

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2017

Pronounced on : 02-06-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Appeal Suit No. 174 of 2016

Mct. M. Chidambaram Trust
represented by its Trustee
Mct. P. Chidambaram
No.742, Anna Salai
Chennai - 600 002

.. Appellant/Defendant

Versus

V. Ravichandran

.. Respondent/Plaintiff

Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 30.11.2015 passed in O.S. No. 387 of 2007 on the file of the Additional District Judge, Chengalpattu.

For Appellant : Mr. V. Raghavachari
For Respondent : Mrs. Chitra Sampath, Senior Advocate
for Mr. T.S. Baskaran

JUDGMENT

R. SUBBIAH, J

The defendant in O.S. No. 387 of 2007 on the file of the learned Additional District Judge, Chengalpattu is the appellant in this appeal. The said suit was filed by the respondent herein for specific performance directing the defendant/appellant herein to execute and register the sale deeds in the name of the plaintiff/ respondent herein or his nominee either in single or various sale deed/s and to handover the vacant possession of the suit property as per the terms of the agreement dated 01.04.1998, in default, the Court shall execute a sale deed and handover possession of the suit property in his favour. The trial court decreed the suit by the Judgment and Decree dated 30.11.2015 against which the defendant/appellant has come forward with this Appeal Suit.

2. For the sake of convenience, the parties shall be referred as they were arrayed in the suit before the trial court, as Plaintiff and Defendant.

3. As per the plaint averments, the defendant is a Trust duly registered under the Indian Trust Act and it was known as Chidambaram Foundation. According to the plaintiff, the defendant was the absolute owner of the land measuring an extent of 5 acres and 6 cents comprised in Survey No.52 and 53/2 at Seevaram Village, Tambaram Taluk, Kancheepuram District. According to the plaintiff, the defendant Trust approached him during the year 1995 for selling the lands morefully described in 'A' Schedule of the plaint and furnished the copies of the documents of title evidencing ownership of the said land. The defendant-Trust also requested the Plaintiff to take various measures that are necessary to release the property from the purview of Urban Land Ceiling Act. Accordingly, the plaintiff had taken steps to bring the property out of the purview of Land Ceiling Act, for which purpose, he incurred huge expenses and also to make the land a saleable and marketable one. According to the plaintiff, it has taken two years for him from 1995 to 1997 to bring the lands out of the purview of Urban Land Ceiling Act by approaching various authorities and for obtaining layout approval to divide the lands into housing plots. After completing all the formalities, the defendant approached the plaintiff and sought his assistance to sell the lands on their behalf, for which purpose, an agreement for sale was also executed on 01.04.1998. As per the agreement, the sale consideration for the lands was fixed at Rs.45,000/- per cent and the defendant-Trust also agreed to execute the sale deed in favour of the purchaser (plaintiff) or nominee or nominees identified by the plaintiff. It was further agreed by the defendant that even though the sale consideration was fixed at Rs.45,000/- per cent, if any amount is realised by the plaintiff over and above the Rs.45,000/- per cent, such amount shall be appropriated by the plaintiff towards consideration for developing and selling the plots. As per the agreement, the plaintiff paid a sum of Rs.5,00,000/- as advance by way of demand draft during the month of March 1998 even prior to signing the agreement dated 01.04.1998.

4. According to the plaintiff, on the strength of the agreement executed in his favour, he had identified prospective purchasers and sold the housing plots in favour of various purchasers. The defendant also executed sale deeds in favour of such prospective purchasers identified by the plaintiff. The Plaintiff also, upon realising the sale amount, has deposited the amount into the bank account of the defendant corresponding to the extent of land sold at the rate of Rs.45,000/- per cent,

as agreed. According to the plaintiff, the defendant has no concern as to the rate at which the land was sold by the plaintiff and the defendant only want the plaintiff to ensure that Rs.45,000/- per cent is periodically deposited into their bank account corresponding to the extent of land sold. In this fashion, the plaintiff has sold various plots in favour of third party purchasers between 01.04.1998 to July 2005 and the amount realised thereof have been periodically deposited by him into the account of the defendant at the rate of Rs.45,000/- per cent proportionate to the extent of the plot sold. According to the plaintiff, even though the agreement stipulates six months for performance of the contract by the parties, such period also lapsed long before. The fact remains that till July 2005, the defendant has executed sale deeds in favour of prospective buyers identified by the plaintiff without any protest or objection. The last such sale deed was executed by the defendant Trust in favour of the purchaser identified by the plaintiff was on 11.07.2005. Thus, the period of six months indicated in the agreement was extended by the act and conduct of the parties.

5. According to the plaintiff, as per the understanding with the defendant, the defendant is entitled to Rs.45,000/- per cent of land for the entire extent of 5 acres and 6 cents, which includes the cost for the land allotted and/or earmarked for roads. The total area of 5 acres and 6 cents of land, if sold by the plaintiff at the rate of Rs.45,000/- per cent, the defendant is entitled to a sum of Rs.2,27,70,000/- and as on the date of filing the plaint, the plaintiff has remitted a sum of Rs.2,20,81,500/- on various dates as and when the lands were sold. Therefore, according to the plaintiff, only a sum of Rs.6,88,500/- remains to be paid to the defendant trust. Further, the defendant had executed the sale deeds for plots to an extent of 303.51 cents to the prospective purchasers identified by the plaintiff. Further, only an extent of 111.44 cents remain to be sold by the defendant to the purchasers identified by the plaintiff. On the strength of the agreement entered into between the plaintiff and defendant, plaintiff has entered into agreements with the prospective purchasers for the remaining plots which remain to be sold and also received advances from the prospective purchasers and deposited the same into the account of the defendant Trust. In fact, on various dates namely 08.08.2005, 18.08.2005 and 24.08.2005, the plaintiff has deposited a total sum of Rs.50,00,000/- and as on the date of instituting the suit, the plaintiff has paid a total sum of Rs.2,20,81,500/- to the defendant Trust. Thus, according to the plaintiff, he was always ready and willing to pay the remaining sale consideration upon sale of the balance land measuring 1 acre and 11 cents, which is set out as B Schedule property in

the plaint.

6. While the facts are so as stated above, the plaintiff received a notice on an application filed by the defendant under Section 9 of the Arbitration and Conciliation Act before this Court in O.A. No. 129 and 130 of 2006, which was filed based on an earlier agreement dated 01.03.1998 invoking the arbitration clause contained therein. While O.A. No. 129 of 2006 has been filed praying for grant of interim injunction restraining the plaintiff from in any manner interfering with the possession of the property which remain unsold measuring about 1 acre and 11 cents including putting up any construction either by the plaintiff or through his agents, contractors or developers thereon, O.A. No. 130 of 2006 has been filed for grant of interim injunction restraining the plaintiff from in any way alienating, encumbering, selling or creating a charge over the property. The plaintiff herein has also filed Application No. 785 of 2005 in O.A. No. 129 and 130 of 2006 for vacating the interim injunction granted by this Court on 22.02.2006. According to the Plaintiff, by virtue of filing of the Original Applications before this Court, the defendant-Trust has refused to perform their part of the contract under the agreement dated 01.04.1998. In such circumstance, the Plaintiff has instituted the suit claiming the relief as stated above.

7. Resisting the case of the plaintiff, the defendant-Trust has filed a written statement stating that the parties to the transaction concerning the sale of land belonging to a Trust should be scrupulously honest, exhibit high degree of transparency and bonafides. The transaction do not pertain to sale of private land, but it belongs to a Trust which serves as a genuine public purpose helping the poor and needy. It is the contention of the defendant-Trust that the plaintiff has enriched himself abundantly in the transaction to the tune of Rs.63,05,349/- without being transparent. As the Plaintiff did not invest his own money in the transactions, he can at best call himself a mere Commission Agent and he could claim a maximum of 2%. If the commission of the defendant is calculated for sale of the entire extent of land, he could have received a sum of Rs.4,55,400/- and this amount could have been received by the defendant within six months from 01.04.1998 till 30.09.1998. However, the plaintiff sold lands until 11.07.2005 and gained enormously. As per the agreement dated 01.04.1998, the agreement is valid only for six months till 30.09.1998 and the sale of the Trust land ought to have been concluded within a period of six months. The sale made beyond the period of six months had benefitted the plaintiff to gain huge amount out of sale of the Trust land. Even during the year 1999, the price of the Trust land started increasing and the increase as on the

date of filing of the written statement is phenomenal. It is obvious that it was to the advantage of the plaintiff to delay the disposing of the land because he could reap the benefits of the constant rise in prices. The defendant is therefore entitled to stop the sale when the plaintiff wishes to transact after the expiry date of the agreement dated 30.09.1998, however, the defendant decided to stop such sale only from 11.07.2005. It is further contended that the plaintiff himself has purchased a piece of land measuring 8.43 grounds for his wife and made enormous gain quite unjustifiably. Further, the land purchased in the name of his wife is situated adjacent to the road and even at the time of such purchase in the name of his wife, the value of the land was Rs.30 lakhs per ground but the plaintiff has purchased it for a mere Rs.2,47,500/- per ground. In this transaction itself, the plaintiff has unlawfully enriched himself to the tune of Rs.2,52,90,000/- which cannot be disputed by the plaintiff.

8. It is further contended in the written statement that defendant Trust is having a close association with Kalpana Trust and the defendant Trust donates money to the said Kalpana Trust. It is also contended that the sale price received through sale of the lands through the plaintiff have been given to Kalpana Trust and the amount paid to Kalpana Trust have been closely monitored and subjected to strict scrutiny by the plaintiff trust so as to ensure that the amount paid to Kalpana Trust through the sale of the lands, are disbursed for worthwhile charities.

9. As regards the transaction between the plaintiff and Defendant Trust, it is contended in the written statement that the sale of land unquestionably on 11.07.2005 in favour of the wife of the plaintiff has triggered suspicion in the transaction made with the plaintiff. The Plaintiff has taken advantage of the rise in prices, as otherwise, the plaintiff would not have purchased 8.43 grounds in the name of his wife. According to the defendant, as on the date of filing of the written statement, 8.43 grounds of land can be sold for Rs.2,10,75,000/- but it was purchased by the plaintiff in the name of his wife for a mere Rs.35,62,754/-. It is further contended that on various dates on 08.08.2005, 18.08.2005 and 24.08.2005, the plaintiff unilaterally deposited a total sum of Rs.50 lakhs and bank challans for these payments carry the name of the plaintiff and none else. When no land was registered after the first payment made on 08.08.2005, there was no reason for the plaintiff to continue to pay the amount on 18.08.2005 and 24.08.2005. Therefore, the payment of Rs.50,00,000/- cannot give any right or stake in the balance land of 111.44 cents to the plaintiff. In any event, as the agreement dated 01.04.1998

lapsed even on 30.09.1998, there was no valid agreement between the plaintiff and the Defendant Trust and consequently, the sum of Rs.50 lakhs paid by the plaintiff cannot be linked and/or given credit for the sale of lands by him. Consequently, the amount of Rs.50 lakhs paid by the plaintiff cannot confer any right in his favour for sale of the remaining lands which belonged to the Defendant Trust. Thus, after the expiry of the agreement dated 01.04.1998, the plaintiff wants to continue the transactions only for his personal gain. The Plaintiff has no legal right to claim, as a matter of right, to alienate the remaining extent of lands. Therefore, the defendant Trust prayed for dismissal of the suit.

10. On the above pleadings, the Trial Court framed six issues and the trial in the suit commenced. During the course of trial, on behalf of the plaintiff, he examined himself as PW1 and Exs. A1 to A16 were marked. On the side of the Defendant Trust, one Mr. Chidambaram was examined as DW1 along with two other witnesses as Dws 2 and 3 and Exs. B1 to B13 were marked. The trial court, after analysing the evidence, both oral and documentary, decreed the suit on 30.11.2015 holding that the evidence of Dws 1 to 3 does not support the defence put forth by the defendant-trust. It is further held that even though the agreement of sale dated 01.04.1998, marked as Ex.A1, entered into between the plaintiff and defendant indicates the time for performance of the contract as six months, even after expiry of the period indicated in Ex.A1, sale deeds have been executed by the defendant trust in favour of the nominee of the plaintiff on various dates till July 2005 and the plaintiff also deposited the amount equivalent to the extent of land. Aggrieved by the said Decree and Judgment of the Trial Court, the Defendant-Trust has come forward with this appeal suit.

11. Mr. V. Raghavachari, learned counsel appearing for the appellant/ defendant would contend that the lands, which are the subject matter of the suit, belongs to the defendant-trust. The defendant-trust has entered into the agreement, Ex.A1 with the plaintiff on 01.04.1998. As per the recitals in the agreement, the plaintiff has to perform his part of the contract within a period of six months. The sale price was agreed at Rs.45,000/- per cent of land to be sold by the plaintiff in favour of the prospective purchaser. However, the sale of the entire extent of land was not completed within a period of six months from the date of execution of Ex.A1. Even after expiry of the time stipulated in Ex.A1, the plaintiff continued to sell the land to the purchasers identified by him till July 2005 and deposited the amount to the account of the defendant trust at the rate of Rs.45,000/- per cent of land. However, the plaintiff sold the land over and above the agreed price of Rs.45,000/- per cent and

enriched himself unlawfully. The total extent of the land sold by the plaintiff is 3.03 acres and nearly 92 cents of land is set out for common enjoyment. The balance land that remains is 1 acre and 11 cents. The learned counsel for the defendant trust would further contend that the understanding between the plaintiff and the defendant trust is that the plaintiff has to collect the money from the prospective purchaser and pay it to the trust. In other words, the plaintiff was appointed only to act as a broker between the defendant trust and the prospective purchasers. In between December 2004 to July 2005, the plaintiff has got the sale deed registered in his own name and in the name of his wife in respect of land measuring 8.43 grounds for a total sum of Rs.35,62,754/-. Further, on 11.07.2005, the plaintiff had identified a purchaser viz., Mrs. Lalithambigai and sold the land and deposited a sum of Rs.1,50,000/- for 1200 square feet of land on 11.07.2015 while the market value of the property is indicated in Ex.A15 as Rs.3 lakhs. Thus, the plaintiff has gained enormously out of the sale transaction which had caused heavy loss to the defendant trust. Therefore, from July 2005 onwards, the defendant trust refused to execute the sale deed in favour of the nominee identified by the plaintiff. Thereafter, the suit was filed by the plaintiff after two years from the date of refusal on the part of the defendant trust to execute the sale deed.

12. According to the learned counsel for defendant, the defendant trust filed O.A. No. 129 and 130 of 2006 before this Court under Section 9 of the Arbitration and Conciliation Act, 1996 based on the earlier agreement of sale dated 01.03.1998, which contain a clause for arbitration, to restrain the respondent herein from alienating the remaining extent of lands. In the said application, the respondent herein has filed a counter admitting that he cannot sell the properties without taking the consent of the defendant trust. Thus, the plaintiff has no independent authority to execute sale deeds and to alienate the property. Now, the plaintiff, who is a land broker, with profit motive, has instituted the present suit to get the sale deed executed in respect of remaining lands of the Trust in favour of the purchasers identified by him. The trustees of the defendant trust are administering the trust for charitable purpose and the act of the plaintiff in alienating the lands of trust after expiry of period fixed in Ex.A-1, agreement, defeats the objects of the Trust. Therefore, plaintiff is not entitled to relief sought for in the suit.

13. The learned counsel for the defendant/appellant would further submit that the price of the land was fixed by the defendant Trust at Rs.45,000/- per cent. While so, the price of the land in Old Mahabalipuram Road increased from the year 2001 onwards. On 11.07.2005, the plaintiff had identified a

purchaser and paid Rs.1,50,000/- for 1200 square feet of land, reflected the registered amount as Rs.2 lakhs while the market value of the property indicated in the sale deed marked as Ex.A15 was Rs.3 lakhs. Thus, the amount that was paid to the defendant Trust by the plaintiff/respondent for one ground of land at Rs.2,42,206/- was based on the value prevailing in the year 1998. When the defendant/trust found that the plaintiff is gaining and the Trust is losing, they have declined to execute any sale deed. The last sale deed executed by the defendant Trust was dated 11.07.2005. According to the learned counsel for the defendant/appellant, the sum of Rs.50 lakhs deposited by the plaintiff/respondent is only towards compensation for the profit he had made in securing a property in his name and in the name of his wife and it was not towards any sale consideration. To fortify this submission, the learned counsel for the defendant/appellant also invited the attention of this Court to the cross-examination of Plaintiff, who was examined as PW1 and he had stated in his evidence that he voluntarily deposited amount to the tune of Rs.50 lakhs on various dates. By relying on the said evidence, the learned counsel for the appellant submitted that the voluntary deposit made by the plaintiff is not towards sale consideration. Further, according to the learned counsel for the defendant/ appellant, a trustee for sale is bound by his office to sell the estate and at every possible advantage to the Cestuis Que Trust with a fair and impartial attention to the interest of all parties concerned. They should act reasonably and diligently. In the management of trust property haste and improvidence should be avoided. The duty of the Trustees is onerous and responsible. The defendant admittedly is a public trust. The beneficiaries are the public at large. The trustees cannot afford to sell the property that could unduly benefit the plaintiff and deny the poor and needy of shelter. The Trustees had therefore felt that it would not be worthy to have the plaintiff as agent to deal with the property when he had sought to sell aggrandize. Further, under the Trust Act, particularly Section 38, the Trustees should exercise reasonable discretion while effecting sale. Likewise, Section 22 of the Act mandates the trustee to deal with the property within the time specified. In this regard, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in Nizam's Pilgrimage Money Trust, Hyderabad vs. C.I.T. reported in (2000) (4) Supreme Court Cases 179 to contend that the Court is bound to protect the Trust properties by invoking the doctrine of cypres and to ensure that the trust properties are not dissipated. Further, the duty of the Trustees is to secure the best available price for the Trust and the Trustees would be committing a breach of their duty if they allow the property to be sold at a lower price than the market value. According to the counsel for the

defendant/appellant, whatever be the increase in price, the Trust was deprived from claiming the amount over and above Rs.45,000/- per cent of land and this shows the avaricious conduct of the plaintiff/respondent to deprive the Trust of its properties.

14. The learned counsel for the defendant/appellant also brought to the notice of this Court Section 20 of the Specific Relief Act which confers discretion on the Court to grant a decree of specific performance guided by settled principles and it should not be arbitrary and unreasonable. According to the counsel for the defendant/appellant, the Court shall not grant a decree for specific performance if the terms of the contract give an unfair advantage to the defendant. In the present case, admittedly, the value of the property was fixed in the year 1998 and the delay in securing the purchasers by the plaintiff/respondent should be shouldered only by the plaintiff/respondent. It is not the case of the plaintiff/respondent that he secured all the prospective purchasers during 1998 and the defendant/Trust has denied execution of the sale deed. Having delayed the process of sale of the land by seven years, the plaintiff/respondent cannot compel the defendant to enforce the contract which has already lapsed. It is further submitted that even though the resolution passed by the defendant/Trust for sale of the property is not withdrawn or cancelled, as per Ex.A1, sale agreement, the defendant-Trust has clearly indicated the period within which the plaintiff/respondent has to perform his contract by six months and beyond that period, the question of approval of the defendant/Trust will not arise. Therefore, according to the counsel for the defendant/appellant, the defendant Trust is justified in refusing to execute the sale deed in favour of the plaintiff/respondent after July 2005 and consequently, the plaintiff/respondent is not entitled for the relief of specific performance.

15. The learned counsel for the plaintiff relied on the decision of the Honourable Supreme Court in (P. Venugopala Naidu and others vs. Venkatarayulu Naidu Charities and others) reported in 1989 Supp (2) Supreme Court Cases 356 wherein in Para No.13, it was held as follows:-

"13. The subordinate court and the High Court did not go into the merits of the case as the appellants were non-suited on the ground of locus standi. We would have normally remanded the case for decision on merits but in the facts and circumstances of the case, we are satisfied that the value of the property which the trust got was not the market value. Two persons namely S.M. Mohammed Yaaseen and S.N.M.

Ubayadully have filed affidavits offering Rs.9 lakhs and Rs.10 lakhs respectively for these properties. In support of their bona fides they have deposited 10 per cent of the offer in the Court. This Court in *Chenchu Rani Reddy vs. Government of Andhra Pradesh* (1986) 3 SCC 391 has held that the property of religious and charitable endowments or institutions must be jealously protected because large segment of the community has beneficial interest therein. Sale by private negotiations which is not viable to the public eye and may even give rise to public suspicion should not, therefore, be permitted unless there are special reasons to justify the same. It has further been held that care must be taken to fix the reserve price after ascertaining the market value for safeguarding the interest of the endowment.

16. The learned counsel for the defendant/appellant also relied on the decision of the Honourable Supreme Court in (*M.V. Ramasubbar and others vs. Manicka Narasimachari and others*) reported in (1979) 2 Supreme Court Cases 65 wherein in Para No.3, it was held as follows:-

"3. It is not in dispute before us that the Indian Trusts Act, 1892, hereinafter referred to as the Act, applied to the trust in question and that it was necessary for the plaintiffs to prove that defendant 1 did not exercise his discretionary power of selling the suit property 'reasonably and in good faith' and that he indirectly purchased it for himself, in the name of his son (defendant 2) within the meaning of Sections 49 and 52 of the Act."

17. The learned counsel for the defendant/appellant also relied on the decision rendered by the Division Bench of the Andhra Pradesh High Court in (*Fatima Fauzia and another vs. Syed UI-Mulk and others*) reported in AIR 1979 AP 229 wherein in Para No.26, it was held as follows:-

"26. We may state at the outset that this is a unique sale not merely because rare and valuable jewellery fetching a fabulous price is involved, but, perhaps for the first time, the Court is called upon to decide the principles and limits of jurisdiction, with regard to sales made by trustees in exercise of their discretionary powers in the execution of the trust. Before advertng to the points pertaining to the procedure adopted in the conduct of the sale and the manner in which the sale of the jewellery has been conducted by the trustees and the adequacy or otherwise of the price obtained and whether the sales are valid and binding on the beneficiaries, it is profitable to

refer briefly to the law governing the general powers and duties of the trustees with regard to the sale of trust properties. Lewin on Trusts (16th edition) said on the topic 'general duty of the trustees with regard to sales' at page 580.

'A trustee for sale will remember that he is bound to sell the estate under every possible advantage to his beneficiaries, and in the case of several successive beneficiaries, with a fair and impartial attention to the interests of all the parties concerned. Trustees, if they or those who act by their authority fall in reasonable diligence in inviting competition, or in the management of the sale, or if they contract under circumstances of haste and improvidence, or contrive to advance the interest of one party at the expense of another, or make a mis-statement as to the condition of the property whereby a reduction of the contract price is necessitated may be personally responsible for the loss to the suffering party and the Court, however, correct be a purchaser, will refuse at his instance to compel the specific performance of the agreement. Where trustees have a higher offer made to them when they have been negotiating for a sale to another of a lower price, they will not be justified in selling at the lower price on grounds of commercial morality.'

18. The learned counsel for the defendant/appellant also invited the attention of this Court to Section 20 of Specific Relief Act, which reads as follows:-

"20. Discretion as to decreeing specific performance:- (1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance:-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no

such hardship on the plaintiff.

(c) where the defendant entered into a contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance."

19. By placing reliance on the above, the learned counsel for appellant submits that as per Section 20 of Specific Relief Act, a discretion is vested with this Court to grant or refuse the relief of specific performance and this Court is not bound to grant such relief merely because it is lawful to do so. Therefore, the learned counsel for the appellant sought for setting aside the decree and judgment of the Court below.

20. With regard to the conduct of the plaintiff/respondent in getting the sale deed executed by the defendant/Trust even after lapse of the time indicated in Ex.A1, sale agreement, the learned counsel for the appellant invited our attention to the deposition of PW1, who deposed that he obtained layout approval to sell the large extent of lands belonging to the defendant/Trust into small pieces at the rate of Rs.45,000/- per cent and the lands were directed to be sold only to poor and needy. According to the counsel for the defendant/appellant, contrary to such recitals in Ex.A1, agreement, the plaintiff/respondent executed the sale deeds even after 7 years of execution of Ex.A1 and gained unlawfully. In this regard, the learned counsel for the defendant/appellant relied on the decision in the case of (Saradamani Kandappan vs. S. Rajalakshmi and others) reported in (2011) 12 Supreme Court Cases 18 wherein it was held in Para No.42 and 43 as follows:-

"42. Therefore, there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, not referring the matter to a larger bench as we have held on the facts in this case that time is the essence of the contract, even with reference to the principles in Chand Ram vs. Kamal Rani, (1993) 1 SCC 519 and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanandam vs. Vairavan, (1997) 3 SCC 1

(i) The courts while exercising discretion in suits for specific performance, should bear in mind

that when the parties prescribe a time/period for taking certain steps or for completion of the transaction, that must have significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance where equity shifts in favour of the purchaser."

21. Thus, by relying upon the above decision, the learned counsel for the appellant would contend that the discretion of the Court to grant a decree for specific performance should be guided by settled judicial principles and it should not be arbitrary and unreasonable. The Court shall not grant a decree for specific performance, if the terms of the contract give a unfair advantage over the defendant. In the present case, admittedly, the value of the property was fixed in the year 1998. The delay in securing the purchasers should be shouldered only by the plaintiff. It is not the case of the plaintiff that he secured all the prospective purchasers in 1998 and the defendant denied the execution of sale deed. Having delayed the process for over 7 years, it is not within the limits of the plaintiff to compel enforcement of the contract.

22. Countering the submissions of the learned counsel for the defendant/ appellant, Mrs. Chitra Sampath, learned Senior counsel appearing for the plaintiff/ respondent would vehemently contend that prior to execution of Ex.A1, agreement of sale dated 01.04.1998, the defendant Trust passed a resolution on 07.03.1998 authorising the sale of 5.06 acres to the plaintiff. Subsequently, the agreement of sale dated 01.04.1998 came to be executed in which six months time was stipulated for completion of the contract. However, the said clause was given a go-bye and plaintiff was identifying purchasers and the defendant trust was also executing sale deeds in favour of those purchasers till

July 2005. It is not the case of the defendant/trust that Ex.A1, agreement of sale dated 01.04.1998 is void. In this regard, the learned Senior counsel for the plaintiff/respondent submitted that pursuant to the resolution, the plaintiff was specifically permitted to take steps to get the land marketable, after removing the encroachments, releasing the land from the purview of Urban Land Ceiling Act and for formation of layout. This has taken considerable time for the plaintiff involving time and money. Thereafter only, the purchasers were asked to buy the land. There is no delay on the part of the plaintiff in performing his part of the contract. As per the terms of the agreement, the defendant trust executed sale deeds in favour of the nominees of the plaintiff from the year 1998 to 2005. The total value for 506 cents of land works out to Rs.2,27,70,000/- at the rate of Rs.45,000/- per vent and the plaintiff has already deposited a sum of Rs.2,20,81,500/- on various dates and the balance to be remitted is only Rs.6,68,500/-. The only defence raised by the defendant Trust is with respect to escalation of price. The defendant, having registered the sale deeds in favour of the nominees of the plaintiff till 11.07.2005 is not justified in refusing to execute the sale deeds only on the ground of rise in price of lands. The price had not escalated between the month of July and August 2005, when the plaintiff had made the entire payment. Therefore, according to the learned counsel for the plaintiff/respondent, there is no justification on the part of the defendant Trust to refuse to execute the sale deed for the remaining lands.

23. It is further contended by the learned Senior counsel for the plaintiff/ respondent that the plaintiff came to know that the defendant Trust is unwilling to execute the sale deed only from the notice received by him in the applications filed by the defendant Trust in O.A. Nos. 129 and 130 of 2006 under Section 9 of the Arbitration and Conciliation Act, 1996, based on the earlier agreement of sale dated 01.03.1998. This Court dismissed the Original Applications by an order dated 18.04.2007, marked as Ex.A16, on the ground that the applicant had come to Court with unclean hands by suppressing the agreement of sale deed 01.04.1998 and it proves the dishonest intention of the defendant Trust and they are not entitled for any equity.

24. The learned Senior counsel for respondent would submit that as on date, the agreement of sale dated 01.04.1998 has not been cancelled or rescinded by the Trustees of the Defendant Trust besides the defendant has not produced any document to substantiate the same. Therefore, according to the senior counsel for the respondent, the agreement of sale dated 01.04.1998 is enforceable and it binds the defendant.

25. The learned Senior counsel for the plaintiff/respondent would further contend that the plaintiff has performed his part of the contract, while the defendants/Trust have committed breach of the terms of Ex.A1, agreement of sale. As per the recitals in Ex.A1, the plaintiff is entitled to purchase the suit land either in his name or in the name of his nominee or nominees. Therefore, the defendant Trust cannot have any objection for registering the sale deeds either in his name or in the name of his wife or nominees.

26. The learned Senior counsel for the plaintiff/respondent invited the attention of this Court to the details furnished by the plaintiff with respect to the total extent of land sold, the amount remitted by the plaintiff/respondent to the credit of the defendant Trust and the balance amount payable by the plaintiff upon the defendant Trust executing the sale deed in favour of the nominee or nominees of the plaintiff and submitted that totally, a sum of Rs.2,20,81,500/- has been paid and only a sum of Rs.6,88,500/- remains to be paid. Therefore, according to the learned Senior counsel for the plaintiff/respondent, the plaintiff/ respondent has performed his part of the contract and it is the defendant/Trust which has failed to adhere to the terms and conditions incorporated in Ex.A1, agreement of sale dated 01.04.1998 by citing the price escalation of the land as a reason.

27. In support of her contention, the learned Senior counsel for the plaintiff/ respondent relied on the decision rendered in the case of (P. D'Souza vs. Shondriilo Naidu) reported in (2004) 6 Supreme Court Cases 649 to contend that price escalation of land is not a ground for denial of execution of sale deed.

28. The learned Senior counsel for the plaintiff/respondent also relied on the decision of the Honourable Supreme Court in (Narinderjit Singh vs. North State Estate Promoters Limited) reported in (2012) 5 Supreme Court Cases 712 to contend that in the absence of any pleading and evidence relating to the hardship and prejudice caused to the defendant/trust by reason of sale of the immovable properties by the plaintiff/respondent herein, the plaintiff is entitled to the equitable relief of specific performance. In Para Nos. 25 and 26 of the above decision, it was held as follows:-

"25. We are also inclined to agree with the lower appellate Court that escalation in the price of the land cannot by itself be a ground for denying relief of specific performance. In K. Narendra vs. Riviera Apartments (P) Ltd., (1999) 5 SCC 77, this Court interpreted Section 20 of the Act and laid down the following propositions.(SCC p.91, para 29)

"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so, the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has thus statutorily recognised in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant (emphasis supplied)

26. In the present case, the appellant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. Rather, the important plea taken by the appellant was that the agreement was fictitious and fabricated and his father had neither executed the same nor received the earnest money and, as mentioned above, all the courts have found this plea to be wholly untenable."

29. Keeping the submissions made on either side and on perusal of the materials on record as well as the judgment of the trial court, the following points arise for consideration in this appeal

(i) Whether the agreement of sale, Ex.A1 entered into between the plaintiff and defendant is only a brokerage agreement or whether the plaintiff is entitled to enforce specific performance based on the same

(ii) Whether the plaintiff is entitled to purchase the remaining unsold lands belonging to the defendant trust

(iii) Whether the findings of the trial court are liable to be set aside

30. With regard to point (i), the learned counsel for the defendant/ appellant submitted that it is the duty of the plaintiff/respondent to identify prospective buyers and bring them to the defendant Trust and the Defendant in turn has to execute the sale deed in favour of the purchaser. As per Ex.A1,

agreement of sale dated 01.04.1998, the plaintiff has to perform his part of the contract in identifying the buyers for sale of the entire extent of the land measuring 5 acres and 6 cents (506 cents) within a period of six months. At the time of execution of the agreement of sale, Ex.A1, the market value of the land was Rs.45,000/- per cent and it was duly reflected in Ex.A1. However, even as per the terms and conditions of the agreement of sale, Ex.A1, the defendant Trust is not under any obligation to execute the sale deed in favour of the plaintiff or his wife. In other words, Ex.A1 is a commission or brokerage agreement and within six months from the date of execution of agreement, the plaintiff is entitled to retain with him the sale price of the land over and above Rs.45,000/- per cent. This submission of the learned counsel for the appellant is repudiated by the learned Senior counsel for the plaintiff/respondent by contending that it is not an agreement for receipt of commission. The defendant Trust has authorised the plaintiff to identify prospective purchasers and the defendant also executed the sale deeds till July 2005. Therefore, it cannot be said that time for performance is fixed as six months or the plaintiff did not perform his part of the contract within the said period.

31. In order to appreciate this submission of the counsel for both sides, it is just and necessary to look into the contents of Ex.A1, agreement of sale dated 01.04.1998. The relevant portion of Ex.A1 reads as follows:-

"WHEREAS the Vendor herein made an offer to sell the property at the rate of Rs.45,000/- per cent and the total sale consideration will be calculated as per the actual measurement available at the site which offer the PURCHASER herein had agreed.

NOW THIS AGREEMENT FOR SALE WITNESSETH AS FOLLOWS:-

1. That the Vendor agrees to sell and convey the property shown in Schedule hereunder to Purchaser or his nominee or nominees at the rate of Rs.45,000/- (Rupees Forty Five Thousand Only) per cent in part/parts as decided by the PURCHASER herein.

2. The VENDOR this day acknowledges receipt of the sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as advance sale consideration paid by the PURCHASER as detailed below.

i. D.D. No.024668 dated 09.03.1998 drawn on Indian Bank, L.B. Road, Thiruvanmiyur branch, Chennai-41 for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only)

ii. DD No.024669 dated 09.03.1998 drawn on Indian Bank, L.B. Road, Thiruvanmiyur branch, Chennai-41 for a sum of Rs.2,00,000/- (Rupees Two

Lakhs Only)

iii. DD No.024670 dated 09.03.1998 drawn on Indian Bank, L.B. Road, Thiruvannamiyur branch, Chennai-41 for a sum of Rs.1,00,000/- (Rupees One Lakh Only)"

and agrees to receive the balance sale consideration as and when the PURCHASER completing the layout work such as mending the site area, fixing the boundary stones and at periodical intervals as and registration of the sale deed/deeds with various plot/plots to respective PURCHASER/PURCHASERS introduced by the PURCHASER herein. The VENDOR has also permitted the PURCHASER to subdivide the Schedule Property. The VENDOR agrees to sell the property to the PURCHASER or his nominee and either by one sale deed or several sale deeds.

3. The PURCHASER will pay the balance sale consideration at the time of the execution and registration of the sale or sale deeds of all the plots and that the expenses for stamp duty registration and legal expenses will have to be borne by the PURCHASER or his nominees thereof. The registration of the sale deed/deeds in favour of the PURCHASER or their nominee/nominees will be done by the power agent duly appointed by the VENDOR.

4. The VENDOR agrees to deliver vacant possession of the property at the time of registration and execution of the sale deed/sale deeds to various party/parties introduced by the PURCHASER herein.

5. The VENDOR will deliver all the documents of title in original relating to the property at the time of registering the sale deed to the PURCHASER herein and copies will be delivered to the plot PURCHASER/PURCHASERS.

6. The VENDOR declares that except themselves nobody has any right or share in the property and that the property is free of all encumbrances and has a marketable title, the VENDOR further assures that they will not enter into any agreement for sale of the property that is now agreed to be sold to the PURCHASER herein, as long as this agreement is in force except this agreement, no agreement is in force.

7. Both parties agree that the transaction of sale will be completed within 6 months period."

32. On a reading of the contents of Ex.A1 dated 01.04.1998, it is clear that the defendant shall execute the sale deed or sale deeds in favour of the purchaser or his nominee or nominees

identified by the plaintiff herein. The clauses in the agreement of sale, Ex.A1 clearly shows that the plaintiff is entitled to sell the entire land measuring 506 cents of land in favour of a prospective purchaser identified by him and in whose favour the defendant Trust will execute the sale deed. As per the terms and conditions of the agreement of sale, Ex.A1, the plaintiff has identified prospective purchaser and the defendant/Trust also periodically executed sale deeds in favour of those nominees without any demur till 11.07.2005. On execution of such sale deeds, the plaintiff also periodically remitted the sale amount at the rate of Rs.45,000/- per cent to the account of the defendant Trust till July 2005. This is not disputed by the defendant. However, only during July 2005, when the defendant Trust came to know that the plaintiff has obtained a sale deed executed in his name and in the name of his wife, did the defendant Trust refuse to execute the sale deed in favour of the purchasers identified by the plaintiff.

33. After having executed the sale deeds from the year 1998 till 2005, the defendant is not justified in saying that the plaintiff is not entitled to enforce the conditions incorporated in Ex.A1, agreement of sale dated 01.04.1998 on the ground that the plaintiff is only a broker and the agreement of sale is nothing but an agreement for commission. As rightly pointed out by the learned Senior counsel for the plaintiff/respondent, as per the terms and conditions of the agreement of sale, Ex.A1 dated 01.04.1998, there is no embargo for the plaintiff to obtain a sale deed executed either in his name or in the name of his wife. There is no violation of the conditions contained in the agreement by the plaintiff in any manner. When the terms and conditions indicate that the defendant Trust agreed to execute the sale deeds in favour of the plaintiff or his nominee, the plaintiff is entitled to get the sale deed executed in his name. This was also admitted by DW1 in his deposition that the sale deeds have been executed by the defendant's Trust in favour of the plaintiff and his wife without any objection. DW1 in his cross-examination has specifically admitted that it is true that even after six months from the date of execution of agreement of sale, Ex.A1, the defendant Trust, without any objection, has executed the sale deeds in favour of the nominees of the plaintiff. Therefore, we hold that the agreement of sale, Ex.A1 entered into between the plaintiff and defendant Trust is not a brokerage agreement, as claimed by the defendant and the plaintiff is entitled to enforce specific performance based on the same. Point No. (i) is answered accordingly.

34. The main defence projected by the defendant Trust in the written statement is that the price of Rs.45,000/- per cent of land was fixed in the year 1998 and the land price has

escalated from time to time. The Plaintiff, taking advantage of the escalation in price, has gained huge profits but remitted only the sum of Rs.45,000/- per cent to the defendant Trust. On perusal of the records, it is seen that the total extent of land covered under Ex.A1, agreement of sale is 506 cents at the rate of Rs.45,000/- per cent and if it is sold the plaintiff is bound to remit a sum of Rs.2,27,70,000/- to the defendant trust. As on July 2005, the plaintiff has sold 303.51 cents of land for which the plaintiff has to remit a sum of Rs.1,36,57,950/- to the defendant Trust. However, at the time of agreement of sale itself, the plaintiff has paid Rs.5,00,000/- and subsequently on various dates, the plaintiff has remitted a sum of Rs.1,65,81,500/-. Thus, the plaintiff has remitted a total sum of Rs.1,70,81,500/- as against the sum of Rs.1,36,57,950/- payable by him. Thus, the plaintiff has paid excess amount to the defendant Trust anticipating execution of sale deed either in his favour or in favour of the nominee of his choice. The excess amount paid by the plaintiff has not been returned by the defendant Trust so far and it is retained by them. Had the intention of the defendant Trust was not to execute the sale deeds for the remaining portion of the land, the defendant Trust ought to have returned the excess amount remitted by the plaintiff. In this context, it is useful to refer to the deposition of PW1 which is as follows:-

குமேலும் ரூ.45,000/- ஒரு சென்ட் என்று குறிப்பிட்ட விலை மனைகளுக்கு மட்டும் இல்லாமல் மனைகள், அதற்கு விடப்பட்ட ரோட்டின் அளவு, அனைத்தையும்கணக்கு செய்து அந்த விகிதாசாரப்படி ரோட்டிற்கும் சேர்த்து பணம் செலுத்தப்பட வேண்டும். பிரதிவாதிகள் நான் லேஅவுட் செய்து விற்பனை செய்ததாலும், ரோட்டிற்காக விடப்பட்ட இடத்திற்கும் சேர்த்து தான் ரூ.45,000/- சென்ட் விலை என்று முடிவு செய்தார்கள். எனவே நான் கிரயம் செய்யும் மனைகளின் விலை மதிப்பு, மனைகளின் அளவு, மட்டும் இல்லாமல் என்னுடைய செலவினங்கள், ரோட்டிற்கு உண்டான கிரய மதிப்பும் கணக்கடப்பட்டு பிரதிவாதிகளுக்கு செலுத்த வேண்டிய தொகை அடங்கியே கொடுக்கப்பட்டது. எனவே ரூ.45,000/- ஒரு சென்டிற்கு என மொத்த 5.06 ஏக்கருக்கும் சேர்த்து நான் பிரதிவாதிகளுக்கு செலுத்த வேண்டும். அதன்படியே நான் 2005 வரை செலுத்தி வந்துள்ளேன். எனது செலவினங்களையும், ரோட்டிற்கு விடப்பட்ட காலியிடத்தின் மதிப்பையும் சேர்த்து நான் விலைபேசி பிரதிவாதிகளுக்கு செலுத்தியது போக மீதி தொகையில் சரி செய்து கொள்ள வேண்டும்.

எனவே மேற்படி 01.04.1998 ஒப்பந்தப்படி சென்ட் 1க்கு ரூ.45,000/- கூடுதல் 506 சென்ட் க்கு நான் தர வேண்டியது ரூ.2,27,70,000/- அதன் படி தாவா தாக்கல் செய்யும் தேதி வரை நான் பிரதிவாதிகளுக்கு செலுத்திய ரூ.2,20,91,500/- செலுத்திவிட்டேன்.

நான் 1.4.98 படி ரூ.6,88,500/- மட்டும் செலுத்த வேண்டும். மேற்படி தொகை ரூ.6,88,500/-யை நான் செலுத்த தயார் என்று தெரிவித்தும் பிரதிவாதி பதிவு செய்து கொடுக்க முன்வரவில்லை. நான் மீதி தொகை செலுத்த

எப்போதும் இப்போதும் இருப்பில் வைத்து பிரதிவாதிக்கு கொடுக்க தயாராக உள்ளேன்.

35. Further, DW1 in his deposition has clearly stated that major portion of the amount payable by the plaintiff has been received by the defendant Trust without any objection. DW2 is a Trustee of Kalpana Trust, who has nothing to do with the suit transaction. However, DW2, in her proof affidavit, claims that the suit property belongs to them and that the defendant trust was holding only on behalf of their family Trust. However, in para No.6 of the proof affidavit, DW2 has stated that "though this property is kept intact, the amount of Rs.50 lacs may just suffice to compensate the loss incurred by the Kalpana Trust for the callous breaking up the property in bits and pieces, making it difficult for the defendant to procure buyers. Further, DW2 admitted that the sum of Rs.50 lakhs paid by the plaintiff was transferred to Kalpana Trust. Similarly, DW3 is a clerk attached to the office of the Chartered Accountant who has only produced Exs. B3 to B13, the balance sheet and IT returns of Kalpana Trust and it has nothing to do with the suit transaction. Thus, the evidence of Dws 2 and 3 only support the case of the plaintiff. Therefore, the evidence on record shows that the plaintiff has performed his part of the contract and the escalation in price cannot be a reason for the defendant to deny execution of the sale deeds in favour of the plaintiff or his nominee for the remaining lands. In this context, it is useful to refer to the decision of Honourable Supreme Court in the case of (P. D'Souza vs. Shondrilo Naidu) reported in (2004) 6 Supreme Court Cases 649 which was relied on by the learned Senior counsel for the plaintiff/respondent wherein in Para No.43, it was held as follows:-

"43. Bhan, J., however, while expressing his dissension in part observed; (SCC pp. 506 & 507, paras 38 & 40)

"38. It is well settled that in cases of contract for sale of immovable property the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the plaintiff.

....

40. Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for decreeing the specific performance

with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend on the facts and circumstances of each case."

36. In this case, even after six months from the date of execution of the agreement of sale under Ex.A1, the defendant Trust has executed sale deed in favour of the plaintiff Trust till July 2005 without any objection. Therefore, the escalation of the price of the land cannot be a valid reason for denial of sale deed in favour of the plaintiff.

37. Even though the learned counsel appearing for the appellant relied on several decisions in support of his contention, they are not applicable to the facts of the case on hand. In fact, in the decision rendered by the Honourable Supreme Court in the case of (Saradamani Kandappan vs. S. Rajalakshmi and others) reported in (2011) 12 Supreme Court Cases 18 relied on by the learned counsel for the defendant/appellant the Honourable Supreme Court in Para Nos. 25 and 28, held as follows:-

"25. The legal position is clear from the decision of a Constitution Bench of this Court in Chand Rani vs. Kamal Rani (1993) 1 SCC 519 wherein this Court outlined the principle, thus (SCC p.525, para 19)

"19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If,

for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to pay a particular loan before a particular date, or to meet an urgent time bound need (say medical or educational expenses of a family member), time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract."

38. In the present case, the intention of the plaintiff and defendant could be inferred from the fact that even after completion of six months of execution of the agreement of sale, Ex.A1, the defendant Trust continued to execute the sale deed in favour of the plaintiff till July 2005. Therefore, time is not the essence of the contract under Ex.A1 and the time of six months indicated therein has been given a go-bye by the conduct of the parties. In this regard, it shall be useful to refer to the decision rendered by the Honourable Supreme Court in the case of (2005) (12) Supreme Court Cases Page No.764 wherein in para No.34, it was held that even though time limit may have been fixed under the contract, the parties, by their conduct and action, would have extended the time and in such a case only, the later part of Article 54 of the Limitation Act will apply and not the first part.

39. It is not as though the defendant-trust was compelled, coerced or made to execute the sale deeds in favour of the plaintiff or nominees of the plaintiff even after six months of the agreement of sale, Ex.A1. The defendant trust could have very well refused to execute the sale deeds in favour of nominees of the plaintiff after expiry of the so-called six months period, but it is not known as to what prevented the defendant trust to do so. On the other hand, even as admitted by the defendant trust, from 1998 till July 2005, they have continuously executed the sale deeds in favour of the plaintiff or the nominees or purchaser identified by the plaintiff and also accepted the amount deposited thereof by the plaintiff. Hence, we are of the opinion that the contention of the counsel for the appellant that the defendant is a Public Trust and hence, this Court should protect the interest of the Trust by refusing the relief of specific performance sought for by the plaintiff as it would affect the interest of the Trust is without any basis, pleading or evidence. When the defendant trust executed the sale deeds without any protest or objection

in favour of the plaintiff or his nominees, it could be inferred that such sale deeds have been executed with the full consent, knowledge and consequences thereof, thereby the defendant trust permitted the alienation of the lands by the prospective purchasers identified by the plaintiff. All along, from 1998 to July 2005, for about seven years, the defendant Trust remained silent without questioning the act of the plaintiff in identifying prospective buyers and executing sale deed thereof. The defendant trust has therefore abandoned their equitable right which has given rise to the plaintiff to infer the intention of the defendant trust to extend the time for performance of the contract. In any event, the defendant trust, having executed the sale deeds with full knowledge, consent and willingness, cannot refuse to execute the sale deed for the remaining extent of land, as claimed by the plaintiff. It is not as though the plaintiff has deceived the defendant-trust and made the defendant to execute the sale deeds by making false claim or misrepresentation. On the other hand, the transaction between the plaintiff and defendant is governed by a valid contract based on which the defendant Trust executed the sale deeds. In fact, the resolution passed by the Trust on 01.03.1998, marked as Ex.A5 to sell the land in favour of the plaintiff was not withdrawn by the defendant Trust. Therefore, we answer point No. (ii) in favour of the plaintiff/respondent and against the defendant/Trust. Consequently, point No. (iii) is also decided against the defendant/Trust.

40. In the result, we confirm the decree and judgment passed by the Trial Court. The Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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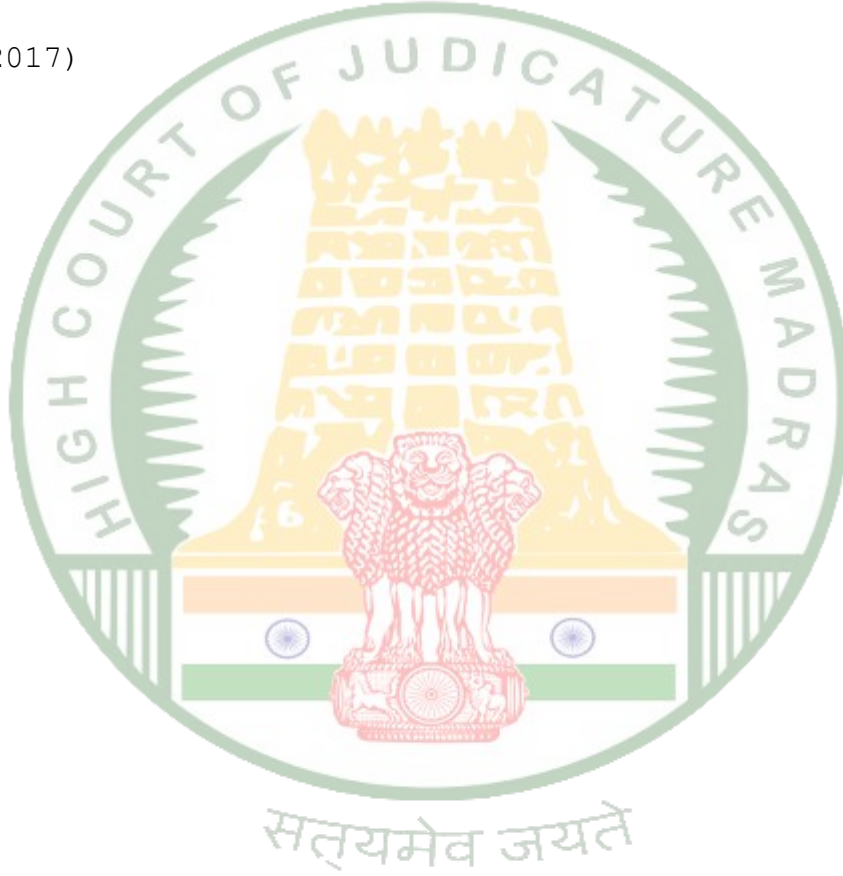
To

The Additional District Judge
Chengalpattu.

+4cc to Mr.V.Raghavachari, Advocate, S.R.No.29511,39488
+2cc to Mr.T.S.Baskaran, Advocate, S.R.No.39481

AS No. 174 of 2016

KS (CO)
RS (27/06/2017)



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