

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2018

PRONOUNCED ON :29.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1497 of 2004

S.Elamaran Appellant/Plaintiff

Vs.

1. B. Habibunnisa Begam

2.A.Latha Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the District Court at Nagapattinam dated 05.03.2004 in A.S.No.101 of 2003, confirming the judgment and decree of the Principal Subordinate Judge's Court at Nagapattinam, dated 16.10.2003 in O.S.No.63 of 2002.

For Appellant : Mr.S.Parthasarathy, SC
for M/s. Sarvabhauman Associates

For Respondents : Mr.Srinath Sridevan

J U D G M E N T

Challenge in this Second Appeal is made to the the judgment and decree dated 05.03.2004 passed in A.S.No.101 of 2003 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 16.10.2003 passed in O.S.No.63 of 2002 on the file of the Principal Subordinate Court, Nagapattinam.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for specific performance or for the refund of the sale consideration of Rs.2,46,000/-.

4.The case of the plaintiff in brief is that the suit

property belongs to the first defendant and as the lane and building belonging to the plaintiff lies south of the suit property, the plaintiff negotiated with the first defendant for the purchase of the suit property and accordingly the plaintiff and the first defendant entered into an agreement on 03.05.2001 for the sale of the suit property where under the first defendant agreed to sell the suit property to the plaintiff for a sum of Rs.2,50,000/- and on that date of the sale agreement, the plaintiff paid a sum of Rs.1,50,000/- to the first defendant as advance and both the parties had agreed to complete the sale transaction in one year and on 13.05.2002, the first defendant received a further sum of Rs.50,000/- out of the sale consideration from the plaintiff and the time for performance was extended by a further period of three months and the payment of Rs.50,000/- on 13.05.2002 had been endorsed on the sale agreement. Prior to the same, on 02.09.2000, the plaintiff had paid a sum of Rs.46,000/- to the first defendant as consideration for the possession of 552 sq.ft in the rear portion of the suit property and accordingly, the plaintiff is in the possession of the abovesaid 552 sq.ft and it was orally agreed between the plaintiff and the first defendant that the aforesaid sum of Rs.46,000/- should be adjusted towards the balance of sale consideration at the time of the execution of the sale deed and accordingly, if the abovesaid sum of Rs.46,000/- is adjusted towards the sale consideration, the plaintiff has to pay only a sum of Rs.4000/- to the first defendant for completing the sale transaction and the plaintiff has been always ready and willing to perform his part of the contract, by paying the sale consideration etc., and it is only the first defendant, who was reluctant to complete the same by projecting one reason or the other and the plaintiff has learnt that the first defendant had negotiated with the second defendant's husband in respect of the sale of the suit property and in this connection, they had entered into an agreement on 23.07.2001 and accordingly, inasmuch as the abovesaid agreement of sale is subsequent to the sale agreement dated 03.05.2001 entered into between the plaintiff and the first defendant, the plaintiff issued a notice dated 20.05.2002 to the second defendant's husband apprising him of the sale agreement dated 03.05.2001 and the said notice was also addressed to the first defendant and the abovesaid notice has been received by the first defendant and the second defendant's husband but, they have not replied to the same and the plaintiff has learnt that the first defendant had sold the suit property to the second defendant on 06.06.2002 and the sale deed has come to be registered. The second defendant has full knowledge about the sale agreement dated 03.05.2001 before purchasing the suit property from the first defendant and the second defendant and her husband also knew about the possession of 552 sq.ft by the plaintiff as above stated in the rear portion of the suit

property and hence the second defendant is not a bonafide purchaser of the suit property and the second defendant's sale deed would not in any manner affect the plaintiff's right to purchase the suit property pursuant to the sale agreement dated 03.05.2001 and inasmuch as the plaintiff has been always ready and willing to pay the balance sale consideration in completing the sale transaction and in case, the first defendant denies the oral agreement regarding the adjustment of Rs.46,000/-, the plaintiff also being ready to pay the sum of Rs.46,000/- to the first defendant towards the sale consideration, accordingly, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5.The case of the first defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. After denying the plaintiff's case, as regards the claim of purchase of the suit property by the plaintiff from the first defendant pursuant to the sale agreement dated 03.05.2001, according to the first defendant, no such sale agreement was entered into between the plaintiff and the first defendant, as regards the sale of the suit property, for a sum of Rs.2,50,000/- and the first defendant has admitted the receipt of Rs.46,000/- for parting with the possession of the extent of 552 sq.ft in the suit property to the plaintiff on 02.09.2000 and according to the first defendant, her relative M.Regina Begum was in need of money and accordingly the first defendant along with Regina Begum approached the plaintiff for obtaining the loan, accordingly, the plaintiff lent a sum of Rs.1,50,000/- to Regina Begum asking her to repay the same with interest and in connection with the said loan transaction, the plaintiff had obtained the signatures of the first defendant in stamp papers as well as the blank papers and also obtained the title deed of the suit property from the first defendant for security purpose and assured that he would return the abovesaid documents at the time of settling the loan transaction and accordingly, the first defendant had signed in the blank papers and stamp papers as directed by the plaintiff and also handed over the title deed of the suit property to the plaintiff and however she did not execute the sale agreement as such in favour of the plaintiff in respect of the suit property and denied that the parties i.e., the plaintiff and the first defendant agreed to extend the time of the performance of the sale agreement on 13.05.2002 and also denied that the plaintiff advanced the sum of Rs.50,000/- to the first defendant on that date, towards the balance of sale consideration and according to the first defendant, the plaintiff is liable to hand over the possession of 552 sq.ft on payment of Rs.46,000/- and it is also contended by the first defendant that Regina Begum had been repaying the borrowed sum with interest to the plaintiff and it is the further case of the first defendant that an agreement of sale was entered into with

Selvi on 01.03.2001 in respect of the portion of the suit property for Rs.40,000/- and on the date of the said agreement itself, the first defendant had received Rs.40,000/- and entrusted the possession of the suit property to S.Selvi and thereafter as directed by S.Selvi, executed the sale deed in respect of the said property in favour of the second defendant on 05.06.2002 and pursuant to the same, it is only the second defendant, who has title, possession and enjoyment of the said property and the plaintiff knew about the same and despite the said position, it is stated that the plaintiff has filed the false suit on the basis of the alleged sale agreement by misusing the signatures obtained from the first defendant in the stamp papers and blank papers as above stated and the plaintiff is not entitled to the relief of specific performance and also the alternative relief and hence the suit is liable to be dismissed.

6. The case of the second defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. After denying the plaint averments, according to the second defendant in respect of the portion of the suit property, a sale agreement was entered into between the first defendant and Selvi, who is her husband's brother's wife for a sum of Rs.40,000/- and the first defendant had been paid the entire sale transaction and pursuant thereto as directed by Selvi, the first defendant had executed the sale deed in respect of the said property in favour of the second defendant on 05.06.2002 and handed over the possession of the same to the second defendant and since then, it is only the second defendant, who has title, possession and enjoyment of the said property and also pleaded that the plaintiff is not entitled to seek the reliefs based on the alleged sale agreement dated 03.05.2001 and the suit laid by the plaintiff is therefore liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A 7 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 has been marked.

8. The Courts below, on an appreciation of the materials placed on record, both oral and documentary evidence and the submissions made by the parties, were pleased to decline the relief of specific performance sought for by the plaintiff and had granted only the alternative relief prayed for by the plaintiff in respect of the sum of Rs.2,00,000/- with interest and accordingly, disposed of the plaintiff's suit. Aggrieved over the same, the present Second Appeal has been laid.

9. At the time of admission of the second appeal the

following substantial questions of law were formulated for consideration.

(i) Whether the Courts below are correct in law in accepting a plea which is contrary to and beyond the written agreement Ex.A1 which is prohibited by Section 92 of the Evidence Act? Vide (2000) 10 SCC 636.

(ii) Have not the Courts below committed a grave error in law in non-suiting the appellant on the ground that his claim is based upon a false plea by totally misleading the plaint?

10. The suit has been laid by the plaintiff for the relief of specific performance on the footing that the first defendant had agreed to sell the suit property to him for a sum of Rs.2,50,000/- and pursuant to the same, the parties had entered into a sale agreement on 03.05.2001 whereunder the plaintiff paid a sum of Rs.1,50,000/- as advance and the parties agreed to complete the sale transaction within a period of one year and further, according to the plaintiff, on 13.05.2002, he paid a sum of Rs.50,000/- to the first defendant and the time for performance of the agreement was further extended and it is further stated by the plaintiff that on 02.09.2000, the plaintiff had paid the sum of Rs.46,000/- to the first defendant and obtained the possession of an extent of 552 sq.ft in the rear portion of the suit property and it is further pleaded that the parties had orally agreed that the abovesaid sum of Rs.46,000/- should be adjusted towards the sale consideration, at the time of the execution of the sale deed and thus, it is contended that only the sum of Rs.4,000/- remains to be paid for completing the sale transaction and as the plaintiff has been always ready and willing to perform his part of the contract and obtain the sale deed and as the first defendant had been evading the same on some pretext or the other and later, the first defendant having alienated a portion of the suit property to the second defendant on 06.06.2002 and as the second defendant is not a bonafide purchaser and has knowledge about the sale agreement dated 03.05.2001, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

11. The first defendant as such has not disputed her signatures in the sale agreement dated 03.05.2001 marked as Ex.A1. Thus, it is found that the first defendant has admitted the execution of the sale agreement as such. However, according to the first defendant, inasmuch as her relative Regina Begum was in need of money, for the purpose of securing the loan, they had approached the plaintiff and at the time of lending the loan, it is her case that the plaintiff had obtained her signatures in the blank papers and stamp papers and also

obtained the title deed of the suit property from her and hence it is pleaded that the first defendant had affixed her signatures in the abovesaid documents only for the purpose of obtaining the loan and not with reference to the execution of the sale agreement as such and therefore it is stated by the first defendant that the plaintiff is not entitled to obtain the reliefs sought for. It is found that even as per the pleadings set out by the first defendant and the evidence adduced by her, the sum of Rs.1,50,000/- has been advanced only to the first defendant by the plaintiff by way of a cheque. That apart, though the first defendant would claim in the written statement that the plaintiff had obtained her signatures in blank papers and stamp papers at the time of lending the loan amount, with reference to her said claim, the first defendant has not whispered anything in her evidence, even during the course of chief examination. Further, the reading of the evidence of first defendant, as has been adduced during the cross examination also would go to show that her case that she had subscribed her signatures in blank papers and stamp papers at the time of lending the loan amount, as put forth by her, cannot be believed and it is found that as determined by the Courts below, the first defendant had subscribed her signatures to the sale agreement knowing fully well about the contents of the document written thereon. It is thus found that when as per the admission of the first defendant, she had signed only in the written document, her plea that the plaintiff had obtained her signatures in blank papers and stamp papers as such cannot be believed and accepted in any manner. Equally her case, that she had parted with the title deed of the suit property to the plaintiff without protest also belies the theory of loan transaction projected by her.

12. Despite holding the abovesaid defence projected to be a false one, the determination of the Courts below holding that the first defendant had signed in the sale agreement only for the purpose of securing the loan, being totally inconsistent to the clear and unambiguous admission of the first defendant that she had signed only in the written document and when the written document marked as Ex.A1, is found to be the sale agreement, as rightly contended by the plaintiff's counsel, the first defendant cannot be allowed to tender evidence contrary to the recitals found in the sale agreement Ex.A1.

13. As far as the payment of Rs.1,50,000/- by the plaintiff to the first defendant, the same is not in dispute. The case of the first defendant that the said amount has been tendered as a loan is found to be false. It is pleaded by the first defendant that the said amount had been secured as a loan by Regina Begam and that Regina Begum has been repaying the said amount with interest, however, when with reference to the abovesaid claim of first defendant, there is no material forthcoming, and the

alleged borrower Regina Begum has not been examined and further there is no proof that Regina Begum had been repaying the alleged loan amount with interest as put forth by the first defendant, thus, it is found that the receipt of Rs.1,50,000/- by the first defendant is only pursuant to Ex.A1 sale agreement.

14. According to the plaintiff, on 02.09.2000, he had paid a sum of Rs.46,000/- to the first defendant and thereby the first defendant had delivered a portion of the suit property in the rear side measuring an extent of 552 sq.ft and this fact has not been controverted by the first defendant and the same has been clearly admitted by the first defendant. Now according to the plaintiff, the parties had orally agreed that the abovesaid sum of Rs.46,000/- is to be adjusted towards the balance sale consideration at the time of the execution of the sale deed. Till date, the first defendant has not established the repayment of the sum of Rs.46,000/- as above stated. It is thus found that a portion of the suit property remains in the possession of the plaintiff since 02.09.2000 i.e., prior to the sale agreement dated 03.05.2001. Accordingly, it is found that inasmuch as the sale agreement Ex.A1 has been entered into between the parties concerned inclusive of the portion delivered to the plaintiff on the payment of Rs.46,000/- on 02.09.2000, the case of the plaintiff is found to be probable that the parties had agreed to adjust the said sum towards the balance sale consideration at the time of the execution of the sale deed. The abovesaid transaction of the payment of Rs.46,000/- coupled with the handing over of the possession of 552 sq.ft in the rear portion of the suit property being a different transaction entered prior to the sale agreement, it is found that there is no need for the parties to incorporate the said facts in the sale agreement Ex.A1. Thus, the Courts below seem to have faulted with the case of the plaintiff on the footing that the abovesaid events had not been incorporated in the sale agreement and thereby proceeded to hold that the sale agreement projected by the plaintiff is a false one. However, as rightly put forth by the plaintiff's counsel, when the receipt of Rs.46,000/- and handing over the possession of 552 sq.ft in the rear portion of the suit property has not been disputed by the first defendant as such and when the said events had taken place much prior to sale agreement, it is seen that there is no need for incorporating the same in the sale agreement and when the first defendant herself has not controverted the abovesaid facts, the Courts below are found to have fallen into error in disbelieving the sale agreement on the footing that, the abovesaid events had not been incorporated in the sale agreement. As above stated, it is the case of the plaintiff that the parties had agreed to adjust the sum of Rs.46,000/- towards the balance sale consideration at the time of the execution of the sale deed. Further, it is also pleaded by the

plaintiff that in case, the defendant disputes the receipt of Rs.46,000/- or the arrangement/agreement of parties to adjust the same towards the balance sale consideration as putforth by the plaintiff, he is ready and willing to pay the said sum of Rs.46,000/- to the first defendant towards the sale consideration. It is thus found that the plaintiff has not suppressed the payment of Rs.46,000/- and the obtainment of the possession of an extent of 552 sq.ft in the rear portion of the suit property in the plaint and has come forwarded with the abovesaid facts in a clear and lucid manner and when the abovesaid facts are not challenged by the first defendant and further when the plaintiff is also ready to pay the said sum of Rs.46,000/- also in case of the denial of the same by the first defendant, the Courts below are found to have erred in disbelieving the plaintiff's case, on the footing that the abovesaid facts had been suppressed in the sale agreement. When the above facts are not required to be disclosed in the sale agreement, there is no question of any suppression of vital facts and hence the approach of the Courts below in non suiting the plaintiff as regards the main relief on the above reasonings is found to be unacceptable and improper.

15. Now, it is the case of the plaintiff that the parties had agreed to extend the time for completing the sale transaction and in this connection, stated that on 13.05.2002, the plaintiff paid a sum of Rs.50,000/- to the first defendant and the same had been endorsed by the first defendant in the sale agreement which endorsement has come to be marked as Ex.A2. To establish the same, the plaintiff has examined the scribe of the said endorsement as P.W.3. P.W.3 in his evidence has clearly deposed about the endorsement marked as Ex.A2 and the receipt of Rs.50,000/- by the first defendant from the plaintiff and the arrangement entered into between the parties in extending the time for completing the sale transaction. With reference to the same, the evidence of P.W.2 appears reliable, consistent and unchallenged. Further, as per the endorsement found in Ex.A2, when it is seen that the sum of Rs.50,000/- has been received by the first defendant from the plaintiff only towards the part of the sale consideration pursuant to the sale agreement Ex.A1 and thereby the first defendant had agreed to extend the time by three months for completing the sale transaction, it is found that the evidence of P.W.3 tendered during the course of cross examination that the first defendant had agreed to return the said amount after three months as such cannot be relied upon for disbelieving the plaintiff's case in toto. At the foremost, the first defendant has denied the receipt of Rs.50,000/- by way of Ex.A2 endorsement. But, the above defence projected by the first defendant is found to be false in the light of the above evidence of P.W.3. If the intention of the first defendant at

the time of receiving Rs.50,000/- on 13.05.2002 is only to return the said sum after three months, nothing prevented the first defendant to tender evidence on the above lines when she had been examined. However, the first defendant had not tendered evidence on the above lines, but she would only deny the same. On the other hand, the plaintiff has chosen to examine P.W.3 in support of his case, as regards Ex.A2 endorsement made by the first defendant for the receipt of Rs.50,000/- and when from the evidence of P.W.3 seen in toto, the said endorsement had been made by the first defendant along with her daughter and also the first defendant had received a sum of Rs.50,000/- only towards the part of the sale consideration following the sale agreement Ex.A1, the solitary evidence adduced by P.W.3, during the course of cross examination that the first defendant had agreed to repay the said sum after three months by itself would not lead to the conclusion that the said sum or the sum of Rs.1,50,000/- already admitted to be received by the first defendant from the plaintiff pursuant to the sale agreement had been received only in respect of the loan transaction as projected by the first defendant. As rightly put forth, the evidence of a witness should be assessed in toto and not in piecemeal.

16. On the whole, if the evidence of P.W.3 read in conjunction with the evidence of the plaintiff and the evidence of the first defendant as well as the contents of Ex.A2 endorsement read with the recitals found in Ex.A1 sale agreement coupled with the fact that the first defendant had meekly subscribed her signatures in the sale agreement knowing the contents of the same as above discussed and further, when her case that the plaintiff had obtained her signatures in blank papers and stamp papers had been found to be unacceptable even by the Courts below, it is found that the evidence of P.W.3 abovestated and relied upon by the Courts below, for coming to the conclusion that the sale agreement, as a whole, has been executed only towards the loan transaction as such cannot be accepted in any manner and on the other hand, when it is found that the first defendant had received a sum of Rs.50,000/- only towards the part of the sale consideration, accordingly, it is seen that the abovesaid solitary evidence of P.W.3 would not in any manner vitiate the plaintiff's case for his entitlement to obtain the main relief of specific performance.

17.If according to the Courts below, the sum of Rs.1,50,000/- paid on 03.05.2001 and the sum of Rs.50,000/- paid on 13.05.2002 forms part of the loan transaction and not pursuant to the sale agreement, it does not stand to reason as to why the Courts below should proceed to grant the alternative relief sought for by the plaintiff pursuant to the sale agreement. If the abovesaid sum had been paid by the plaintiff

only a loan as put forth by the first defendant, there is no need on the part of the Courts below for granting the alternative relief sought for by the plaintiff and the Courts below should have directed the plaintiff to recover the said loan amount by way of a separate suit as the same does not form part of the alleged sale agreement transaction. On the other hand, the Courts below appear to have granted the alternative relief on the footing that the same had been paid by the plaintiff, pursuant to the sale agreement dated 03.05.2001 marked as Ex.A1 and pursuant to the endorsement dated 13.05.2002 marked as Ex.A2 and when the evidence adduced by the plaintiff with reference to the same is seen in toto, it is found that the abovesaid sums had been received by the first defendant only towards the part of the sale consideration as projected by the plaintiff and accordingly, it is found that the Courts below also, unable to avoid the same proceeded to grant the alternative relief sought for by the plaintiff pursuant to the sale agreement.

18. Considering the discussions above made, when it is found that the first defendant has failed to establish that the sum of Rs.1,50,000/- received on 03.05.2001 and the sum of Rs.50,000/- received on 13.05.2002 are towards the loan transaction and on the other hand, when it is found that the said sum had been tendered by the plaintiff to the first defendant only towards the part of the sale consideration, pursuant to the sale agreement Ex.A1, it is found that the Courts below had erred in holding that the abovesaid sums had been borrowed by the first defendant only as loan and resultantly, further erred in declining the main relief of specific performance sought for by the plaintiff.

19. A reading of the pleadings set out in the plaint as well as the evidence tendered by the plaintiff examined as P.W.1 coupled with the agreement entered into between the parties, by way of Ex.A2 to extend the time limit for completing the sale transaction and considering the fact that the plaintiff has in fact, paid almost the entire sale consideration including the sum of Rs.46,000/- paid by him on 02.09.2000 itself, the receipt of such amount having not been disputed by the first defendant till date, it is found that only the balance sum of Rs.4,000/- remains to be paid. Accordingly, it is found that the plaintiff has been always ready and willing to perform his part of the contract and it is further found that the plaintiff has laid the suit on 24.06.2002 within the period of time agreed to between the parties for completing the sale transaction, in such view of the matter, the determination of the Courts below that the plaintiff has failed to establish his readiness and willingness to complete the sale transaction cannot be countenanced in any manner.

20. In this connection, it is to be noted that, on coming to know that the first defendant is making arrangements to sell the suit property in favour of the second defendant's husband pursuant to a sale agreement, it is found that on 20.05.2002, the plaintiff has sent a notice challenging the same, which notice has been marked as Ex.A3. The receipt of Ex.A3, sent to first defendant as well as the second defendant's husband, has not been disputed and established by the acknowledgment cards received from them marked as Ex.A4 and A5. Neither the first defendant nor the second defendant's husband had repudiated the contents of Ex.A3 notice. Thus, it is found that if the defence version projected by the defendants has any semblance of truth, on the receipt of Ex.A3 notice, the first defendant atleast would have endeavoured to send a reply repudiating the claim of the plaintiff based on the sale agreement dated 03.05.2001 and the endorsement dated 13.05.2002. However, no reply has been sent by the first defendant challenging Ex.A3 notice. Accordingly, it is found that, inasmuch as the plaintiff and the first defendant had entered into a sale agreement as projected by the plaintiff as well as extended the time limit for completing the sale transaction following Ex.A2 endorsement and also the receipt of Rs.2,00,000/- by the first defendant towards the sale consideration, it is found that the first defendant had no courage to dispute the case of the plaintiff as such and in such view of the matter, the present case projected by the defendants as if the sum of Rs.2,00,000/- had been received only towards the loan transaction and not towards the sale consideration pursuant to Ex.A1 cannot be believed and accepted in any manner.

21. It is found that the first defendant had alienated a portion of the suit property in favour of the second defendant on 05.06.2002 and it is stated that in respect of the same, the first defendant and one Selvi had entered into the sale agreement on 01.03.2001. However, on the materials placed, the Courts below had disbelieved the above version projected by the defendants and found and held that the second defendant is not a bonafide purchaser and knew about the sale agreement dated 03.05.2001 marked as Ex.A1 and despite the existence of Ex.A1 sale agreement chosen to purchase the portion of the suit property by way of Ex.A7 sale deed. Accordingly, it is found that the Courts below had rightly disbelieved the abovesaid defence version and come to the conclusion that the second defendant is not a bonafide purchaser of the suit property by way of Ex.A7 sale transaction. I do not find any reason to deviate from the abovesaid determination of the Courts below in disbelieving the defence version.

22. In the light of the above discussions, when it is found

that the first defendant has failed to establish that Ex.A1 sale agreement had been entered into between the parties only in respect of the loan transaction and on the other hand, when the materials placed on record and in view of the above discussions, it is found that the parties i.e., the plaintiff and the first defendant had entered into a sale agreement on 03.05.2001 as projected by the plaintiff in respect of the sale of the suit property for a sum of Rs.2,50,000/- and when it is further found that the first defendant had received a sum of Rs.1,50,000/- on the date of the sale agreement and also received a sum of Rs.50,000/- on 13.05.2002 and when the materials placed on record go to show that the first defendant had already been paid a sum of Rs.46,000/- by the plaintiff while parting with the possession of an extent of 552 sq.ft in the rear portion of the suit property and when it is found that the parties had agreed to adjust the said sum also towards the balance sale consideration at the time of the execution of the sale deed and when further, it is seen that the sum of Rs.4,000/- alone remains to be paid towards the sale consideration and on a reading of the evidence tendered in the matter, when it is seen that the plaintiff has been always ready and willing to perform his part of the contract and it is only the first defendant, who had been evading to complete the sale transaction on some pretext or the other, the Courts below are found to have fallen into error in accepting the defence version projected by the defendants contrary to the recitals found in Exs.A1 and A2 being prohibited by Section 92 of the Indian Evidence Act and that too sans valid and acceptable proof and thereby it is found that the Courts below had committed a grave error of law in non-suiting the plaintiff on the footing that he has failed to establish his case of the sale agreement as projected by him and also the Courts below are found to have committed a serious flaw in disbelieving the plaintiff's case, on the footing that the plaintiff has suppressed the vital facts and as above adverted to when the abovesaid facts pertaining to payment of Rs.46,000/- for securing the possession of a portion of the suit property are not required to be incorporated in the sale agreement, it is found that the Courts below had, on reasonings and conclusions which cannot be sustained in the eyes of law, erred in declining the main relief of specific performance prayed for by the plaintiff. Accordingly, it is found that the judgments and decrees of the Courts below are liable to be set aside/ modified and accordingly the plaintiff is found to be entitled to the main relief of specific performance as claimed in the plaint. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

23. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

- (1) 2012 (5) SCC 712 [Narinderjit Singh Vs. North Star Estate Promoters Limited]
(2) 2010 (7) SCC 717 [Laxman Tatyaba Kankate and another Vs. Taramati Harishchandra Dhatrak]
(3) 1979 (3) SCC 393 [Prakash Chandra Vs. Angadlal and Others]
(4) 2000 (10) SCC 636 [A.Abdul Rashid Khan (Dead) and others Vs. P.A.K.A.Shahul Hamid and others]
(5) 2015 (1) SCC 705 [Zarina Siddiqui Vs. A.Ramalingam alias R.Amarnathan]
(6) 2006 (5) SCC 545 [Hero Vinoth (Minor) Vs. Seshammal]
(7) 2005 (7) SCC 60 [Rajeshwar Vs. Puran Indoria]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

24. For the reasons aforesaid, the judgment and decree dated 05.03.2004 passed in A.S.No.101 of 2003 on the file of the District Court, Nagapattinam, confirming the judgment and decree dated 16.10.2003 passed in O.S.No.63 of 2002 on the file of the Principal Subordinate Court, Nagapattinam are set aside/modified and the plaintiff is granted the main relief of specific performance as prayed for and the plaintiff is directed to deposit the balance sale consideration of Rs.4,000/- within one month in the trial court from the date of receipt of the copy of this order. The defendants are granted two months time to execute the sale deed from the date of the deposit of the balance sale consideration by the plaintiff as afore stated. Accordingly, the suit laid by the plaintiff in O.S.No.63 of 2002 is decreed with costs throughout.

25. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Principal District Court,
Nagapattinam.

2.The Principal Subordinate Judge,
Principal Sub Court,
Nagapattinam.

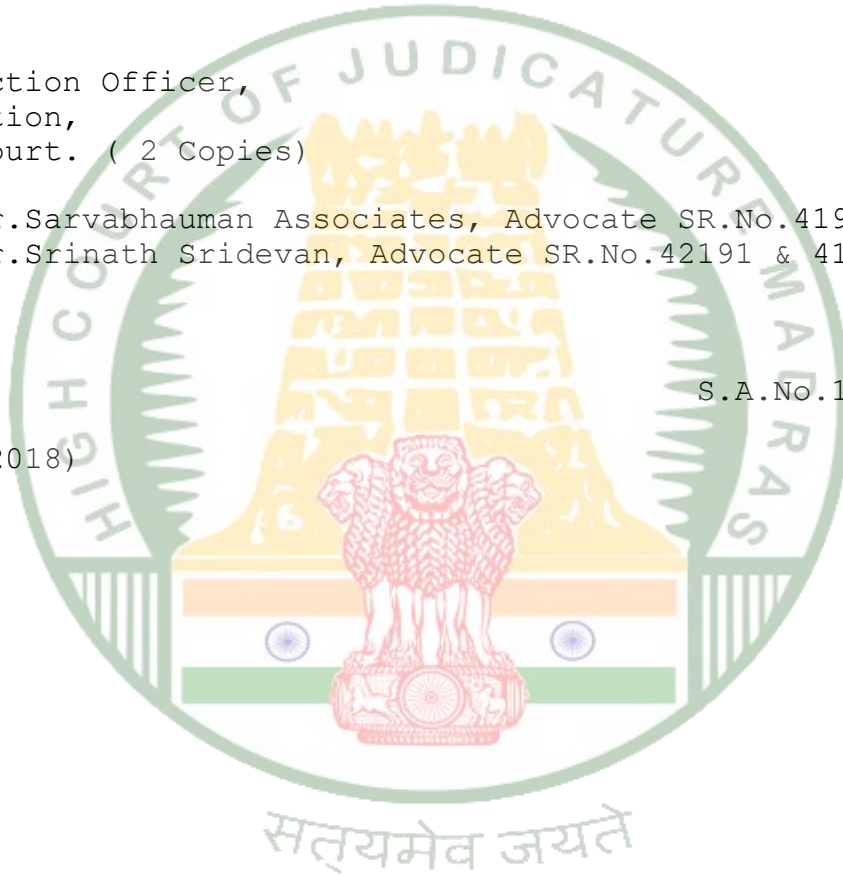
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S.A.No.1497 of 2004

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