

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.03.2017

DELIVERED ON: 11.04.2017

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH

and

THE HON'BLE MR. JUSTICE M.S. RAMESH

A.S. No.783 of 2012, M.P. No.1 of 2012 and
C.M.P. No.7724 of 2016

1 M.S. Dhanasingh (deceased)
2 D. Sathya Vijaya Kumari
3 Dhanasingh Philomina Farjana
4 D. Rajesh Kumar
5 D. Jaswanth Raj
6 K. Stella Padmini
7 Sharmila Anthony Raj
8 D. Naveen Premkumar
Appellants/Plaintiff & LRs of Plaintiff

(Appellants 2 to 8 brought on record as LRs
of the deceased sole appellant vide Court
order dated 03.07.2015 in M.P. No.1 of 2015)

vs.

1 Inbam Padmini Selvaraj
2 M.E. Mariappan
Respondents/Defendants

Appeal Suit filed under Section Order 41 read with Section 96 of the Civil Procedure Code seeking to set aside the judgment and decree dated 22.12.2011 passed in O.S. No.4121 of 2011 on the file of the City Civil Court, (VII Additional Court), Chennai.

For appellants Mr. T.R. Rajagopalan, Sr. Counsel
for Mr. S. Baskaran

For R1 Mr. M. Peer Mohamed

For R2 Mr. V. Lakshminarayanan
for Mr. N. Elayaraja

JUDGMENT

R. SUBBIAH, J.

This appeal suit has been preferred calling in question, the legality and validity of the judgment and decree dated 22.12.2011 passed in O.S. No.4121 of 2011 on the file of the City Civil Court, (VII Additional Court), Chennai (for brevity "the Trial Court"), whereby and whereunder, the Trial Court has rejected the plaint filed by the deceased first appellant, viz., M.S. Dhanasingh.

2 Originally, this appeal suit was filed by M.S. Dhanasingh, who was the plaintiff before the Trial Court. Since he breathed his last during the pendency of this appeal suit, his legal heirs were brought on record as appellants 2 to 8.

3 However, for the sake of convenience and to avoid prolixity, the parties will be referred to as per their rankings before the Trial Court, i.e., the deceased first appellant will be referred to as plaintiff and the respondents 1 and 2 will be referred to as defendants 1 and 2 respectively.

4 Originally, the deceased first appellant filed O.S. No.4121 of 2011 seeking the following relief:

a specific performance directing the first defendant to execute and register a sale deed in favour of the plaintiff as per the agreement dated 13.03.2006 relating to the 2/3 undivided share along with the first floor and second floor of the property bearing no.16, Mahalingapuram Main Road, Nungambakkam, Chennai 600 034, after receiving the sale consideration of Rs.20 lakhs and in default, appoint an Advocate Commissioner to execute and register the sale deed through Court and permit the plaintiff to deposit the sale consideration of Rs. 20 lakhs in Court;

b consequently, to set aside the sale deed dated 23.02.2011 executed by the first defendant in favour of the second defendant, registered as document no.176 of 2011 at the office of the Joint Sub Registrar II, Thousand Lights, Chennai, selling the 1/3 share in

the property bearing Door No.16, Mahalingapuram Main Road, Mahalingapuram, Nungambakkam, Chennai 600 034;

c permanent injunction restraining the second defendant or his men, agents or persons acting through or under him, from interfering with the plaintiff's peaceful possession and enjoyment and administration of the 1st and 2nd floor of the property bearing Door No.16, Mahalingapuram Main Road, Mahalingapuram, Nungambakkam, Chennai 600 034.

5 Seeking rejection of the plaint, the second defendant filed I.A.No.15422 of 2011 which was allowed by the Trial Court vide order dated 03.12.2011. Despite the allowing of the said I.A. to reject the plaint, the suit was posted to 13.01.2012. Hence, the second defendant filed I.A. No.20257 of 2011, to advance the hearing date of the suit from 13.01.2012 to any earlier date. When the said application came up for hearing, the Trial Court allowed the said application vide order dated 22.12.2011 by advancing the hearing date from 13.01.2012 to 22.12.2011 and rejected the plaint on the ground that once the interlocutory petition seeking rejection of plaint is allowed, the suit is not pending in the eye of law and that due to oversight, the suit was posted on 13.01.2012. Challenging the said judgment and decree, the unsuccessful plaintiff has preferred this appeal suit.

6 A vignette of the case of the plaintiff is as under:

6.1 The first defendant is the elder sister of the plaintiff. The first defendant got married in 1950s and she is settled in Singapore. The property bearing Door No.16, Mahalingapuram Main Road, Mahalingapuram, Chennai - 34 was purchased by the plaintiff from one Prema. The plaintiff purchased 1/3 undivided share in the land along with 650 sq. ft. in the ground floor vide sale deed dated 11.12.1992 registered on 13.12.1992 as Document No.1013 of 1992 at the office of the Sub Registrar, Thousand Lights. On the same day, the first defendant, who is the elder sister of the plaintiff also purchased the remaining 2/3 undivided share in the land along with 501 sq. ft. in the first floor and 250 sq. ft. in the second floor vide sale deed dated 11.12.1992 registered on 13.12.1992 as Document No.1012 of 1992 at the office of the Sub Registrar, Thousand Lights. As the first defendant was in Singapore, the plaintiff was residing in the property. The second daughter of the first defendant was given in marriage to the second son of the plaintiff.

6.2 The plaintiff, in the year 2001, formed a private limited company called Axis Automated Private Ltd. with himself and his two sons as Directors. The said company has been engaged

in the business of selling computers and the plaintiff and his two sons were residing in the ground floor and first floor of the property. The plaintiff also has put up additional constructions in the said property.

6.3 While so, in March 2006, when the first defendant visited and stayed in the house of the plaintiff, the family members of the plaintiff as well as the plaintiff expressed the difficulty in managing the property in two names. Hence, the first defendant, who is the sister of the plaintiff, told the plaintiff that she was planning to settle her 2/3 share in favour of her daughter, but, due to need of money for her future life in Singapore, she wanted Rs.20,00,000/- for selling the property to the plaintiff. Hence, for this purpose, the first defendant and the plaintiff entered into an agreement on 13.03.2006, in and by which, the first defendant agreed to sell her 2/3 share in the property for a sale consideration of Rs. 20 lakhs to the plaintiff and also agreed to execute the sale deed during her next visit to Chennai. With the bona fide belief that the first defendant would sell her share to the plaintiff, the plaintiff, along with his sons, borrowed money in the year 2007 and put up additional constructions in the first floor and second floor of the property and the plaintiff was ready and willing to perform his part of the contract.

6.4 When the plaintiff's son who is the son-in-law of the first defendant, along with his wife, who is the daughter of the first defendant, along with his family members, visited the first defendant at Singapore in September 2010, the first defendant promised that she was planning to visit India in early 2011 and at that time, she would receive the amount in India and register the sale agreement dated 13.03.2006. But, for the reasons best known to the first defendant, during her visit to Chennai in 2011, she stayed in the house of her other younger brother B. Prasad at Kolathur, Chennai. Hence, the plaintiff and his family members were not aware of the first defendant's visit as the latter did not inform the former about the same.

6.5 In such a situation, on 24.02.2011, some officials from the Registration Department came to the property to measure the first floor and second floor and the plaintiff and his family members were shocked and surprised to know from them that a sale deed was registered on 23.02.2011 in respect of the suit property. Hence, on 25.02.2011, the plaintiff applied for an encumbrance certificate and came to know that the first defendant, sans any notice, intimation and consent of the plaintiff and in gross violation of the agreement to sell dated 13.03.2006 and against the assurance and undertaking given to the family members of the plaintiff during their visit to Singapore in September 2010, sold her 2/3 share alone to the second defendant, viz., Mariappan, for a sale consideration of

Rs.75 lakhs. Immediately, on 03.03.2011, the plaintiff's son applied for the certified copy of the sale deed and got the same. In fact, as per the promise, assurance and the direction of the first defendant, the plaintiff was keeping Rs.20 lakhs ready.

6.6 Hence, the plaintiff issued a legal notice dated 13.04.2011 to both the defendants to cancel the sale deed dated 23.02.2011 executed by the first defendant in favour of the second defendant and execute the sale deed in the name of the plaintiff as per the agreement dated 13.03.2006. The second defendant issued a reply notice dated 20.04.2011 demanding partition and the first defendant issued reply dated 02.05.2011 contrary to her earlier letter and notice. Hence, the plaintiff filed the suit in question seeking the aforestated relief.

7 Before the Trial Court, the second defendant, the purchaser of the property, took out an application under Order VII Rule 11, CPC, to reject the plaint. The sum and substance of the averments made in the said affidavit is as follows:

7.1 The second defendant is not aware of any agreement of sale dated 13.03.2006 alleged to have been created or executed between the plaintiff and the first defendant. The said agreement for sale dated 13.03.2006 is not genuine. In fact, the second defendant had purchased the suit schedule property from the first defendant through a valid sale deed dated 23.02.2011, after having parted with a valid consideration. On the date of registration of the sale deed, the second defendant, along with the first defendant, went to the suit property and informed about the sale transaction to the plaintiff, who, in turn, assured to vacate and deliver vacant possession of the property since the first defendant is his own sister. If at all the alleged agreement for sale dated 13.03.2006 is true and genuine, the plaintiff would have informed the same to the first defendant when the second defendant went to the suit property along with the first defendant. No prudent person will wait for more than five years for filing the suit and say that he is ready and willing to perform his part of the contract.

7.2 Thus, by contending so, the second defendant sought rejection of the plaint on the following legal grounds:

a The agreement for sale is not duly executed in the manner known to law and the same is in white paper.

b Usually, in an agreement for sale, there must be an advance amount against agreed sale consideration and no such advance was said to have been received and paid.

c Usually and generally, for execution of sale

on the basis of agreement for sale, there must be a time limit, i.e., the period before which sale transaction shall be completed, since the time limit is the essence of contract by both parties to approach a competent legal forum for a suit for specific performance.

d Legally, an agreement for sale must be signed by both the parties in the capacity of vendor and purchaser or seller and purchaser and the present suit agreement for sale, viz., plaint document no.16, the alleged agreement for sale dated 13.03.2006, bears the signature of the first defendant alone and in the absence of offer and acceptance with regard to sale in the present suit agreement for sale, the same is invalid in law and though the plaintiff claims to be the purchaser, the acceptance clause is not there and no signature of the plaintiff is found in the alleged un-registered agreement for sale dated 13.03.2006.

e A person could claim relief of specific performance within three years from the date of agreement for sale and as such, the present suit filed by the plaintiff based on the alleged agreement for sale dated 13.03.2006 is time barred and as such, the suit filed by the plaintiff is not at all maintainable.

8 The Trial Court, after considering the submissions made by the learned counsel on either side, rejected the plaint primarily on the grounds that:

a) the sale agreement does not reveal that the offer made by the first defendant was accepted by the plaintiff and as such, no cause of action has arisen to file a suit for specific performance; and

b) the sale agreement is of the year 2006, but, the suit has been laid only in the year 2011 and hence, the suit is barred by limitation.

9 In short, the finding of the Trial Court is that the suit is a vexatious proceedings, an abuse of process of law and absolutely groundless. Aggrieved by the said judgment and decree of the Trial Court, the plaintiff has preferred the instant appeal suit.

10 Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the appellants/plaintiff submitted that the Trial Court has rejected the suit mainly on the ground that the sale agreement

dated 13.03.2006 does not reflect the acceptance of the plaintiff to the offer made by the first defendant. According to the learned Senior Counsel, yet another finding of the Trial Court is that the agreement for sale was signed only by the proposed vendor, viz., the first defendant and not by the plaintiff, who claims himself as the proposed purchaser.

11 Assailing the said finding, the learned Senior Counsel submitted that for the purpose of rejecting the plaint, the plaint averments alone have to be taken into consideration and in paragraph no.7 of the plaint, it has been clearly spelt out that the first defendant entered into an agreement for sale with the plaintiff agreeing to sell her 2/3 share and believing that the first defendant would stand by her word, the plaintiff, along with his sons, borrowed money in the year 2007 and put up additional constructions in the first floor and second floor of the property, which amounts to acceptance of offer by the plaintiff. Further, by placing reliance upon the averment in paragraph no.8 of the plaint that when the plaintiff's son, along with his wife and family members visited the first defendant at Singapore in September 2010, the first defendant promised that she was willing to visit India in early 2011 and that at that time, the first defendant would receive the amount in India and register the sale deed as per the agreement to sell, the learned Senior Counsel submitted that the same goes to prove that the plaintiff has accepted the offer made by the first defendant.

12 In short, according to the learned Senior Counsel, in the teeth of such categorical stand taken in the plaint, the plaint ought not to have been rejected by the Trial Court on the ground that the acceptance of the offer of the first defendant by the plaintiff was not reflected in the sale agreement. Further, according to the learned Senior Counsel, it is for the first defendant to contend as to whether the plaintiff has accepted the offer or not, but, the first defendant had not chosen to appear before the Trial Court and hence, at the instance of the application filed by the second defendant, the Trial Court ought not to have rejected the plaint and dismissed the suit.

13 With regard to the other finding rendered by the Trial Court that the agreement for sale was signed only by the vendor and not by the purchaser, the learned Senior Counsel appearing for the appellants/plaintiff submitted that a suit for specific performance based on an agreement executed merely by the vendor is maintainable. To fortify this contention of his, the learned Senior Counsel garnered support from the judgment of the Supreme Court in Aloka Bose vs. Parmatma Devi and others [2009-2 L.W. 113 (SC)]. For the very same proposition, the learned Senior Counsel drew further support from the judgment of this Court in S.M. Gopal Chetty vs. Raman [AIR 1998 Madras 169].

14 Coming to the finding of the Trial Court that the agreement was entered into on 13.03.2006, whereas, the suit was filed only in the year 2011 and hence, the suit is barred by limitation, the learned Senior Counsel appearing for the appellants/plaintiff submitted that in the sale agreement, no time limit is fixed; the first defendant agreed to execute the sale deed and register the same during her next visit to India; the first defendant visited India only in February 2011 and

without the knowledge of the plaintiff, the first defendant has sold the property to the second defendant under registered sale deed dated 23.02.2011 and the plaintiff came to know of it only when the officials from the Sub Registrar's office visited the property on 24.02.2011; as per Section 54 of the Specific Relief Act, if a date is fixed for performance, the suit has to be filed within three years from the date of expiry and if no such date is fixed, when the plaintiff comes to know that performance is refused, then, from the date of the plaintiff's knowledge of refusal of performance, the suit can be filed within three years; in the instant case, the plaintiff came to know that the first defendant had sold the property in favour of the second defendant only on 24.02.2011 and hence, 24.02.2011 is the date which has to be taken as the date of knowledge of refusal by the first defendant to execute the sale deed as per the agreement for sale dated 13.03.2006, whereas, the suit was filed on 30.05.2011 well within the period of limitation and therefore, the suit is not barred by limitation. In support of this contention, the learned Senior Counsel placed reliance upon the judgment of the Supreme Court in *Gunwantbhai Mulchand Shah and others vs. Anton Elis Farel and others* [(2006) 3 SCC 634], wherein, at paragraph no.8, it has been held as under:

"8. We may straightaway say that the manner in which the question of limitation has been dealt with by the courts below is highly unsatisfactory. It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in *R.K. Parvatharaj Gupta v.K.C. Jayadeva Reddy* [(2006) 2 SCC 428 : (2006) 2 Scale 156] . In the case on hand, there is no dispute that no date for performance is fixed in the agreement and if so, the

suit could be held to be barred by limitation only on a finding that the plaintiffs had notice that the defendants were refusing performance of the agreement. In a case of that nature normally, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiff had such notice. We are not unmindful of the fact that a statement appears to have been filed on behalf of the plaintiffs that they did not want to lead any evidence. The defendants, of course, took the stand that they also did not want to lead any evidence. As we see it, the trial court should have insisted on the parties leading evidence on this question or the court ought to have postponed the consideration of the issue of limitation along with the other issues arising in the suit, after a trial." (emphasis supplied)

15 In support of the same proposition, the learned Senior Counsel placed further reliance upon the judgments of the Supreme Court in R.K. Parvatharaj Gupta vs. K.C. Jayadeva Reddy [(2006) 2 SCC 428], P.V. Guru Raj Reddy and another vs. P. Neeradha Reddy and others [(2015) 8 SCC 331], R.K.Roja vs. U.S. Rayudu and another [(2016) 14 SCC 275]. Based on the above submissions, the learned Senior Counsel appearing for the appellants sought setting aside of the judgment and decree of the Trial Court.

16 Countering the submissions made by the learned Senior Counsel appearing for the appellants, Mr. V. Lakshminarayanan, learned counsel for the second defendant submitted that the second defendant had purchased the property from the first defendant on 23.02.2011 by paying a sale consideration of Rs.75 lakhs and after purchase of the property, the second defendant issued attornment of tenancy on 06.04.2011 to the tenants who were occupying the first floor of the property; the first defendant had also written a letter to her brother, viz., the plaintiff, requesting him not to disturb the purchaser, viz., the second defendant; thereafter, the plaintiff has filed a suit on 30.05.2011 by creating a false agreement for sale dated 13.03.2006 by mentioning false address of the first defendant; in the plaint, the plaintiff alleged as if the second defendant is a benami of his brother, Balaji Prasad @ B. Prasad; hence, the second defendant filed an application for rejection of plaint on the ground that the agreement dated 13.03.2006 is not a concluded contract as there is no acceptance by the plaintiff and as such, no cause of action has arisen for the suit to be filed.

17 The further contention of the learned counsel for the second respondent/second defendant is that the sale agreement is of the year 2006, but, the suit has been filed only in the year

2011 which is well beyond the period of limitation and therefore, the suit is barred by limitation as rightly held by the Trial Court by appreciating the case of the second defendant in the proper perspective.

18 By inviting the attention of this Court to the sale agreement dated 13.03.2006, the learned counsel for the second respondent/second defendant submitted that a perusal of the agreement would show that the same is in a single sheet of paper signed by the first defendant alone, the same is not even registered, no advance monies were paid to the first defendant, there is no proof of acceptance by the plaintiff and the period is uncertain; a suit for specific performance will lie only when there is an agreement as contemplated under the Indian Contract Act and if there is no acceptance, there is no contract and as such, there is no cause of action for the suit.

19 According to the learned counsel, though in the plaint, it has been stated that the plaintiff's son visited the first defendant in Singapore in 2010, which would prove acceptance of offer, it is only an oral offer which could have been withdrawn at any point of time; therefore, a concluded contract is a condition precedent for filing a suit for specific performance; in the instant case, there is absolutely no concluded contract. In support of this contention, the learned counsel for the second respondent/second defendant placed reliance upon the judgment of the Supreme Court in *Viswesardas Gokuldas vs. B.K.Narayan Singh and another* [(1969) 1 SCC 547]. For the same proposition, the learned counsel placed further reliance on a judgment of this Court in *T. Linga Gowder vs. The State of Madras*, represented by the District Forest Officer, Ootacamund and others [AIR 1971 Madras 28].

20 Further, by drawing the attention of this Court to Forms 47 and 48 of Appendix A of the Civil Procedure Code, the learned counsel for the second respondent/second defendant submitted that the plaintiff must plead that the agreement for sale was entered into and was accepted by him; but, in the instant case, there is no such pleading to show that the plaintiff had accepted the alleged promise in 2006. In this regard, the learned counsel for the second respondent/second defendant placed reliance upon the judgment of the Supreme Court in *Ouseph Varghese vs. Joseph Aley and others* [(1969) 2 SCC 539].

21 In response to the case of the plaintiff that the cause of action for the suit arose on 24.02.2011 when the officials from the Registration Department visited the property only on that date, the learned counsel for the second respondent/second defendant submitted that the said stand of the plaintiff is false, since, at paragraph no.7 of the plaint, it has been specifically stated that the first defendant had visited the

plaintiff in 2007 and was aware of the construction made in the first floor and second floor and as such, even as per the stand of the plaintiff, the first defendant's next visit was in 2007 and not in 2011, as contended by him; further, as per the agreement, the next time the first defendant visited Chennai, the sale deed would be executed; the plaintiff has not offered any explanation as to what happened between 2007 and 2011; hence, the suit is barred by limitation; furthermore, even assuming for a moment that the case of the plaintiff is true as is required under Order VII Rule 11, CPC, at paragraph no.18 of the plaint, he claims that the time was extended only in 2010, whereas, the extension of time must occur before the expiry of three years and not later and on this score as well, the suit must fail. In support of this contention, the learned counsel for the second respondent/second defendant relied upon a judgment of the Delhi High Court in T.Muralidhar vs. P.V.R.Murthy [RFA O.S. No.115/2014], wherein, it has been held as under:

"... It is well settled that specific performance would not be granted if the agreement suffers from some deficiency which makes it invalid or unenforceable. Certainly, the Court cannot presume the terms of agreement and direct enforcement thereof."

22 The learned counsel for the second respondent/second defendant raised a legal submission that as per Section 19(b) of the Specific Relief Act, there should be a specific averment in the plaint that the second defendant was aware of the agreement entered into between the plaintiff and the first defendant and knowing fully well about the sale agreement dated 13.03.2006, the second defendant had purchased the property and therefore, he is not a bona fide purchaser; but, in the instant case, it is pleaded in the plaint that the plaintiff's brother, viz., B. Prasad, who is living at Kolathur, after coming to know about the agreement for sale in favour of the plaintiff, with a mala fide and evil intention, spoiled the mind of the first defendant and had registered a sham and nominal sale deed without paying the amount; but, this pleading is not sufficient for the purpose of Section 19 of the Specific Relief Act; it is the duty of the plaintiff to state that the second defendant was aware of the prior agreement and in spite of knowledge of the prior agreement, the second defendant had purchased the property, the second defendant has not purchased the property for value and he is not a bona fide purchaser; but, none of these aspects is found in the plaint; in fact, there are no pleadings at all qua the second defendant. In support of this contention, the learned counsel for the second respondent/second defendant relied upon the judgment in Hansa V. Gandhi vs. Deep Shankar Roy [(2013) 12 SCC 776], wherein, it has been held as under:

"22. As no averment was made by the plaintiffs in their plaints that the subsequent buyers were not bona fide purchasers for consideration, the subsequent buyers could not have adduced any evidence to show that they were bona fide purchasers for consideration. Had such a plea been raised by the plaintiffs in their pleadings, the subsequent buyers could have adduced necessary evidence to prove their cases. In such cases, normally the burden of proof would lie on the plaintiffs unless there is a registered document so as to raise a presumption that the subsequent buyers had knowledge with regard to the earlier transaction. Such a burden of proof was not discharged by the plaintiffs and therefore, we are also of the view that the subsequent buyers were bona fide buyers for consideration." (emphasis supplied)

and also the judgment of this Court in Sanga Thevar vs. Thanckodi Ammal and others [AIR 1954 Madras 116], the view taken wherein, was affirmed by this Court in K. Rajendran vs. K.Chinnappa Gounder and another [A.S. No.857 of 2003]. Applying the dictum laid down in the aforesaid judgments, according to the learned counsel for the second respondent/second defendant, the rejection of plaint by the Trial Court deserves to be upheld.

23 As a riposte to the arguments advance by the learned counsel for the second respondent/second defendant, the learned Senior Counsel appearing for the appellants/plaintiff submitted that there is no plea in the interlocutory application filed by the second defendant to the effect that the second defendant was a bona fide purchaser for value without notice of the original contract and there is only a plea to the effect that the second defendant had paid a valid consideration and that he was unaware of the sale agreement dated 13.03.2006; in the interlocutory application, it has been merely stated that the second defendant, along with the first defendant, went to the property and the plaintiff never told the first defendant about the agreement.

24 Relying upon Section 19(b) of the Specific Relief Act and Section 3 of the Transfer of Property Act, the learned Senior Counsel appearing for the appellants/plaintiff submitted that the burden to prove that the purchaser in question is a bona fide purchaser for value without notice of prior agreement is on the purchaser; in the instant case, it is for the purchaser, viz., the second defendant to prove that he has purchased the suit property for a valuable consideration, he has paid the money to his vendor in good faith, he had no notice of the earlier contract and he had made necessary enquiries before purchasing the suit property; but, in this case, no evidence is placed before the Court to show that the second defendant had

paid a valid consideration to the first defendant, that he had made any enquiry relating to the property before purchase of the same; therefore, the burden is only on the part of the purchaser, viz., the second defendant, to prove that he is a bona fide purchaser for value without notice of the prior agreement and it is not for the prior agreement holder to establish that the subsequent purchaser has purchased the property knowing fully well about the existence of the prior agreement. In support of this contention, the learned Senior Counsel relied on the judgments in R.K.Mohammed Ubaidullah and others vs. Hajee C.Abdul Wahab (dead) by LRs and others [(2000) 6 SCC 402], Ram Niwas (dead) through LRs vs. Smt. Bano and others [AIR 2000 SC 2921], Bhup Narain Singh vs. Gokul Chand Mahton and others [AIR 1934 PC 68], Veeramalai Vanniar (dead) and others vs. Thadikara Vanniar and others [1981 LW 90], Bole Naidu vs. N.Kothandarama Pillai and others [1987 100 LW 750 (Mad)], B. Nemi Chand Jain and another vs. G. Ravindran and 4 others [2010 (2) CTC 751] and D. Kamalavathi vs. P.Balasundaram (deceased) and others [2011-1-LW 940].

25 We have given our careful and anxious consideration to the rival submissions.

26 Albeit many a contention have been put forth on either side with regard to the plaint averments and also based on Section 19(b) of the Specific Relief Act, the moot question which requires to be decided by us is as to whether the second defendant has made out a case under Order VII Rule 11, CPC, to reject the plaint.

27 It is the first submission of the learned counsel for the second respondent/second defendant that the sale agreement dated 13.03.2006 does not carry with it an essential feature of a sale agreement since it has not been stated therein that the offer made by the first defendant has been accepted by the plaintiff and as such, no cause of action has arisen for the plaintiff to maintain the suit as against the second defendant. But, as contended by the learned Senior Counsel appearing for the appellants/plaintiff, it is for the first defendant to say that the offer made by her was not accepted by the plaintiff. But, the first defendant has not chosen to appear before the Trial Court. In such view of the matter, we are of the considered opinion that non reflection of the plaintiff's acceptance of the offer made by the first defendant, in the sale agreement, cannot serve as a ground for rejection of the plaint, at the threshold. Further, it is worth pointing out that, at paragraph no.8 of the plaint, it has been clearly stated as under:

"8. The plaintiff was always ready and willing to perform his part of the contract. When the plaintiff's son and the son-in-law of the first defendant along

with his wife, the daughter of the first defendant along with his family members, visited the first defendant at Singapore in September 2010, the first defendant promised that she was planning to visit India (Chennai) in early 2011 and at that time, the 1st defendant would receive the amount in India"

The above averments at paragraph no.8 of the plaint are sufficient to come to a conclusion that, prima facie, there was acceptance on the part of the plaintiff to maintain the suit as against the defendants. However, it is also pertinent to point out at this juncture that the genuineness of the said averments can be gone into only during the course of trial and as observed earlier, merely because, in the sale agreement, it has not been stated that the offer was accepted by the plaintiff, the plaint cannot be thrown away. Secondly, the issue as to whether there is acceptance of offer or not, can be looked into from other attendant circumstances also. Therefore, necessarily this issue has to be decided only during the course of trial.

28 Another submission of the learned counsel for the second respondent/second defendant is that the suit is barred by limitation. Under Section 54 of the Specific Relief Act, if no date is fixed in the sale agreement, the suit has to be filed within three years from the date on which the plaintiff has knowledge of refusal of performance. In the instant case, according to the plaintiff, he came to know about the sale executed in favour of the second defendant only on 24.02.2011 when the officials from the Registration Department visited the property. Thus, according to the plaintiff, the date on which he came to know of refusal of performance is 24.02.2011 and he had filed the suit within the limitation period of three years from the said date.

29 But, according to the second defendant, as per the plaint averment, in 2006, the first defendant assured that she would execute the sale deed during her next visit to Chennai, but, during her visit in 2007, she did not execute the sale deed; hence, the suit ought to have been filed by 2010, i.e., three years from 2007.

30 On a perusal of the plaint, it is seen that the plaintiff has averred that the first defendant came to India in 2011 and stayed in her other brother's house without the knowledge of the plaintiff and had executed the sale deed in favour of the second defendant. Further, the learned Senior Counsel also has denied that the first defendant came to India in 2007. Thus, when the visit of the first defendant to India in 2007 is a disputed question of fact, the issue of limitation can be best decided only by the Trial Court during the course of trial. Looking in that perspective as well, the rejection of the plaint by the Trial Court is not legally sustainable, because, when there is a disputed question of fact qua

limitation, the plaint cannot be rejected without appreciating the evidence let in on either side.

31 Yet another submission of the learned counsel for the second defendant is that as per Section 19(b) of the Specific Relief Act, there should be a pleading in the plaint to the effect that the second defendant was aware of the prior agreement and that, in spite of the same, he has purchased the property from the first defendant, the second defendant has not purchased the property for value and he is not a bona fide purchaser; but, the plaint contains none of these aspects.

32 But, according to the plaintiff, it is for the purchaser, viz., the second defendant to prove that he is a bona fide purchaser for value without notice of the prior agreement. In this regard, the learned Senior Counsel has invited the attention of this Court to Section 19(b) of the Specific Relief Act and Section 3 of the Transfer of Property Act.

33 To appreciate the contention of the learned Senior Counsel, it may be apposite to extract Section 19(b) of the Specific Relief Act and Section 3 of the Transfer of Property Act and Explanation II, thereof, as under:

Section 19 of the Specific Relief Act:

19. Relief against parties and persons claiming under them by subsequent title:

Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against:

b any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract.

Section 3 of the Transfer of Property Act:

"A person is said to have notice of a fact" when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation II

Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession

thereof.”

34 Albeit by relying upon the aforesaid two provisions, extensive arguments were advanced, this Court has to see whether on the basis of Section 19(b) of the Specific Relief Act, the Trial Court is correct in rejecting the plaint at the threshold.

35 In our considered opinion, Section 19(b), *ibid*, cannot serve as a ground to reject the plaint at the threshold and the issue as to whether the property was purchased by the second defendant in good faith or not, can be adjudicated upon, only after appreciation of evidence and it is not proper for the Trial Court to reject the plaint before that stage. Further, we are of the considered opinion that if interpretation of any of the provisions is involved, the same can be urged only after the completion of full trial and it cannot serve as a ground for rejection of the plaint. In this regard, useful reference could be made to the judgment in *R.K.Mohammed Ubaidullah (supra)*, wherein, it was held as under:

“14. Section 19 of the Specific Relief Act, 1963, to the extent it is relevant, reads:

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) – (e) ***”

As can be seen from Sections 19(a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto; and (b) any person claiming under him by a title arising subsequent to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code

emphasises due care and attention in relation to good faith. In the General Clauses Act emphasis is laid on honesty."

36 In the light of the aforesaid judgment of the Supreme Court, we are of the considered opinion that no case has been made out under Order VII Rule 11 CPC by the second defendant seeking rejection of plaint. Further, the stand of the second defendant that the sale agreement in question has been concocted for the purpose of the suit cannot be decided at this stage, inasmuch as even the genuineness or otherwise of the sale agreement can be decided only during the course of trial.

Ex consequenti, the judgment and decree dated 22.12.2011 passed by the Trial Court in O.S. No.4121 of 2011 are set aside and this appeal suit stands allowed. No costs. Connected M.P. and C.M.P. are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1 The VII Additional Judge
The City Civil Court
Chennai

+1 Ccs to Mr. S. Baskaran, Advocate sr 21810

+1 CC to Mr. N. Elayaraja, Advocate sr 22004

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A.S. No.783 of 2012

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