

A.S. NO.839 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 08 / 2025

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JUDGMENT PRONOUNCED ON : 28 / 07 / 2026

**CORAM :
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

A.S. No.839 OF 2020

V.Govindasamy
S/o. Late Venkitapathy
Old No.1/108, New No.1/130,
Kaspa Mallai Gounder Palayam,
Palladam, Tiruppur – 641 658.

... Appellant /
1st Defendant

Versus

1.S.Natarajan
S/o.Subramanian
D.No.16/45A, Upathesi Thottam,
Ambrose Nagar, Susainallur,
Karumathampatti, Sulur Taluk,
Coimbatore – 641 018.

... 1st Respondent /
plaintiff

2.Varun Venkat
S/o. Govindasamy
Old No.1/108, New No.1/130,
Kaspa Mallai Gounder Palayam,
Palladam, Tiruppur – 641 658.

... 2nd Respondent /
2nd Defendant

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1
of the Code of Civil Procedure, 1908 praying to set aside the Judgment and

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Decree dated March 5, 2020 passed in O.S. No.314 of 2016 by the learned

Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),

Tiruppur.

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For Appellant : Mr.T.Murugamanickam
Senior Counsel
Assisted by Mr.K.Myilsamy

For Respondent-1 : Mr.S.Saravanan

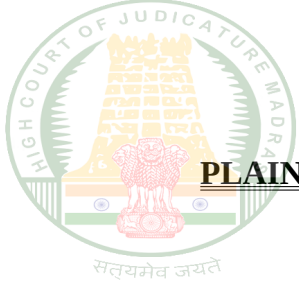
For Respondent-2 : Mr.K.Prabhakaran
Served - No appearance

* * * * *

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated March 5, 2020 passed in O.S. No.314 of 2016 by 'the Sessions Court, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur' ['Trial Court' for brevity], the first defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

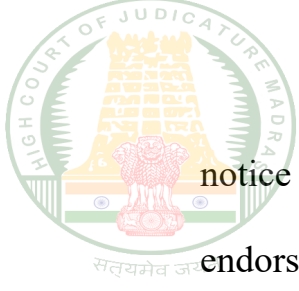
2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

**PLAINTIFF'S CASE**

3.The suit properties originally belonged to the defendants.

The second defendant is the son of the first defendant. The first defendant acquired the suit properties by virtue of a Settlement Deed dated July 19, 2002 from his mother. The plaintiff and the first defendant entered into an Agreement of Sale on September 9, 2015 registered as Document No.1129/2015 on the file of Sub Registrar, Palladam in respect of the suit properties, and the second defendant is also a party thereto. The sale price was fixed at Rs.12,00,000/-. On the date of the Sale Agreement itself, the plaintiff paid a sum of Rs.10,00,000/- as advance. Eleven months' time was fixed for execution of the Sale Deed.

3.1.According to the plaintiff, he was always ready and willing to perform his part of the contract. The plaintiff approached the defendants within the stipulated time of eleven months, for execution of the Sale Deed. But the defendants evaded execution of the Sale Deed. As per the Sale Agreement, the defendants have to execute the Sale Deed in favour of the plaintiff on or before August 9, 2016. However, the defendants failed to do so. In the meantime, the plaintiff sent a legal notice on April 15, 2016 to the defendants calling upon them to execute the Sale Deed in his favour. The first defendant received the legal notice and the

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notice issued to the second defendant was returned to the plaintiff with an endorsement 'not claimed'. The defendants remained evasive. Hence, the plaintiff filed the present Suit for specific performance.

FIRST DEFENDANT'S CASE

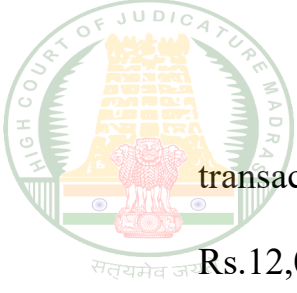
4.The first defendant filed a written statement denying the allegations made by the plaintiff in the plaint. According to the first defendant, he is the absolute owner of the suit properties *vide* Settlement Deed dated July 19, 2002, and he never entered into any Sale Agreement for the purpose of sale of suit properties with the plaintiff. In the month of August 2015, he was in urgent need of money to discharge the loan for the educational expenses of his son, the second defendant and to meet out some family expenses. The first defendant along with his friend - Palanisamy approached the plaintiff, a money lender, for a loan of Rs.10,00,000/-. The plaintiff also agreed to advance the loan, and demanded the first defendant to hand over the original Settlement Deed in his favor and also execute a registered Sale Agreement as security for the loan. He had also obtained signature of the first defendant along with his son on several printed promissory notes and other stamp papers as security for the loan. The plaintiff assured him that he will not misuse the registered

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Sale Agreement and will cancel the same as and when first defendant repays the entire loan amount. Since the first defendant was in urgent need of money, without any alternative and believing the assurance given by the plaintiff, executed a registered Sale Agreement as security. The alleged Sale Agreement is not true, valid and genuine and the same was obtained by fraud, misrepresentation, *etc.*

4.1.It is further averred that the first defendant was paying a sum of Rs.25,000/- every month till the month of March 2016 to the plaintiff. Since the first defendant was unable to pay the interest, the plaintiff issued a legal notice on April 15, 2016. After receipt of the legal notice, the first defendant approached the plaintiff through the said Palanisamy and other *panchayatdars*, before whom, he had agreed to grant one year time to the first defendant to repay the loan amount of Rs.10,00,000/- with 24% interest per annum. The first defendant had not issued any reply notice to the pre-suit notice issued by the plaintiff.

4.2.Further averred that, on the date of the alleged Sale Agreement, the suit properties was worth more than Rs.5,00,000/- per Acre. The total value of the suit properties was more than Rs.25,00,000/-. As the alleged Sale Agreement was executed only as a security for the loan

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transaction, the value of the suit properties was mentioned as Rs.12,00,000/-. The fixation of the longer period for the minimum balance sale consideration of Rs.2,00,000/- is an evidence that the alleged Sale Agreement was executed only as a security for the loan transaction and the same is not a true agreement for sale and is not intended to be acted upon.

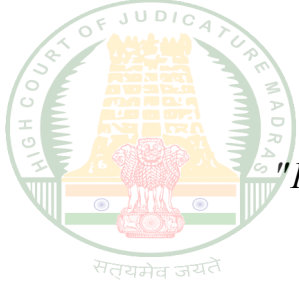
4.3. According to the first defendant, the second defendant is a college student and he had no right over the suit properties. Only because the Sale Agreement was executed as security for a loan transaction, the second defendant was made to sign the document. The alleged readiness and willingness as pleaded in the plaint by the plaintiff was also denied. The plaintiff has not come forward with clean hands. Stating so, the first defendant sought to dismiss the Suit with cost.

SECOND DEFENDANT

5. The second defendant was called absent and set *ex-parte*.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:



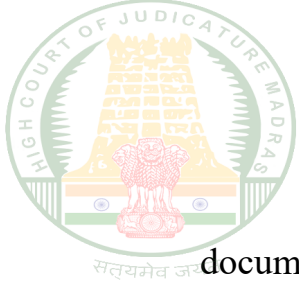
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- "1) *Whether the plaintiff is entitled for the relief of Specific Performance as prayed for?*
- 2) *Whether the Suit Sale Agreement dated September 9, 2015 was intended for sale?*
- 3) *To what other relief, the plaintiff is entitled to?"*

7.The Trial Court, on March 5, 2020 framed the following additional issues:

- "1) *Whether the Suit Sale Agreement dated September 9, 2015 is true and valid?*
- 2) *Whether the plaintiff is always ready and willing to perform his part of the contract?"*

8.At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and one Saravanan was examined as P.W.2 and Ex-A.1 to Ex-A.9 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and one Kaliappan was examined as D.W.2 and no document was marked, on the side of first defendant.

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9. After full-fledged trial, the Trial Court held that the documentary evidences viz., Ex-A.1 to Ex-A.9 marked on the side on the side of the plaintiffs clearly proves that Ex-A.2 - Suit Sale Agreement is true and valid and that the plaintiff has proved his readiness and willingness to perform his part of the contract. Upon finding that the plaintiff has proved his case, the Trial Court concluded that the plaintiff is entitled to the relief of specific performance against the first defendant with costs. The Trial Court directed the first defendant to execute the Sale Deed in respect of the suit properties in favour of the plaintiff on receiving the balance sale consideration and fixed two months' time for execution of the Sale Deed. Consequently, the Trial Court dismissed the Suit *qua* second defendant.

APPEAL SUIT

10. Feeling aggrieved by the Judgment and Decree passed by the Trial Court, the first defendant has preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

11. Mr. T. Murugamanickam, learned Senior Counsel assisted by Mr. K. Myilsamy, learned Counsel on record for the appellant / first

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defendant would submit that there are two items of the suit properties. Suit

Item No.1 is 1 Acre 66 Cents and Suit Item No.2 is 3 Acre 44 Cents. The

suit properties totally measure 5 Acre 10 Cents and belonged to the first

defendant. At the time of Ex-A.2 - Sale Agreement, the second defendant

was studying in a college and hence, the first defendant was in urgent need

of money for their family expenses as well as second defendant's

educational expenses. Hence, the first defendant approached the plaintiff

for a loan and at the instance of the plaintiff, the first defendant executed

Ex-A.2 - Sale Agreement which was not intended to sell the suit properties

but only to serve as security to the loan transaction. That is why an eleven

months' time period has been prescribed under the Sale Agreement, though

majority of the sale consideration has already been paid and the balance

was only Rs.2,00,000/-. Hence, the Trial Court without appreciating the

facts and circumstances, erroneously decreed the Suit in favour of the

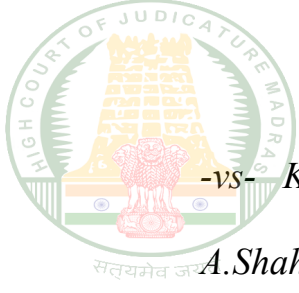
plaintiff. Accordingly, he would pray to allow this Appeal Suit and set

aside the Decree and Judgment passed by the Trial Court. He would rely

on the following Judgments in support of his contentions: (i). *Bhagirath*

-vs- *Ram Ratan* reported in (2017) 6 MLJ 237 (SC); (ii). *Tejram* -vs-

Patirambhau reported in AIR 1997 SC 2702; (iii). *Kamireddi Sattiaraju*



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-vs- *Kandamuri Boolaeswari* reported in 2007-3-L.W.580; and (iv).

A.Shahul Hameed -vs- N.Malligarjuna reported in 2025-3-L.W.577.

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12.*Per contra*, Mr.S.Saravanan, learned Counsel appearing for the first respondent / plaintiff would submit that the defendants admitted the execution of Ex-A.2 - Sale Agreement. Moreover, the plaintiff has examined P.W.2 to prove the payment of consideration. Further, the plaintiff sent Ex-A.3 - Notice dated March 29, 2016 and the same was received by the defendants. Despite receiving notice, they did not send a reply. Further, there is no *iota* of evidence available on record to show that the plaintiff and the defendants had a money transaction and that Ex-A.2 - Sale Agreement was executed to stand as a security thereto. There is no evidence available on record to show that the market value of the suit properties was Rs.25,00,000/- at that time as claimed by the first defendant. The Trial Court after appreciating the entire facts and circumstances, rightly dismissed the Suit. There is no warrant to interfere with it. Accordingly, he would pray to dismiss the Appeal Suit. He would rely on the following Judgments in support of his contentions: (i).*Madhukar Nivrutti Jagtap -vs- Pramilabai Chandulal Parandekar* reported in (2020) 15 SCC 731; (ii).*Nanjammal -vs- Palaniammal* in Appeal No.205 of 1987 dated March 02, 1993; (iii).*S.Shanmugham -vs-*

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R.Nallasamy reported in 2011 (2) MWN (Civil) 22; (iv). *A.Raja -vs-*

J.K.Madhu reported in 2013 (1) MWN (Civil) 825; (v). *Valantine Morris*

-vs- Ramalingam reported in 2014 (3) MWN (Civil) 730; (vi). *George*

Kavalam -vs- P.Vijayalakshmi reported in 2015 SCC OnLine Mad 4067;

and (vii). *M.R.Subramaniam -vs- G.S.Abimunissa* reported in 2017 SCC

OnLine Mad 6871.

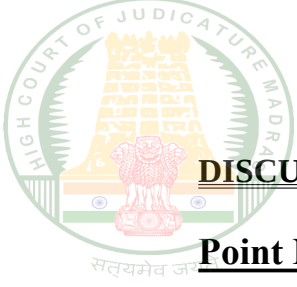
POINTS FOR CONSIDERATION

13.Heard on either side. Perused the entire evidence available on record. The points that arise for consideration in this Appeal Suit are as follows:

(i)Whether Ex-A.2 - Sale Agreement was executed with an intention to sell the suit properties as contended by the plaintiff or was it executed to stand as a security to loan transaction as contended by the defendants?

(ii)Whether the plaintiff is entitled to the equitable relief of specific performance?

(iii)To what other relief the plaintiff is entitled to?

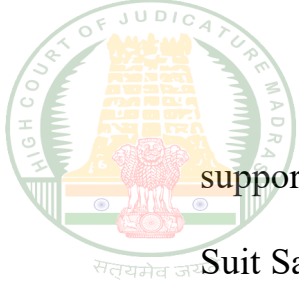
**DISCUSSION:****Point Nos.(i) and (ii):**

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14.Ex-A.2 - Suit Sale Agreement dated September 09, 2015 is a registered document. On the date of the Sale Agreement, Rs.10,00,000/- was given to the defendants. The remaining sale price that needed to be paid was only Rs.2,00,000/-. Eleven months' time period was fixed for the performance of contract. In other words, execution of Sale Deed in respect of the suit properties was to be done on or before August 9, 2016. There is no disputes with the above facts.

15. While the plaintiff contends that Ex-A.2 - Suit Sale Agreement was executed with an intention to sell the suit properties and not for any other purpose, the first defendant contends that it was executed only to stand as a security to the loan he borrowed from the plaintiff, primarily for the purpose of meeting out the educational expenses of his son.

16.As the first defendant attacks the very nature of the document by contending that it was executed for altogether a different transaction, Sections 91 and 92 of the Indian Evidence Act, 1872 would not stand as a bar and the first defendant is entitled to lead evidence in



support of his contention, although he cannot vary the terms of Ex-A.2 -

Suit Sale Agreement in other aspects. In this regard, reliance is placed on a

Division Bench Judgment of this Court in **Kamireddi Sattiaraju -vs-**

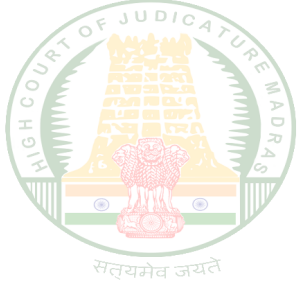
Kandamuri Boolaeswari, reported in **2007 3 L.W. 580**, wherein by

referring to **Roop Kumar -vs- Mohan Thedani**, reported in **2003 3 L.W.**

261 : (2003) 6 SCC 59 and **Parvinder Singh -vs- Renu Gautam**, reported

in **2004 4 L.W. 53 : (2004) 4 SCC 794**, it was clarified thus:

"14. At the outset, it will have to be stated that existence of Ex.A-1 agreement was never in dispute. As far as application of Section 92 of the Indian Evidence Act is concerned, by virtue of Section 91, and having regard to the existence of Ex.A-1 agreement, the terms contained in Ex.A-1 are to be considered without any reference to any other oral evidence insofar as it related to the terms contained therein. In that respect, Sections 91 and 92 of the Indian Evidence Act are inter-dependent. In the light of the evidence available on record, both oral and documentary, as well as the application of Section 92 of the Indian Evidence Act, there is no scope to permit the appellants to contradict, vary or subtract the terms contained in Ex.A-1 agreement. Therefore, even taking Ex.A-1 agreement on its face value, what has to be considered is whether the contention put forward on behalf of the appellants that it was never intended to be acted upon, requires consideration. On this aspect, we find that the decisions relied on by learned counsel for the



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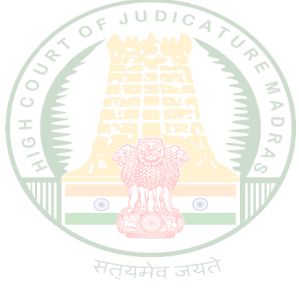
appellants Mr. R. Subramanian as reported in 2003 (6) SCC 595 (supra) and 2004 (4) SCC 794 (supra) fully support his contention.

15. In the judgment reported in 2003 (6) SCC 595, in paragraph 22, the Supreme Court has stated the legal position as regards the substantive part of Section 92 of the Indian Evidence Act in the following words:

"22. This Court in Gangabai v. Chhabubai (1982 (1) SCC 4 : AIR 1982 SC 20) and Ishivar Dass Jain v. Sohan Lal (2000 (1) SCC 434 : AIR 2000 SC 426) with reference to Section 92(1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

16. In the decision reported in 2004 (4) SCC 794, the Supreme Court has held as under in paragraph 9:

"... An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. Tyagaraja Mudaliyar v.

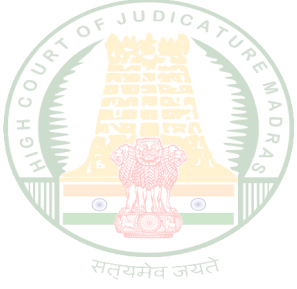


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Vedathanni (AIR 1936 PC 70 : 64 IA 126) is an authority for the proposition that the oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different."

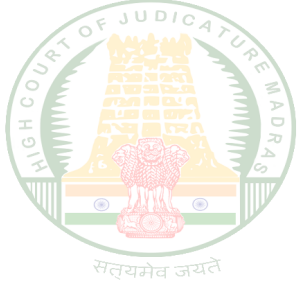
17. From the above ratio laid down by the Supreme Court, when we analyse the stand of the parties, according to the appellants, irrespective of the fact that Ex.A-1 came into being, it was contended that the deed was never intended to be acted upon and that it was a sham document. When the said stand is probed into further, as held by the Supreme Court, the bar under Section 92 of the Indian Evidence Act vis-a-vis Ex.A-1 would operate if only the appellants attempt to rely upon Ex.A-1 agreement and simultaneously sought to vary and contradict its terms. Such is not the case of the appellants. The appellants are not attempting to contend that the terms contained therein are to be varied or that the evidence let in on their side was to contradict the terms contained therein. According to the appellants, the entire evidence let in both oral and documentary, was only to demonstrate that inspite of existence of Ex.A-1, it will have to be held that the parties had a different contract altogether and Ex.A-1 was never intended to be acted upon. At the risk of repetition, we state that applying the ratio laid down by the Supreme Court, such a stand of the appellants was certainly not prohibited"



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17.The learned Counsel for the respondent / plaintiff would contend otherwise by drawing support from the Division Bench Judgment of this Court in *Nanjammal -vs- Palaniammal*, reported in *1993 2 L.W. 505*, wherein in Paragraph No.5, it was held thus:

"5.It was one of the contentions urged in the Court below that the plaintiff had not even obtained encumbrance certificate before the execution of Exhibit A1 and she had not taken the title deed from the defendant. The Court below has pointed out the recital in Exhibit A1 under which the defendant had undertaken to obtain an encumbrance certificate and give it to the plaintiff. The fact that the plaintiff had not taken the title deed in advance does not in any way discredit the truth of the agreement in Exhibit A1. In fact, the evidence of the defendant is that what was written was really an agreement though it was only for the purpose of securing the loan. She (defendant) has admitted that the plaintiff wanted her to execute an agreement for sale by way of security for the loan and she did execute such an agreement. When that is the fact, it is not open to the defendant to raise a plea that the terms of the agreement should be ignored as the



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real purpose was to secure the loan transaction. It is conceded by learned counsel for the appellants that the defendant is barred from raising such a plea by S. 92 of the Indian Evidence Act."

18. This Court is not in consonance with the contention of the learned Counsel for the respondent / plaintiff, for two reasons. Reason No. (i), the Division Bench Judgment relied on by him does not draw any support from any Apex Court Verdict, whereas that in *Kamireddi Sattiaraju's Case* [cited *supra*] relied on by this Court, is based on two Apex Court Judgments. Reason No.(ii), in the Judgment relied by him, the defendant's Counsel conceded that the bar under Section 92 of the Indian Evidence Act, 1872 was applicable. It could be seen from the afore-extracted portion, viz., Paragraph No.5, that the decision of the Court was *inter-alia* based on that concession. For these two reasons, this Court is of the view that *Nanjammal's Case* [cited *supra*] would not come to the aid of the plaintiff. This Court concludes that the first defendant is not barred under Sections 91 and 92 of the Indian Evidence Act, 1872 to contend that the Suit Sale Agreement in Ex-A.2 was executed for altogether a different transaction and also to lead evidence to support the same.

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19.Moving on, the plaintiff, as deposed in his evidence as P.W.1, is a rice merchant. Out of the total sale consideration of Rs.12,00,000/-, he paid upfront Rs.10,00,000/-, as advance. The remaining amount to be paid is Rs.2,00,000/-. If the Suit Sale Agreement was really executed for the purpose of sale of suit properties, this Court wonders why a period of eleven months was fixed as a time period, when more than 80% of the total sale consideration has already been paid by the plaintiff. The plaintiff would contend that the eleven months period was to measure out the suit properties. However, Ex-A.2 - Suit Sale Agreement, Ex-A.4 - Pre-Suit Notice, the plaint as well as the plaintiff's chief-affidavit are silent on this aspect; they do not mention anything about measuring the suit properties. The said contention was raised by the plaintiff for the first time, during his cross-examination as P.W.1 and hence, this Court is of the view that it is an afterthought.

20.Further, if really the plaintiff intended to purchase the suit properties, he would have naturally obtained encumbrance certificate for at least past 12 years just like any common prudent buyer. However, the Ex-A.7 - Encumbrance Certificate was obtained on August 8, 2016, just before filing of the Suit, that too for a period of about two years alone. This Court is not able to comprehend why the plaintiff failed to check the

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encumbrances before entering into the Suit Sale Agreement and why it has been submitted for two years alone. Anyhow, the Encumbrance Certificate submitted as Ex-A.7 for about two years period reveals that there were two Sale Agreements in respect of the suit properties with different persons, namely One Sivalingam and One Innasimuthu, prior to the execution of Ex-A.2 - Suit Sale Agreement. It could be seen that the first defendant had entered into a registered Sale Agreement (Document No.2048 of 2014) in respect of suit properties with said Innasimuthu for Rs.10,00,000/-, to be performed within a span of eleven months, receiving Rs.6,00,000/- upfront as advance. The same was cancelled on January 22, 2015 and on the same day, the first defendant entered into another Sale Agreement (Document No.2048 of 2014), in respect of a portion of suit properties and some more properties, for a sale consideration of Rs.16,00,000/- with an advance payment of Rs.10,00,000/-, to be performed within a period of two years from the date of Sale Agreement. The aforesaid transactions show that the first defendant was in the habit of obtaining loans by executing sale agreements.

21.Further, the plaintiff examined P.W.2 - Saravanan, as an attesting witness to Ex-A.2 - Suit Sale Agreement. He deposed that he knew nothing about the transaction or terms between the parties and he

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merely saw the plaintiff and the first defendant executing the Suit Sale Agreement by affixing their signatures therein. He also deposed that he does not know about the other attesting witness.

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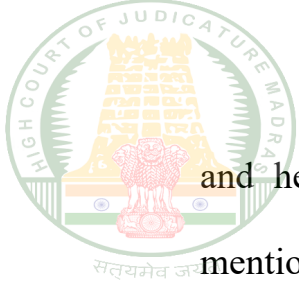
22.Further, the first defendant's case is that he borrowed money and executed Ex-A.2 - Suit Sale Agreement as a security to the same; that upto March 2016, he was paying interest duly and defaulted thereafter; that consequently, the plaintiff immediately issued Ex-A.4 - Pre-Suit Notice in April 2016. When there exist eleven months' time period for performance of contract, *i.e.*, till August 9, 2016, what was the reason for the plaintiff to issue 4 months prior. There is no reason assigned in the pleadings or evidence as to why the Pre-Suit Notice in Ex-A.4 was issued early. Further, when the notice was issued in April 2015, the Suit was filed only later in December 2016.

23.Further, as per the terms of the Suit Sale Agreement, in case of failure on the part of the defendants, to perform their part of the contract, the plaintiff shall deposit the balance sale consideration before Court of law and obtain Sale Deed through Court. When so, the plaintiff has not deposited the balance sale consideration until the *Ex-parte* Decree was passed by the Trial Court [Defendants let the Suit be decreed *ex-parte*

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and later first defendant set aside the same]. However, as per explanation to Section 16 of the Specific Relief Act, 1963, the plaintiff need not jingle his coins. Yet, he has to establish his readiness and willingness throughout to perform his part of the contract by producing either his bank statement or any other document. Mere averment is not sufficient to prove readiness and willingness.

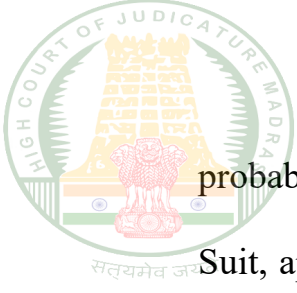
24. Further, on a lighter vein, the first defendant in his written statement claimed that at the time of alleged loan transaction, he gave his Original Title Deed namely the Settlement Deed dated July 19, 2002 executed by his mother in his favour in respect of the suit properties. Ex-A.4 - Pre-Suit Notice, plaint as well as his chief-affidavit as P.W.1 has no whisper about the custody of the Title Deed. On the other hand, in the plaint, it has been stated that just before filing of the Suit, the plaintiff applied for a registration copy of the said Settlement Deed which has been filed along with the plaint. Only during his cross-examination, he admitted the custody of the Original Title Deed with him. What was the need for the plaintiff to suppress the factum of custody of the Title Deed ? One who seeks the equitable relief of specific performance, must come to the Court with clean hands. The plaintiff has not come to this Court with clean hands



and he is not *bona fide*. If really he is *bona fide*, he ought to have mentioned it either in the plaint, or chief affidavit.

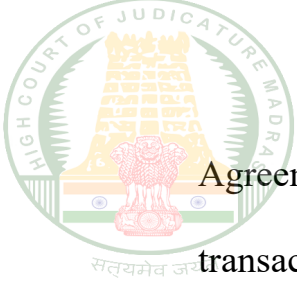
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25.All the above factors, in one way or another, raises serious doubt as to the intention of the parties and the true nature of transaction under Ex-A.2 - Suit Sale Agreement. There is no valid reason assigned as to why a eleven months' time period has been fixed when more than 80% of the sale price has already been paid. The one reason assigned also appears to be an afterthought as held above. Further, no common prudent buyer would make a purchase of immovable properties without verifying the encumbrance particulars. Further, while an attesting witness need not necessarily be aware of contents, particulars of transaction, and the terms agreed between the parties nor is he required to know about the other attesting witness, in the facts and circumstances of this case, the attesting witness - P.W.2 not knowing any of the above creates a suspicion. Further, there is no explanation as to why the plaintiff rushed to issue Ex-A.4 - Pre-Suit Notice in April 2016, when there is time left for execution of Sale Deed till August 9, 2016. If really there was a hurry, why did he then have to wait till December 2016 for filing of the Suit. These facts when read together with the first defendant's case that the Pre-Suit Notice was issued when he defaulted in payment of interest, makes the first defendant's case

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probable. Time gap between the early issuance of notice and the filing of Suit, appears to have been a waiting period spent by the plaintiff awaiting return of money or payment of interest from the first defendant. Further, the plaintiff has concealed the fact that the Title Deed of first defendant is under his custody. While there is no valid explanation or reason assigned for the same, it could be inferred from the facts and circumstances of the case that the plaintiff retained the same without disclosure before Court, so as to retain a strategic advantage where even if the Suit culminates into an adverse decree against the plaintiff, the first defendant will be handicapped as the Title Deed remained in actual possession of the plaintiff. Further, the plaintiff has failed to establish his readiness and willingness though he averred to that effect in Ex-A.4 - Pre-Suit Notice. Further, it could be seen from Ex-A.7 - Encumbrance Certificate filed by the plaintiff, that the first defendant had been obtaining loans from multiple persons by executing Sale Agreement in respect of the suit properties, which fact also probablizes his case that he was in need of money to meet out the educational expenses of his son, the second defendant.

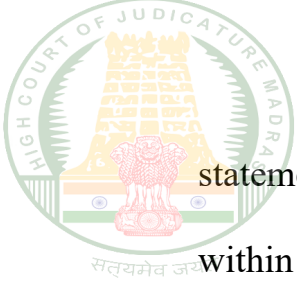
26.On a cumulative reading of all the above facts, this Court is of the view that the plaintiff's contention that the Suit Sale Agreement was executed for sale of suit properties is an afterthought. The Suit Sale

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Agreement was originally executed to stand as a security to the loan transaction, as alleged by the first defendant. And also keeping in mind the fact that as per Section 20 of the Specific Relief Act, 1963 (as it stood before the 2018 Amendment), the relief of specific performance is a discretionary relief, meaning even if the nature of the document is proven to be true, the Court has the powers to still deny specific performance in appropriate cases, this Court is of the view that the plaintiff is not entitled to the relief of specific performance. Needless to mention that the Suit having been filed in 2016, the 2018 Amendment to the Specific Relief Act, 1963, whereby the erstwhile Section 20 was removed, is not applicable as the amendment is prospective in nature [See Judgment of Hon'ble Supreme Court in *Annamalai -vs- Vasanthi*, reported in (2026) 3 SCC 769]. *Point Nos.(i) and (ii) are answered accordingly.*

Point No.(iii):

27.The next point for determination is whether the plaintiff is entitled to any other relief. The plaintiff did not seek for the alternate relief of return of advance amount in the plaint. Unless the said alternate relief is prayed for in the plaint, it cannot be granted [See Judgment of Hon'ble Supreme Court in *K.R. Suresh -vs- R. Poornima*, reported in 2025 *LiveLaw (SC) 522*]. However, in this case, the first defendant in his written

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statement, has agreed to return the advance amount of Rs.10,00,000/-

within a span of 1 year. The learned Senior Counsel appearing on behalf of

the appellant / first defendant, also specifically, submitted that the first

defendant is ready and willing to return Rs.10,00,000/-, with reasonable

interest. In view of the facts and circumstances and in view of the

submissions made by the learned Senior Counsel, to avoid multiplicity of

proceedings and in the interest of justice, this Court is inclined to pass

Money Decree for Rs.10,00,000/- with simple interest in favour of

plaintiff. Interest shall be at the rate of 15% per annum. The reason for the

higher rate of interest is that the plaintiff is a rice merchant; had he

invested the said amount of Rs.10,00,000/- in his business or lent the same

to others, he would have earned a high return on the same. Moreover, the

first defendant during his evidence as D.W.1, has deposed that he had

agreed to repay Rs.10,00,000/- along with 24% interest before the

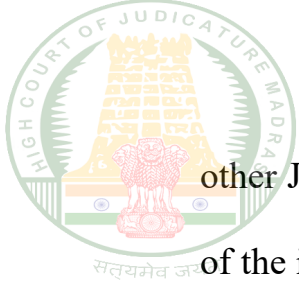
Panchayatdhars. Taking all these factors into consideration, this Court is

of the view that simple interest at the rate of 15% per annum is justifiable.

Point No.(iii) is answered accordingly.

28. Upon giving due consideration to the case laws relied on

either side, this Court is of the view that there is either no quarrel with the



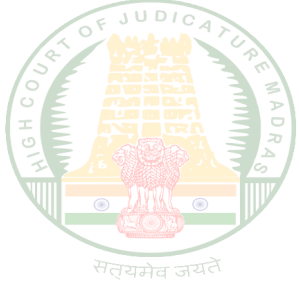
other Judgments relied on either side or they are not applicable to the facts of the instant case.

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CONCLUSION

29. In the result, the Appeal Suit is allowed in part with the following terms:

- (i) The Judgment and Decree passed by the Trial Court is set aside and the plaintiff is not entitled to the equitable relief of specific performance.
- (ii) Plaintiff is entitled to a Money Decree. Accordingly, a Money Decree is passed in favour of the plaintiff for Rs.10,00,000/- with simple interest at the rate of 15% per annum from the date of Suit till realisation.
- (iii) The first defendant shall return a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) with interest at the rate of 15% per annum from the date of Sale Agreement till the date of realization to the plaintiff.



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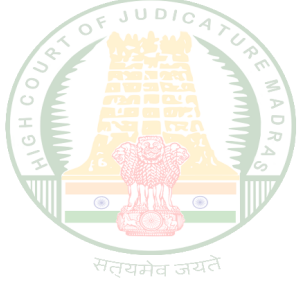
(iv) The plaintiff shall return the Original Settlement Deed dated 19.07.2002 (Doc.No.2865 of 2002, S.R.O.Palladam) to the first defendant, immediately after realizing the above decree amount with interest.

(v) The first defendant shall pay the cost incurred by the plaintiff before the Trial Court.

(vi) A Charge is created upon the suit properties to enable the plaintiff to realize the aforesaid amount with interest specified as above. The charge shall be raised automatically on payment of the aforesaid amount with interest by the first defendant to the plaintiff.

(vii) *Qua* the second defendant, the Suit is dismissed, as admittedly he is a minor at the time of Suit Sale Agreement.

(viii) The first defendant shall pay cost throughout to the plaintiff.



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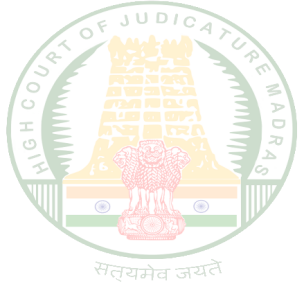
ix) Connected Civil Miscellaneous Petition / Civil Miscellaneous
Petition (Filing), if any, shall stand closed.

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28 / 07 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK/pam

To
The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Tiruppur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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