



A.S.No.363 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

|                           |                             |
|---------------------------|-----------------------------|
| Reserved on<br>18.03.2024 | Pronounced on<br>23.07.2024 |
|---------------------------|-----------------------------|

**CORAM**

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.363 of 2021  
and  
CMP.No.16516 of 2021

K.Raghu @ Raghunathan  
S/o.G.Krishnan  
Door No.149, Appinaickkapatti Village  
Uthangari Post and Taluk  
Krishnagiri District

... Appellant

Vs.

T.R.Jayapal, S/o.Late.Ramasamy  
No.2/1A, Bharathiar Street  
Thiruvalluvar Salai, Teynampet  
Chennai 600 018

... Respondents

**PRAYER:** This Appeal is filed under Section 96 of CPC, against the Judgment and Decree dated 23.04.2021 in O.S.No.46 of 2018 on the file of the Additional District Court, Krishnagiri.

For Appellant : Mr.N.Sivaprakash

For Respondents : Mr.M.Baskar  
for Mr.S.Sai Shankar

**JUDGMENT**



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This Appeal has been filed against the Judgment and Decree dated 23.04.2021 made in O.S.No.46 of 2018 on the file of the Additional District Court, Krishnagiri.

2.The defeated Defendant is the Appellant herein.

3.For the sake of convenience the parties are referred to as per their ranking before the trial Court.

4.The brief facts leading to filing of this Appeal is as under:

4(a).The Respondent/Plaintiff has desired to purchase the suit schedule property and he approached the Appellant/Defendant and his family members to purchase the suit schedule property and two adjoining properties measuring to an extent of 59 cents each.

4(b).The Plaintiff purchased the 1<sup>st</sup> property measuring to an extent of 59 cents from the Appellant/Defendant by way of registered sale deed dated 12.6.2014 as document No.1909 of 2014 on the file of Sub



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Registrar of Uthangarai. The total sale consideration of Rs.20,00,000/- was paid by the Plaintiff to the Defendant for the said purchased property.

4(c).The 2<sup>nd</sup> property which is adjacent to the property belongs to the step brother of the Defendant, who was a minor at that time. The 3<sup>rd</sup> property which is adjacent to the 2<sup>nd</sup> property, also belongs to the present Defendant which is the suit schedule property.

4(d).Since the 2<sup>nd</sup> property belongs to the step brother of the Defendant, who was a minor at that time, it is mandatory to obtain permission from the competent Court. Hence, registered sale agreement was entered with respect to both the properties separately.

4(e).The first agreement dated 12.06.2014 was entered with the Appellant/Defendant with respect to the 3<sup>rd</sup> property (present suit schedule property) and the same was registered as Document No.1910 of 2014 on the file of Sub Registrar of Uthangari. At the time of registration of sale deed with respect to the 1<sup>st</sup> property, the total sale consideration was fixed as Rs.20,00,000/- and a sum of Rs 10,00,000/- was paid as



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advance. The time fixed for completion of sale is eleven months from the date of agreement.

5.It is the further case of the Plaintiff in the Plaint as well as in the oral evidence as PW1 that with respect to the 2<sup>nd</sup> property, which belongs to the step brother of the Defendant, registered sale agreement was entered on 07.08.2014 as Document No.2664 of 2014 on the file of Sub Registrar of Uthangarai and the same was signed by the mother of the minor viz., Selvi @ Kalaiselvi in the capacity of the mother and natural guardian of the minor. The total sale consideration was fixed as Rs.18,01,000/-. At the time of entering into the sale agreement, a sum of Rs.5,00,000/- was paid as advance. As per the terms of agreement, the balance sale consideration of sum of Rs.13,01,000/- has to be paid by the Plaintiff once the Court's permission is obtained by the mother and natural guardian. As the dispute arose between the Plaintiff and Mother of the minor, after exchange of legal notice between Mother of the said minor and the Plaintiff, the case has been filed, based on the sale deed dated 07.08.2014 (subject matter of O.S.No.47 of 2018 on the file of the learned Additional District Judge, Krishnagiri)



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6.The Plaintiff as PW1 has stated that with respect to the present suit schedule property, the Appellant/Defendant also refused to execute the sale by receiving the balance sale consideration. Hence, the Plaintiff caused legal notice dated 15.04.2015 (Ex.A4), which is within the time period of eleven months fixed in the sale agreement dated 12.06.2014. For the said legal notice dated 15.04.2015, the Defendant issued reply notice dated 25.04.2015 (Ex.A5). The present suit in O.S.No.46 of 2018 was filed before the learned Principal District Judge and on administrative order, it was made over to the learned Additional District Judge, Krishnagiri.

7.The Appellant/Defendant filed written statement denying the very intention behind Ex.A.1/Suit sale agreement dated 07.08.2014 (registered agreement) and contended that the Appellant/Defendant had no intention to sell the suit schedule property and the sale agreement dated 12.06.2014 was entered only as a security for the agreement between the Plaintiff and the minor step brother of the Defendant.



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8.Immediately panchayat was conducted between the Plaintiff, the Defendant and the family members of the Defendant. In the said panchayat, the Defendant admitted that he has the intention to sell the suit schedule property, whereas the Defendant demanded exorbitant sum as sale consideration as against the sum agreed in the sale agreement dated 12.6.2014.

9.The Plaintiff was constrained to file the above suit praying for the relief of specific performance and also for delivery of possession on the file of learned Additional District Judge, Krishnagiri. In the said suit, the Defendant entered appearance and filed written statement.

10.For better appreciation of the factual position from the perspective view of the Defendant that the Defendant both in the written statement and as DW1 has stated that the sale agreement dated 12.06.2014 was entered only as a security for the advance amount of Rs.5,00,000/- paid by the Plaintiff for his step brother's property. It is the case of the Defendant that the sale agreement dated 12.06.2014 is only a security for the minor's property till the Court's permission is obtained



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and the sale deed was executed in favour of the Plaintiff.

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11.The receipt of advance amount of Rs.10,00,000/- from the Plaintiff is denied. However, the receipt of Rs.5,00,000/- from the Plaintiff was admitted as an advance, for the step brother's property only. In other words, not as an advance for the sale consideration under the suit sale agreement Ex.A1, but contended that Rs.5,00,000/- received by the present Defendant as security for the completion of sale transaction between the very same Plaintiff for the step brother's property, which is adjacent viz., second property lying between the property already purchased by the Plaintiff from Defendant herein and to be purchased, which is the subject property.

12.It is a specific case of the Appellant/Defendant in the written statement that his sister viz., Ambika claims share in the present suit schedule property and filed a suit in OS.No.3 of 2017 on the file of Sub Court, Uthangarai, praying for partition with respect to the suit schedule property. Hence it is the case of the Defendant that the Plaintiff will not be entitled for decree of specific performance with respect to the entire



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suit schedule property. Yet another plea raised by the Defendant is that dispute arose between the Plaintiff and his step mother with respect to the minor's property. Due to which the step mother of the Defendant refused to execute sale deed with respect to the minor's property. Because of that dispute, Plaintiff has not come forward to cancel the agreement dated 12.06.2014 entered with the Defendant.

13.After trial, the trial Court has formulated the following issues:

- 1. Whether the Plaintiff is entitled to Specific Performance as against the defendant?*
- 2. Whether the Plaintiff is entitled to get delivery of possession?*
- 3. Whether the Plaintiff is ready and willing to perform his part of contract as per the sale agreement?*
- 4. Whether the Plaintiff is entitled to permanent injunction restraining the defendant in any manner creating any encumbrance?*
- 5. To what other relief the Plaintiff is entitled to?*



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14.During the trial, the Plaintiff was examined as PW1, attestor of Ex.A3/suit sale agreement was examined as PW2/Mr.Shanmugam and Mr.Dhandapani, who is one of the panchayathar was examined as PW3. On the side of the Plaintiff Ex.A1 to Ex.A23 were marked and on the side of the Defendant, the Defendant himself was examined as DW1 and no document was marked on his behalf.

15.On consideration of both oral and documentary evidence, the trial Court has come to the conclusion that the suit was filed in time and the Plaintiff is ready and willing to perform his part of contract, Ex.A3 is valid and enforceable and hence, the points placed by the Appellant/Defendant was baseless and furthermore, Plaintiff found to be ready and willing to perform his part of Ex.A3 agreement and decreed the suit on 23.04.2021 and further the Plaintiff was directed to deposit the balance sale consideration amount of Rs.10,00,000/- within a period of one month. Hence the Appeal.

16(a).Learned counsel for the Appellant would contend that the Respondent entered into a sale agreement dated 12.06.2014 for an extent



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of acre 0.59 cents in S.Nos.20/10C, 20/11C and 20/13C is not valid as the Appellant has no title for more than the extent of acre 0.37 ½ as stated above.

16(b).He would further contend that the trial Court without appreciating the oral and documentary evidence adduced by the Plaintiff erroneously granted the relief of specific performance based on the oral evidence of the Defendant that the Defendant admitted the sale agreement/Ex.A3.

16(c).He would further contend that the trial Court failed to appreciate the fact that the Plaintiff himself admitted that as on the date of the execution of the sale deed dated 12.06.2014, he has paid a sum of Rs.30,00,000/- which is for three shares of the property belonging to the Defendant and one Kamalesh.

16(d).He would further contend that the trial Court failed to appreciate the fact that the Plaintiff entered Ex.A18 sale agreement dated 07.08.2014 in respect of the property of minor Kamalesh.



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16(e).He would further contend that the trial Court erred in finding that Ex.A18 sale agreement dated 07.08.2014 is subsequent to Ex.A3 sale agreement dated 12.06.2014 and thus disbelieved the contention of the Defendant that Ex.A3 sale agreement executed for security of the property purchased belonging to minor Kamalesh.

16(f).He would further contend that the trial Court failed to realize that the Plaintiff himself issued Ex.A4 legal notice dated 15.04.2015 to the Defendant and the Defendant also replied Ex.A5 dated 25.04.2015 stating that the sale agreement is not for sale of property and was executed only as a security for the payment made viz., Rs.5,00,000/- for the purchase of property belonging to minor Kamalesh.

16(g).He would further contend that the trial Court failed to note that as per the reply notice Ex.A5 dated 25.04.2015 the Defendant clearly refused to execute the sale deed and that the Plaintiff ought to have filed the suit for specific performance immediately to enforce the contract.



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17.Learned counsel for the Respondent made his submission in support of the judgment of the trial Court.

18.Heard the learned counsel for the Appellant and the learned counsel for the Respondent.

19.On consideration of both oral submissions and written submissions and the citations relied upon by the learned counsels on either sides, the following points are raised for consideration:

- 1.Whether Ex.A3 registered sale agreement between the Plaintiff and the Defendant is valid and enforceable?
- 2.Whether the Appellant has no title more than 3½ cents as pleaded in the grounds is true?
- 3.Whether Ex.A3/suit sale agreement is executed only as a security for the sale transaction between the Plaintiff and his step Mother is true?
- 4.Whether the Respondent/Plaintiff is ready and willing to perform his part of contract?
- 5.Whether the Judgment of the trial Court is sustainable in



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law?

20(a).At the outset, this Court finds that there are three piece of lands adjoining the road between two Taluk head quarters. The first piece of property on the western side of the road originally belongs to the Defendant herein on settlement by his Father. The second piece of land on further West was settled by the Father of the Defendant in favour of his son through his second wife, being the step brother of the Plaintiff herein. And the third piece of land on the further West viz., the suit property belongs to the Defendant.

20(b).It is admitted by both the parties that the first piece of land adjacent to the road was purchased by the Plaintiff from the very same Defendant on 12.06.2014, which is registered as Doc.No.1909 of 2014 and marked as Ex.A2 and thus the Plaintiff is the owner of the first piece of land, adjacent to the western side of the road. With regard to the second piece of land on the western side, suit in O.S.No.47 of 2018 (AS.No.585 of 2023) was filed. Since the trial of the two cases were conducted by two different Judicial Officers at Krishnagiri at different



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point of time, there was divergent view on the issue, one of the pleadings raised by the Defendant relates to the property, which is the subject matter of O.S.No.47 of 2018 (A.S.No.585 of 2023).

21.Had there been a joint trial or atleast simultaneous trial, such a divergent view would not have been possible. The respective advocates ought to have filed a memo for joint trial or atleast for simultaneous trial. For the reasons best known, the Suit in O.S.No.46 of 2018 was taken up by the Additional District Judge, Krishnagiri and the same was disposed on 23.04.2021. However, O.S.No.47 of 2018, which is a next suit, was taken by the Additional District Judge, Krishnagiri, and thereafter judgment was also pronounced on 23.03.2023. By that time the present Appeal was reape for argument.

22.Be that as it may, the learned counsel for the Plaintiff brought to the notice of this Court that initially argument was heard in A.S.No.363 of 2021 and judgment was reserved on 18.03.2024 and thereafter, in A.S.No.585 of 2023 arguments on both sides was heard and orders also reserved on 27.03.2024.



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23.Since separate trial was taken place, this Court has taken sufficient caution not to intermingle the evidence. However, taking note of the entirety of the circumstances and the pleas taken by the respective land owners, treating it as a simultaneous trial. Though not in strict sense of the terms, the judgment has been pronounced in both the A.S. on the same day, however, by separate judgment.

24.From the pleadings as well as oral and documentary evidences, it came to light that one Krishnan (Father) had two wives, he got two children viz., Raghu @ Raghunathan and Ambika through his first wife viz., Maheswari and another son Minor Kamalesh through his second wife viz., Selvi @ Kalaiselvi.

25.Raghu @ Raghunathan is the Defendant herein (A.S.363 of 2021 in O.S.No.46 of 2018 on the file of High Court of Madras). At the time of trial before the trial Court, Kamalesh was minor and later he was declared as major in the proceedings. The said Krishnan (Father) executed a gift deed in favour of Raghu @ Raghunathan (Son) (Ex.A1)



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to the extent of 59 cents, so also he had executed a gift deed in favour of his Minor son Kamalesh, (through the second wife), which is the subject matter of O.S.No.47 of 2018 (A.S.No.585 of 2023 on the file of High Court of Madras) and by settlement deed, he had executed a suit property in favour of the Defendant to an extent of 59 cents.

26.One Suit was filed by Ambika for partition, by alleging that the property as an ancestral property of Krishnan, in the said Suit notice was also served for both parties. Admittedly, O.S.No.3 of 2017 filed by the Sister of the Defendant is still pending.

27.Certified copy of the registered sale agreement dated 07.08.2014 entered between the present Plaintiff and Selvi @ Kalaiselvi, who is the step mother of the Plaintiff on behalf of the minor was marked as Ex.A18, which is admittedly subsequent to Ex.A3, the present suit sale agreement assumes significance.

28.For the sake of convenience, some of the pleadings and evidence of the parties are necessary for better appreciation of the factual



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position, in view of the rival submission made by the respective parties are reproduced here.

28(a).The lands of the Defendant is in two items and another item belonged to the Defendant's step brother by name Minor Kamalesh to an extent of 59 cents each situated abutting road and he felt that the same was fit for installation of Petrol pump as proposed. Finally the Plaintiff purchased an extent of 59 cents from the Defendant for a valid and valuable consideration of Rs.20,00,000/- by virtue of a sale deed dated 12.06.2014 in Doc.No.1909/2014 of Sub Registration Office Uthangarai.

28(b).As the land purchased from the Defendant alone was not enough for installation of petrol pump as per the specification and measurement required by the said Petroleum Company, the Plaintiff and Defendant also entered into an agreement of sale for the suit property on the same date of sale on 12.06.2014 and the said agreement of sale was registered as document No.1910/2014 of Sub-Registration office, Uthangari, which is next document to the above referred sale deed. The



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Plaintiff and Defendant have fixed sale consideration for the suit property as Rs.20,00,000/- i.e., same price as fixed for the land purchased, out of the same a sum of Rs.10,00,000/- was paid to Defendant as advance by cash and the balance sale consideration was agreed to be paid within a period of 11 months. Though the Plaintiff was able to pay the remaining consideration and get sale deed for suit property also, the Defendant's father Mr.Krishnan assured the Plaintiff that he will arrange to get land from his another son Minor Kamalesh.

28(c).The Plaintiff both in the pleadings as well as in the evidence stated that the Father of the Defendant assured to get other piece of land, which he gifted to his minor son Kamalesh, through his second wife Selvi @ Kalaiselvi. Since it is a minor's property, he have to get permission to sell the property from the competent civil Court viz., the District Court, Krishnagiri and required time. It is a specific evidence of DW1 that the Selvi @ Kalaiselvi, who is the step mother of the Defendant and biological mother of the minor Kamalesh has not informed about the filing of GWOP and orders passed therein on the legal notice expressed by her.



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29.In this regard, the Plaintiff has marked Ex.A12 legal notice issued by the Plaintiff to Selvi @ Kalaiselvi dated 02.06.2015, reply notice by Selvi @ Kalaiselvi to Plaintiff as Ex.A13, reply notice issued by the Plaintiff's counsel as Ex.A14, rejoinder by Selvi @ Kalaiselvi as Ex.A15 and rejoinder by Plaintiff as Ex.16, along with copy of order in GWOP.No.76/2014 in Ex.P.19.

30.On perusal of Ex.A18 registered sale agreement entered between the Plaintiff and Selvi @ Kalaiselvi and legal notice exchanged between the parties viz., Ex.A12 to Ex.A16 along with Ex.A7/copy of plaint filed by the Sister of the Defendant in O.S.No.3 of 2017 before the Sub Court, Uthangarai, reveals that the family members of the Defendant are taking the law into their own hands, for the reasons discussed infra.

31.Admittedly, the property initially belongs to Krishnan (Father). Pursuant to Ex.A1/gift deed, 59 cents was given to his son/Defendant born through his first wife, another piece of land was given to another son born through his second wife. Respective agreement



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of sale was entered in respect of the minor property on 07.08.2014, as could be seen from Ex.A18. Whereas the present suit's agreement Ex.A3 is dated 12.06.2014 and therefore, this Court finds that the contention of the learned counsel for the Appellant/Defendant that Ex.A3, is entered only as a security for completion of Ex.A18/sale agreement, cannot be true. Since Ex.A.18 was in August 2014, which is two months subsequent to the suit sale agreement Ex.A3, hence, such a contention put forward by the Defendant could not be countenanced, for the simple reason that on the date entering into Ex.A3, Ex.A18 has not come into force. Ex.A18, came into force only two months thereafter. Hence, at the outset, on *ex-facie* it has to be thrown out at the threshold. A similar finding rendered by the trial Court is well stated and well merited.

32.Ex.A3, was registered on 12.06.2014. PW2/Shanmugam is the attester and it was duly registered before the Registrar Office, concerned. The evidence of PW2 is clear and cogent as to the coming into existence of Ex.A3 and he has also spoken about the sale deed executed by the Defendant in favour of the Appellant in respect of the land immediately adjoining the road under Ex.A2 and hence, this Court is



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of the considered view that Ex.A3 is true and valid. As per the terms of the agreement as discussed supra, a sum of Rs.10,00,000/- has been paid as an advance and balance of Rs.10,00,000/- has to be paid within a period of eleven months.

33.Learned counsel for the Appellant denied the intention behind Ex.A3 and ready and willingness on the part of the Plaintiff and made submission on the point of limitation.

34.On perusal of Ex.A3 and Ex.A4 this Court finds that as per the sale agreement (Ex.A3), the total sale consideration is fixed as Rs.20,00,000/- (Twenty lakhs) and advance amount of Rs.10,00,000/- (Ten lakhs) was already paid. Balance of sale consideration of Rs.10,00,000/- (Ten lakhs) has to be paid within a period of 11 months from the date of agreement. On 15.04.2014, that is, well within a period of 11 months, Plaintiff issued legal notice (Ex.A4) to the Defendant calling upon him to execute the sale deed in his favour. Hence, Plaintiff has approached the Defendant within the agreement period and made a demand for execution of sale deed in his favour. However, by way of



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reply notice dated 25.04.2015 (Ex.A5) Defendant refused to execute the sale deed and further took a stand that the sale agreement (Ex.A3) was executed as a security for the advance paid by the Plaintiff for purchasing his minor brother's property and further denied the receipt of Rs.10,00,000/- (Ten lakhs) as advance.

35.Readiness and willingness:

PW1 in his evidence has clearly deposed that under Ex.A5/reply notice dated 25.04.2015, the Defendant chosen to aver false averment and hence, both the parties have approached the Panchayat. In this connection, evidence of PW1 and admission of DW1 in the cross examination assumes significance. PW1 in the cross examination has categorically admitted as follows:

“முதன் முதலில் நிலம் பார்த்த போது ஒரு மைனர் சொத்து, இரண்டு மேஜர் சொத்து ஆகியோர்களுடைய சொத்துக்கள் தலா 59 செண்ட் எனக்கு கிரயம் செய்து கொடுப்பதாக சொன்னார்கள்.”

“அந்த கிரய ஒப்பந்தத்தை எழுதிய தேதியிலேயே கிரயம் வாங்கியிருக்கலாம் என்று சொன்னால் மைனர் சொத்து நடுவில் இருந்தபடியால் என்னால் மொத்த சொத்தையும் வாங்க



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முடியவில்லை. மைனர் சொத்தையும் சேர்த்து கிரயம் வாங்குவதற்காக முன்பே பணம் கொடுத்தேன் என்று சொன்னால் சரியில்லை. கிரய ஒப்பந்தத்திற்கு பின்பு தான் மைனர் சொத்தை கிரயம் வாங்க பணம் கொடுத்தேன்.”

“மைனர் சொத்தை கிரயம் வாங்குவதற்காக 07.08.2014-ல் ஒப்பந்தம் போட்டுள்ளேன் என்றால் சரிதான். தாவா கிரய ஒப்பந்தப்படி 11 மாதத்திற்குள் மீதி தொகையை செலுத்தி கிரயம் செய்து கொள்ள வேண்டியது என்றால் சரிதான். இந்த கிரய ஒப்பந்தப்படி 11 மாதத்திற்குள் நான் எந்த நடவடிக்கையும் எடுக்கவில்லை. 2015 ம் வருடம் 10வது மாதம் தான் நான் நோட்டீஸ் அனுப்பினேன்.”

“பஞ்சாயத்தார் யார் என்றால் திருப்பத்துரில் டி.கே. ராஜா, எஸ். ராஜேந்திரன் என்பவருடைய ஆள், ஜிம் மோகன் அவர்களுடைய ஆள் ஆகியோர்கள் பேசினார்கள். கம்யூனிஸ்ட் ராதா மற்றும் கொம்பு கோவிந்தன், பூபதி, திமுக எம்.சி ஆகியோர் போய் பேசினார்கள். என் தரப்பில் நானும், வேடியப்பன், சண்முகம் ஆகியோரை நான் கூட்டிப்போனேன்.”

The Plaintiff in the cross examination has admitted as follows:

“நான் என்னுடைய வங்கி கணக்கில் சொத்து வாங்குவதற்கு போதுமான பணம் இருந்தது என்பதை காண்பிப்பதற்காக தற்போது வாதி தரப்பு சான்றாவணம் 20



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முதல் 23 வரையான ஆவணங்களை தாக்கல் செய்துள்ளேன்.”

“நந்தனம் கிளை சின்னிகேட் வங்கி கிளையில் ஓவர் டிராப்ட் நாற்பதைந்து லட்சம் வரை எடுக்கலாம். அந்த வங்கி கிளையில் எனது அக்கவுண்டில் பணம் இல்லாவிட்டாலும், நாற்பதைந்து லட்சம் வரை பணம் எடுக்க முடியும் என்றால் சரி.”

(emphasis supplied)

PW2/attestor of the suit sale agreement has clearly deposed as follows:

“மூன்று பகுதியாக தலா 59 செண்ட் நிலம் இருந்தது. அதில் 1 பகுதியான 59 செண்ட் நிலத்திற்கு விலை பேசினோம். பேசிய அன்றே கிரயம் முடிந்துவிட்டது. அன்றே மற்றொரு 59 செண்ட் நிலத்திற்கும் ரகுநாதனிடம் கிரயம் பேசி கிரய அக்ரிமெண்ட் போடப்பட்டது. அதனுடைய விஸ்தீரணம் எவ்வளவு என்றால் அதுவும் 59 செண்ட்தான். மூல பத்திரத்தை நான் பார்க்கவில்லை வாதி ஜெயபால் பார்த்தார்.”

“அன்றைய தினம் நான் கிரய பத்திரத்திலும், கிரய அக்ரிமெண்டிலும் சாட்சி கையெழுத்து போட்டேன். கிருஷ்ணாவின் இரண்டாவது மனைவி கலைச்செல்வி மகன் கமலேஷ் ஆகியோர் நிலத்தை வாங்குவதற்கு அன்றைய தினம் ஒப்பந்தம் எதுவும் போடவில்லை. ஜெயபால் கிரயம் வாங்கிய நிலத்திற்கு அடுத்தது கமலேஷ் நிலம் என்றால் சரி. கமலேஷ் நிலத்தை வாங்குவதற்கு வாதி ஜெயபால்



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அக்ரிமெண்ட் போட்ட விடயம் தெரியுமா என்றால் ஜெயபால் சொல்லி தெரியும்.”

“கிரய ஒப்பந்தத்திற்காக பத்துலட்சம் ரூபாய் அட்வான்ஸ் கொடுத்தார். பணமாக கொடுத்தாரா, செக்காக கொடுத்தாரா என்றால் பிரதிவாதியிடம் பணமாகதான் கொடுத்தார்.”

“கிரய அக்ரிமெண்டில் கிருஷ்ணன் சாட்சி கையெழுத்து போட்டிருக்கிறாரா என்றால் கிருஷ்ணனின் மகள் சாட்சி கையெழுத்து போட்டிருக்கிறார் அவர் பெயர் தெரியவில்லை.”

DW1 in the cross examination has admitted as follows:

“தாவா கிரய ஒப்பந்த பத்திரத்தில் என் தகப்பனார் இரண்டாவதாக சாட்சி கையெழுத்து செய்திருக்கிறார் என்றால் சரி கிரய ஒப்பந்த பத்திரத்திற்கு பின்னிட்டு நானும், என் சித்தியும், என் தகப்பனாரும் ஒப்புக்கொண்ட கிரய \_\_\_\_\_ தொகையைவிட அதிகமாக பணம் கொத்தால் தான் கிரயம் \_\_\_\_\_ செய்து கொடுப்போம் என்று சொன்னோம் என்றால் சரி”

(emphasis supplied)

“கிரய ஒப்பந்த பத்திரத்திற்கு பின்னிட்டு தாவா சொத்தை வேறு நபர்களிடம் விற்பனை செய்வதற்கு சொல்லியிருந்தேன் என்றால் குடும்ப கஷ்டத்திற்காக பணம் தேவைப்பட்டது அதனால் சொல்லியிருந்தேன். வாதியிடம் கிரய



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ஒப்பந்தம் பேசி பதிவு செய்த பிறகு அதை விட அதிக கிரய  
தொகை கிடைக்கும் என்பதற்காக வேறு நபர்களிடம் தாவா  
சொத்தை கிரயம் செய்ய பேசினேன் என்றால் சரி வாதிக்கு  
நான் முன்றாம் நபர்களிடம் சொத்தை விற்பனை செய்ய  
பேச்சுவார்த்தை நடத்தி வருவது தெரிந்த பிறகு 15.04.2015இல்  
வழக்கறிஞர் மூலம் நோட்டீஸ் அனுப்பினார்.”

(emphasis supplied)

“25.04.2015-இல் நான் அனுப்பிய பதில் நோட்டீஸில்  
தான் முதல் முறையாக ஐந்து லட்சத்தை வாதியிடமிருந்து என்  
தகப்பனார் பெற்றுக் கொண்டதாகவும் அந்த பொறுப்புக்காக  
கிரய அக்ரிமெண்ட் ஏற்பட்டதாக சொல்லியிருக்கிறேன் என்றால்  
சரி”

“பதினொரு மாத கால அவகாசம் முக்கியமான  
சரத்து இல்லை என்றாலும், மைனார் சொத்தை கிரயம் செய்ய  
நீதிமன்ற அனுமதி பெற வேண்டும் என்பதற்காக போடப்பட்ட  
சாதாரண நிபந்தனை என்றால் சரி”

(emphasis supplied)

“கிரய ஒப்பந்த தேதியிலிருந்து இன்றைய தேதி வரை  
பாக்கி தொகையை செலுத்தி கிரயத்தை பூர்த்தி செய்து  
கொள் தேவையான பண வசதி வாதியிடம் உள்ளது என்றால்  
சரி”

(emphasis supplied)



“06.08.2015 அன்று என் சித்தி மைனர் சொத்து குறித்து வழக்கறிஞர் மூலம் வாதிக்கு நோட்டீஸ் அனுப்பினார் என்றால் சரி”

“கிரய அக்ரிமெண்ட் போட் காலத்தை விட சட்ட அறிவிப்பு அனுப்பிய காலத்தில் சொத்து மதிப்பு குறைந்துவிட்டதாக சொல்லியிருக்கிறார் என்றால் சரி அந்த சட்ட அறிவிப்பில் கார்டியன் ஒபி.76.2014இல் 24.11.2014இல் நீதிமன்றம் மைனர் சொத்தை விற்பனை செய்ய அனுமதி கொடுத்த விவரத்தை முதல் முறையாக சொல்லியிருக்கிறார் என்றால் சரி”

(emphasis supplied)

“ஒரு இலட்சத்து நாற்பத்தொராயிரம் ரூபாய் கிரயத்தொகை கொடுத்தால் தான் தாவா சொத்தையும், மைனர் சொத்தையும் கிரயம் செய்து கொடுப்போம் என்று வாதியிடம் சொன்னோம் என்றால் சரி வாதி சொத்து குறித்து கிரய அக்ரிமெண்ட் போட்ட போது இருந்த மார்க்கெட் மதிப்பிற்கு தான் கிரய தொகை செலுத்த முடியும் என்று சொன்னார் என்றால் சரி கிரய ஒப்பந்தப்படி பாக்கி தொகையை வாங்கி கொண்டு தான் கிரயம் செய்து கொடுக்க கடமைபட்டுள்ளோம் என்றாலும், அதைவிட அதிக கிரயத்தொகை கேட்க முடியாது என்றால் சரி அதிக கிரய தொகை கேட்டதால் பஞ்சாயத்து நடந்தது என்றால் சரி



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அந்த பஞ்சாயத்தில் வண்டிகாரன் கொட்டாயை சேர்ந்த தண்டபாணி, சண்முகம், ஆட்டுகாரன் கொட்டாயை சேர்ந்த கணேசன், கோவிந்தன், ராமநாதன் (என் தங்கை கணவா) ஆகியோர் கலந்து கொண்டார்கள் என்றால் சரி அந்த பஞ்சாயத்தில் எந்த முடிவும் ஏற்படாததால் ஒத்தி வைத்து விட்டார்கள் என்றால் சரி அந்த பஞ்சாயத்திற்கு பிறகு 01.09.2015 அன்று நான் கிரயம் செய்து கொடுத்த சொத்து, மைனர் சொத்து, தாவா சொத்து ஆகியவற்றில் தனக்கு பாகம் உண்டு என்று என் சகோதரி அம்பிகாவை வைத்து ஒரு வழக்கறிஞர் நோட்டீஸ் அனுப்பினோம் என்றால் அது அம்பிகாவே அனுப்பிய நோட்டீஸ். நான் அனுப்பும்படி சொல்லவில்லை. மேற்படி சொத்துக்கள் அனைத்தும் என் தந்தை வழி தாத்தா கோவிந்தனுக்கு அசைண்மெண்ட் மூலம் கிடைத்த தொத்து என்றால் சரி என் தாத்தா கோவிந்தனுக்கு அசைண்மெண்ட் மூலம் கிடைத்த சொத்து என்பதால் அவருக்கு பிறகு என் தந்தைக்கும், என் தந்தை எனக்கும், கமலேசுக்கும் தான செட்டில்மெண்ட் பத்திரம் எழுதி வைத்திருப்பதால் எனக்கும், என் தம்பிக்கும் பாத்தியப்பட்ட சொத்து என்றால் என் சகோதரி அம்பிகாவிற்கு அந்த சொத்தில் பாத்தியம் இல்லை என்றால் சரி”

(emphasis supplied)



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36.In view of the admissions of the parties, independent witness PW2 & DW1 (Plaintiff) touching upon the issues to be determined in the appeal and also considering the rival submissions made by the parties, I find that in view of certain averments made in Ex.A15/reply notice, there was a panchayat and in the said panchayat, the Defendant agreed that he entered into a sale agreement under Ex.A3 with the intention to sell, as could be seen from version of PW3/one of the Panchayatar, (whose presence has been admitted by PW1 in the cross examination) and DW1/Defendant as well, assumes significance. Hence, efforts taken by the Plaintiff through Panchayat to get the sale deed registered in his name shows that the Plaintiff/Respondent took maximum efforts to get sale registered in his name. Appellant as DW1, admitted that Panchayat was conducted since he demand more money than agreed amount, assumes significance.

37(a).Reliance was placed upon the Division Bench judgment of this Court in the case of ***S.Deivanai and others Vs. V.M.Kothandaram*** and others reported in ***2017 (4) CTC 734*** to show that minor delay or latches may not be a ground for refusing to give relief of specific



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performance, insofar as the Plaintiff is able to convince the Court by positive evidence for conduct of panchayat and delay has been properly explained, the relief of specific performance shall be granted.

37(b).Therefore this Court finds that the above ruling of the Division Bench of this Court squarely applicable to the case in hand and the Plaintiff has successfully demonstrated the same before this Court, that there was a panchayat as admitted by PW1 in the cross examination and one of the panchayattar is PW3. Their presence was admitted by DW1 in the cross examination and the panchayat has become futile and failed to give result and hence, the Plaintiff has filed suit for specific performance on 22.03.2018. Hence, this Court finds that minor delay in filing the suit was properly explained by PW3, (one of the panchayatar) which was admitted by DW1 in the cross examination.

38.The trial Court has rightly come to the conclusion that in view of the admission of PW2 as well as Defendant in the capacity of DW1 that sincere and positive efforts have taken by the Plaintiff from the time of entering into agreement till the filing of the suit for the



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registration of sale deed. Further PW3/one of the panchayatar has categorically stated that apart from the advance amount of Rs.5,00,000/- further sum of Rs.2,00,000/- over and above the agreed amount was demanded by the Defendant, the was not refuted by DW1 in his evidence assumes significance. Hence, the contention of the learned counsel for the Respondent/Plaintiff that since the Defendant/Appellant demanded extra and higher amount than the agreed amount, sale could not be completed is found to have force.

39.It is a specific evidence of PW3 (one of the panchayatar) that the Defendant/Raghu @ Raghunathan had demanded more amount than agreed amount in the panchayat. He is one of the panchayatar along with Dhandapani, Shanmugam, Ganesan of Attakaran Kottai Govindan and Ramanathan (who is none other than the husband of the Sister of the Defendant, who subsequently filed partition suit as mentioned earlier). Since additional amount and extra amount over and above the agreed amount was asked, the panchayat has become futile. There is no explanation forth coming, never ever any denial by the Appellant/Defendant, assumes significance.



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40.The version of DW1 goes to show that it is at the instance of the Appellant/Defendant alone, the sale deed could not be ripped into a sale deed and hence this Court finds the delay in completion of sale transaction only due to the Defendant as discussed supra, and the intention of the Plaintiff is proved in the manner known to law. Consequently, this Court holds that willingness on the part of the Respondent/Plaintiff stands proved.

41.Further, from the time of entering into the sale agreement (Ex.A3) Plaintiff has again and again approached the Appellant/Defendant and insisted for registration of sale deed. Whereas it was the Defendant, who kept postponing the same stating that once court permission is obtained with respect to his minor step brother's property, both the properties will be registered in favour of the Plaintiff at the same time. The same has been admitted by the Defendant in his Cross examination as follows:

“மைனர் சொத்தை கிரைய அக்ரிமென்ட் போடும் போது  
நீதிமன்றத்தில் மைனர் சொத்து குறித்த அனுமதி பெற



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தேவைப்படுவதாக சொல்லி வாதியிடம் வெற்று தாள்களில் கலைச்செல்வி கையெழுத்து பெற்றார் என்றால் சரி, இந்த விற்பனையை பொறுத்த மட்டிலும் நானும், எனது சித்தி கலைசெல்லியும், எனது தகப்பனார் சொன்னபடி தான் நடந்து கொண்டோம் என்றால் சரி பெட்ரோல் பங்கு அமைக்க வேண்டும். அதனால் தாவா சொத்தை கிரையம் செய்து கொடுக்கும்படி வாதி கேட்ட போது நான் மைனர் சொத்து குறித்து நீதிமன்ற அனுமதி பெற்ற பிறகு தாவா சொத்தை கிரையம் செய்து கொடுப்பதாக சொன்னேன் என்றால் சரி வாதி தாவா சொத்தை கிரையம் செய்து கொடுக்க என்னை அணுகியபோது மைனர் சொத்து குறித்து நீதிமன்ற அனுமதி பெற வேண்டும் என்றும், அதனை பிறகு தாவா சொத்தை கிரையம் செய்து கொடுப்பதாக சொன்னேன் என்றால் சரி”

(emphasis supplied)

From the above admission of the Defendant, it is explicit that the Plaintiff has performed his part of contract by parting with advance amount and insisting the Defendant to register the sale deed. Whereas the Defendant kept postponing the same. The Defendant also admitted the case of the Plaintiff that he dragged on the request of Plaintiff to complete the sale transaction on the pretext that the Court permission to sell minor property is yet to come and asked the Plaintiff to wait for the same and promised



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to sell his property after court permission to sell minor property. This part of case of Plaintiff was put in as suggested, the DW1 has admitted in cross. The Defendant thereby admitted the Plaintiff case. Admission of fact averred by Plaintiff during cross examination of Defendant, by DW1 is best piece of evidence as per Section 54 of Evidence Act. Hence, the Plaintiff has established readiness and willingness on his part and the suit is filed within the period of limitation

42.Delay in filing the suit within the period cannot be a ground to refuse the relief of specific performance as held by the Hon'ble Apex Court in the case of ***R.Lakshmikantham Vs. Devaraji*** reported in **2019 (8) SCC 62**, wherein it is stated as follows:

*"11.The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the Defendant. The High Court also erred in holding that despite having the necessary funds, the Plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the Plaintiff to state that he was not*



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*ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the Plaintiff”*

43.Ramanathan, (husband of Ambika who is sister of Defendant) has participated in panchayat. After failing of panchayat, it appears that the sister of the Defendant has filed a suit for partition in OS No.3 of 2017 on the file of the Sub Court, Uthangarai, claiming share in the suit schedule property. In the said Suit, the Defendant as well as Plaintiff are parties. In this connection DW1 admitted as follows:

“அதன் பிறகு நான், என் சித்தி, என் அப்பா ஆகியோர் சொல்லிக் கொடுத்து என் சகோதரி அம்பிகா ஊத்தங்கரை சார்பு நீதிமன்றத்தில் பாக்பிரிவினை கோரியும் கிரைய பத்திரம் கிரைய ஒப்பந்த பத்திரம் செல்லாது என்று விளம்புகை செய்ய கோரியும் அசல் வழக்கு 3/2017 என்ற வழக்கை தாக்கல் செய்தார் என்றால் அது அவருடைய சொந்த விருப்பம் நாங்கள் சொல்லி வழக்கை தாக்கல் செய்யவில்லை. அந்த வழக்கை வாதி மட்டும் தான் நடத்தி வருகிறார் என்றாலும் நானும் என் அப்பாவும் என் சித்தியும் அந்த வழக்கில் ஆஜராகாமல் ஒருதலைபட்சமாகப்பட்டுள்ளோம் என்றால் சரியல்ல நாங்களும்



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வக்கீல் வைத்து வழக்கு நடத்தி வருகிறோம் அந்த வழக்கில்  
பதில் மனு போட்டுள்ளோம் என்ன பதில் மனு போட்டுள்ளோம்  
என்றால் என் தங்கைக்கு பாகம் உண்டு என்று பதில் மனு  
போட்டு உள்ளோம்”

44.DW1 admits in his cross examination that he has filed written statement in the said suit stating that his sister has got share in the suit schedule property. Such stand taken by the Defendant in the said suit discloses that Defendant colludes with his sister and has filed the above suit. In this connection, it remains to be stated that the sister of the Defendant was present in the Sub Registrar office at the time of registration of sale agreement dated 12.06.2014 (Ex.A3) and has signed as a witness in the sale deed dated 12.06.2014 (Ex.A2) which was also registered at the same time. Hence the sister of the Appellant/Defendant was aware of Ex.A3 on 12.06.2014 itself. Whereas she filed the suit only in the year 2017, after the failure of panchayats conducted to pacify the Appellant/Defendant to execute the sale deed in favour of the Plaintiff. Besides the husband of the Sister of Appellant/Defendant was also participated in the said Panchayat.



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45.Further more, the father of the Defendant settled the entire extent of the suit schedule property in favour of the Defendant and hence he is the owner of the entire extent of the suit schedule property measuring to an extent of 59 cents and hence this Court has no hesitation to held that the sister of the Defendant has no right over the suit schedule property and the above suit has been filed by the sister of the Defendant only with an intention to defeat the right of the Plaintiff.

46.Financial capacity:

On the point of financial capacity of the Plaintiff to pay the balance sale consideration, my attention was drawn to Ex.A17/account statement of the Plaintiff issued by Karur Vysya Bank, T.Nagar Branch. The Respondnet/Plaintiff is financially capable of purchasing the suit schedule property and the same is explicit from the fact that on the date of entering into the sale agreement (Ex.A3) the Plaintiff purchased adjacent property from the Defendant by way of sale deed dated 12.06.2014 (Ex.A5) by paying a sum of Rs.20,00,000/- as total sale consideration. On the same date, the present sale agreement (Ex.A3) has been entered by



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paying an advance amount of Rs.10,00,000/-, out of total sale consideration of Rs.20,00,000/-. Hence on 12.06.2014 itself, the Plaintiff paid a sum of Rs.20,00,000/- as total sale consideration for purchasing the adjacent property along with a sum of Rs.10,00,000/- as advance for the suit schedule property. Hence the Plaintiff paid a sum of Rs.30,00,000/- to the Defendant and only a sum of Rs.10,00,000/- was the balance amount which is to be paid by the Plaintiff. Even the said Rs.10,00,000/- has been deposited by the Plaintiff before the trial Court on 30.04.2021 as directed by the trial Court by way of judgment and decree dated 23.04.2021.

47.Further more, the Defendant as DW1 has admitted as follows:

“வாதி என்னிடம் கிரையம் பெற்ற சொத்திலும் கிரைய அக்ரிமெண்ட் போட்ட சொத்திலும் பெட்ரோல் பங்க் அமைக்க லைசன்ஸ் வாங்க போவதாக வாதி என்னிடம் சொன்னால் என்றால் சரி, வாதி படைத்த செல்வாக்கு உள்ள நபர் என்றாலும் அவர் நினைத்தால் கிரைய அக்ரிமெண்ட் போட்ட தேதியிலேயே முழு கிரைய தொகையையும் கொடுத்து கிரையத்தை பதிவு செய்து கொண்டிருக்கலாம் என்றாலும்



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மைனர் சொத்தை கிரையம் பெற வேண்டும் என்பதற்காக  
அன்றைய தினம் கிரைய அக்ரிமென்ட் மட்டும் போடப்பட்டது  
என்றால் சரி

...

கிரைய ஒப்பந்த தேதியிலிருந்து இன்றைய தேதிவரை கிரைய -  
பாக்கி தொகையை செலுத்தி கிரையத்தை பூர்த்தி செய்து -  
கொள் தேவையான பணவசதி வாதியிடம் உள்ளது என்றால் -  
சரி மைனர் சொத்தை கிரையம் செய்து கொடுக்க நீதிமன்ற  
அனுமதி பெற வேண்டும் என்று என் சித்தியும், என் அப்பாவும்  
கால தாமதம் செய்ததால் வாதி 02.06.2015 அன்று வழக்கறிஞர்  
மூலம் நோட்டீஸ் அனுப்பினார் என்றால் சரி”

(emphasis supplied)

In short, the Appellant as DW1, admitted the Plaintiff has sufficient means to pay the balance of sale consideration. Admission of DW1 is best piece of evidence for the Plaintiff's case. The above admission of the Defendant shows that the Plaintiff has financial capacity to purchase the suit schedule property.

48.As extracted supra, the Plaintiff in his chief examination has categorically deposed that on the date of filing of the suit, he has two



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bank accounts and Ex.A11, account statement has been filed and Ex.A20 is the overdraft account statement of the Plaintiff in Syndicate Bank, Nandhanam Branch. Ex.A11 is the account statement relating to his account in Karur Vysya Bank, T.Nagar Branch, while Ex.A20 to Ex.A23 relates to overdraft account in the Syndicate Bank, Nandhanam branch. It is the specific evidence of PW1 that Ex.A20 and Ex.A21, which are overdraft account details is capable of drawing Rs.20,00,000/-, whereas, the balance of sale consideration is only Rs.10,00,000/-, as admitted by both the parties. Ex.A20 & Ex.A21 have been put to DW1 during cross examination and he had admitted the same as extracted supra. Hence, this Court finds that both the contentions raised by the Defendant as to the readiness and willingness to purchase the suit property are stands negative, in view of the exemplary document evidence Ex.A11, Ex.A20 to Ex.A23, coupled with admission of DW1 in the cross examination.

49.Though the learned counsel for the Appellant/Defendant focused upon Ex.A11 alone, admission of DW1 regarding financial capacity of Plaintiff and coupled with Ex.A20 to Ex.A23 relating to the Plaintiff account in Nandhanam Branch was conspicuously omitted by



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the Appellant/Defendant as pointed by the Plaintiff assumes significance.

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50. Thus, this Court finds that the Plaintiff after entering into an agreement of sale under Ex.A3 on 12.06.2014 waiting for the purpose of getting the permission in respect of sale of minor property, which is entered between the very same Plaintiff with the step brother of the Defendant under Ex.A18 on 07.08.2014. Since necessary orders has to be obtained for selling the minor's property, he was waiting. The step mother of the Defendant has not informed about the order made in GWOP.76 of 2004 by the learned District Judge in Ex.A19. When the Defendant claimed the excess amount, which resulted in panchayat as discussed supra, the terms of reference in panchayat and stand of the respective parties in panchayat, participation of the Plaintiff, Defendant and Defendant's sister's husband were duly spoken to by one of the panchayatar PW3 independent witness and the same was not disputed by the Defendant. Hence, the trial Court has rightly come to the conclusion that the date of the panchayat and result of the panchayat give raise to the continuous cause of the action.



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51.From the date of failure of the panchayat as spoken to by PW3, (independent witness-cum-panchayat) the Suit was immediately filed on 12.03.2018 and hence, Ex.A3/Suit sale agreement is valid and enforceable and the suit is filed in time and based upon the above discussion, in the preceding paragraphs, the Plaintiff has successfully demonstrated that he is ready and willing to perform his part of contract under Ex.A3. There was an understanding between the parties with regard to the piece of the land lying in between the Plaintiff's property and the suit property covered under Ex.A18, which is the subject matter of O.S.No.47 of 2018 (A.S.No.505 of 2023) and subsequently, the panchayat was resulted in, as the Defendant has demanded the enhanced amount over and above the agreed amount, resulted in panchayat, on its failure, suit was filed and same is held to be in time and hence, the points raised by the Appellant/Defendant are answered in negation against the Appellant/Defendant and in favour of the Respondent/Plaintiff.

52.It is to be stated that for getting the permission for running a Petrol bunk, either Plaintiff has to submit the lease deed with respect of the property or the registered sale deed for the land and hence, unless the



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sale deed is registered or lease deed is registered in respect of the suit property in the name of the Plaintiff, no application for getting permission to run petrol bunk can be made before the competent authority for the purpose of obtaining permission for petrol bunk.

53.On consideration of the documentary evidence and oral evidence, admission made by the independent parties shows that after entering into sale agreement (Ex.A3), the Appellant/Defendant, issued reply notice dated 25.04.2015 (Ex.A5) in which he refused to execute sale deed by denying the execution of Ex.A3 on the ground that it was only a security for the advance paid by the Plaintiff for purchasing minor's property. However, it is now demonstrated by the Respondent/Plaintiff that in the panchayat, the Defendant demanded more sale amount as against the agreed sale consideration in Ex.A3 and the Defendant demanded for more sale amount is admitted by the Defendant in his cross examination.

54.From the above oral evidence of Defendant (DW1) it is



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explicit that though the Defendant had denied execution of Sale agreement (Ex.A3) in the written statement, however in evidence as DW1 admitted that in panchayat he admitted the receipt of amount and admits to have executed sale agreement (Ex.A3) for the purpose of sale.

Whereas he demanded for more sale consideration as against the agreed amount. This conduct of the Appellant/Defendant shows that the Appellant/Defendant has not come to court with clean hands and in such circumstances, the trial court has rightly exercised the discretionary relief of specific performance in favour of the Plaintiff.

55.The equitable discretion to grant, or not to grant a relief of specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the Plaintiff so that discretion would be exercised judiciously in favour of the Plaintiff. At the same time, if the Defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.



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56.At the risk of repetition for the sake of clarity in the present case where the Defendant herein pleads that he never received any advance amount and the sale agreement (Ex.A3) was not entered with an intention for selling the suit schedule property and the same was only entered as a security for the agreement between the Plaintiff and his minor step brother with respect to his property. Whereas in the cross examination, he admits that he received advance amount and the sale agreement (Ex.A3) was entered with an intention to sell the property to the Plaintiff. Hence, I have no hesitation to come to the conclusion that the respective points raised above are answered in favour of the Plaintiff and against the Defendant and no merits in this case.

57.Various other grounds raised in the present Appeal is found to be without any pleadings before the trial Court (viz.,) without there being a statement in written statement and without adducing any oral evidence and document evidence, new plea cannot be raised by the Defendant at the Appellate stage. In the instant case, the Plaintiff is continuously approaching the Defendant in person as well as over phone



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and also through conduct of panchayat.

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58.In the result, the Appeal is devoid of merits and hence the Appeal is dismissed. Consequently, Judgment and Decree dated 23.04.2021 made in O.S.No.46 of 2018 on the file of the learned Additional District Judge, Krishnagiri is hereby confirmed. Time for execution of sale deed is four weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

23.07.2024

Index : Yes/No  
Neutral citation : Yes/No  
Speaking Order/Non-Speaking Order

*sai*

To  
The Additional District Judge,  
Additional District Court,  
Krishnagiri.



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**RMT.TEEKAA RAMAN, J.**

*sai*

Pre-delivery Judgment made in

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and

C.M.P.No.16516 of 2021

Dated: 23.07.2024