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A.S.No.730 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

A.S.No.730 of 2019

and

C.M.P.No.22123 of 2019

M.Shanmugasundaram

... Appellant

Vs.

1.Pandiyaraj

2.M.Jayashree

3.S.Manohar

... Respondents

Prayer : Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree of the III Additional District and Sessions Court, Coimbatore, made in O.S.No.127 of 2016, dated 28.06.2019.

For Appellant : Mr.V.Anand

For R2 and R3 : Mr.Siddarth Sridhar
for Mr.R.Bharath Kumar

For R1 : No appearance

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J U D G M E N T

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(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the decree and judgment passed by the learned III Additional District and Sessions Judge, Coimbatore, in O.S.No.127 of 2016, dated 28.06.2019, dismissing the suit for specific performance to enforce the sale agreement allegedly executed by the 1st defendant as Power Agent of defendants 2 and 3, dated 31.08.2005, the unsuccessful plaintiff in the suit has filed the above Appeal.

2.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The case of the plaintiff is as follows :

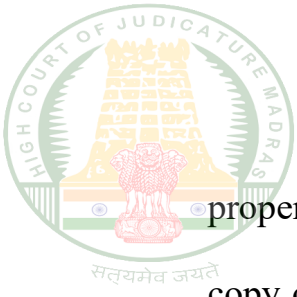
3.1.The suit properties belong to the defendants 2 and 3. The defendants 2 and 3 are husband and wife who were running chit and finance business under the banner of “Sowdambika Group of Companies”. They fell in financial crisis in the chit fund business as they failed to repay the deposit amount received from various depositors. Hence, proceedings were initiated



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against them by the Government of Tamil Nadu to attach the immovable properties of the defendants 2 and 3 and also the properties standing in the name of the Group of Companies owned by them. The defendants 2 and 3 appointed the 1st defendant as Power Agent by virtue of Power of Attorney, dated 09.04.2003, registered as Doc.No.640 of 2003. The Power Agent was appointed not only with the sole objective of representing the principals, but also to administer all other properties and to ensure that the properties are sold and the money due to the depositors are paid out of it. The defendants 2 and 3 also availed financial facility in respect of a portion of the suit property with third parties, besides depositing the title deeds pertaining to some of those properties with the 1st defendant with a view to make it available as security for the repayment of the financial facility availed by them for paying the creditors of “Sowdambika Group of Companies”.

3.2.While so, the 1st defendant impressed upon the plaintiff that an application has been filed before the High Court of Madras to raise the order of attachment in Crl.O.P.No.23546 of 2003 with the objective of selling the suit properties to the third parties and to utilize the proceeds from and out of the sale to pay the creditors and accordingly, offered to sell the suit



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properties to the plaintiff. At the time, the 1st defendant also produced the copy of the affidavit said to have been filed by the 2nd defendant before the High Court and made the plaintiff believe that, upon the attachment passed by the Government of Tamil Nadu being raised, the charge created over the suit properties by the defendants 2 and 3 with the third parties will be raised by paying them and the original documents pertaining to the properties will be released and the properties can be sold to the plaintiff free of all encumbrances. Thereby, the 1st defendant, being the Power Agent of defendants 2 and 3, entered into a sale agreement with the plaintiff on 31.08.2005. The sale consideration of A-Schedule property was fixed at Rs.50,00,000/-; and B-Schedule property was fixed at Rs.3,25,00,000/-, therefore, the total consideration was Rs.3,75,00,000/- and the 1st defendant received a sum of Rs.25,00,000/- as advance. The time agreed for performance of the obligation was fixed as one year from the date of the obligations agreed to be performed by the defendants 2 and 3.

3.3.It is the contention of the plaintiff that, as per the terms of the agreement, the plaintiff's obligation to enforce the sale agreement by being ready to pay the balance sale agreement will come into effect only upon the



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attachment passed by the Government of Tamil Nadu being raised and the charge created in respect of a portion of the suit property in favour of third parties being cleared and all the original documents in respect of the suit property being made available so as to satisfy the plaintiff that there is no encumbrance over the suit property. The 1st defendant was not readily available in the address given by him and after much enquiry, the plaintiff came to know that the 1st defendant was residing at Madurai and accordingly, the plaintiff sent a detailed letter, dated 20.03.2013, through his counsel and called upon the 1st defendant to execute the sale deed and also produce the original documents in respect of the suit properties. The 1st defendant gave a reply on 30.03.2013, which was bereft of particulars, but making it clear to the plaintiff that major portion of the original documents have not been released by defendants 2 and 3 to his knowledge from third parties, besides informing that the Power of Attorney given by the defendants 2 and 3 had been cancelled and the plaintiff should get the sale deed executed only from defendants 2 and 3 directly. The above reply forced the plaintiff to conclude that there was collusion amongst the defendants and the situation made the plaintiff believe as if the cancellation of the Power of Attorney by the defendants 2 and 3 executed in favour of the



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1st defendant, is nothing but a ploy to defeat the rights of the plaintiff.

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3.4.Since the attachment had already been raised and the defendants were making heavy preparation to encumber and alienate the suit properties, the plaintiff filed a suit in O.S.No.85 of 2013 on the file of the District Court, Tiruppur, seeking the relief of permanent injunction to restrain from the defendants from encumbering or alienating the suit properties. It is the contention of the plaintiff that the cause of action to enforce the sale agreement did not arise at that time. The plaintiff filed an application in I.A.No.346 of 2013 under Order II Rule 2 of Civil Procedure Code and an order of injunction was granted in I.A.No.347 of 2013 in the said suit.

3.5.Immediately, the very next day after filing of the injunction suit, the 1st defendant came and produced few documents pertaining to the loan availed by the defendants 2 and 3 from the 1st defendant, as evident by loan agreement executed on 26.12.2003, besides few original title deeds pertaining to the suit property. The 1st defendant, thereupon, informed that the loan availed by the defendants 2 and 3 from the 1st defendant was affirmed by the defendants 2 and 3 in the proceedings before the High Court.



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This apart, the defendants 2 and 3, along with their son, confirmed on

03.02.2005 that the earlier documents deposited are being substituted by

them by depositing some of the title deeds pertaining to a portion of the suit

property. The 1st defendant expressed his willingness to give the original

title deeds available with him in deference to the wish/request made by the

plaintiff, provided the money due to the 1st defendant is paid by the plaintiff.

The plaintiff, after having satisfied with the genuineness of the title deeds,

believed that the loan documents are true and paid a sum of Rs.1,12,56,000/-

towards interest for the loan of Rs.67,00,000/-, thus Rs.1,79,56,000/- in all,

to the 1st defendant, who assigned the loan agreement dated 26.12.2003 on

24.04.2015 in favour of the plaintiff. The plaintiff is entitled to deduct the

money paid to the 1st defendant out of the balance payable to the defendants

2 and 3. As such, according to the plaintiff, he had paid Rs.2,04,56,000/- in

total for the purchase of the suit properties. If for any reason the Court

comes to a conclusion that the plaintiff is not entitled to pay to the 1st

defendant and does not treat it as paid towards the balance sale consideration

payable by the plaintiff, in such circumstance, the plaintiff is ready to pay

the balance sale consideration payable in furtherance to the sale agreement

to the defendants 2 and 3. The period agreed for performance of the



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agreement is one year from the date when all the original documents pertaining to the suit properties are available and the order of attachment by the Government of Tamil Nadu is raised and upon all the original documents in respect of the suit properties being produced to the plaintiff for his perusal.

3.6.Though the defendants 2 and 3 filed a written statement in O.S.No.85 of 2013 contending that all the original documents pertaining to the suit properties are with them, the same is false, since some of the documents were in the custody of the 1st defendant and the same was delivered to the plaintiff upon the loan availed by the defendants 2 and 3 being assigned in favour of the plaintiff. The defendants 2 and 3 have disputed the genuineness of the sale agreement in the written statement filed by them as defendants 1 and 2 in O.S.No.85 of 2013. The plaintiff went to the house of the defendants 2 and 3 in person about two months before the filing of the suit and requested the defendants 2 and 3 to execute the sale deed and informed about some of the original title deeds pertaining to the suit property being available with him. The defendants 2 and 3 did not respond in a positive manner. Further enquiries revealed that the defendants



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2 and 3 have taken back the balance of the title deeds pertaining to the suit properties from third parties. The plaintiff contends that he was always ready and willing to comply with the obligations as per the contract. By pleading so, the plaintiff filed the present suit in O.S.No.127 of 2016 to enforce the sale agreement, dated 31.08.2005, in his favour. The plaintiff also filed another suit in O.S.No.347 of 2017 seeking permanent injunction restraining the defendants from in any manner creating any alienation or encumbrance over the suit properties by creating a third party interest.

4.The defendants 2 and 3 have filed a written statement stating the following :

4.1.The suit agreement has been executed by the 1st defendant with ulterior motive after the Power of Attorney, dated 09.04.2003, was cancelled by the defendants 2 and 3 on 13.01.2006. The present suit is filed with a sole intention to extract money fraudulently and harass the defendants 2 and 3. The suit is a brain child of the 1st defendant, who had created the purported sale agreement, ante dated, after the Power of Attorney in his favour was duly cancelled by the defendants 2 and 3. They admitted that, due to sudden recession in business, which created panic in the minds of the



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customers and the public who made deposits with the firm run by the defendants 2 and 3, there were innumerable pressure on the firms to repay the deposits at the premature stage. Though the firms repaid to the depositors, till 15.06.2002, on account of the premature payments demanded by the depositors, it created an artificial financial crisis. It is also submitted that a Scheme was framed by the High Court of Madras at the instance of the 3rd defendant who mobilized the funds to help the Court Receiver to settle the amounts to all the depositors with interest. The defendants 2 and 3 contend that their firms are the only firms who have repaid the 100% amount of entire deposits with upto date interest.

4.2. At the time of the said crisis, the 1st defendant, through middle men, approached the 3rd defendant and introduced himself and alleged that he knew a number of financiers who can support the firms to come out of the then artificial financial crisis. Though the 3rd defendant initially did not trust the 1st defendant, the 1st defendant started to canvass and at one point of time, due to the financial crisis and sudden pressure, the 3rd defendant, believing the sugar coated words, without completely knowing about the 1st defendant, executed a Power of Attorney dated 09.04.2003. The 1st



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defendant, with his empty words and on false promises, made the defendants

2 and 3 to execute the above said Power of Attorney in his favour, appointing him as their Power Agent. However, after execution of the said Power of Attorney, as promised, the 1st defendant failed to take any effect and fruitful steps to resolve the financial crisis of the firms. But strangely, by breach of trust, the 1st defendant, taking his status as Power Agent, started to act independently and indifferently by taking custody of the two wheelers, motors and other fittings and fixtures of the firms and sold them discretely to enrich himself by fraudulent ways and means. Noticing the illegal acts and the intention of the 1st defendant, the defendants 2 and 3, upon giving a warning, cancelled the Power of Attorney on 13.01.2006 to stop any further loss of their movable assets and to stop the illegal acts of the 1st defendant to enrich himself illegally.

4.3.However, the 1st defendant has created an ante dated sale agreement, dated 05.04.2004, allegedly entered with one P.Natarajan and another sale agreement, dated 31.08.2005, allegedly entered into with the plaintiff. According to the defendants 2 and 3, both P.Natarajan as well as the plaintiff are the henchmen of the 1st defendant. Both the agreements are



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created after cancellation of the Power of Attorney by the defendants 2 and

3. The 1st defendant, after cancellation of Power of Attorney on 13.01.2006, had not informed about the alleged agreement dated 31.08.2005 to the defendants 2 and 3, right from the creation of the same till filing of the suit in O.S.No.85 of 2013 for bare injunction before the Principal District and Sessions Court, Tiruppur, on a notional threat of sale of the plaint schedule properties. Only after the appearance in the said suit, the defendants 2 and 3 came to know about the fraudulent creation of the agreement dated 31.08.2005. It is obvious that the alleged sale agreement, dated 31.08.2005, was not in existence on the date of cancellation of the Power of Attorney and on the other hand, the same was created prior to the filing of the suit in O.S.No.85 of 2013 by putting ante date collusively by the 1st defendant and his henchmen, the plaintiff herein.

4.4.The defendants 2 and 3 would further contend that, at the instance of the 3rd defendant, a Scheme was framed by the High Court of Madras to settle the depositors and a Court Receiver appointed by the High Court vide its order dated 06.01.2004. All the properties of the firms, including the plaint schedule properties, were taken over by the Official Receiver. On



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account of the appointment of the Receiver, the very purpose of execution of the Power of Attorney was defeated, hence also, the Power of Attorney was cancelled on 13.01.2006.

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4.5.The 1st defendant, at the instance of the said P.Natarajan, based upon the purported agreement dated 05.04.2004, filed a bare injunction suit in O.S.No.2537 of 2007 before the District Munsif Court, Coimbatore. In the said suit also, the defendants 2 and 3 herein were shown as defendants 2 and 3. In the said suit, various properties of the defendants were part of the suit properties as Item Nos.1 to 8 and out of those 8 items, Items 1 and 8 are the properties of the present suit, i.e., O.S.No.127 of 2016. The suit in O.S.No.2537 of 2007 was dismissed for default on 17.12.2009.

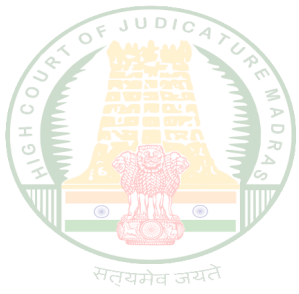
4.6.The defendants 2 and 3 would further contend that, though the 1st defendant had no connection after the cancellation of the Power of Attorney on 13.01.2006 either with the defendants 2 and 3 or any of their business concerns, pursuant to an injunction suit in O.S.No.2372 of 2007 on the file of the I Additional District Munsif Court, Coimbatore, filed by one S.V.Subramaniam who had funded the firms to resolve the issue and to settle



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the depositors, a Memorandum of Understanding (MoU) dated 21.12.2007

was executed between the 2nd and 3rd defendants and their son with the said S.V.Subramaniam and the 1st defendant namely D.Pandiaraj, O.Kasimayan, Padmanaban and Natarajan were collectively called Confirming Parties in the said MoU. The purpose of the MoU was with a clear intention to oust and keep away the 1st defendant and his men to give up all their rights on the agreements for sale in respect of the properties of the Company and personal. In the said MoU, certain clauses were incorporated emphasizing cancellation of any act, if done, on the strength of the cancelled Power of Attorney by the Confirming Parties, during the time when the Power of Attornies were in force. Further, the 1st defendant confirmed the factum of receipt of adequate consideration, apart from assuring all the parties that he had not encumbered in any of the plaint schedule properties. By signing the said MoU, the 1st defendant legally nullified his act done, if any, pursuant to the said Power of Attorney dated 09.04.2003. As per the said MoU dated 21.12.2007, a decree was passed in the suit filed by the said S.V.Subramaniam in O.S.No.2372 of 2007, on 28.04.2008.



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4.7.Hence, it is their contention that the above facts prove beyond doubt that the agreement dated 05.04.2004 and the agreement dated 31.08.2005 were created ante dated, by the 1st defendant hand in glove with his henchmen. The 1st defendant allegedly created the second agreement dated 31.08.2005 within a period of eight months from the alleged first agreement dated 05.04.2004 without cancelling the earlier agreement allegedly entered into by him with Natarajan. In the first fraudulent agreement dated 05.04.2004, the sale consideration for various items of the properties including the present plaint schedule properties was fixed at Rs.4 Crores and a reference was made to an alleged advance of Rs.2 Crores by way of cash, in the suit in O.S.No.2537 of 2007 filed by Natarajan. But strangely, in the second agreement for the plaint schedule properties alone, the sale consideration was fixed at Rs.3,75,00,000/- and a reference was made to an alleged advance of Rs.25,00,000/-. In both the agreements, the period was fixed as one year for due performance after raising the order of attachment, which speaks volumes about the collusion and willful fraud committed by the 1st defendant using the proxies and his henchmen. If really the agreement dated 31.08.2005 was in existence at the time of signing the



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said MoU dated 21.12.2007, the 1st defendant would have definitely divulged the same.

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4.8. Without prejudice to the above contentions, it is stated by the defendants 2 and 3 that the suit filed by the plaintiff is barred by limitation. That apart, O.S.No.85 of 2013 was filed for bare injunction on the threat of sale of schedule properties. Since the plaintiff had failed to obtain any leave to file a suit for specific performance, the present suit is barred by Order II Rule 2 CPC. The High Court of Madras, by its common order dated 06.01.2004, in CrI.O.P.No.23546 to 23551 of 2003 and CrI.M.P.No.6677 to 6684 of 2003, has dismissed the said petitions and appointed an Administrator to take over all the properties of the business concerns owned and managed by the defendants 2 and 3. The said order of this Court was very much prior to the alleged sale agreement dated 31.08.2005. However, the plaintiff and the 1st defendant, in collusion, prepared the alleged suit agreement.

4.9. It is contented by the defendants 2 and 3 that the plaintiff had no wherewithal to pay the sale consideration. Though it is stated by the



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plaintiff that a notice was allegedly sent by him through his counsel to the 1st

defendant, the 1st defendant had sent his reply directly to the plaintiff without sending a copy to the counsel for the plaintiff. Both the sale agreements have been created using the stamp papers purchased from a same stamp vendor. The stamp papers for the alleged suit agreement have been purchased at Tiruppur, whereas, the plaintiff is from Dindigul. The 1st defendant, who got the stamp papers in his name, has created the suit agreement ante dated to grab the properties of the defendants 2 and 3. The suit has been filed after more than 13 years from the date of the alleged sale agreement dated 31.08.2005. The alleged loan agreement, dated 26.12.2003, said to have been executed by defendants 2 and 3 in favour of 1st defendant and the alleged assignment/made over, is also not true. The defendants 2 and 3 are not liable to pay any money to the 1st defendant. Hence, they opposed the suit.

5.Both the suits filed by the plaintiffs in O.S.No.127 of 2016 (suit for specific performance) and O.S.No.347 of 2017 (injunction suit) were tried together by the trial Court.



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6. Based on the above pleadings, the trial Court has framed the following issues in the suit for specific performance in O.S.No.127 of 2016 :

1. *Whether the suit is hit by Order 2 Rule 2 CPC ?*
2. *Whether the suit agreement dated 31.08.2005 is true, valid and binding on the 2nd and 3rd defendants ?*
3. *Whether the suit is barred by limitation ?*
4. *Whether the plaintiff was ready and willing to perform his part of the contract ?*
5. *Whether the plaintiff is entitled for the relief of specific performance ?*
6. *To what other relief ?*

7. The following issues were framed by the trial Court in the injunction suit in O.S.No.347 of 2017 :

1. *Whether the plaintiff is entitled for the relief of permanent injunction ?*
2. *To what other relief, the plaintiff is entitled ?*

8. On the side of the plaintiff, P.W.1 to P.W.7 were examined and Exs.A1 to A66 were marked. On the side of the defendants, 3rd defendant was examined as D.W.1 and Exs.B1 to B9 were marked. Besides, Exs.X1 to



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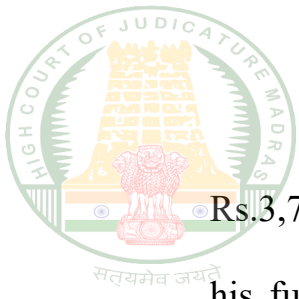
X5 were marked by P.W.4 as third party and Exs.C1 and C2 were marked as Court Exhibits.

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9.On appreciation of the entire evidence and materials on record, the trial Court, by its common judgment and decree dated 28.06.2019, rendered a finding that the suit agreement, dated 31.08.2005, is a result of fabrication and similarly, the alleged loan agreement, dated 26.12.2003, is also a fabricated one, only for the purpose of the suit and thereby, dismissed both the suits.

10.While no appeal has been preferred as against the dismissal of the suit for injunction, challenging the decree and judgment of the trial Court dismissing the suit for specific performance in O.S.No.127 of 2016, the plaintiff has filed the above Appeal.

11.Though various grounds have been raised in the present Appeal, the learned counsel for the appellant/plaintiff before this Court would mainly submit that the suit agreement, dated 31.08.2005, was executed by the Power Agent of the defendants 2 and 3 for a total sale consideration of



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Rs.3,75,00,000/- and a sum of Rs.25,00,000/- has been paid as advance. It is

his further contention that the properties of the defendants 2 and 3 were proceeded under criminal law for non-payment of the deposits received from various depositors and thereby, their properties were attached by the Government of Tamil Nadu in order to protect the interest of the depositors. Admittedly, the Power of Attorney was executed in favour of the 1st defendant to settle the financial crisis faced by the defendants 2 and 3. The suit agreement has been executed by the Power Agent only in order to settle the depositors and he received a sum of Rs.25,00,000/- as advance. Though one year time is agreed in the suit agreement, according to the learned counsel, since the attachment over the properties was not raised, till the attachment was raised, the plaintiff could not file the suit to enforce the contract. Therefore, it is his contention that the question of non-suiting the plaintiff on the ground of limitation, does not arise in this case.

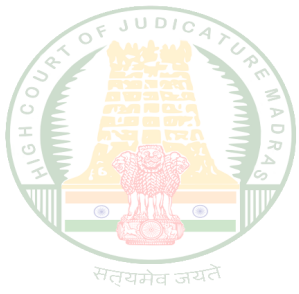
12.He would further submit that Ex.A19-loan agreement between 1st defendant and defendants 2 and 3 makes it clear that the defendants 2 and 3 have received a sum of Rs.67,00,000/- from the 1st defendant. The 1st defendant, in fact, has made over that loan agreement Ex.A19 in favour of



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the plaintiff. Therefore, the plaintiff has paid the amount to the 1st defendant along with interest to the tune of Rs.1,79,56,000/- and even in the event of the Court not believing the payment, the plaintiff is still ready to pay the entire amount towards balance sale consideration. Further, it is his contention that, though the plaintiff had earlier filed a suit in O.S.No.85 of 2013, Order II Rule 2 CPC will not come into play, since there was an attachment in the property and hence, there was no cause of action arising at the relevant point of time to file a suit for specific performance. Therefore, according to him, there cannot be any bar under Order II Rule 2 CPC.

13.The learned counsel would further submit that the evidence of P.W.1 to P.W.7 would clearly prove the documents. However, the trial Court has not appreciated the entire evidence and has non-suited the plaintiff. He would further contend that the act done by the Power Agent is binding on the defendants 2 and 3 and the defendants 2 and 3 cannot restrict the obligations on the alleged ground of collusion between the plaintiff and the 1st defendant. Hence, he prayed for a decree of specific performance.

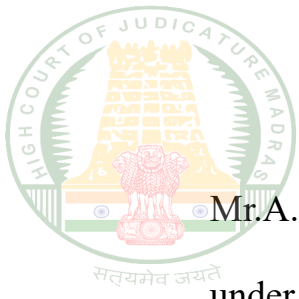


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14. Whereas, the learned counsel appearing for the respondents 2 and 3/defendants 2 and 3, would submit that the plaintiff is none other than the henchman of the 1st defendant. The learned counsel pointed out to the evidence of the plaintiff (P.W.1), wherein, he has stated that he is not aware of the name of the lawyer who filed the case at Tiruppur in O.S.No.85 of 2013; he is not aware of the written statement filed by the contesting defendants 2 and 3 in the said suit; and further, he is also not aware as to the nature of the Court fee paid by him. According to him, these facts clearly show that the plaintiff is only a name lender.

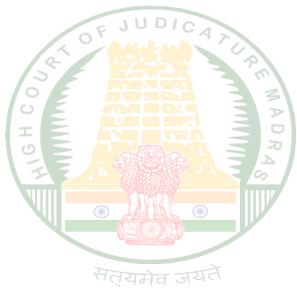
15. It is his further contention that the alleged legal notice Ex.A16 and the reply notice Ex.A17 were never issued and have been created only for the purpose of the suit. This contention of the defendants 2 and 3 has not even been denied in the chief examination of the plaintiff (P.W.1). Further, it is his contention that the plaintiff failed to produce the postal receipt for allegedly sending the legal notice under Ex.A16 and the postal cover for allegedly receiving the reply notice under Ex.A17. Further, in the cross-examination, the plaintiff (P.W.1) has admitted that he has not met



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Mr.A.Punjabakesan, who allegedly issued the legal notice on his behalf under Ex.A16. Further, the plaintiff does not even know who is his lawyer who prepared the plaint and filed the suit. Whereas, he asserted that he knew only one Mr.Balajee Sridhar who prepared the plaint. The learned counsel would point out from Ex.B3 which clearly shows that Mr.Balajee Sridhar is none other than the Advocate of the 1st defendant.

16.The learned counsel would further submit that the plaintiff's evidence also indicates that he is only a Labour Contractor and agriculturist. Absolutely, there is no evidence to show that the said huge sum has been parted by the plaintiff. Ex.C1 (Income Tax Returns filed by P.W.1) also clearly shows that the plaintiff had no other means to pay such huge amount. Sum and substance, the learned counsel would submit that the entire documents are ante dated and created at the instance of the 1st defendant and he would submit that the plaintiff has come to the Court with unclean hands. The trial Court has appreciated the entire evidence in a proper manner and therefore, the well reasoned judgment and decree of the trial Court warrants no interference and accordingly, the learned counsel prays for dismissal of this Appeal.



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17. In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

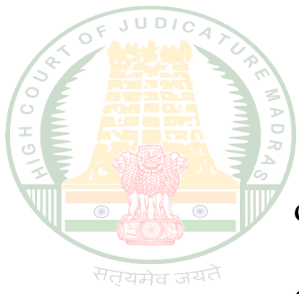
- i. *Whether the suit agreement dated 31.08.2005 (Ex.A18) is true and valid ?*
- ii. *Whether the loan agreement dated 26.12.2003 (Ex.A19) and the endorsements therein are true and valid in the eye of law ?*
- iii. *Whether the suit is hit by Order II Rule 2 CPC ?*
- iv. *Whether the suit is barred by limitation ?*
- v. *Whether the appellant/plaintiff is entitled to the relief of specific performance ?*

Point Nos.(i) and (ii):

18. The present suit has been filed to enforce the sale agreement said to have been executed by the 1st defendant on 31.08.2005 (Ex.A18) in the capacity of Power Agent of the defendants 2 and 3.

19. From the analysis of the pleadings and the evidence on both sides, the undisputed facts in this case are as follows :

- (a) The defendants 2 and 3 and their Group of Companies faced financial crisis due to non-payment of the deposits received from various



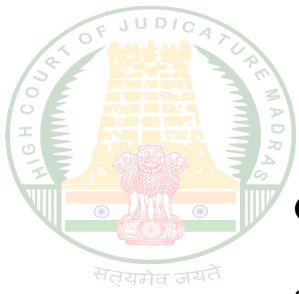
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depositors, which culminated into criminal proceedings for attachment of their properties.

- (b) When the defendants 2 and 3 were in financial crisis, to wriggle out from such issues, they executed a Power of Attorney dated 09.04.2003 under Ex.A14 appointing the 1st defendant as their Power Agent to deal with their properties.
- (c) The defendants 2 and 3 Group of Companies filed Criminal Original Petitions before this Court in CrI.O.P.Nos.23546 to 23551 of 2003 to quash the criminal proceedings against them and the order passed therein on 06.01.2004 is marked as Ex.B6. On perusal of the common order passed by this Court under Ex.B6, it is seen that, though this Court dismissed all the Criminal Original Petitions, stayed all further proceedings in the criminal prosecution till the finalisation of the administrative proceedings. The stay has been granted only for the purpose of settlement proceedings. By the said order, this Court appointed Mr.A.S.Muthusamy, District and Sessions Judge (Retd.) as Administrator of all the Companies of the defendants 2 and 3. The entire properties of the Companies of the defendants 2 and 3 vested with the Administrator to realise the amounts due to the Group of



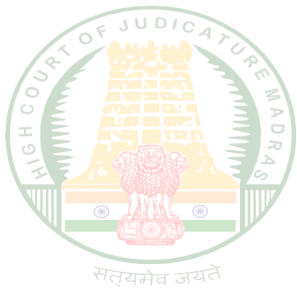
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Companies and to sell the assets as expeditiously as possible, accumulate the sums, and settle 100% of the claims of the depositors within a period of six months from the date of receipt of a copy of the order. Therefore, as early as on 06.01.2004 itself, the entire properties of the defendants 2 and 3 came into the control of the Administrator appointed by this Court.

- (d) In W.A.No.800 of 2006, the order of which is marked as Ex.C7, a Division Bench of this Court has recorded the fact that most of the claims are settled and has directed the Administrator to release some of the properties under attachment for sale of the properties to realise the amount by the depositors. This order has been passed on 28.08.2007.
- (e) These orders of this Court clearly show that the properties of the defendants 2 and 3 are already under attachment and under the control of the Administrator appointed by the High Court.
- (f) In view of the above and also on account of illegal intention of the Power Agent, the defendants 2 and 3 cancelled the Power of Attorney dated 09.04.2003 (Ex.A14) on 13.01.2006.



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20.It is the specific case of the plaintiff that the Power Agent has executed the suit agreement dated 31.08.2005 which is marked as Ex.A18. Subsequently, the plaintiff sent a letter dated 20.03.2013 (Ex.A16) to the 1st defendant through his counsel calling upon him to execute the sale deed. Whereas, the 1st defendant had sent a reply dated 30.03.2013 which is marked as Ex.A17 stating that a portion of the original documents had not been released by the defendants 2 and 3 and they had also cancelled the Power of Attorney executed by them in favour of the 1st defendant. Therefore, immediately, he filed the suit in O.S.No.85 of 2013 for bare injunction.

21.Even accepting the said contention of the plaintiff that the Power Agent/1st defendant had informed him about the cancellation of the Power of Attorney by his reply letter dated 30.03.2013 (Ex.A17) itself, it is clear that the plaintiff was aware of the fact that the defendants are not ready to execute the sale deed. Even then, instead of filing a suit for specific performance, the plaintiff has filed a suit for bare injunction in O.S.No.85 of 2013. This fact creates a serious doubt about the genuineness of the suit



agreement.

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22.It is further to be noted that, having executed the so-called agreement on 31.08.2005 and agreed to complete the transaction within one year after parting a huge amount of Rs.25 Lakhs, no man of ordinary prudence would wait without taking any action in this regard. The plaintiff has remained as a mute spectator all these years. For the first time, a legal notice is said to be sent by him through his counsel under Ex.A16 to the 1st defendant. Ex.A16 shows as if the same has been sent on 20.03.2013 to the 1st defendant, sent by a leading lawyer in Coimbatore, namely, Mr.A.Punjabakesan. However, the original copy of the legal notice has not been filed and only a photocopy has been filed. Ex.A17 is the photocopy of the reply notice dated 30.03.2013 said to have been sent by the Power Agent. It is relevant to note that, if really the agreement was genuine, the normal conduct of the parties would be to send the notice both to the Power Agent as well to the Principals. Whereas, the legal notice dated 20.03.2013 under Ex.A16 has been addressed only to the Power Agent and the reply notice under Ex.A17 is directly sent to the plaintiff. These facts also probabilises the defence theory that these documents have been created later for the



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purpose of the suit.

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23.The above fact is further fortified by the admission of the plaintiff (P.W.1) in his evidence. It is the specific stand of the 1st defendant in the written statement filed in O.S.No.85 of 2013 and also in the present suit that Exs.A16 and A17 have been created for the purpose of the vexatious suit. However, the said contention of the defendants 2 and 3 has not been denied even in the chief examination of the plaintiff. Whereas, the evidence of P.W.1 in the cross-examination shows that he does not remember whether he has seen the Advocate Mr.Punjapakesan and he also does not remember whether he has seen any Advocate in Damodara Centre, Avinashi Road. When he was confronted with Ex.A16 (legal notice), his reply was that, since Ex.A16 was in English, he is not able to say whether it was sent through lawyer or not. This fact creates a serious doubt about the legal notice, particularly, the exchange of notices between the plaintiff and the Power Agent. If really Ex.A16 was sent, the postal receipt or acknowledgment card ought to have been filed to show that the 1st defendant has received the said letter. However, neither the postal receipt nor the acknowledgment card is filed. This fact clearly probabilises the defence



theory that Exs.A16 and A17 have been created only for the purpose of the case.

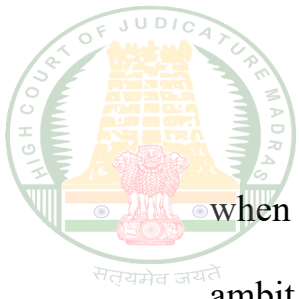
24.Further, it is pertinent to note that, even after knowing that the entire properties of the defendants 2 and 3 are attached by the Government and administered by the Administrator appointed by this Court, the plaintiff parting with a sum of Rs.25 Lakhs as advance on the basis of a sale agreement said to have been executed by the Power Agent of defendants 2 and 3 for the purchase of the properties under attachment, is also highly improbable. Further, even after the 1st defendant informing him about the cancellation of the Power of Attorney by the Principals/defendants 2 and 3, still on the basis of Ex.A19 stated to be the loan agreement dated 26.12.2003 said to have been executed by the defendants 2 and 3 to the 1st defendant, the plaintiff paying a huge amount of Rs.1,79,56,000/- to the 1st defendant on 24.04.2013 under the guise of assignment, is highly unbelievable. No person of ordinary prudence will pay such a huge amount of Rs.1,79,56,000/- on the basis of an alleged made over of the loan agreement under Ex.A19 on 24.04.2013. It is relevant to note that Ex.A19 is stated to be the loan agreement said to have been executed by the defendants 2 and 3



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in favour of the 1st defendant, on 26.12.2003. On a perusal of Ex.A19, it

reads as if it is in favour of Balaji Finance Services, whereunder, the defendants 2 and 3 are said to have received Rs.67,00,000/- from the Balaji Finance Services. Therefore, they have handed over the possession of the properties by depositing the title deeds. The entire document Ex.A19, when carefully seen, absolutely, there is no whisper, whatsoever, as to who is the partner of Balaji Finance Services and the document reads as if equitable mortgage is created and possession is handed over. The entire document Ex.A19 reads as if it is only as a mortgage deed. The very recitals of Ex.A19 show as if possession was handed over on the same day, besides depositing of the title deeds on the same day. The document does not whisper anything about the nature of title deeds. In any event, a reading of all the recitals in Ex.A19 clearly indicates that the document is not admissible in evidence and hit by Section 17 of the Registration Act, 1908. Any loan agreement made with deposit of title deeds and handing over of possession clearly shows that it is a usufructuary mortgage deed. Any mortgage in respect of immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, indicates transfer of interest in the immovable property and



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when possession is also delivered under the document, it comes within the ambit of usufructuary mortgage, which compulsorily requires registration.

Therefore, the document Ex.A19 cannot be looked into for any other purpose. Be that as it may.

25.It is the contention of the plaintiff that, since the 1st defendant has made over Ex.A19 to the plaintiff after receipt of Rs.1,79,56,000/- and has handed over all the six original documents, the said amount has also to be taken as sale consideration. This contention, in our view, cannot be countenanced for the simple reason that Ex.A19, when carefully seen, relates to deposit of only a single document in respect of a Bungalow in Tiruppur Binny Compound, Park Road, and there is no reference to any other document said to have been handed over. Whereas, the endorsement showing the alleged made over, dated 24.04.2013, shows as if six documents were handed over at the time of mortgage. This fact itself clearly contradicts the stand between the mortgage Ex.A19 and the assignment, which creates a serious doubt. When the very Ex.A19 document relates to only one property, mentioning six title documents at the time of the alleged made over on 24.04.2013 indicates that the endorsements were created later. Further, it

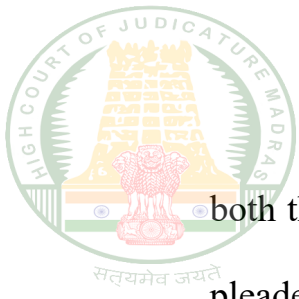


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is relevant to note that, when the properties of the defendants 2 and 3 were attached and under the control of the Administrator appointed by this Court, a person paying a huge amount of Rs.1,79,56,000/- by way of cash, is highly improbable and it probabalises the case of the defendants 2 and 3 that this document Ex.A19 has been created by the 1st defendant only for the purpose of the case in collusion with the plaintiff.

26.Further, it is to be noted that, in the pleadings, it is the specific case of the plaintiff that the so-called made over of the agreement Ex.A19 was made on 24.04.2015, whereas, in the so-called made over endorsement, the very endorsement in Ex.A19 showing the alleged made over shows that the made over is said to have been made on 24.04.2013. Therefore, this fact also creates a serious doubt about the very nature of the document.

27.Further, it is relevant to note that a person dealing with such huge properties which are more valuable and allegedly parting with a huge sum of Rs.1,79,56,000/-, is not even aware as to who is his lawyer who filed the case. At the risk of repetition, the plaintiff (P.W.1) in the cross-examination, has admitted that he does not even know the name of the lawyer who filed



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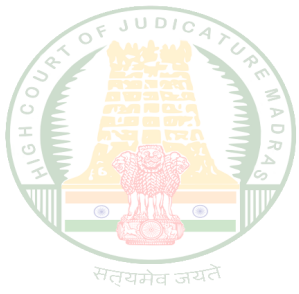
both the cases. When a question was put to him as to what was the defence pleaded in the written statement filed in his previous suit for injunction, he feigns ignorance. Further, he also feigns ignorance of the nature of the Court fee paid in the present suit for specific performance. He does not even know whether he paid in thousands or lakhs. Whereas, it is seen that the Court fee paid was to the tune of Rs.28,12,500/-. The evidence of the plaintiff (P.W.1) is against the normal human conduct. If a person is really interested in purchasing a property and has entered into an agreement, it is natural for any person to know what is the value of the property, what was the amount spent, atleast what was the nature of Court fee paid, who is the lawyer engaged, etc. The plaintiff is absolutely unaware of all these things. Further, though Ex.A16, the so-called notice issued by the plaintiff to the 1st defendant, shows as if it was sent through his Advocate Mr.Punjabakesan, the evidence of P.W.1 indicates that he has never met the said Mr.Punjabakesan. Further, to show that Ex.A16 was actually sent, neither the postal receipt nor acknowledgment card is filed. Though further cross-examination of P.W.1 shows that he once contacted Mr.Punjabakesan, where the Advocate informed the plaintiff that the 1st defendant has issued a reply notice for the legal notice, such contention is also false, since Ex.A17 (reply



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notice) was directly allegedly issued by the 1st defendant to the plaintiff and not to the Advocate Mr.Punjabakesan. As already discussed, the evidence of P.W.1 states that he met only Mr.Balajee Sridhar, Advocate at Tiruppur. He is none other than the lawyer who sent Ex.B3-alleged legal notice dated 19.10.2007 on behalf of the 1st defendant to Natarajan, the holder of alleged first sale agreement dated 05.04.2004. These facts also create serious doubt about Exs.A16 and A17.

28.Further, the evidence of P.W.1 clearly shows that he has not made any attempt even to know about the nature of attachment or encumbrance over the properties before entering into the suit agreement by parting with a huge amount of Rs.25 Lakhs. Though the defendants 2 and 3 also gave a notice under Order XII Rule 8 CPC on 26.07.2018 to produce the accounts to show the alleged payment of Rs.25 Lakhs, no account, whatsoever, has been produced by the plaintiff. This also clearly shows that the plaintiff's case is absolutely false and adverse inference has to be inferred as against the plaintiff.

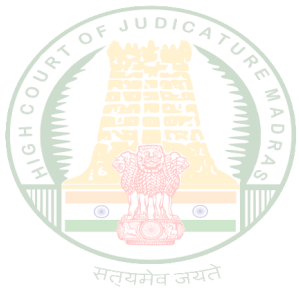


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29.Further, the evidence of P.W.1 clearly shows that he is an agriculturist. To show that the plaintiff has parted with a huge sum of Rs.1,79,56,000/-, he does not have any account books and it is not reflected in the Bank account. However, he has stated that he had pledged jewels and also borrowed the amount. He has also admitted that he has not filed Income Tax Returns from 2015 onwards. When a person has borrowed a huge money to the tune of Rs.1,79,56,000/-, such amount has to be accounted. On mere examination of some interested witnesses, in the absence of any proof for legal money, the Court exercising its jurisdiction of equity cannot believe such transaction which is otherwise illegal. This Court, exercising equitable jurisdiction, cannot overlook the clinching fact that the plaintiff has not proved that the huge amount paid by him in cash was legal money.

30.In this regard, it is relevant to extract the following observations made by a Coordinate Bench of this Court in the case of ***M.K.Srinivasan and ors., vs. R.Ramasamy and ors.*** reported in ***2024 (5) CTC 769*** :



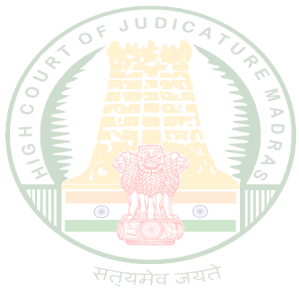
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“Here, the first plaintiff as P.W.1 stuns this Court with his statement that he possessed the entire balance sale consideration in black money. And desperate to save the plaintiffs, their counsel argued that even if balance sale consideration is possessed in the form of unaccounted (black) money, then it is for the Income Tax Department to worry about and not for a civil court to concern itself with. What is overlooked is that a remedy for specific performance is a relief in equity and where the Court will weigh every step which the plaintiffs place in reaching their goal. If this Court were to accept this argument, then it has to tacitly lend its approval for certain illegality which the plaintiffs had willingly engaged, but that would be inequitable to the very scheme of equitable remedy. When the Court expects the plaintiffs to be ready and willing, it means that the plaintiffs possess legal money ready for legal tender/agreement. If the contentions of the plaintiffs were to be stretched further, then in a given case where proceeds of crime were to be diverted for providing sale consideration, then such purchase can even be defended under the provisions of Prevention of Money Laundering Act. That would lead to dangerous consequences. A court of law is, and at all times must be purity personified, and it will be plainly incongruent to its character to spot it in the company of illegality ? big, small or moderate.”

(emphasis supplied)



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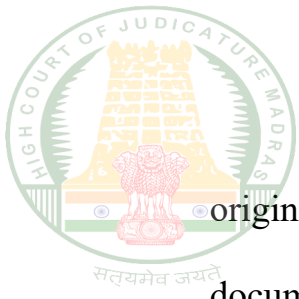
31. Another Coordinate Bench of this Court in the case of ***S.Sarojini***

vs. Mariappan reported in ***2018 SCC OnLine Mad 14331***, held as follows:-

“23. In a suit for Specific Performance, the Court has to keep in mind that the discretionary power vested in it is by virtue of Section 20 of the Specific Relief Act. It is now a well settled principle of law that the Court is not bound to grant Specific Performance merely because it is lawful to do so. The Court should meticulously consider all the facts and circumstances of the case and ensure that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. Since the relief of Specific Performance is given exercising the equity jurisdiction, the conduct of the plaintiff should be fair. The discretion that is exercised by the Court is not arbitrary but it is guided by sound and reasonable judicial principles.”

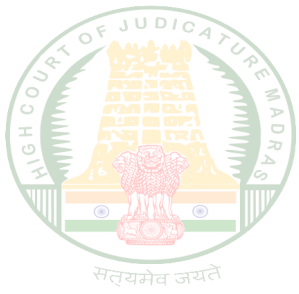
(emphasis supplied)

32. The witnesses to Ex.A18 (suit agreement) are one Ravindranath and Padmanabhan (P.W.2). Those two witnesses also allegedly attested the endorsements on Ex.A19 (loan agreement) on various dates. One endorsement is said to have been made on 03.02.2005, wherein, the details of the documents have not been mentioned. Even in the first page of the



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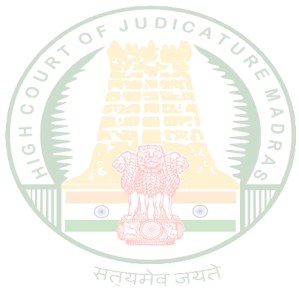
original loan agreement (Ex.A19), there is no whisper about the other documents, but it relates to only one document in respect of a Bungalow at Binny Compound. Very conveniently, the very next page shows that all the original documents are available with the 1st defendant. Therefore, it appears that the endorsement has been created later on 03.02.2005 with some alleged witnesses, namely Ravindranath and Padmanabhan (P.W.2). Thereafter, the another endorsement dated 24.04.2013 shows as if six documents have been handed over. This endorsement is also attested by the same witnesses. The signatures of the witnesses on both the endorsements, even when compared with naked eyes, shows a lot of similarities, proving it to be same persons. This fact creates a very serious doubt about the very document Ex.A19 and the endorsements made therein. It is the specific case of the plaintiff that he has paid a sum of Rs.1,79,56,000/- on 24.04.2015 as per the pleadings. Whereas, the endorsement on Ex.A19 shows as if the payment was made on 24.04.2013. Even in the cross-examination he has asserted that the alleged made over was made on 24.04.2015. Whereas, the document Ex.A19 indicates the date as 24.04.2013. This fact also creates a serious doubt about the alleged made over and huge payment.



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33.It is also relevant to note that the defendants 2 and 3 have filed a written statement in O.S.No.85 of 2013 in the year 2014 itself, even one year before the alleged made over, wherein, they have specifically denied the existence of the agreement and contended that the document has been created, and the alleged payment of huge amount is also denied. Even after such denial, the plaintiff, in the present suit, very surprisingly has pleaded in Para No.11 of the plaint that he is ready and willing to pay the balance sale consideration as per the alleged sale agreement. When it is the specific defence of the Principals/defendants 2 and 3 in their written statement in the previous suit that the plaintiff and the 1st defendant/Power Agent have colluded and misused the Power of Attorney, it is hard to believe that again, the plaintiff, believing the same Power of Attorney, had paid such a huge amount of Rs.1,79,56,000/-. Further, the plaintiff has not even ascertained whether the 1st defendant was a partner in the Balaji Finance Service. Without verifying all these facts, paying such huge amount is also unbelievable.



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34.Further, Exs.A19 the so-called loan agreement does not even indicate the nature of interest payable by the defendants 2 and 3. Whereas, it only indicates that possession has been handed over in view of the loan. Such being the position, calculating 12% interest on the loan amount of Rs.67 Lakhs and paying a sum of Rs.1,79,56,000/- is a question mark and on what basis such amount is arrived in the so-called endorsement dated 24.04.2013, remains a mystery. This also creates a serious doubt on the genuineness of the entire transaction itself.

35.P.W.3 is the son of P.W.1. His evidence clearly indicates that the 1st defendant Pandiyaraj is a close friend of the plaintiff (P.W.1) and he has also admitted that, from 2006 onwards, they are very close to each other. P.W.3 has also admitted that he does not know what relief his father had sought in the suit. The so-called Exs.A23 to A55 do not prove the case of the plaintiff to show his legal capacity to mobilise such huge amount. It is further to be noted that no notice, whatsoever, has been issued from the date of the so-called agreement till the filing of the suit. The evidence of P.W.1 also clearly shows that he has not even verified as to which portion of the B-Schedule



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property was under attachment; he never enquired the 1st defendant about the nature of the attachment over the properties; he has not even verified whether the 1st defendant was a partner in the Balaji Finance Services and he never verified whether any amount has been received by them; even he feigns ignorance of Ex.A19 (loan agreement) and he says that he has not seen Ex.A19.

36.As stated earlier, the suit in O.S.No.2372 of 2007 filed by S.V.Subramaniam who financed the firms at the time of financial crisis, was disposed of on the basis of the compromise recorded. The Memorandum of Understanding (MoU) executed in this regard is marked as Ex.A66, wherein, the Power Agent Pandiyaraj, the 1st defendant herein, and one of the witnesses Padmanaban in all these documents are also shown as Confirming Parties. The Confirming Parties are the holders of agreements of sale/power of attorneys executed by the parties of the first part namely the defendants 2 and 3 and they agreed to the revocation of all the powers of attorney in their favour as well as to give up all their rights under the agreements for sale in respect of the properties of the Company and withdraw all proceedings initiated by them. It is also admitted by the Confirming Parties that they



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received adequate consideration from the parties of the first and second part for cancellation of the agreements. The entire amount is also said to have been cleared to the 1st defendant and other Confirming Parties. This memo was executed during the pendency of the suit in O.S.No.2372 of 2007 filed by S.V.Subramaniam based on a similar agreement said to have been executed by the Power Agent. This MoU was signed on 21.12.2007. Therefore, when the Power Agent has clearly admitted that he has received adequate consideration and agreed to give up all his rights pursuant to the Power of Attornies, there is no necessity or liability for making over the loan agreement in favour of the plaintiff in the year 2013 with the same witness who is also one of the Confirming Parties in the MoU. This also creates a serious doubt on all the documents.

37.As already held, the very Ex.A19 itself is not admissible in evidence and therefore, the question of assignment/making over of the said document, in our view, does not arise at all. The said document Ex.A19 cannot be valid in the eye of law. As long as the plaintiff has not proved the parting with of such huge amount and the so-called amount not being accounted anywhere and the plaintiff not being aware of basic facts like the



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name of his lawyer who filed the cases, nature of Court fee paid, etc., all these facts create a very serious doubt on the very genuineness of the documents relied upon by the plaintiff, viz., Ex.A18, Ex.A19 and endorsements made therein, Ex.A16, Ex.A17. All these facts clearly lead to the only conclusion that the adversity of the defendants 2 and 3 have been taken advantage of by the 1st defendant/ Power Agent, who, in turn, colluded with the plaintiff in order to make unjust enrichment and created all these documents for the purpose of the cases.

38.In view of the above discussion, we hold that the suit agreement (Ex.A18) is a fabricated one and Ex.A19 (loan agreement) is not admissible in evidence and the endorsements therein are also created later for the purpose of the suit and therefore, Ex.A19 in entirety is not valid in the eye of law. ***Point Nos.(i) and (ii) are answered against the appellant/plaintiff.***

Point No.(iii) :

39.Admittedly, the plaintiff has filed a previous suit in O.S.No.85 of 2013 only for injunction and the application filed in I.A.No.346 of 2013 in the said suit seeking leave to file a suit reserving the right, has also been



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rejected and has not been granted. When the cause of action was already

very much available to the plaintiff at the time of filing the previous suit for injunction to file a suit for specific performance, the plaintiff has not worked out the said remedy and therefore, the present suit is also barred by Order II Rule 2 CPC. ***Accordingly, Point No.(iii) is answered against the appellant/plaintiff.***

Point No.(iv) :

40.The alleged suit agreement is said to have been executed in the year 2005. However, the suit came to be presented for the first time on 29.02.2016. It is the contention of the plaintiff that, since the attachment was not raised, he could not file a suit, and after receiving the reply notice on 30.03.2013, he has filed the suit in 2016 within a period of three years. It is relevant to note that, mere sending of a notice to the 1st defendant, in the absence of any postal receipt or acknowledgment card to prove the sending of the same, will not save the limitation and the plaintiff cannot reckon the period of limitation from the date of the so-called notice dated Ex.A16. This Court is of the view that Exs.A16 and A17 are pressed into service only to cover the plea of limitation. Therefore, we hold that the suit is also



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barred by limitation. ***Accordingly, Point No.(iv) is answered against the appellant/plaintiff.***

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Point No.(v) :

41.In the light of the narrative *supra*, the finding of the trial Court that all the documents have been fabricated and it requires serious action against the perpetrators, does not require any interference. Therefore, the relief of specific performance sought by the appellant/plaintiff deserves dismissal and has been rightly negated by the trial Court. ***Point No.(v) is answered against the appellant/plaintiff.***

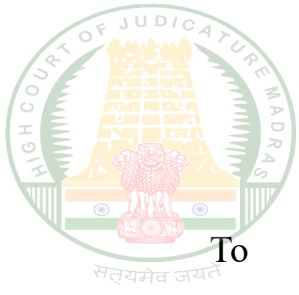
42.In fine, we do not find any merit in this Appeal. Accordingly, this Appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

(N.S.K., J.) (M.J.R., J.)
06.08.2026

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Internet : Yes
Index : Yes / No
Speaking Order
Neutral Citation : Yes

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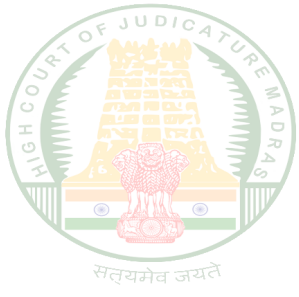
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To

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1.The III Additional District and Sessions Judge,
Coimbatore.

2.The Section Officer,
VR Section,
High Court, Madras.



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N. SATHISH KUMAR, J.
and
M. JOTHIRAMAN, J.

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