

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2018

Delivered on : 14.09.2018

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

A.S.No.322 of 2018
and
C.M.P.No.7952 of 2018
and
Cross Objection No.30 of 2018

Mrs.Lakshmi (Deceased)
Mr.M.J.Sheshagiri (Deceased)
1.Mr.M.M.Janaki Raman
2.Mrs.Hemalatha Seshagiri

... Appellants in A.S.No.322 of 2018 (Defendants)
& Respondents in Cross.Obj.30/2018
Vs.

M/s.Unique Industrial Handlers (P) Ltd.,
represented by its Regional Director,
Mr.J.Ramachandran,
having registered Office at
No.206-208,
Nahar @ Seth Industrial Estate,
Chakala, Andheri (E),
Mumbai-400 099.

... Respondent in A.S.322 of 2018 (Plaintiff)
& Cross Objector in Cross.Obj.30/2018

The Appeal Suit has been filed under Order 41-A Rule 1 & 2
r/w Section 96 of C.P.C and Cross Objection has been filed
under Order 41 Rule 22 of C.P.C., against the judgment and
decree dated 24.08.2017 in O.S.No.1645 of 2012 passed by the VII
Additional District Judge, City Civil & Sessions Court at
Chennai.

Appearance

Mr.K.Govindan for the appellants in the Appeal &
for the respondents in Cross Objection

Mr.S.Rajasekar, for the respondent in the Appeal &
for the cross objector in Cross Objection

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

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The appellants are the defendants in O.S.No.1645 of 2012 on
the file of the VII Additional District Judge, City Civil Court

at Chennai. The said suit was filed by the respondent herein/plaintiff seeking for the following reliefs_

(a)directing the defendants specifically to perform their obligations under the Agreement of Sale dated 25.07.2007 by executing and registering the Sale Deed in respect of the suit schedule property on receipt of the balance sale consideration and, in default, directing the Registry to execute and register a Sale Deed in respect of the suit schedule property in favour of the plaintiff at its expense upon deposit of the balance sale consideration to the credit of the suit,

(b)for a mandatory injunction directing the Defendants to do all acts necessary to put the plaintiff in full possession of the suit schedule property,

(c)for a permanent injunction restraining the defendants and their men, servants or any other person or persons from in any way alienating, mortgaging, encumbering or creating charge over the suit property.

2.The 1st defendant Mrs.Lakshmi is the mother of the 2nd defendant Mr.M.J.Seshagiri. The 3rd defendant M.M.Jankiraman is the son of the 2nd defendant. During the pendency of the suit, the 1st defendant died; hence, the defendants 2 & 3 were recorded as the Legal Heirs of the 1st defendant. Subsequently, the 2nd defendant also died during the pendency of the suit; hence, his wife / mother of the 3rd defendant was brought on record as the Legal Heir of the 2nd defendant arraying her as fourth defendant.

3.For the sake of convenience, the parties will hereinafter be referred to as per their rankings in the suit as the plaintiff and defendants.

4.Originally, the plaintiff filed the above said suit before this Court in C.S.No.908 of 2008 against the defendants 1 to 3 for the above said relief. In the said suit, the defendants were set exparte and an exparte decree was passed by this Court on 23.02.2010 and thereafter, the plaintiff had filed an execution petition in E.P.No.3277 of 2010 and the same was also allowed. Thereafter, a sale deed was executed by the Assistant Registrar-I (O.S), on 23.02.2011 on deposit of balance sale consideration and registered as Doc.No.394 of 2011 in the Office of Sub-Registrar. Thereafter, on coming to know about the execution proceedings, the defendants had taken steps to restore the suit to file, by filing an application to condone delay in filing application for setting aside the exparte decree and another application to set aside the exparte decree. The said applications were allowed and the suit was restored to the file of this Court. Subsequently, the suit was transferred to the file of the VII Additional City Civil Court at Chennai and renumbered as O.S.No.1645 of 2012.

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5.The facts of the case of the plaintiff, inter alia, are as follows_

5-1.The plaintiff is a Private Limited Company incorporated under the Companies Act, 1956, having its registered office at No.206-208, Nahar & Seth Industrial Estate, Chakala, Andheri (E), Mumbai and Regional Office at A-3, Anandh Shree Apartments, Old No.32, New No.6, Hindi Prachara Sabha Road, T.Nagar, Chennai-600 017. The defendants are the absolute owners of the Flat measuring to an extent of 1030 sq.ft bearing No.F1, Block No.B in the First Floor of the building called 'Parsn Apartments' situated at Old Door No.109, New No.46, G.N.Chetty Road, T. Nagar, Chennai, together with 515 sq.ft. undivided share of land comprised in R.S.Nos.61 and 62 currently in T.S.Nos.4801 and 6778 in T.Nagar Village, Mambalam-Guindy Taluk, Chennai District measuring to an extent of 14 grounds 2240 sq.ft or thereabouts.

5-2.The suit property was originally purchased by one M.S.Janakiraman, S/o.M.R.Seshagiri Aiah from M/s.Parsn Foundation and Engineering Corporation, having its registered Office at No.78-B, Nirman Bhavan, No.227, Backbay Reclamation, Nariman Point, Mumbai-400 021, by way of Sale Deed dated 22.08.1985 registered as Document No.1012 of 1985 in the office of the Sub-Registrar, T.Nagar. The said M.S.Janakiraman died intestate on 18.11.2005 leaving behind him, his wife (1st defendant), son 2nd defendant and grand-son (3rd defendant) as his legal heirs. Thus, the defendants derived the title to the suit property. As stated supra, the 2nd defendant died intestate on 18.12.2013 leaving behind him, his wife Mrs.Hemalatha Seshagiri (4rd defendant) and his son Janakiraman (3rd defendant) as his legal heirs.

5-3.It is further case of the plaintiff that the plaintiff-company was looking out for a commercial property on lease and the defendants came forward and offered the suit property on a long term lease. Accepting the same, the plaintiff made an advance payment of Rs.1,50,000/- by cheque bearing No.147203, dated 31.03.2006 drawn on HDFC Bank, Mumbai. In addition to this, another sum of Rs.15,000/- was paid in cash. But, the defendants failed to deliver possession of the property and also did not return the advance amount. Since the defendants failed to keep up their promise, the plaintiff demanded the return of the advance amount. The defendants returned only a sum of Rs.65,000/-. However, the defendants offered the suit property for sale for a total sale consideration of Rs.21 lakhs, treating the balance amount of Rs.1,00,000/- retained by them, as advance for the subsequent sale transaction. Pursuant to the said understanding, an agreement of sale came to be entered into on 25.07.2007, wherein the defendants 1 to 3 agreed to sell the plaint schedule property to the plaintiff for a sale consideration of Rs.21 lakhs. The time specified for payment of the balance sale consideration and completion of the sale transaction was two months from 25.07.2007 ie., on or before 24.09.2007. Further, the defendants 1 to 3 agreed to produce the original title deeds in respect of the suit property for inspection and scrutiny of the plaintiff within the said period of two months. But, right from the date of entering into the sale agreement, the plaintiff had repeatedly requested the defendants to produce the original title deeds in respect of the suit property, for inspection and

scrutiny. The plaintiff has also informed the defendants that they are ready and willing to pay the balance sale consideration immediately after receiving the original title deeds and to have the sale deed executed and registered in their name. In fact, at the request of the defendants, further sum of Rs.10,000/- was paid by the plaintiff to the defendants on 26.09.2007, towards further advance amount, which was duly received and acknowledged by the 4th defendant, wife of the 2nd defendant. Therefore, the balance amount payable by the plaintiff-company in respect of the suit property at the time of execution and registration of the sale deed is only Rs.19,90,000/-.

5-4. However, the defendants have been wantonly evading the execution of the sale deed under the guise that they are not in a position to produce the original title deeds as they have mortgaged the suit property with one Mr. Mahesh Mehta, for a loan amount of Rs.9 lakhs borrowed by them on 03.11.2006. However, the defendants promised to arrange for a meeting of the plaintiff with the said Mahesh Mehta for inspection of the original documents and for clearing the mortgage. Since then, several requests were made by the plaintiff, but the defendants neither arranged for any meeting with the said Mahesh Mehta nor did they produce the original title deeds. Since all their efforts to get the sale deed registered in the name of the plaintiff failed, a legal notice was sent to the defendants by the plaintiff on 29.09.2007 informing them that the plaintiff is ready and willing to perform their part of the contract as per the agreement of sale deed dated 25.07.2007 and calling upon the defendants to make arrangement for the plaintiff to have inspection of the original title deeds relating to the suit property and to facilitate for clearance of the mortgage, if any before executing and registering the sale deed, after receipt of the balance sale consideration. Subsequently, on verification, the plaintiff came to know that the mortgage alleged to have been made by the defendants with the said Mahesh Mehta had already been cleared by the defendants and as such, there is no subsisting mortgage over the said property with the said Mr. Mahesh Mehta. Since the plaintiff did not receive any reply to their notice dated 29.09.2007, nor any action was taken by the defendants to execute and register the sale deed, the plaintiff sent yet another notice on 28.04.2008 reiterating their earlier stand. In the said notice, the plaintiff demanded for an inspection to scrutinize the original title deeds. In the said notice, the plaintiff had categorically stated that they were ready and willing to perform their part of the contract by paying the balance sale consideration of Rs.19,90,000/-. Though the defendants have received the said notice, they have not taken any steps to complete the sale transaction. The plaintiff also came to know that the defendants are clandestinely making attempts to sell the suit property to some third parties. Hence, the plaintiff-company has filed the suit for the reliefs as stated supra.

6. Resisting the case of the plaintiff, the defendants 2 & 3 had filed a joint written statement. The averments made in the written statement filed by the defendants 2 & 3 are as follows_

6-1.The plaintiff had approached the defendants to take the suit property on lease. The defendants accepted the same and the plaintiff entered into a lease agreement with the defendants on 31.03.2006 in respect of the suit property. In the said Lease Agreement, the plaintiff had agreed to pay a sum of Rs.5 lakhs towards one time interest and security deposit. Further, it was agreed between the parties that the demised premises namely suit flat shall be leased out for a period of 5 years commencing from 01.05.2006 to 30.04.2011 and out of Rs.5 lakhs, the plaintiff paid Rs.1,50,000/- by cheque bearing No.147203, dated 31.03.2006 drawn on HDFC Bank, Mumbai towards the part payment of one time interest and security deposit and agreed to pay the balance sum of Rs.3,50,000/-, on the date of handing over the vacant possession of the premises by the defendants to the plaintiff. But, the plaintiff has subsequently purported to have brought about a fraudulent agreement for sale dated 25.07.2007, wherein the plaintiff had forged the signatures of the defendants 1 to 3.

6-2.In fact, the plaintiff originally filed the suit in C.S.No.908 of 2008 before this court for specific performance of the sale agreement; along with the suit, the plaintiff has also filed O.A.No.1024 of 2008 for interim injunction against the defendants from alienating or dealing with the property and obtained an order to that effect from this Court in the said application. In the said suit, the summons were served on the defendants 2 & 3 only on 11.11.2008 and on 1st defendant on 18.01.2009. Since the 2nd defendant is a chronic diabetic patient undergoing treatment in Dr.Mohan's Diabetes Specialities Center, he could not contact his counsel for preparation of written statement. In the meantime, for non-appearance, the defendants were set exparte on 18.09.2009 and the suit was posted before the Master for recording evidence on 02.02.2010. Finally, an exparte decree was passed by this Court on 23.02.2010 and a decree of specific performance was granted in favour of the plaintiff. After the decree dated 23.02.2010, an execution petition was filed by the plaintiff as against the defendants in E.P.No.3277 of 2010. Though originally a counsel was appearing on behalf of the defendants in the suit, he subsequently did not file any vakalat in the Execution Petition, as a result of which a sale deed was executed by the Assistant Registrar-I (O.S), on 21.02.2011 and the Execution Petition was closed on 23.02.2011. The defendants were not aware of the decree and the execution petition.

6-3.Thereafter, only when some persons came and inspected the suit property to comply with the Execution Order, the defendants came to know about the court proceedings and the entire fraud committed by the plaintiff. The flat measures an extent of 1030 sq.ft, worth about Rs.45 lakhs, was knocked away by the plaintiff for a meagre sum of Rs.21 lakhs without any valid and legally enforceable contract. Hence, the 2nd defendant filed an application to condone the delay in filing an application to set aside the exparte decree and the said petition was allowed and the delay was condoned. Subsequently, the 2nd defendant filed an application in A.No.2607 of 2011 for setting aside the exparte decree passed by this Court and the exparte decree was also set aside and the suit was restored to

file. The defendants 1 to 3 further submit that the entire proceedings initiated by the plaintiff is surrounded by suspicious and fraudulent circumstances. The decree, that was passed against the 1st defendant, who died on 27.06.2009, and consequent execution of sale deed by the Officer of this Court are invalid and non-est in the eye of law. There is no mention about agreement for lease dated 31.03.2006 in the alleged agreement for sale dated 25.07.2007. A perusal of the agreement of sale would establish beyond doubt that fraud has been committed by the plaintiff and its associates. Therefore, the plaintiff is not entitled to the reliefs sought for in the suit. Thus, the defendants 1 to 3 sought for dismissal of the suit.

7. The 4th defendant, who was subsequently brought on record as Legal Heir of the deceased 2nd defendant, has also filed a separate written statement, on the same line.

8. On the above pleadings, the Trial Court had initially framed six issues and subsequently, on 06.06.2015, five additional issues were framed. Thereafter, the Trial Court recasted the issues into five, as follows-

- 1) Whether the agreement of sale dated 25.07.2007 is true and valid?
- 2) Whether the plaintiff is entitled to the relief of specific performance as sought for?
- 3) Whether the plaintiff is entitled to the relief of mandatory injunction?
- 4) Whether the plaintiff is entitled to the relief of permanent injunction?
- 5) To what other relief the plaintiff is entitled to?

9. Before the Trial Court, on the side of the plaintiff, the Regional Director of the plaintiff company was examined as P.W.1 and one of the attestors to the sale agreement was examined as P.W.2 and twelve documents were marked as Ex.P.1 to Ex.P.12. On the side of the defendants, the 4th defendant examined herself as D.W.1 and she filed proof affidavit and she was cross-examined on 05.10.2015 and thereafter, she did not subject herself to further cross-examination. Hence, her evidence was closed. During the course of cross-examination of D.W.1 on 05.10.2015, a copy of the lease agreement dated 31.03.2006 was marked by the plaintiff as Ex.B.1.

10. The Trial court, after analysing the entire evidence, has decreed the prayer of specific performance, by directing the defendants to perform their obligations under the Agreement of sale dated 25.07.2007 by executing and registering the sale deed in respect of the suit schedule property on receipt of the balance sale consideration; however, the Trial Court dismissed the prayer of mandatory injunction, on the reasoning that the court fee shall be computed on the amount at which the relief sought is valued in the plaint or on Rs.1,000/- whichever is higher, but in the instant case, the suit is valued at Rs.21 lakhs for the relief of specific performance; that the plaintiff has to calculated the court fee only on the basis of the value

of the plaint ie., Rs.21 lakhs, but, the mandatory injunction prayer has been valued as Rs.1000/- and the plaintiff has paid only a sum of Rs.25/-, which is not correct. Thus, the Trial Court has come to the conclusion that the plaintiff is not entitled to the relief of mandatory injunction.

11. Aggrieved over the decree for specific performance, the defendants have filed the present appeal before this Court. Challenging the dismissal of the prayer for mandatory injunction by the Trial Court, the plaintiff has also filed the Cross Objection as stated supra.

12. The learned counsel for the appellants/defendants submitted that the plaintiff-company approached the defendants 1 to 3 to take the suit property on a long time lease and the said offer was accepted by the defendants 1 to 3 and they entered into a lease agreement on 31.03.2006. At no point of time, the defendants had agreed to sell the suit property to the plaintiff. But, the plaintiff had drafted an agreement of sale dated 25.07.2007 viz., Ex.A.2 and forged the signatures of the vendors viz., the defendants 1 to 3 in the said sale agreement. Similarly, the plaintiff has also forged the signature of the 4th defendant, as one of the witnesses to the said sale agreement-Ex.A.2. Another witness said to have signed the said sale agreement is one Anand, who is an employee of the plaintiff-company. It is alleged that the said Anand has signed in the lease agreement (Ex.B.1), dated 31.03.2006, also as a witness. But, the signatures of the said Anand found in the sale agreement-Ex.A.2 and the lease agreement-Ex.B.1 totally differ from each other. Further, on comparison of the signatures contained in Ex.A.2-Sale Agreement and Ex.B.1-Lease agreement, the signatures of the defendants 1 to 3 did not tally and the same leads to a suspicion as to the genuineness of the sale agreement-Ex.A.2. Similarly, in the lease agreement (Ex.B.1), dated 31.03.2006, the 1st defendant had affixed her thumb impression along with her signature. When that being so, while the 1st defendant affixes the signature in the alleged lease agreement, she would have also affixed her thumb impression along with the signature even in the sale agreement (Ex.A.2) also. But, in the sale agreement (Ex.A.2), the thumb impression of the 1st defendant is not there. Therefore, perusal of the agreement of sale would establish beyond any reasonable doubt that fraud has been committed by the plaintiff and it leads to a suspicion as to the genuineness of the document-Ex.A.2. When the defendants had denied the signatures in the sale agreement, whole burden lies on the plaintiff to prove their case as per Section 101 of the Indian Evidence Act. But, the plaintiff has failed to prove their case before the Trial Court. Since the signatures of the 1st defendant and the 2nd defendant were available in the lease agreement-Ex.B.1, the Trial Court ought to have examined the disputed signatures in the alleged sale agreement-Ex.A.2 with the admitted two signatures in the lease agreement-Ex.B.1. Further more, since the plaintiff had not taken any step to have the signatures verified through a hand-writing expert, the Trial Court ought to have drawn an adverse inference against the the plaintiff and

in favour of the defendants. The Trial Court has also failed to take into consideration the fact that P.W.1 in his cross-examination had categorically stated that he has not seen any parent document or deed pertaining to the suit property and that no legal opinion was sought by the plaintiff-company before purchasing the property. In this regard, the learned counsel for the appellants/defendants submitted that a prudent man will not enter into an agreement for sale without verifying the parental documents and Encumbrance Certificate. But, the Trial Court has not considered this aspect properly. Further, the learned counsel for the appellants by inviting the attention of this Court to the contents of Ex.A2-sale agreement submitted that in Ex.A2 it has been stated as if the vendors viz., defendants have borrowed money on security of the suit property from one Magesh Metha, but Ex.A.5, a registered Receipt (Doc.No.2559 of 2006) dated 3.11.2006, which was executed by the said Mahesh Metha in favour of the defendants, would show that the loan was already cleared by the defendants on 03.11.2006 itself. In such circumstances, if really a sale agreement was entered into between the plaintiff and the defendants 1 to 3, they would have mentioned about the deposit of title deeds with the said Magesh Metha, because there is no necessity for the defendants to include such a clause in the sale agreement, which would show that the document was fraudulently created by the plaintiff. Further, the learned counsel for the appellants/defendants submitted that the suit property was in a prime location at Chennai and that the suit property is valued at Rs.45,92,500/- as on the guide line value in the properties at G.N.Chetty road at T.Nagar is Rs.4,750/- per square feet, based on the guideline value fixed by the Tamil Nadu Government From 01.04.2003 to 31.07.2007, whereas the sale agreement is alleged to have been entered on 25.07.2007 for a very low price of Rs.21 lakhs. Hence, absolutely there is no necessity for the defendants to enter into sale agreement with the plaintiff to sell the suit property for a lesser sale consideration of Rs.21 lakhs.

13.The learned counsel for the appellants/defendants would further submit that in the lease agreement (Ex.B.1 dated 31.03.2006), in page 3, it was mentioned that the plaintiff issued a cheque for the amount of Rs.1,50,000/- bearing Cheque No.147203, dated 31.03.2016 drawn on HDFC Bank, Mumbai, towards the part payment of interest free security amount. But, in the sale agreement dated 25.07.2007 (Ex.A.2) alleged to have been entered into between the plaintiff and the defendants 1 to 3, very same Cheque No.147203, dated 31.03.2006, for an amount of Rs.1,00,000/- was mentioned as a part of advance amount for the sale consideration. This fact would clearly reveal that the cheque issued at the time of entering into lease agreement, towards the part payment of interest free security amount, was subsequently used by the plaintiff to project the case as if the amount under the said cheque was paid as advance for the sale agreement and thus, a fraud has been committed by the plaintiff. Therefore, equity relief of specific performance cannot be granted to the plaintiff. Thus, the learned counsel for the appellants/defendants sought for setting aside the judgment and

decree passed by the Tribunal granting decree of specific performance.

14. Countering the submissions made by the learned counsel for the appellants/defendants, it is contended by the learned counsel for the respondent/plaintiff that the suit property is an old flat admeasuring 1030 sq.ft bearing No.F1, Block No.B, First Floor, PARSN Apartments at Door No.46, G.N.Chetty Road, T.Nagar, Chennai, together with 515 sq.ft of undivided share and interest in the land beneath the building. The plaintiff-company was looking for a property in the year 2006 and entered into an unregistered lease agreement (Ex.B.1) with the defendants and made an advance payment of Rs.1,65,000/- by way of cheque and cash. But, the defendants failed to deliver the possession and on demand, they returned only a sum Rs.65,000/-. However, the defendants offered the property for sale for a total sale consideration of Rs.21 lakhs treating the balance of Rs.1,00,000/- retained by them as advance for the subsequent transaction. Hence, an agreement of sale was entered into on 25.07.2007 between the plaintiff and the defendants 1 to 3 under Ex.A.2. The 2nd defendant was a chronic diabetic patient and the family was also in need of funds. At the request of the defendants, a further sum of Rs.10,000/- was paid in cash on 26.09.2007 to the 4th defendant. The plaintiff was always ready and willing to pay the balance sale consideration of Rs.19,90,000/-. However, the defendants evaded execution of sale deed and set up a plea that the property is under mortgage. They did not also keep up their promise to allow the plaintiff to inspect the original documents. Hence, left with no other option, the plaintiff sent a legal notice on 29.09.2007 (Ex.A.3) to the defendants informing about their readiness and willingness to perform their part of the contract by paying the balance sale consideration of Rs.19,90,000/- and also sought for inspection of original documents of title. At this juncture, the plaintiff came to know that the mortgage, said to have been created by the defendants with the above said Magesh Metha, had already been cleared by the defendants on 03.11.2006 itself, which is evidence from Deed of receipt dated 03.11.2006 marked as Ex.A.5. Hence, the plaintiff has sent another notice dated 28.04.2008 viz., Ex.A.6 to the defendants indicating readiness and willingness to purchase the property. Though notices were received by the defendants, no reply was received by the plaintiff from the defendants. The advance amount of Rs.1,10,000/- is being held by the defendants. The plaintiff came to know that the defendants are trying to sell the suit property to third parties, dehors the valid and subsisting sale agreement entered into with the plaintiff. Hence, the plaintiff filed the suit in C.S.No.908 of 2008 for specific performance and mandatory injunction and an order of interim injunction was obtained by the plaintiff from this Court. The said suit was decreed exparte on 23.02.2010 and thereafter, the plaintiff filed an Execution Petition in E.P.No.3277 of 2010 and got the sale deed executed through the Court on deposit of the balance sale consideration of Rs.19,90,000/-. However, the defendants filed an application in A.No.1520 of 2011 to condone

the delay in filing a petition to set aside the exparte decree with considerable delay and the same was also allowed by this Court on 21.04.2011, on a condition that they should refund a sum of Rs.4,45,000/- spent by the plaintiff towards stamp duty and registration charges. The plaintiff was permitted to withdraw the deposit of Rs.19,90,000/- made by them in the Court. Later, the civil suit was transferred to the file of the City Civil Court. Since the 1st defendant died on 27.06.2009, the written statement was filed by the defendants 2 & 3 on 08.11.2012 levelling bald allegation for the first time that the sale agreement is a forged document. The 4th defendant, who was brought on record on 08.07.2014, filed her written statement on 02.03.2015 on the same line.

15.The learned counsel for the respondent/plaintiff would further submit that the defendants miserably failed to establish the allegation of forgery. In fact, on the side of the plaintiff, one J.Ramachandran, Regional Director of the plaintiff-company, who is a signatory to the sale agreement-Ex.A.2 was examined as P.W.1 and one of the witnesses to Sale agreement-Ex.A.2 viz., H.Anand was examined as P.W.2. On the side of the defendants, the 4th defendant, who was examined as D.W.1, did not mark any document. Ex.B.1, a copy of the lease deed dated 31.03.2016 was marked during the cross-examination of D.W.1. Further, D.W.1 did not subject herself for further cross-examination after 05.10.2015. The pleadings in the written statements do not comply with the requirements of Order VI Rule 4 of Civil Procedure Code. Since the 4th defendant/D.W1 did not subject herself to further cross-examination, the Trial Court has rightly drawn adverse inference against the defendants and has come to the conclusion that the defendants have miserably failed to prove their case of forgery/fraud. In this regard, the learned counsel for the respondent/plaintiff has also relied upon the decision reported in (1999) 3 SCC 457 (Iswar Bhai C.Patel vs. Harihar Behera and another).

16.Further, it is contended by the learned counsel for the respondent/plaintiff that no suggestion was put forth in the cross-examination of P.W.1 & P.W.2 with reference to the serious allegation of forgery/fraud of the sale agreement. Considering the factual aspects, the question of examining a hand-writing expert on the side of the plaintiff to prove the signatures in the documents does not arise in this case. In this regard, the learned counsel for the respondent/plaintiff has also relied upon the decision reported in (2013)3 SCR 601 (Gian Chand and brothers Vs. Rattan Lal).

17.The learned counsel for the respondent/plaintiff has also submitted that in the lease agreement, it has been stated that the suit property was mortgaged with one Mr.Magesh Metha as security for the loan borrowed by the defendants. But, actually, the defendants had cleared the mortgage even prior to the date of sale agreement ie., on 03.11.2006. The receipt for discharge of the mortgage amount issued by the said Magesh Metha was marked as Ex.A.5, which would show that the 4th defendant stood as one of the witnesses to Ex.A.5. Further, a perusal of

Ex.A.12-EC with reference to the suit property for the period from 01.01.2003 to 07.06.2012 (ten years) would reveal that the defendants 1 to 3 with the active involvement of D.W.1/4th defendant, have created numerous encumbrances pending the suit and while the interim orders passed by the Court were in force. It is evident from the entry in Sl.No.3 dated 01.09.2008 in EC, with reference to O.S.No.2177 of 2008 filed by one Ramadoss involving the suit property and again the entry at Sl.No.5 dated 27.04.2011 with reference to O.S.No.4290 of 2010 filed by one Rajasekaran with reference to the suit property, in which suit D.W.1 herein was also a party defendant, would show that even after entering into the sale agreement with the plaintiff the defendants are negotiating with various third parties involving the suit properties. As a matter of fact, after entering into lease agreement dated 31.03.2006 with the plaintiff herein, the 2nd defendant had entered into an agreement of sale on 21.04.2006 with one Vidya Patterson and later cancelled the same on 30.05.2006, which entries are found in Sl.No.1 & 2 of the Encumbrance Certificate Ex.A.12. Thus, the modus operandi of the defendants is to enter into agreements, accept money and then deny the execution and cheat the unwary buyers of their money. The conduct of the defendants in making serious allegation of fraud/forgery against the plaintiff and failure of the 4th defendant (D.W.1) in subjecting herself for further cross-examination and suppressing the clearance of the mortgage, would show that the plaintiff is entitled for the relief of specific performance and consequential reliefs. It is a well settled legal principle that the conduct of the parties should be taken into consideration for granting the equitable relief of specific performance.

18.That apart, the learned counsel for the respondent/plaintiff submitted that the plaintiff is always ready and willing to perform their part of the contract and the plaintiff proved the same by examining P.W.1 & P.W.2 and by marking the legal notices sent by the plaintiff calling upon the defendants to produce the original title deeds. Thus, the learned counsel for the respondent/plaintiff submitted that absolutely there is no need to interfere with the findings rendered by the Court below with regard to the prayer of specific performance.

19.With regard to the Court fee, the learned counsel appearing for the respondent/plaintiff by relying upon Section 42 of the Tamil Nadu Court Fees and Suits and Valuation Act, 1955, submitted that in a suit for specific performance, in the case of a contract for sale, fee shall be payable computed on the amount of the consideration. In the instant case, the sale consideration was fixed at Rs.21 lakhs and the petitioner has paid the court of Rs.24,525/- computed on the basis of the sale consideration of Rs.21 lakhs. Under such circumstances, according to the learned counsel for the respondent/plaintiff, it is not necessary to again pay the court fee on the value of Rs.21 lakhs in respect of the prayer of mandatory injunction directing the defendants to hand over the possession of the property. Further, the learned counsel for the petitioner sought

for allowing the cross-objection, seeking to grant mandatory injunction directing the defendant to put the plaintiff in possession.

20. We have carefully heard the submissions made on either side and perused the materials available on record.

21. On the above submissions made on either side, the following points arose for consideration in this appeal_

1) Whether the defendants have established the plea of fraud/forgery?

2) Whether the plaintiff proved their readiness and willingness to perform their part of the contract?

3) Whether the plaintiff is entitled for the relief of mandatory injunction?

22. As we have dealt with the factual matrix of the case in detail, We refrain from dealing with the same any further. However, certain facts which are absolutely germane and necessary are dealt with by us for disposal of this appeal.

Point No.1:-

23. It is the case of the defendants that Ex.A.2-sale agreement dated 25.07.2007 is a forged document and the signatures of D1 & D2 were forged by the plaintiff. But, not even a single suggestion was put to the witnesses P.W.1 & P.W.2 during their cross-examination with reference to the serious allegation of fraud/forgery brought out by the defendants. Similarly, the second witness to Ex.A.2 sale agreement, viz., Hemalatha Seshagiri (the 4th defendant), who entered into the witness box as D.W.1 was partly cross-examined on 05.10.2015 and thereafter she did not subject herself for further cross-examination by appearing before the Court. In fact, she has also not denied the factum of having signed as an attesor to Sale Agreement-Ex.A.2 in her written statement. Except making a bald allegation that signatures of D1 to D3 are forged, the defendants had not taken any effort to prove the said allegation. When no suggestion was put forth to P.W.1 & P.W.2 with regard to the allegation of fraud/forgery and moreover, when D.W.1 has not subjected herself to further cross-examination, no significance could be attached to the defence put forward in the written statement that the sale agreement-Ex.A.2 is a forged one and the signatures of the defendants were forged in the sale agreement. The factum of D.W.1 not subjecting herself to the further cross-examination by not appearing before the Court in order to refute allegation against her, itself is sufficient to draw an adverse inference against her. In this regard, a useful reference could be placed in the judgment reported in 1993 (3) SCC 457 [Iswar Bhai C. Patel Vs. harihar Behera and another], wherein it has been held by the Hon'ble Supreme Court that adverse presumption must be drawn against the person who does not present himself for cross-examination and to enter the witness-box in order to refute allegations made against him or support his pleading in his written statement.

24.It is yet another defence of the defendants that actually the plaintiff had approached the defendants and offered to take the suit property on lease and as such the plaintiff entered into a lease agreement on 31.03.2006 and the plaintiff agreed to pay a sum of Rs.5 lakhs towards interest free security deposit. Out of Rs.5 lakhs, the plaintiff had paid only a sum of Rs.1,50,000/- through undated cheque bearing No.147203 drawn on HDFC Bank, Mumbai towards part payment of interest free security deposit. This undated cheque was referred to in page 3 of the Lease Agreement dated 31.03.2006. But, in the sale agreement (Ex.A.2) alleged to have been entered into between the plaintiff and the defendants, the very same cheque number was mentioned as if Rs.1 lakh was given in favour of the defendants as an advance for sale consideration amount. Thus, the learned counsel for the appellants/defendants submitted that if really the plaintiff had entered into a sale agreement with the defendants, absolutely there is no possibility to mention the very same cheque number found in the lease agreement (Ex.B.1) entered into on 31.03.2006. This fact would reveal that fraud has been committed by the plaintiff. Therefore, according to the learned counsel for the appellants/defendants, equity relief under the Specific Relief Act cannot be granted to the plaintiff as the plaintiff has not approached the Court with clean hands.

25.But, it is the reply of the learned counsel for the respondent/plaintiff that originally the defendants came forward to offer the suit property for lease and accepting the same, the plaintiff made an advance amount of Rs.1,50,000/- by cheque bearing No.147203 dated 31.03.2006 drawn on HDFC Bank, Mumbai. In addition to that, another sum of Rs.15,000/- was paid as cash. Since the defendants failed to keep up their promise, the plaintiff demanded return of the advance amount. However, the defendants returned only a sum of Rs.65,000/- and offered the suit property for sale for a total consideration of Rs.21 lakhs treating the balance sum of Rs.1,00,000/- payable by the defendants as advance for the subsequent transaction. That is why the very same cheque number was again mentioned in the sale agreement dated 25.07.2007.

26.This Court finds some force in the submission made by the learned counsel for the respondent/plaintiff. In fact, P.W.1 had also spoken about this fact in chief-examination. But, in the cross-examination of P.W.1, not even a suggestion was put forth to P.W.1 or P.W.2 to the effect that the mentioning of the very same cheque number in the sale agreement would go to show that fraud has been committed by the plaintiff. Under such circumstances, this Court cannot give any significance to the submission made by the learned counsel for the appellants/defendants that the presence of the very same cheque number in the sale agreement would go to show that fraud has been committed by the plaintiff.

27.Hence, We find that since no suggestion was put forth to P.W.1 or P.W.2 with regard to the allegation of fraud and forgery, the question of sending the documents to the hand-writing experts to prove the signatures found in the sale

agreement with the admitted signatures of the defendants 1 & 2, does not arise in this case. In this regard, a reference could be placed in a decision reported in 2013 (3) SLR 601 (Gian Chand and brothes Vz. Rattan Lal), (bring from library and extract relevant portion).

"17. It is well settled principle of law that a person who asserts a particular fact is required to affirmatively establish it. In Anil Rishi Vs. Gurbaksh Sing [(2006) 5 SCC 558], it has been held that the burden of proving the facts rests on the party who substantially asserts the affirmative issues and not the party who denies it and the said principle may not be universal in its application and there may be an exception thereto. The purpose of referring to the same is that if the plaintiff asserts that the defendant had acknowledged the signature, it is obligatory on his part to substantiate the same. But the question would be what would be the consequence in a situation where the signatures are proven and there is an evasive reply in the written statement and what should be construed as substantiating the assertion made by the plaintiff.

18. In Krishna Mohan Kul v. Pratima Maity and others (2004) 9 SCC 468, it has been ruled thus: -

"When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation."

19. In Shashi Kumar Banerjee and others v. Subodh Kumar Bannerjee since deceased and after him his legal representatives and others [AIR 1964 SC 529], a Constitution Bench of this Court, while dealing with a mode of proof of a will under the Indian Succession Act, observed that where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same.

20. In A.Raghavamma and another v. A. Chenchamma and another [AIR 1964 SC 136], while making a distinction between burden of proof and onus of proof, a three-Judge Bench opined thus: -

"There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish

the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations,

having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."

21. The present case is not one such case where the plaintiffs have chosen not to adduce any evidence. They have examined witnesses, proven entries in the books of accounts and also proven the acknowledgements duly signed by the defendant. The defendant, on the contrary, except making a bald denial of the averments, had not stated anything else. That apart, nothing was put to the witnesses in the cross-examination when the documents were exhibited. He only came with a spacious plea in his evidence which was not pleaded. Thus, we have no hesitation in holding that the High Court has fallen into error in holding that it was obligatory on the part of the plaintiffs to examine the handwriting expert to prove the signatures. The finding that the plaintiffs had failed to discharge the burden is absolutely misconceived in the facts of the case.

The dictum laid down in the above said decision would be squarely applicable to the present facts of the case. In the instant case, to prove their case, the plaintiff has examined P.W.1 & P.W.2. However, no suggestion was put to the P.W.1 & P.W.2 at the time of cross-examination by the defendants with regard to the alleged fraud/forgery committed by the plaintiff. Under such circumstances, absolutely there is no necessity for the plaintiff to examine hand-writing expert to ascertain the veracity of the signatures found in the documents. Furthermore, the admitted document viz., Ex.B.1 is only a photostat copy. Hence, the question of comparison of signatures found in Ex.B.1 with signatures found in sale agreement-Ex.A.2 does not arise. In fact, the oral evidence given by D.W.1 (4th defendant) on 05.10.2015 would show that the original of Ex.B.1-lease agreement is available with her, but she did not produce the same.

28. Furthermore, no reply was sent to the legal notices (Ex.A.3 & Ex.A.6 dated 29.09.2007 & 28.04.2008), in which the plaintiff called upon the defendants to execute the sale deed by receiving the balance sale consideration. Except making bald allegation that the the plaintiff has committed fraud/forgery, no details/particulars as required under Order VI Rule 4 of CPC have been adduced by the defendants in support of their defence. In this regard, a reference could be placed in the decision reported in AIR 1951 SC 280 [Bishundeo narain and another Vs. Seogeni Rai and Jagernath], wherein the Hon'ble Supreme Court

has held as follows:-

"It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

In the instant also, except making bald allegations of fraud and forgery, the defendants have not adduced any particulars to support their defence. In the light of the above decisions cited supra and considering the evidence on record, it could be safely concluded that the Sale Agreement-Ex.A.2 is a genuine document and the defendants have failed to establish their plea of fraud/forgery.

Point No.2:-

29. With regard to the readiness and willingness, irrespective of the defence of the defendants, We are of the opinion that the plaintiff in a suit for specific performance has to prove that he was always ready and willing to perform his part of the contract. In the instant case, it was agreed between the parties that originally, on 31.03.2006 a long term lease was entered into between the plaintiff and the defendants and in pursuance of the same, the plaintiff has paid an advance amount of Rs.1,50,000/- through a cheque drawn on HDFC Bank, Mumbai. In addition to that, he has paid another sum of Rs.15,000/- to the defendants. However, possession of the property was not handed over to the plaintiff. Thereafter, since the defendants failed to keep up their promise, the plaintiff demanded refund of the advance amount of Rs.1,65,000/-, but the defendants refunded only a sum of Rs.65,000/- and the defendants offered to sell the property to the plaintiff for a sale consideration of Rs.21 lakhs, treating the balance sum of Rs.1 lakh payable by the defendants, as advance for the subsequent sale transaction. It is further case of the plaintiff that apart from Rs.1 lakh, another sum of Rs.10,000/- was paid to the 4th defendant on 26.09.2007.

30. It is further contended by the learned counsel for the respondent/plaintiff that at the time of entering into the sale agreement, the defendants had represented to the plaintiff that the subject property had been mortgaged for a sum of Rs.9 lakhs on 03.11.2006 with one Mr.C.Mahesh Mehta residing at No.17, 1st Floor, E.V.K.Sampath road, Vepery, Chennai. As such, at the time of entering into the sale agreement, only a photostat copy of the parental document in respect of the subject property was handed over to the plaintiff. The defendants had also assured to arrange for a meeting of plaintiff with the said Mahesh Mehta for inspection of the original documents and for clearing the

mortgage. But, the defendants have not arranged for any such meeting. Since the defendants had not come forward to execute the sale deed, the plaintiff issued a legal notice dated 29.09.2007 to the defendants informing the plaintiff's readiness and willing to perform their part of the contract and also calling upon the defendants to arrange for a meeting of the plaintiff with the said Mahesh Mehta to facilitate for clearance of the mortgage. But, to the said legal notice, the plaintiff did not receive any reply from the defendants. The plaintiff came to know that the said mortgage had already been cleared by the defendants on 03.11.2006 under Ex.A.5. Hence, the plaintiff sent another legal notice on 28.04.2008 indicating their readiness and willingness to purchase the property. Though the said notice was received by the defendants, no reply was sent by the defendants. Hence, it is obvious that the plaintiff was always ready and willing to perform their part of the contract and it is the defendants who did not come forward to perform their part of the contract to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration. Therefore, it is clear that the plaintiff has proved their readiness and willingness through the legal notices Ex.A.3, and Ex.A.6.

31.Further, the plaintiff had earlier filed the suit before this Court in C.S.No.908 of 2008 and since the defendants failed to appear before the Court, the plaintiff had obtained an exparte decree and also deposited the balance sale consideration to the credit of the suit and got the sale deed executed in their favour by the Assistant Registrar of this Court. Thereafter, the defendants appeared and got the exparte decree set aside and the suit was restored to file. Thereafter, the suit was transferred to the lower Court and renumbered as O.S.No.1645 of 2012. All these aspects found in this case would show that the plaintiff was already ready and willing to perform his part of the contract.

32.The conduct of the defendants in making serious allegation of fraud/forgery against the plaintiff and failure of the 4th defendant (D.W.1) in subjecting herself for further cross-examination and suppressing the clearance of the mortgage, would show that the plaintiff is entitled for the relief of specific performance and consequential reliefs. It is a well settled legal principle that the conduct of the parties should be taken into consideration for granting the equitable relief of specific performance. In this regard, the Hon'ble Supreme Court in the decision reported in (2015) 1 SCC 705 [Zarina Siddiqui Vs. A.Ramalingam], has categorically held as follows:-

"33.The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be

exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although defendant No.2 held a registered power of attorney on behalf of defendant No.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law."

The above said dictum is squarely applicable to the present facts of the case. The conduct of the defendants in suppressing the materials facts would make the Court to exercise its discretionary power to grant the relief of specific performance in favour of the plaintiff.

Point No.3:-

33. With regard to the relief of mandatory injunction, though the Court below has granted the relief of specific performance and permanent injunction, it has rejected the relief of mandatory injunction directing the defendants to put the plaintiff in possession of the property on the ground of payment of insufficient court fee. But, We are of the opinion that after obtaining the relief of specific performance, the whole rights come to the purchaser. Once such a decree for specific performance is granted, the Court has got every power to order delivery of possession and there is no need for separate prayer for mandatory injunction, as has been held by the Hon'ble Supreme Court in the case reported in (1982) 1 SCC 525 [Babu Lal Vs. Hazari Lal Kishori Lal]. In the said decision, it has been held as follows:-

"11. Section 22 enacts a rule of pleading.

The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide in the

decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

....

16. It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified decree to the extent that the sale deed was to be executed by respondents Nos. 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against respondents Nos. 6 to 9 but also against the subsequent purchaser i.e., the petitioner and thus the petitioner was himself the judgment debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed. The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases'. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to sub-section (2) of section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'."

From the dictum laid down in the above decision, We are of the opinion that there is no need to pay separate court fee for the relief of mandatory injunction, since the Court can grant the relief of delivery of possession once the suit is decreed for specific performance. Accordingly, all the above points are answered in favour of the plaintiff.

34. Hence, We are of the opinion that the plaintiff is entitled for the relief of specific performance, permanent injunction and mandatory injunction as sought for by the plaintiff in the suit. However, considering the fact that the sale agreement has been entered into between the parties in the year 2007 and now, nearly eleven years have lapsed and taking

note of the fact that the value of the property would have gone much higher, We are of the opinion that some additional amount could be granted to the defendants to compensate them. In this regard, a reference could be placed in the decision reported in (P. D'Souza vs. Shondrilo Naidu) reported in (2004) 6 SCC 649, wherein in Para No.43, it was observed as follows:-

"43. Bhan, J., however, while expressing his dissension in part observed; (SCC pp. 506 & 507, paras 38 & 40)

"38. It is well settled that in cases of contract for sale of immovable property the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the plaintiff.

....
40. Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend on the facts and circumstances of each case."

35. For the foregoing reasons, the appeal filed by the defendants is dismissed and the Cross-Objection filed by the plaintiff is allowed. The judgment and decree passed by the Court below is confirmed in respect of granting the reliefs of specific performance and permanent injunction; and the same is set aside in respect of rejecting the relief of mandatory injunction. Consequently, the suit is decreed as prayed for. However, the plaintiff is directed to pay 9% interest per annum on the sale consideration, from the date fixed for performance of the contract under the Sale Agreement till the date of payment. The said amount has to be deposited by the plaintiff, after adjusting the amount that has already been paid, within a period of eight weeks from the date of receipt of a copy of this Judgment. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To,
The VII Additional District Judge,
City Civil & Session Court, Chennai.

Copy to: The Section Officer
High Court, Madras 104

+1cc to Mr.K.Govindan, Advocate SR.NO.63755
+1cc to Mr.S.Rajasekar, Advocate SR.NO.64064

NM(CO)
sm:15.10.2018

A.S.No.322 of 2018
and
C.M.P.No.7952 of 2018
and
Cross Objection No.30 of 2018



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