

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.02.2015.

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.No.943 of 2006
and
M.P.Nos.1 and 2 of 2006

Mrs. Bimabi Appellant/Respondent/Defendent

vs.

V. Subramanian ... Respondent/Appellant/Plaintiff

Second Appeal is filed against the judgment and decree dated 3.10.2005 and made in A.S.No.22 of 2005 on the file of the District Court, Cuddalore, reversing the judgment and decree dated 19.1.2005 and made in O.S.No.36 of 2002 on the file of the Sub Court, Cuddalore.

For appellants : Mr.V. Ravi

For respondent : M/s.Chitra Sampath, Senior Counsel
For Mr.T.S. Baskaran

JUDGMENT RESERVED ON :18.12.2014

JUDGMENT

The judgment and decree, dated 3.10.2005 made in A.S.No.22 of 2005 on the file of the District Court, Cuddalore, reversing the judgment and decree dated 19.1.2005 made in O.S.No.36 of 2002 on the file of the Sub Court, Cuddalore, are under challenge in this memorandum of second appeal.

2. The appellant is the defendant in the suit in O.S.No.36 of 2002, whereas the respondent is the plaintiff.

3. For easy reference and for the sake of convenience, the appellant may hereinafter be referred to as the defendant and the respondent be referred to as the plaintiff wherever the context so require.

4. The necessary facts leading to the filing of this second appeal are as under:-

a. The suit property belongs to the defendant and as she offered to sell the same, the plaintiff had negotiated with the defendant and the sale price was fixed at Rs.1,50,000/- and consequently, they entered into a registered agreement of sale, dated 31.1.2001 and on the date of execution of the agreement, the plaintiff paid a sum of Rs.1,00,000/- as advance to the defendant.

b. It was agreed by both the parties that the balance sale consideration of Rs.50,000/- should be paid within a period of one year from the date of agreement.

c. On 21.3.2001, the defendant had received a sum of Rs.45,000/- from the plaintiff for the marriage of her children. The plaintiff was ready and willing to complete his part of contract even on 21.3.2001. But the defendant represented that the sale deed would be executed after the marriage of her children.

d. Though the plaintiff repeatedly demanding the defendant since June 2001, as the defendant has been postponing the execution of the sale deed, he had caused a notice on 21.12.2001 to specify the date for the registration of the sale deed, as there was no response, the suit has been filed for the following reliefs:-

aa. Pass a decree for specific performance directing the defendant to execute the sale deed in favour of the plaintiff as per the agreement of sale, dated 31.1.2001.

bb. Direct the defendant to deliver possession of the property covered under the sale agreement to the plaintiff.

cc. On the failure to execute the sale deed by the defendant, the court itself may execute the sale deed in favour of the plaintiff and deliver possession of the property through process of court.

5. The defendant resisted the suit by filing his written statement denying all the averments made in the plaint.

6. It is stated that the defendant had requested the plaintiff to pay a sum of Rs.1,00,000/- to meet out the marriage expenses of her children in the month of January 2001. The plaintiff had agreed to advance the amount, but demanded usurious interest of 60%

p.a. for the principal amount and he further wanted the defendant to execute the sale agreement as security for the principal amount. As there was no other option, the defendant had executed the sale agreement after receiving a sum of Rs.1,00,000/- from the plaintiff. The plaintiff had also obtained the signatures of the defendant in blank papers and also in stamped papers. Under the said circumstances, the sale agreement is only a sham and nominal as it was obtained only under compulsion and undue influence.

7. It is also stated that the value of the suit property is more than Rs.7,00,000/-, but it was valued only for Rs.1,50,000/-, which itself prove that the sale agreement was executed only as a security for the amount borrowed by the defendant and therefore, the sale agreement is not true.

8. The defendant has not borrowed any amount on 21.3.2001 as alleged in the plaint. The plaintiff had forged the signature of the defendant and cooked up the entries in the sale agreement with an ulterior motive to harass the defendant and to extract more money.

9. On receipt of the notice, the defendant approached the plaintiff and requested three months time to repay the amount. Since the plaintiff had agreed for the same, no reply notice was given. 9a. The defendant had also filed an additional written statement saying that she and her husband borrowed a sum of Rs.1,00,000/- only to meet their son's marriage expenses. But the plaintiff and his father with an ulterior motive to acquire the suit property, which is a hotel, had concocted the documents. The plaintiff's father is an attestor of the document under Ex.A1 and the scribe of the endorsement, dated 21.3.2001, which proves the mala fide intention of the plaintiff.

9b. Based on the material proposition of facts arising from the pleadings of the parties to the suit, the trial Court has formulated as nearly as four issues for the better adjudication of the suit.

10. In order to substantiate their respective cases, both the plaintiff and the defendant were directed to face the trial. Accordingly, the plaintiff was examined as P.W.1 and three more witnesses were examined on his part. During the course of their examination Exs.A1 to A10 were marked. On the other hand, one Abdul Kapoor was examined as D.W.1. During the course of his examination only one document was marked as Exs.B1.

11. On evaluating the evidences both oral and documentary, the trial court had proceeded to dismiss the suit.

12. Having been aggrieved by the impugned judgment and decree of the trial Court, dated 19.1.2005, the plaintiff had preferred an appeal in A.S.No.22 of 2005 on the file of the learned Principal District Judge, Cuddalore.

13. That appeal was allowed setting aside the judgment and decree of the trial Court.

14. Being not satisfied with the judgment and decree of the first appellate court, the present second appeal has been filed by the defendant.

15. The second appeal has been admitted on the following substantial questions of law:-

a. Whether the Court below was right in granting the relief of specific performance without noticing that the land mentioned in Ex.A1 is the government poramboke land?

b. Whether the first appellate court was right in granting the discretionary relief of specific performance as it is impossible to sell the Government Poramboke Land?

c. Whether the Court below was right in granting the extraordinary relief of specific performance when the super structure alone was sold under the sale deed, dated 1.3.1996 (Registered as document No.467/96 entered in page No.117 to 121 of Volume 1 Book No.1051 of the office of the Joint Sub Registrar No.2, Cuddalore) ?

d. Whether the decree granted by the first appellate court is sustainable in law as the possessory rights and super structure alone was purchased by the Appellant from her vendor through the sale deed, dated 1.3.1996 registered as document No.467/96?

e. Whether the Court below was right in granting the relief as prayed for by the plaintiff/respondent who has not approached the Court of law with clean hands by exploiting the weakness of illiteracy of the Appellant/Defendant, by altering the schedule of property in Ex.A1?

16. Heard Mr.V. Ravi , learned Counsel appearing for the appellant and Mr.T.S. Baskaran, learned counsel for the respondent.

17. The learned counsel for the appellant has submitted that a sum of Rs.1,00,000/- was borrowed by the appellant from the respondent to meet the expense of her son's marriage and therefore, what was received by the appellant was only the loan transaction and no property was sold to the respondent and the so-called sale agreement was only as security for the loan transaction and therefore, Ex.A1 sale agreement is not a legally genuine and valid document and hence, the judgment and decree of the lower appellate court has to be set aside.

18. Further, the learned counsel has submitted that the relief of specific performance is an extraordinary relief and before granting such relief, each and every aspect of the case shall be considered in detail but the lower appellate court has not considered the same before allowing the appeal.

19. The learned counsel has contended that the lower appellate court has not considered the oral evidence of D.W.1 before considering the sale agreement under Ex.A1. Had it considered the oral evidence of D.W.1, it would not have allowed the appeal.

20. The learned counsel has vehemently contended that the appellant being an unlettered, she did not know the contents of Ex.A1 sale agreement and had it been read out, she would not have signed in the sale agreement under Ex.A1 and therefore, no importance need be given to Ex.A1.

21. In support of his contention, the learned counsel for the appellant has relied on the following decisions:-

- a. Viswanathan and others vs. R. Lakshmi Ammal (decd.) and others (1993 (II) MLJ 560).
- b. Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates P. Ltd. and another (2011 (6) CTC 112).
- c. Nallaya Gounder and another vs. P. Ramaswami Gounder (Died) and three others (1993 (2) L.W.86).
- d. A.C. Arulappan vs. Ahalya Naik (2001) 6 SCC 600).
- e. Dhyan Investments & Trading Co. Ltd. vs. Central Bureau of Investigation and others (2001) 6 SCC 607).
- f. Lourdu Mari David and others vs. Louis Chinnaya Arogiaswamy and others ((1960) 5 SCC 589).
- g. S.N. Hasan Abubucker vs. Kottikulam St. Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Mutheru Committee through its Secretary M.S. Buhari and another (2000 (III) CTC 193).
- h. Kashmir Singh vs. Harnam Singh (2008 (123) SCC 796).

22. On the other hand, the learned Counsel appearing for the respondent has argued that when the execution of the sale

agreement and the receipt of the amount mentioned therein as advance have been admitted by the appellant and in the absence of any clause in the sale agreement that the sale agreement is executed only as security for the loan transaction, the trial court ought not to have come to the conclusion that the sale agreement is executed only as a security for the loan transaction and therefore, having found that the trial court had committed an error in coming to such a conclusion, the lower appellate court has reversed the judgment and decree of the trial court and decreed the suit as prayed for and hence, nothing warrants the interference of this Court.

23. Further, the learned Counsel has contended that the respondent is always ready and willing to perform his part of contract and only the appellant is procrastinating the execution of the sale deed by receiving the balance amount of sale consideration, i.e., Rs.50,000/- and therefore, this appeal may be dismissed confirming the judgment and decree of the lower appellate Court.

24. The learned Counsel has vehemently contended that when it is not the case of the appellant that the property in respect of which the sale agreement executed is a government poramboke land and the super structure alone was sold to the appellant under the sale deed, dated 1.3.1996 before the courts below, at the stage of second appeal, no new case can be introduced or on that basis no substantial question of law can be framed when especially there were no pleadings and evidence and even on this ground alone, the second appeal is liable to be dismissed.

25. In support of his contention, the learned Counsel for the respondent has relied on the following decisions:-

a. M. Ramalingam (died) and others vs. V. Subramanyan (died) and others (2003) 1 MLJ 694). b. Mir Abdul Hakeem Khan vs. Abdul Mannan Khadri (AIR 1972 Andhra Pradesh 178 (V, 59 C 40). c. Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438).

1. Baluswami Aiyar vs. Lakshmana Aiyar and three others (AIR 1921 Mad. 172).

e. K. Nirmala vs. Sellamuthu (CDJ 2014 MHC 1628).

f. N.T. Palanisamy Chettiar by agent V.D. Seetharama Mudaliar vs. Komara Chettiar and others (1949) 2 MLJ 568).

26. It is the case of the defendant that the execution of the sale agreement under Ex.A1 is only a security for the amount borrowed from the plaintiff and in fact, no property was

sold to the plaintiff and therefore, the suit for specific performance ought not to be decreed as prayed for.

27. On the other hand, it is the case of the plaintiff that since the defendant offered to sell the suit property and after negotiation, the sale price was fixed at Rs.1,50,000/- and the defendant has also agreed for the same and consequently, Ex.A1 sale agreement was executed and on the date of execution of the sale agreement a sum of Rs.1,00,000/- was paid as advance and thereafter, on 21.3.2001 a sum of Rs.45,000/- has been paid and to that effect an endorsement was made on the reverse of Ex.A1 and when the plaintiff had insisted for the execution of the sale deed, the defendant had told that she would execute the sale deed after the marriage of her son. But thereafter, the defendant is evading and procrastinating the execution of the sale deed.

28. Under these circumstances, it is pertinent to see the contents of the sale agreement under Ex.A1, dated 31.1.2001.

29. A careful perusal of Ex.A1 sale agreement shows that the defendant had agreed to sell the property mentioned in the sale agreement for a sum of Rs.1,50,000/- and a sum of Rs.100000/- was paid on the date of execution of the sale agreement as advance and the balance of Rs.50000/- to be paid within a year.

30. Further, it is stated in Ex.A1 that the defendant had assured that there was no encumbrance in the property and if any encumbrance is found, it would be cleared within a period of one year, i.e. before the execution of the sale deed and further, it is stated that the suit property is in possession of the defendant itself.

31. From the contents of Ex.A1, this Court does not find any clause or condition in the sale agreement under Ex.A1 that Ex.A1 is executed only as security for the amount borrowed from the plaintiff. The sale agreement contains all the clauses to construe as sale agreement and therefore, it cannot be said or concluded that the sale agreement executed by the defendant is only as security for the amount borrowed from the plaintiff.

32. Further, either in the pleadings or in the evidence of the defendant, she never denied the execution of the sale agreement and her signature in Ex.A1. Ex.A1 sale agreement is also a registered document.

33. At this juncture, it is useful to refer to the decision of the Division Bench of this Court, which had an occasion to deal with the similar case in M. Ramalingam (died) and others vs. V. Subramanyam (died) and others ((2003) 1 MLJ 694).

34. In the said decision, the Division Bench of this Court has observed as under:-

" As stated above, the plaintiff seeking the relief of specific performance has rested his case on Ex.A1 agreement for sale dated 22.5.1978. The said Ex.A1 is a registered agreement for sale in respect of the plaint Schedule mentioned immovable property, wherein the sale consideration was fixed at Rs.40,000/-. Ex.A1 document also further contains a recital that a sum of Rs.35000/- was paid by the plaintiff to the defendant and the balance of consideration was only Rs.5000/- and the sale transaction should be completed within a period of six months therefrom. It remains to be stated that all the terms and the recitals in the said document by themselves were very clear and unambiguous and it does not require any further consideration of the terms or recitals therein. The defendant in his written statement has well admitted not only the execution of Ex.A1 agreement, but also the receipt of Rs.35,000/- as found under the agreement. The plaintiff in his evidence as P.W.1 has categorically narrated the events, which preceded the agreement viz., the part payment of consideration and the execution of Ex.A1 agreement.

It is pertinent to point out that Ex.A1 agreement was also registered. Though the plaintiff was cross examined in length, not even one circumstance was brought forth to disbelieve or discredit the evidence of the plaintiff. In view of the admission of the execution of the said document along with the receipt of Rs.35000/- by the defendant coupled with the evidence of P.W.1 and also the clear and unambiguous terms and recitals found therein, the court is of the considered view

that no more proof could be expected to prove the document.

What the defendant contended before the lower court and equally here also is that it was only a loan transaction; that the sale agreement was only manipulated and brought about to hold a threat upon the defendant to secure the due repayment of Rs.40000/- lent by the plaintiff; and that it was never intended to be acted upon. When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction altogether, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by him, was never intended to be operated as an agreement of sale, but only a loan transaction, which was not recorded in the document.

After careful consideration of the available materials, the Court may hasten to say that the appellants have miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record."

35. The facts of the said decision and the facts in the case on hand are similar and therefore, this Court is of view that the principles laid down in that decision are squarely applicable to the case on hand.

36. In this case, the plaintiff seeking the relief of specific performance has rested his case on Ex.A1 agreement for sale dated 31.1.2001. The said Ex.A1 is a registered agreement

for sale in respect of the plaint Schedule mentioned immovable property, wherein the sale consideration was fixed at Rs.1,50,000/-. Ex.A1 document also further contains a recital that a sum of Rs.1,00,000/- was paid by the plaintiff to the defendant and the balance of consideration was only Rs.50000/- and on 21.3.2001 at the request of the defendant, a sum of Rs.45,000/- was given under Ex.A2 and the sale transaction should be completed within a period of one year therefrom on payment of the balance amount of Rs.5000/-. It remains to be stated that all the terms and the recitals in the said document by themselves were very clear and unambiguous and it does not require any further consideration of the terms or recitals therein. The defendant in his written statement has well admitted not only the execution of Ex.A1 agreement, but also the receipt of Rs.1,00,000/- as found under the agreement. The plaintiff in his evidence as P.W.1 has categorically narrated the events, which preceded the agreement viz., the part payment of consideration and the execution of Ex.A1 agreement.

37. It is pertinent to point out that Ex.A1 agreement was also registered. Though the plaintiff was cross examined in length, not even one circumstance was brought forth to disbelieve or discredit the evidence of the plaintiff. In view of the admission of the execution of the said document along with the receipt of Rs.1,45,000/- by the defendant coupled with the evidence of P.W.1 and also the clear and unambiguous terms and recitals found therein, the court is of the considered view that no more proof could be expected to prove the document.

38. What the defendant contended before the lower court and equally here also is that it was only a loan transaction; that the sale agreement was only manipulated and brought about to hold a threat upon the defendant to secure the due repayment of Rs.1,45,000/- lent by the plaintiff; and that it was never intended to be acted upon. When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction altogether, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by her, was never intended to be operated as an agreement of sale, but only a loan transaction, which was not recorded in the document. The non examination of the defendant in this case is fatal to the case of the defendant.

39. After a careful consideration of the available materials, the Court may hasten to say that the appellant has miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record.

40. Further, it is also pertinent to refer the evidence of D.W.1 Abdul Gafoor, who is the husband of the defendant.

41. D.W.1 in his cross examination has deposed as under:-

“ ஒப்பந்தத்தில் கண்ட தொகை ரூ.100000/= த்தை திருமண செலவுக்காக தான் வாங்கப்பட்டது. வா.சா.ஆ.1 யை நான் பதிவு செய்த பிறகு இன்று வரை நான் பார்க்கவில்லை..... அந்த வா.சா.ஆ.1 ஒப்பந்தத்தை பார்க்க வேண்டும் என்று நான் மனு தாக்கல் செய்யவில்லை. நான் ரூ.100000/= த்தை கடனாக கேட்டேன். அவர் கிரைய ஒப்பந்தமாக எழுதிக்கொடுத்தால் தான் நான் பணம் தருவேன் என்று சொன்னார். அதனால் எழுதிக்கொடுத்தேன்..... வா.சா.ஆ.1 ல் இருப்பது என் மனைவியின் கையெழுத்து தான்..... வா.சா.ஆ.1 என்பது ரூ.100000/= பெற்றுக்கொண்டு கிரைய ஒப்பந்தம் என் மனைவி எழுதிக்கொடுத்ததாகவும், 21.3.2001 ல் மேலும் ரூ.45000/= த்தை பெற்றுக்கொண்டு வா.சா.ஆ.2 வரவில் என் மனைவி கையெழுத்து செய்தார் என்று சொன்னால் சரியல்ல..... கடனாக தான் ரூ.100000./ பெறப்பட்டது என்று என் வக்கீலிடம் சொன்னேன். கிரைய ஒப்பந்தம் போடவில்லை என்று சொன்னேன்.....

42. The aforesaid evidence of the D.W.1 has also proved beyond doubt the execution of the sale agreement under Ex.A1 and the receipt of the amount mentioned therein by the defendant.

43. Further, the learned counsel for the appellant has argued that since the plaintiff has not come with the clean hands, the discretionary relief of specific performance can be denied and in support of his contention, he has relied on the decision reported in Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates P. Ltd. and another (2011 (6) CTC 112).

44. He also submitted that in A.C. Arulappan vs. Ahalya Naik (2001) 6 SCC 600), while dealing with the Specific Performance Suit, the Hon'ble Apex Court has held as follows:-

"14. There are other circumstances also to hold that the defendant-respondent had not approached the court with clean hands. Admittedly, the plaint schedule house was in occupation of a tenant. The appellant had agreed to evict the tenant. During the course of litigation between the appellant and the respondent, the appellant came to know that the tenant had been trying to give possession of the house to the respondent. He immediately filed a suit and obtained an injunction and recovered possession of the house from the tenant. The respondent alleged that she got possession of the house from the tenant. She also filed a suit alleging that she had been in possession of the property and she obtained possession of the house from the tenant. It is clear that she had been trying to get possession of the house even before execution of the sale deed, for which she had apparently colluded with the tenant. Moreover, the appellant in this case was clearly in impecunious circumstances and so many loans were outstanding against him. He had executed the first agreement to pay off these debts and in order to raise some funds. From the tenor of the first agreement, it is clear that parties were not very serious about the sale of the house. The fact that after few months the respondent resiled from the agreement and sought for repayment of the money also proves this fact. The appellant had voluntarily retired from service. Admittedly, he had no other house to stay after retirement. The respondent-plaintiff had tried to take unfair advantage over the defendant and throughout the course of the transaction she had not been fair.

15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the Court. The trial Court, which had the added advantage of recording the evidence and seeing the demeanour

of the witnesses considered the relevant facts and reached a conclusion. The appellate Court should not have reversed the decision disregarding these facts and, in our view, the appellate Court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract. "

45. Further according to the counsel for the appellant, in S.N. Hasan Abubucker vs. Kottikulam St. Mohideen Pallivasal Therkku Mohindeen Pallivasal, Nirvagi Mutheru Committee through its Secretary M.S. Buhari and another (2000 (III) CTC 193), this Court while dealing with Order 41 Rule 27 of CPC, has held that if additional evidence placed before Court is such that receiving them would be in the interest of justice, then appellate court ought to permit additional evidence instead of adopting hypertechnical approach.

46. On the otherhand, the learned counsel for the respondent drew the attention of this Court to Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438, wherein, the Hon'ble Apex Court while dealing with framing of substantial questions of law by the High Courts, has held as follows:

"10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100, C.P.C. in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100, C.P.C. should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and Second Appeals are entertained and/or disposed of, without conforming to the above discipline.

...

12. In the light of the legal position stated above, we are of the view that the High Court acted illegally and in excess of jurisdiction in entertaining the new plea, as it did, and consequently in allowing the Second Appeal. Even according to the High Court, the point urged on behalf of the appellant was only a "legal plea" though no specific plea was taken or no precise issues were framed in that behalf. The High Court failed to bear in mind that it is not every question of law that could be permitted to be raised in Second Appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in sub-section (5) of Section 100, C.P.C. Under the proviso, the Court should be "satisfied" that the case involves a "substantial question of law" and not a mere "question of law". The reason for permitting the substantial question of law to be raised, should be "recorded" by the Court. It is implicit therefrom, that on compliance of the above, the opposite party should be afforded a fair or proper opportunity to meet the same. It is not any legal plea that could be raised at the stage of Second Appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded. Thereafter, the opposite party should be given a fair or proper opportunity to meet the same. In the present case, as the extracts from the judgment quoted hereinabove, would show, the High Court has totally ignored the mandatory provisions of Section 100, C.P.C. The High Court proceeded to entertain the new plea and rendered its decision without following the mandatory provisions of Section 100, C.P.C. On this short ground, we are of the view that the judgment and decree of the High Court dated 30th November, 1982 are illegal and in excess of jurisdiction and so unsustainable and deserve to be set aside. We hereby do so. The appeal is allowed with costs, including advocates fee which we estimate at Rs. 10,000/-."

47. A perusal of the evidence adduced by D.W.1, as afore stated, and the averments made in the written statement and the substantial questions of law raised in this appeal are not in conformity with the case of the defendant, rather, it was contradictory and ambiguous and in the stage of second appeal also the defendant introduced a new case and the second appeal was admitted on such new case, which would reveal that the defendant

has not come to the court with clean hands and therefore, the aforesaid decision would not lend any support to the case of the defendant.

48. Further, it was not the case of the defendant that the schedule mentioned property is the government poromboke land and she purchased only the superstructure and therefore, the plaintiff is not entitled to seek for the relief of specific performance before the courts below either in the form of pleadings or evidence. But only at the stage of second appeal, such kind of a new case has been introduced and on such a new case, this second appeal has been admitted and therefore, this Court is of considered view that when there is no pleadings and evidence, this Court cannot go into those substantial questions of law, which are unconnected, and on that ground also, this second appeal is liable to be dismissed.

49. Even assuming for the sake of argument that the schedule mentioned property is government poromboke land and she purchased only the superstructure as claimed by the defendant, since in Ex.A1 sale agreement, there is a clause that there is no encumbrance in the schedule mentioned property and if there is any encumbrance, the defendant would clear such encumbrance and therefore, such question does not arise now and only after the execution of the sale deed, if any dispute arises with regard to the property, then it is for the defendant to settle that dispute.

50. For the aforesaid reasons, the substantial questions of law are answered against the appellant.

51. Accordingly, the second appeal fails and the same is dismissed confirming the judgment and decree of the lower appellate court. However there will be no order as to costs. Connected M.Ps. are also dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

MRA

To

1. The Principal District Judge, Cuddalore.

2. The I Additional Sub Judge, Cuddalore.

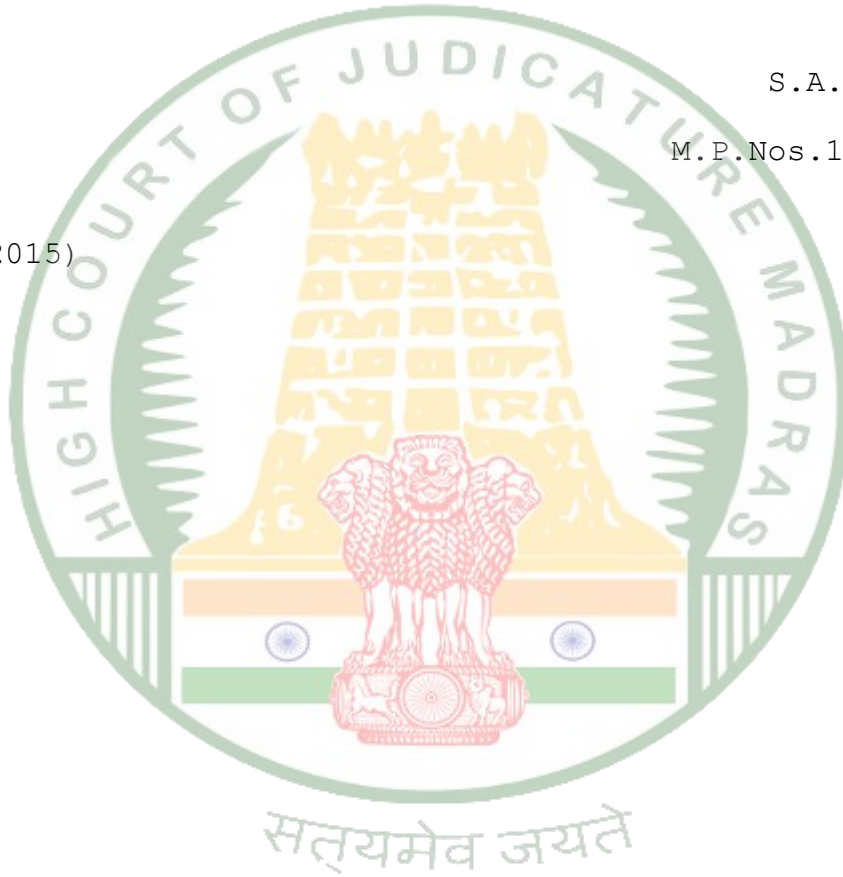
3. The Section Officer, V.R. Section, High Court, Madras.

+lcc to Mr.V.Ravi, Advocate, S.R.No.5452

+lcc to Mr.T.S.Baskaran, Advocate, S.R.No.5691

S.A.No.943 of 2006
and
M.P.Nos.1 and 2 of 2006

VGI (CO)
CA(18/03/2015)



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