



A.S.Nos.194 and 261 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.Nos.194 & 261 of 2011

and

M.P.No.1 of 2013

1.Chinnasamy
2.P.Jeevanandam
3.K.Sankaran
4.R.Palanichami
5.Nallaperumal
6.K.Saravanan
7.K.Senkoden

... Appellants/Defendants 2 to 8
in A.S.No.194 of 2011

K.Saraswathy

...Appellant / 1st defendant
in A.S.No.261 of 2011

Vs.

1.P.Shanmugam

... Respondent / Plaintiff
in both appeals



A.S.Nos.194 and 261 of 2011

2.K.Saraswathi

...Respondent / 1st defendant
in A.S.No.194 of 2011

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2.P.Chinnasamy

3.P.Jeevanandam

4.K.Sankaran

5.R.Palanisamy

6.M.Nallaperumal

7.K.Saravanan

8.K.Sengodan

... Respondents/Defendants 2 to 8
in A.S.No.261 of 2011

Prayer in A.S.No.194 of 2011 : Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 & 2 of Code of Civil Procedure against the judgment and decree dated 29.10.2010 in O.S.No.418 of 2005 on the file of the Additional District cum Sessions Court, Fast Track Court No.5, Tiruppur.

Prayer in A.S.No.261 of 2011 : Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 29.10.2010 in O.S.No.418 of 2005 on the file of the Additional District cum Sessions Court, Fast Track Court No.5, Tiruppur.

AS.No.194/2011:-

For Appellants	:	Mr.V.Manohar
For R1	:	Mr.S.Mukunth
For R2	:	No appearance



A.S.Nos.194 and 261 of 2011

AS.No.261/2011:-

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For Appellant	:	Mr.V.Manohar for Mr.R.S.Mangalakumar
For R1	:	Mr.S.Mukunth for M/s.Sarvabhauman Associates
For R2	:	No such address
For R3 to R6	:	No appearance
For R7	:	Unserved
For R8	:	No appearance

COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

These two appeals arise out of the same judgment and decree in O.S.No.418 of 2005 on the file of the Additional District cum Sessions Court, Fast Track Court No.5, Tiruppur and hence, disposed of by this common judgment.

2.The 1st respondent in both the appeals as plaintiff filed the suit in O.S.No.418 of 2005 for specific performance of an Agreement of Sale dated 16.12.2004 executed by the 1st defendant in favour of the plaintiff and to direct the defendants to execute the Sale Deed in respect of the suit



A.S.Nos.194 and 261 of 2011

property. Defendants 2 to 8 in the suit are the appellants in AS.No.194/2011 and the 1st defendant in the suit is the appellant in AS.No.261/2011.

3.The suit properties, measuring an extent of about 30 acres comprised in different survey numbers are situated at Poomalur Village in Palladam Taluk in Tiruppur District.

4.The case of the 1st respondent in the plaint is as follows:

5.The suit property belonged to the 1st defendant by virtue of multiple Documents of Sale. The 1st defendant entered into an Agreement of Sale with the plaintiff agreeing to sell the suit properties for a sale consideration of Rs.47,65,500/-. At the time of entering into the Agreement a sum of Rs.10,00,000/- was paid as advance and the 1st defendant acknowledged the receipt of the said sum. As per the terms of the Agreement, the sale has to be completed within a period of 12 months from the date of the Agreement by paying the balance of sale consideration. The possession of the property was also handed over to the plaintiff on the date of the Agreement and the



A.S.Nos.194 and 261 of 2011

plaintiff was authorized to develop the property. The 1st defendant on the same date of Agreement i.e. on 16.12.2004 entered into another Agreement with the mother of plaintiff to sell some other portion of the her properties. The 1st defendant entered into an Agreement in respect of other properties in favour of plaintiff's brother-in-law on the same date. A sum of Rs.25,00,000/- was paid as advance under the three Agreements executed on 16.12.2004. The plaintiff was always ready and willing to pay the balance and complete the transaction, but the 1st defendant had delayed the execution. The plaintiff requested the 1st defendant on several occasions to execute the Sale Deed.

6.Surprisingly, the 1st defendant issued a legal notice dated 16.09.2005 to the father of plaintiff referring to the Sale Agreement as a security for a loan transaction. The plaintiff issued a paper publication in "Dhinathanthi" about Sale Agreement executed by 1st defendant so as to inform the public. The plaintiff came to know after exchange of notices that the 1st defendant had executed several sale deeds in favour of defendants 2 to 8 on various dates in respect of the entire suit properties. Immediately



A.S.Nos.194 and 261 of 2011

after coming to know about the fraud committed by the 1st defendan, the plaintiff issued notice to defendants 2 to 8 who are fully aware of the Sale Agreement executed by the 1st defendant in favour of the plaintiff. Since the plaintiff was always ready and willing to purchase the property and the Sale Deeds in favour of defendants 2 to 8 are illegal, the plaintiff was constrained to file the suit for specific performance.

7.The suit was contested by all the defendants. The 1st defendant filed an independent written statement denying the sale transaction. It is the case of the 1st defendant that her husband, by name Mr.R.Kandasamy, had borrowed a sum of Rs.10,00,000/- from the plaintiff's father by name Mr.K.Palaniswamy in the month of December, 2004. It is stated that the alleged The Sale Agreement was fabricated by the plaintiff using the blank stamp papers which were handed over by the 1st defendant at the time of getting loan. It was also submitted by the 1st defendant that he repaid the money with interest at 18%. It is contended that the 1st defendant after the sale of property in favour of defendants 2 to 8 went to the house of plaintiff with the money borrowed, but the plaintiff refused to receive the same. The



1st defendant denied the case of plaintiff that a sum of Rs.25,00,000/- was received under three different Sale Agreements.

8.The 3rd defendant filed a written statement specifically denying the averments. The written statement of 3rd defendant was adopted by defendants 5 to 8. It is also contended by the 3rd defendant that defendants are bona fide purchasers for value as the Sale Agreement is not revealed from the encumbrance certificate obtained by the 3rd defendant before purchasing the property from the 1st defendant. It is admitted by defendants 2 to 8 that they purchased the property by different Sale Deeds dated 29.08.2005. It is contended that the Sale Deed in favour of defendants 2 to 8 are for valuable consideration and they are bona fide purchasers for value without notice of the Agreement between the plaintiff and 1st defendant. The 6th defendant also filed a written statement which was adopted by other defendants. In all the written statements filed by other defendants the specific plea is that they are not aware of the Sale Agreement between the plaintiff and the 1st defendant.



A.S.Nos.194 and 261 of 2011

9.The trial Court after recording the pleadings, framed the following

issues :

- i. Whether the Sale Agreement dated 16.12.2004 is true, genuine and valid document?
- ii. Whether the Sale Deeds in favour of defendants 2 to 8 have been made for illegal gain?
- iii. Whether the plaintiff is entitled to the relief of specific performance?
- iv. To what relief the plaintiff is entitled?

10.Before the trial Court, the plaintiff examined himself as P.W.1 and examined one K.Palanisamy as P.W.2. Exs.A1 to A64 were marked on behalf of plaintiff. The 6th defendant was examined as D.W.2 and one R.Kandasamy was examined as D.W.1. No document was marked on the side of defendants.

11.The trial Court, after considering the evidence, found that the Agreement is true, genuine and valid, since the execution of the suit



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Agreement under Ex.A1 is not denied. The Trial Court did not even frame an issue whether defendants 2 to 8 are bona fide purchasers for value. However, the Trial Court found that the defendant had notice of the Sale Agreement referring to the paper publication under Ex.A22 dated 02.08.2005. Since the Trial Court found that the Agreement under Ex.A1 executed by the 1st defendant in favour of the plaintiff is a true and valid Agreement and the receipt of advance is admitted, the Trial Court held that the plaintiff who has stated about his readiness and willingness is entitled to a decree for specific performance.

12.The suit Agreement is dated 16.12.2004. It is admitted that a sum of Rs.10,00,000/- was paid under the Agreement of Ex.A1 dated 16.12.2004. Since the suit itself was filed on 14.10.2005, within the period specified in the Agreement of Sale, the Trial Court presumed that the plaintiff was ready and willing to perform his part of contract. It is to be noted that the 1st defendant issued a notice to the plaintiff's father on 16.09.2005 under Ex.A25. It is in the said notice, the 1st defendant disputed



A.S.Nos.194 and 261 of 2011

the document under Ex.A1 as a bona fide sale agreement and stated that it was executed as a security for the loan transaction.

13.Having regard to the dates, sequence of events, the Trial Court found that the plaintiff has filed the suit within the time specified in the Agreement and held that the plaintiff is entitled to specific performance. Aggrieved by the judgment and decree of the Trial Court, decreeing the suit for specific performance, the above appeals have been filed by the defendants.

14.Mr.V.Manoharan, learned counsel on record for appellants in AS.No.194/2011 submitted that he is advancing his arguments in both appeals for appellants. The learned counsel referred to the Sale Agreement particularly the endorsement in Ex.A1 which is not signed by the 1st defendant and the plaintiff. Though it was found on the back side of Ex.A1 Agreement,the learned counsel submitted that the Trial Court failed to appreciate the contention of the defendants that the Agreement is manipulated by making use of the blank stamp papers which were obtained



A.S.Nos.194 and 261 of 2011

from the 1st defendant at the time of lending money. The learned counsel then submitted that the plaintiff has not produced any document to substantiate his case that he had the money to purchase the property within the time stipulated in the Agreement. The learned counsel submitted that the document under Ex.A22 dated 02.08.2005 is the paper publication that was given in Coimbatore edition. Pointing out that Tiruppur was part of Coimbatore District earlier, the learned counsel submitted that defendants 2 to 8 are the native of Namakkal and therefore, they had no occasion to see the paper publication in Coimbatore edition. The learned counsel submitted that no scrap of paper or evidence was let in to show that defendants 2 to 8 had knowledge of the prior Agreement between the plaintiff and 1st defendant.

15.On the contrary, learned counsel appearing for the respondent/plaintiff, referring to the Agreement of Sale, submitted that the execution of Agreement under Ex.A1 is not in dispute and it has been proved by the plaintiff. When the Agreement of Sale contains specific terms which are unambiguous, the burden lies on the defendants to prove their



case that the document - Ex.A1 was signed in blank papers, as a security for loan transaction. Mere pleading that the Agreement of Sale is not genuine, according to the learned counsel, is not sufficient. It is submitted that the plaintiff was ready and willing to perform his part of the contract and the same is evident from the pleading and the sequence of events. The learned counsel also referred to the written statement to substantiate his argument that defendants 2 to 8 are not bona fide purchasers for value to seek protection under section 19 of Specific Relief Act.

16.Considering the pleadings, evidence and arguments on both sides, the following points arise for consideration before this Court in this appeal :

- i. Whether the Sale Agreement is a true and genuine document signed by 1st defendant with full knowledge of its contents or a document signed in blank papers as a security for the loan advanced by plaintiff to the husband of 1st defendant?
- ii. Whether the plaintiff was ready and willing to perform his part of the contract in terms of Agreement under Ex.A1 dated 16.12.2004?



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- iii. Whether the defendants 2 to 9 are bona fide purchasers for value without notice of sale Agreement and entitled to protection under Section 19(b) of the Specific Relief Act?
- iv. Whether the plaintiff is entitled to equitable relief of specific performance?

Points [i] and [ii]:-

17. Though the Trial Court has framed a specific issue regarding the truth and genuineness of the Sale Agreement under Ex.A1 dated 16.12.2004, no specific issue is framed as regards readiness and willingness. From the pleadings and evidence, it is seen that the signature of the 1st defendant in the Agreement of Sale under Ex.A1 dated 16.12.2004 is admitted. As per the recitals of the document-Ex.A1, the 1st defendant has agreed to sell the suit properties for a total consideration of Rs.47,65,500/-. A sum of Rs.10 lakhs is stated to be paid as advance under Ex.A1. The sale is to be completed within 12 months from the date of Agreement by paying the balance of sale consideration. Even in the plaint, it is admitted that the 1st defendant, on the same day, entered into another Agreement with the

Page 13 of 30



A.S.Nos.194 and 261 of 2011

plaintiff's brother-in-law and the 1st defendant's husband has entered into another Agreement with the plaintiff's mother. All the three Agreements, even according to the plaintiff, were executed on the same day and the 1st defendant and her husband by name Thiru.R.Kandasamy, received a total sale consideration of Rs.25 lakhs. It is now admitted that two other suits were filed by plaintiff's mother and his brother-in-law in respect of two other Agreements that were executed on the same date. It is also admitted that those two suits were allowed to be dismissed for non prosecution. Even the suits were not even prosecuted for refund of advance amount paid under the respective Agreements. The explanation offered by the learned counsel for the respondent/plaintiff is that the father of plaintiff became sick and therefore, the other two suits were not prosecuted properly. This Court is unable to accept such an explanation as the version of the plaintiff and his father during examination do not corroborate such explanation. The suit Agreement under Ex.A1 contains 4 pages. On the backside of stamp paper, an endorsement is typed to the effect that the 1st defendant has received a further advance amount of Rs.5 lakhs. Strangely, this endorsement is not signed by the parties. The said endorsement is dated 13.07.2005. The fact



A.S.Nos.194 and 261 of 2011

that the endorsement is typed on the backside of the stamp paper along with the Agreement gives rise to a strong suspicion about the genuineness of the Agreement-Ex.A1. The Agreement is signed by the plaintiff and 1st defendant in all the four pages. In the last page, one Kumarasamy and the plaintiff's father have signed as witnesses. Even though plaintiff's father is examined as PW2, the plaintiff has not examined the other witness, namely, Kumarasamy, to prove the genuineness of the Agreement-Ex.A1 as he would be the independent witness to speak about the transaction.

18.The 1st defendant has denied execution of Ex.A1 as an Agreement of Sale and it is his positive case that a sum of Rs.10 lakhs was borrowed from plaintiff's father and that, he called upon the plaintiff and her husband to sign three blank stamp papers and about 10 blank papers at the time of borrowal as security for the loan transaction. The Agreement is dated 16.12.2004. It is admitted that the 1st defendant executed different Sale Deeds in favour of appellants/defendants 2 to 8 dated 29.08.2005 under Exs.A32 to A37. The plaintiff has produced Ex.A22, a paper publication dated 02.08.2005 in which the plaintiff's counsel has referred to the suit



A.S.Nos.194 and 261 of 2011

Agreement and indicated in the public notice that any sale or Agreement in respect of suit properties will be invalid as the 1st defendant has entered into an Agreement of Sale giving one year time to complete the sale. However, on 16.09.2005, the 1st defendant issued a legal notice to the plaintiff's father specifically stating that the signatures of 1st defendant was obtained in blank stamp papers and that the transaction was never intended to be a sale transaction. The purpose of legal notice was to call upon the plaintiff's father to desist from making any legal claim under the guise of any Agreement of Sale. In the suit notice, the plaintiff's father was called upon to receive a sum of Rs.10 lakhs with interest from 16.12.2004 till date @ 18% per annum. The plaintiff's father sent a reply dated 27.09.2005 to the said notice. In the reply, it was reiterated that all the three Agreements dated 16.12.2004 are true, genuine, valid and enforceable documents and the 1st defendant and her husband are bound to execute the Sale Deeds in favour of the three Agreement holders. From the notice and reply, it is seen that plaintiff's father is the real person behind the Agreement. Quite surprisingly, the plaintiff even in the plaint, has described his father as a stranger attester. Even during evidence. He has not admitted the role of his



father in the execution of three Agreements. From the evidence, it does not appear that the plaintiff is capable of mobilising funds on his own and he admits that the balance of consideration was to be paid only by his father.

19.It is the case of plaintiff that his father has given him a sum of Rs.47,65,000/- and he gave only a sum of Rs.10 lakhs as advance. However, the plaintiff's father/PW2 during cross examination states that he gave a sum of Rs.47,65,500/- to his son for purchasing the suit property and out of the said sum, he paid a sum of Rs.25 lakhs which are referred to as advance payable under the three Agreements. The total sale consideration payable under the three Agreements is admitted as Rs.97 lakhs. The plaintiff's father has admitted that he has no accounts to show that he had the balance money. The plaintiff has also admitted during cross examination that he has not produced any document to show that he has the balance amount to complete the sale. The plaintiff has admitted that the entire transaction was negotiated by his father and has stated that he is not aware of the notice issued by the 1st defendant to his father. When there are several Agreements of Sale and the plaintiff's father is the author of all the



three Agreements, this Court is unable to disbelieve the version of 1st defendant that the Sale Agreement was never intended to be acted as a Sale Agreement, especially, when the three Agreements are in respect of vast extent of land, namely, 67 acres, owned by the 1st defendant and her husband and the plaintiff has admitted that the other suits filed by his mother and brother-in-law, were dismissed for non prosecution. During the course of evidence, the plaintiff has admitted as follows:-

“ஒப்பந்தம் பதிவுசெய்ய நடவடிக்கை எடுக்கவில்லை. ஒப்பந்தத்தை பதிவு செய்யலாம் என்ற விவரம் தெரியும். என் தாயார் என்னுடன் வசிக்கவில்லை. என் தகப்பனாருக்கும் எனக்கும் பேச்சுவார்த்தை உண்டு. என் தாயாருடன் நானும், என் தகப்பனாரும் பேசிக்கொள்ளுவதில்லை. ரவிச்சந்திரன் என்னுடைய அக்காள் கணவர் அவருடன் பேச்சுவார்த்தை கிடையாது. என் தாயாரும் மைத்துனர் ரவிச்சந்திரனும் முதல் பிரதிவாதியுடன் வேறு இரண்டு ஒப்பந்தம் போட்டுள்ளனர். அவர்களிடம் நான் மேடோவர் வாங்கியுள்ளேன், அந்த மேடோவர் ஒப்பந்தம் பொய்யானது என்றும் அவர்களது கையெழுத்தை பொய்யாக போட்டு தயார் செய்தும் அசல் வழக்கு 417/05 மற்றும் 416/05ல் அவர்கள் எதிர்வாதம் செய்கிறார்கள்.”

20.The nature of evidence given by the plaintiff indicates that the



plaintiff is just a name-lender and he has come to Court with unclean hands with a false story. As regards readiness and willingness, the plaintiff though has produced some documents to show that he has purchased a few other properties in his name and there are several properties in the name of plaintiff's father, this Court is unable to find any direct evidence to show that the plaintiff was ready and willing to pay the balance payable under the three Agreements. All the three Agreements are signed on the same day. When this Court examined the transaction as a whole, is unable to find proof or the readiness and willingness. Though the documents produced by the plaintiff may show that there are several properties in the name of plaintiff's father and several properties were purchased in the name of plaintiff and his father even after the suit was filed, the plaintiff at best, would rely upon the documents to show the resources the plaintiff and his father had ; but not the readiness and willingness. It is true that the suit itself was filed before the expiry of time. However, the evidence of PW1 and PW2 do not inspire the confidence of this Court to believe their case that they had sufficient funds. When the plaintiff admitted during cross examination that he did not have money on his own but his father would



A.S.Nos.194 and 261 of 2011

provide him money to complete the transaction, this Court in the complex facts, is unable to agree with the findings of the Trial Court regarding genuineness of the Sale Agreement and the readiness and willingness of the plaintiff. It is well settled that the burden lies on the plaintiff to show his readiness and willingness. Unless the plaintiff pleads and proves readiness and willingness, the Court cannot grant a decree for specific performance. This Court finds that the Trial Court has failed to consider several facts which are admitted and as borne out from records before rendering a finding on the question of readiness and willingness. It is admitted that the plaintiff has deposited the balance amount after the suit was decreed. However, there cannot be a reason to hold that the plaintiff was ready and willing to perform his part of the contract. The failure to frame an issue regarding readiness and willingness is a serious defect in the judgment of the Trial Court. This Court is unable to accept the case of the plaintiff as regards bona fides of transaction. Having regard to the circumstances indicated above, **points [i] and [ii] are answered in favour of appellants.**

Point [iii]:-

Page 20 of 30



21.It is the specific case of the appellants / defendants 2 to 8 that they are the *bona fide* purchasers of the suit property for value without notice of the suit Agreement. The appellants/defendants 2 to 8 had purchased not only the suit property but also the remaining properties of 1st defendant which are the subject matter of the other two Agreements. The Trial Court failed to frame an issue whether defendants 2 to 8 are *bona fide* purchasers for value. However, the Trial Court has framed an issue whether the Sale Deeds in favour of defendants 2 to 8 have been made for illegal gain.

22.Section 19 of the Specific Relief Act reads as follows:-

19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant; 1

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the



A.S.Nos.194 and 261 of 2011

company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

23.In the present case, the suit Agreement – Ex.A1 refers to the fact that the suit properties are left to the possession of plaintiff for maintenance.

The specific recitals in the document reads as follows:- "மேற்படி சொத்துக்களை மராமத்து செய்வதற்காக 2 லக்கமிட்டவர் சுவாதீனத்தில் 1 லக்கமிட்டவர் விட்டிருக்கிறார்."

24.However, it is the specific case of the 1st defendant that possession was never handed over to the plaintiff. Defendants 2 to 8 after purchasing the properties under Sale Deeds-Exs.A32 to A37, have developed the suit property as house site and it is admitted that the possession is with the subsequent purchasers namely defendants 2 to 8. The plaintiff has categorically admitted during his cross examination that "2 முதல் 4 பிரதிவாதிகள் அந்த இடத்தை விட்டு மனைகளாக பிரித்து லே அவுட் போட்டு பலருக்கு விற்றது தெரியும். கிரையம் பெற்ற நபர்களில் சிலர் அந்த இடங்களில் வீடு கட்டியுள்ள விவரம் தெரியாது."

25.This Court is unable to accept the case of plaintiff that he has



A.S.Nos.194 and 261 of 2011

taken possession of the suit property. This Court has already seen that the plaintiff has not proved the *bona fides* of the sale transaction under Ex.A1.

In the absence of any independent evidence to show that the plaintiff was in possession of the suit property and the plaintiff's mother and brother-in-law who had entered into two other Agreements have not prosecuted the suits, the case of plaintiff regarding possession cannot be believed without any evidence. The fact that defendants 2 to 8 have taken possession and developed the property and started selling the plots is a relevant fact that defendants 2 to 8 had no reason to suspect the enjoyment of 1st defendant without any encumbrance. Learned counsel for the respondent/plaintiff referred to the paper publications given by plaintiff under Ex.A22 dated 12.08.2005, Ex.A27 dated 24.10.2005, Ex.A28 dated 07.05.2006, Ex.A29 dated 23.12.2008 and Ex.A30 dated 26.12.2008. Except Ex.A22, all other public notices were issued after the 1st defendant executed Sale Deeds in favour of defendants 2 to 8 under Exs.A32 to A37. Though Ex.a22 is dated 02.08.2005, it is contended by defendants 2 to 8 that they are permanent residents of Namakkal District and that they had no occasion to see the paper publication which was made in Coimbatore edition. The plaintiff,



A.S.Nos.194 and 261 of 2011

during the course of evidence has admitted that defendants 2 to 8 belonged to Namakkal District and that the publication under Ex.A22 was given in Coimbatore edition. It appears that defendants 2 to 8/appellants herein had purchased the property for developing the suit property as a layout and for sale of the land in plots after development. The 6th defendant is examined as DW2. He has stated that defendants 2 to 8 had the knowledge of the Sale Agreement, the 1st defendant had earlier entered into with the plaintiff. It is true that the burden lies on the subsequent purchasers to prove that they are the *bona fide* purchasers.

26.Learned counsel for the respondent/plaintiff relied upon the judgment Hon'ble Supreme Court in the case of ***R.K.Mohammed Ubaidullah and others Vs. Hajee C.Abdul Wahaab [d] rep.by its LRs and others*** reported in ***2000 [6] SCC 402***, wherein the Hon'ble Supreme Court has held that the onus of proof of good faith is on the purchaser who takes a plea that he is an innocent purchaser. It is further observed that good faith is a question of fact to be considered and decided on the facts of each case. A combined reading of Section 52 of Indian Penal Code and Section 3 of



A.S.Nos.194 and 261 of 2011

Transfer of Property Act would show that if any other person is in possession of the property, a person who purchased the property without any enquiry cannot be held to be a *bona fide* purchaser. In this case, the possession is different especially when defendants 2 to 8 took possession without any resistance and started developing the property immediately after the sale even before the suit was filed. Since this Court finds no fact or circumstances to doubt the good faith or *bona fides* of defendants 2 to 8, has reason to reject the case of defendants 2 to 8 / appellants herein that they are *bona fide* purchasers of the suit property for value without notice of Sale Agreement. having regard to the finding that the suit for specific performance cannot be enforced as against defendants 2 to 8 in view of Section 19[b] of Specific Relief Act.

27.Learned counsel for the respondent/plaintiff pointed out the stand taken by the 6th defendant who has stated in his written statement that they came to know about the transaction between the plaintiff and the 1st defendant only after receiving Court summons. Referring to the notice issued by plaintiff and the acknowledgment to indicate that defendants 2 to 8 had received the notice issued by plaintiff under Exs.A38 to 45, learned



A.S.Nos.194 and 261 of 2011

counsel submitted that defendants 2 to 8 have pleaded a false case and their statement cannot be taken as one denying knowledge on the date when they purchased the property on 29.08.2005 and though this submission of the learned counsel for the plaintiff is appealing, this Court is unable to accept the contention that defendants 2 to 8 had the knowledge about the Sale Agreement merely because they suppressed the fact that they received notice from the plaintiff even before receiving the suit summons. Admittedly, defendants 2 to 8 purchased the property under Exs.A38 to 45. There is no document to show that defendants 2 to 8 had knowledge about the Sale Agreement even before the date on which they purchased the property. Though the initial burden lies on the defendants to establish that they had no knowledge about the prior Agreement when they purchased the property to claim protection under section 19[b] of Specific Relief Act, the onus shifts on the plaintiff when the subsequent purchasers have come up with a specific plea and there is no evidence to disbelieve their version. A person cannot be expected to prove the negative. The Trial Court failed to frame an issue regarding this fact.

Point [iv]:-

Page 26 of 30



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28. This Court has already seen that the plaintiff has failed to prove the *bona fides* of the Sale Agreement. The plaintiff has failed to prove his readiness and willingness. This Court has already held that defendants 2 to 8 are *bona fides* purchasers of suit properties for value and hence, entitled to protection under Section 19[b] of the Specific Relief Act. During evidence, the plaintiff has categorically admitted that the suit properties have been sold in favour of several persons as plots. The 6th defendant in his evidence, has further stated that several persons who have purchased the plots in the layout had also put up constructions. Learned counsel for the appellants submitted that most of the plots are sold as on date. Since substantial property has now gone into different hands during pendency of suit and none of them are impleaded in the suit, unless the purchasers' enjoyment is disturbed, they are not expected to know about this litigation. Having regard to the admitted facts and circumstances of this case, this Court is not inclined to exercise its discretion in favour of plaintiff to grant a decree of specific performance. Since the relief is discretionary and equitable, the plaintiff cannot be granted the relief of specific performance in the light of subsequent developments, even if the plaintiff proves his case that the



A.S.Nos.194 and 261 of 2011

agreement is true and he was always ready and willing to perform his part of the contract.

29.In view of the aforesaid discussions, this Court is of the view that the Appeal Suits are devoid of merits and are liable to be dismissed.

30.Accordingly, **AS.Nos.194 & 261/2011 stand allowed** and the judgment and decree dated 29.10.2010 made in OS.No.418/2005 by the learned District cum Sessions Judge, Fast Track Court No.5, Tiruppur, is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (A.A.N., J.)
20.12.2022

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Internet : Yes

Index : Yes / No



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To

- 1.The Additional District cum Sessions Court,
Fast Track Court No.5, Tiruppur.
- 2.The Section Officer,
VR Section, High Court,
Chennai.



A.S.Nos.194 and 261 of 2011



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A.S.Nos.194 and 261 of 2011

S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

cda/AP

A.S.Nos.194 & 261 of 2011

20.12.2022