

Reserved on : 05.02.2018

Delivered on : 15.02.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

A.S.No.858 of 2006

and M.P.Nos.2 of 2006 & 1 of 2012

1.M/s.Chandan Pharmaceuticals Corporation
rep by its Partner L.Harishkumar Mehta,
No.62, Burkit Road, T.Nagar, Chennai - 17.

2.L.Harishkumar Mehta

3.L.Udayakumar Mehta

4.L.Shantha Mehta

5.L.Sasikala Mehta

6.L.Lalitha Mehta

7.L.Vijayalakshmi Mehta (Minor)
represented by father C.Laxmichand Mehta

8.L.Sowbhagyavathi Mehta Appellants/Defendants

(8th appellant impleaded as per the order in I.A.No.18538 of 2001 dated 20.09.2002 by the Lower Court; the 1st defendant (C.Laxmichand Mehta) died on 17.06.1995, hence, defendants 2 to 7 were brought on record as legal representatives as per the memo order dated 07.10.1996; appellants 4 to 7 are represented by Power of Attorney Agent - 8th appellant herein)

Vs.

1.R.K.Jalan

2.J.K.Iron & Steel Manufacturing Co.,

rep by its Partner R.K.Jalan,

No.218, Linghi Chetty Street,

Chennai - 600 001.

... Respondents/Plaintiffs

Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree passed in O.S.No.6686 of 1996 dated 30.11.2005 on the file of the Additional District and Sessions court, Fast Track Court-1, Chennai.

For Appellants : Mr.T.Viswanatha Rao

For Respondents : Mr.V.T.Gopalan, Senior Counsel
for Mr.G.Krishna Kumar

J U D G M E N T

The above appeal arises against the judgment and decree passed in O.S.No.6686 of 1996 on the file of the Additional District and Sessions court, Fast Track Court-1, Chennai.

2.Originally, the respondents/plaintiffs filed the suit before the Original Side of this Court and the same was numbered as C.S.No.644 of 1990. Subsequently, the suit was transferred to the file of the Additional District and Sessions court, Fast Track Court-1, Chennai and re-numbered as O.S.No.6686 of 1996.

3.The defendants are the appellants and the respondents were the plaintiffs in the suit.

4.The plaintiffs filed the suit in O.S.No.6686 of 1996 for specific performance and for recovery of possession in respect of Plots - D, E & F.

5.The brief case of the plaintiffs is as follows:

(i)According to the plaintiffs, the 1st plaintiff and the 1st defendant have been friends for some years and having regard to the status of the 1st defendant as a well known person, the 1st plaintiff had implicit confidence and trust in him.

(ii)The 1st defendant had died during the pendency of the suit and his wife was brought on record as the 9th defendant in the suit. Therefore, the defendants 3 & 4 are the sons, the defendants 5 to 8 are the daughters and the 9th defendant is the wife of the deceased 1st defendant.

(iii)The 2nd defendant is the Partnership Concern, of which the defendants 3 to 8 are the partners under the Partnership Deed dated 07.11.1980 and the 1st defendant has been described as Secretary.

(iv)With the idea to start new Industries and Companies, the 1st plaintiff purchased 3 Plots for his Companies from the defendants 1, 3 & 4 under 3 Sale Deeds dated 22.06.1981. The Plots purchased by the 1st plaintiff for his Firm and Companies are shown as A, B, & C in the plan filed along with the plaint, which are adjacent and facing Mount Road, Guindy, Chennai - 32. In those 3 sales, the 1st plaintiff did not experience any difficulty with the defendants 1, 3 & 4. Again in November 1981, the 1st defendant represented to the 1st plaintiff that he and his family group got more vacant sites adjacent to the Plots purchased by the 1st plaintiff for his Firm and Companies under the Sale Deed dated 22.06.1981 and they are willing to sell the same.

(v) The 1st defendant also represented that he has got order in E.P.No.38 of 1978 in C.S.No.49 of 1970 on the file of the High Court of Madras to purchase the lands of an extent of 21 grounds in Adyar Village, Guindy, Chennai - 32, which are also adjacent lands and is willing to sell the same by nominating the 1st plaintiff and or his nominees as purchasers. It was further represented that the 1st defendant and his family group will give right of passage through 30 Feet road from Mount Road to the lands, which are the subject matter of E.P.No.38 of 1978 and for right of the passage, the 1st plaintiff had to file a separate suit for specific performance because the 1st defendant, having received the entire Sale Consideration of Rs.4,00,000/-, failed to do his part of obligation.

(vi) Originally, an extent of 33 grounds and 950 sq.ft., in S.No.24 of T.S.No.24/2 of Block No.8 of Adyar Village, situated in Mount Road, Guindy, Chennai - 15, belonged to the family of Manali Ramakrishnan and others. Their right have been confirmed in C.S.No.37 of 1947.

(vii) By a Sale Deed dated 25.02.1960, the said land was purchased by the 1st defendant. The 1st defendant represented to the 1st plaintiff that after the purchase of the said property by the 1st defendant, he and his family members divided and partitioned their properties, including the said lands and confirmed the same by the Memorandum of Family Settlement and Partition dated 15.02.1975. The 1st defendant also represented to the 1st plaintiff that as per the partition which took place on 15.02.1975, the said lands measuring 33 grounds and 950 sq.ft., were divided as Plots A, B, C, D, E, F, G & H, providing 30 feet common road as per the plan annexed with the plaint and that the Plot - A was allotted to the 1st defendant, Plot - B was allotted to the wife of the 1st defendant, Plot - C was allotted to the 3rd defendant, Plot - D was allotted to the 5th defendant, Plot - E was allotted to the 6th defendant, Plot - F was allotted to the 4th defendant, Plot - G was allotted to the 7th defendant and Plot - H was allotted to the 8th defendant. The Patta was also issued in the name of the defendants 1 to 8 in respect of their respective Plots. The 1st plaintiff was informed that under the Deed of Partition dated 07.10.1980, Plots D, E & F comprised in S.No.24 measuring an extent of 6 grounds and 15 sq.ft., were to be hotchpot of the of the 2nd defendant viz., the Partnership Firm.

(viii) According to the plaintiffs, the 1st defendant represented that the 2nd defendant, in which the defendant 3 to 8 are partners, would sell the suit properties viz., Plots D, E & F to the plaintiffs for a sum of Rs.3,60,000/- at the rate of Rs.1,20,000/- per Plot. The defendants agreed to evict the two hut dwellers from Plot - D by negotiating with them by paying

compensation. The 1st defendant also agreed to join the execution of the Sale Deed along with the other defendants. The 1st plaintiff informed the defendant that the said Plots will be purchased by the 2nd plaintiff viz., the Firm and asked the defendants to executed 3 different Sale Deeds for each Plots.

(ix) On 14.12.1981, the Agreements were prepared to be signed by the parties. The 1st defendant asked the 1st plaintiff to hand over the originals and duplicate Agreements duly signed by the 1st defendant promising to get them signed by the defendants 2 to 8. The 1st plaintiff trusted the 1st defendant and handed over the Agreements' duplicate and originals duly signed for the purpose of execution by the other defendants. Somehow, the 1st defendant was postponing the same. The defendants agreed to give Income Tax Clearance in favour of the 2nd defendant for the sale of the said Plots before the registration of the Sale Deed. The 1st plaintiff had no reason to suspect the 1st defendant, but believed him.

(x) After some time, the defendants informed the plaintiffs that they are unable to evict the two hut dwellers from Plot - D, hence, asked the 1st plaintiff to retain a sum of Rs.30,000/- towards the expenses and pay a sum of Rs.5,000/- as advance and to pay the balance of Rs.85,000/- for Plot - D at the time of registration. Since the plaintiffs were anxious to acquire the Plots, the 1st plaintiff agreed with the defendants for retaining a sum of Rs.30,000/- for evicting the two hut dwellers from Plot - D.

(xi) In the last week of April 1982, the defendants represented that they require the Sale Consideration for their business commitment and requested the plaintiffs to pay the amount in advance. The defendants represented to the plaintiffs that as soon as the Income Tax Clearance is obtained, they would register the Sale Deeds in favour of the 2nd plaintiff. Believing the assurance and promise of the defendants, the plaintiffs paid, by way of Drafts, a sum of Rs.5,000/- on 28.04.1982, a sum of Rs.85,000/- on 03.05.1982, Rs.1,20,000/- on 03.05.1982 and also a sum of Rs.1,20,000/- on 03.05.1982. All these Demand Drafts were taken in the name of the 2nd defendant and received by the 1st defendant. The 2nd defendant, of which the defendants 3 to 8 are partners, accepted the said payments and utilized the same. Thus, the plaintiffs have paid a sum of Rs.3,30,000/- to the defendants being the entire Sale Consideration for the purchase of the Plots described in Schedule to the plaint, after retaining a sum of Rs.30,000/- for the expenses for vacating the two hut dwellers from Plot - D.

(xii) The plaintiffs purchased the stamp papers and after approval of the Sale Deeds for the said Plots, the same were

typed on stamp papers of the total value of Rs.46,000/-. The defendants were informed about the same and were asked to register the Sale Deed on obtaining the Income Tax Clearance. The defendants were postponing the same for some reasons or others. The approved copies of the Sale Deeds were taken by the defendants for submissions to the Income Tax Department for obtaining Income Tax Clearance. On 29.06.1982, the defendants obtained the Income Tax Clearance for the sale of the said Plots in favour of the 2nd plaintiff and the same was given to the 1st plaintiff.

(xiii) The 1st defendant represented to the plaintiffs that all the defendants will be present before the Adyar Registration Office on 25.06.1982 for the execution and registration of the Sale Deeds in favour of the 2nd plaintiff and requested the 1st plaintiff to come to the Office of the Registrar. Believing the representation and assurance of the defendants, on 25.06.1982, the 1st plaintiff and his counsel went to the Office of the Sub Registrar, Adyar and waited for the defendants. The defendants, deliberately failed to come to the Registrar's Office. Hence, the 1st plaintiff questioned the defendants as to why they did not turn up and the defendants gave some excuses and assured the 1st plaintiff, in the presence of his counsel, that the Sale Deeds will be executed and registered on 04.07.1982 stating that the 1st defendant and 3rd defendant will be going to Kumbakonam for attending the marriage of the brother-in-law of the 3rd defendant. The plaintiffs, having parted with the entire Sale Consideration, had no other alternative, except to wait till 04.07.1982 to hear from the defendants. On 04.07.1982, the 3rd defendant did not return, but returned only on 06.07.1982. Again the defendants informed the 1st plaintiff that the registration was fixed on 22.07.1982. On 22.07.1982, after telephoning the defendants, the 1st plaintiff and his counsel went to the Sub Registrar's Office at Adyar and were waiting till evening in vain. The plaintiffs were shocked and surprised at the attitude adopted by the defendants who have induced the plaintiffs to part with the entire Sale Consideration.

(xiv) On 24.07.1982, the 1st plaintiff questioned the dilatory tactics of the defendants with ulterior motive. The 1st defendant at the top voice shouted at the 1st plaintiff and informed him that the defendants are not going to execute and register the Sale Deeds unless extra amount is paid in cash. Hence, on 24.07.1982, the plaintiffs issued notice to the defendants calling upon them to execute the Sale Deeds in respect of the said Plots. A reply dated 12.08.1982 was sent by the defendants, in which the averments made by the plaintiffs in the notice dated 24.07.1982 have not been specifically denied

and all that the defendants have stated was that the plaintiffs should send separate letters to them. The defendants have thus defrauded the plaintiffs with a view to make unlawful gain and it is clear from the reply dated 12.08.1982 that the defendants had acted in a preplanned manner and confidently played a trick on the plaintiffs taking advantage of the confidence and trust reposed by the 1st plaintiff on the defendants. The plaintiffs are always ready and willing to complete the sale and purchase of the said property. The plaintiffs are even now ready to complete the same. In these circumstances, the plaintiffs filed the suit for specific performance and for recovery of possession.

6.The brief case of the defendants is as follows:

(i)According to the defendants, the 1st defendant was never connected with the 2nd defendant at any stage in any position. The averment that there was a purchase made by the 1st plaintiff from the 4th defendant under the Sale Deed dated 22.06.1981 is false. The Plots marked as A, B, C were the subject matter of the sale under the Deed of Sale dated 22.06.1981 by C.Laxmichand Mehta, his wife Sowbhagyavathi Mehta and the 3rd defendant Harish Mehta. Each Sale Deed was executed by each of the 3 persons, excepting the said Sale Deed, there was absolutely no other transaction with the 1st plaintiff or the 2nd plaintiff.

(ii)The 1st plaintiff has filed a suit in C.S.No.269 of 1985 for specific performance of an alleged Agreement dated 25.11.1981 followed by an alleged written Agreement dated 27.01.1982, wherein the 1st plaintiff has putforth the claim for 21 grounds and the suit itself is still pending. While the plea for 21 grounds indicated in paragraph - 6 of the plaint remains still a matter of litigation, it is too much for the plaintiffs to plead that they had intended to have a passage as an approach for these 21 grounds by virtue of 3 more Plots D, E & F to be secured for beneficial enjoyment under an alleged project of the plaintiffs.

(iii)There was no intention or indication, to which consent or concurrence had been given by any of the defendants, for providing 30 feet common passage in terms of a plan to which none of the defendants had been party or privy. The averment that under the Deed of Partnership dated 07.10.1980, Plots covered by S.No.24 Part measuring 6 grounds and 15 sq.ft., were to be hotchpot of the Partnership Firm is false.

(iv)There was no transfer of interest or conversion of the interest of the individuals nor any assessment of the property for the share of capital of the partners to the accounts of the 2nd defendant. This would amply show that these items of property were never transferred to the Partnership Firm or held by the Partnership Firm at any time, possessed and enjoyed by the Partnership Firm in any reputed manner and as such, the

plaintiffs cannot, for a moment, plead such title in the 2nd defendant. The defendants 3 to 8 never dealt with the 1st plaintiff with regard to the sale of the property for a sum of Rs.3,30,000/-. There was no question of any Agreement to evict the two hut dwellers from Plot - D. The 1st defendant did not take the alleged Agreement dated 14.12.1981 from the 1st plaintiff for getting it signed by the defendants 2 to 8. There was absolutely no need for the defendants to sell the property and as such, there was no need to sign any Agreement and give it to the 1st plaintiff.

(v) The Income Tax Clearance pleaded by the plaintiffs is illusory as the 2nd defendant is not vested with the ownership of the property and there was no legal basis for getting clearance by the 2nd defendant. The defendants had not received advance of Rs.5,000/- for the sale of the property nor agreed that the balance is liable to be paid at the time of registration. There was no Sale Agreement and no Sale Consideration was paid. The amount of Rs.3,30,000/- was given to the 2nd defendant, when the position of the 2nd defendant business was in bad shape. There was need for the 2nd defendant to meet the liabilities and the arrangement was one of loan transaction. Advancing of money by the plaintiffs for such purposes cannot now conveniently be twisted as one of sale transaction representing the 2nd defendant as the owner of the property, introducing allegations that the partners were the individual owners who have consented their property to be treated as Partnership Estate.

(vi) According to the defendants, the loan transaction of the 2nd defendant remained as such and the Company itself has been wound up in the year 1986. The allegation that the plaintiffs purchased stamp papers worth Rs.46,800/- is false. There was no question of the defendants agreeing to obtain Income Tax Clearance. The clearance obtained on 29.06.1982 is not admitted. The signature found in the affidavit form for clearance is not that of the defendant's. It is a fabricated signature, which does not even resemble the signature of the defendant and the same had been applied to the Income Tax Special Circle.

(vii) There was no question of the defendants requiring the plaintiff to be present in the Office of the Sub Registrar on 25.06.1982 or on any subsequent dates. The defendants denied the Oral Agreement and there was no legal basis to plead Oral Agreement in respect of the property, which could not be parted in favour of the plaintiffs as they are essentially intended for the defendants' own project and alienation, if made, would have wrecked the project of the defendants and therefore, there is no need for entering into Oral Agreement of Sale and the transaction cannot therefore be specifically enforced. Hence, no cause of action for the filing of the suit. The suit is barred by limitation and the suit is liable to be dismissed on that

ground as well. In these circumstances, the defendants prayed for dismissal of the suit.

7. Before the trial Court, on the side of the plaintiffs, 3 witnesses were examined and 14 documents, Exs.A1 to A14 were marked. On the side of the defendants, the 3rd defendant was examined as D.W.1. However, no document was marked.

8. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, decreed the suit. Aggrieved over the judgment and decree of the trial Court, the defendants have filed the above appeal.

9. Heard Mr.T.Viswanatha Rao, learned counsel for the appellants and Mr.V.T.Gopalan, learned senior counsel on behalf of Mr.G.Krishna Kumar, learned counsel for the respondents.

10. Mr.T.Viswanatha Rao, learned counsel appearing for the appellants submitted that there was no Oral Agreement between the 1st plaintiff and the defendants, therefore, the trial Court should not have decreed the suit. Further, the learned counsel submitted that the property does not belong to the 2nd defendant Firm and therefore, the defendants 3 to 8 cannot enter into an Agreement of Sale with the plaintiffs. Further, the learned counsel submitted that Ex.A6 Income Tax Clearance dated 07.06.1982 is a fabricated document. That apart, the learned counsel submitted that the trial Court should not have decreed the suit for specific performance for the reason that the plaintiffs have not come to the Court with clean hands. The learned counsel also submitted that the plaintiffs had paid a sum of Rs.3,30,000/- by way of Demand Drafts in favour of the 2nd defendant only as a loan and it cannot be construed as Sale Consideration for the purchase of the suit Plots.

10.1. In support of his contentions, the learned counsel for the appellants relied upon the following judgments:

(i) 1969 (3) Supreme Court Cases 555 [Arjun Kanoji Tankar Vs. Santaram Kanoji Tankar] wherein the Hon'ble Supreme Court held as follows:

"...

13. Counsel for the defendant contends that in any event by virtue of Section 14 of the Partnership Act, 1932, all the assets with aid of which the business was carried on by the plaintiff must be deemed in law to have become partnership assets, under the deed of partnership, dated March 16, 1953. Section 14 of the Partnership Act, 1932, provides:

"Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the

stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business."

Property belonging to a person, in the absence of an agreement to the contrary, does not, on the person entering into a partnership with others, become the property of the partnership merely because it is used for the business of the partnership. It will become property of the partnership only if there is an - agreement express or impliedly - at the property was, under the agreement of partnership, to be treated as the property of the partnership.

In Lindley on Partnership, 12th Edn., it is stated at p.365:

"Again, it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to lease to the firm, or without any lease at all.

If, however, a partner brings such property into the common stock as part of his capital it becomes partnership property, and any increase in its value will belong to the firm.

x x x the only true method of determining as between the partners themselves what belongs to the firm, and what not, is to ascertain what agreement has been come to upon the subject. But this is by no means always an easy matter."

We are unable to agree with counsel for the defendant that whenever there is a partnership and the assets which originally belonged to one of the partners are used for the purposes of partnership, they must be presumed to have become partnership assets. In Miles vs. Clarke, (1953) 1 All ER 779 the defendant started the business of a photographer and then admitted the plaintiff - a successful freelance photographer - as a partner. The leasehold premises, furniture and studio equipment belonged to the defendant. It was intended to record the terms of partnership into a formal agreement, but no terms were ever settled, except that the partners were to share the profits equally. On dissolution of the partnership it was held that no terms ought to be implied except such as were essential to business efficacy and that only the consumable items of stock-in-trade were to be regarded as assets of the partnership, and the lease of the property, equipment and personal goodwill were to be treated as being the

property of the partners who brought them into the business."

(ii) AIR 2002 Supreme Court 101 [Shashi Kapila Vs. R.P. Ashwin] wherein the Apex Court held as follows:

"...

9. A partnership firm is an association of persons. But in spite of that unity between themselves, every partner can have his own separate existence from the firm. Any right which a partner has over any property, other than the partnership property, would remain as his individual asset. The mere fact that the particular person has chosen to include himself as a partner of a firm will not result in incorporation of all his individual properties as the assets of the partnership. Section 14 of the Indian Partnership Act 1932 says: "Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business."

10. Here it is an admitted fact that appellant was a tenant of the building even earlier than the formation of the firm M/s Shiva and Co. In such a situation the tenancy right of the appellant in respect of the building is a separate right available to the appellant individually over which the partnership has no claim. Appellant never contended that he had offered the suit property as an asset of the partnership firm. Nor did the firm at any time claim that appellant threw the tenancy right over the building into the hotchpot of the partnership at any time. On the contrary, the agreement has taken care that the building is in the personal possession of the appellant. The following recital in the agreement would bear testimony for it:-

"The purchaser is aware that the tenant is in possession of the said premises and after the purchaser he must obtain the possession of the said premises in due course at his own cost and responsibilities. The seller does not hold himself responsible in any way to get him vacant possession. In fact, the purchaser has agreed to take up this responsibility."

...

12. Thus the appellant cannot lay any claim on the strength of Section 53A of the Transfer of Property Act, even assuming that the agreement is still binding on the parties thereto."

(iii)(2002) 10 Supreme Court Cases 156 [Awadesh Yadav Vs. Suresh Thakur and others] wherein the Supreme Court held as follows:

"...

The trial Court decreed the suit and granted the decree for specific performance of the agreement for sale. Aggrieved, the defendants went up in appeal. The first appellate court found that as a result of partition, the property in dispute no longer remained a joint Hindu Family property and further, defendant 1, Ramnarain Thakur was never a Karta of the joint Hindu Family and, therefore, was not competent to execute the agreement for sale. In this view of the matter, the appeal preferred by the respondents was allowed and decree of the trial Court was set aside."

(iv)(2008) 2 MLJ 1115 (SC) [Thiruvengada Pillai Vs. Navaneethammal and another] wherein the Supreme Court held as follows:

"...

15. While there is no doubt that court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/ signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal. The decision in Muralilal Vs. State of Madhya Pradesh (supra) and Lalit Popli Vs. Canara Bank and others

(supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal.

16. In this case the first defendant had denied having put her finger impression on Ex. A-1. She died during the pendency of the suit before her turn came for giving evidence. The High Court having examined the document has clearly recorded the finding that the thumb mark in Ex. A-1 was pale (that is light) and not clear. The document though dated 1980, was executed on two stamp papers which were purchased in 1973 and 1978. Contrary to the recital in the agreement that possession had been delivered to the plaintiff, the possession was not in fact delivered to plaintiff, but continued with the first defendant and she delivered the possession to the second defendant. The title deeds were not delivered to plaintiff. The attesting witnesses were close relatives of plaintiff and one of them was not examined. The scribe's evidence was unsatisfactory. It was also difficult to believe that the first defendant, an illiterate old woman from a village, would enter into an agreement of sale on 5.1.1980 with plaintiff, and even when he is ready to complete the sale, sell the property to someone else hardly a month thereafter, on 11.2.1980. In this background, the finding by the first appellant court, recorded without the benefit of any expert opinion, merely on a casual perusal, that there appeared to be no marked differences between the two thumb impressions, and therefore Ex. A-1 (sale agreement) must have been executed by first defendant, was unsound. The High Court was justified in interfering

with the finding of the first appellate court that the Ex.A1 was executed by first defendant."

(v) (2011) 12 Supreme Court Cases 220 [Rangammal Vs. Kuppuswami and another] wherein the Apex Court held as follows:

"...

21. Section 101 of the Indian Evidence Act, 1872 defines "burden of proof" which clearly lays down that:

"101. Burden of proof - whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

...

29. It may be relevant at this stage to cite the ratio of the decision of this Court delivered in Subhra Mukherjee Vs. Bharat Coking Coal Ltd, (2000) 3 SCC 312 : AIR 2000 SC 1203, whether the document in question was genuine or sham or bogus, the party who alleged it to be bogus had to prove nothing until the party relying upon the document established its genuineness. This was the view expressed by this Court in Subhra Mukherjee Vs. Bharat Coking Coal Ltd, (2000) 3 SCC 312 : AIR 2000 SC 1203."

(vi) 2016-4-L.W. 417 [Satish Kumar Vs. Karan Singh and another] wherein the Supreme Court held as follows:

"...

9. This Court in Mayawanti vs. Kaushalya Devi (1990) 3 SCC 1 held thus:-

"8. In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not

been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation."

10. Exercise of discretionary power under Section 20 of the Specific Relief Act for granting a decree, this Court in the case of Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruivila's Son and others, AIR 1987 SC 2328 observed:-

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruivila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Exhibit A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance.""

(vii) AIR 2017 Supreme Court 5431 [Dharmabiri Rana Vs. Pramod Kumar Sharma (D) thr. Lrs. and another] wherein the Hon'ble Supreme Court held as follows:

"...

11. The Court can order specific performance of an agreement only when it is proved that a person allegedly executing an agreement to sell has right of transferring the property. When defendants have denied

their entitlement and right, title and interest in the suit property, the said question was necessary to be answered before decreeing the suit. The trial court after noticing the said pleading on behalf of the defendants did not enter into this question or returned any finding that defendants are owner of the suit property. Further, essential findings pertaining to right of the defendant to transfer the property being not there, the passing of a decree of specific performance was clearly erroneous. The Appellate Court has rightly set aside the decree of specific performance of contract after recording the finding that defendant No.1 is not the owner of the property. It is not proved that any power of attorney was executed so as to enable defendant No.2 to enter into agreement to sell and further the execution of agreement has also not been proved. Although, copy of alleged power of attorney dated 04.11.1986 which is admittedly an unregistered document has been filed by appellant before this Court as Annexure-P12, but both the Courts having not considered the same, it is not necessary for this Court to consider the same in this Civil Appeal."

(viii)2018 (1) CTC 50 [S.Palanivel and another Vs. P.Natesan and others] wherein the Division Bench of this Court held as follows:

"...

45.In the instant case, it seen that the plaintiffs have only picked the holes in the defence set up by the defendants, rather than proving that it is only a sale transaction and a sum of Rs.20 lakhs as mentioned in Ex.A1- Sale Agreement was passed to the 1st defendant on 05.07.1998. Further, We find that a major portion of of the Sale consideration viz., Rs.20 lakhs was alleged to have been paid on the date of Sale Agreement itself and only for the purpose of paying a meagre balance amount of Rs.2 lakhs, the long period of 3 ½ years was fixed under the Sale Agreement, which would throw doubt on the conduct of the parties. Under such circumstances, We are of the opinion that the transaction between the parties cannot be one for sale.

...

52.In the instant case, as stated supra, the plaintiffs have failed to establish that there is valid Sale Agreement. Further, the plaintiffs have also failed to establish the passing of the Sale Consideration of Rs.20 lakhs by producing the Income Tax Returns and Bank Accounts statements. Therefore, We are of the opinion that the plaintiffs are not entitled

to get the relief of specific performance. In this regard, a reference could be placed in another decision of the Hon'ble Supreme Court in A.C.Arulappan vs. Smt.Ahalya Naik, AIR 2001 SC 2783 wherein it has been held that merely because it is lawful to grant specific relief, the Court need not grant such an order, thereby allowing the plaintiff to take an unfair advantage over the defendants. In the case on hand also, the plaintiffs are not entitled to any such unfair advantage."

(ix) 2009-5-L.W. 528 [Kalash Properties Pvt. Ltd., represented by its Chairman and Managing Director G.Kaliasundaram, having Office at J 75 Anna Nagar East, Chennai - 600 102 Vs. Lilly Pushpam and others] wherein the Division Bench of this Court held as follows:

"...

20. From the very reading of these two receipts, it could be clear that Ex.P-1 contains the door number of the subject matter, Rs.59 lakhs as a sale price and also Rs.2 lakhs as advance towards the sale price. But, evidently, it did not contain, when the balance of sale consideration was payable and when the contract was to be concluded. It did not even mention anything about the delivery of possession. When these receipts did not contain the material and essential terms as an agreement for sale, it is highly doubtful, whether the contention put forth by the learned senior counsel for the appellant could be accepted. The contents in Exs.P-1 and P-2 would clearly indicate that there was no concluded contract. Prior to the filing of the instant suit, the defendant filed C.S.No.1063 of 1995 seeking the relief of permanent injunction restraining the 1st defendant owner from interfering with his peaceful possession and enjoyment of the suit property. The said suit was filed in the month of July 1995. It was specifically averred in that plaint that the defendant entered into an oral agreement, whereby the plaintiff agreed to purchase the property for a consideration of Rs.59 lakhs and paid Rs.2 lakhs in advance. It was further averred in the plaint that "the plaintiff apprehends that the defendant, on account of his hostile attitude, is likely to delay finalising the terms of the contract to purchase and so does not seek protection under section 53A of the Transfer of Property Act".

(x) (2007) 2 MLJ 403 [A.Ganapathy Vs. S.Venkatesan] wherein the Division Bench of this Court held as follows:

"...

3.As per the plaint averments, the appellant/plaintiff entered into an agreement for sale of the above said property on 17.3.1996 and paid a sum of Rs.15 lakhs towards part consideration, while the total consideration was fixed at Rs.30 lakhs. It is claimed that the respondent gave a stamped receipt dated 17.3.1996 for a sum of Rs. 15 lakhs. It is stated that the appellant was ready and willing to pay the balance sale consideration of Rs. 15 lakhs and called upon the respondent/defendant on number of occasions to accept the same and execute the sale deed as per the agreement. It is further stated that the respondent was evading, that he went on transfer to Tuticorin without any intimation to the appellant, that the appellant found out the whereabouts of the respondent at Tuticorin and approached him there for executing the sale deed after receipt of the balance sale consideration and that the respondent, instead of complying with the terms of the agreement, attempted to alienate the suit schedule property. It is also claimed by the appellant/plaintiff that pursuant to the agreement he was put in possession. Based on the above averments, the appellant/plaintiff laid the suit for specific performance and for permanent injunction.

...
20. Further, as pointed out by the learned Counsel for the respondent/defendant and as held by the learned single Judge, when it is specifically stated in the plaint that an agreement was entered into on 17.3.1996 for purchase of the suit schedule property for a sale consideration of Rs. 30 lakhs and P.W.3 had admitted in his cross-examination in unequivocal terms that the sale agreement was entered into on 17.3.1996 and Exhibit P-1 receipt is only a receipt and not an agreement, coupled with the other contradictions in the evidence of P.W. 1 vis-a-vis P.Ws.2 and 3, the irresistible conclusion would be that there was no agreement at all as claimed by the appellant on 17.3.1996 and Exhibit P-1 receipt is not a true document as claimed by the appellant, and therefore, the appellant/plaintiff was not entitled for the relief of specific performance."

(xi) (2002) 2 M.L.J. 626 [Kumari Anandan Vs. Dr.T.Balamukunda Rao (died) and others] wherein the Division Bench of this Court held as follows:

...
19.The case set up by the plaintiff and the evidence adduced in support thereof or far from being sufficient to enable him to claim the relief of

specific performance. His case is that he formed a new political party and had entered into the oral agreement of purchase of property for the political party. He claims to have been put into possession without any document, without his having paid any advance and being given a period of 1 ½ years to complete the sale transaction. He also claims to have become entitled to secure possession of the upstairs and the outhouse almost a year prior to the date by which the transaction, according to him, should have been completed, and has claimed that the owner had agreed to allow him to remain in possession of the property without any liability for any rent or any other payment for 1 1/2 years. He had admitted the fact that Paul Durai is his wife's brother and that Perumal Nadar is the brother of Paul Durai's wife. He has, through his counsel, suggested to the first defendant in cross examination that P.W.1 had executed the lease agreement, Ex.D.1. Nevertheless he has not chosen to examine Paul Durai to support the plaintiffs assertion that despite the lease agreement, the defendants had agreed to put the plaintiff in possession on the terms alleged by him. The non examination of Perumal Nadar has not been explained at all by the plaintiff. The only inference that can be drawn is that he would not have supported the plaintiff's case.

...

27. In a suit for specific performance of the contract, the onus is on the plaintiff to prove the contract, unless its existence is admitted by the Opposite Party. When the plaintiff fails to prove the contract, the mere fact, that the defendant admits receipt of money but on altogether different account, does not shift the burden of proof to the defendant.

28. When the defendant pleaded that no contract was ever concluded, the Court has to determine whether at the time of alleged agreement, the minds of the parties had come together in actual assent. There must be a clear accession on both sides to one and the same set of terms and nothing should be left for future settlement."

(xii)1995 TLNJ 152 [Vijay Lalchand HUF rep by its Kartha Vijay L.Bulchandani & another Vs. K.M.Lulls HUF rep by its kartha Kiron Kumar M.Lulla], wherein the Division Bench of this Court held as follows:

"...

Learned counsel for the appellants points out that it is only the transferor who can apply under Sec.

230-A of the Income Tax Act for a Clearance Certificate and places reliance on Srimathi Indira Vs. I.T.O. (Vol.150 ITR 351) and Smt.Fouzia Shahi Nazeer Vs. B.K.Lingappa (Vol. 182 ITR 342). He has also contended that the draft sale deed, which was filed by the defendant along with the application for clearance certificate before the Income Tax Officer, would constitute a contract in writing as contemplated by Sec.53-A of the Transfer of Property Act. In support of that proposition, learned counsel places reliance on Maneklal Vs. H.J.Ginwalia & Sons (AIR 1950 S.S. 1), Karthikeya Vs. Singaram (1956 (1) M.L.J. 77) and A.Gangadhara Rao Vs. G.Ganga Rao (AIR 1968 AP 291). In our opinion, it is not necessary to consider either of the propositions for the purpose of these appeals. Hence, we are not considering the authorities cited by learned counsel for the appellants in this regard."

(xiii)AIR 2011 Madhya Pradesh 172 [Sagarmal Gulabchand Jain Vs. Gujarati Beedi Co. & Ors.] wherein the Division Bench of the Madhya Pradesh High Court held as follows:

"...

21.In the case in hands, it is revealed that the plaintiff has sought relief of specific performance in respect of the suit property, belonging to the partnership firm. Kind of the business which the partnership firm (i.e. defendant No. 1) used to perform is neither pleaded nor proved. Obviously, sale of immovable property belonging to the partnership firm could not have been the business of the said firm. This being so, it cannot be said that defendants No. 2 and 3, while dealing with the plaintiff for sale of firm's property, were acting in usual way of the business of the said firm. Accordingly, we hold that the plaintiff could not have achieved the relief of specific performance in the absence of an express authority with defendants No. 2 and 3 from all the remaining partners to sell the firm's property."

(xiv)[1989] 176 ITR 138 (Cal) [Income Tax Officer Vs. Savitri Devi Seva Trust] wherein the Division Bench of the Calcutta High Court held as follows:

"...

All that the ITO concerned is required to do is to ascertain whether the transferor, namely, the assessee Trust, has any existing tax liability and whether sufficient provision has been made for payment of such existing tax liabilities, if any and whether the registration of the conveyance would prejudicially affect the recovery of any existing tax liability.

Beyond that, the ITO is not called upon or empowered to launch into an enquiry on the title of the assessee in the said property. The ITO, in the facts, is not entitled to withhold the certificate under s.230A in favour of the assessee Trust. This is not case where a clear or obvious fraud is being sought to be perpetrated."

(xv)2015-2-L.W. 381 [M.Rani Vs. A.Bala @ Palaniammal] wherein this Court held as follows:

"...

21. While appreciating the evidence adduced before it, the Court may encounter a situation to compare the disputed signatures in a document with the admitted signatures in some documents. In such circumstances, under Section 73 of the Indian Evidence Act, Courts have been given powers to do it. It cannot be said that courts have no such power. It is a statutory power (See N.S.Arumugam Vs. Trishul Traders and others (2006 (2) L.W.167) and K.S.Satyanarayana Vs. V.R.Narayana Rao (AIR 1999 SCC 2544).

22. Under certain circumstances, the courts found that such comparison by the Court may not be best suited and, inappropriate.

23. Lawyers and Judges may be experts in the science of law but may not be so in pure, applied, physical sciences, halography (science of handwriting) datilography (finger printing). There are experts in those sciences. One becomes an expert by attaining qualifications, proficiency and long years of experience in their chosen field. Frankly, Lawyers and Judges may be par excellence in Law and law related matters but, they may not be so in the said sciences. To excel in their professional career various sciences affecting human life and conduct, they must be a megalomaniac but they cannot be expert in all. They are separate experts in each scientific field."

(xvi) (2008) 7 MLJ 53 [P.Sakthivel Vs. M.Palaniasamy and others] wherein this Court held as follows:

"...

32. The other judgment that has been cited by the learned senior counsel appearing for the respondents is Kumari Anandan Vs. Dr.T.Balamukunda Rao and others (2002) 2 MLJ 626 : 2002 (3) CTC 462 wherein the Division Bench of this Court has clearly held that if the oral evidence adduced was not sufficient to establish oral agreement, then it can be said that the plaintiff failed to discharge the burden of proof cast on him. He cannot rely on the discrepancies in the case of defendant to get necessary relief. Even in the case

on hand, the evidence adduced by the plaintiff is not sufficient to establish oral agreement and even if there are discrepancies in the evidence of the defendants, the plaintiff may not be entitled to the relief, which he has asked for."

(xvii) (2008) 6 MLJ 587 [Periyaya Vs. M.Rajagopal and another] wherein this Court held as follows:

"...

18. In P.V. Joseph's Son Mathew vs. N. Kuruivila's Son and others, AIR 1987 SC 2328 : 1987 Supp SCC 340, the Apex Court considered the scope and ambit of Section 20 of the Specific Relief Act and observed thus:-

"Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.""

(xviii) 2001 (3) CTC 408 [Karvannan Vs. Gopal Padayachi] wherein this Court held as follows:

"...

16. On the other hands, the defendant has produced documentary evidence to show that it is during the crucial period 1979-1981, he has been in possession and enjoyment of the property and this must have been sufficient to reject the case of the plaintiff. Exs.D.2 to D.5 are the Adangal extracts for fasli year 1388 to 1391 corresponding to 1978 to 1981. There are entries in the above said Adangal extracts to show that during this period he has paid kist and raised crops and it is stated that the crops have been raised only by the defendant. Learned counsel for the plaintiff explained this by stating that when patta has not been changed, usually, the name of the pattadar would find place in the Adangal records and only under such circumstances the name of the defendant is found. These documents are produced on the said of the defendant to show that contrary to the pleadings of the plaintiff he has been in possession and enjoyment. The plaintiff has failed to produce documentary evidence which he could have done in respect of the oral agreement. But he has

failed to do so. Both the Courts below have not properly appreciated the evidence available in this case both oral and documentary and that too, produced by the defendant. The plaintiff has failed to prove his case. The plaintiff has not adduced proper evidence. The evidence adduced on the side of the plaintiff cannot be called reliable or credible. There is total lack of documentary evidence to corroborate the oral agreement and payment of entire sale consideration. While so, both the courts below have miserably failed to appreciate these documents filed on behalf of the defendant but have strangely accepted the explanation offered by the plaintiff. There is total failure on the part of both the courts below to consider the material evidence available and while the evidence adduced on the side of the defendant was not considered. In fact, both the trial court and the appellate court also, seem to have come to a conclusion based on his own observation. When the plaintiff himself has not asked the court to take specimen signature of the defendant, for getting them compared by the expert, learned munsif seems to have directed the defendant to affix his signature in a document and he has also marked certain admitted records connected with the case wherein the signatures of the defendant were also found. He has proceeded to compare the specimen signature obtained by him and has commented upon it. The plaintiff has not explained as to why he has not sought for the opinion of the expert in respect of the alleged signature obtained in Ex.A.1. Therefore the court need not have taken the trouble of comparing the signature. No doubt, it is open to the court to compare and come to a conclusion. But even such conclusion has to be based on reasonings and must be the comparison on the disputed signature with the admitted signature. So, there has been total misreading of evidence and material records have not been given due consideration, whereas the oral evidence adduced on the side of the plaintiff has been accepted without giving sufficient reasons. The conclusion and reasoning of the courts below appear to be perverse and anyhow not supported by material evidence. Therefore, I am of the opinion that this court is very well justified in interfering with the finding and conclusions of the courts below by allowing the second appeal. On the other hand, there are documentary evidence in respect of the case of the defendant, which has not been properly considered by the courts below. Therefore, I have no hesitation in reversing the judgment and decree of the courts below."

(xix)1997-2-M.L.J. 294 [Lekshmiammal and others Vs. S.Nagalekshmiammal and another] wherein this Court held as follows:

"...

23.In this case also, there is an admission in the pleading that an agreement is to be prepared and agreed upon between the parties. Payment of advance of Rs.5,000 is one of the clauses which must be paid along with the written agreement. The full terms and conditions of the agreement are also to be written.

24.In the above circumstances, the finding of the lower appellate court that till a written agreement is executed there is no concluded contract is to be confirmed."

11.Countering the submissions made by the learned counsel for the appellants, Mr.V.T.Gopalan, learned senior counsel appearing for the respondents submitted that the plaintiffs have clearly proved the plea of Oral Agreement by adducing oral and documentary evidences and therefore, the trial Court has rightly decreed the suit for specific performance and recovery of possession. Further, the learned senior counsel submitted that though the defendants have stated that the plaintiffs have paid a sum of Rs.3,30,000/- as loan to the 2nd defendant Firm and not towards Sale Consideration, it is pertinent to note that they have not made any averment in the written statement about the repayment of the said amount and even according to them, it has not been repaid till today, which would establish the conduct of the defendants. The learned senior counsel submitted that the defendants having taken the Income Tax Clearance for the sale of the property to the plaintiffs under Ex.A6 Income Tax Clearance Certificate, they cannot turn around and take a stand that there was no Agreement between the parties. The learned senior counsel also submitted that the Demand Drafts for a sum of Rs.3,30,000/- were taken in the name of the Firm and were handed over to the 1st defendant. The learned senior counsel also submitted that though the defendants have taken a stand that the 2nd defendant is the owner of the suit property, they have not produced a single document before the trial Court to prove the same.

11.1.In support of his contentions, the learned senior counsel relied upon a judgment reported in 1995 (1) CTC 556 [Vijay Lalchand HUF and another Vs. K.M.Lulls HUF], wherein the Division Bench of this Court held as follows:

"...

6.A question will naturally arise whether the first plaintiff was put in possession by the defendant under the agreement. The report of the Advocate Commissioner shows that the plaintiffs have stored the

building materials on the disputed property and also erected two huts which, according to the plaintiffs, are used by the men appointed by the second plaintiff Trust and the labourers, who are employed for the construction activities. A temple has been constructed on the northern side of the land and a compound wall has been admittedly constructed by the plaintiffs. The security also was appointed only by the plaintiffs. The only inference that can be drawn from the above facts is that the plaintiffs are in possession of the land which is the subject matter of the suit. The fact that the defendant had applied for Income Tax Clearance Certificate under Section 230-A of the Income Tax Act and obtained the same even on 30.8.1991 shows that the parties intended to give effect to the oral agreement for sale and they had acted on it. The defendant has no explanation for not producing the draft sale deed which was filed before the Income Tax Officer along with the application for Clearance Certificate. If that document had been produced, it would have been seen that there is a recital with regard to possession of the property. If there is no such a recital, the defendant would have produced the certificate. An adverse inference can be drawn against the defendant for the non-production of the said document. In such circumstances, we have no doubt in accepting the case of the plaintiffs that possession was handed over to the first plaintiff by the defendant under the agreement and that the plaintiffs have acted in pursuance of the agreement for sale and erected a temple and is proceeding with the work. The plaintiffs have also suffered detriment by erecting a compound wall encircling the entire property including that of the defendant. But for an agreement alleged by the plaintiffs, there was no necessity for them to erect a compound wall around the property of the defendant. The fact that there is only one gate for entering the entire property including the disputed property and the fact that the defendant did not at any time protest against the provision of only one access to the entire property go a long way to make out a prima facie case in favour of the plaintiffs. The finding of the learned Judge ignoring the relevant part of the report filed by the Advocate Commissioner and also ignoring the circumstances that a compound wall has been erected covering the entire property by the plaintiffs, is erroneous. There is ample material now on record to prove prima facie that the plaintiffs are in possession of the disputed land."

12.The appellants/defendants filed a petition in M.P.No.1 of 2012 under Order 41 Rule 27 of the Civil Procedure Code to produce the judgment and decree dated 24.11.2006 passed in A.S.No.41 of 2005 on the file of the Additional District Court, Fast Track Court-II, Chennai as additional document.

12.1.In the affidavit filed in support of the petition, the appellants have stated that the other suit filed by the respondents/plaintiffs in O.S.No.12676 of 1996 for specific performance of the alleged Agreement dated 27.01.1982 was decreed by the trial Court and on Appeal preferred by the appellants in A.S.No.41 of 2005, the Lower Appellate Court had set aside the judgment and decree of the trial Court and allowed the Appeal. The Appeal was allowed by the Lower Appellate Court on 24.11.2006. Now, under Order 41 Rule 27 of the Civil Procedure Code, the appellants have filed the petition to produce the judgment and decree passed in A.S.No.41 of 2005 as additional document.

12.2.It is pertinent to note that the suit in O.S.No.12676 of 1996 was relating to the Agreement of Sale dated 27.01.1982.

12.3.The learned counsel on either side have not made any submissions with regard to this petition.

12.4.However, on a perusal of the affidavit filed in support of the petition, it is clear that the Agreement of Sale dated 27.01.1982 has nothing to do with the alleged Oral Agreement, which is the subject matter of the present suit in O.S.No.6686 of 1996. The suit for specific performance has to be decided only based on the evidences produced by both the parties and merely because the other suit for specific performance was dismissed by the Lower Appellate Court, the finding given by the Lower Appellate Court is not binding on the present Appeal, which relates to the alleged Oral Agreement between the parties. Therefore, I do not find any merits in the petition. That apart, the Appeal was also disposed of after the disposal of the present suit in O.S.No.6686 of 1996 on 30.11.2005.

13.On a careful consideration of the materials available on record, the submissions made by the learned counsel on either side and the judgments relied upon by the learned counsel on either side, it could be seen that it is the case of the plaintiffs that the defendants orally agreed to the sell the suit properties mentioned as Plots - D, E & F for a total Sale Consideration of Rs.3,60,000/- and it is also the case of the plaintiffs that out of this Rs.3,60,000/-, the defendants requested the plaintiffs to retain a sum of Rs.30,000/- for the purpose of evicting the tenants, who are occupying Plot - D. But it is also the case of the plaintiffs that after deducting this

Rs.30,000/-, they had paid the balance amount of Rs.3,30,000/- to the defendants by way of 3 different Demand Drafts. Since the defendants refused to register the Sale Deeds, the plaintiffs have filed the suit.

13.1. On the contrary, though the defendants admitted the receipt of Rs.3,30,000/- from the plaintiffs, they took a plea that this sum of Rs.3,30,000/- was paid to the 2nd defendant Firm as a loan and it was not received by them towards Sale Consideration of the suit Plots. The 3rd defendant was examined as D.W.1. In his evidence, he has stated that a sum of Rs.3,30,000/- was given to the 2nd defendant Firm as loan by the plaintiffs. It is also admitted that there was no written Agreement between the parties. D.W.1 has further stated that the defendants have signed Exs.A7, A8 & A9 Sale Deeds and in the Sale Deeds it has been stated that the Sale Consideration was paid to them by Demand Drafts. In Exs.A7, A8 & A9 Sale Deeds, the names of all the defendants are mentioned. D.W.1 also admitted that the respective parties mentioned in Exs.A7, A8 & A9 Sale Deeds have received the Demand Drafts from the plaintiffs. He has also stated that the amounts received by them from the plaintiffs were also entered in their Account Books. D.W.1 has also stated that though they have received the sum of Rs.3,30,000/-, it was received only as a loan and that their father, viz., the 1st defendant had dealt with the Demand Drafts given by the plaintiffs. The 1st plaintiff was examined as P.W.1 and in his evidence, he has stated that the sum of Rs.3,30,000/- was paid to the defendants only towards the Sale Consideration of the suit properties. In his evidence, he has also stated that earlier, the plaintiffs purchased the properties from the defendants under Exs.A3, A4 & A5 Sale Deeds. P.W.1 has also deposed that out of the total Sale Consideration of Rs.3,60,000/-, after retaining a sum of Rs.30,000/- for evicting two tenants from Plot - D, he has paid the balance amount of Rs.3,30,000/- to the defendants.

13.2. It is also pertinent to note that Ex.A6 is the Income Tax Clearance Certificate issued by the Income Tax Department giving clearance to them for selling the Plots - D, E & F to the plaintiffs. After the submission of Ex.A6 Income Tax Clearance Certificate, the 3 Sale Deeds viz., Exs.A7, A8 & A9 were prepared. However, the defendants have not signed the Sale Deeds. The Auditor was examined as P.W.2. In his evidence, P.W.2 has stated that the defendants handed over the draft Sale Deeds to him for obtaining Income Tax Clearance Certificate under Section 230-A of the Income Tax Act and that he applied for the Income Tax Clearance Certificate after obtaining the signature of the 3rd defendant on 03.06.1982 and presented the same before the Income Tax Office on 04.06.1982. Further, he has stated that he obtained Income Tax Clearance Certificate on 09.06.1982,

which was marked as Ex.A6. He has also stated that Ex.A6 Income Tax Clearance Certificate was handed over to the 1st defendant by him. The defendants contended that the signature found in Ex.A6 Certificate is not that of the 3rd defendant's and that it was a fabricated document. Though the defendants contended that Ex.A6 document is a fabricated document, they have not taken any action against the plaintiffs for the alleged creation of Ex.A6 document. D.W.1 has also admitted that they have not taken any action against the plaintiffs for the alleged fabrication of the document. However, D.W.1 has admitted that Ex.A6 bears the seal of the Income Tax Department.

13.3. In the judgment reported in 1995 TLNJ 152 [Vijay Lalchand HUF rep by its Kartha Vijay L. Bulchandani & another Vs. K.M. Lulls HUF rep by its kartha Kiron Kumar M. Lulla], the Division Bench of this Court held that the fact that the defendants had applied for Income Tax Clearance Certificate under Section 230-A of the Income Tax Act and obtained the same, shows that the parties intended to give effect to the Oral Agreement for sale and they had acted on it.

13.4. In the case on hand, the Income Tax Clearance Certificate was obtained as early as on 09.06.1982 and the original was also produced before the trial Court in the year 2002 itself. In spite of the same, the defendants have not initiated any action against the plaintiffs for producing the alleged fabricated document.

13.5. P.W.2, Chartered Accountant, who was having more than 35 years of standing in the profession deposed about the application submitted by him on behalf of the defendants and also the signature affixed by the 3rd defendant in the application for obtaining the Income Tax Clearance Certificate under Section 230-A.

13.6. The Advocate, who prepared Exs.A7, A8 & A9 Sale Deeds was examined as P.W.3. The said Advocate was known to both the parties. Exs.A3, A4 & A5 Sale Deeds were also prepared by P.W.3. In his evidence, P.W.3 has stated that the contents of Exs.A7, A8 & A9 Sale Deeds were read over to the defendants and only after ascertaining the name of the 5th defendant's husband from the defendants, his name was written in the Sale Deed. Further, he has stated that in Ex.A7, there was a correction, which was done at the instance of the defendants. He has also stated that the said correction was initialled by the 1st defendant. In Ex.A7 Sale Deed, it has been mentioned that a sum of Rs.5,000/- was paid by cash and the balance amounts were paid by Demand Drafts. He has also stated that the Demand Drafts were given to the defendants by the 1st plaintiff in his presence. He has also stated that the Demand Draft for Rs.1,20,000/- was handed over

to the 1st defendant by the 1st plaintiff towards a Sale Consideration for Ex.A8 Sale Deed. In respect of Ex.A9 Sale Deed also a sum of Rs.1,20,000/- was paid in the presence of P.W.3 to the 1st defendant. P.W.3 has specifically stated that the Sale Consideration was paid by the 1st plaintiff to the defendants in his presence. P.W.3 has also stated that Exs.A7, A8 & A9 Sale Deeds were prepared only for the purpose of selling the property to the plaintiffs and they are true and genuine documents. Further, he has stated that the amount paid by the plaintiffs were only towards Sale Consideration and not as a loan.

13.7.Though the defendants have contended that the Chartered Accountant and the Advocate, who were examined as P.W.2 & P.W.3 have deposed false evidence, when there is no enmity between P.W.2, P.W.3 with the defendants, there is no necessity for them to adduce false evidence before the trial Court. The evidence of P.W.2 & P.W.3 are very categorical about the obtaining of Ex.A6 Income Tax Clearance Certificate, execution of Exs.A7, A8 & A9 Sale Deeds and payment of the Sale Consideration by the plaintiffs to the defendants.

13.8.I do not find any reason to disbelieve the evidence of P.W.2 & P.W.3. Infact, P.W.2 is the defendants' Auditor and he has categorically stated about the obtaining of Ex.A6 Income Tax Clearance Certificate. In these circumstances, I am of the considered view that there was Oral Agreement between the plaintiffs and the defendants for the purchase of the suit properties from the defendants. The defendants contended that the suit property does not belong to the 2nd defendant Firm and therefore, the property cannot be sold by the 2nd defendant Firm to the plaintiffs. The plaintiffs contended that the property is a joint family property and the 1st defendant as the Kartha of the family, orally agreed to sell the suit Plots to the plaintiffs. Even in Exs.A3, A4 & A5 Sale Deeds, the 1st defendant had also joined the execution of the Sale Deeds.

13.9.As already stated, D.W.1 in his evidence has stated that the Sale Consideration in respect of Exs.A7, A8 & A9 were paid by Demand Drafts in their respective names and the said entries were also made in their respective Account Books. Though the defendants have contended that the sum of Rs.3,30,000/- was paid by the plaintiffs as loan to the 2nd defendant Firm, they have not produced any evidence in support of the said contention. It is also not the case of the defendants that any document was executed in favour of the plaintiffs for obtaining the loan of Rs.3,30,000/-. Infact, the defendants have not even produced a single document in support of their case. In spite of the defendants contention that the sum of Rs.3,30,000/- was paid as loan, neither in the written statement nor at least in their oral submission, they have stated that they are willing to repay

the loan amount or took any steps to deposit the said amount before the trial Court. Even according to the defendants, they have not repaid the alleged loan amount even after a lapse of more than 35 years.

13.10. With regard to the question of limitation, it could be seen that according to the plaintiffs, the defendants orally agreed to sell the suit lands to the plaintiffs on 25.11.1981 and for the purpose of registration of the Sale Deeds, the plaintiffs waited in the Registrar's Office on 25.06.1982, 04.07.1982 and 22.07.1982. However, the defendants did not turn up for registering the Sale Deeds in favour of the plaintiffs. On 24.07.1982, the defendants refused to execute and register the Sale Deeds and for the notice dated 24.07.1982 sent by the plaintiffs, the defendants sent their reply on 12.08.1982. Under Article 54 of the Limitation Act, a suit for specific performance should be filed within 3 years from the date of execution of the Agreement or within 3 years from the date of refusal.

13.11. Originally, the present suit was filed on 16.04.1985 numbered as C.S.No.644 of 1990 before the Original Side of this Court. Since the present suit has been filed by the plaintiffs within 3 years from the date of refusal, the suit is not barred by limitation. The plaintiffs have proved the Oral Agreement by adducing oral and documentary evidences. The plaintiffs have also established that the Sale Consideration of Rs.3,30,000/- was paid to the defendants. The plaintiffs have also proved that they are always ready and willing to perform their part of the contract and it was only the defendants, who were not ready and willing to perform their part of the contract. Taking into consideration all these aspects, the trial Court has rightly decreed the suit.

14. Though, there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the appellants, since the facts and circumstances are different, they are not applicable to the present case.

15. In these circumstances, I do not find any ground to interfere with the judgment and decree of the trial Court. The appeal is liable to be dismissed. Accordingly, the appeal is dismissed. The petition in M.P.No.1 of 2012 is also dismissed. No costs. Consequently, the connected Miscellaneous Petition in M.P.No.2 of 2006 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

va

To

The Additional District and Sessions Judge,
Fast Track Court-1,
Chennai.

+1cc to Mr.T.VISWANATHA RAO, Advocate, S.R.No.11512
+1cc to Mr.G.KRISHNAKUMAR, Advocate, S.R.No. 11579

Judgment in
A.S.No.858 of 2006
and M.P.Nos.2 of 2006 & 1 of 2012

TR(02/03/2018)



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