

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2018
PRONOUNCED ON : 17.04.2018
CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2198 of 2003
and
Cross objection No.2 of 2005

P.K.Kuppusamy ... Appellant/Respondent/
Plaintiff

Vs.

1. Amirthavalli ... Respondent/Cross Objector No.1/
1st & 2nd Defendants
2. Chakravarthi ... Respondent/Cross Objector No.2/
1st & 2nd Defendants
3. P.Arumugam ... Respondent/Cross Objector No.3/
3rd defendant

Prayer: Second Appeal and cross objection filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.1 of 2001, on the file of the Additional District Judge cum Fast Track Court No.1, Chengalpattu, dated 18.06.2003 in reversing the judgment and decree in O.S. No.203/1998, on the file of the Sub Judge, Maduranthagam dated 25.07.2000.

For Appellant in second appeal
and

For Respondent in Cross objection : Ms.V.Srimathi

For Respondents in second appeal
and

For Cross objectors in Cross objection: Mr.K.Hariharan

JUDGMENT

This second appeal is directed against the judgment and decree dated 18.06.2003, passed in A.S.No.1 of 2001, on the file of the Additional District Judge cum Fast Track Court No.1, Chengalpattu, reversing the judgment and decree dated 25.07.2000, passed in O.S. No. 203/1998, on the file of the Sub Judge, Maduranthagam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance and damages.

4. The case of the plaintiff, in brief, is that the second defendant is the owner of the plaint schedule property and the

first defendant is the wife of the second defendant and the plaintiff and the defendants 1 and 2 entered into an oral agreement of sale on 25.04.1997, whereby the defendants 1 and 2 agreed to convey the suit property to the plaintiff for a sum of Rs.40,000/- within three months and the plaintiff paid an advance of Rs.2,000/- to defendants 1 and 2 in pursuance of the said agreement and at the time of the abovesaid agreement, the third defendant was residing in the suit property and the defendants 1 and 2 agreed to handover the vacant possession of the suit property after evicting the third defendant at the time of the execution of the sale deed and after 15 days, the defendants 1 and 2 informed that in view of their inability to evict the third defendant, the plaintiff alone should evict him after the sale in his favour and the plaintiff is always ready and willing to pay the balance sale consideration and perform his part of the contract and in fact, he wrote to the defendants 1 and 2 to collect the balance amount and execute the sale deed in his favour in or around June 1997, but the defendants 1 and 2 replied on 12.07.1997, in the negative and the defendants by their letter above stated, admitted the existence of the agreement to convey the suit property in favour of the plaintiff and thereafter, the plaintiff sent a lawyer's notice dated 25.8.97 to the defendants 1 and 2 to perform their part of the contract and to the same, the defendants 1 and 2 did not send any reply and the plaintiff came to know that the defendants 1 and 2 have sold the suit property to the third defendant on 06.10.97, in utter disregard to the agreement in favour of the plaintiff and hence, the third defendant is not a bonafide purchaser for the value and hence, the defendants are liable to execute the sale deed in favour of the plaintiff and on account of the conduct of the defendants and inasmuch as the plaintiff had been put to mental and physical agony as well as monetary loss, the defendants are liable to compensate the plaintiff in a sum of Rs.10,000/- and hence, the suit for appropriate reliefs.

5. 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. The allegations that the defendants 1 and 2 entered into an oral agreement of sale with the plaintiff on 25.04.1997 and agreed to convey the suit property to the plaintiff for a sum of Rs.40,000/- thereby and received an advance of Rs.2,000/- from the plaintiff are false and denied and the further allegations that the defendants 1 and 2 promised to evict the third defendant from the suit property within three months and execute the sale deed and deliver the vacant possession of the suit property are also false. The third defendant was not in possession of the suit property till he purchased the suit property on 06.10.97 and hence, there is no necessity to assure the plaintiff to evict him from the suit property as alleged in the plaint. There is no agreement of sale on 25.4.97 as put forth in the plaint and the second defendant has not received a sum of Rs.2,000/- as advance as claimed and the further allegation that after 15 days the defendants 1 and 2 had

informed the plaintiff about their inability to evict the third defendant is false and the allegation that the plaintiff has always been ready and willing to pay the balance sale consideration is also false and the allegations that to a letter sent by the plaintiff, the defendant sent a reply on 12.7.97 is false and no such reply had been sent by the defendant admitting the alleged sale agreement and in pursuance of the sale agreement with the third defendant, the second defendant sold the suit property to the third defendant on 06.10.97 after receiving the balance sale consideration and the sale in favour of the third defendant is true and valid and the defendants are not liable to execute the sale deed in favour of the plaintiff as claimed and also not liable to pay any damages as put forth in the plaint and the suit property is not properly described. No doubt, the second defendant has received a notice from the plaintiff's counsel and as the sale agreement pleaded is untrue, the second defendant has not sent any reply and therefore, the suit is liable to be dismissed.

6. The case of the third defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and the case of the plaintiff as regards the oral agreement dated 25.04.1997 is not admitted and the plaintiff has to strongly prove the same as put forth in the plaint. The third defendant has no knowledge about the said agreement and the third defendant purchased the suit property from the second defendant for a sum of Rs.41,100/- by way of a registered sale deed dated 06.10.97 and the suit property was vacant at the time of purchase and prior to the sale deed, the third defendant entered into an agreement of sale with the second defendant on 30.7.97 and paid a sum of Rs.21,100/- as advance on the date of the sale agreement and on 17.8.97 paid another sum of Rs.10,000/- to the second defendant and accordingly, at the time of the sale deed, the second defendant handed over the parent document with regard to the suit property and the third defendant is a bonafide purchaser for value and after the purchase, the third defendant put up a small hut in the suit property for storing building materials and raised trees and enjoying the same and the suit sale agreement is specifically denied and there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, PW1 has been examined, Exs.A1 to A7 were marked. On the side of the defendant, DWs 1 to 3 were examined, Exs.B1 to B4 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the relief of specific performance as prayed for by the plaintiff. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and dismissed the suit laid by the

plaintiff, however, granted the relief that the plaintiff is entitled to recover only a sum of Rs.2,000/- paid by him without interest and accordingly disposed of the first appeal. Challenging the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

Whether the lower appellate Court is right in denying the benefit of the decree for specific performance to the appellant on the ground of non-deposit of amount at the time of institution of the suit?

10. Aggrieved over the finding of the first appellate Court that the oral sale agreement put forth by the plaintiff is true and consequently the further finding of the first appellate Court that the defendants are liable to pay the sum of Rs.2,000/- without interest to the plaintiff as prayed for as the alternative relief, aggrieved over the same, the cross objection has been preferred by the defendants.

11. The suit has been laid mainly for the relief of specific performance by the plaintiff, on the basis of the oral sale agreement said to have taken place between the plaintiff and the defendants 1 and 2 in respect of the suit property on 25.04.1997 for a sum of Rs.40,000/- and according to the plaintiff, on the date of the oral sale agreement, he has paid a sum of Rs.2,000/- and as per the agreement entered into, the defendants 1 and 2 agreed to execute the sale deed within three months after evicting the third defendant, then in the possession suit property and as the defendants 1 and 2 could not evict the third defendant from the suit property and also though the plaintiff is always ready and willing to perform his part of the contract, as they did not come forward to receive the balance sale consideration and execute the sale deed, despite the legal notice dated 25.8.97 and further also alienated the suit property to the third defendant, in utter disregard of the oral sale agreement, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs. The plaintiff has also claimed a sum of Rs.10,000/- as damages in the suit from the defendants. It is also noted that the plaintiff has also sought for the alternative relief of the return of the advance amount of Rs.2,000/- with interest, in case of the declinement of the main relief of specific performance.

12. Materials placed on record go to show that it is only the second defendant, who is the owner of the suit property on the date of the alleged oral sale agreement dated 25.04.1997. In such view of the matter, the claim of the plaintiff that the defendants 1 and 2 had agreed to convey the suit property to him

as putforth in the plaint, as such, cannot be readily countenanced. No doubt, the first defendant is the wife of the second defendant, however, as the suit property is owned only by the second defendant, at that point of time, it is seen that the very basis of the plaintiff's case that both the defendants had agreed to convey the suit property to him for a sum of Rs.40,000/- by way of an oral sale agreement, as such, cannot be readily believed. Be that as it may, the second defendant has disputed the alleged oral sale agreement putforth by the plaintiff in the plaint and contended that no such agreement had taken place between the parties concerned. The third defendant has also repudiated the sale agreement putforth by the plaintiff for sustaining the reliefs sought for. In the light of the above defence set out by the defendants, it is for the plaintiff to establish that as pleaded he and the defendants 1 and 2 had entered into a sale agreement in respect of the suit property for a sum of Rs.40,000/- as putforth and that he had paid a sum of Rs.2,000/- to the defendants 1 and 2 as advance pursuant to the said sale agreement. According to the plaintiff, the parties had agreed to complete the sale transaction within three months from the date of the oral sale agreement. The oral sale agreement is stated to have come into existence on 25.04.1997. As above seen, the same is seriously challenged by the defendants.

13. In the plaint, the plaintiff has not whispered as to where the oral sale agreement alleged has taken place between the parties concerned, whether at the suit property or in the residence of the defendants or elsewhere and further, the plaintiff has also not whispered whether any negotiation was held between the parties before arriving at the terms of the oral agreement, which is stated to have taken place on 25.04.1997. At the foremost, there is no plea in the plaint as to the defendants 1 and 2, particularly, the second defendant coming forward with the proposal to sell the suit property of the plaintiff for a sum of Rs.40,000/- and that the said proposal had been accepted by the plaintiff or the proposal abovesaid emanated vice-versa and accordingly, following the agreement as abovestated, the parties had endeavoured to arrive at a sale agreement orally. With reference to the above facts, the plaint averments are very vague and the plaint averments only go to show that the parties had orally agreed to for the sale proposal on 25.04.1997 as putforth in the plaint. However, when the same has been controverted by the defendants, it is for the plaintiff to prove the same. During the course of cross examination, the plaintiff examined as PW1 would go to say that he had been to the residence of the defendants 1 and 2 at Villivakkam at Chennai for entering into sale agreement in respect of the suit property and accordingly, paid a sum of Rs.2,000/-. Thus, as per the oral evidence of the plaintiff, the sale agreement is said to have taken place or entered into between the parties concerned at Villivakkam, Chennai in the residence of the defendants 1 and 2. If that be so, the

plaintiff would have come forward with the specific case as regards the same in the plaint. That apart, as per the case of the plaintiff, he has paid a sum of Rs.2,000/- to the defendant on the date of the sale agreement, but would state in his evidence that he has not obtained any receipt for the same. That apart, if really the parties had agreed to go ahead with the sale proposal as claimed in the plaint, it does not stand to reason as to why the parties had not chosen to enter into a written agreement as agreed to between them. No doubt, the parties are entitled to enter into an oral agreement. But when it is found that the defendants had repudiated the oral agreement putforth by the plaintiff, the plaintiff should explain as to why the written agreement had not been resorted to as regards the agreement of sale said to have been entered into between the parties concerned. To the same, the plaintiff, during the course of cross examination, has stated that the written sale agreement had not been entered into, as the defendants 1 and 2 refused to the same and the explanation offered by the plaintiff for the same is that as there would be delay in completing the sale transaction, the defendants 1 and 2 did not come forward to enter into a written sale agreement. So, according to PW1, the plaintiff, as the defendants 1 and 2 apprehended there would be delay in completing sale transaction, they had not come forward to venture into a written agreement. The same would be equally and also more forcibly apply to an oral sale agreement. In such view of the matter, as rightly putforth, on seeing the conduct of the defendants 1 and 2 as regards their resistance to enter into a written agreement, the plaintiff, if really the pleas putforth by him has any semblance of truth, would have urged the defendants 1 and 2 to enter into a written agreement of sale in respect of the suit property. Be that as it may, the plaintiff has sought for the reliefs prayed for only on the basis of the oral sale agreement.

14. According to the plaintiff's case, the third defendant was in the possession of the suit property at the time of the alleged oral sale agreement and the defendants 1 and 2 agreed to evict him from the suit property and handover the vacant possession of the suit property at the time of the execution of the sale deed. The said case of the plaintiff has been vehemently denied by the defendants. There is no material placed on record worth acceptance that the third defendant was in possession of the suit property on the date of the sale agreement i.e., 25.04.1997 or subsequent thereto or prior to the same. On the other hand, materials placed on record go to show that the third defendant, on purchasing the suit property from the second defendant by way of a sale deed dated 06.10.97, it is seen that only thereafter he has been inducted into the possession of the suit property. Such being the position, the case putforth by the plaintiff that on the date of the sale agreement itself the third defendant was in the possession of the suit property and that the defendants 1 and 2 agreed to evict him from the suit property within three months and convey

the vacant possession of the suit property to the plaintiff on the date of the execution of the sale deed, as such, cannot be accepted sans any reliable and convincing materials pointing to the same.

15. In the light of the above said findings, it is seen that the very basis of the plaintiff's case that the defendants 1 and 2 had agreed to convey the suit property to the plaintiff as alleged and agreed to handover the vacant possession of the suit property after evicting the third defendant from the suit property within three months, as such, cannot be believed and accepted.

16. Further, it is the case of the plaintiff that he had written to the defendants 1 and 2, reminding them of the sale agreement in or about June 1997 by exhibiting his readiness and willingness to part with the balance sale consideration and according to the plaintiff, to the said letter, the defendants 1 and 2 responded in negative by way of a letter dated 12.07.1997 and further, according to the plaintiff, in the said letter, the defendants had, however, agreed the existence of the sale agreement entered into between the parties. The same has been vehemently denied by the defendants. The letter dated 12.07.1997 has been placed by the plaintiff and come to be marked as Ex.A1. The said letter has been disputed by the defendants 1 and 2. The Courts below have not believed the genuineness of the abovesaid letter for the reasons assigned by them. No interference is called for with reference to the abovesaid findings of the Courts below on Ex.A1. Be that as it may, a reading of Ex.A1 would go to show that the same militates against the case of the plaintiff. Now, according to the plaintiff, the parties had entered into the sale agreement orally for the sale of the suit property for a sum of Rs.40,000/- and on the date of the sale agreement itself, the plaintiff had paid a sum of Rs.2,000/- to the defendants 1 and 2 as advance. The above case of the plaintiff go to disclose that there has been a concluded contract between the parties as regards the sale of the suit property on 25.04.1997 itself. However, a perusal of Ex.A1, would go to show that, assuming the same to be a true document, the parties had not agreed as regards the sale of the suit property, as Ex.A1 reads as if the defendants 1 and 2 had been insisting the sale price only at Rs.40,000/- and not willing to reduce the said sale price and accordingly, the letter reads as if they had directed the plaintiff to go ahead with the sale proposal, if he his ready to purchase the suit property for a sum of Rs.40,000/- or else, if the plaintiff is not willing for the said proposal, the defendant would alienate the suit property to the third parties. Thus, it is found that by way of Ex.A1 dated 12.07.1997, it is made clear that the parties concerned, namely, the plaintiff and the defendants 1 and 2 would not have come to a concluded contract on 25.04.1997 as regards the sale of the suit property for a sum of Rs.40,000/- as pleaded in the plaint and had agreed

to complete the sale transaction within three months. If such a contract had been concluded between the parties validly as claimed in the plaint, then there is no need for the defendants 1 and 2 to write Ex.A1 to the plaintiff insisting that they are not willing to negotiate with the sale price of the suit property below Rs.40,000/- and they would insist the sale price only at Rs.40,000/- and if the plaintiff is not willing to agree to the sale, they would proceed to sell the suit property to the third parties. Such being the contents of Ex.A1, as rightly argued, by way of the same, it is found that the case of the plaintiff that the defendants 1 and 2 had agreed to convey the suit property to him for a sale price of Rs.40,000/- on 25.04.1997 itself and as if the plaintiff had agreed to the same as such cannot be accepted in any manner. Thus it is found, as above seen, accordingly the plaintiff has not averred in the plaint as to when actually the proposal had emanated from the defendants 1 and 2 for the purchase of the suit property and when the same had been accepted by the plaintiff or vice-versa and on the other hand, it is found that the plaintiff has come forward with the case without any basis as if the parties had straightaway agreed to go ahead with the sale of the suit property for a sum of Rs.40,000/- and accordingly, entered into the oral sale agreement on 25.04.1997 with reference to the same. The above aspect of the matter would go to show that inasmuch as no such concluded contract has been entered into between the parties concerned, it is seen that the plaintiff is unable to place unacceptable and reliable materials in connection with the same and on the other hand, the materials placed by the plaintiff marked as Ex.A1 is found to go against the case projected and on that score, it is seen that the alleged oral sale agreement projected by the plaintiff is not a genuine one.

17. If really any such oral sale agreement had been entered into between the parties concerned, naturally one would have expected the parties to complete the said arrangement in the presence of the third parties on the safer side, particularly, considering the fact that they had ventured to enter into an oral sale agreement. Moreover, when according to the plaintiff, the defendants had not come forward to enter into a written agreement apprehending that the completion of the sale transaction would be delayed, the plaintiff, being the purchaser, at least should have been more cautious that the oral sale agreement entered into is concluded in the presence of the third parties to testify the same in case of any dispute which may arise between the parties. However, in this case, the plaintiff has not whispered in the plaint nor deposed that the alleged sale agreement had been entered into between the parties in the presence of the third parties. Thus, it is found that as regards the proof of sale agreement, we have only the interested ipse dixit evidence of the plaintiff examined as PW1. Now, according to the plaintiff, as above stated, during the course of oral evidence, he had been to the residence of the defendants

1 and 2 at Villivakkam at Chennai and entered into the sale agreement. However, giving a go bye to the abovesaid case, as above seen, the said case has not been pleaded in the plaint, during the course of further evidence, the plaintiff would state that he had attended the marriage of the relatives of the first defendant and the said marriage was also attended by the defendants 1 and 2 and according to the case of the plaintiff, the sale agreement orally was entered into between the parties at the marriage venue. In this connection, the marriage invitation card has been marked as Ex.A5 and the Invitation cover has been marked as Ex.A6. The abovesaid case of the plaintiff has been disputed by the defendants 1 and 2. No doubt, evidence is available that the defendants 1 and 2 also attended the said marriage. However, on that score, we cannot conclude safely that the parties had entered into the sale agreement orally at the marriage venue. If the abovesaid case of the plaintiff has any element of truth, one would have expected the plaintiff to aver the same in the plaint. That apart, as above seen, at the first instance, according to the plaintiff, during the course of oral evidence, he had been to the house of the defendants 1 and 2 at Villivakkam at Chennai for entering into the contract. Quite opposite to the testimony, later, he would state that at the marriage venue, the oral sale agreement had been entered into between the parties and it is thus found that inasmuch as the plea of oral sale agreement projected by the plaintiff is false and not a genuine transaction, it is found that the plaintiff is unable to present a clear picture on the same and found to project inconsistent and contradictory pleas as regards the same. When the plaintiff's case as regards the same has been challenged by the defendant, merely on the footing that the defendants also attended the marriage, that by itself would not lead to the conclusion that the oral sale agreement had been concluded between the parties at the marriage venue. Further, as regards the same, the plaintiff during the course of his evidence would only state that he had disclosed about the agreement at the marriage venue and to the same, the defendants responded that they would enter into the agreement after coming to their house. It is thus seen that the plaintiff is unable to place a clear and consistent picture about the venue where the oral sale agreement took place between the parties concerned and accordingly seem to have projected varying versions and accordingly, unable to give the particulars of the same in the plaint and thus, it is found that the plaintiff's case that the sale agreement had been concluded between the parties at the marriage venue is found to be unacceptable and therefore, on that plea, it is seen that the oral sale agreement projected cannot be upheld. The above said marriage invitation card is projected by the plaintiff later only with a view to buttress his case for establishing that the sale agreement had been entered into between the parties on 25.04.1997. However, simply the said marriage had taken place on 25.04.1997 and that the said marriage had been attended by the plaintiff as well as the

defendants 1 and 2, without any further proof, it cannot be concluded that the parties had arrived at a sale agreement in the marriage venue as projected by the plaintiff.

18. The letter alleged to have been sent by the plaintiff in or about June 1997 to the defendants reminding them of the sale agreement has not seen the light of the day. According to the plaintiff, in response to the said letter, the letter dated 12.07.1997 has been sent by the defendants. However, in Ex.A1 there is no reference about the letter sent by the plaintiff in or about June 1997. As above seen, Ex.A1 letter militates against the case of the plaintiff as regards the alleged concluded contract between the parties said to have taken place on 25.4.97.

19. Now, according to the plaintiff, the parties had agreed to complete the sale transaction within three months from 25.04.1997. Further, according to the plaintiff, he has been always ready and willing to part with the balance sale consideration of Rs.38,000/- and complete the sale transaction and it is only the defendants 1 and 2 who had been delaying the matter. The readiness and willingness alleged by the plaintiff as regards the completion of his part of the sale agreement is challenged by the defendants. As above seen, the letter alleged to have been sent by the plaintiff in or about June 1997 has not been placed before the Court. The abovesaid letter is projected to show that as if the plaintiff was ready to perform his part of the contract within a period of three months from 25.04.1997. However, when the abovesaid letter has not seen the light of the day, the case of the plaintiff that he has been always ready and willing to perform his part of the contract in paying the balance sale consideration right from the date of the oral sale agreement or at least within the period of three months agreed to between the parties is found to have not been established by not placing the said letter alleged to have been sent in or around June 1997. It is thus found that there is no material placed on record to show that the plaintiff has exhibited his readiness and willingness to part with the balance sale consideration within three months from the date of the alleged sale agreement dated 25.04.1997. For the first time, it is found that the plaintiff has sent a lawyer's notice dated 25.08.1997 to the defendant and the same has come to be marked as Ex.A2. No doubt, Ex.A2 is not responded by the second defendant. The receipt of Ex.A2 has been admitted by the second defendant. According to the second defendant, as no such oral agreement had been taken place between the parties concerned, he has not chosen to send any reply to the same. The second defendant should have responded to the legal notice. However, the mere failure of the second defendant in not sending the reply to Ex.A2 by itself would not lead to the conclusion that the oral sale agreement projected by the plaintiff is true. The plaintiff having come forward with the discretionary relief of specific performance should establish his readiness and

willingness to complete the sale transaction right from the day number one and throughout to seek the said relief. However, when it is found that for the first time chosen to send the legal notice much after the period agreed to for completing the sale transaction, it is seen that by way of Ex.A2, it cannot be inferred that the plaintiff has been ready and willing to perform his part of the contract throughout. There is no material worth acceptance to show that the plaintiff has been always ready and willing to perform his part of the contract i.e., paying balance sale consideration right from 25.04.1997, at least throughout the period of three months within which period the sale transaction has been agreed to be completed. Subsequently, it is found that later after the suit properly had been alienated to the third defendant on 06.10.97, the plaintiff has chosen to write another letter dated 12.07.1997. It is found that as rightly determined by the first appellate Court, there is no material placed by the plaintiff to establish his readiness and willingness to complete the sale transaction as alleged in the plaint. As rightly determined by the first appellate Court, though the plaintiff would claim in Ex.A2 that he would be ready with the balance sale consideration and also with the relevant stamp papers at the Sub Registrar's office, Maduranthagam, for completing the sale transaction on 1.09.97, there is no proof to evidence that he was present in the Sub Registrar's office on 1.09.97 with the balance sale consideration and the relevant papers for completing the sale transaction as claimed in Ex.A2, as rightly found by the first appellate Court, if the plaintiff had purchased the stamp papers genuinely for completing the sale transaction as alleged in the notice Ex.A2, the same would have been placed before the Court for appreciation. Further, if the stamp papers had been negotiated by the plaintiff, necessary documents evidencing the same would have been placed before the Court. However, as regards the abovesaid claim of the plaintiff, in particular, as to the claim of the plaintiff that he would be present at the Sub Registrar's office on 01.09.97 with the balance sale consideration and relevant stamp papers, no independent oral evidence is also adduced. All these facts would go to show that the abovesaid case of the plaintiff as projected in Ex.A2, inasmuch as no follow up action had been taken with reference to the same, it is found that as rightly determined by the first appellate Court, the plaintiff is unable to sustain the said case by placing acceptable proof. Thus, it is found that as rightly determined by the first appellate Court, on the bald claim of the plaintiff on his readiness and willingness as putforth in Ex.A2, sans material pointing to the same worth acceptance, we cannot come to the conclusion that the plaintiff had been ready and willing to perform his part of the contract as claimed in Ex.A2. It is found by the first appellate Court that the plaintiff has failed to establish his readiness and willingness to complete the sale transaction and rightly declined the relief of specific performance sought for by the plaintiff as prayed for.

20. The first appellate Court having declined the relief of specific performance, on the footing that the parties had entered into the sale agreement orally, proceeded to hold that the plaintiff is entitled to seek the refund of a sum of Rs.2,000/- paid as advance without interest. However, when in the light of the above discussions, it is found that the plaintiff has miserably failed to establish that such an agreement had been entered into between the parties regarding the sale of the suit property orally, it is found that the very basis of the plaintiff's case should have been rejected and the plaintiff should not have been granted the relief of the refund of the advance sum alleged to have been paid by him. It is thus found that as rightly argued by the defendants' counsel, the first appellate Court had erroneously appreciated the materials placed on record in the wrong perspective and without analysing the materials in the correct perspective proceeded to hold that the oral sale agreement projected by the plaintiff is a genuine transaction, on the footing that the second defendant has not responded to the legal notice marked as Ex.A2. No doubt, the second defendant has failed to respond to the legal notice Ex.A2. However, considering the facts and circumstances of the case, it is found that the failure of the second defendant to send a reply to the legal notice by itself would not in any manner uphold the veracity of the plaintiff's case, particularly, as regards the oral sale agreement projected by him, when it is found that the plaintiff is unable to place any material, as such, worth acceptance to establish that such an oral sale agreement had come to be entered into between the parties on 25.04.1997 as pleaded. On the other hand, considering the reasons abovementioned, there could not have been a concluded contract between the parties concerned as regards the sale of the suit property on 25.04.1997 and in such view of the matter, the plaintiff has also been unable to establish his readiness and willingness to part with the balance sale consideration and accordingly, it is found that the reasonings and determination of the first appellate Court in upholding the sale agreement on the mere reasonings of the failure of the second defendant to respond to the legal notice, in my considered opinion, is found to be based on the wrong appreciation of the materials placed on record and in such view of the matter, it is found that the reasonings and conclusions of the first appellate Court as regards the above aspect of the matter has to be determined only as perverse and illogical and accordingly, it is found that the cross objection preferred by the defendants as against the said findings of the first appellate Court is found to be maintainable in law and accordingly, the same is entitled for acceptance. In such view of the matter, the cross objection preferred by the defendants raising a substantial question of law as regards the perverse and illogical findings of the first appellate Court as well as the trial Court with reference to the genuineness of the alleged oral sale agreement sans any materials worth acceptance pointing

to the same, the cross objections is found maintainable in the eyes of law and the same is entertained.

21. The counsel for the plaintiff contended that the first appellate Court erred in denying the relief of the specific performance on the footing of non deposit of the amount at the time of the institution of the suit by the plaintiff. However, on a perusal of the judgment of the first appellate Court, the first appellate Court has not denied the relief of specific performance merely on the failure of the plaintiff to deposit the balance sale consideration in the Court at the time of the institution of the suit. On the other hand, it is found that the first appellate Court has rightly declined the relief of specific performance as sought for, by holding that the plaintiff has miserably failed to establish his readiness and willingness to perform his part of the contract as per the claim in the legal notice projected by him and accordingly, on that reasonings did not grant the relief of specific performance in respect of the plaintiff. While deciding the said point, the first appellate Court has also opined that the failure of the plaintiff in depositing the balance sale consideration in the Court at the time of the institution of the case would also militate against his case. Thus, the first appellate Court has not rejected the relief of the specific performance barely on the reasoning that the plaintiff has failed to deposit the balance sale consideration at the time of the institution of the suit. In such view of the matter, it is seen that no substantial question of law does arise, as such, for consideration, in this matter.

22. Materials placed on record go to disclose that the third defendant had purchased the suit property on 06.10.97 pursuant to the sale agreement entered into between the second defendant. The third defendant is not shown to be in the know of things about the alleged oral sale agreement dated 25.04.1997 as pleaded in the plaint. The third defendant has not shown to be in the possession of the suit property prior to 06.10.97, particularly, at or about the time of the alleged oral sale agreement. It is found that the third defendant has been inducted into the possession of the suit property only on 06.10.97. Accordingly, the materials placed would go to show that the third defendant had purchased the suit property from the second defendant as putforth by him and as projected by the second defendant and in the light of the abovesaid reasonings, pursuant to the sale deed dated 06.10.97, the third defendant has become the title holder of the suit property and materials placed on record go to show that the third defendant has purchased the suit property after making necessary enquiries with reference to the ownership of the suit property and accordingly, it is seen that the sale deed dated 06.10.97, in favour of the third defendant is true, valid and binding on the plaintiff and thus, it is found that the third defendant is a bonafide purchaser for a valid consideration.

23. The principles of law outlined in the decisions reported in AIR 1994 Ker 267 (Palasseri Velayudhan and Anr. Vs. Palasseri Ithayi and Ors.), AIR 2011 SC 2439 (Mahadev Govind Gharge and Ors. Vs The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka) and S.A.No.315 of 2009 dated 18.08.2016, M.P.No.1 of 2015 in Cross obj. SR No. 46356 of 2015 relied upon by the plaintiff's counsel as well as the decision reported in AIR 1999 Supreme Court 504 (Rickmers verwaltung Gimb H Vs. Indian Oil Corporation Ltd) relied upon by the defendants' counsel are taken into consideration and followed as applicable to the case at hand.

24. For the reasons aforesaid, the first appellate Court is justified in refusing the relief of specific performance sought for on the failure of the plaintiff to establish his readiness and willingness to complete the sale transaction as projected by him and accordingly, the substantial question of law formulated in this second appeal is answered against the plaintiff and in favour of the defendants.

25. In the light of the abovesaid reasonings, the judgment and decree of the first appellate Court to the extent of directing the defendants to pay a sum of Rs.2,000/- to the plaintiff are set-aside and in other aspects, the judgment and decree of the first appellate Court are confirmed. Accordingly, the second appeal preferred by the plaintiff is dismissed with costs. Cross objection is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed. Sd/-

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Additional District Judge cum
Fast Track Court No.1, Chengalpattu.

2. The Sub Judge, Sub Court, Maduranthagam.

Copy to: The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate Sr.No.28332

+1cc to Mr.K.Hariharan, Advocate Sr.No.28320

VGII(CO)

sm:1.6.2018

S. A.No.2198 of 2003

and

Cross objection No.2 of 2005