IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.03.2021

PRONOUNCED ON : 23.04.2021

CORAM

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

C.S.No.549 of 2012

M/s.Kiran Global Chems Limited
Represented by its Chairman Shri Mr.M.S.Jain,
New No.42, Old No.81,
New Avadi Road,
Chennai – 10. ...Plaintiff

Vs.

Appourva J. Patel
Old No.11, New No.19,
Venugopal Avenue,
Spur Tank Road,
Chennai – 31. ... Defendant

PRAYER: Civil Suit filed under Order IV Rule 1 of O.S. Rules r/w Order VII Rule 1 of Code of Civil Procedure for a direction

a) directing the defendant to vacate and deliver vacant possession of the schedule property to the plaintiff;

b) to direct the defendant to pay a sum of Rs.15,00,000/- towards damages for unauthorised use and occupation of the schedule property from 21.08.2010 till 20.11.2011 and to continue to pay Rs.1,00,000/- per month from the date of filing of plaint till the date of vacating and delivering vacant possession of the schedule property to the plaintiff together with interest @ 18% per annum and

c) to direct the defendant to pay the costs of the suit.

For Plaintiff ... M/s.A.S.Balaji

For Defendant ... Mr.Appourva J. Patel
Party-in-person

JUDGMENT

This is the suit for directing the defendant to vacate and deliver vacant possession of the suit property to the plaintiff and to direct the defendant to pay a sum of Rs.15 lakhs towards damages for unauthorised use and occupation of the suit property from 21.08.2010 till 20.11.2011 and to continue to pay Rs.1 lakh per month from the date of filing of plaint till the date of vacating and delivering vacant possession of the schedule property to the plaintiff together with interest @ 18 % per annum and also for costs.

2. The averments made in the plaint are in brief as follows:-

The plaintiff is a Company engaged in the business of manufacturing Sodium Silicate and other chemicals and it is having its factory at Karaikal District in the Union Territory of Puducherry and also at Boothangudi in Nagapattinam District, Tamil Nadu. The defendant is the Proprietor of one M/s.Madras Chemicals which has got its manufacturing Unit adjacent to the plaintiff's factory at Boothangudi. As such, the defendant's father J.C.patel had befriended the plaintiff's Chairman.

b) The defendant ran into financial difficulties and during June 2009, the defendant approached Shri.Mr.M.S.Jain, the plaintiff's then Managing Director stating that his properties being the factory at Boothangudi, Nagapattinam District and his house property at Spur Tank Road, Chennai, (suit property) were under the threat of auction sale by the Debts Recovery Tribunal on recovery action initiated by the Bank of India, Mylapore, Chennai, as he defaulted in repayment of loan borrowed from the said bank and requested the plaintiff for support. Further, he stated that if properties were to be dealt with by the court auction proceedings that they would be sold for a paltry sum in which event his situation would only further worsen and requested the plaintiff to extend a helping hand by accepting to pay the bank and purchase the suit schedule property. Considering the position of the defendant, the plaintiff accepted his offer and paid a sum of Rs.90 lakhs on 06.06.2009 by way of two cheques -

1) State Bank of India Cheque No.978215 for Rs.30,00,000/- and

2) ING Vysya Bank Cheque No.754151 for Rs.60,00,000/- and a sum of Rs.3.25 lakhs on 22.09.2009 by way of ING Vysya Bank Demand Draft No.611687 to the Bank of India on behalf of the defendant. Thus the plaintiff paid a sum of Rs.93,25,000/- by September 2009.

c) The total sale consideration for the suit schedule property was Rs.1,06,67,000/- out of which the plaintiff had paid Rs.93,25,000/- to the Bank of India on behalf of the defendant. The balance sale consideration of Rs.13,42,000/- was paid in cash to the defendant on 21.06.2010 and the defendant executed the sale deed. The defendant also handed over the original documents of title pertaining to the suit property to the plaintiff. At the time of executing the sale deed, the defendant requested for some reasonable time for vacating the suit property and to hand over vacant possession to the plaintiff as he has to identify an alternative accommodation and make arrangements for shifting his residence, which was readily agreed to by the plaintiff by granting two months time.

d) Though the defendant executed the sale deed on 21.06.2010 in the presence of witnesses and promised to come to the Sub-Registrar's Office at Periamet on the next day for registration of the sale deed, the defendant evaded and did not come for registration of the sale deed as promised by him. Hence, the plaintiff had presented the sale deed for registration on 31.08.2010 before the Sub-Registrar Office, Periamet. The Sub-Registrar of Periamet issued summons to the defendant on 06.09.2010 directing him to appear before him on 27.09.2010. On receipt of the said summons, the defendant appeared before the Sub-Registrar, Periamet and denied the execution of the document and filed a petition containing some preliminary objections. The Sub-Registrar, Periamet, passed an order on 21.10.2010 stating that the plaintiff can take further action for getting the document compulsorily registered. Accordingly, the plaintiff filed an application before the District Registrar on 26.10.2010 for compulsory registration of the sale deed. After a detailed enquiry, the District Registrar passed an order on 07.04.2011 directing the registration of the sale deed. Pursuance to the said order, the sale deed was registered on 11.04.2011 as Document No.807 of 2011. Thereafter, the property tax has been transferred to the name of the plaintiff.

e) The defendant had filed a Writ Petition in W.P.No.11631 of 2011 before this court seeking to quash the order passed by the District Registrar dated 07.04.2011 and the said writ petition is not maintainable as the defendant's remedy if any should be only by way of civil suit. The defendant has not denied the receipt of sale consideration and has not denied his signatures on the sale deed, except saying that the plaintiff has used the blank signed stamp papers allegedly given by the plaintiff during the course of business. He has not denied the possession of the original title deeds with the plaintiff. The defendant also lodged a false complaint before the Deputy Commissioner of Police, Chennai, on 07.10.2011 and the same was forwarded to the Inspector of Police, Chetpet Police Station and after enquiry, the said complaint was closed as the dispute is civil in nature.

f) The defendant illegally refused to vacate and handover the vacant possession of the suit property. The defendant is wantonly creating problems and is trying to set up third party interest so as to defeat the rights of the plaintiff. The defendant is liable to pay damages at the rate of Rs.1 lakh per month for the unauthorised use and occupation of the suit property from 21.08.2010, i.e., the date on which two months permission granted by the plaintiff expired, till the date of vacating and delivering vacant possession. Hence, the suit.

5. The averments made in the written statement and counter claim filed by the defendant are in brief as follows:

a) The alleged sale deed dated 21.06.2010 is a forged and fabricated document. The defendant has not executed any such sale deed. Further, no consideration has been paid by the plaintiff to the defendant and the said sale deed is not supported by consideration. The defendant has not appeared for execution/presentation of the alleged sale deed dated 21.06.2010 before the Registering Authority and the plaintiff using his power has obtained registration of the document, which came to be challenged and resulted in a writ petition before this court. This court has left the issue regarding the enforceability of the document open. Hence, the defendant prefers a counter-claim along with the written statement. The plaintiff has filed the suit on the basis of the sale deed dated 21.06.2010 and the said sale deed is a sham and nominal document, without consideration and unenforceable in the eye of law.

b) The defendant is the Proprietor of the Firm M/s.Madras Chemicals and carries on the business in the field of manufacturing of Sodium Silicate Solid glass. Mr. Manmohan Singh Jain (Mr.M.S.Jain) and the defendant are friends for the past 25 to 30 years. In the alleged sale deed, it is mentioned that a sum of Rs.93.25 lakhs was paid by the plaintiff to the defendant. The defendant denies the same. The payments referred to in the alleged sale deed were in fact made by a Company called Kiran Pondy Chemicals (P) Ltd., at the behest of Mr.M.S.Jain at the defendant's requests to clear a loan with Bank of India, Mylapore Branch and at no point of time, was there any agreement of understanding for sale of the suit property owned by the defendant either to Mr.M.S.Jain or M/s.Kiran Pondy Chemicals (P) Ltd., much less the plaintiff. The allegation that a sum of Rs.13.42 lakhs was paid by cash to the defendant is incorrect. The plaintiff has not paid any amount to the defendant more so as sale consideration and there was no agreement or understanding for the sale of the property to the plaintiff or any person. The defendant had no transaction with the plaintiff.

c) Prior to 21.06.2010, there was no notice either from the said M/s.Kiran Pondy Chemicals (P) Ltd., or the Plaintiff's Company or Mr.M.S.Jain with regard to the contention made by the plaintiff as regards the alleged payment of advance amount towards sale consideration or the alleged sale transaction. In any event in as much as no amount being paid or received by the defendant from the plaintiff Company, it cannot be said that the amount to be the alleged sale consideration in the present case.

d) The manufacturing unit of the said Mr.M.S.Jain and the defendant are adjacent to one another at Nagapattinam District. The said Mr.M.S.Jain and the defendant, in the course of their business, were having financial transactions in connection with business. In this process, there were certain money transactions and repayment/adjustments. The nature of business carried down by the M/s.Kiran Pondy Chemicals (P) Ltd., and the defendant required interrogation with various Central and State

Government authorities. The Sodium Silicate business requires the continuous supply of gas and the defendant is possessed of one such license for gas connection which is the basis of the business. Since Mr.M.S.Jain is the friend of defendant, the defendant completely trusted and had absolute faith and confidence in him. The defendant had given and made several signatures on the blank papers, letter heads and several stamp papers to be utilised as and when required for the purpose of filing applications, submitting reports/returns, authorisation, power of attorney, etc., before the Government Authorities in pursuance of the business relationship. The stamp papers on which the sale deed dated 21.06.2010 is alleged to have been executed are some of such stamp papers on which the defendant had affixed his signatures while it was blank and no matter was typed or embossed on it. The defendant did not execute any sale deed in favour of the plaintiff or any other person at any point of time. There was no necessity for the defendant to sell his property.

e) Certain dues were to be paid by the defendant to the Bank of India, Mylapore Branch, Chennai, in the year 2009. Since the defendant was doing business on job contract and it would affect the situation of the defendant and indirectly Mr.M.S.Jain's business was also likely to be affected, the said Mr.M.S.Jain offered to help by giving a sum of Rs.93,25,000/- and also paid the said amount to the Bank of India directly. Except the aforesaid payment, no other payments in cash or otherwise paid to the defendant. The aforesaid amounts, over a period of time have been totally paid by the defendant and adjusted by Mr.M.S.Jain in the course of the business transaction between M/s.Kiran Pondy Chemicals (P) Ltd., and the defendant and there are no amounts due and payable by the defendant as on date. As a matter of fact, the said Mr.M.S.Jain is actually due and payable to the defendant about a sum of Rs.2,50,00,000/- from and out of the aforesaid transactions. The defendant reserved his right to initiate appropriate action against the plaintiff in this regard.

f) Even when there was a threat of auction by the Bank, the defendant did not have any necessity to sell the property. There was no meeting of minds or *consensus-ad-idem* between the plaintiff or Mr.M.S.Jain and the defendant as regards alleged sale of the suit property. Hence the alleged sale deed is the invention of Mr.M.S.Jain for the purpose of grabbing and usurping the defendant's property. The original documents of the suit property were handed over directly from the bank as a safe keeping and security till the amounts were adjusted in the course of the business transactions. During May/June 2010 since the amounts paid to the bank were adjusted and repaid out of job work, the defendant asked for the accounts from Mr.M.S.Jain in order to secure and receive the original documents pertaining to his house and factory.

g) Mr.M.S.Jain did not furnish the accounts nor returned the original documents and started acting differently and adopted the present tactics to wriggle out the situations and to usurp the defendant's property and make illegal gain and enrichment using the plaintiff's Company as a front to satisfy his ends of unjust enrichment. The said Mr.M.S.Jain was originally keen only on doing business with the defendant and thereafter, he wanted to take over the defendant's business as it had a license, great deal of goodwill and reputation and abundant gas supply necessary for the business.

h) The defendant did not understand his ulterior motive and trusted him completely and continued doing business and was signing blank papers and stamp papers as required by the said Mr.M.S.Jain. On the alleged date i.e., on 21.06.2010, the defendant was at Nagapattinam due to his business commitment from 20.06.2010 to 25.06.2010. Therefore, the alleged sale deed dated 21.06.2010 could not have been executed by the defendant on the date and place as alleged by the plaintiff. It is specifically denied that the defendant requested the plaintiff to extend a helping hand by accepting to pay the bank and purchase the suit property. On the contrary, the defendant had sought financial assistance from Mr.M.S.Jain to clear the liability to Bank of India, Mylapore, Chennai, with clear understanding that the said borrowings would be cleared in the course of the business transactions that existed between them. It is false to state that the plaintiff had accepted the alleged offer to sell and paid the alleged amounts. The alleged amounts were only a loan from Mr.M.S.Jain and the same was repaid by the defendant under the job works completed by the defendant. The entire accounts and records in proof of the same are in the exclusive possession of Mr.M.S.Jain.

i) The defendant specifically denies having received the alleged sum of Rs.13,42,0000/- in cash. The original documents were handed over by the Bank of India, Mylapore Branch, Chennai, directly when the amounts were settled. The entrusted documents were to be retained only as security and not as otherwise. The allegation that the original documents were handed over to the plaintiff at the time of alleged execution of sale deed is denied as false. The allegation that the defendant requested time for vacating the suit property and handing over vacant possession is false. The enquiry before the Sub-Registrar, Periamet and thereafter, before the District Registrar, Periamet are vitiated by fraud and bias. The Sub-Registrar, Periamet was influenced by the plaintiff. The District Registrar passed the impugend order dated 07.04.2011 without appreciating oral and documentary evidence. The allegation that the defendant was trying to cheat the plaintiff is false. In fact, it is the plaintiff who is attempting to dispossess the defendant the lawful owner of the suit property. The plaintiff has not given any explanation for not including annexure-I A with the sale deed. The said annexure was furnished only after being called for by the Sub-Registrar, Periamet, without signature of the defendant. This Court while disposing of WP.No.11631 of 2011 has left it open for this Court in

Civil proceedings to decide the surrendering suspicious circumstances and the mitigating factor which otherwise establishes that the said sale deed could not have been executed on the said date.

j) Since the plaintiff was interfering with the peaceful possession and enjoyment of the defendant, the defendant had lodged a complaint before the police. Subsequently, he gave a letter to the police stating that he will work out his remedy before the appropriate civil forum. The defendant denies that he is liable to pay damages either at the rate of Rs.1 lakh per month or any other amounts. The plaintiff has not sent any communication calling upon the defendant to come for registration of the alleged sale deed. The suit has not been properly valued for the purpose of court fee. Since the defendant has not executed the alleged sale deed and the same was fabricated by the plaintiff by using the signatures obtained in blank stamp papers, the said sale deed is not valid in the eye of law. Hence, the defendant is seeking for declaration of the said sale deed as null and void by way of counter claim. He also asked permanent injunction to restrain the plaintiff from interfering with his peaceful possession and enjoyment of the suit property and also for mandatory injunction directing the plaintiff to return the original documents of title pertaining to the suit property and other properties of the defendant. Therefore, the defendant prayed to dismiss the suit and allow the counter claim.

6. The averments made in the written statement filed by the plaintiff to the counter claim filed by the defendant are in brief as follows:-

a) Since the defendant had admitted his signatures, he cannot deny the execution of the sale deed. The defendant had admitted the receipt of consideration of Rs.93.25 lakhs on one hand and on the other hand, denies the receipt of balance sale consideration of Rs.13.42 lakhs and fraudulently denies the execution of the sale deed. Further, the defendant had admitted that the parent documents of title relating to the suit property are with the plaintiff. The allegations that the said original title deeds were handed over by the bank directly to Mr.M.S.Jain to keep the said documents as security for the loan said to have been given by Mr.M.S.Jain are all false. The defendant was carrying on with the job work for one Thomas and after the said Thomas having left the defendant, he did not do any job work and he was in deep financial crisis and approached Mr.M.S.Jain for help. It was Mr.M.S.Jain through his group Company who gave him job work. The defendant was carrying on job work for the plaintiff for which payments have been made and there are no dues as alleged by the defendant. The plaintiff maintains the accounts relating to the job work and were always available with the defendant.

b) A categorical admission on the part of the defendant that the payments were made by the plaintiff at his request is enough to show that there has been valid sale consideration for sale of the suit property. It is matter of fact that a sum of Rs.13.42 lakhs was paid in cash by the plaintiff to the defendant at the time of execution of the sale deed. The said amount was paid in cash as per the request of the defendant. The defendant was carrying on job work for the plaintiff for which payments have been made and there are no dues as alleged by the defendant. The plaintiff has got its own license for gas supply and there was no requirement at all for the plaintiff to depend on the defendant's gas supply license for the business of the plaintiff. There was neither any need nor any requirement for collecting any blank papers, stamp papers, etc, as alleged by the defendant. The stamp papers had been purchased just prior to the execution of the sale deed in the name of the plaintiff and therefore the allegation that the defendant had signed in blank papers are all false.

c) The allegation that the defendant had repaid the sum of Rs.93,25,000/- by doing job work is false. It is equally false to state that the said Mr.M.S.Jain was liable to pay a sum of Rs.2.50 Crores to the defendant towards job work done by him. The sale deed executed by the defendant is an ample proof of the facts and the entire transactions between the plaintiff and the defendant. It is a matter of fact that the defendant had taken time for handing over the possession of the suit property. The allegation that the plaintiff made attempts to dispossess the defendant from the suit property is false. The defendant had lodged a false complaint and hence the same was closed by the police. The defendant is not entitled to get relief for declaration that the said sale deed is null and void; permanent injunction restraining the plaintiff from interfering with the possession of the defendant and for mandatory injunction directing the plaintiff to produce the original title deeds. Therefore, the plaintiff prayed to decree the suit as prayed for and dismiss the counter claim made by the defendant.

7. Based on the aforesaid pleadings, this court has framed the following issues for trial.

"1. Whether the sale deed dated 21.06.2010 had registered as document No.807 of 2011 is not a sale deed executed by the defendant and whether it is sham and nominal?

2. Whether there was an offer and acceptance of the sale consideration of Rs.1,06,67,000/- between the plaintiff and the defendants?

3. Whether the payments made by the plaintiff to the Bank of India, Mylapore was towards the sale consideration of the suit property?

4. Whether the plaintiff helped the defendant, at his request, to pay the Bank and purchase the suit property?

5. Whether the suit is properly valued and proper court fee is paid?

6. Whether the defendant is entitled to the relief of declaring the sale deed dated 21.06.2010 as null and void?

7. Whether the plaintiff is entitled for the relief of vacant possession of the suit property?

8. Whether the plaintiffs are entitled for any damages for the use and occupation of the suit property as prayed for with interest?

9. To what relief the parties are entitled to?"

8. During trial, on the side of the plaintiff one Mr.M.S.Jain was examined as PW1 and Exs.P1 to P32 were marked as exhibits. On the side of the defendant, the defendant examined himself as DW1 and marked Exs.D1 to D12 as exhibits.

9. Heard Mr.A.S.Balaji, the learned counsel for the plaintiff and the defendant / party in person.

10. Issue Nos. 1 to 4, 6 and 7:-

The case of the plaintiff is that it has engaged in the business of manufacturing Sodium Silicate and other chemicals and it has its factory at Karaikal, in the Union Territory of Puducherry and also at Boothangudi in Nagapattinam District, Tamilnadu. Its further case is that the defendant is the Proprietor of one M/s.Madras Chemicals which has got its manufacturing unit adjacent to the plaintiff's factory at Boothangudi and as such, the defendant's father Mr.J.C.Patel had befriended the plaintiff's Chairman Mr.M.S.Jain. Its further case is that the defendant ran into financial difficulties and during June - 2009, the defendant approached the said Mr.M.S.Jain stating that his properties were under threat of auction sale by the Debts Recovery Tribunal on recovery auction initiated by the Bank of India, Mylapore, Chennai, as he defaulted in repayment of loan and requested the plaintiff for support. Its further case is that the defendant informed the said Mr.M.S.Jain that if the properties were sold in public auction, it would be sold only for a paltrysum and hence he requested the said Mr.M.S.Jain to purchase the suit property which is a house property situated at Chennai. Its further case is that considering the position of the defendant, it had accepted his offer and agreed to purchase the suit property for Rs.1,06,67,000/- and in pursuance of the said agreement, the plaintiff had paid a sum of Rs.93,25,000/- to the Bank of India, Mylapore Branch, Chennai, towards the loan obtained by the defendant. Its further case is that on 21.06.2010, at the request of the defendant, the balance sale consideration of Rs.13,42,000/- was paid in cash to the defendant and after receipt of the said amount, the defendant had executed the sale deed in favour of the plaintiff. Its further case is that since the defendant made a request to grant two months time for vacating the premises, it had granted two months time for surrendering possession of the suit property but after executing the said sale deed, the defendant did not come forward to register the same and also adopted dilatory tactics and hence the plaintiff was forced to file an application before the District Registrar for compulsory registration and accordingly, the said sale deed was registered on 11.04.2011. Its further case is that even after expiry of two months time, the defendant refused to surrender the vacant possession and made attempts to sell the property and hence the plaintiff was forced to file the present suit for delivery of possession and also for damages.

11. The case of the defendant is that the said Mr.M.S.Jain and the defendant were friends. His further case is that for non-payment of loan amount, the Bank of India, Mylapore Branch, Chennai, took steps for selling the properties and under such circumstances, the said Mr.M.S.Jain had voluntarily come forward to help the defendant and accordingly, he paid the loan amount of Rs.93,25,000/- to the said Bank and that the said Mr.M.S.Jain had paid the said amount only as a loan and the same was subsequently repaid by him through the job works done by him. His further case is that he has not executed the alleged sale deed with an intention to sell the suit property. His further case is that since the said Mr.M.S.Jain and himself were friends, he had given and made several signatures on blank papers, blank stamp papers, letter pads and several stamp papers to be

utilised as and when required for the purpose of filing applications, submitting the reports/returns, authorisation, power of attorney, etc., before the Government Authorities in pursuance of the business relationship. His further case is that the said Mr.M.S.Jain had falsely fabricated the said sale deed by using the said signed blank stamp papers. His further case is that he did not receive any amount by cash towards sale consideration. His further case is that he never agreed to deliver vacant possession of the suit property to the plaintiff and hence based on the said sale deed, the plaintiff cannot seek any relief. His further case is that the said sale deed is only a sham and nominal document and under the said sale deed title not transferred and hence the said sale deed is liable to be declared as null and void.

12. The defendant has not disputed the fact that at his request, the said Mr.M.S.Jain to clear a loan with the Bank of India, Mylapore Branch, Chennai, had paid a sum of Rs.93.25 lakhs. As already pointed out that it is the case of the plaintiff that the said amount was paid towards a part of sale consideration of the suit property, but according to the defendant, the said amount was paid only as a loan and subsequently, he repaid the loan amount by doing job work. But to substantiate the plea that the said amount

was paid by Mr.M.S.Jain only as a loan and subsequently the defendant has repaid the said amount, except *ipse dixit* of defendant (DW1), no other evidence has been adduced on the side of the defendant. Therefore, the contention of the defendant that the said amount was paid only as a loan and the same was subsequently repaid by him, cannot be accepted.

13. In so far as the contention of the defendant that he has not executed the alleged sale deed in favour of the plaintiff with an intention to sell the suit property is concerned, it would be relevant to refer to the para-6 (f) and (g) of the written statement which reads thus :

> *"f) It is submitted that since Mr.Manmohan Singh Jain is a friend of Defendant since 1982, the defendant completely trusted and had absolute faith and confidence in him. The Defendant had given and made several signatures on blank papers, blank stamp papers, letter heads and several stamp papers to be utilized as and when required for the purpose of filing applications, submitting reports/returns, authorization, power of attorney etcetera, before the said Government authorities in pursuance of the business relationship. It was with this trust, belief, promises and assurance made by the said Mr. Manmohan Singh Jain, this Defendant signed in blank on the papers as he sincerely believed that it would be helpful to have smooth business transaction. Also for the reason the*

factory of the Defendant was at Nagapattinam and the Defendant reside at Chennai.

g) The Defendant submits that the stamp papers on which the said registered as document No.807 of 2011 dated 21/06/2010 is alleged to have been executed, are some of such stamp papers on which the Defendant had affixed his signature while it was blank and no matter was typed or embossed on it. The Defendant categorically states that he did not execute any sale deed in favor of the plaintiff or any other persons at any point of time as regards any of his properties more particularly his residential house which is the suit schedule property. The Defendant further submits that there was no necessity to sell his property at any point of time hitherto. The stamp papers were never typed when the Defendant's signature was affixed."

14. A bare reading of the aforesaid averments would show that he had given and made several signatures on blank papers, blank stamp papers, to be utilised as and when required for the purpose of filing applications, submitting reports/returns, authorisation, power of attorney, etc, before the Government authorities in pursuance of the business relationship. But he has not produced any material to show that he authorised the said Mr.M.S.Jain to file an application or submit reports or representations

before any authority on his behalf. The defendant has not produced any evidence before the court that the said Mr.M.S.Jain has acted as his representative or authorised person before any authority on previous occasions. The defendant not even brought any single instance to show that the said Mr.M.S.Jain acted as his authorised person or power agent.

15. A certified xerox copy of the alleged sale deed dated 21.06.2010 has been marked as Ex.P6. A perusal of the said document shows that the said document was typed on 4 stamp papers with a value of Rs.500/- each and on 3 stamp papers with a value of Rs.100/- each. The said stamp papers were purchased in the name of the plaintiff's Company. The stamp papers containing the value of Rs.500/- were purchased on 18.06.2010 and the other stamp papers were purchased on 11.06.2010. If really the defendant himself had signed in blank stamp papers and handed over them to the said Mr.M.S.Jain for the purpose of filing applications or submitting reports or authorisation or power of attorney before the Government Authorities, naturally he would have purchased the stamp papers in his name and after signing the same, he would have handed over the same to the said Mr.M.S.Jain. But in this case, the stamp papers were purchased in the

name of the plaintiff Company. Further, as already pointed out that four stamp papers are having the value of Rs.500/- each. For submitting any application or authorisation, a prudent man would not have signed in a blank stamp papers having such a high value. In this case, the defendant is not an ordinary layman. He admitted in his cross examination that he studied B.Com and thereafter joined with his father's chemical manufacturing business in 1994. So, it is clear that he is a graduate and came from a business family and also run the business for several years and that being so, his contention that he signed in blank stamp papers and handed over to the said Mr.M.S.Jain only for filing application, representation or power of attorney before authorities is highly unbelievable.

16. As already pointed out that the defendant, in his written statement, in one place, has taken a plea that the plaintiff had fabricated the said sale deed by using the signatures made by him in blank stamp papers. In another place, he has stated that the said document is a sham and nominal document. In the prayer made in the counter claim also, he has prayed to declare the alleged sale deed as null and void, sham and nominal,

nonest and invalid in the eye of law. Where a person admits the execution of the document and the said document was not executed with an intention to transfer the title and only for name sake the said document was executed, then only he can take a plea that the said document is a sham and nominal. But in this case, the defendant has taken a plea that he not at all executed the said document. His contention is that he signed only in blank stamp papers and by using the same, the plaintiff has fabricated the alleged sale deed and in such a case, the question as to whether the said document is sham and nominal will not arise.

17. Even if it is assumed that the defendant is entitled to take inconsistent pleas, in so far as this case is concerned, the defendant has also set up a counter claim to declare that the alleged sale deed is null and void. As per Order 8 Rule 6-A sub rule (4), the counter claim shall be treated as a plaint and governed by the rules applicable to plaints. Once the counter claim attains the status of plaint, the defendant shall be treated as a plaintiff in the said counter claim and in such a case, the defendant cannot take inconsistent pleas.

18. It is also to be pointed out that in para-6 (b) of the written statement, the defendant has stated that he had no transaction with the plaintiff. He further stated that in the alleged sale deed, it is mentioned that a sum of Rs.93,25,000/- was paid by the plaintiff to the defendant but actually, the said amount was not paid by the plaintiff. He further stated that infact, the said payments were made by the Company called M/s.Kiran Pondy Chemicals Private Ltd., at his request at the behest of Mr.M.S.Jain to clear loan with Bank of India, Mylapore Branch, Chennai

19. It is seen from Ex.D2 that the plaintiff herein has filed a petition in P.No.136 of 2010 before the District Registrar, Periamet, for compulsory registration of the sale deed dated 21.06.2010. In the said petition, the defendant herein was arrayed as respondent and he filed an interim reply.

20. It may be relevant to extract paragraph No.1 of the said interim reply.

> *"It is submitted that the Respondent and the Petitioner were doing business together and there were several financial transactions. In the process there were certain borrowing of money and repayment. During the said*

borrowing the Petitioner had obtained several signatures of this respondent on blank papers, letter heads and stamp papers to secure the said borrowings. It is categorically stated that this Respondent did not execute any sale deed in favour of this petitioner or any other persons at any point of time as regards the Respondents residential property or any other property. "

21. From the aforesaid statement, it is clear that before the District Registrar, the defendant herein has taken a plea that the plaintiff herein and he were doing business together and there were several financial transactions. He also stated that in the said process, there was certain borrowing of money and repayment. He also stated that during the said borrowing, the plaintiff herein had obtained several signatures from him on blank papers, letter heads and stamp papers to secure the said borrowings. He has taken the same defence in the reply statement filed by him in Appeal No.1 of 2020 on the file of the District Registrar, Periamet (Ex.D7) also.

22. As already pointed out that as per the written statement, the defendant was not at all having any transaction with the plaintiff, whereas in the replies filed before the District Registrar, Periamet, (Ex.D2 and D7)

the defendant herein has categorically admitted that there were certain financial transactions between the plaintiff and the defendant.

23. Further, as per the written statement, the defendant has taken a plea that he had given and made several signatures on blank papers and stamp papers, letter heads and several stamp papers to be utilised as and when required for the purpose of filing applications, submitting reports/returns, authorisation, power of attorney, etc., before the Government Authorities in pursuance of the business relationship. Further he has stated in the written statement that the said signed papers were given only to Mr.M.S.Jain, whereas in Exs.D2 and D7, the defendant has stated that the plaintiff had obtained several signatures in blank papers and stamp papers during the financial transactions. So, it is clear that the defendant has not taken a definite stand under what circumstances he has signed in the stamp papers.

24. One of the defences taken by the defendant is that from 20.06.2010 to 25.06.2010, he was at Nagapattinam due to his business commitments and hence he would not have signed on 21.06.2010 in Ex.P6

sale deed at Chennai. In support of the said plea, the defendant has produced a receipt said to have been issued by the Hotel Sea Horse, Nagapattinam and marked as Ex.D9. In the said receipt it is stated that the defendant herein was stayed in the said Hotel from 20.06.2010 to 25.06.2010. The defendant has not summoned the concerned ledger from the concerned Hotel. Further, he has not examined the person who issued the said receipt. Even assuming that Ex.D9 is a genuine one, it cannot be presumed that he did not sign at Chennai in Ex.P6 on 21.06.2010. The defendant (DW1) has admitted in his cross examination that he used to go out and come back to the said Hotel. Further, he has admitted in his cross examination that from Chennai to Nagapattinam one can go by car within 7 hours. So, the possibility of coming from Nagapattinam to Chennai on 21.06.2010 and signing in Ex.P6 and thereafter he may have returned to Nagapattinam, cannot be ruled out.

25. It is also contended by the defendant that when the plaintiff paid the amount to the Bank of India to discharge the loan which was obtained by the defendant, issuing two cheques, one for Rs.30 lakhs and another for Rs.60 lakhs and another sum of Rs.3.25 lakhs by way of demand draft and

that being so, the contention of the plaintiff that the plaintiff had paid balance sale consideration of Rs.13.42. Lakhs by cash, is totally false.

26. In the plaint, the plaintiff has not stated why the balance sale consideration of Rs.13.42 lakhs was paid in cash to the defendant. It was only in the written statement filed to the counter claim, the plaintiff has stated the said amount was paid in cash as per the request of the defendant. Further, the plaintiff has stated that the said payments were made by withdrawing the amount from its bank.

27. In order to prove the fact that on the relevant point of time, the plaintiff has withdrawn some amounts from its bank, it has produced bank statements and marked as Exs.P2 and P3. Ex.P2 is the statement issued by Axis Bank. In the said statement, it is stated that on 19.06.2010, the plaintiff has withdrawn Rs.4,20,000/-. Ex.P3 is the statement issued by ING Vysya Bank Ltd., in which, it is stated that on 21.06.2010, the plaintiff has withdrawn Rs.8,00,000/- Merely because the plaintiff has withdrawn the aforesaid amount from its bank account, it cannot be presumed that the said amounts were paid to the defendant. As rightly

contended by the defendant, when the plaintiff paid the amount to the bank to clear the loan which was obtained by the defendant, by issuing cheques and demand draft, nothing prevented the plaintiff to follow the same procedure for paying the balance sale consideration of Rs.13.42 lakhs. Further, the plaintiff has not produced its ledger account for the relevant period to show that it has paid the aforesaid amount of Rs.13.42. Lakhs to the defendant. In this case, the plaintiff has produced a xerox copy of the ledger account for the period from 01.04.2008 to 31.03.2009 and marked as Ex.P26. But the plaintiff has not produced the ledger account for the relevant date of the sale deed dated 21.06.2010 to show that it has paid the balance sale consideration of Rs.13.42 lakhs to the defendant.

28. As per the proviso (1) to Section 92 of the Indian Evidence Act, 1972, failure of consideration can be proved. In this case, the plaintiff being a Company, it would have maintained accounts, but it has not produced its accounts to show that on 21.06.2010, the balance sale consideration of Rs.13.42 lakhs was paid by cash to the defendant. However, even assuming that the balance sale consideration of Rs.13,42,000/- was not paid, that would not invalidate the sale deed executed by the defendant. It is always

open to the defendant to file a suit for recovery of the balance sale consideration. As per Section 55 of the Transfer of Property Act, if any sale consideration is due, that would be a charge on the property. Therefore, the defendant can file a suit within the limitation of 12 years for recovery of the balance sale consideration.

29. A perusal of the records show that after completion of the cross examination, the plaintiff has filed an application to recall him (PW1) for further chief examination and the same was allowed and thereafter on 19.07.2016, PW1 was recalled, and further chief examination was taken and during such examination, Exs.P15 to P28 series were marked and thereafter, the PW1 did not appear for cross examination and hence his evidence was closed. Since he was not subjecting himself for cross examination with regard to Exs.P15 to P28 series, the said documents cannot be taken into consideration. Leaving the said documents, the remaining evidence of PW1 and other Exhibits would clearly establish that the defendant has executed Ex.P6 sale deed in favour of the plaintiff in respect of the suit property.

30. As already pointed out that there is no dispute that the plaintiff has paid a sum of Rs.93.25 lakhs to discharge the loan amount which was obtained by the defendant from the Bank of India, Mylapore Branch, Chennai. According to the plaintiff, in considering the aforesaid payment and also by receiving the balance sale consideration of Rs.13,42,000/-, the defendant had executed Ex.P6 sale deed and also handed over the original title deeds. The case of the defendant is that he did not execute Ex.P6 sale deed and also handed over the original sale deeds as alleged by the plaintiff. His further case is that at the time of discharging the loan amount to the bank, the original documents were directly handed over to Mr.M.S.Jain from the bank as security till the amounts were adjusted in the course of business transaction. But he has not examined any bank official to show that the said documents were directly handed over by the bank to Mr.M.S.Jain. Therefore, it has to be presumed that the defendant had executed Ex.P6 sale deed and only at that time, he handed over the original title deeds to the plaintiff.

31. Further, the defendant has stated in his written statement that subsequently he repaid the amount of Rs.93.25 lakhs. Though the defendant

has stated that the said amounts were adjusted and repaid out of the job work done by him, he has not produced any accounts or any other documents substantiating the said plea. Therefore, this court is of the view that the defendant failed to prove that the said sale deed is either sham and nominal or the said document was fabricated by using his signatures which were made in blank stamp papers. Therefore, the defendant is not entitled to the relief of declaration that the said sale deed is null and void. Once it is held that the defendant is not entitled to get the relief of declaration that the said sale deed is null and void, then it goes without saying that he is not entilted to remain in possession of the suit property. So, he is bound to surrender possession of the suit property to the plaintiff and as such, he is not entitled for permanent injunction as prayed for. Further, as already pointed out that the defendant failed to establish that he handed over signed blank stamp papers to Mr.M.S.Jain and that being so, he is not entitled to mandatory injunction also. Accordingly, these issues are answered in favour of the plaintiff.

32. Issue No.5:-

It appears that the plaintiff has valued the relief for delivery of possession based on the value mentioned in the Ex.P6 sale deed. According to the plaintiff, the value mentioned in the said sale deed was the market value at the relevant time. Though the defendant has disputed the said value is not a market value, he has not adduced any contra evidence to show that the said value is not a market value. Hence, this court is of the view that the plaintiff has valued the suit properly. Accordingly, this issue is also answered in favour of the plaintiff.

33. Issue No.8:-

Since it is held that the defendant is bound to surrender vacant possession, naturally, he is liable to pay damages for use and occupation. But, how much amount the plaintiff is entitled to get as damages cannot be decided without any evidence. Hence, the quantum of damages has to be decided in a separate proceedings under Order 20 Rule 12 of CPC. Accordingly, this issue is answered.

34. Issue No.9:-

In the result, the suit is decreed as follows:-

i) That the defendant is directed to vacate and deliver vacant possession of the suit property to the plaintiff within three months from the date of receipt of copy of the judgment;

ii) That in so far as the damages is concerned, the plaintiff has to work out his remedy by filing separate application under Order 20 Rule 12 of CPC;

iii) That the defendant is directed to pay the costs of the suit to the plaintiff;

iv) That the counter claim filed by the defendant is dismissed and

v) That the defendant is directed to bear his own costs.

23.04.2021

Index: Yes/No
Speaking/Non-speaking Order
gv

P. RAJAMANICKAM.,J.

Gv

To
The Sub-Assistant Registrar,
Original Side-I
High Court, Madras.

Pre-delivery Judgment made in

CS.No.549 of 2012

23.04.2021