

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2019

PRONOUNCED ON : 19.05.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.Nos.577 and 578 of 2002

S.A.No.577 of 2002

1. Lakshmi
 2. Palanisamy Gounder (died)
 3. Vishwanathan
 4. Gurusamy
- (Appellants 3 and 4 brought on record as LRS of the deceased 2nd appellant vide Order of Court dated 25.07.2018 made in CMP.No.6569 to 6571 of 2018 in S.A.No.577 of 2002)

... Appellants/Defendants

Vs.

1. Subbammal (died)
 2. Thangamuthu
- (R2 is recorded as legal heirs of the deceased R1 viz., Subbammal vide order of Court dated 03.09.2019 made in S.A.No.577 of 2002 as per memo dated 11.08.2015)

... Respondents/Plaintiff

S.A.No.578 of 2002

1. Lakshmi
 2. Palanisamy Gounder (died)
 3. Vishwanathan
 4. Gurusamy
- (Appellants 3 and 4 brought on record as LRS of the deceased 2nd appellant vide Order of Court dated 25.07.2018 made in CMP.No.6572 to 6574 of 2018 in S.A.No.578 of 2002)

... Appellants/Defendants

Vs.

1. Angathal (died)
2. Arunachalam (died)
3. Balasubramaniam
4. Susheela

(RR2 to 4 brought on record as
LRS of the deceased sole respondent
vide order of court dated 25.07.2018
made in CMP.No.6575 to 6577 of 2018
in SA.No.578 of 2002)

(R2 Died. RR3 and 4 are recorded as LRS of the
deceased R2 Viz Arunachala Gounder
vide Order of Court dated 03.09/2019
made in S.A.No.578 as per memo
dated 19.06.2019 are recorded) ... Respondents/Plaintiffs

PRAYER IN S.A.No.577 of 2002: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 14.12.2001 and made in A.S.No.13 of 2001 on the file of Additional District Judge (Fast Track Court No.4), Coimbatore at Tiruppur, reversing the judgment and decree dated 16.04.1997 and made in O.S.No.169 of 1991 on the file of the District Munsif Court, Tiruppur.

PRAYER IN S.A.No.578 of 2002: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 14.12.2001 and made in A.S.No.14 of 2001 on the file of Additional District Judge (Fast Track Court No.4), Coimbatore at Tiruppur, reversing the judgment and decree dated 16.04.1997 and made in O.S.No.170 of 1991 on the file of the District Munsif Court, Tiruppur.

S.A.No.577 of 2002

For Appellants : Mr.T.R.Rajaraman

For Respondents: Mrs.Mythili Suresh

for Sarvabhauman Associates for R2

S.A.No.578 of 2002

For Appellants : Mr.T.R.Rajaraman

For Respondents: Mrs.Mythili Suresh

for Sarvabhauman Associates

for R3 and R4

COMMON ORDER

S.A.No.577 of 2002 has been filed by the defendants against the judgment and decree passed by the Additional District Judge of Coimbatore at Tiruppur (Fast Track Court No.4) in A.S.No.13 of 2001 dated 14.12.2001 reversing the judgment and decree passed by the District Munsif, Tiruppur in O.S.No.169 of 1991 dated 16.04.1997.

S.A.No.578 of 2002 also has been filed by the defendants against the judgment and decree passed by the same Court in A.S.No.14 of 2001 dated 14.12.2001 reversing the judgment and decree passed by the District Munsif, Tiruppur in O.S.No.170 of 1991 dated 16.04.1997.

2. One Saminatha Gounder had filed a suit in O.S.No.169 of 1991 on the file of the District Munsif, Tiruppur for specific performance of the sale agreement dated 18.04.1990; to deliver vacant possession of the suit property; to declare that the sale deed executed by the first defendant in favour of the second defendant dated 05.06.1990 in respect of suit properties is null and void and the same is not binding on him and for consequential relief of permanent injunction restraining the defendants therein from either executing or encumbering the suit property. The said Saminatha Gounder's sister Angathal had also filed a suit in O.S.No.14 of 1991 on the file of the District Munsif, Tiruppur for same kind of reliefs against the same defendants. The learned District Munsif, Tiruppur by the separate judgments dated 16.04.1997 had dismissed both the suits, however, he directed the parties to bear their respective costs.

3. Aggrieved by the dismissal of their suits, Saminatha Gounder had filed an appeal in A.S.No.13 of 2001 and Angathal had filed an appeal in A.S.No.14 of 2001 on the file of the Additional District Judge of Coimbatore at Tiruppur (Fast Track Court No.4). The learned Additional District Judge by the separate Judgments dated 14.12.2001 had allowed both the appeals with costs and set aside the judgments and decrees passed by the trial court and decreed the suits as prayed for. He directed the plaintiffs to deposit the balance sale consideration within a month and thereafter, within 15 days, the defendants should execute the sale deeds in favour of the plaintiffs. Feeling aggrieved, the defendants in both the suits have filed the present second appeals. सत्यमेव जयते

4. The case of the plaintiffs in both the suits is that the suit properties were belonging to the first defendant's (Lakshmi) husband Chinnasamy Gounder by virtue of the partition deed dated 03.06.1971. The said Chinnasamy Gounder died in testate leaving behind the first defendant as his only legal heir and thus, she became the absolute owner of the suit properties. On 18.04.1990, the plaintiff in O.S.No.169 of 1991 (Saminatha Gounder) and the said Lakshmi entered into a registered sale agreement with regard to 3.83 1/3 acres of dry agricultural lands situated in survey Nos.391/3 and 391/4 of Vavipalayam Village, Tiruppur Taluk for Rs.10,000/-. On the same day, the said Lakshmi had received Rs.1,000/- towards advance amount of

sale consideration. It was agreed that the sale transaction shall be completed within ten months. Likewise, on the same date, the plaintiff in O.S.No.170 of 1991 namely Angathal also entered in to a registered sale agreement with the said Lakshmi in respect of 50 cents of agricultural land along with a share in well and 5 HP Electric Pump Set Motor and Electricity Service connection situated in survey No.760/1 of Vavipalayam Village, Tiruppur Taluk for Rs.10,000/-. In respect of the said agreement also, the said Lakshmi had received Rs.1,000/- as advance. In that agreement also it was agreed that the sale transaction shall be completed within ten months.

5. It is their further case that they have been ready and willing to perform their part of contract from the date of sale agreement, but, the said Lakshmi was evading to perform her part of contract. It is their further case that later on they came to know that the said Lakshmi colluded with the second defendant (Palanisamy Gounder) and created a false sale agreement dated 15.02.1990 and based on the said sale agreement, the said Palanisamy Gounder had filed a suit for specific performance against Lakshmi in O.S.No.201 of 1990 on the file of the Sub Court, Tiruppur and during pendency of the said suit, the said Lakshmi had executed a sale deed in respect of the suit properties in favour of the said Palanisamy Gounder on 05.06.1990 and thereupon the said Palanisamy Gounder had withdrawn the suit in O.S.No.201 of 1990. It is their further case that the alleged sale agreement and sale deed in favour of the said Palanisamy Gounder will not bind upon them and hence, they were constrained to file the suits for specific performance of their agreements dated 18.04.1990; for delivery of possession of suit properties and to declare that the sale deed executed by the said Lakshmi in favour of Palanisamy Gounder dated 05.06.1990 is null and void and not binding on them and for permanent injunction to restrain the said Lakshmi and Palanisamy Gounder (Defendants 1 and 2) from alienating or encumbering the suit properties.

6. The case of the defendants is that the first defendant (Lakshmi) did not execute the alleged sale agreements dated 18.04.1990 in favour of the plaintiffs. Their further case is that after the death of the first defendant's husband Chinnasamy Gounder, the plaintiffs approached the first defendant and compelled her to sell the suit properties to them, but, since, they offered low price, she refused to sell the suit properties to them. It is their further case that subsequently on 15.02.1990, an agreement was entered between them and thereby the first defendant agreed to sell the suit properties to the second defendant for Rs.32,000/- and also received a sum of Rs.7,000/- as advance. It is their further case that on knowing the said agreement, the plaintiffs again approached the first

defendant Lakshmi and insisted her to cancel the said agreement with the second defendant and sell the properties to them and for that, she did not agree and hence the plaintiffs and the husband of the plaintiff in O.S.No.171 of 1991 viz., Arunachala Gounder colluded together and filed a suit in the name of Arunachala Gounder in O.S.118 of 1990 on the file of the Sub Court, Tiruppur for recovery of Rs.34,000/- , as if, the first defendant's husband Chinnasamy Gounder had borrowed a sum of Rs.30,000/- from the said Arunachala Gounder by executing a pronote.

7. It is their further case that in the said pronote suit, the said Arunachala Gounder had filed an application seeking attachment before judgment of the suit properties and in support of the said application, the plaintiff in O.S.No.169 of 1991 ((Saminatha Gounder) had filed a third party affidavit stating that the defendant therein namely Lakshmi attempting to sell her properties. It is their further case that in the said pronote suit, the said Lakshmi entered appearance and filed an affidavit, undertaking that she will not alienate her properties and thereafter, the plaintiffs and the said Arunachal Gounder again approached the said Lakshmi and informed her that they will withdraw the pronote suit and for that her signatures are required and accordingly, she put up her thumb impressions in blank stamp papers and blank papers and thereafter, the plaintiffs have fabricated the suit agreements and filed the above suits. It is their further case that in the meanwhile, based on the agreement dated 15.02.1990, the second defendant had filed a suit in O.S.No.201 of 1990 on the file of the Sub Court, Tiruppur for the relief of specific performance and since the said Arunachala Gounder had agreed to withdraw the pronote suit, the first defendant had executed a sale deed dated 05.06.1990 in favour of the second defendant. Their further case is that the first defendant did not execute the suit sale agreements in favour of the plaintiffs and she did not receive any amount towards advance and the said agreements were created with a view to grab the suit properties. Hence, they prayed to dismiss the suits.

8. Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried the suits separately. During trial, in O.S.No.169 of 1991, the plaintiff in that suit namely Saminatha Gounder examined himself as P.W.1 and also examined two more witnesses as P.Ws.2 and 3. He had marked Exs.A1 to A6 as exhibits. On the side of the defendants, the second defendant was examined as D.W.1 and the first defendant was examined as D.W.2 and they also examined two more witnesses as D.Ws.3 and 4. Exs.B1 to B9 were marked as exhibits on the side of the defendants. In O.S.No.170 of 1991, the plaintiff therein namely Angathal examined herself as P.W.1 and

she examined two more witnesses as P.Ws.2 and 3. She had marked Exs.A1 to A7 as exhibits on her side. On the side of the defendants, the defendants 1 and 2 examined themselves as DWs.1 and 2 respectively and also examined two more witnesses as DWs.3 and 4 and they marked 4 documents as Exs.B1 to B4.

9. The learned District Munsif, after considering the materials placed before him found that the plaintiffs did not come to the Court with clean hands and they suppressed the materials facts. Accordingly, he dismissed both the suits by separate judgments dated 16.04.1997. Aggrieved by the same, the plaintiffs in both the suits had filed appeals before the Additional District Judge of Coimbatore District at Tiruppur (Fast Track Court No.4) in A.S.Nos.13 and 14 of 2001 respectively. The learned Additional District Judge by the separate judgments dated 14.12.2001 had allowed the said appeals and set aside the judgments and decrees passed by the trial court and decreed the suits as prayed for. Feeling aggrieved, the defendants have filed the present second appeals.

10. This Court at the time of admitting these second appeals has formulated the following substantial question of law:

" Whether the learned Additional District Judge was right in holding that the second defendant was not a bonafide purchaser when there was no pleading or issue on this aspect?"

11. During pendency of the second appeals, the appellants have filed CMP.Nos.22367 and 22368 of 2019 seeking permission to raise additional substantial questions of law. After hearing both sides, the said petitions were allowed and accordingly, the following additional substantial questions of law were formulated on 18.10.2019:

"1) When the 1st defendant executed affidavit of undertaking in O.S.No.201 of 1990 on 14.04.1990 to the effect that she will not alienate the suit property till the disposal of the suit filed by the husband of the plaintiff and alleged agreement seems to have been executed on 18.04.1990 coupled with the denial of the agreement as well as its registration by the first defendant still is the learned District Judge right in upholding the agreement and granting a decree?

2) The fact that the plaintiff gave two different versions regarding why possession not taken coupled with the fact of denying a suit filed by her husband and the affidavit sworn by her brother in the same suit in support of her husband still is decree instead of dismissing the

suit on the ground for falsity and not to come to court with clean hands?"

12. Heard Mr.T.R.Rajaraman, the learned counsel for the appellants in both the second appeals and Mrs.Mythili Suresh for M/s.Sarvabhauman Associates, the learned counsel for the second respondent in S.A.No.577 of 2002 and for the respondents 3 and 4 in S.A.No.578 of 2002.

13. Substantial Question of Law and Additional Substantial Questions of Law 1 and 2 in both the second appeals:

The learned counsel for the appellants in both the second appeals has submitted that the First Appellate Court erred in reversing the well considered judgments of the trial court. He further submitted that the First Appellate Court failed to consider that the plaintiff have not come to the Court with clean hands and suppressed the material facts. He further submitted that the oral and documentary evidence produced by the defendants would clearly show that immediately after the death of the first defendant's husband Chinnasamy Gounder, the plaintiffs approached the first defendant and compelled her to sell the suit properties for low price and for that the first defendant not agreed and subsequently, she entered into a sale agreement with the second defendant (Palanisamy Gounder) on 15.02.1990 for selling the suit properties for Rs.32,000/- and received Rs.7,000/- as advance. On knowing the said fact, the plaintiffs again approached the first defendant and insisted her to cancel the agreement which was entered by her with the second defendant and for that also she refused and hence, they colluded with one Arunachala Gounder who is the husband of the plaintiff in O.S.No.170 of 1991 and filed a pronote suit in O.S.No.118 of 1990 on the file of the Sub Court, Tiruppur, as if, the first defendant's husband Chinnasamy Gounder had borrowed a sum of Rs.30,000/- from the said Arunachala Gounder by executing a pronote.

14. He further submitted that in the said pronote suit, an application was filed seeking attachment before judgment of the first defendant's properties and in support of the said application, the plaintiff in O.S.No.169 of 1991 (Saminatha Gounder) had filed an affidavit dated 09.04.1990 stating that the first defendant herein viz., Lakshmi is trying to alienate her properties. He further submitted that the said Lakshmi after appearance had filed an affidavit by giving undertaking that she will not alienate the properties till the disposal of the suit and that being so, she would not have entered into sale agreements with the plaintiffs on 18.04.1990 with an intention to sell the suit properties. He further submitted that during pendency of pronote suit, the plaintiffs and Arunchala Gounder again approached the first defendant and informed her that they

will withdraw the said pronote suit and for that she has to sign and accordingly, she put her thumb impressions in blank stamp papers and by using the same, the plaintiffs might have prepared the suit sale agreements.

15. He further submitted that the plaintiffs while examining themselves as P.W.1 in their respective suits, they pleaded ignorance about the pronote suit filed by the said Arunachala Gounder and also the application filed by him seeking attachment before judgment. He further submitted that the plaintiff in O.S.No.169 of 1991 namely Saminatha Gounder has purposefully denied the filing of the affidavit by him in support of the application filed in the pronote suit seeking attachment before judgment. He further submitted that the said Saminatha Gounder in his evidence has stated that even from the life time of said Chinnasamy Gounder, he has been in possession and enjoyment of the suit properties and hence, the possession of the suit properties is only with him, but in both the suits, the plaintiffs asked for delivery of possession from the defendants and that itself would show that the plaintiffs have not come to the court with clean hands. He further submitted that since the specific performance is equitable relief, the plaintiffs must come to the Court with clean hands. He further submitted that since the plaintiffs have suppressed the material facts, they are not entitled to the equitable relief of specific performance. He further submitted that the trial court taking into consideration of the aforesaid facts had rightly dismissed the suits, but the First Appellate Court erroneously reversed the findings of the trial court and decreed the suits as prayed for and therefore, he prayed to allow the second appeals and set aside the judgments and decrees passed by the First Appellate Court and restore the judgments and decrees of the trial court.

16. The learned counsel for the appellants in support of his contentions relied upon the decision in Lourdu Mari David and Others -Vs- Louis Chinnaya Arogiaswamy and Others (1996) 5 SCC 589.

17. Per Contra, the learned counsel for the respondents/plaintiffs has submitted that the sale agreements executed in favour of the plaintiffs are registered documents and hence, they are having sanctity and they cannot be fabricated. She further submitted that in the undertaking affidavit filed by the said Lakshmi (1st defendant) in the pronote suit filed by Arunachala Gounder, she has not stated that she already entered into a sale agreement on 15.02.1990 with the second defendant and that itself would show that the said sale agreement was created, subsequently by putting antedate. She further submitted that the first defendant in her evidence has admitted that since she engaged a counsel in the pronote

suit, she would have acted only as per the instructions of her counsel. Further, for withdrawing the pronote suit, the signature or thumb impressions of the defendant is not required. She further submitted that in the suit sale agreements, the first defendant's brother Rathinasamy has signed as one of the witnesses (DW4) and he also admitted in his evidence, he signed in the said agreements and that being so, the contention of the first defendant that she did not execute the suit sale agreements in favour of the plaintiffs is false. She further submitted that the trial court without considering the aforesaid facts in a proper perspective had dismissed the suits and hence, the First Appellate Court had rightly interfered with the findings of the trial court and set aside the judgments and decrees of the trial court and decreed the suits as prayed for and in the said factual findings, this Court cannot interfere and therefore, she prayed to dismiss the second appeals.

18. The learned counsel for the respondents/plaintiffs in support of her contentions relied upon the following decisions :

(i) N.Saraswathi Ammal -Vs- Jayaram Rao and 2 others, 1998 (II) CTC 613

(ii) Syscon Consultants Private Limited -Vs- Primella Sanitary Products Private Limited and Another (2016) 10 SCC 353.

19. It is an admitted fact that the suit properties in both the suits originally belonged to the first defendant's (Lakshmi) husband Chinnasamy Gounder by virtue of the partition deed dated 03.06.1991. It is also an admitted fact that the said Chinnasamy Gounder died on 31.01.1990 without any issues and hence, his wife Lakshmi (first defendant) alone succeeded to his properties as sole legal heir. It is also an admitted fact that the plaintiff in O.S.No.169 of 1991 namely Saminatha Gounder and the plaintiff in O.S.No.171 of 1991 namely Angathal and the first defendant's husband Chinnasamy Gounder were born through the second wife of Muthusamy Gounder and that the second defendant Palanisamy Gounder was born through the first wife of the said Muthusamy Gounder. Hence, the plaintiffs in both the suits, the second defendant and first defendant's husband are siblings.

20. Saminatha Gounder (Plaintiff in O.S.No.169 of 1991) claimed that on 18.04.1990, his brother's wife (first defendant) entered into a registered sale agreement with him in respect of the properties situated in survey Nos.391/3 and 391/4 of Vavipalayam Village, Tiruppur Taluk admeasuring 2.83 1/3 acres for Rs.10,000/- and received Rs.1,000/- as advance on the same day and ten months time was fixed for completing the sale transaction.

21. Saminatha Gounder's sister Angathal (Plaintiff in O.S.No.170 of 1991) also claimed that on 18.04.1990, the said

Lakshmi (first defendant) entered into a registered sale agreement with her in respect of the properties situated in survey No.760/1 of Vavipalayam Village, Tiruppur Taluk admeasuring 50 cents along with a share in a well; 5 HP Electric Pump Set Motor and Electricity Service connection for Rs.10,000/- and received Rs.1,000/- as advance on the same day and ten months time was fixed for completing the sale transaction. In both the sale agreements, the recitals are same (except the properties to be sold), the scribe and attestors also the same.

22. The case of the first defendant in both the suits namely Lakshmi is that after the death of her husband, both the plaintiffs namely Saminatha Gounder and Angathal had approached her and insisted to sell her properties to them, but, she refused to sell the properties to them as they offered low price and subsequently, the second defendant namely Palanisamy Gounder approached her and offered to purchase the suit properties for Rs.32,000/- and hence, she agreed to sell the suit properties to him and to that effect, an agreement was entered into on 15.02.1990 and also received a sum of Rs.7,000/- as advance. Her further case is that on knowing the said agreement, the plaintiffs again approached her and insisted her to cancel the said agreement and they are prepared to purchase the properties for the amount which was agreed by the second defendant, but, she refused to accept their offer and aggrieved by the same, they colluded with one Arunachala Gounder who is the husband of the said Angathal and filed a suit in O.S.No118 of 1990 on the file of the Sub Court for recovery of Rs.34,000/-, as if, her husband had borrowed a sum of Rs.30,000/- from the said Arunachala Gounder by executing a promissory note. Her further case is that in the said pronote suit, an application was filed seeking attachment before judgment of her properties and in support of the said application, the plaintiff in O.S.No.169 of 1991 namely Saminatha Gounder had filed a third party affidavit on 09.04.1990 stating that the first defendant (Lakshmi) was trying to alienate the suit properties and hence on 16.04.1990, after receipt of summons, she filed an affidavit by giving undertaking that she will not alienate the properties till the disposal of the suit. Her further case is that on 18.04.1990, the plaintiffs and the said Arunachala Gounder came along with her brother Rathinasamy Gounder and informed that that they will withdraw the pronote suit and for that, her signature is necessary. Accordingly, she affixed her thumb impressions in blank stamp papers and other blank papers. Her further case is that in the meanwhile, based on the agreement dated 15.02.1990, the second defendant had filed a suit for specific performance in O.S.No.201 of 1990 on the file of the Sub Court, Tiruppur and since that already the plaintiffs and the said Arunachala Gounder assured that the pronote suit will be withdrawn, she

executed a sale deed on 05.06.1990 in favour of the second defendant.

23. Though the first defendant has denied the execution of suit sale agreements in favour of the plaintiffs, she has admitted that the plaintiffs and the said Arunachala Gounder had obtained her thumb impression in blank stamp papers and blank papers by saying that for withdrawing the pronote suit, her thumb impressions are required. So, it appears that she had admitted that the thumb impressions in the suit sale agreements are her thumb impressions. Further, the said sale agreements are registered documents and hence, they are having sanctity. She put her thumb impressions before the Sub-Registrar, admitting that she executed the said documents. Further, her brother Rathinasamy (DW4) has admitted in his evidence that the signatures found in the said sale agreements are his signatures. Therefore, this Court is of the view that the first defendant had executed the suit sale agreements in favour of the plaintiffs. But the proving of execution of sale agreements alone would not entitle the plaintiffs to get the relief of specific performance. For getting the relief of specific performance, the plaintiffs have to satisfy certain legal requirements such as to plead and prove his readiness and willingness to perform their part of the contract, should come to the court with clean hands, etc.

24. As per Section 16 of the Specific Relief Act, 1963, specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are proved by him, other than terms the performance of which has been prevented or waived by the defendant.

25. In the plaint filed in O.S.No.169 of 1991 in Paragraph No.5, it is averred that

" The plaintiff has been ready and willing to get the sale of suit properties by paying balance sale consideration of Rs.9,000/- (Rupees Nine Thousand only) from the date of sale agreement". The same kind of averments have been made in O.S.No.170 of 1991 also. One of the attestors of the suit sale agreements namely Chinnasamy was examined as P.W.2 in both the suits. He has deposed that at the time of entering the agreements, the plaintiffs in both the suits have paid Rs.1,000/- each towards advance and they did not pay the balance amount as they are not having funds. This would show that the averments made in the plaints that the plaintiffs have been ready and willing to get the sale of suit properties by paying balance sale consideration of Rs.9,000/- from the date of sale agreement itself is false.

26. It is also to be pointed out that the plaintiff in O.S.No.169 of 1991 namely Saminatha Gounder, has deposed in his chief examination that since the first defendant raised crops in the suit properties, she said that after harvesting the said crops, she will execute the sale deed and hence for completing the sale consideration, ten months time was fixed. The plaintiff in O.S.No.170 of 1991 also has deposed in her evidence that since the first defendant raised crops and she will execute the sale deed after harvesting, ten months time was fixed for completing the sale consideration, but in cross examination, the plaintiff in O.S.No.169 of 1991 has stated that he has been in possession and enjoyment of suit properties even from the life time of Chinnasamy. If really, the said Saminatha Gounder is in possession of the suit properties, his contention that since the first defendant raised crops and she informed that only after harvesting crops, she will execute the sale deed and that was the reason for fixing ten months time to complete the sale transaction cannot be true.

27. It is also to be pointed out that in the suit sale agreements, it is specifically stated that the first defendant is in possession of the suit property. Further, in the plaints, one of the reliefs asked for is that delivery of possession of the suit properties. Therefore, the contention of the plaintiff in O.S.No.169 of 1991 that he is in possession and enjoyment of the suit property even from the Chinnasamy's life time is also false.

28. Ex.B6 filed in O.S.No.169 of 1991 (certified copy of the plaint filed in O.S.No.118 of 1990) would show that one Arunachala Gounder who is the husband of the plaintiff in O.S.No.170 of 1991 (Angathal) had filed a suit in O.S.No.118 of 1990 on the file of the Sub Court, Tiruppur against the first defendant herein (Lakshmi) for recovery of Rs.34,600/- with subsequent interest alleging that the first defendant's husband had borrowed a sum of Rs.30,000/- from the said Arunachalam and executed a promissory note on 10.12.1988. The said suit was filed on 09.04.1990.

29. Exs.B7 and B8 filed in O.S.No.169 of 1991 would show that the said Arunachala Gounder had filed an application under Order 38 Rule 5 of CPC in I.A.No.386 of 1990 in O.S.No.118 of 1990 seeking attachment before judgment of the suit properties in the pronote suit. Ex.B9 filed in O.S.No.169 of 1991 (A Certified copy of the affidavit filed by the said Saminatha Gounder in OS.No.118 of 1990). In the said affidavit, he has stated in paragraph Nos.1 to 3 as follows:

" 1, I know the plaintiff and his lands and the defendant;

2, The defendant's husband Chinnasamy Gounder is my brother and both of us are party to the registered partition deed dated 03.06.1971 which was executed between our family;

3, The above respondent approached him in the last week and she has asked him to sell schedule property, since she needs money urgently and the respondent is trying to sell schedule property with hectic attempts".

30. The above said averments would show that it was only the plaintiff in O.S.No.169 of 1991 (Saminatha Gounder) gave the particulars with regard to the properties to be attached and also informed the plaintiff therein that the defendant namely Lakshmi was trying to sell the properties. But, he stoutly denied in his evidence with regard to the filing of the said affidavit. He also pleaded ignorance about the said pronote suit. It shows that he purposely suppressed the facts that he only gave particulars with regard to the properties of the defendant and also that she was trying to sell the properties. Likewise, the plaintiff in O.S.No.170 of 1991 who is being the wife of the said Arunachalam also pleaded ignorance about the aforesaid pronote suit. The conduct of the plaintiffs would show that they are trying to suppress the material facts. Since in the written statement filed by the first defendant, she has categorically stated that the plaintiffs colluded with the said Arunachalam and filed a pronote suit as if her husband had borrowed an amount of Rs.30,000/- by executing the pronote and also filed a petition seeking attachment before judgment, it appears that the plaintiffs pleaded ignorance about the said pronote suit.

31. Ex.A4 filed in O.S.No.169 of 1991 would show that the first defendant herein had filed an affidavit in I.A.No.386 of 1990 in O.S.No.118 of 1990 on 16.04.1990 stating that she will not alienate the properties till the disposal of the said pronote suit. Thereafter, within two days i.e., on 18.04.1990, the plaintiffs got the suit agreements.

32. The aforesaid facts would show that immediately after the death of first defendant's husband Chinnasamy Gounder, taking advantage that the first defendant is an illiterate widow and she is not having any support, the plaintiffs planned to grab the properties of the first defendant. In order to achieve their object, they had filed a suit in O.S.No.118 of 1990 on the file of the Sub Court, Tiruppur, alleging that the first defendant's husband had borrowed a sum of Rs.30,000/- by executing a pronote and also filed an application seeking attachment of the properties of the first defendant. In that suit, the first

defendant herein, after entering appearance filed an undertaking affidavit on 16.04.1990, as she will not alienate her properties till the disposal of the pronote suit and thereafter the plaintiffs compelled her to execute the suit agreements in their favour on 18.04.1990. After getting suit sale agreements, it appears that the pronote suit was not pursued and the same was dismissed. The said fact would lead to an interference that the said pronote suit and the application seeking attachment before judgment were filed only with a view to compel the first defendant to execute the suit sale agreements in favour of the plaintiffs. After getting the sale agreements, the said pronote suit was not pursued. Therefore, this Court is of the view that the plaintiffs have not come to the court with clean hands.

33. In N.Saraswathi Ammal -Vs- Jayaram Rao and 2 others (cited supra), the first defendant who had no interest in the property, had signed the document for himself and the second defendant, keeps out of the court and the second defendant would take advantage of the situation to contend that he is not a signatory and therefore, the agreement will not bind him. Further, merely for the purpose of denying the statutory benefit available to the plaintiff under Section 53-A of the Transfer of Property Act, the defendants would go to the extent of falsely contending that the plaintiff had entered into the property only under the guise of a tenant. Further, the payments made by the plaintiff and endorsed by the first defendant are denied by the defendants. Taking into consideration of the aforesaid facts, this court has held that while granting relief for specific performance, the conduct of the defendants also to be taken into account.

34. Syscon Consultants Private Limited -Vs- Primella Sanitary Products Private Limited and Another (cited supra), the Hon'ble Supreme Court in para-51 has observed as follows:-

'51. The conduct of the Defendants 7 and 8 also needs to be specifically commented on. Despite specifically getting reserved a liberty to proceed further after the redemption of the property by the Plaintiff, nothing was done by them. They also did not exercise their right of preemption available under the Portuguese Law. Conspicuously, none of the defendants entered the witness box despite the voluminous and clinching evidence tendered by the Plaintiff, obviously to avoid inconvenient questions, particularly, based on PW-1/F extracted hereinabove. In that view of the matter, it is also not necessary to deal with the various other contentions advanced by learned Senior Counsel on both sides since they have no bearing on the ultimate conclusion.'

35. But, in this case, as already pointed out that the evidence of P.W.2 would clearly show that the plaintiffs did not have sufficient funds to pay balance sale consideration and that was the reason for fixing ten months time. Further, the plaintiffs have totally suppressed the material facts about the filing of the pronote suit and application seeking attachment of the properties of the first defendant and thereby compelled the first defendant to enter into sale agreements with them. Further, the plaintiff in O.S.No.169 of 1991 has falsely stated in his evidence that he has been in possession and enjoyment of the suit properties even from the life time of Chinnasamy Gounder, but, the plaintiffs asked one of the reliefs for delivery of possession also. Further, the plaintiff's deposed that since the first defendant (Lakshmi) raised crops and only after harvesting, she will execute the sale deed, ten months time was fixed. The said statement also appears to be false. Therefore, the aforesaid decisions will not apply to the facts of this case.

36. In *Lourdu Mari David and Others -Vs- Louis Chinnaya Arogiaswamy and Others* (cited supra), the Hon'ble Supreme Court in Paragraph No.2 has observed as follows:

"It is settled law that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief..... "

37. From the aforesaid decision it is clear that the party who seeks to avail of the equitable jurisdiction of a court and specific performance being equitable relief, must come to the court with clean hands. In this case, as already pointed out that the plaintiffs have acted from the very beginning with cunning mind to knockaway the suit properties by hook or crook. Therefore, they are not entitled to the relief of specific performance.

38. The trial court taking into consideration of the aforesaid facts had rightly rejected the claim of the plaintiffs, but, the First Appellate Court erroneously reversed the findings of the trial court and decreed the suits. Hence, the judgments and decrees of the First Appellate Court are liable to be set aside. Accordingly, the substantial question of law and additional substantial questions of law are answered in favour of the appellants/defendants.

39. In the result, these second appeals are allowed. The judgments and decrees of the First Appellate Court are set aside and the judgments and decrees passed by the trial court are restored. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

s/d-
Assistant Registrar

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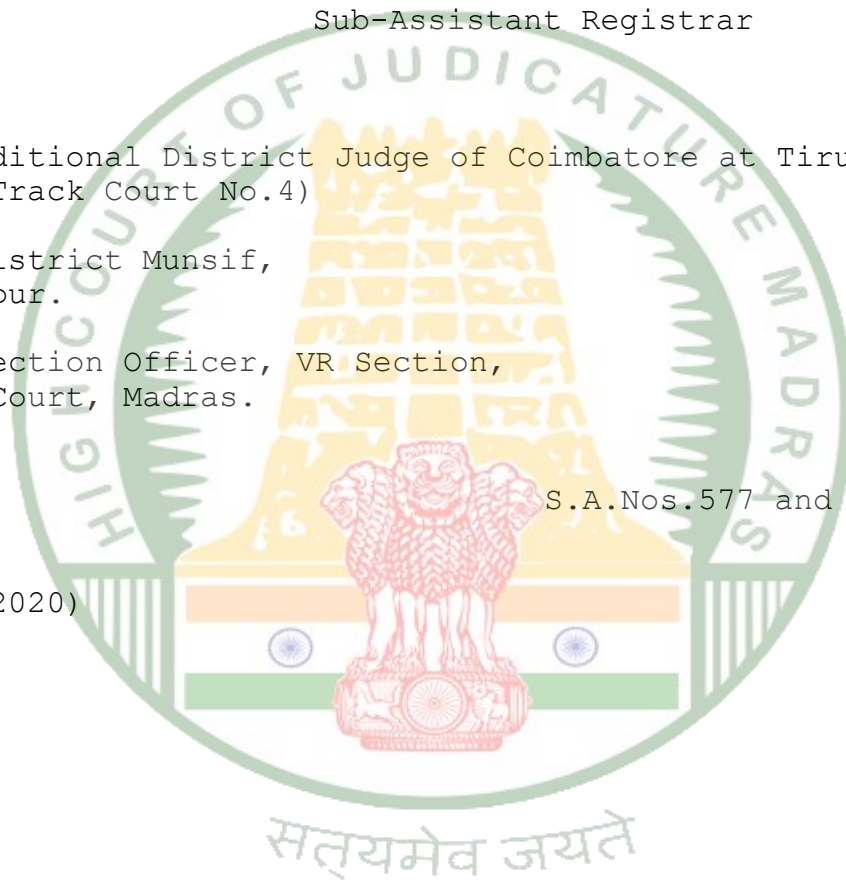
Sub-Assistant Registrar

Vv
To

1. The Additional District Judge of Coimbatore at Tiruppur
(Fast Track Court No.4)
2. The District Munsif,
Tiruppur.
3. The Section Officer, VR Section,
High Court, Madras.

S.A.Nos.577 and 578 of 2002

SAI(CO)
SP(18/12/2020)



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