

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
RESERVED ON : 03.11.2017  
PRONOUNCED ON : 20.11.2017  
CORAM  
THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.187 of 2001

Nallammal

...Appellant/Plaintiff

Vs.

Muthaya Padayachi

.... RespondentDefendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Principal District Judge Villupuram, Villupuram District dated 29.08.2000 passed in A.S.No.41 of 1998 reversing the judgment and decree of the Principal District Munsif, Thirukoilur, dated 19.9.1997 passed in O.S.No.854 of 1991

For Appellant : Mr.T.Sundaresan

For Respondent : Mr.V.Raghavachari

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JUDGMENT

This second appeal is directed against the judgment and decree dated 29.08.2000 passed in A.S.No.41 of 1998 on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 19.9.1997 passed in O.S.No.854 of 1991 on the file of the Principal District Court, Thirukoilur,

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, possession and mesne profits.

4. The case of the plaintiff, in brief, is that the suit properties originally belong to her mother Chinna Pillai Ammal, who purchased the same by virtue of a sale deed dated 13.04.1950 and thereafter, died leaving the plaintiff as her sole heir and thus, the suit properties belong to the plaintiff and being enjoyed by her and on 02.08.1982, the plaintiff entered into a sale agreement with the defendant, agreeing to sell the suit properties for Rs.2,000/- and received a sum of Rs.200/- as advance. But the defendant failed to pay the balance amount

within the time stipulated in the sale agreement and get the sale deed executed. The defendant neither paid the balance amount nor got the sale deed executed from the plaintiff and hence, the sale agreement has become time barred and therefore, the defendant has no right in the suit properties and on the other hand, unlawfully trespassed into the suit properties and therefore, the plaintiff issued a lawyer's notice on 26.06.1991, calling upon the defendant to surrender the possession and to the same, the defendant sent a reply containing false allegations and the defendant has obtained patta by making false representations to the Revenue authorities and hence, the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that it is not in dispute that the suit properties belong to the plaintiff as stated in the plaint and it is true that the plaintiff and the defendant entered into a sale agreement on 02.08.82, in respect of the suit properties for Rs.2,000/- and on the date of the sale agreement, the defendant paid Rs.200/- as advance to the plaintiff and the defendant paid the balance amount of Rs.1800/- within the time stipulated, in the presence of the witnesses on 12.08.82 and thereby took possession of the suit properties from the plaintiff and also obtained patta transferred to his name and paying kist in respect of the suit properties and though he had been requesting the plaintiff to execute the sale deed in his favour, the plaintiff had been evading the same on some pretext or other and as the plaintiff was residing in some other village, the defendant could not contact her and as the defendant persisted the plaintiff to execute the sale deed, the plaintiff demanded additional amount, for which, the defendant was not willing and therefore, the plaintiff issued a lawyer's notice, for which, the defendant sent a reply containing true facts and hence, the plaintiff has laid this false suit against him and the suit is liable to be dismissed.

6. It is found that the defendant has also laid the suit against the plaintiff in O.S.No.894/91 for specific performance of the sale agreement dated 02.08.82. It is further found that the above said two suits were jointly tried and accordingly, the common issues were framed by the trial Court in both suits for determination as follows:

1. Whether it is true that the sale agreement dated 02.08.82 has become time barred?
2. Whether it is true to state that the defendant Muthaya Padayachi has paid the balance amount of Rs.1800/- within the time stipulated in the sale agreement?

3. Whether the defendant Muthaya Padayachi is enjoying the suit properties by unlawfully encroaching into the same?

4. Whether the defendant Muthaya Padayachi has been in possession and enjoyment of the suit properties, pursuant to the sale agreement?

5. Whether the plaintiff in O.S. No. 854/91 is entitled to obtain the reliefs of declaration and possession as prayed for?

6. Whether the defendant Muthaya Padayachi is entitled to obtain the relief of specific performance as claimed in the suit O.S. No.894/91?

7. To what relief the parties are entitled to?

7. In support of the plaintiff's case PW1 has been examined and EXs. A1 to A10 were marked and on the side of the defendant DWs1 and 2 were examined and EXs. B1 to B28 were marked.

8. On a consideration of the oral and documentary evidence adduced in the suit and the submissions made, the trial Court was pleased to decree the suit laid by the plaintiff Nallammal in O.S. No. 854/91 and dismissed the suit laid by the defendant in O.S. No. 894/91. The defendant has preferred an appeal against the judgment and decree passed in O.S. No. 854/91 and the first appellate Court, on a consideration of the materials placed, was pleased to set-aside the judgment and decree of the trial Court and consequently by allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff in O.S. No.854/91. Aggrieved over the same, the plaintiff Nallammal has preferred this second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the first appellate Court has illegally exercised its jurisdiction in permitting the respondent/defendant to raise the new plea of part-performance for the first time in the appellate Court, without any pleading any evidence in the trial court and in allowing the appeal on the new ground?

2. Whether the first appellate Court has wrongly exercised its jurisdiction in allowing the respondent - defendant to have

protection under Section 53(A) of the Transfer of property Act, when his suit for specific performance in OS No.894 of 1991 is dismissed on the ground that he is not ready and willing to perform his obligations under the contract and the decree has become final?

3. Whether the Court below has committed an error of law in reversing the judgment of the trial Court, without considering the findings given by the trial Court and without setting aside the same on proper grounds?

10. It is not in dispute that the suit properties belong to the plaintiff. It is also not in dispute that the plaintiff and the defendant entered into a sale agreement, in respect of the suit properties on 02.08.1982, for a sum of Rs.2,000/-. It is also not in dispute that on the date of the sale agreement, a sum of Rs.200/- was paid as advance, to the plaintiff by the defendant. It is also not in dispute that the parties had agreed that the defendant should pay the balance amount of Rs.1800/- within 15 days from the date of sale agreement and thereby get the sale deed executed from the plaintiff as per the agreement.

11. Now, according to the plaintiff, the defendant has failed to perform his part of contract and did not pay the balance amount within the time stipulated under the agreement and hence, the sale agreement has become time barred and the defendant has no manner of right over the suit properties and hence, the plaintiff issued a notice to the defendant and to the same, the defendant sent a reply containing false allegations and further, according to the plaintiff, the defendant unlawfully trespassed into the suit properties and obtained patta by making false representations to the Revenue authorities and hence, the suit for appropriate reliefs.

12. Per contra, it is the case of the defendant that he has paid the balance amount of Rs.1,800/- to the plaintiff on 12.08.82, in the presence of the witnesses and thereby performed his part of the contract within the time stipulated under the sale agreement and thereby had been put in possession by the plaintiff and accordingly, he has been enjoying the suit properties pursuant to the sale agreement by obtaining patta and paying kist etc and though he had been requesting the plaintiff to execute the sale deed in respect of the suit properties, the plaintiff on some pretext or the other had been evading the execution of the same and on the other hand, instituted a false suit against him and hence, the defendant had also laid a suit against the plaintiff for specific performance in O.S.No. 894/91 against the plaintiff.

13. It is found that though the suit laid by the defendant for specific performance in O.S.No. 894/91 has come to be dismissed by the trial Court, as against the judgment and decree passed in the said suit, it is found that no appeal has been preferred by the defendant. At any event, it is not made clear as to, whether the attempts of the defendant to prefer an appeal against the same, ended in vain. Be that as it may, it is now seen that the judgment and decree passed in O.S.No. 894/91 by the trial Court has become final.

14. The first appellate Court has non suited the plaintiff, mainly on the footing that the defendant is entitled to obtain the benefits conferred under Section 53 A of the Transfer of Property Act, as he has performed his part of the contract pursuant to the sale agreement, dated 02.08.1982 and therefore, even though the sale agreement has become time barred, the plaintiff is not entitled to obtain the recovery of possession from the defendant, as the defendant had been put in possession of the suit properties pursuant to the sale agreement and thereby enjoying the same by obtaining patta and paying kist etc. Accordingly, the counsel for the defendant also contended that even though the defendant's remedy under the sale agreement has become time barred under the law of limitation, inasmuch as the defendant claims to be in possession of the suit properties pursuant to the sale agreement, according to him, the defendant is entitled to project his possession and therefore, it is contended that the first appellate Court is justified in dismissing the suit laid by the plaintiff and in this connection, strong reliance is placed upon the decisions reported in (2002) 3 SCC 676 (Shrimant Shamrao Suryavanshi and another Vs. Pralhad Bhairoba Suryavanshi (Dead) By LRs. and others), (2003) 7 SCC 350 (Ramesh Chand Ardawatiya Vs. Anil Panjwani) and (1989) 1 SCC 76 (Jawaharlal Wadhwa and another Vs. Haripada Chakroberty)

15. It is further contended by the defendant's counsel that inasmuch as his client is in possession of the suit properties in part performance of the contract for sale and the requirements of Section 53A of the Transfer of Property Act having been satisfied in all manners, he is entitled to protect his possession even against the true owner, namely the plaintiff.

16. Per contra, it is argued by the plaintiff's counsel that the defendant has failed to perform his part of the contract and did not pay the balance sum as agreed to, within the time stipulated in the sale agreement and further according to the plaintiff, he has not been put in possession of the suit properties pursuant to the sale agreement and on the other hand, the defendant by making false representations to the Revenue authorities and by encroaching into the suit properties, had obtained patta etc and therefore, the possession of the

defendant in respect of the suit properties cannot at all be termed as lawful and in accordance with law and hence, according to the plaintiff's counsel the defendant is not entitled to obtain the benefits provided under section 53A of Transfer of Property Act and therefore, sought for the setting aside of the judgment and decree of the first appellate Court.

17. It is found that even though the defendant has not specifically sought for the benefits conferred under Section 53A of the Transfer of Property Act in his written statement, still he would claim in the written statement that he has been put in possession of the suit properties pursuant to the sale agreement dated 02.08.1982, which has been marked as Ex.B1. A perusal of the terms of Ex.B1 would go to show that the defendant has not been put in possession of the suit properties on the date of the sale agreement. It is also not the case of the defendant that he has been placed in possession of the suit properties on the date of the sale agreement. On the other hand, according to the defendant himself, only on the payment of the balance amount of Rs.1,800/- by him on 12.08.82, he has been entrusted with the possession of the suit properties by the plaintiff. However, the very case of defendant that he had paid the balance sum of Rs.1,800/- to the plaintiff on 12.08.82, is vehemently disputed by the plaintiff. In such view of the matter, it is for the defendant to establish with acceptable proof that he has paid the balance amount to the plaintiff, as stipulated in the sale agreement and obtained lawful possession of the suit properties from the plaintiff pursuant to the sale agreement. In this connection, it is found that the following conditions are to be fulfilled by a person for taking shelter under Section 53A of the Transfer of Property Act.

- or
- (i) The contract should have been in writing signed by on behalf of the transferor;
  - (ii) The transferee should have got possession of the immovable property covered by the contract;
  - (iii) The transferee should have done some act in furtherance of the contract; and
  - (iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.

18. Therefore, it is found that a party seeking to claim the benefits provided under Section 53A of the Transfer of Property Act can succeed only if he satisfies all the conditions aforesaid. All the postulates stipulated above are sine qua non and a party cannot derive the benefits by fulfilling one or more conditions. Now, it has to be seen, whether the defendant has fulfilled the above stated requirements for getting the benefits provided under Section 53A of the Transfer of Property Act. When, as seen above, even according to the defendant's case, he has been put in possession of the suit properties only on the payment of the balance sale consideration, it is for the

defendant to establish that he has indeed paid the balance sale consideration of Rs.1,800/- to the plaintiff within time stipulated in the sale agreement. Now, the sale agreement Ex.B1 postulates, the payment of sale consideration by the defendant within 15 days from the date of the sale agreement i.e. on 02.08.1982. Now according to the defendant, on 12.08.1982, he has parted with the balance sale consideration to the plaintiff in the presence of the witnesses. If really, the defendant had paid the balance amount to the plaintiff on 12.08.82, as putforth by him, as rightly argued by the plaintiff's counsel, the defendant would have endeavoured to obtain necessary endorsement as regards the same in the sale agreement Ex.B1. However, no such endorsement seems to have been obtained by the defendant with reference to the payment of the balance sale consideration as putforth by him. Notwithstanding the same, it is further seen that the defendant has also not obtained any receipt from the plaintiff for the payment of the balance sale consideration to her on 12.08.82 as putforth by him. If really, the defendant has paid the balance amount as pleaded, even if he had failed to obtain necessary endorsement in the sale agreement, nothing prevented him to obtain a separate receipt with reference to the same. However, he has failed to obtain even a receipt from the plaintiff for the payment of the balance sale consideration. It is therefore highly doubtful, whether at all the defendant would have paid the balance amount as put forth by him. In this connection, the defendant examined as DW1, during the course of cross-examination, has admitted that at the time of parting the balance amount, he has not taken any record along with him and he had solicited the assistance of the witnesses for witnessing the payment of balance amount and he has not also obtained any receipt from the plaintiff towards the payment of balance amount and he has also testified only on apprehending that the plaintiff would deceive him, he had taken a written sale agreement from her towards the sale of properties. When defendant being such a cautious person and has taken all the efforts to get the written sale agreement in respect of the suit properties on 02.08.1982, one would have expected the same caution and approach from the defendant even at the time of the payment of the balance sale amount on 12.08.82 as putforth by him. On the other hand, he would only state that while making the payment of the balance sale consideration, he had not taken any record along with him nor obtained any receipt from the plaintiff in respect of the same and according to him, he has solicited the presence of the witnesses for the payment of the balance sale consideration. This attitude of the defendant seems to be very strange and odd and if really, the defendant had made the payment of the balance sale consideration as pleaded, as a prudent person, he would have obtained necessary endorsement from the plaintiff in the agreement or obtained necessary receipt from the plaintiff in respect of the same and also obtained necessary endorsement or

acknowledgement from the plaintiff that he had been put in possession and enjoyment of the suit properties pursuant to the sale agreement. However, the defendant had not endeavoured to adopt any such course and he would only claim that he had paid the balance amount in the presence of the witnesses and thereby, he had been put in possession of the suit properties. To buttress his above claim, the defendant has chosen to examine the alleged witnesses, who has been examined as DW2. Though DW2 also claims to be a witness to the sale agreement Ex.B1, it is seen that he is not an attester to the sale agreement Ex.B1. Be that as it may, now according to DW2, he is fully aware that whatever payment is made, necessary record should be obtained with reference to the same. If that be so, if really, the defendant had paid the balance amount to the plaintiff on 12.08.82 and if really, DW2 had witnessed the said transaction, DW2 being a man with all practical knowledge, would have advised the defendant to obtain necessary endorsement from the plaintiff in the sale deed or secure necessary receipt from the plaintiff with reference to the same. On the other hand, despite the parties having knowledge that there is every possibility of the other parties deceiving in the absence of any written record with reference to the payment of amount, neither the defendant nor DW2 has chosen to secure any endorsement or receipt from the plaintiff towards the payment of the balance sale consideration. This would only go to show that inasmuch as the defendant had not paid the balance amount to the plaintiff as put forth by him and as DW2 had also not witnessed the said transaction, it is seen that neither the defendant nor DW2 had advised the defendant to get endorsement or receipt from the plaintiff with reference to the same. Thus it is seen that for proper reasonings, the trial Court has not placed reliance on the testimony of DWs1 and 2 and rightly discarded the same.

19. Now, according to the defendant examined as DW1, he would state that the plaintiff had assured to execute the sale agreement subsequently by entrusting the possession of the suit properties. On the other hand, DW2 has deposed that the plaintiff agreed to execute the sale deed on the following date of the payment of balance sale consideration. However, it is found that the plaintiff has not chosen to execute the sale deed in favour of the defendant. Now according to the plaintiff, inasmuch as the defendant has not paid the balance amount as promised and also not performed his part of the contract within the time stipulated in the sale agreement, she has not executed the sale deed in favour of the plaintiff. If really, the defendant has paid the balance amount on 12.08.82 as put forth by him, as a prudent person, one would have expected the defendant to call upon the plaintiff to execute necessary conveyance in respect of the suit properties immediately. Even if the plaintiff had been evading the same by one way or the other, as rightly argued, nothing prevented the defendant in taking steps

in accordance with law to get executed the deed of conveyance in respect of the suit properties. On the other hand, it is found that even after the alleged payment of the balance sale consideration to the plaintiff, as pleaded by him, it is found to be strange that the defendant had not moved his little finger to get the conveyance from the plaintiff in respect of the suit properties subsequent thereto. On the other hand, it is found that for nearly 9 years thereafter, till the laying of the suit by the plaintiff for recovery of possession in O.S.No.854/91, the defendant has not staked his claim to obtain the deed of conveyance from the plaintiff in respect of the suit properties. On the other hand, he has chosen to lay the suit for specific performance only after the plaintiff has laid the suit for declaration and possession in O.S.No.854/91. With reference to the same, the defendant would contend that inasmuch as he had been put in possession of the suit properties by the plaintiff, on the payment of the balance sale consideration, he has not chosen to lay the suit against the plaintiff immediately for the relief of specific performance. If really, the defendant had paid the balance sale consideration as pleaded by him, one would have expected him to take appropriate action for obtaining the legal conveyance from the plaintiff in respect of the suit properties. On the other hand, to say that he had remained content with the entrustment of the possession of the suit properties, as such, cannot be accepted in any manner.

20. Now according to the plaintiff, she had not parted with the possession of the suit properties in favour of the defendant pursuant to the sale agreement. In the light of the above discussions, when it is found that, as rightly determined by the trial Court, the defendant has miserably failed to establish that he has paid the balance sale consideration as per the sale agreement Ex.B1, it is seen that the plaintiff would not have entrusted the possession of the suit properties to the defendant pursuant to the sale agreement. Therefore, it is rightly found by the trial Court that the defendant has not been put in possession of the suit properties pursuant to the sale agreement, as the defendant has failed to establish that he had paid the balance amount as put forth by him. Now according to the defendant examined as DW1, the plaintiff is a helpless lady in the village and therefore, it is found that taking advantage of the said situation, the defendant had unlawfully encroached into the suit properties and thereby obtained patta and paid kist etc., in respect of the suit properties. With reference to the obtainment of the patta in his favour, all that defendant would state that inasmuch as he has paid the balance sale amount pursuant to the sale agreement, on the representation of the same to the Revenue authorities, he had obtained patta from them in respect of the suit properties. However, when the fact remains that the defendant has failed to establish the payment of the balance amount as per the sale

agreement Ex.B1, as rightly put forth by the plaintiff's counsel, only on false representations to the Revenue authorities by taking advantage of the unenviable position of the plaintiff, she being a helpless lady in the village without any support, it is found that the defendant had stealthily encroached into the suit properties and by making false representations obtained patta and paying kist in respect of the suit properties. It is further found from the evidence adduced by the parties concerned, the defendant owns his other land also in the concerned patta and therefore, it is seen that it is not very clear as to whether the payment of kist made by him is for the suit properties or his own properties. Be that as it may, the obtainment of patta or the payment of kist would not confer any title as such in respect of the suit properties. Therefore, in toto, it is seen that the defendant has failed to establish the payment of the balance sale consideration to the plaintiff as per the terms of the sale agreement Ex.B1 and the defendant has also failed to establish that he has been put in possession and enjoyment of the suit properties by the plaintiff pursuant to the sale agreement.

21. In the light of the above discussions, it is found that as the essential ingredients above stated for invoking the benefits conferred under section 53A of the Transfer of property Act have not been satisfied by the defendant in any manner, it is seen that the defendant cannot resist the claim of recovery of the suit properties by the plaintiff, she being admitted title holder of the suit properties.

22. In view of the above discussions, it is found that, as rightly determined by the trial Court, the defendant has miserably failed to establish that he has performed his part of the contract i.e., payment of balance sale consideration to the plaintiff within the time stipulated in the sale agreement. It is also found that the defendant has failed to establish that he has been put in possession and enjoyment of the suit properties by the plaintiff pursuant to the sale agreement. However, it is seen that the defendant has encroached into the suit properties and by making false representations to the Revenue authorities obtained patta etc., by taking advantage of the helpless situation of the plaintiff in the village. In such view of the matter, when the defendant has failed to establish that he is entitled to invoke the benefits under section 53A of the Transfer of Property Act, as per the terms of Section 53A of the Transfer of Property Act, the transferor/plaintiff would be entitled to invoke the right of recovery of possession. The terms of Ex.B1, the sale agreement, entered into between the parties would go to show that in the event of the failure of the defendant to perform his part of contract i.e. non-payment of the balance sale consideration, the sale agreement would be rendered invalid. In such view of the matter, it is found that

Ex.B1 having been rendered invalid, on the failure of the defendant to pay the balance sale amount within time stipulated therein, it is found that whatever be the position of the parties placed under Ex.B1, the parties would get reverted back to their original position. In such view of the matter, it is found that the plaintiff being the admitted owner of the suit properties, is found to be entitled to get the recovery of possession of the same from the defendant who is none but a stranger, who had encroached the suit properties in an illegal manner.

23. In the light of the above discussions, when it is found that a contract for sale or agreement to sell does not at all create any interest or charge in the properties concerned and the persons claiming the benefits under section 53A of the Transfer of Property Act being conferred only a limited right, subject to the satisfaction of the conditions stipulated therein, it is found that on the failure of the defendant to perform his part of the contract as provided under Ex.B1, it is seen that no title would be created in favour of the defendant under the sale agreement.

24. It is further found that in so far as this case is concerned, the defendant has failed to establish that he has been put in possession and enjoyment of the suit properties pursuant to the sale agreement. However, it is the contention of the defendant that inasmuch as he has been put in possession and enjoyment of the suit properties pursuant to the sale agreement, the law of limitation would not apply to him in obtaining the relief of specific performance. However, the above argument does not merit acceptance, considering the fact, whether the parties have been put in possession of the properties concerned in part performance or otherwise, still as far as the question of limitation provided under section 54 of the Transfer of Property Act is concerned, the same would apply. In this connection, a useful reference made to the decision reported in (2015) 8 SCC 390 (Fatehji and company and another Vs. L.M.Nagpal and others).

25. Counsel for the defendant contended that merely on the fact that the defendant has not chosen to prefer any appeal against the judgment and decree passed in his suit for specific performance, that would not entitle the plaintiff to obtain possession from him inasmuch as he has satisfied all the conditions provided under Section 53A of the Transfer of Property Act. However, in the light of the above discussions, it is found that the defendant has miserably failed to establish the essential conditions stipulated for claiming the benefits under section 53A of the Transfer of Property Act.

26. As adverted above, the suit laid by the plaintiff for declaration and possession and the suit laid by the defendant for specific performance were jointly tried and accordingly, it was found that common issues was framed by the trial Court and common judgment was pronounced in both matters. The specific performance suit preferred by the defendant has been dismissed. Against the same, no appeal has been preferred by the defendant. In such view of the matter, it is found that in the light of the decision of the Apex Court reported in 2015-1-L.W.1 (Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal & others), it is found that the suits in which the common issues were framed and a common trial had been conducted, the losing party should prefer appeals in respect of all the adverse decrees founded even on partially adverse or contrary speaking judgments and the decree not assailed thereupon metamorphoses into the character of a "former suit" and the cause or rights of the parties having failed to prefer appeals against any such adverse decrees/judgments against the other parties gets permanently sealed and foreclosed since resjudicata applies against them. Therefore, it is found that the defendant having failed to prefer an appeal against the judgment and decree passed in the specific performance suit, is found to be debarred from contesting the suit laid by the plaintiff for declaration and possession on the ground of resjudicata also in the light of the above said decision of the apex Court.

27. The reasonings of the first appellate court that the defendant has expressed his readiness and willingness to pay the balance sale consideration of Rs.1,800/- once again during the first appellate court proceedings would satisfy the requirements of Section 53 A of the Transfer of Property Act cannot be accepted, when the said cause of the defendant has been found to be false and not accepted by the trial Court and further the trial Court has also held that the defendant has failed to establish his readiness and willingness to pay the balance sale consideration and not also paid the balance sale consideration as putforth by him and also not established that he had been in possession and enjoyment of the suit properties pursuant thereof. When the above said determination of the trial Court has come to a finality, the defendant having not preferred any appeal against the judgment and decree of the trial court, it is found that the first appellate court has erred in holding that the defendant has been ready and willing to perform his part of the contract merely on the statement made by the defendant during the first appellate court proceedings and as rightly argued, this attitude of the defendant at a belated stage would not establish that he has been ready and willing to perform his part of contract right from inception as contemplated under section 53 A of the Transfer of Property Act.

28. In view of the above discussions, it is found that the

first appellate Court has completely fell into error in holding that the defendant is entitled to obtain the benefits of the part performance of the contract provided under section 53A of the Transfer of Property Act despite the failure of the defendant to prove that he has paid the balance amount within time stipulated in the sale agreement and that he has been put in possession of the suit properties pursuant to the sale agreement. It is further found that the first appellate Court has wrongly exercised its jurisdiction in allowing the defendant to enjoy the benefits provided under Section 53 A of the Transfer of Property Act, when the suit for specific performance in O.S. 894/91 has come to be dismissed on the sole ground that the defendant has not been ready and willing to perform his obligations under the contract and that apart the decree passed in the said suit has become final. It is further found that the first appellate Court has committed a serious error in law, in reversing the well considered judgment and decree of the trial Court by dislodging the reasonings and conclusions of the trial Court in upholding the plaintiff case and setting aside the same without proper reasonings and conclusions. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the defendant.

29. Resultantly, the judgment and decree on the file of the Principal District Court, Villupuram, dated 29.08.2000 passed in A.S.No.41 of 1998 are set-aside and the judgment and decree of the Principal District Court, Thirukoilur, dated 19.9.1997 passed in O.S.No.854 of 1991 are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

#### Memorandum of Costs

|                                               |          |
|-----------------------------------------------|----------|
| Stamp for Vakalatnama                         | ...3.00  |
| Do used for the Memo                          | ..23.00  |
| Do.for do of the Lower Court                  | .. 2.00  |
| Do.for enclosures                             | ..2.50   |
| Value of copy Stamp paper used for enclosures | ..57.00  |
| Advocate's Fee on Rupees                      | .7394.00 |
| Batta and Postage                             | ... 8.00 |
| Translation and Printing / Typing Charges     | ...Nil   |
|                                               | -----    |
|                                               | 7489.50  |
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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

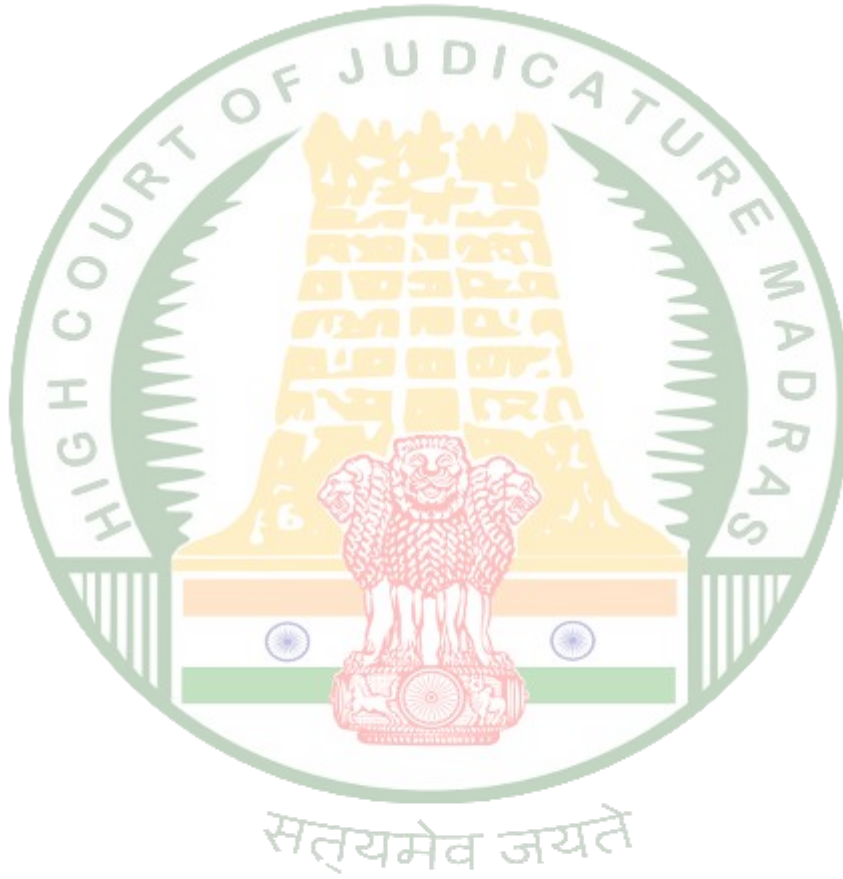
1. The Principal District Court, Villupuram.
2. The Principal District Court, Thirukoilur.

+2 ccs to Mr.T.Sundaresan advocate sr 82272

+1 cc to Mr.V.Raghavachari Advocate sr 81992

S. A.No.187 of 2001

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