

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.312 & 313 of 2018
and C.M.P.No.8721 of 2018

Kumarasamy Gounder ... Appellant in SA No.312 of 2018
K.Santhamani ... Appellant in SA No.313 of 2018

Vs

1. S.Krishnaprasad
2.V.Soundarrajan Respondents in both Second Appeals

COMMON PRAYER : Second Appeals filed under Section 100 of C.P.C against the judgment and decree dated 21.07.2017 made in A.S.Nos.94 & 95 of 2009 on the file of the II Additional District & Sessions Judge, Tiruppur reversing the judgment and decree dated 18.06.2009 made in O.S.No.25 & 24 of 2007 on the file of the Sub Court, Udumalpet.

For Appellant : Mrs.Hema Sampath
in both Appeals Senior Counsel for
M/s.C.R.Prasanan

For Respondents : Mr.M.S.Krishnan
in both Appeals Senior Counsel for
M/s.Sarvabhauman Associates

COMMON JUDGMENT

These Second Appeals are filed against the judgment and decree dated 21.07.2017 made in A.S.Nos.94 & 95 of 2009 on the file of the II Additional District & Sessions Judge, Tiruppur reversing the judgment and decree dated 18.06.2009 made in O.S.No.25 & 24 of 2007 on the file of the Sub Court, Udumalpet.

2. The issues and parties involved in both the Second Appeals are interlinked and therefore, they are disposed of by this common judgment. The learned Senior Counsel appearing for the respondents submitted that he has instructions to appear on behalf of both the respondents. Both the Senior Counsel for Appellants as well as respondents consented for Second Appeals being taken up for final hearing.

3. The appellants in both the Second Appeals are plaintiffs in O.S.No.25 and 24 of 2007. In the suit, the first respondent minor was represented by his mother and guardian, S.Santhamani. The second respondent is the father of minor first respondent. The appellants filed respective suits against the respondents for specific performance of agreements of sale dated 14.07.2006 and for return of advance amount of Rs.50,000/- paid by the appellants on 14.07.2006, together with interest @ 12% p.a.

4. According to the appellants, the suit property originally belonged to the first respondent's grandfather Venugopalsamy. The suit properties were bequeathed to the first respondent by his paternal grandfather Venugopalsamy by Registered Will dated 01.10.2001. The first respondent was minor at that time, under the care and custody of his mother S.Santhamani and he was represented by guardian and mother S.Santhamani. The grandfather of the first respondent Venugopalsamy died on 03.10.2001 and Will dated 01.10.2001 came into effect and the first respondent became the absolute owner of the suit property. The mother of the first respondent, as guardian and mother, offered to sell the suit properties for a sum of Rs.3,50,000/- to the plaintiff in O.S.No.25 of 2007, Appellant in S.A.No.312 of 2018 and Rs.2,50,000/- to the plaintiff in O.S.No.24 of 2007, Appellant in S.A.No.313 of 2018 to meet out the educational and medical expenses of the minor first respondent. On 14.07.2006, two agreements of sale were entered into between the appellants and mother & guardian of the first respondent S.Santhamani and an advance amount of Rs.50,000/- each were paid to the mother & guardian of the first respondent by the appellants. As per the agreement, the time for execution of the sale deed was fixed as four months and the mother & guardian of the first respondent has to clear the encumbrance, if any and she agreed to get permission of the court for selling the minor's right over the suit property. The mother of the first respondent filed H.M.G.O.P.No.82 of 2006 on the file of Sub Court, Udumalpet for permission of the court to sell the minor's property. The second respondent who is the father of the first respondent was also a party to the said H.M.G.O.P and he has stated that he has no objection to grant permission to the mother of the first respondent to sell the minor's property. The learned Subordinate Judge, Udumalpet, by order dated 17.11.2006 granted permission to sell the minor's property with a direction to the appellants, as purchasers to deposit the entire sale proceeds into the court. The appellants, on 29.01.2007 deposited the the entire sale proceeds of Rs.3,50,000/- and Rs.2,50,000/- respectively to the credit of HMGOP No.82 of 2006. The appellants requested the mother & guardian of the first respondent to refund the advance amounts of Rs.50,000/- each paid by the appellants and the mother of the first respondent promised to return the same at the time of execution of sale

deed. The appellants were always ready and willing to get the sale deed executed in their favour. Even after the entire sale proceeds were deposited into the court, the mother of the first respondent was delaying the execution of sale deed. The sale is for the benefit and necessity of minor first respondent. The minor has to be educated and maintained. The sale is for benefit and interest of minor as set out by the guardian in H.M.G.O.P.No.82 of 2006 and the second respondent who is the father of the first respondent also consented for the same. There is no worthwhile income from the suit property and due to paucity of water, agricultural operations are difficult. The sale proceeds can be invested and the interest can be used to educate and maintain the minor.

4 (a) The appellants issued notice dated 07.02.2007 to the first respondent to fix the date for execution of sale deed and inform them the date in advance. The mother and guardian of the first respondent received the said notice on 10.02.2007 but she did not come forward to execute the sale deed in favour of the appellants. The appellants issued another notice dated 10.03.2007 expressing their readiness and willingness to get the sale deed executed in their favour and calling upon the mother of the first respondent to execute the sale deed on 16.03.2007. The mother and guardian of the first respondent received the said notice on 14.03.2007 but she did not execute the sale deed. On these averments, the appellants filed the suits.

5. The respondents filed written statement and contended that the suit properties of minor are not only a first class garden land but has also got potential value of house sites and for industrial and commercial purpose and valuable property. The market value of the property is more than Rs.2 lakhs per acre and the value of entire 14.76 acres is worth more than Rs.30 lakhs. The guideline value is also more than Rs.1 lakh per acre. The properties are purchased in and around Coimbatore and Tirupur for establishing commercial and industrial activities. The price of the immovable properties are increasing. Earlier, there was a agreement between the appellant in S.A No.312 of 2018 and the respondents and the actual sale consideration has been mentioned in the said agreement. The appellant in S.A.No.312 of 2018 insisted the first respondent to sign some documents for getting permission of the court. Without referring to the contents, the mother and guardian of the first respondent signed the said documents. The first respondent has now come to know that the appellant has committed fraud on the court in getting permission by misrepresenting the sale consideration as Rs.3,50,000/- and Rs.2,50,000/- respectively. The suit sale agreement and proceeds of the agreement are not for the welfare of the minor. The H.M.G.O.P.No.82 of 2006 and the said agreement and proceeds are

not binding on the minor. The agreement of sale dated 14.07.2006 is not fair and do not reflect true transaction and it is fraudulent and against the interest of the minor. As per Section 20 of Specific Relief Act, the appellants are not entitled to equitable relief of specific performance of agreement of sale as per the agreement dated 14.07.2006 and order dated 07.11.2006 made in H.M.G.O.P.No.82 of 2006. The hardship that will be caused to the minor makes it inequitable to enforce the suit agreement for the relief of specific performance.

6. Based on the pleadings, the learned Trial Judge framed four issues. The second issue was -

"Whether the plaintiff is entitled to the alternate relief of amount as prayed in the suit ?"

The said issue was re-cast as -

"whether the plaintiff is entitled to the additional relief of refund of excess amount of Rs.50,000/- each with subsequent interest ?"

7. Before the Trial Court, the appellant in S.A.No.312 of 2018 was examined as PW1 in O.S.No.25 of 2007 and the appellant in S.A.No.313 of 2018 was examined as PW1 in O.S.No.24 of 2007. One Balasubramaniam was examined as PW2 in both the suits. On the side of the respondents, the mother and guardian of the first respondent S.Santhamani was examined as DW1 in both the suits. On the side of the appellant in S.A.No.312 of 2018, fourteen documents were marked as Exs.A1 to A14. On the side of the appellant in S.A.No.313 of 2018, twelve documents were marked as Exs.A1 to A12. On the side of the respondents, one document was marked as Ex.B1.

8. The learned Judge, considering the pleadings, oral and documentary evidence, decreed the suits as prayed for. Against the said judgment and decree dated 18.06.2009 made in O.S.Nos.25 and 24 of 2007, respondents filed A.S.Nos.94 & 95 of 2009. The learned First Appellate Judge, considering the materials on record, judgment of the Trial Court as well as the arguments of the learned counsel for the appellants and respondents, allowed both the appeals on the ground that the appellants suppressed the earlier agreement Ex.B1 dated 25.06.2006 and the value of the property mentioned as 11.50 lakhs and has not given any reason for mentioning less value in the suit agreements.

9. Against the said common judgment and decree dated 21.07.2017 made in A.S.Nos.95 & 94 of 2007, the appellants have come out with the present Second Appeals.

10. The learned Senior Counsel for the appellants contended that the intention of the first respondent through his guardian to sell the property is clear in the suit agreement and both the parties knew the terms thereof. When there is no vagueness and uncertainty in the terms of agreement, appellants are entitled to decree of specific performance. The respondents have not produced any document to show the value of the property as on the date of agreement of sale is more than Rs.6,00,000/-. Any increase in price subsequent to the agreement of sale will not be a ground for refusing execution of sale deed as per agreement of sale as well as permission granted by the learned Subordinate Judge, Udumalpet in HMGOP No.82 of 2006 vide order dated 17.11.2006. The contention of the respondents in the written statement that appellant in S.A.No.312 of 2018 took some signature of the mother and guardian of the first respondent and she signed the same without reference to the contents proved to be wrong as she had admitted in her evidence that she knew about the suit agreements of sale and the sale consideration mentioned in the agreements. The first respondent's contention that appellant in S.A.No.312 of 2006 alone appointed Advocate and conducted proceedings in H.M.G.O.P.No.82 of 2006 is not correct. Not only the first respondent, but the second respondent also gave evidence in the H.M.G.O.P No.82 of 2006 and stated that the sale is necessary for the education, medical and maintenance of the minor first respondent and deposed that the sale price is proper.

10(a) The learned Subordinate Judge, Udumalpet, only after considering the averments in the petition in HMGOP No.82 of 2006 and evidence of the respondents and appellants, granted permission to the mother of the first respondent to sell the property as it is in the interest of minor and directed the appellants to deposit the entire sale proceeds into the court. As per the order dated 17.11.2006 made in HMGOP No.82 of 2006, the appellants have deposited the entire sale consideration on 27.01.2007 and 29.01.2007. The learned First Appellate Judge failed to see that as per Section 91 of the Evidence Act, the respondents are not entitled to let in oral evidence contrary to the terms of written agreement. The proviso to Section 92 of Evidence Act is not applicable to the facts of the present case.

10(b) The learned First Appellate Judge erred in holding that both the suit agreements of sale were not for the benefit of the minor overlooking the fact that competent court after being satisfied with sale is for the benefit of the minor granted permission and it is not open to the respondents to contend that sale is not for the benefit of the minor. The respondents have not denied the agreements of sale, receipt of advance, deposit of sale consideration into the court and readiness and willingness of the appellants to perform their part of the contract. The learned First Appellate Judge erred

in rejecting the decree for specific performance. The respondents have not specified the fraud or misrepresentation of appellants when the mother of the first respondent, in her evidence admitted execution of sale agreements and sale price which shows that there is no fraud or misrepresentation.

10(c) The learned Senior Counsel further contended that the respondents are not entitled to approbate and reprobate for denying the decree of specific performance being granted to the appellants. The learned First Appellate Judge erred in holding that Ex.B1 mentions higher amount and the suit agreements have mentioned lesser amount without considering the property mentioned in Ex.B1 includes larger extent of 30 cents and 2 cents with building belonging to the second respondent and the said agreement could not be enforced as the second respondent refused to perform his part of contract as per Ex.B1. The learned First Appellate Judge erred in holding that appellants suppressed Ex.B1. Appellant in S.A.No.313 of 2018 is not a party to the said agreement and properties mentioned in the said agreement are different. The first respondent admitted that she received Rs.2,50,000/- under Ex.B1 and appellants have deposited Rs.3,50,000/- and 2,50,000/- respectively totalling to Rs.6,00,000/- to the credit of H.M.G.O.P No.82 of 2006 and first respondent is having Rs.50,000/- each paid by appellants. The appellants have totally paid Rs.9,50,000/- and sale consideration mentioned in the suit sale agreements are not less than the prevailing market rate as on that date.

10(d) The learned Senior Counsel for the appellants, in support of her contention, relied on the following judgments -

(i) 1997 (II) CT 357 [M.P.Abdul Hameed & Co. v. The Tamil Nadu Civil Supplies Corporation Ltd. and another]

11. We have carefully perused the judgment of the court below and also the judgment impugned in this appeal. The appellant firm is running a rice milling business in partnership under the name and style of Hameedia Rice Mill and the appellant applied on 21.2.75 to the second respondent requesting the Tamil Nadu Civil Supplies Corporation Limited to appoint the firm as Hulling Agent for conversion of paddy into rice after remitting a sum of Rs. 25,000 towards security deposit through demand draft. The appellant had voluntarily applied for as hulling agent under the Tamil Nadu Civil Supplies Corporation Limited, remitted the security

deposit and executed the agreement and on the strength of the same, the 2nd respondent appointed the plaintiff as hulling agent in Ramanathapuram region. The appellant had also again executed an agreement to continue as hulling agent on 21.10.76. The agreement was executed in favour of the Managing Director of the Corporation as 'Principal' and the said agreement contain 19 clauses with schedules showing the hulling and incidental charges and also the transport charges allowed. The stocks of paddy entrusted by the principal will be under the joint custody of the hulling agent and one of the officials of the Corporation. There are other clauses also in the agreement with which we are not presently concerned. The respondent Corporation had undertaken to purchase paddy and hull the same and distribute rice to the consuming public of Tamil Nadu and they have got the greater responsibility and obligations to the consuming public. In the interest of public and to safe guard any kind of malpractice as far as possible, the respondent Corporation has formulated in consultation with the Government of Tamil Nadu, standard forms of agreement and other forms to be entered into by the hulling agent, transport contractors and other so as to ensure purchase and transport of different varieties of paddy from the purchasing centres to the various districts and for storing of paddy and hulling the same into rice and distribution of rice through the retail sales depots of the respondent Corporation and other consumer co-operative societies so as to reach the consuming public in a regular and continuous manner. Hence, as rightly pointed out by Mr. Shanmugavel, it is incorrect to say that the agreement throw unreasonable burden on the appellant by the respondent Corporation. As already stated, the appellant himself has voluntarily entered into an agreement with the respondent Corporation and has also renewed the same for a further term. Nobody has compelled either the appellant or any other rice milling licensees to offer themselves to be appointed as hulling agents of the respondent Corporation. On their depositing different amounts of deposits according to their capacity, as already stated the appellant has volunteered by depositing a sum of Rs. 25,000 towards security deposit and entered into agreement for becoming a hulling agent of the Corporation and further renewed his agreement by executing a fresh agreement on 22.10.76 also. Hence, we are unable to accept the contention of Mr. Venkataseshan, learned

counsel for the appellant that the appellant was compelled to take the paddy for the hulling. Having entered into the agreement and signed the same with eyes opened, the appellant cannot now contend that the clauses of the agreement are unreasonable, arbitrary and therefore cannot be enforced on the appellant.

(ii) 2007 (3) SCC 163 [Bhandari Construction Co. v. Narayan Gopal Upadhye]

15. When the terms of the transaction are reduced to writing, it is impossible to lead evidence to contradict its terms in view of Section 91 of the Evidence Act. There is no case that any of the provisos to Section 92 of the Act are attracted in this case. Why the case that was sought to be spoken to by the respondent was not set up by him in the complaint was not explained. The case set up in evidence was completely at variance with the case in the complaint. There was no evidence to show that the consideration was to be Rs.9,00,000/-, especially, in the light of the recitals in the registered agreement. There was also no document to show the payment of Rs.4,00,000/- by way of cash. Hence, this was no evidence to show that the balance amount due under the agreement after the admitted payment of Rs.5,00,000/- was paid. The affidavit produced before the State Forum and the evidence of the colleague of the respondent is clearly inadmissible and insufficient to prove any such payment. Thus, the case set up by the respondent in his evidence was not established. It is in that situation that the District Forum taking note of the payment of Rs.5,00,000/- and the failure of the respondent to encash the cheque for Rs.5,00,000/- that was returned by the company, ordered the complainant to pay the balance amount due under the transaction as evidenced by the written instrument and take delivery of the premises in question and in the alternative gave him the option to take back the sum of Rs.5,00,000/- with interest. Neither the State Commission, nor the National Commission has given any sustainable reason for differing from the conclusion of the District Forum. A mere suspicion that builders in the country are prone to take a part of the sale amount in cash, is no ground to accept the story of payment of Rs.4,00,000/- especially when such a payment had not even been set up in the complaint before the District Forum. Not only that, there was no independent evidence to

support the payment of such a sum of Rs.4,00,000/- except the ipse dixit of the respondent. The affidavit of the bank employee filed in the State Commission cannot certainly be accepted as evidence of such a payment. Payment of such a sum had clearly been denied by the company. The respondent had, therefore, to prove such a payment. His case that the purchase price was Rs.9,00,000/-, itself stands discredited by the recitals in the agreement dated 27.7.1997 in which the purchase price was recited as Rs.7,75,000/-. Not only that the respondent did not have a receipt for evidencing the payment of Rs.4,00,000/- and if the amount was paid on 5.7.1997 or 8.7.1997, as claimed by him, he would certainly have ensured that the payment was acknowledged in the agreement for sale executed on 27.7.1997. The agreement for sale actually speaks of his obligation to pay the balance to make up Rs.7,75,000/- after acknowledging receipt of Rs.5,00,000/-. The respondent is not a layman. He is a practising advocate. According to him, he specialises in documentation. He cannot, therefore, plead ignorance about the existence of the recital in the agreement. He cannot plead ignorance of its implications.

(iii) 2007 (10) SCC 231 [P.S.Ranakrishna Reddy v. M.K.Bhagyalakshmi and another]

17. The contention of the appellant has been rejected both by the learned Trial Judge as also by the High Court upon assigning sufficient and cogent reasons. The agreement has been held to have been executed by the parties in support whereof large number of witnesses had been examined. The High Court, in particular in its judgment, has categorically opined that when the respondents served a notice upon the appellant on 29.05.1981, it was expected of the appellant to raise a contention that the said agreement was a sham one or nominal one and was not meant to be acted upon but it was not done. Failure on the part of the appellant to do so would give rise to an inference that the plea raised in the suit was an afterthought.

18. The findings of facts by both the Courts are concurrent ones and in our opinion no case has been made out to interfere therewith by this Court.

19. Submission of Mr. Chandrashekhar to the effect that having regard to the rise in price of an immovable property in Bangalore, the Court ought not

to have exercised its discretionary jurisdiction under Section 20 of the Specific Relief Act is stated to be rejected. We have noticed hereinbefore that the appellant had entered into an agreement for sale with others also. He had, even after 11.5.1979, received a sum of Rs. 5,000/- from the respondent. He with a view to defeat the lawful claim of Respondent No. 1 had raised a plea of having executed a prior agreement for sale in respect of self-same property in favour of his son-in-law who had never claimed any right thereunder or filed a suit for specific performance of contract. The Courts below have categorically arrived at a finding that the said contention of the appellant was not acceptable. Rise in the price of an immovable property by itself is not a ground for refusal to enforce a lawful agreement of sale. [See P.D' Souza (supra) and Jai Narain Parasrampuriah (supra)]

(iv) 2009 (1) MLJ 1264 [C.Ananda Sundaraman v. C.Thirupurasundari]

15. A reading of that part of the evidence in cross-examination of D.W.1, the defendant, would clearly indicate that he had a clear knowledge of the Will in question. Therefore, he could not be allowed to plead that he had no knowledge. During trial, Ex.P.17, the consent affidavit of the defendant was filed. Ex.P.17 is the consent affidavit given by the appellant/defendant. When the contents are looked into, it not only speaks about the knowledge of the appellant as to the testament, but also he expressed his consent therefor. The flimsy explanation, which is thoroughly unsustainable, was sought to be made in the averment in the written statement that playing fraud on him, the plaintiff had obtained signature in the blank papers and it was converted as the consent affidavit. This part of the averment made in the written statement was not spoken by the defendant in the box. However, the plaintiff has examined P.W.4, the practising Advocate, to the effect that it was he who attested Ex.P.17, the consent affidavit and after knowing the contents only, the affidavit was sworn in by the defendant and thus, it would be quite clear that originally, he has signed and has given the consent affidavit. For the reasons known to him, he made an attempt to

withdraw the same, but in vain.

(v) 2017 (5) CTC 154 [R.Leela Ammal v. V.Gopal]

17. It is evident from the recitals in the agreement of sale that it contains a clause for forfeiture of advance amount in the event of failure on the part of the plaintiff to perform his part of the contract. The recitals further recite that if the defendant postpones or causes delay in executing the sale deed or refused to execute the sale deed within the time fixed under the agreement, then the plaintiff is entitled to take steps to seek the relief of specific performance through the competent Court. In our considered opinion, as per the recitals contained in the agreement for sale, there is absolutely no scope for concluding that the said agreement of sale, Ex.A-1 is only a tentative or nominal one or the defendant has no intention to offer the property for sale in favour of the plaintiff. Hence, we are of the opinion that Ex.A-1 is not a nominal or tentative document, as claimed by the defendant and such a plea is only an after-thought.

18. It is the further defence of the defendant that the agreement for sale was prepared and brought by the plaintiff to the house of the defendant and after obtaining her signature, the signature of the attesting witnesses was obtained at a later point of time at their work place. According to the learned counsel for the defendant/appellant, it is the specific defence of the defendant that at the time of signing agreement by her, the attesting witnesses were not present. However, the plaintiff has not chosen to examine the attesting witnesses to the agreement of sale to prove that the agreement was signed only in their presence. In this context, we have perused Ex.A-4, notice sent by the defendant to the plaintiff on 05.05.2008. In the said notice, the defendant had admitted the execution of the agreement of sale as also the receipt of sum of Rs.1,00,000/- towards sale advance. When a party to the document admits its due execution, then he cannot turn around and challenge the terms contained therein. Therefore, we do not find any infirmity in the reasons assigned by the trial court that since the attesting witnesses to the agreement of sale are none other than the brothers and sisters of the defendant, naturally, they will not support the case of the plaintiff, who

is a stranger. Hence, we are of the opinion that since the signature in Ex.A-1, agreement of sale dated 05.04.2008 was admitted by the defendant, non-examination of the attesting witnesses to Ex.A-1 is not fatal to the case of the plaintiff. Moreover, the defendant in her cross-examination has admitted that she is residing along with her brother and sister in the same house. We therefore hold that the plaintiff has established his case beyond any shadow of doubt that Ex.A-1, agreement of sale dated 05.04.2008 was executed by the defendant only with the intention to sell the property to the plaintiff.

19. The learned counsel for the defendant/appellant would submit that the defendant is an illiterate woman and she has entered into the agreement of sale, Ex.A-1 dated 05.04.2008 without knowing the real market value of the property covered under the agreement. When a contract is entered into with an illiterate woman, the onus is on the plaintiff to prove that the defendant fully knew about the contents of the document. In the present case, the plaintiff has failed to prove that the agreement of sale was entered into by the defendant knowing fully well about the contents contained thereon. In support of this contention, the learned counsel for the defendant/appellant relied on the decision of the Division Bench of this Court in the case of (K. Varadhan vs. I. Pattammal (died) and four others) reported in (1992) 2 Law Weekly 209. We have considered the submissions of the learned counsel for the defendant/appellant on the above aspect. We find that the defendant has not raised this plea in her written statement. When the defendant herself has admitted the execution of agreement of sale dated 05.04.2008, Ex.A-1 and also the receipt of Rs.1,00,000/- as advance, the plea that she is an illiterate woman and as such the onus is on the plaintiff to prove that the defendant fully knows about the conditions cannot be accepted. It is also not the case of the defendant that she is an illiterate woman and she signed the document without knowing its contents. Hence, we answer Point No.1 in favour of the plaintiff/respondent herein and against the defendant/appellant herein.

11. The learned Senior Counsel for the respondents contended that the appellants suppressed the earlier agreement Ex.B1. They have also not explained as to why less sale consideration of Rs.3,50,000/- and Rs.2,50,000/- have been mentioned in the

suit agreements while Rs.11,50,000/- was mentioned in Ex.B1. Appellant in S.A.No.312 of 2018, by misrepresentation, obtained signature of the mother of the first respondent in certain documents and by playing fraud obtained order dated 17.11.2006 in HMGOP No.82 of 2006. Appellant in S.A.No.312 of 2018 only engaged Advocate on behalf of the respondents in the said H.M.G.O.P. The suit properties are valuable properties and at the time of agreement of sale, the value of the suit property is Rs.2,00,000/- per acre and even the guideline value is more than Rs.1,00,000/- per acre. The sale of the minor property is not for the benefit of the minor and sale is against the interest of the minor. The mother of the minor, in collusion with the appellants entered into the agreement of sale and it will not bind the minor. If the guardian plays fraud on the minor, interest of minor must be protected at any costs. In the H.M.G.O.P No.82 of 2006, the appellants did not bring to the notice of the court about the earlier agreement dated 25.06.2006. Had it been brought to the notice of learned Judge, he would not have granted permission to sell the minor's property to appellants. The appellants have not explained the difference in price. The appellants have not mentioned the earlier agreement in the notice, plaint and has not filed any reply statement. Difference in extent of land is only 30 cents. Even in the notice issued, the appellants have not mentioned the earlier agreement and suppressed the same. The appellants have not approached the court with clean hands. In the circumstances, right and interest of the minor should be protected by the court. The ultimate guardian of the minor is court. The first respondent is bound to return Rs.50,000/- each to the appellants together with interest. Appellants are not entitled to equitable relief of specific performance.

11 (a) The learned Senior Counsel for the respondents, in support of his contention, relied on the following judgments -

(i) 2013 (6) CTC 624 [G.Anbazhagan and another v. G.Manoharan (deceased)

19. I find some force in the submission of the learned Senior Counsel in that regard. It is seen from the judgment of the Honourable Supreme Court in LOURDU MARI DAVID v. LOUIS CHINNAYA AROGIASWAMY ((1996) 5 SCC 589) that the party who makes false allegations is not entitled to the equitable relief of specific performance. In the judgment reported in A.C.ARULAPPAN v. SMT.AHALYA NAIK ((2001) 6 SCC 600), the Honourable Supreme Court held that merely because it is lawful to grant specific performance, the court cannot grant the relief.

20. It leads to the conclusion that the plaintiff came to this court with false case regarding delivery of possession and therefore, the question that arises for consideration is whether such plaintiff is entitled to the discretionary relief of specific performance. As stated supra, in the judgments referred to above, the Honourable Supreme Court and the Division Bench of our High Court have clearly held that the relief of specific performance is a discretionary relief and there is no need to grant the relief even though the plaintiff is entitled to the relief and when the plaintiff comes to court with unclean hands or with false case, even though the plaintiff is entitled to specific performance, the same can be denied to him. Therefore, having regard to the false case projected by the first respondent that possession was given to him under the agreement of sale, even though the plaintiff/first respondent proved the agreement of sale in his favour, he is not entitled to the discretionary relief of specific performance

(ii) 2011 (5) CTC 543 [Lakshamma v. Rathinamma]

22. Further, under section 20(2) of the Specific Relief Act, the Court in its discretion not to decree specific performance, when the performance of the contract would involve some hardship on the defendant which he did not foresee or whereas its non-performance would involve no such hardship on the plaintiff and where the terms of the contract gives the plaintiff an unfair advantage over the defendant and it is inequitable to enforce specific performance.

23. Further, having regard to the fact that the plaintiff/respondent has suppressed the muchalika which would throw light upon the transaction that was entered into between the parties and the plaintiff having allowed the appellant/defendant to put up construction over the suit property, after having agreed to purchase the site as well as the ground floor construction the enforcement of specific performance of the contract would be inequitable and involve hardship on the appellant/defendant and the respondent/plaintiff would get an unfair advantage and hence, the contract cannot be specifically enforced. Further, the plaintiff/respondent has come to the Court with unclean hands by suppressing the muchalika and therefore, he is guilty of suppression

of facts and hence, he is not entitled to the discretionary relief of specific performance.

(iii) 2001 (6) SCC 600 [A.C.Arulappan v. Ahalya Naik]

7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.

10. This Court held that it is settled law that the party who seeks to avail of the jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

11. In Gobind Ram v. Gian Chand [2000 (7) SCC 548] it was observed in Para 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has to consider the whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience.

(iv) 1996 (5) SCC 589 [Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others]

2.It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands; In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable

relief.....

(v) 1994 (1) SCC 1 [S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (Dead) by LRs and others]

6. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court.

12. In reply to the contention of the learned Senior Counsel for the respondents, the learned Senior Counsel for the appellants contended that the appellants have not suppressed any material facts, played fraud and it is not correct to state that appellants have not approached the court with clean hands. The earlier agreement of sale relates not only with regard to suit properties but also the property of second respondent measuring 30 cents as well as 2 cents with building. The value given in the suit agreements are proper and correct. The first respondent after becoming major, did not revoke or terminate the agreement and did not dispute the validity of the said agreements. The relief of specific performance is no doubt a discretionary relief but the discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20 (2) of Specific Relief Act under which the court shall exercise the discretionary power.

None of the circumstances exist in the present case and appellants are entitled to decree of specific performance. The judgments reported in 1994 (1) SCC (1), 1996 (5) SCC 589 and 2001 (6) SCC 600 cited supra, relied on by the learned Senior Counsel for the respondents are not applicable to the facts of the present case.

13. The following Substantial Questions of Law are framed in these Second Appeals -

(1) Whether in law the Lower Appellate Court has committed error in refusing to grant decree of specific performance by reversing the decree of the trial court when permission for sale of the property was granted in HMGOP No.82 of 2006 and the entire

amount had been deposited on 29/01/2007 even before the suit notice was issued on 07/02/2007 and the suit was filed on 21/03/2007 ?

(2) Whether in law the Lower Appellate Court erred in overlooking that the defendants are estopped in challenging the suit agreements dated 14/07/2006 by their conduct and after admitting the suit agreements ?

(3) Whether the first respondent can refuse to execute the sale deed on the ground of escalation of price subsequent to sale agreement with the appellants ?

(4) Whether the non-mentioning of earlier agreement of sale by the appellants will amount to suppression of fact when the parties and the properties involved in the earlier agreement of sale Ex.B1 and the suit agreement Ex.A1 are different ?

(5) Whether the First Appellate Court erred in not considering that the property of the second respondent measuring 30 cents and 2 cents with building were also subject matter of Ex.B1 and admission of the mother of the first respondent that she received Rs.2.50 lakhs as advance as per Ex.B1 on behalf of the minor ?

(6) Whether the respondents are entitled to contend that sale of the minor properties are not for the benefit of the minor after deposing in the HMGOP No.82 of 2006 that the sale is for the benefit of the minor and for educational, medial and maintenance of the minor ?

14. Heard the learned Senior Counsel appearing for the appellants as well as respondents and perused the materials available on record.

15. Substantial questions of law 1 to 6 :

The appellants filed suit for specific performance dated 14.07.2006. According to the appellants, the properties are bequeathed to first respondent by his paternal grandfather Venugopalsamy by Registered Will dated 01.10.2001. After the death of his grandfather, the first respondent became the absolute owner of the suit property. The mother and guardian of the first respondent offered to sell the suit properties to the appellants to meet out the educational, medical and maintenance

expenses of the minor and entered into suit agreements of sale. At the time of agreements of sale, the first respondent was studying in IX standard. He was also suffering from Asthuma. The mother of the first respondent filed HMGOP No.82 of 2006 on the file of Sub Court, Udumalpet for permission to sell the property of the minor to the appellants. In the said HMGOP petition, the mother and guardian of the first respondent has stated that the sale of the property will be for the benefit of the first respondent. She also deposed that the sale consideration of Rs.3,50,000/- and Rs.2,50,000/- are proper price. The second respondent, who is the father of the minor first respondent, also deposed to the same effect.

16. The appellants were examined in H.M.G.O.P No.82 of 2006 and filed affidavit of undertaking to deposit the entire sale consideration into the court. Only after considering all these facts and being satisfied that the sale of the property will be in the interest and benefit of the minor and sale price is fair and proper, the learned Subordinate Judge, Udumalpet granted permission to the mother and guardian of the first respondent to sell the suit property to the appellants. By order dated 17.11.2006, the learned Subordinate judge, Udumalpet directed the appellants to deposit the entire sale proceeds into the court and permitted the mother of the first respondent to withdraw the interest on such deposit, once in three months to meet out the expenses of the minor till he attains majority. In such circumstances, it is not open to the respondents to contend that the sale consideration is not correct and the suit properties are worth more than Rs.30 lakhs. The respondents except making such allegations in the written statement, failed to substantiate the same by any acceptable evidence.

17. The respondents have also stated in the written statement that the guideline value of the property is more than Rs.1 lakh per acre. They have not summoned and examined any official from Sub Registrar Office to prove their contention. They have also not let in any evidence to show that the suit property is valuable and has potential of being converted into house sites and the value as on date of agreements of sale is more than what is mentioned in the suit agreements of sale. The respondents, relied on Ex.B1 which was the agreement of sale entered into between the appellant in S.A.No.312 of 2018 and respondents. The properties mentioned in the said agreement includes the wordings "in addition to the suit property, "the property belonging to the second respondent measuring 30 cents and 2 cents with building". The learned First Appellate Judge failed to take into consideration these facts and erroneously held that the appellants have failed to explain as to why the value of the suit property was reduced by Rs.5,00,000/- from 25.06.2006 to 14.07.2006. On the other hand, the appellants have let in evidence to show that the agreement

Ex.B1 includes the property of the second respondent and in order to get permission to sell the property of the first respondent, suit agreements were entered into. The appellant in S.A.No.313 of 2018 was not a party to the earlier agreement dated 25.06.2006 and the second respondent is not a party to the suit agreements.

18. The learned Trial Judge, considering the above fact and that the first respondent has not taken any steps to set aside the order made in HMGOP No.82 of 2006, held that the said order is binding on the first respondent. The learned Trial Judge has rightly held that Ex.B1 relates to different properties and parties are different in Ex.B1 and suit agreements of sale. The learned First Appellate Judge failed to consider the reasoning of the Trial Judge and on erroneous ground held that appellants are not entitled to decree of specific performance and also failed to take into consideration the admission of the mother of the first respondent that she received Rs.2,50,000/- as advance and that she entered into Ex.B1 agreement of sale. It is not the case of the respondents that the said amount of Rs.2,50,000/- was returned to the appellant in S.A.No.312 of 2018 when the suit agreements were entered into. The learned Trial Judge has rightly held that non-mentioning of Ex.B1 is not suppression of fact. On the other hand, the learned First Appellate Judge, without considering the reasoning of the learned Trial Judge, erroneously reversed the judgment of the Trial Court holding that suppression of earlier agreement of sale Ex.B1 is fatal to the claim of the appellants.

19. From the materials on record, it is seen that the appellant in S.A.No.312 of 2018 has paid Rs.2,50,000/- to the mother of the first respondent at the time of entering into Ex.B1, agreement of sale and also deposited Rs.3,50,000/- lakhs to the credit of HMGOP No.82 of 2006. The appellant in S.A.No.313 of 2018 has deposited Rs.2,50,000/- to the credit of HMGOP No.82 of 2006. The appellant in S.A.No.312 of 2018 is not seeking refund of Rs.2,50,000/- paid to the mother of the first respondent at the time of execution of Ex.B1 agreement dated 25.06.2006. The mother of the first respondent has also not stated that she has refunded the said amount to the appellants or offered to refund the said amounts. In addition to that, both the appellants have paid Rs.50,000/- each when they entered into suit agreements of sale. The mother of the first respondent has totally received Rs.3,50,000/- as advance from the appellants and Rs.6,00,000/- in court deposit as sale consideration of the suit property for the benefit of the minor, totalling to Rs.9,50,000/-. The Trial Court, considering all the above facts in proper perspective has held that the

appellants are entitled to the relief of specific performance and decreed the suit as prayed for.

20. The learned First Appellate Judge, without giving proper reason, erroneously reversed the judgment and decree the Trial Court. Both the agreements of sale marked as exhibits contain terms and conditions of sale and both the parties knew about the terms and conditions and agreed to perform their part of contract. There is no ambiguity in the suit agreements of sale. Even though the mother of the first respondent has stated that without reference to the contents of the suit agreements of sale, she signed the same, contrary to such stand taken in the written statement, the mother of the first respondent has admitted in her evidence and deposed that she knew about the agreement of sale and sale price was known to her. She has also filed HMGOP No.82 of 2006 and deposed before the Court that the sale price is fair and proper and the sale will be in the interest and benefit of the minor. The second respondent has also deposed in support of the contention of the mother of the first respondent. Having taken such a stand, it is not open to the respondents to wriggle out of the suit agreements of sale. The first respondent did not send any notice stating that suit agreements of sale are not valid and binding on the first respondent. She did not even send any reply to the notices sent by the appellants calling upon her to execute and register sale deeds in their favour.

21. The appellants, believing the representation and offer of the respondents, entered into suit agreements of sale and parted with total sum of Rs.9,50,000/- in the year 2006. In such circumstances, taking into consideration that appellants have performed their part of contract by depositing the sale proceeds, as directed by the learned Subordinate Judge, Udumalpet in H.M.G.O.P No.82 of 2006, the appellants are entitled to discretionary relief of specific performance, as rightly contended by the learned Senior Counsel for the appellants. Respondents have failed to prove that the value of the property mentioned in the sale agreement is not proper and it was much more than what is mentioned in the agreement of sale and also not proved that any fraud or misrepresentation committed by the appellants. Further, it is well settled that escalation in price of the property subsequent to the agreement of sale is not a ground for refusing relief of specific performance.

22. The contention of the learned Senior Counsel for the appellants that discretion or power of court with regard to decree of specific performance must be exercised judicially and cannot be exercised in an arbitrary manner has considerable force. Section 20 (2) of Specific Relief Act sets out circumstances under which the court can refuse the decree of

specific performance. Section 20 of the Act reads as follows -

Section 20 of Specific Relief Act

20. Discretion as to decreeing specific performance - (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance -

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1 - Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2 - The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered

losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

23. None of the conditions enumerated in Section 20 exists in the present case. The respondents have also not alleged and proved that the first respondent will be put to hardship if decree of specific performance is granted to the appellants. On the other hand, the appellants having parted with Rs.9,50,000/-, will be put to much hardship if relief of specific performance is not granted to them. From the explanation to Section 20 (2) of the Specific Relief Act, it is clear that mere inadequacy to consideration is not a ground for refusing to grant the decree of specific performance. As per section 20(2), the plaintiff is entitled to specific performance if he had done substantial act. In the present case, the appellants have not only deposited the entire sale consideration but have also paid additional sum of Rs.3,50,000/- as advance to the mother of the first respondent. In the facts and circumstances of the present case, the judgments relied on by the learned Senior Counsel for the respondents do not advance the case of the respondents.

24. In the written statement filed on behalf of the first respondent, she had taken a stand that appellants suppressed the material facts and have not approached the court with clean hands. She also contended that she did not know the terms of the said agreements of sale. Contrary to such stand, she deposed as DW1 to the effect that she knew the terms of suit agreements and sale price. Her deposition shows that her statements in the written statement are not correct and thus false statements are made only to wriggle out of her liability to execute and to register those sale deeds in favour of the appellants. In view of such stand taken by the first respondent, the defence of the first respondent cannot be accepted.

25. The contention of the learned Senior Counsel for the respondents that earlier agreement of sale Ex.B1 is still in force as the same was not terminated is without merits. As soon as the suit agreements are entered into, Ex.B1 is automatically cancelled in respect of the suit properties belonging to the first respondent. In any event, the first respondent, after becoming major and the second respondent did not take any steps subsequently to enforce the suit agreement of sale Ex.B1.

Accordingly, all the substantial questions of law are answered in favour of the appellants.

26. In the result, both the Second Appeals are allowed setting aside the common judgment and decree dated 21.07.2017 made in A.S.Nos.94 & 95 of 2009. The order of the learned Trial Judge dated 18.06.2007 made in O.S.No.25 & 24 of 2007 is confirmed and restored. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgr

To

1. The II Additional District & Sessions Judge,
Tiruppur.

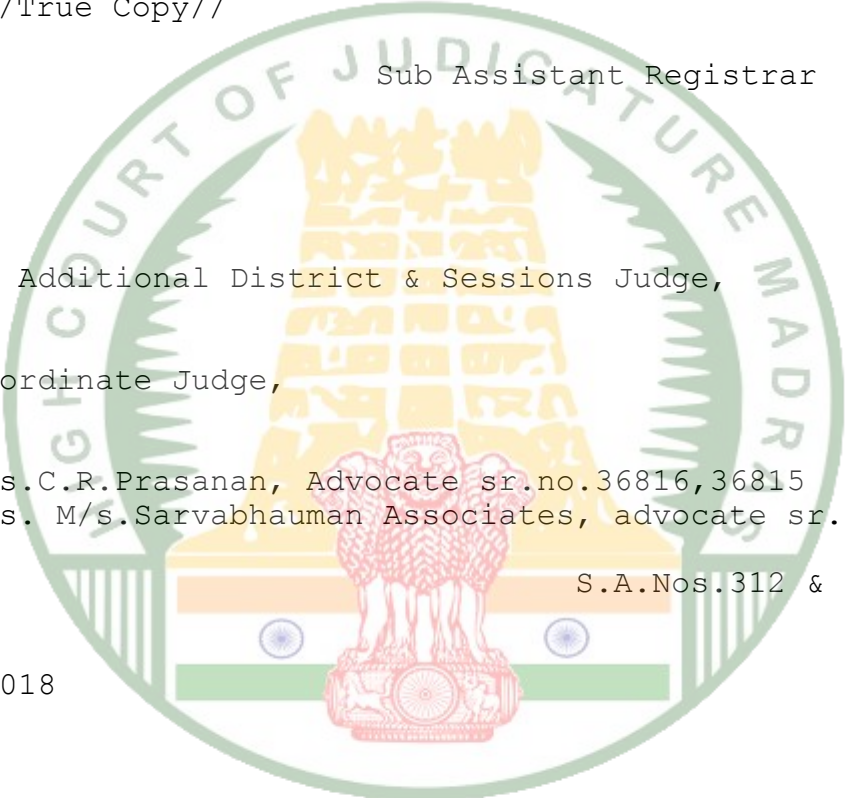
2. The Subordinate Judge,
Udumalpet.

+2cc to M/s.C.R.Prasanan, Advocate sr.no.36816,36815

+1cc to M/s. M/s.Sarvabhauman Associates, advocate sr.no.36916

S.A.Nos.312 & 313 of 2018

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