

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2017

PRONOUNCED ON : 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.837 & 838 of 2001

1. Thangaraj (Deceased)
2. Rajamani
3. Natarajan
4. Manickam
5. Mariyammal

... Appellants/Plaintiff in both SA

(Appellants 2 to 5 brought on record as Lrs of the deceased sole appellant vide order of the Court dated 11.10.2017 made in C.M.P.Nos.1433 to 1438 of 2010)

Vs.

1. Chandrasekaran ... First respondent in S.A.No.837/2001/
second respondent in S.A.No.838/2001/
Defendants

2. Ganga ... Second respondent in S.A.No.837/2001/
First respondent in S.A.No.838/2001/
Defendants

Common Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of Principal District Court, Cuddalore in A.S.Nos. 89 & 79 of 1998 dated 25.08.1999 reversing the judgment and decree passed by the Subordinate judge, Chidambaram in O.S.No.51/1990 dated 17.02.1998.

In both second appeals

For Appellants : Mr.Srinath Sridevan

For Respondents : Mr.R.Srinivas

C O M M O N J U D G M E N T

The second appeals are directed against the judgment and decree dated 25.08.99 passed in A.S.Nos. 89 & 79 of 1998, on the file of the District Court Cuddalore, reversing the judgment and decree dated 17.02.98 passed in O.S. No.51/90, on the file of the Sub ordinate Court, Chidambaram.

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

3. Suit for specific performance of the sale agreement dated 14.06.98 by directing the defendants to execute the registered sale deed in terms thereof, in respect of the suit properties after receiving the balance sale consideration or in the alternative, for specific performance of the suit agreement dated 14.6.98 by directing the first defendant to execute the registered sale deed in respect of the half share of the suit properties for a price of Rs.11,340/- after receiving the balance price of Rs.6,660/- and to pass a preliminary decree for partition and separate possession of the half share of the suit properties in favour of the plaintiff against the defendant.

4. The case of the plaintiff, in brief, is that the suit properties belong to the defendants 1 and 2 and they are each entitled to half share share in the same. While so, the first defendant entered into a sale agreement with the plaintiff to sell the suit properties and accordingly, executed the sale agreement dated 14.06.98 for a price fixed at Rs.22,680/- for the entire suit properties and received an advance of Rs.4680/- and the plaintiff is to pay the balance of Rs.18,000/- and get the sale deed executed by the first defendant along with the second defendant, who is also entitled to half share share and the time for performance is two months. The plaintiff has always been ready and willing to perform his part of the contract and accordingly, purchased the stamp papers but the defendants were evading and the plaintiff issued notice dated 19.7.90 to the defendants and the acknowledgement was awaited and hence, the suit for specific performance of the sale agreement dated 14.06.98 and in case, the first defendant does not come forward to execute the sale deed along with the second defendant, the first defendant is liable to execute the sale deed in respect of his own half share share for proportionate price and hence, the alternative reliefs.

5. The case of the first defendant, in brief, is that the suit is not maintainable either in law or on facts. It is true that the plaintiff and the first defendant entered into the agreement to sell regarding the suit properties as stated in the plaint containing the terms thereof and the plaintiff has to blame himself for not acting in accordance with the agreement and has failed to perform his part of the contract. The

plaintiff has laid the false suit to grab the possession of the suit properties from the defendants illegally and hence the sale agreement is incapable of specific performance and stands cancelled as per its own terms and there is no privity of contract between the plaintiff and the second defendant and hence, the plaintiff cannot seek the claim of specific performance as against the second defendant and the plaintiff is not entitled to seek the relief of partition and the defendant has not received any notice from the plaintiff and hence, the plaintiff is not entitled to the reliefs sought for and the suit is liable to be dismissed.

6. The case of the second defendant, in brief, is that the suit is not maintainable either in law or on facts and as the second defendant is not a party to the sale agreement, is not bound by the same and the first defendant has no right to execute the sale agreement in respect of her half share share in the suit properties and the first defendant is neither the power agent or the authorised agent of the second defendant to enter into a sale agreement with the plaintiff on her behalf. There is no privity of contract between the plaintiff and the second defendant and is also having the pre-emptive right to purchase the share of the first defendant in respect of the suit properties and the plaintiff cannot seek to enforce the sale agreement against the first defendant /against the second defendant's right of pre-emption in respect of the suit properties. The plaintiff have never been ready and willing to perform his part of the contract and hence, the plaintiff is not entitled to the reliefs sought for and the suit is liable to be dismissed.

7. In support of the plaintiff's claim, PW1 has been examined, Exs.A1 to A10 were marked. On the side of the defendants DWs 1 and 2 were examined and no documents has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to grant the relief of specific performance sought for by the plaintiff. Aggrieved over the same, the defendants have preferred the separate first appeals and the first appellate Court, on an appreciation of the materials placed, was pleased to set-aside the judgment and decree of the Trial Court and by allowing the appeals preferred by the defendant, resultantly, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeals have come to be preferred by the plaintiff.

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

1) Whether the lower Appellate Court is justified in dismissing the suit relying upon illustrations to Sec.15 of Specific Relief Act 1908, the Act of which has been repealed by the Specific Relief Act, 1963?

2) Whether the plaintiff is not entitled to the alternative relief by execution of sale deed in respect of half share of the first defendant on the basis that alternative relief relates to the Specific Performance of whole of contract as far as the first defendant is concerned and if so, whether the plaintiff is liable to pay only half of the whole price and not to the entire price?

3) Whether the lower Appellate Court is right in holding that the suit is for Specific Performance of a part of contract coming under Sec.15 of Specific Relief Act, 1908 and not one under Sec.12(4) of the 1963 Act?

10. It is not in dispute that the suit properties jointly belong to the defendants 1 and 2 and thus, they are entitled to undivided half share in the suit properties. It is seen and also agreed by the first defendant that he had entered into a sale agreement with reference to the whole of the suit properties including the share of the second defendant in the same on 14.06.98 for a sale price of Rs.22,680/- and accordingly, received an advance of Rs.4,680/- and it is seen from the terms of sale agreement marked as Ex.A1, the plaintiff has to pay the balance amount of Rs.18,000/- within two months from the date of the sale agreement and it is seen that the first defendant had agreed to execute the sale deed along with the second defendant who is entitled to the remaining half share in the suit properties and according to the plaintiff, though he had been always ready and willing to perform his part of the contract, inasmuch as the defendants evaded to comply with the terms of the sale agreement, the plaintiff after sending the legal notice to the defendants, instituted the suit for claiming the appropriate reliefs.

11. According to the first defendant, though he has admitted to have executed the sale agreement Ex.A1, it is pleaded by him that the plaintiff has never been ready and willing to perform his part of the contract as per the sale agreement and that apart, it is stated that the second defendant being not a party to the sale agreement and as there is no

privity of contract between the plaintiff and the second defendant in respect of the suit properties under Ex.A1, the plaintiff cannot enforce the sale agreement as against the second defendant and the plaintiff had failed to comply with the performance of his part of the contract, he has lost the right of enforcement of the sale agreement and hence, the suit is liable to be dismissed.

12. The second defendant has pleaded in specific that she is not a party to the sale agreement Ex.A1 and had not authorised, in any manner, the first defendant to enter into the sale agreement Ex.A1 with the plaintiff in respect of her half share in the suit properties and hence, there is no privity of contract between the plaintiff and the second defendant, the plaintiff is not entitled to enforce the sale agreement against her and she has also pleaded that the plaintiff has never been ready and willing to perform his part of the contract and on the whole, the plaintiff is not entitled to obtain the reliefs claimed in the suit.

13. The sale agreement dated 14.06.98 has been marked as Ex.A1. A reading of the terms of the Ex.A1 would go to show that on payment of the balance sale consideration of Rs.18,000/- within a period of two months from the date of the sale agreement by the plaintiff, it is found that the first defendant had agreed to execute the sale deed in favour of the plaintiff along with the second defendant in respect of the suit properties. It is thus found that even on the date of the sale agreement Ex.A1, the plaintiff is fully aware that the second defendant owns half share in the suit properties. However, it is found that the plaintiff has chosen to obtain the sale agreement Ex.A1, only from the first defendant and not from the second defendant. When it is seen that the plaintiff has knowledge about the entitlement of the half share in the suit properties as belonging to the second defendant, as a prudent person, the plaintiff should have endeavoured to obtain the sale agreement Ex.A1 also from the second defendant. It is not the case of the plaintiff that the second defendant had authorised the first defendant in any mode to enter into the sale agreement Ex.A1 with the plaintiff with respect to the suit properties on her behalf. In such view of the matter, it is seen that when the plaintiff having knowledge about the entitlement of the half share in the suit properties as belonging to the second defendant and when the plaintiff has not pleaded or established that the first defendant had the authority of the second defendant to enter into the sale agreement with the plaintiff, in respect of her share in the suit properties also under Ex.A1 and admittedly, when the second defendant is not a party to the sale agreement Ex.A1, as rightly determined by the first appellate Court, there is no privity of contract as such,

between the plaintiff and the second defendant under Ex.A1 and therefore, it is seen that the plaintiff cannot maintain the suit for the relief of specific performance as against the second defendant. Therefore, the first appellate Court, has rightly held that the plaintiff is not entitled to enforce Ex.A1 against the second defendant.

14. The defendants have taken a specific plea in the written statement that the plaintiff has not been ready and willing to perform his part of the contract under Ex.A1 and the readiness and willingness on the part of the plaintiff being the sine qua non for the entitlement for the discretionary relief of specific performance, the plaintiff having failed to establish the same with acceptable materials, according to them, on that ground also, the plaintiff is not entitled to seek the relief of specific performance. The first appellate Court, on an appreciation of the materials placed, held that the plaintiff has failed to establish that he has been ready and willing to perform his part of contract to get the relief of specific performance.

15. As adverted above, as per the terms of the sale agreement, the plaintiff has tendered the advance amount of Rs.4,680/- to the first defendant out of the sale price fixed at Rs.22,680/-. It is therefore found that the plaintiff is incumbent upon to pay the balance sale consideration of Rs.18,000/- and it is found that Ex.A1 sale agreement, in particular, has stipulated a specific time for the performance of the parties by two months from the date of the sale agreement. It is thus seen that the plaintiff should take all the steps to pay the balance sale consideration within two months from 14.06.1998, which ends on 13.8.1998 and should have called upon the defendants to complete the sale transaction as per the terms of the agreement. Though the plaintiff would aver very vaguely in the plaint that, he has been ready and willing to perform his part of the contract, it is found that the plaintiff has miserably failed to establish the same, by way of acceptable and reliable materials. To establish the readiness and willingness on the part of the plaintiff, we have only the interested ipse dixit testimony of the plaintiff. Now according to the plaintiff, he had been oftenly requesting the first defendant to receive the balance amount and complete the sale transaction. However, with reference to the above case of the plaintiff, other than the interested evidence of the plaintiff examined as PW1, we have no other materials. The above case of the plaintiff is stoutly resisted by the defendants. There is no material to hold that the plaintiff was ready with the balance sale consideration of Rs.18,000/- on or before 13.8.98 and willing to pay the same to the defendants. However, it is contended as per the direction of the first defendant, the

plaintiff had made ready, the stamp papers marked as Ex.A2, for completing the sale transaction. However, it is not made clear as to when actually the sale papers marked as Ex.A2 had been obtained and with reference to the same, the plaintiff has not chosen to examine the stamp vendors and the alleged stamp papers claim to have been purchased from them by the plaintiff. The plaintiff has not specifically pleaded in the plaint or mentioned in the pre-suit notice as to when he purchased the stamp papers marked as Ex.A2. However, a perusal of Ex.A2 would go to show that it had been purchased on 05.8.88. However, when there is no material on the part of the plaintiff that he had prior to 05.8.88 was ready to pay the balance sale consideration amount of 18,000/- to the defendants or to the first defendant as the case may be and when there is no independent evidence on the part of the plaintiff that the first defendant had directed him to make ready the stamp papers for completing the sale transaction, it is found that merely on the purchase of the Ex.A2 stamp papers, we cannot safely concluded that the plaintiff had been ready and willing to perform his part of the contract within the time stipulated in the sale agreement.

16. If really the plaintiff had been ready and willing to perform his part of the contract from the inception, assuming for the sake of arguments that the plaintiff had been ready to part with the sale consideration to the first defendant or the defendants as the case may be, within the time stipulated in the sale agreement Ex.A1 and assuming that it is true that the first defendant or the defendants as the case may be, had refused to complete their part of the contract by accepting the balance sale consideration, for one reason or the other, the plaintiff should have proceeded further in the matter as per law and should have endeavoured to obtain the sale deed from the defendants concerned, by resorting to further necessary legal steps. However, according to the plaintiff, despite his readiness and willingness to perform his part of the contract within the time stipulated, it is only the defendants who were postponing or delaying the completion of the sale consideration. Despite the alleged refusal of the defendants, it is seen that the plaintiff had chosen to issue the legal notice only on 19.7.90 marked as Ex.A3, directing the first defendant to complete the sale transaction. It is seen that the legal notice marked as Ex.A3 has not been addressed to the second defendant. It is therefore seen that the plaintiff has made up his mind that he cannot call upon the second defendant to complete the sale transaction as she is not a party to the sale agreement and accordingly, chosen to issue the notice Ex.A3 only to the first defendant. It is thus found that the readiness and willingness on the part of the plaintiff, as against both the defendants is also not made clear by the issuance of Ex.A3, as the same has been issued only to the first defendant. Further, it is found

that Ex.A3 has been issued long after the period stipulated in the sale agreement Ex.A1 i.e., clearly two years after the sale agreement. It is seen that inasmuch as the plaintiff has not been ready and willing to perform his part of the contract, accordingly, he did not chose to take immediate steps with reference to the completion of the transaction under Ex.A1 and therefore, his pleading that the first defendant or the defendants as the case may be, had been delaying to complete the transaction, despite his readiness and willingness, cannot be believed in any manner. It is seen that till 19.7.90, there is no valid and acceptable material on the part of the plaintiff to show that he is ready and willing to perform his part of the contract. Therefore, resultantly, it has to be held that the plaintiff is not ready and willing to perform his part of the contract within the time stipulated in the agreement and even thereafter for nearly two years, he has not taken any part in completing the sale transaction by expressing his readiness and willingness to the defendants as such and accordingly, it is seen that very belatedly he has sent the legal notice and this by itself would go to show that the plaintiff, on account of the latches and indifference would not be entitled to obtain the equitable relief of specific performance under the sale agreement Ex.A1. Accordingly, it is seen that the first appellate Court has determined that the plaintiff has failed to establish that he is ready and willing to perform his part of the contract either as against the first defendant or the defendants as the case may be and therefore, it is seen that as determined by the first appellate Court on that footing also, the plaintiff is not entitled to seek and obtain the relief of specific performance.

17. Even to the knowledge of the plaintiff on the date of Ex.A1 sale agreement, the second defendant is entitled to undivided half share. Despite the above position, the plaintiff has not endeavoured to obtain the sale agreement Ex.A1, from the second defendant. The plaintiff has not pleaded or established that the first defendant had the legal authority to enter into the sale agreement Ex.A1, on behalf of the second defendant. The plaintiff, in particular, has not pleaded that he had been ready and willing to pay the balance sale consideration to the second defendant for completing the sale transaction and accordingly, it is seen that the pre-notice Ex.A3 has come to be issued only to the first defendant and not to the second defendant, even though, according to the plaintiff, both the defendants are liable to be execute the sale deed on receiving the balance sale consideration. It is further seen that the Ex.A3 has also been issued only to the first defendant directing him to execute the sale deed in respect of the whole of the suit properties and in case he is unable to obtain the execution of the sale deed by the second defendant, he had been called upon

to execute the sale deed in respect of his undivided half share in the suit properties by receiving the appropriate sale amount.

18. It is thus found that the plaintiff has made up his mind that he would not get the sale deed from the second defendant in respect of her half share in the suit properties, on the date of Ex.A3 itself and it is seen that accordingly, under Ex.A3 chosen to seek the alternative remedy of obtaining the sale deed from the first defendant alone in respect of his half share in the suit properties. However, it is found that despite the above said position, the plaintiff has chosen to lay the suit for specific performance against both the defendants, claiming the common relief for specific performance as against both of them, by way of the sale agreement dated 14.6.98 and only sought for the alternative relief from the first defendant for the specific performance of the sale agreement executed under Ex.A1 in respect of his undivided half share of the suit properties. Therefore, it is seen that on the date of the filing of the suit, the plaintiff has laid the suit strongly insisting the relief of specific performance as against both the defendants by way of enforcing the sale agreement against both of them and accordingly, sought for common relief of specific performance against them jointly and only in the alternative, he had sought for the relief as against the first defendant. Therefore, as put forth above, as per the pleadings set out in the plaint, the plaintiff has not given up the common relief of specific performance and in particular not relinquished his claim to the specific performance to the portion of the share of the suit properties to which the second defendant is entitled to and accordingly, it is seen that the plaintiff is endeavouring to enforce the sale agreement as a whole against both the defendants by filing the suit. Till date it is seen that the plaintiff has not relinquished his claim of specific performance under the sale agreement Ex.A1 against both defendants. Accordingly, it is seen that on the appeals preferred by the defendants having been allowed by the first appellate Court, aggrieved over the same, the plaintiff has come forward with the present second appeals.

19. During the course of arguments in the second appeal, the plaintiff's counsel mainly contended that even though his relief of specific performance cannot be enforced as against the second defendant, as she being not a party to the sale agreement, it is his contention that despite the same, the plaintiff would be entitled as per law to seek the specific performance of the agreement as against the first defendant in respect of his half share in the suit properties for a sale price of Rs.11,340/- and therefore, according to him, the first defendant is duty bound to received the balance of Rs.6,660/- and complete the sale transaction, as according to him, the

plaintiff has always been ready and willing to perform his part of the contract.

20. In this connection, it is his further contention that the first appellate Court has erred in placing reliance upon Section 15 of the Specific Relief Act, 1908 as the said Act had already been repealed by the Specific Relief Act 1963. As regards the above contention of the plaintiff's counsel, it is found that the first appellate court has erred in relying upon the illustrations appended to Section 15 of the 1908 Act. When it is noted that the said Act had been subsequently repealed by 1963 Act, the above position also being admitted by the defendant's counsel, as he has also submitted that the determination of the case by the first appellate Court, on the above aspects also does not merit acceptance, it is found that the first appellate Court is not justified in negating the relief of specific performance sought for by the plaintiff relying upon the illustration of Section 15 of the 1908 Act, particularly, when the said Act had not been subsequently repealed by the Specific Relief Act 1963, accordingly, the first substantial question of law formulated is answered.

21. It is further contended vehemently by the plaintiff's counsel that despite his non entitlement to claim the relief of specific performance as against the second defendant, according to the him, as per Section 12 of the Specific Relief Act 1963, he is entitled to seek the specific performance of the part of the contract Ex.A1, as against the first defendant in respect of the his half share in the suit properties and therefore, it is contended that the first appellate Court has erred in not granting the alternative relief sought for as against the first defendant. In this connection, strong reliance was placed upon by the plaintiff's counsel on the decisions reported in (1999) 7 SCC 703 (Manzoor ahmed magray Vs. Ghulam hassan aram and others) (Mohammad yousuf magray Vs. Ghulam hassan aram and others) (2000) 10 SCC 636 (A.Abdul rashid khan (dead) and others Vs. P.A.K.A. Shahul hamid and others) (2011) 11 SCC 153 (Kammana sambamurthy (dead) by Lrs Vs. Kalipatnapu Atchutamma (Dead)). A perusal of the abovesaid decisions would go to show that even if the sale agreement could not be enforced as against the defendants by the plaintiff, it is seen that the plaintiff would be entitled to enforce the same as against the first defendant in respect of his half share in the suit properties, if the conditions stipulated under Section 12 of the Specific Relief Act, 1963 are complied with.

22. Similarly, the counsel for the defendants also contended that the plaintiff would be entitled to enforce the sale agreement as against the first defendant in respect of the half share in the properties, provided he complies with the

condition stipulated under Section 12 of the Specific Relief Act 1963 and according to him, inasmuch as the plaintiff has failed to comply with the conditions stipulated therein, he is not entitled to enforce the sale agreement as against the first defendant also and in this connection, the defendants' counsel has placed reliance upon the decisions reported in (2001) 8 SCC 173 (Rachakonda narayana Vs. Ponthala parvathamma and another), (2000) 7 SCC 379 (Surjit kaur Vs. Naurata singh and another), AIR 2001 AP 204 (Polepalle subramanyam chetty and others Vs. Gundamreddy peddakka)

23. It is found that when the defendants 1 and 2 are entitled to only for the undivided half share in the suit properties and when the suit properties are not yet divided by metes and bounds, neither of them can claim that they are entitled to any specific share in the suit properties and in such view of the matter, when it is found that there is no separation of the description of the suit properties as belonging to the defendants 1 and 2 individually and on the other hand, when the sale agreement Ex.A1 is found to have been taken in respect of the whole of the suit property, it is seen that the plaintiff cannot claim that he can enforce the part of the agreement as against the first defendant under Section 12(4) of the Specific Relief Act 1963. When it is found that Section 12(4) of the Specific Relief Act would apply only when a part of the contract which, taken by itself, can and ought to be specifically enforced, stands on a separate and independent footing from another part of the same contract which cannot or ought not be specifically performed, and inasmuch as on consideration, the Court may direct the specific performance of the former part. However, in so far as this case is concerned, when the division of the suit property had not so far taken by metes and bounds and when it is not clear as to which portion of the suit properties, the defendants 1 and 2 would be entitled to, resultantly, the first defendant's share of the suit properties cannot be determined at this point of time, the sale agreement Ex.A1 as against the first defendant cannot be said to be standing on a separate and independent footing from the another part of the contract namely as against the second defendant and in such view of the matter, it is seen that Section 12(4) of the Specific Relief Act, would not apply to the facts and circumstances of the case at hand.

24. In the light of the above position, it is seen that the plaintiff would be entitled to obtain the relief of specific performance in part as against the first defendant, if, he had adhered to the conditions stipulated under Section 12(3). Section 12(3) of the Specific Relief Act reads as follows:

(3) Where a party to a contract is unable to perform the whole

of his part of it, and the part which must be left unperformed either-

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party-

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), (pays or has paid) the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

25. A perusal of the above provisions of law would go to show that on account of the non performance of the sale agreement by the second defendant for the reasons aforesaid, when it is found that when the defendants have equal share in the suit properties, the plaintiff in order to seek part performance of the contract as against the first defendant, should be ready to pay the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and the plaintiff in addition to that should relinquish all claims to the performance of the remaining part of the contract and all right to compensation either for the deficiency or for the loss or the damage sustained by him through the default of the defendants. It is found that the plaintiff has not established his readiness and willingness to pay the sale consideration from the date of inception, even in respect of the half share of the first defendant in the suit properties as discussed above and further, when on the date of the plaint, the plaintiff has not relinquished all claims to the performance of the remaining part of the contract and his right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendants and on the other hand, laid the suit mainly for the relief of specific performance in whole as against both the defendants and had only sought for the alternative relief of specific performance against the first defendant in respect of his half share in the suit properties, it is seen that, as rightly put forth by the counsel for the defendant, the plaintiff has failed to establish both the conditions stipulated under Section 12 (3) (a) (i) and (ii) as above extracted. In particular, as contended by the defendant's

counsel, the plaintiff, till date, has also not relinquished the claim to the performance of the remaining part of the contract and continued to press for the enforcement of the whole of the contract against both the defendants. It is seen that, as rightly contended by the defendants' counsel, the plaintiff, as such, is not entitled to obtain the specific performance in part of the sale agreement Ex.A1 even as against the first defendant.

26. In the light of the above discussions, I hold that the plaintiff is not entitled to the alternative relief of specific performance of the sale agreement, in respect of the half share of the suit properties of the first defendant and I therefore, hold that the first appellate Court is right in negating the alternative relief of specific performance sought for by the plaintiff and accordingly, the substantial questions of law formulated in this second appeal are answered.

27. In conclusion, the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Cuddalore.

2. The Subordinate Court,
Chidambaram.

3. The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.SRINATH SRIDEVAN, Advocate, S.R.No. 87662
+2cc to Mr.R.SRINIVAS Advocate, S.R.No. 88292 & 88293

Pre-delivery Judgment in
S. A.Nos.837 & 838 of 2001

NM(CO)
TR(14/02/2018)