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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2019

PRONOUNCED ON : 13.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.Nos.621 and 622 of 2006
and

CMP.No.7521 of 2006

S.A.No.621 of 2006

Purushothaman (died)

2. Suguna

3. Balamurugan

4. Velmurugan

5. Thilagavathi

(Appellants 2 to 5 brought on record
as LR's of the deceased sole appellant viz.,
Purushothaman vide Court
Order dated 26.06.2019 made
in CMP.No.3488 and 3497/2019
in SA.Nos.621 and 622 of 2006)

... Appellants/Defendant

Vs.

Nagammal

... Respondent/Plaintiff

S.A.No.622 of 2006

Purushothaman (died)

2. Suguna

3. Balamurugan

4. Velmurugan

5. Thilagavathi

(Appellants 2 to 5 brought on record
as LR's of the deceased sole appellant viz.,
Purushothaman vide Court Order
dated 26.06.2019 made in
CMP.No.3488 and 3497/2019
in SA.Nos.621 and 622 of 2006)

... Appellants/Defendant

Vs.

1.Nagammal

2.Venugopal

... Respondents/Plaintiff



PRAYER in S.A.No.621 of 2006 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 22.12.2005 in A.S.No.13 of 2005 on the file of the Principal District Judge's Court, Cuddalore in so far as it is against the appellants to deliver possession and pay future damages in the appeal against the judgment and decree dated 20.12.2004 in O.S.546 of 1995 on the file of the First Additional Sub Court, Cuddalore.

PRAYER in S.A.No.622 of 2006 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 22.12.2005 in A.S.No.14 of 2005 on the file of the Principal District Judge's Court, Cuddalore confirmed the appeal against the judgment and decree dated 20.12.2004 in O.S.No.319 of 1996 on the file of First Additional Sub Court, Cuddalore.

For Appellants : Mrs.Chithra Sampath,
Senior Counsel for
Mr.R.Sunil Kumar
(in both second appeals)

For Respondents : Mrs.Hema Sampath
Senior Counsel for
for Ms.R.Meenal
(in S.A.No.621 of 2006)
and
(for R1 in S.A.No.622 of 2006)
R2- Set exparte in SA.No.622 of 2006

COMMON JUDGMENT

S.A.No.621 of 2006 has been filed by one Purushothaman (Second defendant in O.S.No.546 of 1995) against the judgment and decree passed by the Principal District Judge, Cuddalore in A.S.No.13 of 2005 dated 22.12.2005, confirming the judgment and decree passed by the First Additional Sub-Judge, Cuddalore in O.S.No.546 of 1995 dated 20.12.2004.

S.A.No.622 of 2006 also has been filed by the aforesaid Purushothaman (Second plaintiff in O.S.No.319 of 1996) against the judgment and decree passed by the Principal District Judge, Cuddalore in A.S.No.14 of 2005 dated 22.12.2005 confirming the judgment and decree passed by the First Additional Sub-Judge, Cuddalore in O.S.No.319 of 1996 dated 20.12.2004.

2. One Nagammal (sole respondent in S.A.No.621 of 2006 and the first respondent in S.A.No.622 of 2006) had filed a suit in O.S.No.546 of 1995 on the file of the First Additional Sub-Judge, Cuddalore, against one Erusappan and his sons viz., Purushothaman and Venugopal for recovery of possession of the suit property and for recovery of Rs.50,000/- towards mesne profits and Rs.20,000/- towards damages caused to the well.



The said Erusappan and his elder son Purushothaman (Appellant) had filed a suit in O.S.No.319 of 1996 on the file of the First Additional Sub-Judge, Cuddalore, against the said Nagammal and Venugopal for the relief of specific performance of the contract of sale evidenced by the Panchayat verdict dated 17.09.1995 directing the first defendant to sell the suit property to the plaintiffs for Rs.55,000/-.

3. The learned First Additional Sub-Judge, Cuddalore by the common judgment dated 20.12.2004 had decreed the suit in O.S.No.546 of 1995 with costs and directed the defendants therein to deliver vacant possession of the suit property within three months and also directed the defendants to pay a sum of Rs.10,000/- towards damages. However, he dismissed the suit in O.S.No.319 of 1996 with costs. Aggrieved by the same, the said Purushothaman (Second defendant in O.S.No.546 of 1995 and the second plaintiff in O.S.No.319 of 1996) had filed appeals in A.S.No.13 and 14 of 2005 on the file of the Principal District Judge, Cuddalore. The learned Principal District Judge, Cuddalore by the common judgment dated 22.12.2005 had dismissed the appeal in AS.No.14 of 2005 and partly allowed the appeal in A.S.No.13 of 2005 and set aside the judgment and decree of the trial court in O.S.No.546 of 1995 with regard to awarding of damages to the tune of Rs.10,000/-. However, he directed the said Purushothaman to pay a sum of Rs.500/- per month towards damages for use and occupation of the houses in the suit property from the date of judgment passed in the appeals and in other respects he confirmed the judgment and decree passed by the trial court. However he directed the parties to bear their own costs throughout. Feeling further aggrieved, the said Purushothaman had filed these second appeals.

4. For the sake of convenience, the parties are referred to as described in O.S.No.546 of 1995.

5. The averments made in the plaint in O.S.No.546 of 1995 are in brief as follows:

(a) In the suit property, there are two thatched houses and a brick-built house. There are about twelve yielding coconut trees. The suit property originally belonged to the first defendant (Erusappan). The said Erusappan offered to sell the suit property to the plaintiff viz., Nagammal and she agreed to purchase the same. The said agreement was reduced into writing on 05.12.1991 and subsequently in pursuance of the said sale agreement, the said Erusappan had executed a registered sale deed dated 17.02.1992 in favour of the plaintiff for a valuable consideration. The amount mentioned in the said document has been fully received by the said Erusappan. The debt undertaken to be discharged by the plaintiff payable by the said Erusappan to the Cuddalore Cooperative House Building Society was paid by the plaintiff. The plaintiff has thus become the absolute owner of the suit property.



(b) At the time of execution of the sale deed, the said Erusappan was occupying the brick built house along with his son Purushothaman (second defendant). Of the two thatched houses, one has been rented out by the first defendant to a third party. The other thatched house alone was delivered to the plaintiff. The defendants 1 and 2 (Erusappan and Purushothaman) had agreed that they will deliver possession of the brick built house in their occupation and the thatched house rented out by them within a short period. The plaintiff bonafide believed the said representation and agreed to the request made by the defendants. With regard to the coconut trees, the defendants agreed to hand over possession of the same also at the time when they deliver possession of the houses. A few days after the execution of the sale deed, the second defendant Purushothaman and his brother Venugopal (third defendant) joined hands and on the instigation of their father Erusappan informed the plaintiff that they also having right in the suit property and will not allow the plaintiff to take possession. The plaintiff was shocked by the conduct of the aforesaid persons and at the same time, she wanted to purchase peace. Hence, at the instance of the defendants, the plaintiff executed two promissory notes, one in favour of the second defendant Purushothaman and the other in favour of the third defendant Venugopal on 07.03.1992 for Rs.35,000/- each.

(c) After taking the promissory notes from the plaintiff, the defendants acted in the most treacherous manner by cancelling the sale deed. The cancellation is invalid and the sale deed cannot be unilaterally cancelled. The plaintiff immediately convened a Panchayath to expose misconduct of the defendants and in the said Panchayat the defendants also participated and it was decided that the plaintiff should pay Rs.79,500/- before 29.05.1992. In case of default by her, the first defendant should pay Rs.61,500/- to the plaintiff before 29.07.1992. The sum of Rs.79,500/- represents two promissory notes executed by the plaintiff to the defendants 2 and 3 for Rs.35,000/- each and also an extra payment of Rs.9,500/- to the first defendant. The agreement between the parties before the Panchayat was reduced to writing duly signed by all the parties.

(d) The plaintiff was having the money ready but she wanted the defendants to vacate and deliver possession. The defendants 2 and 3 rushed to the court, in the meanwhile, by filing two suits against the plaintiff in O.S.No.368 and 377 of 1992 on the file of the Sub Court, Cuddalore for recovery of the amounts due under the said two promissory notes. The plaintiff filed written statements in those suits bringing to the notice of the court, the circumstances under which the promissory notes were executed and also submitted to the decree. After passing of the decrees in the aforesaid suits,



the defendants 2 and 3 have taken out execution for realisation of money. The first defendant also filed a suit for recovery of Rs.9,500/- in O.S.No.317 of 1995 on the file of the District Munsif, Cuddalore. So the defendants have chosen to collect the amount without vacating the property. The defendants are bound to surrender the possession of the property to the plaintiff and also they are liable to pay the past mesne profits of Rs.50,000/- and future mesne profits. Further, they have totally damaged the well and hence they are liable to pay Rs.20,000/- towards damages. Hence, the suit.

6. The averments made in the written statement filed by the defendants 1 and 2 in O.S.No.546 of 1995 are in brief as follows:

(a) It is true that the suit property originally belonged to the first defendant. It is also true that a sale deed was executed by the first defendant in favour of the plaintiff, but it is false to state that it was fully supported by consideration and that title stood transferred to the plaintiff. The house property was built by the first defendant with the help of his two sons. The first defendant had temporary misgivings with his sons and coming to know about his sense of alienation from them, the plaintiff threw an Olive branch by offering to pay cash if the first defendant consented to sell the property. The plaintiff and her husband Duraisamy, hustled the first defendant to execute the sale agreement dated 05.12.1991 stipulating a consideration of Rs.1,31,000/-/. An advance of Rs.5,000/- was paid on that day by the plaintiff and the plaintiff undertook to pay the balance within a period of three months and obtain the conveyance. She did not, however, pay the amount within the stipulated period but by exercise of fraud, got a sale deed dated 12.02.1992 and got registered on 03.03.1992 for an ostensible consideration of Rs.67,000/- without paying any amount. When the first defendant weaned himself away from the fraudulent influence of the plaintiff and her husband's machinations, he cancelled the sale deed by a document dated 12.03.1992. The document was a confirmatory instrument of the fact that no title was conveyed under the said deed dated 12.02.1992. Since no title has been conveyed under the sale deed and the plaintiff cannot claim any damages or mesne profits from the defendants. The possession of the properties also not handed over to the plaintiff. The plaintiff in the meanwhile, tried to placate the outraged defendants by executing two promissory notes on 07.03.1992 for Rs.35,000/- each in favour of the defendants 2 and 3 to make up the consideration that was not paid.

(b) The plaintiff and husband approached the panchayadars of Vannarapalayam for seeking peace. The rival parties gave it in writing to the Panchayatdars to resolve their disputes in a joint memorandum dated 29.03.1992. The Panchayadars decided that the plaintiff's title could be



perfected only if she paid Rs.79,500/- whereupon the first defendant should revoke the cancellation deed dated 12.02.1992 and gave their verdict in writing on 29.05.1992. Alternatively, the panchayadars had stated that the defendants should pay Rs.61,500/-. The verdict did not put an end to the controversy. Still the defendants wanted no more trouble with the plaintiff and her husband and they wanted to retire from the conflict, if the plaintiff paid Rs.79,500/-. The defendants 2 and 3 issued a notice on 07.08.1992 calling upon the plaintiff to pay the amount undertaken to be paid by her. The plaintiff did not have the money but wanted the property all the same. Hence, the defendants 2 and 3 had filed suits in O.S.Nos.368 of 1992 and 377 of 1992 on the file of the Sub Court, Cuddalore, based on the aforesaid promissory notes. The first defendant had filed a suit in O.S.No.317 of 1995 on the file of District Munsif Court, Cuddalore. The first two suits were decreed and the last mentioned suit is still pending.

(c) When the plaintiff was dragging her feet, with very conceivable dilatory tactics to settle the suit claims, instituted by the defendants the plaintiff resorted to a petition to Vannarpalayam Panchayat again to resolve the disputes. On receipt of notice, the defendants also submitted themselves to solve the issue before the Panchayat. Both the parties gave in writing that they will accept the panchayat verdict. It was resolved by the Panchayatdars by a verdict in writing on 17.09.1995 that the plaintiff should pay Rs.1,08,840/- (taking into account the decree amounts court fees and expenses, loss of interest) to the defendants before 02.10.995 and take possession of the property. In default the defendants should pay Rs.55,000/- (taking into account the amount received by the first defendant, the partial payments in the decree and the court expenses) to the plaintiff before 17.10.1995 and secure peaceful title from the plaintiff. Both the parties affixed their respective signatures in the said resolution. Since the plaintiff failed to perform her part of the contract, the second defendant had paid Rs.55,000/- to the credit of the plaintiff to the Panchayadars on 13.10.1995. It appears that the plaintiff has not claimed the said amount, despite notice to her and hence the amount has been returned to the second defendant. The possession of the defendants, subsequent to the tender of Rs.55,000/- as per the Panchayat verdict, is in part performance of the contract to obtain conveyance from the plaintiff by way of the contract to obtain conveyance from the plaintiff by way of abundant caution and perfect title without any let or hindrance from the plaintiff. The plaintiff who had been a party to the contract and having been primarily responsible in convening a Panchayat, has deliberately suppressed the above subsequent events and change in circumstances arising from the very new contract, has filed the fraudulent suit.

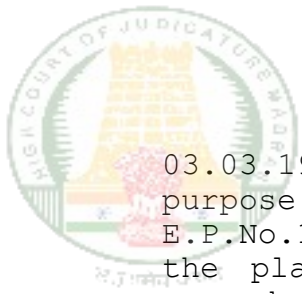


(d) The defendants are entitled to be protected in their possession under Section 53-A of the Transfer of Property Act, if, for any reason, the court finds that the plaintiff has title to the property. Since the plaintiff has not paid the consideration and also failed to comply with the undertaking given by her before the Panchayathdar, she is not entitled to get any of the reliefs, either of recovery of possession or of mesne profits. The fanciful claim for damages to the well is equally unfounded. The quantum of damages is excessive. The rental income, if let out for the house property, would not be more than Rs.200/- per month. The income from the coconut trees would be Rs.250/- per year. Therefore, the defendants 1 and 2 prayed to dismiss the suit with exemplary costs.

7. Originally the said suit was filed against the defendants 1 and 2 only. During pendency of the said suit, the first defendant died and hence, his second son namely Venugopal had been impleaded as third defendant.

8. The averments made in the written statement filed the third defendant in O.S.No.546 of 1995 are in brief as follows:

(a) The property was purchased with a thatched hut by the first defendant. Subsequently, the third defendant provided funds from his salary and by obtaining loan and the building was constructed in the suit property. However, still the first defendant wrongly claimed as if he is the sole owner of the property. The third defendant has been demanding partition, but the first defendant postponed such partition under one pretext or other. The second defendant was always close to the first defendant and he instigated his father to deprive the third defendant from this lawful claim of the suit property. The first defendant executed a sale deed dated 12.02.1992 in favour of the plaintiff for a meagre sale consideration of Rs.67,000/-. It seems that it was agreed that the third defendant should be paid some amount separately. Coming to know the said fact, the third defendant protested with the plaintiff. Thereafter, finding that the sale will not stand and the third defendant had share in the property, the plaintiff consented to pay a sum of Rs.35,000/- to the third defendant. As she did not have funds, she executed promissory note dated 07.03.1992 for Rs.35,000/- in favour of the third defendant. However, the said amount was not paid to the third defendant. After issuing notice, filed a suit in O.S.No.368 of 1992 on the file of the Sub-Court, Cuddalore for recovery of the amount. In that suit, the plaintiff herein had submitted to a decree, accordingly, decree was passed on 13.07.1994, but the plaintiff herein did not pay any amount and hence, the third defendant had filed EP.No.77 of 1995 for attachment and for bringing the property for sale. The suit property was attached in January 1995 and thereafter, the plaintiff herein had paid some amount. On



03.03.1997, the said E.P was dismissed for statistical purpose. Subsequently, the third defendant filed another E.P.No.106 of 1997 and the same is pending. It seems that the plaintiff executed a promissory note in favour of the second defendant also and he also filed a suit in O.S.No.377 of 1992.

(b) As far as the third defendant is concerned, he wanted only money and not the property and that he also obtained a money decree and took execution proceedings. The third defendant is not in talking terms with the defendants 1 and 2 ever since he demanded earlier for partition relating to the suit property. Hence, he never wanted a joint purchase of the suit property which meant further troubles. The defendants 1 and 2 filed the suit in O.S.No.319 of 1996 for enforcing the Panchayath arrangement, but the third defendant has not claimed any interest in the property. Therefore, the third defendant prayed to dismiss the suit.

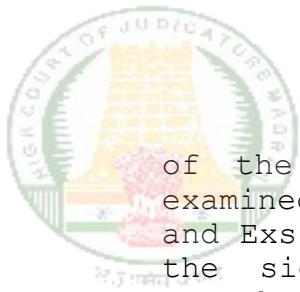
9. The averments made in the additional written statement filed by the second defendant in O.S.No.546 of 1995 are in brief as follows:

The first defendant during his life time, while he was in sound disposing state of mind, had executed a will in favour of the second defendant bequeathing the suit property and therefore, the second defendant alone entitled to the suit property. The third defendant is not having any right over the suit property. Therefore, the second defendant prayed to dismiss the suit.

10. The defendants 1 and 2 in O.S.No.546 of 1995 viz., Erusappan and Purushothaman had filed a suit in O.S.No.319 of 1996 for the relief of specific performance of the contract of sale evidenced by the Panchayath verdict on 07.09.1995 directing the first defendant namely Nagammal to sell the suit property to the plaintiff at Rs.55,000/-. In the plaint, they virtually reiterated, the averments made in the written statement filed by the second defendant namely Purushothaman in O.S.No.546 of 1995.

11. The first defendant namely Nagammal in O.S.No.319 of 1996 filed a written statement virtually reiterating as to what she averred in the plaint filed by her in O.S.No.546 of 1995. The second defendant in O.S.No.319 of 1996 namely Venugopal had filed a written statement reiterating as to what he averred as third defendant in his written statement in O.S.No.546 of 1995.

12. Based on the aforesaid pleadings, the learned First Additional Sub-Judge, Cuddalore had framed necessary issues and tried both the suits jointly. He recorded the evidence in O.S.No.546 of 1995 and treated the same as evidence in O.S.No.319 of 1996 also. During trial, on the side



of the plaintiff, the plaintiff's husband M.Duraisamy was examined as P.W.1 and one more witness was examined as P.W.2 and Exs.A1 to A17 were marked on the side of the plaintiff. On the side of the defendants, the second defendant viz., Purushothaman examined himself as D.W.1 and he marked Exs.B1 to B12 as exhibits. One exhibit was marked as Ex.C1 through P.W.2.

13. The learned First Additional Sub-Judge, Cuddalore, after taking into consideration of the materials placed before him found that Ex.A1 Sale Deed dated 17.02.1992 was executed by the first defendant Erusappan in favour of the plaintiff Nagammal, only after receiving the sale consideration of Rs.67,000/-. He also found that since in Ex.A1 sale deed, it is stated that the possession also handed over to the plaintiff Nagammal, the sale became absolute one. Therefore, the first defendant had no right to cancel the said sale deed and hence Ex.B1 Cancellation Deed is not valid in law. He further found that the resolution passed by the Panchayadar cannot be treated as sale agreement and based on the said resolution, the defendants 1 and 2 cannot compel the plaintiff to execute a sale deed. Accordingly, he decreed the suit in O.S.No.546 of 1995 with costs directing the defendants therein to deliver vacant possession of the suit property within three months. He also directed the defendants therein to pay a sum of Rs.10,000/- as damages to the plaintiff therein. He dismissed the suit in O.S.No.319 of 1996 with costs.

14. Aggrieved by the aforesaid judgment and decree passed by the trial court, the second defendant in O.S.No.546 of 1995 namely Purushothaman had filed an appeal in O.S.No.13 of 2005 and the said Purushothaman had also filed an appeal in A.S.No.14 of 2005 on the file of the Principal District Judge, Cuddalore against the judgment and decree passed in O.S.No.319 of 1996.

15. The learned Principal District Judge, Cuddalore had dismissed the appeal in A.S.No.14 of 2005 confirming the judgment and decree of the trial court. However, he partly allowed the appeal in A.S.No.13 of 2005 and modified the judgment and decree passed by the trial court and set aside the judgment and decree with regard to the awarding damages to the tune of Rs.10,000/- by the trial court relating to O.S.No.546 of 1995, however, he directed the second defendant therein namely Purushothaman to pay a sum of Rs.500/- per month towards damages for use and occupation of the houses in the suit property from the date of judgment and in other respects, he confirmed the judgment and decree passed by the trial court. Feeling aggrieved, the said Purushothaman has filed the present second appeals.



16. This Court at the time of admitting these second appeals had formulated the following substantial questions of law in SA.No.621 of 2006

"(1) Whether the continuance of possession by the defendant in the suit property pursuant to the decision of the village panchayat was not in part performance of the contract to which the plaintiff was a party and therefore entitled to the protection of his possession under Section 53 A of the Transfer of Property Act?

(2) Whether the plaintiff is entitled to recovery of damages even without payment of sale consideration which admittedly has not been paid by the plaintiff to the defendant ?"

17. This Court at the time of admitting these second appeals had formulated the following substantial questions of law in SA.No.622 of 2006

"(1) Whether the voluntary submission of a party to abide by a decision of the third party regarding a sale of the property would not be binding on such party, when the third party directed the execution of the sale in favour of the other contesting party?

(2) Whether the failure of the court in mistakenly assuming that the plaintiff had not examined any witness on his side, when actually P.W.2 has been examined by the plaintiff to support the truth and genuineness of the Panchayat verdict and the wrong assumption of the Court was not perverse and vitiated its entire judgment?

(3) Whether a clause in Ex.X.1 and B.8 referring to execution of sale in favour of the Panchayat, even if invalid was not severable and hence the document was still enforceable as binding between the parties?

(4) Whether the defendant was not barred by estoppel from resiling from the decision of the Panchayat in having chosen to refer the dispute voluntarily to the Panchayat and including the plaintiff to act on the same ?"

18. Heard Mrs.Chitra Sampath, the learned Senior Counsel assisted by Mr.R.Sunil Kumar for the appellants in both the second appeals and Mrs.Hema Sampath, the learned Senior Counsel assisted by Ms.R.Meenal for the respondent in S.A.No.621 of 2006 and the first respondent in S.A.No.622 of 2006.

19. Substantial Questions of law in SA.Nos.621 and 622



The learned Senior counsel for the appellants has submitted that the Courts below erred in decreeing the suit filed by Nagammal (O.S.No.546/1995) and dismissed the suit filed by Erusappan and Purushothaman (O.S.No.319 of 1996). She further submitted that the Courts below failed to see that Ex.A.1 Sale deed was not supported by consideration. She further submitted that the courts below failed to see that the plaintiff in O.S.No.546 of 1995 (Nagammal) had executed promissory notes in favour of the defendants in O.S.No.546 of 1995 admitting the fact that she did not pay the sale consideration to first defendant Erussappan. She further submitted that based on the aforesaid promissory notes, already the defendants in O.S.No.546 of 1995 had filed suits and obtained decrees against the said Nagammal. Based on the aforesaid decrees, the defendants 2 and 3 had filed Execution Petitions also and in the said Execution petitions, the said Nagammal had paid some amounts, but subsequently, she did not pay the balance amount.

20. The learned Senior Counsel for the appellants has further submitted that admittedly, both the parties were subjecting themselves for Panchayat's verdict by giving consent letters and only based on the said consent letters, the Panchayadars after considering the rival contentions had passed a resolution directing the plaintiff Nagammal to pay a sum of Rs.1,08,840/- (taking into account, the decree amounts passed in the pronote suits, court fees and expenses and loss of interest) to the defendants before 02.10.1995 and take possession of the suit property and in default, the defendants should pay a sum of Rs.55,000/- (taking in to account, the amount received by the first defendant, the partial payments in the decree and the court expenses) to the plaintiff before 17.10.1995 and secure peaceful title from the plaintiff (Nagammal). She further submitted that since the said resolution was passed by the Panchayadar based on the consent letters given by both the parties, the said resolution (verdict) will bind upon both the parties. She further submitted that the said Nagammal did not pay the aforesaid amount of Rs.1,08,840/- within the time stipulated by the Panchayadars and hence, the second defendant Purushothaman had paid a sum of Rs.55,000/- to the credit of the plaintiff to the Panchayadars on 13.10.1995.

21. The learned Senior Counsel for the appellants has further submitted that the evidence of P.W.2 and Ex.X1 would clearly show that the plaintiff Nagammal did not receive the said amount and hence Panchayadars returned the aforesaid amount to the second defendant Purushothaman and only thereafter the defendants 1 and 2 filed the suit in O.S.No.319 of 1996 for the relief of specific performance. She further submitted that the courts below failed to see that the plaintiff did not pay the balance sale consideration as per the Panchayadars' verdict. Since the plaintiff failed to pay the balance sale consideration, she is not entitled to seek



for delivery of possession mesne profits and damages. She further submitted that the courts below failed to consider that since the parties voluntarily submitted themselves for the verdict of the Panchayadars, the said verdict has to be treated as contract and same is enforceable before the Court of law. She further submitted that during pendency of the suits, the first defendant Erusappan had executed a Will bequeathing the suit property in favour of the second defendant Purushothaman and hence the second defendant is entitled to seek specific performance of the contract of sale (Panchayat Verdict) Therefore, she prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and dismissed the suit which was filed by the plaintiff Nagammal in i.e., O.S.No.546 of 1995 and decree the suit which was filed Erusappan and Purushothaman i.e., in O.S.No.319 of 1996.

22. The learned Senior Counsel for the appellants, in support of the aforesaid contentions, relied upon the following decisions:

- (i) Janak Dulari Devi and another Vs. Kapildeo Rai and another 2011 (6) SCC 555
- (ii) Kaliaperumal Vs. Rajagopal and another (Civil Appeal No.5800 of 2002 on the file of the Hon'ble Supreme Court of India dated 20.02.2009
- (iii) A.Mahimaidas Vs. V.Parameshwari and Others, 2019 (2) MLJ 24 :
- (iv) State of Rajasthan and Others Vs. Shiv Dayal and Others MANU/SC/1092/2019 : (2019) 6 MLJ 527

23. Per contra, the learned Senior Counsel for the respondent in SA.No.621 of 2006 and the first respondent in SA.No.622 of 2006 has submitted that in Ex.A.1 Sale deed it is clearly stated that the purchaser was directed to discharge the loan due to the society and accordingly a sum of Rs.8,748/- was paid by Nagammal's husband Duraisamy to Cuddalore House Building Society and discharged the Mortgage. She further submitted that Ex.A.1 also shows that the first defendant had received the balance sale consideration by cash. She further submitted that after receiving the entire sale consideration since the first defendant made a requests to grant time for vacating the house, the plaintiff granted time for vacating the premises but subsequently the sons of the first defendant had created problems and forced the plaintiff Nagammal to execute pronotes in their favour and accordingly she executed two pronotes each for Rs.35,000/- in favour of sons of the first defendant namely the defendants 2 and 3 and also executed another promissory note in favour of the first defendant for a sum of Rs.9000/-. She further submitted that eventhough, the said Nagammal is not liable to pay any amount under the aforesaid pronotes, in order to purchase peace, she did not contest the suits filed on the said promissory notes and also paid some amount after passing decrees. She further submitted that even assuming that the sale consideration was



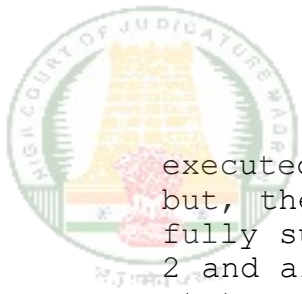
not passed, that would not invalidate the sale made in favour of the plaintiff Nagammal and it is always open to the vendors to file a suit for recovery of purchase money. She further submitted that in this case, already, the defendants had filed suits based on the promissory notes and the said promissory notes were admittedly executed only towards balance sale consideration and that being so, they cannot claim double benefits, one is by filing suit on promissory notes for recovering the amount and another one is by filing suit for specific performance. She further submitted that the Panchayat's verdict will not bind upon the plaintiff and hence she is not bound to honour the said Panchayat's verdict. She further submitted that since some manipulations has been made in Ex.X1, the courts below taking into consideration of the same, had rightly rejected Ex.X1. She further submitted that the courts below taking into consideration of the aforesaid facts had rightly decreed the suit filed by Nagammal and dismissed the suit filed by Erusappan and Purushothaman and in the said concurrent factual findings this court cannot interfere and therefore, she prayed to dismiss the second appeals.

24. The learned senior counsel for the first respondent in support of the aforesaid contentions relied upon the following decisions:

- (i) Latif Estate Line India Ltd., rep by its Managing Director Mr.Habib Abdul Latif Vs. Hadeeja Ammal and others 2011 (2) CTC 1
- (ii) Vidhyadhar Vs. Mankikrao and another - AIR 1999 SC 1441
- (iii) Annamalai Mudaliar and 2 others Vs. Krishnaveni Ammal and 5 others - 2002 -1-L.W.425

25. According to the plaintiff Nagammal, the suit properties originally belonged to the first defendant Erusappan and the said Erusappan had sold the suit properties to her for Rs.67,000/- under the registered sale deed dated 17.02.1992 (Ex.A.1). Her further case is that she paid Rs.8,500/- to discharge the mortgage debt to the housing society, Rs.1,500/- by cash for family expenses, Rs.5,000/- as advance and on the date of sale, she paid the balance amount of Rs.52,000/- to the first defendant. Her further case is that at the time of execution of Ex.A.1 Sale deed, the first defendant was occupying the brick built house along with his son, the second defendant and out of two thatched houses, one was rented out by the first defendant to the third party and another thatched house was delivered to her. Her further case is that the defendants 1 and 2 agreed to deliver the brick built house and one thatched house within a short period, but, they subsequently did not deliver the said houses.

26. The defendants 1 and 2 in their written statement had admitted that the suit property originally belonged to the first defendant and also admitted that the sale deed was



executed by the first defendant in favour of the plaintiff, but, they are denying the averment that the said sale deed was fully supported by consideration. Though, the defendants 1 and 2 and also the the third defendant had stated in their written statements that the first defendant had built up the houses with the financial help of his two sons (defendants 2 and 3) to substantiate the said plea, they have not produced any materials before the court. Taking into consideration of the aforesaid facts, both the courts below had concurrently held that the suit properties are self acquired properties of the first defendant. This Court is of the view that the said factual concurrent findings do not require any interference by this court.

27. According to the defendants 1 and 2, since there was some misunderstanding between the first defendant and his sons, the plaintiff and her husband taking advantage of the same, prevailed over the first defendant and entered into a sale agreement on 05.12.1991 for purchasing the suit properties for Rs.1,31,000/- and at that time, she paid Rs.5,000/- as advance. It is their further case that on 12.02.1992 the plaintiff got a sale deed from the first defendant by exercising fraud and got a sale deed registered for an ostensible consideration of Rs.67,000/- without paying any amount and hence, the possession was not given to the plaintiff.

28. The plaintiff though averred in her plaint that on 05.12.1991, a sale agreement was entered between herself and the first defendant and later the same was culminated in a registered sale deed, she conveniently omitted to mention what was the sale consideration mentioned in the sale agreement, as well as in the sale deed. The plaintiff has not examined herself as witness before the trial court. The plaintiff's husband was examined as P.W.1. He has admitted in his evidence that the sale agreement was entered for Rs.1,31,000/-. He further deposed that since the guideline value shows only Rs.67,000/- for the suit property, the sale deed was registered for Rs.67,000/- only. He further deposed that on 26.11.1991, a sum of Rs.8,478/- was paid to the co-operative society and obtained Ex.A2 Receipt and also deposed that the amount of Rs.67,000/- was paid to the first defendant as mentioned in Ex.A.1 Sale deed. So it is clear that though the agreement was entered in to for Rs.1,31,000/-, the plaintiff has paid only Rs.67,000/- to the first defendant and obtained Ex.A.1 Sale deed in her favour. There is no explanation from the plaintiff as to eventhough, the sale agreement was entered into for Rs.1,31,000/- why, Rs.67,000/- alone was paid at the time of executing the sale deed.

29. As per proviso (1) to Section 92 of the Evidence Act, 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. Therefore, the defendants are entitled to adduce evidence to show that the consideration was not fully passed for the sale as per the agreement entered between the plaintiff and the first defendant. In this case, as already pointed out that it is an admitted fact that the plaintiff had entered into an agreement with the first defendant for purchasing the suit properties for Rs.1,31,000/- but as per the evidence by P.W.1 only Rs.67,000/- was paid. Hence, the plaintiff was liable to pay the balance sale consideration and that must be the reason for executing two promissory notes each for Rs.35,000/- in favour of the defendants 2 and 3 and one promissory note for Rs.9,500/- in favour of the first defendant. Further, since the plaintiff has not paid the aforesaid amounts, the defendants 1 to 3 filed suits for recovery of the amounts due under the aforesaid promissory notes. The plaintiff did not contest the said suits and consequently, the said suits were decreed directing the plaintiff herein to pay the principal amount with interest and costs. Further, P.W.1 has admitted in his evidence that in pursuance of the said decrees, the third defendant had filed execution petition in which the plaintiff had paid some amounts and subsequently, the third defendant had allowed the said EP for dismissal.

30. The evidence on record shows that the dispute between the parties not solved and hence both the parties approached the Panchayat with a request to solve the issues. Before the Panchayat also several rounds of talks took place, finally on 17.09.1995, a decision was taken in the Panchayat and a copy of the said decision has been marked as Ex.B8. A perusal of Ex.B8 shows that it was decided that the plaintiff should pay Rs.1,08,840/- to the first defendant within fifteen days i.e., on or before 02.10.1995. Further, it was decided that the said amount should be paid by the plaintiff to the Panchayat President Narasinga Murthy. It was further decided that on such payment, the said Erusappan and his two sons (defendants 2 and 3) should withdraw their cases which were instituted by them against the plaintiff Nagammal. Though, it was not specifically mentioned that what are the cases to be withdrawn, it can be inferred that the aforesaid cases would mean only the pronote cases which were filed by the defendants against the plaintiff. Further, it was decided that the defendants should vacate the premises on or before 02.11.1995 and hand over the possession to the plaintiff. It was also decided that on such failure to pay the amount by the plaintiff Nagammal as contemplated supra, the defendants 1 to 3 can pay a sum of Rs.55,000/-, to Nagammal and get sale deed executed in their favour. The other clauses are not relevant for this case. In the said document, the plaintiff Nagammal, her husband Duraisamy and the defendants 1 to 3 have signed.

31. The plaintiff's husband (PW1) also has admitted in his evidence that both the parties were subjecting themselves



to the Panchayat's decision. He also admitted the decision of the Panchayat. He also admitted that he was directed to pay a sum of Rs.1,08,840/- to the defendants. however, he has stated that the aforesaid amount should be paid within three months. So, it appears that he disputes only the time which was given to him for making the said payment. Further, he has stated that he paid a sum of Rs.1,30,000/- to the Panchayath President Narasinga Murthy, but the defendants refused to receive the said amount. According to the defendants 1 and 2, the plaintiff did not pay the amount of Rs.1,08,840/- as per the Panchayat's decision on or before 02.10.1995 and hence, the plaintiff has lost her right to retain the property. Their further case is that since the plaintiff has lost her right over the property, as per the default clause, they paid the amount of Rs.55,000/- to the Panchayat President on 31.10.1995, but the plaintiff refused to receive the same.

32. PW1 has not stated any reason as to why he paid Rs.1,30,000/- eventhough he was directed by the Panchayat to pay Rs.1,08,840/- only. He did not examine the panchayat President Narasinga Murthy as witness to show that he has paid the amount within the stipulated time. The evidence of DW2 would show that the plaintiff has not paid the amount within the time fixed by the Panchayat. The evidence of PW1 also shows that he did not pay the said amount within the stipulated time. The evidence on record would show that the defendants also did not pay the amount as per the default clause. Though DW2 has stated that the second defendant has paid a sum of Rs.55,000/- with the Panchayat on 13.10.1995, as held by the first appellate court that D.W.2 has not produced any ledger to show that the said amount was credited in the Panchayath account. Further, D.W.2 has not stated that any notice was given in writing intimating the plaintiff stating that the second defendant has deposited a sum of Rs.55,000/- with the Panchayath and the plaintiff has to receive the said amount and execute the sale deed in favour of the defendants. So, it appears that both the parties have not strictly followed the decision of the Panchayath.

33. In State of Rajasthan and Others Vs. Shiv Dayal and Others, (cited supra), the Paragraph Nos.21 and 22 has observed as follows.

'21. When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded de hors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no judge acting judicially could reasonably have reached. (See observation made by learned Judge-Vivian Bose, J.-as His Lordship then was Judge of the Nagpur High



Court in Rajeshwar Vishwanath Mamidwar and Others Vs. Dashrath Narayanan Chilwelkar and others; MANU/NA/0086/1942:AIR 1943 Nagpur 117 - para-43)

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22. In our opinion, if any one or more ground, as mentioned above, is made out in an appropriate case on the basis of the pleadings and evidence, such ground will constitute substantial question of law within the meaning of Section 100 of the Code.'

34. In A.Mahimaidas Vs. P.Parameswari and others, (cited supra), This court taking into consideration of the facts and circumstances of that case has held that though in the sale deed, it has been mentioned that the entire sale consideration has been paid before the Sub-Registrar, but actually the Sub-Registrar has not made any endorsement with regard to that and accordingly, held that the alleged payment is not true and the entire transaction itself is only a fraudulent one. But in this case, the facts are totally different. In this case, as agreed in the sale agreement, the plaintiff Nagammal had discharged the loan to the Housing Society, which was obtained by the first defendant Erusappan and subsequently, pronotes were executed in respect of the balance sale consideration and based on the said pronotes suits also have been filed and got decrees by the defendants 1 to 3. Further, the third defendant had filed Execution Petition, based on the said money decree and in the said execution petition, the plaintiff Nagammal has made some payments also. Further, in this case, both the parties entrusted the matter to the panchayat to settle the issues and also accepted the panchayat verdict. Further, both the courts below concurrently held that the sale deed executed in favour of the plaintiff by the first defendant is a valid one. Therefore, the aforesaid judgment will not help the case of the appellant.

35. In Janak Dhulari Devi and another Vs. Kapildeo Rai (cited supra) in paragraph No.15, the Hon'ble Supreme Court has held as follows:

'15. We hasten to add that the practice of ta khubzul badlain (of title passing on exchange of equivalent) is prevalent only in Bihar. Normally, the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. The exception to this rule is stated in Kaliaperumal (supra). The practice of 'ta khubzul badlain' in Bihar recognizes that a duly



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executed sale deed will not operate as a transfer in preasenti but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents that is registration receipt and the sale consideration, if the intention of the parties was that title would pass only on payment of entire sale consideration. As a result, until and unless the duly executed and registered sale deed comes to the possession of the purchaser, or until the right to receive the original sale deed is secured by the purchaser by obtaining the registration receipt, the deed of sale merely remains an agreement to be performed and will not be a completed sale. But in States where such a practice is not prevalent, possession of Registration Receipt by the Vendor, may not, in the absence of other clear evidence, lead to an inference that consideration has not been paid or that title has not passed to the purchaser as recited in the duly executed deed of conveyance. Where the purchaser is from an outstation, the vendor being entrusted with the Registration Receipt, to collect the original sale deed and deliver it to the purchaser, is common. Be that as it may. ''

36. From the aforesaid decision, it is clear that normally the recitals in a sale deed about transfer of title, receipt of consideration and delivery of possession will be evidence of such acts and events; and on the execution and registration of the sale deed, the sale would be complete even if the sale price was not paid, and it will not be possible to cancel the sale deed unilaterally. Further, it is clear that the practice of 'ta khubzul badlain' in Bihar recognizes that a duly executed sale deed will not operate as a transfer in preasenti but postpones the actual transfer of title, from the time of execution and registration of the deed, to the time of exchange of equivalents that is registration receipt and the sale consideration, but the said practice is not prevalent in other states Therefore the aforesaid decision, also will not help the appellant. On the contrary, the said decision is in favour of the respondent.

37. In Kaliaperumal Vs. Rajagopal and another (cited supra), the Hon'ble Supreme Court in paragraph Nos.8 and 9 has held as follows:

''8. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale



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in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of Transfer of Property Act, 1882 ('Act' for short) defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of Evidence Act.

9. In this case, the execution of the sale deed on June 26, 1983 is not in dispute. The said instrument was presented for registration on October 21, 1983 and registered on October 26, 1983, as the first respondent/vendor appeared before the Sub-Registrar and admitted that the vendors had executed the documents, but refused to make an endorsement to that effect on the deed as the vendors had not received the



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balance consideration of Rs.40,000/-. Applying the above mentioned principles to the facts of this case, we find that the parties intended that ownership of the property would be transferred to the appellant only after receipt of the entire consideration by the vendors, as a condition precedent. The operative portion of the sale deed clearly states that the vendors have agreed to receive Rs.40,000/- in the presence of the Sub-Registrar on the date of the registration of the sale deed and that in consideration of payment to be so made, the property was being conveyed to the purchaser. This makes it clear that the title was intended to pass only on the payment of balance consideration of Rs.40,000/- in the presence of the Sub-Registrar. This is also supported by the evidence of DW-1 to DW-4. The Sub-Registrar has also clearly recorded that no amount was tendered or paid by the purchaser to the vendors in his presence. Therefore title in fact did not pass either on execution or registration of the sale deed. There is yet another circumstance to show that title was intended to pass only after payment of full price. Though the sale deed recites that the purchaser is entitled to hold, possess and enjoy the scheduled properties from the date of sale, neither the possession of the properties nor the title deeds were delivered to the purchaser either on the date of sale or thereafter. It is admitted that possession of the suit properties purported to have been sold under the sale deed was never delivered to the appellant and continued to be with the respondents. In fact, the appellant, therefore, sought a decree for possession of the suit properties from the respondents with mesne profits. If really the intention of the parties was that the title to the properties should pass to the appellant on execution of the deed and its registration, the possession of the suit properties would have been delivered to the appellant."

38. From the aforesaid decision also, it is clear that the payment of entire consideration is not a condition precedent for completion of the sale by passing of title. If the intention of the parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has



passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. If the parties intended that Transfer of the Ownership should pass only after receipt of the entire consideration, then the title will pass only after payment of the entire consideration. In this case, the facts and circumstances of the case would show that the parties never intended that the title will pass only on payment of the entire sale consideration. Therefore, the aforesaid decision also will not help the plaintiff.

39. In Annamalai Mudaliar and 2 others Vs. Krishnaveni Ammal and 5 others (cited supra), this court has held that the payment of consideration is not a sine quo non for the completion of sale under Section 54 of the Transfer of Property Act which has also held that non-payment of consideration does not prevent the passing of title.

40. In Latif Estate Line India Ltd., rep by its Managing Director Mr. Habib Abdul Latif Vs. Hadeeja Ammal and others (cited supra), the Hon'ble Full Bench of this Court after referring to several decisions has held that in paragraph No.59 as follows:

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.



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(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

41. From the aforesaid decision, it is clear that a deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence, such a deed of cancellation cannot be accepted for registration. Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons. In this case admittedly the sale deed was executed by the first defendant in favour of the plaintiff vide Ex.A1. In the said document, it is not stated that the title will pass only on payment of the entire sale consideration. Therefore, on execution and registration of the said sale deed, the title passed on to the plaintiff. So, it is not open to the first defendant to cancel the sale deed unilaterally.

42. In Vidhyadhar Vs. Mankikrao and another (cited supra), the Hon'ble Supreme Court has held since the title in the property had already passed, even if the balance amount of sale price was not paid, the sale would not become invalid. The property sold would stand transferred to the buyer subject to the statutory charge for the unpaid part of the sale price.



43. As already pointed out that a true copy of the said resolution (decision) of the Panchayat has been admitted by PW1 and hence, it was marked as Ex.B8 through him only. In the said document, the plaintiff Nagammal and her husband Duraisamy (PW1) have signed as petitioners and the said Erusappa Padayatchi and his two sons viz., Venugopal and Purushothanam signed as respondents. Further, they have signed in the said document as they have accepted the aforesaid decision of the Panchayat. Further, it is not a case of the plaintiff that they have not accepted the aforesaid decision of the Panchayat. The only contention of the plaintiff is that in the Panchayat, it was decided that the plaintiff should pay a sum of Rs.79500/- on or before 29.05.1992, but she has suppressed the fact in her plaint with regard to the Panchayat decision dated 17.09.1995(Ex.B8) .

44. The learned senior counsel for the respondent/plaintiff has submitted that Ex.B8 Panchayat decision has no legal sanctity and hence based on the said Panchayat decision, the defendants cannot file a suit for specific performance. At this juncture, it would be relevant to refer to the decision in Dhiyan Singh and Another Vs. Jugal Kishore and Another, AIR 1952 SC 145 wherein the Hon'ble Supreme Court has observed as follows:

'We do not think the fact that there was a voluntary com promise whereas here there was the imposed decision of an arbitrator makes any difference because we are not proceeding on the footing of the award but on the actions of the parties in accepting it when they need not have done so if the present contentions, are correct.

Even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other an absolute estate in the properties they agreed to divide among themselves and did divide. That, in our opinion is a representation of an existing fact or set of facts. Each would consequently be estopped as against the other and Brijlal in particular would have been estopped from denying the existence of facts which would give Mst. Mohan Dei an absolute interest in the suit property."

45. From the aforesaid decision, it is clear that even if the arbitrator was wholly wrong and even if he had no power to decide as he did, it was open to both sides to accept the decision and by their acceptance recognise the existence of facts which would in law give the other some rights in the properties. Further, it is clear that the parties are estopped



as against the others with regard to the existence of facts. In this case, even assuming that the Panchayat has no such power to direct the parties to perform certain acts but the said Panchayat itself was convened only at the instance of the plaintiff and her husband and after deliberation, certain decisions were taken and resolutions were passed and accepting the said resolutions, the plaintiff as well as her husband have signed. Therefore, the plaintiff cannot go back against the decision of the Panchayat at least to the extent that with regard to her liability of payment of the amount. The principle of estoppel will apply.

46. In so far as the defendants are concerned, as already pointed out that there is no evidence before the court that the defendants have paid the amount before the Panchayat President within the stipulated time and also with regard to calling the plaintiff to receive the said amount and both the courts below have concurrently rejected the contention of the defendants that they were ready and willing to perform their part of contract and in the said factual concurrent findings, this court does not want to interfere.

47. Taking into over all consideration of the facts and circumstances of the case, and also to put an end to incessant litigations, this court is of the view that the plaintiff viz., Nagammal shall be directed to pay the amount, which was directed by the Panchayat and the same was accepted by her, to the defendants and on receipt of the said amount, the defendants have to deliver vacant possession of the suit property to the plaintiff. Since the plaintiff has retained part of sale consideration, it would not be proper to direct the defendants to pay the damages for use and occupation. The damages for sue and occupation can be adjusted towards the interest to be paid by the plaintiff for the sale consideration. Further, the defendants also not entitled to claim interest for the aforesaid amount as they are in possession of the suit property and enjoying the same. Further, it is made clear that on receipt of the aforesaid amount by the defendants, the defendants shall not execute the decrees obtained by them against the plaintiff based on the promissory notes, and they shall file full satisfaction memos with regard to the said decrees. Accordingly, the substantial questions of law are answered.

48. In the result, both the second appeals are partly allowed. Consequently, the connected miscellaneous petition is closed. The judgments and decrees passed by the courts below are set aside in both the suits and are modified to the effect that the plaintiff Nagammal in O.S.No.546 of 1995 shall deposit a sum of Rs.1,08,840/- (Rupees One Lakh Eight Thousand Eight Hundred and Forty Only) (as per the decision of the Panchayat and the same is not disputed by the plaintiff) before the trial court within two months from the date of



receipt of a copy of this judgment and on such deposit, the defendants shall receive the said amount and deliver vacant possession of the suit property to the plaintiff within two months thereafter and also they shall file full satisfaction memos before the concerned court with regard to the decrees obtained by them against the plaintiff based on the promissory notes. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

v/gv

To

1. The Principal District Judge's Court, Cuddalore.
2. The First Additional Sub Court, Cuddalore.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to Mr.R.Subramanian, Advocate SR.No.3308, 3309

S.A.Nos.621 and 622 of 2006
and CMP.No.7521 of 2006

CA(CO)
GMY(07/12/2021)