

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :**25.01.2018**

JUDGMENT PRONOUNCED ON : **05.03.2018**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.292 of 2007

Nandhini Promoters
Represented by Proprietrix
Mrs.E.Thenmozhi,
No.5, Easwaran Colony
Sarwamangala Nagar, Nanganallur,
Chennai 600 061. By Power Agent
Mr.J.Elan Chezhan

... Plaintiff

Vs

1. A.Sadiq Ali (Deceased)
2. Mrs.Yasmeen Unnisa Alias Yasmeen Ali
3. A. S.Y.Sarfarraz Ali
4, A.S.Y.Viquaar Anzum

[Defendants 3 & 4 are brought on record as LR's of the
deceased 1st defendant as per order dated 20.04.2017
in Appl. No.2407/2017]

... Defendants

Prayer : Complaint filed under IV Rule 1 and 2 of the Original Side Rules read with Specific Relief Act read with Order VII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

- (a) pass a decree and judgment directing the 1st and 2nd defendant to execute and register the sale deed/s in favour of the plaintiff or their nominee(s) on the terms and conditions of the sale agreement dated

24.07.2006 between the Plaintiff and the defendants 1 & 2 on receipt of the balance sale consideration of Rs.59,00,000/-, failing which the Hon'ble Court may direct any suitable person from the Hon'ble Court to execute and register the sale deed in respect of 'suit property' in favour of the plaintiff or their nominee(s)

- (b) grant permanent injunction restraining the 1st and 2nd defendants, their representatives, agents or any other men claiming through them not to alienate or encumber in any manner the 'Suit Property' to any third party or anyone else except the plaintiff or their nominee(s);
- (c) an order for costs of the suit.

For Plaintiff : Mr. C.S.K.Sathish
for Mr.B.Ravi Raja

For Defendants : Mr. V.Manohar

J U D G M E N T

The Suit was filed for specific performance of the contract dated 24.07.2006 entered into by the defendants and the plaintiff.

2. The brief averments in the plaint are as follows:

The plaintiff is a proprietor ship concern engaged in the business promoting and developing residential buildings, apartments etc. The defendants, who are the owners of the property at Door No.1/57 New No.1/61, Valliswaran Koil Street, Manapakkam Panchayat, Chennai 116, offered to sell the same to the plaintiff through certain mediators. The said

mediators had introduced one Mr.Habibullah Khan @ M.H.Khan, who is the father of the 2nd defendant and father-in-law of the 1st defendant to the plaintiff and after negotiations the sale consideration for the suit property was fixed at Rs.59,50,000/-. Thereafter, the said Mr.M.H.Khan had handed over a set of copies of the documents of title relating to the suit property to Mr.J.Elan Chezhan, upon the receipt of Rs.10,000/- in cash from the plaintiff as a token advance for the sale of the property. On receipt of the preliminary opinion from their counsel, the plaintiff came to know that the defendants 1 and 2 are the owners of the suit property. The counsel for the plaintiff also had advised the plaintiff to request for effecting mutation of the revenue records in the name of the defendants 1 and 2. After having verified the title, the plaintiff had entered into an agreement of sale on 24.07.2006, agreeing to purchase the suit property for a total consideration of Rs.59,50,000/- and had paid a sum of Rs.20,00,000/- as advance.

3. The defendants 1 and 2 had acknowledged the receipt of the advance also. As per the said agreement the plaintiff had agreed to pay the balance of sale consideration, within 3 months from the date of the agreement, subject to compliance of certain conditions mentioned in the agreement itself. According to the plaintiff in order to purchase the suit property, the plaintiff had arranged for sale of the property belonging to the

proprietrix, viz. Mrs. E.Thenmozhi, situate at No.5, Eswaran Colony, Sarwamangala Nagar, Nanganallur, Chennai 61, for consideration of Rs.50,00,000/- on 27.07.2006.

4. According to the plaintiff, the property had originally belonged to the mother of the 2nd defendant and mother-in-law of the 1^s defendant Mrs. Mumtaz Begum, who had purchased the property from one K.Soundararajan under the sale deed dated 13.06.1983. It is averred that the said Mumtaz Begum had executed a power of attorney in favour of one Mr.Ashok Kumar, who had transferred the property in favour of his three close relatives. It appears that the suit was filed by Mumtaz Begum in OS No.126 of 2001 before the District Munsif, Poonamalle, seeking to set aside the above three sale deeds and finally a compromise was struck between the parties in the said suit, pursuant to which the purchasers from Ashok Kumar, viz. D.Parsram, P.Mohini and P.Srichand had sold the property in favour of the defendants 1 and 2. Since the property originally belonged to the mother of the 2nd defendant, the plaintiff apprehended that the four brothers of the 2nd defendant may stake a claim to the suit property at a later point of time, hence the plaintiff had insisted that affidavits should be obtained from the four brothers of the 2nd defendant,

affirming the title of defendants 1 and 2 to the suit property before execution of the sale deed in favour of the plaintiff. It is also contended that a Clause to that effect was incorporated in the very agreement of sale and the plaintiff would claim that the said Clause is a precondition for performance of the contract and despite several requests the defendants did not come forward to get the affidavits as required from the four brothers of the 2nd defendant.

5. Therefore, according to the plaintiff, though the plaintiff was ready and willing to perform its part of the contract, the defendants by not providing the affidavits made it impossible for the plaintiff to conclude the contract. However, the defendants choose to send a letter on 18.10.2006 claiming that the agreement will stand cancelled if no payment is received prior to 24.10.2006, viz., the last date for performance of the contract, to which the plaintiff sent a reply by way of a telegram on 23.10.2006, seeking affidavits as per Clause 10 of the agreement. The defendants 1 and 2 sent a reply telegram on 24.10.2006 stating that the affidavits have already been delivered to the plaintiff. On 25.10.2006, the plaintiff had sent a reply along with a draft sale deed. On 06.12.2006 the defendants had sent back the advance amount after deducting Rs.50,000/- towards liquidated damages, which was received by the plaintiff. Soon thereafter, the plaintiff

had filed the present suit on 03.01.2007 seeking specific performance.

6. The defendants resisted the suit contending that the plaintiff was never ready and willing to perform its part of the contract. According to the defendants, it was agreed between the parties that the time is the essence of the contract and if the sale is not concluded by 24.10.2006, the agreement would become unenforceable. According to the defendants, even at the time of entering into the agreement the plaintiff had satisfied herself about the title of the defendants and Clause 10, which required the defendants to get affidavits from the 2nd defendant's brothers before the registration of the sale deed was inserted only to satisfy them as mere addition without being taken as a primary requisite for completion of the sale transaction. The defendants would further claim that the time of three months fixed under the agreement was about to end, they had sent a letter to the plaintiff demanding the payment of balance of sale consideration. Though the plaintiff refused to receive the letter sent by speed post the husband of the proprietrix came to the office of the 1st defendant on 23rd October and received the said letter. According to the defendants, the affidavits had been already given and the plaintiff had suppressed the said fact and in order to gain time raised the issue of non furnishing of the

affidavits. The defendants would further contend that the receipt of the demand draft for Rs.19,50,000/- being the advance amount by the plaintiff and encashment of the same without demur would show that the plaintiff never intended to perform its part of the contract under the agreement. On the above contentions, the defendants sought for dismissal of the suit.

7. On the above pleadings, the following issues were framed by this on 20.04.2010.

1. *Whether the plaintiff was ready and willing to perform her part of the obligations under the agreement of sale?*
2. *Whether the plaintiff is entitled to the equitable relief of specific performance?*
3. *Whether the plaintiff is entitled to a decree for permanent injunction?*
4. *Whether the plaintiff is entitled to any other relief?*

8. At trial, the husband of the plaintiff was examined as P.W.1, one V.Baskar was examined as P.W.2 and the 1st defendant was examined as D.W.1. Exhibits P1 to P58 were marked on the side of the plaintiff. No documentary evidence was produced on the side of the defendants.

Issue No.1:

9. This issue relates to the readiness and willingness on the part of the plaintiff to perform its part of the contract. The agreement is dated 24.07.2006, a period of 3 months was fixed for performance under the agreement. The time fixed under the agreement expired on 24.10.2006. By a letter dated 18.10.2006 marked as Ex.P37, the 1st defendant has called upon the plaintiff to make payment on or before 24.10.2006 and take the sale deed. The said letter also indicates that if payment is not made by 24.10.2006, the agreement will stand cancelled. The letter also specifically states that the defendants had complied with all the terms and conditions as per the sale agreement including vacant possession. On receipt of the said letter, the plaintiff has sent telegram complaining that Clause 10 of the agreement with reference to the requirement of affidavits from the four brothers of the 2nd defendant has not been complied with. Clause 10 of the agreement dated 24.07.2006, marked as Ex.P24, reads as follows:

“10. The vendors undertake to obtain affidavits duly attested from four brothers of M/s.H.Yasmeen Unissa @ H.Yasmeen Ali, the 2nd vendor herein as required by the purchaser before registration of sale deed.”

10. It is the case of the plaintiff that the defendants had not

furnished the said affidavits as required under Clause 10. Mr.C.S.K.Sathish, learned counsel appearing for the plaintiff would submit that Clause 10 of the agreement would amount to a reciprocal promise and unless it is shown that the defendants have complied with the requirement under Clause 10, they cannot unilaterally cancel the agreement complaining that the plaintiff has not come forward to pay the balance of sale consideration within time fixed under the agreement.

11. In response to the telegram issued by the plaintiff on 23.10.2006 under Ex.P38, the defendants had issued a reply by telegram on 24.10.2006, marked as Ex.P39. In the said telegram also it is claimed that the defendants had provided all the copies of the documents including the affidavits of four brothers of the 2nd vendor, Mrs.Yasmeen Ali. The plaintiff had sent a letter on 25.10.2006 to the defendants, marked as Ex.P40. In the said letter the plaintiff has denied the receipt of the affidavits and required the defendant to furnish the affidavits of the four brothers, a draft sale deed was also enclosed with the said letter dated 24.10.2006. The same was received by the plaintiff on 28.10.2006. On 03.11.2006 the defendants, pointing out that the plaintiff has not been ready and willing to perform its part of the contract, within the period of three months as agreed to, under the agreement dated 24.07.2006, offered

to return the advance amount after deducting a sum of Rs.50,000/- as per the terms of the agreement dated 24.07.2006, marked as Ex.P24. This letter dated 03.11.2006 has been marked as Ex.P43 on the side of the plaintiff. On 09.11.2006, the plaintiff chose to write to the defendants, in reply to the letter dated 03.11.2006, claiming that affidavits have not been given and pointing out that the plaintiff has always been ready and willing to perform its part of the contract. The plaintiff also reiterated that there is no specific provision in the agreement for terminating the agreement.

12. On 06.12.2006, the defendants had returned the advance amount of Rs.19,50,000/- by way of two demand drafts to the plaintiff under cover of the letter dated 06.12.2006, which has been produced as Ex.P46. It is not in dispute that the plaintiff has received the said demand drafts sent under cover of Ex.P46 and had encashed the same. However, on 12.12.2006, the plaintiff sent a legal notice stating that the demand drafts have been received under protest and hence the unilateral cancellation of the agreement dated 24.07.2006 is not valid. It is also claimed that the defendants failed to provide the affidavits as sought for. Therefore, the plaintiff again called upon the defendants to furnish the copies of the affidavits of the four brothers of the 2nd defendant and also be present before the Sub Registrar, Saidapet, on 15.12.2006 at 12.30 p.m. to receive

the balance of sale consideration and execute the sale deed.

13. The defendants sent a reply through Ex.P47, dated 12.12.2006, by way of a telegram, stating that the contract does not subsist and hence the plaintiff cannot demand execution of sale deed. It is thereafter the plaintiff has come forward with the present suit on 03.01.2007. The plaintiff has produced certain Telephone Bills to show that the plaintiff has called upon the defendants to comply with the requirement of furnishing of affidavits of the four brothers of the 2nd defendant. Relying upon the above documentary evidence, Mr.C.S.K.Sathish, learned counsel appearing for the plaintiff would submit that the plaintiff has always been ready and willing to perform its part of the contract and it is the defendants, who had evaded performance by not furnishing the affidavits that had been agreed to be furnished as per the agreement dated 24.07.2006 (Ex.P24).

14. Per contra, Mr.V.Manohar, learned counsel appearing for the defendants would submit that the defendants had always maintained that they had performed all that is required for execution of the sale deed within three months from the agreement under Ex.P24. Pointing out that the 1st

letter dated 18.10.2006, marked as Ex.P37 would itself show that the defendants had categorically stated that all requirements of the contract has been complied with by them. Even in the said letter, according to the learned counsel, the defendants have made it clear that the time is essence of the contract and if the plaintiff fails to pay the balance of sale consideration by 24.10.2006 the agreement would stand cancelled.

15. According to Mr.V.Manohar, the failure on the part of the plaintiff to pay the balance of sale consideration despite such categorical demands made by the defendants would only show that the plaintiff was not ready and willing to perform its part of the contract. Mr.V.Manohar, learned counsel would also lay considerable stress on the fact that the plaintiff had encashed the demand drafts sent by the defendant under the cover of the letter dated 06.12.2006 on 07.12.2006 and he chose to send a reply only on 12.12.2006 through his counsel claiming that the demand drafts were received under protest. According to Mr.V.Manohar, from the very fact that the plaintiff had chosen to encash the demand drafts under which the defendants sought to return the advance money paid by the plaintiff, it should be construed that the plaintiff has given up the agreement and hence the plaintiff cannot be favoured with a decree for specific performance. Mr.V.Manohar, learned counsel would also submit that

specific performance being a discretionary relief, the court must take note of the conduct of the plaintiff in receiving and encashing the demand drafts under which the advance was sought to be returned by the defendants, as a factor while exercising such discretion. The terms of the agreement are admitted by the parties, it is seen from the oral and documentary evidence that the dispute between the parties relate to only the requirement of Clause 10 of the agreement.

16. Clause 10 of the agreement dated 24.07.2006, extracted above would show that there was an obligation on the part of the defendants to produce affidavits from the brothers of the 2nd defendant. According to the learned counsel for the plaintiff, Clause 10 was incorporated because of the peculiar circumstances of the case, where one Ashok Kumar had as power agent of Mumtaz Begum, mother of the 2nd defendant had sold the properties to his own relatives under Exs.P5 to P7. According to him, the suit in OS No.126 of 2001 was filed by the said Mumtaz Begum against the allinees on the file of the District Munsif Court, Poonamalle, challenging the sale deeds marked as Ex.P5 to P7. It is also contended that the said suit resulted in a compromise decree on 14.10.2001 and the suit was eventually dismissed as withdrawn on

22.11.2001. In the interregnum the purchasers from Ashok Kumar under Ex.P5 to P7 had conveyed the suit property to D1 and D2 on 15.10.2001. Since, it was shown that Mumtaz Begum had four sons the plaintiff in order to strengthen the title of the defendants to the suit property had required that the defendants to produce affidavits from the four sons of the Mumtaz Begum, disclaiming any interest over the suit property. According to the plaintiff, it was it which got the patta transferred in the name of the defendants under Ex.P25, therefore, it cannot be said that the plaintiff was not ready and willing to perform its part of the contract.

17. Mr.C.S.K.Sathish, learned counsel appearing for the plaintiff would also contend that the plaintiff had in fact sold its property under Ex.P6, for Rs.50,00,000/- on 27.07.2006 and the said sale proceeds were available with them for payment of the balance of sale consideration to the defendants. He would also contend that the plaintiff had parted with its valuable property with the object of purchasing the suit property from the defendants. The copy of the said sale deed has not been however produced. Pointing out that the plaintiff had made arrangements for development of the property by preparing the blue prints, plans etc., which have been produced as Exs.P31, P33 and 34. Mr.C.S.K.Sathish would contend that the plaintiff had established that it has been always ready and

willing to perform its part of the contract and it is only the default on the part of the defendants in not producing the affidavits as agreed to. that resulted in the performance being delayed.

18. Mr.V.Manohar, learned counsel appearing for the defendants would point out that the agreement dated 24.07.2006 specifically states that time is the essence of the contract. Therefore, Mr.V.Manohar, would contend unless it is shown that the plaintiff was always ready and willing to perform its part of the contract within the time stipulated under the agreement, it cannot be favoured with a decree for the specific performance. Mr.V.Manohar would also rely upon the judgment of Hon'ble Supreme Court in ***Saradamani Kandappan Vs. S.Rajalakshmi and Others reported in 2011 (12) SCC 18.*** According to Mr.V.Manohar, unless the plaintiff is able to show that she has always been ready and willing to perform her part of the contract, she cannot be favoured with the decree for specific performance.

19. Mr.C.S.K.Sathish, learned counsel appearing for the plaintiff would rely upon the judgment of the Division Bench of this Court in ***Pachaiappan and others v. S.P. Koon Mari,*** reported in ***1996 (2) LW 1*** and contend that it is not only the conduct of the plaintiff but the conduct of the

defendants should also be looked into by the Court. The decision in **Pachaiappan's** case arose out of totally different facts. The agreement that was sought to be enforced in the said proceedings was an agreement of reconveyance and the Division Bench was alive to the fact that what was sought to be enforced was an agreement of reconveyance. The Division Bench had in fact observed that in a case of an agreement for reconveyance, the Court cannot adopt the same stringent stands as applicable to the case of enforcement of other agreements. Therefore, I do not think that the decision in **Pachaiappan's case** could be safely applied to the case of the specific performance of an agreement of sale, where a person seeks to obtain the property for the 1st time.

20. The readiness and willingness cannot be put in a straight jacket formula. The same would depend on the facts and circumstances of each and every case. If we analyse the evidence on record in this case, it could be seen that the defendants had always maintained that time is the essence of the contract and there was an obligation cast on the plaintiff under the agreement of sale dated 24.07.2006 to tender the balance of sale consideration before the expiry of three months i.e., before 24.10.2006. Even on 18.10.2006, the defendants have called upon the plaintiff to tender the balance of sale consideration within the time

stipulated date 24.10.2006 and take the sale deed. The said letter dated 18.10.2006, the receipt of which is acknowledged by the plaintiff is very clear in its term. In as much as it requires the plaintiff to pay the balance of sale consideration by 24.10.2006. Even after the said letter the plaintiff did not come forward to pay the balance of sale consideration but kept insisting for production of the affidavits, which according to the defendants had been produced even earlier.

21. Yet another factor which militates against the claim of the plaintiff is the action of the plaintiff in receiving the demand drafts for Rs.19,50,000/- sent by the defendants on 06.12.2006 and encashing the same. After encashing the same the plaintiff chose to send a notice dated 12.12.2006 claiming that the demand drafts were received under protest. This conduct of the plaintiff would in my opinion lead to the inference that the plaintiff had given up its rights under the agreement. Of course, after rethink, the plaintiff had claimed that the acceptance of the demand drafts was under protest. The fact that the said claim was made after encashing the demand draft raises doubt about the genuineness of the claim of the plaintiff that it was always ready and willing to perform its part of the contract. Even while sending the notice dated 12.12.2006, the plaintiff has not chosen to return the said sum of Rs.19,50,000/- viz., the sale advance

paid under the agreement. The plaintiff of course has produced two cheques dated 15.12.2006, drawn in favour of the defendants and subsequently cancelled for a sum of Rs.54,00,000/-. The total sale consideration fixed under the agreement was Rs.59,50,000/- as per the agreement, the plaintiff has paid Rs.20,00,000/- towards advance and the balance of sale consideration of Rs.39,50,000/-, out of said Rs.20,00,000/- the defendant had returned the sum of Rs.19,50,000/- to the plaintiff under the two demand drafts, as evidenced by the letter dated 06.12.2006, marked as Ex.P46. It is not in dispute that the said demand drafts were encashed by the plaintiff. Therefore, the balance of sale consideration payable by the plaintiff was Rs.58,50,000/-. If all the plaintiff could seek execution of sale deed, the plaintiff should have established that it was ready and willing to pay a sum of Rs.58,50,000/- when she demanded the execution of sale deed on 12.12.2006.

22. The proposed sale deed along with the two cancelled cheques has been produced as Ex.P50, the two cheques are of Rs.33,20,000/- and Rs.20,80,000/-, totally a sum of Rs.54,00,000/- and the sale deed recites that Rs.5,00,000/- was to be paid by cash on 15.12.2006 at the time of execution of the sale deed. Admittedly, the defendants did not come forward to execute the sale deed. The plaintiff has not produced

any documentary evidence to show that she was in possession of Rs.5,00,000/- on that date. The bank account of Nandhini Promoters of which Mrs.E.Thenmozhi, is shown to be the Proprietor has been marked as Ex.P52 and it shows that there was the credit balance of Rs.33,28,450/- as on 15.12.2006. Similarly, for the bank account of Mrs.E.Thenmozhi, the statement has been produced as Ex.P54 would show that there was a credit balance of Rs.20,82,278/- as on date 15.12.2006. Both put together would show that the plaintiff was possessed of a sum of Rs.54,10,728/- as on 15.12.2006. There is no evidence to show that the plaintiff was also possessed of the balance of Rs.5,00,000/-, which was to be paid in cash. There is no concrete evidence to show that apart from Rs.50,00,000/- realised by the sale of the property, the plaintiff had other funds from and out of which, she could have paid the balance sale consideration. The transactions evidenced by the statement of accounts marked as Exs.P52 and P54, belie the claim of the plaintiff that she had a sum of Rs.50,00,000/- for which she had sold the property was always with her. From Ex.P52, it is seen that the balance in the account was only Rs.7,33,850/- and remaining sum of Rs.26,00,000/- has been deposited in the said account only between 10th and 15th of December 2006. Similarly a perusal of Ex.P54, the statement of account of the plaintiff's proprietrix's personal account would also show that huge withdrawals had taken place

between August and September 2006 and a sum of Rs.20,82,278/- was available as on 16.12.2006. Even assuming that the plaintiff had the money with it that alone cannot lead to the inference that it was always ready and willing to perform its part of the contract, possession of funds is one thing and readiness and willingness to perform is another. The very fact that the plaintiff had taken back the advance by encashing the demand drafts would show that it was not willing to perform its part of the contract. In the light of the above discussion I am constrained to hold that the plaintiff was not ready and willing to perform its part of the contract.

Issue No.2:

23. It has to be seen whether the plaintiff is entitled to the equitable relief of specific performance even assuming that it has been ready and willing to perform its part of the contract. It is settled position of law that specific performance being an equitable relief need not be granted merely because it is legal to do so. The Court while exercising the discretion regarding the grant or refusal of relief of specific performance has to bear in mind the equities on the peculiar facts of each of every case. In this case, I am afraid that the plaintiff has no equity in its favour. Of course the defendants have had the benefit of the monies of the plaintiff from the date of the agreement, viz. 24.07.2006 till 06.12.2006, when they

chose to return the advance received by them, after deducting the sum of Rs.50,000/-. The plaintiff, who is seeking specific performance has to show that its claim is equitable. It should be pointed out that the plaintiff while demanding specific performance on 12.12.2006 claiming that the demand drafts representing the advance amounts were received by it under protest had not chosen to repay the same to the defendants. There is not even attempt made by the plaintiff to pay the monies to the defendants, which according to it was received under protest. This action of the plaintiff would mean that the defendants did not have the benefit of advance amount atleast from 12.12.2006 till date.

24. It is a matter of public knowledge that the prices of immovable property had increase several times in the past 10 years. The suit was filed on 03.01.2007, nearly 11 years were gone-by the institution of the suit. The defendants have not had any benefit under the contract till date. In such a situation, I do not think it will be equitable to direct the defendants to execute a sale deed in respect of the property after receiving the sale consideration of Rs.59,00,000/- that was fixed way back in 2007. To repeat the words of the Hon'ble Supreme Court used in **Saradamani Kandappan v. S.Rajalakshmi and others**, reported in **2011 (4) LW 97**, it will be a cruel joke on the defendants to grant a decree for specific

performance in favour of the plaintiff in the peculiar facts and circumstances of this case. Therefore, I find that it will not be equitable to grant the relief of specific performance in favour of the plaintiff on the peculiar facts and circumstances of the case, even assuming that the plaintiff had been ready and willing to perform its part of the contract.

Issue No.3:

25. The plaintiff has sought for an injunction restraining the defendants in any manner alienating or encumbering the suit property, since the main relief of specific performance itself has been rejected, the plaintiff is not entitled to the relief of injunction also.

Issue No.4:

26. The plaintiff has not sought for alternative relief of refund of advance. Of course, there is no provision in the agreement for retention of any amount by the defendants in the event of failure on the part of the plaintiff to honour the agreement. In the absence of any prayer either for refund of advance or for damages by the plaintiff, Section 22 of the Specific Relief Act prohibits the Courts from granting the reliefs. Hence the plaintiff is not entitled to any other relief also.

27. In fine, the suit is dismissed, in view of the fact that the defendants have had the benefit of the sum of Rs.50,000/- deducted by them from the advance paid by the plaintiff, defendants are not entitled to cost of the suit. In view of the above conclusions, the suit is dismissed without costs.

05.03.2018

jv
Index: No
Internet: Yes
Speaking order

List of the Witnesses examined on the side of the Plaintiff:

P.W.1 J.Elan Chezhan
P.W.2 V.Baskar

List of Exhibits marked on the side of the Plaintiff:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1	Ex.P1	29.12.1996	The power of attorney
2	Ex.P2	14.07.1996	The xerox copy of the sale deed
3	Ex.P3	13.06.1983	The xerox copy of the sale deed
4	Ex.P4	-	The xerox copy of the patta
5	Ex.P5	20.12.2000	The xerox copy of the sale deed
6	Ex.P6	20.12.2000	The xerox copy of the sale deed
7	Ex.P7	20.12.2000	The xerox copy of the sale deed
8	Ex.P8	16.03.2001	The xerox copy of the revocation of power of attorney
9	Ex.P9	14.10.2001	The xerox copy of the memorandum of understanding

Sl.No.	Exhibits	Date	Description of documents
10	Ex.P10	15.10.2001	The xerox copy of the sale deed
11	Ex.P11	15.10.2001	The xerox copy of the sale deed
12	Ex.P12	15.10.2001	The xerox copy of the sale deed
13	Ex.P13	22.11.2001	The xerox copy of the decree
14	Ex.P14	.12.01.2006	The xerox copy of the house tax receipt
15	Ex.P15	16.06.2006	The power of attorney
16	Ex.P16	23.06.2006	The stamped receipt
17	Ex.P17	26.06.2006	The certificate of encumbrance
18	Ex.P18	-	The chitta for patta No.581/8
19	Ex.P19	01.06.2006 to 30.06.2006	The mobile bill issued by BSNL for mobile No.9444019941
20	Ex.P20	.03.07.2006	The Certificate of encumbrance
21	Ex.P21	-	The chitta and adangal in respect of survey No.581/8
22	Ex.P22	.10.07.2006	The stamped receipt
23	Ex.P23	-	Computer print out of e-mail
24	Ex.P24	24.07.2006	The sale agreement
25	Ex.P25	-	The patta
26	Ex.P26	-	The chitta
27	Ex.P27	.01.08.2006	The stamped receipt
28	Ex.P28	01/07/06 to 31.07.2006	The cellphone bill issued by BSNL for mobile No.9444019941
29	Ex.P29	-	The brochure issued by the plaintiff
30	Ex.P30	-	The stamped receipt
31	Ex.P31	-	The blue print sub division plan prepared by licensed surveyor and signed by the defendants
32	Ex.P32	01.08.2006 to 31.08.2006	The cellphone bill issued by BSNL for mobile No.9444019941
33	Ex.P33	-	The detailed estimate prepared by the Consulting Engineer, Corporation of Chennai
34	Ex.P34	-	The blue print plan

Sl.No.	Exhibits	Date	Description of documents
35	Ex.P35	01.09.2006 to 30.09.2006	The cellphone bill issued by BSNL for mobile No.9444019941
36	Ex.P36	.03.10.2006	The receipt
37	Ex.P37	18.10.2006	The letter
38	Ex.P38	23.10.2006	The certified true copy of the telegram sent by the plaintiff to the defendants
39	Ex.P39	24.10.2006	The telegram
40	Ex.P40	-	The copy of the letter with postal receipt
41	Ex.P41	-	The postal acknowledgment card
42	Ex.P42	01.10.2006 to 31.10.2006	The cellphone bill issued by BSNL for mobile No.9444019941
43	Ex.P43	.03.11.2006	The letter
44	Ex.P44	.09.11.2006	The copy of the letter with postal receipts
45	Ex.P45	06.11.2006 to 30.11.2006	The cellphone bill issued by BSNL for mobile No.9444019941
46	Ex.P46	.06.12.2006	The letter
47	Ex.P47	.12.12.2006	The copy of the legal notice
48	Ex.P48	-	The postal acknowledgment
49	Ex.P49	15.12.2006	The telegram
50	Ex.P50	15.12.2006	The Cheques (cancelled)
51	Ex.P51	16.12.2006	The telegram
52	Ex.P52	01.12.2006 to 16.12.2006	The bank statement on a plain paper
53	Ex.P53	-	The returned postal envelope addressed to the defendants with the postal endorsement "refused"
54	Ex.P54	01.07.2006 to 22.12.2006	The bank statement taken on a plain paper
55	Ex.P55	.02.01.2007	The nil certificate of encumbrance of the property
56	Ex.P56	27.07.2006	The certified copy of the sale deed

Sl.No.	Exhibits	Date	Description of documents
57	Ex.P57 (series)	-	The original applications for planning permission
58	Ex.P58	25.12.2006	The reply legal notice

List of the Witnesses examined on the side of the Defendants:

D.W.1 Saddiq Ali

List of Exhibits marked on the side of the Defendants: Nil

jv

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

05.03.2018



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R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment
C.S.No.292 of 2007

05.03.2018

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