

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.04.2016

DELIVERED ON: 11.05.2016

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

A.S.No.751 of 2008

M.Manoharan

.. Appellant/Defendant

vs.

G.Ganapathy

..Respondent/Plaintiff

Appeal Suit filed under Section 96 r/w Order XLI Rule 1 of the Civil Procedure Code, 1908 against the decree and judgment passed in O.S.No732 of 2007 dated 13.02.2008 by the learned VI Additional Judge, City Civil Court, Chennai.

For appellants : Mr.P.Arvind
for M/s.A.Mohandoss

For respondent : Mr.P.Srinivasan

JUDGMENT

This appeal has been preferred under Section 96 of the Code of Civil Procedure challenging the decree dated 13.02.2008 passed by the learned VI Additional Judge, City Civil Court, Chennai in O.S.No.732 of 2007 on the file of the said Court. The defendant in the above said suit is the appellant in the appeal.

2. G.Ganapathy, the respondent herein filed the said suit against the appellant herein for the relief of specific performance based on an agreement for sale dated 11.06.2006 allegedly executed by the appellant herein/defendant, directing the execution of the sale deed in accordance with the suit agreement, for a direction to the defendant to deliver possession of the suit property, for a permanent injunction restraining the appellant/defendant from in any manner alienating the suit property and for costs.

3. The above said prayers came to be made by the respondent herein/plaintiff based on the plaint averments which are, in brief, as follows:

The appellant herein/defendant represented that the suit property being a Plot-A type house site together with a tiled house bearing old Door No.83, New Door No.60 in MMDA colony, Arumbakkam, Chennai - 107, belonged to him; that it was free from encumbrance and that he wanted to sell the same. Bonafide believing the representation of the appellant/defendant, the respondent/plaintiff entered into an agreement for sale on 11.06.2006 for purchasing the suit property for a total sale consideration of Rs.8,20,000/- and paid an advance of Rs.1,00,000/- to the appellant/defendant. Thereafter, both of them cancelled the said agreement and entered into a new agreement on the same day. In pursuance of the said agreement for sale, a sum of Rs.2,30,000/- was paid as advance and part payment of the sale consideration and the same was acknowledged by the appellant/defendant. The said amount was received by the appellant/defendant for clearing his loans and for vacating the tenant who was in occupation of the suit property. He agreed to clear the loan and vacate the tenant within a period of 45 days from the date of agreement. Hence, the time for completion of the sale transaction was fixed as 45 days. After the receipt of a huge sum of Rs.2,30,000/- from the respondent/plaintiff, the appellant / defendant had been evading execution of the sale deed in spite of the repeated demands made by the respondent/plaintiff. The appellant/defendant also failed to take steps to vacate the tenant who was in occupation of the suit property and he also failed to clear the loan. Though the respondent/plaintiff even asked the appellant/defendant to execute a sale deed subject to such tenancy, the appellant/defendant evaded performance of his obligations under the agreement for sale. Hence, the respondent/plaintiff sent a letter dated 23.06.2006 expressing his readiness and willingness and the same was received by the appellant/defendant on 24.06.2006. Again on 12.08.2006 the respondent/plaintiff caused a registered legal notice to be issued through his counsel contending that the appellant/defendant had not redeemed the title deeds from the bank with which the property had been mortgaged and that the appellant /defendant had not taken steps to evict the tenant. It was also informed in the said notice that the respondent/plaintiff, in spite of the lapses on the part of the appellant/defendant, was calling upon the appellant/defendant to receive the balance amount of sale consideration and execute the sale deed in respect of the suit property free from encumbrances in favour of the respondent/plaintiff within a period of 10 days. The said notice was responded with a reply notice dated 25.08.2006 falsely claiming that he had already entered into an agreement

for sale with Mithukrishnan S/o.Srinivasan on 05.10.2005 and that he received a sum of Rs.1,00,000/- as advance from him out of the total sale consideration of Rs.7,50,000/-. It was also averred therein that the said Muthukrishnan did not come forward to purchase the suit property, pursuant to which the appellant/defendant offered to return the advance received from him. It was also contended in the reply notice that only thereafter, he entered into an agreement with the respondent/plaintiff on 11.06.2006 and that still since his family members did not want to alienate the property, he offered to return the advance amount with interest to the respondent/plaintiff. It was also averred in the reply notice that Muthukrishnan had sent a lawyer's notice on 21.08.2006 requiring the appellant/defendant to execute the sale deed in terms of the agreement between Muthukrishnan and the appellant/defendant. Of course, the said notice dated 21.08.2006, which is said to have been issued by Muthukrishnan contained a recital that a sum of Rs.1,00,000/- was paid, but no amount was paid as advance. The said averment made in the reply notice amounts to a fraud and foul play committed by the appellant/defendant by creating a fictitious story and inducing Muthukrishnan to make a claim. The respondent/plaintiff also received a notice dated 21.08.2006 from the said Muthukrishnan through his lawyer claiming that being the prior agreement holder he was entitled to get sale deed executed in his favour. The alleged agreement with Muthukrishnan was false and it was created in collusion with the appellant/defendant, pursuant to which alone the notice dated 21.08.2006 came to be issued. The respondent/plaintiff sent a suitable reply on 12.08.2006. The respondent/plaintiff had been always ready and willing to perform his part of the agreement and he was ready to pay the balance sale consideration of Rs.5,90,000/-, whereas it was the appellant/defendant who was refusing to receive the balance sale consideration with a malafide intention of cheating the respondent herein/plaintiff. Hence, the respondent/plaintiff was constrained to file the suit for the above said reliefs.

4. The suit was resisted by the appellant herein on the averments made by him in the written statement which are, in brief, as follows:

The sale transaction with the respondent /plaintiff was arranged by a mediator. He had already entered into a sale agreement on 05.10.2005 with one Muthukrishnan S/o.Srinivasan and received a sum of Rs.1,00,000/- against the agreed sale consideration of Rs.7,50,000/-. As per the said agreement, the sale deed should be executed in favour of Muthukrishnan as soon as the approval of the Indian Overseas Bank, where he had availed loan, would be obtained or within 12 months whichever was earlier. As the said Muthukrishnan did not come forward to

complete the transaction, the appellant/defendant wanted to sell the property to a third party. The said Muthukrishnan, who kept quite for one year, after coming to know that the appellant/defendant has entered into a sale agreement with the respondent/plaintiff, chose to file a suit against both of them in O.S.No.8065/2006 on the file of the I Assistant Judge, City Civil Court, Chennai. The plaint averment to the effect that the respondent/plaintiff also received a lawyer's notice dated 21.08.2006 from the first agreement holder is false. It is not correct to state that the appellant/defendant, after receiving huge amount, with a view to delay the transaction and defraud the respondent/plaintiff fabricated such a story of prior agreement. Since Muthukrishnan came to know about the sale agreement between the appellant/defendant and respondent/plaintiff, he sent a lawyer's notice to both of them. As the appellant/defendant was of the view that the previous agreement with Muthukrishnan had become time barred, he omitted to mention the same in the agreement executed in favour of the respondent/plaintiff. The plaint averment that the appellant/defendant undertook to vacate the tenant within 45 days from the date of agreement, but the tenant refused to vacate the premises is false. The story of prior agreement with Muthukrishnan is not imaginary. The appellant/defendant is willing to return the amount received from the respondent/plaintiff with interest. Hence, he would pray that the suit be dismissed as not maintainable either in law or on facts.

5. Based on the above said averments, the learned trial Judge framed the following issues:

"1)Whether the plaintiff is entitled to get the relief of specific performance against the defendant as prayed for;

2) Whether the defendant entering into a sale agreement with one Muthukrishnan prior to the plaintiff is true and valid one?

3)To what other relief the plaintiff is entitled?"

6. In the trial that followed the framing of issues, three witnesses were examined as Pws 1 to 3 and 8 documents were marked as Exs.A1 to A8 on the side of the respondent herein/plaintiff, whereas the appellant/defendant figured as the sole witness (DW1) on his side and no document was marked on the side of the appellant/defendant. At the conclusion of trial, the learned trial Judge heard the arguments advanced on both sides and considered the evidence in the light of such arguments. Upon such consideration, the learned trial Judge

answered all the issues in favour of the respondent herein/plaintiff and decreed the suit as prayed for with costs by a judgment and decree dated 13.02.2008. Challenging the said decree of the trial Court dated 13.02.2008, the appellant herein/defendant has come forward with the present appeal on various grounds set out in the memorandum of grounds of appeal.

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

1. Whether the respondent/plaintiff is entitled to the relief of specific performance and other reliefs sought for in the plaint?

2. Whether the suit is bad for non-joinder of necessary parties insofar as the alleged prior agreement holder has not been made a party?

3. To what relief the parties are entitled?

8. The arguments advanced by Mr.P.Arvind, learned counsel representing Mr.A.Mohandoss, learned counsel on record for the appellant/defendant and by Mr.P.Srinivasan, learned counsel for the respondent/plaintiff were heard. The pleadings of the parties, the judgment and decree of the trial Court and the evidence, both oral and documentary, adduced on both sides, were also perused and this Court paid its anxious consideration to the same.

Point Nos.1 to 3:

9. The respondent herein/plaintiff filed the suit for specific performance directing the appellant/defendant to execute sale deed in accordance with the suit agreement for sale dated 11.06.2006, for a direction to the appellant/defendant to deliver possession of the suit property, for a permanent injunction restraining the appellant/defendant from alienating the suit property and also for costs. The respondent/plaintiff has come forward with a plea that on 11.06.2006, the appellant/defendant entered into an agreement with the respondent/plaintiff agreeing to sell the suit property for a sum of Rs.8,20,000/- and received a sum of Rs.1,00,000/- as advance on 11.06.2006. It is the further case of the respondent/plaintiff that on the same day, a fresh agreement was entered into, whereby a total sum of Rs.2,30,000/- was acknowledged to have been received as advance and part payment of the sale consideration and that the defendant agreed to clear the bank loan and vacate the tenant, who was in occupation of the suit property, within a period of 45 days and execute a sale deed free from encumbrances on receipt of the balance amount of sale consideration. There is a discrepancy in the pleading made

by the respondent herein/plaintiff in his plaint and his evidence as PW1 as to when a sum of Rs.1,30,000/- over and above Rs.1,00,000/- paid initially as advance, but the appellant/defendant has not denied having received a total sum of Rs.2,30,000/- as advance and part payment of the sale consideration. He has also not denied execution of the suit sale agreement agreeing to sell the suit property to the respondent/plaintiff for a sale consideration of Rs.8,20,000/-.

10. The suit sale agreement dated 11.06.2006 has been marked as Ex.A1. The agreement contains an acknowledgment of the receipt of a sum of Rs.2,30,000/- as advance. It is the evidence of PW1 that an agreement was entered into on 11.06.2006, whereunder a sum of Rs.1,00,000/- was paid as advance and that thereafter, on the same day, cancelling the said agreement, a new agreement came to be executed whereby a total sum of Rs.2,30,000/- was paid as advance and part payment of the sale consideration. Though Ex.A1 contains a recital to the effect that said agreement was entered into on 11.06.2006 and a sum of Rs.2,30,000/- was paid by the respondent/plaintiff and received by the appellant/defendant as advance and part payment of the sale consideration on the date of agreement itself, during cross examination of PW1, he stated that the suit sale agreement was entered into on 11.06.2006 for a sale consideration of Rs.8,20,000/-; that initially a sum of Rs.1,00,000/- was paid as advance and that after a lapse of 10 days, a further sum of Rs.1,30,000/- was paid.

11. One Elamparithi, who figured as PW2, has deposed in line with the evidence of PW1 by stating that the suit sale agreement was entered into on 11.06.2006 for a sale consideration of Rs.8,20,000/- and a sum of Rs.1,00,000/- was paid as advance on the date of agreement and that a further sum of Rs.1,30,000/- was agreed to be paid on 21.06.2006. One Rajakumari figured as PW3 and she deposed in line with the evidence of PW2. It is her testimony that initially a sum of Rs.1,00,000/- was paid as advance and that it was she who got a further sum of Rs.1,30,000/- and handed over the same to the appellant/defendant on 21.06.2006. The appellant/defendant figured as the sole witness (DW1) on his side. He admits having received a sum of Rs.2,30,000/- as advance from the respondent/plaintiff and the execution of Ex.A1 agreement for sale. However, he has also stated in his evidence that prior to the suit sale agreement, he had entered into an agreement with one Muthukrishnan on 05.10.2005 and received an advance of Rs.1,00,000/- from him. However, during cross examination, he chose to state that in the suit sale agreement, he assured that there was no prior sale agreement and there was no other encumbrance.

12. A perusal of the plaint pleadings regarding the date of execution of Ex.A1 agreement for sale and the date of payment of Rs.2,30,000/- as advance, in comparison with the evidence of Pws 1 to 3, will make it clear that the respondent/plaintiff has come forward with conflicting statements as to when the advance amount was paid. It is pertinent to note that Ex.P1 does not contain any recital to the effect that only a sum of Rs.1,00,000/- was paid on the date of agreement and a further advance of Rs.1,30,000/- was agreed to be paid within ten days thereafter. Ex.A1 does not contain even an endorsement to the effect that out of the total amount of Rs.2,30,000/- recited as advance paid on the date of agreement, a sum of Rs.1,00,000/- alone was paid and the balance amount of Rs.1,30,000/- was paid on 21.06.2006. It shall also be noticed that in Ex.A1 agreement for sale, the date has been altered.

13. However, there is an endorsement dated 21.06.2006 to the effect that the agreement entered into earlier stands cancelled. The endorsement in vernacular is reproduced hereunder:

“இதன் மூலம் முன்பு செய்யப்பட்ட விக் கிரய ஒப்பந்தம் ரத்தாகிறது.

Sd./

(வாங்குபவர்)

Sd./

(விற்ப்பவர்) ”

A reading of the said endorsement will show that the agreement that was entered into earlier was being cancelled. The endorsement came to be made on 21.06.2006. The sale agreement Ex.A1 is said to have been made on 11.06.2006. If a proper interpretation of the sale agreement and the endorsement is adopted, one can come to the conclusion that by the endorsement Ex.A1 agreement itself shall stand cancelled.

14. The appellant/defendant did not mention anything about the agreement between the appellant/defendant and one Muthukrishnan. However, he has made a clear admission in the plaint that the said Muthukrishnan issued a lawyer's notice not only to the appellant/defendant, but also to the respondent/plaintiff, claiming specific performance of an agreement for sale dated 05.10.2005 allegedly executed by the appellant herein/defendant for the sale of the suit property for a total sale consideration of Rs.7,50,000/- out of which a sum of Rs.1,00,000/- had been paid as advance. However, it was claimed by the plaintiff that the said Muthukrishnan is a close relative of the appellant/defendant and that in order to defeat the claim of the respondent/plaintiff, the said muthukrishnan was set up by the appellant/defendant to send such a notice as if he was the prior agreement holder. The respondent/plaintiff has gone to the extent of making an averment in the plaint that

the story of agreement with Muthukrishnan was false and imaginary. A letter dated 23.06.2006 allegedly sent by the respondent/plaintiff to the appellant/defendant through professional couriers and the acknowledgment have been marked as Ex.A2. In the said letter it was stated that the respondent/plaintiff was ready to make payment of the balance sale consideration of Rs.5,90,000/- in accordance with the terms of the agreement dated 11.06.2006 and that the respondent/defendant was requested to discharge the loans, get back the original title deed and make arrangements to execute a sale deed in favour of the respondent/plaintiff. The reply notice and a further notice sent by the respondent/plaintiff through his advocate on 12.08.2006 to the appellant/defendant and the postal acknowledgment card evidencing service of the said notice on one Rajeswari came to be marked as Exs.A3 and A4 respectively. Meanwhile, Muthukrishnan S/o.Srinivasan, residing at No.18, Avvaiyar Street, Meenakshi Amman Nagar, Valasaravakkam, Chennai - 600 087 chose to issue a notice to the appellant/defendant and the respondent/plaintiff. In the said notice he claimed that the appellant/defendant executed an agreement for sale on 05.10.2005 agreeing to sell the suit property to him for a sum of Rs.7,50,000/- and receiving a sum of Rs.1,00,000/- as advance. Expressing his readiness and willingness to make payment of the balance sale consideration of Rs.6,50,000/-, he called upon both the appellant/defendant (as owner of the property) and the respondent/plaintiff (as the subsequent agreement holder) to come and execute the sale in his favour after receiving a sum of Rs.6,50,000/- towards the balance amount of sale consideration in accordance with the terms of the agreement dated 05.10.2005. The reply notice to Ex.A5 notice sent by the appellant/defendant through his lawyer has been marked as Ex.A6. In the reply notice he has admitted having executed an agreement for sale in favour of the said Muthukrishnan on 05.10.2005 fixing the sale consideration at Rs.7,50,000/- and received a sum of Rs.1,00,000/- towards advance. It was also stated therein that the appellant/defendant was prepared to return the advance amount received from Muthukrishnan as he had entered into an agreement with the respondent/plaintiff for a sale consideration of Rs.8,30,000/-, out of which a sum of Rs.1,00,000/- was paid on 10.06.2006 and a further sum of Rs.1,30,000/- was received on 21.06.2006. It was also contended therein that since the said Muthukrishnan did not issue a notice before the expiry of 45 days, expressing his willingness to purchase the suit property, Muthukrishnan could not get a relief under the Specific Relief Act. The reply of the respondent/plaintiff dated 13.09.2006 sent to the lawyer of Muthukrishnan has been marked as Ex.A7. Besides denying the existence of an agreement between the appellant/defendant and the above said Muthukrishnan, the respondent/plaintiff has stated in the said reply notice that he paid a sum of Rs.2,30,000/- to the appellant/defendant on

13.06.2006 to purchase the suit property from him and it was agreed between them that the balance amount would be paid within 45 days thereafter to complete the sale transaction.

15. A conjoint reading of the plea made in the plaint, the plea made in the written statement and the evidence of Pws 1 to 3, the evidence of DW1, Ex.A1 agreement, the endorsement dated 21.06.2006 found therein and the contents of notices exchanged between Muthukrishnan on the one hand and the appellant/defendant and respondent/plaintiff on the other hand, will show that there is utter confusion as to the date on which the suit sale agreement was entered into and the dates on which the advance amount recited in Ex.A1 was paid to the appellant/defendant. According to the plaint averment, a sum of Rs.2,30,000/- was paid on the date of agreement itself, namely 11.06.2006. But while deposing as PW1, the respondent/plaintiff has given a go by to the plaint averment and deposed to the effect that a sum of Rs.1,00,000/- was paid on the date of agreement, namely on 11.06.2006 and a further sum of Rs.1,30,000/- was paid 10 days thereafter. Pws 2 and 3 have also supported the evidence of PW1 by stating that the second payment of Rs.1,30,000/- towards advance was made 10 days after the date of agreement. In fact, Pws 2 and 3 have mentioned the date as 21.06.2006. On the other hand, Ex.A1 agreement says that the entire advance amount of Rs.2,30,000/- was paid on 11.06.2006, the date of agreement and the receipt of the same was acknowledged by the appellant herein/plaintiff. Therefore, it is quite obvious that the plaintiff has chosen to lead evidence through himself as PW1 and Pws 2 and 3 contrary to the contents of Ex.A1 and also the averments made in the plaint.

16. Therefore, we have to see what is the reason for such contradictions. The reason will be quite obvious, if we consider the way in which the plaintiff's side witnesses were cross-examined by the counsel for the defendant. The execution of the suit sale agreement Ex.A1 has been admitted by the appellant/defendant. But on the other hand, he simply made a contention that since he had already executed an agreement for sale in favour of Muthukrishnan and he was ready to execute a sale deed in favour of Muthukrishnan, he would refund the advance amount received from the respondent herein/plaintiff. The same has not come from his heart. It shall be obvious from Ex.A6 reply notice dated 25.08.2006 sent by the appellant/defendant through his lawyer to the counsel for respondent/plaintiff. In the reply it was stated that it was a fact that he entered into a sale agreement with the respondent/plaintiff for a total sale consideration of Rs.8,30,000/- and received a sum of Rs.1,00,000/- on 10.06.2016 and a further sum of Rs.1,30,000/- on 21.06.2006 towards advance and executed the agreement for sale. It is pertinent to note that the total sale consideration recited in Ex.A6 differs from

total sale consideration found noted in Ex.A1 agreement. A sum of Rs.8,20,000/- has been quoted as the total sale consideration in Ex.A1 and the same is reflected in the plaint also. In Ex.A3 notice dated 12.08.2006, issued by the respondent/plaintiff through his lawyer, the total sale consideration has been cited as Rs.8,20,000/- and it was recited therein that a sum of Rs.2,30,000/- was paid on 11.06.2006 itself as advance. Ex.A6 is the reply to the said notice. In the said reply notice, sale consideration has been noted as Rs.8,30,000/-, which is different from the amount noted in Ex.A1 agreement and Ex.A3 notice.

17. On receipt of the said reply notice under Ex.A6, the respondent /plaintiff did not issue any rejoinder pointing out the difference in the amount of sale consideration. The date of payment of the advance amount also differs. Further the date of payment of advance amount also differs. Under Ex.A6, the first payment of Rs.1,00,000/- as advance was said to have been made on 10.06.2006 and the second advance of Rs.1,30,000/- was stated to have been made on 21.06.2006. As a crown of the discrepancies, the reply notice issued by the respondent/plaintiff through his lawyer Thiru.Y.Kerisshnan on 13.09.2006 contains a totally different averment regarding the date of agreement and date of payment of advance amount. The said reply notice has been marked as Ex.A7. In the said reply notice, the date of agreement and the date of payment of advance by the respondent herein/plaintiff has been noted as 13.06.2006.

18. Though there are a number of discrepancies regarding the alleged execution of the agreement for sale as indicated above, all the discrepancies and the loopholes found in the evidence of the plaintiff came to be nullified and plugged by the evidence of DW1, the defendant who clearly admitted the receipt of Rs.2,30,000/- as advance and execution of the suit sale agreement for sale marked as Ex.A1. It is also obvious from the evidence of DW1 and also from the documents produced on his side that the plaintiff was ready and willing to complete the sale transaction by performing his part of the obligations under Ex.A1-Agreement for sale and on the other hand, it was the defendant who wanted to wriggle out of the same showing the alleged prior agreement executed in favour of Muthukrishnan. The defendant, as DW1, has admitted that Muthukrishnan, the alleged prior agreement holder did not issue any notice expressing his readiness and willingness to pay the balance amount of sale consideration and complete the sale transaction in accordance with the agreement between the defendant and the said Muthukrishnan. Though DW1 would have stated that he did not set up Muthukrishnan to file the suit O.S.No.8065 of 2006, when a suggestion was made to the effect that it was agreed to give Muthukrishnan a sum of Rs.1,00,000/-, the same was not

denied. Though DW1 would have stated that he was ready to execute the sale deed in favour of Muthukrishnan in pursuance of the agreement dated 05.10.2005, he has not chosen to take steps to implead the said Muthukrishnan as a party defendant in the present suit for an adjudication which would be binding on Muthukrishnan also.

19. However, it has been admitted across the bar that the suit filed by Muthukrishnan, namely O.S.No.8065 of 2006, was earlier in point of time and that the said suit came to be dismissed by a judgment dated 07.11.2012. It has also been admitted across the bar that the said Muthukrishnan did not file any appeal challenging the said judgment and decree passed in O.S.No.8065 of 2006. The plaintiff and the defendant were parties in the said suit filed by Muthukrishnan. Since the said suit was dismissed and the said Muthukrishnan did not file any appeal, there cannot be any question of holding the present suit to be collusive to deny the relief of specific performance sought for by the plaintiff, especially in the light of the fact that the entire transaction with the plaintiff under Ex.A1 agreement for sale has been clearly admitted by the defendant as DW1. If at all Muthukrishnan would feel that the present suit is collusive, it is for Muthukrishnan to take steps to get himself impleaded in the suit as a prior agreement holder, since the filing of the present suit was brought to his notice.

20. In view of the admissions made by DW1 regarding execution of Ex.A1-Agreement for sale and also the fact that the alleged prior agreement holder did not make payment of the balance amount of sale consideration in accordance with the alleged prior agreement for sale and that he even agreed for getting a sum of Rs.1,00,000/-, this court has to come to the conclusion that the alleged prior agreement with Muthukrishnan had been given a decent burial by the parties to the said agreement. However, it is seen from the evidence that the said Muthukrishnan filed a suit for specific performance in O.S.No.8065/2006 in which both the appellant herein and the respondent herein were made party defendants. But the said suit came to be dismissed on 07.11.2012 and no appeal was preferred by the said Muthukrishnan against the decree passed in the said suit. Even the learned counsel for the appellant in this appeal admitted across the bar during his arguments that the said Muthukrishnan did not file any appeal against the decree dated 07.11.2012 dismissing his suit O.S.No.8065/2006. It is also not in dispute that the plaintiff in the present suit, namely G.Ganapathy, figured as the second defendant in O.S.No.8065/2006 filed by the said Muthukrishnan and that Manoharan, the defendant in the present suit figured as the first defendant in the said suit. A copy of the judgment pronounced in the said suit has also been placed before this court, during the course of the arguments, for its perusal. A perusal of the said

judgment shows that O.S.No.8065/2006 filed by Muthukrishnan against Manokaran and Ganapathy (respectively the defendant and the plaintiff in the present suit) arraying them as defendants 1 and 2, came to be dismissed after trial on 07.11.2012. Not only the appellant herein/defendant but also the respondent herein/plaintiff took a stand in the said suit filed by Muthukrishnan that a subsequent agreement had been executed in favour of the respondent herein (Ganapathy) and that the said Muthukrishnan was not entitled to the relief of specific performance, as he had not performed his obligations and he had not proved his readiness and willingness to perform his obligations under the agreement, based on which he filed the said suit O.S.No.8065/2006 for specific performance. Accepting the defence plea made by the appellant herein and the respondent herein, who were the defendants in the said suit O.S.No.8065/2006, the said suit was dismissed by a judgment dated 07.11.2012. It is also admitted across the bar that the said Muthukrishnan did not prefer any appeal till the date of hearing of this appeal. In view of the said facts, this court comes to the conclusion that the plea of non-joinder of necessary parties has got to be rejected and the second point for consideration should be answered in favour of the respondent/plaintiff and against the appellant/defendant.

21. Though there are many discrepancies in the evidence adduced on the side of the respondent/plaintiff regarding the genuineness of Ex.A1-Agreement and passing of consideration under the said agreement, the same came to be rectified by the admission made by the appellant herein/defendant in his evidence as DW1. Hence there shall be no scope for going into the question of genuineness or otherwise of Ex.A1-Agreement for sale. The principle "admitted facts need not be proved", shall apply.

22. So far as the readiness and willingness of the respondent herein/plaintiff to complete the transaction by performing his obligations under the agreement for sale is concerned, it is an admitted fact that the respondent herein/plaintiff has deposited the balance amount of sale consideration into the court to the credit of the suit. From the various exchange of notices also it shall be quite clear that the respondent herein/plaintiff had been all along ready and willing to perform his part of the obligations under Ex.A1-Agreement for sale and on the other hand, it was the appellant/defendant who wanted to wriggle out of the contract, because of the opposition made by the members of his family. Hence this court comes to the conclusion that the finding of the trial court regarding readiness and willingness on the part of the respondent herein/plaintiff is correct and the same does not deserve any interference. In a suit for specific performance, when the readiness and willingness of the plaintiff stands

substantiated, unless the court comes to the conclusion that granting the relief of specific performance will result in miscarriage of justice on the ground that any undue advantage had been taken by the plaintiff, then the plaintiff cannot be denied the relief of specific performance. Hence the finding recorded by the trial court that the respondent herein/plaintiff was entitled to the relief of specific performance as prayed for in the plaint, has got to be confirmed. Accordingly, all the three points, namely Points 1, 2 and 3 formulated for determination in this appeal, are answered in favour of the respondent herein/plaintiff and against the appellant/defendant.

23. In view of the findings recorded above answering the points for determination 1 to 3 in favour of the respondent herein/plaintiff, this court does not find any valid ground for interfering with the judgment and decree of the trial court. Accordingly, the appeal fails and the same deserves to be dismissed.

In the result, the appeal is dismissed and the decree of the trial Court dated 13.02.2008 in O.S.No.732 of 2007 shall stand confirmed. However, in view of the peculiar facts and circumstances of the case, there shall be no order as to costs.

-s/d-

Assistant Registrar

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VI Additional Judge, City Civil Court,
Chennai

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