

Mrs.Sarojamma vs / on 25 February, 2025

Author: N.Sathish Kumar

Bench: N.Sathish Kumar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.02.2025

Coram

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit No.178 of 2025

Mrs.Sarojamma,
W/o Aswath Reddy,
D.No.1/138, Nallasandram Village,
Thally Kothanur Post,
Denkanikottai Taluk,
Krishnagiri District.

.. Appellant

/versus/

1.Mr.Venkatarama Reddy
S/o Late Muni Reddy

2.Mr.Mahesh Kumar,
S/o Venkatarama Reddy

3.Mr.Santhosh Kumar,
S/o Venkatarama Reddy

The above 1 to 3 are residing at
D.no.1/517 Nagasandram Village,
Kuppatti Taraff, C.R.Palyam Post,
Denkanikottai Taluk,
Krishnagiri District.

<https://www.mhc.tn.gov.in/judis>

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Prayer: Appeal Suit has been filed under Section 96 of t
against the decree and judgment in Original Suit No.139 of 2019 (on
file of the Additional District Judge at Hosur) dated 09.10.2023.

For Appellant

:Mr.P.Subba Red

JUDGMENT

This Appeal Suit has been filed challenging the judgment and decree of the Trial Court in dismissing the Suit for Specific Performance and granting a decree for return of advance amount of Rs.10,00,000/- with interest at the rate of 6% p.a., from the date of suit, till realization.

2. It is the case of the plaintiff that, the defendants have executed a registered sale agreement on 08.11.2017 agreeing to sell the suit schedule property in favour of the plaintiff for a total sale consideration of Rs.10,25,000/- and received an advance amount of Rs.10,00,000/-. It is also agreed between the parties that sale shall be completed within 12 months time and for paying the remaining sale consideration. Though the plaintiff is always ready and willing to perform her part of contract, the defendants avoided the same. Therefore, the plaintiff had issued a <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) legal notice on 07.11.2018 and filed the suit.

3. It is the contention of the defendants that the plaintiff is a close relative of the first defendant and the first defendant had constructed a terraced house at Nagasandiram Village. In order to discharge the debts for the construction of house, the first defendant had borrowed a sum of Rs.10,00,000/- from the plaintiff as a hand loan and agreed to pay the interest at the rate of 2% p.a and sofar he paid interest to the tune of Rs.2,60,000/-. The first defendant paid interest regularly at the rate of 2% p.a, to the tune of Rs.2,60,000/-. The defendants never agreed to sell the suit property to the plaintiff.

4. On the basis of the above facts, the following Issues were framed for consideration:-

(i)Whether the suit sale agreement was not executed in consensus ad idem but only as security for loan of Rs.10,00,000/-?

(ii)If suit sale agreement was executed by consensus ad idem, whether the plaintiff has been <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) ready and willing to perform her part of agreement?

(iii)Whether the plaintiff is entitled to relief of specific performance as prayed for?

(iv)What other relief?

5. On the side of the plaintiff, the plaintiff herself was examined as PW-1 and two other witnesses were examined as PW-2 and PW-3 and four documents were marked as Ex.A1 to A4. On the side of

the defendants, two witnesses were examined as DW-1 and DW-2 and one document was marked as Ex.X1.

6. Based on the evidence and materials, the Trial Court dismissed the suit in respect of the specific performance, however, granted an alternative relief of Rs.10,00,000/- to be paid to the plaintiff with interest at the rate of 6% p.a., from the date of the suit, till the date of realization.

7. Challenging the said finding, the learned counsel appearing for the plaintiff would mainly contend that once the registered agreement has been admitted, the defendants have no right to take contrary stand to the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) terms of the contract. The trial Court has not considered this aspect. That apart, the trial Court while dismissing the suit, granted the decree for the alternative relief restricted the interest from the date of the suit, though the 1st defendant had admitted that the amount was borrowed with interest at the rate of 2% p.a. However, the trial Court restricted the interest to only 6% p.a., Since the issue pertains to the specific performance, this Court is of the view that no notice is required, as the trial Court's rejecting of the specific performance is well balanced. Therefore, this Court disposes of the appeal under Order 41, Rule 11 of C.P.C., without sending notice to the respondents.

8. In the light of the above submissions, the following Points arise for consideration:-

(i)Whether the agreement dated 08.11.2017 came into existence for sale of the property?

(ii)Whether the plaintiff was ready and willing to perform her part of contract?

(iii)What other reliefs, the parties are entitled to?

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9. Though the registered agreement dated 08.11.2017 is projected as a sale agreement, it is the specific case of the plaintiff that the defendants agreed to sell the property for a sum of Rs.10,25,000/- and received Rs.10,00,000/- as an advance on the date of agreement (i.e.) 08.11.2017. The remaining sale consideration of Rs.25,000/- was to be paid within 12 months as agreed between the parties. The very conduct of the parties agreeing to the 12 months time, when the substantial amount of Rs.10,00,000/- has already been paid and only the remaining partial sum of Rs.25,000/- was left to be paid within one year, in fact clearly probalilise the case of the defendants that the agreement was a loan transaction. Once the execution of contract has been admitted, no oral evidence contrary to the terms of the contract is permissible as per Section 92 of the Indian Evidence Act, 1872 or Section 95 of the Bharatiya Sakshya Adhiniyam, 2023. At the same time, the proviso to the said Section will permit the parties to bring the probabilities to show that the document was not intended for that purpose. There was no due execution of the contract. The conduct of the parties, particularly in a civil case, cannot be ignored altogether. The conduct of parties are relevant to decide the issue. Having paid a substantial amount of <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) Rs.10,00,000/- and

waiting for another one year to pay the remaining Rs.25,000/-, such conduct is contrary to the normal human being. Moreover, if really the agreement had come into existence for the sale of the property, the conduct of the party, who advanced such a huge amount, would have been atleast to verify the title and make arrangements for survey of the land, etc. However, the evidence of PW-1 clearly indicates that she was not even aware of the nature of the property, she intended to purchase. The very admission made by PW-1 makes it clear that she was not even aware of the contract and has not even verified the title deeds and also has not even made an attempt to find out if there is an encumbrance on the property. These facts clearly indicate that though the agreement was registered, it was not intended for sale of the property.

10. That apart, the legal notice was also issued just before the expiry of the one year period (i.e) on 07.11.2018. The suit was also filed on 20.06.2019, even after an year delay from the legal notice. All these facts clearly indicate that the plaintiff is neither ready nor willing to purchase the property and the agreement was not intended for the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) purchase of the property. Accordingly, I do not find any merit in this appeal. Hence, this Appeal Suit is dismissed.

11. However, the trial Court ordered that the interest at the rate of 6% p.a. payable by the defendants to the plaintiff from the date of the suit has to be modified necessarily, since the defendants themselves admitted in the written statement that they borrowed the amount on interest at the rate of 2% p.a.

12. In such view of the matter, the interest is ordered at the rate of 10% p.a. from the date of agreement, till the date of suit and thereafter, 6% p.a., till the date of realization. No costs.

25.02.2025 ari Index:yes/no Speaking order/non speaking order Neutral citation:yes/no To:

The Additional District Judge at Hosur. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 06/03/2025 01:03:33 pm) N.SATHISH KUMAR, J.

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