



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019
PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.20 of 2016
and
CMP. No.516 of 2016

H.S.Om Prakash (deceased)

1. Geetha Rani

2. H.O. Vikram

...Appellants / Defendant

Cause title accepted vide order of court dated
25.03.2013 made in M.P. No.1/13 in SA.Sr. No.86992
of 2001.

Vs.

Anjani Ranjit

...Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.07.2001 made in A.S.No.2 of 2000 on the file of District Judge and Appellate Authority of the Nilgiris at Ootacamund reversing the judgment and decree dated 02.11.1999 passed in O.S.No.267 of 1996 on the file of Sub Court, Nilgiris at Ootacamund.

For Appellants : Mr.C.Ravichandran
for M/s. A.U.Ilango

For Respondent : Mr. S.R. Rajagopal SC for
for M/s. S.Sivasansarana

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated dated 10.07.2001 passed in A.S.No.2 of 2000 on the file of District Court and Appellate Authority of the Nilgiris at Ootacamund reversing the judgment and decree dated 02.11.1999 passed in O.S.No.267 of 1996 on the file of Subordinate Court, Nilgiris at Ootacamund.

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



3. Suit for specific performance.

4. The case of the plaintiff, in brief, is that the plaintiff entered into an agreement of sale on 14.08.1992 with the defendant to purchase 6 acres of agricultural land comprised in survey No. 328/2A situated at Sholur village in the registration sub district of Udhagamandalam, of which the defendant was the absolute owner, for a sum and consideration of Rs.2,50,000/- and pursuant to the sale agreement, the plaintiff paid a sum of Rs.10,000/- as advance towards the sale consideration. As per the terms of the agreement of sale, the defendant had agreed to give a right of way with a minimum of 15 feet wide road of the property sought to be purchased or in the alternative, a right of way from the main road and the defendant had also undertaken to furnish no objection certificate and the other clearances from the appropriate authorities concerned if necessary and also the defendant had to furnish a nil Encumbrance Certificate to the plaintiff and it was agreed between the plaintiff and the defendant that the sale should be completed on or before 25.11.1992 and in the third week of November 1992, the plaintiff's representative contacted the defendant and informed him that the plaintiff is ready and willing to complete the sale transaction and the defendant informed the plaintiff's representative that there is a problem to be sorted out in respect of the right of way to the land proposed to be sold to the plaintiff and requested some more time and after the problems regarding the right of way are sorted out, he had informed the plaintiff's representative that, he would inform the plaintiff and then the transaction could be completed. The plaintiff's husband met R.Pratap, the agent and the defendant on 17.12.1992 and enquired the reasons for the delay and the defendant represented that every effort is being made to finalise the right of way and entry to the property and also for furnishing the Encumbrance Certificate and accordingly requested for some more time to complete the sale transaction and in the third week of January 1993, the defendant sent word to the plaintiff to send the money and the power of attorney agent for completing the registration and the plaintiff sent the estate manager and accountant with the draft sale deed and for having discussion with the defendant and the defendant had assured that he would obtain the nil Encumbrance Certificate and complete the other formalities within a week. On that assurance, the plaintiff had agreed for the extension of time for completing the transaction and the plaintiff's representatives again went to Sholur on 28.01.1993 and were surprised to learn that the nil Encumbrance Certificate had not been obtained and the other formalities not been completed and the defendant asked for further time. On 06.02.1993, the agent R.Pratap asked the plaintiff to send her representatives for registration and assured that all the matters would be completed



by then. However, the agent R.Pratap returned back to Masanagudi and came again on 12.02.1993 to Madras with nil Encumbrance Certificate and asked the plaintiff to send her representative with the balance sale consideration for the registration of the sale. On that assurance, the plaintiff's estate manager V. Balaji and Accountant K.Radhakrishnan went with the balance sale consideration to complete the sale transaction. However, they were informed that the defendant was not willing to complete the transaction as he had changed his mind and the defendant is not entitled to go back on the agreement of sale. The plaintiff received a letter dated 19.02.1993 from the defendant returning the demand draft of Rs.10,000/- stating that he was not going through the same and retaining the land owing to the reasons of his ill health and informed that the agreement stands cancelled and the defendant has unilaterally cancelled the agreement and is not entitled to do so. The plaintiff has been always ready and willing to pay the balance amount and complete the sale transaction. It is only the defendant who had been evading the completion of the sale one way or the other without completing his part of the contract as abovestated and hence, according to the plaintiff, the need for the suit for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that a sum of Rs.10,000/- was paid as advance towards the sale consideration of Rs.2,50,000/- for the sale of 6 acres of agricultural land at Sholur village and that the agreement was brought by the plaintiff for the same. However, the agreement was not complete as the survey number and the description of the property agreed to be sold and the plan of the property was not incorporated in the agreement. The survey number has been specifically filled in the agreement by the plaintiff and the alleged agreement of sale is defective and not complete and cannot be specifically enforced and at the time of signing the agreement, it was agreed that the land would be surveyed and the plan demarcating the 6 acres out of 6.14 acres would be prepared and the survey could be done within a week. However, the plaintiff and her husband immediately left Masanagudi and thereafter, never returned and met the defendant and the land was neither surveyed nor measured. At no point of time, the defendant had agreed to sell the suit property to the plaintiff as described in the plaint. In fact, the defendant is owning a building in the plaint schedule property and has never agreed to sell the same to the plaintiff. The Survey field No.328/2A of Sholur village comprises of 32.56 acres not yet been sub divided and the abovesaid fact has been explained to the plaintiff and other than paying the initial advance, the plaintiff had not taken any steps to show that she was willing and keen to purchase the land, in particular, as agreed to, the survey was not conducted and the case of the plaintiff that her



representative met the defendant in the third week of November 1992 is false. Only on 14.08.1992, the defendant has seen the plaintiff and her husband and it is false to state that the defendant asked for extension of time to complete the transaction. The defendant is not aware as to what had transpired between the plaintiff, her husband and R.Pratap, and the defendant is not aware of the activities of R.Pratap. The defendant had informed the plaintiff and her husband once or twice over the phone asking them to send somebody to survey 6 acres, but, there was no positive response from the plaintiff. The agreement of sale discloses that the advance amount should be refunded if the sale had not taken place by 25.11.1992. By end of January 1993, the defendant felt that the plaintiff was not keen or willing to purchase 6 acres of land and hence returned the advance amount of Rs.10,000/- to the plaintiff as per clause 14 of the sale agreement and the defendant has never agreed to sell the land measuring 6.14 acres as set out in the suit and therefore, the suit is liable to be dismissed.

6. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A8 were marked. On the side of the defendant D.W.1 was examined, Exs.B1 and B2 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. 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 allowing the appeal preferred by the plaintiff, granted the relief of specific performance in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

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

"(1) Whether the plaintiff is entitled for a decree for specific performance despite the cancellation of the sale agreement under Ex.A3 letter?

(2) Whether the lower appellate court was right in granting a discretionary relief of specific performance without having regard to the value of the property and without having regard to the meagre amount paid by the plaintiff? and

(3) Whether the lower appellate court was right in holding that the sale agreement in question is not incumbent?"



9. The suit has come to be laid by the plaintiff for the relief of specific performance based on the agreement of sale dated 14.08.1992. The plaintiff has averred in para-3 of the plaint that the agreement of sale was entered into with the defendant on 14.08.1992 to purchase 6 acres of agricultural land comprised in survey No.328/2A situated at Sholur village in the registration sub district of Udhagamandalam for a sum of Rs.2,50,000/- and that the plaintiff had paid a sum of Rs.10,000/- as advance on the date of the sale agreement. Further, the plaintiff has also averred that the parties to the sale agreement, abovestated, had agreed that the sale should be completed on or before 25.11.1992. The sale agreement dated 14.08.1992 has been marked as Ex.A2. Based on the sale agreement Ex.A2, the plaintiff has sought for the relief of specific performance in respect of the property as described in the plaint schedule. As abovenoted, in para 3 of the plaint, even according to the plaintiff, the sale agreement has been entered into only for the extent of 6 acres of land in survey No.328/2A. No doubt, on a perusal of Ex.A2 sale agreement, there is a reference to the property involved in the agreement of sale as comprised in survey No.328/2A, measuring an extent of 6 acres and the agreement reads that the said property has been more fully described in schedule-1 thereunder and delienated and coloured..... in the plan annexed thereto. Therefore, as per Ex.A2, the property agreed to be conveyed by way of the same has been described in the schedule-1 thereunder and delienated and coloured in the plan annexed thereto. However, on a perusal of Ex.A2, in the last page, the same has been signed by the defendant as the party of the first part and the plaintiff as the party of the second part and two witnesses had attested the said agreement of sale. Apart from that, the sale agreement does not proceed further. If really the parties had undertaken and agreed that the sale agreement Ex.A2 had been entered into only qua the property as more fully described in the schedule-1 annexed thereunder and also delienated and coloured in the plan annexed thereto, naturally, there should have been schedule-1 to the sale agreement and the plan annexed thereto and the plan of the sale agreement should have been coloured in particular so as to identify the property with reference to which the parties thereto had proceeded to enter into the transaction. On the other hand, Ex.A2 does not contain any schedule nor any plan annexed thereto and the property that is described as the subject matter of the agreement could only be gathered from the second part of the agreement of sale contained in the page No.1 and the said part reads that by way of the said agreement, the defendant had agreed to convey the land measuring an extent of 6 acres comprised in survey No.328/2A and other than that, there is no other description of the property for identifying the same in the sale agreement. As abovenoted, neither the schedule nor the plan is found to have been attached



to the sale agreement Ex.A2. This has also been admitted by the plaintiff's power agent examined as P.W1 and during the course of cross examination, P.W.1 has clearly admitted that at the time of execution of Ex.A2, two copies were prepared and Ex.A2 had been completed on the date of the execution of the same and Ex.B1 is the copy of Ex.A2 and Ex.A2 is not complete in many aspects and also further admitted that there is neither schedule nor plan depicting the property in EX.A2. Therefore, at the most, based on the recitals contained in Ex.A2 sale agreement, it could only be inferred that the parties thereto had agreed for the conveyance of the extent of 6 acres of land comprised in survey number 328/2A. Only on that basis, the plaintiff has also averred in para-3 of the plaint that the parties had entered into an agreement of sale on 14.08.1992.

10. However, on a reading of the description of the property given in the plaint schedule, it is given in three items. The first item is shown as measuring an extent of 3 acres in survey number 328/2A within the specific boundaries and the second item is shown as measuring an extent of 2.43 acres in survey number 328/2A lying within the specific boundaries and the third item is shown as measuring an extent of 0.71 acres in survey number 328/2A lying within the specific boundaries and adding the abovesaid extents as given in the plaint schedule, it is found that the plaintiff has come forward with the suit for the relief of specific performance for the total extent of 6.14 acres of land comprised in survey number 328/2A. However, when as above pointed out, EX.A2 sale agreement reads that it is only entered into between the parties thereto for the sale of the land of an extent of 6 acres of land in survey number 328/2A and nothing more than that and when according to the plaintiff, the property intended to be conveyed is only the plaint schedule property and when the plaint schedule property, in toto, measures an extent of 6.14 acres, in such view of the matter, as rightly determined by the trial court, the parties themselves are not sure as to what is the actual extent of land that had been agreed to be sold/purchased amongst them and resultantly it is found that the abovesaid confusion had arisen between the parties with reference to the actual extent of the property and the lie of the property agreed to be sold by way of Ex.A2 sale agreement. In this connection, the plaintiff has examined the power agent as P.W.1. P.W.1 during the course of cross examination has clearly admitted that it is true to state that at the time when Ex.A2 sale agreement had been entered into between the parties, they are not aware as to for which property the agreement had been entered into. If really the parties are sure about the property, which they had agreed to convey / purchase by way of Ex.A2 sale agreement, Ex.A2 sale agreement would have been executed in a clear shape and resultantly, the same would have also been appended with the necessary schedule



describing the property agreed to be conveyed / purchased as well as the plan depicting the lie of the property given in the second part of the sale agreement. However, as abovenoted, no schedule or plan has been annexed to the sale agreement Ex.A2 and in particular on a perusal of the copy of Ex.A2 sale agreement marked as Ex.B1, there is no reference even about the survey number in the same and in such view of the matter, when according to the plaintiff, she has come forward with the suit for the relief of specific performance in respect of the suit property as described in the plaint based on Ex.A2 sale agreement, when the suit property is found to be comprising of an extent of 6.14 acres of land in survey number 328/2A, it is evident, as determined by the trial court, that the parties are not definite and sure about the actual extent of the property they had agreed to convey / purchase.

11. P.W.1 is only the power agent of the plaintiff. The plaintiff has not come forward to tender evidence in the matter nor the plaintiff's husband has come forward to depose on behalf of the plaintiff. P.W.1, during the course of cross examination, has clearly admitted that at the time when Ex.A2 sale agreement had been entered into, he was not present and that he does not know directly under what circumstances Ex.A2 sale agreement had been entered into. Therefore, it is clear that P.W.1 has no direct knowledge about under what circumstances and on what terms, the parties thereto had proceeded to enter into the sale agreement. On a perusal of the various terms contained in the sale agreement, particularly clause 5a, it is seen that the same reads that consideration for the property stated in clause 2 is subject to the party of the first part (D) giving right of way for the party of the second part (P), which alone gives the right of way and entry to the party of the second part to the said property (a minimum of 15 feet wide road right of way from the main road). Therefore, it is found that the parties, at the time of entering into the agreement in question Ex.A2, had agreed that the defendant should set apart 15 feet wide road / right of way from the main road to have access to the property agreed to be conveyed / purchased. Now according to the defendant for the purpose of identifying the right of way, both the parties had agreed to survey the property and fix the right of way as fixed under the agreement of sale under clause 5a. As abovenoted, the parties had agreed that the sale agreement should be completed on or before 25.11.1992. Though the plaintiff would claim that she had sent her representative to the defendant in the third week of November 1992 and that she has been expressing her readiness and willingness to complete the sale transaction, however, the plaintiff has not whispered as to which of her representatives had contacted the defendant in the third week of November 1992 and the so called representative, who is said to have met the



defendant at that point of time, has also not been examined in support of the plaintiff's case. Further according to the plaintiff, her husband Ranjit Pratap had met R. Pratap, the agent and the defendant on 17.12.1992 and enquired the reasons for the delay with reference to the abovesaid case of the plaintiff and to sustain the same, the plaintiff has not endeavoured to examine her husband and what had transpired between her husband and the defendant on 17.12.1992. The plaintiff would further aver that the defendant had sent a word in the third week of January 1993 to send the money and the power agent for completing the registration and according to the plaintiff, she had sent the estate manager and the accountant with a draft sale deed and for having discussions with the defendant. However, there is no proof that the defendant had sent a word in the third week of January 1993 directing the plaintiff to send the money and the power of attorney agent for completing the registration. The so called estate manager and the accountant said to have been sent by the plaintiff, have not been examined by the plaintiff. Further according to the plaintiff, the defendant's agent R. Pratap had asked her to send the money and her agent with the balance sale consideration and complete the registration. On that assurance, it is stated that the plaintiff again sent her estate manager V. Balaji and the accountant K. Radhakrishnan, however, there was no response on the part of the defendant. But, the plaintiff, to sustain her case, has also not endeavoured to examine her estate manager V. Balaji and the accountant K. Radhakrishnan. When the defendant has, in toto, disputed the readiness and willingness on the part of the plaintiff and would state that other than the payment of a sum of Rs.10,000/- as advance on the date of sale agreement, the plaintiff has not moved ahead in completing the sale transaction, particularly to survey the field for identifying the right of way to be demarcated for gaining access to the property in question and though the plaintiff would claim that she had been periodically sending her emissaries to approach the defendant and complete the sale transaction either on her own accord or at the instance of the defendant as averred in the plaint, when the same are totally refuted by the plaintiff other than meeting the plaintiff or her husband on 17.12.1992 and when as abovenoted, the plaintiff has not even whispered as to which representative she had deputed to meet the defendant and also failed to examine the alleged representative and also failed to examine the estate manager and the accountant said to have been deputed by her on various occasions to complete the sale transaction at the instance of the defendant and when according to the defendant, the plaintiff was never keen and willing to go ahead with the sale transaction by surveying the field and identifying the right of way and if really the plaintiff had deputed her estate manager for surveying the field and the manager had in fact measured the field, as rightly determined by



WEB COPY

the trial court, to sustain the said case, the plaintiff would have endeavoured to examine her manager and also would have endeavoured to produce the plan said to have been obtained through the survey proceeding and on the other hand, when there is no material at all on the part of the plaintiff expressing her readiness and willingness to complete the sale transaction one way or the other right from the inception, in such view of the matter, when her further claim that the defendant had been approaching her and her husband through his so called agent R.Pratap for completing the transaction, has been totally repudiated by the defendant and despite the same, the plaintiff has not cared to examine the so called agent of the defendant, namely, R.Pratap and when it is seen that other than Ex.A4 letter dated 25.11.1992, the plaintiff has not placed any other material either by way of oral evidence or by way of the documentary evidence to establish her readiness and willingness and particularly when the right of way had not been determined by the plaintiff by surveying the field along with the defendant and more so, when both the parties had not yet decided as to the actual extent of the property and the lie of the property they had agreed to convey / purchase as above pointed out and the parties had not been at any consensus ad idem with reference to the same on the date of the sale agreement as admitted by P.W.1 as above referred to, as rightly determined by the trial court, when the parties are themselves not definite and sure about the actual extent and lie of the property agreed to be conveyed / purchased and also as to where the right of way to be fixed / earmarked and with reference to the same, the plaintiff has not proceeded to survey the field with the defendant one way or the other and when there is no material at all on the part of the plaintiff to show her readiness and willingness right from the date of sale agreement other than Ex.A4 letter dated 25.11.1992 and when Ex.A4 letter is found have been issued on the date fixed by the parties for the completion of the sale transaction, it is thus evident, in toto, that right from 14.08.1992 onwards till 25.11.1992 the plaintiff has not moved her little finger to measure/survey the property and fix the right of way and complete the sale transaction by identifying the property agreed to be conveyed / purchased.

12. In the light of the abovesaid background, it is found that according to the defendant, left with no other alternative, as the plaintiff was not keen in proceeding further to complete the sale transaction one way or the other in a true spirit and in accordance with the terms set out in the sale agreement, the plaintiff cannot be allowed to blame the defendant as if he had not taken steps to fix the right of way and part with the nil Encumbrance Certificate, clearance certificate, etc., and on the other hand, when the parties themselves are not sure about the actual property with reference to which they had chosen to enter



into the sale agreement of sale by measuring / surveying the same, it is seen that there is no consensus ad idem between the parties with reference to the subject matter and resultantly considering the abovesaid conduct of the plaintiff, it is found that despite the expiry of the time fixed under the sale agreement, the plaintiff having not further endeavoured to proceed further, in such a scenario, it is seen that the defendant has sent a communication dated 19.02.1993 to the plaintiff returning the amount advanced by her by way of demand draft informing that he is not willing to go ahead with the sale agreement and accordingly further informed her that the agreement stands cancelled. The abovesaid letter has been marked as Ex.A3. The receipt of Ex.A3 has not been disputed by the plaintiff nor the acknowledgment of receipt of the Demand Draft for Rs.10,000/- sent along with the letter. Without any demur, it is found that the plaintiff has received the advance amount sent by the defendant by way of Ex.A3. When as per clause 14 of the sale agreement Ex.A2 and when the same stipulates that the defendant shall complete the sale and the registration of the sale deed in favour of the plaintiff in respect of the property on or before 25.11.1992, failing which the defendant shall return all the moneys paid by the plaintiff within two weeks from the abovesaid date and as abovenoted when the plaintiff till the period fixed in the sale agreement i.e. 25.11.1992 had not endeavoured and been keen to proceed further by surveying the field and fixing the right of way, etc., accordingly, by invoking clause 14 of the sale agreement, it is found that the defendant had performed his part of the contract by refunding the advance amount paid by the plaintiff and also informing the plaintiff that the sale agreement stands cancelled. In such view of the matter, it is found that as rightly contended by the defendant's counsel and held by the trial court, the defendant has rightly determined the sale agreement as per the terms of the sale agreement involved in the matter.

13. As abovenoted, the plaintiff has miserably failed to establish her readiness and willingness to complete the sale transaction right from the inception of the sale agreement, particularly, the plaintiff having failed to establish that she had taken steps to measure the field identifying the same and from Exs.A5 to A8, the copies of the documents of title given by the defendant to the plaintiff, it is found that the defendant is the owner of the extent of 6.14 acres land in survey No.328/2A, therefore, at the most, we could only gather that the defendant had agreed to convey 6 acres of land out of 6.14 acres in the abovesaid survey number. When the sale agreement is not in accordance with any schedule or plan as recited therein and when the identity of the property is not clear from Ex.A2 sale agreement and the right of way has also not been fixed by the



parties thereto and when the endeavour with reference to the same had not been undertaken by the plaintiff eagerly and keenly from the inception of the sale agreement and though the plaintiff would aver that she had been periodically sending her men to contact the defendant and complete the transaction and with reference to the said case, as abovenoted, the plaintiff has not examined any one of them and the plaintiff herself had not endeavoured to tender evidence in the matter other than examining her power agent and when the power agent P.W.1 is admittedly not involved in the execution of the sale agreement and is a total stranger to the same and not aware of the terms and the understanding based on which the sale agreement had been entered into between the parties thereto, in such view of the matter, as rightly put forth by the defendant's counsel, P.W.1 would not be competent to speak about the readiness and willingness on the part of the plaintiff in completing the sale transaction. The failure of the plaintiff in subjecting herself to examination in the matter, certainly adverse inference has to be drawn against her as contended by the defendant's counsel.

14. In the light of the abovesaid discussions, when as above discussed, the plaintiff has laid the suit for the relief of specific performance in respect of 6.14 acres of land in survey No.328/2A and on the other hand when the sale agreement is effected only in respect of 6 acres of land in the abovesaid survey number and when in Ex.A2 sale agreement the extent of 6 acres of land has not been identified by giving the boundaries thereto and on the other hand, the plaint schedule reads as if 3 items lying within the specific boundaries of an extent of 6.14 acres had been agreed to be conveyed, but, Ex.A2 sale agreement belies the same and furthermore, when from the materials available on record it is found that survey No.328/2A belonging to the defendant also comprises of the superstructure and when the superstructure is not the subject matter of the sale agreement Ex.A2 and as abovenoted, the parties to the sale agreement particularly, the plaintiff had not endeavoured to measure and identify the property, in such view of the matter, when the parties are not in agreement with reference to the actual property intended to be conveyed / purchased and furthermore, when the agreement has been found to be determined by the defendant rightly as per clause 14 of the sale agreement, in such view of the matter, the trial court is found to be correct in holding that the plaintiff is not entitled to seek and obtain the discretionary and equitable relief of specific performance based on the sale agreement Ex.A2 and rightly determined that for the reasons aforestated, the sale agreement has become incapable of enforcement owing to the failure of any consensus as idem between the parties with reference to the subject matter described therein and also by holding that the



defendant has never agreed to convey the suit property as described in the plaint in favour of the plaintiff based on the sale agreement and further holding that the plaintiff has never been ready and willing to perform her part of the contract.

WEB COPY

15. On the other hand, the first appellate court, without considering the abovesaid aspects in the right perspective and without even assessing the case put forth by the respective parties, particularly, the case projected by the plaintiff totally being inconsistent, failing to note that when the plaintiff has come forward with the relief of specific performance based on the sale agreement Ex.A2 and the subject matter in Ex.A2 is only to be stated measuring an extent of 6 acres, on the other hand when the plaintiff has sought the relief of specific performance of an extent of 6.14 acres, that too, each lying in three items within various boundaries and accordingly when the identity of the property itself has not been rightly determined by the parties based on the sale agreement and with reference to the same, no further endeavours had been made by the plaintiff, in particular, by surveying the field and fixing the right of way, etc., and as abovenoted, the plaintiff has failed to examine any one who are supposed to have met the defendant on various occasions for accomplishing the sale transaction as averred in the plaint, P.W.1, the power agent being found to be totally a stranger to the case projected by the plaintiff, the first appellate court, without considering the abovesaid aspects of the matter and on a misreading of the evidence on record as well as the pleas set out by the parties and in particular failing to appreciate the complete absence of readiness and willingness on the part of the plaintiff in going ahead with the completion of the sale transaction and consequently the right of the defendant to determine the sale agreement as per clause 14 of the same and knowing fully well that the plaintiff had failed to truly express and prove her readiness and willingness to complete the sale transaction, the first appellate court however to camouflage the same, had directed the plaintiff to pay the interest for the balance sale consideration at the rate of 18% per annum from the date of filing of the suit till the date of the disposal of the appeal, in such view of the matter, as rightly argued by the defendant's counsel, the reasonings and conclusions of the first appellate court are found to be not on the proper appreciation of the materials placed on record, both oral and documentary, on the other hand, the same had been arrived at by an improper and erroneous appreciation of the evidence on record and the same had resulted in miscarriage of justice. In other words, the reasonings and conclusions of the first appellate court for upholding the plaintiff's case being found to be totally perverse, illogical and irrational and in



such view of the matter, the judgment and decree of the first appellate court cannot be allowed to sustain in the eyes of law and liable to be set aside.

16. The defendant's counsel in support of his various contentions placed reliance upon the following decisions reported in

1. AIR 2019 Supreme Court 1178 (Mehboob-Ur-Rehman (dead) through Lrs vs. Ahsanul Ghani).
2. (2018) 9 Supreme Court Cases 805 (Jagjit Singh (dead) through Lrs vs. Amarjit Singh)
3. (2010) 10 Supreme Court Cases 512 (Man Kaur (dead) by Lrs. vs. Hartar Singh Sangha)
4. 2014-1-L.W. 47 (I.S.Sikandar (d) by Lrs vs. K. Subramani & ors)
5. (2000) 3 Supreme Court Cases 668 (Rohini Prasad and others vs. Kasturchand and another)
6. (2002) 2 Supreme Court Cases 440 (Neelakantan and others vs. Mallika Begum).

The counsel for the plaintiff placed reliance upon the decision reported in (2011) 15 Supreme Court Cases 247 (Jogendra Ram vs. Phullan Mian (dead) by Lrs. and others.

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

17. In the light of the abovesaid discussions, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.

18. In conclusion, the judgment and decree 10.07.2001 passed in A.S.No.2 of 2000 on the file of District Court and Appellate Authority of the Nilgiris at Ootacamund, are set aside and the judgment and decree dated 02.11.1999 passed in O.S.No.267 of 1996 on the file of Subordinate Court, Nilgiris at Ootacamund, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bga



To

1. District Court and Appellate Authority of the Nilgiris at
Ootacamund,

2. Sub Court, Nilgiris at Ootacamund,

copy to: The Section Officer,
VR Section, High Court, Madras.

+1 cc to M/s.Sivasansarana, Advocate, S.R.No.69635

+1 cc to M/s.A.U.Ilango, Advocate, S.R.No.691297

S.A.No.20 of 2016

RK(CO)
SSM(06/11/2019)