THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2021

PRONOUNCED ON : 30.03.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1709 of 2008

K. Murugan
S/o. Kunjupaiyan ...Appellant/1st Respondent/Plaintiff

Vs.

1. R. Udayakumar
S/o. K. Raju ...1st Respondent/Appellant/1st Defendant

2. Kunju @ Kunjupaiyan
S/o. Periannan
...2nd Respondent/2nd Respondent/2nd Defendant

Prayer: Second Appeal is filed under Section 100 of CPC, 1908 against the judgment and decree passed in A.S.No.39 of 2006 dated 04.07.2008 on the file of the Sub Court, Mettur, reversing the judgment and decree passed in O.S.No.240 of 2004 dated 22.08.2006 on the file of the District Munsif Court, Mettur.

For Appellant	:	Mr. S. Parthasarathy, Senior Counsel for M/s. A. Sundaravadhanam
For Respondents		
For R1	:	Mr. J. Ramakrishnan
For R2	:	No appearance. Set exparte vide order dated 18.03.2021.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 04.07.2008 passed in A.S.No.39 of 2006, on the file of the Subordinate Court, Mettur, reversing the judgment and decree dated 22.08.2006 passed in O.S.No.240 of 2004 on the file of the District Munsif Court, Mettur.

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

3. The plaintiff in O.S.No.240/2004 is the appellant in the second appeal.

4. Suit for specific performance.

5. Briefly stated according to the case of the plaintiff, the suit property belongs to the first defendant by virtue of the sale deed dated 12.01.1996 and the first defendant had authorised the second defendant to sell the suit property by way of the registered Power of Attorney deed dated 31.07.1998 and the second defendant offered to sell the suit property to the plaintiff as the power of attorney agent of the first defendant by showing the deed of power of attorney in his favour and the plaintiff had verified the same and entered into a sale agreement with the second defendant on 03.06.2001 to purchase the suit property for Rs.70,000/- and paid a sum of Rs.60,000/- as advance on the date of the sale agreement and the sale agreement was reduced into writing and both the plaintiff and the second defendant had signed the same in the presence of the witnesses and the second defendant had also agreed to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration of Rs.10,000/- within a year from the date of the agreement and on the date of the agreement, the second defendant also handed over the original deed of power of attorney to the plaintiff. Thereafter, the plaintiff had approached the second defendant on many occasions asking him to execute the sale deed after receiving the balance sale consideration. However, the second defendant had been giving evasive answers and on 01.07.2001 the plaintiff met the first defendant in person along with the attesting witnesses of the sale agreement and asked the first defendant to complete the sale transaction . The first defendant informed that he had received the advance amount of Rs.60,000/- from the second defendant and assured that he would take steps to execute the sale deed and on that representation made by the first defendant, the plaintiff had been waiting for more than a year. However, the defendants had not come forward to execute the sale deed as agreed to. The plaintiff has always been ready and willing to perform his part of the contract. On 06.05.2004 the plaintiff issued a legal notice to the defendants calling upon them to execute the sale deed after receiving the balance sale consideration and also waited at the Sub Registrar's Office, Kolathur on 13.05.2004 for the defendants to come and execute the sale deed. However, the defendants failed to turn up and execute the sale deed . The defendants issued a reply dated 02.06.2004 containing false allegations and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate relief.

6. The first defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and admitted that the suit property belongs to him and that he had executed the deed of power of attorney in favour of the second defendant on 31.07.1998. However, according to him, the abovesaid Power of Attorney deed was cancelled on 17.08.2001 by way of the registered cancellation deed and as at present, the second defendant is not the power of attorney agent of the first defendant. It is also put forth by the first defendant that it is false to state that the second defendant offered to sell the suit property to the plaintiff for a sum of Rs.70,000/- and that the parties had entered into the agreement of sale on 03.06.2001 in writing agreeing to convey the suit property for Rs.70,000/- and that the plaintiff had paid a sum of Rs.60,000/- as advance on the date of the sale agreement and that they had agreed to complete the sale transaction within one year on the plaintiff paying the balance sum and the second defendant agreeing to execute the sale deed in favour of the plaintiff qua the suit property. It is false to state that the plaintiff met the first defendant on 01.07.2001 in the presence of the attesting witnesses and asked to complete the sale transaction and that the first defendant had acknowledged the receipt of Rs.60,000/- from the second defendant to the plaintiff and assured that he would execute the sale deed within a short period of time. All the abovesaid facts are totally false and the first defendant has no knowledge about the sale agreement said to have been entered into between the plaintiff and the second defendant and the second defendant has not apprised the first defendant about the entering into any sale agreement with the plaintiff qua the suit property . The second defendant had not entered into any sale agreement qua the suit property to the knowledge of the first defendant till the power deed had been cancelled on 17.08.2001. The first defendant never received any amount from the second defendant representing the sale consideration for the alleged sale agreement between the plaintiff and the second defendant. To the legal notice sent by the plaintiff, suitable reply has been issued by the first defendant. According to the first defendant in order to give unnecessary troubles to the first defendant and to obtain unlawful gain, the plaintiff and the second defendant had colluded together and created the false sale agreement without the knowledge of the first defendant after the power of attorney deed had been cancelled by the first defendant. The second defendant has set up his son i.e. the plaintiff as the agreement holder and created the sale agreement on 03.06.2001 and with the help of their men as the attesting witnesses. The sale agreement dated 03.06.2001 is not binding upon the first defendant and the first defendant is not liable to execute any sale deed in favour of the plaintiff qua the suit property based

on the abovesaid sale agreement. The suit property was worth more than two lakhs and therefore, it is false to state that the suit property was worth only Rs.70,000/- on the date of the alleged sale agreement and there is no cause of action for the suit and the suit is liable to dismissed.

7. The second defendant put forth the case that based on the power of attorney deed executed in his favour by the first defendant dated 31.07.1998, he had entered into the sale agreement with the plaintiff qua the suit property on 03.06.2001 for Rs.70,000/- and received Rs.60,000/- as advance on the date of the sale agreement from the plaintiff and agreed to execute the sale deed after the receipt of Rs.10,000/- within a year from the date of the sale agreement and he had handed over the original power deed to the plaintiff on the date of the sale agreement. Thereafter, he had given the advance amount of Rs.60,000/- to the first defendant and the first defendant received the same and asked the second defendant to delay the execution of the sale deed in favour of the plaintiff as there was some family problem between the first defendant and his wife. The second defendant is also ready to produce the voucher given by the first defendant for receiving the advance amount of Rs.60,000/- and further stated that only on account of the delay tactics adopted by the first defendant, the sale deed could not be executed. As per the sale agreement, the sale deed has to be executed in favour of the plaintiff after receiving the balance sale consideration of Rs.10,000/-. The plaintiff is the son of the second defendant and they are living separately for more than six years and accordingly prays to decree the suit as prayed for by the plaintiff.

8. In support of the plaintiff's case, P.Ws.1 and 2 were examined and Exs. A1 to A6 were marked. On the side of the defendants D.W.1 was examined and Exs.B1 to B12 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial court was pleased to grant the relief of specific performance in favour of the plaintiff as prayed for. Challenging the same, the first appeal has been preferred by the first defendant and the first appellate court, on an appreciation of the materials available on record, both oral and documentary, and the arguments put forth by the respective counsel was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the first defendant, resultantly dismissed the plaintiff's suit. Impugning the same, the plaintiff has preferred the second appeal.

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

1) Has not the lower appellate court committed an error of law to the facts and circumstances of the case, in not holding that Ex.A1 is a registered document and Ex.A2 has been executed before the cancellation deed under Ex.B4?
2) Has not the lower appellate court committed an error of law to the facts and circumstances of the case, in not decreeing the suit after holding that cancellation of the power of attorney under Ex.B4 is not valid in law?
3) Has not the lower appellate court committed an error of law to the facts and circumstances of the case, in not holding that in law the appellant is not bound to disclose the relationship between him and the second respondent?

11. The suit has been laid by the plaintiff for specific performance based on the sale agreement dated 03.06.2001 marked as Ex.A2. Now according to the plaintiff, the second defendant, as the power agent of the first defendant, had agreed to convey the suit property to him for Rs.70,000/- and the parties had reduced the terms of the agreement by way of the written sale agreement on 03.06.2001 and the plaintiff had paid a sum of Rs.60,000/- as advance on the date of the sale agreement and the parties, abovestated, had agreed to complete the sale transaction within a year from the date of the sale agreement and though the plaintiff had been always ready and willing to perform his part of the contract in paying the balance sale consideration and getting the sale deed, according to the plaintiff, the defendants had been delaying the completion of the sale transaction on some pretext or the other and as they had not come forward to execute the sale deed despite the issuance of the legal notice on 06.05.2004 and instead the first defendant having sent the reply notice containing false allegations, according to the plaintiff, the suit has come to be laid by him for the relief of specific performance.

12. The second defendant has, in toto, supported the plaintiff's case by filing the separate written statement. It is only the first defendant, who is actually contesting the plaintiff's case. It is not in dispute that the suit property belongs to the first defendant. It is also not in dispute that the first defendant had executed a registered Power of Attorney deed in favour of the second defendant empowering him to alienate the suit property to the third parties on 31.07.1998, which document has come to be marked as Ex.A1. According to the plaintiff, the original Power of Attorney deed Ex.A1 had been entrusted to him by the second defendant on the date of Ex.A2. According to the first defendant he had cancelled the Power of

Attorney deed in favour of the second defendant by way of the registered cancellation deed dated 17.08.2001 marked as Ex.B4 and further put forth the case that till the execution of Ex.B4, no sale agreement had been executed by the second defendant in favour of any one qua the sale of suit property and thereby contended that the sale agreement Ex.A2 had been created by the plaintiff and the second defendant in collusion, as the plaintiff is the son of the second defendant and further put for the case that he had not been apprised of the abovesaid sale agreement either by the second defendant or by the plaintiff as put forth by them in the matter and also put forth the case that he had not received Rs.60,000/- from the second defendant said to have been paid by the plaintiff towards the sale consideration to the second defendant on the date of Ex.A2 and therefore, it is the defence version of the first defendant that Ex.A2 sale agreement had been created by the plaintiff and the second defendant in collusion, with a view to defraud the first defendant and to obtain unlawful enrichment and therefore, it is his case that the plaintiff is not entitled to obtain the discretionary and equitable relief of specific performance.

13. Both the courts had concurrently held that the first defendant had not properly intimated regarding the cancellation of the power of attorney deed under Ex.B4 to the second defendant as per law. In fact, from the materials placed on record, particularly, the evidence of the first defendant examined as D.W.1 as adduced by him during the course of cross examination, it is found that he has clearly admitted that he had not informed the second defendant in writing about the factum of the cancellation of the Power of Attorney deed under Ex.B4 and also further admitted that he had not given any paper publication qua the cancellation deed Ex.B4 regarding the cancellation of the power deed and therefore, as rightly concluded by the courts below when the cancellation deed Ex.B4 had not been properly intimated to the second defendant, the contention of the first defendant that the second defendant is aware of the cancellation deed Ex.B4, as such, cannot be accepted. Merely because the cancellation deed is a registered instrument that by itself would not be sufficient to hold that proper communication had been made to the second defendant qua the same. Therefore, assuming that Ex.B4 cancellation deed had been executed by the first defendant on 17.08.2001, the same would come into force only from the date of cancellation i.e. 17.08.2001 and not prior to the same. In the light of the abovesaid factors, the defence version of the first defendant that the cancellation deed had been properly intimated to the second defendant, as such, cannot be countenanced.

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14. The power of attorney deed in favour of the second defendant has been executed by the first defendant on 31.07.1998, which has been marked as Ex.A1. Based on the abovesaid power of attorney deed, according to the plaintiff and the second defendant, the sale agreement Ex.A2 had come to be executed between them. It is thus found that, nearly after three years from Ex.A1 power of attorney deed, Ex.A2 sale agreement had been executed by the second defendant in favour of the plaintiff on the strength of the Power of Attorney deed Ex.A1. One crucial factor that requires to be mentioned in this matter is that the plaintiff is the son of the second defendant. Nowhere in the plaint, the plaintiff has mentioned about his relationship with the second defendant. As to why the plaintiff has not mentioned his relationship with the second defendant in the plaint, there is no proper explanation on the part of the plaintiff. Law does not prohibit the father to execute a sale agreement in favour of the son. In such view of the matter, when according to the plaintiff, his father, namely the second defendant, as the power agent of the first defendant had executed the sale agreement qua the suit property in his favour marked as Ex.A2, the plaintiff should be fair and should have come out with the true facts with reference to the relationship between him and the second defendant. Therefore, as rightly concluded by the first appellate court, the relationship between the plaintiff and the second defendant as the son and father had been, for one reason or the other, deliberately suppressed by the plaintiff in the plaint.

15. According to the first defendant, till the date of the cancellation deed Ex.B4, no sale agreement had been executed by the second defendant qua the sale of the suit property. Therefore, according to him, only after coming to know of the cancellation deed, the plaintiff and the second defendant had colluded together and created the sale agreement Ex.A2 and therefore, put forth the case that based on the created sale agreement, the plaintiff is not entitled to obtain the equitable and discretionary relief of specific performance. In view of the abovesaid defence version put forth by the first defendant, the plaintiff has to establish at the foremost that the sale agreement Ex.A2 had been really executed between him and the second defendant as put forth in the plaint. Now according to the plaintiff, the sale agreement had been executed on 03.06.2001. It is found that Ex.A2 sale agreement had been engrossed on a stamp paper purchased on 01.10.2000. With reference to the same, the plaintiff examined as P.W.1, during the course of cross examination would state that he does not know from whom the stamp paper for the sale agreement had been purchased and the same had been purchased on the date of the execution of the sale agreement and the same is reflected in the

same paper. However, as above pointed out, the sale agreement is dated 03.06.2001, whereas the stamp paper on which the same is engrossed is found to be purchased on 01.10.2000. Therefore, the abovesaid aspect throws a serious suspicion with reference to execution of the sale agreement as put forth by the plaintiff on 03.06.2001 in his favour by the second defendant. The attestor to the sale agreement examined as P.W.2 would depose in the cross examination that the sale agreement was completed at about 11 a.m. on 03.06.2001 and it had been engrossed on a 50 rupees stamp paper and he does not know who had purchased the stamp paper and according to him, the stamp paper was purchased 15 minutes prior to the typing of the sale agreement. Therefore, as per the evidence of the attestor, the stamp paper on which the sale agreement had been engrossed was purchased only on the date of the sale agreement i.e. 03.06.2001. However, it is found that, as above pointed out, the stamp paper is found to have been purchased on 01.10.2000. Therefore, it is highly doubtful whether the sale agreement would have been executed between the plaintiff and the second defendant on 03.06.2001 as put forth by them. When neither the plaintiff nor the attestor examined as P.W.2 are clear in their evidence with reference to the purchase of the stamp paper on which the sale agreement had been engrossed, the abovesaid aspect also had been rightly taken into consideration by the first appellate court in doubting the genuineness of the sale agreement, particularly, to hold that the same would not have been written on 03.06.2001 as claimed by the plaintiff and the second defendant.

16. As above pointed out, when the Power of Attorney deed in favour of the second defendant had been executed on 31.07.1998, if really the second defendant had intended to convey the property to his son, namely the plaintiff, as to why he had not endeavoured to go ahead with the abovesaid sale transaction with his son immediately after the execution of Ex.A1 power of attorney deed, there is no proper explanation forthcoming on the part of the second defendant. With reference to the same, according to the plaintiff, he would state that he and his father, the second defendant are not in talking terms and that they are living separately, however, he would at the same time also depose that both his name and his father's name are together found in the family card. It is also admitted that both his name and his father's name are simultaneously recorded in the voters list. Therefore, the case projected by the plaintiff that he has not been maintaining cordial relationship with his father, the second defendant for several years, as such, cannot be countenanced and it is found that the abovesaid case has been projected by the plaintiff only for the purpose of this case. If really the plaintiff and his father, the second defendant, had not been maintaining cordial relationship for

several years as claimed by the plaintiff, as rightly contended by the first defendant's counsel, the plaintiff would not have gone ahead with the sale agreement with the estranged second defendant qua the sale of the suit property. Therefore, when according to the plaintiff, he is not having cordial relationship with the second defendant for several years and only a strained relationship has been existing between them, in such view of the matter, the very execution of the sale agreement on 03.06.2001 between them raises a serious doubt as to whether at all such an agreement would have been entered into between them. From the evidence of the plaintiff examined as P.W.1, from the case projected by the plaintiff, he would put forth that other than verifying the power deed Ex.A1, he had not verified the title of the first defendant qua the suit property and also though would claim that he had obtained the encumbrance certificate, had not endeavoured to produce the Encumbrance certificate obtained by him qua the suit property prior to the sale agreement. Therefore, to say that he had entered into the sale agreement with his estranged father based on Ex.A1 power deed alone qua the suit property without verifying the title of the first defendant, as such, cannot be believed and accepted.

17. The plaintiff would put forth the case that he had approached the second defendant through the witnesses for the sale transaction. However, as rightly contended by the first defendant's counsel, when according to the plaintiff, the relationship between him and his father remain sore for several years, no prudent person would have ventured to enter into the sale agreement in such a scenario, that too, without verifying the title of the first defendant qua the suit property. On the other hand, inasmuch as Ex.A2 sale agreement had been brought about by the plaintiff and the second defendant only after coming to know of the cancellation deed Ex.B4, it is found that the sale agreement had been brought about hurriedly by the parties concerned with a view to defraud the first defendant one way or the other and to obtain unlawful enrichment.

18. Accordingly, it is also noted that the parties had agreed for the sale price of Rs.70,000/-. Now the case has been projected by the plaintiff that he had paid Rs.60,000/- on the date of the sale agreement. If really the plaintiff had intended to purchase the suit property based on the sale agreement and if he had really paid a sum of Rs.60,000/- to the second defendant on the date of the sale agreement as the agreement holder, the plaintiff would have ensured that the sale transaction is completed at the earliest point of time. Particularly, when according to him even on the date of sale agreement he had been not maintaining cordial relationship with his father, the second defendant, would see to it that the sale transaction is

concluded at the earliest point of time. However, quite strangely the plaintiff and the second defendant are said to have fixed the time limit of one year for completing the sale transaction from the date of the sale agreement, that too, for the payment of a paltry sum of Rs.10,000/-. As to why the period of one year was fixed for paying the paltry sum of Rs.10,000/- and complete the sale transaction, there is no proper explanation forthcoming on the part of either the plaintiff or the second defendant. Therefore, to say that as the plaintiff found it difficult to pay the sum of Rs.10,000/- immediately, the time limit of one year was fixed, cannot be accepted readily. When assuming the case of the plaintiff that the relationship between the parties of the sale agreement is not smooth and cordial on the date of the sale agreement is true, if really the sale agreement had been brought about, the endeavour of the plaintiff would be only to complete the sale transaction at the earliest point of time and therefore, the fixation of one year period for completing the sale transaction is found to be totally strange and unacceptable and accordingly inasmuch as no sale agreement, as such, had been entered into between the plaintiff and the second defendant on 03.06.2001 as claimed by them and the same had been created by them only with the intention of defrauding the first defendant one way or the other and to obtain unlawful enrichment, the abovesaid inconsistencies and improbabilities had occured qua the sale agreement Ex.A1.

19. According to the plaintiff his relationship with the second defendant is not cordial and there existed an estranged relationship between them for more than 10 years. If really he had ventured to purchase the suit property and on his coming to know that the first defendant had executed the power of attorney deed in favour of the second defendant, as a prudent person, before entering into the sale agreement with the second defendant the plaintiff should have only approached the first defendant qua the sale of the suit property. On the other hand, the case projected by the plaintiff that despite the estranged relationship between him and his father, the second defenant, he had chosen to enter into the sale agreement qua the sale of the suit properties directly with the second defendant through the attesting witnesses, as such, cannot be readily believed and countenanced.

20. If really the sale agreement Ex.A1 had come into existence between the plaintiff and the second defendant, as put forth by the plaintiff, and when according to the plaintiff for venturing into the sale agreement Ex.A2 he had only verified the power deed Ex.A1 and when according to him, the original power deed had been entrusted to him by the second defendant on the

date of Ex.A2 and if according to the plaintiff he had been ready and willing to perform his part of his contract thereafter as claimed by him, in the normal course of events, the plaintiff should have only approached the second defendant with reference to the same. Though the plaintiff would claim that he had approached the second defendant and conveyed to him about his readiness to perform his part of the contract, however, when according to the plaintiff the second defendant had been evading to respond to his request, in such view of the matter, the plaintiff should have immediatley issued the legal notice calling upon the second defendant to come forward and execute the sale deed as per the terms of the sale agreement. The position being above, the case projected by the plaintiff that he had met the first defendant on 01.07.2001 regarding the sale of the suit property and that the first defendant had informed to him about the receipt of Rs.60,000/- from the second defendant and assured that he would execute the sale deed shortly are found to be totally unnatural and unacceptable. Particularly, when according to the plaintiff, the pucca power deed had been executed in favour of the second defendant qua the sale of the suit property, the plaintiff should have only endeavoured to meet the second defendant and complete the sale transaction as per law. Therefore, his case that he had met the first defendant on 01.07.2001 in the presence of the attesting witnesses and that the first defendant had acknowledged the receipt of Rs.60,000/- from the second defendant and assured to complete the sale transaction shortly are all found to have been projected only to add the colour of reality to the false case projected by the plaintiff one way or the other. The abovesaid case of the plaintiff, as rightly concluded by the first appellate court, creates a serious suspicion over the sale agreement.

21. Though the plaintiff would claim that he has been not having cordial relationship with the second defendant for several years , however, when according to the plaintiff despite the abovesaid position, he had entered into the sale agreement Ex.A2 with his father and also paid a sum of Rs.60,000/- to him as advance and now when the second defendant, by way of the written statement, has admitted the abovesaid case of the plaintiff, to get rid of the suspicious circumstances surrounding Ex.A2 sale agreement, as rightly contended by the first defendant's counsel, the plaintiff should have endeavoured to examine the second defendant as a witness in support of his case particularly to establish that the sale agreement Ex.A2 had really come into existence as claimed by the plaintiff on 03.06.2001 and that the first defendant had received a sum of Rs.60,000/- from the plaintiff and assured to complete the sale transaction within a period of one year on the receipt of the

balance sale consideration. Though the second defendant would also claim in the written statement that he had paid Rs.60,000/- to the first defendant and that the first defendant had issued a voucher pursuant to the same, however, with reference to his abovesaid case, no material is forth coming whatsoever. In the abovesaid background, as rightly concluded by the first appellate court, when the execution of the sale agreement on 03.06.2001 between the plaintiff and the second defendant itself is found to be shrouded in mystery, as above discussed, merely from the recitals in Ex.A2 sale agreement we cannot safely presume that the plaintiff had really paid Rs.60,000/- to the second defendant based on Ex.A2 sale agreement and equally, it cannot be readily accepted that the said amount of Rs.60,000/- had been subsequently tendered by the second defendant to the first defendant as claimed by him. In that context only it has been noted by the first appellate court that the plaintiff has failed to establish the payment of Rs.60,000/- to the second defendant by placing acceptable document such as receipt or any other record evidencing the abovesaid payment. Accordingly, it is found that, as above pointed out, it is very strange that the parties had set apart a time limit of one year for completing the sale transaction, that too, for the purpose of paying the paltry sum of Rs.10,000/-.

22. The sale agreement is dated 03.06.2001. The parties had agreed to complete the sale transaction within a period of one year from the date of the sale agreement . The claim of the plaintiff that he had been always ready and willing to perform his part of the contract right from the inception of the sale agreement is not borne out by any acceptable and convincing material. His claim of meeting the second defendant and requesting him to execute the sale deed based on the terms of the sale agreement is not buttressed with proof whatsoever, and not endeavoured to examine the second defendant with reference to the same. Though the second defendant had come forward with the written statement supporting the plaintiff's case and as the pleas contained in his written statement, as such, cannot be accepted readily particularly when the sale agreement in question itself is being challenged by the first defendant as a created record in collusion between the plaintiff and the second defendant and when there is no necessity on the part of the plaintiff to meet the first defendant with the request to complete the sale transaction particularly when the plaintiff had entered into the sale agreement only on the strength of the power deed Ex.A1 and when the plaintiff as well as the attesting witness are unable to explain and tender evidence as to how come the sale agreement dated 03.06.2001 had been engrossed on a stamp paper purchased on 01.10.2000 and when the plaintiff, as above pointed out, suppressed the relationship with the second

defendant and considering the factum of the parties to the sale agreement setting up the time limit of one year for completing the sale transaction,all put together, in toto, the first appellate court is right in coming to the conclusion that the plaintiff has suppressed the material facts and also unable to establish that the sale agreement Ex.A2 had really come into existence between him and the second defendant as claimed by him and that he had paid Rs.60,000/- on the date of sale agreement and furthermore has failed to establish convincingly that he had been always ready and willing to perform his part of the contract right from the inception of the sale agreement till the issuance of the legal notice which had come to be issued nearly 3 years after the execution of the sale agreement i.e. issued just before the expiry of the limitation period and though the suit has come to be laid by the plaintiff within the stipulated period, but when the plaintiff is expected to show his readiness and willingness in performing his part of the contract from the inception of the sale agreement and when the plaintiff has miserably failed to establish the same and as above discussed, when the very truth and execution of the sale agreement Ex.A2 has not been established by the plaintiff and when there are serious suspicions surrounding the sale agreement Ex.A2, as above pointed out, and when no proper and convincing explanation has been offered by the plaintiff to dispel the same, all put together, in my considered opinion, the first appellate court is justified in not extending the equitable and discretionary relief of specific performance in favour of the plaintiff, particularly, the plaintiff having come forward with the suit containing false facts and suppressing the true facts and in such view of the matter, I do not find any valid reason to interfere with the reasonings and conclusions of the first appellate court in declining the relief of specific performance. The reasonings and conclusions of the first appellate court for negativing the relief of specific performance claimed by the plaintiff are found to be based on a proper appreciation of the materials placed on record, both oral and documentary, both on factual matrix as well as on the point of law, and when they are not shown to be in any manner perverse, illogical and irrational, no interference is warranted with reference to the same. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the first defendant.

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

1) (2013) 4 Supreme Court Cases 546 (Garre Mallikharjuna Rao (dead) by Lrs. and others vs. Nalabothu Punniah)

2) 2016 (6) CTC 58 (T. Basker vs. S. Venkatammal & others)

3) 2017 (3) CTC 711 (N. Sundaram vs. P. Kamalammal & others)

4) 2017(4) MLJ 318 (R. Lakshmi Bai and another vs. M.V. Rani)

5) 2018(1) MLJ 489 (B.V. Subramanian Proprietor of "Baggya Reka Exports" vs. Vasantha)

6) 2018 (4) CTC 13 (S. Sarojini and another vs. P. Mariappan and another)

7) 2018(4) MLJ 538 (Thangaraj (deceased) & Ors vs. Radhakrishnan & ors)2018(4) LW 622 (K. Narasiman (deceased) and others vs. C.P.Sanjeevi Kudaliar)

8) S.A.No.722 of 2019 (Madras High Court) (Deivanai vs. V.Sathyanarayana Chetty & others)

9) (2007) 11 Supreme Court Cases 75 (S.Nazeer Ahmed vs. State Bank of Mysore and others)

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

24. In conclusion, the judgment and decree dated 04.07.2008 passed in A.S.No.39 of 2006, on the file of the Subordinate Court, Mettur, reversing the judgment and decree dated 22.08.2006 passed in O.S.No.240 of 2004 on the file of the District Munsif Court, Mettur, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (JJ Act)

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Sub Assistant Registrar

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To
1. The Subordinate Court,
   Mettur.

2. The District Munsif Court,
   Mettur

3. Section Officer,
   VR Section,
   High Court,
   Madras

+1CC to Mr.J.Ramakrishnan, Advocate, Sr.No.20860

Judgment made in
S.A.No.1709 of 2008

AD (CO)

K.RK. (18.11.2021)