IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 17..07..2018

Judgment Pronounced on: 23..11..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Suit No.644 of 2002

1.Mrs.P.Syamala
Proprietrix
Prajwal Associates

2.P.Bhaskara Reddy [Died)

3.Geetha Prajwal Reddy*
Rep. by Mother and Natural Guardian,
Mrs.P.Syamala Reddy
Plot No.598, Alagirisami Salai,
K.K.Nagar,
Chennai 600078.

[*Impleaded as legal heirthe deceased 2nd plaintiff as per order in Appln.No.78 of 2006 dated 05.01.2006]

... Plaintiff

-Versus-

1.R.Gopinathan
2.Mrs.G.Padmini
3.G.Bhupesh
4.Ms.G.Mona

5.M/s.Niruba & Co
Rep. by its Partner,
R.Gopinathan,
No.46, I Street,
Sait Colony,
Egmore, Chennai 600008.

6.M/s.R.P.G. Builders,
Rep. by its Partner,
G.Padmini,
No.46, I Street,

Sait Colony,
Egmore, Chennai 600008.

7.M/s.Jamals,
Rep. by its Managing Partner,
Mrs.S.C.M.Jamaludeen,
Mount Chambers,
758, Anna Salai,
Chennai 600002.

... Defendants

Suit filed under Order IV, Rule 1 of the Madras High Court [Original Side] Rules, 1956 r/w order VII Rule 1 of the Code of Civil Procedure, 1908 praying for a judgement and decree directing the defendants 1 to 6 to specifically perform their part of the obligation of the Agreement for Sale entered into on 09.05.2001 by executing and registering sale deed or deeds in respect of the schedule mentioned property to the plaintiffs or their nominee/nominees after discharging the encumbrance over the property and register the sale on receipt of the balance sale consideration of Rs.68,00,000/- on a date to be fixed by this court and in default direct the Assistant Registrar, Original Side of the High Court, Madras to execute and register deeds of sale in respect of the schedule mentioned property either divided or undivided in favour of the plaintiffs or their nominee/nominees on deposit of the balance of sale consideration of Rs.68,00,000/- to the credit of the suit; or in the alternative directing the defendants to pay a sum of Rs.1,38,00,000/- to the plaintiffs with future interest @ 24% p.a. calculated on monthly payments on the said sum until realization or payment; for a declaration declaring the plaintiffs have got equitable charge over the schedule mentioned property for the payment made and incurred by the plaintiffs in relation to the contract dated 09.05.2001; and for a permanent injunction restraining the defendants, their men, agents, servants or any other person/persons claiming through them from alienating the property or demolishing the property or structures either by way of sale, mortgage, joint development, lease or otherwise, except in accordance with the contract entered into with the plaintiffs on 09.05.2001 and also for costs of the suit.

For Plaintiff	:	*Mr.R.Thiagarajan*
For Defendants	:	*Mr.N.V.Srinivasan for Mr.Varun Srinivasan for M/s.NVS & Associates D1 to D6*
		Mr.S.A.Rajan for D7

JUDGEMENT

This suit is filed for a decree for specific performance of oral contract entered into on 09.05.2001 thereby directing the defendants 1 to 6 to execute a sale deed in respect of the suit property after receiving the balance sale consideration of Rs.68,00,000/- or in the alternative, directing the defendants to pay a sum of Rs.1,38,00,000/- with future interest at 24% p.a. calculated on monthly payments on Rs.1,38,00,000/- till date of actual realization or payment as damages to the plaintiffs; declaring that the plaintiffs have got equitable charge over the suit property for the amount paid and incurred by them in relation to the oral contract dated 09.05.2001 and for permanent injunction restraining the defendants from alienating or altering the nature of the suit property and also for costs of the suit.

2.0. **The case of the plaintiff, in brief, is as follows:-** The 1st plaintiff is a Real Estate Promoter. The 2nd plaintiff is the husband of the 1st plaintiff. He is an Engineer and has been engaged in the construction field. The 3rd plaintiff is the son of plaintiffs 1 and 2. The defendants were introduced to the plaintiffs by the mediators one Mr.Parthasarathi and Paulraj. Thereafter, the 2nd plaintiff met the 1st defendant and discussed about the purchase of the suit property situate at No.8 (old No.12), New No.12 (old No.46) and New No.10 (old No.45), Sait Colony, I Street, Egmore, Chennai, measuring an extent of 4 grounds and 10 square feet. After the initial discussions and negotiations, it was ultimately agreed by the 1st defendant, who ostensibly represented his wife, the 2nd defendant, his son - Bhupesh, 3rd defendant, daughter-Ms.G.Moha, the 4th defendant and the firms namely, M/s.Niruba & Co, the 5th defendant and M/s.R.P.G. Builders, the 6th defendant to sell the property and he offered to sell the suit property to the plaintiffs for joint development and promotion. 1st defendant has agreed to retain 1/8 proportionate undivided share in the land for themselves and also agreed to take one constructed flat out of 8 Flats to be constructed by the 1st plaintiff namely M/s.Prajwal Associates. The value of the land was fixed at Rs.44,00,000/- per ground and the total cost of the project was worked out at Rs.1,76,00,000/-, out of which a sum of Rs.20,00,000/- was agreed to be discharged towards 1/8th undivided land cost in proportion to the flat to be constructed and to be offered to the 1st defendant and his family and the balance sum of Rs.1,54,00,000/- is to be paid by the plaintiffs.

2.1. The plaintiffs insisted on production and scrutiny of title deeds before parting of funds by way of advance sale consideration. Since the mediators pressurized the plaintiffs that similar builders like the 1st defendant are interested to conclude the transactions immediately and asked the plaintiff to pay advance to the defendants 1 to 6 at the earliest so as to conclude the contract forthwith. On 09.05.2001, the 2nd plaintiff gave four cheques viz., (i) Cheque No.303021 dated 09.05.2001 for Rs.25,00,000/- in favour of the 1st defendant, (ii) Cheuqe No.303023 dated 09.05.2001 for Rs.45,00,000/- in favour of the 3rd defendant, (iii) Cheque No.303024 dated 09.05.2001 for Rs.5,00,000/- in favour of the 4th defendant, and (iv) Cheque No.303025 dated 09.05.2001 for Rs.25,00,000/- in favour of the 2nd defendant, in all for a total sum of Rs.1,00,00,000/-. The above cheques were issued by Prajwal Associates drawn on Indian Overseas Bank, West Mambalam, Chennai 600033 and the same were subsequently encashed by the respective defendants.

2.2. On 09.05.2001 itself, the 1st defendant gave photo copies of the title documents of the suit property to the 2nd plaintiff, but, he did not produce the original documents as promised earlier. After the receipt of the photo copies of the title deeds, the plaintiffs contacted the defendants' counsel and informed him that the original deeds were not produced to them. The plaintiff was thinking whether to go through the transaction in the light of the subsequent events or withhold the payments covered by cheques issued to the defendant until the original title deeds are produced. However, the defendants' counsel informed the plaintiffs that the 1st defendant is a decent gentleman and the plaintiffs need not have any fear or anxiety and he would ensure that the transactions would be completed without any hurdle. On 10.05.2001, the 2nd plaintiff again contacted the 1st defendant's counsel for scrutiny of the original title deeds as per the discussion. The 1st defendant informed his counsel that he was not aware whether the property documents are available at Chennai or Chittoor and promised that in a couple of days, the documents would be produced for inspection and scrutiny. The 2nd plaintiff has continued to insist on the production of original deeds and he also contacted 1st defendant over telephone. Thereafter, the 1st defendant informed that the original documents have been deposited with Egmore Benefit Fund Society Limited in connection with the financial assistance availed by the 6th defendant. On 13.06.2001 the 1st defendant arranged for inspection of the original documents, on 13.06.2001 at office of the Egmore Benefit Fund Society Limited. The Manager of the 1st defendant accompanied the 2nd plaintiff for inspection. The 1st defendant had also obtained a letter dated 27.06.2001 from the Egmore Benefit Fund Society Limited indicating the liability on the loan account and the probable payment required for discharging the mortgage. The above letter also states that the liability as on 30.06.2001 would be Rs.55,00,000/- but, the defendants 1 to 4 did not pay any amount to the Egmore Benefit Fund Society Limited out of the advance of Rs.70,00,000/- received from the plaintiffs.

2.3. The plaintiffs having parted with a sum of Rs.70,00,000/- as advance towards sale consideration to the defendants 1 to 6 decided to enter into an agreement incorporating all the terms and conditions and accordingly, they met the 1st defendant at his counsel's place on 10.08.2001 wherein the modalities regarding payment details, implementation and execution of project through joint development agreement were discussed. It was also agreed between the parties that the payments have to be made as follows:

(a) Rs.24 lakhs on 10.08.2001

(b) Rs.20 lakhs on or before 30.09.2001

(c) Rs.15 lakhs on or before 30.10.2001

(d) Rs.10 lakhs on or before 30.11.2001

(e) Rs.10 lakhs on or before 30.12.2001

(f) Rs.22 lakhs towards his flat land cost

(g) Rs.70lakhs advance already paid on 09.05.2001

in all totaling to Rs.1.71 lakhs

2.4. The plaintiffs further stated that the 2nd plaintiff informed the 1st defendant that a sum of Rs.24,00,000/- can be retained while paying the third installment of Rs.15,00,000/- whereas the 2nd plaintiff insisted that the 1st defendant should deposit the second installment of Rs.20,000,000/- before Egmore Benefit Fund Society Limited towards outstanding of Rs.55,00,000/- which was then due on the mortgage as on 30.06.2001. As a matter of fact, the 1st defendant also informed the plaintiffs that he will get the title deeds from the Egmore Benefit Fund Society Limited in no minute and he will not sign in any agreement as discussed by the plaintiffs and he will obtain documents from the Egmore Benefit Fund Society Limited after final payments and he would ensure that the suit property shall be free from all encumbrance. Therefore, they assured that the payments due to the Egmore Benefit Fund Society Limited will be cleared before the effective implementation of joint development agreement in respect of the suit property.

2.5. The plaintiffs having noticed that the conduct of the 1st defendant and his family members were not free from blemish from the beginning and had their own apprehension that any further payments towards sale consideration would be utilized for due discharge of mortgage debt or not. The plaintiffs had also become apprehensive about the conduct of the 1st defendant who had humiliated the 2nd plaintiff when he had enquired about the discharge of mortgage debt. The 1st defendant also humiliated the 2nd plaintiff in the presence of their counsel in the 1st week of September, 2001. On account of the conduct of the 1st defendant and the defendants 2 to 6, the plaintiffs had no other option but to recall the money forthwith together with interest and other expenses incurred by them in relation to the project.

2.6. The plaintiffs further stated that as a matter of fact, the 1st defendant promised to refund the money by 30.12.2001 with interest and other damages suffered by the plaintiffs pursuant to the contract dated 09.05.2001. Since they failed to fulfill their contractual obligations, the 2nd plaintiff on behalf of the 1st plaintiff met the 1st defendant in the office of the 1st defendant's counsel on 12.04.2002 and sought for refund of money and the expenses incurred in relation to the project. Instead of returning the money, the 1st defendant assaulted and manhandled the 2nd plaintiff and the 2nd plaintiff's spectacles were broken.

2.7. The plaintiffs were hoping to get back the advance amount together with interest and damages suffered by them from the defendant, but, the 3rd defendant, who is the son of the 1st defendant, informed their counsel on 19.07.2002 that they are contemplating to deal with the property in favour of a third party and promised to refund the advance money to the plaintiffs and also promised to deliver all the papers to the counsel on 22.07.2002 for verification and for discharge of payments received from the plaintiffs. The plaintiffs were hopping to get the payment and waiting for the defendants 1 to 6 on 22nd and 23rd July, 2002 at the office of the 1st defendant's counsel, but, he did not turn up as promised. On 23.07.2002, the 1st defendant's counsel tried to contact the 1st defendant but, they were informed that the 1st defendant had gone to his native place at Chittoor. Thereafter, the 1st defendant has informed his counsel that he sold the property to the 7th defendant for a total consideration of Rs.1,45,00,000/- and he would confirm the return of advance money to the plaintiff in a couple of days. But, he did not make any payment. Subsequently, when the plaintiffs applied for Encumbrance Certificate on 09.08.2002, they came to know that the 1st defendant and his family members along with the partnership firm entered into an agreement with the 7th defendant to convey the suit property and the same was duly registered at the Office of the Sub Registrar, Periamet, Chennai. On perusing the agreement, the plaintiffs found that the payment of Rs.70,00,000/- made by them to the defendants 1 to 4 was not disclosed in the agreement. The plaintiffs further stated that they parted with the advance money by availing Over Draft Facility from Indian Overseas Bank, West Mambalam besides borrowings from the other sources at huge interest at 24 to 28% per annum. They are also paying huge interest for the same. In view of the sale consideration paid to the defendants 1 to 6, they were also not in a position to make payment to two other properties which they have purchased at Chennai. The plaintiffs were subjected to physical and mental humiliation and the 1st plaintiff has been put to severe stress. The plaintiffs understand that pursuant to the agreement of sale dated 08.07.2002 with the 7th defendant , the defendants 1 to 6 received a sum of Rs.25,00,000/- as advance, but, they have not paid any amount to the plaintiffs till date. The bankers from whom the plaintiffs have borrowed money are also charging interest at 16 to 18% p.a. Without rescinding the contract entered with the plaintiffs, the defendants 1 to 6 have now started dealing with the property and the 7th defendant also demolished the building and has started developing the property.

2.8. The plaintiffs have an equitable charge over the schedule mentioned property in view of the payments made by them pursuant to the agreement for development of the suit property. The Plaintiffs have an enforceable subsisting right to call upon the defendant to specifically perform their part of contractual obligations arising out of the contract dated 09.05.2001 and to compel to offer the property for development pursuant to the contract. The plaintiffs valued the contract at Rs.1,54,00,000/- which is equitable to the value of 7/8th undivided share in the suit property less construction cost of Rs.2000/- per square feet retained by the defendants 1 to 6 at the cost of Rs.700/- per square feet which covers stilt car parking area at Rs.1,25,000/-, Chennai Metropolitan Development Authority and development charges at Rs.50,000/- and, payment of drainage and metro water fees at Rs.25,000/-. The contract value after adjustment of the payment agreed upon was fixed at Rs.1,38,00,000/-. The plaintiff further stated that the defendants 1 to 6 have entered into a contract with the 7th defendant on 08.07.2002 and are trying to deal with the property without reference to the various payments made by the plaintiffs pursuant to the contract dated 09.05.2001. The plaintiffs are always ready and willing to perform their part of obligations arising out of the contract dated 09.05.2001 and for any reason, if this court is of the view, instead of enforcing the contract, damages would be the remedy to the plaintiffs, as an alternative relief, the plaintiffs seek for refund of advance money of Rs.70,00,000/- together with damages amounting to Rs.20,00,000/- as per Section 73 of The Contract Act r/w Section 21 of The Specific Relief Act as the plaintiffs have paid more than Rs.31,00,000/- towards interest on Rs.70,00,000/- paid to the defendants 1 to 4 and have suffered a loss of Rs.30,00,000/- which the plaintiffs would have earned from the project if it had been completed besides the mental agony and loss to the plaintiff which they tentatively estimated at Rs.20,00,000/- Hence, this suit for the reliefs as stated above.

3.0. The 1st defendant filed his written statement wherein he inter alia contended that defendants 1 to 6 are the owners of the suit property and the plaintiffs approached him for the purchase of the suit property on 09.05.2001. The defendants specifically informed the plaintiffs that there is a subsisting mortgage over the suit property and the mortgage was with Egmore Benefit Fund Society Limited and the defendants required the plaintiffs to discharge the debts in order to the process the transaction further for which the plaintiffs accepted and agreed to purchase the suit property for Rs.2,02,00,000/-. The plaintiffs for the best reasons known to them handed over four cheques drawn on Indian Overseas Bank (i) Cheque No.303021 dated 09.05.2001 in favour of the 1st defendant for rs.25,00,000/-, (ii) Cheque NO.303023 dated 09.05.2001 in favour of the 3rd defendant for rs.15,00,000/- ; (iii) Cheque NO.303024 dated 09.05.2001 in favour of the 4th defendant for Rs.5,00,000/- and (iv) Cheque No.303025 dated 09.05.2001 in favour of the 2nd defendant for Rs.25,00,000/- and in all for a total sum of Rs.70,00,000/- and submitted that the amount may be retained by the defendants 1 to 4 as guarantee for due performance of contract. The parties agreed and understood that the payments made by way of EMD that would be forfeited in case of breach of undertaking to clear the mortgage debts immediately. Relying on such representation of the plaintiffs, the 1st defendant on 13.06.2001 took the plaintiffs to the society for perusal of the original title deeds and the counsel for the plaintiffs wanted a letter from the society as to the total amount that was to be paid for clear the mortgage debts. The 1st defendant also secured a letter on 27.06.2001 from the society regarding the amount payable as on 30.06.2001. From this it is clear that the original date stipulated for completing the transaction was 30.06.2001, but the plaintiffs revealed that they were in such financial stress they could not muster up cash for clearing the mortgage debts and paying the balance to the defendants and went on postponing the completion of transaction under one pretext or the other. Ultimately, after giving them sufficient gratitude, finally written a letter on 11.12.001 stating that if the mortgage debts are not cleared by the plaintiff by 30.12.2001, and paid the balance amount due, the defendants would have to forfeit the advance amount paid and the transaction would stand cancelled. After having received such a letter, nothing was heard from the plaintiffs for months thereby showing their acquiescence to the situation of forfeiture and ultimately realizing the delicate situation they placed themselves in, they were only to anxious to get back the money advanced and expressed themselves that they were not interested in the property and appealed for return of advance money. The plaintiffs were only anxious to get back the advance money and expressed themselves that they were not interested in property and appealed for repayment of advance amount paid. The plaintiffs, who claimed themselves to be the reputed Real Estate Traders and Builders, deviated from the normal practice prevailing in the society when transaction for a huge sum was taking place and they ignored mandatory provision of Section 53-A of the Transfer of Property Act by failing to enter into an agreement for reasons best known to themselves knowing fully well that the oral agreement for sale cannot be specifically enforced through court of law without strong proof despite circumstances attending to the transaction. The plaintiffs failed and neglected to perform their part of contract particularly, when the time for performance of contract was already notified. It has also become clear from the conduct that the plaintiffs were unwilling and never ready to perform their primary obligation of clearing the mortgage debts to the society and to pay the balance amount to the defendants 1 to 6 in order to complete the sale by 30.06.2001.

3.1. It is further contended that in view of the above circumstances, the defendants have no other alternative than to accept the offer of the 7th defendant and enter into an agreement of sale on 08.07.2002. The defendants have already lost heavily on account of the delay caused by the plaintiffs and with a view to avert further loss they had to embark on an agreement with the 7th defendant. The market value of the property is estimated at Rs.50,00,000/- per ground, but, for the problem created by the plaintiff by non performance of contract, the property would have fetched much more than Rs.1,45,00,000/- at the current market price for which the defendants' family agreed to sell the property to the 7th defendant and the 7th defendant was also wiling to discharge the mortgage debts payable by the defendants 1 to 4 to the society. Ultimately, they have paid a total consideration of Rs.1.,45,00,000/- and the defendants also put the 7th defendant in possession of the suit property much before filing of the present suit. Now the 7th defendant is in absolute possession and enjoyment o the suit property having paid the entire sale consideration to the defendants 1 to 6. In view of the above, the defendants right of conveyance of title cannot be restrained by the plaintiffs who have admittedly rescinded the contract and only asked for money already forfeited.

3.2. The prayer sought for by the plaintiffs based on the oral agreement has no basis and not in accordance with the decided legal principles. Since the defendants specifically fixed the time limit for completion of the transaction, non compliance of such terms and conditions as resulted in breach of agreement and the plaintiffs are entitled to base their claim of such non existent right. The plaintiffs have rescinded their contract by their own non performance. The averments made in the plaint would clearly reveal that the plaintiffs were not financially ready and they are unprepared to perform their part of contract. From the plaint it is seen , the plaintiffs themselves sought for refund of money on 12.04.2002 after five months of 1st defendant's letter dated 11.12.2001, which would show that they were aware that the contract had been brought to an end by their non performance. Thus, the plaintiffs have acquiesced themselves to the situation of forfeiture and wanted to get back the money. Therefore, the claim for specific performance would not lie.

3.3. The defendants further contended that there cannot be any charge created over the property as claimed by the plaintiff having not performed their part of obligation and rescinded the contract by their own conduct. The prayer for permanent injunction restraining the defendants from selling the property or demolishing the building has no basis or any legal right and cannot be maintained. In the absence of a plea of concluded agreement of sale, the present suit is not maintainable and the plaintiffs cannot seek for injunction alleging that they have prima facie case. No blanket injunction restraining the owner from exercising the right of disposal can be granted after the plaintiffs incurred forfeiture and voluntarily rescinded the contract. The defendants further stated that the suit is misconceived and is a abuse of process of court and the plaintiffs seek to indirectly achieve what cannot be achieved directly and it is unconstitutional and violative of Articles 19 and 21 of the Constitution of India.

3.4. The defendants 2 to 6 have filed a memo dated 02.03.2010 adopting the written statement filed by the 1st defendant.

3.5. The 7thdefendant filed his written statement contending that that they have completed the sale transaction successfully in the month of August, 2002. According to them, they came to understand through a real estate broker that the suit property was available for sale and they have met defendants 1 to 4 and they have disclosed that the suit property belong to them and also to the defendants 5 & 6 in which some of the defendants are partners. The defendants 1 to 4 represented that they availed mortgage loan from Egmore Benefit Fund Society by creating equitable mortgage by depositing the title deeds relating to the suit property. The counsel for 7th defendant insisted for title deeds, after they have satisfied with the title and preliminary discussion after entering into the contract for purchase of the property. The sale consideration was agreed at Rs.1,75,00,000/- on the condition that the 7th defendant should discharge the mortgage and receive all the title deeds in original, thereafter, the defendants 1 to 4 would enter into a registered agreement of sale. The 7th defendant paid a sum of Rs.50,00,000/- directly to the Egmore Benefit Fund Society Limited and they have also paid a sum of RS.20,00,000/- as sale advance besides the amount of Rs.75,00,000/- towards advance sale consideration paid to the defendants 1 to 4. The agreement was duly registered on 07.07.2002.

3.6. The 7th defendant further contended that before entering into an agreement they made reasonable enquiries about the vendors and about the property. He came to know through a real estate broker that the 1st defendant was a Member of Legislative Assembly of Government of Andhra Pradesh and was of a very decent origin owning a large Diary Farm and Milk Product Unit in Chittoor. The 7th defendant made enquired about the 1st defendant and they did not get any information regarding the previous encumbrance or commitment on the property. As the title deeds were deposited with the Egmore Benefit Fund Society Limited, the property was free of encumbrance except the equitable mortgage. On 26.08.2002, the 7th defendant paid the balance sum of

Rs.75,00,000/- to the defendants 1 to 6 through various bank instruments and the defendants 1 to 4 also executed an affidavit of declaration for the entire sale consideration. Thus, under the provisions of the Transfer of Property Act part performance of sale has been fully completed in their favour and the 7th defendant has taken physical possession of the property fully and continued to be in possession. They are willing to perform their part of contract not withstanding the requirement of registration of sale as the 7th defendant deemed to have become the owner of the property. The 7th defendant had also demolished the old buildings in the property after obtaining necessary permission from the Corporation of Chennai. The defendants 1 to 4 has also executed a registered power instrument appointing an Agent for completion of sale in favour of the 7th defendant or his nominee. The alleged previous transaction between the plaintiffs and the defendants 1 to 6 was not known to them. The plaintiffs are stranger to the 7th defendant and they have not seen or known them. The 7th defendant is an innocent purchaser for a valuable consideration and their title on this ground also cannot be assailed. Even on the reading of the plaint, the plaintiffs have not made out a case for specific performance. The defendants 1 to 6 never intended to enter into an agreement of sale with the plaintiffs and the plaintiffs were also not serious in enforcing the right if at all they had any. The plaintiffs cannot maintain the suit. The 7th defendant further contended that an agreement to enter into an agreement for purchase of immovable property cannot at all be a contract which cannot be specifically enforced and the specific performance of the alleged delayed and non existent contract cannot be ordered and the suit against the 7th defendant is improper and liable to be dismissed in limine.

4. Upon considering the pleadings of either party, the following issues have been framed for trial:

(1) Whether the plaintiffs are entitled for specific performance of the agreement for sale dated 09.05.2001?

(2) Whether the plaintiffs are entitled for the alternative relief of damages of Rs.1.3 crores or damages with future interest at 24% p.a. calculated on the monthly rests?

(3) Whether the plaintiffs are entitled to claim equitable charge over the suit schedule mentioned property for the payments incurred pursuant to the contract dated 09.05.2001?

(4) Whether the plaintiffs are entitled for a perpetual injunction as against alienation by way of sale, mortgage, joint development agreement, lease or otherwise of the property?

(5) Are the defendants 1 to 6 not bound by the terms of the contract dated 09.05.2001?

(6) Whether the 7th defendant is a bona fide purchaser for value without notice?

(7) To what reliefs the parties entitled to?

5. During trial on side of the plaintiffs, the 1st plaintiff was examined herself as P.W.1 and one Mr.B.Nagi Reddy, the brother of the 1st plaintiff was examined as P.W.2 and Ex.P.1 to P.45 were marked and on the side of the defendants, 1st defendant was examined himself as D.W.1, however, no documentary evidence was marked on the side of the defendants.

Issue No.1:-

6. According to the plaintiffs, the defendants entered into an oral contract with the plaintiffs on 09.05.2001 for the sale of the suit property. Further, P.W.1 is the Proprietress of M/s.Prajwal Associates. The 2nd plaintiff is the husband of the 1st plaintiff. He was an Engineer and engaged in construction of flats. He died pending suit. The defendants 1 to 4 are the absolute owners of the suit property. The 1st defendant was ostensibly representing his wife, son and daughter, the defendants 2 to 4 herein. The defendants 5 and 6 are firms in which the defendants 1 to 4 are directors. The defendants 1 to 4 agreed to offer the suit property for joint development and promotion. Based on the photocopies of the title deeds produced by the 1st defendant, the plaintiffs agreed to purchase the suit property and accordingly entered into an agreement of sale orally. The value of the property was fixed at Rs.44,00,000/- per ground and the total cost of the project was worked out at Rs.1,76,00,000/- out of which Rs.20,00,000/- was agreed to be discharged towards 1/8th undivided land cost in

proportion to the flat to be constructed and to be offered to the 1st defendant and his family members, the balance sum of Rs.1,54,00,000/- is to be paid by the plaintiffs to the defendants 1 to 4. Pursuant to the oral agreement the plaintiffs had paid a sum of Rs.70,00,000/- by way of four different cheques in the names of the defendants 1 to 4 individually and the amounts were also realized by the respective defendants. Subsequently, the plaintiffs came to know that the suit property was mortgaged with the Egmore Benefit Fund Society Limited and the defendants 1 to 4 were liable to pay a sum of Rs.55,00,000/- to the mortgagee. But the defendants 1 to 4 did not discharge the mortgage loan from out of the advance sale consideration received by them though the 1st defendant informed the plaintiffs that he would discharge the loan and clear that the mortgage debt and hand over the property free from all encumbrances. When the 2nd plaintiff approached the 1st defendant in the 1st weeks of September,2001 and enquired him about the discharge of the mortgage debt, the 1st defendant had humiliated the 2nd plaintiff. Having not satisfied over the conduct of the 1st defendant, plaintiffs had decided to recall the advance amount together with interest and also other expenses incurred by them in relation to the project. Though the 1st defendant promised to return the advance amount by 30.12.2001 with interest, he did not keep up his promise and instead, on 12.04.2002, the 1st defendant assaulted and manhandled the 2nd plaintiff. It is the further case of the plaintiffs that thereafter, on 19.07.2002, the 3rd defendant, the son of the 1st defendant informed through his counsel that they are contemplating to deal with the property in favour of a third party and promised to return the advance amount. But, even thereafter, no amount was returned to the plaintiffs. While so, the defendants 1 to 6 have entered into an agreement with the 7th defendant in respect of the suit property.

7. The case of the defendants 1 to 6 is that they are the owners of the suit property; the plaintiff approached the defendant for purchase of the suit property on 09.05.2001 and at that time, the 1st defendant informed the plaintiffs that there is a subsisting mortgage over the suit property with the Egmore Benefit Fund Society Limited and required the plaintiffs to discharge the debts in order to process the transaction further and the plaintiffs had also agreed to purchase the suit property for a total consideration of Rs.2,02,00,000/-; on 09.05.2001 itself, the plaintiffs had given four cheques in the name of the defendants 1 to 4 individually for a total sum of Rs.70,00,000/- and the plaintiffs informed that the same may be retained as a guarantee for due performance of the contract and the parties agreed and understood that the payment made by way of Earnest Money Deposit would be forfeited in case of breach of undertaking to clear the mortgage debt immediately. The defendants 1 to 4 secured a letter from the mortgagee regarding the amount payable as on 30.06.2001 on the mortgage and from those transction it would be clear the original date stipulated for completion of the contract was 30.06.2001, but, the plaintiff expressed their inability due to financial crisis and they were not able to mobilize the requisite amount to complete the contract and ultimately, after giving sufficient time to the plaintiffs, the

defendants sent a letter on 11.12.2001 informing the plaintiffs that, if the mortgage debt is cleared off by the plaintiff on or before 30.12.2001 and the balance of sale consideration is not paid, the defendants would forfeit the advance amount and the contract would stand cancelled. Even after the receipt of the letter, the plaintiffs did not come forward with any reply and they failed to discharge the mortgage debt, hence, the amount paid as advance has been forfeited by the defendants. It is the further case of the defendants that the plaintiffs were never ready and willing to perform their part of contract by discharging the mortgage debt on behalf of the defendants as undertaken by them and pay the balance sale consideration and complete the sale transaction and on the other hand, they were only interested in getting back the advance amount. Therefore, the plaintiffs are not entitled for any relief as sought for in the suit.

8. The law on granting a decree for specific performance is well-settled. It is for the 1st plaintiff to prove that from the date of execution of the agreement of sale till date of decree, she was always ready and willing to perform her part of contract as per the agreement. The ***"readiness"*** is meant by the capacity of the plaintiffs to perform the contract which would include the financial position to pay the purchase money and the ***"willingness to perform the contract"*** is meant the conduct of the plaintiff which has to be scrutinized properly along with the attendant circumstances. It is for the court to infer from the facts and circumstances whether the plaintiff was ready and willing to perform his part of contract. The Hon'ble Supreme court in **Kalwati (D) through L.Rs.**

v. Rakesh Kumar, AIR 2018 SC 960, has held as follows:

> "19. In his Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar MANU/SC/0522/1996: (1996) 4 SCC 526, this court drew a distinction between readiness to perform the contract and willingness to perform the contract. It was observed that by readiness it may be meant the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. As far as the willingness to perform the contract is concerned, the conduct of the plaintiff has to be properly scrutinized along with attendant circumstances. On the facts available, this court may infer whether or not the plaintiff was always ready and willing to perform his part of contract."

9. Keeping the above said principles in mind, let us scrutinize the available materials. Admittedly, P.W.1 is the sole proprietrix of Prajwal Associates. The 2nd plaintiff was the husband of the 1st plaintiff. He died pending suit. The defendants 1 to 4 were the absolute owner of the suit property. There is no dispute regarding the oral agreement entered into between the plaintiffs and the defendants 1 to 4 for joint development and promotion of the suit property and the sale consideration was also fixed. On 09.05.2001 itself, the plaintiffs paid a total sum of Rs.70,00,000/- to the defendants by way of four different cheques drawn in the name of the defendants 1 to 4 and the defendants 1 to 4 had realized the amount. According to the plaintiffs, the same was paid as advance under the oral contract. The defendants 1 to 4 contended that the

same was paid only as guarantee for due performance of contract and it was agreed between them that the same would be forfeited if the plaintiffs did not perform their part of contract. Even though in the written statement the 1st defendant stated so, in his evidence, he has admitted that he had received a sum of Rs.70,00,000/- towards part sale consideration. The relevant portion of his evidence is as follows:-

> "The 2nd plaintiff Mr.P.Baskara Reddy contacted me in the 1st week of May, 2001 and asked me whether I was selling the suit property. I expressed my willingness to sell the suit property. I then told him that there existed a mortgage over the suit property with Egmore Benefit Fund Society Limited and to discharge that mortgage, I was willing to sell the suit property. The 2nd plaintiff Mr.P.Baskara Reddy had negotiated with me regarding the sale transaction. I have dealt with the matter on behalf of the defendants 2 to 6 also. I received Rs.70,00,000/- by way of 4 cheques from Mr.P.Baskara Reddy drawn in favour of myself for Rs.25 lakhs Mr.G.Bupesh, the 3rd defendant for Rs.15 lakhs, Mr.G.Moha, 4th defendant for Rs.5 lakhs and Mrs.G.Padmini, 2nd defendant for Rs.25 lakhs"

From this evidence of D.W.1, it is clear that he had received the amount only towards part sale consideration.

10. The learned counsel for the defendants 1 to 6 vehemently contended that, even though the plaintiffs claimed that the alleged oral agreement for purchase of the

suit property was entered into by the 2nd plaintiff on behalf of the firm, for which the 1st plaintiff was the proprietress, no authorization was given to the 2nd plaintiff by the 1st plaintiff to act on behalf her firm. Further, according to the learned counsel, admittedly, when the 1st plaintiff was not preset at the time of the alleged oral agreement entered into between the 1st defendant with the 2nd plaintiff for the sale of the suit property and the 1st plaintiff had no personal knowledge about the agreement, and she cannot be a witness competent to let in evidence in respect of the terms of the agreement. The 1st plaintiff had deposed based on hearsay information and the 1st plaintiff, who is bound to establish the oral contract, failed to discharge her burden. The learned counsel for the defendants 1 to 6 placed reliance heavily in support of his contention on a judgement of the Hon'ble Supreme court in **Rangammal v. Kuppuswami [AIR 2011 SC 2344]**.

11. It is admitted by the plaintiffs that the deceased 2nd plaintiff was acting on behalf of the 1st plaintiff and 1st defendant had entered into an agreement for the sale of the suit property with the 1st plaintiff and that the 1st plaintiff was not present at the time when the contract was confirmed. However, the 1st defendant himself has clearly admitted that it was only the 2nd plaintiff who had transactions with him regarding the purchase of the suit property and the entire transaction had been done only through the deceased 2nd plaintiff and he alone had handed over the cheques for a total sum of Rs.70,00,000/- to the defendants. When that be so, now, it is not open to the defendants

to contend that the 2nd plaintiff had no authority to enter into the contract. Hence, the contention of the learned counsel for the defendants 1 to 6 in this regard cannot be countenanced.

12. Now, this court has to see as to whether the plaintiffs were ready and willing to perform their part of contract and to get the transaction completed after payment of balance sale consideration. It is the specific case of the plaintiffs that though the 1st defendant at the time of oral agreement had agreed to discharge the mortgage debt payable to the Egmore Benefit Fund Society Limited, later on failed to keep up his promise and the defendants 1 to 4 did not settle the mortgage debt from out of the advance amount received from the plaintiffs. Doubting the bona fide of the defendants 1 to 4, the plaintiffs opted for refund of advance amount forthwith together with interest and other expenses incurred in relation to the project. The relevant portion of the pleading in the plaint is as follows:-

> "10. ... ... On account of the conduct of the first defendant and other defendants 2 to 6, the plaintiffs had no other option but to recall the money forthwith with interest and other expenses they incurred in relation to the project."

13. P.W.1, the 1st plaintiff, in her evidence has clearly admitted that her husband

was demanding for refund of advance amount. The verbatim of the evidence of P.W.1, in this regard, is reproduced hereinbelow:-

> "I lost confidence on him when we came to know that the original documents of the properties were with the Egmore Benefit Fund Society Limited, and that is, in June 2001. When my husband demanded repayment of advance, he was assaulted by him and his spectacles were broken. With such a person, I though it was not proper to give a police complaint as against 1st defendant since it will aggravate the situation. I was not present at the time of the said incident. My husband told me about the incident. We have not issued any notice to recall the money paid to the 1st defendant , since the 1st defendant had promised to repay the amount by 30.12.2001. My husband told me that the 1st defendant had promised to repay the amount by 30.12.2001. Gopinathan told my husband that he will repay the amount. I was not present at that time. As already told by me, since the 1st defendant is no a good man, I have not proposed to issue any notice to him for refund of amount and aggravate the situation and also I apprehended my husband's life. Since the 1st defendant's son , the 3rd defendant had informed to the counsel that they will deal with the properties with some 3rd parties and refund the amount to us so we were waiting and no notice was issued. Gopinathan's son , the 3rd defendant, told his counsel on 19.07.2002 that they will refund money."

From the above piece of evidence, it is clear that the plaintiffs, after September 2001, were not willing to get the contract completed by paying the balance sale consideration and they were very much eager in getting back the advance amount paid by them. No where in the plaint, the plaintiffs have specifically pleaded that they were ready and willing to get the contract completed after paying the balance sale consideration. The plaintiffs who seek for equitable remedy of specific performance of contract must plead and prove their readiness and willingness from the date of agreement till date of decree. But, the plaintiffs have failed to do so, and they only wanted get back the advance amount paid under the contract together with interest and other charges incurred in relation to the project. Therefore, this court is of the view that the plaintiffs who have not established their readiness and willingness to get the sale transaction completed are not entitled for a decree for specific performance of contract. **The Issue No.1 is answered accordingly against the plaintiffs.**

Issue Nos.2 and 5:-

14. Coming to the alternative relief, the plaintiffs prayed for a decree against the defendants for payment of Rs.1,38,00,000/- together with future interest at 24% p.a. calculated on monthly payments on the said sum of Rs.1,38,00,000/- till date of actual realization or payment. The advance amount paid by them also included in the said amount. In para 17 of the plaint, the plaintiffs have pleaded as follows:

> "For any reason , this Hon'ble Court is of the view instead of enforcing the contract, damages would be an adequate remedy to the plaintiffs and plaintiffs seek for refund of Rs.70 lakhs together with damages amounting to Rs.20 lakhs as provided under Section

73 of the Contract Act read with Section 21 of the Specific Relief Act, 1963. The plaintiffs have paid more than Rs.31 lakhs towards interest on Rs.70 lakhs paid to the defendants 1 to 4 and have suffered a loss of Rs.30 lakhs which the plaintiffs would have earned from the project if it had been completed as per the contract dated 09.05.2001 besides the mental agony and loss to the plaintiffs which they tentatively estimate at Rs.20 lakhs."

The plaintiffs, however, restricted their claim in respect of alternative relief for damages to Rs.1,38,00,000/-.

15. It is an admitted fact that the cheques issued by the plaintiffs on 09.05.2001 were realized by the defendants 1 to 4. It is the case of the defendants that though the plaintiffs have paid Rs.70,00,000/- as security for due performance of contract, they failed to perform their part of contact. Therefore, the amount paid by them has been forfeited as agreed upon between the parties and as such the plaintiffs are not entitled for refund of the amount. The contract for sale was oral. What are the terms agreed upon between the parties have not been proved by either parties by letting in acceptable evidence. The defendants 1 to 4 in their written statement have contended as follows:-

"Ultimately, the 1st defendant after giving them sufficient latitude* (sic) finally had to write a letter dated 11.12.2001 stating that if the plaintiffs did not clear the mortgage loan by 30.12.2001 and pay the defendants the balance amount, they would have to forfeit the advance amount paid and that the contract would stand cancelled. "

16. Even though it has been contended by the defendants 1 to 6 that on 11.12.2001, they have sent a letter to the plaintiffs requiring them to complete the contract by 30.12.2001 by paying the balance sale consideration or else the amount paid by them under the contract would be forfeited, no such letter has been produced in evidence before this court. In the course of cross examination, the 1st defendant has specifically admitted that the letter alleged to have been said by them was not produced in court and he had instructed his assistant to prepare the letter and it was addressed to the 2nd plaintiff. He further admitted that he did not have any acknowledgment for having sent such a letter to the 2nd respondent. The exact version of the D.W.1 is as follows:-

"On 11.12.2001, I had written a letter to Mr.P.Bhaskara Reddy indicating the amount payable to the Egmore Benefit Fund Society Limited up to 31.12.2001 and since he had not cleared the loan with the said society, I had to forfeit the amount paid by him. That letter is not produced before this court. I gave instructions to prepare that letter to my assistant and he had prepared that letter and it was addressed to Mr.P.Bhaskara Reddy and dispatched at Chittoor. I do not have the acknowledgment card for having dispatched that letter by registered post to Mr.P.Bhaskara Reddy. ......"

"I informed the plaintiffs to complete the sale transaction before 30.12.2001. I have not filed any evidence before this court to prove that I have informed the plaintiffs by a registered letter with acknowledgment due. ....."

"I have written a letter I do not remember the date, to the plaintiff stating that the entire transaction shall be completed on or before 30.12.2001 as otherwise, the advance amount will be forfeited. I have not filed any document in this case to show that the letter written by me was served on the plaintiffs. I have not filed any document in this case to show that a letter was so written by me to the plaintiffs."

17. Though the defendants 1 to 6 had admitted the receipt of payment to the tune of Rs.70,00,000/- pursuant to the oral contract, their case is that the amount was not paid as part sale consideration and the same was paid only as security for due performance and on the failure of the plaintiffs to perform their part of contract , the amount paid by them got forfeited as per the understandings between the parties. But, there is no acceptable evidence available to hold that the plaintiffs paid Rs.70,00,000/- to the defendants 1 to 4 as security and there was an agreement for forfeiture in the event the plaintiffs failed to perform their part of contract. Even though, the 1st defendant claimed to have sent a letter to the plaintiffs regarding forfeiture of the amount paid by them, no such letter has been produced in evidence before this court. D.W.1 in his evidence has admitted that he did not have any acknowledgment for having sent a letter to the 2nd plaintiff. Therefore, this court is of the view that the plea of forfeiture has not been established by the defendants. Immediately after the plaintiffs

expressed their unwillingness to get the contract completed, the defendants 1 to 6 had decided to deal with the property with some other 3rd party and had entered into an agreement with them. They did not return the advance amount received from the plaintiffs for which the plaintiffs are legally entitled.

18. Coming to the claim for damages for the alleged breach of contract by the defendants 1 to 6, as already discussed supra, when the plaintiff failed to establish their claim for specific performance of contract, they cannot seek for damages or any other relief except for the refund of advance amount. When the contract has not reached its logical end, unless and otherwise it has been proved by the defendants 1 to 6 that the amount paid under the contract would be forfeited as the plaintiffs did not perform their part of contract, the defendants 1 to 6 are liable to return the advance amount to the plaintiffs. To this extent, the oral agreement entered into between the parties would bind on the defendants 1 to 6. As already discussed supra, after September, 2001, the plaintiffs were ready to get back the advance amount, but, the defendants 1 to 6 did not return the advance amount. Therefore, the plaintiffs are entitled to get back the advance amount together with interest @ 12% from 09.05.2001 till today and thereafter @ 9% till date of realization in full. **The Issue Nos.2 and 5 are answered accordingly in favour of the plaintiff to the extent indicated above.**

<u>Issue No.3 and 4:</u>

19. Since it has been concluded that the plaintiffs are not entitled for the specific performance of contract, the plaintiffs are not entitled for equitable charge over the suit property and perpetual injunction restraining the defendants 1 to 6 from alienating the suit property. **The Issue Nos.3 and 4 are answered accordingly against the plaintiffs.**

Issue No.6:-

20. The 7th defendant claims to be an innocent purchaser. According to the 7th defendant, they were informed only about the mortgage of the suit property with the Egmore Benefit Fund Society and after thorough enquiry they were under the bona fide belief that except the mortgage over the suit property, there was no other encumbrance and they were not aware of the earlier oral agreement between the plaintiffs and the defendants 1 to 6. The 7th defendant had stated in his written statement that he had paid the entire sale consideration to the defendants 1 to 6 much before the filing of the instant suit and he has been put in possession of the suit property. Admittedly, the previous agreement for sale was an oral one. It is case of the plaintiff that the 7th defendant was put on notice about the same, except the pleadings no other material was produced by them to establish their case that the 7th defendant was aware about the previous oral agreement. As there is no material available on record to show that the 7th defendant was put on notice regarding the oral agreement between the plaintiffs and the defendants 1 to 6, in the considered opinion of this court, the 7th defendant is a bona

fide purchaser of the suit property for valuable consideration. **The Issue No.6 is also answered against the plaintiff.**

21. Even though, the learned counsel on either side placed reliance on number of decisions of the Hon'ble Supreme Court as well as this court in support of their respective case regarding the general principles governing the law on specific relief, in view of the factual finds recorded by this court, there is no necessity for this court to discuss about the case laws referred to by the respective counsel.

Issue No.7:

22. In the light of the above discussions, this court is of the opinion that except a decree for refund of advance amount with interest as indicated earlier, no other relief can be granted to the plaintiffs.

23. **In the result,** the civil suit is decreed in part with proportionate cost as against the defendants and the defendants are directed to return a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) together with simple interest @ 12% p.a. from 09.05.2001 till date of decree and thereafter @ 9% p.a. till date of payment or realization in full and the civil suit in other respects stands dismissed.

Index : yes / no 23..11..2018
Internet : yes / no

Speaking / Non Speaking Judgment
kmk

Witnesses on the side of the plaintiffs:

P.W.1 - Mrs.P.Syamala (1st plaintiff)
P.W.2 - Mr.B.Nagi Reddy (Brother of the 1st plaintiff)

Witness on the side of the defendants:

D.W.1 - Mr.R.Gopinathan (1st defendant)

Documents on the side of the plainitffs:

Ex.P.1	05.04.1991	Certified copy of sale deed
Ex.P.2	15.03.1991	Certified copy of sale deed
Ex.P.3	21.06.1991	Certified copy of sale deed
Ex.P.4	30.06.1994	Certified copy of sale deed
Ex.P.5	30.06.1994	Certified copy of sale deed
Ex.P.6	27.06.2001	Xerox copy of letter sent by the Egmore Benefit Fund Society Limited to the 6th defendant
Ex.P.7	15.04.2002	Xerox copy of cash memo
Ex.P.8	08.07.2002	Xerox copy of agreement of sale
Ex.P.9	24.08.2001	Sale Agreement
Ex.P.10	30.08.2001	Sale Agreement
Ex.P.11	27.01.2002	Letter sent by Mrs.T.R.Krishnamurthy to the 2nd plaintiff
Ex.P.12	24.05.2002	Xerox copy of letter sent by the 1st plaintiff to Mrs.T.Amirthavalli
Ex.P.13	29.09.2010	Encumbrance Certificate
Ex.P.14	25.03.2010	Letter issued by the Indian Overseas Bank, West Mambalam to M/s.Prajwal Associates
Ex.P.15	25.03.2010	Letter issued by the Indian Overseas Bank, West Mambalam to M.s.Prajwal Associates
Ex.P.16	15.10.2004	Discharged promissory note
Ex.P.17	21.10.2004	Discharged promissory note
Ex.P.18	15.10.2004	Discharged promissory note
Ex.P.19	21.10.2004	Discharged promissory note

Ex.P.20	16.09.2002	Discharged promissory note
Ex.P.21	29.11.2002	Letter sent by the plaintiffs' counsel to the defendants' counsel
Ex.P.22	04.07.2011	Letter sent by the plaintiffs' counsel to the defendants' counsel
Ex.P.23	08.07.2002	Certified copy of agreement of sale
Ex.P.24	28.01.2004	Encumbrance Certificate (series)
Ex.P.25	27.07.2011	Encumbrance Certificate (series)
Ex.P.26	22.08.2002	Certified copy of General Power of Attorney
Ex.P.27	30.05.2003	Certified copy of sale deed
Ex.P.28	31.05.2003	Certified copy of sale deed
Ex.P.29	31.05.2003	Certified copy of sale deed
Ex.P.30	31.05.2003	Certified copy of sale deed
Ex.P.31	13.06.2003	Certified copy of sale deed
Ex.P.32	03.07.2003	Certified copy of sale deed
Ex.P.33	03.07.2003	Certified copy of sale deed
Ex.P.34	09.07.2003	Certified copy of sale deed
Ex.P.35	09.07.2003	Certified copy of sale deed
Ex.P.36	25.07.2003	Certified copy of sale deed
Ex.P.37	27.08.2003	Certified copy of sale deed
Ex.P.38	14.11.2003	Certified copy of sale deed
Ex.P.39	28.11.2003	Certified copy of sale deed
Ex.P.40	02.01.2004	Certified copy of sale deed
Ex.P.41	02.01.2004	Certified copy of sale deed
Ex.P.42	28.01.2004	Certified copy of sale deed
Ex.P.43	24.07.2011	Notice to produce documents sent by plaintiffs' counsel to the defendants' counsel
Ex.P.44	26.08.2002	Xerox copy of sworn affidavit
Ex.P.45	26.08.2002	Xerox copy of the order in C.A.No.4091 to 4092 of 2003 passed by the Supreme Court of India

<u>Documents on the side of the defendants:-</u>

Nil

V.B.D.J.

23..11..2018

V.BHARATHIDASAN.J.,

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Pre delivery Judgment
in
Civil Suit No.644 of 2002

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