



S.A.No.531 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.11.2025
Pronounced on	02.02.2026

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.531 of 2023 and
C.M.P. No.16591 of 2023

Varadharajan @ Pandian

...Appellant

Vs.

Thayar

...Respondent

Prayer : Second Appeal is filed under Section 100 CPC, 1908 against the decree and judgment dated 25.10.2021 passed in A.S. No.5 of 2020, on the file of the II Additional District and Sessions Court, Chidambaram, confirming the Judgment and decree dated 05.09.2019 passed in O.S. No.89 of 2013, on the file of the Subordinate Court, Chidambaram.

For Appellant : Mr.S. Subramaniya
for Mr. S. Sathish Rajan
For Respondent : Mr. A. Muthukumar



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JUDGMENT

The present Second Appeal is preferred against the decree and judgment dated 25.10.2021 passed in A.S. No.5 of 2020, on the file of the II Additional District and Sessions Court, Chidambaram, confirming the Judgment and decree dated 05.09.2019 passed in O.S. No.89 of 2013, on the file of the Subordinate Court, Chidambaram.

2. The appellant herein is the 2nd defendant in the above suit. The respondent herein is the plaintiff in the suit. The parties will be referred to in the rank assigned to them in the suit for the purpose of convenience and clarity.

3. The plaintiff instituted the suit seeking for the relief of specific performance of the Agreement of Sale dated 05.07.2013 executed by the 1st defendant in favour of the plaintiff agreeing to sell the suit land.

4. The case of the plaintiff is that the suit property was agreed to be



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sold for total sale consideration of Rs.1,01,000/-. Towards the said amount, the plaintiff had paid a sum of Rs.20,000/- as advance and agreed to pay the balance amount of Rs.81,000/- within a period of one month and failing which the plaintiff is entitled to file a suit to get the sale deed executed. The plaintiff approached the 1st defendant several times within a stipulated period of one month to tender balance amount and requested him to execute the sale deed, but the 1st defendant evaded with an intention to defeat the rights of the plaintiff. On 16.08.2013, the plaintiff sent a legal notice calling upon the 1st defendant to receive the balance sale consideration and to execute the sale deed. Meanwhile, the 1st defendant sold the property to the 2nd defendant. The 1st and 2nd defendants colluded together and created a sale deed knowing fully well about the agreement between the plaintiff and the 1st defendant. Hence, the suit.

5. The 1st defendant remained *ex parte*. The 2nd defendant resisted the claim of the plaintiff and submitted that he purchased the suit property from the 1st defendant on 20.08.2013 for a proper sale consideration of Rs.65,700/-. After purchase by the 2nd defendant, the



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Hence, prayed for dismissal of the suit.

6. The trial court, decreed the suit in favour of the plaintiff and the same was confirmed by the first appellate court.

7. Challenging the same, the present Second Appeal is filed by the 2nd defendant.

8. This Second Appeal is admitted on the following substantial question of law:

“Whether the courts below are right in arriving at the conclusion that the appellant is not an innocent bonafide purchaser by not properly appreciating the evidence on record and thereby, not granting him the protection under Section 19(b) of the Specific Relief Act.”

9. Mr.S. Subramaniya, the learned counsel for the appellant / 2nd defendant contends that the 2nd defendant is the bonafide purchaser



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without notice of the alleged agreement between the plaintiff and the 1st defendant. He contends that the entire transaction was entered into in a bonafide manner and the sale deed having been registered, the courts below erroneously held that the 2nd defendant has no *locus standi* to object the case of the plaintiff. He would further submit that the suit sale agreement is an unregistered and unstamped document fabricated by the plaintiff in order to defeat the right of the 2nd defendant. Moreover, in Ex.A2 legal notice, the plaintiff has stated that the entire sale consideration was paid to the 1st defendant. Whereas, in the plaint, it is mentioned that the plaintiff has paid a sum of Rs.20,000/- as advance and balance amount of Rs.81,000/- has to be paid. The above contradictory statements of the plaintiff would itself prove that the suit agreement is a fabricated document. Furthermore, the plaintiff failed to seek the relief of declaration to set aside the sale deed in favour of the 2nd defendant executed by the 1st defendant and no issue has been framed in this regard. The courts below failed to frame necessary issues or points for consideration as to whether the 2nd defendant is bonafide purchaser. The courts below, merely based on the evidences of the attesting witness and the scribe of the suit agreement, erroneously concluded that the plaintiff



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is entitled for the relief of specific performance even without any evidence as to his readiness and willingness to perform his part of contract. Hence, he would submit that if the relief of specific performance is granted in favour of the plaintiff, the 2nd defendant will be put to great hardship. He would further contend that though the courts below have held against the 2nd defendant, the non consideration of the relevant facts amounts to a concurrent error committed by the courts. He also pointed out that the High Court can determine issues of fact in Second Appeal under Section 100 in certain circumstances and interfere with the findings of the courts below, when such circumstances are clearly made out. The learned counsel further contended that in appreciation of evidence the courts below have overlooked material facts as to the bonafideness of the 2nd defendant in purchasing the suit property without notice of the suit sale agreement. He would also contend that the plaintiff failed to establish his readiness and willingness to perform his part of contract. A subsequent purchaser can also challenge the readiness and willingness on part of the plaintiff who has not met the requirements of clauses A, B and C of Section 16 of the Specific Relief Act, 1963. The plea of readiness and willingness of vendee is always available to all the



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defendants in a suit for specific performance including subsequent vendee and vendor and therefore, the observation made by the courts below that the 2nd defendant has no *locus standi* to question the validity of the sale agreement and the readiness and willingness of the plaintiff to perform his part of contract is incorrect. To support his contentions he has relied upon the following judgments:

- 1. Sukhwinder Singh vs. Jagroop Singh & another reported in CDJ 2020 SC 099***
- 2. K.N. Nagarajappa and others vs. H. Narasimha Reddy reported in (2021) 18 SCC 263***
- 3. Narayan Sitaramji Badwaik (dead) through Legal representatives vs. Bisaram and others reported in (2021) 15 SCC 234.***
- 4. Ram Awadh (dead) by Lrs. vs. Achhaibar Dubey reported in CDJ 2000 SC 057***
- 5. Kadupugotla Varalakshmi vs. Vudagiri Venkata Rao and others reported in CDJ 2021 SC 144.***

Hence, prayed for setting aside the judgment and decree passed by the courts below.



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WEB COPY 10. Mr.A. Muthukumar, the learned counsel for the plaintiff /

respondent would seek to sustain the judgments passed by the courts below. It is contended that the courts below have concurrently held against the defendants and the reversal of the same is not warranted. It is his case that the plaintiff had entered into a sale agreement with the 1st defendant and paid a sum of Rs.20,000/- as advance and agreed to pay the balance sale consideration of Rs.81,000/- within a period of one month and execute the sale deed. Despite repeated demands and issuance of legal notice, the 1st defendant failed to receive the balance sale consideration and execute the sale deed. The 1st defendant executed a sale deed in favour of the 2nd defendant in order to defeat the valuable right of the plaintiff. The learned counsel contends that the defendants have connived with each other and executed the sale deed and therefore, the same cannot be considered as a bonafide transaction. The courts below rightly rejected the defence set up by the 2nd defendant and decreed the suit in favour of the plaintiff. He would further submit that it is settled law that even an unregistered sale agreement relating to sale of immovable property could be received in evidence in a suit for specific performance. To support his contention, he has relied upon the judgment



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of the Hon'ble Supreme Court in ***R. Hemalatha vs. Kashthuri reported in (2023) 3 MLJ 178 (SC)***. Hence prayed for dismissal of the Second Appeal.

11. Heard on both sides. Records perused.

12. It is settled law that, as per proviso to Section 49 of the Registration Act, 1908, unregistered document affecting immovable property and required by Registration Act or Transfer of Property Act to be registered, might be received as evidence of contract in a suit for specific performance. Therefore, there is no infirmity in relying upon the unregistered sale agreement by the courts below. However, in this Second Appeal, the only question to be decided is, whether the 2nd defendant is a bonafide purchaser without notice. On a perusal of the impugned judgment of the first appellate court, it is seen that there is an observation that the 2nd defendant had enquired the 1st defendant as to whether there was any sale agreement in respect of the suit property. Now the question is, whether that alone would show that the 2nd defendant was aware of the suit sale agreement between the plaintiff and the 1st defendant. The



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learned counsel for the 2nd defendant would submit that mere common enquiries as to the existence of sale agreement, cannot be construed as knowledge about the actual existence of suit sale agreement. It is also seen that, neither the trial court nor the first appellate court has framed any issue or points for consideration as to whether the 2nd defendant is a bonafide purchaser. In a circumstance, where the 2nd defendant had contested the suit and had put forth the contention that he was a bonafide purchaser without notice and through his evidence had deposed that he had no knowledge of agreement entered into between the plaintiff and the 1st defendant, that aspect require appropriate consideration in this Second Appeal. Though the first appellate court observed that, since the 2nd defendant had enquired about the existence of any sale agreement with the 1st defendant, that alone would not be sufficient to come to a conclusion that the 2nd defendant would have knowledge of the suit agreement between the plaintiff and the 1st defendant. Such conclusion is only an assumption and there is no evidence with regard to the knowledge of the 2nd defendant. Moreover, the mere fact that the 1st defendant has not caused appearance in spite of notice having been issued and he not being examined as a witness, it could not be assumed that



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there is connivance amongst the defendants to defeat the rights of the plaintiff. Since the 2nd defendant has purchased the property for a consideration under a registered document and the 1st defendant having lost interest in the property, if he had not chosen to appear and defend the suit, the same cannot be a presumption of connivance in the absence of evidence to that effect. The plaintiff failed to establish that the 2nd defendant is not a bonafide purchaser and bought the property not in good faith. On the other hand, the 2nd defendant amply proved that he is a bonafide purchaser and bought the property in good faith for valuable consideration and without notice of any prior agreement.

13. In the background of the above consideration, the plaintiff, in any event, is not entitled to a decree for specific performance against the 1st defendant. Despite holding that the 2nd defendant is a bonafide purchaser, the fact that the 1st defendant had received a sum of Rs.20,000/- as advance from the plaintiff cannot be lost sight. Since the 1st defendant having lost interest in the property has not appeared before the trial court, and considering the plight of the plaintiff that he would have been entitled to the benefit of the land if the transaction was



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concluded and in such situation, this Court deems it appropriate to direct the 2nd defendant to pay a sum of Rs.1,50,000/- inclusive of the advance amount of Rs.20,000/- to the plaintiff in full quit of all claims, within a period of three months, failing which, the same should carry interest at 12% per annum till payment. The plaintiff is at liberty to withdraw the amount of Rs.81,000/- deposited by her before the trial court.

14. In view of the above, the following order is passed.

- i. The Second Appeal is allowed. No costs. Consequently connected Civil Miscellaneous Petition is closed.
- ii. The decree and judgment dated 25.10.2021 passed in A.S. No.5 of 2020, on the file of the II Additional District and Sessions Court, Chidambaram, confirming the Judgment and decree dated 05.09.2019 passed in O.S. No.89 of 2013, on the file of the Subordinate Court, Chidambaram, is set aside.
- iii. The decree and judgment dated 25.10.2021 in A.S. No.5 of 2020 on the file of the II Additional District and Sessions



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WEB COPY Court, Chidambaram, shall stand modified and the appellant / 2nd defendant is directed to pay a sum of Rs.1,50,000/- to the respondent / plaintiff in full quit of all claims, within a period of three months, failing which, the same should carry interest at 12% per annum till payment.

iv. The plaintiff is at liberty to withdraw the amount of Rs.81,000/- deposited by her before the trial court.

02.02.2026

Index: Yes/No

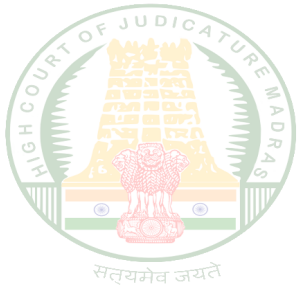
Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The II Additional District and Sessions Judge, Chidambaram
2. The Subordinate Court, Chidambaram.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

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Pre delivery judgment in

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