

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2016
PRONOUNCED ON : 17.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.126 of 2011
and
M.P.No.1 of 2011

1.M.Palaniappan
2.Devaraj

... Appellants/Defendants

Vs.

Nachimuthu

... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.10.2010 made in A.S.No.5 of 2008 on the file of the Principal District Court, Namakkal confirming the judgment and decree dated 13.09.2006 made in O.S.No.491 of 2002 on the file of the Sub-Court, Namakkal.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.T.Gowthaman

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 05.10.2010 made in A.S.No.5 of 2008 on the file of the Principal District Court, Namakkal, confirming the Judgement and decree dated 13.09.2006 made in O.S.No.491 of 2002 on the file of the Sub Court, Namakkal.

2. The suit has been laid for specific performance.

3. The averments contained in the plaint are briefly stated as follows:

The suit properties belonged to the first defendant. The plaintiff and the first defendant entered into a written sale agreement on 15.06.1986, whereby, the first defendant agreed to sell the suit properties to the plaintiff for a total sum of Rs.1,00,000/- and accordingly, received from the plaintiff, a

sum of Rs.85,000/-, as an advance on 15.06.1986 and the parties have entered into the sale agreement on the same date and the first defendant further agreed to receive the balance sale consideration of Rs.15,000/- within a year, from the date of the sale agreement (i.e.) on or before 15.06.1987 and agreed to execute and register the sale deed in favour of the plaintiff in respect of the suit properties.

4. The plaintiff has been always ready and willing to perform part of his contract by paying the balance sale consideration of Rs.15,000/- and to have the sale deed executed and registered in his name from the first defendant. As per the terms of the sale agreement, the first defendant is bound to complete and perform his part of contract. Even though the plaintiff had approached the first defendant on several occasions to pay the balance sale consideration and had repeatedly requested the first defendant to receive the same and to execute and register a proper sale deed in his favour, the first defendant has been delaying the same under one pretext or the other with a sole view to cheat and defraud the plaintiff. Therefore, left to no other alteration, on 11.05.1987 the plaintiff issued a lawyer notice to the first defendant calling upon him to complete the sale transaction as per the terms and conditions of the sale agreement. Therein also, the plaintiff has expressed his readiness and willingness to have the sale deed executed in his name. The first defendant sent a reply notice dated 21.05.1987 containing false allegations and also, denying the execution of the sale agreement itself and directed the plaintiff to send a copy of the sale deed dated 15.06.1986 for his perusal, as if he is unaware of the same and to enable him to give a detailed further reply. The plaintiff sent a suitable rejoinder along with a xerox copy of the sale agreement dated 15.06.1986 to the counsel for the first defendant. Even on receipt of the same, the first defendant did not choose to send any further reply. Again, on 03.07.1987, the plaintiff sent a reminder-cum-pre suit notice to the first defendant. After receiving the same, the first defendant approached the plaintiff and promised to complete his part of the contract, but he failed to do so. Again, the plaintiff approached the first defendant and then also, the first defendant promised to perform part of his contract, but the first defendant failed to act as per his promise. The plaintiff purchased the court fee stamp papers for Rs.7,500/- on 08.08.1988 from S.T.O., Tiruchengodu and on coming to know of the same, the first defendant again approached the plaintiff with the panchayatdars and agreed to execute and register the sale deed within five months and inasmuch as the first defendant failed to act as per the above said decision of the Panchayatdars, the plaintiff, on 28.04.1989, sent a last reminder-cum-pre suit notice to the first defendant and the first defendant, on receipt of the same, neither replied to the same nor came forward to execute and register the sale deed as per the sale agreement. The first defendant has not been willing to perform his part of the

contract in spite of several demands made by the plaintiff. As the first defendant attempted to encumber the suit properties in favour of the third parties, the plaintiff has been constrained to file the suit against the first defendant.

5. The second defendant is the son of the first defendant. The second defendant filed I.A.No.829 of 1991 to implead himself as a party in the suit and the same was dismissed. Challenging the same, the second defendant preferred C.R.P.No.13/1994 on the file of the High Court, Madras and the same was allowed. The second defendant thus has been arrayed as a party in the suit. The second defendant has no right or title over the suit properties and his claim that the suit properties are the joint family properties of the defendants is false. Even assuming that the properties are the joint family / ancestral properties, the second defendant would have no right or share over the suit properties as per the Hindu Succession Act, 1956 and though the second defendant has been added as a party, the plaintiff claims no relief against the second defendant in the suit.

6. Though the first defendant had filed an additional written statement containing several new facts, other than what has been already adverted to by him in the written statement, after the suit had been amended vis-a-vis impleadment of the second defendant, inasmuch as he has set forth new set of facts in the additional written statement, the same was challenged by the plaintiff by way of an application in I.A.No.129 of 1996 to strike off the same as it did not confine to the amended plaint but, it is really substitution of the earlier written statement. After contest, the same was allowed. As against which, the first defendant preferred C.R.P No.1655/98 and after it was vehemently contested, it has come to be dismissed and it was held that the first defendant is not entitled to put forth fresh pleas, which are not in answer to the fresh matter introduced by the amendment of the plaint and be inconsistent with the pleas previously put forth by him in the written statement and the first defendant threw a challenge to the above order passed by the High Court in the above mentioned C.R.P in the apex court by filing S.L.P.No. 1161 of 2006 and the S.L.P has been dismissed by the apex court. Following the same, it could be seen that the first defendant had been permitted to contest his case in the additional written statement conforming to what he has adverted in para 17 of the additional written statement.

7. The averments contained in the written statement filed by the first defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. The case of the plaintiff is that the first defendant agreed to sell the suit properties to the plaintiff for a sum of Rs.1,00,000/- on 15.06.1986 and received a sum of Rs.85,000/- as advance from the plaintiff and executed the sale agreement on the same date

and agreed to receive the balance sale consideration of Rs.15,000/- from the plaintiff within a period of one year and promise to execute and register the sale deed in favour of the plaintiff is false. The sale agreement is a forged document and the signature and thumb impression found on the same are not that of the defendant. The defendant had not dealt with the plaintiff at any point of time and the suit has been filed by the plaintiff in order to achieve unlawful enrichment. To the notice sent by the plaintiff, the defendant sent a suitable reply dated 21.05.1987 through his advocate containing true facts. The allegations, with reference to the subsequent exchange of notice between the parties, are denied. The defendant, never at any point of time, agreed to convey the suit properties to the plaintiff as put forth in the plaint. It is false to state that the defendant is attempting to encumber the suit properties in favour of the third parties. There is no cause of action in the suit and the suit is liable to be dismissed.

8. The averments contained in the additional written statement filed by the first defendant are briefly stated as follows;

It is false to state that the second defendant has no right or title or possession over the suit properties and the contention of the second defendant that the suit properties are the joint family properties of the defendants 1 & 2 is absolutely correct. It is false to state that the second defendant would not be entitled to claim any right or share over the suit properties even if the suit properties are the ancestral /joint family properties of the defendant.

9. The averments contained in the written statement filed by the second defendant are briefly stated as follows:

The second defendant has denied all the averments put forth in the plaint. According to the second defendant, the first defendant did not execute the suit sale agreement dated 15.06.1986 in favour of the plaintiff as alleged in the plaint. A finance Company by name Chitra Finance was functioning in Tiruchengode Taluk and the plaintiff was one of the partners of the above said finance company. The defendant's paternal aunt's husband by name Arumuga Gounder for the purpose of his business approached the first defendant for a loan and requested him to recommend his name for loan from the above said finance company and the first defendant recommended his name and accordingly, a sum of Rs.20,000/- was advanced to Arumuga Gounder by Chitra Finance and Arumuga Gounder promised to pay interest regularly. Inasmuch as he was unable to pay the interest, the partners of above said finance company forced and threatened the first defendant to put his signature and thumb impression in various blank stamp papers, white sheets and blank promissory notes for ensuring due discharge of the loan with interest by Arumuga

Goundar and left with no other alternative, the first defendant signed the above said empty stamp papers, pro-notes, white sheets and as Arumuga gounder had not paid the loan amount, it appears that the partners of the above said finance company had created the suit sale agreement fraudulently by misusing the stamp papers and white sheets, wherein, the first defendant had signed and put his signature and LTIs. Further, according to the second defendant, the suit properties are the joint family properties of the defendants and the first defendant has no right to sell the same to any one and further, it is stated that even during the year 1985, the suit properties easily fetched Rs.20,00,000/- and the above fact would prove the falsity of the suit sale agreement. Hence, the suit is liable to be dismissed.

10. In support of the plaintiff's case, PWs1 and 2 were examined and Exs.A1 to 10 were marked. On the side of the defendants DWs1 to 5 were examined and Exs.B1 to B4 were marked. Ex.C1 has also been marked. Ex.X1 has also been marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. Aggrieved over the same, the defendants preferred the first appeal and the first appellate court was also pleased to confirm the judgement and decree of the trial Court. Aggrieved over the same, the present second appeal has been preferred by the defendants.

12. The second appeal has been admitted and the following substantial questions of law are formulated in the second appeal for consideration:

(a) Whether the suit sale agreement has been validly executed, if so, whether it is enforceable in law especially when the plaintiff has not proved his readiness and willingness throughout and also not made out a case to get the equitable remedy of specific performance?

(b) Whether the courts below have committed an error in holding that the transaction under Ex.A1 is an agreement for the purchase of the suit property particularly when the stamp papers for Ex.A1, purchased in the name of the first defendant, non examination of attester and scribe to prove the due execution and unexplained silence on the part of the plaintiff for a period of two years would disentitle him to get the discretionary relief of specific performance?

(c) Whether the courts below are right in law in holding that the second defendant being the son of the first defendant is not having any right by birth

as against his claim of devolution of property in intestate succession under Sections 6 and 8 of the Hindu Succession Act, 1956?

(d) Whether the courts below have committed an error in holding that an admission of a signature in Ex.A1 is an admission of a suit agreement?

(e) Whether the courts below are correct in law in rejecting the additional written statement on the basis of the misconception of law that the defendant cannot be allowed to take a new ground of defence or substituting or taking inconsistent plea in the defence?

(f) Whether the courts below are justified in granting the relief of specific performance after lapse of 20 years even without taking into consideration of the time gap, price rise, subsequent change in circumstance with regard to land use pattern instead of granting the alternative relief trade for the plaintiff?

13. According to the plaintiff, the first defendant, being the owner of the suit properties, agreed to sell the same to the plaintiff for a sum of Rs.1,00,000/- and following the consensus ad idem between the plaintiff and first defendant, to negotiate the sale transaction in respect of the suit properties as above, they entered into a sale agreement on 15.06.1986 and accordingly, the plaintiff paid a sum of Rs.85,000/- on the date of the sale agreement as advance and promised to pay the balance sale consideration of Rs.15,000/- within a period of one year from the date of the sale agreement i.e. on or before 15.06.1987 and thereafter, even though the plaintiff was always ready and willing to perform his part of the contract in making the payment of balance sale consideration and to get the sale deed executed and registered in his name, it is alleged by the plaintiff that the first defendant had been delaying the same, on one pretext or the other and finally, the plaintiff was forced to issue the notice dated 11.05.1987 calling upon the first defendant to receive the balance sale consideration and execute and register the sale deed in respect of the suit properties in his favour and though the first defendant had received the said notice, issued a reply notice dated 21.05.1987

containing false allegations and also, denying the execution of the sale agreement itself and directed the plaintiff to send a copy of the sale deed dated 15.06.1986 for his perusal, so as to give a detailed further reply and in compliance of the same, the plaintiff through his counsel had also sent a copy of the sale agreement to the first defendant and despite the receipt of the same, the first defendant did not send any further reply and also, did not come forward to perform his part of the contract and therefore, the plaintiff sent another notice dated 03.07.1987 to the first defendant and even on receipt of the same, the first defendant failed to act, as per the terms of the agreement of sale and even though the plaintiff was ready and willing to perform his part of the contract and had also purchased the court fee stamp papers in connection with the same, the first defendant was not ready. However, he had approached the plaintiff that he would do his part under the sale agreement immediately and despite giving assurance on the same lines twice, the first defendant did not evince interest to act and perform as promised by him and as per the terms of the sale agreement, the plaintiff issued the final notice on 28.04.1989 calling upon the first defendant to act as per the terms of the sale agreement. Though the first defendant had received the same, did not reply and hence, the suit has been laid by the plaintiff. According to the plaintiff, following the order of the High Court, the second defendant namely Devaraj, son of first defendant, has been added as a party in the suit proceedings.

14. In the written statement, the first defendant has disputed the genuineness of the sale agreement dated 15.06.1986. According to him, it is a forged document and he had not agreed to sell the suit properties in favour of the plaintiff for Rs.1,00,000/- as alleged in the plaint. Therefore, according to the first defendant, there is no cause of action for the suit and hence, the suit is liable to be dismissed.

15. Following the impleadment of the second defendant, the first defendant in the additional written statement has taken a stand for the first time that the suit properties are the joint family properties of the first defendant and his son, namely, the second defendant and therefore, he has no right to sell the suit properties on his own to the plaintiff. The first defendant has not pleaded in the original written statement that the suit properties are the joint family properties belonging to him and his son viz., the second defendant and that, he has no right to convey the suit properties to the plaintiff on his own.

16. The second defendant in his written statement has taken a stand that as the first defendant was instrumental in getting the loan for his brother-in-law Arumugu Gounder from Chitra finance, in which, the plaintiff was one of the partners and as Arumuga Goundar could not repay the loan amount, the partners of

the Chitra finance by coercion, had threatened and obtained the first defendant's signature and LTI in various white papers, stamp papers and pro-notes for the due discharge of the loan amount and according to him, the Chitra finance had misused the above said papers to create the sale agreement and filed a false suit in the name of the plaintiff. Further, according to the second defendant, the suit properties are the joint family properties belonging to the first defendant, his father and himself and therefore, the first defendant, on his own, would not be entitled to execute the sale agreement in favour of the plaintiff.

17. The parties are referred to as per their ranking in the trial Court, for the sake of convenience.

18. The main plea put forth by the defendants' counsel is that the suit properties are the joint family properties of the defendants 1 & 2 and therefore, according to him, the first defendant, on his own, would not be entitled to convey the suit properties to the plaintiff under the sale agreement. From the evidence adduced by the parties in this matter, it could be seen that the suit properties and the other properties had been purchased by the first defendant's father Marappa Gounder under Ex.B1 and the same has not been controverted. Therefore, it could be seen that the suit properties are the self acquired properties of Marappa Gounder. It is not the case of the defendants that the suit properties are the ancestral properties of Marappa Gounder. No evidence, to establish the above said plea, has also been placed in the Courts below. That apart, it has also not been pleaded that Marappa Gounder had treated the suit properties and the other properties purchased by him under Ex.B1 as the joint family properties and enjoyed them jointly along with his sons and grandsons. The plea of blending by Marappa Gounder has also not been pleaded and established by the defendants.

19. To put forth that the suit properties are the joint family properties of the defendants, the trump card projected by the defendants is the copy of the partition deed marked as Ex.B4, which, according to them, is the partition effected between the defendants and the first defendant's brother and brother's son, in respect of the suit properties belonging to Marappa Gounder. However, as rightly found by the Courts below, the above said partition deed cannot be accepted in any manner to hold that the suit properties, in particular, are the joint family properties of the defendants as pleaded by the defendants. In the original written statement, the first defendant has not taken a plea that the suit properties are the joint family properties of himself and his son viz., the second defendant. In the original written statement, the first defendant has not denied that he is not entitled to convey the suit properties to the plaintiff under the sale agreement and on the other hand, he has pleaded that the sale agreement is a

forged document and not executed by him as alleged in the plaint. However, after the second defendant has been impleaded in the suit as a party, while affording him an opportunity to file an additional written statement to the amended plaint filed thereof, for the first time, the first defendant has taken a plea that the suit properties are the joint family properties of himself and his son viz., the second defendant. The second defendant has also taken a similar plea in his written statement. The suit has been filed on 03.05.1988. Therefore, as rightly found by the courts below, in order to defeat the plaintiff's case, one way or the other, it could be seen that the defendants had been improving the case gradually and accordingly, it is evident that they, along with the first defendant's brother Arthanari Gounder, had created Ex.B4 partition deed and therefore, the said document having been executed by the parties concerned, after the institution of the suit, no safe credence could be attached to the same and on that basis, this Court would not be ready to accept the plea that the suit properties are the joint family properties of the defendants. Surprisingly, the daughters of Marappa Gounder had not been added as parties in the partition deed marked as Ex.B4. It is admitted that Marappa Gounder had died intestate on 27.05.1979. Even as per the evidence adduced by the first defendant as DW1, he had, by arrangement, enjoyed the properties allotted in his favour separately without any actual division with his brother and his brother had also been enjoying the properties separately and therefore, it could be seen that without any partition, as such the first defendant and his brother Arthanari Gounder had been separately enjoying the properties distributed in their favour by amicable arrangement amongst themselves and therefore, it could be seen that only for the purpose of this case, after the institution of lis, in order to defeat the plaintiff's case, Ex.B4 partition deed has been effected between the defendants and Arthanari Gounder and the sons of Arthanari Gounder. In such circumstances, when by amicable arrangement amongst themselves, the first defendant and his brother had been enjoying the properties of Marappa Gounder separately, it could be seen that, as per the provisions of the Hindu Succession Act, 1956, Palaniappan and his brother Arthanari Gounder had been enjoying the properties allotted in their favour, as per the arrangement made amongst themselves separately and also, enjoying their respective properties as their separate properties and not as joint family properties.

20. It could be seen that as per the provisions of Hindu Succession Act, 1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956 amongst the Class-I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties and not as the joint family properties of the first defendant and his son viz. the second defendant. To the above position of law, there are ample authorities and a perusal of the decisions reported, which have been cited by the counsel for the

defendants, would go to show that the properties derived by the first defendant from his father could only be treated as the separate properties of the first defendant and not as the joint family properties of the first defendant and his son viz., the second defendant. In this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 (The Additional Commissioner of Income-tax, Madras-1 V. P.L.Karuppan Chettiar), 1993 Supp (1) Supreme Court Cases 580 (Commissioner of Income Tax V. P.L.Karuppan Chettiar), (1986) 3 Supreme Court Cases 567 (Commissioner of Wealth Tax, Kanpur and Others V. Chander Sen And Others), (2008) 3 Supreme Court Cases 87 (Bhanwar Singh V. Puran And Others) and the latest decision (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others). A perusal of the above said decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, the position of law being above as adumbrated by our High Court and the Apex Court in the above said decisions, the contention of the defendants' counsel that the suit properties are the joint family properties of the defendants 1 and 2 cannot at all be countenanced in any manner.

21. However, still not losing hope, the defendants' counsel pressed into service, the decision reported in (2013) 9 Supreme Court Cases 419 (Rohit Chuhan Vs. Surinder Singh and Others). Though the above said decision may lend support to his contention, however, the above said decision is also taken note of in the decision reported in (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others) and the apex Court has distinguished the above said decision relied on by the defendants' counsel by holding that in the above said decision, there was no consideration of the effect of Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956. Therefore, it could be seen that on a conjoint reading of Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956, it could be seen that if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

22. In the light of the above decisions, it is clear that the suit properties are the separate properties of the first defendant and therefore, the plea, now, taken by the defendants that the suit properties are the joint family properties of the defendant 1 & 2 and that, the first defendant, on his own, is not entitled to convey the suit properties to the plaintiff under the suit sale agreement cannot be accepted and has to be rejected.

23. The first defendant in his written statement has taken a specific plea that the sale agreement is a forged document. It is therefore evident that the burden of proof squarely lies upon the plaintiff to establish that as pleaded by him, the first defendant had executed the sale agreement in favour of the plaintiff on 15.06.1986. Even before impleadment of the second defendant in the suit, in order to establish that the signature and LTI found in the sale agreement marked as Ex.A1 are that of the first defendant, the plaintiff had taken steps to have them scrutinised by an expert and the expert's report has also been since received by this Court and the same has been marked as Ex.C1. From Ex.C1, it has been made clear and established that the LTIs found on Ex.A1 are that of the first defendant and therefore, it could be seen that the plaintiff has, through Ex.C1, clearly established that it is only the first defendant, who had executed the sale agreement in his favour on 15.06.1986.

24. Quite inconsistent to the plea taken by him in the written statement, the first defendant, in the additional written statement, had taken a plea that the plaintiff, as the partner of Chitra Finance had created the said sale agreement, based upon the signature and LTI obtained from the first defendant by coercion by Chitra finance in respect of a loan transaction. However, as adverted to earlier, the first defendant was not permitted to raise such a plea in the additional written statement. However, the second defendant has taken the said defence in his written statement and the same being questions of fact and not questions of law as put forth by the defendants' counsel, a reading of the judgement of the trial Court, on the above issue would go to show that the trial Court has considered the facts of the parties' case on all the aspects and after analysing the evidence adduced by the parties with reference to the same, found that the above plea of the second defendant, in particular, that the partners of the Chitra Finance had by coercion and threat, obtained the signature and LTI of the first defendant in various blank papers, stamp papers, etc., in respect of the loan transaction is false and not true. No interference is called for to the above findings of the trial Court in any manner and it has not been established to be perverse or erroneous. Therefore, it could be seen that the defendants, one way or the other, in order to defeat the plaintiff's case has come forward with inconsistent pleas and accordingly, had been putting forth new pleas desperately quite inconsistent to each other to non suit the plaintiff.

25. No doubt, in this case, the attempt made by the plaintiff, to establish the authenticity of Ex.A1 sale agreement through one of the attestors examined as PW2 had failed. It is evident that PW2 has turned hostile to the plaintiff's case and despite the cross examination, nothing could be elicited from him in support of the plaintiff's case. However, that would not in any manner undermine or vitiate the plaintiff's case. As seen earlier, the plaintiff has without any ambiguity or doubt

established that the LTIs found in the sale agreement are that of the first defendant through Ex.C1 sale agreement and Ex.A1 is not a document which requires compulsory, attestation as per law. Therefore, it could be seen that the failure of the plaintiff to establish the authenticity of Ex.A1, through PW2 by itself, would not, in any manner destroy the plaintiff's case. Further, it could also be seen that the plaintiff has also tendered evidence on his own as PW1 with reference to the sale agreement Ex.A1.

26. That apart, the first defendant has also admitted during the cross examination that the signature and LTI found in Ex.A1 are his signature and LTI and therefore, the above aspect has also been considered by the Courts below in the right perspective and coupled with the other points as discussed above, held that the sale agreement has been executed only by the first defendant and the said facet of the case has been established by the plaintiff clearly without any ambiguity or doubt.

27. With reference to the above aspect of the case, the trial Court has considered the pleas of the parties and analysed the evidence in the right perspective and found that the defendants have taken inconsistent pleas with reference to the execution of the sale agreement, at one time, denying the execution of the sale agreement and at another instance, taking a plea that the attestors of Ex.A1 are closely associated with the plaintiff and his family friends and therefore, it could be seen that as found by the trial Court, the defendants have been falsely taking inconsistent pleas to non suit the plaintiff one way or the other.

28. The defendants' counsel also pleaded that the plaintiff has not ascertained before the execution of the sale agreement that it is only the first defendant, who is the owner of the suit properties. However, on that aspect, the trial Court has found that the plaintiff had established that he had verified the revenue records and other records before the sale agreement and on the basis of the same, noting that the revenue records stand only in the name of the first defendant as regards the suit properties, it could be seen that the plaintiff, before venturing to enter into sale agreement with the first defendant, had ascertained that the first defendant is the owner of the suit properties.

29. In the light of the above facts, the contention that the plaintiff has not established the due execution of the sale agreement by the first defendant cannot be accepted in any manner. On the other hand, as rightly found by the courts below, it could be seen that the plaintiff has, through acceptable and reliable evidence, established that the first defendant had executed the sale agreement agreeing to convey the same to the plaintiff for Rs.1,00,000/-.

30. The defendants' counsel contended that the plaintiff has failed to establish that he was ready and willing to perform his part of the contract and therefore, he is not entitled to seek the equitable remedy of specific performance. As regards the above contention of the defendants counsel, it is argued by the plaintiff's counsel that the defendants' in the written statement nowhere specifically controverted the stand of the plaintiff in the plaint that he has been ready and willing to perform his part of the contract. In the plaint, the plaintiff has, at many places, averred that he was ready and willing to perform his part of the contract. Now, as per the terms and conditions of the sale agreement, the plaintiff has to pay the balance amount of Rs.15,000/- within one year and get sale deed executed. According to the plaintiff, the balance sale consideration is only a small amount and he was always ready and willing to pay the balance sale consideration and only on the delay committed by the first defendant, the sale deed could not be executed. From the evidence of the plaintiff and the defendants, as we could gather, the plaintiff has been always ready and willing to perform his part of the contract and he has not only averred to the same but also established through his evidence and that of the defendants. It is not the case of the defendants that the plaintiff had no capacity to pay the balance sale consideration. Considering the status and economic viability of the plaintiff, it could also be seen that, on the relatively small quantum of balance sale consideration, the plaintiff was having the amount to tender at any time as per the sale agreement. Since the first defendant was not ready to perform his part of contract, according to the plaintiff, he had sent the notice on 11.05.1987 calling upon the first defendant to receive the balance sale consideration and execute and register the sale deed and the receipt of the same has not been denied. The first defendant sent a reply on 21.05.1987 repudiating the sale agreement. In the reply, marked as Ex.A4, the first defendant has not taken a plea that the plaintiff has no means to pay the balance sale consideration and he has not been ready and willing to perform his part of the contract. Subsequent to the same, as per the direction of the first defendant, the plaintiff sent a copy of the sale agreement to the first defendant marked as Ex.A5 through his advocate and though the first defendant had received the same, he had not sent any further reply and thereafter, the plaintiff had sent another notice dated 03.07.1987 marked as Ex.A7 and to evidence that the first defendant had received the same, marked the acknowledgement card as Ex.A8. Even thereafter, as the first defendant had not come forward to complete the sale transaction as per Ex.A1, the plaintiff sent the final notice on 28.04.1989 marked as Ex.A9 and the second defendant had received the same and the acknowledgement card has been marked as Ex.A10. To Exs. A5, 7 and 9, the first defendant did not send any reply. Therefore, it could be seen that from the inception, the first defendant or the second defendant has never taken a plea that

the plaintiff was not ready and willing to perform his part of contract as per the sale agreement. Only for the first time, during the course of arguments, such a plea has been raised by them. No doubt, as argued by the defendants' counsel and as reported in the decision cited in (2011) 1 Supreme Court Cases 429 (J.P.Builders and Another V. A.Ramadas Rao and Another) even in the absence of specific plea taken by the opposite parties with reference to the readiness and willingness, the duty is on the plaintiff to establish the said plea and considering the above, the evidence adduced on the side of the plaintiff and also conduct of the parties and also the financial capacity of the plaintiff and also the relatively meagre quantum of the balance sale consideration, and also considering the inconsistent pleas put forth by the defendants, at various points of time, to defeat the plaintiff's case, one way or the other, it could be seen that, as rightly argued by the plaintiff's counsel for the purpose of the case, the defendants have taken a plea that the plaintiff has not been ready and willing to perform his part of the contract, however has failed to establish the above aspects of their case. On the other hand, as rightly found by the Courts below, it could be seen that the plaintiff has clearly established and proved that he has been throughout ready and willing to perform his part of the contract and therefore, it could be seen that he has made out a case that he is entitled to seek the equitable remedy of specific performance on the basis of the suit sale agreement.

31. The defendants' counsel has also taken a plea that the value of the suit properties is high and according to them, one acre of the suit properties would easily fetch more than 20,00,000/- during the year 1985 and therefore, the value alleged to have been arrived at Rs.1,00,000/- for the suit properties in 1986 cannot, at all, be believed by any stretch of imagination and therefore, on the above aspect alone, it is contended that the Court should not grant the equitable remedy of specific performance in favour of the plaintiff.

32. With reference to the same, as rightly argued by the plaintiff's counsel, the discretionary relief of specific performance cannot be denied merely on the basis of inadequacy of consideration as stated under Section 20 of the Specific Relief Act. Now according to the defendants, the suit properties are high value properties and therefore, the consideration fixed at Rs.1,00,000/- under Ex.A1 is very very low. With reference to the above case of the defendants, the decision reported in (2011) 12 Supreme Court Cases 18 (Saradamani Kandappan V. S.Rajalakshmi and others) is pressed into service. Further, according to the defendants, considering the fact that the suit agreement is of the year 1986, the present lis having been prolonged one way or the other and as we are in 2016, considering the escalation of price, as on date, the Court should take into account the present market value of the suit properties and should decline the relief of specific performance

to the plaintiff under Ex.A1. The long period during which this litigation has been dragged on, could be seen not on account of the attitude of the plaintiff, on the other hand, it could be seen that it was on account of the various proceedings initiated by the defendants one way or the other in various courts, even to the apex court and for such reasons the litigation having been delayed and therefore, merely because the litigation has been stalled for several years and not reached its finality, on that ground alone, it could not be held that the plaintiff has faulted and therefore, considering the present value of the suit properties in the market, the contention of the defendants that the plaintiff has to be non suited on that ground cannot be countenanced straightaway.

33. Now according to the defendants, even on the date of the sale agreement, the suit properties are high value properties. However, with reference to the above case of the defendants, no shred of evidence has been placed by them. Therefore, it could be seen that in the absence of any evidence on the side of the defendants to hold that the suit properties fetched more value than what has been mentioned Ex.A1, we cannot accede to the defendants contention in any manner. As rightly found by the Courts below, considering that even in the partition deed of the year 2000, the suit properties and the other properties had been valued only at Rs.35,000/- would, on a comparative basis, go to show that the value of the suit properties fixed in the sale agreement cannot be at the low level.

34. In the above said circumstances, when there is nothing on record to buttress above defence of the defendants and when it is found that the value fixed in the sale agreement is not established to be low, the plea now taken by the defendants that considering the value of the suit properties, at the present market value, the suit litigation having been pending for more than 20 years, the Court should refuse the relief of the equitable remedy of specific performance to the plaintiff cannot be accepted. Therefore, the plea of high value of the suit properties projected by the defendants to disentitle the plaintiff, cannot be permitted as just and proper, in any view of the matter.

35. The defendants' counsel also contended that the sale agreement had been engrossed on the stamp papers purchased by the first defendant and normally, it is engrossed only on stamp papers purchased in the name of the purchaser and therefore, on that basis alone, the sale agreement should be held to be a false document. However, the above plea has to be rejected and the courts below have considered it in the right perspective and found that inasmuch as the first defendant was having the stamp papers purchased in his name at the relevant point of time, the parties agree to make use of them for executing the sale agreement and therefore, no exception could be taken to the same in any manner. If really, as contended by the defendants, the

plaintiff had intended to create the sale agreement, he would have taken every step to get sale agreement engrossed in the stamp papers purchased in his name. On the other hand, as per the normal turn of events, the plaintiff had, as agreed between the parties, taken the sale agreement in the stamp papers purchased in the name of the first defendant and which were available in the custody of the first defendant at the relevant point of time. Therefore, the above aspect, being question of fact and not involving question of law and also, considered by the courts below in the right perspective would not be helpful to sustain the defence of the defendants in any manner.

36. The defendants' counsel also pressed into service, the decisions, reported in 2012 (4) CTC 100 (Pappammal @ T.Pappa V. P.Ramasamy), (1980) 1 Supreme Court Cases 52 (S.B.Noronah Vs. Prem Kumari Khanna), (2008) 8 MLJ 862 (C.T.Devaraja, Proprietor of Jayalakshmi Industries, and also of ' Vil Ambu' a Tamil Weekly T.Nagar, Madras In re. and (2009) 15 Supreme Court Cases 528 (Olympic Industries V. Mulla Hassainy Bhai Mulla Akberally and others) and the principles of law as adumbrated in the above said decisions and taken into consideration and followed as applicable to the facts and circumstances' of the present case. Similarly, the plaintiff's counsel relied on the decisions reported in 2003 (4) Mh.Lj 134 : 2004(2) BCR 361 (Asudamal V. Kisanrao), AIR 2004 Supreme Court 4472(1) (P.D'Souza V.Shondrilo Naidu), AIR 1998 Madras 336 (K.M.Rajendran V.Arul Prakasm and another), AIR 2002 Himachal Pradesh 106 (Dalip Singh V.Ram Nath and another), AIR 2006 Allahabad 289 (Nardev Singh and Ors V.Mahabir Singh and Anr) and AIR 2000 Himachal Pradesh 53 (Shri Krishan Swarup Bhatnagar V. Shri Chander Mohan Rewal and another) and the principles of law, as held, are followed and applied as applicable to the facts and circumstances of the present case.

In the light of the above discussion, I hold that the defendants' have failed to establish that substantial questions of law are involved in this appeal for consideration. The substantial questions of law formulated are answered against the appellants and in favour of the respondent. I therefore hold that the second appeal is devoid of merits and accordingly, the second appeal is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Principal District Judge,
Namakkal.

2.The Sub-Judge, Namakkal.

+ 1 cc to M/s. T. Gowthaman, Advocate SR.67360

+ 1 cc to M/s. N. Manokaran, Advocate Sr.67031

S. A.No.126 of 2011
and
M.P.No.1 of 2011

PPA (CO)
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