

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.04.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.Nos.913 to 927 of 2010
and MP.No.1/2012 (15 Mps)

1.Thangamuthu
2.Murali Sankar
3.Sivaswamy
4.Sivakamasundari
5.Sivachandrasekaran ... Appellants/LRs of the Plaintiff in
SA.913/2010

R.Vajrabai ... Appellant/ Plaintiff in SA.914/2010

1.K.Saradha
2.Sasikala Devi
3.Santhini ... Appellants/LRs of Plaintiff in
SA.915/2010

M.Subramaniam ... Appellant/Plaintiff in SA.916/2010

V.M.Jayachandran ... Appellant/Plaintiff in SA.917/2010

Prema Varadarajulu ... Appellant/Plaintiff in SA.918/2010

1.Jegan Jothi
2.Sanjana
3.Karthick Prabu ... Appellants/Plaintiffs in SA.919/2010

N.Marudachalam ... Appellant in SA.920/2010

C.S.Krishnan ... Appellant in SA.921/2010

V.Amsavalli ... Appellant in SA.922/2010

R.Palanichamy ... Appellant in SA.923/2010

N.Sakunthala ... Appellant in SA.924/2010

M.R.Murahari ... Appellant in SA.925/2010

E.Purusothaman ... Appellant in SA.926/2010

1.Duraisamy (deceased)
2.Vasantha Duraisamy
(2nd appellant impleaded as legal heir of
the deceased first appellant vide

order of this court made in MP. 1 to 4/2015)... Appellants in
SA.927/2010

vs.

1.Sridevi Venkidasamy
2.Srikanth
3.L.Kumarasamy
4.V.R.Govindarajulu
5.Coimbatore Sri Vigneshwara
House Building Society
rep. By its Secretary
Thangavel Thevar
6.Srihari (deceased)
7.Radhika Srihari
(R7 brought on record as legal heir
and R2 recorded as LR of the
deceased R6 vide order of this court
dated 11.2.2015 in MP.1/2015) ... Respondents/Defendants
in all SAs

All the Second Appeals are filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 28.11.2007 made in AS.Nos.40, 42, 44, 48, 58, 59, 60, 88, 97, 98, 99, 100, 107, 125 and 130 of 1989 on the file of the Additional District Judge, (Fast Track Court No.1) Coimbatore confirming the common judgment and decree dated 12.1.1989 made in O.S.Nos.455, 150, 606, 518, 501, 504, 472, 608, 503, 1223, 502, 707, 148, 98 and 515 of 1980 on the file of the Subordinate Judge, Coimbatore.

For Appellants : Mr.R.Subramanian in all the appeals

For Respondents: Mr.P.S.Raman, SC
for M/s.A.Prakash, M.Murugan &
Vineet Subramani - R1, 2 & 7
M/s.Profexs Associates - R3
R4 & R5 -No Appearance

COMMON JUDGMENT

The unsuccessful plaintiffs are the appellants herein.

2.The plaintiffs and few others filed separate suits for specific performance of sale agreements executed by each one of them with one L.Kumarasamy arrayed as the 4th defendant in the suits. The relief sought for in all the suits is for directing the defendants 1 to 3 to execute the sale deeds on receiving the balance sale consideration and for directing the defendants to deliver possession of the suit mentioned properties.

3.There were totally 35 sale deeds and 35 suits filed between 1979 and 1982. As the subject matter of all the sale

agreements is forming part of the same property measuring 3 acres and 38cents and as the main controversy in issue involved in all the suits and as the documents based on which the reliefs sought for and the defendants against whom the reliefs sought for are one and the same, all the suits were jointly tried and were by common judgment and decree dated 12.1.1989 dismissed. Aggrieved against the same, 29 out of 34 plaintiffs filed appeals, which were, by common judgment dated 28.11.2007 dismissed by the lower appellate court, thereby, agreeing with the findings of the trial court and by confirming the judgment and decree of the trial court. Challenging the same, out of 29, 15 appellants have come forward with the present second appeals before this court. The total extent of the property covered in all the present second appeals is 97cents, out of 3 acres and 38cents and all the second appeals for the reasons stated supra are hence disposed of by common judgment by this court.

4. Few facts, which are relevant for consideration herein are as follows : The suit property comprised in S.Nos.152, 157, 158 and 159/1, Sowripalayam Village, Coimbatore originally belonged to one Vijayammal, who entered into a sale agreement with one Coimbatore Sri Vigneshwara House Building Society, which was formed by the plaintiffs in all the suits except in OS.676/1981 and which was represented by its Secretary L.Kumarasamy, who was arrayed as the 4th defendant. The agreement between Vijayammal and the Society represented by its Secretary was dated 25.3.1976 and the sale price agreed was Rs.20,000/- per acre and a sum of Rs.10,000/- was received as advance on the same day. In pursuance of the same, Vijayammal executed a general power of attorney in favour of Kumarasamy in his individual capacity on 16.4.1976. The said Vijayammal executed a registered settlement deed in favour of the defendants 1 to 3 on 24.11.1978 and three months thereafter, she died issueless. Admittedly, during the lifetime of Vijayammal, proceedings were initiated against Vijayammal under Urban Land Ceiling Act, which was in force between 3.8.1976 and 15.6.1999 and the same stood repealed thereafter. The suit sale agreements produced as Exs.A6 to A54 came to be entered into between 1977 to 1979 for different sale consideration ranging between Rs.1,500/- and above Rs.2,000/- per cent. The plaintiffs admittedly made demand and issued legal notices for execution of sale deeds on the strength of their sale agreements, after the death of Vijayammal and their claim to get the sale deeds executed was seriously disputed and denied by the settlees/defendants 1 to 3. Thereafter, the suits came to be filed seeking the reliefs against the defendants 1 to 3 as stated above.

5. The relief sought for in the suits was seriously contested by the defendants 1 to 4 on various grounds. According to the defendants, the power of attorney was valid only for 3 months and on the death of the principal, the power of attorney became unenforceable. The suit agreements executed without

obtaining any exemption under the Urban Land Ceiling Act are against the public policy and are not enforceable against the defendants 1 to 3, who are not parties to the contract and the suit agreements came into existence by an act of collusion between the plaintiffs and the fourth defendant. The defendants have also in their written statements denied the plea of the plaintiff's readiness and willingness to perform their part of the contract.

6.Both the parties in support of their respective contentions adduced oral and documentary evidence. Out of 34 plaintiffs, the plaintiffs in OS.Nos.518 and 455/1980, 625/1981 and 130/1982 and their witnesses were examined as PW1 to PW7 and one Sri Hari, who is one of the defendants in OS.No.1457/1979 and the guardian of other defendant by name Srikanth and his witness were examined as DW1 and DW2. The plaintiffs and the defendants produced Exs.A1 to A148 and Exs.B1 to B109 documents. Exs.C1 to C4 documents were also received as court documents.

7.The trial court after duly appreciating the entire evidence adduced before the same, arrived at the findings that the power of attorney executed by Vijayammal in favour of Kumarasamy is in his individual capacity and Ex.A4 (Ex.B37) dated 16.4.1976 purported to be the power of attorney executed by Vijayammal in favour of Kumarasamy is not true and genuine document and the execution of the same is not proved to be the same power of attorney executed by Vijayammal and Ex.A3 (Ex.B52) dated 25.3.1976 sale agreement entered into between Vijayammal and Coimbatore Vigneshwara House Building Society represented by its Secretary L.Kumarasamy was admitted by the parties, but the suit reliefs are based only on the independent agreements entered into between the individual plaintiffs and L.Kumarasamy (Exs.A6 to A54) and the sale agreements came into existence only by way of collusion between the plaintiffs and the fourth defendant and the sale agreements are not proved by the witnesses and the sale agreements are not true, but fabricated for the reasons recorded in the judgment and even otherwise, the sale agreements executed by the power of attorney are by exceeding the terms of power in the manner as explained in the judgment and the sale agreements are not binding on and enforceable against the principal or successors-in-title. The trial court further held that the sale agreements are barred by section 6 of the Urban Land Ceiling Act and the power of attorney holder has no right to execute the sale deeds before obtaining permission and clearance from the land ceiling authorities and neither the plaintiffs nor the power of attorney holder proved the payment of advance and principal in terms of power of attorney executed by her power agent and out of 34 agreement holders, only two agreement holders were examined to speak about their readiness and willingness and they are not competent to prove the readiness and willingness of other parties and the plaintiffs failed to prove their readiness and willingness to perform their part of the contract by offering

the entire sale consideration to get the sale deeds executed. The trial court on basis of such findings, negated the claim made by all the plaintiffs and dismissed all the suits. Aggrieved against the same, 29 plaintiffs preferred appeals before the lower appellate court. The lower appellate court, having agreed with the findings of the trial court, confirmed the judgment and decree of the trial court and dismissed the appeals. As against the dismissal of 29 appeals, 15 appellants are now before this court by way of present second appeals.

8. The common substantial questions of law that arise for consideration herein are as follows:

1. Have not the courts below misconstrued the import of Tamil Nadu Urban Land Ceiling and Regulation Act of 1978 in that at the time when the agreements were executed in favour of the plaintiffs, the Act had not been notified?

2. Are not the courts below wrong in overlooking that when the defendants have not specifically denied the averment of readiness and willingness in the plaint, they are deemed to have been admitted under Order VIII Rule 5 of CPC and further the plaintiffs having deposited the balance sale consideration during the pendency of the suit, the readiness and willingness have been proved?

3. Are not the judgments of the courts below bristling with inconsistencies, in that in the earlier parts of the judgment, the agreements and power of attorney are found to be genuine, valid but in latter portions conflicting findings have been given?

4. Have not the courts below failed to consider Sections 202 and 209 of Contract Act which state that the power agent is bound to discharge the responsibilities assigned to him in the agreement and the power of attorney has interest in the subject matter of the property and therefore the finding that the power of attorney has become unenforceable is perverse?

5. Have not the courts below failed to exercise their judicial discretion under section 20 of Specific Relief Act which has resulted perverse findings since under Section 20(3) of the Act, the plaintiff has done substantial acts and suffered losses and hardship because of 4th defendant's act as found by the Lower Appellate Court itself?

6. Is not the appreciation of facts perverse warranting interference under Sections 100 and 103 of CPC as seen from the fact that findings have been given dehors pleadings in the written statement/issues?

7. Once the Urban Land Ceiling Act was repealed in 1999, the Ceiling proceedings lapse and the title goes back to Vijayammal and therefore, under Section 43 of

Transfer of Property Act is she not bound to enforce the agreement?

9. Heard the rival submissions made on both sides and perused the records.

10. The relief sought for in all the suits is for specific performance of the separate sale agreements entered into between the plaintiffs and the fourth defendant. The fourth defendant by name L. Kumarasamy purported to have executed the suit sale agreements only on the strength of the power of attorney dated 16.4.1976 executed by Vijayammal in his favour to do certain acts in respect of the suit properties. The power of attorney in favour of L. Kumarasamy and the sale agreements between the plaintiffs and L. Kumarasamy are preceded by one sale agreement Ex.A3 (Ex.B52) between Vijayammal and Coimbatore Sri Vigneshwara House Building Society having the plaintiffs as its members. Though Ex.A3 (Ex.B52) sale agreement dated 25.03.1976 is the basic document for the subsequent power of attorney dated 16.4.1976 under which L. Kumarasamy was purported to have given power to enter into sale agreements with third parties and though the sale agreement dated 25.3.1976 is referred to in the respective plaints, the relief sought for in the suits is based on the individual sale agreements. Both the courts below having found that Ex.A3 (Ex.B52) is not filed along with the plaint and having found that the suit reliefs are based on individual sale agreements and the terms of the agreements sought to be enforced are in respect of the individual agreement and having further found that the court fee paid is only on the value of the properties as fixed in Exs.A6 to A54 individual sale agreements and having relied on the oral evidence of PW1 and PW2 witnesses/two of the agreement holders/plaintiffs have, while rejecting the contention raised on the side of the defendants that Ex.A3 (Ex.B52) is under Ex.B88 cancelled, for the failure of the defendants to prove the execution of Ex.B88, rightly arrived at the conclusion that the sale agreements are based on individual sale agreement and Ex.A3 (Ex.B52) is either given up or abandoned.

11. As far as the power of attorney dated 16.4.1976 is concerned, the xerox copy of the same is produced as Ex.A4 on the plaintiffs' side and as Ex.B37 on the side of the defendants. Both Ex.A4 and Ex.B37 are the copies of one and the same document. The defendants, having denied and disputed the genuineness of the same, produced Ex.B89 which is according to them, the real power of attorney executed by Vijayammal in favour of L. Kumarasamy.

12. Both the courts below after detailed discussion found that the genuineness and true execution of Ex.A4 (Ex.B37) is not established by the plaintiffs. The reasons given for arriving at such conclusion are that the execution of the document is not proved by examining any one of the persons associated with the

document and PW1 and PW2 witnesses, having become the members of the society only on 1.7.1976 i.e., much after 16.4.1976, have no direct knowledge either about the execution or manner of execution of the document and are not competent persons to speak about the genuineness of the same. The stamp papers used for executing the document are purchased on three different dates at three different places and there are also discrepancies in the dates mentioned in the stamp papers and there are corrections regarding the year in the stamps put on the document. There are also difference in the manner of writing and signature of Vijayammal in all the pages. There is reasonable doubt raised as to whether the entire contents found in the document were written on one and the same day. Further, there is no recital in the document to show that the power given is for three months. By reason of the discrepancies and inconsistencies as referred to above, the courts below disbelieved the genuineness of Ex.A4 (Ex.B37) dated 16.4.1976. It is relevant to point out at this juncture that the original of the same is not produced before this court on either side and the fourth defendant L.Kumarasamy, who is the author of the same remained exparte and no step was taken to summon him to appear before the court along with the original, to prove the genuineness of Ex.A4 (Ex.B37) document. On the failure of the plaintiffs to prove the genuineness of Ex.A4 (Ex.B37), the relief sought for in the suits based on sale agreements executed on the strength of such disputed document is not maintainable. The findings so rendered by the courts below are in my considered view, based on sufficient materials and are supported by proper reasoning and no ground much less valid ground is made out by the plaintiffs to enable this court either to treat the same as perverse or to disagree with the same.

13. Even otherwise, the courts below on the basis of the terms of power of attorney found that the authority given under the power of attorney was mainly for getting clearance and approval from the Urban Land Ceiling authorities for the formation of layouts and the power agent is given the authority to enter into the sale deeds only after obtaining such clearance and approval. It is also found by the courts below that the authority for fixing sale price was only on the principal/owner and any amount received by the power agent shall be duly handed over to the principal/owner. As already referred to, the sale price fixed under Ex.B52 sale agreement dated 25.3.1976 is Rs.20,000/- per acre, whereas the sale price fixed under the sale agreements in favour of the plaintiffs is ranging from Rs.1,000/- to above Rs.2,000/- per cent. That being so, both the courts below are of the view that the power of attorney holder exceeded his power conferred on him and the terms under the document of the power of attorney in executing the sale agreements before obtaining clearance and approval and in fixing the sale price on his own, that too, over and above the sale price fixed under Ex.B52 sale agreement. Though the proper person to be examined to explain the doubts and suspicion raised against the genuineness of Ex.A4 (Ex.B37) and the power to

execute the sale agreement for the sale price fixed therein is L.Kumarasamy/D4, he failed to contest the suits. The plaintiffs also failed to take steps to summon him as one of the witnesses during trial. Thus, both the courts below are of the view that when the power agent exceeded his authority, the sale agreements, which are the outcome of such exercise, are not binding either on the principal or successors-in-title and are not enforceable against them.

14. At this stage, the learned counsel for the defendants cited the following authorities in support of his argument regarding the extent of authority under the power of attorney, (i) AIR 1985 Karnataka 213 (Syndicate Bank, Bangalore v. I.K.Amitha and others) and (ii) AIR 1955 Cochin and Travancore 83 (Division Bench) (Travancore Devaswom Board v. S.Neelacantan Moothathu and others) wherein, it is held that "one has to look at the manner in which the power is given to the agent by the principal and the purpose for which it is given in order to ascertain the extent of power and the principles that may be applied for the construction of powers of attorney are: (i) the operative part of the deed is controlled by the recitals where there is ambiguity; and (ii) where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts". "The principal will not normally be liable for the unauthorised criminal acts of the agent or for the other acts done by him in excess of his authority". In my considered view, such observations are squarely applicable to the facts of the present case.

15. The courts below have also rejected Ex.B89 which is according to the defendants, the true copy of power of attorney dated 16.4.1976 executed by Vijayammal in favour of L.Kumarasamy. The learned counsel for the plaintiffs/appellants would at this juncture attempt to raise an argument that the execution of power of attorney, having been admitted by Vijayammal during her lifetime in the exchange of communication between Vijayammal and Urban Land Ceiling Authorities and the same having been admitted by her settlees/successors-in-title, no burden is cast upon the plaintiffs to prove the same and the rejection of the same, on the failure of the plaintiffs to prove the same by examining the person associated with the document, is perverse and is legally unsustainable. It is note worthy to mention at this juncture that what is admitted by deceased Vijayammal and the contesting defendants is the execution of power of attorney dated 16.4.1976 and Vijayammal was not alive to identify the actual document executed by her and the other party to the document/4th defendant remained exparte and the plaintiffs conveniently omitted to summon him before the court. The defendants have nowhere admitted the genuineness of Ex.A4 (Ex.B37) dated 16.4.1976 and the same was also produced on the plaintiffs' side for the first time during trial. Curiously enough, the sale agreement dated 25.3.1976 and the power of

attorney dated 16.4.1976 which are the basic documents for the relief sought for in the suits, are not produced along with the plaint. The plaintiffs have no explanation for their failure to do so. On their failure to do so, there is no occasion for the defendants to look into those documents and to deny the genuineness of the same. Such an occasion arises for the defendants only after the documents were produced through the witnesses during trial. In this context, it is useful to refer to the observation of the learned brother judge in the judgment reported in (1996) 2 MLJ 199 (K.Saroja v. Valliammal and others) that in a suit for specific performance, it is for the plaintiff to prove that there is a valid sale agreement and that the plaintiff is entitled to get a decree as prayed for. Since the relief of specific performance is a discretionary relief, even if there is an agreement, it does not follow that the plaintiff is entitled to get a decree for specific performance and while considering the agreement, the court is entitled to consider the surrounding circumstances so as to arrive at a finding regarding the genuineness of the so-called agreement. The observation of the learned brother judge would answer the contention raised on the side of the plaintiffs in this regard.

16.Both the courts below have also found that the execution of sale agreements Exs.A6 to A54 is not duly proved and the same is suspected to be fabricated documents for the following reasons: (i)There are discrepancies and inconsistencies in the subject matter of the agreement with reference to plot numbers. When the sale agreement dated 25.3.1976 and the power of attorney dated 16.4.1976 are for converting the agricultural land into plots, the plot numbers given in the sale agreements executed from 24.5.1976 onwards cannot reflect the actual state of affairs. (ii)There are interpolation in some of the documents regarding price fixation. When PW1 and PW2 would in their deposition admit that the sale price was fixed only in August 1976, the sale price mentioned in the agreements before August 1976 cannot be true. (iii)The stamp papers used for executing the sale agreements are purchased from outside. It is not proved that the stamp papers were not available from local area, as such, they were purchased from outside. (iv)There is no continuity in serial numbers of the stamp papers. The same serial number is given for the stamp papers purchased on two different dates. (v)There are two agreements in respect of the plot nos.16 and 24. As the findings rendered by the courts below are based on the entries, particulars and recitals contained in the documents in question, the plaintiffs are unable to make out any valid reason for this court to disagree with such findings.

17.The courts below, after due discussion of all relevant facts relating to execution of the documents and after careful scrutiny of all the material documents, rendered specific findings on the enforceability of Ex.A3 (Ex.B52) and genuineness of Ex.A4 (Ex.B37) and genuineness of Exs.A6 to A54 sale agreements and enforceability of and binding nature of the same

against the contesting defendants. Though the correctness of such findings are seriously questioned by the plaintiffs before this court, the documents produced on their side before the court concerned are of no help to prove their case. The plaintiffs are unable to question the correctness of the grounds referred to by the courts below for suspecting the genuineness of the documents, which are based on errors apparent on the face of the records. The plaintiffs are also unable to show that the findings rendered by the courts below are contrary to the particulars contained in the documents. On the other hand, the detailed discussion made in the judgments of the courts below would only demonstrate the earnest efforts taken by them in not omitting any material particulars relating to the main controversy in issue. That being the manner of appreciation and analysis of the oral and documentary evidence by the courts below, the factual findings rendered by the courts below on the basis of the same, do not suffer from any infirmity, inconsistency or perversity and there is no conflicting findings given by the courts below. Further, in view of the Apex Court in the decision reported in (2011) 15 SCC 247 (Jogendra Ram v. Phullan Mian (Dead) by Lrs and others), when the findings of fact by the courts below are supported by cogent and clear reasonings, the same warrant no interference and re-appreciation of evidence under section 100 of Civil Procedure Code is not legally permissible, as such, the substantial questions of law 3 and 6 are accordingly answered against the plaintiffs.

18. This Court, having accepted the findings of the courts below that the material documents i.e., the power of attorney and sale agreement are not proved and the documents are found to be fabricated and the parties have come to court with unclean hands, is inclined to apply the principles laid down in the following decisions: (i) the Apex Court in the judgment reported in (2013) 4 SCC 546 (Garre Mallikharjuna Rao (dead) by LRs and others v. Nalabothu Punniiah) held that "exercise of discretionary jurisdiction of court to grant specific performance is not justified, when facts pleaded and proved by the plaintiff rested on untrustworthy and vague evidence". (ii) the Division Bench of this court in the judgment reported in 1996 (I) CTC 620 (Mrs. Shoba Viswanatha v. D.P. Kingsley) was of the view that "the plaintiff, who has not come to court with clean hands, is disentitled from obtaining discretionary relief of specific performance and the suit filed with oblique motive should be dismissed". The Division Bench of this Court in the same judgment has gone to the extent of saying that "the appellate court can allow the plea of illegality to be raised on the basis of available evidence, even in the absence of any pleading raised before the trial court". The above observations would answer the argument advanced on the side of the plaintiffs that the defendants having not raised the plea against the genuineness of the document, the courts below erred in going into the same and the factual findings rendered by the courts below in pursuance of the same are unwarranted and such

objections raised on the side of the plaintiffs are hence, liable to be rejected.

19. Next substantial question of law to be considered herein is the plea regarding readiness and willingness of the plaintiffs to perform their part of the contract. As per Section 16(c) of the Specific Relief Act, one who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him other than terms the performance of which has been prevented or waived by the defendant, is not entitled to seek enforcement of specific performance of a contract. It is true that the plaintiffs have in their respective plaints specifically pleaded that they have been always willing and ready to perform their part of the contract and on the other hand, it is the deceased Vijayammal and the defendants 1 to 3 who failed to perform their part of the obligations and in spite of several repeated demands and requests made by the plaintiffs and others, the deceased Vijayammal postponed the execution of the sale deeds in favour of the members and after her demise, several requests made by the plaintiffs to the defendants 1 to 3 to execute the necessary sale deeds went unheeded. Whereas, the defendants have in their written statement denied the allegations that the plaintiffs have the means to purchase the properties and the averment as to "readiness and willingness" which is merely a fond hope and an after thought to make an illegal profit, out of the so called suit contract of sale. It is further stated therein that there was no occasion or need for Vijayammal to fail to perform her obligations under an unknown contract and that neither the plaintiffs nor the fourth defendant who is their counterpart, have fulfilled the conditions precedent for securing the performance of the so called agreement for sale. According to the defendants 1 to 3, the so called sale agreements are the outcome of collusion between the plaintiffs and the fourth defendant, as such, the plaintiffs are not entitled to the relief of specific performance.

20. Both the courts below have for the reasons stated in the judgment found that the plaintiffs failed to prove their readiness and willingness to perform their part of contract. The Hon'ble Supreme Court in the decision reported in (2011) 15 SCC 247 (Jogendra Ram v. Phullan Mian (Dead) by Lrs and others) categorically held that whether the plaintiff has always been ready and willing to perform his part of contract and is entitled to a decree for specific performance of the contract, is not a question of law and the same cannot be framed nor can interference with concurrent findings of the courts below on that question be called for. The Apex Court in para 18 of the same judgment, referred to its earlier decision reported in (1999) 2 SCC 471 (Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor) for the same legal proposition.

21. However, the learned counsel for the plaintiffs has by relying upon the decision of larger bench consisting of 3 judges of the Supreme Court reported in AIR 1993 SC 398 (Shri Bhagwan Sharma v. Smt. Bani Ghosh) advanced an argument that the High court is entitled to go into the question as to whether the findings of fact recorded by the first appellate court, which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature and if the High court decides to dispose of the case finally in accordance with the provisions of Section 103(b), it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and on a reappraisal of the entire evidence, the ultimate conclusion may be arrived at in favour of either party and it cannot be prejudged.

22. That being the legal position, this court is inclined to decide the correctness of the findings rendered by the courts below on the basis of the available evidence. In this case, there are 7 witnesses examined on the side of the plaintiff. Out of 7, 4 are the plaintiffs in the particular suits and three are general witnesses and the general witnesses do not depose about the plaintiffs' plea regarding their readiness and willingness to perform their part of contract. Out of 4, PW3 and PW6 are the subsequent agreement holders under one of the agreement holder with the fourth defendant and are hence not competent to speak about the readiness and willingness of the plaintiffs, who are the original agreement holders having their agreements with the fourth defendant. Thus, the competent witnesses to speak for themselves and on behalf of other original agreement holders are the plaintiffs in OS.518/1980 and 455/1980 examined as PW1 and PW2. As already stated above, the averments regarding the plaintiffs' readiness and willingness are duly denied by the defendants in their written statement. Though a vague attempt is made on the plaintiffs' side to say that the plaint averments regarding readiness and willingness were not denied in the written statement filed by the defendants and their failure to deny the same would amount to admitting the plaint averments, in my considered view, the averments raised in the written statement are specific and sufficient enough in denial of the plea regarding the plaintiffs' readiness and willingness to perform their part of the contract. That being so, the burden is now on the plaintiffs, who are bound to satisfactorily prove the same. There were 34 suits and joint trial was held in all 34 suits and on consent, the evidence adduced in OS.518/1990 and 455/1980 was agreed to be taken as evidence in all the cases. However, that by itself will not give a room for an argument that the oral evidence of PW1 and PW2 do relate to not only for themselves, but also other plaintiffs.

23. The Hon'ble Supreme Court in the judgment reported in (2010) 10 SCC 512 (Man Kaur (dead) by LRs v. Hartar Singh Sangha) has in unequivocal terms held that "where the law

requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad". It is one of the principles laid down by the Supreme Court, while deciding the legal position as to who should give evidence in regard to matters involving personal knowledge. The principles are laid down, after observing in the forgoing paragraph that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct. It is further observed in para 17 of the same judgment that "to succeed in a suit for specific performance, the plaintiff has to prove: (a)that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b)that the defendant committed breach of the contract; and (c)that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness of the other. One without the other is not sufficient. Therefore, a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney-holder of the person concerned". As rightly pointed out by the learned senior counsel for the contesting defendants, on the strength of the principles laid down by the Apex Court, non-examination of the other plaintiffs regarding their readiness and willingness to perform their part of the contract which is well within their personal knowledge, would compel this court that other plaintiffs failed to satisfy statutory requirement under section 16(c) of the Specific Relief Act and the same would dis-entitle

the other plaintiffs to seek enforcement of specific performance of contract in their suits and would render the relief sought for in their suits to be rejected.

24. Even otherwise, PW1 and PW2 are not able to depose about the financial capacity and readiness and willingness of other plaintiffs. They categorically denied any knowledge about the properties owned by other plaintiffs and their financial capacity to pay the entire sale consideration. Further, the courts below have held that there is absolutely no evidence adduced to prove that the sale consideration was paid to Vijayammal or her successors-in-title as per the terms of the power of attorney dated 16.4.1976. whereas, the evidence given by PW1 and PW2 is only to the effect that they are willing to pay the balance amount in the event of their being directed by the court and they were also found to be unwilling to pay the entire amount in terms of the agreement including the amount which was not shown to be received by the principal Vijayammal. The failure of PW1 and PW2 to speak for themselves and on behalf of other plaintiffs that they are either willing to pay the balance amount without any direction from the court or they are willing to pay the entire consideration in terms of the agreements, would amount to non-compliance of the statutory requirement under section 16(c) of the Specific Relief Act. The attention of this court is also drawn to the fact that neither the fourth defendant nor any of the plaintiffs or the Society during the lifetime of Vijayammal issued any notice calling upon her to execute the sale deeds in terms of power of attorney given to the fourth defendant. Further, there is no evidence adduced before the trial court about the wherewithal of the plaintiffs to pay entire sale consideration. Thus, the appreciation of conduct of PW1 and PW2 as discussed above is sufficient enough to decide their plea regarding readiness and willingness against them.

25. In this context, the learned senior counsel for the defendants would rely on the following decisions: (i) (1995) 5 SCC 115 (N.P.Thirugnanam (dead) by LRs v. Dr.R.Jagan Mohan Rao and others. (ii) (2009) 17 SCC 27 (Azhar Sultana v. B.Rajamani and others) (iii) (2010) 1 SCC 287 (A.K.Lakshmipathy (Dead) and others v. Rai Saheb Pannalal H.Lahoti Charitable Trust and others) and (iv) 1998 (I) CTC 186 (Vasantha and others v. M.Senguttuvan). It is held by the Hon'ble Supreme Court in the first decision reported in (1995) 5 SCC 115 (N.P.Thirugnanam (dead) by LRs v. Dr.R.Jagan Mohan Rao and others) that "the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. Right from the date of the execution till date of the decree, he must prove that he is ready and has always been willing to perform his part of the contract. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief"..... "To adjudge whether the plaintiff is ready and

willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract".

26.The Apex Court in the second judgment reported in (2009) 17 SCC 27 (Azhar Sultana v. B.Rajamani and others) observed that "the plaintiff indisputably in view of Section 16(c) of the Specific Relief Act, 1963 was required to make requisite averments that she had all along been and still is ready and willing to perform her part of the contract and also establish the same". It is further observed therein that "Section 16(c) of the Specific Relief Act 1963 postulates continuous readiness and willingness on the part of the plaintiff. It is a condition precedent for obtaining a relief of grant of specific performance of contract". In the third case reported in (2010) 1 SCC 287 (A.K.Lakshmipathy (dead) and others v. Rai Saheb Pannalal H.Lahoti Charitable Trust and others), the Apex Court held that "it is well settled that in a suit for specific performance of a contract for sale, it has to be proved that the plaintiff who is seeking for a decree for specific performance of the contract for sale must always be ready and willing to complete the terms of the agreement for sale". The Supreme Court, having observed so, was not inclined to interfere with the concurrent findings of fact, on consideration of the evidence on record, by the the trial court as well as by the High court that the plaintiffs were not ready and willing to perform the terms and conditions of the agreement for sale. Similar views are reiterated by the learned brother judge of our High court in the last decision reported in 1998(I) CTC 186 (Vasantha and others v. M.Senguttuvan). Thus, applying the same principles to the facts of the present case, the courts below have rightly found that the plaintiffs failed to prove their readiness and willingness to perform their part of the contract as contemplated under section 16(c) of the Specific Relief Act and the same would dis-entitle the plaintiffs to claim any relief in their suits.

27.This Court at this juncture, is inclined to usefully quote the observation of the Apex Court in the judgment reported in (2000) 9 SCC 219 (Govind Das v. Kanhiya Lal and another) that "two courts have taken a particular view with regard to the evidence adduced before it and the conclusion which was arrived at was more than a plausible one and under the circumstances, the High Court has no justification to interfere with this concurrent finding of fact". In the light of the same principle, this court is not inclined to disagree with the findings of the courts below. The substantial question of law No.2 is accordingly answered against the plaintiffs.

28.Regarding the 5th substantial question of law that the courts below failed to exercise their judicial discretion under section 20 of the Specific Relief Act, despite the fact that the plaintiffs have done substantial acts and suffered losses in consequence of a contract capable of specific performance, such issue does not arise herein. In view of the specific factual findings rendered by the courts below against the genuineness and true and valid execution of the documents and about the fabricated and collusive nature of the agreements, the relief of specific performance being discretionary in nature, section 20 (3) of the Act cannot be invoked in favour of the plaintiffs, who are found guilty of an act of collusion and who have come to court with unclean hands and this substantial question of law is hence answered against the plaintiffs.

29.Regarding fourth substantial question of law arising out of Sections 202 and 209 of the Indian Contract Act, as rightly argued by the learned senior counsel for the defendants, the plaintiffs, who come to court for the suit reliefs based on fabricated documents and who are found guilty of non-performance of their part of the contract, cannot seek the decree of specific performance of the suit agreements by taking shelter under the right of the fourth defendant, if any, under Sections 202 and 209 which are extracted hereunder:

"202.Termination of agency, where agent has an interest in subject-matter:

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

"209.Agent's duty on termination of agency by principal's death or insanity:

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him."

First of all, it is nowhere stated in the plaint that the power of attorney is coupled with interest under the terms of the power of attorney. The power of attorney, except authorised to do certain acts, is not conferred any benefit or interest on the holder. Consequently, the suit agreements are outside the scope of section 202 of the contract Act. As far as the benefit and concession claimed under section 209 is concerned, there is no evidence adduced on the side of the plaintiffs that they entered into the sale agreements after thoroughly verifying the authority given to the fourth defendant under the power of

attorney and the purpose for which the same was executed and the nature of acts performed under the same. Had it been true that the plaintiffs have truly and genuinely entered into the sale agreements, after having made proper enquiry regarding the aspects as above referred to, they would have taken steps to ascertain the payment of advance to Vijayammal and they could have during the lifetime of Vijayammal issued notice to her to execute the sale agreements in terms of the power of attorney and in terms of the agreement. Their failure to do so if viewed in the light of the finding of the courts below regarding fabricated nature of the documents, will dis-entitle them to resort to the relevant provisions of the Contract Act and this question of law is accordingly answered against the plaintiffs.

30. The other issue i.e., substantial question of law no.1 raised herein is against the bar under section 6 of the Urban Land Ceiling Act 1978. The Urban Land Ceiling Act was in force from 3.8.1976 to 15.6.1999 and the same thereafter stood repealed. Section 6 of ULT Act prohibits transfer of any vacant land by way of sale, mortgage, gift, lease or otherwise until he has furnished a statement under section 7 and a notification regarding the excess vacant land held, has been published under sub section (1) of section 11 and any such transfer made in contravention of this provision shall be deemed to be null and void. The power executed in favour of the fourth defendant made it clear that he has to first apply for clearance and approval from the Land Ceiling Authorities and thereafter enter into sale agreements. No such approval or clearance was obtained either before or after coming into force of ULC Act. On the other hand, the fourth defendant entered into Exs.A6 to A54 sale agreements before and after 3.8.1976, the date on which the Act came into effect. The learned senior counsel for the defendants would at this juncture cite (i) full bench decision of our High court reported in 1999 (II) CTC 181 (P.Gopirathnam and 4 others v. Ferrodous Estate (Pvt.) Ltd) and (ii) the Division Bench judgment reported in 2003-1-LW 696 (Garuda Chit and Trading Co. P. Ltd. and others v. Coramandel Indag Products Pvt. Ltd) in support of his contention that the prohibition under section 6 applies not only to completed transfer, but proposed transfer of excess vacant land and agreement of sale is also affected by this section. In both the cases, it is held that valid contract becomes unenforceable if enforcement violates any law. It is also specifically held therein that specific performance of agreement of sale of excess vacant urban land cannot be enforced by court as it will amount to defeating law and against public policy. It is further held that a decree for specific performance of agreement of sale directing vendor to get exemption from ceiling Act and then sell suit property to purchaser, cannot be granted conditionally upon vendor satisfying certain conditions, if it is not part of the agreement. The full bench of our High court, after detailed discussion about the earlier decisions, has made it very clear that the sale agreement of excess vacant land is hit by section

6 of the ULC Act and as there is a statutory bar for alienating the property, the suit filed for specific performance is not maintainable. The same view is reiterated by the Division Bench and by applying the same view, the plaintiffs herein are held dis-entitled to get the decree for specific performance. This issue is in the light of the aforesaid observations of earlier decisions of this court, answered against the plaintiffs.

31.As far as the last 7th issue is concerned, the plaintiffs sought to enforce the suit agreements on yet another ground that after repealing of the Urban Land Ceiling Act in 1999, the defendants 1 to 3 as successors-in-title of Vijayammal are bound to enforce the suit agreements under section 43 of the Transfer of Property Act. For better appreciation, Section 43 of the Transfer of Property Act is extracted hereunder:

"43.Transfer by unauthorised person who subsequently acquires interest in property transferred-
Where a person (fraudulently or) erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest, which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

In my considered view, when the suit agreements are hit by section 6 of ULT Act, the question of enforcement of the same, after repealing of ULT Act does not at all arise. Further, when the suit agreements having not been proved to be executed on the date mentioned therein and are held to be not genuine, but fabricated, no question of seeking enforcement of the same, under section 43 of the Transfer of Property Act arises for consideration.

32.Even otherwise, placing reliance on Section 43 of Transfer of Property Act for seeking enforcement of the suit agreements, as rightly pointed out by the learned senior counsel for the defendants, is entirely misconceived for the following reasons: The sine qua non for application of section 43 is that at the initial stage the transferor should have fraudulently or erroneously represented that he is authorised to transfer certain immovable property or professes to transfer such property for consideration and the transferor thereafter acquires any interest in the property at any time during which the contract of transfer subsists and only if this precondition is satisfied, the question of option of the transferee arises. Otherwise, section 43 has no application, as per the observation

of the Hon'ble Supreme Court in the judgment reported in (2009) 11 SCC 28 (NI. Pra Channabasava D.S. Mathadhipatigalu Kannada Mutt v. C.P.Kaveeramma and others). The Hon'ble Supreme Court has in the decision reported in 2009 (2) CTC 337 (Jharu Ram Roy v. Kamjit Roy and others) clearly observed that section 43 cannot be applied to any sale brought about by act of fraud which vitiates most solemn acts.

33. In the present case, it is nobody's case that either Vijayammal or the fourth defendant executed the document by fraudulently or by making erroneous representation regarding their authority to transfer the property. While Vijayammal had full right over the properties, as far as the fourth defendant is concerned, though he is held to have exceeded his authority in executing the sale agreements, without obtaining clearance and approval from the authorities concerned, he did not subsequently acquire any right over the property to enable the agreement holders to invoke the provisions of section 43 of the Transfer of Property Act. In yet another judgment reported in (1999) 3 SCC 172 (Delhi Development Authority v. Ravindra Mohan Aggarwal and another), the reliance on section 43 was negatived, in the absence of any acceptance of the plaintiff's bid under public auction and it is held therein that section 43 is applicable only where transfer has already taken place.

34. The plaintiffs have also relied on the following two judgments: (i) AIR 1964 SC 1789 (Silla Chandra Sekharam v. Ramchandra Sahu) and (ii) AIR 1973 Alahabad 425 (V 60 C 148) (Ehsanul Haq v. Mohd. Umar and another) in support of their contention that they are entitled to enforce the suit agreements against the defendants, after Urban Land Ceiling Act was repealed and to enforce their right by compelling the defendants to make good the contract, under section 13(1)(a) of the Specific Relief Act, which is, for better appreciation extracted hereunder:

"S.13(1)(a) - Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest."

Here again, such claim is liable to be rejected for the same reasons for which section 43 of Transfer of Property Act is held to be not applicable to the facts of the present case. In this case, Vijayammal was not the person, who had no title or imperfect title at the time of alleged contract, but she had absolute title to transfer the property. What is prohibited under ULC Act is any transaction without getting clearance and approval from the authority concerned by virtue of Section 6 of Urban Land Ceiling Act. Further, as rightly argued by the learned senior counsel for the defendants, such right can be

enforced only subject to compliance of statutory requirement under other provisions of law under sections 16 and 20 of the Specific Relief Act. The plaintiffs, on their failure to establish the genuineness of the agreements and on the basis of specific findings rendered by the courts below about the fraudulent and collusive nature of the document and the plaintiffs for want of proof of their readiness and willingness, under section 16(c) of the same Act are dis-entitled to claim any right under section 13(1)(a) of the Specific Relief Act and are hence dis-entitled to claim enforcement of the suit agreements.

35.As all the substantial questions of law involving factual and legal aspects are thus decided against the plaintiffs, no interference of the well considered judgments of the courts below is warranted.

36.Thus, viewing from any angle, the plaintiffs are necessarily held to be disqualified and dis-entitled to get discretionary relief of specific performance.

37.In the result, all the second appeals are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rk

To

- 1.The Additional District Judge (Fast Track Court No.I) Coimbatore.
- 2.The Subordinate Judge, Coimbatore.

Copy to:

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

+15 ccs to Mr.R.Subramanian, Advocate, sr.24505 to 24519
+5 ccs to Mr.M.Murugan, Advocate, sr.24354
+3 ccs to M/s.Profexs Associates, Advocates, sr.24503

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