IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :**29.11.2017**

JUDGMENT PRONOUNCED ON **: 12.12.2017**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.960 of 2007

M/s.Sak Apparels,
Rep by its Partner, Mr.Deepak Ramchand
Having office at Dr.K.S.P.Towers,
No.30, Sri Ayyappa Nagar,
Chinmaya Nagar Main Road, Chennai 600 092. ... Plaintiff

Vs

1. Madras Management Association
   Rep. By its Power of Attorney Agent,
   Mr.R.Raghunathan,
   No.8 Krishnasamy Iyer Avenue,
   Mylapore, Chennai 600 004.

2. B.Saktheeswaran

3. Mr.Rajan Babu

4. Mrs.Hemalatha ... Defendants

Defendants 2 to 4 impleaded as per order
dated 28.09.2010 in Appl No.6940/2009 and
in Appl.No.5899/2010 dated 27.10.2010

Amended as per order dated 04.01.2012
in Appl. No.18/2012

Prayer : Plaint filed under Order VII Rule 1 of the Code of Civil Procedure, read with Order IV Rule 1 of O.S.Rules, praying for the following judgment and decree:-

(a) directing the defendant herein to execute and register the Sale Deed or Deeds in favour of the Plaintiff free from encumbrance on the date to be fixed by this Hon'ble High Court, in default the Assistant Registrar (O.S.), High Court of Judicature at Madras, to execute the said sale deed(s) in respect of the plaint schedule mentioned property in favour of the plaintiff and or his nominee or nominees consequently deliver vacant possession as per Agreements dated 21.05.2007 and 20.07.2007 or in the alternate direct the defendant herein to refund the advance sale consideration of Rs.25,00,000/- together with interest at the rate of 18% per annum till the date of realization;

(b) Granting a permanent injunction restraining the defendant, his men, agents, servants, or anybody claiming right either under or through him in any manner alienating or encumbering the suit property in any manner in favour of any third parties;

(c) for the cost of the suit.

For Plaintiff : Mr.K.V.Babu

For Defendants : Mr.Arumugarajan for D2
Ms. S.P.Arthi for D3 & D4

J U D G M E N T

This suit is laid for specific performance of an agreement of sale entered into between the plaintiff and the first defendant on 21.05.2007. According to the plaintiff, the first defendant, represented by its Power of Attorney, had offered to sell the suit property for a consideration of Rs.84,00,000/- and on the same day namely 21.05.2007, an advance of Rs.25,00,000/- was paid by the plaintiff. As per the agreement, 60 days was fixed for performance of the agreement. According to the plaintiff, the time fixed is subject to the eviction of the tenant who was in occupation of the suit property and handing over of vacant possession. On 13.07.2007, the plaintiff sent a letter seeking eviction of the tenant and called upon the first defendant to execute the sale deed as per the agreement. Since, the first defendant was unable to evict the tenant within the time prescribed and time prescribed was to expire, shortly an extension agreement was entered into between the parties on 20.07.2007 in and by which it was agreed that the tenant would vacate the premises by 30.09.2007 and registration of the sale deed shall be completed within 15 days there from. Except the said extension all other clauses of the agreement dated 21.05.2007 were reaffirmed by the supplementary agreement dated 20.07.2007. Since the first defendant did not come forward to execute the sale deed even after 30.09.2007, the plaintiff had issued a telegraphic notice, demanding execution of sale deed on 09.10.2007 and had followed it up with the present suit dated 22.10.2007.

2. Upon service of summons, the first defendant appeared and filed a written statement contending that it had already sold the suit property to a third party. The first defendant would also further contend that the sale deed has to be completed within 15 days from the date of the tenant handing over the possession or within 60 days from the date of the agreement whichever is later. Relying upon the said Clause, the first defendant would contend that the plaintiff has lost his right to seek specific performance of the agreement. The execution of the agreement was dated 21.05.2007, the supplementary agreement was dated 20.07.2007 wherein the receipt of advance of Rs.25,00,000/- was also admitted. The first defendant would further claim that the sale made by the first defendant in favour of one B.Saktheeswaran on 07.09.2007 was under the instructions of the plaintiff.

3. Upon such written statement being filed by the 1st defendant, the plaintiff took steps to implead the defendants 2, 3 and 4 in the suit. The second defendant is a purchaser from the first defendant under a sale deed dated 07.09.2007. It appears that the second defendant had in turn sold the property to defendants 3 and 4 on 23.07.2008. In view of the said

two sales, the plaintiff took steps to implead the purchasers in Application No.6490 of 2009 and the said application having been allowed the defendants 2, 3 and 4 were impleaded as parties to the suit. The plaint was amended by including paragraph 7(a) of the plaint.

4. The plaintiff would contend that the sale deeds dated 07.09.2007 and 23.07.2008 are not binding on it. The prayers for declaration that the sale deeds referred to supra are not binding on the plaintiff were also included in the suit. The plaintiff also claimed a sum of Rs.25,00,000/- towards damages.

5. The second defendant filed a written statement contending that he is a *bona fide* purchaser of the property by way of sale deed dated 07.09.2007. According to the second defendant, he was not aware of the suit agreement and as such he is a *bona fide* purchaser for value without notice of the subsisting agreement of sale.

6. The defendants 3 and 4 filed a separate written statement claiming that they are also *bona fide* purchasers for value and therefore the plaintiff would not be entitled to the relief for specific performance.

7. On the above pleadings the following issues were framed by this Court:

1. *Whether the plaintiff is entitled to the relief of specific performance of the agreements dated 21.05.2007 and 20.07.2007?*
2. *Whether the suit filed by the plaintiff is maintainable as against the defendants 2 to 4? Whether the plaintiff was always ready to perform his part of contract?*
3. *Whether the plaintiff is entitled for a declaration that the sale deed executed by the first defendant in favour of the second defendant as null and void and not binding on the plaintiff?*
4. *Whether the plaintiff is entitled for a declaration that the sale deed executed by the second defendant in favour of the 3rd and 4th defendants as null and void and not binding on the plaintiff?*
5. *Whether the plaintiff is entitled for a permanent injunction?*
6. *Whether the plaintiff is entitled for damages for a sum of Rs.25,00,000/- for the loss and hardship suffered by the plaintiff?*
7. *Whether the defendants 3 and 4 are bonafide purchasers for value without notice?*
8. *Whether the plaintiff is entitled for alternative relief of return of sale consideration of Rs.25,00,000/- together with interest at 18% p.a. as sought for in the case of refusal of main relief?*
9. *To what relief?*

The issues framed are re-cast as follows::

1. *Whether the suit is maintainable in view of Section 69 of the Indian Partnership Act?*
2. *Whether the plaintiff is entitled to the reliefs of declaration that the*

sale deed executed by the first defendant in favour of the second defendant on 07.09.2007 and the sale deed executed by the second defendant in favour of the defendants 3 and 4 on 23.07.2008 are not binding on the plaintiff?

3. *Whether the plaintiff is entitled to a relief of specific performance of the agreements dated 25.01.2007 and 20.07.2007 and the plaintiff is ready and willing to perform its part of the contract In terms of Section 16(c) of the Specific Relief Act?*
4. *Whether the plaintiff is entitled for alternative relief of advance?*
5. *Whether the plaintiff is entitled to the relief of damages?*
6. *Whether the defendants 2, 3 and 4 are bona fide purchasers for value without notice of the subsisting agreement of sale between the plaintiff and the first defendant?*
7. *To what other reliefs and performance are entitled to?*

8. The first defendant did not choose to file any additional written statement after the amendment of the plaint. Though the first defendant entered appearance and filed a written statement, it did not let in evidence and did not take part in the trial of the suit thereafter.

9. I have heard Mr.K.V.Babu, learned counsel appearing for the plaintiff, Mr.Arumugarajan, learned counsel appearing for the second defendant and Ms.S.P.Arthi, learned counsel appearing for the defendants 3 and 4.

Issue No.1:

10. The first issue has been framed on the premise that the plaintiff is an unregistered firm. During the course of trial, the plaintiff has produced the Certificate of Registration of Firm issued by the Registrar of Firms on 03.05.2000 to show that the plaintiff is in fact a registered Firm. Therefore this issue is answered in favour of the plaintiff to the effect that the suit filed by the plaintiff is not hit by Section 69 of the Indian Partnership Act.

Issue No.3:

11. The factum of execution of the agreement and the receipt of advance are admitted by the first defendant. The first defendant would in defence plead that the execution of the sale deed was not dependent on the eviction of the tenant. It would also rely upon the default clause, viz. Clause 4 of the agreement dated 21.05.2007 which provides for refund of the sale advance with 24% interest in the event of the vendor being unable to evict the tenant within a stipulated time. Therefore, according to the first defendant, the plaintiff is not entitled to the relief of specific performance, and he can only sue for the alternate relief of refund of advance. The first defendant would also take a plea that the sale in favour of the second defendant was made as per the directions of the plaintiff, which the plaintiff would vehemently deny. The supplementary agreement is also admitted, it

very clearly states that the time for evicting the tenant/getting the vacant possession of the property is extended up to 30.09.2007 and the sale deed is to be executed within 15 days from the date of such eviction. The agreement dated 21.05.2007 would also recite that the parties are entitled to specific performance of the agreement on the mutual obligations of the parties. The plaintiff had in fact demanded performance on 13.07.2007 indicating that it is ready to pay the balance amount and take the sale deed. The receipt of this letter by the first defendant is not in dispute as the same is acknowledged by the first defendant. It is only after the receipt of the said letter, the supplementary agreement was entered into on 20.07.2007. As per the supplementary agreement, the first defendant is required to vacate the tenant by 30.09.2007 and execute a sale deed within 15 days thereafter. Within the period of said 15 days, viz., 10.10.2007, the plaintiff has issued a telegraphic notice seeking execution of the sale deed. The suit has been filed on 22.10.2007.

12. After the filing of the suit and after passing of the interim orders by this Court, the Power of Attorney of the first defendant had sent a letter on 01.11.2007, which is marked as Ex.P7. In the said letter, the power agent of first defendant would claim that the plaintiff was not ready and willing to perform his part of the contract. Though, the first defendant had sold the property to the second defendant on 07.09.2007, the Power of Attorney Agent of the first defendant does not disclose the said sale in the

letter dated 01.11.2007 marked as Ex.P7. The plaintiff would claim that the second defendant is not the nominee of the plaintiff, the second defendant does not also claim that he is the nominee of the plaintiff. All that the second defendant would plead is that he is a *bona fide* purchaser for value without notice of the agreement of the sale. The readiness and willingness of the plaintiff is not questioned by the second defendant or the defendants 3 and 4. The plaintiff has produced documents in the form of Bank Pass Book for the period from 01.05.2007 to 31.10.2007. From the volume of transactions found in the said document, viz. Bank Pass Book it is seen that the plaintiff was possessed of the ability to raise funds. The Income Tax returns of the plaintiff have been filed as Ex.P14. It is seen from the Income Tax returns that the Gross Profit of the plaintiff firm as on 31.03.2008 is about Rs.62,61,764/- and the total turnover is about Rs.2,38,27,292/-. Thus, it is seen that the plaintiff was possessed of funds for payment of the balance of sale consideration of Rs.59,00,000/-, and it was also ready and willing to perform their part of the contract.

13. P.W.1, who is the partner of the plaintiff Firm had deposed that the plaintiff was always ready and willing to perform its part of the contract. The evidence regarding readiness and willingness on the part of the plaintiff has not been discredited in Cross-examination. Therefore, I conclude that the plaintiff was ready and willing to perform his part of the

contract and it is entitled to seek specific performance of the contract. Though, a plea is taken by the first defendant that in view of the Clause 4 of the agreement of sale dated 21.05.2007, the plaintiff cannot seek specific performance, but it is only entitled to refund of advance, the said plea cannot be countenanced in view of the specific recital in Ex.P3, the agreement of sale, wherein, it is clearly stated that the parties would be entitled to specific performance of the agreement in the event of the failure on the part of any of the parties. I therefore, conclude that the plaintiff is entitled to seek specific performance of the agreements of sale dated 21.05.2007 and 20.07.2007.

Issue Nos.2 and 6:

14. The sum and substance of the contention of the defendants 2, 3 and 4 is that they are *bona fide* purchasers for value without notice of the subsisting agreement and they are entitled for protection under Section 19(b) of the Specific Relief Act. On this Mr.K.V.Babu, learned counsel appearing for the plaintiff would contend that the second defendant cannot be said to be a *bona fide* purchaser for value without notice of the subsisting agreement, in view of the fact that the first defendant had taken a plea that the second defendant is the nominee of the plaintiff. The learned counsel would point out that the said plea of the first defendant is nothing but false. Though the first defendant would claim that the sale deed

dated 07.09.2007 was executed by the plaintiff in favour of the second defendant, pursuant to the directions of the plaintiff, the first defendant has not entered into the witness box to prove the same. As rightly contended by the learned counsel for the second defendant, the fact that the Power of Attorney of Agent of the first defendant had written the letter under Ex.P7 on 01.11.2007, after receipt of notice in the suit and it is not claimed by the Power of Attorney Agent that the sale deed executed by the first defendant in favour of the second defendant on 07.09.2007 was pursuant to the direction of the plaintiff in the said letter. It cannot be presumed that the statement in defence made by the first defendant is true and it will bind the second defendant also in order to impute knowledge of the agreement to the second defendant.

15. P.W.1 in his proof affidavit has also specifically stated that he had not instructed the first defendant to execute the sale deed in favour of the second defendant. The sale deed executed by the first defendant in favour of the second defendant has been produced as Ex.P8. A perusal of the said sale deed would show that that there is no recital to the effect that the same is being executed pursuant to the suit agreement dated 21.05.2007. Therefore, it is clear that the plea of the first defendant that the sale deed dated 07.09.2007 executed by the first defendant in favour of the second defendant was as per the directions of the plaintiff is a false plea

and the same does not deserve any consideration by this Court. In order to seek a declaration that the sale deeds executed by the first defendant in favour of the second defendant on 07.09.2007 and the further sale by the second defendant in favour of defendants 3 and 4 on 23.07.2008 as void, it should be shown that the second defendant is not a *bona fide* purchaser for value without notice of the subsisting contract. The plaintiff who had amended the plaint after the filing of the written statement by the first defendant disclosing the sales has not, in the plaint, averred that the second defendant or the defendants 3 and 4 were aware of the subsisting agreement of sale. As rightly pointed out by Ms. S.P.Arthi, learned counsel appearing for the defendants 3 and 4, the very pleading in paragraph No.7 (a) of the plaint is to the effect that the defendants 2, 3 and 4 were not aware of the subsisting agreement. The plaintiff has in the plaint stated as follows:

> "*[7][a] The plaintiff further submits that the first defendant herein has deliberately sold the property and which resulted in the present plaintiff applying for necessary Encumbrance Certificate and had found out to his utter shock and dismay the* ***first defendant herein has sold the Suit Schedule mentioned property, pending the agreement for sale by suppressing the same and also having received a sum of Rs.25,00,000/- as advance to and in favour of the second defendant herein by a registered sale deed dated 01/09/2007****, registered as document no.946 of 2007 with Joint*

Sub Registrar's Office Thousandlights, Chennai. Furthermore, the said second defendant also has dealt with the property and has sold the same to the defendants 3 and 4 herein by a registered sale deed on 23.07.2008 and the same has been registered as document No.669 of 2008. The plaintiff immediately caused a legal notice through his Advocate on 03.03.2009 to the defendants 3 and 4. The said defendants 3 and 4 herein in reply to the notice claiming ownership over the property."

16. Of course in paragraph 7 (b), the plaintiff has stated that the defendants 3 and 4 are not *bona fide* purchasers for value and the document only has been created deliberately to defeat the rights of the plaintiff. In the proof affidavit of P.W.1 also the said averments contained in paragraph 7 (a) and (b) of the plaint are repeated. The plaintiff has come forward with the specific case that the first defendant had sold the property to the second defendant suppressing the existence of the suit agreement. The learned counsel for the plaintiff would however attempt to take shelter under the plea made by the first defendant that the sale in favour of the second defendant on 07.09.2007 was made at the behest of the plaintiff. I have already found that such plea is contrary to the documentary evidence and hence the same cannot accepted. The agreements in question, viz. the agreement dated 21.05.2007 and the supplementary agreement dated 20.07.2007 both are unregistered instruments. Therefore, unless it is

brought out by tangible evidence that the second defendant, who is the subsequent purchaser, was aware of the earlier, subsisting, agreement of sale, the plaintiff cannot seek the relief of declaration that the sale deed executed by the first defendant in favour of the second defendant is null and void or not binding on him. The plaintiff, as P.W.1, would admit that Ex.P8 sale deed dated 07.09.2007 was executed much before the filing of the suit and Ex.P9 dated 23.07.2008 was executed before the filing of the application for impleading defendants 2 to 4. P.W.1 would further depose that he came to know about the sale in favour of defendants 3 and 4 only subsequent to the filing of the suit. It is also admitted by the plaintiff as P.W.1 in Cross-examination that he had stated in his proof affidavit that the first defendant is negotiating to sell suit schedule property with 3rd parties by suppressing the agreement of sale. He would go on to depose that he is seeking a declaration that the sale deeds dated 07.09.2007 and 23.07.2008 are *sham* and nominal only on the ground that the plaintiff had obtained an order of injunction restraining the first defendant from alienating the property. Therefore, there is nothing in evidence to suggest that either the second defendant or defendants 3 and 4 have knowledge of the suit sale agreement prior to or at the time of purchase of the property.

17. Mr.K.V.Babu, learned counsel appearing for the plaintiff would contend that defendants 3 and 4 being purchasers pending the suit

cannot raise the defence of being bona fide purchaser for value without notice. Though the learned counsel is right in his submissions that defendants 3 and 4 cannot claim the protection under Section 19(b) of the Specific Relief Act, the second defendant being the purchaser prior to the suit would entitle to claim the said protection.

18. The Division Bench of this Court in ***Arunachala Thevar And Ors. vs Govindarajan Chettiar And Ors.*** Reported in ***1977 (2) MLJ 431***, has considered the claim of a subsequent purchaser as a *bona fide* purchaser for value without notice of the contract after considering the entire case law on point. The Division Bench had observed as follows:

> *"Clause (b) of Section 19 requires four elements to be proved to successfully claim the benefit of the exception, viz.,*
>
> *1. that the transfer is for value ;*
>
> *2. that the consideration has been paid ;*
>
> *3. that the subsequent transferee has taken the transfer in good faith; and*
>
> *4. that both the purchase and the payment of the consideration had been made without notice of the prior contract."*

The Division Bench has further observed as follows:

> *"13.The sum and substance of the above cited decisions is to the effect that a transferee should have paid the entire consideration money to the owner before he was put*

on notice of the prior agreement of sale, that such payment of consideration need not be in money only, but may be either in money or money's worth or may be by way of some adjustment, but there must be actual payment or adjustment and not merely a promise to pay or a mere agreement for adjustment.....”

The Division Bench also sounded a note of caution and observed as follows:

“*.....However, we make it clear that no hard and fast rule can be laid down regarding the ambulatory nature of the burden of proof in cases of this type, which is initially cast on the transferee, and each case as it arises must be decided according to its own peculiar facts, circumstances and probabilities.....”*

19. This dictum of Division Bench was followed by another Division Bench of this Court in ***B.Nemi Chand Jain and others vs G.Ravindran and others*** reported in ***2010 (2) CTC 751.*** While reiterating the General Principles on the applicability of the Section 19, the Division Bench observed as follows:

“*The legal presumption of knowledge or notice arises from:*

(a) Wilful abstention from an enquiry or search;

(b) Gross negligence;

(c) Registration, omission to search the register kept under the Registration Act, may amount to gross negligence so as to

attract the consequences which result from notice;

(d) Actual possession; and

(e) Notice to an agent. "

1. In ***P.Lakshmi Ammal v. S.Lakshmi Ammal and others*** reported in ***1990 (2) MLJ 192***, this Court had after referring to ***Arunachala Thevar*** *case cited supra*, has extracted the following portion of the Judgment of the Division Bench.

2.

"The onus of proof lies upon the party speaking to defeat the prior contract, to adduce prima facie evidence that he is a bona fide transferee for value without notice. ***But, the burden is light and he may discharge it by merely denying the factum of notice on oath. In any case, very little evidence is required on his part to prove this fact which is negative.****"*

21. The second defendant, as D.W.1 has filed a proof affidavit, wherein he specifically stated that he is a *bona fide* purchaser of the suit property even before filing the suit. Though, he has been Cross-examined at length nothing has been brought out to impute knowledge of the agreement between the plaintiff and the first defendant to D.W.1. Mr.K.V.Babu, learned counsel appearing for the plaintiff would contend that though he had stated that he had approached the Power Agent of the first

defendant after he came to know that the property is available for sale through paper publication but he has not chosen to produce the said publication. He would also further contend that the sale consideration under Ex.P8 sale deed is less than the guideline value and therefore, the second defendant cannot be said to be a *bona fide* purchaser for value without notice of the agreement.

22. No doubt, the sale consideration paid under Ex.P8 is Rs.65,00,000/- which is less than the price agreed under Ex.P3 agreement of sale between the plaintiff and first defendant. But it should be borne in mind the property was in occupation of the tenant and the second defendant took the sale deed subject to the tenancy and the tenant had subsequently attorned it to the second defendant. Be that as it may, the plaintiff cannot contend that because the sale consideration is lower than the agreed price under Ex.P3, the transaction is not a *bona fide* transaction. As pointed out by the Division Bench, the burden of proof on the second defendant is very light and once the second defendant states that he was not aware of the subsisting agreement of sale, the burden shifts to the plaintiff to prove that the sale was not a *bona fide* transaction and the same was not supported by consideration. I must point out that the plaintiff has miserably failed to establish the above said requirements.

23. Mr.K.V.Babu learned counsel appearing for the plaintiff would however contend that the sale deed executed by the first defendant in favour of the second defendant though dated 07.09.2007 was actually registered only on 30.10.2007 and the endorsements therein were made only on 30.10.2007. Therefore, the learned counsel would contend that the sale deed itself was complete only upon registration i.e. 30.10.2007 and not prior to that. Hence according to the learned counsel, the second defendant cannot also be treated as a *bona fide* purchaser for value without notice of the subsisting agreement prior to the filing of the suit, since sale deed was registered only on 30.10.2007 after the filing of the suit. It is seen from Ex.P8 sale deed that it was executed on 07.09.2007 and was presented for registration on the same date. The sale deed itself was engrossed on stamp papers for Rs.20,000/-, the balance stamp duty of Rs.5,99,864/- has been paid by way of a demand draft on the same day and the same is acknowledged by the Sub Registrar. The required endorsements under Section 52 of the Indian Stamp Act, regarding presentation of the document before the Sub Registrar, payment of the registration charges and the process of execution as well as identification of the executant were all completed on 07.09.2007 and the Joint Sub Registrar, Thousand Lights, had also affixed his signature on 07.09.2007 in the said endorsements. However, the document was given a pending number as P.41 and the same was eventually registered on 30.10.2007

and document No.946 of 2007 was assigned on 30.10.2007. Mr.K.V.Babu, learned counsel appearing for the plaintiff would contend that unless it is shown that the process of the registration was completed, the second defendant cannot claim title to the property and therefore, the sale having been completed only on 30.10.2007, the second defendant could also be termed only as a *lis pendens* purchaser. According to Mr.K.V.Babu, learned counsel being a *lis pendens* purchaser the second defendant would not be entitled to claim the benefits of Section 19(b) of Specific Relief Act. It is settled preposition of law that a *lis pendens* purchaser cannot claim the benefits of Section 19(b) of the Specific Relief Act, but the moot question is whether the second defendant can be termed to be a lis pendens purchaser.

24. Countering the submission of the learned counsel Mr.K.V.Babu, on the question of second defendant being *lis pendens* purchaser, Ms. S.P.Arthi, learned counsel appearing for the defendants 3 and 4 would contend that in view of Section 47 of the Registration Act, which provides that document once registered will date back to the execution of the document, the second defendant is deemed to be the owner of the property from 07.09.2007 and hence, he cannot be termed as a *lis pendens* purchaser. In support of her submission she would rely upon the judgment of the Hon'ble Supreme Court in ***Hamda Ammal vs***

Avadiappa Pathar And 3 Others, reported in ***1991 (1) SCC 715***, wherein three Judges of the Supreme Court considered the effect of the Registration of a sale deed in the light of Section 47 of the Registration Act and concluded that even though the sale deed is registered latter it will take effect from the date of execution and any attachment made between the date of execution and the date of registration cannot have a superseding effect on the sale. Mr.K.V.Babu, the learned counsel appearing for the plaintiff would however rely upon the judgment of the Hon'ble Supreme Court in ***Har Narain (Dead) by L.Rs v. Mam Chand (Dead) by L.Rs. and Ors.*** *r*eported in ***AIR 2010 SC (Supp) 78***, wherein two Judges of the Hon'ble Supreme Court had concluded that the sale is completed only upon registration and therefore, the fiction created Under Section 47 will not come into play before actual registration of the document had taken place. In the later case the Supreme Court found that if the Sale deed is registered after the filing of the suit, the purchaser under such Sale deed will not be entitled to the benefit of Section 19(b) of the Specific Relief Act. He would also rely upon the judgment of Supreme Court in ***Hiralal Agrawal etc v. Rampadarath Singh and Ors. etc.*** reported in ***AIR 1969 SC 244*** *and* ***Chandrika Singh v. Arvind Kumar Singh (dead) by Lrs. And Ors,*** reported in ***AIR 2006 SC 2199.***

25. I shall first deal with the later two cases relied upon by

Mr.K.V.Babu. Both the above cases are on the question of premption under Section 16 of the Bihar Land Reforms Act, 1950, wherein the Supreme Court, upon consideration of the provisions of Section 16 of the Bihar Land Reforms Act, as well as Section 47 of the Registration Act, concluded that a right of premption or right of re-conveyance would not accrue to the purchaser till such time the sale deed was registered. Both the above judgments turned upon a consideration of the provisions of Section 16 of the Bihar Land Reforms Act, which provided for a right of re-conveyance to a co-sharer or riot holding the land adjoining the land transferred and the said right was to be exercised within three months from the date of registration of the document of transfer. Therefore, considering the specific provisions of the said enactment, the Hon'ble Supreme Court came to the conclusion that it is the date of registration which would give a right of presumption or a right of reconveyance under the said Act. Therefore, the said two judgments are not of any assistance to decide the present controversy.

26. In ***Har Narain (Dead) by L.Rs*** case cited supra, the Hon'ble Supreme Court has pointed out that the sale is completed only upon registration of the document. In the said case, the sale having been registered after the filing of the suit, it was held that a purchaser cannot be termed as a *bona fide* purchaser for value without notice of the agreement.

It is seen from the facts narrated in the case that the agreement of sale was entered into between the appellant and the respondents on 25.05.1971. The sale deed was executed by respondent No.1 in favour of respondent Nos.2 to 6 in 02.08.1971 and the said sale deed was registered on 03.09.1971. The suit was filed on 10.08.1971, i.e. subsequent to the date of execution of the sale deed and before registration thereof. In such circumstances, the Supreme Court concluded that the sale deed in favour of the respondents 2 to 6 being registered after the suit, respondents 2 to 6 cannot be held to be entitled to the benefits of Section 19(b) of the Specific Relief Act. The date of presentation of the sale deed for registration is not available in the report. It is not known as to whether the sale deed was presented for registration prior to the filing of the suit as in the case on hand or was in fact presented for registration, after filing of the suit. Therefore, it becomes necessary to examine the provisions of the Registration Act, to find out as to when a registration can be said to have been completed.

Section 60 of the Registration Act provides that

*Section 60: **Certificate of Registration**:-*

(1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the Registering Officer shall endorse thereon a Certificate containing the word "registered" together

with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall, then, be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.

Section 60 does not lay down as to when the registration can be treated to be completed. Section 59 provides that

The Registering Officer shall affix the date and his signature to all the endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day.

Section 52 lays down duties of the Registering Officer which requires the Registering Officer to record

1. *(a) The day, hour and place of presentation and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of presenting it; and*

   (b) a receipt for such document shall be given by the Registering Officer to the person presenting the same.

Section 58 requires the Registering Officer to endorse certain particulars on every document admitted to the registration. The said Section reads as follows:

> *Section 58: Particulars to be endorsed on documents admitted to registration : -*
>
> *(1) On every document admitted to registration, other than a copy of a decree or order, or a copy, sent to a registering officer under Section 89, there shall be endorsed, from time to time, the following particulars, namely:-*
>
> *(a) the signature and addition of every person admitting the execution of the document and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;*
>
> *(aa) in the case of a document for sale of property, the signature and addition of every person admitting the claim under such document, and, if such claim has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;*
>
> *(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and*
>
> *(c) any payment of money or delivery of goods made in the presence of the Registering Officer in reference to the execution of the document and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.*
>
> *(2) If any person admitting the execution of a document refuses to endorse the same, the Registering Officer shall*

nevertheless register it, but shall at the same time endorse a note of such refusal.

27. A perusal of Ex.P8 would show that all the endorsements required under Sections 52 and 58 have been made in Ex.P8 on 07.09.2007 itself. Only the certificate of registration has been issued on 30.10.2007. Only the endorsement of the word 'registered' has been made on 30.10.2007. It is also seen from Ex.P8 that the document was subject to a reference under Section 47 and the deficit stamp duty of Rs.6,53,296/- has been paid on 27.06.2008. Therefore, it is clear that the first defendant had done whatever was required of him as a vendor even on 07.09.2007. It is also seen that the document required a local inspection by the Sub Registrar and probably it is because of the delay in such local inspection, the document has been registered on 30.10.2007, as per the endorsement of the District Registrar.

28. In view of Section 47 of the Registration Act, and in view of the decision of Bench of three Judges in ***Hamda Ammal case,*** the document, once registered takes effect of the execution of the document. The document having been registered prior to the date of the suit and all endorsements required under Sections 52 and 58 of the Registration Act having been made on 07.09.2007 itself, the completion of the formality of entering the factum of registration and issuing certificate thereof under

Section 60 cannot alone have the effect of the document being rendered one which was subsequent to the filing of the suit. And therefore, I am of the considered opinion that Ex.P8, sale deed, takes effect from the date of its execution of sale deed 07.09.2007 and consequently the second defendant cannot be termed as a *lis pendens* purchaser. Once the second defendant is held to be a *bona fide* purchaser for value without notice of the prior agreement, he would automatically be entitled to protection under Section 19(b) of the Specific Relief Act. Therefore, Issue Nos.2 and 6 are answered against the plaintiff and in favour of defendants 2 to 4 to the effect that the second defendant is a *bona fide* purchaser for value without notice of the pre-existing agreement and hence the plaintiff is not entitled to the declaration that the sale deeds dated 07.09.2007 and 23.07.2008 are not binding on them.

<u>Issue No.4</u>:

29. The plaintiff has prayed for an alternative relief of the return of advance of Rs.25,00,000/- paid under Ex.P3. The first defendant has not denied the receipt of the advance of Rs.25,00,000/- as per Ex.P3. Ex.P3 provides that in the event failure on the part of the vendor to perform its part of the contract the purchaser will be entitled for refund of advance amount of Rs.25,00,000/- with interest 24% per annum. However, the plaintiff has claimed interest only at 18% per annum. In view of the fact that

the plaintiff fails in the suit solely on the ground that the defendant No.2 is a *bona fide* purchaser for value without notice of the prior agreement of sale, I conclude that the plaintiff is entitled to the relief of refund of advance with 18% interest from the date of suit till date of payment.

Issue No.5:

30. Though the plaintiff has claimed Rs.25,00,000/- towards damages, there is no evidence of any loss suffered by the plaintiff. The alternative relief prayed by the for the plaintiff for refund of the advance amount has already been granted with 18% interest. In the absence of any cogent and convincing evidence regarding the quantum of damages suffered by the plaintiff, I am constrained to reject the said claim of the plaintiff.

31. In fine the suit is dismissed insofar as it relates to the relief of specific performance, relief of permanent injunction, relief of declaration that the sale deeds dated 07.09.2007 and 23.07.2008 are null and void and not binding on the plaintiff as well as the relief of damages claimed by the plaintiff. The suit is decreed against the first defendant alone for refund of the advance of Rs.25,00,000/- with interest 18% per annum from 21.05.2007 till date of realization. The first defendant will be liable for cost of the suit for the plaintiff. The suit against defendants 2, 3 and 4 is

dismissed.

12.12.2017

Index: Yes/No
Internet: Yes/No
Speaking order/Non speaking order
jv

List of Witnesses examined on the side of the plaintiff:

PW1 – Deepak Ramchand

List of Exhibits marked on the side of the Plaintiff:

Sl. No.	***Exhibits***	***Date***	***Description of Documents***
1	Ex.P1	21.08.2012	The original resolution
2	Ex.P2	03.05.2000	The registration of the certificate of firm issued by the Registrar of Firms, Central Chennai
3	Ex.P3	21.05.2007	The original agreement
4	Ex.P4	13.07.2007	The office copy of the letter
5	Ex.P5	20.07.2007	The original supplementary agreement
6	Ex.P6	10.10.2007	The certified copy of the telegraph notice
7	Ex.P7	01.11.2007	The original letter
8	Ex.P8	07.09.2007	The certified copy of the sale deed
9	Ex.P9	23.07.2008	The certified copy of the sale deed
10	Ex.P10 series	03.03.2009	The lawyer's notice with acknowledgment cared
11	Ex.P11	06.04.2009	The original reply
12	Ex.P12	13.08.2012	The original encumbrance certificate
13	Ex.P13	-	The computer generated statement of account of the plaintiff firm
14	Ex.P14	-	The income tax returns of the plaintiff firm for the assessment year 2008 to 31.03.2012

List of Witnesses examined on the side of the Defendant:

1. DW1 - B.Saktheeswaran
2. DW2 - Rajan Babu

List of Exhibits marked on the side of the Defendant:

Sl. No.	***Exhibits***	***Date***	***Description of Documents***
1	Ex.D1	20.12.2007	The original lease agreement
2	Ex.D2	-	The extract from the permanent land register
3	Ex.D3	-	The endorsement in Ex.D1 is marked as Ex.D3
4	Ex.D4	-	The undertaking in favour of D3 and D4 is marked as Ex.D4. (Original)
5	Ex.D5	15.07.2008	The original agreement of sale
6	Ex.D6	23.07.2008	The certified copy of the sale deed
7	Ex.D7	08.12.2008	The interior work contract
8	Ex.D8 series	23.03.2009 to 03.08.2010	The original invoice (15 Nos.)
9	Ex.D9 series	-	The original invoice
10	Ex.D10	-	The certified copy of patta
11	Ex.D11	-	Water and Sewerage Tax card (original)
12	Ex.D12	-	Water and Sewerage Tax receipt (original) (5 Nos.)
13	Ex.D13	-	The photocopy of EB card
14	Ex.D14	-	The copy of demand
15	Ex.D15	-	The photocopy of passport (compared with original)

12.12.2017

jv

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

R.SUBRAMANIAN,J.

jv

Pre Delivery Judgment
C.S.No.960 of 2007

12.12.2017