IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.03.2015
Delivered on : 02.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

A.S.No.726 of 2009

Adityaram Properties Pvt. Ltd.,
Rep. by its Chief Accountant
Regd. Office at No.14, Ambadi Road
Kotturpuram
Chennai - 600 085 .. Appellant/Plaintiff

-Vs-

1.Santhanam
2.Rani
3.Vijaya alias Pattu
4.Devi
5.Kokila
6.V.Elumalai
7.V.Jayaraman .. Respondents/Defenants

Appeal filed under Section 96 of the Civil Procedure Code and Order 41 Rules 1 and 2 of CPC against the judgement and decree of the learned Principal District Judge, Chengalpattu dated 23.12.2008 in O.S.No.588 of 2004.

For Appellant : Mr.T.R.Rajagopalan, Sr. Counsel
for Mr.T.M.Pappiah

For Respondent : Mr.S.V.Jayaraman, Sr. Counsel
for Mr.P.Chandrasekaran
for R1 to R5 and R7
Mr.V.Karthikeyan for R6

JUDGMENT

This appeal has been preferred against the decree of the trial court dated 23.12.2008 made in O.S.No.588/2004 on the file of the Principal District Judge, Chengalpattu dismissing the above said suit filed for the relief of specific performance based on an agreement for sale and on the other hand granting the alternative relief of refund of advance amount with interest.

2. The appellant/plaintiff, a Private Limited company incorporated under the Companies Act, 1956 filed the original suit for the relief of specific performance against the respondents 1 to 7 herein/defendants 1 to 7 in the suit based on an agreement for sale dated 01.09.2003, praying for a decree directing the

respondents herein/defendants to execute a sale deed and register the same in favour of the appellant herein/plaintiff conveying the suit properties after receiving the balance sale consideration of Rs.1,52,000/-. However since the relief of specific performance is discretionary, the appellant/plaintiff included an alternative prayer for refund of the advance amount with interest at the rate of 24% per annum from the date of agreement till realisation.

3. The plaint averments, in brief, are as follows:

(i) The plaintiff is a private limited company carrying on the business with the following objects:-

> "To buy, sell, improve, develop, exchange, lease, mortgage, dispose of and deal in all kinds of lands and buildings and development of Agricultural lands, farm sites, farm houses and orchard by undertaking land development, plantations, orchids growing, cultivation and other related agrofarm activites."

In such usual course of business, Real Estate Agents brought one V.Elumalai (6th respondent) son of Late Varadhan to the Registered Office of the plaintiff at No.14, Ambadi Street, Kottupuram, Chennai - 600 085. The said Elumalai expressed his desire and readiness to sell three items of properties measuring 53 cents, 26 cents and 105 cents comprised respectively in S.Nos.57/2, 53/8 and 93/3 at Panaiyur, Chennai - 600 112, which stood in the name of his father late Varadhan. He represented that he along with his mother (R1), sisters (R2 to R5) and brother (R7) inherited the properties of late Varadhan as his legal heirs and that all of them had authorised him to negotiate and sell the suit properties on their behalf also.

(ii) It was also represented by Elumalai that he was the head of the family and as such he was representing his mother, brother and sisters and that he could enter into an agreement for sale of the suit properties, as he had been authorised by the above said persons. Believing the said representation of Elumalai (R6), the plaintiff entered into an agreement for sale with Elumalai representing himself and the other legal heirs of late Varadhan. The said agreement was reduced to writing and signed on 01.09.2003 at the Registered/Administrative office of the plaintiff company, in the presence of Real Estate Agents, who signed it as attestors. On the date of agreement, a sum of Rs.1,00,000/- was paid as advance by way of a cheque drawn on HDFC bank bearing Cheque No.092151 dated 03.09.2003 in favour of Elumalai. Again the plaintiff company paid another sum of Rs.1,00,000/- by cash to the said Elumalai as further advance. Subsequently, Rs.60,000/- was paid as further advance in cash to the said Elumalai. On the same day, a further sum of Rs.1,40,000/- was paid by issuing a cheque in favour of Elumalai bearing Cheque No.14038 drawn on HDFC Bank towards sale consideration. Thus a total consideration of Rs.4,00,000/- had been paid by way of two cash payments and two cheque payments. All the three items of suit properties measuring a total extent of 1.84 acres were agreed to be sold for a total sale consideration of Rs.5,52,000/-, out of which a sum of Rs.4,00,000/- had been paid.

(iii) While entering into the agreement, Elumalai (R6) agreed to produce the title deeds and parent deeds relating to the suit properties and undertook to bring the other respondents/defendants also for signing the sale deed and for registration of the sale deed at the office of the Sub Registrar, Adyar. The payments received by Elumalai were also shared by him with the other defendants. As per the request made by Elumalai (R6), draft sale deed was prepared by the appellant/plaintiff to be signed by Elumalai and other respondents. The said Elumalai, who promised to come and receive the draft sale deed for getting the approval of the other respondents, authorised and permitted the plaintiff to enter into the property and take all necessary steps for the development of the said land by laying roads, planting trees, providing irrigation facilities and putting up constructions and compound wall. Having failed to bring the other respondents for executing the sale deed as promised by him, Elumalai (R6) demanded another cash payment of Rs.50,000/-, whereas the plaintiff agreed to make such a payment only by way of cheque. Elumalai (R6) who was insisting upon payment of the said amount in cash, thereafter issued a lawyer's notice on 02.12.2003 making false allegations, for which a proper reply cum legal notice dated 29.12.2003 came to be issued by the plaintiff through its counsel. The plaintiff also sent copies of the reply-cum-notice dated 29.12.2003 to 1) the Inspector of Police, Neelankarai, 2) Commissioner of Police, Chennai, 3) Sub Registrars of Alandur and Saidapet and 4) the Inspector General of Registration, Chennai. The plaintiff, who was put in possession of the properties measuring an extent of 1.84 acres, was always ready and willing to pay the balance sale consideration of Rs.1,52,000/-. However the 6th respondent Elumalai was bent upon cheating and defrauding the plaintiff by falsely contending that he had received only Rs.3,00,000/- and suppressing the receipt of a total sum of Rs.4,00,000/- as part payment of consideration. Under the reply cum legal notice dated 29.12.2003, the plaintiff expressed his readiness and willingness to pay the balance sale consideration of Rs.1,52,000/- to Elumalai and called upon him and the other respondents to receive the same in the presence of the Sub Registrar and execute and register a sale deed in favour of the appellant/plaintiff. However, the respondents, through a different counsel sent a rejoinder dated 12.01.2004, wherein the respondents have made false allegations once again in an attempt to escape from their liability under the suit agreement for sale. The same was received by the appellant on 23.01.2004. During the enquiry conducted by the police at Neelankarai Police Station, the Real Estate Agents and the witnesses made it clear that the agreement for sale was executed by the 6th respondent Elumalai on his own behalf and on behalf of the other respondents. However, the respondents were making attempts to wriggle out of the commitment and they committed breach of agreement. As such, the plaintiff, without waiving its rights to enforce the right to sue for compensation for the breach of agreement holding the respondents liable to pay damages, which shall be equivalent to five times of the sum of Rs.4,00,000/- paid under the agreement for sale, was constrained to approach the court with the plaint praying for a decree for specific performance directing the respondents herein to execute and register a sale deed in respect of the suit properties in accordance with the sale agreement dated 01.09.2003 or in the alternative to pass a decree directing the respondents to return the advance amount of Rs.4,00,000/- together with interest at the rate of 24% per annum from the date of 01.09.2003 till the date of realisation.

4. The suit was resisted by the respondents/defendants contending that there was no agreement for sale of the suit properties; that the signatures of the 6th respondent/6th defendant, obtained on blank stamp papers and blank papers at the time of lending money, were used for fabrication of an agreement for sale and that thus the suit came to be filed on such fabricated document. Besides the above averment, respondents 1 to 5 and 7 separately filed written statement containing the following averments:

i) The suit is not maintainable either in law or on facts and the same should be dismissed in limine with cost. The person, who signed the plaint, has not been proved to be properly authorised by the plaintiff company. The suit properties originally belonged to Varadhan son of Periyasamy, having purchased the same under three registered sale deeds dated 31.05.1960, 24.09.1962 and 25.07.1965 bearing Document Nos.1315/1960, 2557/1962 and 1626/1965 registered on the file of SRO, Saidapet. Ever since the date of purchase, P.Varadhan was in exclusive possession and enjoyment of the same as absolute owner and he was cultivating the said land raising paddy crops. At no point of time, the 6th respondent Elumalai went to the Registered office of the appellant/plaintiff company offering the suit properties for sale. On the other hand, the 6th respondent through his friend approached the appellant/plaintiff company for getting a loan of Rs.4,00,000/- on a monthly interest basis repayable on demand within three months. In this regard, he executed a Pronote on 01.03.2003 securing the said loan, besides signing a twenty rupees Non-Judicial blank stamp paper and green papers as demanded by the plaintiff. The 6th respondent never represented that he was acting on behalf of the other respondents also and he did not assure to bring the other respondents for the execution and registration of sale deed as alleged in the plaint.

ii) A sum of Rs.4,00,000/- was borrowed by the 6th respondent/6th defendant as a short term loan. The said amount was lent by the appellant/plaintiff on various occasions by making part payments. The loan was repayable together with interest. With the help of the signatures obtained in the blank stamp paper and blank green papers, the suit agreement for sale has been created and fabricated. The suit properties are in the hands of the first respondent and the 6th respondent has no right over the suit properties to encumber the same. With the help of panchayatdars, the suit properties were divided into seven equal shares and each one of the respondents was allotted 1/7th share as evidenced by a Koorchit and the respective shares are in the possession and enjoyment of the respective respondents. It is totally false to state that the 6th respondent agreed to sell the property for a sale consideration of Rs.5,52,000/-. The question of payment of balance sale consideration of Rs.1,52,000/- did not arise and at no point of time, the 6th respondent did make any promise to come and receive the draft sale deed from the plaintiff for the approval of the other respondents. At no point of time, the plaintiff was put in possession of the suit properties. The averments to the contrary found in the plaint are false. The property is an agriculture land and the same is being cultivated by the respondents 1 to 5 and 7 and the agriculture produce is shared among them. Apart from that, there is a material alteration in the subject agreement and hence the same cannot be specifically enforced.

iii) The market value of the suit properties shall be more than 50,00,000/- rupees per acre. The quotation of a meagre amount as sale consideration will show the doubtful nature of the claim made by the appellant/plaintiff. Even assuming that the suit agreement for sale was executed by the 6th respondent, the same will not bind the respondents 1 to 5 and 7, since they were not parties to the agreement and they had not authorised the 6th respondent to act as their agent in entering into an agreement for sale. A money transaction between the plaintiff and the 6th respondent is wrongly projected as a transaction of an agreement for sale. The course open to the plaintiff is to file a suit for recovery of money rather than seeking specific performance. The plaintiff having lent money should have filed a separate suit for recovery of money due to him under the loan transaction and it cannot enforce such a right by making an alternative prayer in the suit for specific performance. The 6th respondent is ready and willing to repay Rs.4,00,000/- obtained by him as loan together with interest at the rate of 24% per annum. Hence the suit filed by the plaintiff seeking specific performance should be dismissed with cost.

5. Based on the above said pleadings, the trial court framed two issues and one additional issue, which are as follows:

Issues:

"1. Whether the plaintiff is entitled to the specific performance as prayed for?

2. To what relief ?"

Additional Issue:

"Whether the plaintiff is entitled to claim Rs.4,00,000/- together with 24% interest from the defendants as alternative relief?"

6. Two witnesses were examined as PWs.1 and 2 and 21 documents were marked as Exs.A1 to A21 on the side of the appellant/plaintiff. Three witnesses were examined as DWs.1 to 3 and seven documents were marked as Exs.B1 to B7 on the side of the respondents/defendants. At the conclusion of trial, on an appreciation of evidence, the learned trial judge, by a judgment and decree dated 23.12.2008, held that the suit agreement for sale, having been executed by one out of seven co-sharers alone, would not be specifically enforced and that on the other hand, the plaintiff was entitled to the alternative relief of refund of the admitted amount of Rs.4,00,000/- with interest at the rate of 24% per annum from 01.09.2003 till the date of realisation and costs. The said decree of the trial court is challenged in the present appeal 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 agreement for sale has been proved to be executed by the 6th respondent/6th defendant?
2) Whether the suit agreement for sale is binding on the respondents 1 to 5 and 7? and whether the same will effect their shares in the suit properties?
3) Whether the appellant/plaintiff is entitled to the relief of specific performance directing the respondents 1 to 3 to receive the balance sale consideration and execute the sale deed in accordance with the terms of the suit sale agreement?

8. The arguments advanced by Mr.T.R.Rajagopalan, learned senior counsel appearing for Mr.T.M.Pappiah, learned counsel on record for the appellant, by Mr.S.V.Jayaraman, learned senior counsel appearing for Mr.P.Chandrasekaran, learned counsel on record for the respondents 1 to 5 and 7 and Mr.V.Karthikeyan, learned counsel for the 6th respondent were heard. The materials available on record were also perused.

Point No.1:

9. The plaintiff in the original suit, whose prayer for a decree for specific performance directing the defendants to execute a sale deed in accordance with the suit agreement for sale dated 01.09.2003 after receiving the balance sale consideration has been negatived and in whose favour a decree for the alternative relief of refund of the advance amount with interest has been granted, has come forward with the present appeal as against the rejection of the main relief of specific performance.

10. Admittedly, the suit properties described as three items comprised in S.Nos.57/2, 93/2 and 93/3 measuring respectively 53 cents, 26 cents and 105 cents (in all totally measuring 1.84 acres) belonged to one Varadhan, son of Periyasamy as his self-acquisitions, having purchased those three items under three different sale deeds dated 31.05.1960, 24.09.1962 and 25.07.1965

bearing Document Nos.1315/1960, 2557/1962 and 1626/1965 registered on the file of SRO, Saidapet. The said sale deeds have been produced on the side of the respondents/defendants and marked as Exs.B1 to B3. The said Varadhan died intestate on 09.12.1999 as evidenced by Ex.B4 Death Certificate. All the respondents 1 to 7/defendants 1 to 7 are his legal heirs and legal heir certificate to the said effect has been produced and marked as Ex.B5. The respondents 1 to 7/defendants 1 to 7 being his widow, daughters and sons became co-owners of the suit properties and each one was entitled to 1/7th share. The appellant/plaintiff claims that he entered into an agreement for the purchase of the suit properties from the respondents for a sum of Rs.5,52,000/- and that the said agreement was reduced to writing and signed by the authorised signatory of the plaintiff company and the 6th respondent, for himself and other respondents, namely respondents 1 to 5 and 7. The above said agreement dated 01.09.2003 has been marked as Ex.A1. The said agreement does have a computer generated printing with gaps that were filled up with pen. The gaps left out are the date and month in the opening sentence of the document, the names of the sellers under the agreement, the description of properties at two places, the sale consideration, the amount paid as advance and the balance amount of sale consideration. P.Adhityaram, the Managing Director of the plaintiff company has signed for the plaintiff as the purchaser and the 6th respondent V.Elumalai has signed as Vendor. Though two signatures under the heading witnesses are found, names and addresses of the witnesses are not found noted anywhere in the agreement. The heading of the document has been printed as ",,,,,,,,/ க்கு சுத்த விக்கிரைய ஒப்பந்தப் பத்திரம்". The amount of sale consideration has not been filled up in the title of the deed, even though a space has been provided therein. While referring to the vendors under the agreement for sale, the 6th respondent Elumalai, son of Varadhan alone has been referred to as the person entering into the agreement for himself and as the representative of his family members, namely mother Santhanam (R1), sisters Rani, Pattu, Devi and Kokila (R2 to R5) and his brother Jayaraman (R7). The recital, which is in the handwriting also is not happily worded. For better appreciation, the same is reproduced here under:

> "V.ஏழுமலை, தகப்பனார் லேட் வரதன், வயது 35, No.13, எம்.ஜி.ஆர் நகர், பனையூர், சென்னை- 119, தனக்காகவும் தனது குடும்பத்தினர், தாய் சந்தானம், சகோதரிகள் ராணி, பட்டு, கோகிலா, தேவி, சகோதரர் ஜெயராமன் அவர்களது பிரதிநிதி ஆகவும் நாங்கள் எல்லோரும் எங்கள் பிரதிநிதியான ஏழுமலை மூலம் எழுதிக் கொடுக்கும் கிரய ஒப்பந்த பத்திரம்"

11. Though Adhityaram, Managing Director of the appellant company/plaintiff company is stated to have signed the agreement on behalf of the plaintiff company, similar recitals are not found with the signature of V.Elumalai, the 6th respondent/6th defendant. The signature has not been super-added with an explanation that he signed it on his own behalf and on behalf of the other respondents/other defendants, namely respondents 1 to 5

and 7/defendants 1 to 5 and 7 as their representative. Under the said circumstances alone, the respondents herein/defendants have taken a stand that the respondents/defendants never intended to sell the suit properties to the plaintiff for a sum of Rs.5,52,000/- and that the suit sale agreement was also not executed by the 6th respondent either for himself or on behalf of the other respondents. It is their contention that actually the 6th respondent/6th defendant Elumalai approached the plaintiff for loan and at that point of time, the plaintiff, besides obtaining a Promissory Note for a sum of Rs.4,00,000/-, obtained his signatures in blank stamp paper and blank green sheets and that the same was used for creation of and fabrication of the suit sale agreement produced as Ex.A1. It is their further contention that even if the 6th respondent/6th defendant could have executed the agreement, he was not authorised by the other respondents, namely respondents 1 to 5 and 7/defendants 1 to 5 and 7 to negotiate for the sale of their shares also in the suit properties and for entering into an agreement on their behalf also.

12. In this regard, before ever the appellant/plaintiff took steps to issue a legal notice calling upon the respondents/defendants to come and receive the balance amount of sale consideration and execute the sale deed in accordance with the agreement for sale, it was the 6th respondent/6th defendant Elumalai, who issued a notice through his lawyer at the first instance, stating that he borrowed a total sum of Rs.3,00,000/-, which amount was paid by the appellant/plaintiff by issuing a cheque dated 03.09.2003 for Rs.1,00,000/- and another cheque dated 26.09.2003 for Rs.1,40,000/- and a cash payment of Rs.60,000/-. It was stated therein that the said amount was borrowed to provide funds to the 7th respondent/7th defendant Jayaraman, who had been awarded a contract for putting up storm water drains at Rajiv Nagar; that in the said circumstance, a friend of the 6th respondent by name Sankar introduced him to the appellant/plaintiff at the end of August 2003; that on 01.09.2003, the appellant obtained xerox copies of the documents pertaining to the family properties of the 6th respondent and several signatures in the ready-made documents with several blanks, stamp papers and plain papers and paid a sum of Rs.1,00,000/- by way of a post-dated cheque dated 03.09.2003 with a further promise to pay another sum of Rs.2,00,000/- and that the said amount of Rs.2,00,000/- was paid by way of a cheque dated 26.09.2003 for Rs.1,40,000/- and Rs.60,000/- paid in cash. It was also contended in the said notice that when the 6th respondent/6th defendant was able to arrange funds for repayment of the said loan and wanted to make repayment on 05.11.2003, he was asked to come back after a few days, since Adhityaram wanted to consult his partner; that when he again met Adhityaram at the office of the appellant/plaintiff on 01.12.2003 along with his wife, mother, sisters and brother, he showed belligerent attitude and proclaimed that the entire property had gone into his hands and that instead of receiving the amount from the 6th respondent/6th defendant, Adityaram showed such an attitude and even threatened to call the police and have them put in the lock up. With the said averment,

they called upon the appellant company and its Managing Director Adhityaram to return the documents and desist from creating documents.

13. Only after the said notice was served on the appellant company, a reply cum legal notice came to be issued on 29.12.2003 under Ex.A3 alleging execution of the agreement for sale dated 01.09.2003 by the 6th respondent for himself and as representative of the other respondents/other defendants agreeing to sell the suit properties for a sum of Rs.5,52,000/- calculated at the rate of Rs.3,000/- per cent. The payments allegedly made under the agreement are indicated as follows:

Date	Mode of Payment	Amount
01.09.2003	Cheque	Rs.1,00,000/-
01.09.2003	Cash	Rs.1,00,000/-
26.09.2003	Cheque	Rs.1,40,000/-
26.09.2003	Cash	Rs.60,000/-
	Total	Rs.4,00,000/-

In the reply notice, the appellant herein/plaintiff called upon the 6th respondent/6th defendant Elumalai to withdraw the notice dated 02.12.2003 and execute and register a sale deed in accordance with the agreement within seven days from the date of receipt of the reply notice, with a further warning that in case of failure, the appellant/ plaintiff would have to take resort to civil and criminal proceedings against the 6th respondent/6th defendant. The said notice was sent to the lawyer of the 6th respondent alone and no notice was sent and not even a copy of the said notice was sent to the other respondents. However curiously the appellant/plaintiff chose to mark copies of the said reply notice to 1) the Inspector of Police, Neelankarai Police station, Chennai - 600 041, 2) the Commissioner of Police, Egmore, Chennai - 600 008, 3) the Sub Registrar, Neelankarai and 4) the Inspector General of Registration, Chennai - 4. Besides issuing such a reply notice and marking copies of the same to the above said officials, the appellant/plaintiff also chose to issue a warning to the public by publishing a notice in the "News Today" dated 08.01.2011 marked as Ex.A4 and "Malaimalar" marked as Ex.A5.

14. In Ex.A6-Rejoinder dated 12.01.2004, the respondents/defendants reiterated their stand taken in the earlier notice. The original sale deeds under which late Varadhan purchased the suit properties have been exhibited as Exs.B1 to B3 on the side of the respondents/defendants. Death certificate of Varadhan and Legal heir certificate showing the legal heirs of Varadhan have been produced respectively as Exs.B4 and B5. Solvency certificate issued by Tahsildar, Tambaram to the 7th respondent Jayaraman to enable him to participate in the tender for getting the contract for construction of storm water drain has been produced as Ex.B7. The production of the original sale deeds, death certificate of Varadhan and Legal heir certificate by the respondents/defendants would make it clear that the original title

deeds and other documents showing the title of the respondents/defendants over the suit properties remained with the respondents/defendants and they were not handed over to the appellant/plaintiff. It is the contention of the respondents/defendants that the 6th respondent/6th defendant, at the time of making borrowal from the appellant/plaintiff, handed over the xerox copies of the documents showing their title to the suit properties and that the appellant/plaintiff obtained his signature in a document containing blanks, which were subsequently filled up, besides getting a promissory note. When it is contended by the respondents/defendants that the transaction was one of a loan transaction and not an agreement for sale and that Ex.A1-Agreement was created with the help of signatures obtained in a document containing blanks without allowing him to go through the contents, the appellant/plaintiff shall have to prove its case that the said agreement was executed by the 6th respondent/6th defendant knowing fully well that it was an agreement for sale, by adducing reliable and sufficient evidence.

15. In this regard, two witnesses were examined as PWs1 and 2 on the side of the appellant herein/plaintiff. PW1 is said to be the former Chief Accountant of the plaintiff company. His proof affidavit, which has been filed as his evidence in chief, simply contains statements to the effect that the suit was filed for specific performance based on the suit agreement for sale dated 01.09.2003 and he would state and reiterate the averments found in paragraphs 3 to 20 of the plaint; that plaint documents 1 to 6 were filed in support of the suit claim and that the averments made in paragraphs 3 to 20 of the plaint were true to the best of his knowledge, information and belief. It does not state what are the averments that are true to his knowledge and what are the averments which are true as per his information and belief. Though he has chosen to enter the witness box as a witness for the appellant/plaintiff, he would state that he had not seen the 6th respondent/6th defendant earlier. As per his evidence in the cross examination, a sum of Rs.4,00,000/- was paid by him as Chief Accountant of the appellant company/plaintiff company as advance for the suit sale agreement, out of which Rs.1,60,000/- was paid in cash and Rs.2,40,000/- was paid by way of cheques. What were the dates on which the cheques were issued and what were the dates on which the cash payments were made? - have not been clarified or elaborated by PW1 in his evidence. It is his further evidence during cross examination that he did not go through the original documents and encumbrance certificate relating to the suit properties. Though it was stated by him that the 6th respondent/6th defendant agreed to sell the suit properties for a sum of Rs.5,52,000/- acting on his behalf and on behalf of the other co-owners, he has not mentioned, who were the other co-owners represented by the 6th respondent/6th defendant. The authorisation given to PW1 for adducing evidence on behalf of the plaintiff company has been produced as Ex.A8. The Memorandum and Articles of Association of the plaintiff company is Ex.A9. It is also his admission that the suit transaction was not referred to in the documents sent to the Company Registrar. The proof

affidavit was signed on 4th day of February 2004 but filed on 29.04.2004. He was orally examined before the trial court on 11.07.2006. A perusal of the testimony of PW1 will make it clear that he is neither a signatory nor a witness to Ex.A1-Agreement for sale. His evidence that the agreement was entered into in his presence does not instil confidence of the court insofar as he has not stated, who signed the agreement on behalf of the plaintiff company and who were all represented by the 6th respondent/6th defendant, what were the dates on which payments were made and what were the amounts paid on such occasions.

16. One Sriram, son of Adhiseshaiah was examined as PW2. He was also not a signatory to Ex.A1-Agreement for sale either on behalf of the plaintiff company or as a witness. He was examined as the Chief Accountant of the plaintiff company, who succeeded to PW1. The proof affidavit of PW2 was signed on 22.10.2008 and filed before the court on 29.10.2008. He was orally examined on 30.10.2008. The authorisation given to him to give evidence as a witness for the appellant/plaintiff has been produced as Ex.A11. He was projected as the successor to PW1 - Pulla Rao as Chief Accountant of the appellant company/plaintiff company. The resolution authorising PW2 to give evidence on behalf of the appellant/plaintiff company is dated 10.03.2008. Therefore, he could not have any direct knowledge regarding the execution of Ex.A1-Agreement for sale. His evidence is based on the records maintained by the appellant/plaintiff company. PW2 joined as Chief Accountant in the appellant/plaintiff company only in the year 2007, namely three years after the filing of the suit. Still he would assert that it was the 6th respondent/6th defendant, who approached the appellant/ plaintiff company for the sale of the suit properties and that it was not correct to state that he approached the appellant/plaintiff company for seeking a loan. However, he would admit that he did not know whether the 6th respondent had been empowered to sell the suit properties and whether he had got any Power of Attorney from the other co-owners. Curiously, during further course of examination, he admitted that he, having joined the company in February 2007, cannot have direct knowledge about Ex.A1-suit sale agreement dated 01.09.2003. The documents produced as Exs.A12 to A21 are nowhere concerned with the dispute that has arisen between the parties to the suit and no explanation is forthcoming as to why all those documents have been produced.

17. From the above said oral and documentary evidence adduced on the side of the appellant/plaintiff, it cannot be concluded that the plaintiff has proved that Ex.A1-agreement for sale was executed by the 6th respondent/6th defendant on his own behalf and on behalf of the other respondents for the sale of the suit properties to the appellant/plaintiff. However, since the signatures of the 6th respondent/6th defendant found in Ex.A1-Agreement for sale are admitted by the defendants, we have to refer to the evidence adduced on the side of the respondents/defendants also, besides their pleadings for coming to a definite conclusion as to whether Ex.A1 - Agreement was executed

as a sale agreement by 6th respondent/6th defendant. The contention of the respondents in their written statement is to the effect that when the 6th respondent/6th defendant approached the plaintiff to get a loan of Rs.4,00,000/- on monthly interest basis repayable on demand within three months, besides executing a Promissory Note on 01.03.2003, he affixed his signatures as demanded by the plaintiff in 20 rupees Non-Judicial stamp paper and some kind of green papers having blank spaces and that the same was used for creation of the suit agreement for sale dated 01.09.2003 marked as Ex.A1. This is quite contrary to the content of the notice issued by him through his lawyer on 02.12.2003 marked as Ex.A2. In Ex.A2 he had contended that he approached the plaintiff for a loan at the end of August 2003; that he was asked to come back on 01.09.2003 and that on 01.09.2003, after getting xerox copies of the documents pertaining to his family properties from him, Adityaram made him sign several ready-made documents prepared both on stamp papers and plain papers, containing typed matters with several blanks; that he was made to sign without even allowing him to read the documents, holding out that the same was obtained only as security for the financial assistance to be extended by the plaintiff and that such signatures were obtained besides getting a promissory note executed by him. The above said contradiction coupled with the fact that all blank spaces in Ex.A1 filled up with handwriting have been attested by the 6th respondent/6th defendant by affixing signatures against those hand written portions, will make it clear that Ex.A1-Agreement was not created by obtaining the signatures of the 6th respondent in blank stamp papers and blank papers and on the other hand, it was typed in the usual form of agreement leaving spaces for writing the matters pertaining to the particular agreement and that after filling up the spaces and making the document into a full fledged one, signatures of the 6th respondent were obtained not only at the end of each page of the agreement, but also at all places wherein matters had been filled up with handwriting. Though no specific issue was framed by the trial Court as to whether the 6th respondent Elumalai signed Ex.A1 agreement after it was prepared in full or whether the signatures were obtained in the said document containing blanks which were subsequently filled up?, it is quite obvious that the parties to the suit participated in trial knowing fully well the respective contentions of the parties and have adduced evidence touching all the points in controversy. Hence, from the full fledged evidence adduced on both sides in this regard before the trial Court, this Court is able to arrive at a conclusion that the suit agreement for sale produced as Ex.A1 was executed by the 6th respondent/6th defendant after the agreement was prepared in full and that the contention of the respondents/defendants to the effect that the same was prepared with the help of the signatures of Elumalai obtained in blank stamp papers and blank papers or documents containing blanks without allowing him to go through its contents has got to be rejected as untenable.

Point No.2:

18. As held in the forgoing paragraphs, Ex.A1 agreement has been proved to be an agreement for sale executed by the 6th respondent/6th defendant Elumalai in favour of the appellant/plaintiff and the respondents have not proved their case that it was created using the signatures of Elumalai obtained either in blank stamp papers and blank papers. The respondents / defendants have also failed to substantiate their contention that the signatures of Elumalai (Respondent No.6/Defendant No.6) were obtained in an incomplete document having a number of blanks and without even allowing him to read the contents of the document. However, it is an admitted fact that the 6th respondent Elumalai alone signed Ex.A1 agreement for sale and none of the other respondents signed the agreement as a party to it. It is also an admitted fact that the suit properties were the self acquired and absolute properties of Late Varadhan and on his death, they devolved upon his heirs, namely respondents 1 to 7 in equal shares. Out of the 7 co-owners, one of them namely Elumalai (6th respondent) alone executed Ex.A1 agreement for sale dated 01.09.2003. Even while signing the document, Elumalai did not append any note to his signature to the effect that he was signing the agreement as an authorized agent of the other respondents, namely respondents 1 to 5 and 7/defendants 1 to 5 and 7. Of course, in the body of the agreement such a recital is found. But, the same shall not be enough to make the respondents 1 to 5 and 7/ defendants 1 to 5 and 7 bound by the agreement for sale. Unless the appellant/plaintiff proves that the 6th respondent/6th defendant had been duly authorized by respondents 1 to 5 and 7 / defendants 1 to 5 and 7 to enter into an agreement for sale on their behalf also so as to bind their shares in the suit properties, the appellant/plaintiff shall not be entitled to get the relief of specific performance against the respondents 1 to 5 and 7 / defendants 1 to 5 and 7.

19. Even though the appellant/plaintiff would have contended that the benefit of the amount paid to Elumalai, the 6th respondent/6th defendant under Ex.A1 agreement for sale enured to all the respondents and all the respondents had enjoyed the benefit of the transaction under Ex.A1 agreement, there is no reliable evidence to substantiate the said contention of the appellant/plaintiff. In fact, Adityaram, the Managing Director of the appellant/plaintiff company, who is said to have held negotiations with the 6th respondent/6th defendant Elumalai and entered into an agreement for sale under Ex.A1 sale agreement, has not chosen to enter the witness box. One Pulla Rao, the then Chief Accountant of the appellant/plaintiff company and his Successor in office P.Sriram alone were examined as Pws 1 and 2. A careful consideration of the evidence of PW1-Pulla Rao, in its entirety, will show that he did not have any personal knowledge regarding the negotiations between Adityaram, the Managing Director of the appellant company and Elumalai, the 6th respondent/6th defendant. His evidence in Chief examination in the form of proof affidavit is simply a formal one stating that the averments found in Paragraphs 3 to 20 of the plaint are true to

the best of his knowledge, information and belief and that 6 documents were produced in support of the claim of the appellant/plaintiff. He has not shown separately the averments relating to the facts regarding which he had got personal knowledge and the averments relating to the facts regarding which he got information and believed to be true. During cross-examination, he clearly admitted that he had not seen Elumalai, the 6th respondent prior to his examination in the trial Court as PW1. Hence it can be easily discerned that his evidence was confined to his acquiring knowledge about the payments made to Elumalai, the 6th respondent from the account books of the appellant/plaintiff company. Though PW1, according to his version, was in the service of the appellant/plaintiff company on the date of Ex.A1 agreement and the dates of payments made under the said agreement for sale to Elumalai, the 6th respondent, he could not have any personal knowledge regarding what transpired between Elumalai, the 6th respondent and Adityaram, the Managing Director of the appellant/plaintiff company leading to the execution of Ex.A1 agreement for sale. In fact, for the first question asked in the cross-examination he made an answer admitting that he did not see the 6th respondent Elumalai prior to his examination as PW1 in the trial Court. However, in the later part of the cross-examination he showed a tendency to depose as if the 6th respondent Elumalai came to the office of the appellant/plaintiff company and agreed that he along with the other co-owners were ready to sell the suit properties for a sum of Rs.5,52,000/- and that the negotiation for the same was held in the office of the appellant/plaintiff company. The said improvement, made in the later part of the cross-examination and also the re-examination, will not have the effect of nullifying his admission made earlier that he did not see the 6th respondent Elumalai before 11.07.2006, the date on which he was examination as PW1 before the trial Court. Similarly, PW2's evidence cannot be a direct evidence regarding what transpired between Adityaram and Elumalai, the 6th respondent/6th defendant and the matters discussed during the negotiation leading to the execution of Ex.A1 agreement. Admittedly, he joined the services of the appellant/plaintiff company only in February 2007. As such, it is obvious that he cannot have any personal knowledge regarding the execution of Ex.A1 agreement for sale. If at all any attempt has been made by PW2, as if he got such a personal knowledge, then his testimony will become unreliable since veracity of PW1 itself will become questionable. In fact, while deposing as PW2, he chose to hold out that it was the 6th respondent who approached the appellant/plaintiff with a proposal to sell the suit properties to the appellant/plaintiff, as if he (PW2) got personal knowledge of the same rather than the said fact having come to his knowledge from the documents and account books maintained in the office of the appellant/plaintiff.

20. Be that as it may, it is a clear admission made by him that he did not know whether the 6th respondent/6th defendant had got the authority and power of the other respondents to sell the suit properties to the appellant/plaintiff. He, having deposed as

if he had got knowledge regarding every aspect of the transaction, has chosen to make an admission that he did know whether a deed of power of attorney executed by the other respondents authorizing the 6^{th} respondent has been produced as a document in the trial Court. Hence, neither the testimony of PW1 nor the testimony of PW2 will be helpful to the appellant/plaintiff to prove its case that Elumalai (6^{th} respondent) had been authorized by the other respondents to enter into an agreement for sale on their behalf also. In any event, even if it is assumed for the sake of argument that Elumalai (6^{th} respondent) did make such a representation to Adityaram, the Managing Director of the appellant/plaintiff company, unless it is established by reliable evidence that the other respondents had either authorised the 6^{th} respondent to do so on their behalf or they subsequently ratified the act of 6^{th} respondent entering into an agreement for sale on their behalf also, the appellant/plaintiff cannot succeed in its attempt to get the relief of specific performance against the remaining respondents, namely respondents 1 to 5 and 7. Admittedly, respondents 1 to 5 and 7 had not executed any deed of Power of Attorney in favour of Elumalai, the 6^{th} respondent, for negotiating for the sale of their shares also in the suit properties and for entering into an agreement with the intending purchaser. It is also an admitted fact that none of the respondents 1 to 5 and 7 had given an authorisation in writing falling short of a proper deed of Power of Attorney in favour of the 6^{th} respondent Elumalai. In fact, there is not even a scrap of paper to show that respondents 1 to 5 and 7 either authorized R6 to negotiate for sale of their shares in the suit properties or ratified the act of the 6^{th} respondent Elumalai in entering into a sale agreement with the appellant/plaintiff under Ex.A1.

21. In an attempt to show that the respondents 1 to 5 and 7 should have authorized Elumalai, the 6^{th} respondent to enter into a sale agreement with the appellant/plaintiff so as to bind their shares also, an argument was advanced on behalf of the appellant/plaintiff pointing out the contradictions and weaknesses in the defence case of the respondents /defendants. Respondents 1 to 5 and 7/ defendants 1 to 5 and 7 have taken a plea in their written statement that the suit properties had been divided among respondents 1 to 7 and the same was evidenced by a Koorchit and that each one of the respondents is in exclusive possession and enjoyment of the portion allotted to him/her as his /her share. They had also taken a stand in the written statement that the 6^{th} respondent Elumalai released and relinquished his share in favour of the first respondent/first defendant and that all the six persons, namely respondents 1 to 5 and 7 are cultivating the land and were sharing the agricultural produce among themselves. The fact that all of them shared the agricultural produce will show that the cultivation was common and the fact that respondents 1 to 5 and 7 jointly cultivated the suit properties will lead to an inference that the partition alleged by the respondents cannot be true.

22. Pointing out the above said contrary stands taken by the

respondents, the learned senior counsel for the appellant argued that the same will show that the contention of the respondents as if there was a division of the suit properties among R1 to R7 and the 6th respondent released and relinquished his share in favour of the first respondent would not be true. Of course, the said contention of the learned senior counsel for the appellant/plaintiff does have substance in it and the same has go to be countenanced. But, the same cannot be stretched further to make an inference that such contradictory and untrue stands taken by the respondents 1 to 5 and 7 shall probablize that authorisation had been given by them to Elumalai, the 6th respondent. The plea of prior partition, release and relinquishment of the share of the 6th respondent and separate enjoyment of the respective share of the respondents seems to have been made in order to protect the share of the 6th respondent Elumalai also. Simply because such a stand was taken as a result of over consciousness, no inference can be made to the effect that the respondents 1 to 5 and 7 had or could have authorized the 6th respondent to enter into an agreement for sale in respect of their shares also. Even the admission made by PW2- Devi, the respondent No.4 to the effect that Respondents 1 to 7 are jointly enjoying the suit properties and that they reside together as one family will not improve the case of the appellant/plaintiff. Of course, DW2 has admitted during cross-examination that no partition was effected among the respondents in respect of the suit properties.

23. The further argument advanced by the learned senior counsel for the appellant is that there is an admission to the effect that the benefit of the agreement was enjoyed by all the respondents who are the members of one and the same family; that hence a oral agreement with the other respondents, namely respondents 1 to 5 and 7 should be imputed and that such oral agreement for sale could be specifically enforced in law. Such a contention does not hold water in it and the same has got to be discountenanced. It is the further contention of the learned senior counsel appearing for the appellant that an agreement for sale need not be in writing and it can be oral and that such oral agreements for sale could be specifically enforced. In support of his contention, the following judgments have been cited:

1. Krishnan Kesavan and Others Vs. Kochukunju Karunakaran reported in AIR 1988 Kerala 107;
2. Bru Mohan and Others V.Sugra Begum and Others, reported in (1990) 4 Supreme Court Cases 147; and
3. Ouseph Varghese Vs. Joseph Aley and Others, reported in 1969 (2) Supreme Court Cases 539.

All the above precedents have been cited to show that an agreement for sale could be oral and such oral agreement could be specifically enforced. There is no quarrel over the proposition that as per the law in force on the date of Ex.A1 agreement and on the date of filing of the suit, oral agreement for sale in respect of immovable property could be specifically enforced. But in the case on hand, the appellant/plaintiff has failed in its attempt to show that an oral agreement against Respondents 1 to 5 and 7 could be imputed or that they had ratified the act of the 6th respondent in entering into an agreement under Ex.A1, on their behalf also. Hence, the above cited judgments do not render any help to the appellant/plaintiff to prove its case against the respondents 1 to 5 and 7. Accordingly, this Court comes to the conclusion that Elumalai, the 6th respondent alone is bound by the suit sale agreement marked as Ex.A1 and that the other respondents (respondents 1 to 5 and 7) are not bound by Ex.A1.

Point No.3:

24. In the foregoing paragraphs, this Court has held that Ex.A1 agreement will bind Elumalai, the 6th respondent alone and it is not binding on the other respondents, namely respondents 1 to 5 and 7. Admittedly, respondents 1 to 7 being the legal heirs of the original owner of the suit properties, namely Varadhan are entitled to 1/7th share each in the suit properties. If at all the appellant / plaintiff can get the relief of specific performance of the contract under Ex.A1 sale agreement, it shall be restricted to the 6th respondent's 1/7th share alone. So far as the remaining 6/7th share belonging to respondents 1 to 5 and 7 is concerned, the appellant/plaintiff is not entitled to the relief of specific performance or any other relief. Even in respect of the 1/7th share of Elumalai (6th respondent/6th defendant), the appellant/plaintiff cannot be granted the relief of specific performance. In fact, during the course of argument, it was represented to this Court that the appellant/plaintiff was not interested in getting a decree for specific performance against the 6th respondent and in respect of his 1/7th share alone.

25. Ex.A1 agreement for sale does not contain any recital to the effect that the vendor under the agreement agreed to deliver possession of the suit properties to the purchaser in part performance of the agreement for sale. There is not even an endorsement made subsequently evidencing delivery of possession in part performance of the agreement for sale. The appellant/plaintiff, who claims to have got possession of the suit properties in part performance of the agreement for sale, has not even furnished the date on which possession was given to the appellant/plaintiff. As the suit properties are owned jointly by respondents 1 to 7, one of them namely the 6th respondent alone cannot induct any third party purchaser in possession even in case of a competed sale of his share. Such third party purchaser of the share of one of the co-owners has to work out his remedy by seeking partition and separate possession of the share purchased by him. That being so, it is highly improbable that the 6th respondent could have handed over possession of the suit properties to the appellant/plaintiff in part performance of the suit agreement for sale.

26. In fact, it is the 6th respondent who chose to issue a notice at the first instance denying having executed any agreement for sale and calling upon the appellant/plaintiff and its Managing Director to receive the amount due to them from the sixth respondent and return the entire set of documents obtained by the Managing Director of the appellant from him. The said notice was

dated 02.02.2003 and the same has been marked as Ex.A2 on the side of the appellant/plaintiff. Only in response to Ex.A2 notice, the original of Ex.A3 came to be issued by the appellant/plaintiff as a reply cum legal notice to Ex.A2. The said reply cum legal notice was addressed to the advocates firm through whom Ex.A2 notice was issued by the 6th respondent alone. Only in the said reply cum legal notice, the appellant/plaintiff chose to call upon the 6th respondent to comply with and fulfill the terms and conditions of the sale agreement. The notice had been drafted in such a way that the 6th respondent should bring his family members to receive Rs.1,52,000/- being the balance amount of sale consideration and execute and register a sale deed conveying the suit properties in favour of the appellant / plaintiff. It was also stated therein that in case of failure on the part of the 6th respondent to do so, the balance amount of sale consideration would be deposited into the appropriate Court seeking a direction for the execution and registration of a sale deed in favour of the appellant/plaintiff. It was also stated that in case of failure on the part of the 6th respondent to withdraw Ex.A2 notice and execute and register a sale deed, the appellant/plaintiff would be constrained to take civil and criminal proceedings against the 6th respondent. Copies of the said notice were sent to 1) the Inspector of Police, Neelankarai Police Station, 2) the Commissioner of Police, Chennai, 3) the Sub Registrar, Neelangarai and 4) the Inspector General of Registration, Chennai. Having chosen to send the notice to the 6th respondent's counsel and mark the copies of the same to the above said officials, the appellant/plaintiff failed to issue any such notice or mark a copy of Ex.A3 reply notice to the other respondents, namely respondents 1 to 5 and 7.

27. In addition, the appellant/plaintiff chose to effect publication of a warning notice to the public in the News papers "News Today"and "Malai Sudar". The news paper cuttings have been produced as Exs.A4 and A5. Thereafter only, all the respondents joined together and issued a notice dated 12.01.2004 through their counsel Mr.A.Ramu, Advocate. The same has been marked as Ex.A6. For the said notice issued on behalf of the respondents under Ex.A6, no reply came to be sent by the appellant/plaintiff claiming that the agreement was executed on behalf of respondents 1 to 5 and 7 also and that hence they were also bound by the suit sale agreement. At the first instance, the appellant seems to have made an attempt to cause intimidation by marking a copy of Ex.A3 notice to the Police officials and the officials of the Registration Department. The same will show that the appellant/plaintiff tried to achieve things by misusing its proximity to and influence with the officials of the Police Department and Registration Department.

28. Further, the grant of the relief of specific performance of an agreement for sale is discretionary. When the appellant/plaintiff has come to the Court with unclean hands by falsely claiming to have got possession of the suit properties in part performance of the agreement for sale, that too, after making

an attempt to achieve things using its influence with the police officials and officials of the Registration Department, the appellant/plaintiff shall not be entitled to the exercise of discretion of the Court in its favour even in respect of the 1/7th share of the 6th respondent. That apart, the sale consideration noted in Ex.A1 agreement for sale is Rs.5,52,000/-. Ex.A9 is the copy of the Certificate of Incorporation of the appellant company with the change of name from Bay View Farms Pvt. Ltd., to Adityaram Properties Pvt., Ltd., The same is also evident from the sale deeds marked as Exs.A16, A18 and A19 under which the appellant/plaintiff company purchased properties from third parties. Such a change was made with effect from 17.07.2003. The Managing Director of the said company is Adityaram. He has also changed his name to Adityaram from Rambabu and the same has been admitted during the course of argument. Exs.A12 and A15 are sale deeds dated 02.05.2000 and 07.03.2005 executed in favour of Mrs.P.Amani Rambabu, the wife of the Managing Director of the appellant/plaintiff company. The said sale deeds were executed by the Managing Director of the appellant company acting as power agent of one Jothi and Balakrishnan respectively. Exs.A13 is the certified copy of the sale deed dated 12.09.2001 under which the appellant company purchased a property from respondents 1, 2, 4, 6 and 7 in its former name "Bay View Farms Pvt. Ltd.," Ex.A14 is a certified copy of a sale deed under which the appellant/plaintiff company purchased another property from Sydani Be in its former name “Bay View Farms Pvt. Ltd.”. Exs.A16 to A19 are other sale deeds dated 08.09.2005, 19.09.2005, 05.04.2006 and 06.11.2006 under which the plaintiff company purchased some other properties. Ex.20 is a certified copy of the sale deed under which one P.Kamaraju S/o. Late Ramaiah had purchased a property measuring 85 cents comprised in S.No.92/1 of Sholinganallur Village within the Sub-Registration District of Neelangarai for a sum of Rs.8,50,000/-. Though the same has been produced as a document on the side of the appellant/plaintiff and marked as Ex.A20, there is no evidence to show the nexus between the same and the issue involved in the case on hand. The next document is a certificate obtained from the Sub-Registrar, Neelangarai showing the guideline value of the suit properties during the period April 2002 to March 2003. All the lands are classified as agricultural lands and it was valued taking one acre as the basic measurement as per the guideline value. The guideline value cannot be adopted as the market value. It serves the purpose of the Government for preventing evasion of stamp duty and registration charges. Under Ex.A17 itself an extent of 23 cents was purchased by the appellant for a sum of Rs.2,30,000/-. The same works out to Rs.10,00,000/- per acre. Though the appellant/plaintiff has chosen to produce sale deeds and the guideline value with a view to show that the sale consideration quoted in Ex.A1 was the market value of the suit properties, the evidence is lacking. Even if it is assumed that the sale consideration quoted in Ex.A1 Agreement for Sale reflected the market value of the suit properties as on the date of agreement, the development of the surrounding area and the escalation of the cost of the land in the surrounding area should also be taken into account.

29. According to the respondents / defendants, the market value of the suit properties even as on the date of filling of their written statement, was Rs.50,00,000/- per acre. Now the same would have increased further. The Court also can take note of the fact that the present market value of the property shall be several times more than the rate prevailed as on the date of filing of the suit. Under the said circumstances, it shall be inequitable to grant the relief of specific performance even in respect of the $1/7^{th}$ share of the 6^{th} respondent/6^{th} defendant. The appellant/plaintiff is also not inclined to get such a relief against the 6^{th} respondent/6^{th} defendant binding his $1/7^{th}$ share alone. Hence, this Court, on a thorough re-appreciation of evidence, is of the considered view that the appellant/plaintiff shall not be entitled to the relief of specific performance even as against the 6^{th} respondent/6^{th} defendant and in respect of his $1/7^{th}$ share in the suit properties. The trial Court committed no error in arriving at a conclusion that the appellant herein/plaintiff shall not be entitled to the main relief sought for in the suit, namely the relief of specific performance directing the respondents /defendants to execute a sale deed in favour of the appellant / plaintiff in respect of the suit properties after receiving the balance amount of sale consideration. This Court does not find any defect or infirmity in the said finding of the trial Court warranting interference by this Court. The said finding of the trial Court deserves confirmation.

30. So far as the alternative relief of re-fund of advance amount with interest is concerned, the learned trial Judge has chosen to grant such relief relying on the admission made by the 6^{th} respondent that he had received a sum of Rs.4,00,000/- from the appellant/plaintiff. Though the learned trial Judge chose to negative the prayer for specific performance against the respondents 1 to 5 and 7 on the premise that they were not parties to the suit sale agreement and the suit sale agreement entered into between the appellant/plaintiff and the 6^{th} respondent would not bind them, since they had not authorised the 6^{th} respondent/6^{th} defendant to enter into such sale agreement on their behalf also, the learned trial Judge has chosen to pass a decree granting the alternative relief against the respondents without restricting it to the 6^{th} respondent alone. The same was done by the trial Court based on its perception that originally the written statement was filed as a common written statement by all the seven respondents wherein they had admitted that the 6^{th} respondent received a sum of Rs.4,00,000/- from the appellant/plaintiff on various occasions. Its is true that there is no discussion by the trial Court as to how it came to the conclusion that the respondents 1 to 5 and 7/defendants 1 to 5 and 7 were also liable to repay the said amount with interest. However, none of the respondents 1 to 5 and 7 has chosen to file an appeal or cross-objection challenging that part of the decree granted against them. During the course of argument in the appeal also, the counsel appearing for the said respondents submitted that they were not aggrieved by such a

direction as the 6^{th} respondent/6^{th} defendant was prepared to comply with the direction made in the decree. Though the interest awarded by the trial Court at the rate of 24% per annum seems to be slightly on the higher side, no challenge was made to the same by the respondents. Hence, that part of the decree passed by the trial Court granting the alternative relief of re-fund of advance amount and directing the respondents/defendants to repay Rs.4,00,000/- with interest at the rate of 24% per annum from 01.09.2003, namely the date of agreement till the repayment and directing the defendants to pay cost of the suit has become final and the same does not deserve interference and the same has to be confirmed without any modification.

31. In the result, the appeal is dismissed with costs and the decree of the trial Court dated 23.12.2008 made in O.S.No.588 of 2004 shall stand confirmed in all respects without any modification.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

gpa
To
The Principal District Judge
Chengalpattu.

Copy to:The Section Officer, V.R.Section, High Court, Madras.

1 cc to Mr.P.Chandrasekaran, Advocate Sr.No.26261
in A.S.No.726 of 2009

sai(co)
pmk.29.6.2015