IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2021

Pronounced on : 08.06.2021

CORAM

THE HON`BLE MR.JUSTICE R.PONGIAPPAN

C.S.No.820 of 2016

1. Smt.Buddavarapu Nirmala
2. Balantrapu Madhuri
3. Voleti Archana ... Plaintiffs

Vs

1. M/s.Sri Gokulam Chit and Finance Co. Pvt. Ltd.,
Rep. By its Executive Director,
Mr.G.Baiju.

2. Mr.P.M.Mohanam ... Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC , for the following judgment and decree :

[a] Directing the 1st defendant to pay a sum of Rs.3,28,52,568/- (Rupees Three Crores Twenty Eight Lakhs Fifty Two Thousand Five Hundred Sixty Eight) within such time as may be stipulated by this Court;

[b] Directing the 1st defendant to pay subsequent interest @ 12% per annum on Rs.2,62,12,168/- (Rupees Two Crores Sixty Two Lakhs Twelve Thousand One Hundred Sixty Eight), from the date of filing of the suit and till date of realization of the suit claim.

[c] Directing the defendants to pay the plaintiffs the cost of the suit.

For Plaintiffs : Mr.S.P.Vijaya Ragavan

For Defendants : Mr.L.Rajasekar (for D1)

Mrs.R.V.Rukmani (for D2)
for Mr.P.B.Balaji

JUDGMENT

The plaintiffs have filed the instant Civil Suit for recovery of a sum of Rs.3,28,52,568/- (Rupees Three Crores Twenty Eight Lakhs Fifty Two Thousand Five Hundred Sixty Eight) from the 1st defendant, being the balance sale consideration of Rs.2,62,12,168/- together with interest at 12% per annum i.e. Rs.66,40,400/- from the date of execution of Sale Deed bearing Document No.733 of 2014 dated 24.02.2014 registered with the Sub-Registrar Office, Kodambakkam, Chennai, till the filing of the suit and for costs.

2. The gist of the averments found in the plaint filed by the plaintiffs in the instant suit, is as follows:

(i) The suit schedule property was originally owned and possessed by Mr.Buddavaraupu Narayana Murthy, (hereinafter referred to as

'Narayana Murthy'), who is the husband of the 1st plaintiff and the father of the plaintiffs 2 and 3. The said Narayana Murthy, died intestate on 17.12.2012, leaving behind the plaintiffs as his only legal heirs. After the demise of Narayana Murthy, the 2nd defendant along with the 1st defendant, approached the plaintiffs in 2013 for sale of suit schedule property. At that time, the 2nd respondent had shown the Sale Agreement dated 23.06.2011, alleged to have been entered into between the Narayana Murthy and the 2nd defendant. According to the said agreement, the deceased agreed to sell the suit schedule property in favour of the 2nd defendant for a sum of Rs.2,62,88,000/-. Further, the 2nd defendant paid Rs.25,00,000/- as advance sale consideration.

(ii) The defendants attempted to revive the said Agreement to Sale dated 23.06.2011, by seeking sale in favour of the 1st defendant. The plaintiffs agreed to execute a fresh sale deed in respect to the suit schedule property in favour of the 1st defendant. Accordingly, the said agreement dated 23.06.2011 was rescinded. The advance sum of Rs.25 Lakhs was agreed to be deducted. As per the new terms and conditions, the sale consideration was fixed at Rs.4,95,46,250/-. The balance sale price was agreed to be paid by the 1st defendant to the plaintiffs.

(iii) Prior to the execution of the sale in favour of the 1st defendant, the plaintiffs received a part consideration of Rs.1,55,00,000/-. During the month of February 2014, the 1st defendant called the plaintiff and requested them to execute the sale deed in his favour on 24.02.2014. By considering the request made by the 1st defendant, the plaintiffs reached the Kodambakkam Sub Registrar's Office on 24.02.2014.

(iv) In the Sub Registrar's Office, though the plaintiffs were ready on their part to execute the Sale Deed on 24.02.2014, the 1st defendant was not ready to pay the balance due. However, the 1st defendant fervently promised to pay the balance sale consideration in the next couple of days after the registration of the sale deed. Believing the said promise, the plaintiffs executed the sale deed on 24.02.2014 in favour of the 1st defendant and the same was registered as Document No.733 of 2014 on the file of the Sub Registrar's Office, Kodambakkam. During such time, it was recited in the Sale deed dated 24.02.2014 that the entire sale consideration had been paid to the plaintiffs in the following manner.

a. Rs.4,95,462/- has been paid by way of adjustment against the TDS amount of 1% payable on Sale consideration.

b. Rs.2,18,17,620/- was paid by various Demand Drafts drawn on Catholic

Syrian Bank, Kodambakkam.

c. Rs.2,72,33,168/- was paid by various cheques drawn on Catholic Syrian Bank, Kodambakkam.

(v) As the plaintiffs did not receive the entire sale consideration from the 1st defendant, the sale deed dated 24.02.2014 was vaguely worded as 'by various demand drafts', ' by various cheques'. From and out of the total sale consideration, the balance sale consideration of Rs.3,10,50,788/- was agreed to be paid by the 1st defendant within a shortest period of time on 24.02.2014.

(vi) While at the time the plaintiffs' demanded the 1st defendant to pay the balance sale consideration, the 1st defendant had made a further payment of Rs.48,38,620/- by way of six demand drafts of Catholic Syrian Bank, all dated 01.03.2014. Accordingly, a total sum of Rs.2,33,34,082/- alone was received by the plaintiffs towards the entire sale consideration and Rs.2,62,12,168/- is the balance sale consideration that has to be paid by the 1st defendant to the plaintiffs. In this regard, the 2nd defendant is also evading, responding to the legitimate demands of the plaintiffs. Now the defendants try to escape from their liabilities. The plaintiffs issued a legal notice dated 07.11.2015 calling upon the defendants to pay the balance sale consideration together with interest at the rate of 24% per annum within seven days. Though the said notice was received by both the defendants, the 1st defendant alone has made his reply through his counsel, denying his liability.

(vii) The fresh contract entered into between the 1st defendant and plaintiffs is only after rescinding the earlier agreement dated 23.06.2011. The 2nd defendant is neither a party to the sale deed dated 24.02.2014 nor a beneficiary.

(viii) After the receipt of the reply notice from the 1st defendant, the plaintiffs effected a rejoinder notice dated 16.02.2016 to the defendants with the corrected amount of the demand. The rejoinder notice was received by both the defendants. In his reply to the rejoinder notice, the 1st respondent invented yet another story that as per the instructions of the plaintiffs, the balance of Rs.2,62,12,168/- has been paid to the 2nd defendant by the 1st defendant. The plaintiffs never had nor created any Nominee for their behest with instructions to the 1st defendant to make the payments to that unknown Nominee. Such payments made to the 2nd defendant will not bind the plaintiffs. On thorough verification and calculations, it was found that the defendants are liable to make payment of Rs.2,62,12,168/-. Hence, the suit.

3. The Gist of the averments found in the written statement filed by the 1st defendant, is as follows:

(i) In respect to the sale deed dated 24.02.2014, the 1st defendant paid the entire sale consideration to the plaintiffs vide various demand drafts and cheques. There is no outstanding in respect to the sale consideration, as alleged by the plaintiffs. The plaintiffs and the 2nd defendant alone have approached the 1st defendant's company representing that the husband of the 1st plaintiff late Narayana Murthy had entered into an agreement of sale for selling the suit schedule property to the total sale consideration of Rs.2,62,88,000/-, further they only gave an offer to the 1st defendant for the purchase of the suit property. In otherwise, it is not correct to say that the sale agreement dated 23.06.2011 was rescinded.

(ii) Sale consideration pertains to the sale deed dated 24.02.2014 was paid by RTGS transfer and Demand Drafts to the plaintiffs and to the persons named by the 1st plaintiff. The 1st plaintiff had received a sum of

Rs.40 Lakhs vide Demand Draft dated 02.05.2013. Further on 25.02.2013, a demand draft for a sum of Rs.1 Crore was drawn in favour of the 1st plaintiff and the same was acknowledged by her. Again on 29.08.2013, Rs.25 Lakhs was paid to the 1st plaintiff vide Demand Draft and in all amounting to a sum of Rs.1,65,00,000/-. The 1st plaintiff and the 2nd defendant have discussed among themselves the mode in which the balance sale consideration to be paid and also they have given the name of the persons in whose favour the Demand drafts should be drawn for the remaining sale consideration.

(iii). The date of execution of the sale deed was fixed at the instance of the plaintiffs and the 2nd defendant. It is not correct to say that the 1st defendant promised to pay the balance sale consideration in the next couple of days after registration of the sale deed. The 2nd defendant had attested as a witness in the sale deed executed by the plaintiffs in favour of the 1st defendant. Only after the receipt of the entire sale consideration, the plaintiffs have executed the sale deed. The present suit has been filed with an ulterior motive. The amount paid to the plaintiffs are detailed below.

S.No.	***Date***	***Demand Draft / Cheque Details***	***Names of the Drawee***	***Amount***
1	02.05.2013	Demand Draft No.004621	B.NIRMALA	Rs.9,00,000/-
2	02.05.2013	Demand Draft No.004622	B.NIRMALA	Rs.9,00,000/-
3	02.05.2013	Demand Draft No.004623	B.NIRMALA	Rs.9,00,000/-
4	02.05.2013	Demand Draft No.004624	B.NIRMALA	Rs.9,00,000/-
5	02.05.2013	Demand Draft No.004625	B.NIRMALA	Rs.4,00,000/-
6	27.05.2013	Demand Draft No.004638	B.NIRMALA	Rs.5,00,000/-
7	27.05.2013	Demand Draft No.004639	B.NIRMALA	Rs.9,50,000/- Rs.9,50,000/-
8	27.05.2013	Demand Draft No.004640	B.NIRMALA	Rs.9,50,000/-
9	27.05.2013	Demand Draft No.004641	B.NIRMALA	Rs.9,50,000/-
10	27.05.2013	Demand Draft No.004642	B.NIRMALA	Rs.9,50,000/-
11	27.05.2013	Demand Draft No.004643	B.NIRMALA	Rs.9,50,000/-
12	27.05.2013	Demand Draft No.004644	B.NIRMALA	Rs.9,50,000/-
13	27.05.2013	Demand Draft No.004645	B.NIRMALA	Rs.9,50,000/-
14	27.05.2013	Demand Draft No.004646	B.NIRMALA	Rs.9,50,000/-
15	27.05.2013	Demand Draft No.004647	B.NIRMALA	Rs.9,50,000/-
16	27.05.2013	Demand Draft No.004648	B.NIRMALA	Rs.9,50,000/-
17	29.08.2013	Demand Draft No.004781	B.NIRMALA	Rs.9,00,000/-
18	29.08.2013	Demand Draft No.004782	B.NIRMALA	Rs.9,00,000/-
19	29.08.2013	Demand Draft No.004783	B.NIRMALA	Rs.7,00,000/-
20	21.02.2014	Cheque No.787652	Modern Marbles	Rs.60,00,000/-
21	21.02.2014	Cheque No.353942	P.Mohanan	Rs.35,00,000/-

S.No.	Date	Demand Draft / Cheque Details	Names of the Drawee	Amount
22	21.02.2014	Cheque No.353943	P.Anitha W/o.P.Mohanan	Rs.35,00,000/-
23	21.02.2014	Cheque No.353934	M.Aishwarya D/o.P.Mohanan	Rs.35,00,000/-
24	21.02.2014	Cheque No.353935	M.Akil S/o.P.Mohanan	Rs.35,00,000/-
25	21.02.2014	Cheque No.353932	Modern Marbles	Rs.25,00,000/-
26	21.02.2014	Cheque No.354128	Modern Marbles	Rs.26,12,167/-
27	21.02.2014	Cheque No.353931	P.Harikumar B/o.P.Mohanan	Rs.10,00,000/-
28	22.04.2014	Demand Draft No.004953	B.NIRMALA	Rs.88,620/-
29	22.04.2014	Demand Draft No.004954	B.NIRMALA	Rs.9,50,000/-
30	22.04.2014	Demand Draft No.004955	B.NIRMALA	Rs.9,50,000/-
31	22.04.2014	Demand Draft No.004956	B.NIRMALA	Rs.9,50,000/-
32	22.04.2014	Demand Draft No.004957	B.NIRMALA	Rs.9,50,000/-
33	22.04.2014	Demand Draft No.004958	B.NIRMALA	Rs.9,50,000/-
34	22.04.2014	Amount earmarked for Water Tax		Rs.4,83,750/-
35		Loan Adjustment	P.Mohanan	Rs.11,16,250/-
36	22.04.2014	TDS remitted to Income Tax Department		Rs.4,95,463/-
		Total Amount		Rs.4,95,46,250/-

S.No.	Date	Cheque Details	Name	Amount
1	07.07.2014	Cheque No.912615	CMWSSB	Rs.2,50,000/-
2	23.09.2014	Cheque No.694252	CMWSSB	Rs.2,60,334/-
			TOTAL	**Rs.5,10,334/-**

(iv) Only after 19 months, from the date of the execution of the sale deed, the present suit has been filed. The loan outstanding to the tune of Rs.11,16,250/- availed by the 2nd defendant was adjusted by the plaintiffs and the said amount also forms part of the sale consideration.

(v) The plaintiffs want to clear the metro water tax arrears and the corporation tax for the suit schedule property and accordingly, a sum of Rs.4,83,750/- was kept aside for payment of metro water tax. The 2nd defendant has falsely alleged that they have not paid a sum of Rs.2,60,32,168/-. Only after denying the allegations levelled against the 1st defendant, the reply notice dated 09.12.2015 was sent to the plaintiffs.

(vi) The 2nd defendant was a tenant in the said property for several years and he had put up a superstructure in the said land with the permission of the original owner of the property Mrs.Annapoorna Vishalakshi, who had leased the property to the 2nd defendant as a vacant land. Only thereafter, the 2nd defendant had put up superstructure and was carrying on business in the said premises. After the death of Mrs.Annapoorna Vishalakshi, her legal heirs had partitioned the composite property, wherein the suit property was alloted to the share of Mrs.B.L.Seetha, who in turn had settled the property to her son B.Narayana Murthy.

(vii) Considering the fact that the 2nd defendant invested a huge amount by putting up a superstructure and also by considering the long standing possessory rights as a tenant, the said B.Narayana Murthy, agreed to execute a sale deed in favour of any third party as nominated by the 2nd defendant.

(viii) The plaintiffs and the 2nd defendant had an understanding between themselves and due to the same 2nd defendant and the plaintiffs have negotiated the sale price as Rs.4,95,46,250/-. Only after the discussion made between the plaintiffs and the 2nd defendant, they approached the 1st defendant for the sale of suit property. The plaintiffs and the 2nd defendant had agreed to share the sale price between themselves, on the terms mutually agreed between them. Only after the unanimous instructions of both plaintiffs and the 2nd defendant the 1st defendant distributed the sale consideration in the name of the 2nd defendant and his family members.

(ix) The 1st plaintiff and the 2nd defendant had jointly acknowledged the receipt of the cheques issued in the name of the 2nd defendant and his family members. In order to enrich themselves the plaintiffs have conveniently suppressed the mutual agreed terms entered by them with the 2nd defendant and having collected the cheques in the name of the 2nd defendant and his family members, the plaintiffs have come out with this vexatious suit claiming a sum of Rs.3,28,52,568/-. The suit is not maintainable either on facts or on law.

4. The Gist of the averments found in the written statement filed by the 2nd defendant, is as follows:

(i) The 2nd defendant is neither a proper nor a necessary party to the suit. The suit claim is against the 1st defendant alone. It is true that the 2nd defendant had entered into the agreement with the Narayana Murthy and the sale consideration agreed to be paid by the 2nd defendant was Rs.2,62,88,000/-. The said Narayana Murthy, requested for an advance of Rs.25,00,000/-, and the same was paid by the 2nd defendant. The plaintiffs have suppressed the material facts in order to maintain the suit claim. Before his death the said Mr.Narayana Murthy, met with an accident and due to the same he was hospitalised. Thereupon as per the request of his wife viz., Mrs.Buddavarapu Nirmala [the 1st plaintiff], in order to meet the mounting medical expenses from time to time, the 2nd defendant had released huge monies running to a total of not less than Rs.40 Lakhs.

(ii) Subsequent to the payment of an advance of Rs.25 Lakhs, the 2nd defendant spent enormous amount to the tune of Rs.1 Crore, for vacating the other tenants. In the meantime, the said Mr.Narayana Murthy, died on 07.12.2012. The balance sale consideration originally agreed to be paid by the 2nd defendant to Mr.Narayana Murthy, will be paid to the plaintiffs and whatever excess sale consideration that would be available and payable by the proposed purchasers identified by the 2nd defendant will ensure to the benefit of the 2nd defendant, since he had not only paid Rs.25 Lakhs, but also spent enormous amount to vacate the other tenants from the said property.

(iii) Now with an ulterior motive of making unlawful enrichment, the plaintiffs have chosen to fabricate a false version and file this present suit. This suit is only an after thought borne out of greed and malice. Hence, the suit filed by the plaintiffs, is liable for dismissal.

5. Having considered the pleadings and the submissions of the learned counsel on either side, the following issues were framed for consideration on 27.04.2018.

1. Whether the plaintiffs are entitled for a recovery of Rs.3,28,53,568/-?
2. Whether the plaintiffs are entitled to the interest as claimed?
3. Whether the suit is maintainable?
4. Whether the plaintiffs are entitled for a recovery of money in the absence of any vendors lien?
5. To what other reliefs the parties are entitled to?

6. In addition to the above, the following issues were also framed on 27.03.2019.

1. Whether the documents Ex.D3-D11 have been created by the 1st defendant for the purpose of this Suit?
2. Whether the forged documents Ex.D3-D11 can be relied upon as proof of payment by 1st defendant towards sale consideration to the plaintiffs?

7. Finally, the following issue was framed on 11.02.2021, for consideration.

"3. Whether Exhibit D3-D11 the Cheque Vouchers filed by the 1st Defendant are fabricated for the purpose of this suit?"

8. On the side of the plaintiffs, the 1st plaintiff viz., Buddavarapu Nirmala Devi was examined as PW1 and one Mr.T.S.Alagesan, Deputy Director and Document Expert, Forensic Sciences Department, Government of Tamil Nadu, was examined as PW2. Further, the following nine documents were marked as Ex.P1 to Ex.P9.

Exhibit	*Date*	*Description*
Ex.P1	24.02.2014	Certified copy of the sale deed bearing Doc.No.733/2014, SRO at Kodambakkam.
Ex.P2		Abstract of bank account statement of PW1 issued by the Lakshmi Vilas Bank, Vishakapatnam, from 01.10.2011 to 30.06.2013
Ex.P3	22.04.2016	Abstract of bank account statement of PW1 issued by the Indian Bank, Maharanipet Branch, Vishakapatnam for the period from 01.04.2011 to 31.03.2016
Ex.P4	07.11.2015	Office copy of the legal notice dated 07.11.2015, sent by the lawyer of PW1
Ex.P5	09.12.2015	Reply notice dated 09.12.2015, issued by 1st defendant's lawyer
Ex.P6	16.02.2016	Rejoinder notice dated 16.02.2016 sent by the lawyer of PW1
Ex.P7		Returned cover of rejoinder notice issued in the name of the 2nd defendant.
Ex.P8	29.06.2016	Reply for the rejoinder dated 29.06.2016 sent by 1st defendant's lawyer.
Ex.P9	19.01.2018	Report of the Deputy Director, Documents Division, Forensic Sciences Department to the Assistant Registrar (OS-1), High Court, Madras.

9. Similarly, on the side of the defendants, one Mr.N.K.Shunmugam, Co-ordination Manager of 1st defendant Company, was examined as DW1. Further, the following eleven documents were marked as Ex.D1 to Ex.D11.

Exhibit	*Date*	*Description*
Ex.D1	19.01.2017	Original Statement of accounts dated 19.01.2017 issued by Catholic Syrian Bank for the list of Demand Drafts issued in favour of Smt.B.Nirmala
Ex.D2	02.01.2019	Original Board resolution passed on 02.01.2019, authorising DW1 to give oral evidence
Ex.D3	02.05.2013	Original cheque voucher dated 02.05.2013
Ex.D4	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of Iswarya
Ex.D5	21.02.2014	Original Cheque voucher dated 21.04.2014 in the name of M/s.Modern Marbles and Granites.
Ex.D6	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of Modern Marbles and Granites.
Ex.D7	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of P.Harikumar
Ex.D8	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of Akil Mohan
Ex.D9	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of Anitha
Ex.D10	21.02.2014	Original Cheque voucher dated 21.02.2014 in the name of P.Mohanan
Ex.D11	24.02.2014	Original Cheque voucher dated 24.02.2014 in the name of 2nd defendant Mohanan.

10. Heard the learned counsel appearing on either side and perused the documents available on record.

Additional Issues 1 and 2 dated 27.03.2019 and Additional Issue dated 11.02.2021:

11. Admittedly, in earlier periods, the suit schedule property was owned and possessed by Narayana Murthy, who is the husband of the 1st plaintiff and father of the plaintiffs 2 and 3. The said Narayana Murthy,

died intestate on 17.12.2012, leaving behind the plaintiffs herein as his only legal heirs. While at the time when the said Narayana Murthy is alive, he entered into a sale agreement with the 2nd defendant P.Mohanan, for selling the suit schedule property to the tune of Rs.2,62,88,000/-. Thereafter, after the demise of the said Narayana Murthy, on 24.02.2014, after fixing the sale price as Rs.4,95,46,250/-, the plaintiffs herein sold out the property in favour of the 1st defendant.

12. The case of the plaintiffs is that prior to the execution of the sale deed dated 24.12.2014, they received only a part consideration of Rs.1,84,95,462/-, which was inclusive of deduction under TDS and also a sum of Rs.25 Lakhs to be returned to the 2nd defendant being the money received by the deceased Narayana Murthy, as a part consideration under the agreement dated 23.06.2011.

13. In otherwise, believing the assurance given by the 1st defendant that the balance sale consideration would be paid within a short period, the plaintiffs executed a sale deed on 24.02.2014 and thereafter, the 1st defendant has not fulfilled his promise in paying the balance sale consideration.

14. On the other hand, it is the case of the 1st defendant that on the date on which the sale deed was executed viz., 24.02.2014, the entire sale consideration has been paid to the plaintiffs as well as to the nominee of the plaintiffs. In this regard, while at the time of giving evidence as DW1, viz., one Mr.N.K.Shunmugam, who is the Manager of the 1st defendant company has stated that through Ex.D3 to D11, a total sum of Rs.2,37,28,417/- was paid to the 2nd defendant, as per the instruction given by the plaintiffs.

15. In this regard, the learned counsel appearing for the plaintiffs had vehemently opposed the same and made a submission that in the voucher, alleged to have been issued by the plaintiff viz., D3 to D11, the 1st plaintiff has not signed. Further, the signature found in the said vouchers does not belongs to the 1st plaintiff, as alleged.

16. In this regard, in order to substantiate the same, he had relied on the evidence given by PW2.

17. It is true, PW2-Mr.T.S.Alagesan, who is the Deputy Director and Document Expert, Forensic Sciences Department, Government of

Tamil Nadu, gave evidence as the signature found in Ex.D3 to D11, alleged to be signed by the 1st plaintiff, does not belongs to her. So it is made clear that the evidence given by the plaintiffs as the signature found in Ex.D3 to Ex.D11, do not belong to the 1st plaintiff was corroborated through the evidence of PW2. Therefore, this Court cannot easily throw away the evidence given by PW1 that the signature found in Ex.D3 to D11 does not belongs to her.

18. Accordingly, this Court is of the firm opinion that the vouchers prepared as Ex.D3 to D11, in order to show payment to the 2nd defendant is bogus one and therefore, it cannot be said that the 1st defendant paid Rs.2,37,28,417/- to the 2nd defendant as instructed by the plaintiff.

19. Further, the evidence given by PW1 and the abstract of bank account statement pertains to PW1 marked as Ex.P2 and Ex.P3, would show that Rs.2,37,28,417/- not remitted in the plaintiffs' account by the 1st defendant. Accordingly, the additional issues 1 to 3 are decided affirmatively in favour of the plaintiffs as Ex.D3 to D11 is created for the purpose of this suit.

Issue Nos.1 to 5:

20. It is the admitted case of plaintiffs that as per Ex.P1, i.e., sale deed dated 24.02.2014, the suit schedule property was sold out to the 1st defendant and thereafter the same is now in the possession of the 1st defendant. In otherwise, in respect to payment of sale consideration the recitals found in the sale deed dated 24.02.2014, is as follows:

> NOW THIS DEED OF ABSOLUTE SALE WITNESSETH AS FOLLOWS:
>
> In Pursuance of the aforesaid agreement between the Vendors and the PURCHASER, the Vendors hereby admit and acknowledge the receipt of the sale consideration of Rs.4,95,46,250/- (Rupees Four Crores Ninety Five Lakhs Forty Six Thousand Two Hundred and Fifty Only) from the PURCHASER as mentioned hereunder:

a.	Rs.4,95,462/-	(Rupees Four Lakhs Ninety Five Thosuand Four Hundred and Sixty Three Only), paid by way of adjustment against the TDS amount of 1% payable on Sale consideration.
b.	Rs.2,18,17,620/-	(Rupees Two Crores Eighteen Lakhs Seventeen Thousand Six Hundred Twenty Only) paid by various Demand Drafts drawn on Catholic Syrian Bank, Kodambakkam.
c.	Rs.2,72,33,168/-	(Rupees Two Crores Seventy Two Lakhs Thirty Three Thousand One Hundred Sixty Eight Only) paid by various cheques drawn on Catholic Syrian Bank, Kodambakkam.

21. So, as per the said recitals, Rs.4,95,46,250/- was paid by the 1st defendant to the plaintiffs towards the sale consideration. Further, it is made clear that the same was received by the plaintiffs by way of various

Demand Drafts and various cheques. Now, on comparing the evidence given by PW1 with the recitals found in Ex.P1, it seems the oral evidence given by the plaintiffs is against the recital found in the sale deed dated 24.02.2014.

22. Though, it was contended on the side of the 1st defendant that a portion of the sale amount was paid to the defendant as instructed by the plaintiffs, being the plaintiffs they alone have to prove that the recitals found in the sale deed as narrated as above, is not having any truth. In this connection, it is necessary to see Section 91 of Indian Evidence Act, which reads as follows:

> **91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document**.—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.
>
> *Exception 1*.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

23. Accordingly, Section 91 of the Indian Evidence Act, puts an embargo on reception of oral evidence about the terms of a document when the terms in the contract, grant or disposition of property required by law to be reduced in writing, have been embodied in the deed itself. Accordingly, the said provision gives primacy to the written text as against the frailty of memory which fades with passage of time.

24. A document is normally supposed to be the correct record of what the parties thereto have agreed to and before signing had an opportunity to alter its contents if what was written did not really conform to the agreement or did not correctly represent the true intention of the parties. Accordingly, once the document is written and registered,

it must exclude all other evidence regarding its contents.

25.As a matter of public policy, the written document must always prevail against the vageries of memory which may or may not be able to reproduce with any exactitude the actual terms agreed upon.

26. Accordingly, I am of the view that the evidence given by the plaintiffs that the entire sale consideration is not paid to them is found not correct and the same was not proved on the side of the plaintiffs. More than that, on a whole consideration of the entire evidence, let in by PW1 and DW1, discloses the fact that after completing the sale in 24.12.2014 only on 07.11.2015, i.e., after 19 months, the plaintiffs herein chose to send the legal notice and demanded to pay the suit claim alleging that the same was not paid at the time of registering the sale. In this regard, when at the time, the 1st plaintiff examined as PW1, she had admitted that the legal notice to the 1st defendant has been sent after 19 months from the date of sale. In this regard, for the delay, she has not given any proper explanation.

27. So, culling out the said circumstances to the case of the plaintiffs, it creates a suspicious circumstances whether the plaintiffs

have approached this Court with clean hands or not. It is true, in the written statement filed by the 1st defendant as well as the reply notice sent by him, he has admitted that the portion of the sale consideration was paid to the 2nd defendant. Though there was an admission on the side of the 1st defendant, applying the principles set out in Section 91 of the Indian Evidence Act, it is for the plaintiffs to prove their case. It is settled law that in order to prove the case of the plaintiffs, they would not be permitted to stand on the legs of the defendant.

28. In this regard, in the case of ***State of Madhya Pradesh Vs. Nomi Singh & Another*** in Civil Appeal No.3050 of 2015 [decided on 24.03.2015], our Hon'ble Apex Court has held as follows:

> "It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case."

29. Further, in the case of ***Devender Bhati Vs. Chander Kanta***, in RSA No.4/2015 and CM APPL.339/2015 & 8696/2015 [decided on 21.01.2015], High Court of Delhi has held as follows:

> "37. In Harish Mansukhani v. Ashok Jain (2009 (109) DRJ 126 (DB) , the Division Bench noticed that the plaintiff has to

prove his case and had to stand on his own legs..."

Accordingly, I am of the opinion that the weakness of the defendants' case cannot be taken into account for considering the case of the plaintiffs in their favour.

30. The learned counsel appearing for the plaintiffs relied on the judgment of our Hon'ble Apex Court in ***Vidyadhar Vs. Manikrao and Another,*** reported in **1999 (3) SCC 573,** and made submission that in order to constitute a sale, both the parties should necessarily have the intention to transfer the ownership. But herein, it is a case though the plaintiffs are having the intention to transfer the ownership of the suit schedule property in favour of the 1st defendant, the same was subject to the payment of entire sale consideration. Therefore, due to the reason that the 1st defendant himself admitted the fact that a portion of the sale consideration was paid to the 2nd defendant, it cannot be said that the sale effected between the plaintiffs and the 1st defendant was a complete one. In the judgment referred by the plaintiff's counsel, our Hon'ble Apex Court, has held as follows:

"38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in presenti or in future. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence on record."

31. Now, on going through the whole judgment referred by the plaintiffs' counsel, it seems a portion of the sale consideration was not paid to the vendor. But herein, it is a case, the recitals found in the sale deed dated 24.02.2014 is against the case of the plaintiffs and proved the fact that the entire sale consideration was paid at the time of registering the same. Accordingly, the judgment referred by the learned counsel appearing for the plaintiffs is not relevant to the facts of the present case.

32. Further, it is the case of the 2nd defendant that while at the time the husband of the 1st plaintiff viz., Narayana Murthy, was alive, a number of tenants were running business in the suit schedule property. Further, for evicting the tenants, he made some contribution as well as he has paid a sum of Rs.40 Lakhs towards the medical expenses to the deceased Narayana Murthy. In order to prove the same though no document has been exhibited on the side of the defendant, PW1 has stated that in the sale deed dated 24.02.2014, the 2nd defendant has signed as a witness. Further, she has stated that only the 2nd defendant informed

her about the execution of the sale deed by her husband's relatives and wanted her to be present along with her daughters for the execution of the sale deed.

33. In otherwise, in respect to the relationship between the 2nd defendant and the plaintiffs, the 1st plaintiff has not given any accepting evidence as the 2nd defendant is no way related to the transaction made between her and the 1st defendant. Apart from that, it is admitted on the side of the plaintiffs that the 1st plaintiff had studied M.A., B.Ed. Further, the 2nd plaintiff has studied MBA and the 3rd plaintiff after completing her studies, now working in HSBC bank. Therefore, it is made clear that all the plaintiffs herein are educated persons. In the said circumstances, if really the 1st defendant has not paid a portion of the sale amount to them, being educated women, they will take steps immediately after the registration of the sale deed. But in this case, as already stated the demand notice was sent to the 1st defendant after 19 months from the date of registration and also it is necessary to borne in mind that the evidence given by the expert is not a conclusive proof.

34. So, in the said circumstances, the story put forth by the 2nd defendant is having some force and probabalise the fact that for the service rendered by the 2nd defendant, the plaintiffs had directed the 1st defendant to pay a portion of the sale consideration to the 2nd defendant.

35. Further, herein it is a case, either of the parties have admitted Ex.P1 i.e. the sale deed dated 24.02.2014, as true one. In the said situation, the recital found in the Ex.P1 is that on the date of registration, entire sale consideration was received by the plaintiffs through various demand drafts and cheques. Further, on that date itself, the right having by the plaintiffs in respect to the suit schedule property was transferred to the 1st defendant. Therefore, after effecting sale, the plaintiffs are not having any lien over the said property. Without understanding the same, the plaintiffs have filed this case, alleging that they are having the right to receive a part of the sale consideration from the 1st defendant. In this aspect also, the plaintiff's are not entitled to the relief prayed for. Accordingly, Issue Nos.1 and 5 are decided affirmatively in favour of 1st defendant.

36. Therefore, in the light of the said discussion, this Court comes to the conclusion that the plaintiffs are not entitled to receive the balance sale consideration as alleged by them. Hence, the Civil Suit is dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

08.06.2021

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Index : Yes/No
Speaking/Non-Speaking Order

R.PONGIAPPAN, J.

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Pre-delivery judgment in C.S.No.820 of 2016

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