

Reserved on: 03.03.2017

Pronounced on : 23.03.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.41 of 2003

Professional Management of constructions
represented by its Proprietrix

Mrs. Seeta Ramaraju

10, First Floor, 829, Anna Salai,

Chennai – 600 002

.. plaintiff

vs.

1. Estate of Irussammal

Rep. By her administer P.Anbuchezhian

50,59th Street, 10th Sector, K.K.Nagar

Chennai – 600 078

2. Estate of Alamelu

Rep. By her administer P.Anbuchezhian

50,59th Street, 10th Sector, K.K.Nagar

Chennai – 600 078.

3. Mrs.Kamatchi

4. C.Munusamy

5. Mrs. Chinnammal

6. Mrs.Govindammal
7. Radha
8. C.Krishnan
9. P.Anbuchezhian
10. S.Perumal
11. R.Dhansekaran
12. C.Shankar
13. Vijaya
14. Chitra
- 15.Valli
16. Anagammal

.. Defendants

Civil Suit filed under Order VII Rule 1 of CPC and Order IV Rule 1 of Original Side Rules praying for the following judgment and decree against the defendants.

a. Directing the defendants to specifically perform their part of the obligations arising out of the agreement of sale dated 12.01.1998 for execution of the deeds of sale in favour of the Plaintiff or her nominee or nominees in respect of the plaint Schedule-B & C properties, being part of the Schedule-A property, either in

one lot or in pieces or divided or undivided as the case may be on a day to be fixed by this Hon`ble Court on receipt of the balance payment of Rs. 8,50,000/-; and in default thereof, direct the Assistant Registrar, Original Side, High Court, Madras to execute a deed of sale or deeds of sale in faour of the plaintiff or her nominee or nominees in respect of the plaint Schedule-B & C properties either in one lot or in pieces or divided or undivided as the case may be on a day to be fixed by this Hon`ble Court on remittance of Rs. 8,50,000/= towards the balance sale consideration payable by the Plaintiff and consequently direct performance of such acts which are incidental thereto.

b. Grant a perpetual injunction, restraining

the defendants herein or their men, agents, servants or anyone claiming through them from alienating or dealing with the properties morefully described in the schedules - B & C hereunder, being part of the Schedule - A property, by way of sale, mortgage, lease, or joint development except in accordance with law.

c. Grant a mandatory injunction, directing the defendants herein to deliver all the original title deeds pertaining to the suit property to the plaintiff as mentioned in the Schedule `D` on a day to be fixed by this Hon`ble Court;

d. Grant such further or other reliefs; and

e. Costs of the suit.

For plaintiff	: Mr. R.Thiagarajan
For D1 to D9	: Mr.Veerakathiravan Senior Counsel assisted by Mrs.S.T.P.Kuilmozhi
For D10, D12 to D19	: Mrs. Chitra Sampath Senior Counsel for Mr.T.S.Baskaran
For D11	: Mr.T.Ravichandran

J U D G M E N T

The suit is filed for specific performance directing the defendants to execute the Deed of Sale in favour of the plaintiff in respect of "B" and "C" schedule properties, for permanent injunction not to alienate the suit properties and mandatory injunction directing the defendants to deliver all the original title deeds.

2. The brief facts of the case of the plaintiff are as follows:

(i) The plaintiff, who is a promoter in real estate properties is the proprietrix of Professional Management of Constructions. During the course of business, for development and promotion, she entered into an Agreement of Sale dated 12.01.1998 with defendant Nos. 1 to 8 through their Power Agent, viz., defendant Nos. 9 and 10 for purchase of land bearing unit Nos.7 and 12 to 21 along with road portions beginning from Unit No.21 on western side up to the end of property boundary, on eastern side in the part of Survey Nos.171 and 172 in Village No.4, Urapakkam, Chengalpattu Taluk, Kanchipuram District and part in Survey No.33/1, in village No.6, Nandhivaram, altogether for total sale consideration of Rs.17,00,000/-. On the date of agreement itself, a sum of Rs.5,00,000/- was paid towards advance. The plaintiff also paid another sum of Rs.3,50,000/- on 24.3.1998 towards balance sale consideration and thus, she has totally paid a sum of Rs.8,50,000/-. Time agreed for completion of the entire transaction is four months from the date of

agreement. After agreement, defendant No.9 had executed three separate Sale Deeds for rear portion of the suit property on 27.3.1998 for an extent of 42.45 cents in favour of the plaintiff.

(ii) The property registered in favour of plaintiff is located on the rear side of the main property and arrangement between the plaintiff and the defendants was that the plaint schedule "A" mentioned property should be promoted, after obtaining approval of layout/ sub division plan from the competent authority, as residential plots. The plaintiff incurred a sum of Rs.1,50,000/- towards Architect's fee, project preparation, drawings, reports, advertisements, etc., and for obtaining approval of layout/subdivision of the property.

(iii) Accordingly, the front portion of "A" schedule property was subdivided into 8 plots as shown in the plan. The plaintiff has also obtained signature of the power Agent for development and

promotion of the front portion of the property as residential flats. The three separate Sale Deeds were brought out at the first instance with a view to develop the property in the front side. The approach road was re-aligned straight with the existing front part gaining access from the old approved road of Udaya Suriyan Nagar on northern side in order to give access to the plaintiff's properties and the public park reserved earlier on the southern side. The re-aligned road measuring about 15.90 cents, which includes the major portion of "A" schedule, was duly handed over through a Gift Deed, to the Urapakkam Panchayat and registered on 20.03.1998. The essential terms of the agreement of Sale is that the defendants shall sell 100 cents on actual measurements at Site and the plaintiff shall pay the sum of Rs.17,00,000/- in full and final settlement. The duty was entrusted to defendant No.9 to measure the property with the revenue officials and offer the same to the plaintiff in accordance with law. The layout/Sub division plan prepared by the plaintiff is free from all

encumbrances.

(iv) While measuring the property at site, the plaintiff found some discrepancies with regard to measurement. Besides, she was informed about the pendency of a civil suit in O.S.No.281/93 on the file of the District Munsif, Chenglepet, filed by defendant Nos. 5 and 7 herein against the defendant Nos.6,8 and 10 and two others respectively, for partition and separate possession of the suit properties. When the plaintiff was measuring properties, one Chinnammal and Radha represented by his wife R.Susheela objected to the measurement being done and to the property being subdivided without reference to their rights, title or interest over the suit property. Therefore, the plaintiff insisted the defendants' power agent to sell the property free from all encumbrances by way of mortgage sale or *lis pendens* etc. Soon after the plaintiff came to know about the litigation, she stopped all further work on commencement of the project and suspended the booking process.

(v) There was exchange of letters between the parties, after the Agreement of Sale and after the execution of three Sale Deeds in favour of the plaintiff and her husband, from 23.04.1998 till 23.09.2002. Even though time was the essence of contract, in the agreement, the same has never been strictly adhered to, since the suit was pending and as stated above, the plaintiff had a strong apprehension that the doctrine of *lis pendens* shall apply for alienation *pendete lite*. Therefore, the plaintiff had sought for the status report from the defendants' Power agent. A detailed notice dated 16.01.2001 was sent to the defendants through Power Agent, Defendant Nos. 9 and 10. Since there has been total inaction on the part of the defendants' Power Agent and the Agreement holder, the plaintiff was constrained to send a letter on 31.12.2001 expressing readiness and willingness to complete the sale transaction. Thereafter, defendant No.9 expressed his desire to resolve the disputes

amicably. The defendants' Power Agent had written a letter on 06.7.2002 to the plaintiff stating that the legal problems have been solved and the property is free from all encumbrances.

(vi) Since the plaintiff wanted the status report of the suit in O.S.No.281 of 1993, the defendants' power agent has sent a letter dated 19.08.2002 to the plaintiff enclosing the judgment and decree passed in the aforesaid suit. In the said letter, the defendants' Power Agent also mentioned that the balance sale consideration shall be made within 15 days from the date of receipt of the said letter failing which, he threatened to cancel the Agreement for Sale without giving any further notice to the plaintiff. On receipt of the above letter, the plaintiff issued a legal notice dated 23.09.2002 to the Power Agent of the defendants wherein sought for status report as to whether any application has been filed for restoration of the suit and if so, the same is pending or not. The plaintiff also requested the

defendants to produce all the title deeds and encumbrance certificate for a period of 13 years. However, the defendants' Power Agent, without furnishing the materials called for by the plaintiff in his legal notice, started alienating the property in favour of third parties and commenced negotiations through one Ramanathan, without validly terminating the contract entered into with the plaintiff on 12.01.1998. The plaintiff has already paid part of sale consideration of Rs.8,50,000/- and has incurred total expenditure to the tune of Rs.26,00,000/-. The price that has been agreed between the parties for sale and purchase of the suit schedule A property in the year 1998 was fair, reasonable and equitable. Though the plaintiff is ready and willing to perform her part of contract even from the year 1998, the defendants are attempting to commit breach of contract. Hence, the plaintiff has filed the present suit.

3. Brief facts as stated in the written statement filed by defendant No.9, who is the Power Agent of defendant Nos.1 to 8 ,

which was adopted by defendants 10, 12 to 16, are as follows:

(i) According to the defendants, the suit is barred by limitation and this Court has no jurisdiction, as the property is situate outside the jurisdiction of this Court. The suit is also barred under Clause 12 of the Letters Patent Act. Admitting the terms of agreement and sale consideration, it is the contention of the defendants that having agreed to pay further sum of Rs.3,50,000/- on 25.02.1998 and agreed to complete the sale within a period of four months, the plaintiff failed to adhere it. Though the plaintiff has to pay the first instalment on 25.2.1998, she paid the same only on 24.3.1998. As the plaintiff failed to adhere the payment terms, the defendants have not handed over the original title deeds as stated in the agreement dated 12.01.1998 but withheld the same on the oral understanding that the same shall be handed over by the defendants to the plaintiff only upon payment of the entire sale consideration. Pursuant to the payment of Rs.3,50,000 on 24.03.1998, i.e. 50% of the sale

consideration, the defendant No.9 had executed three Sale Deeds of even date dated 27.3.1998 in favour of one Ramaraju and his wife Seetha Ramaraju for a total extent of 42.45 cents out of 100 cents agreed to be conveyed under the sale Deed on 27.3.1998.

(ii). The plaintiff did not come forward to pay the sale consideration of Rs.8,50,000/- for the remaining extent in the suit "A" schedule property. However, the plaintiff issued a letter dated 23.4.1998 raising certain disputes and differences with reference to the terms of Agreement entered on 12.01.1998 by inserting conditions, which were not mentioned in the terms of the agreement dated 12.01.1998, viz, that the completion of sale transaction was subject to the completion of construction of Culvert connecting the Udayasuriyan Nagar to GST Road. Further, she has asserted that there was a shortage of extent of land than that was mentioned in the documents. The plaintiff also came out with a new allegation that there was a dispute over the suit

"A" schedule properties and hence, unless the defendants cleared all the above deficiencies, she will not be in a position to pay the balance price and complete the transaction. She also promised to pay the balance 50% of the sale price within 90 days on completion of the Culvert.

(iii) Refuting all the above allegations, the defendant No.9 sent a letter dated 06.5.1998 granting further time for payment of balance sale consideration till 12.05.1998 and also stated in the said letter that on failure to pay the same, the agreement would stand cancelled. In spite of the above specific stand by the defendant No.9, the plaintiff was not ready to complete the sale transaction. Her intention was only to delay as long as possible in order to recoup his resources to pay the price. Again, the defendants issued a legal notice dated 04.8.1998 calling upon the plaintiff to make the payment in a week failing which the agreement would stand cancelled. In spite of the same, the

plaintiff issued a reply on 12.08.1998 reiterating her earlier stand of asserting that payment will be made by her only on compliance of her demands which were not part of the terms of agreement.

(iv) In view of the above position, the defendants were constrained to cancel the agreement dated 12.01.1998 by letter dated 27.8.1998. After termination of the above agreement on 27.8.1998, the plaintiff tried to keep alive the agreement dated 12.01.1998 by sending various correspondences and the same were periodically refuted by the defendants. On 19.06.2000, the plaintiff herself had proposed two options to the defendants either to go ahead with the sale or to refund the purchase money and take back the properties already conveyed to the plaintiff.

(v) In response to the said letter, the defendants had, in no uncertain terms by their letter dated 27.07.2000, refused to

go ahead with the sale of the suit "A" schedule property for the balance extent but agreed to refund the sale price and sought for re-transfer of lands already conveyed to the plaintiff in "A" schedule property. The plaintiff sat over the letter of the defendants dated 27.07.2000 for nearly four months before issuing a legal notice on 16.01.2001 seeking to insist upon new deficiencies, which were not required by her in her earlier correspondences, viz.,demanding undertaking letters from the defendants 1 to 7 and sought for a confirmation that the Power of Attorney in favour of this defendant is in force and handed over all the original documents. Such demand was made by the plaintiff for the first time, only with an intention to create confusion as if she is willing to continue to go ahead with the suit transaction. In spite of the delay and laches on the part of the plaintiff in completing the sale, the defendants were interested in selling the property and called upon the plaintiff for further discussion vide his letter dated 16.09.2001, 06.7.2002 and

19.8.2002. The defendants gave further offer to buy the suit properties for the same price only in good faith with no intention to cheat or harm the plaintiff. However, by their above letters, the defendants have never revived the suit agreement dated 12.01.1998 which was already cancelled by their legal notice dated 27.8.1998.

(vi) In spite of the new offer made by the defendants, the plaintiff failed to pay the balance sale consideration and still she sought time for arranging funds. Thereafter, the plaintiff has issued false legal notice on 23.09.2002. Since the plaintiff did not accept the fresh offer of sale made by the defendants, as stated above, the defendants had executed Sale Deed in favour of defendant No.11 on 26.07.2002 in respect of suit "C" schedule property for valuable consideration. Pursuant to the same, the defendant No.11 had been in possession and enjoyment of the same by effecting the transfer in revenue records in his name.

The defendants also informed the plaintiff about the sale of the "B" schedule property to defendant No.11. Even knowing very well about the sale of the property, the plaintiff has filed the present suit for specific performance without impleading the subsequent purchaser, namely, defendant No.11 and tried to obtain interim orders.

(vii) The plaintiff has not come to Court with clean hands. The plaintiff was never ready and willing to perform her part of the contract. At the time of negotiations, she was made aware of the pendency of the suit filed by defendant Nos.5 and 7 in O.S.No.291 of 1993 on the file of the District Munsif, Chengalpet for partition and separate possession for various properties. It is futile on the part of the plaintiff to assert that the defendants should give an encumbrance free property for settling the dispute among themselves. The construction of Culvert at the junction of GST Road at Udayasuriyan Nagar was not a *sine qua*

non for completion of the sale transaction. Further, the said Culvert was completed before 04.8.1998 as asserted by the defendants in their legal notice dated 04.8.1998. The allegation that the plaintiff spent expenditure for layout purpose is also denied by the defendants. Despite the direction of this Court, during the pendency of the suit, to deposit the balance sale price within the stipulated period, only after getting extension of time, the amount has been deposited. This itself shows that the plaintiff was never ready and willing to perform her part of contract. Hence, the defendants prayed for dismissal of the suit.

4. The defendant No.11 has filed separate written statement *inter alia* contending that he is the bonafide purchaser for value without notice of the alleged sale agreement. The defendant No.11 purchased the suit "B" schedule property for the valuable consideration on 26.9.2002 and is in possession and enjoyment of the property and also recorded his name in the

revenue records. The plaintiff has filed the suit without impleading him and also obtained *ex parte* order of injunction. The plaintiff has not come to Court with clean hands. The defendant No.11 also adopted the written statement filed by the 9th defendant.

5. On the above pleadings, the following issues were framed by this Court, vide order dated 21.8.2009:

1. *Whether the suit is barred by law of limitation?*
2. *Whether the plaintiff has always been ready and willing to perform its obligations as per the agreement of sale deed 12.01.1998?*
3. *Whether the time is the essence of the contract?*

4. *Whether the defendants have committed breach of the agreement of sale dated 12.01.1998?*
5. *Whether the defendants 11 to 16 are not bound by the terms of the agreement of sale dated 12.01.1998?*
6. *Whether the defendants are not liable to deliver the original title deeds pertaining to the suit schedule property for effectual implementation of the terms of the agreement for sale dated 12.01.1998?*
7. *Whether the plaintiff is entitled to the relief of specific performance?*
8. *Whether the 11th defendant is a bonafide purchaser of the suit schedule property for value and without notice of the sale*

agreement dated 12.01.1998?

9. Whether the plaintiff is entitled to the relief of mandatory injunction?

10. To what reliefs the parties are entitled?

5. On the side of the plaintiff, Mrs. Seeta Ramaraju, the Proprietrix of Professional Management of Constructions was examined as P.W.1 and Exs.P.1 to P.34 were marked. On the side of the defendants, one S.Perumal, was examined as D.W.1 and Exs.D1 to D6 were marked.

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description of documents
1.	P-1	15.07.1960	Certified copy of the sale deed
2.	P-2	15.07.1960	Certified copy of the sale deed
3.	P-3	15.12.1965	Certified copy of the sale deed
4.	P-4	20.05.1992	Certified copy of general power of attorney
5.	P-5	11.04.1997	Certified copy of general power of attorney
6.	P-6	10.07.1997	Certified copy of general power of attorney

S.No.	Exhibits	Date	Description of documents
7.	P-7	12.01.1998	Agreement of sale
8.	P-8	27.03.1998	Sale deed
9.	P-9	27.03.1998	Sale deed
10.	P-10	27.03.1998	Sale deed
11.	P-11	-	Sub-division plan
12.	P-12	23.04.1998	Letter from the plaintiff to the defendant
13.	P-13	06.05.1998	Letter from the defendant to the plaintiff
14.	P-14	11.05.1998	Letter from the plaintiff to the defendant
15.	P-15	04.08.1998	Legal notice from the defendant`s counsel to the plaintiff
16.	P-16	12.08.1998	Reply from the plaintiff to the defendant`s counsel
17.	P-17	29.08.1998	Letter from the defendant`s counsel to the plaintiff
18.	P-18	07.09.1998	Reply from the plaintiff to the defendant`s counsel
19.	P-19	09.03.1999	Letter from plaintiff to the defendant
20.	P-20	19.03.1999	Letter from the defendant to the plaintiff
21.	P-21	22.03.1999	Letter from the plaintiff to the defendant
22.	P-22	22.07.1999	Letter from plaintiff to the defendant
23.	P-23	30.07.1999	Letter from defendant to the plaintiff
24.	P-24	19.06.2000	Letter from plaintiff to the defendant
25.	P-25	27.07.2000	Letter from defendant to the plaintiff
26.	P-26	20.11.2000	Xerox copy of the affidavit

S.No.	Exhibits	Date	Description of documents
27.	P-27	16.01.2001	Legal notice from plaintiff`s counsel to the defendant
28.	P-28	03.09.2001	Letter from plaintiff to the defendant
29.	P-29	16.09.2001	Letter from defendant to the plaintiff
30.	P-30	06.07.2002	Letter from defendant to the plaintiff
31.	P-31	19.07.2002	Letter from plaintiff to the defendant
32.	P-32	19.08.2002	Letter from defendant to the plaintiff
33.	P-33	23.09.2002	Legal notice from plaintiff`s counsel to the defendant
34.	P-34	07.04.2006	Xerox copy of the demand draft

Exhibits produced on the side of the defendants:

<i>S.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1.	D-1	26.09.2002	Certified copy of the sale deed
2.	D-2	07.04.2011	Encumbrance certificate
3.	D-3	05.10.2002	Reply notice from the defendant`s counsel to the plaintiff`s counsel
4.	D-4	10.02.2003	Letter issued by the postal department to the defendant`s counsel
5.	D-5	05.07.2002	Certified xerox copy of judgment in O.S.No.281/1993, DMC, Chengalpattu
6.	D-6	05.07.2002	Certified xerox copy of the decree in O.S.No.281/1993, DMC, Chengalpattu

6. The learned counsel appearing for the plaintiff submitted

that the defendants 1 to 8 are the owners of the suit property and through Power Agent, viz., the defendant No.9, they entered into a contract for sale of the suit property and other property measuring 100 cents. In fact, the property itself was agreed to be purchased only for the purpose of promotion and development. On the date of agreement, i.e. 12.01.1998, a sum of Rs.5,00,000/- was paid towards advance. Subsequently, a sum of Rs.3,50,000/- was paid. Thus, in total, a sum of Rs.8,50,000/- was paid towards part of sale consideration. It is submitted by the learned counsel for the plaintiff that three Sale Deeds were executed in favour of the plaintiffs in respect of 42.45 cents, which is admittedly situate in the rear side and the plaintiff, in fact, wanted to develop front side of the property. It is further submitted by the learned counsel for the plaintiff that the defendants agreed to sell the property free from encumbrances and also agreed to construct Culvert in the road connecting into the properties. It is also submitted that the defendants, without

performing their part of contract and without performing their obligations to clear the encumbrances, insisted upon the plaintiff to buy the property, which is not sustainable in law.

7. It is submitted by the learned counsel for the plaintiff that some of the defendants filed partition suit among themselves on the file of the District Munsif Court, Chengalpet, and that they have also filed an application for injunction not to alienate the suit property. Having agreed to sell the property free of encumbrance, the defendants cannot insist the plaintiff to register the property with encumbrance. According to the learned counsel, the plaintiff was all along ready and willing to purchase the property and she has also performed part of her obligation by paying a sum of Rs.8,50,000/-, which is half of the total sale consideration and, in fact, rear portion of the property was also registered in her name. The above aspect clearly indicates that she was interested in purchasing the property in

entirety.

8. The learned counsel for the plaintiff submitted that the plaintiff made several development and subdivided the property as 8 plots and also incurred expenditure for forming layouts. The tenor of the terms of contract clearly shows that the property should be sold free of encumbrance. It is submitted that exchange of correspondences between the parties would clearly show that the plaintiff was ready and willing to purchase the property from the very beginning.

9. It is the contention of the learned counsel for the plaintiff that the plaintiff obtained leave to institute the suit before this Court. Hence, on that ground, the defendants cannot take any defence that the time of four months, as agreed between the parties in the agreement for completion of sale, has lapsed, as subsequent contract of the parties and exchange of various correspondences between them would clearly show that time was

not the essence of contract. Since litigation was pending and formation of Culvert has not been completed, as agreed between the parties, sale could not be executed in respect of front portion whereas the plaintiff was all along ready and willing to perform her part of the contract. When there are specific terms agreed between the parties, oral and documentary evidence is inadmissible, if the same are contrary to the contents of the documents. The implied condition in the agreement is that the defendants should clear the litigation and sell the property. Hence, the learned counsel submitted that the parties themselves agreed to sell the properties beyond the period as agreed in the agreement. It is also submitted that the plaintiff had all along shown her readiness and willingness and the property has been sold to defendant No.9 for meagre amount and this itself clearly indicates that in order to defeat the rights of the plaintiff, the defendants are prolonging the issue.

10. It is submitted by the learned counsel for the plaintiff

that the plaintiff had invested huge amount for development of the properties. Admittedly, rear portion of the property was also purchased by her and hence, no prejudice, whatsoever, was caused to the defendants. The further submission of the learned counsel for the plaintiff is that the defendants also not pleaded about the hardship suffered by them. In the absence any specific pleading with regard to the hardship suffered by them, the plaintiff, who has all along shown her readiness and willingness, is entitled for specific performance as prayed for. It is the contention of the learned counsel for the plaintiff that defendant No.9 never got into the box and only defendant No.10 was examined. None of the owners including Power of Attorney was examined. Hence, it is submitted that the plaintiff has made out a case for specific performance.

11. In support of his contention, the learned counsel for the plaintiff has placed reliance on the judgments reported in AIR

1954 SC 75 (***DURGA PRASAD V. DEEP CHAND***) ; AIR 1965 SC 1405 (***MADAM SETTY SATYANARAYANA V. G.YELLOJI RAO AND OTHERS***) ; AIR 1967 SC 868 (***GOMATHINAYAGAM PILLAI AND OTEHRS V. PALANISWAMI NADAR***); 1969 (2) SCC 554 (***MAULA BUX V. UNION OF INDIA***); 1969 (3) SCC 120 (***NATHULAL V. PHOOLOCHAND***); AIR 1971 SC 1238 (***RAMESH CHANDRA V. CHUNI LAL***) AIR 1973 SCC 559 (***Dr.JIWAN LAL V. BRIJ MOHAN MEHRA***; 1979 (4) SCC 393 (***PRAKASH CHANDRA V.ANGADLAL AND OTHERS***); AIR 1979 SC 1245 (***NATHU V. STATE OF U.P***); 1986 (3) SCC 300 (***ROJASARA RAMJIBHAI VAHYABHAI V. JANI NAROTTAMDAS LALLUBHAI***) ; AIR 1988 SC 1074 (***INDIRA KAUR V. SHEO LAL KAPOOR***); 1993(1) SCC 519 (***CHAND RANI VS. KAMAL RANI***); 1995 (4) SCC 15 (***S.V.R.MUDALIAR V. RAJABU BUHARI***; 1996 (10) SCC 51 (***PANDURANG GANPAT TANAWADE V. GANPAT BHAIRU KADAM AND OTHERS***) ; 1997 (2) SCC 200 (***SUKHBIR SINGH AND OTEHRS***

V. BRIJ PAL SINGH AND OTEHRS) ; 1999 (6) SCC 337 (**SYED DASTAGIR V. T.R.GOPALAKRISNA SETTY**); 2000 (6) SCC 420 (**MOTILAL JAIN V. RAMDASI DEVI**) ; 2000 (7) SCC 548 (**GOBIND RAM V. GIAN CHAND**); 2002 (8) SCC 146 (**NIRMALA ANAND V. ADVENT CORPORATION (P) LTD AND OTEHRS**); 2004 (8) SCC 689 (**SWARNAM RAMCHANDRAN V. ARAVACODE CHAKUNGAL JAYAPALAN**) ; 2005 (3) SCC 342 (**DEVALSAB V. IBRAHIMSAB**; 2005 (7) SCC 534 (**ANIGLASE YOHANNAN V. RAMLATHA AND OTHERS**); 2009 (3) SCC 141 (**G.JAYASHREE AND OTHERS V. BHAGWANDAS S PATEL**); 2009 (5) SCC 182 (**N.SRINIVASA V. KUTTUKARAN MACHINE TOOLS LIMITED**); 2010(2) LW 368 (**A.RAMADAS RAO V. J.P.BUILDERS**); 2011(1) SCC 429 (**J.P.BUILDERS V. A.RAMADAS RAO**) ; 2011 (9) SCC 147 (**CITADEL FINE PHARMACEUTICALS V. RAMANIYAM REAL ESTATES PRIVATE LIMITED AND ANOTHER**); 2013(8) SCC 131 (**SATYA JAIN V. ANIS AHMED RUSHDIE**); 2014 (6) CTC 333

(RATHNAVATHI V. KAVITA GANASHAMDAS) and 2014 (4) CTC 369 (ASHOK KUMAR JAISWAL AND OTHERS V. ASHIM KUMAR KAR AND OTHERS).

12. The learned Senior counsel for defendant Nos. 1 to 9 fairly conceded that he is not canvassing the issue of limitation. It is the main contention of the learned counsel for defendant Nos. 1 to 9 that the plaintiff is not ready and willing to perform her part of the contract. The oral and documentary evidence adduced on both sides would clearly prove the fact that the plaintiff was never willing nor ready to purchase the property in spite of the fact that contract was terminated by the defendants. Having obtained Power from all the parties concerned and also registering half of the property, the plaintiff, in order to get over the delay, invented a theory that there was a litigation in respect of the properties and the defendants have to clear the same. It is submitted by the learned counsel for the defendants 1 to 9 that

since all the co-parcenors, i.e. defendants and others, have entered into an agreement and agreed to sell the properties, the litigation among the defendants, at any cost, will not affect the rights of the plaintiff. The plaintiff is also aware of this litigation at the time of entering into the contract. Suppressing the above facts, now the plaintiff has invented the said reason for filing the suit making allegations against the defendants.

13. It is submitted by the learned Senior counsel for the defendants 1 to 9 that absolutely, there is no clause in the agreement to measure the property. Therefore, the contention of the learned counsel for the plaintiff that the plaintiff found discrepancy in the measurement is also found to be false. Similarly, the other allegation that the defendants failed to construct a Culvert is also falsified in view of the admission of the plaintiff in the cross examination. In fact, the Culvert was completed in May 1998 itself and the same was also intimated to the plaintiff and hence, the delay could not have occurred for that

reason.

14. It is the submission of the learned Senior counsel for the defendants 1 to 9 that despite cancellation of agreement, defendant No. 9, in good faith and in order to complete the transaction, has given several opportunities to the plaintiff to pay the remaining sale consideration. But since the plaintiff failed to get the sale Deed registered, the defendants, except no other option, were forced to sell the property to third party. The purchase of the property to third party was also intimated to the plaintiff. Knowing very well about the sale of the properties to third party, the plaintiff has filed the suit without impleading the subsequent purchaser. The above aspects would clearly show that the plaintiff has not come to Court with clean hands.

15. It is the vehement contention of the learned Senior counsel for the defendants 1 to 9 that despite the direction of this Court to deposit certain amount, the same has been deposited

in this Court, only after getting extension of time. All these facts clearly show that the plaintiff was never ready and willing to perform her contract. Therefore, it is submitted by the learned Senior Counsel that the instant suit is nothing but abuse of process of law. Hence, the learned Senior counsel prayed for dismissal of the suit.

16. In support of his arguments, the learned Senior counsel has placed reliance on the judgments reported in 2015 – 3- L.W. 875 (**VASUMATHI H.SHAH V. PUSHPA RAJU**); 2013 (1) MWN (Civil) 395 (**A.AHMED ALI V. A.VENKATESH**); 2011 (3) CTC 153 (**N.RAVINDRAN V. V.RAMACHANDRAN**); (2009) 5 SCC 462 (**AHMADSAHAB ABDUL MULLA V. BIBIJAN AND OTHERS**); 2013 (4) CTC 213 (**P.ANANTHAKRISHNAN V. P.SHANBAGAVALLI**); 2011 (3) CTC 205 (**S.NARAYANAPPA VS. SAMPANGI RAMAYYA**); (2010) 10 SCC 512 (**MAN KAUR VS. HARTAR SINGH**); 2009 (5) CTC 365 (**INDERCHAND JAIN V. MOTILAL**) and 2009 (7) MLJ 761 (**Ms. LEELAVATHI VS. SRI**

VENGATESHWARA FINANCE).

17. Learned Senior counsel appearing for the defendant Nos.10, 12 to 16 submitted that the plaintiff was never ready and willing to purchase the remaining property. Ex.P7, agreement is dated 12.01.1998 whereas the instant suit is filed only on 20.1.2003, i.e. after a delay of 5 years. The learned Senior counsel for defendant Nos.10, 12 to 16 further submitted that there were exchange of notices and even when the defendants agreed to sell the property to the plaintiff, after cancellation of the agreement, she did not come forward to pay the balance sale consideration. All these facts would clearly show that the plaintiff is not at all willing to purchase the property and she has not established the plea of ready and willingness. The plaintiff is also not in possession of the property. Therefore, according to the learned Senior counsel for the defendants 10, 12 to 16, the suit filed before this Court is not maintainable and prayed for

dismissal of the suit.

18. The learned counsel for defendant No.11 submitted that the defendant No.11 is the bonafide purchaser for meagre amount. It is the contention of the learned counsel that property was purchased based on the guideline value. Even though the plaintiff claims that she paid a sum of Rs.8,50,000/- as 50% of the sale consideration based on the agreement dated 12.1.1998, the plaintiff has purchased only an extent of 42.57 cents. Therefore, the plaintiff now cannot attack the document on the ground that the defendant No.11 purchased the property by paying meagre amount. It is submitted that defendant No.11 has purchased the property for valuable consideration only after due diligence and without knowledge of the alleged agreement. Hence, the learned counsel submitted that the suit is liable to be dismissed.

Issue No:2:

19. The instant suit has been filed to enforce the contract

dated 12.01.1998 and to execute the Deed of Sale in favour of the plaintiff in respect of suit "B" and "C" schedule properties with consequential injunction thereon. Before dealing with issue No.2, it is necessary to narrate the admitted facts hereunder:

20. The suit properties were originally owned by defendants 1 to 8. They appointed defendant No.9, as Power of Attorney to deal with the properties and 10th defendant is the previous agreement Holder. The plaintiff and the Power of Attorney, i.e. defendant No.9, entered into an agreement of Sale dated 12.01.1998, for an extent measuring 1 Acre for a total consideration of Rs.17,00,000/-. Prior to the execution of the agreement dated 12.01.1998, which is marked as Ex.P7, there were negotiations between the plaintiff and defendant No.10, who is said to be the agreement holder at the relevant time. The conditions set out in the agreement entered into between the plaintiff and the defendant Nos 9 and 10, which is marked as

Ex.P7, reads as follows:

1. *The VENDORS shall sell and the PURCHASER shall purchase all areas of Unit Nos.7 and from 12 to 21 along with the road portions beginning from Unit No.21 on western side upto the end of property boundary on eastern side in the layout of SURIYA FARM LAND, more particularly described in the SECOND SCHEDULE.*
2. *The PURCHASER have agreed to purchase the SECOND SCHEDULE PROPERTY free from all encumbrances, charges, liens, lispendens and claims whatsoever at or for the Total Aggregate Consideration of Rs.17,00,000/= (Rupees Seventy Lakhs Only).*
3. *On execution of this Agreement, the PURCHASER have paid the VENDORS, a sum of Rs.5,00,000/= (Rupees Five Lakhs only) towards PART of the SALE CONSIDERATION as below:*

*By Cheque No.188844 dated 12.01.1998
drawn on Syndicate Bank, Anna Salai*

Branch, Chennai-600 002.

The receipt of which, subject to realisation, the VENDORS do hereby admit and acknowledge.

4. The PURCHASER do hereby agree to pay second part, a sum of Rs.3,50,000/= towards sale consideration on or before 28th day of February 1998.

5. The sale shall be completed within 4 months from the date of this Agreement and it is considered to be the essence of this Agreement.

6. The PURCHASER is hereby allowed by the VENDORS to realign or change the road areas except the 23' 0" wide Road, meant for public and common use for all Owners of FIRST SCHEDULE PROPERTY, running South to North from Unit No.8 to Unit No.11 & 12 and to re-divide or subdivide the lands into any number of Units or Plots to the convenience of the PURCHASER only within the areas of SECOND SCHEDULE PROPERTY.

7. *The VENDORS shall extend all their cooperation to the PURCHASER in their endeavor and shall sign, wherever and whenever necessary, to obtain approval or sanction from DTP / CMDA / Local Authorities for the development of Housing Units in the SECOND SCHEDULE PROPERTY and for any such other matters requiring the owner's consent and/ or signature to effectively carryout the Development Proposal by the PURCHASER.*
8. *The VENDORS alongwith previous Agreement Holder shall hereby agree to the PARTIES in the Agreement of sale to transfer the land portion or share, if necessary, with the prospective Buyer of Housing Units as nominated and identified by the PURCHASER.*
9. *The VENDORS do hereby handover the land to the PURCHASER and permit the PURCHASER to develop the land whatever necessary to successfully carryout the Development Proposal of the PURCHASER.*

10. *The VENDORS and the Agreement Holder, being the Promoter of Udayasurian Nagar, do hereby undertake to immediately start constructing a Culvert or Bridge, at their own cost, at the junction of Udayasurian Nagar Main Road and GST Road to facilitate easy approach from GST Road and for smooth disposal of rain water.*
11. *The VENDORS undertake to produce the necessary clearance, if required under Income Tax Act, for registration of Sale Deeds.*
12. *The PURCHASER shall have the option to purchase the SECOND SCHEDULE PROPERTY either as a whole land or as any number of Subdivided Plots or in Undivided Shares as required thereof.*
13. *The sale shall be executed either in favour of the PURCHASER or in favour of any person or persons nominated by the PURCHASER.*
14. *The PURCHASER shall defray all the expenses of sale and the cost of development and the VENDORS shall not be held*

responsible for any liability, damages, costs and consequences that may arise in the matter of construction, allotment and sale of the Housing Units proposed to be built in the SECOND SCHEDULE PROPERTY.

15. The VENDORS have handed over the following Documents and Records (all originals) to the PURCHASER this day:

a) Deeds of Sale dated 15.06.1960 (Document Nos. 2045 and 2044 of 1960 and of 1965).

b) Deeds of Power of Attorney.

c) Encumbrance Certificates for all concerned Properties till this day.

d) Certificates for necessary Legal Heirs.

e) Death Certificates.

f) Copies of Sale Agreements made with Mr.S.Perumal for all concerned Properties

g) Patta and / or Adangal for all concerned Properties with FMB sketch.

16. The VENDORS do hereby declare that they have full Right and good Title to dispose the

SECOND SCHEDULE PROPERTY in favour of the PURCHASER and / or to their nominees and assure the PURCHASER as follows:

- 1. The land is FREE from all encumbrances, Charges, Liens, Lispendens, Attachments, Trusts whatsoever.*
- 2. There is no legal impediment or bar, within the knowledge of the VENDORS, whereby they may be prevented from conveying the Property;*
- 3. There is no subsisting Agreement of Sale in respect of the SECOND SCHEDULE PROPERTY except the ONE said herein;*
- 4. There is no Notice of Acquisition or Requisition received by or served upon the VENDORS in respect of the SECOND SCHEDULE PROPERTY or any part thereof;*
- 5. The VENDORS through their POWER OF ATTORNEY AGENT and the said*

AGENT in his individual capacity including the previous AGREEMENT HOLDER assure the PURCHASER that the SECOND SCHEDULE PROPERTY will be guarded against any kind of disputes till the Properties were conveyed in full to the PURCHASER and / or to their Nominees. ..”

21. A reading of Ex.P7 shows that the parties have agreed that the sale shall be completed within four (4) months from the date of agreement. In fact, clause (1) of the agreement clearly shows that the parties intended to sell and purchase all areas of Unit Nos. 7 and from 12 to 21 along with the road portions beginning from Unit No.21 on western side upto the end of property boundary on eastern side in the layout of Suriya Farm Land, more particularly described in the second schedule. The aforesaid agreement also shows that a sum of Rs.5,00,000/- was paid towards part of sale consideration by way of cheque drawn

on Syndicate Bank and it is also specifically agreed by the purchaser to pay another sum of Rs.3,50,000/- towards further balance sale consideration on or before 28.2.1998. The vendors and the agreement holder, i.e. 10th defendant herein, have also undertaken to start constructing a Culvert or Bridge immediately, at their own cost, at the junction of Udayasuriyan Nagar Main Road and GST Road to facilitate easy approach from GST Road and for smooth disposal of rain water.

22. It is the admitted case of both sides that even though four (4) months time was stipulated in the aforesaid agreement to complete the entire transaction, the same could not have been done in respect of the suit properties. It is also admitted fact that under Exs.P8 to P10, three Sale Deeds to an extent of 42.45 cents were registered in favour of the plaintiff on 27.3.1998. Now the suit has been laid only in respect of remaining 52.60 cents more fully described in "B" and "C" schedule properties of the

plaint. Though in the agreement, the plaintiff has agreed to pay a sum of Rs.3,50,000/- on or before 28.02.1998, she has not paid the said amount, as agreed, within the stipulated time. However, the same has not been seriously objected to and subsequently, she paid a sum of Rs.3,50,000/-, in total, a sum of Rs.8,50,000/- towards the above sale transaction. The Sale Deeds were registered in favour of the plaintiff. This fact is not in dispute. Exs.P8 to P10 show that document has been registered for lesser value.

23. It is the contention of the learned counsel for the plaintiff that the documents have been registered on the basis of the guideline value. Be that as it may, now the suit is for enforcing Ex.P7 contract, in respect of the remaining extent of 52.60 cents. According to the learned counsel for the plaintiff, having agreed to sell the properties free from encumbrances and also agreed to construct Culvert on the junction of Udayasurian

Nagar main Road and GST Road, the defendants failed to perform their part of contract. Besides, there were also discrepancies in the boundaries to be sold and hence, according to him, the sale could not be completed within time. It is the contention of the learned counsel for the plaintiff that the defendants failed to give a marketable title, as there was litigation pending in respect of the suit properties and, therefore, the plaintiff requested the defendants to give a marketable title and also measure the properties and construct Culvert. As the defendants failed to do the above obligations, the plaintiff was all along requesting the defendants to clear marketable title and construct Culvert and execute the Sale Deed. Therefore, according to the learned counsel for the plaintiff is all along ready and willing to perform her part of the contract and it is only the defendants failed to perform their part of the contract.

24. Having purchased the rear portion of the property, the

plaintiff was in the intention to develop front portion into units and has also spent amounts towards Master plan, Architect fee, preparation of drawings, advertisements, and obtaining approval of layout / sub division of the property etc., Hence, it is the contention of the learned counsel for the plaintiff that no prejudice whatsoever, is caused to the defendants, if the document is enforced in her favour.

25. At this juncture, when the agreement is carefully read, it is seen that the parties have agreed to complete the sale within four (4) months from the date of the agreement. It is also agreed by the vendor and the agreement holder to construct a Culvert or Bridge at their own cost in the junction of Udayasurian Nagar immediately. Besides, they have also agreed to declare that they have full right and good title to dispose of the suit schedule property in favour of the purchaser and also declare that the land is free from all encumbrances, charges, Liens,

Lispendens, Attachments, Trustes whatsoever. It is also stated that there is no legal impediment or bar within the knowledge of the vendor whereby they may not be prevented from conveying the property.

26. When the specific clauses agreed between the parties are read along with pleadings and evidence of the plaintiff, this Court is of the view that the contention of the learned counsel for the plaintiff that the sale could not be proceeded in view of the litigation among the defendants cannot be countenanced at all for the simple reason that on the basis of the said agreement and the Power given to defendant No.9 , they have already registered three Sale deeds in respect of the rear portion under Exs.P8 to P10. Vide the said Sale Deeds, they have purchased 42.45 cents. The above purchase was made on 27.3.1998, i.e., within three months from the date of agreement. That apart, at that point of time, the plaintiff has not even raised any allegation with

regard to the construction of Culvert or the pendency of the suit among the defendants. It is to be noted that though the plaintiff agreed to pay, apart from the advance amount of Rs.5,00,000/-, another sum of Rs.3,50,000/- on or before 28.2.1998, the same has not been paid by her within the above stipulated period, as could be seen from the documents adduced by both sides.

27. It is further to be noted that the person coming before the Court of law for equitable relief, particularly, for the grant of specific performance, must show his/her readiness and willingness from the very inception of the agreement till the document is registered and such readiness and willingness should be continuous one and it cannot be in a piecemeal manner. The readiness virtually means capacity to mobilise the funds. The willingness is mental attitude to purchase the property. Only when both the readiness and willingness go together, the person, who seeks equitable relief or Specific performance, can succeed. If any one of the ingredients is absent on the part of

the plaintiff, she is not entitled for specific performance.

28. In the above settled position of law, now it has to be analysed, whether the plaintiff is continuously ready and willing to perform her part of the obligation from the very inception of the agreement till the filing of the suit.

29. It is pertinent to note that time is not generally an essence of the contract. At the same time, as far as immovable property is concerned, time agreed between the parties in the contract cannot be ignored altogether. In this case, under Ex. P7, agreement, four months time was agreed between the parties to complete the transaction. But subsequent conduct of the parties, would clearly show that specific time agreed between the parties, has been waived by them. In fact, the same has not been strictly adhered to by the parties.

30. On a perusal of the entire agreement, Ex.P7, this Court

is of the view that since all the owners, viz., the defendants 1 to 8 have executed power in favour of defendant No.9 and pursuant to the said power, the defendant No.9 has entered into the agreement with the plaintiff along with defendant No.10, who is the previous agreement holder, there cannot be any difficulty in executing the document. Therefore, the contention of the learned counsel for the plaintiff that since the defendants 5 and 7 filed some partition suit in O.S.No.281 of 1993 as against the defendant Nos. 3, 6, 8 and 10, they could not proceed further till litigation is over, cannot be countenanced at all.

31. Admittedly, the aforesaid suit, which is said to have been filed on the file of the District Munsif, Chenglepattu, is for partition among the owners, whereas, as already stated, all the owners, in fact, have executed power in favour of defendant No.9 and the said defendant No.9 on behalf of the original owners had entered into the alleged agreement. Therefore, this

Court is of the view that pendency of the civil suit between the defendants is not a bar for executing or getting document registered in the name of the plaintiff. Admittedly, the plaintiff herself got registered the documents in respect of 42.45 cents. Therefore, the contention of the learned counsel for the plaintiff that because of the pendency of the suit, they could not proceed further with the agreement, is not sustainable in law.

32. In this regard, it is useful to look into paragraphs 10 and 11 of the plaint, wherein it is specific case of the plaintiff that only when she went to measure the properties along with her husband, she came to know about the pendency of the suit in O.S.No.281 of 1993 and since some of the defendants objected to, she stopped all further work on commencement of the project and suspended the booking process in order to avoid transfer of the property under litigation to the prospective clients and also to avoid further litigation.

33. Furthermore, P.W.1, in the cross examination, has categorically stated that only in the month of April 1998, she went to measure the property along with her office staff. P.W.1 has also admitted that she does not know personally as to what had happened when they came during measurement. Only in the presence of her husband, some of the defendants made some objections. Further she has also admitted in the cross examination, that she has not seen the records and she has forgotton to say what is the short fall of area out of 100 cents. She has also stated that she is not sure whether the road portion is included in the schedule "A" or "B" or "C" and whether there is an agreement with regard to the exact measurement of the property identification and demarcation of the same and handing over of possession.

34. All these facts would clearly show that only in the

month of April 1988, dispute was raised by the plaintiff with regard to the pendency of the suit, the discrepancies in the extent agreed to be sold and also the dispute of non construction of Culvert. In her evidence, she has also admitted that the defendants 9 and 10 already gifted 23 feet road, as agreed between them, in favour of Panchayat Board for laying the road. She has further admitted that she has not gifted any portion from her property for laying the road to the local panchayat. In fact, she has also admitted in her evidence that another lay out, namely, Udhayasuriyan nagar, was developed by defendant No.10 and construction of platform, i.e. Bridge, was started in the March 1998 and completed in May 1998 by the defendants. Similarly, she has also admitted that there was no written agreement with regard to the specification for construction of culvert.

35. From the very admission of P.W.1, it could be seen that

the construction of culvert was also completed in May 1988. Though the defendant Nos. 9 and 10 undertook to construct the Culvert immediately pursuant to the date of agreement, P.W.1's evidence itself clearly indicates that the defendants have started constructing culvert in March 1998 and completed in May 1998. Therefore, the contention of the learned counsel for the plaintiff that failure to construct the culvert is also one of the reasons for delay in performing her part of obligation, cannot be countenanced at all.

36. In the back ground of oral evidence of the parties, now this Court has to analyse the documentary evidence adduced on the side of the plaintiff. Ex.P12 is the letter dated 23.4.1998, issued by the plaintiff to the defendants. It is to be noted that half of the total consideration i.e. Rs.8,50,000/- was paid and 42.45 cents was also registered in the name of the plaintiff and till such time, there was no dispute whatsoever, raised by the

plaintiff with regard to the time and other conditions set out in the agreement. P.W.1 also admitted in her evidence that Ex.P7 agreement was drafted by her advocate. A specific condition was also set out in the agreement to the effect that there was no impediment or bar for sale of the suit property. P.W.1's evidence would also clearly indicate that her advocate has prepared Ex.P7 and also gave opinion for purchase of the property etc.

37. It is pertinent to point out, at the risk of repetition, that when all the owners, i.e. defendants, have appointed particular person as power of Attorney with whom the plaintiff has entered into an agreement, she cannot complain at this stage that since there was a litigation between some of the defendants, the same is a bar for registering document. Even assuming that the doctrine of *lis pendens* would affect any transaction, it is to be noted that, in this case, all the owners have agreed to sell the properties. Therefore, this Court is of the view that the alleged

apprehension on the part of the plaintiff as to the *lis pendens* cannot be sustained for the simple reason that the said suit itself is for partition between the parties and in the event the suit is decreed allotting shares, the question of document being affected by the doctrine of *lis pendens* would not arise at all, as, admittedly, all the sharers have already entered into the agreement through their power Agent. Admittedly, Ex.P7 is also drafted by the Advocate of the plaintiff. He would have verified all the documents. Therefore, the contention put forth by the learned counsel for the plaintiff in this regard cannot be countenanced at all.

38. The plaintiff has issued a letter dated 23.4.1998 referring some telephonic conversation she had with the parties alleging that construction of bridge was not completed inspite of the plaintiff's reminders and also stated in the letter to hand over the list of documents as per the agreement. Similarly, another

ground of discrepancy in the land is also raised for the first time by the plaintiff. According to the defendant, the ground of discrepancy in the land was taken by the plaintiff only for the first time in Ex.P12.

39. Pursuant to Ex.P12 letter, the defendant No.9 sent a reply dated 06.5.1998 wherein he has admitted that even though he has agreed to construct a Culvert to connect Udhyasuriyan nagar with GST road, the work has already been commenced since the plaintiff has not paid a sum of Rs.3,50,000/- as agreed in the agreement and as the above payment was made only on 24.3.1988, there was some delay to complete construction and he has also stated that the original documents will be handed over only at the time of final payment. Similarly, he has also refuted the contention of the plaintiff that there is a short fall in the measurement for which he has clearly stated that he has agreed to sell the property starting from Unit No.7, 12 to 21

excluding 23 feet road running from Plot No.21. Plot Nos.16 and 17 are approximately measure about 17 grounds. In the reply, it is also categorically stated that Ex.P12 letter was sent in order to delay the payment, but the defendant No.9 had requested the plaintiff to pay the sale consideration on or before 12.05.1998 failing which the agreement shall stand cancelled.

40. It is also mentioned by the defendant that without making full payment, the plaintiff cannot enter into the land to make any development for which reply was sent by the plaintiff under Ex.P14. In Ex.P14, letter, the plaintiff, called upon the 9th defendant to complete his commitment which he has already agreed earlier. In Ex.P14, the specific allegation made by defendant No.9 about the measurement, laying of bridge and belated payment made by the plaintiff have not been denied. There is no reference in Ex.P14 with regard to the above allegations. In Ex.P13, the defendant No.9 has requested the

plaintiff to pay the entire sale consideration on or before 12.5.1998. In the reply to said Ex.P13, the plaintiff repudiated the allegations found in Ex.P13. Thereafter, the plaintiff kept quiet till 12.8.1998. The defendant, therefore, issued another legal notice on 04.8.1998 clearly stating that the defendant has agreed to purchase Unit 7, 12 to 21 for total consideration of Rs.17,00,000/-, narrating the earlier time stipulated in the letter dated 06.5.1998 and also informed the plaintiff about the completion of Culvert.

41. In the above legal notice, the defendant No.9 has cancelled the agreement dated 12.01.1998, Ex.P7, as the plaintiff failed to pay the balance sale consideration inspite of his request made under Ex.P13. For the above legal notice, the plaintiff again sent a reply dated 12.8.1998, after the agreement was cancelled by the defendant No.9. Even in the reply, the plaintiff contended that the defendant No.9 failed to construct culvert. In

this regard, as already discussed above, when P.W.1's evidence is carefully analysed, she has categorically admitted in the cross examination that Culvert was completed as early as in the month of May 1998. Therefore, again making some allegations in the month of August would clearly show that this correspondence has been made only to keep alive the contract.

42. Ex.P17 is the letter sent by the defendants' counsel to the plaintiff wherein also he has stated that the dispute among the defendants is known to the plaintiff even before entering into the agreement. He has also categorically stated that the plaintiff is making continuous allegation only in order to gain time to complete the transaction.

43. Not stopping with that, the plaintiff has again sent a letter raising similar dispute with regard to the same ground and contended that only in the month of April 1998, they came to

know about the dispute among the defendants and stated that even now they are ready to pay the balance sale consideration to complete the sale transaction. Similarly, under Ex.P19, the plaintiff sent a letter stating that to clear all the matters between them, she requested the defendant to sign the necessary papers for DTCP sanction. Ex.P20, dated 19.3.1999, the defendant No.9, again issued a reply stating that inspite of several reminders with regard to the case, the plaintiff is making a practice of writing letters, and clearly stated that if really, the plaintiff was interested in purchasing land, she was requested to come and meet the defendant in person before 27.3.1999 to get more details about the matter and get satisfied. The tenor of the letter dated 19.3.1999, consequently indicates that the plaintiff is making repeated queries from the beginning without making any steps to complete the sale transaction. It shows that finally, the defendant No.9 despite cancellation of agreement, had given one chance to the plaintiff to meet him in person before 27.3.1999 to

get more details about the matter and get herself satisfied.

44. For the above letter, the plaintiff again sent a letter dated 22.3.1999, *inter alia* stating that there is no purpose going to be served in meeting the defendants and again requested the defendants to clear and complete his compliance as agreed and she will pay the balance sale consideration within seven (7) days from the date of said compliance. The above reply sent by the plaintiff would clearly indicate that despite the request made by the defendant No.9 to meet him personally to inform her about the details she sought, she has avoided such meeting and in fact, harping upon some discrepancy from the very beginning. The tenor of the said letter would clearly indicate that the plaintiff was not interested in keeping proper register.

45. Ex.P.22 is another letter sent by the plaintiff dated 22.07.1999. That is also similar request made by her to

defendant No.9 to complete all the compliances so that she will pay the balance sale consideration. This letter was sent after a lapse of 18 months from the date of agreement. In this communication, no specific details or compliance is sought from the defendant but only general allegation is made to clear the compliance. The above letter was replied by the Power of Attorney under Ex.P23, wherein he has stated as follows:

“.. ..I am in receipt of your letter dated 22-7-1999 and it is a surprise to me that you are still having the habit of writing letters which, I believe, you think that correspondence will solve all the problems between us. I cannot understand your attitude of pretending and hiding the facts which were discussed prior to the date of Agreement about the alleged case.

Even now I stand on my point that as a power of Attorney Holder, I am no way connected with the dispute among the land

owners. This was already discussed many times.

I have given enough opportunity to you for compliance of the Agreement. You are still harping on the dispute and gaining time. Regarding payment you have made, I would like to say that I have executed two sale Deeds for a total extent of 43 cents, which covers about 50% of the Agreement value. There is no point in crying about your loss only, unmindful of my loss. You wanted to gain time and now after seeing the fast development of the area, you have started writing letter now as if you are ready.

If you are really interested with money, please meet me to enable us to avoid unnecessary correspondence and displeasure. Otherwise please treat this letter as a final one and you can come and settle your account fully and finally.”

46. The tenor of the above letter clearly shows that the plaintiff, despite several opportunities given, is not prepared to pay the balance sale consideration and she is harping only on the dispute, which is said have arisen between the defendants in the partition suit. Thereafter from 30.7.1999, the plaintiff kept quiet and suddenly she sent another letter on 19.06.2000, Ex.P24, blaming the defendants stating that their silence is not going to solve the problem unless otherwise the defendants are interested for the same. She has also stated that the plaintiff has no other option except to pay the balance and take the litigation or encumbrance free land from the defendant or to take back money calculated, in the case of returning money. It is further stated that the plaintiff is ready to register the lands back to the defendants. Though there were continuous correspondences between the plaintiff and the defendant from 23.4.1998 under Ex.P12 to 30.7.1999 under Ex.P23, the plaintiff kept quiet

almost for 11 months till the letter is sent under Ex.P24. Even in Ex.P24, she has given two options, in fact, she has chosen to re-deliver the property which was registered in her name under Exs.P8 to Ex.P10, provided the defendants pay back the money within 15 days. The tenor of the above letter would clearly indicate that the plaintiff is not at all interested in pursuing the issue and she has no intention to purchase the property. For the above letter, the defendant No.9, sent a reply dated 27.07.2000 stating as follows:

"You have been all along showing your skill in writing letters, forgetting the reality of the matter. I had many times come to your office with an intention of solving the matter. But you never showed any interest in meeting me and all the time I had to return back with disappointment. You have not even spoken to me over phone at least to show your courtesy.

In short I accept your proposal viz.

- 1. Taking back the land, 2. Returning the*

advance amount only. With the following conditions. I will not pay expenses, stamp duty and interest as claimed by you, since your attitude from May 98 put me in greater financial loss more than you and in turn I should claim compensation of loss from you. However in order to avoid further loss for both of us, I am expressing my acceptance as above.

I will return the advance amount only and in turn you should execute the sale deed in favour of my nominee. If you accept, please reply.”

47. It is seen that the plaintiff issued a legal notice dated 16.01.2001 through one M.Kamalakannan Advocate, wherein she has stated that she was always ready and willing to honour the agreement of sale. In the said legal notice, the defendant was asked to produce undertaking letters from the owners to the

effect that the the Power of Attorney Deeds executed earlier by the defendants are still in force and also to hand over to the original documents which were agreed upon and to clarify the discrepancies in the extent of the schedule mentioned property. The above conduct of the plaintiff clearly indicates that from stage by stage, she has been creating document by issuing a letter to create evidence as if she was always ready and willing to perform the part of the contract.

48. Having accepted to give vacant land and to get back the money paid by her under Ex.P25, letter dated 27.07.2000, she has again sent a legal notice after 3 ½ months requesting the defendants to produce undertaking letters from all the owners to show that the Power of Attorney executed was still in force. This conduct of the plaintiff clearly shows that she is not at all interested in finalising the sale transaction. She has successfully dragged on the transaction from the year 1998 till 2001 even

though there was specified time stipulated in the agreement.

49. Admittedly, the plaintiff is a real estate promoter. The tenor of all the letters and the manner of dispute raised by her in each and every stage would clearly indicate one fact that only in order to delay the agreement to the maximum level and to have control over the property, the said letters were sent from time to time to show as if she was always ready and willing to purchase the property. As discussed above in detail, after legal notice dated 16.01.2001, the plaintiff kept quiet till 03.9.2001 and again, she made some requests to the defendants to complete their part of the obligation within 15 days under Ex.P28. In Ex.P29, the defendant has sent a letter dated 16.09.2001 wherein she has narrated that after receipt of legal notice sent by the plaintiff's lawyer under Ex.P27, there was discussion between himself and the plaintiff's lawyer wherein, many options were given to the plaintiff and that the plaintiff

promised to come back with positive proposal. The defendant also clearly stated that at the time of meeting on 11.09.2001, he has requested the plaintiff to inform the convenient date to enable them to meet his lawyer to get his opinion in this matter. Under Ex.P30, again, the defendant No.9 has sent a communication to the plaintiff informing that the suit pending between some of the defendants was over and property is free from encumbrances and again he has requested the plaintiff to pay the balance sale consideration within 15 days.

50. In response to Ex.P30, the plaintiff sent a reply dated 19.07.2002, wherein she has requested the defendant to give another 10 days time to get his advocate's opinion before proceeding further in the matter. Further, she has made another demand requesting defendant No.9 to obtain letters of undertaking from all the owners. In the above letter also, she has not expressed her readiness immediately to pay the balance

sale consideration. Under Ex.P32, dated 19.08.2002, the defendant No.9 again sent a letter to the plaintiff giving 15 days for payment of balance sale consideration to register the document. Even then, the plaintiff has not come forward to pay the amount. Suddenly, on 23.09.2012, another the legal notice was issued by the plaintiff through one R.Thiagarajan Advocate, wherein also request was made to the defendants to obtain the encumbrance certificate for period of 30 years and also another demand was made to the defendants to furnish necessary particulars as to whether any petition is filed for restoration of suit which has been dismissed for default on 06.07.2002 and present position, if any. It is also stated that on compliance of the request in respect of the legal opinion with regard to marketable tile, the plaintiff shall finalise the sale transaction without any further delay. The above legal notice imposing further conditions on the defendants that to report as to whether any application for restoration of the suit, which was dismissed

for default, is pending as well as the status of the petition would also clearly indicate that the plaintiff is not interested in pursuing the matter honestly. On the other hand, she wanted to have control over the property on the basis of the agreement, Ex.P7. Despite four months time agreed between the parties, the plaintiff was successful in dragging the matter till 2002.

51. It is the grievance of the plaintiff that bridge was not constructed as agreed and measurement was not proper and subsequently, she has improved her grievance by saying that she was not aware of the partition suit filed between the defendants. Thereafter, again, despite cancellation of the agreement, she has made improvement stage by stage. Even when the defendant informed the dismissal of the suit for partition, the plaintiff has not come forward to register the property whereas she sought time to get the legal opinion and finally, she has again introduced another condition to get the letters of undertaking from all the

co-owners in order to find out whether the power of Attorney is still in force or not.

52. Not stopping with that, as stated earlier, through a lawyer, she again imposed condition on defendant No.9 to give particulars whether any application for restoration of the suit which was dismissed for default, is filed and pending and its status, if any. The correspondence of the plaintiff from the very beginning to end clearly indicate one fact that at every stage, she has introduced one or other allegation to show as if she was always ready and willing to purchase the property. The first correspondence started in the month of April 1998. Thereafter, she raised some objections in the month of August 1998. Again sent a communication as if a bridge was not constructed which is also found to be false by oral evidence as well as in view of the admission of P.W.1 in her cross examination. Likewise, at every stage she was making new grounds some how or other only in

order to keep the agreement alive despite specific time agreed between the parties. Her evidence also clearly indicates that Ex.P7 in fact, was prepared by her own Advocate, Kamala kannan in the year 1998. The very same advocate has issued a legal notice in the year 2001.

53. In the cross examination, P.W.1 has categorically admitted that when her husband went to see the land, he discussed with the agreement holder as well as the power of Attorney holder namely, the defendants 9 and 10. Then only entire negotiations were held by her husband and he visited the suit property several times. It is also stated by her that Kamalakannan advised them that the documents are clear and that they can proceed with the purchase of the property. All the owners of the suit property have given Power of Attorney to defendant No.9. Only after their advocate told them that all the owners have given the power of attorney in favour of 9th

defendant and also entered into agreement of sale in favour of the defendant No.10, they proceeded further with negotiation. Ex.P7, the agreement of sale was drafted by the Advocate Kamalakannan. The plaintiff's husband had given instructions to the Advocate for drafting the agreement of sale.

54. From the entire evidence of P.W.1, it is very clear that the plaintiff is not lay woman and in fact, she is real estate developer and she had the benefit of consulting lawyer and only on the advise of the lawyer, she entered into the agreement. As stated above, the agreement was also prepared by the lawyer and he was also aware that since all the owners of the property have given Power of Attorney in favour of defendant No.9 and hence, she proceeded to purchase the property. In such circumstances, the contention of the plaintiff that in view of some disputes allegedly came to her knowledge subsequently, she could not finalise the sale, cannot be accepted.

55. Admittedly, Ex.P26 clearly shows that the suit itself is filed claiming shares among the defendants. Therefore, even if the said suit is decreed, the same will not affect the sale made by the power of Attorney, as all the sharers have already given power to defendant No.9 to sell the property. Having knowledge of these facts, making problem in every stage and coming to Court clearly indicates the conduct of the plaintiff that she is not ready and willing to perform her part of the contract from the very beginning. Whereas she has tried to create the documents as if she was always ready and wiling to perform her part of the contract.

56. Lastly, the suit was filed only on 28.1.2003. Even after direction of this Court to deposit the balance sale consideration within the specific period, the plaintiff has not deposited the amount. Only after getting extension of time from this Court, she deposited the sale consideration. Therefore, from the

beginning, particularly, the attempts made by her in every stage by way of correspondences, clearly show that the plaintiff is not ready and willing to perform her part of the contract from the very inception. Despite cancellation of the agreement by the defendant No.9, the plaintiff is not ready and willing to mobilise the funds. Further, to show that she had capacity to mobilise the funds, all along, no documents, whatsoever, was filed that she had ready money in her hand. Even after cancellation of agreement, when the defendant was magnanimous to extend the time to complete the transaction, the plaintiff in one way or other has made allegations against the defendant and has not come forward to register the document. From over all exchange of correspondences between the plaintiff and the defendant No.9, this Court is of the view that the intention of the plaintiff is only to drag the matter purposely to keep the contract alive for gaining benefit.

57. It is also to be noted that for legal notice issued by the plaintiff dated 23.09.2002, the defendant issued a reply which is marked as Ex.D3 dated 05.10.2002. In the reply notice, it is categorically stated by the defendants that the property has already been sold to third party, since the plaintiff has failed to come forward to register the document. By way of this reply notice, the sale in favour of the third parties was made known to the plaintiff. But the suit has been filed by the plaintiff wantonly, without impleading the subsequent purchaser. This fact itself clearly shows that the plaintiff has not come to this Court with clean hands. Of course, the name of defendant No.11 is not mentioned in the reply notice. Once the subsequent sale of the property is known to the plaintiff, she ought to have made some enquiries in the Registrar Office and should have filed the suit by impleading the subsequent purchaser also i.e, defendant No.11, but the suit has been filed without impleading defendant No.11. The defendant No.11, himself filed an application to implead him

in the suit, which clearly shows that the plaintiff has not come to the Court with clean hands.

58. As already discussed above, this Court holds that the plaintiff has not come to the Court with clean hands and has not established the plea that she is always ready and willing to execute the transaction. Even after the cancellation of the agreement, though several chances were given by the defendants to complete the transaction by paying the balance sale consideration of Rs.8,50,000/-, the plaintiff has not completed the sale. Hence, this Court is of the view that the plaintiff has not shown her readiness and willingness from the inception of the agreement. The readiness and willingness must be present from the date of the agreement till it is culminated in the sale deed. But exchange of various correspondences between the parties and the oral evidence of the plaintiff explicated the fact that the plaintiff has not at all shown her readiness and willingness to

purchase the property.

59. Insofar as the judgments relied on by the learned counsel for the plaintiff and defendants in this aspect is concerned, admittedly, there is no dispute with regard to the proposition of law laid down in all these cases. It is indisputable that in a suit for specific performance of contract, the plaintiff must establish his readiness and willingness to perform his part of the contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous readiness and willingness to perform the contract on her part from the date of contract. "Readiness and willingness" to perform the part of the contract has to be determined /ascertained from the conduct of the parties. In the case on hand, as discussed above, in this issue, the plaintiff has never

shown her readiness and willingness to complete the sale transaction. Accordingly, this issue is answered.

Issue No: 3

60. Though the parties have agreed specific time of four months in the agreement, subsequent conduct of the parties in waiving the stipulated time would clearly show that in this case, time was not intended to be the essence of the contract. Hence, this issue is answered accordingly.

61. Insofar as the judgments relied on by the learned counsel for the plaintiff in this aspect are concerned, absolutely, there is no dispute with regard to the proposition laid down in all those cases. In view of the facts and circumstances as discussed supra, the said judgments are not applicable to the case on hand. In the case on hand, admittedly, though the parties had

agreed for four months time to complete the sale transaction, subsequent conduct of the parties and exchange of various correspondence between them clearly show that the time was not essence of the contract. As stated above, in this case, the parties themselves have waived the time stipulated in the agreement and hence, it is clear that time is not an essence of the contract in this case.

Issue No.1:

62. Insofar as this issue is concerned, the counsel appearing for either side fairly conceded that they are not canvassing the plea of limitation, as the suit is filed within the period of three years, i.e from the date of refusal of the contract. Therefore, this Court is of the view that as the time was not essence of the contract, the suit filed before this Court is well within the period of limitation. Though the agreement was cancelled by the defendant No.9, vide communication dated 27.08.1998,

subsequently, the parties, in fact, had discussion and agreed to go ahead with the transaction as agreed between the parties and this correspondence would continue till Ex.P32 dated 19.08.2002. Therefore, the suit filed in the year 2003 is well within the period of limitation.

Issue No:5

63. No answer is required for this issue since, the second issue is held against the plaintiff.

Issue No.6:

64. It is the specific case of the defendants that as the plaintiff failed to pay the balance sale consideration as agreed, they could not deliver the original deeds pertaining to the suit property. Admittedly, as discussed in detail in issue No.2, the plaintiff is in the habit of making general allegations complaining the non- performance of the contract of the defendants and she

never paid the entire balance sale consideration of Rs.8,50,000/-. Therefore, it cannot be contended that merely because original titles have not been produced, the sale could not be completed. The evidence of P.W.1, as already discussed above, would clearly show that she has not even seen the records and only her husband participated in the negotiation.

65. In any event, it is not the case of the plaintiff that she could not perform the sale consideration, because the original title deeds were retained by the defendants. Admittedly, the plaintiff has registered the document in respect of 42.50 cents and with regard to the remaining properties, the plaintiff failed to establish her readiness and willingness, as discussed in issue No.2, and that the "B" and "C" schedule properties now said to have been sold to defendant No.11. That being the case, the original title deeds cannot be given only to the plaintiff. At the most, the plaintiff is entitled to get the certified copies of the

documents since two different owners have purchased the property. Accordingly, this issue is answered.

Issue No: 4:

66. As discussed in issue No.2, despite the fact that defendant No.9 had constructed bridge as early as in May 1998, only the plaintiff has not come forward to pay the balance sale consideration. Similarly, the defendant No.9 has also declared in the agreement that there is no impediment or bar for selling the properties. Admittedly, the defendant Nos. 1 to 8 owners have given power of Attorney in favour of defendant No.9, with whom the plaintiff had entered into the present agreement, and defendant No.10 is also agreement holder. Despite repeated requests and steps made by the defendants, the plaintiff has not come forward to complete the transaction. Therefore, the plaintiff alone committed breach of agreement, as discussed in issue No.2. This issue is answered accordingly.

Issue No. 7:

67. In view of the discussion held in issue No.2 and the fact that the plaintiff nowhere pleaded in the plaint that she was already put in possession of the property, I am of the view that she cannot claim specific performance. Whereas when Exs.P8 to P10, documents were carefully seen, more particularly, part of the property purchased by the plaintiff under Ex.B8, one boundary set out in the above sale would clearly show that northern side property was retained by the vendors. This fact itself clearly proves that the plaintiff was not put in possession of the property.

68. There is no evidence to show that the purchaser was put in possession of property in pursuance of the agreement. When clause 6 of the agreement is carefully perused, it shows that only purchaser is allowed by the vendors to re-alienate or

change the road areas. Similarly Clause 9 of the agreement shows that vendor agreed to hand over the land to the purchaser. These clauses in Ex.P7 coupled with Ex.P8, sale deed show that the plaintiff was not put in possession of the property. P.W.1's evidence in the cross examination, also clearly shows that when she went to measure the property along with her husband, somebody had objected to and thereafter, they did not enter into the land. The plaintiff also pleaded that the moment she came to know about the litigation, she stopped all further steps in the suit property.

69. Further, in the cross examination, P.W.1 has stated that she did not know whether defendant No.11 is in possession of "B" schedule property from the date of purchase. This fact clearly indicates that possession of the property, pursuant to the agreement has not at all been established by the plaintiff.

70. That apart, the suit property is situate outside the jurisdiction of this Court. Even in the plaint, it is not pleaded that whether the plaintiff is in possession of the suit property. Even the relief of delivery of possession also not prayed for and the plaintiff has filed the suit for specific performance. Though it appears that the plaintiff has obtained leave before this Court, when there is no relief sought, for delivery of possession and the evidence shows that the plaintiff is not in possession of the property, the suit filed before this Court is also not maintainable as the property is situate outside the jurisdiction of this Court, as per clause 12 of the Letters Patent Act.

71. It is well settled that grant of decree for specific performance is one of the discretion of the Court. The Court has to see all the attendant circumstances. In this case, the plaintiff has not come to Court with clean hands to entitle her for the specific relief as prayed for. This issue is answered accordingly.

Issue No.8:

72. The defendant has purchased the suit property on 26.09.2002 to an extent of 48 cents, which is the subject matter of Ex.P7 agreement. It is the contention of the learned counsel for defendant No 11 that defendant No.11 is the *bonafide* purchaser for value and he was not given notice of earlier agreement. It is seen that he has also made some reasonable enquiry with regard to suit property. Ex.D2 encumbrance certificate is filed by defendant No.11. When the purchaser has made diligent enquiry and purchased the property, without knowledge of the earlier agreement, the so called purchase is held to be the *bonafide* one. Of course, the Power of Attorney, defendant No.9, has sold the property. If really he had informed defendant No.11 about the alleged previous agreement, then it could be stated that the purchase made by defendant No.11 is not *bonafide* one. But the alleged previous agreement has not

been informed to defendant No.11 and he purchased the same without notice of the alleged earlier agreement.

73. In the absence of any evidence to show that defendant No.9 has, in fact, informed defendant No.11 about the alleged previous agreement, it cannot be inferred that merely because defendant No.11 purchased the property from defendant No.9, he is aware of the previous agreement. It is the main contention of the learned counsel for the plaintiff that the document has been registered only for pittance and hence, the sale itself is sham and nominal. It is also the contention of the learned counsel for the plaintiff that the plaintiff has agreed to purchase the property for Rs.17,00,000/- and, therefore, selling the property in the year 2002 for a sum of Rs.1,68,0000/- is highly improbable and cannot be countenanced. It is the contention of defendant No.11 that he has purchased the property based on the guideline value. In the absence of any evidence to show that

it is sham and nominal document, the sale cannot be attacked.

74. It is to be noted that the plaintiff claims to have purchased the property for a sum of Rs.8,50,000/-, i.e. half of the sale consideration, under Ex.D7 and registered the property to an extent of 42.45 cents for the above amount of Rs.8,50,000/-. When Exs.P8 to P10 Sale deeds are read together, it is clear that the property, in fact, was purchased and registered for the value of Rs.2,97,150/-, whereas it is the contention of the parties that the above extent was sold and registered towards half of the sale consideration paid under agreement Ex.P7. If that being the case, the plaintiff has played a fraud in registering the document on guideline value. Therefore, the plaintiff cannot approbate and reprobate the things. In fact, she has relied upon the above sale deeds for enforcement of the contract in respect of the other property. Therefore, as there is no evidence to show that defendant No.11

has played fraud in registering the property in lesssr value, this Court cannot infer the same on mere surmise and conjecture.

75. Admittedly, there was a longstanding dispute between the plaintiff and the power of Attorney. Even that may be one of the reason for defendant No.9, Power of Attorney, to sell the property for lesser value. As stated above, in the absence of any evidence to show that registration is done in lesser value, one cannot hold that there was a fraud on the registration. In any event, before registration, defendant No.11 has made due enquiry and obtained encumbrance certificate and the property was also registered on 26.9.2002.

76. It is worthy to mention that under Ex.P29, dated 16.09.2001 and Ex.P32 dated 19.08.2002, the defendant No.9, in fact, requested the plaintiff to complete the sale transaction. Even thereafter, the plaintiff has not come forward to purchase

the property. Thereafter only, Ex.D1, document, appears to have been executed by Power of Attorney. Defendant No.11 also made diligent enquiry about the property. Therefore, as discussed above, in the absence of any evidence by the plaintiff to show that the sale is not *bonafide* one, this Court has no other option except to hold that the purchase made by the defendant No.11 is *bonafide* one. This issue is answered accordingly.

Issue Nos. 9 and 10

77. In view of the discussion held in issue Nos.2 and 7 that the plaintiff was never ready and willing to perform her part of the contract, she is not entitled for any relief and these issues are answered against the plaintiff.

87. In the result, the suit is dismissed. However, there shall be no order as to costs.

Index : Yes

speaking order/Non speaking order
23..3..2017