

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.07.2017

DATE OF DECISION: 10.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.94 of 2013 and M.P.No.1 of 2013
and Cross Objection No.111 of 2013

S.Pathma

... Appellant in AS No.94/13
Respondent in Cross Obj.No.111/2013

Vs

V.Radhakrishnan (Deceased Defendant)

Rep. by his legal heirs

1. Mrs.Geetharani
2. R.Priya
3. R.Bhuvana
4. R.Archana
5. R.Suganya
6. R.Manikandan

... Respondents in As No.94/13
Cross Objectors in Cross Obj. No.111/2013

Prayer in AS No.94/2013: This appeal is filed under Section 96 C.P.C. and Order 41 Rule 1 of C.P.C., against the judgement and decree in OS.No.1 of 2006 dated 17.01.2013 on the file of the District Judge, Karaikal.

Prayer in Cross Obj.No.111/2013: This Cross objection is filed under Order XLI Rule 22 C.P.C., against the grant of alternative relief in Judgment and decree dated 17.01.2013 in O.S,No.1 of 2006 on the file of the District Judge, Karaikal and to dismiss the said suit in toto.

For Appellant in AS : Mr.S.V.Jayaraman, Sr. Counsel
and Respondent in Cross Obj. for Mr.C.Kalaichelven

For Respondents in AS : Mr.T.M.Hariharan
and Cross Objectors in Cross Obj. for Mr.N.Nandakumar

J U D G E M E N T

The plaintiff in OS No.1 of 2006 on the file of the District Court, Karaikal is the appellant. The suit in OS No.1 of 2006 was filed by the appellant seeking specific performance of an agreement of sale dated 06.10.2004 or in the alternative for refund of advance along with subsequent interest.

2. According to the plaintiff the deceased first defendant entered in to an agreement of sale dated 06.10.2004 with her for sale of the suit property for a total consideration of Rs.9,00,000/-. On the date of the agreement the plaintiff paid a sum of Rs.1,50,000/- as sale advance and a sum of Rs.7,00,000/- by way of cheque dated 11.10.2004, which according to the plaintiff, was encashed by the deceased first defendant. The time for performance under the agreement was fixed as 12 months.

3. The plaintiff would contend that since the 1st defendant was

hospitalized at Chennai, he could not execute the sale deed within the time fixed under the contract. According to her, she met the 1st defendant in the hospital at Chennai and the 1st defendant has assured that he would execute the sale deed after he is discharged from the hospital. Since the 1st defendant did not come forward to execute the sale deed even after his discharge from hospital, the plaintiff was forced to issue a legal notice to the 1st defendant on 07.01.2006 which was received by the 1st defendant on 25.01.2006. The plaintiff had in fact filed the present suit seeking specific performance on 10.02.2006. Thereafter, the 1st defendant had sent a reply notice dated 09.02.2006 which was received by the plaintiff on 13.02.2006, after she had filed the suit. The plaintiff had also deposited the balance of consideration of Rs.50,000/- on 14.02.2006. On the above contentions the plaintiff claimed that she has been ready and willing to perform her part of the contract and therefore she is entitled to the relief of specific performance of the agreement of sale dated 06.10.2006.

4. The deceased first defendant filed a written statement. In the said written statement he would contend that he does not know the plaintiff and also claimed that the agreement is a forgery. He would further

contend that the property does not belong to him absolutely and it belongs to the joint family consisting of himself and his brothers. There was no partition between himself and his brother and therefore the plaintiff could not seek specific performance as against him. It was also contended that the plaintiff was not ready and willing to perform her part of the contract.

5. In the light of the above rival pleadings, the Trial Court namely the First Additional District Judge, Karaikal, framed the following issues for determination in the suit:

1. *Whether the defendant has (not) offered to sell the suit property to the plaintiff and did not even know the plaintiff?*
2. *Whether the defendant did not execute the sale agreement on 06.10.2004?*
3. *Whether the defendant did not receive an advance of Rs.8,50,000/- through cash payment of Rs.1,50,000/- and cheque payment of Rs.7,00,000/-?*
4. *Whether the plaintiff is entitled to get specific performance of the contract of sale based on the sale agreement dated 06.10.2004?*
5. *Whether the plaintiff is only entitled for the alteration (alternative) relief of return of advance with interest?*
6. *To what relief are the parties to the suit entitled?*

6. Before the trial Court the plaintiff examined herself as P.W.1 and examined 10 other witnesses as P.W.2 to P.W.11 and Exs. A1 to A9 were marked. On the side of the defendants the 2nd defendant was examined as D.W.1 and Exs. B1 and B2 were marked. Exs. X1 to X24 were marked as Court documents.

7. The first defendant died pending suit and his legal representatives were impleaded as defendants 2 to 6. In view of the categorical denial of his signatures, by the defendant, in the suit agreement as well as the other documents his signatures were referred to the Hand Writing Expert for opinion along with his admitted signatures and the Expert found that the signatures were that of the 1st defendant. The report of the expert was marked as Ex.X23 and the Expert was examined as P.W.11. Considering the evidence on record and the expert opinion, the learned District Judge, Karaikal held that the agreement was in fact executed by the 1st defendant and that the 1st defendant had encashed the cheque for the sum of Rs.7,00,000/-. The Trial Court however concluded that the plaintiff was not ready and willing to perform her part of the contract and therefore

the plaintiff is not entitled to the main relief of specific performance but she would be entitle to the alternative relief of refund of advance.

8. On the above findings the learned Trial Judge decreed the suit for the refund of advance along with interest while rejecting the claim of the plaintiff for specific performance. Against the rejection of prayer for specific performance the plaintiff has come forward with this appeal and against the grant of alternative relief for refund of the advance the legal representatives of the deceased 1st defendant namely defendants 2 to 6 have filed the Cross Objection No.111 of 2013.

9. I have heard Mr.S.V.Jayaraman, learned Senior Counsel appearing for Mr.C.Kalaichelven, learned counsel for the appellant and Mr. T.M.Hariharan, learned counsel appearing for Mr.N.Nandakumar, learned counsel for the respondents/cross objectors.

10. Mr.S.V.Jayaraman, learned Senior Counsel appearing for the appellants would contend that the trial Court was not right in holding that the plaintiff has not been ready and willing to perform her part of the

contract. Pointing out the admitted fact that the deceased 1st defendant was hospitalized at Chennai, the learned Senior Counsel would contend that the plaintiff cannot be said to have been not ready and willing to perform her part of the contract. The learned Senior Counsel would also contend that the conduct of the 1st defendant in coming with a false case at every stage of the proceeding should have been taken note of by the trial Court. The learned Senior Counsel would point out the following instances where the deceased first defendant had knowingly projected a false case.

(1) Having received the pre-suit notice on 25.01.2006 and having sent a reply on 09.02.2006, the deceased 1st defendant had taken a false plea in the written statement that he did not receive the pre-suit notice at all.

(2) In the reply notice dated 09.02.2006 the 1st defendant would contend that he did not sign the agreement and he did not know the plaintiff. However in the written statement he would come out with a new plea that he was not the absolute owner of the property.

(3) Having received the cheque for Rs.7,00,000/- and having encashed the same the deceased 1st defendant would go to the extent of denying his signature on the reverse of the cheque and contend that he not received

any money from the plaintiff.

11. Highlighting the above facts the learned Senior Counsel would contend that in a suit for specific performance the conduct of the defendant would also be relevant because the maxim that who seeks equity must do equity, would equally apply to the 1st defendant also. Pointing out to the evidence that is available on record the learned Senior Counsel would contend that the plaintiff cannot be held guilty of not being ready and willing to perform her part of the contract. Admittedly, the first defendant was unwell and was admitted in a Hospital at Chennai, soon after the agreement of sale was executed and according to the learned Senior Counsel immediately after his discharge the plaintiff issued the notice on 07.01.2006 and followed it up with a suit which was filed on 10.02.2006.

12. Relying heavily on the fact that almost entire sale consideration leaving only a balance of Rs.50,000/- out of Rs.9,00,000/- had been paid even during October 2004, the learned Senior Counsel would contend that this case would fall within the exceptions set out by the Hon'ble Supreme

Court in *Saradamani Kandappan v. Rajalakshmi and others*, [2011 (4) LW 97], The learned Senior Counsel would also further contend that the first defendant was guilty of suppression of material facts guilty of attempting to suppress facts namely the existence of a Will executed by his father bequeathing the suit property to him. The legal representatives of the 1st defendant had in fact admitted the existence of such Will. Therefore according to the learned Senior Counsel the first defendant cannot be allowed to wriggle out of the contract on the sole ground that the plaintiff was not ready and willing to perform her part of the contract. The learned Senior Counsel would also submit that the plaintiff has demonstrated that she has always been ready and willing to perform her part of the contract by tangible and acceptable evidence. Therefore according to the learned Senior Counsel the trial Court was wrong in rejecting the relief of Specific performance after having held that the agreement is true and valid.

WEB COPY

13. Per contra Mr.T.M.Hariharan, learned counsel appearing for the respondents/cross objectors would submit that the very agreement has not been established. He would further contend that the agreement recites

that the property was purchased by the 1st defendant under the sale deed dated 16.02.1998 whereas the said sale deed stands in the name of the father of the 1st defendant Venkatesa Chettiar. Therefore, according to the learned counsel the property belonged to the joint family and the 1st defendant had no right to enter into an agreement with reference to the said property. Pointing out to the fact that the plaintiff had issued a notice calling upon the deceased 1st defendant to execute the sale deed only on 07.01.2006 that is 3 months after the expiry of the 12 month period fixed under the agreement, the learned counsel would contend that the plaintiff cannot be said to have been ready and willing to perform her part of the contract. He would strenuously argue that in order to obtain a relief of specific performance, which is a discretionary relief, the plaintiff must establish continuous readiness and willingness. The learned counsel would also point out the contradictions in the evidence of the witnesses who are examined on the side of the plaintiff to show payment of the sum of Rs.1,50,000/- as advance on the date of the agreement and further a sum of Rs.7,00,000/- by way of cheque dated 11.10.2004 which is said to have been encashed by the 1st defendant and contend that these contradictions would belie the case of the plaintiff. He would also further

plead that though the plaintiff attempted to prove a Will said to have been executed by the deceased Venkatesa Chettiar father of the 1st defendant, the said Will has not been produced and the said Will having been shown to have dealt with the properties situate within the original jurisdiction of this Court and having not been probated as required under Section 213 of Indian Succession Act. According to him the learned Trial Judge erred in concluding that the property was bequeathed by deceased father of 1st defendant under the Will. MR. T.M.Hariharan, learned counsel would also contend that the plaintiff has come to Court with the false case and therefore she is not entitled to relief specific performance. The false case, according to Mr.T.M.Hariharan, learned counsel, is that in the plaint the plaintiff has stated that the plaintiff did not make a demand for execution of sale deed within the period stipulated under the agreement because the deceased 1st defendant had not handed over to the plaintiff the title deed, anticident title deed, nil encumbrance certificate and other documents. Reading certain portions of the evidence of P.Ws.2 and 3, Mr.T.M.Hariharan, learned counsel would contend that from the said evidence it could be seen that the plaintiff was aware of the acquisition of property, she was also aware of existence of the documents and therefore,

she had falsely claimed that the deceased 1st defendant had not produced the relevant documents and hence she was unable to complete the transaction within the period of one year fixed under the agreement.

14. On the above rival contentions, the following points are framed for determination in this Appeal:

1. *Whether the conclusion of the trial Court the plaintiff was not ready and willing to perform her part of the contract could be sustained?*
2. *Whether the trial Court was right in concluding that the agreement in fact executed by the 1st defendant?*
3. *Whether the trial Court was right in concluding that it was the 1st defendant who had encashed the cheque dated 11.10.2004 for a sum of Rs.7,00,000/-?*
4. *Whether the trial Court was right in rendering findings on the tile of the 1st defendant in a suit for specific performance?*

Point No.4:

15. Mr.T.M.Hariharan, learned counsel appearing for the respondents/cross objectors would contend that the trial Court was not right in concluding that the 1st defendant is the owner of the property under the Will said to have been executed by his father on 27.05.1998. The learned counsel would contend that in the absence of the production of the Will, the trial Court was not right in going into the question of the title of the 1st defendant. The learned counsel would further contend that the property remained undivided between the 1st defendant and his brothers and therefore, 1st defendant has no right to execute the agreement. I am unable to accept the above said contention of the learned counsel for the simple reason that the suit is one for specific performance and the question of title is alien to the scope of the suit. The Hon'ble Supreme Court in *Kasthuri V. Iyyamperumal*, reported in **[2005 (2) CTC 676]**, has held that the question of title is not relevant in a suit for specific performance while considering the question as to whether a person who claims independent title to the property could be made a party to the suit for specific performance. The Hon'ble Apex Court after referring to an earlier decision in *Anil Kumar Singh v. Shivanath Mishra and Gadusa Guru*, reported in **[1995 (3) SCC 147]** had concluded as

follows:-

"as noted herein earlier in a suit for specific performance of the contract for sale the issue to be decided is the enforceability of the contract entered between the appellant and the respondents Nos.2 and 3 and whether the contract executed by the appellant and the respondent Nos. 2 and 3 for the sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of the contract for sale against the respondents Nos. 2 and 3."

16. The scope of the suit for specific performance as pointed out by the Hon'ble Supreme Court is only with reference to the contract and it cannot be enlarged to the suit for title. Therefore, I do not think the issue relating to the title of the deceased 1st defendant could be either raised or adjudicated in the present suit. The Court in a suit for specific performance has to essentially confine the enquiry only to the validity of the agreement and also whether the plaintiff is entitled to specific

performance. An enquiry into the title of the defendant is alien to the scope of the suit for specific performance. The trial Court did not frame any issue relating to the title of the 1st defendant though the deceased 1st defendant had pleaded in his written statement that he is not the owner of the property and the property belongs to a joint family. However, in view of the unreasonable stand taken by the 1st defendant in his written statement for the first time the plaintiff was forced to produce unnecessary voluminous evidence regarding the execution of the Will by the father of the 1st defendant on 27.05.1998 and attempted to prove the said Will. Therefore in my considered opinion the trial Court rightly did not frame any issue but however made passing observation that the defence of the 1st defendant that he is not the absolute owner of the property and that he had no exclusive right over the property as on 06.10.2004 is false. In my considered opinion the said observation also is wholly unnecessary for the purpose of the present suit. Even in the absence of such a findings the trial Court could have proceeded to determine the other issues or determined as to whether the plaintiff is entitled to specific performance or not. Hence the question whether the trial Court was right in going into the question of title of the 1st defendant or not really fades into

insignificance.

17. Mr.T.M.Hariharan, learned counsel would attempt to take advantage of the situation and vehemently contend that it was at the instance of the plaintiff the Court was drawn in to the controversy regarding title. I am unable to agree with the said contention of the learned counsel. It is only in view of the conduct of the 1st defendant. The 1st defendant had chosen to sent a reply notice wherein he had chosen to deny the truth and validity of the agreement. In the said reply notice dated 09.02.2006 the plaintiff did not choose to whisper about the so called defect in title or that the property actually belonged to a joint family. However, for the first time in the written statement the deceased 1st defendant came out with a new theory of joint family and absence of partition. This led to the plaintiff attempting to prove the title of the 1st defendant. Therefore, if at all the Court had been drawn in to the controversy relating to the title, it is only due to the unreasonable stand taken by the deceased 1st defendant. In the light of the law laid down by the Hon'ble Supreme Court, I do not think it is necessary for the Court in the suit for specific performance to go into the question of title.

Points Nos.2 & 3:

18. The defence of the 1st defendant is that he had not executed the sale agreement. He has chosen to deny his signatures in the sale agreement, on the reverse of the cheque dated 11.10.2004 and in the acknowledgment card that was filed in evidence of the receipt of the notice issued by the plaintiff. In so far as the signature in the acknowledgment card filed by the plaintiff to show that the notice dated 07.01.2006 was received by the 1st defendant on 25.01.2006, the 1st defendant would claim as follows in his written statement which was filed on 02.04.2006.

"...This defendant had not signed the sale agreement and not received the legal notice and signed the acknowledgment as alleged in the plaint. These signature are specifically denied by this defendant. This defendant has not received the notice mentioned in the plaint and had not signed the acknowledgment as mentioned in the plaint."

19. The above plea is false even to the knowledge of the 1st

defendant. The acknowledgment dated 25.01.2006 has been produced as Ex.A6 by the plaintiff. Though the 1st defendant would deny that he had received the notice and would deny his very signature in the said acknowledgment, the 1st defendant has sent a reply to the said notice on 09.02.2006 and the said reply has been marked as Ex.B1. This itself shows that the 1st defendant had come out with the false case regarding the receipt of the notice in the written statement after having sent a reply to the said notice on 09.02.2006.

20. The 1st defendant would deny his signatures in the suit agreement. He would claim that he does not know the plaintiff and the suit agreement is forgery. He would also deny his signatures on the reverse of the cheque dated 11.10.2004 and having gone to the Bank and encashed the cheque. The claim that the signatures are forged stands belied by the report of the expert which is marked as Ex.X23. The Expert was examined as P.W.11. Mr.T.M.Hariharan, learned counsel appearing for the respondents/cross objectors would point out that the expert has admitted that the report contains the reasoning sheet and not the observation sheet and in the absence of the observation sheet the report of the expert cannot

be accepted. With regard to the plea that the observation sheet has not been produced, P.W.11 the expert has categorically denied the suggestions made to her that she could not depose as to the correctness of her findings in the absence of the observation sheet. She has also denied various suggestion to the effect that there are differences between the admitted signatures and the disputed signatures. She also denied that she has not made any observations with reference to specific features of the signatures.

21. In the light of the said evidence, the report of the expert marked as Ex.X.23 stands proved and the minor contradictions pointed out by the Mr.T.M.Hariharan, do not constitute grounds to reject the opinion of the expert made under Ex.X23. A perusal of the said exhibit namely Ex.X23 which is accompanied by a reasoning sheet very clearly establishes that the signatures of the 1st defendant in the agreement namely Ex.A1 tally with his admitted signatures and the defence taken that the signatures are forged cannot be accepted. The signatures of the 1st defendant in the cheque dated 11.10.2004 produced as Ex.A7 has also been taken for comparison by the expert and it has been found that the signatures in the

said cheque tallied with the admitted signatures of the 1st defendant.

22. Mr.T.M.Hariharan would invite my attention to the evidence of the witness namely P.W.2, who claims to have accompanied the 1st defendant while he encashed the cheque dated 11.10.2004 and the evidence of P.W.5 the Vice President the ING Vysya Bank Ltd, Kumbakonam regarding the denomination of the notes that were handed over to the 1st defendant on the said date and contend that the encashment of the cheque has not been proved. While P.W.2 has deposed that the notes were given in different denominations, P.W.5 has said that the currency notes were given in Rs.100/- denomination. This in my consideration opinion will not dilute the effect of the evidence of P.W.5 the Bank Manager, who has no axe to grind against the 1st defendant or defendants 2 to 6. It has not been suggested he is deposing falsely. The cheque has been produced by P.W.5 i.e. from proper custody.

WEB COPY

23. Mr.T.M.Hariharan would further point out that the pass book of the plaintiff produced as a Ex.A4 shows that the entry relating to withdrawal of Rs.7,00,000/- by the 1st defendant has been interpolated. I

am unable accept the said submission of the learned counsel in view of the fact that the balance in the said pass book after the debit entry of Rs.7,00,000/- showing that the withdrawal of Rs.7,00,000/- by the 1st defendant represents the correct figure. Therefore the claim that the entry relating to the withdrawal of Rs.7,00,000/- by the 1st defendant on 11.01.2004 has been interpolated cannot be accepted. Considering the entire evidence on record I find that the plaintiff established the factum of the execution of the agreement and the payment of consideration of Rs.1,50,000/- in cash on the date of the agreement and Rs.7,00,000/- by cheque dated 11.10.2004 which was duly encashed by the 1st defendant. I have no hesitation that the 1st defendant has come with the false defence, denying the execution of the agreement and the receipt of Rs.1,50,000/- on the date of the agreement and Rs.7,00,000/- received by encashing the Cheque dated 11.10.2004 that only with the view of to wriggle out of agreement. Even his plea that he was not absolute owner of the property seems to have been taken only with a view to defeat the right of the plaintiff under the agreement. Therefore I conclude that the agreement was executed by the 1st defendant and he had also received a sum of Rs.1,50,000/- on the date of the agreement and encashed the cheque

dated 11.10.2004 of Rs.7,00,000/-.

Point No.1:

24. The last but not least is the question of readiness and willingness on the part of the plaintiff to perform her part of the contract. The claim of the plaintiff with reference to readiness and willingness is that she had met the 1st defendant in the hospital at Madras and the 1st defendant assured that he would execute the sale deed immediately after his discharge from the hospital and return to Kumbakonam. Since she found that the 1st defendant was attempting to evade the performance after his return she has chosen to issue a notice under the Ex.A5 on 07.01.2006 and the suit for specific performance was filed on 10.02.2006. Pointing out that the notice was received by the 1st defendant on 25.01.2006 and the suit was filed within 15 days from the date of the receipt of the notice of demand by the 1st defendant, Mr.T.M.Hariharan, learned counsel appearing for the respondents/Cross Objectors would contend that in the absence of the demand within the period of 12 months contemplated under the agreement. Seeking the aid of the pronouncements of Hon'ble Supreme Court in *Saradamani Kandappan v. Rajalakshmi and others*, [2011 (4)

LW 97], and **Padmakumari and ors. v. Dasayyan and others in [2015 (6) CTC 545]** the learned counsel would contend that the plaintiff has not proved that she was always ready and willing to perform her part of the contract.

25. Per Contra Mr.S.V.Jayaraman, learned Senior Counsel appearing for the appellant would contend that if the plaintiff shows that she had been making demands and that it is because of the conduct of the defendant that she was made to wait beyond the period prescribed under the agreement she cannot be said to be not ready and willing to perform her part of the contract. The learned senior counsel would point out that even in the Judgement of the Supreme Court in **Saradamani Kandappan v. Rajalakshmi and others, [2011 (4) LW 97]**, the Supreme Court had made a distinction between the cases where the major part of the consideration has been paid leaving a negligibly small amount remaining the relief of specific performance should not be denied on the ground of delay alone.

26. On facts, as noted earlier the plaintiff has parted with

Rs.8,50,000/- out of Rs.9,00,000/-. The balance that remained to be paid was only Rs.50,000/- . The plaintiff had even in the notice demanding performance has specifically pointed out that she waited for the defendant to be discharged from the hospital. 'The fact that the 1st defendant was unwell and was admitted in the hospital in Madras is not in dispute. The defendants had not chosen to show that the 1st defendant discharged from the hospital before 05.10.2004, which is the last date for the performance fixed under the agreement. The very fact that the notice issued by the plaintiff on 07.01.2006 was served on the defendant only on 25.01.2006, after several attempts would show that the 1st defendant was really not available in Kumbakonam till January 2006. Therefore I do not find there is any undue delay on the part of the plaintiff in order to deny her the relief of specific performance.

27. At this juncture the conduct of the defendants is also be taken note of. In the reply notice the 1st defendant would deny the agreement and the receipt of the payment of advance. In the written statement he would deny the very receipt of the legal notice after having issued a reply. He would also go one step further and claim that he has no title to the property in the written statement. A Division Bench of this Court in

Pachiappan and others v. S.P.Koon mari reported in [1996 (2) LW 1], held that the conduct of the defendant would also be relevant in a suit for specific performance. It was further held that the principle of equitable relief not being granted to one who puts up a false plea would depend on whether the false claim is with reference to a material fact or not. Though Mr.T.M.Hariharan would contend that the plaintiff has come out with false case the defendants did not produce the relevant documents in the plaint the same to would fall under the category of the immaterial facts.

28. On the other hand the defendants in this case are guilty of suppression of material facts, denial of a receipt of reply notice which show that the defendants are bent upon denying relief of specific performance to the plaintiff.

29. In my considered opinion the conduct of the 1st defendant in this case has been most unsatisfactory and he attempted to take all possible defences knowing it to be false in order to mislead the Court in refusing the specific performance to the plaintiff. Unfortunately, the trial Court had concluded that the plaintiff was not ready and willing to perform her

part of the contract.

30. Mr.T.M.Hariharan, learned counsel appearing for the respondents/Cross objectors would rely upon the Division Bench decision in ***Shoba Viswanathan v. D.P.Kindgly*** reported in **[1996 (1) LW 721]** wherein it was held that the discretionary relief in equity cannot be granted to a person who has come with unclean hands. The same Division Bench in ***Pachiappan and others v. S.P.Koon mari*** reported in **[1996 (2) LW 1]** explained as to when and what circumstances relief could be denied to a person on the ground of having come to Court with unclean hands. It has been made very clear in ***Pachiappan and others v. S.P.Koon mari***, that in order to deny relief to a person on the ground that he or she has come with unclean hands, it should be shown that he or she has come with the false case with reference to a material fact.

The Division Bench has concluded as follows:

“17. The principle that the equitable relief of specific performance cannot be granted to a person who has put forward a false case is based on the doctrine that one who

seeks equity must do equity. But the question whether the plaintiff is disentitled to claim the relief, will depend on the facts of each case. If in a particular case the false claim set up by the plaintiff is immaterial and does not affect the main case in any manner, the Court shall not refuse the relief. In the present case, the plaintiff has correctly stated in the plaint that he had received a sum of Rs.13,500/- in cash under Ex.B.1. He has also correctly stated that the defendants have not discharged the loan due to the bank. But in his deposition the plaintiff has for the only in cash. No doubt that version is not proved. But the same does not in any way affect the merits of the case. According to the deposition, a sum of Rs.2000/- was retained by the defendants to discharge the loan due to one Munian. He has not stated in the deposition that the loan due to the said Munian was not discharged and, therefore, he was entitled to deduct that sum also from the amount payable to the defendants for getting reconveyance. He has categorically stated in the plaint that he is prepared to deposit in Court whatever is the amount due to the defendants. In such circumstances, the version put forward in the deposition, even if it is false, cannot disentitle the plaintiff from getting the relief. The said version has not in any way misled the defendants or led to any injustice.”

31. In the light of the dictum of the Division Bench which has been followed in *Arunachala Mudaliar v. Jayalakshmi Ammal* reported in [2003 1 CTC 355], I do not think that the inconsistency in the case of the plaintiff was so serious or material so as to disentitle her to the relief of specific performance. In the light of the factual scenario I am constrained to conclude that the plaintiff was always ready and willing to perform her part of the contract and the delay if any is attributable only due to the conduct of the defendants. Therefore the trial Court was not right in rejecting the relief of specific performance and granting the relief of refund of advance alone. In the light of the above conclusions the appeal is allowed and the judgment and decree of the trial Court are set aside and the suit in OS No.1 of 2006 will stand decreed for specific performance as prayed for with costs throughout. Consequently, the connected miscellaneous petition is closed.

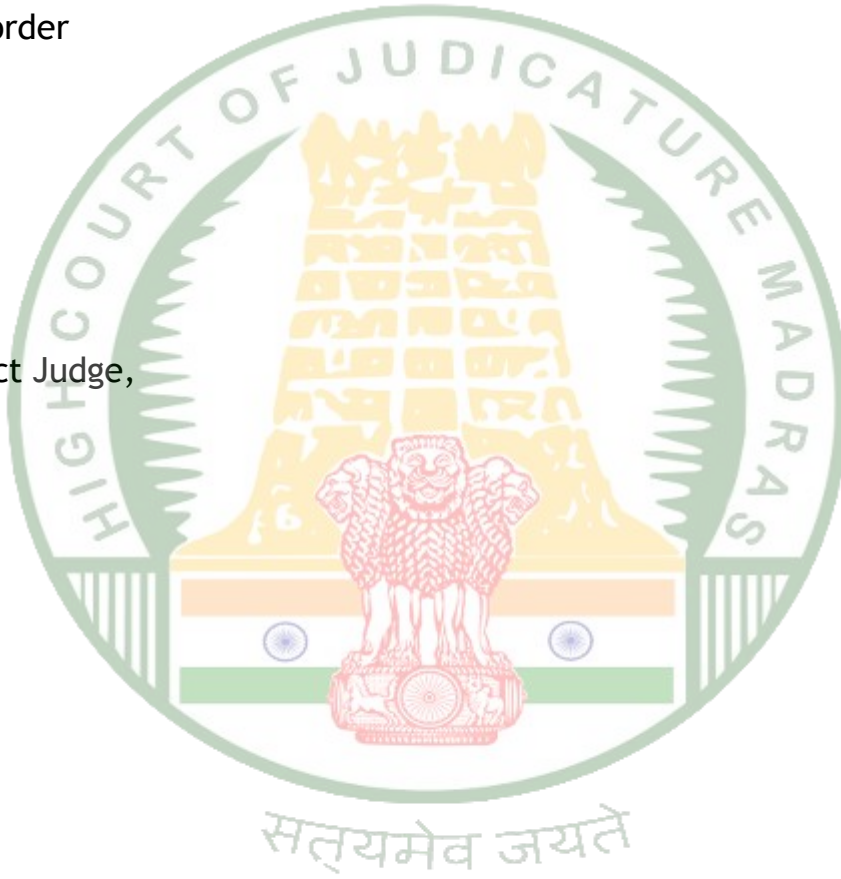
32. The cross objection filed by the defendants in Cross Objection No.111 of 2013 will stand dismissed. It is made clear that any finding with reference to the title of the 1st defendant rendered by the trial Court will

stand deleted.

10.08.2017

Index : Yes
Internet: Yes
speaking order
jv

To
The District Judge,
Karaikal



WEB COPY

R.SUBRAMANIAN,J

jv

Predelivery judgement

A.S.No.94 of 2013 and M.P.No.1 of 2013
and Cross Objection No.111 of 2013



10.08.2017

WEB COPY