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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2026
PRONOUNCED ON : 30.07.2026

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No.1043 of 2013
and C.M.P.Nos.2585 & 2588 of 2019, M.P.Nos.1 of 2013 & 1 of 2014,
and C.R.P.No.1666 of 2019
and C.M.P.No.10777 of 2019

S.A.No.1043 of 2013:

S.Rajendran

..Appellant/Defendant

Vs

K.Manivannan

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the First Appellate Court, Principal District Judge, Salem dated 28.11.2008 made in A.S.No.52 of 2008 confirming the decree and judgment of the trial Court, Sub Judge, Sankari in O.S.No.166 of 2001 dated 20.04.2006.

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PRAYER in C.M.P.No.2585 of 2019: Civil Miscellaneous Petition filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 to receive additional evidence, which are enumerated herein:

(a) Sale Deed dated 30.07.2010, registered as Document No.3835 of 2010 on the file of SRO, Magudanchavadi executed by the respondent, viz., K.Manivannan through his power agent by name, P.Govindarasu in favour of R.Chelizhan, P.Subramani, P.T.Raja and A.P.Shanmugam;
(b) Power of Attorney dated 05.02.2010, registered as document No.92 of 2010, on the file of SRO, Magudanchavadi executed by the respondent in favour of P.Govindarasu;
(c) Aadhar card bearing No.2430 5332 0309 of the petitioner / appellant.
(d) House Tax receipts dated 28.03.2018 issued by Special Officer, Magudanchavadi Panchayat in favour of the petitioner/ appellant.
(e) Affidavit and petition in R.E.A. 01 of 2019 in REA No.151 of 2012 in REP No.58 of 2006 filed before the executing court, Sub Court, Sankari and pass such further orders.

PRAYER in C.M.P.No.2588 of 2019: Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, 1908 to grant an order of interim injunction restraining the respondent or his men or agent or anybody claiming through or under him in any interfering with the peaceful possession and enjoyment of the petitioner in respect of the suit schedule property covered in

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O.S.No.166/2001 on the file of Sub Court, Sankari from in any way encumbering the suit schedule property, pending disposal of this second appeal and pass such further orders.

PRAYER in M.P.No.1 of 2013: Miscellaneous Petition filed under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 to grant an order of interim injunction restraining the respondent from in any way encumbering the suit schedule property, which is the subject matter of the suit in O.S.No.166 of 2001 on the file of Sub Judge, Sankari and in A.S.No.52 of 2008 on the file of Principal District Judge, Salem pending disposal of this second appeal.

PRAYER in M.P.No.1 of 2014: Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, 1908 to stay all further proceedings in pursuance of decree and judgment dated 28.11.2008 made in A.S.No.52 of 2008 by Principal District Judge, Salem confirming the decree and judgment of trial Court, Sub Judge, Sankari in O.S.No.166 of 2001 dated 20.04.2006 pending disposal of this second appeal.

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C.R.P.No.1666 of 2019:

S.Rajendran

.. Petitioner/
Judgment Debtor

Vs

K.Manivannan

..1st Respondent/
Decree Holder

2. R.Chelizhan

3. P.Subramani

4. P.T.Raja

… Respondents/
5. A.P.Shanmugam Subsequent Purchasers

**(R2 to R5 are the subsequent purchasers/petitioners in R.E.A. No. 151 of 2012)*

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908 to set aside the petition and order dated 11.12.2018 made in REA.No.151/2012 in REP.No.58/2006 in O.S.No.166/2001 on the file of the Sub Court, Sankari.

PRAYER in C.M.P.No.10777 of 2019: Civil Miscellaneous Petition filed Section 151 of the Code of Civil Procedure, 1908 to stay all further proceedings in pursuance of the impugned order dated 11.12.2018 in REA 151/2012 in REP 58/2006 in O.S.No.166 of 2001 on the file of the Sub Court, Sankari pending disposal of this civil revision petition and pass such further orders.

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In both cases:

For Appellant / Petitioner : Mr.K.N.Nataraaj

For Respondent : Mr.S.Parthasarathy

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COMMON JUDGMENT

This common judgment shall dispose of the Second Appeal in S.A.No.1043 of 2013 and the Civil Revision Petition in C.R.P.No.1666 of 2019.

2. The Second Appeal is filed by the defendant against the judgment and decree of the first appellate court, the Principal District Judge, Salem, dated 28.11.2008, made in A.S.No.52 of 2008, confirming the judgment and decree of the trial court, the Sub Judge, Sankari, dated 20.04.2006, made in O.S.No.166 of 2001, whereby the suit for specific performance is decreed. The Civil Revision Petition arises out of the execution of that very decree and challenges the order of the executing court directing delivery of possession. Both proceedings are between the same parties and turn upon the validity of the same decree. The relief claimed in the Civil Revision Petition is entirely dependent upon the fate of the Second Appeal. For these reasons, and to avoid the risk of conflicting findings and a multiplicity of proceedings, it is appropriate to dispose of both matters by a common judgment.

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3. For convenience, the parties are referred to by their rank before the trial court. The appellant in the Second Appeal and the petitioner in the Civil Revision Petition is the defendant; the first respondent in both matters is the plaintiff. Respondents 2 to 5 in the Civil Revision Petition are the subsequent purchasers who, together with the plaintiff, sought delivery of possession in execution.

SECOND APPEAL in S.A.No.1043 of 2013:

4. The plaintiff's case is that the suit property comprises of agricultural land in Ernapuram Village, Sankari Taluk, Salem District, comprised in Survey Field Nos.121/4 and 121/5, together with the defendant's half share in a well and a 5 H.P. electric motor pump-set, with all easementary and cart-track rights. According to the plaintiff, the property belonged to the defendant, who, by a registered agreement of sale dated 17.06.1998, agreed to sell it to the plaintiff free of encumbrances for a total consideration of Rs.1,50,000/-. The defendant received Rs.1,25,000/- as an advance, representing the major portion of the consideration, and the balance of Rs.25,000/- was to be paid within one year, that is, on or before 17.06.1999, when the defendant was to execute the sale deed. The agreement further provided that, if the defendant failed to execute the sale deed, the plaintiff could deposit the balance with the court and obtain the sale deed and possession through legal process.

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5. The plaintiff pleaded that he was always ready and willing to perform his part of the contract and approached the defendant on several occasions with the balance consideration, but the defendant evaded execution. The plaintiff therefore issued a legal notice dated 07.06.1999, calling upon the defendant to execute the sale deed on 17.06.1999 at 10.00 a.m. at the Sub Registrar's Office, Magudanchavadi, and waited there until 5.00 p.m. that day; the defendant did not appear and refused to receive the notice. The plaintiff further alleged that from 15.05.2001 the defendant was attempting to alienate or encumber the suit property to defeat the plaintiff's rights. The plaintiff accordingly sued for specific performance of the agreement of sale, with an alternative prayer for refund of Rs.1,25,000/- with interest in the event specific performance was declined, and for a permanent injunction restraining alienation and creating a charge over the suit properties.

6. The defendant resisted the suit by a written statement in which he denied the agreement altogether. He contended that he never entered into any agreement with the plaintiff, that the agreement of sale dated 17.06.1998 was forged and fabricated, and that his signature had been forged to create it. He pleaded that the suit was undervalued, that the property was worth more than Rs.4,00,000/- at the time of the alleged agreement, and that he had no occasion

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to sell a property of such value for the meagre sum of Rs.1,50,000/-. He prayed for dismissal of the suit with exemplary costs.

7. On the pleadings, the trial court framed the following issues:

(i) whether the plaintiff is entitled to the relief of specific performance sought? *and*

(ii) to what other relief the plaintiff is entitled?

8. On the side of the plaintiff, five witnesses were examined as P.W.1 to P.W.5. The documents were marked as Ex.A.1 to Ex.A.3, Ex.C.1 and Ex.X.1 to Ex.X.4. The photographs of the disputed and admitted signatures and thumb impressions were marked as Material Objects M.O.1 to M.O.3. P.W.1 is the plaintiff. P.W.2 is one Singaravel, who signed as an attesting witness to the agreement of sale. P.W.3 is the son of one Nallappan, the scribe who wrote the agreement. P.W.4 and P.W.5 are the handwriting and fingerprint experts. Ex.A.1 is the registered agreement of sale dated 17.06.1998; Ex.A.2 is the legal notice dated 07.06.1999; and Ex.A.3 is the returned cover. Ex.C.1 is the voters' list. Ex.X.1 to Ex.X.4 comprise the specimen signatures of the defendant taken in court and the reports of the experts. On the side of the defendant, the defendant examined himself as D.W.1, examined his wife as D.W.2, and marked no documents.

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9. By its judgment and decree dated 20.04.2006, the trial court accepted the plaintiff's evidence. It held that P.W.4 and P.W.5, though now practicing privately, had each served for about three decades in the Forensic Sciences Department and were registered experts; that they bore no enmity towards the defendant and no friendship with the plaintiff; and that their reports establishing identity of authorship were reliable and corroborated by the registered character of Ex.A.1 and by the evidence of P.W.2 and P.W.3. The trial court found that the defendant had executed Ex.A.1, that the plaintiff was ready and willing to perform his part of the contract, and that the defendant had failed to execute the sale deed within the agreed period. It accordingly decreed the suit for specific performance, granting the plaintiff one month to deposit the balance consideration and directing the defendant to execute the sale deed.

10. Aggrieved, the defendant preferred A.S.No.52 of 2008 before the Principal District Judge, Salem. The first appellate court examined the evidence and noted that the defendant had voluntarily submitted to the examination of the documents by the private experts and had himself given his specimen signatures and thumb impressions in court, and that he could not thereafter object to that course; that expert opinion is, in any event, corroborative evidence, and the

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opinion here was supported by the reasoning sheets and by the oral evidence of the independent witnesses P.W.2 and P.W.3; and that the registered agreement was executed at the document-writer's office and registered before the Sub Registrar. On the question of price, the first appellate court held that the burden lay on the defendant to prove that property worth more than Rs.4,00,000/- was being sold for Rs.1,50,000/-, and that the defendant had produced no document such as the guideline register to establish the market value, whereas the plaintiff's witnesses had spoken to a value of about Rs.1,00,000/- per acre. The first appellate court concluded that the agreement of sale was valid, that the plaintiff was ready, willing and capable of performing his part of the contract, that the property had been properly valued, and that the plaintiff was entitled to specific performance. By judgment and decree dated 28.11.2008, the appeal was dismissed with costs, and the trial court's decree was confirmed.

CIVIL REVISION PETITION in C.R.P.No.1666 of 2019:

11. The defendant filed the Civil Revision Petition in C.R.P.No.1666 of 2019, against the order dated 11.12.2018 made in R.E.A.No.151 of 2012 in R.E.P.No.58 of 2006 in O.S.No.166 of 2001. The sequence of events in execution is material. On the strength of the decree in O.S.No.166 of 2001, the

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plaintiff levied execution in R.E.P.No.58 of 2006. As the defendant did not execute the sale deed, the executing court executed a sale deed in favour of the plaintiff on 09.07.2009. The plaintiff thereafter executed a general power of attorney on 05.02.2010 in favour of one Govindaraju, who, in turn, executed a sale deed on 30.07.2010 in favour of one Chezhiyan and three others, who are respondents 2 to 5 in this revision. The plaintiff and the subsequent purchasers then filed R.E.A.No.151 of 2012 under Order 21 Rule 35 read with Order 21 Rule 16 and Sections 146 and 151 of the Code of Civil Procedure, seeking delivery of possession. After enquiry, the executing court, by the impugned order dated 11.12.2018, ordered delivery; when delivery was obstructed, police aid was granted in R.E.A.No.1 of 2019 by order dated 18.02.2019.

12. In the grounds of revision, the defendant contends that the executing court exercised its discretion improperly; that the subsequent purchasers had no locus standi to maintain R.E.A.No.151 of 2012 without the leave of the court, the plaintiff having already parted with the property by 30.07.2010, and hence had no locus standi; that the decree is inexecutable because the suit schedule describes agricultural land without boundaries and the defendant owns only an undivided half share, which has not been demarcated; that the executing court

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ignored the pendency of S.A.No.1043 of 2013 and the order of stay said to have been granted on 30.06.2014, which had not been vacated; and that the defendant, an illiterate person, continued in possession and paid the statutory dues throughout. Thud, he prays that the order of delivery be set aside.

13. The learned counsel for the appellant/defendant urged that the grant of specific performance is not a matter of right but of judicial discretion, and that the discretion was wrongly exercised in the present case. He submitted that the defendant holds only a half share, that the schedule contains no boundaries or demarcated extent, and that a decree for specific performance of such property is incapable of execution. He contended that fixing one year to pay a balance of only Rs.25,000/- out of Rs.1,50,000/- is wholly unrealistic and indicative of an unfair bargain that exploited the defendant's illiteracy, and that a prudent purchaser who had paid Rs.1,25,000/- would not have remained quiet for a year. He submitted that, on the plaintiff's own additional documents, the property was worth about Rs.3,94,000/-, so that the agreed price of Rs.1,50,000/- was a throwaway. He further submitted that the signatures ought to have been referred to the Forensic Sciences Laboratory rather than to retired officers acting privately, that the Sub Registrar was not summoned, and that, at the highest, the courts ought to have granted only the alternative relief of refund of the advance.

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On execution, he reiterated that the subsequent purchasers had no locus without leave, that the decree is inexecutable, and that proceedings continued despite the stay.

14. The learned counsel for the respondents supported the concurrent findings. He submitted that two witnesses, including the defendant's own wife, signed the registered agreement; that the voters' list, Ex.C.1, establishes that 'Krishnaveni', who signed as the first attesting witness, is the defendant's wife; that the expert opinion, obtained with the defendant's consent and based on specimen signatures given by the defendant himself in court, conclusively establishes that the disputed signatures and thumb impressions are those of the defendant; and that the defendant led no evidence whatsoever of market value. On execution, he submitted that there was no order of stay in force, that the executing court itself executed the sale deed on 09.07.2009, and that nothing now survives in the Second Appeal.

15. By way of reply, learned counsel for the appellant reiterated that the property is worth far more than the agreed price and that, as the defendant has only a half share in an unmeasured property, the agreement could not be specifically enforced.

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Substantial Questions of Law:

16. Against the concurrent decrees, the defendant has filed this Second Appeal, which was admitted on the following substantial questions of law:

1. Whether the Courts below failed to take into consideration the absence of positive evidence and a period of 1 year to complete the transactions to prove his readiness and willingness to perform his part of the contract as envisaged under Section 16 of the Act?

2. Whether the suit for specific performance should have been dismissed on the ground of false plea on the part of the plaintiff relating to identification of the property without boundaries and its possession thereof, particularly existence of dwelling house?

3. Whether the respondent wilfully acted at variance with the terms of the contract, i.e., having paid allegedly a sum of Rs. 1,25,000/-; time taken out of total sale consideration of Rs. 1,50,000/-, time taken for completing the sale transaction is one year, which is unrealistic, exploiting the illiteracy of the respondent?

4. Whether the terms of the contract at the time of entering into the contract and the circumstances under which the alleged contract was entered into, such that the contract gives the respondent an unfair advantage over the appellant in contravention of Section 20 of the Specific Relief Act, 1963?

5. When the suit is filed by the respondent with alternative relief of repayment of earnest money, when the respondent fails to prove the fulfilment of his part of obligations in accordance with law, is it fair and

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equitable to return the earnest money under Section 22 of the Specific Relief Act paid by the respondent?

C.M.P.No.2585 of 2019:

17. Before addressing the substantial questions of law, C.M.P. No.2585 of 2019, filed by the appellant/defendant under Order XLI Rule 27 CPC, requires consideration. The appellant has filed this application under Order XLI Rule 27 of the Code of Civil Procedure for permission to admit certain documents as additional evidence.

18. The appellant's case is that, after the first appeal in A.S.No.52 of 2008 was dismissed on 28.11.2008, the respondent/plaintiff obtained a sale deed from the trial court by filing an execution petition. Thereafter, the respondent/plaintiff, acting through his power agent appointed under a Power of Attorney dated 05.02.2010, sold the suit property by a registered sale deed dated 30.07.2010. The appellant seeks to produce the said Power of Attorney, the subsequent sale deed and certain connected documents as additional evidence in this second appeal.

19. The scope of Order XLI Rule 27 of the Code of Civil Procedure is well settled. Additional evidence may be permitted only in the following circumstances:

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(i) where the trial Court has refused to admit evidence that ought to have been admitted;

(ii) where the party seeking to produce additional evidence establishes that, despite the exercise of due diligence, such evidence was not within their knowledge or could not be produced before the trial Court; or

(iii) where the appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause.

20. In the present case, none of the above contingencies is attracted. The documents sought to be produced admittedly came into existence only after the disposal of the first appeal. Therefore, the question of the trial Court refusing to admit them or the appellant being unable to produce them before the trial Court despite due diligence does not arise.

21. It is also an admitted fact that when the Power of Attorney and the subsequent sale deed were executed, no proceedings were pending before this Court. The appellant filed the present second appeal only thereafter, together with an application to condone the delay in filing the appeal. Consequently, these subsequent documents did not form part of the record in the Courts below.

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22. It is a settled principle that the rights of the parties are ordinarily determined by reference to the facts and circumstances existing on the date of institution of the suit, unless subsequent events have a direct and material bearing on the issues in the litigation or are required to be taken into account to render complete justice. The documents sought to be produced relate to transactions that took place after the disposal of the first appeal. They neither bear on the questions that arise for determination in this second appeal nor are they necessary to enable this Court to pronounce judgment effectively.

23. In such circumstances, this Court finds that the proposed additional evidence does not satisfy any of the requirements prescribed under Order XLI Rule 27 of the Code of Civil Procedure. Hence, the application is devoid of merit.

24. It is pertinent to note that the appellant, throughout contested the suit on the specific plea that he had never executed the agreement of sale and that the signatures found therein, including those of the attesting witnesses, were forged. Upon acceptance of the expert evidence, the Courts below negatived that defence. The appellant now contends that his signatures were obtained

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under force, threat, and coercion before the Sub-Registrar due to a chit transaction. This is not merely an additional plea but a complete departure from, and destructive of, the original defence. A litigant cannot be permitted to approbate and reprobate by setting up mutually destructive pleas at different stages of the proceedings. The proposed additional evidence is evidently intended to lay the foundation for such an inconsistent case, which cannot be permitted under the guise of Order XLI Rule 27 Code of Civil Procedure. Accordingly, C.M.P. No.2585 of 2019 is liable to be dismissed.

Substantial Questions of Law Nos.1 and 3

25. From the records, it appears that the defendant adopted an "all-or-nothing" defence by alleging that the agreement itself was fraudulent. Having failed on that issue, he ordinarily cannot, on appeal, set up an entirely different factual case, such as that the plaintiff was not ready and willing or that equitable considerations warranted refusal of specific performance, because those issues were never pleaded or tried. The appellate court is, however, entitled to examine whether the plaintiff's pleadings and evidence independently satisfy the statutory requirement of readiness and willingness, and whether the trial court's finding on that aspect is sustainable in law.

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26. Ex.A.1 is a registered agreement of sale, executed at the document-writer's office and registered before the Sub Registrar. The presumption of regularity attaching to a registered instrument has not been displaced. The execution was attested by P.W.2, an attesting witness, and by P.W.3, the son of the scribe, both independent witnesses with no reason to depose falsely. The defendant's denial of his signature was then tested by expert examination: the disputed signatures (Q.1 to Q.4) and the specimen signatures given by the defendant himself in open court (S.1 to S.4), together with the corresponding thumb impressions, were compared by P.W.4 and P.W.5, retired forensic experts of long standing, who found common authorship. To this was added the voters' list, Ex.C.1, which establishes that 'Krishnaveni', the first attesting witness, is the wife of the defendant, thereby falsifying the defendant's plea that no such person related to him.

27. The objection that the documents ought to have been sent to the Government Forensic Sciences Laboratory rather than examined by retired officers is without substance. Expert opinion under Section 45 of the Indian Evidence Act, 1872, is admissible whether the expert is in government service or in private practice; what matters is the expert's competence and the cogency

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of the reasons given. Here, P.W.4 and P.W.5 each served about thirty years in the Forensic Sciences Department, were registered experts, and supported their conclusions with reasoning sheets. More importantly, the examination was undertaken at the plaintiff's application and with the defendant's consent, who voluntarily furnished his specimen signatures and thumb impressions in court. Having taken the chance of a favourable opinion, the defendant cannot be permitted to resile from that course and to impeach the very procedure to which he submitted. In any event, the expert opinion was corroborative only; the substratum of the finding rests on the registered instrument and the direct testimony of P.W.2 and P.W.3. The concurrent finding that the defendant executed Ex.A.1 is well supported by evidence and discloses no perversity.

28. The first and third substantial questions concern the plaintiff's readiness and willingness, and the alleged unreality of the one year fixed for completion. Under Section 16(c) of the unamended Act, the plaintiff must plead and prove that he was ready and willing, throughout, to perform his part of the contract. 'Readiness' refers to the financial capacity to pay the consideration, and 'willingness' to the plaintiff's conduct and disposition to perform.

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29. On the facts, the plaintiff discharged this burden. He had already paid the larger part of the consideration, Rs.1,25,000/- out of Rs.1,50,000/-, leaving only Rs.25,000/- payable. The plaintiff pleaded specifically that he approached the defendant on several occasions, and the defendant did not specifically traverse those averments. He issued notice Ex.A.2 dated 07.06.1999, fixing the time and place for execution, and waited at the Sub Registrar's office on the appointed day; the defendant neither replied to the notice nor appeared. When the defendant persisted in default, the plaintiff sued and was willing to deposit the balance into court, as the agreement itself contemplated. These circumstances amply establish continuous readiness and willingness, and both courts below have so found.

30. The contention that the one-year period to pay a balance of Rs.25,000/- is 'unrealistic' and that it betrays an unfair bargain is misconceived. The period was a term of the contract to which the defendant himself agreed; a stipulation generous to the purchaser cannot, in the defendant's hands, be turned into a ground for avoiding the contract. Nor does the period assist the defendant on the question of default: it was the defendant, not the plaintiff, who failed to perform when the time came. The argument that the plaintiff willfully acted at

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variance' with the contract is unsupported by any finding or evidence; on the contrary, it was the defendant who acted at variance by refusing to execute the sale deed. The first and third substantial questions are answered against the appellant.

Substantial Question of Law No.2

31. The second substantial question assumes that the property was not properly identified, that boundaries were absent, and that a false plea was set up regarding possession and the existence of a dwelling house. That assumption is not made out. Definite survey field numbers, Survey Field Nos.121/4 and 121/5, describe the suit property, with the extent and the defendant's half share specified, together with the half share in the well and pump-set. Agricultural land identified by survey number and extent is sufficiently identified; the absence of a recital of the four boundaries does not render the agreement void for uncertainty or the decree inexecutable, where the subject matter is otherwise ascertainable. The plea regarding a dwelling house and possession is a question of fact which the defendant did not establish by any evidence; it cannot now be elevated into a substantial question of law. The second substantial question is answered against the appellant.

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Substantial Question of Law No .4

32. The fourth substantial question is that the price was inadequate to the point of giving the plaintiff an unfair advantage, attracting Section 20 of the unamended Specific Relief Act, 1963. Under that provision, the court's discretion to decree specific performance is to be exercised soundly, not arbitrarily; relief may be refused where the contract gives the plaintiff an unfair advantage, or where its enforcement would be inequitable. But it is equally settled, and the Explanation to Section 20 makes this clear, that mere inadequacy of consideration is not, by itself, a ground to refuse specific performance.

33. The defendant pleaded that the property was worth more than Rs.4,00,000/-, but, as both courts below found, he produced no evidence of market value, no guideline register, no sale statistics, and no valuation. The burden of establishing unfairness lay on the party asserting it, and the defendant did not discharge it. The plaintiff's witnesses spoke to a value of about Rs.1,00,000/- per acre, against which the agreed price of Rs.1,50,000/- for the half share is not shown to be unconscionable. The reliance, in reply,

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on a sale deed dated 30.07.2010, said to reflect a value of about Rs.3,94,000/-, does not advance the defendant's case. There is, moreover, no finding of fraud, misrepresentation or undue influence; the bare assertion that the defendant is illiterate, unsupported by proof that his illiteracy was exploited, does not establish an unfair advantage. The escalation in the value of immovable property between the date of contract and the date of suit is a feature common to most such cases. It is not a ground to deny specific performance to a plaintiff who has proved his case and his readiness and willingness. The discretion was, therefore, properly exercised by the courts below. The fourth substantial question is answered against the appellant.

Substantial Question of Law No.5

34. The fifth substantial question concerns the alternative relief of refund of the earnest money under Section 22 of the Specific Relief Act, 1963. The alternative relief of refund is considered only where specific performance is refused. Here, the plaintiff has proved the agreement, has proved his readiness and willingness, and is entitled to specific performance, which has been concurrently decreed. There is therefore no occasion to relegate the plaintiff to the alternative relief, and the contention that only the advance ought to have

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been returned must fail. The fifth substantial question is accordingly answered against the appellant.

35. For all these reasons, the concurrent findings of the courts below are unexceptionable, supported by the evidence on record, and disclose no error of law, let alone perversity, warranting interference under Section 100 of the Code of Civil Procedure. All the substantial questions of law are answered against the appellant. The Second Appeal must fail.

Civil Revision Petition:

36. With regard to the Civil Revision Petition, the order under challenge is an order of the executing court directing delivery of possession; it can be interfered with only if it suffers from a jurisdictional error or is so perverse as to result in a manifest miscarriage of justice.

37. First, as to the locus of the subsequent purchasers: the executing court itself executed the sale deed in favour of the decree-holder on 09.07.2009, and the decree-holder thereafter conveyed the property, through his power of attorney, to respondents 2 to 5. Those persons are transferees claiming under the decree-holder, and Order 21 Rule 16 and Section 146 of the Code permit

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execution to be sought by a transferee of the decree-holder's interest and by a person claiming under a party. Significantly, the application R.E.A.No.151 of 2012 was filed by the decree-holder together with the subsequent purchasers; the decree-holder remained on record, and the question of want of leave does not arise in the manner suggested. Secondly, as to in executability: the property is identified by survey number, and the decree, like the agreement, relates to the defendant's half share; delivery of the decree-holder's half share, or joint possession to the extent decreed, is a matter for the mode of delivery and does not render the decree a nullity. The objection on this score is, at best, one touching the manner of execution and not the jurisdiction to order delivery.

38. Thirdly, as to the stay: the executing court recorded that the order of stay said to have been granted in the connected proceeding of this Court was not shown to be in force, had not been extended beyond July 2014, and that the judgment-debtor, despite repeated opportunities over several years, never produced a copy of any subsisting stay order. The executing court proceeded, on 11.12.2018, on the then-prevailing understanding that an order of stay would lapse if not extended. Indeed, the rule of automatic lapse of interim orders has since been disapproved by the Hon'ble Supreme Court in ***High Court Bar Association, Allahabad v. State of Uttar Pradesh***, reported in **2024 INSC 150**,

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which held that interim orders do not stand automatically vacated by the mere efflux of time. But that subsequent development does not assist the defendant here, for two reasons. The executing court's conclusion rested not merely on the rule of lapse but on the factual position that no subsisting order of stay was placed before it despite ample opportunity. And, in any event, with the dismissal of the Second Appeal and the confirmation of the decree by this judgment, any question concerning the stay during the pendency of the appeal has become academic, and the impediment, if any, to execution no longer survives. The executing court committed no jurisdictional error in ordering delivery, and the grant of police aid to give effect to that order was a necessary and proper consequence. The Civil Revision Petition is, accordingly, devoid of merit and liable to be dismissed.

39. In the result:

(i) C.M.P.No.2585 of 2019 is dismissed. No costs;

(ii) The Second Appeal in S.A.No.1043 of 2013 is dismissed, and the judgment and decree of the first appellate court, the Principal District Judge, Salem, dated 28.11.2008 in A.S. No. 52 of 2008, confirming the judgment and decree of the trial court, the Sub Judge, Sankari, dated 20.04.2006 in O.S. No. 166 of 2001, are confirmed;

(iii) The Civil Revision Petition in C.R.P.No.1666 of 2019 is dismissed.

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The order dated 11.12.2018 of the executing court in R.E.A.No.151 of 2012, R.E.P.No.58 of 2006, and O.S.No.166 of 2001 is confirmed;

(iv) No order as to costs shall be made;

(v) Consequently, the connected miscellaneous petitions in C.M.P.Nos. 2588 and 10777 of 2019 and M.P.Nos.1 of 2013 & 1 of 2014 are closed.

30.07.2026

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

sts

To:

1. The Principal District Judge,
   Salem.

2. The Sub Judge,
   Sankari.

3. The Section Officer,
   V.R.Section,
   High Court,
   Madras – 600 104.

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

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Common Judgment made in
S.A. No.1043 of 2013
& C.R.P.No.1666 of 2019

Dated:
30.07.2026

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