

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2019

Date of Verdict : 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.2050 of 2001
and C.M.P.No.3444 of 2007

M.K.Kanniappan ...Appellant/3rd defendant/
Vs. 3rd defendant

Ganesa Mudaliar (died)

1. Valliammal
2. G.Gangadaran
3. G.Umapathi (died)
4. G.Subramani
5. D.Lakshmi
6. Chella Muthu
7. C.Krishnan

(RR5 to 7 instead of RR5, 7 & 8
vide order of this Court dated
20.09.2019 made in S.A.No.
2050 of 2001 as per memo
dated 20.09.2019 are recorded)...6th & 7th Respondent/
1st & 2nd defendants/
1 & 2nd Defendants

8. Meenakshi
9. Minor Dahush
10. Minor Sakthi

Minors rep. by their mother
Natural guardian Meenakshi
(RR 8 to 10 brought on record
as legal heirs of the deceased
R3 viz., G.Umapathi vide Court
Order dated 01.11.2018 made
in C.M.P.No.6363 to 6395/2018
in S.A.No.2050 of 2001) ...Respondents 1 to 5/
Appellants/Plaintiffs

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 23.11.2000 made in A.S.No.53 of 1994 on the file of the Sub Court, Ranipet, Vellore District, reversing the judgment and decree dated

25.02.1994 made in O.S.No.397 of 1986 on the file of the District Munsif Court, Arakkonam.

For Appellant : Mr.G.Jeremiah

For Respondents

For R1, R2, R4, R5

& R8 to R10 : Mr.A.Muthukumar

R3 : Died

R6 : Exparte vide Court
Order dated 05.11.2019

R7 : Notice served

JUDGMENT

This appeal is directed as against the judgment and decree dated 23.11.2000 made in A.S.No.53 of 1994 on the file of the Sub Court, Ranipet, Vellore District, reversing the judgment and decree dated 25.02.1994 made in O.S.No.397 of 1986 on the file of the District Munsif Court, Arakkonam.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for specific performance. The suit schedule property belongs to the defendants 1 & 2 viz., Chellamuthu and Krishnan and they agreed to sell the suit property to the plaintiff for the sale consideration of Rs.11,000/- and received a sum of Rs.7,000/- as advance from the plaintiff on 12.07.1984 and also executed unregistered agreement in favour of the plaintiff. As per the agreement on receipt of balance sale consideration of Rs.4,000/-, they have to register the sale deed and there is no time fixed for registration of sale deed. The third defendant viz., M.K.Kanniappan is also residing in the same street in Melaulampudur Village and he is fully aware of the sale agreement between the plaintiff and the defendants 1 & 2.

3.2. After the agreement, the plaintiff approached the defendants 1 & 2 on several occasions for execution of sale deed in respect of the suit schedule property on receiving the balance sale consideration of Rs.4,000/-. But the defendants 1 & 2 were refused to register the sale deed for one and other reasons. When the plaintiff was always ready and willing to perform his part of the contract, the defendants 1 & 2, were dodging and postponing the execution of sale deed. While being so, the plaintiff came to understand that the defendants 1 & 2

sold the schedule property to the third defendant viz., M.K.Kanniappan. Thereafter, the plaintiff obtained the certified copy of the sale deed and found that the first defendant alone sold out 15 cents of the suit property in favour of the third defendant. Therefore, the plaintiff caused legal notice on 06.08.1984 to the defendants calling upon them to execute sale deed as per the sale agreement by receiving the balance sale consideration of Rs.4,000/-. The defendants 1 & 2 duly received the notice and failed to execute any sale deed and also not replied so far. Hence, the plaintiff filed the suit for specific performance, directing the defendants 1 & 2 to execute the sale deed on receipt of balance sale consideration of Rs.4,000/- and also deliver the possession of the suit property to the plaintiff.

4. On receipt of summons, the defendants 1 & 2 did not appear before the trial Court and they were set exparte. The third defendant alone appeared and filed his written statement, stating that the third defendant purchased the property to an extent of 15 cents with specified boundaries from the first defendant and his son for full and valid sale consideration under the registered sale deed dated 25.07.1984. On the date of purchase itself, the possession of the suit property was also delivered to the third defendant. In fact, pursuant to the sale agreement between the third defendant and the defendants 1 & 2, the third defendant laid cement pipe line for irrigation purpose in the property purchased by him.

4.1. The third defendant further submitted that the defendants 1 & 2 none other than own cousin brothers of the plaintiff, as such they colluded together and created false sale agreement and set up the plaintiff to file false and vexatious suit with an intention to grab more money from the third defendant. The third defendant is a bonafide purchaser and the suit property was purchased for full and valid sale consideration without the knowledge of the alleged agreement between the plaintiff and the defendants 1 & 2. Therefore, he prayed for dismissal of the suit filed by the plaintiff for specific performance.

5. On the side of the plaintiff, examined P.W.1 to P.W.3 and were marked Ex.A.1 to Ex.A.6. On the side of the defendants examined D.W.1 to D.W.3 and Ex.B.1 to Ex.B.11 were marked. The Advocate Commissioner's report and his plan were marked as Ex.C.1 and Ex.C.2. On perusal of the material placed on record, both the oral and documentary evidences of the respective parties and the submissions made, the trial Court dismissed the suit filed by the plaintiff. Aggrieved by the same, the

plaintiff filed an appeal suit in A.S.No.53 of 1994 and the first appellate Court allowed the appeal and decreed the suit filed by the plaintiff. Aggrieved over the same, the third defendant preferred this second appeal.

6. At the time of admission of this second appeal on 15.03.2002, the following substantial question of law were formulated for consideration:-

"1. Whether the grounds on which the appellate Court has rejected the objection to the validity of Ex.A.1 are sustainable?

2. Whether the Court below has erred in not noting that the appellant is entitled to question the terms of the documents under Section 92 proviso (1) of the Evidence Act when the appellant questioned the very truth and validity of Ex.A.1 that which is neither true or valid?

3. Whether the finding of the Lower Appellate Court that the appellant is not a bonafide purchaser for valuable consideration, is sustainable on the facts and circumstance of the case and on the evidence let in?"

7. The learned counsel appearing for the appellant/third defendant submitted that D.W.3 i.e., the scribe of the alleged sale agreement which is marked as Ex.A.1, dated 12.07.1984, categorically deposed that the agreement not at all written on 12.07.1984 and it had written only after 15 days. He further stated that no amount was paid on that day and no one was informed about the payment of advance. Therefore, the first appellate Court ought to have accepted the findings of the trial Court that the alleged sale agreement dated 12.07.1984 is not true and valid one. The said sale agreement in Ex.A.1 is not at all executed on 12.07.1984 and it was created only after the sale deed dated 25.07.1984, which is marked as Ex.B.3. The plaintiff and the defendants 1 & 2 are relatives and as such, they concocted the alleged agreement dated 12.07.1984 and instituted the present suit as against the third defendant. Proviso (1) of Section 92 of Indian Evidence Act, applies only when the parties sought to vary or contradict the terms of contract and the document itself is questioned as invalidate document and grant for the purpose only evidence is inadmissible and subsequent evidence deposed by D.W.3 is acceptable one. As such the first appellate Court erred in reversing the valid judgment and decree passed by the trial Court.

7.1. Further the learned counsel appearing for the appellant/third respondent submitted that evidence of P.W.1 to P.W.3 are quite inconsistent as such the trial Court rightly rejected the case of the plaintiff. Since the third defendant is a bonafide purchaser for valuable sale consideration and quite unaware of the alleged sale agreement between the plaintiff and the defendants 1 & 2. In fact, in the alleged sale agreement, no time was fixed to perform their contract. To support of his arguments, the learned counsel appearing for the appellant/third defendant relied upon the following judgments :-

1. 1987 AIR (SC) 2328 - Mathew Vs. Kuruvilla
2. 1972 AIR (Allahabad) 396 - Durga Prasad and another Vs. Lilawati and another
3. 2008(2) CTC 382 - P.Sampooranam and others Vs. L.R.Somasundaram and others.
4. 2017 AIR (Madras) 118 - Natarajan Vs. Marudhakkal and others

8. The learned counsel appearing for the respondents/plaintiff submitted that the defendants 1 & 2 are brothers and they jointly executed the agreement for sale in favour of the plaintiff on 12.07.1984 for the total sale consideration of Rs.11,000/- in which, on the same day they received a sum of Rs.7,000/- as advance. The said document is marked as Ex.A.1. There are three witnesses to Ex.A.1 in which, the first witness was examined as D.W.2 and the third witness was examined as P.W.2. According to P.W.2, the third defendant had knowledge about the sale agreement between the defendants 1 & 2 and the plaintiff. Even then, the third defendant purchased 15 cents of the suit schedule property from the first defendant alone by the registered sale deed dated 25.07.1984, which is marked as Ex.B.3. D.W.2 deposed that one Dhandapani (D.W.3) is the scribe of the Ex.A.1 and he did not know about the advance amount paid by the plaintiff. The scribe of the Ex.A.1 was examined as D.W.3 and he deposed that the sale agreement Ex.A.1 was not executed on 12.07.1984 and it was executed after 15 days. He admitted that he only had written the sale agreement in which all the witnesses were signed. Therefore, execution of sale agreement has been categorically proved by the plaintiff and no quarrel about the execution of Ex.A.1.

8.1. The learned counsel appearing for the respondents/plaintiff further submitted that there is inconsistency stand taken by the third defendant through out the entire proceedings. The third defendant filed written statement and also deposed as D.W.1. The entire stand taken by the third defendant is contrary to the written statement and whatever stand taken in the written statement is contrary to his

evidence. On the one hand, he had taken a stand that no sale agreement entered between the third defendant and the defendants 1 & 2, in respect of the purchases and on the other hand his father already paid advance amount and he was put in possession of 15 cents of the suit schedule property. To prove his possession and enjoyment of the property, the third defendant did not produce any chitta, patta or adangal in respect of the suit schedule property.

8.2. He further submitted that according to the third defendant (D.W.1), his father was put in possession of the suit schedule property for the loan borrowed by the defendants 1 & 2. Thereafter from the year 1973 onwards, the third defendant is in possession and enjoyment of the suit property. The defendants 1 & 2 informed him that after the partition suit decreed, they will register the property. Further the third defendant deposed that in the year 1983, he installed pipe line to the suit schedule property. Whereas in the written statement, the third defendant categorically stated that he already entered into an agreement very long back to purchase the suit property with the defendants 1 & 2. In pursuant to the same the third defendant purchased the land to an extend of 15 cents from the first defendant by the sale deed dated 25.07.1984. Therefore, there are contrary statement in the written statement. The specific case of the third defendant that he entered into agreement and purchased the suit property. Contrary to the said plea, he filed written statement before the Court as if his father lent money to the defendants 1 & 2, for which he was put in possession of the suit property

8.3. He further submitted that entire suit property belongs to the defendants 1 & 2 and admittedly they are brothers. Without even partition of the suit schedule property between them, the first defendant alone can't sell the property to the third defendant that too without the knowledge and consent of the second defendant. In fact, already a suit in O.S.No.331 of 1993 was filed for partition and it was dismissed for default between the defendants 1 & 2. That apart, according to the third defendant his father entered into an agreement for sale with defendants 1 & 2 and in the year 1973, there was an oral agreement between the defendants 1 & 2 with the third defendant to sell the property. Accordingly, they fixed the sale consideration for a sum of Rs.4,800/- in which, one month before the date of sale, a sum of Rs.2,000/- was paid as advance. Whereas in the sale deed dated 25.07.1984, which is marked as Ex.A.2 & Ex.B.3, did not contain any recital to that effect that sum of Rs.2,000/- paid as advance and remaining sale consideration was paid on the date of registration of sale deed.

Therefore, considering the above contradiction, the first appellate Court rightly reversed the judgment and decree of the trial Court and decreed the suit in favour of the plaintiff and prayed for dismissal of the present second appeal.

9. Heard Mr.G.Jeremiah, learned counsel appearing for the appellant/third defendant and Mr.A.Muthukumar, learned counsel appearing for the respondents 1-5 & 8-10/legal heirs of the plaintiff. The defendants 1 & 2 were set exparte before the trial Court and they did not appear before the first appellate Court also. Though notice was served and paper publication was effected on the respondents 6 & 7/defendants 1 & 2, no one has appeared on behalf of them.

10. The defendants 1 & 2 are brothers. The plaintiff is also relative to them. The suit property belongs to the defendants 1 & 2 and they have entered into an agreement for sale with the plaintiff on 12.07.1984 and the plaintiff paid a sum of Rs.7,000/- as advance in the total sale consideration of Rs.12,000/-. No time was fixed for execution of the sale deed. While being so, the first defendant alone executed sale deed in favour of the third defendant in respect of 15 cents from the total extend of 30³/₄ cents of the suit schedule property by a registered sale deed dated 25.07.1984. Though the plaintiff is ready to perform his part of contract, the defendants 1 & 2 failed to execute the sale deed in favour of the plaintiff. Hence the plaintiff caused legal notice on 06.08.1984 to the defendants 1 & 2 and thereby call upon them to execute sale deed in his favour.

11. According to the third defendant Ex.A.1, the sale agreement is a created one and it was never executed by the defendants 1 & 2 in favour of the plaintiff on 12.07.1984. After the sale agreement between the third defendant and the defendants 1 & 2 on the date of sale i.e., 25.07.1984, the defendants 1 & 2 demanded more money than the agreement from the third defendant, for which the third defendant refused to pay the same. Therefore, the defendants 1 & 2 and the plaintiff are being the relatives, they colluded each other and created Ex.A.1, as if the defendants 1 & 2 already entered into an agreement for sale with the plaintiff and filed the present suit only to extract more money from the third defendant.

12. It is seen that the scribe of the sale agreement i.e., Ex.A.1 was examined as D.W.3. One of the witness of the said sale agreement ie., Ex.A.1 was examined as D.W.2. Another witness was examined as P.W.2. D.W.3 deposed that he only wrote the Ex.A.1 and he had no knowledge about that when it was

executed. Further he deposed that at the time of execution of the sale agreement, there was no money transaction between the defendants 1 & 2 with the plaintiff. Whereas P.W.2 stated that on 12.07.1984, the agreement was written by D.W.3 and on the same day, the defendants 1 & 2 received a sum of Rs.7,000/- as advance, as part of the sale consideration. D.W.2 another witness deposed that Ex.A.1 was written by D.W.3 and he signed as witness to the document and on that day no amount was given by the plaintiff to the defendants 1 & 2. Further he deposed that the information about the advance amount was not informed to him. Therefore it is proved that Ex.A.1 was executed by the defendants 1 & 2 in favour of the plaintiff. As against the admitted document Ex.A.1, no one had deposed and it is a valid document as per Section 92 of Indian Evidence Act. Section 92 of Indian Evidence Act reads as follows :-

"92. Exclusion of evidence of oral agreement.-When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1) .-Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law

Proviso (2).-The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document: "

Therefore, though D.W.3 only deposed that the said agreement was not executed on 12.07.1984 and he did not have the knowledge of payment of advance by the plaintiff, it is a legal document and its execution is clearly admitted.

13. Further the third defendant stated in his written statement that to purchase the suit schedule property from the defendants 1 & 2, he entered into a sale agreement with the defendants 1 & 2 long back. In pursuant to the said agreement, the third defendant laid the cement pipe line long back for irrigation purpose in the property purchased by him to an extend of 15 cents of the suit schedule property. Whereas he deposed that the suit schedule property was handed over for his father's possession and enjoyment for the loan lent by his father to the defendants 1 & 2. Even before the sale deed dated 25.07.1984, one month before the date of sale, there was an oral sale agreement and a sum of Rs.2,000/- was paid as advance. He categorically deposed that no written agreement for sale. There is contradiction between the plea taken in the written statement and the deposition. According to the written statement, in the year 1973, there was an oral sale agreement and after the period of 11 years i.e., on 25.07.1984, the defendants 1 & 2 executed sale deed in favour of the third defendant. In his deposition, the third defendant has stated that a sum of Rs.2,000/- was paid one month before the date of sale. On perusal of Ex.A.2/Ex.B.3, the sale deed dated 25.07.1984, no recital is there in respect of the advance amount of Rs.2,000/- paid by the third defendant one month before the date of sale. Insofar as the Ex.B.4 and Ex.B.5 - chitta dated 19.02.1993 and revenue receipt dated 17.02.1993 respectively, both are subsequent to the suit. The suit was initiated on 18.08.1984 and the Ex.A.2 is in respect of the half of the portion of the suit schedule property belongs to the defendants 1 & 2.

14. The defendants 1 & 2 are brothers and the first defendant alone cannot execute sale deed with out the consent or knowledge of the second defendant. Admittedly, there was no partition between the defendants 1 & 2 and they executed agreement for sale to the plaintiff before the execution of sale deed. Therefore, it is not believable one that Ex.A.1 is a created one to extract more money from the third defendant by the defendants 1 & 2 colluded with the plaintiff. If at all, the first defendant executed the sale deed for the half of the portion of the suit schedule property, Ex.A.1 was executed by the defendants 1 & 2 for the entire portion of the suit schedule property. On perusal of Ex.A.2, the sale deed executed by the first defendant in favour of the third defendant, the first defendant derived the title from the Will executed in favour of him. The said Will has not been marked before the trial Court. Further stated in the sale deed that the father of the third defendant filed suit in O.S.No.331 of 1973 for recovery of money and to settle the said amount, the said sale deed was executed in favour of the third defendant. The plaint of the said suit in

O.S.No.331 of 1973 was marked as Ex.B.1. On perusal of Ex.B.1, the said suit was filed for partition, in which the second defendant and the father of the third defendant are parties and the same was dismissed for default. Therefore, the recital of the sale deed Ex.A.2 is false. Further there is no peace of evidence produced by the third defendant in respect of the sale agreement between the defendants 1 & 2 with the third defendant. When the third defendant claimed that he is a bonafide purchaser under Ex.A.2, he has to prove his case. Therefore, Ex.A.1 is not a created one and duly executed by the defendants 1 & 2 in favour of the plaintiff.

15. The defendants 1 to 3 were living in the same street. In fact, the property belongs to the third defendant is situated on the northern side of the suit schedule property. According to him, he laid cement pipe line in the suit schedule property and drawing water for irrigation purpose for the property belongs to his father. When the third defendant intended to purchase the property, he has to verify the encumbrance certificate of the said property. Ex.A.1 sale agreement is a registered one and if the third defendant verified the encumbrance certificate, he would have the knowledge of the sale agreement between the defendants 1 & 2 with the plaintiff. P.W.2 is a witness to the Ex.A.2 and he categorically deposed that at the time of execution of the sale deed, the third defendant had the knowledge about the sale agreement between the defendants 1 & 2 with the plaintiff. Therefore, the third defendant is not a bonafide purchaser for the valid sale consideration of the half of the portion of the suit schedule property. Admittedly, there is no partition between the defendants 1 & 2 and no documentary proof has been produced by the third defendant in respect of their partition and the first defendant alone can sell his share.

16. To support of his arguments the learned counsel appearing for the appellant/third defendant cited the judgment reported in 1987 AIR (SC) 2328 in the case of Mathew Vs. Kuruvilla as follows :-

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not

used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Ex A1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance. "

17. The learned counsel appearing for the appellant/third defendant also relied upon the judgment reported in 1972 AIR (Allahabad) 396 in the case of Durga Prasad and another Vs. Lilawati and another, which reads as follows :-

"9. Besides this. Durga Prasad was not residing with Jalaluddin or Nanhey. He being a Hindu had nothing to do with them and in order to show that he too had notice of the telegram and the agreement for sale it was contended on behalf of the respondent that Durga and Jalaluddin had joint cultivation and had friendly relations. If it was so, unless there was some evidence to connect Durga with this telegram It would be difficult to believe that Durga had any notice of this telegram or the agreement to sell, which was executed by the vendor in favour of the plaintiff. The only evidence about Durga having knowledge of this telegram was that of Hari Shanker. His evidence, as stated above, was disbelieved by the trial court. There is nothing in the judgment of the lower appellate court that the lower appellate court believed the statement of Hari Shanker. There is not a word in the judgment of the lower appellate court to show that the finding recorded by the trial court about Hari Shanker being unreliable was upset by it. In this view of the matter, the deductions drawn by the lower appellate court for importing knowledge on Durga are all based on conjectures and they cannot take the place of evidence. Thus, the finding of the lower appellate court that Durga had

knowledge of this agreement for sale or the telegram is a perverse finding which cannot be maintained in this appeal.

10. Even assuming that Jalaluddin being a close relation of Nanhey had some knowledge of the telegram, it cannot be said that Durga too had knowledge of this telegram or the agreement for sale.

11. It was argued by the learned counsel for the respondent that the burden was on the appellants, who are the vendees, to prove that they were purchasers in good faith for value and without notice. It is true that the initial burden is always on the vendee to show that he had no knowledge of the agreement. But, the vendee has only to discharge this burden by leading a negative evidence. The negative evidence can only consist of his own statement denying the fact that he had knowledge of the same. As soon as the vendee denies knowledge of the notice, the burden is discharged and then the burden shifts on the vendor to prove that the vendee had the notice of the earlier agreement. In my opinion, this is a well settled principle of law and I do not think that any authority is needed in support of this proposition. However *Ramchander Singh v. Bibi Asghari Begum*, AIR 1957 Pat 224 and *Kirtarath Rai v. Sripat Rai*. AIR 1928 All 307 can be cited as authorities for this proposition.

12. Durga Prasad entered the witness box and denied on oath that he had any knowledge or notice of the earlier contract for sale. He. therefore, by this denial discharged the burden which initially lay on him. It was then for the plaintiff-respondent to prove by some evidence that Durga Prasad had notice of the telegram and the agreement for sale. This the plaintiff-respondent has miserably failed to prove, and, as observed above, her evidence on this point is not worthy of credence. When there are two or more than two persons who have purchased the property the person who had the earlier contract for sale in his favour must prove that which of the

persons who purchased the property in question had notice of the agreement for sale. If he is not able to prove this against one of the vendees, his suit would not succeed. In view of this finding. I am, therefore, of the opinion that the plaintiff's suit for the specific performance also fails."

18. In the above judgments, the Honb'le Supreme Court of India and the Hon'ble High Court of Allahabad have held that before decreed the suit for specific performance, the Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff.

19. In the case on hand, after the execution of the sale agreement ie., Ex.A.1, the first defendant alone executed the sale deed in favour of the third defendant. The defendants 1 & 2 are brother and admittedly there was no partition between them. Therefore, this Court consciously verifies all the facts and circumstances and accepts the case of the plaintiff. As such, the above judgments would not helpful to the case of the third defendant/appellant.

20. The learned counsel appearing for the appellant/third defendant also relied upon the judgment of this Court reported in 2017 AIR (Madras) 118 in the case of Natarajan Vs. Marudhakkal and others as follows :-

"22. Defendants 4 and 5 who are subsequent purchasers would contend that they have no knowledge of the earlier agreement. Though a claim is made in the plaint that the plaintiff has informed the defendants 4, and 5 about the existence of agreement and requested them not to purchase the property from the 1st defendant, there is no evidence to support the said claim. None of the witnesses examined by the plaintiff have spoken about the said fact. The sale deed in favour of the defendants 4 and 5 has been executed on 19.10.2004 and it has been registered on the same day. As already

stated, the notice requiring specific performance was issued only on 13.11.2004, i.e. after the execution of the sale deed in favour of the defendants 4 and 5. The suit has been filed on 30.11.2004 within a week from the date of issuance of notice. It is also the case of the defendants 4 and 5 that the suit agreement has been prepared by the plaintiff in collusion with the 3rd defendant in order to defeat the rights of the defendants 4 and 5. In the absence of any evidence to impute knowledge of the earlier agreement to defendants 4 and 5, I am constrained to conclude that they are bona fide purchasers for value without notice of the prior agreement of sale, even assuming that the same has been validly entered into. Thus Point No. 4 is also answered against the plaintiff."

21. In the above judgment, this Court held that the subsequent purchaser had no knowledge about the sale agreement between the plaintiff and other defendants. In the case on hand, Ex.A.1 was entered into between the defendants 1 & 2 with the plaintiff on 12.07.1984. Ex.A.2 the sale deed was executed by the first defendant in favour of the third defendant on 25.07.1984. Immediately on 06.08.1984, the plaintiff caused notice to the defendants to call upon them to execute the sale deed. Further the sale agreement i.e., Ex.A.1 executed in favour of the plaintiff by both the defendants 1 & 2. Whereas the sale deed executed by the first defendant alone, that too without partition between the defendants 1 & 2, insofar as the half of the share of the suit schedule property in favour of the third defendant. The third defendant has also not clear about the agreement of sale before the sale deed dated 25.07.1984 and there are so many contradictions between the written statement as well as his deposition. Therefore, the third defendant is not a bonafide purchaser and hence the above judgment is not helpful to the case of the third defendant.

22. In the light of the above discussions, this Court does not find any valid reason to interfere with the judgment and decree passed by the first appellate Court and the first appellant Court has analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and allowed the suit in favour of the plaintiff. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be

that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff and as against the third defendant.

23. In fine, this Second Appeal fails and accordingly dismissed by confirming the judgment and decree of the first appellate Court with costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

rts

To

1. The Sub Judge,
Ranipet, Vellore District,
2. The District Munsif Judge,
Arakkonam.
3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1 cc to M/s.A.Muthukumar Advocate sr321
+1 cc to M/s.G.Jeremiah Advocate sr592

Judgment
in S.A.No.2050 of 2001
and C.M.P.No.3444 of 2007

rr(co)
aa16/12/2020
aa07/01/2021

सत्यमेव जयते
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