

Judgment Reserved on: 25.04.2017

Judgment Pronounced on: 01.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.143 of 2011

and

M.P.No.1 of 2011

Santhamani .. Appellant/Defendant
Versus

Usha .. Respondent/Plaintiff

Appeal Suit filed under section 96 read with Order 41 Rule 1 and 2 of Code of Civil Procedure against the judgment and decree dated 29.10.2010 passed in O.S.No.111 of 2006 by the learned Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur.

For Appellant : Mr.G.R.Swaminathan Senior Counsel
for Mr.RThiagarajan

For Respondent : Mr.M.S.Krishnan, Senior Counsel
for M/s.Sarvabhauman Associates

JUDGMENT

Aggrieved over the decree and judgment of the learned trial Court decreeing the suit filed for specific performance in respect of the common undivided 2/3 share of the defendant, the present appeal came to be filed by the defendant. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

2.The brief facts of plaintiff's case is as follows:- It is the case of the plaintiff that the suit property originally belonged to the father of the defendant Avinashi Gounder by self acquisition. He had a registered settlement deed dated 21.09.1955 conveying absolute title and possession of the suit property to his wife Angammal. Thereafter the said Angammal, died intestate on 03.05.2005 leaving behind her the defendant as the sole surviving legal heir. By making such representation,

the defendant has offered to sell the suit property to the plaintiff and executed a sale agreement dated 13.07.2005 for a total sale consideration of Rs.15,23,800/- and received a sum of Rs.2.50 lakhs as advance towards part payment of the agreed sale consideration. Even before the agreement, the plaintiff has verified the encumbrance and obtained encumbrance certificate for the suit property. It is also agreed in the agreement that the plaintiff on paying the balance amount of Rs.12,73,800/- within 90 days the defendant is bound to execute the sale in favour of the plaintiff.

3. Although the plaintiff had means and had capacity to pay the balance sale consideration, period of 90 days was mutually agreed to satisfy about her absolute title from all encumbrances, defects in title if any. The defendant had also issued a publication in Dhina Thanthi on 1.8.2005 and also lodged a complaint on 9.8.2005 with regard to the loss of the original settlement deed. On 2.9.2005, when the plaintiff had been in the Sub-Registrar Office, Avinashi, to ascertain the guideline value of the suit property to purchase the stamp paper and to draw sale deed, she was shocked and surprised to know that one Karuppathal claiming to be the half-sister of the defendant has filed a suit for partition in O.S.No.210 of 2005 on the file of the District Munsif Court, Avinashi as against the defendant and the Sub-Registrar of Avinashi on 16.08.2005. The plaintiff also came to know that interim application also filed against the defendant for restraining her from alienating the suit property and against the Sub-Registrar, Avinashi, restraining him from registering the sale deeds in respect of the suit property. The plaintiff had immediately approached the defendant and sought for explanations as to why she has concealed and suppressed about the said case. But the defendant had given vague excuses and had sought some time to furnish details and to solve the dispute amicably and to convey absolute title and possession of the suit property free of all encumbrances, claims and defects in title. Thereafter, the defendant has issued a legal notice on 23.9.2005 suppressing all the material facts and truths more particularly about the pending partition suit. In the legal notice sent by the defendant on 23.9.2005 and 5.10.2005 she had falsely contended that the sale price agreed between the parties is only Rs.15,50,000/- and not Rs.15,23,800/. This was also properly replied by the plaintiff on 10.10.2005, furnishing with them a copy of the Term Deposit Advice dated 10.10.2005 for Rs.12,73,800/- issued by the State Bank of India, Commercial Branch, Tiruppur. In fact, prior to the issuance of legal notice by the defendant, the defendant has already appeared before the Court on 23.9.2005 in the partition suit filed by her half-sister. The plaintiff was always ready and willing to perform her part of contract. In fact the defendant had been concealing

and suppressing about the previous suit for partition. The plaintiff was always willing to purchase the suit property. The conduct of the defendant clearly shows that the defendant and the plaintiff in O.S.No.210 of 2005 had brought about a collusive suit to defeat the legitimate right of the plaintiff. In the above suit the defendant has also filed a memo giving undertaking not to sell the suit property before the disposal of the suit. In the above suit O.S.No.210 of 2005 it is admitted that this defendant is entitled to 2/3rd share in the suit property. Since there is rival claim with regard to the suit property, the plaintiff seeking specific performance in respect of the admitted common 2/3rd share of the suit property without prejudice to the rights of said Karuppathal. The plaintiff was ready to pay the remaining sale consideration of Rs.7,65,867/-. Besides the said amount, the plaintiff was ready to deposit the remaining sale consideration of Rs.5,07,933/- towards the remaining common 1/3rd share value of the suit property as and when the Court directs. The plaintiff is the managing partner of a reputed hosiery garments knitting company under the name and style "Thillainathan Textiles" and she is also the proprietrix of a business concern viz. M/s Gowri Hosiery Mills at Tiruppur. She is also managing around 12 manufacturing units in and around Tiruppur and the business volume turnover every year is approximately around Rs.20 Crores. She had been looking out for lands like that of the suit property for a very long time for her future business expansion like construction of Factories and Mills with approach roads to National Highways at Avinashi to Coimbatore Road for easy accessibility of labours and infrastructure. The suit property found to be suitable for the future business expansion of her industries. Hence she had entered into a contract with the defendant to execute a sale deed in respect of 2/3rd share of the defendant as admitted by Karuppathal in O.S.No.210 of 2005. The plaintiff further submits that being the bona fide agreement holder she is entitled for the relief of specific performance. However, if the Hon'ble Court for some reason comes to a conclusion that she is not entitled to the relief of specific performance, she is entitled for the alternative relief of refund of the advance amount of Rs.2,50,000/- together with interest at 18% per annum from the date of agreement. She is also entitled to a charge over the suit property till satisfaction of the decree.

4.The defendant admitting the agreement, has contended that the agreed sale consideration was Rs.15,50,000/- and not Rs.15,23,800/- as alleged by the plaintiff. The time stipulated was 90 days for completion of the sale agreement. It is stated by the defendant that Karuppathal has no right or interest over the suit property and she has filed a partition suit in O.S.No.210 of 2005. In the above suit the defendant has also filed a memo on 20.03.2006 giving undertaking not to sell the

suit property before the disposal of the suit. The plaintiff knowing very well that the said Karuppathal had no title to the suit property, colluded with the said Karuppathal and filed the present suit before this Court to evade to get the sale completed. It is the contention of the defendant that she had valid title, right, possession and enjoyment of the suit property. Hence prayed for dismissal of the suit.

5. In the light of the above pleadings, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of specific performance?
2. Whether the suit is maintainable?
3. Whether the plaintiff is entitled to alternative relief of refund of the advance?
4. Whether the plaintiff is entitled for permanent injunction?
5. What relief the plaintiff is entitled if any?
6. Whether the time was essence of the contract and the plaintiff was ready to perform her part of contract?

6. On the side of the plaintiff P.W.1 and P.W.2 were examined and marked 33 documents Ex.A1 to A33. On the side of the defendant, the defendant examined herself as D.W.1 and marked three documents as Ex.B1 to B3.

7. On the basis of the evidence and materials the learned trial Court granted decree for specific performance of 2/3rd common undivided share of the property. Aggrieved over the same, the present appeal came to be filed.

8. The only contention of the learned Senior Counsel appearing for the appellant is that the suit is filed to enforce the part of the contract. Whereas in the plaint pleadings and Ex.A10 and A19 it is clearly pleaded by the plaintiff that she reserves right to enforce the remaining part of contract in respect of 1/3rd share. When the plaintiff has taken such a stand reserving right to enforce the contract for the remaining part, suit has to fail in view of Section 12 (3) of the Specific Relief Act. Hence it is the contention of the learned Senior Counsel for the appellant that suit filed for enforcement of part of contract is not maintainable as the plaintiff has reserved right to enforce the remaining part of the contract. Therefore, it is submitted that the decree of the learned trial Court granting specific performance cannot be sustainable in the eye of law. The plaintiff has not relinquished her claims to performance of remaining part of contract. Hence the trial Court granting of decree in respect of the remaining part of the contract is not maintainable. Therefore, prays for allowing the

appeal. In support of his arguments, the learned Senior Counsel for the appellant has relied upon the following Judgments:-

1. Surjit Kaur v. Naurata Singh [(2000) 7 SCC 379];
2. Shanker Singh v. Narinder Singh [(2014) (16) SCC 662]

9. On the other hand, the learned Senior Counsel for the Respondent submitted that Ex.B1 is the agreement dated 13.7.2005, wherein the defendant has agreed to sell the property to an extent of 4.01 acres for a total sale consideration of Rs.15,23,800/-. On the date of agreement the defendant has received Rs.2,50,000/- towards advance sale consideration. It is also agreed by the parties that on payment of the remaining sale consideration of Rs.12,73,800/- by the plaintiff within 90 days the defendant has to execute the sale deed. Ex.B1 agreement is not in dispute. In the entire written statement the defendant did not deny the plaint pleadings. Though the defendant was aware of the fact that her half-sister one Karuppathal claiming 1/3rd share in the suit property, she has sent a legal notice to the plaintiff as if she does not aware of the above proceeding. Ex.B2 legal notice was issued on 23.09.2005, wherein the above fact has been suppressed by the defendant. After issuing the legal notice expressing her readiness the defendant has also filed a memo before the District Munsif Court Avinashi, giving undertaking not to alienate the property in the suit filed by her half-sister in O.S.No.210 of 2005. All these facts clearly show that the defendant had intention either to delay or to evade in performing her part of contract for some reason or other. Whereas the plaintiff was always ready and willing to perform her part of contract from the very beginning. The balance sale consideration was also deposited in the bank within the stipulated period of agreement. Whereas the defendant has suppressed the suit filed by her half-sister for partition, though she has been impleaded in the above suit. The plaintiff has restricted her claim only in respect of 2/3rd share of the defendant as admitted in the previous suit filed by her half-sister for partition. The pleadings of the plaintiff was not even denied in entirety in the written statement. It is further the contention of the learned Senior Counsel for the Respondent that during the trial the plaintiff has also filed a memo relinquishing her right in respect of the remaining part of the contract, which is also recorded by the learned trial Court. Therefore, it is the contention of the learned Senior Counsel for the Respondent that the relinquishment of her right in respect of the remaining part of the contract can be made at any stage of the litigation. Therefore, it is the contention of the learned Senior Counsel for the Respondent that the relinquishment recorded by the learned trial Court does not require any interference. Hence, prays for dismissal of the appeal. The learned Senior Counsel for the Respondent in support of his arguments relied upon the following judgments:-

1. Surinder Singh v. Kapoor Singh [2005 (5) SCC 142]

2. Zarina Siddiqui v. A.Ramalingam alias R.Amarnathan [(2015) (1) SCC 705]

3. P.Alagesan v. A.Mariadas [1993-1- L.W. 599].

10. In the light of the above submissions, now the points that arise for consideration are:-

1. Whether the plaintiff is entitled to seek for enforcement of the part of the contract without relinquishing of her claim to performance of the remaining part of the contract?

2. Whether the plaintiff was ready and willing to perform her part of contract?

3. To what relief?

11. Points 1 to 3:- It is the admitted fact by both sides that under Ex.B1 sale agreement dated 13.7.2005, the defendant has agreed to sell the suit property for a total sale consideration of Rs.15,23,800/- and received Rs.2,50,000/- as advance on the date of agreement. The parties have agreed to complete the sale within 90 days. Though the defendant has taken defence in the written statement to the effect that agreed sale consideration was Rs.15,50,000/- and not Rs.15,23,800/-, the same has not been established. The entire plaint pleadings when carefully seen the plaintiff has pleaded the nature of the contract and subsequent development such as filing of the suit by the half-sister of the defendant for partition in O.S.No.210 of 2005 on the file of the District Munsif Court, Avinashi, during the existence of the contract and subsequent to her appearance in the above suit through her lawyer, she has caused a legal notice on 23.9.2005 even during the period of 90 days, suppressing the suit filed by her half-sister and also claiming different consideration. The plaintiff has clearly pleaded that even before entering into the contract, she has obtained encumbrance certificate and verified the title and after entered into contract, she has also deposited the remaining sale consideration in to bank. The plaint pleadings have narrated the sequences and events which transpired with respect to the agreement.

12. The written statement filed by the defendant is only bereft of details except stating that the agreed sale consideration was Rs.15,50,000/-. The other aspects pleaded in the plaint is not even denied specifically as contemplated under Order 8 Rule 5 of C.P.C. Under Order 8 Rule 5 of C.P.C., every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. So, mere evasive denial

will not be the denial in the eye of law. The defendant has not even specifically denied the entire pleadings of the plaintiff in the written statement. Therefore, without denying the pleadings, the defendant cannot advance her case as if the plaintiff was aware of the fact that Karuppathal had no title or claim in the suit property and the plaintiff had colluded with the said Karuppathal. Before the agreement, the plaintiff has also obtained encumbrance certificate in respect of the suit property same can be seen from Ex.A2 to A4. Ex.A11 and A12 have been filed to show that a suit has been filed by one Karuppathal against the defendant claiming partition of 1/3rd share in respect of the suit property. In the above suit the defendant in fact appeared on 3.9.2005 and thereafter on 20.03.2006 the defendant has also filed a memo giving undertaking not to sell the suit property before the disposal of the suit in O.S.No.210/2005. The above suit has been filed for partition in respect of 1/3rd share alone. It is admitted in the above suit the remaining 2/3rd share belonged to this defendant. Having entered appearance in the above suit on 31.08.2005, the defendant sent a legal notice dated 23.09.2005 to the plaintiff as if she was always ready to perform her part of contract and the plaintiff alone was delaying the payment. In the above legal notice Ex.B2 dated 23.09.2005 the pendency of the suit has been suppressed by the defendant.

13.It is curious to note that the plaintiff has immediately sent a reply notice on 1.10.2005 marked as Ex.A8 wherein she has narrated the fact that she came to know about the pendency of the suit when she went to Sub-Registrar's Office, Avinashi, to ascertain the guideline value of the suit property to purchase the stamp paper to draft the sale deed. The plaintiff had immediately approached the defendant and sought for explanation as to why she has concealed and suppressed about the said case. But the defendant had given vague excuses. Immediately after the above reply the defendant has also sent rejoinder dated 5.10.2005, wherein she has denied the existence of injunction order and stated that she will be available at the Sub-Registrar's Office, which is also replied by the plaintiff on 10.10.2005 wherein it is clearly stated that the defendant has already entered appearance in the above suit. The conduct of the defendant having entered appearance in the suit and sending legal notice, clearly show that she has sent such notice only to show as if she was ready to perform her part of contract. In fact sending such notice at the fag end of the period of limitation of the agreement between the parties, only for the purpose of defeating the contract. The plaintiff has also immediately deposited the entire sale consideration in to bank which could be seen under Ex.A5 dated 10.10.2005. Thereafter, the plaintiff has also sent a notice dated 22.2.2006 calling upon the defendant to execute the sale deed. Even after

receiving the notice the defendant has in fact filed a memo in the partition suit on 20.03.2006 giving undertaking not to alienate the property. All these facts clearly show that only the defendant in fact has not only suppressed the material facts for some reason or other, delaying the completion of contract taking advantage of the partition suit filed by her half-sister. Therefore, it cannot be stated by the defendant that time was the essence of the contract. Of course specific time agreed between the parties in the agreement makes time is the essence of contract. But the facts of this case clearly show that even during the period of agreement between the parties a third party sets up a claim of 1/3rd share over the property. That is also made known to the defendant. The defendant having appeared in the above suit has also filed a memo giving undertaking not to sell the property pending suit. Now she cannot contend that only the plaintiff was not ready and willing to perform her part of contract. The plaintiff in fact has deposited the entire balance sale consideration in to the Bank on 10.10.2005. Further, she had also filed Ex.A32 statement of accounts to show her means and capacity to mobilize funds and Ex.A33 challan for deposit of remaining sale consideration in respect of 2/3rd share in the Court. All these facts clearly show that the plaintiff was always ready and willing to perform her part of contract. The entire pleadings of the plaintiff with regard to the capacity to mobilize funds and her intention to purchase the property, entered into agreement to purchase the property to extend her future business in Avinashi area is also not denied in the entire written statement. P.W.1 in her evidence also clearly spoken about the entire transaction from the very beginning and P.W.2 also examined on her side to prove the agreement and also payment of advance.

13(a).The defendant herself examined as D.W.1. In her evidence she has introduced new facts in her evidence without any pleadings in her written statement in that regard. She has introduced evidence to the effect that the plaintiff was insisting to pay some amount to Karuppathal and also give some property. These facts never pleaded in the written statement. Further, she has also gone to the extent of saying on the date of agreement she has received only 1.50 lakhs as advance. This is also contradicted with her pleadings. But in the cross-examination she has admitted that agreed sale consideration was Rs.15,23,800/- and she is also aware of the fact that the plaintiff has deposited the remaining sale consideration in the bank. When the third party has set up some right over the property which is also suppressed by the vendor normal conduct of the human being in such situation would be to deposit the amount in the bank to show their bona fides. The plaintiff has done the same in this case also within the period of agreement. Ex.A30 and A31 shows that the plaintiff was also impleaded in

the above suit by the Karuppathal. When somebody creates a cloud over the property which is the subject matter of the agreement, it is normal conduct of human being would be to purchase the remaining property other than the property against which some cloud has been created. Therefore, the plaintiff has rightly filed the suit to enforce the contract in respect of 2/3rd share of the defendant. This is based on the admission of the Karuppathal in the suit filed by her in O.S.No.210 of 2005, wherein she has called upon the defendant herein to allot her 1/3 share in the suit property. Therefore, the plaintiff has rightly exercised her option to enforce the contract for execution of the sale for 2/3rd share by the defendant. Of course in the plaint and pleadings it is pleaded by the plaintiff that she has reserved right to enforce the contract in respect of the remaining 1/3rd share and presently she is enforcing the contract only in respect of 2/3rd share of the defendant. When such pleadings have been made and though the plaintiff has not relinquished her right to enforce contract in respect of the remaining 1/3rd share, during the trial the plaintiff has filed a memo relinquishing her right in respect of remaining 1/3rd share of the contract which is also noticed by the learned trial Court in the judgment the memo dated 22.9.2010 relinquishing her right in respect of 1/3rd share of the suit property. Recording the said memo in O.S.No.210 of 2005 taking into consideration of the relinquishment of the plaintiff the trial Court has decreed the suit. In this regard it is useful to refer the judgment of the Hon'ble Apex Court reported in Surinder Singh v. Kapoor Singh [2005 (5) SCC 142] (three Judges Bench of the Supreme Court), wherein the Hon'ble Apex Court dealing with Section 12 of the Specific Relief Act in para 8 held as follows:-

"8. SECTION 12 (3) of the Act is a beneficial provision so far as the purchasers are concerned. In the instant case, in view of the findings of fact arrived at by the High Court, the decree for specific performance of contract in respect of the entire suit land could not have been granted as the Appellant herein was not authorized by his sister to enter into the agreement for sale. The relinquishment of claim as contemplated under Section 12 (3) (ii) of the Act as regard performance of the remaining part of the contract and all rights to compensation need not specifically be pleaded and can be made at any stage of the litigation. Such a plea can also be raised at the appellate stage. Delay by itself, it is trite, may not stand in the way of the plaintiff from claiming the relief unless the defendant establishes prejudice."

The larger Bench of the Apex Court made it clear that the relinquishment of claim in respect of the remaining part of the contract can be made at any stage of the litigation. Such a plea

can also be raised at the appellate stage. There cannot be any specific plea in that regard. Therefore, the above judgment makes it clear that once relinquishment is made by the party even during the trial, remaining part of the contract can be enforced.

14. Similarly, in a judgment reported in P. Alagesan v. A. Mariadas [1993-1- L.W. 599], the Hon'ble Apex Court in para 14 held as follows:-

"14. In the present case, the parties have filed an affidavit as stated earlier relinquishing their claim for any compensation or damages or performance of the remaining part of the contract. Hence the plaintiff will be entitled to specific performance of that part of the contract which the first defendant is able to perform. In other words, the plaintiff will be entitled to get a sale deed for 1/7th share in the land and the entirety of the saw mill which belongs exclusively to the first defendant."

15. In a judgment reported in Surjit Kaur v. Naurata Singh [(2000) 7 SCC 379], the Hon'ble Apex Court in para 14 held as follows:-

"14. It must be clarified that this Court is not saying that merely because in correspondence or orally a party has insisted on performance of the whole contract he cannot thereafter elect to accept performance in part. A mere assertion that contract must be performed in full or even a filing of a suit for specific performance of the whole contract without averring that the plaintiff is willing to accept performance in part may not amount to electing not to accept performance in part. It is only in cases where a party has categorically refused to accept performance in part i.e. he has unambiguously elected not to accept part-performance that he will be precluded from subsequently turning around and electing to accept performance in part. Whether a party has categorically elected or not will depend on the facts of each case."

16. The larger Bench of the Supreme Court in the above judgment clearly held that the party who has relinquished his right in respect of the remaining part of the contract, specific performance can be granted in respect of the other part of the contract. Of course in a judgment reported in Shanker Singh v. Narinder Singh [(2014) (16) SCC 662] in para 24 the Hon'ble Apex Court held as follows:-

"24. In this connection, we may refer to the relevant provisions of the Act. Section 12(3) of the Act

permits a party to an agreement to relinquish a part of the agreement which is not enforceable. However, it should be possible to identify and demarcate that part of the agreement which is not to be enforced. We must also keep in mind the provision of Section , 14 of the Act which deals with contracts which are not specifically enforceable, and sub-section (1)(b) thereof includes therein a contract which runs into minute and numerous details, as is seen in the present case."

There is no dispute with regard to the above case wherein identification of the properties is in dispute. The Hon'ble Apex Court taking into consideration of the identity of the properties and part of the land has to be segregated has held that part of contract cannot be enforced.

17. The fact remains in this case is only in respect of undivided property to be enforced. There is no question of identity of the property arise in this case. The plaintiff has also relinquished her share during the pendency of the suit. Though she has filed the suit to enforce the agreement in respect of remaining part of contract, subsequently she has given up by relinquishing the right and interest in remaining part of contract. Therefore, there will be no difficulty in enforcing the contract. The exhibits marked on the side of the plaintiff particularly Ex.A5 dated 10.10.2005 to show the deposit of amount in the bank, Ex.A32 statement of accounts and publication and encumbrance obtained by the plaintiff all are clearly prove the fact that she was all along ready and willing to perform her part of contract. Once the defendant alone has suppressed the material facts and projected false theory, though grant of specific performance is a discretionary relief, the plaintiff has clearly pleaded and established that she is intended to purchase the property only for the expansion of the business and she was always ready and willing to perform her part of contract. The above aspect is not even denied in the written statement. Besides this the plaint documents clearly prove that the plaintiff had all along ready and the defendant in fact suppressed the material facts by making false statements to mislead the Court. Therefore, taking into consideration of the readiness and willingness established on the part of the plaintiff by depositing the balance sale consideration in the bank and also depositing the amount in respect of 2/3rd share in the Court. The plaintiff has also made enquiry in the Sub-Registrar Office and had been in Sub-Registrar Office, Avinashi, to ascertain the guideline value of the suit property to purchase the stamp paper to draft the sale deed, it is also not denied in the written statement makes it clear that she was always ready and willing to perform her part of contract.

18. In a judgment reported in *Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan* [(2015) 1 SCC 705], the Hon'ble Apex Court in para 23, 24, 33 and 34 held as follows:-

"23. The last contention of Mr. Prakash, learned Senior Counsel appearing for the respondent is that having regard to the increasing market price of the suit property, the discretion to grant specific performance should not be exercised in favour of the plaintiff-appellant and against the defendant-respondent.

24. It is well settled that remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.

33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse

of the process of law."

In this case also the defendant the defendant has suppressed the material facts of the pendency of the suit filed by her half-sister and appeared before the Court as if she was ready to perform her part of contract. In fact, she has filed a memo in O.S.No.210 of 2005 giving undertaking not to alienate the suit property. All these facts clearly lead an inference that the defendant has not come to the Court with clean hands.

19. Similarly, the only contention of the appellant that the plaintiff has not relinquished her right and interest in respect of the remaining part of contract is also found to be false. In fact the plaintiff has relinquished her right and interest and also filed a memo before the trial Court which was also recorded by the trial Court. As held by the Larger Bench of the Hon'ble Apex Court relinquishment can be made at any stage even during the appeal stage. There need not be any pleadings in that regard. Hence, having regard to the above judgments and facts, this Court does not find any reason to interfere with the findings of the learned trial Court in granting specific performance. Sale consideration for remaining one third share was already deposited in bank as per the plaint. Therefore, the decree and judgment of learned trial Court granting specific performance does not require any interference, since the above deposit can be paid to defendant. Accordingly, these points answered.

20. In the result, the appeal stands dismissed. The judgment and decree of the learned trial Court is confirmed. No costs. Consequently, M.P.No.1 of 2011 is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To

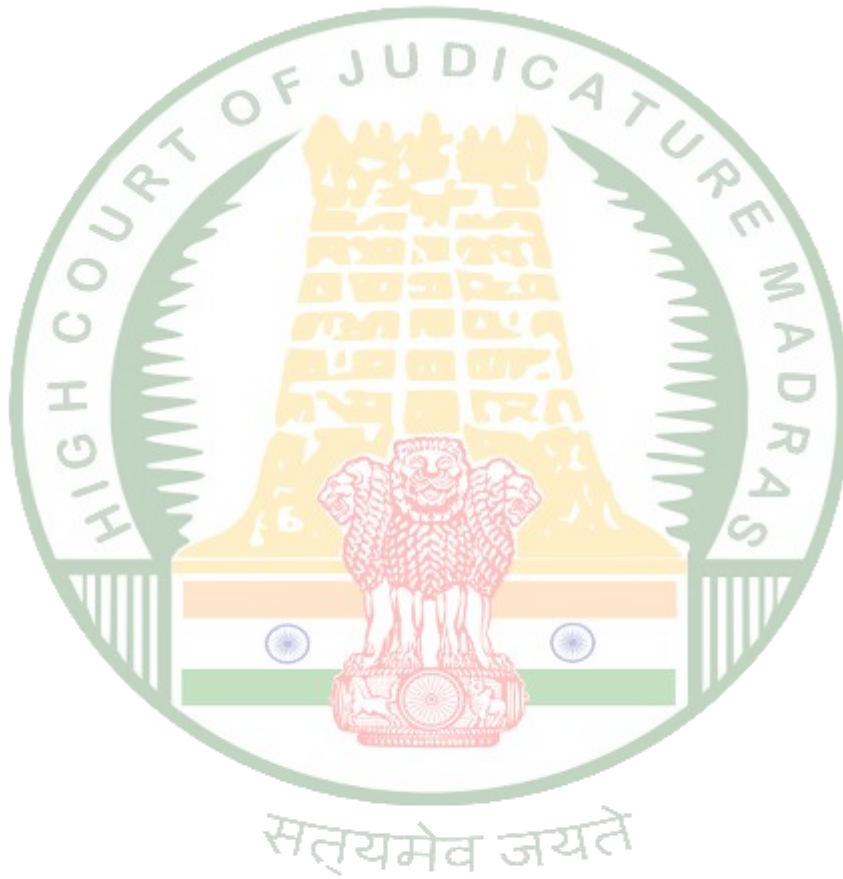
1. The Additional District Judge and
Fast Track Court IV
Coimbatore at Tiruppur.

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+1 CC to Mr.R. Thiyagarajan, Advocate sr 39309
+1 CC to M/s. Sarvabhuman Associates, Advocate sr 39325

IN A.S.No.143 of 2011

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