

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.No.64 of 2012

M.Bama ... Appellant/Plaintiff

Vs.

1.R.Nirupama

2.S.K.Raja

3.K.Jayakumar

4.S.N.Thiyagarajan

5.T.Manivannan

6.T.Ravindran

7.T.Rajkumar

... Respondents /Defendants

Prayer :- First Appeal has been filed under Section 96 of the Civil Procedure Code against the Judgement and Decree dated 30.12.2011 passed in O.S.No.2488 of 2011 on the file of the Fast Track Judge-III, Additional District Court, Chennai.

For Appellant : Mr.A.Thiagarajan  
Senior Counsel  
for Mr.S.Ramesh Kumar

Respondent No.1 : No appearance  
Set exparte vide order  
dated 21.10.2019.

For Respondent No.2 : Mr.P.Dinesh Kumar  
for M/s.K.A.Vimal Kumar

For Respondent Nos.3 to 7 : Mr.C.Shankar

JUDGMENT

Aggrieved over the Judgement and Decree dated 30.12.2011 passed in O.S.No.2488 of 2011 on the file of the Fast Track Judge-III, Additional District Court, Chennai, 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 declaration.

4.The case of the plaintiff in brief is that the first

defendant is the owner of the property bearing Old No.4, New No.5 & 6, Madhavaram High Road, Perambur, Chennai -1 and the first defendant had appointed the second defendant as her lawfully constituted power of attorney agent to deal with the abovesaid property including the right to sell the same to the prospective purchasers. The power of attorney was executed by the first defendant in favour of the second defendant on 15.07.2002 and the same has been registered. The first defendant entered into a Joint Venture Agreement on the very same date with the second defendant under which, it was agreed that the first and second defendant would be entitled to 40 - 60 respectively. The second defendant, in the capacity of the Power Agent of the first defendant, entered into a sale cum construction agreement on 06.09.2002 with the plaintiff's husband A.Manoharan in respect of a flat in the proposed first floor construction and the plaintiff's husband paid a sum of Rs.15,000/- as advance on the date of the agreement and subsequently, paid a sum of Rs.1,00,000/- on 04.10.2002 and thereafter, paid another sum of Rs.2,10,000/- on 27.11.2002 and necessary endorsements were made by the second defendant with reference to the same on the reverse side of the agreement dated 06.09.2002. The second defendant was not able to show any progress in the construction and the old building alone had been demolished, so, the second defendant offered to transfer his 60% share in the property in favour of the plaintiff's husband or his nominee. The plaintiff was nominated as the transferee and a sale agreement was entered into between the plaintiff and the second defendant representing the first defendant as a duly constituted Power Agent on 15.10.2003 and the same has also been registered. The sale consideration has been fixed as Rs.5,00,000/- and a sum of Rs.3,00,000/- out of Rs.3,25,000/- paid by the plaintiff's husband was treated as advance and the balance sum of Rs.2,00,000/- had been agreed to be paid by the plaintiff at the time of the registration of necessary documents. The plaintiff was constrained to write a letter to the second defendant on 09.03.2004 but the second defendant evaded the receipt of the said letter. Again on 05.05.2004 and again on 16.08.2004, the plaintiff wrote to the second defendant expressing her readiness and willingness to pay the balance sale consideration and complete the sale transaction. There was no positive response from the second defendant and thereafter, on repeated demands and requests, the second defendant came forward to receive the balance sale consideration of Rs.2,00,000/- and execute a written receipt for the same on 22.01.2005 on behalf of the first defendant. Even after the receipt of the entire sale consideration, the defendants 1 & 2 have not come forward to execute the sale deed in favour of the plaintiff and hence, the plaintiff issued a legal notice on 24.02.2006 calling upon them to come forward to execute the sale deed. The first defendant sent a reply with the false allegations on 09.03.2006, to which, the plaintiff sent a suitable rejoinder on 22.03.2006. The second defendant also sent a letter dated 13.03.2006 stating that he

could not register the deed in view of the fact that the first defendant is not coming forward to hand over the original document of title. The plaintiff came to know that the property has been sold to a third party and had applied for an encumbrance certificate and understood that the third defendant had purchased the subject property on 22.03.2006 including 60%, for which, the plaintiff had entered into an agreement and also paid the entire sale consideration. The third defendant is not a bona fide purchaser for value and he had entered into the abovesaid agreement knowing fully well about the subsistence of the plaintiff's agreement and the third defendant's sale deed does not whisper even about the agreement of sale entered into between the plaintiff and the defendants 1 & 2 and therefore, in conclusion between the defendants 1 & 3 and with a view to defeat the rights of the plaintiff, the abovesaid sale deed had been created and further, the plaintiff was learnt that on 11.09.2008, the third defendant had alienated the property in favour of the defendants 4 to 7, when the suit is pending and hence, according to the plaintiff, she has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The defendants 3 to 7 resisted the plaintiff's suit by contending that the plaintiff's suit is not maintainable either in law or on facts and admitted that the first defendant is the owner of the property described in the plaint schedule bearing Old Door No.4 and New Nos.5 & 6, Madhavaram High Road, Perambur, Chennai - 11 and it was represented by the first defendant that she entered into a Joint Venture Agreement with the second defendant only for the purpose of promoting the site by constructing flats and thereby, the defendants 1 & 2 agreed to share the profits, after constructing the flats with the ratio as 40 : 60, according to the value fixed by the first defendant. It was also represented by the first defendant that the second defendant did not take steps to develop the property and the property had been lying as vacant and the second defendant had not secured any prospective purchaser. The defendants denied the plea of the plaintiff that the second defendant had entered into a sale cum construction agreement on 06.09.2002 with the plaintiff's husband A.Manoharan and the receipt of Rs.3,25,000/- on various dates from the plaintiff's husband as put forth in the plaint and also disputed the acknowledgement of the abovesaid sums by the second defendant as claimed in the plaint. The abovesaid agreement, on verification, is found to have been signed only by the second defendant and no proper acknowledgement had been secured from the second defendant and the abovesaid agreement had been prepared for the purpose of the case. The case of the plaintiff that the second defendant thereafter on account of inability to show any progress in the construction, offered to transfer 60% to his share in the property i.e. vacant land in favour of the plaintiff's husband or his nominee is false and also denied that the plaintiff and the second defendant had agreed to enter into an agreement on

15.10.2003 with reference to the transfer of 60% of the vacant land as put forth in the plaint. The term "Joint Venture Agreement" is itself self speaking. Inasmuch as the first defendant was unable to promote the property individually, only on that account she had nominated the second defendant as her agent, he being a builder. Therefore, the alleged agreement of sale of 60% of the vacant land said to have been entered into between the plaintiff and the second defendant on 15.10.2003 is non-est in the eyes of law and not binding upon the defendants. The defendants also disputed the case of the plaintiff that the sum of Rs.3,00,000/- has been adjusted as advance, out of the sum paid by the plaintiff's husband to the second defendant in respect of the sale agreement dated 06.09.2002 and also disputed the case of the plaintiff that the balance sum of Rs.2,00,000/- had been agreed to be paid on the date of the registration and further disputed the case of the plaintiff that she had written several letters to the second defendant expressing her readiness and willingness to pay the balance sale consideration and complete the sale transaction. Further, also denied the case of the plaintiff that subsequently, the second defendant came forward to receive the balance sum of Rs.2,00,000/- and executed a written receipt with reference to the same on 22.01.2005 and the same only exposes the collusion between the plaintiff and the second defendant. If the first defendant had the intention to sell the vacant land as such, she would not have entered into the Joint Venture Agreement at all with the second defendant and simultaneously, executed the deed of power of Attorney. She would have straight away dealt with the property on her own as she has sold it out now to the third defendant. The plaintiff was a tenant under the first defendant in the suit premises before the demolition. Therefore, the plaintiff is aware of the Joint Venture Agreement entered into between the defendants 1 & 2 and also the appointment of the second defendant as the power of Attorney agent by the first defendant for the promotion of the flats in the suit premises. The reply notice issued by the first defendant is self explanatory. The letter sent by the second defendant would only reveal the collusion between the plaintiff and the second defendant. In the agreement of sale projected by the plaintiff, nothing has been whispered about the Joint Venture Agreement and the agreement stipulates three months time for the execution of the sale deed and if really the plaintiff had paid the entire sale consideration to the second defendant before the registration, she would not have waited till the date of the filing the suit for specific performance for completing the sale transaction. The plaintiff is not entitled to 60% of the suit property as the first defendant never ratified the sale agreement put forth by the plaintiff. The third defendant being convinced with the first defendant representation that the second defendant had not acted in terms of the Joint Venture Agreement and that she had cancelled the power, accordingly, entered into an agreement to purchase the property from the first defendant and she handed

over all the documents of title along with the possession. The allegations that the plaintiff has been always ready and willing to purchase the suit property is false and the same is specifically denied and there is no cause of action for the suit. The plaintiff is not entitled to seek the relief of declaration claimed in the plaint and hence, the suit is liable to be dismissed.

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

"(1). Whether the sale agreement executed between the plaintiff and the second defendant in respect of 60% of the vacant site is valid?

(2). Whether the sale deed dated 22.03.2006 in respect of 60% of the vacant site is valid?

(3). Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 15.10.2003?

(4). To what relief the plaintiff is entitled to?"

7. In support of the plaintiff's case, PW1 was examined and Exs.A1 & A21 were marked. On the side of the defendants, DW1 was examined and no document has been 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 dismiss the plaintiff's suit. Aggrieved over the same, the plaintiff has preferred the first appeal.

9. This Court had originally disposed of the first appeal preferred by the plaintiff by way of a judgment dated 27.04.2015 and accordingly, on an appreciation of the materials placed on record and the submissions made, was pleased to allow the appeal preferred by the plaintiff and by setting aside the judgment and decree of the trial Court, decreed the suit in favour of the plaintiff as prayed for without costs. Aggrieved over the judgment and decree dated 27.04.2015, the third defendant has preferred the Civil Appeal No.4750 of 2017 in the Supreme Court and the Supreme Court has disposed of the abovesaid Civil appeal as follows:

"Learned counsel for the appellant points out that the High Court has not considered the fact that on the same

day on which the power of attorney was executed, a joint venture agreement was also executed. The attorney was to develop the property and get a share of the property and it is that share which could be sold under the power of attorney. Since development of the property has not taken place, the attorney could not sell the property.

We find that the High Court has not gone into this aspect. We are of the view that the matter ought to be remanded back to the High Court to consider this aspect of the matter.

Accordingly, we allow this appeal, set aside the impugned order and remand the matter to the High Court for fresh decision on merits in accordance with law.

It is made clear that we have not expressed any final opinion on rival contentions of the parties."

10. The following points arise for determination in this first appeal:

"(1). Whether the sale agreement put forth by the plaintiff dated 15.10.2003 in respect of 60% of the vacant site is true, valid and binding on the defendants?

(2). Whether the plaintiff has been always ready and willing to perform her part of the agreement?

(3). Whether the plaintiff is entitled to obtain the relief of specific performance in respect of the sale agreement dated 15.10.2003 as prayed for?

(4). Whether the plaintiff is entitled to seek the relief of declaration in respect of the sale deed dated 22.03.2006 as claimed in the plaint?

(5). Whether the sale deed dated 22.03.2006 in respect of 60% of the

vacant site is true, valid and binding on the plaintiff?

(6).To what relief the plaintiff/appellant is entitled to?

(7).To what relief the defendants are entitled to?"

11.Point Nos.1 to 5

It is not in dispute that the first defendant is the owner of the property bearing Old No.4, New Nos.5 & 6, Madhavaram High Court, Perambur, Chennai - 1. It is also not in dispute that with a view to promote her property by constructing flats etc., the first defendant had entered into a Joint Venture Agreement with the second defendant on 15.07.2002 and the same has come to be marked as Ex.A1. It is also not in dispute that following Ex.A1 Joint Venture Agreement, the first defendant had appointed the second defendant as her power of attorney Agent and the said power of attorney has been marked as Ex.A2. Both Exs.A1 & A2 had been executed on the same date, one following the other. From the materials placed on record, it is found that the first defendant had entered into the Joint Venture Agreement Ex.A1 with the second defendant only for the purpose of promoting her property i.e. for the purpose of the construction of flats and accordingly, it is found that by virtue of the Joint Venture agreement, the first defendant and the second defendant had agreed to dispose of the flats put up in the property in the ratio of, the first defendant being the first party entitled to 40% of the total built up area and the second defendant being the second party entitled to 60% of the total built up area and it has been mutually agreed between the first defendant and the second defendant that the first defendant wanted only the sale price of 40% constructed area, according to the value fixed by the first defendant and it has been also mutually agreed between them that the second defendant has to use quality materials and he has to provide quality construction out of his funds and is entitled to 60% to any intending purchaser/purchasers and the Joint Venture Agreement also stipulated that both the parties had agreed thereby by which the first defendant should execute the power of attorney in favour of the second defendant for enabling the second defendant to do further proceedings for the construction and sell the proportionate 60% undivided share of the entire constructed area of the property and the first defendant had also assured the second defendant that he could give effective advertisement and pay all the formalities with respect to promotion and development of the property at his cost. The relevant clauses with reference to the same, which are reflected in the Joint Venture Agreement, are extracted below:

first party and the second party that the First Party shall handed over the possession of the schedule mentioned property with tenants to the second party within three days from the date of signing this agreement i.e. on or before 18.07.2002 and the second party shall take responsible to vacate the existing tenants in the schedule mentioned property.

5.The Second party hereby agree to build up flats in the schedule mentioned land as a joint venture and in colloboration and dispose of the same or a portion of the same in the ratio of:

First party 40% of the total built up area

Second party 60% of the total built up area

It is mutually agreed between the First party and the Second party that the First Party wants only the selling price of the 40% constructed area According the value fixed by the 1<sup>st</sup> party.

6.It is mutually further agreed that the second party has to use quality materials and he has to provide quality construction out of his funds and he is entitled to sell 60% share to any intending purchaser/purchasers.

7.It is hereby agreed that the first party has to execute a power of Attorney in favour of the second party, that the second party has to do the proceedings for the construction and that the second party is entitled to sell the proportionate 60% undivided share of the entire constructed area of the schedule mentioned property. And

13.The first party herreby assure that the second party can give effective advertisement and he can do all the formalities with respect to promotion and development of schedule detailed property at his cost."

defendants that only for the promotion of the property by putting up the flats and securing profits in the ratio as agreed to between the defendants 1 & 2, it is found that the Joint Venture Agreement Ex.A1 has come to be effected between the defendants 1 & 2. If really, the first defendant had intended to sell the suit property as such, i.e. as a vacant site, she would not have entered into the Joint Venture Agreement with the second defendant for the purpose of promoting the property by constructing the flats and sell the same in the ratio as agreed to between the parties under Ex.A1 Joint Venture Agreement. On the other hand, as contended by the defendants, the first defendant would have suo-motu proceeded to dispose of the property without any agreement or collaboration effected with the second defendant.

13.As above pointed out, Ex.A1 Joint Venture Agreement provides for the execution of the power of attorney deed in favour of the second defendant by the first defendant for enabling the second defendant to put up the construction of the flats and sell the same to the prospective purchasers and enjoy the profits as agreed to under the agreement, accordingly, it is found that Ex.A2 power of attorney deed has come to be executed by the first defendant in favour of the second defendant. As per clause -8 of the power of attorney deed Ex.A2, the same authorised the second defendant to find out the purchaser/purchasers and to sell the schedule mentioned property or any portions thereof either as whole or as undivided share or as divided share. The further clauses contained in the power of attorney deed provide and enable the second defendant to sub divide, develop and improve the schedule mentioned property on behalf of the principal and also to put up construction of the flats thereon by obtaining plan from appropriate authorities and provide all the amenities thereof and to transfer the property to the prospective purchasers. Therefore, when it is found that Ex.A2 power of attorney deed had emanated consequent to the Joint Venture Agreement entered into between the defendants 1 & 2 and only for the purpose of promoting the property, the Joint Venture Agreement had been entered into between the defendants 1 & 2 and accordingly, the second defendant had been authorised or empowered to put up the flats and sell the property in the ratio of 40 : 60, 40% to be taken by the first defendant and 60% to be taken by the second defendant, in such view of the matter, as rightly put forth by the contesting defendants, the various terms and conditions set out in the Joint Venture Agreement Ex.A1 and the power of attorney Ex.A2 should be read harmoniously and in conjunction with each other and so viewed and understood, it is found that both the Joint Venture Agreement Ex.A1 and the Power of Attorney Ex.A2 are complimentary to each other and accordingly, the various clauses contained in both deeds should be read in toto and cumulatively, so as to understand the intention of the parties thereto and accordingly, it is found that as rightly put forth by the contesting defendants, the power of attorney agent

viz., the second defendant had the authority only to transfer 60% of the built up area to the prospective purchasers as provided in Exs.A1 & A2 in toto and he is not entitled to sell or alienate 60% of the undivided vacant site /land in favour of the prospective purchasers. When the very purpose appointing the second defendant as the power agent by the first defendant is only to promote the property for the construction of flats and thereby, secure the benefits thereof by selling the promoted property in the ratio as fixed between them, in such view of the matter, if the power of attorney agent is permitted to sell 60% of the vacant site without putting up any construction in the property, the same would occasion a serious loss and hardship to the first defendant as the owner of the property and if the owner had intended to sell the property as vacant site or vacant land, there is no need on the part of the first defendant to enter into any Joint Venture Agreement with the second defendant and also execute a power of attorney deed in favour of the second defendant as the said exercise could be done by the first defendant on her own and inasmuch as the first defendant was unable to promote the property, it is evident that she had come forward to enter into the Joint Venture Agreement with the builder viz., the second defendant and accordingly, as a corollary executed the power of attorney in favour of the second defendant for the purpose of enabling him to put up the construction of the flats in the property by approaching the appropriate authorities with reference to the same and thereafter, sell the same to the prospective purchasers on behalf of the first defendant, in such view of the matter, the contention of the plaintiff that clause 8 of the power of attorney should be read in isolation and not in conjunction or in alliance with the various clauses contained in the Joint Venture Agreement Ex.A1, as such, cannot be countenanced in any manner and on the other hand, as rightly put forth by the contesting defendants, the clauses contained in Exs.A1 & A2 deeds should be read harmoniously to understand the intention of the parties thereto in the right perspective and so viewed, as above pointed out, we can gather that Exs.A1 & A2 deeds had come into existence only for the sole purpose of promoting the property by the first defendant and accordingly, it is found that only in terms of Ex.A1 Joint Venture Agreement, she had executed power of attorney deed in favour of the second defendant and in such view of the matter, on a proper appreciation of the various clauses contained in Exs.A1 & A2 read together coupled with the intention of the parties, in all, it is found that by way of Exs.A1 & A2, the first defendant had not granted any power or permission or empowered the second defendant to sell 60% of the vacant site and on the other hand, it is found that she had only authorised or empowered the second defendant to sell 60% of the constructed area reserving 40% of the same with her as per the value agreed to between them and therefore, to say that without promoting the property i.e. without putting up any construction therein, the second defendant had been empowered

to sell the vacant site in the ratio of 60% cannot at all be countenanced in any manner either factually or legally and in such view of the matter, the endeavour of the second defendant to sell 60% of the vacant land or the case projected by the plaintiff that the second defendant had agreed to alienate 60% of the vacant land to her by way of an agreement dated 15.10.2003 cannot at all be accepted legally and therefore, it is found that the trial Court is justified in holding and determining that the agreement of sale projected by the plaintiff for the transfer of 60% of the vacant site in her favour by the second defendant on the basis of the power of attorney Ex.A2, as such, cannot be legally sustained, when it is found that the second defendant has no power to sell 60% of the vacant land as he had been authorised to sell only 60% of the constructed area by the first defendant as per the terms set out in the Joint Venture Agreement Ex.A1 and the terms set out in the power of attorney Ex.A2.

14. Inasmuch as the second defendant had been empowered or authorised only to sell the constructed area in the ratio of 60% as per Exs.A1 & A2, it is found that following Exs.A1 & A2, the second defendant, at the first instance, had, according to his case, entered into a sale cum construction agreement with the plaintiff's husband A.Manoharan on 06.09.2002, which document has been marked as Ex.A3 and the contesting defendants even challenged the abovesaid agreement as not truly and legally effected. Be that as it may, when the abovesaid agreement is purported to have been entered into only in respect of the flat in the first floor construction, it is evident that only as the power of attorney of the first defendant and in terms of Exs.A1 & A2, it is found that Ex.A3 agreement, if it is a true one, had been entered into by the second defendant with the plaintiff's husband with reference to the proposed construction to be put up in the first floor of the intending construction. If really the second defendant had the power or authority to sell 60% of the vacant site, Ex.A3 agreement would not have been entered into for the flat in the proposed first floor construction.

15. The materials placed on record go to show that the second defendant had not proceeded with the construction. The reason for not proceeding with the construction need not be dealt with in detail. The second defendant had remained ex parte in the proceedings, even the first defendant had remained ex parte, only the defendants 3 to 7 are contesting the plaintiff's suit. The fact, however, remains that no construction had been made by the second defendant in the property concerned following Exs.A1 & A2 itself. In such view of the matter, it is found that for one reason or the other, the second defendant was unable to proceed with the construction of the flats and therefore, it is found that both the Joint Venture Agreement as well as the power of attorney deed ceased to have any legal force and in such view of the matter, when as above pointed out, the second defendant had

not been authorised to sell 60% of the vacant site and on the other hand, he had been empowered to sell only 60% of the constructed area, when the second defendant had not endeavoured to put up any construction in the property, in such view of the matter, the case of the plaintiff that the second defendant had entered into the sale agreement with her on 15.10.2003 with reference to 60% of the vacant site of the property as the nominee of her husband in continuation of the sale cum construction agreement dated 06.09.2002 and agreed to adjust the sum of Rs.3,00,000/- paid by the husband of the plaintiff as advance, as such, cannot be legally sustained. When such an agreement could not be legally entered into and executed by the second defendant in favour of the plaintiff sans any confirmation of power on the second defendant with reference to the same by the first defendant as above pointed out, in such view of the matter, the agreement of sale projected by the plaintiff dated 15.10.2003, even assuming to be a true one, cannot be legally sustained and therefore, it is found that the plaintiff would not be entitled to claim any relief based on the sale agreement dated 15.10.2003.

16.As rightly put forth by the contesting defendants, inasmuch as the second defendant was unable to proceed with the construction for one reason or the other, it is found that the plaintiff's husband had not proceeded to enforce the sale agreement on 06.09.2002 said to have been entered into with the second defendant and on the other hand, the plaintiff for one reason or the other had projected the subsequent sale agreement said to have been entered into with second defendant on 15.10.2003 with reference to 60% of the vacant site. When the second defendant does not have any power to enter into such an agreement based on Exs.A1 & A2 read together, in such view of the matter, the sale agreement projected by the plaintiff marked as Ex.A2, as rightly held by the trial Court, cannot be declared as a valid document and in such view of the matter, the plaintiff is found to be not entitled to claim any relief based on the invalid document, particularly, when the agreement of sale projected by the plaintiff is found to be invalid document i.e. the second defendant having no power to execute such a document in favour of the plaintiff as per the terms of Exs.A1 & A2, in such view of the matter, as a corollary, as pointed out by the contesting defendants, the plaintiff cannot be granted the discretionary and equitable relief of specific performance based on the invalid agreement dated 15.10.2003.

17.The plaintiff's counsel contended that the defendants 3 to 7 are not entitled to challenge the relief of specific performance claimed by the plaintiff based on the sale agreement dated 15.10.2003 and according to him, the abovesaid relief is claimed only against the defendants 1 & 2 and therefore, according to him, when the defendants 1 & 2 had not contested the plaintiff's case and remained ex parte, the trial Court, according to him, should have granted the relief

of specific performance in favour of the plaintiff as prayed for. However, the abovesaid contention does not merit acceptance. Even if the defendants 1 & 2 had remained ex parte, when from the materials placed on record as above discussed, when the sale agreement projected by the plaintiff dated 15.10.2003 is found to be an invalid document i.e. the second defendant not having any power to enter into such an agreement of sale with the plaintiff, in the light of the various terms and conditions set out in Exs.A1 & A2 read together, in such view of the matter, the factum of the defendants 1 & 2 remaining ex parte in the suit does not assume any significance, when in particular, the plaintiff is found to be not entitled to secure the discretionary and equitable relief of specific performance based on the invalid document.

18.The plaintiff's case has proceeded that she has paid a sum of Rs.3,00,000/- as advance to the second defendant on the date of the sale agreement Ex.A2. The sale agreement stipulates three months time for completing the sale transaction and the balance sale consideration to be paid by the plaintiff is Rs.2,00,000/-. According to the plaintiff, after several letters and reminders to the second defendant alone, the second defendant came forward and received the balance sale price on 22.01.2005. According to the plaintiff, even thereafter, the second defendant had not come forward to execute the sale deed as per the terms of the sale agreement. Therefore, she caused a legal notice on 24.02.2006 marked as Ex.A11 and for the first time, the plaintiff has sent the communication even to the first defendant as well as to the second defendant. The first defendant has in toto repudiated the claim of the plaintiff based on the sale agreement dated 15.10.2003 in her reply notice dated 09.03.2006 marked as Ex.A12. The first defendant has clearly averred that the second defendant is not entitled to sell 60% of the vacant site and he had only been empowered to sell 60% of the constructed area and therefore, contended that the plaintiff is not entitled to seek any relief based on the sale agreement dated 15.10.2003. The reply received from the second defendant dated 13.03.2006 has been marked as Ex.A13, wherein, the second defendant expressed his inability to execute the sale deed, inasmuch as the documents are lying with first defendant. Thereafter, after sending the re-joinder, it is found that the plaintiff has laid the suit, particularly, according to the plaintiff, after coming to know that the first defendant had alienated 60% of the vacant site to the 3<sup>rd</sup> defendant on 22.03.2006.

19.Considering the abovesaid events in sequence, assuming the plaintiff's case to be true and the sale agreement dated 15.10.2003 is a valid document, considering the plea of readiness and willingness on the part of the plaintiff, when according to the plaintiff, she has paid the entire sale consideration on 22.01.2005, after much persuasion on the

second defendant, as to why the plaintiff had not endeavoured to seek the relief of specific performance immediately on knowing the evasive attitude of the second defendant in not come forward with the execution of the sale deed as per the terms set out in the sale agreement, there is no proper explanation on the part of the plaintiff. After the alleged case of the plaintiff that she has paid the entire sale consideration on 22.01.2005, it is found that the plaintiff had chosen to issue the legal notice only on 24.02.2006 to the defendants 1 & 2. As to why she should wait for more than one year for issuing the legal notice, no proper explanation is forth coming on the part of the plaintiff. Therefore, it is found that there is complete absence of readiness and willingness on the part of the plaintiff in enforcing the alleged sale agreement and the element of readiness and willingness on the part of an agreement holder being sine qua non for the grant of discretionary and equitable relief of specific performance, when the same is glaringly absent in the present case on the part of the plaintiff, on that score also, assuming the sale agreement dated 15.10.2003 is valid, it is found that the plaintiff would not be entitled to seek the relief of specific performance based on the said sale agreement. From the decision relied upon by the counsel appearing for the contesting defendants reported in (2000) 2 Supreme Court Cases 428 (Ram Awadh (Dead) By Lrs. And others Vs. Achhaibar Dubey and another), it is found that the plea of absence of readiness and willingness can be raised even by the subsequent purchaser of the property or his legal representatives, who are the defendants in the suit and therefore, the contention of the plaintiff's counsel that the contesting defendants are not entitled to raise the plea of absence of readiness on the part of the plaintiff in enforcing the sale agreement, particularly, when the defendants 1 & 2 had not challenged the plaintiff's case as such cannot be countenanced. The position of law, with reference to the abovesaid aspect, has been outlined in the abovesaid decision as follows:

"Specific Relief Act, 1963 - S.16  
(c) - Suit for specific performance of agreement to sell property - Plea that plaintiff was never ready and willing to perform his part of the agreement - Held, can be raised also by subsequent purchaser of the property or his LRs, who were defendants in the suit.

The appellants are LRs of a subsequent purchaser of certain property. They were defendants to a suit by one B for specific performance of an earlier agreement to sell the property to her. She had not pleaded in her plaint that she was ready and willing to perform her part of the

agreement, but that plea was later introduced by way of an amendment. The question now was in regard to whether she or her legal representatives were, in fact, at all material times ready and willing to perform their part of that agreement. The first appellate Court declined to permit the present appellants to plead and contend that B and her legal representatives were never prepared to perform their part of the agreement and, for this purpose, it relied upon the judgment of Supreme Court in the case of Jugraj Singh, (1995) 2 SCC 31. The High Court, in second appeal, affirmed that view. Allowing the appeal, the Supreme Court.

Held:

The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit.

Jugraj Singh V. Labh Singh, (1995)  
2 SCC 31 overruled

Ardeshir Mama V. Flora Sassoon,  
(1927-28) 55 IA 360 : AIR 1928 PC 208:

Gomathinayagam Pillai V.  
Palaniswami Nadar, AIR 1967 SC 868 :  
(1967) 1 SCR 227 :

Lakhi Ram V. Trikha Ram, (1998) 2  
SCC 720, referred to."

20.The counsel for the contesting defendants also relied upon the decision reported in (2019) 7 MLJ 216 LNIND 2019 MAD 5324 (P.M.Thangavel Vs. M.Ramamoorthy and others). The principles outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

21.Further, as rightly contended by the counsel appearing for the contesting defendants, assuming the sale agreement dated 15.10.2003 is valid and assuming that the plaintiff has paid the entire sale consideration pursuant to the same, when it is found that the plaintiff has endeavoured to legally enforce the sale agreement against the first defendant only on 24.02.2006 nearly 3 years after the execution of the sale agreement on 15.10.2003 and the earlier communication had been sent by the plaintiff with reference to the same only to the second defendant and not to the first defendant as admitted by the plaintiff herself, in such view of the matter, it is found that there is complete absence of readiness and willingness on the part of the plaintiff and the plaintiff's suit, as such, is not in consonance with the provision of Section 16 (c) of the Specific Relief Act. It is thus found that the plaintiff is not entitled to seek the relief of specific performance based on the agreement projected by her.

22.Inasmuch as the second defendant has failed to proceed with the construction of the flats in the property pursuant to Exs.A1 & A2 and as per the terms set out therein, it is evident that Exs.A1 & A2 had been given a go-by by the second defendant and the resultant position, the first defendant being the owner of the property, it is found that the first defendant had chosen to alienate her portion of the property in favour of the third defendant as the lawful owner thereof and the first defendant being entitled to the same and when the same cannot be questioned either by the plaintiff or by the second defendant in any manner and when as above pointed out, the agreement of sale projected by the plaintiff dated 15.10.2003 ceased to have any legal force and the same having been declared to be a invalid document, in such view of the matter, as rightly held and determined by the trial Court, the alienation effected in favour of the third defendant by the first defendant on 22.03.2006 and the subsequent alienation made by the third defendant in favour of the defendants 4 to 7 cannot also be challenged and questioned by the plaintiff and therefore, it is found that the sale deeds effected in favour of the defendants 3 to 4 in toto are true, valid and binding on the plaintiff. In the light of the above discussions, I hold that the sale deed dated 15.10.2003 projected by the plaintiff in respect of 60% of the vacant site is not true, valid and binding on the defendants. I further hold that the plaintiff has never been ready and willing to perform her part of the contract. I therefore hold that the plaintiff is not entitled to seek and obtain the relief of specific performance in respect of the sale agreement dated 15.10.2003. I hold that the sale deed dated 22.03.2006 in respect of 60% of the vacant

site executed by the first defendant in favour of the third defendant is true, valid and binding on the plaintiff and I therefore, the plaintiff is not entitled to seek the relief of declaration as prayed for, accordingly, the Point Nos.1 to 5 are answered.

23.Point Nos.6 & 7

For the reasons aforesaid, the Judgement and Decree dated 30.12.2011 passed in O.S.No.2488 of 2011 on the file of the Fast Track Judge-III, Additional District Court, Chennai, 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

sms

To

The Fast Track Judge No.III,  
Additional District Court, Chennai.

Copy to

The Section Officer,  
V.R.Section, High Court, Madras.

+1cc to Mr.G.Shankar, Advocate, S.R.No. 93953

+1cc to Mr.Kuyilan, Advocate, S.R.No. 94935

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No. 93969

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A.S.No.64 of 2012

SSD(CO)  
GN(04/01/2021)