance as prayed for. Aggrieved by the said judgment and decree, the defendant preferred an appeal in A.S.No.24 of 2018 and the learned District Judge, Theni, upon considering the materials available on record and on hearing the arguments of both sides, passed the



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impugned judgment and decree dated 22.01.2015 dismissing the appeal and

thereby confirming the judgment and decree passed by the trial Court.

Challenging the dismissal of the first appeal, the defendant has preferred the present Second Appeal.

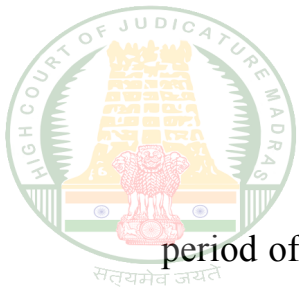
8. At the time of admission, the following Substantial Questions of Law came to be formulated:

“1. Whether the Courts below are right in concluding that the agreement, dated 03.06.2011 was not intended to operate as security for a loan transaction?

2. Whether the Courts below were right in not advertng to the fact that almost entire sale consideration was paid on the date of the agreement and unusually long period of two years was fixed for payment of the balance, which necessarily indicates that the agreement was only to operate as security for the borrowing?

3. Whether the Courts below were right in disbelieving Exhibits B.1 to B.4 on the ground that no one connected with the documents have been examined?”

9. It is not in dispute that the suit property is owned by the defendant. According to the plaintiff, he and the defendant entered into a sale agreement dated 03.06.2011 under Ex.A.1 fixing the sale price at Rs.3,10,000/- and the



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period of performance as two years and he paid Rs.3,00,000/- towards advance on the date of agreement itself. However, it is the specific defence of the defendant that the sale agreement under Ex.A.1 was executed only as a security for the loan transaction, as the defendant borrowed a sum of Rs.3,00,000/- on 03.06.2011 and paid interest till 03.12.2012. The Courts below upon appreciation of the evidence have concurrently held that the execution of the sale agreement stands proved and that the plaintiff is entitled to a decree for specific performance. Moreover, both the Courts below have held that the plaintiff has proved his readiness and willingness to perform his part of the contract, as contemplated under Section 16(c) of the Specific Relief Act.

10. It is settled law that in a suit for specific performance, the plaintiff must establish his readiness and willingness to perform his part of the contract as mandated under Section 16(c) of the Specific Relief Act. Such requirement is not a mere formality, but a condition precedent for granting the relief of specific performance. In the case on hand, a cursory perusal of the judgment of the Courts below, discloses that there is no independent discussion or clear finding regarding the readiness and willingness of the plaintiff. The only conclusion recorded are merely mechanical and did not reflect any application of mind to the evidence on record.

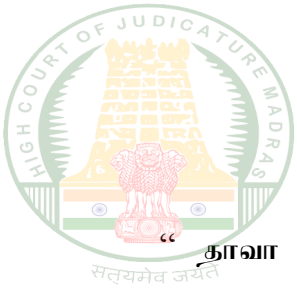


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11. Now turning to the nature of the transaction, the defence of the defendant is that the agreement was executed as a security for loan transaction, as rightly pointed out by the learned Counsel for the defendant, finds support from several surrounding circumstances. The payment of substantial portion of the alleged sale consideration at the inception, the stipulation of an unusually long period for performance, and the handing over of the original title deed are all factors, which are more consistent with a loan transaction than with a bonafide agreement of sale.

12. As already pointed out, even according to the plaintiff, he paid a sum of Rs.3,00,000/-, being the entire sale consideration, and a period of two years was fixed for performance. The plaintiff, in his evidence, has attempted to explain the fixation of such a long period by stating that the defendant had expressed that he had no other house. However, as rightly pointed out by the learned counsel for the defendant, during the course of cross-examination of the defendant, a suggestion was put on behalf of the plaintiff to the effect that a period of two years was fixed to enable the defendant to purchase another house. The said suggestion runs contrary to the explanation now offered by the plaintiff in his evidence.



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“தாவா கிரையத் தொகையை வைத்து ஁ஹு வீடு வாட்குவண்டும் என்பதற்காகத்தான் 2 வருட கால அவகாசம் கிரைய ஒப்பந்தத்தில் ஁பாடப்பட்டது என்றால் சரியல்ல.”

Thus, the plaintiff's own evidence stands inconsistent with the suggestion put forth by his side during the cross-examination of the defendant with regard to the fixation of the two-year period for performance.

13. The defendant has produced the copy of the sale agreement cancellation deed dated 02.01.2013 entered into between the wife of the plaintiff (P.W.2) and one Sahaya Thiraviyam under Ex.B.1 and the copy of the sale agreement dated 17.04.2013 entered into between the plaintiff's wife and one Seeniammal under Ex.B.2. The defendant has also produced the copy of the sale agreement dated 23.06.2009 entered into between himself and Uvari Anthony, along with the deed of cancellation dated 19.08.2010 under Exs.B.3 and B.4 respectively.

14. The learned counsel for the defendant would contend that the evidence brought on record, particularly Exs.B.1 and B.2 evidencing similar transactions entered into by P.W.2 with third parties, lends further support to the defence set up by the defendant. However, the Courts below, on the ground that the parties to the documents under Exs.B.1 and B.2, namely, Sahaya Thiraviyam and Seeniammal, were not examined, held that the defendant had failed to prove the



said documents and consequently rejected the evidence adduced on his side. In

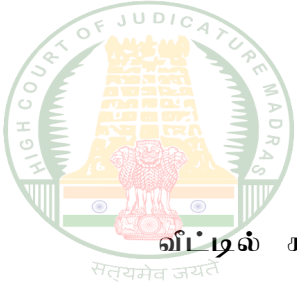
other words, the defence set up by the defendant came to be rejected primarily on the premise that the parties to the other agreements relied upon by him were not examined. However, it is pertinent to note that both P.W.1 as well as P.W.2, in their evidence, have categorically admitted the transactions covered under Exs.B.1 and B.2. P.W.1, in her evidence, would state that

“என் ஊரில் உள்ள சகாயதிரவியம் வீட்டை 30.11.2011 அன்று ரூ.2இ10இ000/-க்கு கிரையம் ஁பசியதாக சொல்லி அட்வான்! 2 லட்சம் கொடுத்ததாக அவுராடு ஒரு கிரைய ஒப்பந்தம் என் மனைவி பெயருக்கு பதிவு செய்தனா என்றால் பதிவு செய்தன். ஁மற்படி கிரைய ஒப்பந்தத்திலும் கால அவகாசம் மீத தொகை 10 ஆயிரத்துக்குப் ஁பாடப்பட்டது என்றால் சரிதான். ஁மற்படி கிரைய ஒப்பந்தத்திற்கு 2 வருட கால அவகாசம் ஁பாடப்பட்டது என்றால் அவர் என் உறவினர் என்பதால் ஁பாடப்பட்டது.

.....

அதுபால் 17.04.13ல் சீனியம்மாள் என்பவர் வீட்டையும் என் மனைவி பெயரில் கிரைய ஒப்பந்தம் செய்தன் என்றால் சரிதான். ஁மற்படி சீனியம்மாள் வீட்டையும் ரூ. 2இ25இ000/-க்கு கிரையம் ஁பசி முன் பணம் 2இ10இ000/- செலுத்தப்பட்டுள்ளது

என்றால் சரிதான். மீத தொகை 15ஆயிரம் பாக்கி செலுத்துவதற்கும் 2 வருட கால அவகாசம் ஁பாடப்பட்டது என்றால் சரிதான். நீதக் கிரைய ஒப்பந்தத்திலும் 2 வருட கால அவகாசம் ஁பாடப்பட்டுள்ளது என்றால் ஁மற்படி சீனியம்மாளும் 2 வருடம் வீட்டில் இருப்பதாக ஁கட்டதால் ஁பாடப்பட்டது. சீனியம்மாள் ஁மற்படி கிரைய ஒப்பந்த



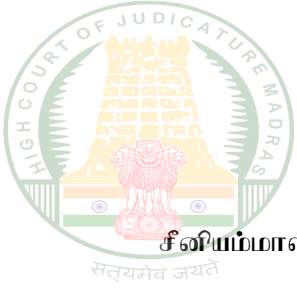
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வீட்டில் கட்டி தற்பாதும் வசித்து வருகிறார் என்றால் சரிதான். நான் கிரைய ஒப்பந்தம் செய்யும் பாது சீனியம்மாள் கட்டி கொண்டு டேந்தார் என்றால் சரியல்ல. அவர் கட்டி முடித்துவிட்டார். னேறுவரை சீனியம்மாள் மீது கிரைய ஒப்பந்தம் பிரகாரம் பதிவு செய்யுமாறு எவ்வித நடவடிக்கையும் எடுக்கவில்லை என்றால் சரிதான்.”

15. The plaintiff's wife P.W.2 in her cross-examination would admit

“எங்கள் ஊர் சகாய திரவியம் என்பவரது வீட்டை நாட்கள் 30.11.11ல் ரூ.2 இ10இ0000/-க்கு கிரையம் ஁பசி ஒப்பந்தம் ஁பாட்டாம் என்றால் சரிதான். முன் பணமாக ரூ.2இ00இ0000/- கொடுத்தாம் என்றால் சரிதான். கிரையத்தினை பதிவு செய்வதற்கு 2 வருட கால அவகாசம் சகாய திரவியம் ஁கட்டதால் கொடுத்தாம். சகாய திரவியத்திடமும் கிரைய ஒப்பந்தம் ஁பாட்டமிறகு அவர் சொத்து சம்மந்தப்பட்ட பத்திரத்தை வாட்கி வைத்துக்கொண்டாம் என்றால் சரிதான். 2.1.13ல் 2 வருட கால அவகாசம் டேந்தாபாதும் பணத்தை வாட்கிக்கொண்டு கிரைய ஒப்பந்தத்தை ரத்து செய்தாம் என்றால் சரிதான். சகாய திரவியத்திடமும் ரூ.2 இ00இ0000/-த்தைத்தான் திருப்பி வாட்கினாம்.

.....
எங்கள் ஊர் பாண்டி மனைவி சீனியம்மாள் என்பவர் வீட்டையும் நாட்கள் கிரையம் ஁பசினாம். சீனியம்மாள்தான் என் வீட்டை வைத்துக்கொள்ளுங்கள் என்று வந்தார். 17.4.13 அன்று ரூ.2 இ25இ0000/- கிரையம் ஁பசி ரூ.2இ10இ0000/-த்தை முன் பணமாக கொடுத்தாம். ஁மற்படி கிரையம் ஁பசி சீனியம்மாள் வீட்டை கட்டிக்கொண்டிருந்தார்கள் என்றால் சரிதான். தற்பாது கட்டி முடித்து சீனியம்மாள் அந்த வீட்டில் வசித்து வருகிறார். கிரையம் ஁பசி முடித்தமிறகு சீனியம்மாள் வீட்டை கட்டிக்கொண்டிருப்பது குறித்து நாட்கள் எதுவும் ஆட்சபணை எதுவும் செய்தாமா என்றால் ஆட்சபணை செய்யவில்லை.



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சீனியம்மாள் கட்டிய வீடு ஆர்சி வீடு என்றால் சரிதான். சீனியம்மாஸிடம் கிரையம் ஒப்பந்தம்

பாடுபாது 2 வருட கால அவகாசம் பாடப்பட்டது என்றால் சரிதான். சகாய திரவியத்துடன் கிரையம் ஒப்பந்தம் செய்யுமாது கால கெடு 2 ஆண்டுகள்தான் பாட்டாம். சீனியம்மாளுக்கு அட்வான்! கொடுத்துபாதும் அவரது மூலப்பத்திரத்தை வாட்கிக்கொண்டுதான் பணத்தைக் கொடுத்தாம்.”

16. The above categorical admissions made by the plaintiff and his wife (P.W.2) have a decisive bearing on the matter. The rejection of Exs.B.1 and B.2 by the Courts below, on the sole ground that the parties to those documents were not examined, is legally unsustainable. Once P.W.1 and P.W.2 have admitted the execution and existence of the said documents, the same stand duly proved and no further proof is required. The failure of the Courts below to accord due weight to such material evidence has resulted in a clear miscarriage of justice.

17. Moreover, the Courts below appear to have erroneously shifted the burden of proof onto the defendant by expecting him to disprove the nature of the transaction. In a suit for specific performance, the burden squarely lies upon the plaintiff to establish the genuineness of the agreement and to prove compliance with the statutory requirements, including readiness and willingness. The approach adopted by the Courts below is thus contrary to the settled principles



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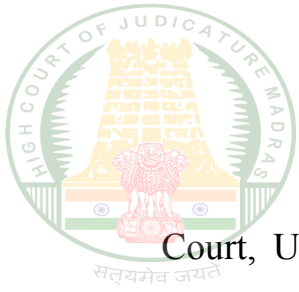
governing burden of proof.

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18. As rightly contended by the learned counsel for the defendant, Exs.B.1 and B.2, coupled with the admissions of P.W.1 and P.W.2, probabalise the defence set up by the defendant. However, the Courts below, merely referring to the recitals in Ex.A.1 and the evidence of D.W.1 acknowledging such recitals, proceeded to conclude that the agreement of sale under Ex.A.1 stood proved, without properly appreciating the totality of evidence on record.

19. In view of the above, this Court has no hesitation in holding that the findings recorded by the Courts below are perverse, being vitiated by non-consideration of material evidence and failure to apply settled legal principles. Consequently, the judgments and decrees of the Courts below are liable to be set aside. Having regard to the facts and circumstances of the case, this Court holds that the defendant is entitled to costs throughout. Accordingly, the Substantial Questions of Law are answered in favour of the defendant.

20. In the result, the Second Appeal is allowed and the judgment and decree made in A.S.No.24 of 2018, dated 22.01.2019, on the file of the Additional District Court (FTC), Theni, confirming the judgment and decree passed in O.S.No.96 of 2013, dated 22.01.2015, on the file of the Subordinate



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Court, Uthamapalayam are set aside. Consequently, the suit in O.S.No.96 of 2013 stands dismissed. The defendant is entitled to costs throughout.

Consequently, the connected Civil Miscellaneous Petition is closed.

17.04.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

SSL

To:

1. The Additional District Court (FTC), Theni.
2. The Subordinate Court, Uthamapalayam.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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**PRE-DELIVERY JUDGMENT MADE IN
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