

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2018

Pronounced on : 24-10-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Appeal Suit No. 383 of 2017
and
C.M.P. No. 14366 of 2017

D. John Robert .. Appellant/Plaintiff

Versus

P. Rathinam . Respondent/Defenent

Appeal filed under Section 96 read with Order 41, Rule 1 of Code of Civil Procedure against the Judgment and Decree dated 01.06.2017 made in O.S. No. 47 of 2016 on the file of Principal District Judge, Krishnagiri.

For Appellant : Mr. Sanjay Mohan
for M/s. Ramasubramaniam & Associates

For Respondent : Mr. V. Raghavachari

JUDGMENT

The unsuccessful Plaintiff in O.S. No. 47 of 2016 on the file of the Principal District Judge, Krishnagiri is the appellant in this appeal. He has filed the aforesaid suit for specific performance of the agreement of sale dated 03.04.2013, which he entered into with the defendant and for consequential relief of permanent injunction, and in the alternative, he prayed for a direction to the defendant to repay the sum of Rs.27,10,000/- which he paid as advance sale consideration. The trial Court dismissed the suit against which the present appeal is filed.

2. The Plaintiff has filed the suit in O.S. No. 47 of 2016 for the following relief:-

(i) For a decree of specific performance of agreed terms of sale dated 03.04.2013 between the plaintiff and defendant and direct the defendant to execute the sale deed in favour of the plaintiff and put into legal and physical possession delivered under the sale deed within the time fixed by this Honourable Court.

(ii) In case of refusal and non compliance with the decree to execute and

register the sale deed by the defendant, this Honourable Court may be pleased to execute and register the sale deed through a court officer to execute and register the sale deed representing the defendant in favour of plaintiff.

(iii) For a decree for possession in respect of suit properties.

(iv) Alternatively, the plaintiff prays for recovery of the sum of Rs.27,10,000/- (Rupees Twenty Seven Lakh and Ten Thousand Only) as advance sale consideration as per the acknowledge receipt dated 02.05.2013 with interest at the rate of 6% from the date of receipt of the amount till the date of repayment in full in one lumpsum

(v) For a decree for costs and such other incidental and ancillary reliefs which the Honourable Court may be pleased to grant in the circumstances of the above suit and render justice."

3. As per the plaint averments, the defendant, along with one S. Selvam approached the plaintiff to sell the property comprised in Survey No.7/6 measuring 5920 square feet with specific boundaries located at Painapally Village, Krishnagiri Taluk. According to the plaintiff, it was represented by the defendant that the property belongs to one Mrs. Yasodha, Wife of Rajagopal and he was appointed by the said Yasodha as her lawful power of attorney agent by means of a registered general power of attorney deed dated 06.11.2006 registered as document No. 682 of 2006 in Book IV and therefore, he is competent and is empowered to execute the sale deed in his favour. In order to substantiate the said statement, during the first week of March 2013, the defendant furnished copies of the title deeds and the general power of attorney deed relating to the said property after receiving a token amount of Rs.10,000/- in cash. After a fortnight, the defendant along with the said S. Selvam met the plaintiff and negotiated the sale price for the property in question in the presence of the plaintiff's cousin Mr. J. Anna Andrews. After deliberations, the sale price for the property was fixed at Rs.500/- per square feet which was also mutually agreed by the plaintiff and defendant. It is the further case of the plaintiff that as the defendant was in urgent need of money, he requested the plaintiff to pay a sum of Rs.11,00,000/- as advance. Having regard to such request made, the plaintiff paid the sum of Rs.11,00,000/- by means of a cheque No.730371 drawn on ICICI Bank, Hosur Branch in favour of the defendant. While handing over the cheque to the defendant, the plaintiff made a request to execute an agreement of sale, but the defendant has stated that he is in a great hurry and informed the plaintiff that the sale deed itself would be executed shortly and there is no need to execute an agreement of sale. The Plaintiff was also rest contented with such statement made by the defendant and did

not insist for an agreement of sale to be executed.

4. According to the plaintiff, notwithstanding the payment of Rs.11,00,000/- paid by him towards advance sale consideration, the defendant requested him to pay a further sum of Rs.16,00,000/- to meet his urgent expenses. On such request, the plaintiff paid the sum of Rs.16,00,000/- to the defendant by way of cheque. However, the defendant wanted the amount of Rs.16,00,000/- to be paid in cash and therefore, the plaintiff paid the sum of Rs.16,00,000/- in cash through his father at Hosur on 02.05.2013. Thus, the defendant had received a total sum of Rs.27,00,000/- and he has also executed a consolidated receipt for Rs.27,00,000/- in favour of the plaintiff. After executing the receipt for Rs.27 lakhs, the defendant agreed that the sale deed will be executed during the second week of July 2013. Accordingly, during the second week of July 2013, the plaintiff expressed his readiness and willingness to get the sale deed executed in his favour by paying the balance sale consideration. However, the defendant, through his friend Selvam, informed the plaintiff that the sale deed will be executed after 15th August 2013 inasmuch as the original owner of the property Mrs. Yasodha has to sign the sale deed. However, the defendant did not keep up his words and when asked for execution of the sale deed, the defendant informed that the land owner Mrs. Yasodha want the sale price to be enhanced. Since the plaintiff did not agree for purchasing the property at an enhanced rate, he sought for return of the advance sale amount paid by him. Later, the plaintiff got transferred to Kolkatta and hence he could not demand the defendant, for a considerable length of time, to repay the advance sale consideration paid by him. However, on 27.06.2015, the plaintiff, along with his relatives, met the defendant and had discussion. During the course of such discussion, the defendant agreed to pay the advance sale amount with interest on or before 15.09.2015. When the plaintiff met the defendant for payment of the amount, he asked him to come on 10th October 2015. However, during the second week of October 2015, when the plaintiff contacted the defendant, his mobile phone was switched off and therefore, the plaintiff went to his office. To the shock and surprise of the plaintiff, the office of the defendant was also closed. According to the plaintiff, all the efforts taken by him to contact the defendant failed. Therefore, the plaintiff met the said Selvam, friend of the defendant at his residence on 26.12.2015 and he promised to settle the amount paid by the plaintiff. According to the plaintiff, there was no specific time limit fixed for performance of the contract as per the oral agreement he had entered into with the defendant. Further, the plaintiff was always ready and willing to perform his part of the contract but it was the defendant, who sought for enhanced sale price during the subsistence of the contract and it was contrary to the original understanding between the parties to complete the sale transaction. While so, on 31.01.2016, the defendant and his friend S.Selvam called upon the plaintiff's cousin namely Mr. Anna Andrews and informed him that if the plaintiff exerts

pressure on him through Police or Court for refund of the advance sale amount, he has to face dire consequences. This was informed to the plaintiff by his cousin Mr. Anna Andrews and he asked the plaintiff to take necessary legal steps as are necessary to get back the advance sale amount paid by him. Therefore, on 15.02.2016, the plaintiff sent a written complaint to the Inspector of Police, SIPCOT Police Station by registered post with acknowledgment due for which a receipt in CSR No. 85 of 2016 was issued. The Plaintiff also caused a notice dated 09.02.2016 to the defendant calling upon him to come to the office of Sub-Registrar, Krishnagiri on 22.02.2016 at 10.00 am to execute the sale deed in his favour after receiving the balance sale consideration of Rs.2,50,000/-. Even though the defendant received the notice dated 09.02.2016, he has not chosen to give any reply or complied with the demands made by the plaintiff. In those circumstance, the plaintiff has filed the above suit for the relief as mentioned supra.

5. The defendant filed a written statement denying the entire plaint averments. According to the defendant, he is doing real estate business and during the course of such business, Mrs. Yasodha had executed a power of attorney deed dated 06.11.2006 in his favour to deal with the land owned and possessed by her. On the strength of the power of attorney deed executed in his favour, the defendant had sold the land owned by Mrs. Yasodha in favour of one Magendiran of Kaveripattinam Town, Mittahalli Post. After the sale of the said property, the plaintiff intended to purchase the very same property which the defendant sold it to one Magendiran. The defendant also had deliberations with the said Magendiran and expressed the intention of the plaintiff to purchase the land which was conveyed to him. As the said Magendiran also agreed to sell the property to the plaintiff, which he had purchased from the defendant, as power of attorney agent of Mrs. Yasodha, the defendant negotiated with the plaintiff and fixed the total sale consideration at Rs.38,00,000/-. The Plaintiff also agreed to purchase the said property for a total sum of Rs.38,00,000/- and initially he paid a sum of Rs.11,00,000/- as advance sale consideration and subsequently another sum of Rs.16,00,000/-, totalling a sum of Rs.27,00,000/-. The defendant also promptly paid the said sum of Rs.27 lakhs to Mr. Magendiran. According to the defendant, the plaintiff never paid a sum of Rs.10,000/- as token advance in the first week of March, 2013, as alleged by him.

6. The defendant specifically denied that he along with one Selvam have met the plaintiff and negotiated the sale price for the plaint mentioned property. According to the defendant, for having received the sum of Rs.27 lakhs from the plaintiff, the defendant had requested the said Magendiran to execute a sale deed in favour of the plaintiff and accordingly, a sale deed dated 06.05.2013 was also executed by the said Magendiran in favour of the plaintiff which was registered on the file of Sub-Registrar,

Veppenapalli. Thus, according to the defendant, he has fulfilled the contract which he had orally entered into with the plaintiff and after the execution of the sale deed dated 06.05.2013 in favour of the plaintiff, there was no obligation to be fulfilled by the defendant towards the plaintiff. According to the defendant, the plaintiff has come forward with the suit with unclean hands and by suppressing the sale deed dated 06.05.2013. The defendant specifically denied that the plaintiff had met him during September and October 2015. In fact, the plaintiff had visited the defendant's house when he was away and threatened the wife of the defendant by asking the defendant to come and meet him, as if the defendant evaded to meet the plaintiff. It is in those circumstances, the defendant has given a complaint dated 10.11.2015 to the Taluk Police Station. According to the defendant, there was an oral contract between him and the plaintiff which was also fulfilled by him by executing a sale deed in favour of the plaintiff on 06.05.2013, which was executed by Magendiran. While so, on 24.11.2015, the plaintiff has given a complaint against the defendant before the SIPOOT Police Station alleging as though the defendant did not repay the sum of Rs.27 lakhs received from him, which is not only false but vexatious and based on such complaint, the defendant was called upon to appear for an enquiry by the Inspector of Police, SIPCOT Police Station. According to the defendant, he has no obligation to be fulfilled for having received the sum of Rs.27 lakhs from the plaintiff. For having received the said sum, already, a sale deed dated 06.06.2015 was executed in favour of the plaintiff. The suit is frivolous and vexatious, therefore, the defendant prayed for dismissal of the suit.

7. Before the trial Court, the plaintiff examined himself as PW1 along with two other witnesses as PWs 2 and 3 and Exs. P1 to P9 were marked on his side. On the side of the defendant, the defendant examined himself as DW1 and Exs. D1 to D6 were marked. The trial Court framed four issues for adjudication in the suit. On consideration of the oral and documentary evidence, the trial court concluded that the plaintiff, who alleged that there was an oral agreement between him and the defendant, has a heavy burden to be discharged to prove such an oral agreement, but he miserably failed to prove the same. On the contrary, the defendant, by marking Ex.D1, sale deed executed in favour of the plaintiff on 06.05.2013 by Magendiran, has proved that the defendant had received the sum of Rs.27 lakhs from the plaintiff to convey the property which was sold in favour of Mahendiran and accordingly, the sale deed dated 06.05.2013 was also executed in favour of the plaintiff. The trial Court therefore concluded that the plaintiff did not prove the alleged oral contract to purchase the suit mentioned property and therefore dismissed the suit. Aggrieved by the dismissal of the suit, the plaintiff has come up with the present appeal.

8. The learned counsel for the appellant, at the outset, would contend that the appellant/plaintiff herein has preferred this appeal only in so far as it relates to the refusal of the trial court for granting a decree for alternative prayer of refund of the sum of Rs.27 lakhs with interest and that the appellant/plaintiff is not agitating the relief of specific performance of the contract, as prayed for in the plaint. The learned counsel for the appellant would further contend that the appellant paid a sum of Rs.11 lakhs on 03.04.2013 by way of cheque and another sum of Rs.16 lakhs on 02.05.2013 by way of cash for which the defendant has also issued a consolidated receipt, Ex.A4 acknowledging the receipt of the sum of Rs.27 lakhs. The receipt of the sum of Rs.27 lakhs was also admitted by the defendant in his deposition before the trial Court. It is not the case of the defendant that he had paid back the amount of Rs.27 lakhs to the plaintiff. However, the defendant would contend that for having received the sum of Rs.27 lakhs, he felicitated the execution of the sale deed, Ex.B1 dated 06.05.2013 in his favour through Mr. Mahendiran. According to the learned counsel for the appellant, the recitals in Ex.B1, sale deed would indicate that the sale consideration said to have been received by the vendor namely Mr. Mahendiran under Ex.B1 is only Rs.4 lakhs. Even the market value of the property covered under Ex.B1, sale deed dated 06.05.2013 was Rs.7 lakhs. Therefore, it is clear that the execution of the sale deed dated 06.05.2013, Ex.B1 in favour of the plaintiff by Mr. Mahendiran has nothing to do with the amount of Rs.27 lakhs paid by the plaintiff to the defendant. The property covered under Ex.B1 was a separate and distinct transaction between the plaintiff and the said Mahendiran and the defendant has nothing to do with the purchase of the said property by the plaintiff. Even in Ex.B1, sale deed, there was no reference made about the defendant.. The defendant also did not produce any document to prove the payment of Rs.27 lakhs to Mahendiran. Thus, the averment of the plaintiff that he paid Rs.27 lakhs to the defendant for purchasing the suit property is proved. While so, the court below ought to have accepted the plea of the plaintiff for alternative relief of refund of the amount of Rs.27 lakhs and non-consideration of the same by the trial court warrants interference by this Court.

9. The learned counsel for the appellant/plaintiff would further contend that the defendant approached the plaintiff and represented that he is the power of attorney holder of Mrs. Yasodha and on such representation, the plaintiff agreed to purchase the property that belonged to Mrs. Yasodha through the defendant, who is her power of attorney agent. However, the defendant, in his written statement claimed that the amount of Rs.27 lakhs was received by him on behalf of Mahendiran, who was the owner of the suit property. In such circumstances, according to the counsel for the plaintiff, the question of impleading Mrs. Yasodha will not arise. However, the trial court erroneously concluded that the plaintiff did not implead Mrs. Yasodha as

a party to the suit and therefore, the suit, as filed by the plaintiff, is liable to be dismissed for non-joinder of necessary party. When it is not the case of the defendant that he received the amount on behalf of Yasodha, the plaintiff need not implead the said Mrs. Yasodha as a party to the suit, especially to get the amount refunded, but it was not properly considered by the court below. Even otherwise, it was not the defence of the defendant that Mrs. Yasodha is a proper and necessary party to the suit, for getting the alternative relief of refund of the amount, while so, the trial court ought not to have dismissed the suit on the ground of non-joinder of Mrs. Yasodha as a party to the suit. The learned counsel for the plaintiff therefore prayed for allowing this appeal by setting aside the Judgment and Decree passed by the trial court. in so far as it relates to the alternative prayer for refund of the sum of Rs.27 lakhs paid by the plaintiff to the defendant

10. Repudiating the arguments advanced by the counsel for the appellant/ plaintiff, the learned counsel for the respondent/defendant would contend that the respondent/defendant did not deny that he had received Rs.27 lakhs from the plaintiff. In fact, the defendant issued a receipt dated 02.05.2013 under Ex.A4. A perusal of the receipt would indicate that there is no indication as to the purpose for which the defendant had received the amount from the plaintiff or the details of the property which the plaintiff proposed to purchase. On the other hand, the defendant specifically raised a defence that the sum of Rs.27 lakhs was received from the plaintiff only to get the property, which stands in the name of Mahendiran, transferred or conveyed in favour of the plaintiff. Thus, the respondent/defendant has not derived any benefit out of the sum of Rs.27 lakhs paid by the plaintiff. According to the counsel for the respondent, even according to the plaintiff, the respondent/defendant is not the owner of the property, to which he had entered into an oral agreement. Furthermore, no prudent person would enter into an oral agreement and pay a sum of Rs.27 lakhs. While so, without impleading the owner of the property, the suit is not maintainable only as against a power of attorney agent. Further, it is the case of the plaintiff that he paid Rs.27 lakhs way back in the month of May 2013, while so, it is not known as to why the plaintiff could keep quiet for a period of more than three years to file the suit for specific performance without asserting his right to get a decree for specific performance at the earliest point of time. Even according to the appellant/plaintiff, only on 09.02.2016, he had sent a legal notice calling upon the respondent/defendant to come to the Sub-registrar Office on 22.06.2016 to execute the sale deed. Such a notice was not sent to the actual owner of the property to which the plaintiff sought for execution of a sale deed. On the contrary, it is the specific defence of the defendant that only for facilitating the conveyance of the property, which stands in the name of Mahendiran, he had received the sum of Rs.27 lakhs and accordingly, the sale

deed, Ex.B1 dated 06.05.2013 was executed in favour of the plaintiff. This would amply prove that the defendant had paid the amount of Rs.27 lakhs received from the plaintiff to the vendor Mr. Mahendiran. When such a defence was taken by the defendant in his written statement, the plaintiff ought to have impleaded Mahendiran to discharge his burden, but the plaintiff chose not to do so. In this context, the learned counsel for the respondent/defendant placed reliance on Section 230 of The Contract Act which specifically stipulates that an agent cannot personally enforce, nor be bound by the contracts on behalf of the principal. In the present case, even as admitted by the plaintiff, the defendant is only a power of attorney agent. While so, a power of attorney agent cannot be expected to enforce the contract undertaken by him on behalf of his principal by executing the sale deed in favour of the plaintiff. This is more so that the defendant denied that he received the sum of Rs.27 lakhs from the plaintiff in his capacity as power of attorney agent of either Mrs. Yasodha or Mr. Mahendiran.

11. To fortify this submission, the learned counsel for the defendant also relied on the decision of the Honourable Supreme Court in the case of (Premnath Motors Limited Limited vs Anurag Mittal) reported in (2009) 1 CTC 190 to contend that as per Section 230 of The Contract Act, an agent is not liable for the acts of a disclosed principal subject to a contract to the contrary. For the very same proposition, reliance was also placed on the decision of the Division Bench of this Court in (Jayakrishna Trading Company, represented by its Partner K.T.K. Venkatesan and others vs. Kandasamy Weaving Factory and Company, rep. by Mrs. Suryam Prabha, Komaraplayam, Salem) reported in 1995 1 Law Weekly 230 wherein it was held that an agent cannot personally enforce nor be bound by contracts on behalf of the principal. Thus, according to the counsel for the defendant, the defendant, being an agent, cannot be expected to adhere to the terms and conditions of the contract which he orally entered into on behalf of his principal. In the present case, the suit was filed only as against the defendant, who, even according to the plaintiff, is an agent of the person who owns ownership over the land which he proposed to purchase and in the absence of the principal being impleaded as a party to the suit, the decree for specific performance, even if granted, cannot be enforced as against the agent/defendant. In order to get a decree for specific performance, the plaintiff ought to have impleaded the owner, who owns the plaint mentioned property, as a party to the suit. The trial court, has come to a correct conclusion that the non-joinder of the owner of the property described in the plaint is fatal to the case of the plaintiff and such a finding need not be interfered with by this Court. The learned counsel for the defendant, therefore, prayed for dismissal of the appeal.

specific performance of an oral contract, in this appeal, the plaintiff confined his relief only in so far as it relates to the refusal of the Court below to consider his alternative prayer for refund of the sum of Rs.27 lakhs he paid to the defendant, with interest.

13. It is to be noted that the defendant did not deny that he had received the sum of Rs.27 lakhs from the plaintiff. In fact, the defendant has issued a receipt dated 02.05.2013, marked as Ex.P4, for having received a sum of Rs.27 lakhs from the plaintiff. The receipt dated 02.05.2013 merely says "Received cash Rs.27,00,000/- (Rupees Twenty Seven Lakhs Only). The receipt was not stamped but merely signed. According to the defendant, he received the amount from the plaintiff to facilitate the plaintiff to purchase the property from one Mr. Mahendiran, who was the owner of a land. It is also the defence of the defendant that earlier, he sold the property to Mr. Mahendiran in his capacity as Power of Attorney agent of one Mrs. Yasodha and the plaintiff intended to purchase the very same property from Mr. Mahendiran. Thus, according to the defendant, he mediated and acted as a facilitator to enable the plaintiff to purchase the property which was owned by the said Mr. Mahendiran. It is also the defence of the defendant that Mr. Mahendiran also agreed to sell the property to the plaintiff for a total sum of Rs.38 lakhs and out of Rs.38 lakhs, the plaintiff paid a sum of Rs.27 lakhs, which he had promptly paid to Mr. Mahendiran.

14. It is seen from the plaintiff averments that the sum of Rs.27 lakhs was paid by the plaintiff on two instalments, the first payment was made by way of Cheque for Rs.11 lakhs and the next payment of Rs.16 lakhs was paid by way of cash. It is the contention of the plaintiff that he paid this amount only to enable him to purchase the property owned by one Yasodha. It is his further contention that the sale transaction was negotiated by him with the defendant in the presence of one Selvam. Admittedly, as mentioned above, for having received the sum of Rs.27 lakhs, the defendant has issued a receipt on 02.05.2013. It could be evident that within four days therefrom, Mr. Mahendiran had executed a sale deed dated 06.05.2013 in favour of the plaintiff. However, the plaintiff would contend that the sale transaction he had with Mr. Mahendiran is a separate, independent and distinct transaction and it has got nothing to do with the amount of Rs.27 lakhs, which he paid to the defendant. On the other hand, according to the defendant, the sum of Rs.27 lakhs was received by him only to enable the plaintiff to purchase the property, which was owned by Mr. Mahendiran and accordingly, he performed his obligations by getting the sale deed executed by Mr. Mahendiran in favour of the plaintiff. In effect, the defendant had raised a defence that the money which he had received from the plaintiff was for the purpose of facilitating the sale transaction between the plaintiff and Mr. Mahendiran which he had precisely performed and there is no other transaction he had with the

plaintiff. When the defendant had raised such a defence, the burden is on the plaintiff to clear the air surrounding the controversy. At the first blush, the plaintiff ought to have impleaded either Mrs. Yasodha when he contends that he intended to purchase only the property owned by Mrs. Yasodha through the defendant, who is her power of attorney agent. It is also to be mentioned that when the plaintiff, who intended to purchase the property for a whooping sum of Rs.27 lakhs, ought to have obtained an encumbrance certificate to ensure whether Mrs. Yasodha is actually the owner of the property as on the date when he paid the sum of Rs.27 lakhs to the plaintiff. This is more so that on 02.05.2013 when the plaintiff paid the sum of Rs.27 lakhs to the defendant, according to the defendant, he, in his capacity as power of attorney agent of Mrs. Yasodha, had already sold the property to the aforesaid Mr. Mahendiran. Even though such a defence was raised by the defendant in his written statement, the plaintiff did not implead the above said Mr. Mahendiran as a party to the suit. Even without impleading the above said Mahendiran as a party to the suit, the plaintiff only chose to raise a doubt as to whether the defendant had really paid the sum of Rs.27 lakhs received from him to Mr. Mahendiran and the plaintiff did not produce any document to that effect. Instead of raising such a plea, the plaintiff could have very well impleaded the above said Mr. Mahendiran as a party to the suit and if impleaded, he will be competent to say as to whether the defendant paid the sum of Rs.27 lakhs which he received from the plaintiff or not. Further, the plaintiff would contend that he negotiated the sale transaction with the defendant in the presence of one Mr. Selvam. According to the defendant, the said Selvam is none other than the brother of the plaintiff's father. The Plaintiff, therefore, could have very well examined the said Selvam to atleast prove the nature of sale transaction he had with the defendant in the presence of Selvam or the property which he actually sought to purchase through the defendant. We also wish to state that the plaintiff was not sure from whom he sought to purchase the property. We hasten to say so because the plaintiff has neither impleaded Mrs. Yasodha, from whom he intended to purchase the property or the said Mr. Mahendiran, who, according to the defendant was the owner of the property from whom the plaintiff intended to purchase the property for Rs.38 lakhs and paid Rs.27 lakhs as advance. The Plaintiff ought to have cleared the aforesaid controversy surrounding his claim for refund of the sum of Rs.27 lakhs which he paid to the defendant. The aforesaid persons namely Mrs. Yasodha, Mr. Mahendiran and Mr. Selvam are competent persons to depose as to the nature of transaction the plaintiff and defendant had. However, for the reasons best known, the plaintiff failed to implead them and therefore, the suit filed by the plaintiff has to be dismissed for non-joinder of proper and necessary parties.

the defendant and the contract is only an oral contract. As rightly pointed out by the trial court, when it is an oral contract, the burden is heavy on the part of the person who wish to take advantage of such an oral contract. In the present case, the plaintiff pleaded that the contract is oral. The defendant raised several defence to rebut the nature of contract, the property which the plaintiff actually proposed to purchase and the owner from whom he intended to purchase the property. The defendant also raised a defence that the sum of Rs.27 lakhs was intended only for purchasing the property owned by Mr. Mahendiran and accordingly, the property was also purchased by the plaintiff. Of course, it is true that in the sale deed dated 06.05.2013 executed by Mr. Mahendiran, the total sale consideration mentioned was only Rs.4 lakhs. According to the plaintiff, even the market value of the property covered under the sale deed dated 06.05.2013 is only Rs.7 lakhs and therefore, the sum of Rs.27 lakhs which he paid to the defendant is not intended to purchase the property owned by Mr. Mahendiran. Here again, this controversy or dispute with respect to the value of the property covered under Ex.B1, sale deed dated 06.05.2013 could be adjudicated only if the plaintiff impleaded Mr. Mahendiran and in the absence of his impleadment, the same cannot be decided by this Court. On the one hand, the plaintiff would contend that there is no reference about the defendant in Ex.B1, sale deed dated 06.05.2013, on the other hand, the plaintiff did not implead the above said Mahendiran to strengthen his contention.

16. As rightly pointed out by the counsel for the defendant, even according to the plaintiff, the defendant is only a power of attorney agent and therefore, it is for the plaintiff to implead the owner of the property who has conferred the power of attorney in favour of the defendant. In the absence of impleading the owner of the property from whom the plaintiff sought to purchase the property, the defendant, in his capacity as power of attorney agent, cannot be expected to fulfil the contractual obligations. Further, as pointed out by the counsel for the defendant, as per Section 230 of The Contract Act, an agent cannot personally enforce a contract which he entered into on behalf of the principal, nor he is bound by the obligations, if any, undertaken, on behalf of the owner. In the decision of the Honourable Supreme Court in (Premnath Motors Limited Limited vs Anurag Mittal) reported in (2009) 1 CTC 190 it was held that as per Section 230 of The Contract Act, an agent is not liable for the acts done by him on behalf of his principal. In para No. 4 of the said Judgment, it was held as follows:-

"4. Section 230 of the Contract Act categorically makes it clear that an agent is not liable for the acts of a disclosed principal subject to a contract of the contrary. No such contract to the contrary has been pleaded. An identical issue was considered by this Court in the case of Marine Contained Services South Pte Ltd., vs. Go Go Garments, AIR 1999 SC 80 where a similar

order passed by the Consumer Protection Act was set aside by this Court. It was held that by virtue of Section 230 the agent could not be sued when the principal has been disclosed."

17. In the present case, the defendant had disclosed the person on whose behalf he acted as a facilitator namely Mr. Mahendiran, however, for the reasons best known, the plaintiff did not implead the said Mahendiran as a party to the suit. The Plaintiff, who has filed the suit for specific performance with an alternative prayer for refund of the sum of Rs.27 lakhs, must make his pleadings specific and not generic. A plaintiff who has come to the Court must prove his case precisely, without giving any room for any doubt. A plaintiff also should not take advantage of the weakness of the defence raised by the defendant and he has to independently prove his own case. Applying this settled proposition of law to the facts of this case, we find that the plaintiff has not disclosed clearly the nature of transaction he had with the defendant and the property which he actually intended to purchase. He has also failed to implead proper and necessary parties to substantiate his pleadings. In the absence of the same, even the alternative relief prayed for by the plaintiff for a direction to the defendant to refund the sum of Rs.27 lakhs cannot be countenanced.

18. In the result, we confirm the Judgment and Decree dated 01.06.2017 made in O.S. No. 47 of 2016 on the file of Principal District Judge, Krishnagiri. The Appeal Suit fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

rsh

To

The Principal District Judge
Krishnagiri

+1cc to M/s. Ramasubramaniam & Associates, Advocate SR.No. 72795

+1cc to Mr. V. Raghavachari, Advocate SR.No. 72554

A.S. No. 383 of 2017

ASK(13/12/2018)