

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.647 of 2009

1. Velumani (Deceased)
2. Selvi
3. S.Ravi
4. P.Sumathi
5. E.Suba ...Appellants 1 to 5/Defendants 4 to 8
Chitra (Died)
6. K.Sivakumar
7. Kabilan (Minor)
(Minor represented by his father
& natural guardian 6th appellant)
8. Jayachitra
9. Karthikeyan (Minor) ... Appellants 6 to 9
(Represented by her mother &
natural guardian Jayachitra)

(Cause title accepted vide order
of the Court dated 18.03.2009
made in M.P. No.1 of 2009)

(6th Appellant appointed as guardian
for 7th Appellant vide order of the Court
dated 18.03.2009 in M.P.No.2 of 2009)

(Appellants 8 & 9 brought on record as LRs
of the deceased 1st appellant vide order of
Court dated 24.07.2019 in CMP No.13944 of 2019)

Vs.

1. M.MahalingamIst Respondent/Plaintiff
2. Kamalam
3. S.Nataraj
4. S.Ranganathan ... Respondents 2 to 4/Defendants 1 to 3

Prayer: Appeal Suit filed under Section 96 of Civil Procedure
Code as against the judgment and decree of the Additional
District and Sessions Court (Fast Track Court No.II) at
Coimbatore dated 28.12.2007 in O.S.No.68 of 2005.

For Appellants : Mr.M.S.Krishnan, Senior Counsel
for M/s.Sarvabhauman Associates.

For R1 : M/s. Ananda Gomathy Sivakumar

For R2 to R4 : No appearance/Set exparte
vide order dated 24.10.2019

JUDGMENT

Aggrieved over the judgment and decree dated 28.12.2007, passed in O.S.No.68 of 2005, on the file of the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, the defendants 4 to 9 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 and possession.

4. The case of the plaintiff, in brief, is that the suit property originally belonged to L.Subbaiyan, by virtue of the sale deed dated 12.11.1989 and since then, Subbaiyan had been in the possession and enjoyment of the suit property as the absolute owner thereof. Subbaiyan evinced interest to sell the suit property to the plaintiff and accordingly, the plaintiff had also agreed to purchase the same and the plaintiff and Subbaiyan entered into a written agreement with reference to the same on 15.07.2004, wherein the sale consideration for the sale of the suit property had been fixed at Rs.8,25,000/- and Subbaiyan received a sum of Rs.2,00,000/- as advance on the date of the sale agreement and the sale agreement has been duly attested by two witnesses, one Anthony and the other attestor being the son of Subbaiyan, who is the third defendant herein. Subbaiyan agreed to complete the sale transaction within six months from the date of the sale agreement. Whiles, Subbaiyan died on 22.07.2004 intestate within a period of seven days from the date of entering into sale agreement and he left behind his wife and children who are the defendants 1 to 9 to succeed to his estate equally. Whiles, the plaintiff thereafter approached the defendants for the early completion of the sale transaction with reference to the suit property. Though the defendants had agreed to the same, however, dragged on the same under some pretext or the other. The plaintiff has been always ready and willing to complete the sale transaction and he is possessed of sufficient amount towards the payment of the balance sale consideration and execute the sale deed at his own expenses. Despite repeated demands of the plaintiff for the

completion of the sale transaction, the defendants delayed the matter and finally, the plaintiff came to know that there were disputes amongst the defendants in partitioning the suit property as the legal heirs of the deceased Subbaiyan and thereby to get their share of the sale price. The plaintiff in fact approached each of the defendants and they had stated that they have dispute over the suit property in sharing the sale consideration and sought time. However, the defendants had not agreed to complete the sale transaction inspite of the repeated demands of the plaintiff and left with no other alternative, the plaintiff issued a legal notice on 20.12.2004, calling upon the defendants to complete the sale before the stipulated time. Except the defendants 5 and 8, all the other defendants had received the legal notice. However, they had not endeavoured to comply with the demand made therein nor responded to the legal notice and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendants 1 to 3 filed the written statement and almost accepted the plaintiff's case as regards the execution of the sale agreement in favour of the plaintiff by Subbaiyan on 15.07.2004 and the receipt of Rs.2,00,000/- as advance by Subbaiyan and the attestation of the sale agreement by the third defendant along with one Anthony and also the demise of Subbaiyan. On the demise of Subbaiyan, according to the defendants 1 to 3, though they were ready to execute the sale deed, the defendants 4 to 9 did not come forward with the execution and further, according to them, the defendants 4 to 9 relied upon the alleged wills dated 10.03.2000 and 19.06.2003 said to have been executed by Subbaiyan bequeathing the suit property along with other properties to the defendants 4 and 6. However, Subbaiyan had no intention to bequeath the suit property through the Will and the abovesaid plea of Wills had been taken by the defendants 4 to 9 only with a view to defraud the defendants 1 to 3 as well as the plaintiff. The deceased Subbaiyan was fond and affectionate towards all the defendants and therefore, there is no necessity on his part to execute the Will bequeathing the suit property solely to the defendants 4 and 6 without making any provisions to the other defendants, particularly, his wife, the first defendant. Only with an intention to grab the suit property in entirety, the defendants 4 and 6 have projected the Wills falsely and the alleged Wills projected by the defendants 4 to 9 are not true and obtained in suspicious circumstances and the other allegations put forth by the defendants 4 to 9 that Subbaiyan borrowed a sum of Rs.2,00,000/- from his employer and towards discharge of the same, he borrowed money from the plaintiff and while advancing the money, the plaintiff obtained sale agreement etc., are false and according to the defendants 1 to 3, they are ready to execute the sale deed in favour of the plaintiff

towards their share by receiving their share of sale consideration and accordingly, prayed for the passing of the decree in the suit.

6. The defendants 4 to 9 resisted the plaintiff's suit by contending that the suit property belonged to Subbaiyan by virtue of the sale deed dated 12.11.1989. However, disputed the case of the plaintiff that Subbaiyan had agreed to convey the suit property for Rs.8,25,000/- and following the same, they had entered into a written agreement on 15.07.2004 and that Subbaiyan received Rs.2,00,000/- as advance and promise to complete the sale transaction within six months. The defendants 4 to 9 disputed the case of the plaintiff that he had been approaching the defendants for the execution of the sale deed after the demise of Subbaiyan and that the defendants had agreed to the same and thereafter, dragged on the matter on account of the disputes amongst themselves qua the suit property. According to the defendants, the transaction between the plaintiff and Subbaiyan was only lending and for the amount borrowed, the suit agreement had been obtained by the plaintiff. It is further put forth that Subbaiyan was employed in M/s.Peninsula Agencies run by V.Krishnakumar and he had borrowed Rs.2,00,000/- from his employer on January 2004 for the marriage and family expenses and in order to discharge the abovesaid debt, Subbaiyan had approached the plaintiff for a loan of Rs.2,00,000/- during the end of June 2004 and the plaintiff had agreed to lend the amount, provided, the sale agreement is executed by Subbaiyan in respect of the suit property in favour of the plaintiff and Subbaiyan had agreed to the same and executed the sale agreement only as a security for the loan borrowed from the plaintiff and the plaintiff had assured that he would not go ahead with the sale agreement and would be content to receive the loan amount with interest. Only under the abovesaid circumstances, the sale agreement had come into existence and the amount of Rs.2,00,000/- was borrowed from the plaintiff had been repaid to V.Krishnakumar by Subbaiyan and therefore, the suit laid by the plaintiff based on the sale agreement is not maintainable. Subbaiyan had executed the registered Wills in respect of his properties on 10.03.2000 and 19.06.2003 and by way of the Will dated 19.06.2003, he had bequeathed the suit properties in favour of the defendants 4 and 6 absolutely. Therefore, it is false to state that Subbaiyan had died intestate. The defendants 2 and 3 had taken away the abovesaid Wills and also the title deeds of the properties and taking advantage of the dispute between the legal heirs of the deceased Subbaiyan, the plaintiff had chosen to levy the false suit and obtain the unjust enrichment. The market value of the suit property is more than Rs.10,00,000/-. Subbaiyan did not intend to sell the suit property to the plaintiff and the plaintiff is not entitled to the relief of specific performance.

Further, it is put forth by the defendants 4 to 9 that the plaintiff is not possessed of sufficient funds for the payment of the balance sale price and he has not been ready and willing to perform his part of the contract. The defendants are willing to repay the borrowed sum with interest to the plaintiffs. The defendants further put forth that in case specific performance is ordered, they alone should be held entitled to receive the balance sale price and execute the sale deed and contended that there is no cause of action for the suit and the suit is liable to be dismissed.

7. The defendants 4 to 9, in the additional written statement, had reiterated about the Wills executed by Subbaiyan referred to in the written statement and it is further put forth by them that the first defendant had actually not filed the vakalath in defending the plaintiff's suit along with the defendants 2 and 3 and had not instructed her counsel to put forth the case against the defendants 4 to 9 and with a view to grab the entire balance sale price, the defendants 2 and 3 had projected a false case, as if, the first defendant, the mother is also sailing with them and according to the defendants, the first defendant had not engaged any Advocate or filed vakalath, supporting the plaintiff's suit along with the defendants 2 and 3, as put forth by the defendants 2 and 3 and therefore, according to them, the defendants 2 and 3 had colluded with the plaintiff for committing fraud on the other defendants and prayed for the dismissal of the plaintiff's suit.

8. 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 plaintiff is entitled to seek the relief of specific performance?

2. Whether the suit sale agreement had been executed only as a security for the borrowal of the debt?

3. To what relief the plaintiff is entitled to?

9. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A10 were marked. On the side of the defendants 4 to 9, DWs 1 and 2 were examined, Exs.B1 to B6 were marked.

10. Though the defendants 1 to 3 had filed the written statement, thereafter, they had not contested the plaintiff's suit and remained ex-parte.

11. On the basis of the materials placed on record and the submissions made, the trial Court was pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the defendants 4 to 9 have preferred the first appeal.

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

1. Whether the sale agreement dated 15.07.2004 is true, valid and binding on the defendants?

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

3. Whether the plaintiff is entitled to obtain the relief of specific performance and possession in respect of the sale agreement dated 15.07.2004?

4. Whether the sale agreement dated 15.07.2004 is obtained by the plaintiff only as a security for the amount lend by him to the deceased Subbaiyan as claimed by the defendants 4 to 9?

5. To what relief the plaintiff is entitled to?

6. To what relief the defendants 4 to 9/appellants are entitled to?

Point Nos.1 to 4:

13. From the pleadings put forth by the respective parties and the materials placed on record, it is found that the suit property originally belonged to the deceased Subbaiyan. The defendants 1 to 9 are the legal representatives of the deceased Subbaiyan. According to the plaintiff, the deceased Subbaiyan, being the owner of the suit property, evinced interest to sell the same to the plaintiff and the plaintiff having also agreed to the abovesaid proposal, according to the plaintiff, the sale agreement had been entered into between them on 15.07.2004 agreeing to sell the suit property for Rs.8,25,000/- and according to the plaintiff, he had paid Rs.2,00,000/- to the deceased Subbaiyan as advance on the date of the sale agreement and the parties had agreed to complete the sale transaction within six months from the date of the sale agreement. However, Subbaiyan died on 22.07.2004 leaving behind the defendants as his legal representatives and after the demise of Subbaiyan, the plaintiff had been repeatedly approaching the defendants,

calling upon them to complete the sale transaction by receiving the balance sale consideration. However, the defendants had been delaying the matter for one reason or the other, particularly, on account of the property disputes amongst themselves and therefore, according to the plaintiff, he has been necessitated to cause the issuance of the legal notice on 14.01.2005 calling upon the defendants to complete the sale transaction and despite the same, inasmuch as the defendants had failed to come forward and execute the sale deed based on the sale agreement, the suit has been laid by the plaintiffs for appropriate reliefs.

14. The defendants 1 to 3 had filed a written statement and in all aspects accepted the plaintiff's case and put forth the case that they are ready and willing to execute the sale deed in favour of the plaintiff based on the sale agreement dated 15.07.2004 and further put forth the case that only the defendants 4 to 9 have not come forward to execute the sale deed by projecting the false Wills and therefore, the defendants 1 to 3 prayed for the disposal of the plaintiff's suit as prayed for. However, subsequently, the defendants 1 to 3 had not chosen to contest the plaintiff's case and remained ex-parte.

15. It is only the defendants 4 to 9 who had been contesting the case. According to them, the sale agreement dated 15.07.2004 is not true and valid as put forth by the plaintiff and it is stated that Subbaiyan had borrowed a sum of Rs.2,00,000/- from his employer and to discharge the said debt, he had received a sum of Rs.2,00,000/- as loan from the plaintiff and the plaintiff had agreed to lend the said sum only if the sale agreement is executed in his favour in respect of the suit property as security and Subbaiyan had acceded to the same and executed the sale agreement only as security for the loan borrowed from the plaintiff and not otherwise and therefore, according to the defendants 4 to 9, the sale agreement had not come into existence with reference to the sale of the suit property in favour of the plaintiff on the part of Subbaiyan as such and the same had been executed only as a security for the loan amount and therefore, according to them, the plaintiff is not entitled to obtain the relief of specific performance based on the sale agreement. Further, the defendants 4 to 9 had also projected two Wills said to have been executed by Subbaiyan in respect of the properties and according to them, by virtue of the Will dated 19.06.2003, the suit property had been bequeathed by Subbaiyan only in favour of the defendants 4 and 6 and therefore, it is put forth that it is only the defendants 4 and 6 who are entitled to the suit property and the defendants 4 to 9 also put forth the case that they are ready to repay the amount borrowed from the plaintiff with interest and also would state that in case the Court holds

that the plaintiff is entitled to the relief of specific performance, they should only be held entitled to receive the balance sale consideration and accordingly, prayed for the dismissal of the plaintiff's suit.

16. In the light of the abovesaid rival pleas set out by the respective parties, when the defendants 4 to 9 had challenged the truth and validity of the sale agreement dated 15.07.2004, projected by the plaintiff and contended that the same had been executed only as a security for the borrowal of the loan amount from the plaintiff, at the foremost, the plaintiff has to establish that the sale agreement had been executed in his favour by Subbaiyan only with an intention of conveying the suit property in favour of the plaintiff as recited therein. In this connection, the plaintiff has tendered evidence as PW1 and he has clearly deposed about the execution of the sale agreement in his favour by the deceased Subbaiyan for Rs.8,25,000/- and the receipt of Rs.2,00,000/- as advance tendered by him to Subbaiyan on the date of the sale agreement and the time limit of six months stipulated by the parties for the completion of the sale transaction. The sale agreement in question has been marked as Ex.A1. Despite cross examination, nothing has been culled out from PW1 to discredit his evidence with reference to the case projected by him qua the execution of the sale agreement by Subbaiyan as pleaded by him and accordingly, it is found that the trial Court is justified in relying upon the evidence of the plaintiff to grant the reliefs in favour of the plaintiff. Not only that, the plaintiff, to buttress his case, had also examined one of the attestors of the sale agreement, namely, Anthony, as PW2 and PW2 had also clearly deposed about the execution of the sale agreement by Subbaiyan for Rs.8,25,000/- and the receipt of Rs.2,00,000/- as advance by Subbaiyan from the plaintiff on the date of the sale agreement and the period of six months fixed by the parties for completing the sale transaction and he has clearly deposed about the attestation of the sale agreement by him and Mahalingam, son of the deceased Subbaiyan and therefore, the plaintiff had established and sustained his case by examining the attesor PW2 and despite cross examination, nothing has been elicited from the mouth of PW2 to disbelieve or reject his evidence in any manner as regards the factum of execution of the sale agreement between the plaintiff and Subbaiyan and the receipt of Rs.2,00,000/- as advance from the plaintiff towards sale consideration as spoken to by him. Therefore, considering the evidence of PWs 1 and 2, in toto, they being complementary to each other and also supportive to each other, in all, it is seen that the plaintiff has amply established his case through the evidence of PWs 1 and 2 as well as the marking of the sale agreement as Ex.A1. At this juncture, it has to be noted that the defendants 1 to 3 in the written statement had not disputed the execution of the sale

agreement Ex.A1 as well as the attestation of the same by the third defendant along with PW2 Anthony as well as the receipt of Rs.2,00,000/- as advance by Subbaiyan from the plaintiff towards the sale consideration.

17. It is also pertinent to note that even the contesting defendants 4 to 9 have not disputed the signature of Subbaiyan in the sale agreement Ex.A1. All that they would plead is that inasmuch as Subbaiyan had the necessity of discharging the loan amount received from his employer, he had borrowed Rs.2,00,000/- from the plaintiff and only towards the said borrowal, according to them, the plaintiff had obtained the sale agreement Ex.A1 as security from the deceased Subbaiyan. Therefore, it is seen that considering the pleas put forth by the defendants 4 to 9 in the written statement, it is found that they have clearly admitted that Subbaiyan had executed the sale agreement, knowing the contents thereto in entirety and therefore, when the defendants 4 to 9 have taken the abovesaid defence that the sale agreement had been obtained as security for the loan transaction and particularly, when the abovesaid defence of the defendants 4 to 9 has been challenged by the plaintiff in toto, as well as repudiated by the defendants 1 to 3 in their written statement, it is for the defendants 4 to 9 to establish the abovesaid defence version.

18. In this connection, the defendants 4 to 9 had chosen to examine the employer of the deceased Subbaiyan, V.Krishnakumar as DW2. DW2 would tender evidence as regards the borrowal of Rs.2,00,000/- from him by Subbaiyan. Therefore, according to the contesting defendants, only for discharging the said amount, Subbaiyan had borrowed Rs.2,00,000/- from the plaintiff and only as security for the borrowal he had executed the sale agreement in favour of the plaintiff. Considering the evidence of DW2, when it is found that there is no proof as such evidencing the actual borrowal of Rs.2,00,000/- on the part of Subbaiyan from DW2 and when with reference to the same, the contesting defendants would rely upon the bank statement of accounts, marked as Ex.B5 and when there are certain entries contained therein and when there is no clear indication as to in whose account Rs.2,00,000/- has been transferred on 16.07.2006, the facts being above, even otherwise, as held by the trial Court, assuming the borrowal of Rs.2,00,000/- by Subbaiyan from DW2 is genuine, on that score alone, it cannot be held that the sale agreement had been executed by Subbaiyan only as a security for the subsequent borrowal of Rs.2,00,000/- by him from the plaintiff as put forth by the contesting defendants. As held by the trial Court, even for the sake of arguments, if it has to be accepted that Subbaiyan had borrowed Rs.2,00,000/- from DW2, when he has the necessity to borrow the said amount, in such view of the matter, it is natural that Subbaiyan had endeavoured

to sell the suit property to discharge the said debt and therefore, merely because of the existence of the earlier debt, it cannot be held without any basis that the amount of Rs.2,00,000/- tendered by the plaintiff on the date of the sale agreement would only represent the loan amount received by Subbaiyan from the plaintiff and not the amount towards the part of the sale consideration as put forth by the plaintiff. When as above pointed out, the execution of the sale agreement on the part of Subbaiyan knowing the contents thereof have been clearly spoken to by PWs 1 and 2 and their evidence had not been dented in any manner during the course of cross examination and not shown to be unreliable and untrustworthy on the part of the contesting defendants, in such view of the matter, the determination of the trial Court that the plaintiff has established the truth and validity of the sale agreement, in my considered opinion, do not warrant any interference.

19. Not stopping there, it has to be noted that the plaintiff has pleaded that after the demise of Subbaiyan, he had approached the defendants repeatedly for the completion of the sale transaction. However, the defendants had been delaying the matter and the plaintiff on noticing that the defendants had not come forward to execute the sale deed on account of the property dispute amongst themselves and therefore, it is put forth that he had issued the legal notice calling upon the defendants to complete the sale transaction on 20.12.2004. The legal notice has been marked as Ex.A2. According to the plaintiff, barring the defendants 5 and 8, the other defendants have received the legal notice. Despite the receipt of the legal notice, the defendants have not responded to the same in any manner nor complied with the demand made by the plaintiff therein. The acknowledgement cards had been marked as Ex.A3 series and the covers returned from the defendants 5 and 8 have been marked as Ex.A4. Considering the materials placed on record, it is evident that inasmuch as the sale agreement dated 15.07.2004 had been truly executed by Subbaiyan in favour of the plaintiff as pleaded by the plaintiff and the plaintiff had been repeatedly approaching the defendants to complete the sale transaction pursuant to the sale agreement, unable to repudiate the case of the plaintiff, it is found that the defendants had not chosen to send any reply controverting the case projected by the plaintiff in the legal notice. The abovesaid aspects of the matter would only strengthen the plaintiff's case as regards the truth and validity of the sale agreement in question.

20. Though the defendants 4 to 9 had resisted the plaintiff's suit by filing the written statement contending that it has been obtained only as security for the loan transaction, however, it is found that they had also pleaded in the written statement that in case specific performance is ordered in favour

of the plaintiff, the Court should hold that it is only the defendants 4 to 9 who are entitled to receive the balance sale price and execute the sale deed. The abovesaid aspects of the pleas put forth in the written statement had been accepted by the fourth defendant examined as DW1. Therefore, it is seen that the contesting defendants are unable to stoutly resist the truth and validity of the sale agreement Ex.A1 and on the other hand, had been taking prevaricative stands with reference to the same so as to avoid the execution of the sale deed in favour of the plaintiff one way or the other.

21. From the materials placed on record and considering the copies of the Wills projected by the contesting defendants marked as Exs.B3 and B4, when it is seen that only the copies of the Wills had been exhibited and when the defendants inter se have challenged the truth and validity of the abovesaid Wills one way or the other and when there is no material to uphold the execution of the abovesaid Wills by Subbaiyan as well as the truth and validity of the abovesaid Wills and other than marking the copies of the Wills, the contesting defendants having not endeavoured to sustain the truth and validity of the same, considering the abovesaid factors in toto, it is seen that as put forth by the plaintiff, on account of the dispute amongst the defendants as to who should inherit the suit property after the demise of Subbaiyan and when the Wills projected by the contesting defendants have been seriously challenged by the other defendants, in such view of the matter, it is found that owing to the property tussle amongst the defendants, they had not come forward to execute the sale deed in favour of the plaintiff and delaying the matter and it is further found that the contesting defendants had chosen to project the false case as if the sale agreement has been taken as a security for the alleged borrowal of a sum of Rs.2,00,000/- by Subbaiyan from the plaintiff. However, when with reference to the alleged loan transaction, there is nil material on the part of the contesting defendants and when as above discussed, the truth and validity of the sale agreement has been clearly established by the plaintiff, in all, it is found that the trial Court is wholly justified in upholding the truth and validity of the sale agreement marked as Ex.A1.

22. The defendants have also taken the plea that the plaintiff has been not ready and willing to perform his part of the contract. In other words, according to the contesting defendants, the plaintiff has not established his solvency to pay the balance sale consideration within the stipulated period. The plaintiff, on the other hand, has clearly pleaded that he has been always ready and willing to perform his part of the contract and it is only the defendants who had been evading the same on some pretext or the other. Considering the materials

placed on record, when it is found that as per the sale agreement, the sale transaction should be completed within six months from the date of the sale agreement and Subbaiyan having died on 22.07.2004 and the plaintiff had put forth the case that he had been approaching the defendants to complete the sale transaction repeatedly and the defendants had been evading the same on some pretext or the other and when it is seen that the plaintiff has also issued a legal notice on 20.12.2004 within the stipulated period calling upon the defendants to complete the sale before the stipulated period, despite the same, as above noted, the defendants had not responded to the notice nor complied with the demands made by the plaintiff therein, thereafter, it is seen that the plaintiff has levied the suit against the defendants on 04.02.2005. It is thus seen that there is no laches or delay on the part of the plaintiff in the issuance of the legal notice as well as in the institution of the suit claiming the relief of specific performance.

23. As regards the solvency of the plaintiff in paying the balance sale consideration, the plaintiff has marked both his and his wife's bank pass book as Ex.A5 as well as the salary certificate as Ex.A7, the Provident Fund statement of his wife as Ex.A6, the deposit receipt of Canara Bank as Ex.A8, Kisan Vikas receipt as Ex.A9 and NSD certificate as Ex.A10. It is also to be noted at this juncture that both the plaintiff as well as his wife are Government employees. Therefore, the determination of the trial Court that considering the employment of the plaintiff and his wife as Government employees, when they are able to raise funds from any bank for the purpose of acquisition of the property at any point of time and also considering the materials on the part of the plaintiff, when the capacity and means of the plaintiff to pay the balance sale consideration cannot be doubted as such and when there is no material on the part of the defendants that the plaintiff and his wife are not maintaining cordial relationship and in such view of the matter, considering the total solvency of the plaintiff and his wife and their ability to raise the funds from the bank etc., the trial Court is justified in holding that the abovesaid documents amply establish the capacity of the plaintiff to pay the balance sale consideration. That apart, as held by the trial Court, the plaintiff is not expected to tender the amount in the Court unless directed to establish his solvency in paying the balance sale consideration and the plaintiff is not required to deposit the amount in the Court except when so directed by the Court. In such view of the matter, considering the anxiety and eagerness exhibited by the plaintiff to go ahead with the performance of the sale agreement and his capacity and means to raise funds for paying the balance sale consideration to the defendants and obtaining the execution of the sale deed and when the plaintiff has established his

total readiness and willingness to perform his part of the contract as above pointed out, in all, the trial Court is justified in holding that the plaintiff has been always ready and willing to perform his part of the contract and also had the capacity and means to pay the balance sale consideration for the purpose of completing the sale transaction.

24. The counsel for the defendants would put forth the arguments that considering the factual matrix as regards the hospitalisation of Subbaiyan on the date of the sale agreement and his subsequent demise on 22.07.2004 within a period of seven days from the date of entering into sale agreement and the plaintiff having not endeavoured to verify the title of Subbaiyan qua the suit property prior to the execution of the sale agreement, according to him, all together would only belie the case of the plaintiff that he had truly obtained the same for the purpose of completing the sale transaction. As regards the verification of Subbaiyan's title qua the suit property, now the plaintiff would tender evidence that he had only seen the xerox copy of the sale deed furnished by Subbaiyan at the relevant point of time and according to him, the original sale deed was lying in the bank. However, when it is seen that even as per the case of the contesting defendants that the plaintiff is only residing in the same street and when it is found that the plaintiff and Subbaiyan are known to each other and accordingly, it is seen that the plaintiff had been in the know of things as regards the title of Subbaiyan qua the suit property and to cap it all, when the title of the Subbaiyan in respect of the suit property is not in dispute and in such view of the matter, the arguments of the plaintiff's counsel that there is a suspicion in the plaintiff's case as regards his endeavour to go ahead with the execution of the sale agreement without a proper verification of the title deed, as such, cannot be countenanced, considering the abovesaid facts and circumstances of the case. As regards the inability of Subbaiyan to execute the sale agreement, particularly, at the time of hospitalisation during the relevant period, however, as above pointed out, considering the oral and documentary evidence projected by the plaintiff and when it is found that Subbaiyan had indeed executed the sale agreement only with an intention of selling the suit property in favour of the plaintiff as well as received Rs.2,00,000/- as advance from the plaintiff and merely because at the relevant point of time Subbaiyan was hospitalised, that alone would not be a factor in isolation to hold that the sale agreement had not been executed by Subbaiyan with an intention to convey the suit property in favour of the plaintiff. When according to the contesting defendants, Subbaiyan was in the hospital at the relevant point of time and he would have not endeavoured to go ahead with the execution of the sale agreement as such, the same logic would also apply as

regards the case projected by them with reference to the borrowal of Rs.2,00,000/- by Subbaiyan from the plaintiff at that point of time. Therefore, the arguments of the plaintiff's counsel that there is a doubt regarding the truth and validity of Ex.A1 sale agreement on the part of Subbaiyan considering his hospitalisation at the relevant point of time and his demise thereafter, by themselves, would not render the sale agreement untrue and invalid and on the other hand, when considering the evidence available on record, in toto, it is found that the sale agreement in question had been indeed executed only by Subbaiyan with an intention of conveying the suit property and accordingly, it is found that the defendants are liable to execute the sale deed in favour of the plaintiff as the legal descendant of Subbaiyan as determined by the trial Court. In this connection, the plaintiff's counsel relied upon the decision reported in 2008-3-LW.252 (Munusamy Vs. Nava Pillai). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

25. In the light of the abovesaid discussions, I hold that the sale agreement dated 15.07.2004 is true, valid and binding on the defendants and I further hold that the plaintiff has been always ready and willing to perform his part of the contract. I further hold that the plea of the contesting defendants that the sale agreement is only taken as a security for the loan taken by Subbaiyan is false. I further hold that the plaintiff is entitled to obtain the relief of specific performance and possession of the suit property in respect of the sale agreement dated 15.07.2004 as prayed for. Accordingly, the Point Nos.1 to 4 are answered. Point Nos.5 and 6:

26. For the reasons aforesaid, the judgment and decree dated 28.12.2007, passed in O.S.No.68 of 2005, on the file of the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore are confirmed and resultantly, the first appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sli

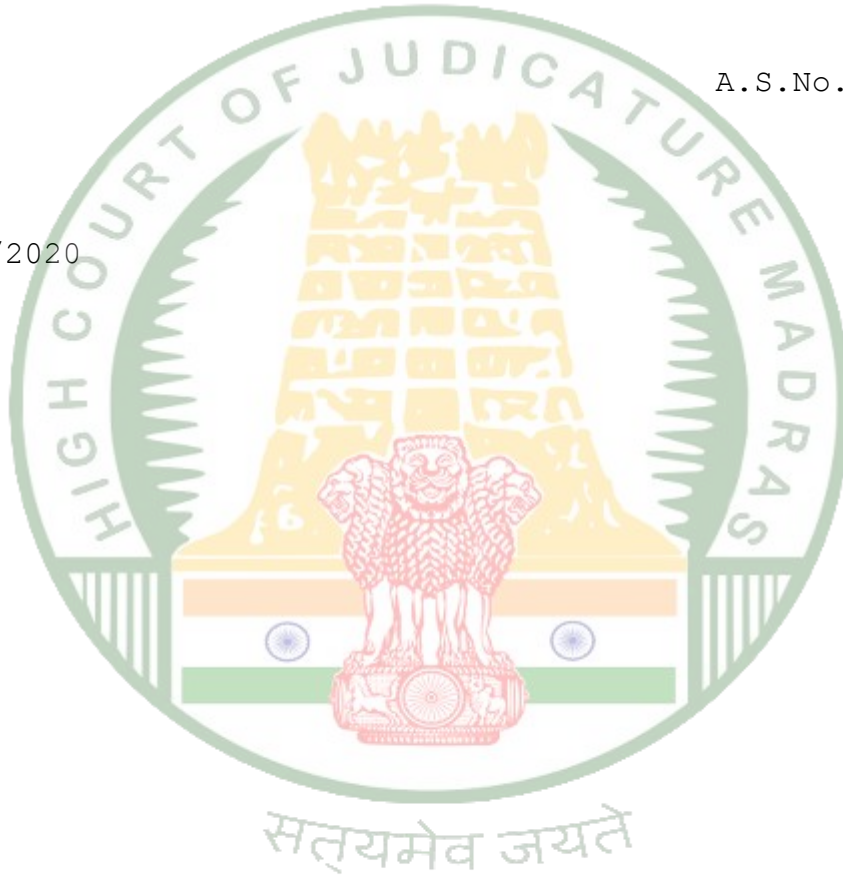
To:

The Additional District and Sessions Court,
(Fast Track Court No.II), Coimbatore.

+lcc to M/s.Anandha Gomathy, Advocate Sr.97234
+lcc to M/s.Sarvabhaman Associates, Advocate Sr.964781

A.S.No.647 of 2009

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