

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.03.2019

PRONOUNCED ON: 05.04.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.522 of 2002

and

C.M.P.Nos.4268 and 6034 of 2002

M.Natarajan ... Appellant/1st Respondent/Plaintiff

Vs.

1.A.Nagarajan (Died) ...1st Respondent/Appellant/Defendant

2.R.Natarajan ...2nd Respondent/2nd Respondent/2nd Respondent

3.Rukmani (Died)

[RR3 is brought on record
as LR of the deceased R1
vide order of the Court dated
23.12.2010 made in
CMP.Nos.1915 to 1917 of 2010]

4.P.A.Srinivasan

5.Kamatchi

6.A.Manikkammal

7.A.Sankaran

8.A.Damodharan

9.G.A.Thangavel

[RR4 brought on record as LR of
the deceased RR3 and RR5 to RR9
brought on record as LRs of the
deceased R1(II class) LRs of the
deceased R1 vide order of the

Court dated 19.11.2018 made in
CMP.Nos.18063/2018 and
CMP.Nos.542 to 544 of 2012
in S.A.No.522 of 2002]

... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 14.02.2002 made in A.S.No.206 of 2001 on the file of the II Additional District Court, Erode reversing the judgment and decree dated 07.02.2000 passed in O.S.No.72 of 1997 on the file of the Subordinate Court, Gobichettipalayam.

For Appellant : Mr.N.Manokaran

For Respondents : No representation
No appearance
Set exparte vide order dated 15.03.2019

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 14.02.2002 passed in A.S.No.206 of 2001 on the file of the II Additional District Court, Erode, reversing the judgment and decree dated 07.02.2000 passed in O.S.No.72 of 1997 on the file of the Subordinate Court, Gobichettipalayam.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

3. Suit for specific performance.

4. The case of the plaintiff in brief is that the suit property belong to the first defendant and he had executed a registered general power of attorney deed in favour of the second defendant on 26.12.1995 in respect of the suit property empowering him to sell the same to the third parties and based on the said power of attorney, the second defendant had agreed to sell the suit property in favour of the plaintiff for a sum of Rs.2,25,000/- and he received a sum of Rs.2,15,000/- from the plaintiff as advance and the parties had agreed that the balance sale consideration of Rs.10,000/- should be paid within a period of one year i.e., on or before 13.11.1997 and complete the sale transaction and accordingly, the parties had entered into the registered sale agreement with reference to the sale of the suit property as per the terms contained therein on 13.11.1996 and while so, when the plaintiff was endeavoring to purchase the suit property from the second defendant, the first defendant sent a notice on 27.02.1997 to the plaintiff and the second

defendant and the same had been received by the plaintiff and in the said notice, the first defendant had apprised that he had cancelled the power of attorney deed executed in favour of the second defendant by way of a cancellation deed dated 18.01.1997 and accordingly directed the plaintiff to hand over the papers containing the signatures of the first defendant obtained by the plaintiff and to the same, the plaintiff had sent a reply containing true facts on 17.02.1997 and in the reply notice, the plaintiff has averred about the execution of the sale agreement dated 13.11.1996 and also informed the first defendant to receive the balance sale price and execute the sale deed as per the terms of the sale agreement, failing which the plaintiff would be necessitated to seek the legal redressal in a court of law and to the said reply notice, the first defendant sent a rejoinder on 09.04.1997 containing facts contrary to the truth and the claim of the first defendant that the sale agreement dated 13.11.1996 is invalid is false and on the other hand, only based on the power of attorney granted in favour of the second defendant, the sale agreement had been entered into between the plaintiff and the second defendant and therefore the sale agreement date 13.11.1996 is binding on the first defendant and as per the terms thereof, the first defendant is bound to execute the sale deed in favour of the plaintiff and the plaintiff has always been ready and willing to perform his part of the contract and obtain the sale deed and it is only the first defendant, who is not willing to come forward to execute the sale deed and the plaintiff is also ready to deposit the balance sale consideration of Rs.10,000/- in the court and accordingly it is stated that the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The case of the first defendant is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the suit property belong to the first defendant and it is also true that the first defendant had executed the registered general power of attorney deed in favour of the second defendant, however the same had been cancelled by the first defendant by a deed of cancellation on 18.01.1997 and on 26.12.1995 itself the first defendant had borrowed a sum of Rs.2000/- from the plaintiff and executed a mortgage deed in respect of the suit property and the said mortgage deed has not been discharged and the general power of attorney deed dated 26.12.1995 has been obtained in collusion between the plaintiff and the second defendant with a view of grab the suit property belonging to the first defendant, the fact that the plaintiff and the second defendant had entered into the sale agreement in respect of the sale of the suit property for a sum of Rs.2,25,000/- on 13.11.1996 came to the knowledge of the first defendant only by way of the reply notice sent by the plaintiff

dated 17.03.1997 and it is false to state that the second defendant had borrowed a sum of Rs.2,15,000/- on the date of the alleged sale agreement as advance by the plaintiff, the abovesaid sale agreement had been brought about in collusion between the plaintiff and the second defendant and no amount had been paid to the first defendant on the basis of the abovesaid sale agreement and therefore the abovesaid sale agreement is not binding upon the first defendant in any manner. At the time of the execution of the mortgage deed dated 26.12.1995, the plaintiff and the second defendant had obtained the signatures of the first defendant in five rupees stamp paper as well as in two blank papers and blank promissory notes and it is false to state that the plaintiff has always been ready and willing to complete the sale transaction as per the terms of the sale agreement dated 13.11.1996, and to the reply notice sent by the plaintiff, the first defendant sent a re-joinder on 09.04.1997 containing the true facts and the value of the suit property has been grossly under valued in the sale agreement and at the time of the sale agreement, the suit property is valued more than Rs.6,00,000/-. The sale agreement dated 13.11.1996 brought about by the plaintiff and the second defendant based on the general power of attorney deed is a fabricated record and on coming to know that the second defendant had been indulging in the activities adverse to the interest of the first defendant, the first defendant had cancelled the general power of attorney deed by a deed of cancellation dated 18.01.1997 and the first defendant is not bound to execute any sale deed in favour of the plaintiff in respect of the suit property based on the sale agreement dated 13.11.1996. There is no cause of action for the suit and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A10 were marked. On the side of the first defendant, D.Ws.1 and 2 were examined. Exs.B1 and B2 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. On appeal by the first defendant, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the first defendant, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

7. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1.Whether the First Appellate Court has

properly appreciated and applied the principles to find out whether the execution of the Sale Agreement Ex.A1 by the power agent of 1st defendant is valid in law in view of the peculiar facts of the present case?

2. Was not the First Appellate Court erred in holding that in view of Section 17(2)(XI) of Indian Registration Act, 1908 the discharge of the mortgage on 26.12.1995 requires registration, particularly when the execution of Ex.A10 has been admitted by the 1st defendant?

3. Whether the cancellation of the Power of Attorney Deed/Ex.A8 dated 26.12.1995 under Ex.B1 dated 18.02.1997 will displace the claim of the plaintiff in a suit for specific performance based on the agreement dated 13.11.1996 (Ex.A1)?

4. Whether the findings of the First Appellate Court is based on evidence and whether the evidence of D.W.1 is based on pleadings in view of the decision of this Honourable Court in 1997 (1) MLJ 360 = 1997 (1) L.W 474?

8. It is not in dispute that the suit property belong to the first defendant. The materials placed on record go to show that in respect of the suit property, the first defendant had executed the registered general power of attorney deed in favour of the second defendant on 26.12.1995 empowering him to sell the suit property and do other acts necessary with reference to the same and the abovesaid general power of attorney deed has been marked as Ex.A8. Though, it is found that the first defendant had challenged the abovesaid power of attorney deed that the same had been brought about from him in collusion between the plaintiff and the second defendant at the time when the first defendant had borrowed a sum of Rs.2000/- from the plaintiff on 26.12.1995 by mortgaging the suit property, however the fact remains that the first defendant had admitted the execution of the general power of attorney deed executed in favour of the second defendant marked as Ex.A8, accordingly, it is found that he had also chosen to subsequently cancel the same by a deed of cancellation on 18.02.1997, which document has come to be marked as Ex.B1. According to the first defendant, on noting that the second defendant has been acting adversely against his interest qua the suit property, he has been necessitated to cancel the power of attorney deed Ex.A8 executed in favour of the second defendant by a deed of cancellation marked as Ex.B1.

9. Be that as it may, as per the materials placed on record, it is found that based on Ex.A8, the general power of attorney deed, according to the plaintiff, he and the second defendant had entered into a sale agreement in respect of the suit property on 13.11.1996 whereunder the second defendant as the power of attorney holder of the first defendant had agreed to convey the suit property in favour of the plaintiff for a sum of Rs.2,25,000/- and it is further put forth by the plaintiff that on the date of the abovesaid sale agreement, the second defendant received a sum of Rs.2,15,000/- as advance towards the sale price and it is further put forth that both the parties had agreed that the balance sum of Rs.10,000/- should be paid within one year from the date of the sale agreement i.e., on or before 13.01.1997 and on the same, the second defendant should execute the sale deed in favour of the plaintiff in respect of the suit property and accordingly it is found that the registered sale agreement had come to be executed between the plaintiff and the second defendant on 13.11.1996, which document has come to be marked as Ex.A1. According to the plaintiff, pursuant to the sale agreement Ex.A1, he has been endeavoring to complete the sale transaction by paying the balance sale transaction and obtain the sale deed from the second defendant at the earliest, however according to him, the first defendant sent a legal notice dated 27.02.1997 marked as Ex.A2 to him and the second defendant informing about the execution of the mortgage deed in respect of the suit property on 26.12.1995 for the sum of Rs.2000/- in favour of the plaintiff and alleging that at that point of time the plaintiff and the second defendant had obtained his signatures in five rupee stamp paper, two blank papers and empty promissory notes and also they had also obtained the general power of attorney deed registered in favour of the second defendant from the first defendant and subsequently also obtained the signature in five rupee blank stamp paper during 1996 and further informing that he is willing to discharge the mortgage debt and thereby called upon the plaintiff to receive the said sum and cancelled the mortgage transaction and by way of the said notice, it is stated, that the first defendant had informed that he had cancelled the general power of attorney executed in favour of the second defendant by a deed of cancellation on 18.01.1997 and according to the plaintiff to the said notice, he had sent a reply on 17.03.1997 through his lawyer marked as Ex.A3, whereunder he had informed the first defendant about the execution of the sale agreement dated 13.11.1996 in respect of the suit property between him and the second defendant as the power of attorney holder of the first defendant for a sum of Rs.2,25,000/- and the receipt of Rs.2,15,000/- as advance received by the second defendant on the date of the sale agreement and accordingly called upon the first defendant to receive the balance sum of

Rs.10,000/- and come forward to execute the sale deed in favour of the plaintiff, failing which, he would be necessitated to institute the suit, seeking appropriate reliefs.

10. In the legal notice sent by the first defendant to the plaintiff and the second defendant marked as Ex.A2, the same is found to have been issued mainly calling upon the plaintiff to receive the amount due under the mortgage deed and thereby discharge the mortgage debt. In the reply sent to the same marked as Ex.A3, the plaintiff would claim that the first defendant had already paid the amount towards the mortgage debt and according to him, the first defendant had agreed to cancel the mortgage deed later. However, in the re-joinder sent by the first defendant marked as Ex.A4, it has been averred that the mortgage debt has not been repaid and the debt is still pending and denied the fact that he had discharged the mortgage debt and agreed to cancel the mortgage deed later and accordingly it is found that the first defendant has not accepted the discharge of the mortgage debt. It is not in dispute between the parties that the first defendant had mortgaged the suit property in favour of the plaintiff on 26.12.1995 by receiving a sum of Rs.2000/-. It is the only the plaintiff, who claims that the mortgage debt had been repaid by the first defendant, however the same had been repudiated by the first defendant. Despite the abovesaid position, the plaintiff has not placed any material to hold that the mortgage debt had been repaid by the first defendant. Though the plaintiff during the course of his evidence examined as P.W.1 would claim that for the amount repaid by the first defendant towards the mortgage debt, he had issued a receipt, however when the same has been controverted by the first defendant and when there is other material placed on record worth acceptance evidencing that the mortgage debt had been discharged as putforth by the plaintiff, in all, it has to be held that the mortgage debt created on 26.12.1995 is still subsisting and for one reason or the other, the plaintiff has putforth the case that the mortgage debt had been repaid by the first defendant. If really, the mortgage debt had been repaid as rightly argued, the first defendant would have endeavored to get the cancellation of the mortgage deed as per law and in such view of the matter, the first appellate court is found to have rightly determined that in the absence of any proof of the discharge of mortgage debt and particularly the alleged receipt said to have been issued by the plaintiff in favour of the first defendant with reference to the same purports to extinguish the mortgage and accordingly in such view of the matter, the said document being compulsorily registrable and furthermore, when the mortgage deed executed between the parties has not been produced for consideration and if really the mortgage debt had been repaid by the first defendant, necessary endorsement would have been obtained in the mortgage deed itself with reference to

the same, in all, it is found that the mortgage debt created on 26.12.1995, it is found to be not discharged or settled and the same remains subsisting.

11. Inasmuch as, the general power of attorney deed marked as Ex.A8 had been cancelled by the first defendant by way of Ex.B1, deed of cancellation, according to the plaintiff, he has been necessitated to institute the suit against both the defendants for appropriate reliefs.

12. Considering the peculiar facts and circumstances of the case, inasmuch as, the first defendant had cancelled the general power of attorney deed executed in favour of the second defendant by way of Ex.B1 cancellation deed and according to the first defendant, the power of attorney deed had been cancelled inasmuch as the second defendant is found to have been acting adversely to his interest and accordingly on the same lines, the first defendant had also taken defence that the sale agreement in question marked as Ex.A1 has been brought about by the plaintiff and the second defendant in collusion and thereby altogether disputed the genuineness and the validity of the sale agreement Ex.A1 in toto and in fact disputed that the said agreement had been entered into for a sum of Rs.2,25,000/- as put forth by the plaintiff and also disputed the same by contending that no consideration has been received by him with reference to the same, in any manner, in all, as rightly determined by the first appellate court, in my considered opinion also, the plaintiff is bound to establish the truth and validity of Ex.A1 sale agreement projected by him for sustaining his case. The plaintiff cannot be allowed to contend that the first defendant has admitted the execution of the sale agreement Ex.A1 and therefore he is not entitled to challenge the same in any manner. However, when according to the first defendant he has been necessitated to cancel the general power of attorney deed Ex.A8 on account of the adverse acts committed by the second defendant detrimental to his interest and accordingly had also challenged the sale agreement Ex.A1 in toto, at the foremost, the plaintiff having come forward with the suit seeking the discretionary and equitable relief of specific performance, should establish the truth and validity of the same for seeking the benefits under the same.

13. From the materials placed on record, it is found that Ex.A1 sale agreement is found to be a registered document and attested by two witnesses and written by a scribe. When the first defendant has thrown a challenge to the genuineness and validity of the abovesaid sale agreement, the plaintiff should have endeavored to establish the truth of the same at the first instance by examining the attestors to the said document and if need be, the scribe of the said document to sustain his case that the same had been really entered into between him and the second defendant in respect of the suit property for a sum of

Rs.2,25,000/- and also to establish that on the date of the sale agreement, the plaintiff had paid a sum of Rs.2,15,000/- to the second defendant as advance towards the sale price. However, for the reasons best known to the plaintiff, despite the availability of the attestors as well as the scribe of Ex.A1 sale agreement, the plaintiff has not chosen to examine them for sustaining his case. However, in this matter, in support of the plaintiff's case, the second defendant had tendered evidence as P.W.2. However, the fact remains that though the second defendant has been arrayed as a party in the proceedings, he has not chosen to enter appearance in the suit and file a written statement. However, he had appeared as a witness on behalf of the plaintiff and deposed in favour of the plaintiff. The abovesaid conduct of the second defendant would go to show that the relationship between the plaintiff and the second defendant is very close and cordial and accordingly the second defendant is found to have come forward to adduce evidence on behalf of the plaintiff, particularly, without receiving any summons from the Court to stand as a witness in the proceedings. The second defendant examined as P.W.2 has admitted that he has not received any summons from the Court for giving evidence. According to him, he had come to know about the hearing date as he had appeared in the court on the earlier occasion. It is thus found that the second defendant is watching the proceedings very closely and though he had been made as a party to the suit proceedings, he had chosen not to contest the suit, however keen on watching the proceedings closely and accordingly come forward to depose in favour of the plaintiff. As to why he had not entered appearance in the suit and filed a written statement etc., absolutely there is no proper explanation adduced on the part of the second defendant. This conduct of the plaintiff and the second defendant would go to show the proximity and the same also throws a grave suspicion with reference to the sale agreement brought about by them marked as Ex.A1 in respect of the suit property.

14. That apart, as could be seen from the evidence adduced by the plaintiff examined as P.W.1, he has not chosen to receive the notice sent by the first defendant marked as Ex.A2. According to him though the said notice had been addressed to him with his address correctly furnished, he had not received the said notice, and when confronted as how come he had issued the reply notice marked as Ex.A3, the plaintiff would state that the notice copy received by the second defendant had been furnished to him and based on the same, he had sent the reply to the plaintiff marked as Ex.A3 and furthermore, the plaintiff has already admitted that there is no misunderstanding or ill-feeling between him and the second defendant. It is thus found that the plaintiff and the second defendant are closely associated with each other and accordingly the plaintiff had

been chosen to sent the reply marked as Ex.A3 based on the copy of Ex.A2 notice furnished to him by the second defendant and the same also throws a serious suspicion as regards the truth of Ex.A1 sale agreement. Ex.A1 sale agreement is stated to have been entered into between the plaintiff and the second defendant for a sale price of Rs.2,25,000/-. Now, according to the plaintiff, he has paid the sum of Rs.2,15,000/- on the date of the sale agreement. Therefore, the balance sale consideration is only Rs.10,000/-. If really the sale agreement Ex.A1 had been brought about by the plaintiff and the second defendant as putforth by them, as to why they should endeavor to fix a period of one year for the payment of paltry sum of Rs.10,000/-, the balance sale price for completing the sale transaction, no proper explanation is forthcoming. If they had really entered into the sale agreement, as rightly found by the first appellate court or as rightly putforth by the first defendant before the Courts below, the plaintiff would have paid the entire sale transaction on 13.11.1996 itself and obtained the sale deed from the second defendant with reference to the suit property. On the other hand, to say that they had agreed to fix the period of one year for paying the balance sum of Rs.10,000/- for the purpose of completing sale transaction, the same is found to be very very odd and unnatural and furthermore, as to why such a long period has been fixed for the payment of the balance sum of Rs.10,000/-, absolutely no reason has been adduced in the sale agreement as such. However, the plaintiff during the course of his evidence would come forward with the case that inasmuch as, he was not having the balance sum as well as the sum required for meeting the registration expenses, they had agreed to fix the period of one year for completing the sale transaction. If the abovesaid cause is the reason for fixing the period of one year for completing the sale transaction, the same would have been incorporated in the sale agreement itself by furnishing necessary recitals with reference to the same. As abovenoted, nothing has been mentioned in Ex.A1 as to why the period of one year has been fixed for paying the balance sale price and complete the sale transaction. The plaintiff being engaged in silk business to say that he was not having the sum of Rs.10,000/- and the other sums required for registration expenses for completing the sale transaction immediately appears to be very very unnatural and unacceptable and that too, the conduct of the parties to the sale agreement Ex.A1 fixing a period of one year for completing the sale transaction is found to be very very odd and unnatural and the abovesaid feature alone throws a strong suspicion, as determined by the first appellate court, in the genuineness of Ex.A1 sale agreement.

15. If really the sale agreement Ex.A1 had been brought about between the plaintiff and the second defendant as putforth by them, when the first defendant has thrown a challenge to the

same one way or the other and the plaintiff seeking the discretionary and equitable relief of specific performance based on the same, to establish the genuineness of the same, and the case put forth by him with reference to the same, should have examined the attestors and the scribe of the said document. He cannot be allowed to rest by merely examining the second defendant in support of his case, as it is found that the evidence adduced by the second defendant is far from satisfactory and also totally unreliable. Now, according to the plaintiff examined as P.W.1, the first defendant was not in the picture at the time when the sale agreement Ex.A1 was entered into between him and the second defendant and furthermore, the plaintiff has already admitted that he does not know the relationship between the defendants 1 and 2, whether it was cordial or uncordial and hostile. Furthermore, when from the materials placed on record, it is found that the plaintiff is already known to the first defendant, as the parties had entered into a mortgage deed on 22.10.1985, in respect of the suit property and naturally the plaintiff should have apprised the first defendant as regards the sale agreement entered into between him and the second defendant. However, he would state that he has not made any enquiry as regards the same with the first defendant and admitted that the first defendant was not present at the time when the sale agreement was entered into and also admitted that he does not know whether the sale price of Rs.2,15,000/- paid by him to the second defendant had been paid by the second defendant to the first defendant. He would also state that he has not examined in the Registration Department as regards the sale price of the suit property at the time when the sale agreement was entered into. Quite inconsistent to the abovesaid case of the plaintiff, the second defendant examined as P.W.2 would state that at the time when the sale agreement was entered into, the first defendant was present, however he would state that the first defendant's signature had not been obtained as an attesor to the sale agreement. Therefore, even as regards the presence of the first defendant at the time when Ex.A1 sale agreement is alleged to have been entered into, there is a marked inconsistency between the evidence of the plaintiff and the second defendant. If as put forth by the second defendant, if the first defendant was available at that point of time, the sale agreement would have executed by the first defendant himself in favour of the plaintiff. Furthermore, if the first defendant was available at that point of time, the first defendant himself would have received the sale price of Rs.2,15,000/- directly from the plaintiff. However, the second defendant would come forward with the case that he had paid the sum of Rs.2,15,000/- to the first defendant on 17.11.1996 and according to him, the first defendant issued a receipt in connection with the same and from the evidence adduced by the second defendant, it is found that on being confronted with the

alleged receipt said to have been issued by the first defendant for the payment of Rs.2,15,000/-, the second defendant immediately had produced the alleged receipt said to have been issued by the second defendant, which document has come to be marked as Ex.A10. No doubt, the first defendant had admitted his signature contained in Ex.A10 however would state that the contents had not been written thereon at the time when his signature had been obtained. As abovenoted, the first defendant all along been averring that his signatures had been obtained in various stamp papers, blank papers and empty promissory notes at the instance of the plaintiff and the second defendant, when the mortgage deed was executed and accordingly it is found that merely because, the second defendant has admitted the signature in Ex.A10 that alone would not be sufficient to hold that the contents therein had been established by the plaintiff. If really, by way of Ex.A10, the first defendant had received the sum of Rs.2,15,000/- from the second defendant on 17.11.1996, nothing prevented the plaintiff or for the matter, the second defendant, his close associate, from examining the attestors to the said document as well as the scribe of the said document. Though the said document is found to have been attested by two witnesses and scribed by one S.Subbarao, the document writer, when the abovesaid persons are available for tendering evidence, nothing prevented the plaintiff or for the matter, the second defendant, from examining those persons to establish the authenticity of Ex.A10 receipt to sustain the case that the first defendant had received the sum of Rs.2,15,000/- from the second defendant on 17.11.1996 as putforth for the first time by the second defendant during the course of his evidence. As rightly found by the first appellate court, if really the said amount had been received by the first defendant from the second defendant on 17.11.1996, nothing would have prevented the second defendant from putting forth the necessary pleas with reference to the same by filing a written statement in the suit proceedings. As abovenoted, the second defendant though had been served with the summons in the suit has remained exparte and not filed any written pleas with reference to the case projected by him during the course of his evidence. If according to the second defendant, the first defendant was present on the date of the sale agreement, as a natural course, the first defendant would have received the sale price of Rs.2,15,000/- directly from the plaintiff and there would have been no necessity at all for disbursing the said amount to the first defendant by the second defendant on 17.11.1996 as putforth by the second defendant during the course of his evidence. Therefore, it is highly doubtful only whether at all, the sum of Rs.2,15,000/- had been paid by the plaintiff to the second defendant on the date of the sale agreement Ex.A1 and accordingly it is found that the abovesaid inconsistencies had appeared in the evidence adduced by the plaintiff and the second

defendant. The plaintiff cannot be allowed to contend that he is not concerned with the transaction entered into between the the second defendant and the first defendant and therefore the abovesaid discrepancies are not in any manner required to be answered by him for sustaining the case. However, when he had chosen to examine the second defendant as his witness and the second defendant has also come forward to tender evidence in support of the plaintiff's case by not even receiving the summons and as abovenoted, the plaintiff and the second defendant are found to be closely associated with each other and acting together from the inception one way or the other, in such view of the matter, the abovesaid factors assume importance for determining the truth of the plaintiff's case projected based on Ex.A1 sale agreement. As rightly assessed and determined by the first appellate court, on a bare perusal of Ex.A10 document, it is found to have been created using the signature of the first defendant, subsequently and accordingly, it is found that the attestors and the scribe's signatures had been obtained in a closed manner with a view to adjust and fill up the space and in the similar fashion, even the seal of the scribe has been affixed on the same against the name of the scribe and not under the name of the scribe as usually done. The abovesaid features also throw a serious suspicion in the genuineness of Ex.A10 document.

16. If really Ex.A1 sale agreement had been entered into between the plaintiff and the second defendant for a sum of Rs.2,25,000/- in respect of the suit property and if really the plaintiff had paid the sum of Rs.2,15,000/- on the date of the sale agreement, when as per the abovesaid case of the plaintiff, the plaintiff had paid nearly 95% of the sale consideration, one would have naturally expected the plaintiff to receive the parent title deed of the suit property from the second defendant on the date of the sale agreement. On the other hand, it has not even pleaded by the plaintiff that the second defendant had entrusted the parent title deed of the suit property to him on the date of the sale agreement and the same had also not been incorporated in the sale agreement and on the other hand, it is found that the parent title deed of the suit property marked as Ex.A9 had been produced only by the second defendant at the time of tendering evidence on behalf of the plaintiff and if really the sale agreement Ex.A1 had been entered into between the plaintiff and the second defendant on 13.11.1996 as putforth, the plaintiff would have endeavored to obtain the parent title deed Ex.A1 at the earliest point of time and to say that the plaintiff had remained satisfied with the execution of the sale agreement alone even after the payment of 95% of the sale consideration, in my considered opinion and as determined by the first appellate court, appears to be totally unnatural and unacceptable. The above feature also lends a serious suspicion

in the genuineness of Ex.A1 sale agreement.

17. Furthermore, as above noted, the mortgage deed executed in respect of the suit property on 22.10.1985 has not been established to have been cancelled. It is thus found that the same is still subsisting. If really Ex.A1 sale agreement had been entered into between the plaintiff and the second defendant on 13.11.1996, it is found that, necessary recitals with reference to the mortgage transaction in respect of the suit property created by the first defendant would have been incorporated in Ex.A1 sale agreement. If really the mortgage debt had been discharged by the first defendant, at least, pointing to the same, necessary recitals would have been incorporated in Ex.A1 sale agreement. On the other hand, despite the subsistence of the said mortgage debt, to say that the plaintiff and the second defendant had entered into the sale agreement without any reference to the same in Ex.A1 sale agreement, as such, cannot be believed and accepted and the abovesaid feature also lends a serious suspicion in the genuineness of the Ex.A1 sale agreement.

18. According to the plaintiff, on the date of the sale agreement only a sum of Rs.10,000/- remains to be paid towards the balance sale consideration. For the payment of the said sum, one year had been fixed between the parties concerned. Now according to the plaintiff, right from the inception of the sale agreement, he had been ready to pay the balance sale consideration and complete the sale transaction. Be that as it may, naturally the balance consideration being only a meagre sum of Rs.10,000/-, immediately after Ex.A1 had come to be executed, within a week, or at least thereafter, if the said document is a genuineness one, the plaintiff would have endeavored to pay the balance sum of Rs.10,000/- to the second defendant and obtained the sale deed from him, so as to put to completion the transaction entered into between them. Though the plaintiff would claim that he had been always ready and willing to pay the balance sum and complete the sale transaction, with reference to the abovesaid case, no acceptable material is forthcoming. The sale agreement is dated 13.11.1996. The legal notice issued by the first defendant to the plaintiff and the second defendant dated 27.02.1997 marked as Ex.A2 is issued nearly three months after the sale agreement. Only thereafter by way of Ex.A3 reply dated 17.03.1997, the plaintiff has come forward with the case as if, he is ready to pay the balance sum of Rs.10,000/- and complete the sale transaction. Therefore, till 17.03.1997, there is no material on the part of the plaintiff to establish that he had been always ready and willing to pay the balance sum of Rs.10,000/- from the inception of the sale agreement and complete the sale transaction as pleaded. As above noted, Ex.A3 reply has been

repudiated by the first defendant by sending a rejoinder challenging the genuineness of Ex.A1 sale agreement in toto, particularly, the passing of consideration under the said document. The receipt of Ex.A4 rejoinder has not been disputed by the plaintiff and Ex.A4 is dated 09.04.1997. Even thereafter, the plaintiff has not evinced interest to pay the balance sum of Rs.10,000/- immediately and complete the sale transaction one way or the other in the manner known to law. On the other hand, it is found that the plaintiff had chosen to institute the suit against the defendants seeking the discretionary and equitable relief of specific performance only on 16.06.1997 i.e., nearly two months after the issuance of rejoinder marked as Ex.A4. In all, it is found that nearly after 7 months after the execution of Ex.A1 sale agreement, he has instituted the suit claiming the relief of specific performance based on Ex.A1 sale agreement. Though it is found that the plaintiff had come forward with the suit within the period of time limit fixed by the parties for completing the sale transaction, however considering the peculiar facts and circumstances of the case as well as the balance transaction, being only a paltry sum of Rs.10,000/-, in such view of the matter, the plaintiff seeking the discretionary and equitable relief of specific performance should establish that he has always been ready and willing to perform his part of the contract right from the inception and the abovesaid conduct of the plaintiff in toto would go to expose that he had chosen to come forward with the payment of the balance sale price only after the issuance of the legal notice Ex.A2 on the part of the first defendant and even thereafter, only 4 months subsequent thereto, he had chosen to institute the suit against the defendants. Thus it is found that the plaintiff has, considering the facts and circumstances of the case at hand, failed to establish his readiness and willingness to perform his part of the contract right from the inception and merely because the plaintiff has instituted the suit within the time fixed between the parties, that alone ipso facto cannot be the factor or the basis for holding that the plaintiff has been always ready and willing to perform his part of the contract as sought to be made out by him. The abovesaid factor also lends a serious doubt in the genuineness of the plaintiff's case and accordingly it is found that inasmuch as, no sale agreement, as such, had been entered into between the plaintiff and the second defendant on 13.11.1996 as put forth by the plaintiff and the second defendant and as such, they had brought about the sale agreement with a view to defeat the first defendant one way or the other, accordingly it is seen that the first defendant had chosen to cancel the power of attorney executed in favour of the second defendant and also challenged the genuineness of Ex.A1 sale agreement and only thereafter it is found that the plaintiff had realized the hollowness in his case suffering from

various vices, particularly that he had been not ready to perform his part of the contract from the inception, however unable to sustain his claim by placing acceptable and reliable material pointing to the same, the plaintiff's case found in toto would only go to expose that he has failed to establish his readiness and willingness to complete the sale transaction and the same is lacking completely as above discussed and on that score alone, it is found that the plaintiff's suit should fail.

19. As regards the case projected by the first defendant that the sale agreement Ex.A1 had not been brought about for the real value of the suit property, there is no acceptable material on the part of the second defendant with reference to the same, and the estimate projected by him marked as Ex.B2 cannot be taken into consideration ipso facto for determining the abovesaid defence projected by him. The plaintiff's documents marked as Exs.A5 to A7 also cannot be the basis for determining that the value of the suit property has been correctly fixed in the sale agreement. Be that as it may, when the genuineness and the validity of Ex.A1 sale agreement itself has not been established by the plaintiff as above pointed out and discussed, as to whether the sale price fixed under the sale agreement represents the correct value or not does not loom large and in such view of the matter, the abovesaid factor, would not in any manner, be a material factor for deciding the issues involved in the lis.

20. In the light of the abovesaid factors, it is found that the plaintiff cannot be allowed to seek and obtain the discretionary and equitable relief of specific performance and merely because, the sale agreement Ex.A1 had been executed by the second defendant during the pendency of the power granted to him by the first defendant, however, when the truth and validity of the sale agreement Ex.A1 as such having not been established by the plaintiff as above discussed and furthermore, when the terms of the agreement as above pointed out are found to be very unnatural and unacceptable and when considering the conduct of the parties particularly the plaintiff and the second defendant, they being in close proximity and acting together from the inception one way or the other and accordingly noting the acts of the second defendant becoming adverse to his interest, the first defendant having also chosen to cancel the power granted in his favour and when the genuineness and validity of Ex.A1 sale agreement has not been established by the plaintiff, particularly he having come forward with the suit seeking the enforcement of the same i.e., endeavoring to seek the discretionary relief of specific performance based on the same, in all, in my considered opinion and as determined by the first appellate court, the enforcement of the sale agreement

would create a serious hardship on the part of the first defendant and particularly when the said sale agreement itself has not been established and entered into for the valid consideration as recited therein and the plaintiff having also failed to establish the passing of sale consideration as such, as abovenoted, the plaintiff also having failed to establish the readiness and willingness to perform his part of the contract, in such view of the matter it would not be in the interest of justice and also be inequitable to enforce the specific performance of the same, as such, as claimed by the plaintiff and accordingly in my considered opinion, this is a fit case where the provisions of section 20 of the Specific Relief Act, 1963 should be invoked and accordingly the plaintiff having failed to establish his case in all aspects as above discussed, is found to be, as rightly determined by the first appellate court, based on the materials placed on record and by giving proper reasonings and conclusions, not entitled to obtain the relief of specific performance and therefore no interference is called for in the judgment and decree of the first appellate court dismissing the plaintiff's suit by setting aside the judgment and decree of the trial court. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the first defendant.

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

1. 2015 (1) SCC 597 [E.Prakaksh Vs. B.R.Sampath Kumar]
2. 1997 (II) CTC 517 [Kousalya Ammal Vs. Valliammai Ammal and another]
3. 2005(7) SCC 534 [Aniglase Yohannan Vs. Ramlatha and others]

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

22.In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Additional District Judge,
II Additional District Court,
Erode.

2.The Subordinate Judge,
Subordinate Court,
Gobichettipalayam.

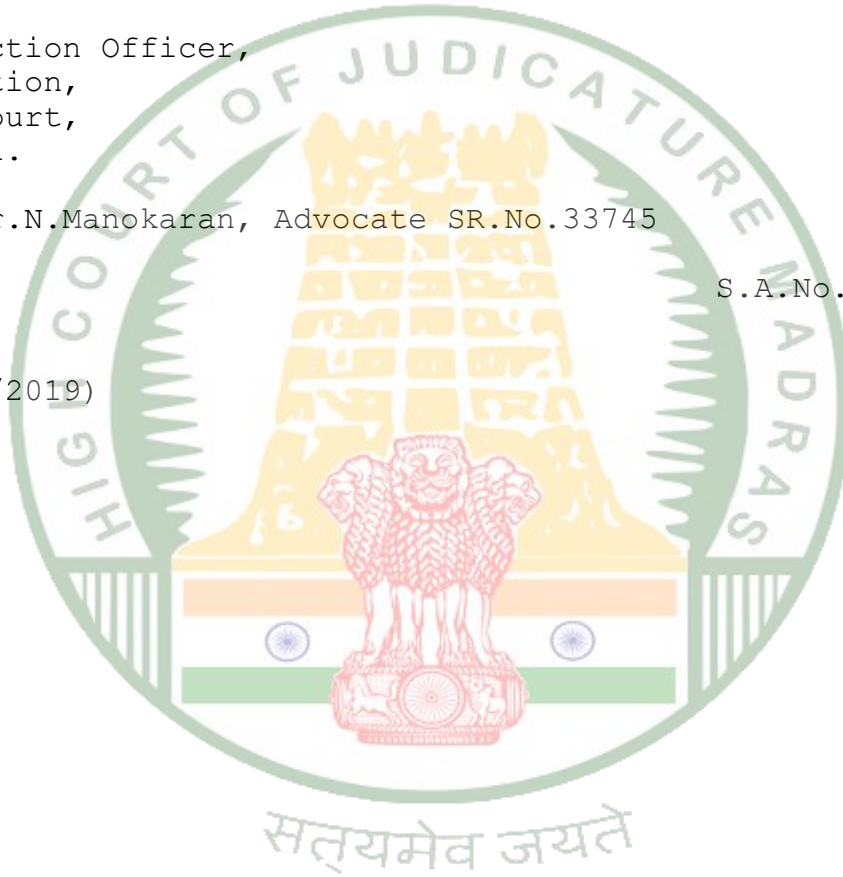
Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.N.Manokaran, Advocate SR.No.33745

S.A.No.522 of 2002

RSI (CO)
GMY (08/06/2019)



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