

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.11.2019

PRONOUNCED ON:12.12.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.12 of 2013

and

M.P.No.1 of 2013

R.Sivasubramaniam

...Appellant

Vs.

1. Gauhar Jaan Begum

2. The Tamilnadu Industrial Investment Corporation Limited,
No.692, Anna Salai,
Nandanam,
Chennai - 600 035.

...Respondents

Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and Decree dated 23.08.2012 passed in O.S.No.636 of 2010 on the file of the I Additional District Court, Coimbatore.

For Appellant : Mrs.Hema Sampath, SC
for M/s.D.Muthuselvam

For RR1 : Mr.R.Bharath kumar

For RR2 : Mr.K.Mahesh

J U D G M E N T

Aggrieved over the judgment and decree dated 23.08.2012 passed in O.S.No.636 of 2010 on the file of the I Additional District Court, Coimbatore, the plaintiff has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for specific performance and permanent injunction.

4. Briefly stated according to the case of the plaintiff, the first defendant being the owner of the suit property, on 10.03.2010 entered into a sale agreement with respect to the sale of the same in favour of the plaintiff for a sum of Rs.11,75,000/- and the plaintiff paid a sum of Rs.1,75,000/- as advance on the date of the sale agreement and the first defendant had borrowed the amount from the second defendant and mortgaged the suit property and the first defendant agreed to execute the sale deed in favour of the plaintiff free from all encumbrance after discharging the loan availed from the second defendant within three months from the date of the sale agreement. The plaintiff has been always ready and willing to pay the balance sale price and obtain the sale deed from the defendant. On 03.06.2010, the first defendant approached the plaintiff and requested for further four months time to execute the sale deed, as she was unable to repay the loan amount to the second defendant and an endorsement to that effect has been made in the sale agreement. The first defendant had not cleared the loan borrowed from the second defendant and despite several requests of the plaintiff, the first defendant did not come forward to complete the sale transaction. Therefore, the plaintiff sent a notice dated 27.09.2010 calling upon the first defendant to execute the sale deed. But the first defendant has not responded to the same. Now, the first defendant is taking steps to encumber the suit property to third parties with a view to defeat the rights of the plaintiff and hence, according to the plaintiff, he has been necessitated to levy the suit for appropriate reliefs.

5. The first defendant in the written statement put forth the case that the plaintiff is the tenant in the suit property from 2004 onwards and the plaintiff had not paid the rent for several months together and the first defendant reserves her right to sue the plaintiff as regards the arrears of the rent and also evicting him from the suit property. According to the first defendant, the plaintiff's daughter and his son-in-law approached the first defendant to purchase the suit property at Rs.11,75,000/- and the first defendant had agreed to sell the same and the abovesaid parties have entered into a sale agreement and with reference to the same on 24.12.2009, the plaintiff's daughter Gothainayagam paid Rs.1,75,000/- as advance to the first defendant and it was agreed that the sale transaction should be completed within three months and in the event of the plaintiff's daughter failing to complete the sale transaction, she has to forfeit the advance amount and the time intended to be the essence of the agreement and the plaintiff's daughter was delaying the sale transaction alleging about the suit property taken as the security by the second defendant for sanctioning huge loan and the plaintiff's daughter expressed her willingness to purchase the suit property after the loan had

been cleared, however the plaintiff's daughter and her husband urgently left to Canada in connection with their job assignment. Whiles, the plaintiff without consulting with the family members of the first defendant approached and unduly influenced the first defendant and obtained a fresh agreement on 10.03.2010 hurriedly and the first defendant being a muslim woman and not aware of the implications made thereby and the plaintiff thereby by-passed the original document dated 24.12.2009 entered into between the plaintiff's daughter and the first defendant. The plaintiff is not earning any money and depending upon his daughter and on account of the collusion of the plaintiff's daughter, her husband and the plaintiff, a fresh agreement had been obtained without consulting the male members of the first defendant. If the first sale agreement dated 24.12.2009 had been cancelled, the plaintiff would have stated about the same in the second agreement which was obtained by undue influence and coercion. The plaintiff has not even whispered the same in the plaint. The plaintiff has come forward with the suit suppressing the original agreement dated 24.12.2009. The plaintiff has failed to implead his daughter and daughter's husband/son-in-law as parties to the suit and the plaintiff's suit is liable to be dismissed on that score as they are necessary parties. On account of the failure of the plaintiff's daughter's to go ahead with the sale agreement dated 24.12.2009 and the plaintiff's daughter having also chosen to terminate the said agreement, shall stand forfeit to loose the advance amount. The first defendant had taken appropriate steps to clear the loan availed from the second defendant and the matter is pending with the second defendant with reference to the same. The first defendant had been always ready and willing to perform her part of the contract dated 24.12.2009 and on account of the failure of the plaintiff's daughter to perform her part of the contract, she stands forfeit to loose the advance amount and the plaintiff's daughter has not been ready and willing to perform her part of the contract in respect of the sale agreement dated 24.12.2009 and therefore the suit is liable to be dismissed.

6. In the reply statement, the plaintiff has disputed the case projected by the first defendant in the written statement and would state that her daughter had entered into the sale agreement with the first defendant for purchasing the suit property for Rs.11,75,000/- and the payment of Rs.1,75,000/- as advance by her daughter to the first defendant on the date of the sale agreement and further admitted that his daughter and her husband has to leave Canada in connection with the job assignment, however according to the plaintiff, it was agreed between the parties that the suit sale agreement should be entered into and the advance amount paid by the plaintiff's daughter should be treated as advance for the suit sale agreement and accordingly it is putforth that the suit sale

agreement had come to be executed between the plaintiff and the first defendant on 10.03.2010 and following the same, the original agreement was torn in front of the first defendant and the plaintiff is in the possession of the destroyed agreement and further the plaintiff's daughter executed a power deed in favour of the plaintiff and the plaintiff disputed the case of the first defendant that the sale agreement had been brought about by undue influence and coercion as alleged in the written statement. Therefore, according to the plaintiff he is entitled to obtain the reliefs prayed for.

7. In the additional written statement, the first defendant reiterated her claim made in the original written statement and contended that the suit sale agreement had been brought about on the part of the plaintiff by exercising undue influence and coercion and without consulting the male members of the first defendant and also putforth that the plaintiff has falsely pleaded that the advance paid by his daughter under the sale agreement dated 24.12.2019 is to be treated as advance for the sale agreement dated 10.03.2010. According to the first defendant, no such recital is incorporated in the sale agreement with reference to the same. The first defendant is not a willing party to the sale agreement dated 10.03.2010 and the same was obtained by the plaintiff by using undue influence and coercion, and the first defendant never intended to sell the suit property to the plaintiff and the plaintiff is already in arrears of house rent to the first defendant. The first defendant further disputed the claim of the plaintiff that the original sale agreement was torn after the execution of the suit sale agreement. Further the first defendant had disputed that she extended the time stipulated under the sale agreement dated 10.03.2010 ie., on 03.06.2010, as claimed by the plaintiff and therefore prayed for the dismissal of the plaintiff's suit.

8. The second defendant has putforth the case that it is an unnecessary party to the suit proceeding and not aware of the suit sale agreement entered into between the plaintiff and the first defendant. According to the second defendant, the suit property had been mortgaged in its favour and the sale agreement would not bind the the second defendant and therefore prayed for the dismissal of the plaintiff's suit.

9. On the basis of the abovesaid pleas putforth by the respective parties, the following issues were framed by the trial court for consideration:

- i. Whether the agreement dated 10.03.2010 was executed by the first defendant with free consent?
- ii. Whether the endorsement dated 03.06.2010 in the said agreement is genuine?

iii. Whether the plaintiff is entitled to specific performance enforced the suit agreement?

iv. To what relief is the plaintiff entitled?

10. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A6 were marked. On the side of the defendants', D.Ws.1 to 3 were examined. Exs.B1 to B8 were marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit with costs. Impugning the same, the First Appeal has been preferred by the plaintiff.

12. The following points arise for determination in the First Appeal:

i. Whether the sale agreement dated 10.03.2010 is valid and binding on the first defendant?

ii. Whether the plaintiff has been always ready and willing to perform his part of the contract?

iii. Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 10.03.2010 as claimed in the plaint?

iv. To what relief, the plaintiff/appellant is entitled to?

v. To what relief, the first defendant is entitled to?

Point Nos.1 to 3:

13. The suit has been laid by the plaintiff mainly against the first defendant for the relief of specific performance based on the sale agreement dated 10.03.2010. The abovesaid sale agreement has been marked as Ex.A1. The abovesaid sale agreement has been challenged by the first defendant contending that the same had been obtained from her by the plaintiff by exercising undue influence and coercion. However, as could be seen from the judgment of the trial court, it is found that the though the first defendant had challenged the abovesaid sale agreement on account of undue influence and coercion, it appears that she had chosen to challenge the same only due to coercion and given up the factor of undue influence during the trial. The first defendant is a Mohammedan lady.

14. According to the plaintiff, the first defendant, had agreed to sell the suit property to him for Rs.11,75,000/- and he had paid a sum of Rs.1,75,000/- as advance on the date of the sale agreement. It is the further case of the plaintiff that the first defendant had mortgaged the suit property with the second defendant and obtained a loan and assure to discharge the loan within three months and complete the sale transaction. It is

further pleaded by the plaintiff that the first defendant sought further four months time to complete the sale transaction as she was not able to discharge the loan of the second defendant and made an endorsement to that effect in the sale agreement. Further according to the plaintiff, though he had always been ready and willing to perform his part of the contract, inasmuch as the first defendant had not taken steps to discharge the loan of the second defendant and complete the sale transaction in favour of the plaintiff, it is putforth that the plaintiff has sent a notice on 27.09.2010 calling upon the first defendant to execute the sale deed in his favour, however as the first defendant had not endeavored further in that direction and on the other hand, attempted to alienate the suit property to the third parties with a view to deprive the right of the plaintiff, in respect of the same, according to the plaintiff he has been necessitated to lay the suit against the defendants, particularly against the first defendant for appropriate reliefs.

15. Therefore as above pointed out, the plaintiff in the original plaint has not putforth any previous sale agreement entered into in respect of the suit property between his daughter Kothainayagam and the first defendant. Further the plaintiff has also not pleaded in the plaint that the suit sale agreement dated 10.03.2010 had been executed between him and the first defendant in continuation of the sale agreement entered into between his daughter and the first defendant qua the suit property.

16. The first defendant resisted the plaintiff's suit contending that she had not intended to sell the suit property to the plaintiff based on the sale agreement dated 10.03.2010 as alleged in the plaint and according to her, the plaintiff is a tenant in respect of the suit property from 2004 onwards and has left the huge arrears of rent to be paid and squatting in the suit property without paying the same and further it is putforth by her that she had entered into the sale agreement with the plaintiff's daughter Kothainayagam on 24.12.2009 agreeing to sell the suit property to Kothainayagam for Rs.11,75,000/- and received a sum of Rs.1,75,000/- from Kothainayagam on the date of the sale agreement and according to the first defendant, a period of three months time had been fixed to complete the sale transaction and time is the essence of the contract and it is putforth that Kothainayagam had not come forward to proceed further pursuant to the sale agreement dated 24.12.2009 to pay the sale consideration and obtain the sale deed from the first defendant and on the other hand, it is stated that she along with her husband left Canada and not endeavored any further action based on the sale agreement dated 24.12.2009 for completing the sale transaction and therefore according to the first defendant, on the failure of Kothainayagam to complete the

sale transaction within the stipulated period fixed between the parties and also as she had not expressed her readiness and willingness to complete the sale transaction in any manner as provided under law, it is stated that by virtue of the terms setout in the sale agreement dated 24.12.2009, she stands forfeited to loose the advance amount paid by her and further according to the first defendant she had not entered into any sale agreement with the plaintiff on 10.03.2010 as putforth by the plaintiff and on the other hand, according to her, the plaintiff without consulting the male members of the first defendant's family, approached the first defendant and by exercising undue influence and coercion obtained a fresh agreement from her on 10.03.2010.

17. Considering the abovesaid pleas putforth by the respective parties and the materials placed on record it is found that we are now faced with two sale agreements in the matter namely the sale agreement dated 10.03.2010 marked as Ex.A1 and the sale agreement dated 24.12.2009 marked as Ex.A5. Inasmuch as, the first defendant has challenged the sale agreement projected by the plaintiff marked as Ex.A1, at the foremost, the plaintiff has to establish that the sale agreement Ex.A1 had been brought about only as per the pleas set out by him in the plaint. However, as rightly determined by the trial court, considering the materials placed on record, it is found that the plaintiff has miserably failed to establish the same. According to the plaintiff, the first defendant agreed to sell the suit property in his favour for Rs.11,75,000/- and executed the sale agreement Ex.A1 in his favour and received a sum of of Rs.1,75,000/- as advance on the date of the sale agreement. As above noted, nowhere it has been pleaded by the plaintiff in the original plaint that Ex.A1 sale agreement has been executed between the parties in continuation of the sale agreement dated 24.12.2009 which has been marked as Ex.A5. In this connection, the plaintiff examined as P.W.1 during the course of cross examination has admitted that he has been residing in the suit property as a tenant since 2004 onwards and also admitted that the sale agreement dated 24.12.2009 had been executed between his daughter Kothainayagam and the first defendant and the recitals contained therein are true and further admitted that the abovesaid sale agreement had been executed by fixing a particular time limit of three months for the completion of the sale transaction pursuant to the same and further admitted that in the event of the failure of his daughter to complete the contract, she would stand to loose the advance amount and necessary recitals to that effect had been incorporated in the abovesaid sale agreement and further admitted that there is no material to show that his daughter had been always ready and willing to perform her part of the contract within the stipulated period as per the sale agreement dated 24.12.2009 and

further admitted that the time fixed in the abovesaid sale agreement had expired on 24.03.2010 and also further admitted that on the date of the said sale agreement Ex.A1, the sale agreement dated 24.12.2009 has not been enforced and further according to him on the execution of the abovesaid suit agreement Ex.A1, the sale agreement Ex.A5 had been torn and also further admitted that he has not paid any amount as advance under the sale agreement Ex.A1 and also would state that the amount of Rs.1,75,000/- received as advance under the suit agreement Ex.A1 has been adjusted from the advance amount paid by his daughter under the sale agreement dated 24.12.2009 and would claim that his daughter had executed a power of attorney deed in his favour and his daughter had not sent any letter to him authorizing him to adjust the amount paid by her under the sale agreement dated 24.12.2009 towards the advance amount to be paid in the abovesaid sale agreement Ex.A1 and also would admit that Ex.A1 sale agreement recites that he has paid a sum of Rs.1,75,000/- in cash to the first defendant and the abovesaid recital is true and further admitted that there is nothing containing in Ex.A1 that his daughter had authorized him to adjust the advance amount paid by her to the first defendant as the advance under the suit sale agreement by way of canceling the earlier agreement and as above noted, P.W.1 had admitted that he has been in the possession and enjoyment of the suit property since 2004 onwards as a tenant and according to him he needs no delivery of possession based on the sale agreement Ex.A1 and further admitted that Ex.A1 sale agreement has been engrossed in the stamp paper purchased in the name of his daughter Kothainayagam and would further admit that to evidence for his readiness and willingness to complete the sale transaction pursuant to Ex.A1 sale agreement, he has not filed any document in support of the same and he is in possession and custody of the documents pointing to the same and would state that he has sent any notice marked as Ex.A4 on 27.09.2010 and he has not filed any acknowledgment card for the receipt of the same by the first defendant and further admitted that by way of Ex.A4 notice, he has further sought four months extension of time and at the fag end of his examination, the power of attorney deed executed in his favour by his daughter has been marked as Ex.A7 and with reference to Ex.A7, he would admit that there is no reference about the sale agreement dated 24.12.2009 in the power of attorney deed Ex.A7 and nothing has been recited about the Ex.A5 sale agreement in Ex.A7 power deed and there is nothing contained in Ex.A7 empowering him to adjust the advance amount paid by his daughter under the sale agreement dated 24.12.2009 towards the advance amount to be paid under Ex.A1 sale agreement.

18. Considering the abovesaid evidence of the plaintiff, it is thus found that the plaintiff has not come forward to the Court with clean hands. When according to the plaintiff, for the sale agreement Ex.A1, he has paid a sum of Rs.1,75,000/- as advance in cash and when it is seen that he has given a go by to the abovesaid case and would come forward with the new case in the reply statement as if the advance amount paid by his daughter under Ex.A5 had been treated as the advance amount for the suit sale agreement Ex.A1 and however when there is nothing referred to about Ex.A5 in Ex.A1 sale agreement and when it is noted that no such power had been authorized or given to the plaintiff by his daughter for adjusting the advance amount and when no recital to that effect has been incorporated even in Ex.A7 power deed and when it is noted that Ex.A5 sale agreement had not been put in action by the plaintiff's daughter within the stipulated period or even thereafter and the plaintiff's daughter had not expressed her readiness and willingness to complete the sale transaction following the same and accordingly as per the recitals contained in Ex.A5, she stands forfeited to loose the advance amount paid by her and when there is no proof whatsoever to hold that the plaintiff's daughter had authorized the plaintiff to direct the advance amount paid by her to the first defendant under Ex.A5 sale agreement as the advance amount to be paid under Ex.A7 and when the plaintiff despite all the abovesaid factors still underlines that the recitals contained in Ex.A1 sale agreement regarding the payment of the advance amount in cash is true, however when as above pointed out, conflicting pleas with reference to the same are noted in the plaintiff's case and when the plaintiff's would admit that the amount of Rs.1,75,000/- has not been paid by him to the first defendant on the date of the suit sale agreement Ex.A1 and the same has been adjusted out of the advance amount paid by his daughter under Ex.A5 sale agreement and when the plaintiff is not entitled to adduce any evidence contra to the recitals contained in Ex.A1 sale agreement as per Section 91 of the Evidence Act and when the plaintiff is found to be in the possession of the suit property since 2004 and when there is nothing referred to about the same in Ex.A1 sale agreement and on the other hand Ex.A1 sale agreement recites as if the first defendant is liable to deliver the possession of the suit property to the plaintiff on the execution of the sale deed following the same and when the plaintiff has given a go by to the abovesaid case during the course of his evidence, as rightly held by the trial court, the plaintiff on the basis of the abovesaid conflict of pleas and the evidence projected by him is dis entitled to seek and obtain the equitable and discretionary relief of specific performance.

19. As could be seen from the available materials on record, when the plaintiff's daughter Kothainayagam would not be entitled to enforce the sale agreement dated 24.12.2009 marked as Ex.A5 and she had already stand forfeited to loose the advance amount paid by her, consequent to the failure of the performance of the part of the contract within the stipulated period, in such view of the matter, the plaintiff cannot be allowed to contend and putforth the case that Ex.A1 sale agreement is only a continuation of the sale agreement Ex.A5. If that be so, necessary recitals would have been incorporated in Ex.A1 pointing to the same. If the plaintiff's daughter had authorized the plaintiff to direct the advance amount paid by her to the first defendant under Ex.A5, the power deed Ex.A7 would contain the recitals pointing to the same or the plaintiff's daughter would have sent a communication to the plaintiff authorising him to do so. When with reference to the same, nothing is forthcoming on the part of the plaintiff, in such view of the matter, the case projected by the plaintiff that he is entitled to obtain the discretionary relief of specific performance based on Ex.A1 sale agreement, as such, cannot be accepted in any manner.

20. In the light of the abovesaid contradictory pleadings and evidence putforth by the plaintiff as regards the very execution of Ex.A1 sale agreement and the recitals contained therein, the further case of the plaintiff that the first defendant had sought for the extension of time to complete the sale transaction on 03.06.2010 as such cannot be accepted in any manner. When the recitals contained in Ex.A1 sale agreement had been failed to be established by the plaintiff, his further case that the first defendant had sought the extension of time by four months to execute the sale deed in his favour on 03.06.2010 as such cannot be accepted. In the light of conflict of pleadings and evidence adduced by the plaintiff with reference to Ex.A1 sale agreement, the evidence of his witness examined as P.W.2 to sustain the truth of Ex.A1 sale agreement also falls to the ground.

21. The plaintiff being the tenant under the first defendant qua the suit property since 2004 onwards and when the plaintiff's daughter had not intended further action to obtain the sale deed from the first defendant qua the suit property based on Ex.A5 sale agreement and Ex.A1 sale agreement had not been obtained in continuation of Ex.A5 sale agreement and when it is seen that the first defendant is a Mohammedan Lady and when admittedly the first defendant's husband was not in the scenario at the time of the obtainment of the first defendant's signature in the sale agreement Ex.A1 and when Ex.A1 sale

agreement is found to be engrossed in a non-judicial paper standing in the name of the plaintiff's daughter Kothainayagam and when according to the first defendant, her signature had been obtained by the plaintiff by exercising undue influence and coercion by representing that the same is only with reference to the sale agreement entered into with his daughter and thereby the first defendant had subscribed her signature to the same and considering the position that the first defendant is only a Mohammedan lady and she is not in the know of things as such and if really the first defendant had intended to execute a fresh sale agreement in favour of the plaintiff as put forth by the plaintiff, nothing prevented the plaintiff from obtaining the same with the knowledge of the first defendant's husband, particularly when he is present and when there is no urgency for the obtainment of the sale agreement Ex.A1 during the absence of the first defendant's husband and furthermore when the suit sale agreement Ex.A1 had been obtained in the stamp paper standing in the name of the plaintiff's daughter, all put together, considering the material contradictions galore in the plaintiff's case, as above pointed out and when the recitals contained in Ex.A1 sale agreement do not fit to the case projected by the plaintiff in the reply statement and in the course of his evidence and if really Ex.A5 sale agreement had been enforced or intended to continue and acted upon by the plaintiff's daughter and when the plaintiff's daughter could have even enforced the same by appointing the plaintiff as the power agent and on the other hand, the plaintiff's daughter has not endeavored to act further based on the power deed Ex.A7 and enforce the sale agreement Ex.A5 and when the plaintiff is not sure about the authenticity of the recitals contained in Ex.A1 sale agreement as regards the payment of the advance amount and when according to the plaintiff himself, Ex.A5 sale agreement was decided to be terminated and accordingly the same had been torn in the presence of the first defendant at the time of Ex.A1 sale agreement and despite the same, when it is found that he has come forward with the case as if the advance amount paid under Ex.A5 is to be treated as advance amount under Ex.A1 sale agreement and when the plaintiff has suppressed the occupation of the suit property on his part from 2004 onwards and the same had been deliberately omitted to be mentioned in Ex.A1 sale agreement and when there is no proper reason given by the plaintiff for obtaining the sale agreement from the first defendant during the absence of her husband, in all, it is seen that the case projected by the plaintiff based on Ex.A1 sale agreement does not merit acceptance as such and hence the reasons adduced by the trial court for rejecting the same do not merit any interference.

22. Though the plaintiff would claim that he has always been ready and willing to perform his part of the contract however there is nothing forthcoming on the part of the plaintiff pointing to the abovesaid aspect of the plaintiff's case and as abovenoted, having admitted that he has not filed any proof or material evidencing his readiness and willingness to perform his part of the contract, though he is having the custody of the same and when according to the first defendant, the plaintiff is not a man of means and not even paid the rent over a long period for the occupation of the suit property and kept a huge arrears and when there is nothing forthcoming on the part of the plaintiff evidencing his readiness and willingness to perform his part of the contract or his capacity to pay the balance sale consideration within the stipulated period or within a reasonable time whatsoever, all put together, it is found that as rightly contended by the first defendant's counsel, there is complete absence of the materials pertaining to the readiness and willingness of the plaintiff to perform his part of the contract and in enforcing the sale agreement. The abovesaid factor would also dis-entitle the plaintiff to obtain the discretionary and equitable relief of specific performance. When the plaintiff has failed to obtain the consent of his daughter for entering into the suit sale agreement Ex.A1 with the first defendant and when there is no proof on the part of the plaintiff that Ex.A1 sale agreement is a continuation of the earlier sale agreement marked as Ex.A5 and considering the conduct of the plaintiff in the obtainment of the suit sale agreement from the first defendant during the absence of her husband and considering the status of the first defendant, she being the Mohammedan lady and an illiterate person and though the first defendant had admitted her signatures in the suit sale agreement, however the same by itself could not be considered as if she had admitted the contents of the same and subscribed to the same knowing the contents of the same, in such view of the matter, the case projected by the plaintiff cannot be accepted for the grant of equitable and discretionary relief of specific performance. The plaintiff's counsel contended that the first defendant has not chosen to enter into the witness box and only her husband had tendered evidence and therefore according to him when her husband is no way associated with Ex.A1 sale agreement, it is putforth that her husband is not competent to adduce evidence on behalf of the first defendant. Similarly, it is contended by her that the evidence of D.W.2 also does not lend support to the defence version. However, considering the abovesaid reasonings when it is found that the duty is essentially cast upon the plaintiff to sustain his case and when from the conflict of pleas and evidence projected by the plaintiff and his overall conduct and also the suppression of the material information from the Court on the part of the

plaintiff at the first instance and the plaintiff having projected a new case only subsequent to the filing of the written statement by the first defendant by way of reply statement and when the plaintiff has miserably failed to establish and sustain his case in any manner, as regards the validity of the suit sale agreement as well as the readiness and willingness to perform his part of the contract, his failure to obtain the consent of his daughter for proceeding with the suit sale agreement and when the sale agreement Ex.A5 had been put to an end or terminated as admitted by the plaintiff himself and when thereafter the plaintiff is not entitled to seek recourse in any manner to the sale agreement Ex.A5 and when the plaintiff has failed to establish that the alleged notice sent by him had been received by the first defendant and when the plaintiff has not even marked the acknowledgment card received from the first defendant and there is complete absence of readiness and willingness on the part of the plaintiff, in such view of the matter, the mere failure on the part of the first defendant in sustaining her defence version by itself would not enure to the plaintiff to seek the remedies prayed for. The plaintiff has to stand or fall on the strength of his own case. He cannot be allowed to pick holes in the defence version and thereby endeavor to succeed in his case by projecting a fresh foundation of pleadings for a new case on the strength of the same.

23. In this connection, the counsel for the first defendant placed reliance upon the decisions reported in

1. 2003(10) SCC 390 [Manjunath Anandappa Urf Shivappa Hanasi Vs. Tammanasa and others]
2. 2003(1) MLJ 369 [Duraisamy and others Vs. N.Ethirajulu and others]
3. 2007 (3) SCC 163 [Bhandari Construction Co. Vs. Narayan Gopal Upadhye]

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

24. In the light of the abovesaid discussions, I hold that the plaintiff has miserably failed to establish the truth and validity of Ex.A1 sale agreement as well as the binding nature of the same on the first defendant. I further hold that the plaintiff has failed to establish the readiness and willingness in performing his part of the contract and therefore I hold that the plaintiff is not entitled to seek the equitable and discretionary relief of specific performance based on Ex.A1 sale agreement. Accordingly, the point nos.1 to 3 are answered against the plaintiff.

Point Nos.4 and 5:

25. For the reasons aforesated, the judgment and decree dated 23.08.2012 passed in O.S.No.636 of 2010 on the file of the I Additional District Court, Coimbatore are confirmed and resultantly the First Appeal is dismissed with costs. Consequently connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The I Additional District Judge,
Coimbatore.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1 CC to Mr.R. Bharath Kumar, Advocate sr 103949.

A.S.No.12 of 2013
and
M.P.No.1 of 2013

KS (CO)
SP(01/09/2020)

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