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S.A.No.411 & 468 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2024
PRONOUNCED ON : 15.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal Nos.411 & 468 of 2014 &
M.P.No.1 of 2013

In S.A.No.411 of 2014

E.Rathinabai ... Appellant

-Versus-

E.Shanmugam (Died)

2. E.S.Murali

3. E.S.Raghu

4. E.S.Gopi

5. Arunapari Vallal

6. Kalpana Ayyappan ... Respondents

(Respondents 2 to 6 brought on record as legal heirs of the deceased sole respondent vide order dated 31.01.2023 made in CMP.Nos.3387 & 3543 of 2022)

Appeals filed under Section 100 of C.P.C. against the judgement and decree dated 13.12.2013 made in A.S.No.13 of 2012 on the file of the First Additional District Judge, Tiruvallur (FTC), partly confirming the judgment and decree dated 31.10.2011 made in O.S.No.29 of 2010 on the file of the Sub



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Court, Tiruttani.

For Appellant : Mr.S.Udayakumar
in both S.As.

For Respondents : Mr.S.K.Rahul Vivek
in both S.As. for Mr.J.James

In S.A.No.468 of 2014

E.Shanmugam (Died)

2. E.S.Murali

3. E.S.Raghu

4. E.S.Gopi

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6. Kalpana Ayyappan ... Appellants

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*For Appellant : Mr.S.K.Rahul Vivek
for Mr.J.James*

For Respondents : Mr.S.Udayakumar

COMMON JUDGEMENT

These two second appeals arise out of the judgment and decree of the court of the I Additional District Judge at Thiruvallur in A.S.No.13 of 2012 dated 13.12.2013 in partly modifying the judgment and decree of the court of Subordinate Judge at Tiruttani in O.S.No.21 of 2010 dated 31.10.2011.

2. For the sake of convenience, parties will be referred to as per their ranks in the original suit.

3. O.S.No.70 of 2008 was originally presented before the learned Subordinate Judge at Tiruvallur. Subsequently, it was transferred and renumbered as O.S.No.29 of 2010 on the file of the Sub Court, Tiruttani.

4. The plaintiff has sought for the following reliefs:

“i. Directing the defendant to execute the sale deed based on the agreement of re conveyance dated 25.08.1980 and 18.01.1994, the letter by the defendant



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after receiving the sale consideration of Rs.83,500/-.

ii. Directing the defendant pay to the plaintiff the arrears of rent received by the defendant from the tenants from 1994 to the year 2007 for a sum of Rs.60,000/-

iii. For permanent injunction restraining the defendant and his agents from collecting the rents for the suit premises from the tenants.

iv. For the costs of the suit

v. For any other relief or reliefs as this Hon'ble Court may deem fit under proper circumstances of the case and render justice accordingly."

5. This suit has a background. On 10.02.1974, the plaintiff/Rathinabai entered into an agreement for sale regarding the suit schedule mentioned property with one Nathamuni Udayar vagayara. The plaintiff was put in possession of the property pursuant to the agreement as part performance of the same. Since the original vendors namely Nathamuni Udayar and others did not come forward to execute the sale deed, the plaintiff decided to file a suit for specific performance. Accordingly, she approached the defendant for filing the same.

6. The plaintiff pleaded that she is an illiterate lady and had approached



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the defendant with a hope that the defendant will get the property from Nathamuni Udayar on her behalf. The defendant had advised her that the sale agreement be transferred in his name and believing his words, the plaintiff transferred the agreement of sale in favour of the defendant. This was by virtue of the deed dated 25.08.1980. It is her specific case that this document is not supported by consideration. On getting the sale deed executed in his name, the defendant had agreed to reconvey the same to the plaintiff on the same day.

7. As per the agreement of re-conveyance, the plaintiff was to collect the rents, but unfortunately the defendant prevented her from doing so. Since the plaintiff did not have any income, she had leased out the suit schedule mentioned property, which had been given to her in part performance of the agreement dated 10.02.1974, in favour of a hotelier and she left for Bangalore.

8. On the basis of the agreement dated 25.08.1980, the defendant had filed a suit for specific performance against Nathamuni Udayar and others. However, the defendant did not inform the plaintiff about what transpired in the same. The plaintiff pleaded that sometime in 1993, she enquired about the case and she was informed by the defendant that the matter is now pending in



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second appeal. She stated that she visited the defendant subsequently on 19.01.1994. During that meeting, the defendant received the original re-conveyance agreement and handed over a letter dated 18/1/1994. The defendant had paid a sum of Rs.38,500/- namely Rs.20,000/- in cash and Rs.18,500/- by cheque to the plaintiff. The plaintiff without proper understanding had received the amount. She thought that the defendant was paying the rents that he had collected from the tenants.

9. In and about 01.10.2007, the plaintiff was informed by one Narasimhan, her friend who was residing in Agraharam Village that the second appeals filed against Nathamuni Udayar and others had come to a conclusion and pursuant thereto, the learned District Munsif at Tiruttani had executed a sale deed in favour of the defendant for the suit schedule mentioned property. The sale deed had been executed on 14.11.2005 and it had been received by the defendant on 23.11.2005. She would state that the defendant did not inform the plaintiff about the disposal of the appeal, since he wanted to cheat and defraud her. Therefore, basing her claim upon the letter executed by the defendant on 18.01.1994, she filed a suit seeking for the aforesaid reliefs.



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10. It is the claim of the plaintiff that the receipt issued on 18.01.1994 is a mutual agreement and as per the said letter, a sum of Rs.40,000/- has to be paid by the defendant to the plaintiff, after the disposal of the suit. She also claimed that the defendant did not act as per the letter dated 18.01.1994 and did not execute the sale deed in her favour. Hence, she issued a notice on 23.10.2007 to the defendant calling upon him to execute the sale deed as per the re-conveyance agreement. The defendant immediately issued a reply on 03.11.2007 containing false averments. The plaintiff alleged that since the defendant was receiving the rents from the premises till date, she was constrained to file a suit for specific performance.

11. It is a clear and categorical case that as per the receipt dated 18.01.1994, she is entitled to claim the aforesaid reliefs.

12. On being served with summons, the defendant entered appearance and filed a detailed written statement.

13. According to him, the agreement dated 25.08.1980 is an assignment of the sale agreement dated 10.02.1974. He pleaded that on the basis of the said



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agreement dated 25.08.1980, a suit for specific performance of the agreement dated 10.02.1974 was filed by the defendant along with the plaintiff in O.S.No.207 of 1980 on the file of the Sub Court at Kanchipuram. In the said suit, as the plaintiff was the assignor, she was arrayed as the second plaintiff. She also examined herself in the suit as PW1. She was also on record before the High Court in S.A.Nos.1702 and 1703 of 1993, which arose out of O.S.No.207 of 1980. He pleaded that the re-conveyance agreement dated 25.08.1980 was annulled by her as she opted to receive cash on 19.01.1994.

14. The defendant would specifically put forward a case that a sum of Rs.43,500/- was paid by the defendant to the plaintiff. He would plead that the plaintiff, on her own accord, had approached the defendant with the re-conveyance agreement due to her financial condition. At that time, she had been accompanied by her brother, one A.V.Sathyanarayanamurthy and two others seeking settlement in terms of money. He pleaded that the plaintiff had made a specific endorsement, on 19.01.1994, on the deed of re-conveyance dated 25.08.1980 giving her consent that she would receive Rs.83,500/- in full quit of her right under the deed dated 25.08.1980. She did so, after consulting her brother, who is an advocate practising in Bangalore, and two of her supporters



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viz., Mr.Narasimhan about whom the plaintiff had pleaded in paragraph 6 of the complaint and one deceased Chengalrayan.

15. The defendant alleged that all the three, namely A.V.Sathyanarayanamurthy, Narasimhan and Chengalrayan along with one Advocate P.S.Parthasarathy, were witnesses to the said endorsement and document. The receipt of a sum of Rs.43,500/- was also made clear in the said document. He would specifically state that by virtue of letter dated 18.01.1994, the plaintiff is entitled only to the balance of Rs.40,000/- out of sale consideration of Rs.83,500/-. He would state that the plaintiff did not receive the balance amount, despite the fact that the defendant had offered to pay the same. He alleged that the plaintiff's claim to rentals was available only till 19.01.1994.

16. The defendant would plead that the entire suit had been engineered by one Gandhi and Narasimhan, since the defendant had initiated rent control original proceedings against the defaulting tenants in the property. The tenants, who had been in possession of the property and who were facing the threat of eviction, had set up the plaintiff to file the present suit in order to avoid any



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orders being passed against them. On this basis, he sought for dismissal of the suit.

17. On the basis of these pleadings, the learned trial judge framed the following issues:

- “1. 18.1.1994 அன்று பிரதிவாதி எழுதிக் கொடுத்த கடிதத்திற்குப் பின்னர் 25.8.1980 தேதியில் பிரதிவாதி பெயருக்கு வாதி எழுதிக் கொடுத்த மறுமாற்றவிப்பு பத்திரம் படி வாதிக்கு எந்த உரிமையும் கிடைக்காது என்பது சரியா?
2. 18.1.1994ல் பிரதிவாதியால் வாதி பெயருக்கு எழுதிக் கொடுக்கப்பட்ட கடிதம் காலவரைச் சட்டத்தால் பாதிக்கப்பட்டுள்ளதா?
3. மொத்தத்தில் வாதிக்கு ரூ.40,000/ மட்டும் தான் பிரதிவாதியிடமிருந்து கேட்க உரிமை உள்ளது என்பது சரியா?
4. 1994 முதல் 2007 ஆம் ஆண்டு வரை பிரதிவாதி வாடகைதாரர்களிடமிருந்து வசூல் செய்த வாடகை பணத்தை வாதி கேட்டிருப்பது 113 கால வரையறைச் சட்டப்படி நிலைக்கத்தக்கதல்ல என்பது சரியா?
5. நீதிமன்றக் கட்டணம் சரியாக செலுத்தப்படவில்லை என்பது சரியா?
6. வழக்கில் சொல்லப்பட்டுள்ளபடி வழக்கு மூலம் எழுவில்லை என்பது சரியா?
7. வாதி வழக்குரையில் கோரியவாறு 25.08.1930 மற்றும் 18.1.1994 தேதியிட்ட மறு மாற்றவிப்பு ஆணைப்படி ரூ.83,500/ ஐ பெற்றுக் கொண்டு கிரயப்பத்திரம் எழுதிக் கொடுக்க வேண்டுமென்று தீர்ப்பாணை பெறத்தக்கவரா?
8. 1994ல் இருந்து 2007 வரை வாடகைதாரர்களிடமிருந்து பிரதிவாதி வசூலித்த வாடகை பாக்கி ரூ.60,000/ஐ பெறத்தக்கவரா?
9. வாதி வழக்குரையில் கோரியவாறு பிரதிவாதியோ அவரது ஆட்களோ முகவர்களோ வாடகைதாரர்களிடமிருந்து வாடகையை வசூலிக்கக்கூடாது என்று நிரந்தர உறுதிக்கட்டளை பெறத்தக்கவரா?
10. வேறு என்ன பரிகாரங்கள்?”



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“1. Whether it is true that the re conveyance agreement dated 25.08.1980 was annulled by plaintiff by receiving cash and execution of letter dated 18.1.1994?

2. Whether it is correct the suit based upon the letter dated 18.1.1994 was barred by Limitation Act?

3. Whether it is true that the re conveyance sale agreement is not in force after 19.1.1994?

4. Whether it is correct the re conveyance sale agreement was nullity as per the provisions of Contract Act?

5. Whether it is correct the plaintiff was stopped seeking relief of specific performance basing the re-conveyance agreement dated 25.08.1980?

6. Whether it is correct the suit was barred for non disclosure of cause of action?

7. Whether the plaintiff is entitled for relief of Specific Performance?

8. Whether the plaintiff is entitled to rent arrears of Rs.60,000/- from the defendant?

9. Whether it is correct that the claiming of rent arrears is barred as per Article 113 of Limitation Act?

10. Whether the plaintiff is entitled for permanent injunction against the defendant from collecting rent from



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the tenants?

11. To what other relief?

19. On this side of the plaintiff, PW1 to PW8 were examined including the tenant as well as S.Agraharam Narasimhan as PW2 and PW4 and Ex.A1 to Ex.A20 were marked. The defendant entered the witness box as DW1 and marked Ex.B1 to B22.

20. Considering the oral and documentary evidence placed before her, the learned Subordinate Judge decreed the suit as prayed for.

21. Aggrieved by the same, the defendant preferred A.S.No.13 of 2012. The learned I Additional District Judge, Thiruvallur partly allowed the appeal. He directed the specific performance of the sale deed in favour of the plaintiff to an extent of 20 feet x 40 feet measuring 800 square feet without any consideration as mentioned in the document of re-conveyance dated 25.08.1980. He further granted an injunction restraining the defendant from collecting any rents from the tenants in the hotel premises alone. He dismissed the suit as regards specific performance and permanent injunction as regards other portion. Insofar as rent arrears are concerned, the suit was dismissed



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giving liberty to the plaintiff to work out her right on filing a proper statement of accounts in a separate proceeding.

22. Aggrieved by that portion of the judgement, which granted the plaintiff only a right over 800 sq.ft, S.A.No.411 of 2014 has been filed by the plaintiff. Since the appeal has been dismissed in part and allowed in part, the defendant preferred S.A.No.468 of 2014.

23. S.A.No.411 of 2014 was admitted on 10/4/2014 on the following substantial questions of law:

1) Whether the findings rendered by the First Appellate Court only with regard to 20' x 40' (800 sq.ft.,) instead of the entire suit property to the appellant even though the First Appellate Court had categorically held that the cancellation of Ex.B1 under Ex.B2 was not proved by the respondent and therefore, the restricted relief granted to the appellant is correct in law?

2) Whether the First Appellate Court's interference in trial Court findings that the appellant/plaintiff is not entitled to 65' x 180' (1170 sq.ft.,) is correct in law in view of the failure on the part of the respondent to prove Ex.B1 and B2?



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3) *Whether the findings relating to Ex.B1 that Ex.B1 was not cancelled by the appellant/plaintiff and that it is still in force but restricted the defendant to execute the sale deed only with regard to 20' x 40' (800 sq. ft.) without assigning any sound reasoning for arriving at such finding is correct in law?*

4) *Whether the findings rendered by the First Appellate Court relating to collection of rent by way of separate proceeding is correct in law?*

24. On 25.04.2014, the appeal preferred by the defendant was admitted on the following substantial questions of law:

“1) *Whether the lower Appellate Court has properly considered and appreciated the documentary evidences under Ex.B1 to Ex.B4 and Ex.A1 to Ex.A4 in the proper perspective coupled with the oral evidences of parties while granting decree for specific performance without consideration?*

2) *Whether the lower Appellate Court is right in confirming the judgment and decree of the trial court directing specific performance of the agreement of re-conveyance under Ex.B1 without consideration when the*



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said deed of re-conveyance was duly cancelled by way of an endorsement under Ex.B2?

3) Whether the lower appellate court is right in decreeing the suit for specific performance when the plaintiff has not come to the court with mutual facts and with clean hands and that the mandatory requirements of readiness and willingness were also not pleaded or proved and on that ground ought to have refused the equitable relief of specific performance?

4) Whether the lower Appellate Court had properly exercised judicial discretion while directing specific performance when the plaintiff is guilty of suppression and not having come to court with clean hands, more particularly when there was complete novation of the contract?”

25. Though two appeals have been filed, they have arisen out of the judgment in a single suit and single appeal namely O.S.No. 29 of 2010 on the file of the Subordinate Judge at Tiruttani and A.S.No.13 of 2012 on the file of the I Additional District Judge at Tiruvallur. Being appeals against a single judgment, I clubbed both the appeals as well as the question of law and heard them for the purpose of disposal.



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26. On behalf of the plaintiff, I heard Mr. S. Udayakumar and on behalf of the respondent, I heard Mr.S.K.Rahul Vivek for Mr.J.James.

Specific Performance Requires An Agreement

27. This is the suit for a specific performance. Therefore, the plaintiff will have to prove that there is an agreement and that she is always ready and willing to get a sale deed executed in her favour. Apart from readiness and willingness, she would also have to prove that the agreement that has been projected by her is the agreement that she seeks for specific performance. Law does not enable a party to project one agreement in the pleading and thereafter abandon it and seek to proceed with another agreement. It is the specific case of the plaintiff that she is entitled to re-conveyance by virtue of the document dated 18.01.1994. This necessarily requires me to extract the said document:

“ In full quit of your right arising under unreg. re-conveyance agreement dated 25.8.80 executed by me in your favour in respect of 20 feet East to West 40 feet North to South site in S.No.345/18C you agreed to receive Rs.83,500/- from me. Accordingly, I have paid you on 19.01.1994 Rs.20,000/- in cash and Rs.18,500/- by way of post dated cheque. I have undertaken to repay Rs.5,000/- (Five thousand only) which you



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received as advance from one Thilagavathy W/o Selvaraj of Sannathi Street, Tiruttani. Thus I have paid in all Rs.40,000/- (Forty Thousand) only making up 1st half of the above said Rs.83,500/- (Eighty three thousand five hundred only). As the said S.Nos.345/18C, 345/17C and 345/15C are subject matter of suit in O.S.No.207/80 and O.S.No.7/82 before Sub-Judge Kancheepuram and are at the stage of second appeal filed by one Masilamani and his brothers you have agreed to receive from me 2nd half amount of Rs.40,000/- after the final disposal of the said suits. If for any reason the said Masilamani and his brothers become successful in their appeals finally or purchase peace by paying them more than agreement-amount I will be under no obligation to pay you the said 2nd half of Rs.40,000/- and you shall have to return to me the above said 1st half amount of Rs.40,000/- received from me by way of cash and cheque.

I hereby acknowledged receipt of said original agreement dated 25.08.80 duly cancelled by you.

Your brother Sathyanarayanamurthy S/o Venkatrayappa has executed today a separate gurantee letter in my favour.”



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WEB COPY 28. A reading of the said document would go to show that it is not an agreement of sale of an immovable property. It is a letter. This letter was written by the defendant to the plaintiff states that the plaintiff had given up her right under the unregistered re-conveyance deed dated 25.08.1980. The execution of the re-conveyance deed is admitted by both sides. The history of the case pursuant to the re-conveyance deed, before the letter dated 18.01.1994, might have some significance.

29. The plaintiff obtained an agreement of sale with one Nathamuni Udayar and others. She required the assistance of the defendant herein for the purpose of getting a sale deed for the suit property through the process of court. Consequently, O.S.No.207 of 1980 was presented before the Sub Court at Kanchipuram. For the purpose of initiating the said proceedings, the plaintiff had assigned her right under Ex.B1 in favour of the defendant on 25.08.1980. The defendant herein as the first plaintiff and the plaintiff herein as the second plaintiff presented O.S.No.207 of 1980. That suit ended in a decree in their favour on 31.10.1991. Against the said judgment and decree, a regular appeal was preferred before the learned District Judge at Chengalpattu in AS.No.125



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of 1991 which came to be disposed on 26.08.1992. The appeal in A.S.No.125 of 1991 came to be dismissed confirming the decree of the suit for specific performance on the aforesaid date. Till that stage, it is clear that the plaintiff and the defendant had engaged the same lawyer and contested the proceedings.

30. Aggrieved by the same, the defendant in O.S.No.207 of 1980 preferred a second appeal before this court. In the second appeal, the present defendant was the first respondent and the present plaintiff was the second respondent. Though Mr.S.K.Rahul Vivek would state that the plaintiff herein as the second defendant had engaged a lawyer and had contested the case, a perusal of the original records in S.A.No.1702 of 1993 would show that having received the summons, the present plaintiff who was the second respondent therein did not appear in person or through a counsel.

31. The reason for this in my view is because the plaintiff had agreed to give up her rights, under the re-conveyance agreement dated 25.08.1980 through the agreement dated 18.01.1994. She had agreed to give up her right after receiving a sum of Rs.83,500/- from the defendant in full quit of her right. It was under those circumstances, she had received a sum of Rs.20,000/- by



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way of cash and Rs.18,500/- by cheque on that date and a further sum of Rs.5,000/- to be paid to one of her creditors. It is clear from Ex.B4, the receipt of the payment is admitted by the plaintiff herself in her examination. The said document under Ex.B4 reads as follows:

*“ I, Rathna Bai wife of late Raja Rao, Sannadhi Street, Tiruttani Town and Taluk received Rs.20,000/- (Rupees Twenty thousand only) in cash and cheque for Rs.18,500/- by way of posted-cheque on 19.1.94 from Sri. E.Shanmugam, Advocate Tiruttani towards **full quit settlement of Rs.83,500/-** for my right under unregd re-conveyance agreement dated 25.08.80 and the superstructure in Survey No.345/18C.”*

32. Ex.B4 is not a stand alone document, but it has to be read along with Ex.B3, a guarantee letter given by her brother, a counsel from Bangalore namely Mr.A.V.Sathyanarayanamurthy. This document reads as follows.

“From:

*A.V.Sathyanarayanamurthy,
No.132, 1st Floor,
Gandhi Bazaar,
Bangalore – 4.*

To



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*E.Shanmugam,
Advocate,
Tiruttani.*

Sir,

In pursuance of unreg re-conveyance agreement dt.25.8.80 executed by you in favour of my sister Rathna Bai W/o Raja Rao of Sannathi street, Tiruttani in respect of a site measuring East to West 20 feet and North to South 40 feet in Sannathi Street, Tiruttani my sister agreed to receive Rs.83,500/- (eighty three thousand five hundred only) in full quit of her right under the agreement. Out of the said sum you have paid her today (19.1.94) Rs.40,000/- made up of cash and cheque dt.19.3.94 for Rs.18500/- on my guarantee of repayment. As the said site is subject matter of suits in O.S.No.207/80 and 7/82 before Sub-Court, Kancheepuram and they are at the stage of 2nd Appeal and the opposite party viz., Masilamani & others have filed 2nd appeal. My sister has agreed to receive the balance Rs.40,000/- after the final disposal of the said suits. In case the opposite party (Masilamani & others) becomes successful ultimately, I hereby undertake to repay the said sum of Rs.43,500/- paid by you to my sister. I have executed this guarantee letter with clear knowledge and consent.”



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33. A combined reading of exhibit B3 and B4 would go to show that the plaintiff and the defendant had entered into an agreement on 25.08.1980 for assigning the right of the plaintiff to the defendant under the agreement dated 10.02.1974, subject to the relief of the suit that would be presented against Nathamuni Udayar and others. This right of seeking re-conveyance was given under these documents. I am able to perceive that as the litigation was pending for a long time nearly a decade and a half, the plaintiff herein decided to give up her rights by receiving a sum of Rs.83,500/- in full quit of her rights under the agreement dated 25.08.1980 and the defendant also agreed to do so. In fine, the agreement dated 25.08.1980 for re-conveyance was given up by the plaintiff by virtue of executing Ex.B2, Ex.B3 and Ex.B4. The original of the re-conveyance agreement that was with the plaintiff was returned to the defendant as she had given up her claim.

34. It is pertinent to note that the plaintiff as PW1 had entered the witness box and admitted to her signatures in Ex.B1, Ex.B2, Ex.B3 and Ex.B4. In other words, the plaintiff and the defendant agreed to the execution of the re-conveyance deed and also to the novated agreement dated 19.01.1994 between



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the parties whereby the plaintiff herein stepped out of the litigation, leaving the defendant to proceed therewith after the receipt of Rs.43,500/-.

35. The specific performance of the agreement sought for is the letter dated 18.01.1994. I have extracted the letter above. The letter instead of reading as if the defendant had agreed to convey the property to her, it only reads that the plaintiff had given up her right over the agreement executed on 25.08.1980 on receipt of Rs.83,500/-. A party having given up her right for re-conveyance, upon receipt of payment in full quit cannot turn around and project a fresh case before the court and seek for specific performance of the agreement so given up.

36. It is here that the reason for initiating the present suit is not too far to see. The plaintiff had entered the witness box and had literally given away her case. She had stated in more than one place in the plaint that she chose to conduct the entire litigation after being persuaded by PW2/ Mr. Narasimhan. She has stated in her proof of affidavit as follows:

“ மேலும் ரூ.40,000/- பெற்றுக் கொள்ளுமாறு பிரதிவாதி என்னை
வறிபுறுத்தினார். நான் அதை பெற்றுக்கொள்ள மறுத்துவிட்டேன்.”

This shows that pursuant to the letter dated 18.01.1994, the plaintiff was approached by the defendant for the payment of balance of Rs.40,000/- and it



was the plaintiff, who refused to receive the same.

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37. During the course of cross examination, the plaintiff had stated as follows

“நான் இது குறித்து எந்த வழக்கறிஞரையும் பார்க்கவில்லை. வழக்கிற்கான செலவுத் தொகையும் நரசிம்மனுக்குதான் தெரியும். ஏ2வின் படி ரூ.83,500/ பி1 க்கு பதிலாக கொடுப்பதாக பெற்று உள்ளேன். அந்த பணம் தரவில்லை. ஏ2 முன்னிலையில் 43,500/ பெறப்பட்டது என்றும். 40,000ம் மட்டும் தரவேண்டும் என்றால் சரிதான். ஏ2வின் முன்னிலைக்கு சொத்தை தருமாறு ஏதும் கூறப்பட்டவில்லை. ... மீதிபணம் குறித்து கடிதம் மூலமாகவும் நேரடியாகவும் பணம் கேட்டேன். அவர் மீதி ரூ.40,000ம் தராததால் தாவா வழக்கை தாக்கல் செய்து உள்ளேன். இந்த வழக்கை தாக்கல் செய்வதற்கான செலவுத் தொகையை நரசிம்மன் தான் பார்த்துக்கொள்கிறார். ரூ.43,500/ பெற்றுக் கொண்டதற்கு நான் 19.1.94 தேதியில் கையொப்பம் செய்து உள்ளேன் என்றால் சரிதான். ... இந்த வழக்கை தாக்கல் செய்வதற்கு முன்பே பிரதிவாதி தாவா சொத்தில் உள்ள வாடகைதாரர்களை காலி செய்ய வழக்குகள் தாக்கல் செய்து இருந்தார். இந்த வாடகை தாரர்கள் நரசிம்மனை அழைத்துக்கொண்டு பெங்களுருக்கு வந்தார்கள். வாடகைதாரர்கள் எங்களை காப்பாற்ற வேண்டும் என்று அதற்கு வழக்கு எனை தாக்கல் செய்ய சொல்லி அவர்களும், நரசிம்மனும் பெங்களுருக்கு வந்தார்கள். மேற்படி வாடகை தாரர்களும் நரசிம்மனும் சொன்னதின் படி தான் இந்த வழக்கை தாக்கல் செய்து உள்ளேன். ... பிரதிவாதி எனக்கு தரவேண்டிய ரூ.40,000/த்தை தரவேண்டும் என்று தான் இந்த வழக்கை தாக்கல் செய்துள்ளேன்.”



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38. The extract of the aforesaid evidence would show that the plaintiff was not interested in the agreement, but she approached the court only on account of the persuasion of the tenants in the property and Mr.Narasimhan/PW2.

39. PW2 on entering the witness box had stated that after the agreement had been entered into on 25.08.1980, the parties had negotiated regarding the same on 18.01.1994 and 19.01.1994. On 19.01.1994, the defendant had made a payment of Rs.43,500/- for which the brother of PW1 had stood as a guarantor. This shows that after the agreement dated 25.08.1980, the parties had renegotiated their position and the plaintiff had accepted Rs.83,500/- in full quit for the purpose of giving up her rights under the agreement. The consideration for giving up her right was Rs.83,500/-. Out of the said amount, she had received a sum of Rs.43,500/- leaving a balance of Rs.40,000/-.

40. I am extracting some portion from the evidence of PW2 for the purpose of understanding why the suit:

“வா.சா.2 எழுதிக்கொடுக்கும் காலத்தில் வாதியின்
சகோதரர் வழக்கறிஞர் சத்தியநாராயணன் உடன் இருந்தார்.



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18.1.1994 மற்றும் 19.01.1994 வாதி பிரதிவாதியுடன் பேச்சுவார்த்தை நடத்தினார். வா.சா.2 முன்னிலைக்கு பிரதிவாதி வாதிக்கு ரூ.43,500/- மட்டும் தான் செலுத்தினார். வாடகைதாரர்கள் என்னிடம் காப்பாற்றும்படி முறையிட்டார்கள். வாடகைதாரர்களுடன் வாதியைப் பார்க்க பெங்கூருக்கு 1 முறைதான் சென்றேன்,”

41. This shows that the defendant, after having been successful till the second appellate court in S.A.No.1702 of 1993, had initiated eviction proceedings against the tenants in the suit schedule mentioned property. The tenants had immediately approached PW2- Mr.Narasimhan for assistance. Till that time, the plaintiff was not interested in initiating the suit as she had received the amount of Rs.43,500/- and had moved away from the litigation. Therefore, Mr.Narasimhan had convinced her to initiate the present suit to protect the tenants. This is clear from the evidence of PW2. Therefore, this is not a bonafide litigation at the instance of the plaintiff for the purpose of enforcing the contract dated 25.08.1980, which, as found by me she, had given up the contract pursuant to the discussions on 18.01.1994 and 19.01.1994. Therefore, there was no contract post 18.01.1994 for enforcement.

42. Having given up the contract upon the receipt of a sum of Rs.83,500/- , today it is not open for her to turn around and plead for specific performance



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of the agreement dated 25.08.1980. In fact the present suit itself is not for specific performance of that agreement *per se*, but also for the agreement dated 18.01.1994. I have already come to the conclusion that the agreement dated 18.01.1994 is not an agreement for re-conveyance, but an agreement under which the right of re-conveyance that was granted to the plaintiff on 25.08.1980 was given up by her. Therefore, when there is no agreement for re-conveyance, pursuant to the revised and negotiated agreement dated 18.01.1994, the suit for specific performance is not maintainable.

Readiness and Willingness in a Suit for Specific Performance

43. Now let me turn to the aspect of pleading (or lack of it) of readiness and willingness. It is settled by virtue of Section 16(c) of this Specific Relief Act that unless and until the plaintiff pleads and proves her readiness and willingness, the question of the court granting specific performance does not arise. This is because failure to 'aver and prove' readiness and willingness is a personal bar to the grant of the said relief. As early as 1924, the position of law had been settled in ***Gonesh Ram v. Ganpat Rai, AIR 1924 Cal 461*** wherein the celebrated jurist, Justice Asutosh Mookerjee held that the court in a suit for



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specific performance should not permit the plaintiff to depart from the plaint and give evidence. This view had been further clarified by Chief Justice A.N.Ray (as his Lordship then was) in ***Md. Ziaul Haque v. Calcutta Vyaper Pratisthan***, AIR 1966 Cal 605 as follows:

“Emphasis was rightly placed on the aspect of the plaintiff's case pleaded that there was an agreement in the month of August and that the plaintiff failed to prove that case and the plaintiff having completely abandoned that case of agreement in the month of August, any attempt on behalf of the plaintiff to take recourse to May agreement would be to have a decree for specific performance of an agreement which was not the agreement of the parties according to the plaintiff.”

The view taken by Justice Asutosh Mookerjee and by Chief Justice A.N.Ray was quoted with approval by the Supreme Court in ***Ganesh Shet vs. Dr.C.S.G.K.Setty and Others***, (1998) 5 SCC 381.

44. In the present case, there is no dispute that there was an agreement of re-conveyance on 25.08.1980. On that date neither the plaintiff nor the defendant had a right over the property as both of them, had proposed to file a suit together, for obtaining a decree of specific performance of the agreement



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entered into by the plaintiff herein with Nathamuni Udayar Vagayara on

10.02.1974. It was only after this agreement dated 25.08.1980 that the suit was presented before the learned Subordinate Judge at Kancheepuram. Pending the second appeal, on 18.01.1994, the plaintiff herein gave up her right in the re-conveyance agreement upon the receipt of the money on 19.01.1994. Therefore, it was in this light, which is clear from paragraph 7 of the plaint, that she projected the agreement dated 18.01.1994 as a mutual agreement.

45. In a suit for specific performance of the contract of re-conveyance, a party has to prove his readiness and willingness, failure to do so is fatal, see, **Bal Krishna v. Bhagwan Das, (2008) 12 SCC 145**. The absence of pleading of readiness and willingness in the present case makes me to look against the plaintiff.

46. The extract of the agreement above would show that it was not an agreement granting her right of re-conveyance over the schedule mentioned property but an agreement by which she gave up her right under the agreement dated 25.08.1980. Having projected the agreement dated 18.01.1994 as the final agreement between the parties, applying the verdict of Justice Asutosh Mookerjee and Chief Justice A.N.Ray to the facts of the present case, it is not open to the plaintiff to plead that she is entitled for re-conveyance as per the



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agreement dated 25.08.1980.

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False Plea – No Specific Performance

47. A false story had been projected by the plaintiff that she had not received any rent from 25.08.1980 to 18.01.1994. On the contra, from the evidence that has been given by her before the trial court, it is clear that till 19.01.1994 when she received the amount of Rs.43,500/-, she had received the rents from the hotelier who was a tenant. For the sake of this suit, the plaintiff had falsely pleaded in paragraph 5 of the plaint that she received a sum of Rs.43,500 thinking that it was an amount collected by the defendant from the tenants. This flummoxes me for the simple reason that when the tenant had already paid the rents to the plaintiff, the question of her being under the impression that the defendant was paying rents to her all over again sounds contradictory. It is too well settled position of law that a person who takes a false plea is not entitled to the relief of specific performance. Having taken a false plea on the payment of Rs.43,500/-, the suit has to fail. It is pertinent to point out here that both the courts below have not adverted to this crucial aspect.



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No Readiness and Willingness – No Specific Performance

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48. Readiness and willingness is one of the fundamental principles on the basis of which a specific performance suit must be approached. Lack of readiness and willingness has to result in the dismissal of the suit. Law reports and treatises on specific performance are replete with judgments on this point. However, in order to give completeness to the judgment, I refer to the latest position of law laid down by the Supreme Court in the case of ***Shenbagam and other vs. K.K.Rathinavel, 2022 SCC Online SC 71***. In the said judgment, the Supreme Court interfered with a decree of specific performance which had been confirmed consequently by the lower appellate court as well as by this Court. It was held that in the absence of readiness and willingness and the conduct of the plaintiff towards the same, the Court should not decree a suit for specific performance. Bearing in mind these principles, I approach the facts of the case.

49. A careful reading of the entire plaint shows that from 18.01.1994 onwards, the plaintiff did not show any readiness or willingness for the purpose of converting the alleged re-conveyance agreement dated 25.08.1980 into an executable decree. It is not too far for me to see that she did not do so because she gave up her right as found by me on 18.01.1994 and made the endorsement



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on 19.01.1994.

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50. The lower appellate court has placed reliance upon Ex.A20 in order to disbelieve the endorsement that was made by the plaintiff on Ex.B1. The reason for arriving at that conclusion by the lower appellate court was based on the premise that if the plaintiff had given up her right under Ex. B1, the defendant in the present case would not have written a letter to her under Ex. A20. This in my view is the perverse appreciation of evidence for the following reasons:

(i) The agreement dated 25.08.1980 is admitted by both sides.

(ii) The endorsements made by the plaintiff on Ex. B2 and Ex.B4 are admitted.

(iii) The plaintiff also admits that her brother had given a guarantee letter under Ex.B3.

(iv) Under these documents i.e., Ex.B2, Ex.B3 & Ex.B4, the defendant herein had agreed to pay a sum of Rs.40,000/- to the plaintiff on the completion of the proceedings before the High Court in S.A.No.1702 of 1993.

51. A reading of Ex.A20 would go on to show that the defendant had



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informed the plaintiff that the second appeal is still pending. This is in order to inform the plaintiff that as the appeals are still pending, he is not in a position to pay her the balance of Rs.40,000/- out of the agreed sum of Rs.83,500/- by which the plaintiff had given up her right under the re-conveyance agreement.

52. If the courts below misappreciated the evidence placed before them, this court can certainly interfere with their findings as it renders their judgment perverse.

Readiness and Willingness must be Specifically Pleaded

53. It was argued by Mr.Ragul Vivek that a meaningful reading of the plaint does not show readiness and willingness on the side of the plaintiff to seek for re-conveyance of the property. I would necessarily have to agree with him.

54. No where in the plaint the plaintiff has specifically stated that she is ready and willing. I am alive to the principle that Readiness and willingness is not a strait jacket formula to be applied. To substantiate at the same, Mr. Udhaya Kumar would cite the following judgments:



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(i) *V.Udayakumar and others vs. L.Navaneethammal and others*,
(2002) 1 MLJ 519;

(ii) *Manjunath Anandappa URF Shivappa Hanasi vs. Tammanasa and others*, (2003) 10 SCC 390;

(iii) *Aniglase Yohannan vs. Ramlatha and others*, (2005) 7 SCC 534;

(iv) *Faquir Chand and another vs. Sudesh Kumari*, (2006) 12 SCC 146;

(v) *Silvey and others vs. Arun Varghese and another*, (2008) 11 SCC 45.

Mr.S.Udayakumar would state that readiness and willingness is not a mathematical Formula to be applied in a civil proceeding.

56. The position of law laid down by these authorities is not in dispute. They are binding on me. A reading of all these judgments would go on to show that the entire plaint must be read as a whole and for the mere fact that the words 'readiness and willingness' are not found therein is not fatal to the case. In case by a reading of the entire plaint, the court is able to come to the



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conclusion that in the absence of the words 'readiness and willingness', the plaintiff has still pleaded readiness and willingness, as can be culled out from the other averments, the court has to treat that as sufficient compliance with Section 16(c) of the Specific Relief Act.

57. In the light of these principles, I read the plaint. Paragraph No.5 of the plaint speaks about the fact that the plaintiff had received a sum of Rs.43,500/- and had returned the original re-conveyance agreement to the defendant on 18.01.1994. The next plea was only in the year 2007, when Narasimhan, PW2, had approached the plaintiff. In the previous portion of the judgment, I found that Narasimhan had approached the plaintiff in the year 2007 in order to save the tenants from being evicted.

58. Furthermore, a reading of the decree that was produced by Mr.S.Udaya Kumar before this court would go on to show that even during the second appellate proceedings in S.A.No.1702 of 1993, the plaintiff had not participated in the proceedings. She had participated in the proceedings before the learned District Judge at Chengalpet, when the appeal was pending in A.S.No.125 of 1991, but after 1994, there is no evidence to show that she had



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participated in the proceedings arising out of O.S.No.207 of 1980.

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59. As stated above, I am able to come to the conclusion that the plaintiff was not interested in the agreement between Nathamuni Udayar Vagayara and herself as she had assigned it to the defendant on 25.08.1980 and shifted to Bangalore. Thereafter, on 19.01.1994, she had received a sum of Rs.43,500/- and had given up her right under the agreement dated 25.08.1980. Having given up her right, she was not interested in prosecuting the proceedings and left the same entirely into the hands of Shanmugam/the defendant to deal with the matter. There is a total gap in the pleadings from 1994 to 2007.

60. Even if I were to treat 14.11.2005 as the date on which the plaintiff has the right to proceed against the defendant, from 2005 to 2007, when the plaint was actually presented, there is no explanation for the delay. Therefore I come to the conclusion that the plaintiff has not been ready and willing. This is because the plaintiff knew pretty well that having given up her right on 19.01.1994, she has no right to seek enforcement of the agreement dated 25.08.1980. If at all she has the right, she has the right to receive the balance of Rs.40,000/- from the defendant more about this later.



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**Champertous Agreement and the Bar of raising a
new plea in the Second Appeal**

61. Mr.S.Udaya Kumar would argue that the entire agreement is a champertous agreement and therefore, the court should look against the defendant. The argument on champertous agreement has to be based on pleadings. Nowhere the plaintiff has pleaded that the agreement dated 25.08.1980 or the agreement dated 18.01.1994 is a champertous one. On the contrary, the plaintiff in paragraph No.7 of her plaint has admitted that the agreement dated 18.01.1994 is as follows:

“ It is further submitted that the plaintiff bases her claim on the letter executed by the defendant dated 18.01.1994. It is a mutual agreement. ”

62. Champerty means a bargain between the plaintiff or the defendant in a suit and a third party. The bargain in champerty is to divide between themselves the land or the other matter of the suit in the event of litigation being successful. Whereupon the champerted is to carry on the party's suit or action at his insistence, it can also be seen as purchasing the right of action or right to sue of the other person. Such a kind of agreement is illegal in common law. However, the said principle is inapplicable insofar as India is concerned, See **In**



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re 'G', a senior advocate of the Supreme Court, (1954) 2 SCC 171. Further

a party cannot raise that an agreement is a champertous agreement for the first time in the second appeal. It requires pleadings and proof.

63. In this particular case, the defendant had entered into an agreement assigning the right of the plaintiff in his favour. A careful reading of Ex.B1 shows that it is not a champertous agreement but a deed of assignment of the right that the plaintiff had under the agreement with Nathamuni Udayar. Ex.B1 to Ex.B4 show that the plaintiff had received monies from the defendant to give up her right under the agreement dated 25.08.1980.

64. In the light of the discussion that the agreement dated 25.08.1980 is not a champertous agreement, the judgment in *Angayarkanni and another vs. N.Ponnuswami and 22 others, 2018 (6) CTC 769* is also inapplicable to the facts of the case.

65. In case of fraud, undue influence, coercion and any other vitiating factors including the plea that the agreement is against the public policy ought to be specifically pleaded and proved, see *Ladli Parshad Jaiswal v. Karnal*



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Distillery Co. Ltd., AIR 1963 SC 1279.

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66. The purpose of the pleadings is that the opposite side must not be taken by surprise. In this particular case, as there is a total absence of pleadings before the trial court regarding champertous agreement and this aspect has not been framed as an issue, I am not in a position to permit Mr. S.Udaya Kumar to raise it as a plea in the second appeal.

67. A new plea cannot be raised in the second appeal. Even if I were to apply the principle of champerty to the case, it will not assist Mr.S.Udaya Kumar because a champertous agreement requires a third party to sponsor the litigation. However, a perusal of the previous proceedings shows that the first plaintiff was the present defendant and the 2nd plaintiff was the present plaintiff in O.S. 207 of 1980 on the file of the learned Subordinate Judge, Kanchipuram. It is not a case of third party sponsoring a litigation, but of assignment of the agreement entered into by the plaintiff with Nathamuni Udayar and Vagaiyara to the defendant.

68. It is on the strength of the assignment that both parties approached the court and were successful in obtaining the decree. Today, in the second



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appellate stage, an agreement that was concluded by the decree of the court and has ended up in a sale deed executed by the court in favour of the defendant cannot be treated as one hit by champerty.

69. Facing this difficulty, Mr. S.Udaya Kumar would submit that the defendant being an advocate cannot enter an agreement with his client. This too is a new plea taken in second appeal.

70. There is no evidence that the defendant had ever acted as a lawyer for the plaintiff. Mr.S.Udaya Kumar was kind enough to produce the previous records before the court in the form of a typed set. A perusal of the same shows that before the trial court as well as the lower appellate court, the defendant Shanmugam did not appear for the plaintiff Rathinabai. On the contrary, they had engaged experienced civil lawyers to conduct their matter before the trial court as well as before the lower appellate court. In the second appellate stage too, Shanmugam was represented by a senior counsel of this court. Therefore, I cannot agree with Mr. Udaya Kumar on the position of law that the defendant being a lawyer, he can never enter into an agreement of sale with any party.



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Such a position would be a travesty to the parties and if laid down as law by this court, no lawyer can ever enter into an agreement of sale. I will not be a party to such a proposition.

71. The following judgements cited by Mr.S.Udaya Kumar arise out of proceedings which had been initiated by the clients as against their respective lawyers under the Advocates Act 1961 viz.,

(a) ***T.A.Kathiru Kunju vs. Jacob Mathai and another, (2017) 5 SCC 755;***

(b) ***Jaipur Vikas Pradhikaran vs. Ashok Kumar Choudhary and others, (2011) 14 SCC 105.***

Hence, they are inapplicable.

72. On more than one occasion, I asked Mr.S.Udayakumar if there is any proof to show that Shanmugam/the defendant had acted as a lawyer for the plaintiff/Rathinabai. He submitted that Shanmugam had never acted as an advocate, but had only joined Rathinabai as the second plaintiff in O.S.No.207 of 1980 before the Sub Court at Kancheepuram. Therefore none of these judgments cited by Mr.S.Udayakumar applies to the facts of this case.



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73. Having come to the conclusion that the plaintiff had given up her right under the agreement dated 25.08.1980 by virtue of Ex.B2 and Ex.B4, I cannot dismiss the suit simpliciter. This is because the plaintiff has admitted that it is a mutual agreement and the defendant also relied upon the said document. Therefore, the plaintiff would be entitled to the sum of Rs.40,000/- which remains unpaid pursuant to the agreement under Ex.B2. The amount ought to have been paid by Shanmugam/defendant immediately after the disposal of the second appeal on 7/6/2005. However, the defendant did not pay the amount leaving the amount outstanding. Consequently, I would come to the following conclusion:

(i) that the judgment and decree of the Ist Additional District Judge at Tiruvallur in A.S.No. 13 of 2012 dated 13.12.2013 in modifying the judgment and decree of the court of the learned Subordinate Judge at Tiruttani in O.S.No.29 of 2010 dated 31.10.2011 is set aside.

(ii) The suit in O.S.No.29 of 2010 on the file of the learned Subordinate Judge, Tiruttani insofar as the relief of specific performance is concerned shall stand dismissed.

(iii) The defendant shall pay a sum of Rs.40,000/- together with interest



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at the rate of 18% per annum from 07.06.2005 till the date of repayment.

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(iv) As a measure of security for enforcing repayment, there shall be a charge over the property till the amount is paid.

74. In fine, the substantial questions of law framed in S.A 468 of 2014 are answered in favour of the appellant and against the respondent. The substantial questions of law framed in S.A.No.411 of 2014 are answered against the appellant and in favour of the respondent. Accordingly S.A.No.468 of 2014 shall stand allowed and S.A.No.411 of 2014 shall stand dismissed.

75. Since the plaintiff has projected a false case before the court and since the defendant has defaulted in payment of money to the plaintiff, both the parties will have to bear their respective costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

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Index : yes / no

Neutral Citation : yes / no



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Speaking / Non Speaking Order

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To

- 1.The Subordinate Judge, Tiruttani
- 2.The First Additional District Judge, Tiruvallur (FTC)



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V.LAKSHMINARAYANAN, J.

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