

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 17.07.2019
PRONOUNCED ON : 30.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.695 of 2010

1. S.Ravichandran
2. S.Pandiayan
3. S.Saravanan ... Appellants/Defendants

Vs.

1. Kavitha
2. C.Thanagaraju
3. P.Narayanan ... 2nd & 3rd Respondents/ Defendants 4&5

Prayer: Appeal Suit filed under Section 96 r/w order 41 Rule 1 & 2 of Civil Procedure Code as against the judgment and decree in O.S. No.108/2003, on the file of the Additional District Court cum Fast Track Court II, Salem, dated 11.12.2006.

For Appellants : Ms.V.Srimathi

For R1 : Mr. K.Bijai Sundar

For R2 : No appearance set ex-parte
vide order dated 17.07.2019

For R3 : Mr. S.Ashok Kumar

JUDGMENT

Aggrieved over the judgment and decree dated 11.12.2006, passed in O.S. No.108/2003, on the file of the Additional District Judge, Fast Track Court No.2, Salem, the defendants 1 to 3 have laid 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 directing the defendants 1 to 4 to pay the sum of Rs.9,20,000/- received as part of the sale price with interest at 18% per annum from the date of the suit till realization.

4. The case of the plaintiff, in brief, is that the suit property belonged to the defendants 1 to 3 by virtue of a registered partition deed, dated 04.04.1981 and the fourth defendant Thangaraju had entered into a sale agreement dated 07.06.1996 and also paid an advance of Rs.2,50,000/- and by way of the said agreement, it was agreed that another sum of Rs.35,000/- was to be paid within ten days from the date of agreement and Rs.1,00,000/- within 45 days from the date of the agreement and the balance sale price, namely, Rs.8,61,090/- to be paid on or before 06.09.1996. Since the fourth defendant did not have enough money to purchase the suit property, he entered into an agreement of sale with the plaintiff on 07.11.1996 for a valid consideration of Rs.11,76,450/- and the plaintiff had paid a sum of Rs.9,20,000/- as advance towards the sale consideration and agreed to receive the balance sum on or before 05.11.1998 and the defendants 1 to 3 had also agreed to the same as a sum of Rs.2,00,000/- by cash and cheque for Rs.1,00,000/- drawn in favour of the third defendant was received by the defendants 1 to 3 and they had also signed on the reverse page of the agreement dated 07.06.1996 and hence, they are all aware of the agreement in favour of the plaintiff and the plaintiff had been always ready and willing to pay the balance sale consideration and however, instead of executing the sale deed in favour of the plaintiff, the defendants 1 to 4 had created a false document in favour of the fifth defendant as though a sale deed had been executed for a paltry sum of Rs.3,35,790/- and also played fraud on the plaintiff by inserting different survey number and also by under valuing the property and the plaintiff, through her power agent, had lodged a complaint against the defendants 1 to 5 and the same was taken on file and the same is pending on the file of the Judicial Magistrate Court, Salem. In such circumstances, the plaintiff, left with no other alternative, accordingly has laid the suit against the defendants for appropriate reliefs.

5. The defendants 1 to 3 resisted the plaintiff's suit by contending that the suit laid by the plaintiff is not maintainable either in law or on facts and admitted the execution of the sale agreement in respect of the suit property dated 07.06.1996 for a sum of Rs.11,76,450/- and also the receipt of Rs.2,50,000/- from the fourth defendant on the date of the sale agreement. However, denied the case of the plaintiff that the fourth defendant did not have enough money to purchase the suit property and also disputed the case projected by the plaintiff that the fourth defendant had entered into the agreement of sale with the plaintiff on 07.11.1996, in respect of the suit property and according to the defendants, they are not aware of the abovesaid sale agreement in favour of the plaintiff and in fact, the plaintiff is not at all known to the defendants 1 to 3. It is further stated that the case of the plaintiff that she has paid Rs.9,20,000/- as advance out of the total sale consideration of Rs.11,76,450/- to the fourth defendant is false and the abovesaid sale agreement is made only

for the purpose of litigation and also disputed the case of the plaintiff that the third defendant had received Rs.2,00,000/- in cash and Rs.1,00,000/- in cheque in respect of the abovesaid sale agreement and further it is stated that the plaintiff is not ready and willing to complete her part of the contractual obligation and according to the defendants 1 to 3, there is no privity of contract between the plaintiff and them and the time stipulated qua the agreement of sale dated 07.06.1996 had already been expired and subsequent to the date of the abovesaid sale agreement, the fourth defendant came to the defendants 1 to 3 and gave Rs.2,00,000/- in cash and Rs.1,00,000/- in cheque and when the defendants questioned about the cheque, the fourth defendant replied that the cheque was issued by one Kavitha towards some debt borrowed by her from the fourth defendant and it was stated to be issued by the said Kavitha to the fourth defendant without mentioning the name of the payee and at the time of the delivering the cheque, the fourth defendant filled the name of the third defendant in the same and believing the words of the fourth defendant, the defendants 1 to 3 had accepted the cheque and the defendants now understood that the fourth defendant has played fraud in dealing with property and the plaintiff has not come out clearly as to when she paid the various amounts to the fourth defendant and the presumption is that the intention of the plaintiff was to give only loan to the fourth defendant to purchase the suit property and as a security to the contract, the sale agreement was effected and if really the intention of the plaintiff was to purchase the suit property, she would have entered into the sale agreement with the true owners of the same, namely, the defendants 1 to 3 and the fourth defendant not having any valid title to the suit property cannot convey a better title to the plaintiff and also has no authority to transfer the suit property to the plaintiff. The plaintiff issued a legal notice to the defendant dated 04.06.1999 and to the same, the defendants 1 to 3 issued a reply dated 22.06.1999 containing true facts. The plaintiff lodged a complaint before the Judicial Magistrate Court No.2, Salem to take cognizance of the offence alleged to have been committed by the defendants under Section 420 of Indian Penal Code and the same is pending and the plaintiff has never been ready and willing to perform her part of the contract and the intention of the plaintiff is only to recover earnest money alleged to have been paid by her to the fourth defendant. Even according to the plaintiff, she has paid the amount only to the fourth defendant and therefore, the fourth defendant is the person who has to pay the sum, if any, to the plaintiff. The defendants 1 to 3 suspect that the plaintiff would have colluded with the fourth defendant and had come forward with a false suit. The defendants 1 to 3 cannot be made the scapegoats for the wrong committed by the fourth defendant and the plaintiff is not a bonafide purchaser. The fourth defendant is not entitled to the suit property in any manner and not entitled to enter into any agreement of sale for conveying the same in favour of the plaintiff. The defendants as the absolute owners of the suit

property conveyed the same in favour of the fifth defendant by way of a sale deed dated 12.01.1998 and since then it is the fifth defendant who is the absolute owner of the suit property. The defendants 1 to 3 never agreed to execute the sale deed in favour of the plaintiff and there is no cause of action for the plaintiff against the defendants 1 to 3 and the suit is liable to be dismissed.

6. The fifth defendant resisted the plaintiff's suit contending that the defendants 1 to 3 were the absolute owners of the suit property and he came to know that there was an agreement of sale between the defendants 1 to 3 and the fourth defendant dated 07.06.1996 in respect of the suit property for the sum recited therein and the receipt of Rs.2,50,000/- by the defendants 1 to 3 pursuant to the same and further, it is stated that the fourth defendant had not performed his part of the obligation under the abovesaid agreement and the fourth defendant has never been ready and willing and capable of performing his obligation under the said contract and the fourth defendant was in search of buyers who are capable of purchasing the suit properties and the fifth defendant, accordingly had approached the defendants 1 to 3 to purchase the suit property for a sum of Rs.11,86,458/- and accordingly, the defendants 1 to 4 have agreed to sell the suit property to the fifth defendant and the fifth defendant had paid the abovesaid sum of Rs.11,86,458/- to the defendants 1 to 3 and obtained the sale deed on 12.01.1998 from them quoting the price at Rs.3,35,790/- in terms of the guide line value fixed by the Registration Department for the suit property. However, the full price of Rs.11,86,458/- has been paid. The fifth defendant has disputed all the other allegations put forth by the plaintiff in the plaint and further stated that at the time of the execution of the sale deed in favour of the fifth defendant, the fourth defendant was also present and he had received back the advance money paid by him to the defendants 1 to 3 under the sale agreement dated 07.06.1996 and passed on a receipt to the defendants 1 to 3 and further represented that the original agreement dated 07.06.1996 was lost and the abovesaid fact has also been mentioned in the reply notice dated 04.06.1999 sent by the defendants 1 to 3. The fifth defendant is a bonafide purchaser for value without notice of the suit agreement dated 07.11.1996 said to have been executed between the plaintiff and the fourth defendant. The sale deed dated 12.01.1998 is a valid document. The plaintiff having alleged to seek only the refund of advance sum of Rs.9,20,000/- by way of a legal notice dated 04.06.1999 is not entitled to seek the relief of specific performance and therefore put forth that there is no cause of action to lay the suit and the suit is liable to be dismissed.

7. On the basis of the above pleas set out by the respective parties, the following issues were framed by the trial Court for determination:

1. Whether the plaintiff is entitled to obtain the relief of specific performance?

2. To what other relief the plaintiff is entitled to?

8. In support of the plaintiff's case, PWs 1 to 4 were examined, Exs. A1 to A10 were marked. On the side of the defendants, DW1 was been examined. No document has been marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decline the relief of specific performance prayed for by the plaintiff and however, granted the relief in favour of the plaintiff by determining that the defendant 1 to 3 are liable to pay a sum of Rs.9,20,000/- to the plaintiff with interest thereon at 6% from the date of the suit till realization and accordingly disposed of the suit in favour of the plaintiff with costs. Impugning the same, the defendants 1 to 3 have come forward with the present First Appeal.

10. The following points arises for determination in the First Appeal:

1. Whether there is any privity of contract between the plaintiff and the defendants 1 to 3 in respect of the sale of the suit property on the basis of the sale agreement dated 07.11.1996 as put forth by the plaintiff?

2. Whether the plaintiff is entitled to seek the refund of Rs.9,20,000/- from the defendants based on the sale agreement dated 07.11.1996 as put forth in the plaint?

3. Whether the plaintiff is entitled to obtained the relief of specific performance in respect of the sale agreement dated 07.11.1996?

4. To what relief the plaintiff is entitled to ?

5. To what relief the defendants 1 to 3/appellants are entitled to?

6. To what relief the fifth defendant is entitled to ?

Point Nos.1 to 3:

11. It is not in dispute that the defendants 1 to 3 are the owners of the suit property. As could be seen from the materials placed on record, the parties are not in dispute that the defendants 1 to 3 and the fourth defendant had entered into an agreement of sale dated 07.06.1996, whereby the defendants 1 to 3 had agreed to sell the suit property in favour of the fourth defendant for a sum of Rs.11,46,090/- and it is further seen that the defendants 1 to 3 had received a sum of Rs.2,50,000/ from the fourth defendant as advance. It is further seen that as per the abovesaid agreement of sale, the

fourth defendant is required to pay the balance sale price in instalments as stipulated under the agreement of sale and in all, pay the entire balance sale consideration on or before 06.09.1996. However, it is found that the fourth defendant did not go ahead with the abovesaid sale agreement and failed to perform his obligations pursuant to the same i.e., he has not come forward to pay the remaining balance sale price as fixed in the abovesaid sale agreement to the defendants 1 to 3 and obtain the sale deed from them qua the suit property. The time fixed for the completion of the sale transaction in the abovesaid sale agreement is on or before 06.09.1996 and the fourth defendant having failed to perform his part of the contract and furthermore also not proceeded further in any manner and not initiated any action based on the same against the defendants 1 to 3 and in particular, when on the date of the presentation of the present suit on 01.11.2001, the abovesaid sale agreement has become time barred, it is found that the fourth defendant had lost interest whatsoever he had in respect of the suit property based on the abovesaid sale agreement.

12. As rightly put forth by the defendants' counsel, based on the sale agreement dated 07.06.1996, the fourth defendant would not derive any claim of title to the suit property as he had not endeavoured to go ahead with the performance of his obligations as outlined in the abovesaid sale agreement. Therefore, it is seen that the fourth defendant cannot claim any valid title to the suit property based on the sale agreement dated 07.06.1996. As could be seen from the pleas put forth by the respective parties, inasmuch as the fourth defendant was unable to go ahead with the performance of his obligations under the sale agreement dated 07.06.1996, it is found that he has been searching for the prospective buyers for the suit property. Now, according to the fifth defendant, on coming to know of the abovesaid position, he having evinced interest to purchase the suit property, accordingly, put forth the case that he had approached the defendants 1 to 3 with reference to the same and as per the agreement and understanding entered into between him and the defendants 1 to 3 as well as the fourth defendant, accordingly, it is found that the defendants 1 to 3 had conveyed the suit property in favour of the fifth defendant by way of the sale deed dated 12.01.1998. Though there are some controversies between the parties as regards the quantum of consideration passed on by the fifth defendant to the defendants 1 to 3 under the abovesaid sale deed, the fact remains that the defendants 1 to 3 had conveyed the suit property in favour of the fifth defendant by way of the abovesaid sale deed. The copy of the abovesaid sale deed has been marked as Ex.A8. According to the fifth defendant, he is not aware of the sale agreement dated 07.11.1996 said to have been entered into between the plaintiff and the fourth defendant in respect of the suit property for the sum as set out in the plaint and also not aware of the passing of any sum by the plaintiff to the fourth defendant or for the matter, to the defendants 1 to 3 as claimed by the plaintiff.

According to the fifth defendant, he is a bonafide purchaser for value without notice of the sale agreement dated 07.11.1996 projected by the plaintiff.

13. The plaintiff has laid the suit based on the sale agreement dated 07.11.1996 said to have been entered into between him and the fourth defendant qua the suit property. As above noted, the fourth defendant is not the owner of the suit property. He cannot claim any title to the suit property based on the sale agreement dated 07.06.1996. As abovenoted, whatever right the fourth defendant had in respect of the suit property by way of the sale agreement dated 07.06.1996, the same had been lost due to the lapse of the abovesaid agreement as the fourth defendant has failed to perform his obligations under the said agreement and furthermore, when the fourth defendant having also not enforced the same in the manner known to law within the time allowed by law, in toto, it is found that the sale agreement dated 07.06.1996 has become invalid and unenforceable. In the light of the above position, if really the plaintiff had intended to purchase the suit property, as rightly contended by the defendants 1 to 3, in particular, the plaintiff should have only purchased it from the defendants 1 to 3 and endeavoured to enter into the sale agreement with them for the purchase of the suit property. On the other hand, the case projected by the plaintiff that she had entered into the sale agreement for the purchase of the suit property with the fourth defendant who has no title to the suit property in any manner is found to be totally unacceptable and also without any justification. It is not the case of the plaintiff that he is not aware of the ownership of the defendants 1 to 3 qua the suit property. Even as per the case projected by the plaintiff, it is found that she is aware that the defendants 1 to 3 are the true owners of the suit property and that the fourth defendant had only an agreement of sale with the owners of the suit property in respect of the suit property dated 07.06.1996. In such view of the matter, if really, according to the plaintiff, he had come to understand that the fourth defendant is unable to go ahead with the performance of the contract vide sale agreement dated 07.06.1996 and evinced interest in respect of the suit property, in the normal course of events and as a prudent person, the plaintiff would have only ventured to enter into the sale agreement with the defendants 1 to 3 for the purchase of the suit property and the case projected by the plaintiff that she had only entered into the sale agreement dated 07.11.1996 with the fourth defendant for the purchase of the suit property cannot at all be believed and accepted in any manner.

14. Though it is projected by the plaintiff that the defendants 1 to 3 are also aware of the sale agreement dated 07.11.1996 entered into between him and the fourth defendant, with reference to the abovesaid claim of the plaintiff, there is no acceptable and reliable material and the sale agreement dated 07.11.1996 has been marked as Ex.A1. If really the

defendants 1 to 3 have knowledge about the same and also have given their consent with reference to the same and agreed to convey the suit property based on the said sale agreement, the plaintiff or for the matter, the fourth defendant would have endeavoured to array the defendants 1 to 3 as parties to the sale agreement or atleast would have obtained their signatures in the abovesaid sale agreement as an acknowledgement of their consent to the abovesaid transaction. On the other hand, there is nothing contained in Ex.A1 agreement that the defendants 1 to 3 had given their nod or acquiescence to the abovesaid transaction and also agreed to convey the suit property in favour of the plaintiff on the performance of the obligations on the part of the plaintiff and the fourth defendant as put forth therein. Furthermore, a reading of the averments contained in Ex.A1 sale agreement would go to disclose that even prior to the execution of the abovesaid sale agreement between the plaintiff and the fourth defendant, the recitals therein go to disclose that as if the plaintiff had paid various sums to the fourth defendant and the sale agreement recites as if the plaintiff had paid Rs.10,000/- to the fourth defendant on 25.08.1996, Rs.1,00,000/- by way of a cheque dated 28.08.1996, Rs.2,00,0000/- in cash on 07.09.1996 and also Rs.1,00,000/- on the same date vide cheque dated 07.09.1996 in the name of the third defendant and further, the agreement recites that he had paid Rs.3,10,000/- in cash on the date of the sale agreement i.e., 07.11.1996, in all, according to the plaintiff, he has paid a total sum of Rs.9,20,000/- as above pointed out. Further, the agreements recites as if the balance sum has to be paid by the plaintiff to the fourth defendant on or before 05.11.1998 and obtain the sale deed in respect of the suit property. The only recital that link the defendants 1 to 3 with the above agreement Ex.A1 is the payment of Rs.1,00,000/- by way of cheque dated 07.09.1996 and the payment of Rs.2,00,0000/- by way of cash on 07.09.1996. According to the plaintiff, for the receipt of Rs.2,00,000/- by way of cash and Rs.1,00,000/- by way of cheque on 07.09.1996, it is put forth that the defendants 1 to 3 had made an endorsement with reference to the same in the sale agreement dated 07.06.1996. As rightly contended by the defendants' counsel, if really the abovesaid sums had been advanced to the defendants 1 to 3 in acknowledgement of their acceptance to the sale agreement Ex.A1 and their assent to convey the suit property in favour of the plaintiff pursuant to Ex.A1 sale agreement, naturally, the plaintiff would have endeavoured to obtain the necessary endorsement with reference to the payment of Rs.2,00,000/- in cash and Rs.1,00,000/- in cheque from the defendants 1 to 3 only in Ex.A1 sale agreement and the plaintiff's case that the endorsement with reference to the same had been made by the defendants 1 to 3 in the sale agreement dated 07.06.1996 as such cannot at all be believed and accepted in any manner. To cap it all, the sale agreement dated 07.06.1996 has not been produced in the matter. If such an endorsement had been made by the defendants 1 to 3 in the sale agreement dated 07.06.1996, the plaintiff being the alleged and

willing purchaser of the suit property based on Ex.A1 sale agreement as a prudent person, she would have obtained the sale agreement dated 07.06.1996 from the defendants or from the fourth defendant as the case may be. However, the sale agreement dated 07.06.1996 has not seen the light of the day, particularly, to evidence that any endorsement had been made by the defendants 1 to 3 acknowledging the receipt of Rs.2,00,000/- in cash and Rs.1,00,000/- by way of cheque. Apart from the above two transactions made under Ex.A1, equally, the case of the plaintiff that the defendants 1 to 3 had also extended the time for the sale agreement dated 07.06.1996 till 05.11.1998 also is not proved and as above noted, the sale agreement dated 07.06.1996 has not been produced to establish the abovesaid extension of time.

15. No doubt, the defendants 1 to 3 had not disputed the receipt of Rs.2,00,000/- in cash and the receipt of Rs.1,00,000/- in cheque and according to them, after the time stipulated in the agreement of sale dated 07.06.1996 had lapsed, the fourth defendant had approached them and given Rs.2,00,000/- in cash and Rs.1,00,000/- in cheque and on questioning the fourth defendant about the cheque, it is stated that the fourth defendant represented that the abovesaid cheque was issued by one Kavitha for the amount due by her to the fourth defendant without mentioning the name of the payee and therefore, in the abovesaid cheque, he had filled the name of the third defendant and on that basis, they had accepted the cheque and only had later realized that fraud has been committed by the fourth defendant. In any event, when it is found that the plaintiff has not established that the sum of Rs.2,00,000/- and Rs.1,00,000/- in cheque have been passed by her to the defendants 1 to 3 and only put forth the case that the same had been handed over to the fourth defendant and according to the defendants 1 to 3, the abovesaid sum was received by them only from the fourth defendant and not from the plaintiff for the reasons stated by them and when the endorsement alleged to have been made by the defendants 1 to 3 with reference to the same has not seen the light of the day and the case of the plaintiff that by way of the receipt of the said sum, the defendants 1 to 3 had extended the time fixed under the sale agreement dated 07.06.1996 upto 05.11.1998 is also not substantiated in any manner, in such view of the matter, on the abovesaid facts and circumstances also, we cannot accept that the defendants 1 to 3 had given their nod and consent to the sale agreement Ex.A1 entered into between the plaintiff and the fourth defendant. As above noted, if the abovesaid sums represent only the consideration qua the sale agreement Ex.A1 and if really the defendants had received the said sums, nothing would have prevented the plaintiff from taking appropriate endorsement with reference to the same in Ex.A1 itself. Therefore, when there is no material to substantiate the case of the plaintiff that the abovesaid sums had been received by the defendants 1 to 3 as an acknowledgement of their liability to execute the sale deed in

favour of the plaintiff based on Ex.A1 agreement, in such view of the matter, on that factor alone, it cannot be held that the defendants 1 to 3 have also made themselves liable to convey the suit property in favour of the plaintiff by way of Ex.A1 sale agreement.

16. When as abovenoted, there is no privity of contract between the defendants 1 to 3 and the plaintiff in any manner for the sale of the suit property and when admittedly the defendants 1 to 3 are not parties to Ex.A1 sale agreement and not shown to have acknowledged the receipt of Rs.3,00,000/- in toto towards the sale agreement under Ex.A1 and at the most, the acknowledgement of Rs.3,00,000/- on the part of the defendants could only be termed as in connection with the sale agreement dated 07.06.1996 and nothing more than that and when there is no material to hold that by way of the acknowledgement of the same, the defendants 1 to 3 had extended the time up to 05.11.1998 qua the performance of the sale agreement dated 07.06.1996, in such view of the matter, the case projected by the plaintiff that the defendants 1 to 3 are also aware of same and given their consent for the sale transaction under Ex.A1, as such, cannot at all be believed and accepted in any manner.

17. As regards the alleged payment of the other sums said to have been made by the plaintiff, even as per the case of the plaintiff, the same is only alleged to be paid to the fourth defendant and not to the defendants 1 to 3. In this connection, the plaintiff has not come forward to enter into the witness box to depose her case. She has examined her husband as PW1. PW1 has admitted that his wife, namely, the plaintiff was in a good health condition and know well about the facts of the case and despite the above position, the plaintiff has not chosen to enter the witness box. Be that as it may, her husband had been examined as PW1. PW1, during the course of his cross examination has admitted that the sale agreement dated 07.06.1996 entered into between the fourth defendant and the defendants 1 to 3 had become time barred and also admitted that the abovesaid sale agreement had been executed between the plaintiff and the fourth defendant and however would state that Ex.A1 sale agreement had been entered into only on the basis of the sale agreement dated 07.06.1996. Therefore, as rightly put forth by the defendants' counsel, if really, the plaintiff is a bonafide purchaser of the suit property at least she would have endeavoured to project the sale agreement dated 07.06.1996 from the fourth defendant in support of her case.

18. Furthermore, PW1 has also admitted that the fourth defendant is not the owner of the suit property and he had not received any acknowledgement in writing from the defendants 1 to 3 for the payment of Rs.9,20,000/- and also further admitted that they had not directly entered into any agreement with the defendants 1 to 3. Therefore, when the defendants 1 to 3 are not at all associated in any manner with the sale agreement

Ex.A1 and when the alleged payment of Rs.3,00,000/- said to have been paid to the defendants 1 to 3 by the plaintiff has not been established and not been acknowledged by the defendants 1 to 3 only in recognition of Ex.A1 sale agreement and as above noted, according to the defendants 1 to 3, the abovesaid sum had been paid to them only by the fourth defendant in respect of the sale agreement dated 07.06.1996 and PW1 has admitted that there is no document evidencing the payment of Rs.9,20,000/- to the defendants 1 to 3 and when the sale agreement dated 07.06.1996 has not been produced and there is no material to hold that any endorsement as such has been made by the defendants 1 to 3 acknowledging the receipt of Rs.3,00,000/- in the abovesaid sale agreement as well as the extension of the time till 05.11.1998 for the performance of the contract, in all, it is found that the case projected by the plaintiff that the defendants 1 to 3 are also aware of the transaction and given their consent for the sale agreement Ex.A1 said to have been entered into between the plaintiff and the fourth defendant cannot at all be believed and accepted in any manner.

19. Prior to the institution of the suit, the plaintiff has issued pre-suit notice marked as Ex.A9 and under Ex.A9, the plaintiff has not sought for the relief of specific performance based on the sale agreement. On the other hand, by way of the abovesaid notice, she has only sought for the receipt of sum of Rs.9,20,000/- alleged to have been paid by her to the fourth defendant and the same has been accepted by PW1. The case projected by the plaintiff by way of Ex.A9 legal notice has been totally repudiated by the defendants 1 to 3 in the reply notice marked as Ex.A10. As above pointed out, the plaintiff has miserably failed to establish that the defendants 1 to 3 had been, in any manner, associated with the sale agreement Ex.A1. The fourth defendant is not the owner of the suit property. The fourth defendant has no authority to convey the suit property to the plaintiff. The right which the fourth defendant had in respect of the suit property based on the sale agreement dated 07.06.1996 has been lost once forever. In any event, merely on the basis of the sale agreement dated 07.06.1996, the fourth defendant cannot lay the claim of valid title to the suit property, particularly, when it is seen that the contract for sale does not of itself create any interest in, or charge upon the property in favour of the buyer and the same has been outlined under Section 54 of the Transfer of Property Act. The plaintiff has failed to establish the payment of Rs.9,20,000/- to the fourth defendant as claimed by her pursuant to or based on Ex.A1 sale agreement. Despite the abovesaid factors, it is found that the plaintiff has chosen to lay the suit against the defendants for the relief of specific performance or in the alternative for the refund of the sum of Rs.9,20,000/- with interest.

20. On the basis of the materials placed on record, the trial Court after holding that inasmuch as the sale agreement

had not been entered into between the plaintiff and the defendants 1 to 3, the true owners of the suit property, determined that the plaintiff is not entitled to seek and obtain the relief of specific performance and further holding that the sale agreement had been entered into only between the plaintiff and the fourth defendant despite the plaintiff having noted that the fourth defendant has no title to the suit property and that the defendants 1 to 3 have title to the suit property, he had entered into the sale agreement with Ex.A1 and also claimed to have paid various sums under the abovesaid sale agreement, the trial Court has further held that the sale agreement Ex.A1 projected by the plaintiff cannot at all be relied upon and on that basis, further held that the plaintiff has not also not endeavoured to proceed further to purchase the suit property and also further proceeded to hold that only with a view to grab the suit property, the plaintiff has entered into the abovesaid sale agreement and resultantly held that the plaintiff is not entitled to obtain the relief of specific performance and declined the same.

21. Considering the above discussions, when it is seen that the plaintiff has miserably failed to establish that the defendants 1 to 3 are aware of the sale agreement and given nod to the same and the plaintiff has miserably failed to establish that he had paid Rs.9,20,000/- to the defendants 1 to 3 or for the matter she had paid Rs.3,00,000/- on 07.09.1996 to the defendants 1 to 3 based on the sale agreement Ex.A1 and when there is no document at all on the part of the plaintiff worth acceptance evidencing the payment of Rs.9,20,000/- to the defendants 1 to 3 in particular and further despite having noted that the fourth defendant has no title to the suit property and it is only the defendants 1 to 3 who has title to the suit property, the plaintiff having entered into the sale agreement Ex.A1 only with the fourth defendant and not with the defendants 1 to 3 and further when the plaintiff has also not further proceeded to go ahead with the performance of her obligations under Ex.A1 sale agreement and endeavoured to pay the balance sale consideration to the fourth defendant within the time fixed under the sale agreement Ex.A1 and on the other hand had chosen to issue legal notice only on 04.06.99 much after the time fixed in the sale agreement for the performance being 05.11.1998, in all, it is found that the plaintiff and the fourth defendant had colluded together one way or the other and brought the sale agreement Ex.A1 with a view to grab the suit property from the defendants 1 to 3 and accordingly, it is found that the plaintiff has also not evinced interest to initiate further action to accomplish the further transaction by way of Ex.A1 and also miserably failed to establish that the various sums had been paid by her based on the sale agreement Ex.A1 either to the fourth defendant or to the defendants 1 to 3 as sought to be made by her, in the light of the abovesaid position, the trial Court is found to be justified in not granting the relief of specific performance in favour of the plaintiff and no

interference is called for with reference to the same.

22. Despite the abovesaid factors, it is found that the trial Court had erred in directing the defendants 1 to 3 to refund the sum of Rs.9,20,000/- with interest to the plaintiff as determined by it. As above pointed out, when there is no valid, acceptable and reliable materials to hold that any sum either by way of cash or cheque had been parted by the plaintiff to the defendants 1 to 3 and the same had been received by the defendants 1 to 3 in recognition of the plaintiff's alleged right under the sale agreement Ex.A1 and as above noted, there is no privity of contract between the plaintiff and the defendants 1 to 3 in any manner and the same had also been accepted by PW1 and considering the conduct of the plaintiff in toto she having not evinced interest to pursue the sale agreement in the manner known to law and only keen on the receipt of the sums said to have been parted by her based on the same and when as above pointed out and held that when the plaintiff having failed to establish that she has paid a sum of Rs.9,20,000/- to the defendants 1 to 3 as such and the same had been acknowledged by them to the plaintiff and the so called acknowledgement of Rs.3,00,000/- on the part of the defendants has not been shown to be in continuation or in recognition of the Ex.A1 sale agreement and as above pointed out, the alleged endorsement said to have been made by the defendants 1 to 3 with reference to the same in the sale agreement dated 07.06.1996 has not seen the light of the day, in all, it is found that the trial Court has completely committed a serious miscarriage of justice in directing the defendants 1 to 3 to refund Rs.9,20,000/- with interest to the plaintiff based on Section 15 of the Specific performance Act. When Section 15 of the Specific Performance Act deals with the person as to who may obtain specific performance and when the abovesaid Section recites that the specific performance of the contract may be obtained by any party thereto and when as above pointed out, the defendants 1 to 3 are not at all parties to Ex.A1 sale agreement and the plaintiff has not established the receipt of Rs.9,20,000/- by the defendants 1 to 3 pursuant to the sale agreement Ex.A1, in such view of the matter, when there is no contract at all between the plaintiff and the defendants 1 to 3, there is no question of enforcement of Ex.A1 sale agreement by the plaintiff against the defendants in any manner and in such view of the matter, as rightly contended by the defendants' counsel, the defendants 1 to 3 not being parties to Ex.A1 sale agreement, they are not liable to pay any sum to the plaintiff as prayed for by the plaintiff. Therefore, the determination of the trial Court that the defendants 1 to 3 are liable to pay the sum of Rs.9,20,000/- with interest to the plaintiff is liable to be set aside.

23. Though the plaintiff has laid the suit claiming the refund of the sum of Rs.9,20,000/- from the defendants 1 to 4, the trial Court has disposed of the plaintiff's suit and only

granted the refund of the abovesaid sum in favour of the plaintiff from the defendants 1 to 3 alone. Thereby, it is found that the trial Court has declined the abovesaid relief sought for by the plaintiff against the fourth defendant. Challenging the abovesaid determination of the trial Court, the plaintiff has not come forward with any appeal or preferred any cross objection in the present appeal.

24. However, the fact remains that the fourth defendant has remained ex-parte both in the trial Court as well as before this Court and chosen not to contest the plaintiff's claim. Accordingly, it is found that when the case had been projected by the plaintiff that he had paid only Rs.9,20,000/- to the fourth defendant as claimed by her and failed to establish that the abovesaid sum had been paid to the defendants 1 to 3 and the abovesaid case of the plaintiff having not been challenged by the fourth defendant in any manner and the plaintiff having come forward with the suit claiming for the relief of specific performance based on Ex.A1 and sought for the relief of refund of the sum of Rs.9,20,000/- as the alternative relief, in the light of the above position, when the plaintiff is not entitled to the main relief of specific performance in respect of the sale agreement dated 07.11.1996 Ex.A1, considering the abovesaid factors in toto, in my considered opinion, the interest of justice would require that the plaintiff should be granted the relief of the obtainment of the sum of Rs.9,20,000/- only from the fourth defendant as the case projected by the plaintiff had not been challenged by the fourth defendant in any manner.

25. In the light of the above discussions, I hold that there is no privity of contract between the plaintiff and the defendants 1 to 3 qua the sale of the suit property based on the sale agreement dated 07.11.1996 as put forth by the plaintiff. I further hold that the plaintiff is not entitled to seek the refund of the sum of Rs.9,20,000/- from the defendants 1 to 3 based on the sale agreement dated 07.11.1996 and the plaintiff is entitled to recover the sum of Rs.9,20,000/- only from the fourth defendant based on the sale agreement dated 07.11.1996. Further I hold that the plaintiff is not entitled to obtain the relief of specific performance in respect of the sale agreement dated 07.11.1996. Accordingly, the point Nos.1 to 3 are answered.

Point Nos. 4 to 6:

26. For the reasons aforesaid, the determination of the trial Court holding that the defendants 1 to 3 are liable to pay the sum of Rs.9,20,000/- to the plaintiff with interest at 6% per annum from the date of the suit till realization is set aside and on the other hand, it is held that it is only the fourth defendant who is liable to pay the sum of Rs.9,20,000/- to the plaintiff with interest at 6% per annum from the date of the suit till the date of realization and accordingly, the judgment and decree dated 11.12.2006, passed in O.S. No.108/2003, on the file of the Additional District Judge, Fast Track Court No.2, Salem are set aside/modified and in other

aspects, the judgment and decree of the trial Court are confirmed and accordingly, the First Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sli
To:

The Additional District Judge,
Fast Track Court No.2, Salem.

+1cc to Mr.K.Bijai Sundar , Advocate SR.No. 83724
+1cc to Mr.V.Ragavachari , Advocate SR.No. 83496
+1cc to Mr.S.Ashok Kumar , Advocate SR.No. 83500

A.S.No.695 of 2010

A.SK(30/09/2020)



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