

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.07.2019

PRONOUNCED ON: 06.09.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.396 of 2008

and

M.P.Nos.2 and 3 of 2008

1. K.P.Govindasamy Gounder (Deceased)

2. G.Ramachandran

3. G.Thangaraj

4. G.Selvaraj : Appellant 1 to 4/Defendants 1 to 4

5. Kaliammal : 5th Appellant

[Appellants 2 to 4 recorded as
LRs of the deceased first appellant
and fifth appellant brought on record
as LR of the deceased first appellant vide
order of Court dated 06.01.2012 made
in M.P.No.1 of 2010 in A.S.No.396 of 2008]

Vs.

N.Muthusamy : Respondent/Plaintiff

Prayer: First Appeal filed under Section 96 of C.P.C.,
against the judgment and Decree dated 22.10.2007 passed in
O.S.No.13 of 2005 on the file of the Fast Track Court No.V
(Additional District & Sessions Judge), Coimbatore at Tiruppur.

For Appellants : Mr.K. Govi Ganesan

For Respondent : Mr.V.Raghavachari
for M/s. Avinash Wadhwani

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J U D G M E N T

Aggrieved over the judgment and decree dated
22.10.2007 passed in O.S.No.13 of 2005 on the file of the
Additional District & Sessions Judge / Fast Track Court No.V,
Coimbatore at Tiruppur, the defendants have 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 or in the alternative for a direction to the defendants to pay a sum of Rs.13,30,899.93/- out of which a sum of Rs.3,00,000/- for improvement of land with further interest on the advance amount of Rs.7,83,000/- from the date of the suit till realization and to create charge over the plaint schedule properties and for the relief of permanent injunction.

4. Briefly stated, according to the case of the plaintiff by way of an agreement of sale dated 06.09.1999, the defendants had agreed to sell the suit properties to the plaintiff for Rs.13,11,300/- at the rate of Rs.3,10,000/- per acre and the plaintiff paid the advance amount of Rs.5,00,000/- on the date of the sale agreement to the defendants and as per the terms of the agreement abovestated, the plaintiff has to pay the sum of Rs.2,00,000/- before the end of Ippasi month and the balance sum of Rs.6,11,300/- should be paid before the end of the first week of Thai month and accordingly the plaintiff had paid Rs.2,00,000/- before the end of Ippasi month and the endorsement has been made by the third defendant in the abovesaid agreement and further when the plaintiff had approached the defendants to pay the balance sum in the month of Thai 2000, the defendants informed that the title deeds of the plaint schedule properties were deposited with M/s.Tamilnadu Industrial Investments Corporation, Tirupur by way of equitable mortgage and accordingly required funds to discharge the said mortgage and the plaintiff accused the defendants for not disclosing the abovesaid encumbrance. However, the defendants delivered the possession of the plaint schedule properties to show their bonafides qua the execution of the sale agreement as abovestated and accordingly the plaintiff paid a sum of Rs.58,000/- to the defendants vide a cheque dated 24.01.2000 to discharge the mortgage debt of M/s.Tamilnadu Industrial Investments Corporation, Tirupur and the plaintiff planted coconut saplings in the plaint schedule properties which had grown up in or about 300 trees and the plaintiff had laid underground pipes to irrigate the coconut trees with water from the well in his adjacent land by way of drip irrigation facilities and further according to the plaintiff in April 2000, the defendants received Rs.25,000/- by way of a cheque dated 03.04.2000 in the name of M/s.Tamilnadu Industrial Investments Corporation, Tirupur for discharging the loan and in all, the plaintiff has paid a total sum of Rs.7,83,000/- towards the sale price and always been ready and willing to perform his part of the contract. But the defendants had failed to perform their part despite the issuance of notice by the plaintiff calling upon the defendants to receive the balance sale consideration

and execute the sale deed in March 2002 and the defendants neither responded to the notice nor complied with the demand made thereunder and hence according to the plaintiff, they need for the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit and briefly stated according to the defendants an extent of 0.06 Acre and the share in the common well in the plaint schedule properties had been sold by the first defendant in favour of one Muthusamy on 27.03.1992 and another portion in Survey No.408 had been settled by the first defendant in favour of his wife Kaliammal by way of a settlement deed dated 20.09.2006 and therefore pleaded that the plaint schedule properties in entirety do not belong to the defendants and the description of the plaint schedule properties is wrong and disputed that they had executed the sale agreement in favour of the plaintiff qua the plaint schedule properties on 06.09.1999 as putforth by the plaintiff and according to the defendants, the abovesaid sale agreement projected by the plaintiff is a fabricated record and the defendants have not received Rs.5,00,000/- or any amount from the plaintiff and also would state that the amount of Rs.58,000/- and Rs.25,000/- paid by the plaintiff had been repaid by them and further contended that the plaint schedule properties had not been entrusted to the plaintiff and also disputed the case of the plaintiff that he had raised coconut trees in the plaint schedule properties by using the well water in his adjacent land and on the other hand would state that the plaintiff had promised to supply water from his well to irrigate the coconut saplings planted by the defendants in the plaint schedule properties and on that basis the defendants had raised the coconut trees and in the guise of supplying water, according to the defendants, the plaintiff had left out the effluent water from his dyeing factory into the plaint schedule properties and therefore according to the defendants, the notice has been sent to the Tamil Nadu Pollution Control Board, Chennai and other authorities complaining of the abovesaid illegal acts of the plaintiff and subsequent to the inspection made by the authorities concerned, the service connection to the plaintiff's dyeing factory was disconnected and the defendants has not received any legal notice from the plaintiff in respect of the sale agreement dated 06.09.1999 and the defendants came to know about the sale agreement projected by the plaintiff only through the letter received from M/s.Tamilnadu Industrial Investments Corporation, Tirupur on 22.11.2002 and immediately sent a reply to the plaintiff's advocate and further according to the defendants, they had executed an agreement of sale to one K.P.Chenniappan and one Palani Kuppasamy with reference to an extent of acre 3.36 in S.F.No.407/2 on 07.04.1988 and according to them only to defeat the abovesaid sale transaction, the plaintiff had fabricated the suit sale agreement and filed the

vexatious suit with a view to grab the plaint schedule properties and further according to the defendants, the plaintiff is not entitled to seek any relief based on the sale agreement dated 06.09.1999 and the alternative relief prayed for by the plaintiff is barred by limitation and hence prayed for the dismissal of the plaintiff's suit.

6. On the basis of the above pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

i. Whether the plaintiff is entitled to a decree for specific performance as prayed for?

ii. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for?

iii. Whether the sale agreement dated 06.09.1999 is true and valid?

iv. Whether the suit is barred by limitation?

v. To what relief ?

Additional Issue:

Whether the plaintiff prayed for the alternative relief of the refund of Rs.7,83,000/- the advance amount and Rs.3,00,000/- the cost of the improvement effected in the suit property with interest is barred by the period of limitation?

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A23 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.B1 to B22 were marked. Further, Exs.X1 to X4 and Ex.C1 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff granting him the relief of specific performance in respect of the sale agreement dated 06.09.1999, eschewing the common portion of acre 0.06 with common well therein and also granted the relief of permanent injunction in favour of the plaintiff as prayed for and further directed the plaintiff to deposit the balance sale price of Rs.5,28,300/- within 15 days from the date of the judgment failing which he would not be entitled to the relief of specific performance of the sale agreement and that he shall be entitled only to the alternative relief of the refund of Rs.7,83,000/- towards the payment made by him under the sale agreement and also held that the plaintiff is entitled to obtain Rs.60,000/- towards the costs of improvement made in the plaint schedule properties with interest

at the rate of 9% per annum from the date of agreement of sale i.e., 06.09.1999 and from 24.01.2000 till the date of delivery of possession of the suit properties respectively and at 6% per annum from 22.10.2007 till the date of realization and accordingly disposed of the plaintiff's suit with costs. Impugning the same, the present First Appeal has been preferred by the defendants.

9. The following points arise for determination in this First Appeal.

i. Whether the sale agreement dated 06.09.1999 is true, valid and binding on the defendants?

ii. Whether the plaintiff has been always ready and willing to perform his part of the sale agreement dated 06.09.1999?

iii. Whether the plaintiff is entitled to the relief of permanent injunction against the defendants as prayed for?

iv. Whether the plaintiff is entitled to claim the alternative relief from the defendants as prayed for?

vi. To what relief the plaintiff is entitled to?

vii. To what relief the defendants / appellants are entitled to?

Point Nos.1 to 5:

10. The suit has come to be laid by the plaintiff against the defendants for the relief of specific performance in respect of the sale agreement dated 06.09.1999. According to the plaintiff, the defendants had agreed to sell the suit properties in favour of the plaintiff for a sum of Rs.13,11,300/- at the rate of Rs.3,10,000/- per acre and accordingly entered into a sale agreement with him on 06.09.1999 and according to the plaintiff, he had paid the sum of Rs.5,00,000/- on the date of the sale agreement and had also paid a further sum of Rs.2,00,000/- before the end of Ippasi month as per the terms of the abovesaid sale agreement to the defendants and further according to the plaintiff, when he had approached the defendants to pay the balance sale consideration in the month of Thai 2000, it is putforth that the defendants had informed that the suit properties had been mortgaged with M/s.Tamil nadu Industrial Investments Corporation, Tirupur and that they required funds to discharge the same and when the plaintiff questioned the defendants as to why they had suppressed the abovesaid encumbrance at the time of the execution of the sale agreement and according to the plaintiff, the defendants had parted with the possession of the suit properties with the plaintiff to show their bonafides and thereby it is stated that the plaintiff had paid the sum of Rs.58,000/- to the defendants and also a further sum of

Rs.25,000/- vide cheques and further it is putforth that the plaintiff had raised coconut saplings in the suit properties and cultivating the same with the water from the well lying in his adjacent land and according to the plaintiff, he has been always ready and willing to perform his part of the contract and also issued the legal notice to the defendants calling upon them to receive the balance sale consideration and execute the sale deed on 28.03.2002 and despite the receipt of the same, the defendants neither responded to the said notice nor complied with the demand made by the plaintiff under the same and hence according to the plaintiff, he had been necessitated to lay the suit against the defendants for appropriate reliefs.

11. The defendants resisted the plaintiff's case contending that the sale agreement dated 06.09.1999 projected by the plaintiff is a fabricated record and they had not executed the abovesaid sale agreement in favour of the plaintiff as putforth in the plaint and not received Rs.5,00,000/- based on the same as advance and also they would claim that they had received Rs.58,000/- and Rs.25,000/- from the plaintiff by way of cheques, however according to them, they had repaid the said amount to the plaintiff and disputed the case of the plaintiff that he had been entrusted with the possession of the suit properties and also disputed the case of the plaintiff that he had raised the coconut saplings and on the other hand, according to the defendants, it is only they who had been raising the coconut trees in the plaint schedule properties on the assurance made by the plaintiff that he would supply water from his well and on the other hand as the plaintiff had discharged the effluents of his Dyeing factory into the suit property, hence according to the defendants, they had lodged the complaint against the plaintiff with the M/s.Tamilnadu Pollution Control Board and subsequently when they came to know about the sale agreement projected by the plaintiff from the notice issued by M/s.Tamilnadu Industrial Investments Corporation, Tirupur on 22.11.2002, according to them, they had issued a suitable reply to the plaintiff and hence according to the defendants, the plaintiff is not entitled to seek any of the reliefs prayed for by him in the suit. Further the defendants would also plead that the first defendant had already alienated an extent of 0.06 acre and share in the common well in the plaint schedule properties to one Muthusamy on 27.03.1992 itself and the first defendant had settled another portion in S.F.No.408 in favour of his wife Kaliyammal vide settlement deed dated 20.09.2006 and therefore according to the defendants they are not the owners of the entire suit properties and the suit sale agreement had been created by the plaintiff and prayed for the dismissal of the plaintiff's suit.

12. As regards the truth and validity of the sale agreement dated 06.09.1999 marked as Ex.A1, the plaintiff has tendered evidence as P.W.1 and also examined the attester of the sale agreement Rajendran as P.W.2. Both P.Ws.1 and 2 have clearly deposed that the defendants had agreed to sell the suit properties in favour of the plaintiff for the sum of Rs.13,11,300/- and that the plaintiff had paid a sum of Rs.5,00,000/- as advance on the date of the sale agreement and also would depose that the plaintiff had paid Rs.2,00,000/- before the end of the Ippasai month and the endorsement had been made by the third defendant in the sale agreement with reference to the same, which endorsement has been marked as Ex.A2 and therefore when the evidence of P.Ws.1 and 2 qua the abovesaid sale agreement, the receipt of Rs.7,00,000/- in toto by the defendants from the plaintiff pursuant to the sale agreement are found to be totally inspiring, trustworthy and convincing and despite cross examination, nothing has been culled out from them to discredit their evidence in any manner and furthermore when the plaintiff is found to have issued the legal notice dated 28.03.2002 calling upon the defendants to perform their part of the contract qua the sale agreement dated 06.09.1999 and when the materials placed on record, i.e., the postal acknowledgment cards received from the defendants marked as Exs.A9 to A12 go to show that they had received the abovesaid notice and the defendants having not responded to the same at the earliest point of time repudiating the sale agreement Ex.A1 or the receipt of Rs.7,00,000/- pursuant to the same from the plaintiff, in all, it is found that the trial court is found to be justified in accepting the abovesaid case of the plaintiff by relying upon the evidence of P.Ws.1 and 2 in toto as well as the other abovesaid materials placed on record.

13. According to the plaintiff, when he had endeavored to pay the balance sum to the defendants in the month of Thai, the defendants apprised him of the mortgage created with Tamilnadu Industrial Investments Corporation, Tirupur, qua the suit properties and as the defendants had entrusted the possession of the suit properties to the plaintiff, it is put forth by the plaintiff that he had paid Rs.58,000/- and subsequently Rs.25,000/- by way of cheques and the same having been established by the plaintiff through the evidence of P.W.3 as well as the documents marked as Exs.X1 and X2 and when the receipt of the abovesaid amounts had not been repudiated by the defendants and when according to the plaintiff, the abovesaid amounts had been paid only pursuant to the sale agreement Ex.A1 and on the other hand the defendants would claim that they had repaid the sum of Rs.58,000/- and Rs.25,000/- to the plaintiff, however to sustain the abovesaid case of the defendants, there being no proof whatsoever on their part and if really they had repaid the sums, they would have obtained necessary

acknowledgment from the plaintiff pointing to the same, in all, it is found that the abovesaid factors also would go to show the truth and genuineness of the sale agreement Ex.A1.

14. The plaintiff would putforth the case that the suit properties had been entrusted with his possession by the defendants and only on that basis, he had paid the sum of Rs.58,000/- and Rs.25,000/- to the defendants for discharging the mortgage debt of M/s.Tamilnadu Industrial Investments Corporation , Tirupur. When the materials placed on record go to show particularly the Commissioner's report as well as the cost receipts and bills putforth by the plaintiff marked as Exs.A4 to A6, point to the expenses incurred by him towards the drip irrigation of the coconut saplings, in all, it is found that as determined by the trial court, the suit properties had been entrusted with the possession of the plaintiff by the defendants pursuant to the sale agreement. Accordingly it is found that the defendants are unable to place reliable any material to evidence that they had been in the possession and enjoyment of the suit properties thereafter.

15. The abovesaid materials placed on record, in toto, would go to point out clearly that inasmuch as the sale agreement Ex.A1 had been really executed by the defendants in favour of the plaintiff agreeing to sell the suit properties for the sum recited therein, in such view of the matter, it is evident that the defendants are unable to repudiate the case of the plaintiff that he has paid the sum of Rs.7,83,000/- towards the sale price and also unable to repudiate the case of the plaintiff that he had been entrusted with the possession of the suit properties by the defendants pursuant to the sale agreement and when with reference to the abovesaid factors, the plaintiff has established his case through his evidence as well as the evidence of P.Ws.2 and 3 and also buttressed the same with the materials as above pointed out, in all, it is found that the plaintiff has established that the sale agreement dated 06.09.1999 marked as Ex.A1 is a true and valid agreement of sale and the same is binding upon the defendants.

16. The defendants would putforth the case that there is a sale agreement in respect of the suit properties in favour of one K.P.Chenniappan and Palani Kuppusami on 07.04.1988 itself and only with a view to defeat to the abovesaid sale transaction, according to them, the sale agreement Ex.A1 had been fabricated by the plaintiff. However, considering the materials placed on record, when it is found that the defendants have not projected the sale agreement said to have been entered into with one K.P.Chenniappan and Palani Kuppusamy and when it is further seen that Palani Kuppusamy is the father in law of D.W.1, the second defendant and Chenniappan is the maternal

uncle of D.W.1 and when D.W.1 has also admitted that the abovesaid persons had not levied any suit pursuant to the so called agreement and when he has further admitted that he has not disclosed the abovesaid sale agreement in the reply notice sent on 17.12.2002 marked as Ex.B14 and furthermore when the sale agreement said to have been executed infavour of the abovesaid persons has not seen the light of the day and the defendants having also not chosen to examine the abovesaid persons in support of their case and when with reference to the said version, the defendants would rely upon only the legal notice dated 25.06.2003 marked as Ex.B21 and in such view of the matter, as rightly determined by the trial court, Ex.B21 notice cannot at all be relied upon and the same is found to be concocted by the defendants to defeat the plaintiff's case one way or the other. In such view of the matter, the abovesaid defence version projected by the defendants for defeating the plaintiff's suit has been rightly turned down by the trial court.

17. The defendants would putforth the case that the first defendant had alienated an extent of 0.06 acre and common share in the well to one Muthusamy on 27.03.1992 itself and also settled a portion in S.F.No.408 in favour of his wife Kaliasammal vide the settlement deed dated 20.09.2006 and in this connection relied upon the documents marked as Exs.B1 and B2. As rightly determined by the trial court, as regards the claim of the defendants that the first defendant had settled the portion in S.F.No.408 in favour of his wife, when the abovesaid case is not admitted by the plaintiff, despite the same, the defendants have not chosen to examine either the first defendant or his wife in support of their version and further the defendants have also not placed any material worth acceptance evidencing that Kaliasammal is enjoying the portion said to have been settled in her favour by her husband namely the first defendant. Therefore, the trial court is found to be justified in not relying upon the abovesaid settlement projected by the defendants alleged to have been made by the first defendant in favour of his wife vide Ex.B2 deed. Considering the transaction covered under Ex.B1 sale deed, considering the small extent of the properties involved thereunder, in such view of the matter, the trial court has chosen to eschew the abovesaid alienated portion from the proposed sale transaction granted in favour of the plaintiff pursuant to the sale agreement Ex.A1. The abovesaid determination of the trial court is found to be correct and proper, considering the materials available on record.

18. The defendants would repudiate the issuance of the legal notice on the part of the plaintiff marked as Ex.A8. However, as above pointed out, the plaintiff has marked the acknowledgment cards as Exs.A9 to A12 for establishing that the defendants had acknowledged the receipt of the abovesaid notice.

However the defendants would also challenge that their signatures are not available in the abovesaid acknowledgment cards. Considering the address for service given in the legal notice Ex.A8 and when the same is not repudiated by the defendants, in such view of the matter and furthermore when the defendants have not placed any material to show that the abovesaid legal notice has not been served on them and in that connection has not chosen to examine the postal authority for repudiating their signatures in the acknowledgment cards, the legal presumption could be raised that the notice sent by the plaintiff by way of Ex.A8 would have been in the normal course of events been received by the defendants and the same could also be gathered from the acknowledgment cards Exs.A9 to Ex.A12. In such view of the matter, the trial court is found to be justified in drawing adverse inference against the defendants for not responding to the legal notice Ex.A8.

19.As abovenoted, the suit properties are found to be only in the possession of the plaintiff and when the defendants have failed to place any material sustaining their claim of possession and enjoyment of the suit properties and on the other hand, the materials available on record as above pointed out, in all, go to disclose that it is only the plaintiff who had been raising the coconut trees in the suit properties with the aid of water from the well located in his adjacent land, the trial court is found to be right in holding that the possession of the suit properties is only with the plaintiff pursuant to the sale agreement Ex.A1 and accordingly also right in holding that the plaintiff is entitled to seek the relief of permanent injunction as prayed for and also right in determining that the plaintiff has made improvements in the suit properties for a sum of Rs.60,000/- by placing reliance upon Exs.A4 to A6 and in my considered opinion, there is no reason warranting any interference with the abovesaid determination of the trial court.

20. The issue had also been raised by the defendants that the suit properties are worth more than Rs.60,00,000/- on the date of the sale agreement and at present worth more than Rs.6,00,00,000/- and thereby contended that the sale agreement is not a true document. However, considering the copy of the sale deed dated 11.02.2004 executed by the first defendant in faovur of Rangasamy and another and the sale price fixed therein and furthermore when there is no material on the part of the defendants to hold that the suit properties are worth about Rs.60,00,000/- on the date of Ex.A1 sale agreement and worth Rs.6,00,00,000/- at present, in such view of the matter, the trial court is found to be right in rejecting the abovesaid version of the defendants for defeating the plaintiff's case.

21. The defendants have also raised the plea of limitation qua the alternative relief prayed for by the plaintiff. However, the trial court considering the proviso to section 22 (2) of the Specific Relief Act, 1963 and accordingly noting that the plaintiff is entitled to seek the relief at any stage of the proceeding and accordingly the plaintiff having been permitted to amend the plaint for seeking the alternative relief, accordingly found right in holding that the abovesaid claim made by the plaintiff is not barred by limitation and also right in determining that the plaintiff is entitled to the refund the sum of Rs.7,83,000/- with interest as determined by it.

22. The main contention putforth by the defendants' counsel is that the plaintiff has failed to establish his readiness and willingness to perform his part of the sale agreement Ex.A1 and according to him, the readiness and willingness of the plaintiff to perform his part of the contract being the condition precedent to the passing of a decree for specific performance in his favour and the plaintiff having failed to establish the same, according to him, the trial court had erred in granting the relief of specific performance in favour of the plaintiff and in this connection, placed reliance upon the decision reported in 1999 (8) SCC 396 [Balraj Taneja and another Vs. Sunil Madan and another] . Further he would also putforth that the trial court has not framed any specific issue as regards the readiness and willingness on the part of the plaintiff qua the sale agreement Ex.A1.

23. The plaintiff has averred that he has been always ready and willing to perform his part of the contract and in fact as above noted, he had paid a total sum of Rs.7,00,000/- as per the terms of the agreement and also parted with the sum of Rs.83,000/- subsequently and had also issued the legal notice Ex.A8, the same having not been responded by the defendants as above pointed out and when the plaintiff's solvency is not put in dispute and when from the case projected by the plaintiff in toto, it is found that the plaintiff has been always ready and willing to perform his part of the contract and to show his readiness and willingness, as rightly contended by the plaintiff's counsel, the plaintiff is not required to jingle the coins unless called upon by the Court and when the available materials on record go to show the readiness and willingness on the part of the plaintiff in toto, it is found that as determined by the trial court, the plaintiff has been always ready and willing to perform his part of the contract. Though the specific issue has not been framed by the trial court, considering the main issue framed by the trial court as to whether the plaintiff is entitled to obtain the relief of

specific performance as prayed for and when that issue encompasses within itself the concept of readiness and willingness on the part of the plaintiff for entitling him to seek the relief of specific performance, in such view of the matter, considering the evidence of P.Ws.1 and 2 as well as the other materials on record, in all, it is found that the plaintiff has established his readiness and willingness to perform his part of the contract and on the other hand, it is only the defendants who had been avoiding the same on some pretext or the other. The defendants had been raising various pleas for stifling the plaintiff's case without any foundation or basis and the abovesaid conduct of the defendants would only go to show that they are hell-bent upon to defeat the plaintiff's case one way or the other and accordingly been projecting false pleas one after another and however, as above discussed and pointed out, the defendants having failed to establish the abovesaid pleas and when the abovesaid pleas are found to be totally untenable and unacceptable, in all, it is found that the defendants who had been refusing to perform their part of the contract and would also go to the extent of disputing the factum of the execution of the sale agreement Ex.A1 without any foundation and in such view of the matter, it has to be held that the plaintiff has been always ready and willing to perform his part of the contract of sale agreement Ex.A1 and accordingly entitled to obtain the relief of specific performance as prayed for qua the sale agreement Ex.A1.

24. Considering the sale agreement involved in the matter and the creation of mortgage of the suit properties by the defendants with the Tamilnadu Industrial Investments Corporation, Tirupur and the endeavor of the plaintiff to discharge the said debt by paying Rs.78,000/- and the issuance of the legal notice thereafter and the entrustment of the possession of the suit properties to the plaintiff by the defendants and the levy of the suit immediately after the issuance of the legal notice, in all, it is found that the plaintiff has established his readiness and willingness, in such view of the matter, the trial court is found to be justified in extending the relief of specific performance in favour of the plaintiff as prayed for based on the sale agreement Ex.A1.

25. The plaintiff's counsel in support of his contentions placed reliance upon the decisions reported in

i. 2014 (3) MWN (Civil) 11 [Karuna @ Natarajan and others Vs. S.Dhanakotti and others]

ii. 2008 (11) SCC 45 [Silvey and others Vs. Arun Varghese and another]

iii. 2011 (1) MWN (Civil) 819 [A.N.Arunachalam Vs. T.Sivaprakasam and another]

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

26. In the light of the abovesaid discussions, the trial court is found to have analysed and assessed the materials placed on record, both oral and documentary, in the right perspective and properly considered the principles of law pertaining to the issues involved between the parties qua the subject matter, in all, had rightly granted the reliefs in favour of the plaintiff as determined by it and the reasonings and conclusions of the trial court for upholding the plaintiff's case do not warrant any interference. In all, the point Nos.1 to 5 are accordingly answered in favour of the plaintiff and against the defendants.

Point Nos.6 and 7:

27. For the reasons aforesaid, the judgment and decree dated 22.10.2007 passed in O.S.No.13 of 2005 on the file of the Additional District & Sessions Judge / Fast Track Court No.V, Coimbatore at Tiruppur are confirmed and resultantly the First Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mfa

To

The Additional District & Sessions Judge,
Fast Track Court No.V, Coimbatore at Tiruppur.

+1cc to Mr.V.Raggavachari, Advocate, SR.No.77867.

+1cc to Mr.K.Govi Ganesan, Advocate, SR.No.77443.

Judgment made in
A.S.No.396 of 2008
and
M.P.Nos.2 and 3 of 2008

VD(CO)
CSR:04/02/2020