**IN THE HIGH COURT OF JUDICATURE AT MADRAS****RESERVED ON : 10.11.2025****PRONOUNCED ON : 24.03.2026**

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**CORAM****THE HON'BLE DR.JUSTICE A.D.MARIA CLETE****AS No. 270 of 2018**

E. Rajeswari  
W/o. Elumalai,  
No.128F, Ayyagounder St,  
Kaliyaman Koil Road,  
Agrahara Valappady Village,  
Valappady Tk, Salem Dt.

..Appellant/defendant

Vs

R. Venugopal  
S/o. Raja Chettiar,  
Athanoorpatti Po,  
Valappady Tk, Salem Dt.

..Respondent/plaintiff

**PRAYER:** This Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree in O.S.No.24 of 2017 on the file of II Additional District Court, Salem dated 05.12.2017.

For Appellant(s): Mr.C.Jagadish  
For Respondent(s): Ms.Zeenath Begum

**JUDGMENT**

This appeal is directed by the defendant against the judgment and decree dated 05.12.2017 passed in O.S. No. 24 of 2017 on the file of the II Additional District Court, Salem, insofar as the trial Court granted a money decree directing the defendant to pay Rs. 13,00,000/- with interest at 7.5% p.a. from



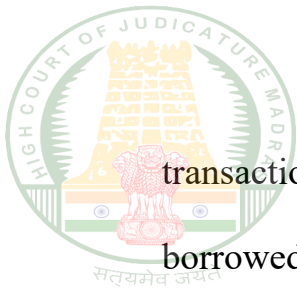
the date of suit till realization, while rejecting the suit for specific performance and refund.

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2. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court.

3. **The case of the Plaintiff:** The plaintiff filed the suit for specific performance in respect of the scheduled house-site properties, pleading that the defendant had acquired title under the registered sale deed dated 11.03.1992 and later agreed to sell the same to him for Rs.15,00,000/-. According to the plaintiff, the defendant received Rs.13,00,000/- as advance on 21.01.2016 and executed a registered sale agreement, under which the balance of Rs.2,00,000/- was payable within twelve months, whereupon the defendant was to execute a sale deed free from encumbrances. The plaintiff asserted that he was always ready and willing to perform his part, but that the defendant evaded execution of the sale deed despite repeated demands, including a legal notice dated 25.10.2016 calling upon him to appear before the Sub-Registrar Office, Valappady, on 02.11.2016, which was returned unserved. Apprehending alienation to third parties, the plaintiff sought specific performance, or in the alternative refund of Rs.13,00,000/- with interest, together with a charge over the suit properties, costs and other appropriate reliefs.

4. **The case of the Defendant:** The defendant contested the suit as false and not maintainable, and denied the alleged sale agreement, receipt of Rs.13,00,000/- as advance, and the plaintiff's readiness and willingness. Her specific case was that the

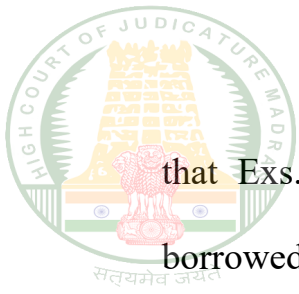


transaction was not one of sale, but only a loan transaction, under which she had borrowed Rs.3,00,000/- from the plaintiff and was repeatedly made to execute sale agreements as security for the said loan. According to her, the earlier agreements were cancelled and fresh documents were obtained under coercion, culminating in the agreement dated 21.01.2016, falsely reciting a sale consideration of Rs.15,00,000/- and advance of Rs.13,00,000/-, though no such amount was in fact paid. She further denied any deliberate evasion of notice or intention to alienate the suit properties, and maintained that, apart from the initial borrowing of Rs.3,00,000/-, she had received no amount from the plaintiff and had never intended to sell the property. On that basis, she sought dismissal of the suit with costs.

5. On the pleadings, the trial Court framed issues as to whether the sale agreement dated 24.08.2011 was executed only as security for a loan transaction, as contended by the defendant; whether the plaintiff was entitled to specific performance; whether he was entitled to refund of the advance amount; whether a charge could be created over the suit properties; and to what other reliefs he was entitled.

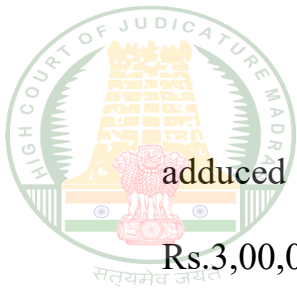
6. At trial, on the plaintiff's side, P.W.1 and P.W.2 were examined, and Ex.A.1 to Ex.A.9 were marked. On the defendant's side, D.W.1 was examined, and no documents were marked on her behalf.

7. On an appreciation of the evidence, the Trial Court placed decisive reliance on the admissions of P.W.1 in cross-examination, wherein he admitted



that Exs.A2, A6 and A8 had been executed only as security for amounts borrowed by the defendant. Referring to Sections 91 and 92 of the Evidence Act, and relying on *Roop Kumar v. Mohan Thedani*, (2003) 6 SCC 595, the Trial Court held that, though oral evidence cannot ordinarily contradict the terms of a written document, it is admissible to show that a document was never intended to be acted upon. It accordingly concluded that Ex.A2 was not a genuine agreement of sale, but only a security for a loan, and on that basis rejected the relief of specific performance as well as the claim for refund and charge as framed. However, taking note of the defendant's own admission that she had borrowed money from the plaintiff, and finding that she had failed to substantiate her plea that the borrowing was only Rs.3,00,000/-, the Trial Court granted the plaintiff a money decree for Rs.13,00,000/- with interest at 7.5% per annum from the date of suit till realisation, together with proportionate costs, and dismissed the claim for specific performance and other reliefs.

8. Aggrieved by the judgment the defendant preferred appeal contending that the appellant/defendant contended that the Trial Court, having found that the alleged sale agreement was not enforceable and that the transaction was in substance only a loan transaction, erred in converting a suit for specific performance into one for recovery of money and in granting a decree for Rs.13,00,000/- with interest, though no such relief had been specifically sought, no issue had been framed in that regard, and no independent evidence had been



added to sustain such a claim. According to the appellant, only a sum of Rs.3,00,000/- had in fact been borrowed, the subsequent agreements merely reflected accumulation of usurious interest at 36% per annum, any independent claim for recovery was barred by limitation, and the grant of Rs.13,00,000/- with further interest amounted to awarding interest upon interest, which is impermissible in law.

### **Points for Determination**

9. The following points arise for determination in the appeal:

(1) Whether the Trial Court was justified in granting a money decree for Rs.13,00,000/- with interest after holding that the transaction was only a loan transaction?

(2) To what relief is the appellant entitled?

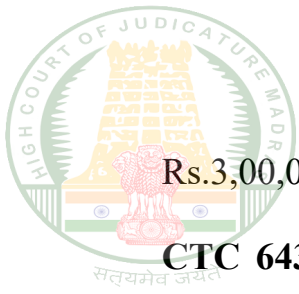
10. The learned counsel for the appellant/defendant contended that, once the Trial Court had itself found, on the plaintiff's own admissions, that the alleged sale agreement was never intended to be acted upon and was only a security for a loan transaction, it could not, while negating the reliefs of specific performance, refund of advance and charge, still proceed to grant a money decree for Rs.13,00,000/- with interest under Issue No.5, "to what relief", as such a decree travelled wholly beyond the scope of the suit and the issues framed, and deprived the defendant of an opportunity to defend a money



claim. According to the defendant the suit was one exclusively for specific performance, whereas the defence to a money suit stood on an entirely different footing; even on the plaintiff's evidence, the borrowing was only Rs.3,00,000/-, and the larger figure reflected in the subsequent documents represented accumulation of usurious interest at 36% per annum.

11. It was further submitted that, if the transaction was treated as a loan, the plaintiff's remedy lay only in separate and appropriate proceedings, subject to limitation, and not by conversion of the present suit into one for recovery of money. In support of the said submissions, reliance was placed on **V.P. Murugesan v. P. Shiek Mideen, 2015 (6) CTC 810, and Vellaisamy v. P. Subramanian, S.A. No.125 of 2016, dated 28.08.2019**, for the proposition that refund without a specific prayer may be directed only where there is a valid sale agreement but specific performance is declined, and not where the document itself is found to be only a security for a loan.

12. The learned counsel for the respondent/plaintiff contended that the Trial Court was right in directing refund, since the plaintiff had established his bona fides and readiness by issuing the notice in time under Ex.A3, and the genuineness of Ex.A2 had also been spoken to by PW2, the attesting witness. It was further submitted that the plaintiff having paid Rs.13,00,000/- had clearly established his financial capacity to pay the balance sum of Rs.2,00,000/-, while the defendant had failed to substantiate her plea that she had borrowed only



Rs.3,00,000/- Relying on **S. Malaika v. R. Saravanan, reported in 2016 (4)**

**CTC 643**, the learned counsel argued that, even if specific performance was

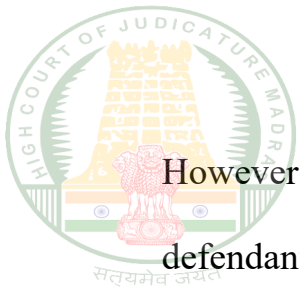
declined, the Trial Court was justified in directing repayment of the amount received under the agreement; and, in any event, on the defendant's own showing, at least the admitted loan amount with interest was liable to be repaid.

On that basis, dismissal of the appeal was sought.

### **Point No.1 and point No.2**

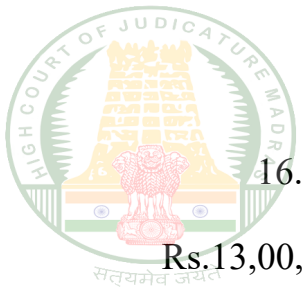
13. At the outset, it is necessary to note that the present appeal has been preferred only by the defendant, and that too only as against the money decree granted by the Trial Court directing payment of Rs.13,00,000/- with interest. The plaintiff has not filed either an appeal or cross-objection as against the rejection of the relief of specific performance. Therefore, the finding recorded by the Trial Court, on the basis of the admissions of P.W.1 and the surrounding circumstances, that Ex.A2 was not intended to be acted upon as a genuine agreement of sale, but was executed only as security for a loan transaction, is not put in issue in this appeal. This Court is therefore required to examine only whether, after having arrived such a finding, the Trial Court was justified in nevertheless granting a money decree for Rs.13,00,000/- with interest in favour of the plaintiff.

14. As already noticed, the Trial Court, relying upon the admissions of P.W.1 in cross-examination rejected the relief of specific performance.



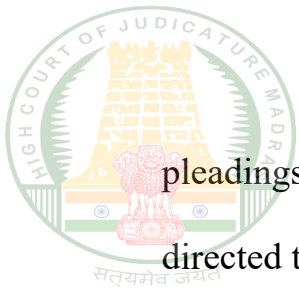
However, in the very same judgment, it proceeded to hold that, since the defendant had admitted borrowing money from the plaintiff and had failed to establish that the borrowing was only Rs.3,00,000/-, the plaintiff was entitled to a money decree for Rs.13,00,000/- with interest at 7.5% per annum from the date of suit till realization. It is this part of the reasoning that is assailed by the appellant.

15. In the considered view of this Court, once the Trial Court had come to the definite conclusion that the transaction evidenced by Ex.A2 was not one of sale, but only a loan transaction for which the document had been taken as security, it could not have proceeded to grant a money decree for Rs.13,00,000/- with interest in the very same suit filed for specific performance. The relief of specific performance necessarily rests upon the existence of a valid and enforceable agreement of sale intended to be acted upon by the parties. Likewise, the alternative relief of refund contemplated in a suit of this nature is only a relief incidental to such a genuine contract of sale. Where the very agreement relied upon is held not to be a true agreement of sale, but only a security for a borrowing, the character of the plaintiff's claim changes entirely. It ceases to be a claim for refund of advance paid under a contract of sale, and assumes the character of a claim arising out of an alleged loan transaction.



16. It is true that the plaint contains an alternative prayer for refund of Rs.13,00,000/- with interest, together with creation of charge over the suit properties. But that circumstance, by itself, does not justify the decree granted by the Trial Court. The alternative prayer for refund in a suit for specific performance is predicated upon the case that the amount was paid as advance sale consideration under a valid agreement of sale. Once the Trial Court rejected that very basis and held that the transaction was only a loan transaction, the claim could not thereafter be decreed as though it still retained the legal character of refund of advance under a contract of sale. In other words, the Trial Court could not simultaneously hold that Ex.A2 was not a genuine sale agreement and yet rely upon the very recital contained therein as conclusive proof for granting a money decree for the amount mentioned therein.

17. The learned counsel for the appellant is therefore right in contending that the reasoning of the Trial Court is internally inconsistent. Having held that the plaintiff was not entitled to specific performance, refund of advance as such, or charge over the property on the footing of a genuine agreement of sale, the Trial Court could not, in the same breath, fix the liability of the defendant at Rs.13,00,000/- solely on the strength of the recital in Ex.A2 and grant a money decree under the residuary issue relating to “other reliefs”. Such a course, in effect, converted the present suit for specific performance into a suit for recovery of money on a disputed loan transaction, without proper



pleadings, without a specific issue on that footing, and without a full trial directed to those aspects.

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18. In this context, the decisions relied on by the learned counsel for the appellant assume significance. In **V.P. Murugesan v. P. Sheik Mideen** reported in **2015 (6) CTC 810**, it was held that refund of advance may be granted in a suit for specific performance where the agreement of sale is found to be genuine, but the relief of specific performance is declined for other reasons. Likewise, in **Vellaisamy v. P. Subramanian (S.A. No.125 of 2016, dated 28.08.2019)**, this Court took the view that such refund without a specific prayer may be permissible only where the foundation continues to be a valid agreement of sale, and not where the document itself is found to be only a security for some other transaction. The principle emerging from those decisions is that the grant of refund in a suit for specific performance is only ancillary to a genuine contract of sale, and cannot be employed to bypass the requirements of a separate adjudication where the transaction is found to be of a different character altogether.

19. As against this, the learned counsel for the respondent relied on **S. Malaika v. R. Saravanan** reported in **2016 (4) CTC 643** to contend that, even if specific performance is declined, the Court is not powerless to direct repayment of the amount received under the agreement. There can be no quarrel

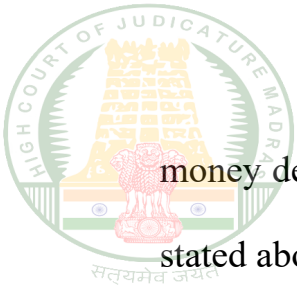


with the said principle in an appropriate case. But that decision cannot advance the case of the respondent herein, for the simple reason that the said principle would apply only where the agreement is accepted as a genuine agreement of sale and the amount paid thereunder is found to be advance sale consideration. In the present case, the Trial Court has categorically held, and that finding has not been challenged by the plaintiff, that Ex.A2 was not intended to be acted upon as a true agreement of sale, but was only a security for a loan transaction. Therefore, the respondent cannot invoke the principle applicable to refund of advance under a genuine sale agreement.

20. In such circumstances, the proper course, if at all the plaintiff had any legally enforceable claim arising out of the alleged loan transaction, was to work out such remedy independently in the manner known to law, definitely not by filing the Specific Relief . The Trial Court was therefore not justified in granting, in the present suit, a money decree for Rs.13,00,000/- with interest merely because the defendant had admitted some borrowing from the plaintiff. Thus Point no.1 is answered in favour of appellant / defendant .

### **Point No.2**

21. In the light of the findings rendered on Point No.1, the appellant/defendant is entitled to succeed in the appeal. Since the plaintiff has not challenged the dismissal of the relief of specific performance, and since the



money decree granted by the Trial Court is liable to be set aside for the reasons stated above, the result is that the suit is liable to stand dismissed in entirety.

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22. Accordingly, the Appeal is allowed, there shall be no order as to costs. The judgment and decree dated 05.12.2017 in O.S. No.24 of 2017 granting a money decree directing the defendant to pay Rs.13,00,000/- with interest at 7.5% p.a. from the date of suit till realization is set aside. The suit in O.S. No.24 of 2017 is dismissed in entirety. Consequently, the connected miscellaneous petition, if any, is closed.

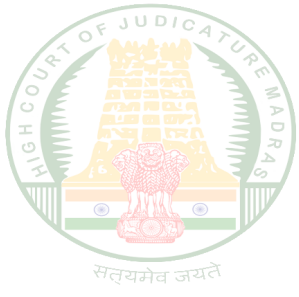
**24.03.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No  
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To

1.II Additional District Court,  
Salem.

2.V.R.Section  
High Court, Madras.



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AS No. 270 of 2



**DR.A.D.MARIA CLETE, J.**

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**Pre-delivery Judgment made**  
**in**  
**AS No. 270 of 2018**

**24.03.2026**