

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON: 08.08.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.624 and 626 of 2019
and

C.M.P.Nos.10866 & 10939 of 2019

S.A.No.624 of 2019

P.M.ThangavelAppellant/Plaintiff

Vs.

1. M.Ramamoorthy

2. Ranikalpana

3. C.Mani

4. M.Duraisamy ...Respondents 1 to 4/Defendants 1,2 & 3

S.A.No.626 of 2019

P.M.Thangavel ... Appellant/Plaintiff

Vs.

1. M.Duraisamy ...1st Respondent/3rd Defendant

2. M.Ramamoorthy

3. Ranikalpana

4. C.Mani ... Respondents 2 to 4/Defendants
1,2 & 4

Prayer in S.A.No.624 of 2019 :

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.12.2018 made in A.S.No.100 of 2018 on the file of the Principal District Court, Erode reversing the judgment and decree dated 18.04.2018 made in O.S.No.434 of 2013 on the file of the Second Additional Sub Court, Erode.

Prayer in S.A.No.626 of 2019 :

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.12.2018 made in A.S.No.101 of 2018 on the file of the Principal District Court, Erode reversing the judgment and decree dated 18.04.2018 made in O.S.No.434 of 2013 on the file of the Second Additional Sub Court, Erode.

For Appellant : Mr.N.Manokaran
in both the appeals.

For Respondents: Mr.T.V.Ramanujam, SC, for R1 to R3 in
S.A.No.624 of 2019

M/s.M.Rajasekaran for R2 to R4 in
S.A.No.626 of 2019

Mr.N.C.Ashok kumar for R4 in S.A.No.624 of
2019 and R1 in S.A.No.626 of 2019

C O M M O N J U D G M E N T

Second Appeal Nos.624 and 626 of 2019 are directed against the judgment and decree dated 07.12.2018 passed in A.S.Nos.100 and 101 of 2018 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 18.04.2018 passed in O.S.No.434 of 2013 on the file of the Second Additional Subordinate Court, Erode.

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 permanent injunction.

4. Briefly stated, according to the plaintiff, the defendants 1 and 2 are the husband and wife and that the suit property is allotted to the first defendant by the TamilNadu Housing Board, Erode, vide the allotment order dated 10.03.1994 and the defendants 1 and 2 were in the possession of the suit property by way of the sale cum lease agreement and the allottee has to pay the monthly installments to the Tamil Nadu Housing Board till the completion of the entire sale amount and furthermore, the final sale price shall be fixed after the disposal of the land acquisition cases and on the payment of the sale consideration, the Tamil Nadu Housing Board is to execute the sale deed in favour of the allottee and according to the plaintiff, he and the third defendant are the sons of one Mutthusamy and the fourth defendant is the brother-in-law of the

third defendant and it is stated by the plaintiff that since the third defendant has not come forward to file the suit along with him, he has been cited as the defendant in the suit and it is put forth by the plaintiff that the defendants 1 and 2 had agreed to sell the suit property to the plaintiff's father Muthusamy for a sum of Rs.2,00,000/- and entered into a sale agreement on 23.12.1996 and on the date of the sale agreement, the defendants 1 and 2 have received a sum of Rs.1,99,000/- as advance and handed over the possession of the suit property to Muthusamy and they also agreed to execute the sale deed in favour of Muthusamy immediately after getting the sale deed from the Tamil Nadu Housing Board and the plaintiff's father Muthusamy was continuously ready and willing to perform his part of contract and however died on 23.03.2011 leaving behind the plaintiff and third defendant as his legal heirs and after the demise of Muthusamy, the plaintiff took the possession of the suit property and enjoying the same and also made improvements in the suit property with the knowledge of the defendants 1 and 2 and paying the property tax, water tax etc., including electricity consumption charges and the plaintiff has also expressed his willingness to the defendants 1 and 2 to get the sale deed by paying the balance amount in terms of the sale agreement and the defendants 1 and 2 had also agreed to execute the sale deed immediately after getting the sale deed from the Tamil Nadu Housing Board in their favour. Further according to the plaintiff, during the second week of July 2013, the first defendant informed the plaintiff that the third defendant demanded him to execute the sale agreement in respect of the suit property in favour of his nominee and accordingly on 22.07.2013 the plaintiff sent a letter to the first defendant not to heed to the words of the third defendant and however with a view to defeat the rights of the plaintiff, the defendants and one Madheswaran, who is the close associate of the third defendant and also the son of the first defendant colluded together and executed the power deed in favour of the 4th defendant and executed the sale agreement in favour of Madheswaran in respect of the suit property and the same was subsequently cancelled on 31.07.2013. The plaintiff had issued the legal notice to the abovesaid persons not to create encumbrance in respect of the suit property. On 29.09.2013, the 4th defendant attempted to trespass into the suit property claiming that he has purchased the suit property from the first defendant. On verification, according to the plaintiff, he came to know that the sale deed had been executed by the Executive Engineer, Tamil Nadu Housing Board to the first defendant in respect of the suit property on 29.07.2013 and the first defendant had executed the sale deed in favour of the 4th defendant and the same had been entered into in violation of the terms of the sale agreement and therefore the sale deed dated 30.07.2013 in favour of the 4th defendant is not true, genuine

and valid and no consideration had passed thereunder and despite having knowledge about the sale agreement, the fourth defendant had entered into the abovesaid sale deed with the defendants 1 and 2 and hence according to the plaintiff, he has been necessitated to seek the relief of specific performance and other appropriate reliefs against the defendants and hence the suit.

5. The defendants 1 and 2 resisted the plaintiff's suit admitting that the suit property had been allotted to the first defendant by the Tamil Nadu Housing Board and that the sale agreement had been entered into between the defendants 1 and 2 and Muthusamy and also putforth that they had executed the registered power of attorney in favour of Muthusamy, but the same was cancelled on 10.09.2012 i.e., after the death of Muthusamy. According to them, in the cancellation deed it has been clearly averred that Muthusamy had received back the advance amount paid under the agreement from the defendants 1 and 2 and it is therefore contended by them, the plaintiff has no right to claim any right over the suit property by virtue of the sale agreement dated 23.12.1996. Further it is stated that the third defendant is aware of the same and contended that the suit is barred by limitation and further it is stated that the defendants 1 and 2 at the request of the plaintiff allowed him to occupy the suit property as a tenant under the defendants 1 and 2. It is further putforth by them that they had appointed the 4th defendant as their power of attorney and subsequently cancelled the same and further putforth that the 4th defendant had purchased the suit property from them for a valid consideration on 30.07.2013 and the plaintiff has knowledge about the same and the plaintiff has no right, title or interest in respect of the suit property. The plaintiff is not entitled to seek and obtain the reliefs prayed for and sought for the dismissal of the suit.

6. The third defendant also contested inter-alia the plaintiff's case that the sale agreement in favour of Muthusamy has been subsequently cancelled on 10.09.2012 and Muthusamy had received the advance amount paid under the sale agreement and after the cancellation deed executed by the defendants 1 and 2, the plaintiff is not entitled to claim any right over the suit property under the sale agreement and therefore the 3rd defendant has not joined hands with the plaintiff in filing the suit and in other aspects, more or less has reiterated the pleas already putforth by the defendants 1 and 2 in the written statement and accordingly prayed for the dismissal of the plaintiff's suit.

7. The 4th defendant had also filed written statement resisting the plaintiff's suit and he has also putforth similar

pleas as projected by the defendants 1 and 2 in all aspects and accordingly prayed for the dismissal of the plaintiff's suit.

8. In support of the plaintiff's case, P.W.1 was examined. Exs. A1 to A16 were marked and on the side of the defendants, D.Ws.1 to 4 were examined. Exs.B1 to B12 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court had granted the reliefs in favour of the plaintiff as prayed for and accordingly disposed of the plaintiff's suit. Aggrieved over the judgment and decree of the trial court, it is found that the defendants 1, 2 and 4 had preferred the first appeal in A.S.No.100 of 2018 and the 3rd defendant had preferred the first appeal in A.S.No.101 of 2018. 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 appeals preferred by the defendants as above stated, dismissed the suit laid by the plaintiff. Challenging the same, the plaintiff has come forward with the present second appeals.

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

(a) Whether the suit filed on 11.10.2013 is barred by limitation under Article 54 of the Limitation Act, 1963 particularly when the 1st defendant himself got the sale deed only on 29.07.2013 (Ex.A12)?

(b) Whether the findings, discussions and conclusion of the first appellate court in holding the sale agreement as unenforceable under Sec.20 of the Contract Act, 1872, are supported by pleadings in the written statement of the defendants and their oral evidences?

(c) Has not the First Appellate Court committed an error in refusing to exercise its discretion to grant relief of specific performance, when the registered agreement to sell is legal and validly proved and further requirements for getting a decree are established?

(d) Whether the First Appellate Court is legally right in reversing the well considered judgment of the trial court, unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles, particularly in the light of the amendment to the Specific Relief Act, 1963 which came into force on 01.08.2018?

(e) Has not the First Appellate court committed an error in its failure to non-suit defendants for their act of apparent collusion and collusion, bad conduct and fraud played by them on the court as well as the plaintiff, to deprive the plaintiff's claim under Ex.A1?

11. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is seen that the facts adduced by the respective parties as regards their various contentions need not be adverted to in detail. From the materials placed on record, it is found that the parties are not in dispute qua the sale agreement dated 23.12.1996, the copy of which has been marked as Ex.A1, which had been entered into between Muthusamy and the defendants 1 and 2. Muthusamy is the father the plaintiff and the third defendant. As could be seen from the recitals contained in Ex.A1 sale agreement, it is found that the defendants 1 and 2 had agreed to sell the suit property in favour of Muthusamy for a sum of Rs.2,00,000/- and on the date of the agreement, Muthusamy had paid a sum of Rs.1,99,000/- to them as advance towards the sale consideration and it is seen that the parties thereto had agreed to complete the sale transaction as soon as the sale deed had been executed in favour of the defendants 1 and 2 by the Tamil Nadu Housing Board. On a perusal of the sale agreement entered into between the defendants 1 and 2 and Muthusamy, it is found from the recitals contained therein, Muthusamy is very well aware of the position that the defendants 1 and 2 had not obtained the sale deed in respect of the suit property from the Tamil Nadu Housing Board on the date of the sale agreement. It is found that the first defendant had been allotted the suit property by the Tamil Nadu Housing Board and on that basis, the defendants 1 and 2 being the husband and wife had proceeded to enter into the sale agreement with Muthusamy in respect of the suit property in anticipation of the sale deed to be executed in favour of the first defendant by the Tamil Nadu Housing Board. Therefore, it is seen that Muthusamy is very well aware of the position that the first defendant is only an allottee in respect of the suit property by the Tamil Nadu Housing Board and only after the execution of the sale deed in favour of the first defendant by the Tamil Nadu Housing Board, the first defendant would acquire a legal title to the suit property and accordingly it is evident that as determined by the first appellate court, in particular, Muthusamy is fully aware of the allotment order issued by the Tamil Nadu Housing Board as well as the handing over of the intimation letter dated 27.07.1994 given by the officials of the Tamil Nadu Housing Board to the first defendant and the abovesaid documents have come to be marked as Exs.B16 and B17. On a perusal of Ex.B16, it is found that the sale price had been

fixed therein only tentatively and it further recites that the final sale price would be determined only after the land acquisition cases are finally settled with reference to the suit property and accordingly it is found that on various conditions as set forth in the abovesaid allotment order, the first defendant had been allotted the suit property and in particular, it is found that vide para No.8 , the allotment order mandates as follows:

" The allotment of the house plot is made to the allottee on the specific understanding that the house / should be occupied only by the allottee and should not be let out or rights of the applicant parted with alienated, assigned or otherwise encumbered without the explicit, previous written sanction of the Exe.Engineer & Adm. Officer, Erode Housing Unit which will be accorded only in extraordinary circumstances. The order of the MD/Chairman, Tamil Nadu Housing Board in this regard will be final and can not be questioned."

Therefore from the abovesaid allotment order issued by the Tamil Nadu Housing Board to the first defendant, it is evident that the allotment had been made only on the specific understanding that the allottee should occupy the house allotted to him and not let out the same or part with the rights thereof or alienate the same or encumber the property allotted without the explicit and previous written sanction of Executive Engineer and Administrative Officer, Erode, Housing Unit and it is further seen that such sanction would be accorded only in extraordinary circumstances and further the allotment order recites that the order of the Managing Director/Chairman, Tamil Nadu Housing Board in this regard will be final and cannot be questioned. Therefore, as rightly contended by the defendants as well as rightly determined by the first appellate court, the allotment order issued to the first defendant in respect of the suit property clearly bars him from alienating the suit property in any manner without the explicit and previous written sanction of the Tamil Nadu Housing Board which would be granted only in extraordinary circumstances. In Ex.B17, the letter of handing over the possession, it has been recited that the suit property will be handed over to him on the payment of monthly installments as prescribed therein and further recites that if the suit property is not taken over within the stipulated time, the allotment would be cancelled.

12. In the light of the abovesaid recitals particularly contained in Ex.B16, the allotment order issued by the Tamil Nadu Housing Board, when there is a clear bar on the first defendant not to alienate the property to others without the written permission from the Tamil Nadu Housing Board and

when it is seen that it is not the case of the plaintiff that the first defendant or the defendants 1 and 2 had obtained any such written permission from the Tamil Nadu Housing Board for alienating the suit property in favour of Muthusamy and it has also not been pleaded by the defendants 1 and 2 that they had obtained any such written permission from the Tamil Nadu Housing Board qua the alienation of the suit property before entering into the sale agreement Ex.A1, in such view of the matter, when as abovenoted, Muthusamy had full knowledge about the allotment of the suit property in favour of the first defendant by the Tamil Nadu Housing Board on various conditions and when Ex.A1 sale agreement itself recites about the same, ie., the factum of the allotment of the suit property to the first defendant by Tamil Nadu Housing Board, in such view of the matter, as rightly found and determined by the first appellate court, the case of the plaintiff that the defendants 1 and 2 are entitled to alienate the suit property in favour of Muthusamy by way of Ex.A1 sale agreement is found to be totally contrary to the ban imposed under Ex.B16 and in such view of the matter, when there is a total ban as regards the alienation of the suit property on the part of the first defendant to others without the written permission of the Tamil Nadu Housing Board, the sale agreement Ex.A1 having been entered into between Muthusamy and the defendants 1 and 2 without the written permission of the Tamil Nadu Housing Board, in such view of the matter, as rightly put forth by the defendants' counsel, when the relief of specific performance could be granted only based on the existence of a valid and enforceable contract and when the sale agreement in question, Ex.A1 is found to have been entered into between the parties thereto in contravention and violation of the ban imposed under Ex.B16 allotment order and in such view of the matter, such an agreement could not be valid and legally enforceable. Considering the void nature of the sale agreement and its unenforceability in law, it is seen that the first appellate court is justified in invoking section 20 of the Specific Relief Act also for refusing the relief of specific performance prayed for by the plaintiff. In the light of the above position, it is seen that on that sole ground alone, the first appellate court is totally justified in holding that the sale agreement Ex.A1 is not a valid and enforceable agreement and thereby rightly declined the grant of the equitable and discretionary relief of specific performance in favour of the plaintiff. In this connection, the counsel for the defendants placed reliance upon the decision reported in 1990 (3) SCC (1) [Mayawathi Vs. Kaushalya Devi] wherein the position of law with reference to the jurisdiction to order specific performance of the contract, it has been held there must be a valid and binding contract between the parties in respect of the matter and the same is extracted below:

Specific Relief Act, 1963 - Preamble and Section 9 - Applicability of the Act - Conditions for - There must be a valid and binding contract between the parties in respect of which parties should be consensus ad idem - Burden of proof on plaintiff seeking specific performance of the contract - Opposite party may take any defence available under law.

The jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before there has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation.

13. For the above position of law, the decision reported in 2016 (4) SCC 352 [Satish Kumar Vs. Karan Singh and another] is also relied upon. On similar lines almost akin to the facts and circumstances of the present case, in the decision reported in 2015 (1) LW 881[Radha Lakshmanan Vs. M.S.Gurusamy] it has been held that when the sale agreement had been executed during the ban period without the explicit permission of the Tamil Nadu Housing Board, such a sale agreement could not be executed as the allottee had no title to alienate the property, accordingly refused the relief of specific performance and the position of law has been outlined in the abovesaid decision as follows. In fact, in the abovesaid decision it has been held that any alienation by the allottee in contravention of the conditions of the allotment order is a void agreement within the meaning of section 23 of the Indian Contract Act and further held that the said agreement cannot be validated by the act of the parties and the position of law has been outlined in the abovesaid decision as follows:

Specific Performance / Agreement to sell enforcing of, void, when Contract Act Section 23/Agreement to sell, enforcing of, void, when, Limitation Act, Article 54/Agreement to sell, enforcing of, void, when, Transfer of property Act, Section 35 applicability, sale agreement, bar to sell, effect of. Allotment order by TNEB that defendant shall not part with possession or alienate, assign or encumber his rights until the cost of the plot determined is paid in full or till the expiry of a period of five years - Effect of condition - what is- Ex.A1

sale agreement executed during five year period - whether valid/void under Section 23 - Condition whether valid, effect of.

Held: cannot enforce sale agreement executed during existence of prohibition - defendant did not possess a marketable title - Specific performance refused, in order - Rule of namo debt quad non habit, invoking of, sale agreement cannot be validated as it is void under Sec.20. Sale agreement on 25.10.1993, stated three years time for executing the sale agreement - Suit filed on 03.04.2006 is barred.

As per the regular allotment order dated 08.04.1991 plot No.212 at Korattur having an extent of 2300 sq.ft was allotted in favour of M.S.Gurusamy, the defendant/respondent herein subject to various conditions and one of the conditions, would prove the case of the defendant that the allotment order of the suit property was made to the defendant on a specific understanding that he shall not part with possession or alienate, assign or otherwise encumber his rights in the above plot until the cost of the plot determined under Condition No.2 is paid in full or till the expiry of a period of five years from the date of this order of allotment or till any pending writ petitions or suits of the above lands in question are disposed off, whichever is later, without the written prior approval of the Board. This condition dated 08.04.1991 imposing a ban of five years period not to part with possession or alienate the suit property was in existence on the date of sale agreement dated 25.10.1993. Ex.A1 came to be executed between the plaintiff and the defendant for alienating the property in favour of the defendant. Therefore, the learned appellate Court taking into account the prohibition existed against Ex.A2 dated 25.10.1993 rightly came to the conclusion that the said prohibition not only existed for five years from the date of allotment under Ex.A2 and such prohibition continued till the defendant has become the absolute owner of the suit property on 23.03.2006, therefore, the plaintiff cannot seek any remedy under section 35 of the Transfer of Property Act.

For the reason that the agreement Ex.A1 is a void agreement within the meaning of Section 23 of the Indian Contract Act, the said agreement cannot be validated by the Act of parties. Admittedly, in the present case, the regular order of allotment dated 08.04.1991 alleging the suit property in favour of the defendant was allotted was subject to a specific and explicit condition that the defendant shall not part with possession of the suit property until the expiry of a period of five years from the date of order of allotment without the written prior approval of the Board. Surprisingly, even during the currency of the prohibitory Clause No.10, the sale agreement was entered between the parties on 25.10.1993. Therefore, when the sale agreement dated 25.10.1993 was executed during the existence of

the prohibition, the view taken by the learned Appellate Court confirming the reasoning given by the trial court refusing to decree the suit for specific performance, in my considered view, is in order.

Both the plaintiff and defendant were aware of the fact that the defendant did not possess a marketable title, in view of Clause 10 of the agreement on the date of the agreement dated 25.10.1993 was entered for alienating the suit property in favour of the plaintiff. In view of the prohibition staring at both parties, the first appellate court has rightly invoked the golden rule of 'namo debt quad non habit' and held against the plaintiff that she could not enforce agreement Ex.A1 sale agreement prior to 23.03.2006 for the reason that the defendant was not having any title to the suit properties, which has been candidly admitted by the plaintiff. That apart since the sale agreement dated 25.10.1993 itself was entered during the ban and legally prohibited period, the same cannot be validated for the reason that Ex.A1 sale agreement itself is void by virtue of Section 20 of the Indian Contract Act.

A mere reading of the above judgment clearly shows in unmistakable terms that the Court cannot be a party to a transaction which is void in law, therefore, finding no merit or substance in the challenge made against the concurrent findings of the Courts below, this appeal is liable to fall.

Subbireddy Vs. K.N.Srinivasan Murthy, AIR 2006 Karnataka 4;
M.Rathnam Vs. Smt.Susheelamma, AIR 2009 Karnataka 79;
P.Gopirathnam and four others Vs. Ferrodous Estate (Pvt.) Ltd., rep. By its Power of Attorney Holder Sri.G.John Arthur, 1999 (II) CTC 181;
L.T.Colonel Jaswant Sing Vs. Daljit Singh and others AIR 1998 P&H 254 and
B.P.Samyappan and 4 others Vs. Arunthavaselvan and 3 others 1994 (1) LW.399.

14. In the light of the above position, when it is seen that the sale agreement relied upon by the plaintiff is found to have been entered into between the parties thereto in violation of the ban of the Tamil Nadu Housing Board, in such view of the matter, the sale agreement cannot be validated by the act of the parties in any manner or by the act of the Court and accordingly, it is seen that the first appellate court is justified in determining that Ex.A1 sale agreement is a void agreement having been entered into in utter disregard to the ban and without the prior written sanction of the Tamil Nadu Housing Board and furthermore, without the expiry of the period contemplated under Ex.B17 and in my considered opinion, no reason is warranted to interfere with the abovesaid

determination of the first appellate court.

15. The plaintiff's counsel contended that the sale agreement had been entered into between the parties and Muthusamy being a bonafide purchaser without the knowledge of the conditions imposed by the Tamil Nadu Housing Board and accordingly further putforth that in any event, the first defendant having obtained the sale deed from the Tamil Nadu Housing Board subsequently on that footing contended that the deceased Muthusamy or for the matter, the plaintiff as his legal heir, would be entitled to enforce the sale agreement and in this connection, placed reliance upon section 13(1)(a) of the Specific Relief Act and section 43 of the Transfer of Property Act. However as rightly putforth by the defendants' counsel, the deceased Muthusamy cannot be held to be unaware of the conditions imposed by the Tamil Nadu Housing Board while granting the allotment in favour of the first defendant and therefore the plaintiff cannot be allowed to contend that Muthusamy is a bonafide purchaser or bonafidely entered into the sale agreement with the defendants 1 and 1 qua the suit property. Furthermore, as rightly contended by the defendants' counsel, section 43 of the Transfer of Property Act would not be applicable to the case at hand. Section 43 contemplates transfer made by a person fraudulently or on erroneous representation. Insofar as the present case is concerned, it is not the case of the plaintiff that the defendants 1 and 2 had professed or claimed that they had obtained a valid title qua the suit property from the Tamil Nadu Housing Board and entitled to alienate the same in favour of Muthusamy. On the other hand, the recitals in Ex.A1 sale agreement itself would go to show that Muthusamy is well aware of the allotment of the suit property by the Tamil Nadu Housing Board in favour of the first defendant and in such view of the matter, when it is seen that the defendants 1 and 2 had not suppressed any information from Muthusamy as regards the allotment of the suit property by the Tamil Nadu Housing Board on conditions, in such view of the matter, in my considered opinion, such circumstances would not bring within its purview the applicability of section 43 of the Transfer of Property Act. Similarly, it is seen that admittedly the first defendant is the allottee of the suit property by the Tamil Nadu Housing Board. Only thing is, he has been prohibited by the Tamil Nadu Housing Board from alienating the suit property without the explicit and written permission from them. Therefore, it cannot be strictly held that the defendants 1 and 2 or for the matter the first defendant has no title as such qua the suit property. On the otherhand, the question involved here is whether the first defendant had acted in adherence to the conditions of allotment before entering into the sale agreement with Muthusamy in respect of the suit property. In such view of the matter, when there is no question of absence of title or imperfect title on the part of the first defendant or as the

case may be, on the part of the defendants 1 and 2 qua the suit property and the issues involved in the matter is whether the sale agreement had been entered into in violation of the ban imposed under Ex.B16, in such view of the matter, it is found that invocation of section 13 (1)(a) of the Specific Relief Act has no applicability to the case at hand. The trial court is found to have erred in placing reliance upon section 13(1)(a) of the Specific Relief Act for upholding the plaintiff's case.

16. The first appellate court has also held that the suit laid by the plaintiff is barred by limitation. It is found that as per the sale agreement, 10 years period of time has been fixed for the completion of sale agreement. Ex.A1 is dated 23.12.1996. Therefore the period of 10 years fixed therein expired on 22.12.2006. From Ex.B17, the letter of handing over possession, it is found that the period fixed therein is 13 years from 03.03.1993 and the same ends on 02.03.2006. Therefore, as rightly determined by the first appellate court, as per the period fixed in the sale agreement Ex.A1, the 10 years period having expired on 22.12.2006, the suit should have been levied by the plaintiff, if at all, he is entitled to enforce the sale agreement, on or before 21.12.2009.

17. Even prior to the institution of the suit, Muthusamy, the agreement holder had died. Now according to the plaintiff, he and the third defendant are the legal heirs of the deceased Muthusamy. As the third defendant, according to the plaintiff, had not joined hands with him, it is stated by the plaintiff that he had been necessitated to institute the suit for enforcing the sale agreement by adding the third defendant as the defendant in the suit. It is found that the deceased Muthusamy was also granted the power of attorney in respect of the suit property on the date of the sale agreement which document has been marked as Ex.B1. However, Muthusamy did not enforce the said power given to him. Now according to the defendants, the power deed given to Muthusamy had been cancelled on 10.09.2012 which document has been marked as Ex.B2. However, even before the cancellation deed Ex.B2, Muthusamy had died. Therefore, it is evident that on the demise of Muthusamy, the power deed given to him under Ex.B1 lapses or ceases to have any force. In such view of the matter, the defence put forth by the defendants that Muthusamy had received the advance amount from the defendants 1 and 2 paid under the sale agreement and therefore the power deed issued to him had been cancelled and therefore the sale agreement could not be enforced by the plaintiff, as such, cannot be accepted, mainly noting that there is no material to hold that Muthusamy had received back the sale consideration paid under Ex.A1 sale agreement. When the cancellation deed does not give particulars as to when the amount had been received back by Muthusamy and in whose presence

the same had been received and what is the material obtained from Muthusamy with reference to the same and when with reference to the same, there is no material at all, in such view of the matter, merely from the cancellation deed Ex.B2 which document is found to have come into existence after the demise of Muthusamy, in such view of the matter, the case of the defendants that Muthusamy had received back the amount of Rs.1,99,000/- from the defendants 1 and 2 cannot be believed and rightly not accepted as not proved by the first appellate court.

18. As above noted, when the period for the sale agreement had expired on 22.12.2006, in such view of the matter, Muthusamy having not endeavored to enforce the sale agreement during his life time and the present suit having been laid by the plaintiff only on 11.10.2013, in such view of the matter, the first appellate court is justified in holding that the suit laid by the plaintiff is hit by the law of limitation and considering the facts and circumstances of the case, I am unable to disturb the abovesaid determination of the first appellate court.

19. The contention has been put forth by the plaintiff's counsel that the entitlement of the defendants 1 and 2 to execute the sale deed in favour of Muthusamy or for the matter, the plaintiff would arise only after the obtainment of the sale deed by the first defendant from the Tamil Nadu Housing Board and therefore according to the plaintiff's counsel, when the first defendant had obtained the sale deed from the Tamil Nadu Housing Board only on 29.07.2013, according to him, the suit having been laid within the time allowed by law from that period, the suit is not barred by limitation. However the abovesaid contention does not merit acceptance. When it is found that the specific time has been fixed under the sale agreement, de-hors the obtainment of the sale deed by the first defendant from the Tamil Nadu Housing Board, the plaintiff, if at all, is entitled to enforce the sale agreement, should have levied the suit within three years from the time fixed under the sale agreement and the same having not been done in the present matter, in such view of the matter, it seen that the suit laid by the plaintiff is barred by limitation.

20. When it is found that Muthusamy had left behind both the plaintiff and the third defendant as his legal heirs, it does not stand to reason as to how the plaintiff alone would be entitled to enforce the sale agreement in question, if at all, he is entitled to, without asking the relief on behalf of the third defendant also. As the legal heir of Muthusamy, at the most, the plaintiff would be entitled to only a share in the suit property. If Muthusamy is held to be a valid agreement holder and entitled to enforce the sale agreement, admittedly,

when the suit for partition between the plaintiff and the third defendant is pending in O.S.No.99 of 2014, however, it is seen that the suit property has not been added in the said suit, therefore when the plaintiff is found to have laid the present suit to obtain the relief of specific performance to himself solely based on the sale agreement Ex.A1 said to have been entered into by his father Muthusamy, when Muthusamy had left behind not only the plaintiff but also the third defendant as his legal heir, in such view of the matter, the claim of the relief of specific performance putforth by the plaintiff in entirety is found to be legally not maintainable and the abovesaid determination of the first appellate court is found to be correct and not warranting any interference.

21. As could be seen from the materials placed on record, the first defendant had, after obtaining the sale deed from the Tamil Nadu Housing Board qua the suit property, executed the sale deed in favour of the 4th defendant along with his wife in respect of the suit property on 30.07.2013 which document has been marked as Ex.A13. However, according to the plaintiff, the abovesaid sale deed is not legally valid and according to him, the same had been entered into in violation of the sale agreement Ex.A1. However, when Ex.A1 sale agreement is found to be a void agreement and not enforceable as above pointed out, in such view of the matter, the plaintiff cannot be allowed to impugn the sale deed in favour of the 4th defendant on the strength of Ex.A1 sale agreement and furthermore the plaintiff has also not sought for any relief of declaration qua the sale deed dated 30.07.2013 marked as Ex.A13 as invalid in such view of the matter, the first appellate court is found to be correct in holding that the plaintiff would also not be entitled to get the relief prayed for by him without seeking the relief of declaration qua the abovesaid sale deed Ex.A13 in the manner known to law and accordingly, the first appellate court is justified in rejecting the plaintiff's suit on the said ground also.

22. In the light of the abovesaid discussions, it is found that the first appellate court has analysed the evidence adduced in the matter both oral and documentary in detail and by giving cogent reasonings and conclusions, had rightly held that the sale agreement in question namely Ex.A1 is a void agreement and not legally enforceable. As determined by it and when the abovesaid determination of the first appellate court is found to be based upon the proper appreciation of the laws governing the issues involved in the matter, the first appellate court is found to be justified in refusing the equitable and discretionary relief in favour of the plaintiff and the first appellate court is also found to be right in holding that the plaintiff's suit is barred by limitation and

also by giving acceptable and cogent reasons, set aside the judgment and decree of the trial court and when the plaintiff is found to be not entitled to obtain the relief of specific performance and when there is no fraud or collusion on the part of the defendants, as such, in defending the plaintiff's suit and when the defendants have also not suppressed any materials from the Court, in such view of the matter, and on the whole, it is found that the judgment and decree of the first appellate court dismissing the plaintiff's suit do not warrant any interference and the substantial questions of law formulated in the second appeals are accordingly answered in favour of the defendants and against the plaintiff.

23. In support of his contentions, the plaintiff's counsel placed reliance upon the decisions reported in

1. 2018 (5) CTC 610 [Krishnaveni and others Vs. Muthumanickam and others]
2. 2019 (3) SCC 520 [Vijay A.Mittal and others Vs. Kulwant Rai (dead) through Legal Representatives and another]
3. 2018 (2) SCC 82 [Balwant Vithal Kadam Vs. Sunil Baburaoi Kadam]
4. 2008 (17) SCC 491 [Bachhaj Nahar Vs. Nilima Mandal and another]
5. 2019 (1) Supreme 268, Supreme Court of India [L.Ponnayal @ Lakshmi Karuppannan (dead) Vs. L.R.Sengoda Gounder and Another]
6. 2015 (1) SCC 597 [K.Prakash Vs. B.R.Sampath Kumar]

In support of his contentions, the defendants' counsel also placed reliance upon the decisions reported in

1. 2009 (1) CTC 791 [Neraichelvi Vs. K.Ranganathan and 3 others]
2. 2011 (3) CTC 567 [Pappammal (died) and others Vs. Sarojini and others]

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

24. In conclusion, both second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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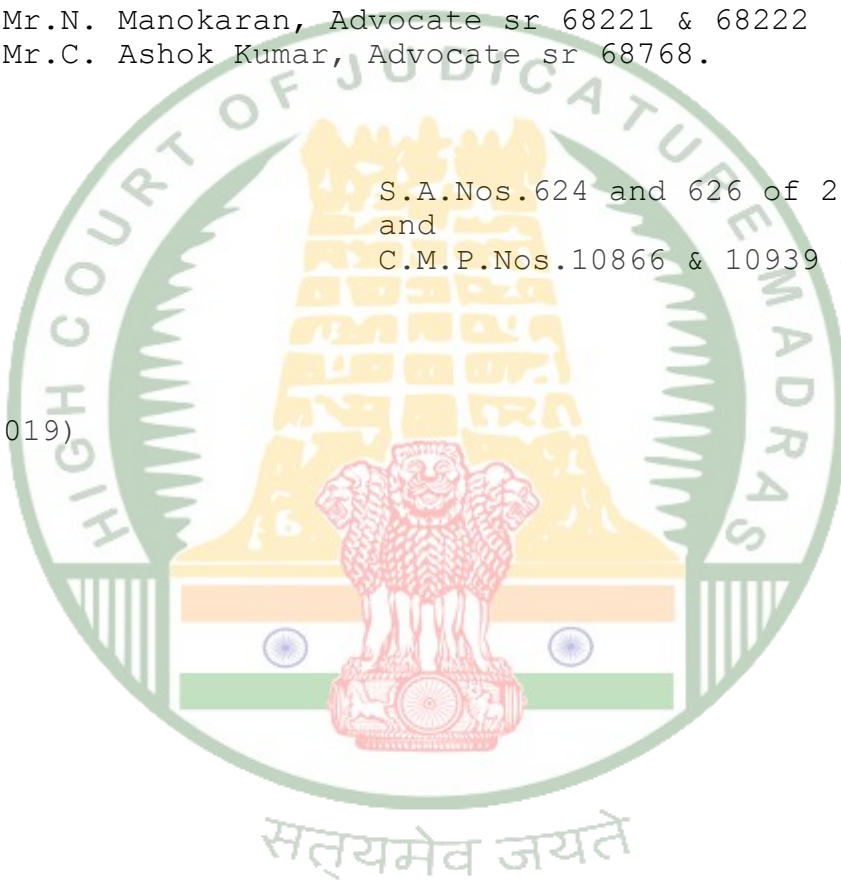
1. The Principal District Judge,
Principal District Court,
Erode.
- 2.The Second Additional Subordinate Judge,
Second Additional Sub Court,
Erode.

+2 Ccs to Mr.N. Manokaran, Advocate sr 68221 & 68222

+3 Ccs to Mr.C. Ashok Kumar, Advocate sr 68768.

S.A.Nos.624 and 626 of 2019
and
C.M.P.Nos.10866 & 10939 of 2019

TM(CO)
SP(17/09/2019)



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