

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.03.2019
Pronounced On	26.04.2019

CORAM
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

A.S.Nos.271 to 274 of 2016
and
Rev.Appl.Nos.2 to 5 of 2018
and
C.M.P.Nos.4708 to 4710, 4721 to 4726,
4751, 4752 & 4753 of 2016

1.G.Kandasamy
2.N.Palanisamy
3.D.Kandasamy
S.Selvaraj (Deceased)
4.S.Varadharajan
5.S.Manimegalai
6.S.Santhosh Kumar
7.S.Yuvashri

S.Muthulakshmi (Deceased) ... Appellants in
all Appeal
Suits/Plaintiffs and
Review Petitioners
in all Rev.Application

WEB COPY

Vs.

Jagadeswari

... Respondent in
A.S.No.271 of 2016/Defendant
&Rev.appln 2/18

R.Kaliappan

... Respondent in
A.S.No.272 of 2016/Defendant
&Rev.appln 3/18

Rajammal

... Respondent in
A.S.No.273 of 2016/Defendant
&Rev.appln 4/18

K.Mohankumar

... Respondent in
A.S.No.274 of 2016/Defendant
&Rev.appln 5/18

Common Prayer: Appeal Suits are filed under Order 41 r/w 96 of CPC, to set aside the judgments and decrees passed by the learned II Additional District and Sessions Judge at Tiruppur on 27.11.2015 in O.S.Nos.297, 64, 293 & 295 of 2006.

For Appellants : Mr.G.K.R.Pandian in
all Appeal Suits

For Respondent : Mr.A.K.Kumarasamy
Senior Counsel for
Mr.V.Nicholas in all Appeal Suits

C O M M O N J U D G M E N T

C.SARAVANAN, J.

The present Appeal is directed against separate judgements and decrees all dated 27.11.2015 in O.S.Nos. 64, 293, 295 & 297 of 2006 passed by the II Additional District and Sessions Court, Tiruppur.

2.The appellants have also filed review applications to review the orders dated 28.08.2017 in C.M.P.Nos.10469, 10470, 10471 & 10472 of 2017 in A.S.Nos.271, 272, 273 & 274 of 2016 passed by the Hon'ble Division Bench of this Court.

3.The appellants are the plaintiffs in the above suits. The respective respondents in were the respective defendants in the respective suits.

4.The Trial Court dismissed O.S.Nos. 293, 295 & 297 of 2006. In O.S.No.64 of 2006 alone, the Trial Court has ordered refund of Rs.5 lakhs to the appellants.

5.Aggrieved by the respective judgment and decrees in the respective suit, the these four appeal have been filed by the unsuccessful plaintiffs.

6.We are disposing all the four appeals as the facts are intertwined in all the cases and arise in the same factual background. Respective respondents/defendants are members of the same family.

7.The above suits were filed by the appellants-plaintiffs against the respective respondents/defendants for a specific performance of contract under four different agreements all dated 15.4.2005. Respective agreements were marked as Ex.A1 in the respective suits.

8.The appellants in the respective suits have alleged that sale agreements all dated 15.4.2005 all marked as Ex.A1 in the respective suits were signed between the appellants and the respondents.

9.As per the recitals in the agreement, the respective respondents have acknowledged having received advance from the appellants for selling the suit schedule properties which are lands. In the plaint it was further averred that the respondents had transferred possession of the land to the appellants/plaintiffs.

10.Details of the amounts allegedly paid under the respective sale agreements marked as Ex.A-1 in the respective suits are as follows:-

A.S.Nos	O.S.Nos	Date of Agreement	Name of the vendor (Defendant)	Total consideration	Advance as per the Agreement
271 of 2016	O.S.No. 297 of 2006	15.04.2005	Jegatheeswari (Daughter)	Rs.16,50,000/-	Rs.5,00,000/-
272 of 2016	O.S.No. 64 of 2006	15.04.2005	R.Kaliappa n (Father)	Rs.16,50,000/-	Rs.5,00,000/-
273 of 2016	O.S.No. 293 of 2006	15.04.2005	Rajammal (Mother)	Rs.49,50,000/-	Rs.10,00,000/-
274 of 2016	O.S.No. 295 of 2006	15.04.2005	Mohan Kumar (Son)	Rs.16,50,000/-	Rs.5,00,000/-

11.In the respective complaints, the appellants/plaintiffs have averred that they have spent

an amount of Rs.7 lakh towards improvement of the suit schedule properties for laying plots and roads for sale to the prospective buyers/investors. Before filing the above suits, the appellants had also issued legal notice to the respondents/defendants which were not answered.

12.In the written statements all respondents except the respondent in A.S No.272 of 2016 (the defendant in O.S 64 of 2006) have denied having either signed the above agreement or having received the advance as per the agreement.

13.They have also denied that the Appellants were put in possession of the suit schedule property. Consequently, they have also denied that the appellants/plaintiffs would have spent money for developing the plots. They have therefore refused to execute sale deeds.

14.In Para 7 of the respective Judgments the defence of the respondent has been narrated.

15.It is the case of the appellants that the respective respondents/defendants had entered into respective Exhibit A1 sale agreement dated 15.04.2005 wherein the respective respondents/ defendants have acknowledged having received advance amounts from the appellants/plaintiffs and had transferred possession of the land to the appellants/plaintiffs but had failed to execute sale deeds despite the appellants/plaintiffs expressing their readiness and showing their willingness to pay the balance sale consideration.

16.The respondent in A.S No.272 of 2016 (defendant in O.S.No.64 of 2016) in his written statement stated that the appellants were not only unwilling to pay the balance sale consideration but had also forged and created documents in the name of his wife and two children i.e the respective respondents/defendants in respective appeals/suits in O.S.Nos. 293 of 2006, 295 of 2006, 297 of 2006 and therefore question of executing sale deed did not arise.

17.He further stated that having come to know that the documents were fabricated to make it seem as if the other members in of his family (respective respondent's/defendant's in the respective appeals/corresponding suits) had purportedly signed the

agreements, he wanted to put end to the transactions with the appellants/plaintiffs. In other words, the said respondent/plaintiff has questioned the bonafide of the appellants.

18.The respondent-plaintiff in A.S.No. 272 of 2016, in written statement in O.S.No. 64 of 2006 alone has admitted having received a sum of Rs.4,00,000/- (Rupees four Lakhs only) though as per the agreement dated 15.04.2005 the said respondent/defendant had acknowledged having received a sum of Rs.5 lakhs as advance.

19.The Trial Court has therefore ordered refund of Rs. 5,00,000/- by the said respondent though the appellants had not asked for alternative relief for refund of the amount.

20.The respondent in A.S.No. 273 of 2016 (the defendant in 293 of 2006) who is the wife of the respondent in A.S.No.272 of 2016 has denied having received a sum of Rs. 10,00,000/- (Rupees Ten lakh) as advance or having executed the Ex-A1 sale agreement dated 15.04.2005 and stated that the documents were forged and fabricated based on the details of property made available by her husband (respondent/defendant in A.S.No. 272 of 2016/ O.S.No. 64 of 2006) in a collateral transactions with one Chenniyappan and others, details of which are narrated later.

21.The said respondent has also denied the claim of appellants/plaintiff that they have spent a sum of Rs. 7,00,000/-for developing the suit schedule properties.

22.Similar defence was taken by the respondent/defendant in A.S.No. 274 of 2016 in the written statement in O.S.No. 295 of 2006.

23.In O.S.No.297 of 2006, the defendant (respondent in A.S.No.271 of 2006) stated that her father (respondent in A.S.No. 272 of 2016/ defendant in O.S.No. 64 of 2006) had borrowed a sum of Rs.2,00,000/- from one Chenniyappan and three others in connection with the marriage of her sister, Kamalaveni.

24.In the written statement, the said respondent/defendant has averred that at the time of above loan transaction, all the respondent herein had offered securities to the said Chenniyappan and had signed certain documents as securities.

25.When her father i.e the respondent/defendant in A.S.No. 272 of 2016/ O.S.No. 64 of 2006 attempted to repay the loan, the said Chenniyappan allegedly demanded additionally a sum of Rs.1 lakh over and above the principal amount of Rs.2 lakhs borrowed and the interest paid by them during the interregnum.

26.Since, they encountered problems in retrieving the documents offered as security and a getting a discharge of the above loan from the said Chenniyappan, the third appellant's/plaintiff's father namely M.Duraisamy, a panchayat president mediated and helped them and sorted out the dispute and paid a sum of Rs.1,00,000/- to the said Chenniyappan and three others. According to her the said loan was thus discharged.

27.It is stated that Rajan Palanisamy prepared necessary documents. It was stated that since the appellants/plaintiff also obtained previous documents given as security to said Chenniyappan, the appellants/plaintiff forged and fabricated documents in their name in the respective sale agreement dated 15.4.2005.

28.The respondent/defendant in A.S.No.272 of 2016 / O.S.No.64 of 2006 has reiterated rest of the of the defence of the other respondents/defendants that based on the signatures available in the documents given to the said Chenniyappan, the appellants/plaintiff have forged the signatures and fabricated the sale agreement dated 15.4.2005.

29.In the four suits, the Trial Court framed the following issues:-

- (a)Whether the sale agreement was valid or not?
- (b)Whether the plaintiffs were entitled to relief?
- (c)If so, to what other reliefs?

30.In the respective suits, following documents were marked and following persons deposed evidence as

witnesses on behalf of the appellants/plaintiffs and the respondent's/defendants:-

		O.S.No.64 of 2006	O.S.No.293 of 2006	O.S.No.295 of 2006	O.S.No.29 7 of 2006
Plaintiff Witness	PW1	Kandasamy	Kandasamy	Kandasamy	Kandasamy
	PW2	Rajan Palanisamy	Rajan Palanisamy	Rajan Palanisamy	Rajan Palanisam y
	PW3	Ganesh Kumar	-	-	Rajan Palanisam y
Defendan t Witness	DW1	Kaliappan	Rajammal	Mohan Kumar	Jagadeesw ari
	DW2	-	Kaliappan	Kaliappan	Kaliappan
Exhibits on behalf of Plaintif fs	-	A1 to A5	A1 to A7	A1 to A7	A1 to A7
Exhibits on behalf of Defendan ts	-	-	-	B1 to B3	B1
Court Witness	Advocate Commissioner's Reports (C1) Sketch filed by the Advocate Commissioner (C2)				

31.Rajan Palanisamy is said to have prepared Ex.A1 viz the above four sale agreements dated 15.04.2005 in the respective suits.

32.These agreements were said to have been witnessed by the said Rajan Palanisamy and M.Duraisamy, the father of the third appellants/plaintiffs.

33.Rajan Palanisamy has also deposed that he has seen the plots developed by the appellants on the suit schedule properties. Similarly, Ganesh Kumar has deposed that he has seen the plots developed by the appellants on the suit schedule property.

34.Respective defendants deposed evidence as DW1. The defendant in O.S.No. 64 of 2006 (respondent in A.S.No. 272 of 2016) deposed as DW2 in the other three suits.

35.In the O.S.No.64 of 2006 (subject matter of A.S.No.272 of 2016), the appellants/plaintiffs took out an application for appointment of an advocate commissioner.

36.The Advocate Commissioner has also given a report to the effect that in the suit schedule property, the appellants/plaintiffs had de-marked and had put layout stones with 30 ft. road. The report further states that there were no constructions on the plots. The impugned judgements are however silent on this report of the Advocate Commissioner.

37.In his deposition, respondent/defendant in O.S.No.64 of 2006 as DW1 and as DW2 in the rest of the other suits has stated about a prior transaction with the Chenniyappan and three others wherein he has stated that he had received a sum of Rs.2,00,000/- as advance for selling land.

38.The said respondent has further stated that on 18.10.2004, he had entered into an agreements to sell the suit schedule properties to one Chenniyappan and others and had received a sum of Rs.2,00,000/- as token of advance.

39.In his deposition, he has stated that the said Chenniyappan and three others had refused to pay the balance sale consideration. He therefore wanted to cancel the agreement with the said Chenniyappan. However, latter refused to return the documents and receive back the aforesaid advance amount of Rs.2,00,000/- and instead demanded additionally a sum of Rs.1,00,000/-.

40.Therefore, respondent/defendant took the help of the third appellant's/plaintiff's father M.Duraisamy. It is stated that M.Duraisamy settled the dispute with the said Chenniyappan on 20.04.2005.

41.He has further deposed that the said M.Duraisamy is one of the witness to agreements and the photocopy of the settlement arrived has been retained by the said M.Duraisamy.

42.He reiterated that other three sale agreements were forged by the appellants/plaintiffs with the help of said Rajan Palanisamy.

43.He has further stated that on 25.03.2005, the first appellant paid a sum of Rs.1,00,000/- to the said Chenniyappan for which a document was prepared by the

said Rajan Palanisamy and was duly acknowledged by him. However, these documents are not available.

44.The defendant in O.S.No.64 of 2006 (respondent in A.S.No.272 of 2016) has further stated that a sum of Rs.1,00,000/- was paid on 25.03.2005 and that Rajan Palanisamy who deposed as PW2 had drafted the agreement and has signed as a witness.

45.He has also admitted that on 15.04.2005, he has signed Ex. A1 agreement to sell the suit schedule property to Appellants/ Plaintiffs for a total sale consideration of Rs.16,50,000/-, but denied having received a sum of Rs.5,00,000/- from the appellants/ Plaintiffs. He has however admitted having received only Rs. 4,00,000/- as advance.

46.During cross examination, defendant in O.S.No.64 of 2006 (A.S. 272 of 2016) has agreed that he neither had any document to substantiate the above transaction with Chenniayappan nor had pleaded the above defence either in the written statement or in the proof affidavit.

47.Though the defendants in O.S.No.297 of 2006 (respondent in A.S.No.271 of 2016) and O.S.No.293 of 2006 (respondent in A.S.No.273 of 2016) have taken the same defence in their respective written statement and proof affidavit, however, during cross examination, the former has admitted that she has never seen the land.

48.She also admitted that the knowledge of the alleged panchayat settlement with Chenniayappan and the involvement of the third appellant's / plaintiff's father M.Duraisamy was through her father [respondent / defendant in O.S.No.64 of 2006 (A.S. 272 of 2016)] and that she also had no documents to substantiate the defence.

49.Thus, it is evident that the respondent in A.S.No.271 of 2016 had no role in these transaction except to sign the agreement.

50.The defendants in O.S.No. 293 of 2006 (respondent in A.S.No. 273 of 2016) reiterated the same stand in the written statement as was taken by the defendant in O.S.No.64 of 2006.

51.The defendant in O.S.No. 295 of 2006 (Respondent in A.S.No. 274 of 2016) as reiterated the content of the proof affidavit during chief examination.

52. During cross-examination, the defendant in O.S.No. 295 of 2006 (Respondent in A.S.No. 274 of 2016) admitted that his mother (respondent/defendant in A.S.No.273 of 2016/O.S.No. 293 of 2006) had indeed signed Ex A1 Sale agreement dated 15.4.2005.

53. In his cross examination he has also stated that "My father has entered into sale agreement with the plaintiffs and my mother has also entered into sale agreement of property with the plaintiffs."

54. During the pendency of the suit, the Appellants/Plaintiffs have deposited the balance sale consideration to the credit of the respective suits to prove their bonafide.

55. After the appeals were taken up for hearing, the appellants filed C.M.P.Nos.22770 to 22772 of 2017 in respective appeals in A.S.Nos.271, 273 & 274 of 2016 for sending Exhibit A-1 sale agreements dated 15.04.2005 under Order 41 Rule 28 read with Order 26 Rule 10A and along with admitted signature in B1 for examination and comparison by a handwriting expert.

56. Under these circumstances, by an order dated 13.06.2018, this court had directed the Trial court to send Ex.A1 along with admitted signature in Ex.B1 of the respective respondents/defendants for examination and opinion of a handwriting expert from the Forensic Science Department, Chennai.

57. On receipt of the same, the Forensic Science Department was directed to give an opinion with regard to the signature of the respondent herein found in the said documents and file their report on or before 05.07.2018.

58. The respondents had thereafter filed their objections stating that the handwriting experts had given the report without properly comparing and considering the disputed signature and admitted signature of the respondents and that the report was based on assumption and presumption.

59. Therefore, the respondents prayed that the handwriting experts may be permitted to be examined to

substantiate their defence and therefore prayed that an opportunity may be given to cross examine the hand writing experts who had given report.

60. Accordingly, in exercise of the power under Order 41 Rule 2_ of CPC, the documents namely Ex.A1 in O.S.Nos. 293, 297 and 295 of 2006 with Ex.B1 in O.S.Nos.293, 297 and 295 of 2006 were sent back to the trial Court along with the report of the hand writing experts for recording his evidence. This was done by an order dated 27.08.2018.

61. It is now stands confirmed that the admitted signature in Ex.B1 and the signature in respective sale agreements dated 16.04.2005 marked as Ex.A1 in the respective suits matches with the respective respondents /defendants.

62. Thus, execution of the document by the respective respondents/ defendants stands fully established. It can be safely concluded that respective respondents/ defendants had received the consideration as per the respective sale agreements. The reason why they chose not to execute the sale deed in favour of the appellants' remains has remained unexplained.

63. The only point for consideration is whether the appellants/plaintiffs are entitled for the relief as prayed for in the suit?

64. After examining the evidence and pleading, the Trial court has concluded that in absence of registration of the respective Exhibit A1 "Sale Agreement" under Section 17 (1 A) of the Registration Act, 1908, the appellants/plaintiffs were not entitled for the relief by way of specific performance. It has been concluded that the agreement was intended to create a transfer within the meaning of Section 53A of the Transfer of Property Act, 1882.

65. The Trial Court while disposing the respective suits had concluded that even if the respective Ex A-1 were signed between the original plaintiffs 1-4 (other Appellants/plaintiffs being legal representatives of the plaintiff No.4 who died during pendency of the suit) and the respective respondents/defendants, the court was not bound to order specific performance as according to the appellants there was a part performance of the agreements

pursuant to the respective Exhibit A1- Agreements in absence of registration in terms of Section 49 & Section 17 (1 A) of the Registration Act, 1908.

66.The Court has held that these documents cannot be admitted in terms of Section 17 (1A) of the Registration Act 1908 which reads as under:-

"(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and, if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said Section 53-A."

67.We have heard the learned counsel Mr GKR Pandian for the appellants and the learned Senior Counsel Mr.A.K.Kumarasamy for the respondent.

68.The learned counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in Ameer Minhaj vs Dierdre Elizabeth (Wright) Issac and Others (2018) 7 SCC 639 and the decision of the Hon'ble Supreme Court in Zarina Siddiqui vs A.Ramalingam alias R.Amarnathan (2015) 1 SCC 705.

69.In the last mentioned case it was held that "The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance." The learned counsel therefore submits that this is a fit case and the court can exercise its discretion in their favour.

70. In this case all the respective Exhibit A1 sale agreements are unregistered and are therefore admissible in evidence only for a limited purpose in view of the claim that the respondent that the possession has been transferred.

71. In *S. Kaladevi vs V.R. Somasundaram and Others* (2010) 5 SCC 401, the Hon'ble Supreme Court has re-stated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the Registration Act, 1908.

72. In *Ameer Minhaj vs Dierdre Elizabetht (Wright) Issar* (2018) 7 SCC 639, the Hon'ble Supreme Court has adverted to the principles delineated in *K.B Saha and Sons Private Limited vs Development Consultant Limited* (2008) 8 SCC 864 where in it has added one more principle thereto that a document that is required to be registered, but if it is unregistered, it can still be admitted as evidence of a contract in a suit for specific performance. There it held that the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act"

73. The Principal document there namely agreement to sell dated 12-11-1995 was not registered and was executed prior to coming into force of Section 17(1A) of the 1908 Act. The provision was made applicable prospectively. Hence, same was not required to be compulsorily registered at the time of its execution.

74. The Court held that "Even if it was required to be registered, keeping in view purport of Section 49 r/w Section 17(1A) of the 1908 Act, same could be received as evidence for a limited purpose, without having any effect for the purposes of Section 53A of 1882 Act." This observation is apposite to the facts of the present case. Thus, the respective Exhibit A1 in the respective suits though not registered admissible for limited person.

75.The Hon'ble Supreme Court in *Avanish Kumar Chauhan vs Vijay Krishna Mishra* 2009 (2) SCC 532 also held that under Section 49 of the Registration Act, 1908 there is no prohibition to receive an unregistered document in evidence for collateral purpose, provided that the document so tendered in evidence should be duly stamped or comply with requirements of Section 35 of Stamp Act. It was held that if the document is not stamped, it can be received only if duty and penalty are paid in accordance with Section 35 of Stamp Act. In this case the Ex.A1 is inadequately stamped.

76.The observation of the Trial Court that in the present cases even though in the depositions 1st appellant has stated that the Appellants have paid tax they were not substantiated with any documents is of no significance.

77.The observation of the Trial Court that the respective Ex.A1 Agreements dated 15/04/2005 have not been used for collateral purpose under proviso to section 49 of the Registration Act, 1908 by the Appellants is correct.

78.The Trial Court has partly granted relief in O.S.No. 64 of 2006 together with interest at 6% in view of the recitals in the Ex-A1 Agreement by order is refunded Rs.5,00,000/- since the defendant i.e respondent in A.S. No 272 of 2016 i.e Kaliappan has admitted having received Rs.4,00,000/- (Rupees Four lakhs).

79.As far as other appeals are a concerned, no such relief by way of refund of the advance has been made in view of specific denial by respective respondents/defendants.

80.Since the execution of the respective sale agreements stated 15.4.2005 in Ex.A1 in the respective suits now stand established pursuant to a report of the handwriting expert pursuant to an order of this court under Order 41 Rule 28 read with Order 26 Rule 10A of CPC, the respective respondents in the rest of the appeal can no longer take a stand that the agreements were not signed by any of them or that they were fabricated.

81.In fact the respondent in A.S.No 274 of 2016 (defendant in O.S.No 295 of 2006) i.e. Mohan Kumar during

cross examination has also admitted that his mother i.e.Rajammal, the respondent in A.S.No. 273 of 2016 (Defendant in O.S.No 293 of 2006) had indeed executed the sale agreement shows that execution of agreement and payment of consideration as recorded no longer be questioned.

82.The fact that there was a prior agreement for selling the respective portions of the suit schedule properties to the said Chenniyappan before the appellants entered stands established even though no documents have been filed to substantiate the same based on the admissions in the written statement, proof affidavit of the respondent in A.S.No 271 of 2016 (O.S.No.297 of 2006) and the deposition of the respective respondent's in the respective suits.

83.A collective reading of written statements and depositions of the respondents in the respective suit reveals the pattern and the truth stands established that there was indeed proposal to sell the properties earlier to Chenniyappan and others.

84.Since the respondent encountered difficulties and therefore the help of the appellants were sought. Under these circumstances, respective Ex.A1 were prepared with the signature of the respondents.

85.The signatures in the respective Ex.A1 stands established that they are the signature of the respective respondents after they were sent for examination with the admitted signature in Ex B1.

86.It also stands established that that the appellants are real estate brokers and had reached out to the respondents to help them from the clutches of the said Chenniyappan. However, in the process, the appellants exerted pressure on the respondents to sell the properties to them.

87.On a over all consideration of the facts and circumstances of the case, we are of the view that denial of the relief by way of specific performance of contract cannot be interfered as neither the appellants nor the respective respondents have been truthful.

88.The fact that the respondents have all along maintained that they had not executed the Ex A-1 agreement shows they have not been truthful.

89.We are of the view that the other respondents/defendants have also received the consideration as per the recital in the respective Ex A-1. In all, all the respondents together have received a sum of Rs.25 lakhs as advance from the appellant as tabulated in para-10 of this order.

90.In our view, the Trial court was correct in not ordering specific performance even though the appellants have shown readiness and willingness to perform their obligation under the respective agreement dated 15.4.2005 vide Ex.A1 by depositing the balance sale consideration to the credit of the respective suits.

91.We are of the view that proviso to Section 49 of the Registration Act, 1908 comes to the rescue of the appellants/plaintiff in a limited way to order refund of the amounts paid by them and for awarding a reasonable compensation to them for the amounts invested by them with the respondents/defendants.

92.Therefore, question to be answered is to what compensation the appellants/plaintiffs are entitled to other than the relief by way of specific performance.

93.There, has been a efflux of almost 14 years. The value of the land would have increased manifold. Had the respondents executed the sale deed pursuant to respective Ex. A1 agreements, the appellants would have made profits from sale of plots.

94.However, their investment has not yielded the desired to the result due to non cooperation of the respondents which incidentally came to their rescue in the form of Section 17-(1A) of the Registration Act, 1908 and in the form of Section 53 A of Transfer of Property Act, 1882 and in view of the stand of the appellants that they had been put to possession.

95.Therefore, in our considered view the appellants/plaintiffs are not only entitled for a reasonable

compensation apart from refund of the advance amounts paid the respective respondents/defendants.

96. Therefore, to balance the scales of justice and to mitigate the loss suffered by the appellants/plaintiffs, we are inclined to direct the respondents/defendants to jointly and severally refund the amount of Rs.25 lakhs paid as advance as per the recitals in the respective Exhibits A1 in the respective suit together with another sum of Rs.26,25,000/- as compensation to the appellants/plaintiffs calculated at 7.5% per annum.

97. In fine, it is ordered as follows:-

- i. The respondents/defendants shall deposit the following amounts to the credit of the respective suits as follows within a period of eight weeks from the date of receipt of a copy of this order.

A.S. Nos	O.S.Nos	Date of Agreement	Name of the vendor (Defendant)	Compensation awarded by this Court	Interest at 7.5% p.a (14 years)
271 of 2016	O.S.No.2 of 2006	15.04.2005	Jegatheeswari (Daughter)	Rs.5,00,000/-	Rs.5,25,000/-
272 of 2016	O.S.No.6 of 2006	15.04.2005	R.Kaliappan (Father)	Rs.5,00,000/-	Rs.5,25,000/-
273 of 2016	O.S.No.2 of 2006	15.04.2005	Rajammal (Mother)	Rs.10,00,000/-	Rs.10,50,000/-
274 of 2016	O.S.No.2 of 2006	15.04.2005	Mohan Kumar (Son)	Rs.5,00,000/-	Rs.5,25,000/-
				Rs.25,00,000/-	Rs.26,25,000/-
Total (Rs. 25,00,000 + Rs.26,25,000) = Rs.51,25,000/-					

ii. In the event of failure of the respondents/defendants deposit the amount within such period, the appellants/plaintiffs are at liberty to initiate the appropriate proceedings to execute this Order. The respective respondents/defendants shall also pay at 7.5% on the aforesaid amounts in the event of delay.

iii. On such deposit, the appellants/plaintiffs are entitled to withdraw the same.

iv. The appellants/plaintiffs are also entitled to withdraw the amount already deposited by them together with interest accrued thereon.

v. In view of the above, all Appeal Suits are partly allowed as above. Consequently, all Review Applications are closed and all connected Civil Miscellaneous Petitions are also closed. No cost.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.II Additional District and Sessions Court,
Tiruppur.

Copy to
The Section Officer,
VR Section,
High Court, Madras

+4ccs to Mr.V.Nicholas , Advocate SR.No. 40286
+4ccs to Mr. G.K.R.Pandian, Advocate SR.No. 40276

A.S.Nos.271 to 274 of 2016
and
Rev.Appl.Nos.2 to 5 of 2018
and
C.M.P.Nos.4708 to 4710,
4721 to 4726,
4751, 4752 & 4763 of 2016

A.SK (23/07/2019)