

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2015
Delivered on : 13.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.336 of 2012

1) Indrani Ammal
2.A.S.Raja
3.A.S.Babu

.. Appellants/Defendants.

-Vs-

M.Ravi

.. Respondent/Plaintiff.

Appeal filed under Section 96 r/w.Order 41 of the Civil Procedure code against the judgment and decree dated 25.04.2011 made in O.S.No.41 of 2006 on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District.

For Appellants : Mr.Rubert J.Barnabas

For Respondent : Mr.D.Rajagopal

JUDGMENT

The defendants in the original suit are the appellants in the appeal. The respondent herein filed O.S.No.30 of 2006 on the file of the District Court, Vellore, for the relief of specific performance based on an agreement for sale dated 10.06.2003 directing the appellants/defendants to execute the sale deed and to deliver possession of the suit property and also for permanent injunction not to encumber or alienate the suit property. The respondent/plaintiff also had prayed for a direction to pay Rs.1000/- as damages. An alternative prayer for refund of the advance amount with interest had also been made. The suit came to be made over to the Additional District and Sessions Judge, Fast Track Court, Vellore and renumbered as O.S.No.41 of 2006.

2. The plaint allegations, in brief, are as follows:

The appellants/defendants are the absolute owners of the suit property described in the plaint schedule. They offered to sell the

property to the respondent/plaintiff for a sale consideration of Rs.10,20,000/-. The said offer was also accepted by the respondent/plaintiff. In furtherance of the offer and acceptance, the appellants/ defendants executed an agreement for sale dated 10.06.2003 receiving a sum of Rs.10,00,000/- as advance and part payment of sale consideration and agreeing to execute the sale deed and register the same on receipt of balance consideration of Rs.20,000/- within a period of 6 months from the date of the agreement. The respondent/plaintiff was ever ready and willing to perform his part of the agreement by making payment of the balance amount of consideration and getting the sale deed executed and registered in his name. However, the appellants/defendants were bent upon dragging on the matter by simply purchasing time. At one point of time, when the respondent/plaintiff came to know that the appellants / defendants were trying to sell the property to third parties for higher price, he issued a registered notice dated 22.11.2003 through his lawyer calling upon the appellants/defendants to receive the balance sale consideration and register a sale deed in favour of the respondent/plaintiff. After the receipt of the said notice, the appellants 2 and 3/defendants 2 and 3 approached the respondent/plaintiff and orally requested for extension of time till 10.06.2005. Again on 09.06.2005, they personally met the respondent/plaintiff and sought extension of time till 10.06.2006. Showing magnanimity, the respondent/plaintiff conceded the request for such extension of time. But, the appellants/defendants showed indifference driving the respondent/plaintiff to file the suit for specific performance and hence, the suit came to be filed.

3. The suit was resisted by the appellants/defendants based on the written statement filed by the second appellant, which was adopted by the appellants 1 and 3. The averments made in the written statement, in brief, are as follows:

The appellants/defendants never agreed to sell the suit property to the respondent/plaintiff for a sum of Rs.10,20,000/- as claimed by the respondent/plaintiff in his plaint. The plaint allegations as if a sum of Rs.10,00,000/- out of the total consideration of Rs.10,20,000/- was paid as advance and part payment of consideration on the date of agreement is also false. Moreover, the suit property is not the absolute property of the appellants/defendants. On the other hand, it was acquired by A.Sagadevan, the husband of the first appellant/father of appellants 2 and 3. Apart from appellants 2 and 3, they also have other issues. As such, the claim of the respondent/plaintiff that the appellants executed the agreement for sale claiming to be the absolute owners of the suit property is not correct. The second defendant owes some antecedent debts to the respondent/plaintiff. The suit agreement was executed by the appellants/defendants as a security for the repayment of the said loan amount. The purpose for which the agreement was executed will make it clear that it was not intended to be acted upon

as an agreement for sale. The same is nothing but a sham and nominal document from which no legal right or obligation would flow. Out of the debt owed by the second appellant, a sum of Rs.9,00,000/- was repaid to the respondent/plaintiff subsequent to the date of suit agreement for sale. Under such circumstances, the suit filed by the respondent/plaintiff for specific performance and other reliefs is devoid of merits and the same is liable to be dismissed with costs.

4. Based on the above said pleadings, the trial Court framed the following issues and additional issues:

Issues:

1) Whether the plaintiff is entitled to a decree of specific performance as prayed for in the plaint?

2) Whether the court has to execute the sale deed in favour of the plaintiff?

3) Whether the plaintiff is entitled to delivery of possession of suit properties?

4) Whether the plaintiff is entitled for damages of Rs.1000/- or in the alternative the defendants are directed to pay back the advance amount?

5) Whether the plaintiff is entitled to permanent injunction as prayed for in the plaint?

6) To what relief the plaintiff is entitled?

Additional Issues:

1) Whether the suit agreement is executed as sham and nominal?

2) Whether the agreement for sale is executed for antecedent debt and not supported by consideration?

3) Whether the suit sale agreement out of necessity or purpose?

5. In the trial, three witnesses were examined as PWs 1 to 3 and 4 documents were marked as Exs.A1 to A4 on the side of the respondent herein/plaintiff. One witness was examined as DW1 and 7 documents were marked as Exs.B1 to B7 on side of the appellants herein/defendants.

6. At the conclusion of trial, the learned trial Judge (Additional District and Sessions Judge, Fast Track Court, Vellore) considered the pleadings of the parties and the evidence adduced on both sides in the light of the arguments advanced on both sides. Upon such consideration, the learned trial Judge answered the issues 1 to 3 and 5 in favour of the respondent herein/plaintiff. The

learned trial Judge also answered the additional issues 1 to 3 against the appellants/defendants and rejected the defence plea of the appellants /defendants in toto. However, regarding Issue No.4, in view of the fact that the trial Judge held the plaintiff entitled to the other reliefs and no specific evidence was adduced regarding the damage suffered by the respondent/plaintiff, the learned trial Judge negatived the prayer for a direction to pay damages. The alternative prayer for refund of the advance amount was also negatived in view of the fact that the main relief of specific performance was granted. The judgment of the trial Court based on which the decree appealed against has been drawn, was pronounced on 25.04.2011. Aggrieved and challenging the same, the present appeal has been filed by the appellants herein/defendants on various grounds set out in the memorandum of grounds of appeal.

7. The points that arise for consideration in the appeal are as follows:

1) Whether the suit sale agreement was obtained by using threat and coercion and hence invalid?

2) Whether the suit sale agreement was a sham and nominal transaction?

3) Whether the respondent / plaintiff has pleaded and proved his readiness and willingness in accordance with section 16(c) of the Specific Relief Act, 1963?

4) Whether the respondent /plaintiff is entitled to the relief of specific performance directing the appellants/defendants to execute sale deed in accordance with the suit sale agreement and deliver possession of the suit property to the respondent/plaintiff?

5) Whether the respondent/plaintiff is entitled to the relief of injunction as prayed for?

6) To what other reliefs the parties are entitled?

8. The arguments advanced by Mr.Rupert J.Barnabas, learned counsel for the appellants and by Mr.D.Rajagopal, learned counsel for the respondent were heard. The materials available on record were also perused. This Court, being the final Court of appeal on facts, re-appreciated the evidence available on record.
Points 1 and 2:

9. The defendants, who suffered a decree for specific performance, delivery of possession and permanent injunction based on the suit agreement for sale dated 10.06.2003, have brought forth this appeal against the decree of the trial Court dated 25.04.2011. The sole plaintiff in the original suit is the respondent in the appeal.

The suit was filed based on clear and unambiguous plea that the appellants herein/defendants agreed to sell the suit property, namely a house-site measuring 910 sq.ft together with a madras terraced building constructed thereon bearing New Door No.20, Vellore Road, Tharapadavedu Village, Katpadi Taluk, Vellore District comprised in S.No.534/2 (part) for a sum of Rs.10,20,000/-, received a sum of Rs.10,00,000/- as advance and part payment of consideration and executed the suit sale agreement agreeing to execute and register the sale deed on receipt of balance sale consideration of Rs.20,000/- within six months from the date of agreement for sale.

10. In this regard, the defence plea of the appellants/defendants is that they never had any intention and they did not agree to sell the suit property to the respondent/plaintiff for a sum of Rs.10,20,000/-. It is their contention that they did not receive Rs.10,00,000/- as advance and part payment of consideration as claimed by the respondent/plaintiff on the date of suit agreement, namely 10.06.2003. It is also their contention that the suit sale agreement did not create any right in favour of the respondent/plaintiff and did not impose any obligation on the appellants/defendants, since, according to them, the suit sale agreement was a sham and nominal transaction. However, in order to substantiate their stand that the suit sale agreement was only a sham and nominal deed, they have not adduced reliable evidence except the interested testimony of DW1 (A.S.Raja), the second appellant/second defendant himself. A close scrutiny of the defence plea of the appellants/defendants in this regard makes it clear that they do not dispute the fact that they executed the suit sale agreement dated 10.06.2003 in favour of the respondent/plaintiff on the said date. When the execution of the agreement is not disputed and on the other hand, is admitted, then the defence plea of the appellants/defendants that it was not intended to be acted upon as an agreement for sale and on the other hand it was executed as a security for repayment of the loan has got to be substantiated by the defendants by adducing sufficient and reliable evidence.

11. In this case, the appellants/defendants would contend that the second appellant did owe some antecedent debts to the respondent/plaintiff and as a security for the repayment of the same, the suit agreement for sale came to be executed. Though such a plea was taken by the appellants/defendants, there is dearth of evidence adduced on the part of the appellants/defendants to discharge the burden of proof cast on them. It is the testimony of DW1 (the second appellant himself) that he borrowed a sum of Rs.2,00,000/- alone from the respondent/plaintiff on 05.02.2003, which was repayable with interest at the rate of 24% per annum; that at the time of lending, as insisted upon by the respondent/plaintiff, he affixed his signature in 6 blank papers affixed with revenue stamps purporting to be promissory notes; that in addition to the said blank promissory notes, the respondent / plaintiff also obtained as many as 6 blank

cheques signed by the second appellant and that when he could not promptly repay the said amount, he along with other appellants were compelled and intimidated to execute a sale agreement on 10.06.2003 without receiving a single pie on the said date as consideration.

12. As a corollary to the above said contention, DW1 stated further in his evidence that for the sum of Rs.2,00,000/-, which was actually lent to him (second appellant) on 05.02.2003, the respondent/plaintiff filed another suit in O.S.No.439 of 2003. In order to prove the same, he produced the certified copy of the plaint in the said suit, namely O.S.No.439 of 2003, as a piece of evidence on his part and marked it as Ex.B1. However, DW1 in addition to the above said statement, ventured to state further that the above said suit O.S.No.439 of 2003 came to be settled, but prejudiced by the protraction of the said case, the respondent/plaintiff presented the blank cheques for collection, got them dishonoured and filed criminal complaints in C.C.Nos.5, 6 and 7 of 2004 on the file of the learned Judicial Magistrate I, Vellore. It is the further statement of DW1 that all those criminal cases ended in acquittal and hence, the respondent /plaintiff, who had obtained the suit agreement for sale by using coercion and intimidation, chose to file the present suit with false and untenable allegations.

13. DW1's further evidence is that the respondent/plaintiff was not ready and willing to perform his part of the agreement under the suit agreement for sale, as the said agreement for sale was only a sham and nominal document. DW1 has also chosen to dispute the issuance of pre-suit notice dated 22.11.2003 and the connected averments. The certified copies of the judgments of the Criminal Court in C.C.Nos.5, 6 and 7 of 2004 on the file of the learned Judicial Magistrate I, Vellore have been produced as Exs.B2 to B4. Certified copies of the complaints in those cases were produced as Exs.B5 to B7. On the basis of the above said statements contained in the evidence of DW1 in chief examination coupled with the production of the said documents, the appellants/defendants attempted to show that for a sum of RS.2,00,000/- lent by the respondent/plaintiff to the second appellant, a number of blank promissory notes and plank cheques were obtained and that when he (DW1) was not in a position to repay the amount within the agreed time, all the appellants were coerced, intimidated and compelled to execute the suit agreement for sale produced as Ex.A1.

14. Only in an attempt to show that the suit agreement for sale was not a genuine one and it was intended to be a security for repayment of the loan, the appellants have produced Exs.B1 to B7. Apart from Exs.B1 to B7, no other document has been produced by them. Ex.B1 is nothing but a certified copy of the plaint in the previous suit O.S.No.439 of 2003 filed by the respondent herein/plaintiff on the file of the subordinate Judge, Vellore for recovery of money based on a promissory note dated 05.02.2003 executed for a sum of

Rs.2,50,000/- together with interest at the rate of 24% per annum. Though DW1, the second appellant, in his evidence, has stated that he did not contest the suit. However, he added that the suit claim in the said suit was settled. If at all such a claim was settled, either settlement would have been reported to the Court to be incorporated in the decree or after the passing the decree in the said suit, full satisfaction could have been recorded. No such document has been produced by the appellants. There is also no oral evidence to the said effect. None of the following documents, namely certified copy of the judgment in the previous suit O.S.No.439 of 2003, certified copy of the decree in the said suit and suit register extract of the said suit showing settlement or full satisfaction recorded in the said suit has been produced. The mere proof of the fact that the respondent filed a previous suit in the year 2003 for recovery of a sum of Rs.2,50,000/- with 24% interest based on a promissory note in which it was also alleged that two more debts, one for a sum of Rs.5,00,000/- based on a promissory note dated 19.02.2003 and the other for a sum of Rs.2,00,000/- based on a promissory note dated 20.12.2002 were due, shall not be enough to discharge the burden of proof cast on the appellants/defendants to prove their contention that the suit agreement for sale was executed only as a security for the repayment of the loan or that Ex.A1 agreement for sale was executed as a sham and nominal document.

15. In this regard, the answers given by DW1 to the questions put to him in the cross-examination are relevant. During cross-examination he admitted that though he borrowed a sum of Rs.2,00,000/- on 05.02.2003, the above said former suit O.S.No.439 of 2003 came to be filed on the file of the Sub-Court, Vellore for a sum of Rs.2,50,000/- and interest and that the said suit was decreed in the year 2004 itself. However, the appellants have not chosen to produce the certified copies of the judgment and decree. On the other hand, there is a specific admission made by DW1 that he got a house bearing Door No.25, Gajaraj Mudali Street and the same was attached and brought for sale by the respondent/plaintiff and that a bid made by a third party was accepted and while the same stood listed for confirmation of sale, DW1 made his mother and sister to file a claim petition claiming 5/6th share and pray for an order setting aside the sale in respect of 5/6th share. It is also obvious from the admissions made by DW1 during his cross-examination that the claim petition was dismissed by the trial Court, whereupon the matter was taken to the High Court in which initially an order of conditional stay directing deposit of Rs.1,00,000/- was passed and ultimately the claim petition was remitted back to the trial / executing Court for further enquiry. Though he would claim that thereafter the said suit was settled, no document came to be produced to show such settlement.

16. The suit sale agreement is dated 10.06.2003. It is not in dispute and on the other hand it is admitted by DW1 that Ex.A1

agreement was executed on 10.06.2003. Though the settlement in the previous suit is said to have taken place after 2004 and the suit sale agreement was admittedly executed much earlier, namely on 10.06.2003 itself, nothing was canvassed in the earlier suit and no settlement regarding the suit sale agreement came to be made while settling the dispute in the earlier suit. The same is the reason why the appellants are not in a position to produce any document to show the terms of such settlement. In addition, in the written statement and in the evidence of DW1 in chief, the fact that the suit agreement for sale dated 10.06.2003 was a registered agreement was sought to be suppressed. Even during cross-examination, DW1 would contend that his signature and the signatures of the other appellants were obtained on 10.06.2003 using coercion against them and that their signatures were obtained in the said document in front of the registrar's office. His evidence is aimed at showing that he did not enter the Registrar's office for registering the document. The suit sale agreement marked as Ex.A1 is a registered document registered in the office of the Sub-Registrar, Katpadi on 10.06.2003 itself. All the three appellants and the respondent were the signatories to the said document and they also affixed their signatures and left thumb impressions for the registration endorsement. Such a fact of registration of the said document itself is sought to be suppressed by the appellants, especially by the second appellant, who deposed as the sole witness on the side of the appellants/defendants. If at all such a registered document was obtained by using force, threat, coercion or intimidation, then immediately thereafter they could have lodged a complaint with the police, apart from the possibility of their informing the registering authority that they were being coerced to come to the Registrar's office to execute and register the document and thereby preventing the registration of such document. Even after the registration of the document, the appellants did keep quiet for more than three years.

17. It is the case of the appellants that the second appellant alone borrowed a sum of Rs.2,00,000/- from the respondent/plaintiff and it is not their case that the other two appellants either jointly borrowed with him or stood as guarantors for the second appellant / second defendant. As such, the circumstances under which and the reasons for which the other two appellants, namely appellants 1 and 3/defendants 1 and 3 also joined in execution of Ex.A1 agreement, as projected by the appellants /defendants in their written statement and through the testimony of DW1 is quite unnatural and unbelievable. If at all the previous suit filed on the basis of the promissory note came to be settled, the fact that the suit agreement for sale had been executed as a security for the repayment of the said loan could have been very well incorporated in such settlement, since admittedly the suit agreement for sale came to be executed much prior to the alleged settlement in the prior money suit, namely O.S.No.439 of 2003. As there is no evidence to the effect that such a clause was also incorporated in the settlement, the contention of the appellants

that the suit agreement for sale was executed only as a security for the repayment of the loan and it was not intended to be acted upon as an agreement for sale cannot be sustained.

18. Before the filing of the suit, a pre-suit notice came to be issued on 22.11.2003 calling upon the appellants to execute and register the sale deed after getting the balance amount of sale consideration, namely Rs.20,000/-. A copy of the said notice has been produced as Ex.A2. The receipt of the said notice by the appellants has been admitted. But, curiously no reply setting out the defence plea now taken by them was sent by the appellants/defendants. The failure to issue any such reply will improbabilize the case of the appellants/defendants and probabilize the case of the respondent/plaintiff. In addition to the execution of the suit sale agreement, the appellants have also handed over the parent document relating to the suit property and the same has been produced as Ex.A3. The deed of undertaking executed on the same date (10.06.2003) to the effect that except the appellants, others (daughters of the first appellant) did not have any right in the property has been marked as Ex.A4. Neither the first appellant nor the third appellant, who are signatories to Exs.A1 and A4, not even any other third party witness to prove that Ex.A1 document was executed only as a security for repayment of loan, came to be examined on the side of the appellants/defendants.

19. The interested testimony of DW1, with all the lacunae pointed out supra, does not instill confidence and make the defence case of the appellants/defendants probable. When the execution of the agreement has been admitted by the appellants/defendants, the burden to prove that the same was executed as a security for repayment of loan or that there was an understanding that the document would not be acted upon shall stand heavily cast upon them. The evidence adduced in the form of testimony of DW1 and the documentary evidence adduced in the form of Exs.B1 to B7 are not sufficient to discharge the said burden. The said evidence is not enough to probabilize the defence case of the appellants/defendants. The mere fact that three cheques pertaining to the account of the second appellant drawn in favour of the respondent/plaintiff were dishonoured when presented for collection and three criminal complaints came to be preferred by the respondent/plaintiff as evidenced by Exs.B2 to B4 and that such complaints came to be dismissed, as evidenced by Exs.B5 to B7, shall not be enough to probabilize the case of the appellants/defendants that the suit agreement for sale was obtained by force as a security for the repayment of the loan. Point Nos.1 and 2 are answered accordingly holding that the findings of the trial Court that the suit sale agreement was proved to be genuine and that the same was not proved to be either obtained using coercion or threat or sham and nominal have got to be confirmed. Point Nos. 3 to 5:

20. On the other hand, the respondent/plaintiff besides examining himself as PW1, produced Exs.P1 to P4 and examined the attestors of Ex.A1 as Pws 2 and 3, who totally corroborated the evidence of PW1 relating to the execution of Ex.A1 agreement for sale and payment of Rs.10,00,000/- as advance and part payment of sale consideration. With such evidence the respondent/plaintiff clearly established the execution of the suit agreement for sale and its genuineness. Devaraj, one of the attestors of Ex.A1, figured as PW2 and his proof affidavit was accepted as his evidence in chief examination. However, before the next date fixed for his cross-examination, he passed away and his testimony was not taken into consideration and was eschewed as he was not subjected to cross-examination. However, another attestor of Ex.A1 by name Subramani, son of Venkatesan was examined as PW3. He corroborated the contents of Ex.A1 and the evidence of PW1 in all respects. It is the clear statement of PW1 that on 10.06.2003, the date of agreement, the entire sale consideration was available with him; that since a shop was there in the suit property on the date of agreement for sale, the appellants/defendants received Rs.10,00,000/- only as advance and part payment of sale consideration and that they agreed to execute the sale deed on receiving the balance amount of sale consideration, namely Rs.20,000/-, after vacating the person running the shop in the suit property. PW3 also states the very same thing in his evidence. According to his evidence, the respondent/plaintiff was having the entire sale consideration of Rs.10,20,000/- with him on the date of agreement itself, but the defendants received only Rs.10,00,000/- as advance on the premise that they would vacate the tenant in a few days and then take the balance and execute the sale deed. Both of them clearly deposed that the amount, namely Rs.10,00,000/- was paid in cash and they also asserted that Ex.A1 sale agreement was not obtained by using threat or coercion. PW3 was not cross-examined with regard to the reason assigned by him as to why the entire amount was not paid on the date of agreement itself, even though the respondent/plaintiff was having the entire money with him. The mere fact that PW1 and PW3 were not in a position to state the denominations of the currency notes in which the amount was paid shall not be enough to discredit their evidence.

21. The parent document relating to the suit property has been produced as Ex.A3. It is a sale deed dated 20.03.1958 in favour of Sagadeva Mudaliar, the husband of the first appellant / the father of appellants 2 and 3. It is obvious from the contents of the said document that the said property came to be purchased by the vendor therein in a court auction sale with the help of the amount provided by Sagadeva Mudaliar and thereafter, the auction purchaser conveyed the same in favour of Sagadeva Mudaliar. The said Sagadeva Mudaliar is admittedly no more. The appellants 1 to 3 seem to have executed Ex.A1 agreement for sale claiming them to be the absolute owners of the suit property. The appellants are none other than the wife and sons of Late Sagadeva Mudaliar. In Ex.A1 itself, the property has

been described to be the self-acquired property of Sagadeva Mudaliar. A deed of undertaking also came to be executed by the appellants 1 to 3 under Ex.A4, stating that the daughters of Sagadeva Mudaliar did not have any right in respect of the suit property and in case of any dispute being raised by them, the appellants would clear the same taking the responsibility on themselves to bear the cost for the same.

22. It is also an admitted fact that in the previous suit filed on pronote viz., O.S.No.39 of 2003, the property was attached and brought for sale in execution and the mother, brother and sisters of DW1 were made to make a claim as if they had 5/6th share in the said property and that said claim petition was dismissed by the Sub-Court, Vellore. The said admission was made by DW1 in his evidence in cross-examination. It is his further evidence that the order of Sub-Court, Vellore was challenged in the High Court and the High Court besides directing payment of Rs.1 Lakh as a condition for granting stay, remitted the matter back to the executing court. Of course there is no material, except Ex.A4 undertaking executed by the appellants to show that the sisters of the 2nd appellant (DW1) do not have any right to share in the property of their father Sagadeva Mudaliar. But in a suit for specific performance, the question of title or defect in title of the vendor under the agreement for sale need not be gone deep into, especially when the purchaser under the agreement is not projecting it as a ground for postponement of completion of the transaction or as a ground for rescission of the contract. If the purchaser under the agreement for sale expresses his readiness and preparedness to purchase the property holding the vendors under the agreement to be competent to convey the property, the mere fact that others also may have ostensible rights to make claims to a share in the property shall not be the ground on which the purchaser under the agreement shall be non-suited for the relief sought for especially when the purchaser is prepared to part with the entire sale consideration and get the sale deed from the vendors under the agreement for sale without insisting that the probable claimants should also join in execution of the sale deed.

23. In the case on hand, though the respondent/plaintiff has chosen to get Ex.A4 undertaking deed, since he has chosen to sue the appellants for specific performance for the execution of the sale deed by the appellants/defendants, despite the appellants' contention that there are other legal heirs of Sagadeva Mudaliar having an interest in the suit property, such an option on the part of the respondent/plaintiff shall amount to his relinquishment of any right under Ex.A4 against the appellants, in the event of the sisters of the appellants 2 and 3 coming forward to stake a claim in the suit property. The respondent/plaintiff has volunteered to take the risk of getting a sale deed from only three of the legal heirs of Sagadeva Mudaliar. The principle of caveat emptor will apply and the respondent/plaintiff shall be debarred from relying on Ex.A4 at a

later point of time to claim damages or refund of a part of sale consideration on the premise that the other legal heirs of Sagadeva Mudaliar would be found to be entitled to a share in the property. When it is made clear that the respondent/plaintiff is prepared to take the risk of getting a sale deed from the appellants alone, the contention that others also do have a share in it will not disentitle the respondent/plaintiff from getting a decree for specific enforcement of the agreement for sale, if he is otherwise entitled.

24. Of course, a plaintiff in a suit for specific performance in respect of an immovable property should plead and prove that either he had fulfilled his obligation in entirety or that he has been always ready and willing to perform his part of the obligations under the agreement. In short, the readiness and willingness should be pleaded and proved in accordance with Section 16(c) of the Specific Relief Act, 1963. Here, in the case on hand, the appellant/plaintiff has made a clear and categorical plea that he paid a major portion of the sale consideration, namely Rs.10,00,000/- out of Rs.10,20,000/- as advance on the date of agreement and that from the said moment he was ever ready and willing to perform his part of the agreement by making payment of the balance amount of consideration, namely Rs.20,000/- and get the sale deed executed and registered in his name. The agreement contains a stipulation that the parties agreed for completion of the sale transaction within six months. Clear plea has been made and evidence has been adduced to the effect that he was ready and willing to pay the balance and get the sale deed within the said period of six months, but the appellants/defendants were postponing the completion of the transaction on one pretext or other and that therefore, the appellant/plaintiff issued a registered notice through his lawyer on 22.11.2003, a copy of which has been marked as Ex.A2. The receipt of the said notice has been admitted by the appellants/defendants. It is also admitted by them that no reply to the same was issued by them. Of course the respondent/plaintiff did not file a suit within a short time from the date of issuance of the notice. On the other hand, the suit came to be filed on 24.05.2006. The reasons assigned for the said time gap are that after the receipt of the notice, appellants 2 and 3 approached the respondent/plaintiff and orally requested for extension of time till 10.06.2005 and again till 10.06.2006; that the respondent/plaintiff conceded for such extension and that when the respondent/plaintiff developed doubt regarding the bonafide of the appellants/defendants, he was constrained to file the suit for specific performance and other reliefs. As against the clear and categorical pleading made by the respondent/plaintiff and the evidence adduced on behalf of the respondent/plaintiff in this regard, there is no contrary evidence adduced by the appellants/defendants capable of disproving the contention of the respondent/plaintiff.

25. The learned trial Judge, on a proper appreciation of evidence, arrived at a correct conclusion that the respondent/plaintiff pleaded and proved his readiness and willingness strictly in accordance with Section 16(c) of the Specific Relief Act, 1963 and that therefore he was entitled to the relief of specific performance directing execution of sale deed after receiving balance consideration and also to hand over possession of the suit property to the respondent/plaintiff as prayed for. On a re-appreciation of evidence, this Court also comes to the very same conclusion and it finds no reason to interfere with the said finding of the trial Court. Since the respondent/plaintiff is found to be entitled to the relief of specific performance and it has also been found that the appellants were not ready and willing to perform their part of the contract and they have gone to the extent of disputing the genuineness of the suit sale agreement, the finding of the trial Court that the respondent/plaintiff was also entitled to a decree for permanent injunction restraining the appellants from alienating or encumbering the suit property does not deserve any interference. Point Nos.3 to 5 are answered accordingly against the appellants and in favour of the respondent.
Point No.6 :

26. So far as the other relief, namely damages is concerned, the trial Court itself has found that the respondent/plaintiff had not made out a case for damages and negatived the prayer for damages. As against the said finding and as against the said part of the decree of the trial Court, no appeal has been filed and no cross-objection has been taken by the respondent/plaintiff. Hence the same has become final. In view of the grant of main relief of specific performance, it is not necessary to consider the alternative prayer for refund of the advance amount. The respondent shall have one month's time from the date of receipt of a copy of this judgment for depositing the balance amount of sale consideration, if not deposited earlier.

27. In the result, the appeal is dismissed with costs. The respondent shall have one month's time from the date of receipt of a copy of this judgment for depositing the balance amount of sale consideration, if not already deposited. Consequently, the connected miscellaneous petition is closed.

gpa

-s/d-

Deputy Registrar(J)

Dt:26/2/2015

True Copy

Sub-Assistant Registrar

To

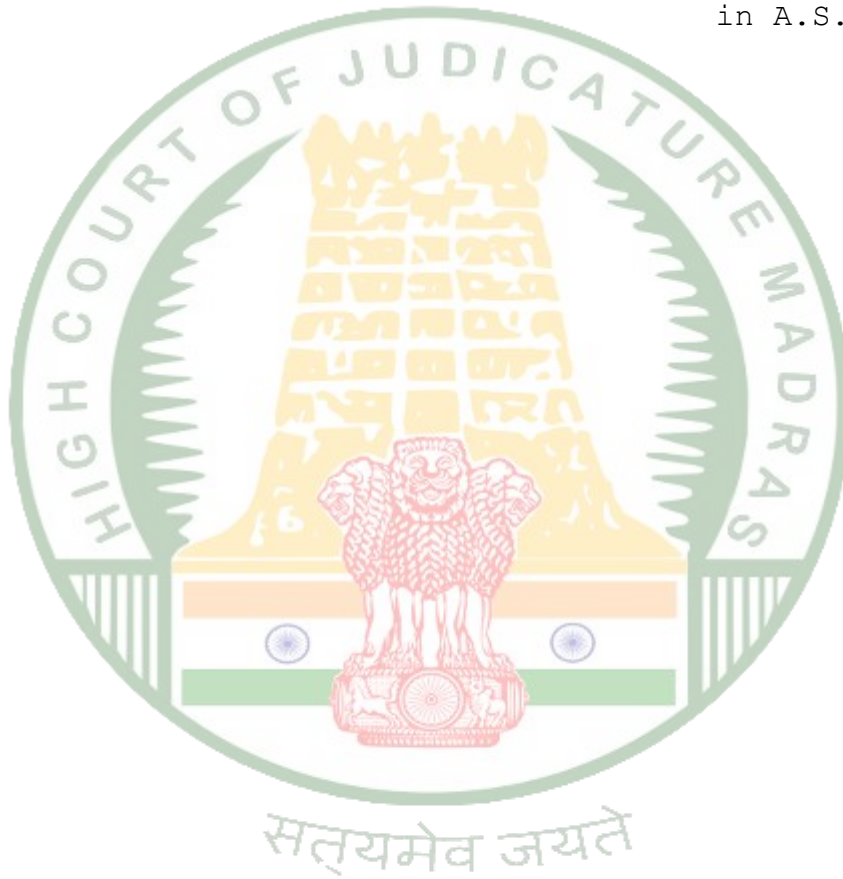
The Additional District and Sesssions Judge
(Fast Track Court), Vellore, Vellore District

+ 1 cc to Mr.D.Rajagopal,Advocate SR 2411

+ 1 cc to Mr.Rupert J.Barnabas, Advocate SR 2215

tej(co)
prk6/3

Pre-delivery Judgment
in A.S.No.336 of 2012 &
M.P.No.1 of 2013



WEB COPY