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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2022

DELIVERED ON : 26.04.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

A.S.NO.280 OF 2016

AND

C.M.P.NO.5049 OF 2016

B.Vetriselvan

... Appellant/Defendant

.Vs.

T.Ganesan

... Respondent/Plaintiff

PRAYER:-

Appeal Suit filed under Section 96 and Order XLI Rule 1 of the Code of Civil Procedure against the judgment and decree dated 12.01.2016, passed in O.S.No.14 of 2013 on the file of the IV Additional District Court, Ponneri.

For Appellant : Mr.J.R.K.Bhavanantham

For Respondent : Mr.J.Thilagaraj

J U D G M E N T

The appeal has been filed against the judgment and decree, dated 12.01.2016, passed in O.S.No.14 of 2013 on the file of the IV Additional District Court, Ponneri.

2. The defendant, who suffered a decree for specific performance before the trial Court, is the appellant herein.

3. For the sake of convenience, the appellant shall hereinafter be referred to as "defendant" and the respondent shall be referred to as "plaintiff".

4. The case of the plaintiff is as follows :



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The defendant approached the plaintiff for sale of the suit property, which is a vacant land bearing Plot No.6 in S.No.128/B1C, Surappattu Village, Ambattur, Thiruvallur, for a sale consideration of Rs.21,00,000/- and accordingly, they entered into a sale agreement on 31.03.2012. A sum of Rs.2,00,000/- was paid as advance towards the sale consideration on the same day, i.e. On 31.03.2012.

- The period of the agreement was six months, but time was not the essence of the contract.
- Upon request of the defendant, the plaintiff paid another sum of Rs.2,80,000/- as an additional advance on 10.06.2012 and the receipt of the same was acknowledged by the defendant in writing, on 11.06.2012 on the reverse side of the sale agreement dated 31.03.2012.
- The plaintiff was always willing and ready to execute his part of the sale agreement, however, the defendant evaded to execute the sale deed.
- When the plaintiff approached the defendant in the month of November, 2012, the defendant started giving elusive reply to the plaintiff and when the plaintiff started pressing upon the performance of the contract, the defendant evaded from the plaintiff.
- The plaintiff came to know that the defendant was venturing to sell the suit property to third parties.
- Therefore, the plaintiff issued a legal notice dated 04.12.2012 to the defendant, calling upon the defendant to receive the balance sale consideration and execute the sale deed in his favour.
- The defendant sent a reply notice, dated 10.12.2012, stating that he is not at all aware of any agreement with the plaintiff and he does not possess even a copy of the sale agreement what the plaintiff is referring to, hence, called upon the plaintiff to send a copy of the same, or otherwise, it would be construed as if there was no such agreement.
- The reply notice is apparently false and ill-designed and therefore, it did not deserve any rejoinder.
- The plaintiff also came to know that the defendant was trying to make alterations to the physical features of the suit property.



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Hence, the plaintiff filed the suit for specific performance based on the sale agreement dated 31.03.2012 with an alternative relief of refund of advance amount with interest and in addition, for compensation of Rs.5,00,000/-, for permanent injunction from alienation of suit property to third parties and for costs.

5. The defendant filed his written statement and took a stand as follows:

- The defendant's father, namely, Baskaran, is the owner of the lands in S.Nos.128B/2B3 and 2B4, adjacent to the suit property and he is the one who proposed to sell these properties to the plaintiff.
- The defendant did not voluntarily come forward to sell the suit property to the plaintiff. Only the plaintiff entered contract with the defendant's father for the properties adjacent to the suit property.
- The advance amount of Rs.2,00,000/- was received only by the defendant's father, Baskaran, for the land adjacent to the suit property.
- The defendant did not sign any document and he was not furnished with any copy of the alleged agreement.
- The defendant denied that time is not the essence of the contract.
- The plaintiff did not have enough sources to pay the balance amount and get the sale deed registered in his name.
- The plaintiff had no intention to fulfill his part of the contract, instead, he bargained with the defendant's father for the property which is adjacent to the suit property to resolve the way-passage right.
- The plaintiff has signed as witness in the parent document, dated 03.02.2006, in favour of the defendant executed by his vendor Veeramani, through his Power Agent Velayutham, from whom, the defendant purchased the suit property.
- The suit is bad for non-joinder of the defendant's father Baskaran and the plaintiff has no locus standi to file the suit as against this defendant, since the alleged contract for sale dated 31.03.2012 is not made out for a true intention of the suit property.



➤ Therefore, the suit is liable to be dismissed.

6. On the above pleadings, the trial Court framed the following issues:

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i. "Whether the alleged sale agreement dated 31.03.2012 is not made out with an intention to sell the suit property?

ii. Whether the plaintiff is entitled for the relief of specific performance as claimed in the suit ?

iii. Whether the plaintiff is entitled for the relief of permanent injunction against the defendant in respect of suit property ?

iv. To what reliefs ?"

7. On the side of the plaintiff, P.W.1 was examined and five documents were marked as Exs.A1 to A5. On the side of the defendant, D.W.1 was examined and two documents were marked as Exs.B1 and B2.

8. The trial Court, on considering the oral and documentary evidence on record, came to a conclusion that the sale agreement (Ex.A2) is true and valid and was executed only with the intention to sell the suit property and that the plaintiff was always ready and willing to execute his part of the contract, hence, by the judgment and decree dated 12.01.2016, decreed the suit and granted the relief of specific performance and injunction as prayed for, with costs.

9. Challenging the judgment and decree, dated 12.01.2016, passed by the trial Court, the defendant has filed the present appeal before this Court.

10. Mr.J.R.K.Bhavanantham, learned counsel for the appellant/defendant, made the following submissions before this Court :

- The trial Court has not framed an issue with regard to readiness and willingness of the plaintiff.
- The plaintiff has not proved his readiness and willingness to perform his part of the contract.
- The agreement (Ex.A2) is an unregistered document, hence, the suit for specific performance on the strength of an unregistered document is not maintainable in law.

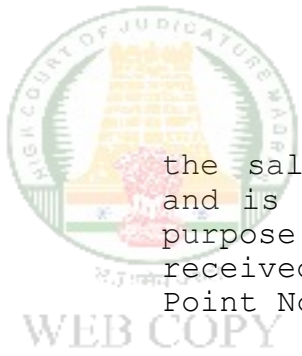


x. To what other reliefs, the plaintiff is entitled to ?

Point Nos.1 and 2 :

14. The defendant has taken a specific defence that he is not at all aware of the sale agreement dated 31.03.2012 (Ex.A2), which the plaintiff refers to in his legal notice (Ex.A3) and has taken a further stand that, it was the defendant's father who entered into agreement with the plaintiff for sale of some other properties adjacent to the suit property, and in any event, the defendant has not entered into any agreement with the plaintiff, nor has he received any amount from the plaintiff, rather, the defendant signed in blank papers only for the purpose of obtaining patta, since the plaintiff was an erstwhile Village Administrative Officer. However, to prove all these, the defendant has not chosen to enter into the witness box, for the reasons best known to him, rather he has examined his father/Power Agent as D.W.1. But, the father of the defendant (D.W.1), in the cross-examination, has categorically admitted the signature of his son (defendant) in each and every page of the sale agreement dated 31.03.2012, i.e. Ex.A2. He has also admitted the signature of his son (defendant) dated 11.06.2012 in the acknowledgment for receipt of further advance amount of Rs.2,80,000/- on 10.06.2012, made on the reverse side of the sale agreement Ex.A2. D.W.1 has further admitted that his son is a B.Sc., graduate and is working as News Editor in a popular News Channel.

15. Therefore, this Court is of the opinion that the act of the defendant, who is a prudent literate and holding a responsible post in a leading News Channel, in signing blank papers knowing very well about its consequences, is far from practicality and is not convincing. Further, there is no evidence, much less an averment on the side of the defendant to show that he has initiated any criminal complaint against the plaintiff for fabrication of documents using his signature on blank papers. There is no evidence on the side of the defendant to disprove the execution of Ex.A2. Mere signing of the plaintiff as witness in the parent document of the defendant does not bar the plaintiff from purchasing the property for a valid consideration, unless there is any evidence on record to prove such an allegation. When the title of the defendant to the suit property is admitted by both the parties and the signature of the defendant in Ex.A2 is also admitted by the father of the defendant (D.W.1) himself, both in the document as well as in the endorsement for receipt of further amount of Rs.2,80,000/- dated 11.06.2012, this Court does not find any ground to interfere with the findings of the trial Court that



the sale agreement dated 31.03.2012 (Ex.A2) is true and valid and is intended only for the purpose of sale, not for any other purpose as alleged by the defendant, and the defendant has received a sum of Rs.4,80,000/- as advance from the plaintiff. Point Nos.1 and 2 are answered accordingly.

Point No.3 :

16. Based on settled legal propositions, it can be said in one breath that time is not the essence of the contract relating to immovable properties, but in the same breath, it has to be said that the time stipulated in the contract should have some significance. However, in such circumstances, it is trite that Courts have to look into the facts of each and every case and the conduct of the parties to verify as to whether time is the essence of the contract. In the lis on hand, it is true that the sale agreement (Ex.A2) stipulates a period of six months. But, the plaintiff has pleaded and deposed in his evidence that, though a time period of six months is stipulated in Ex.A2, time is not the essence of the contract. But, the defendant who simply avers that time is the essence, has not even deposed to that effect in his evidence, nor has he at least put forth a suggestion to the plaintiff during the cross-examination with regard to time as essence. On a perusal of the entire oral and documentary evidence on either side, this Court cannot find anything to disprove that time is not the essence of Ex.A2. Moreover, there is no specific clause in the agreement (Ex.A2) for automatic cancellation or expiry of the agreement after the period of six months, to make time as essence of the contract.

17. The learned counsel for the plaintiff placed reliance on a judgment of the Hon'ble Supreme Court in Balasaheb Dayandeo Naik (dead) through LRs and others v. Appasaheb Dattatraya Pawar [2008 (1) CTC 530], wherein, it is held that, mere fixation of time within which contract is to be performed, does not make stipulation as to time as essence of contract. In the light of the above decision and also having regard to the facts of the case and conduct of the parties in not placing much emphasis on time as essence, this Court concurs with the view of the trial Court that time is not the essence of the sale agreement Ex.A2. Point No.3 is answered accordingly.

Point No.4 :

18. Relying upon Section 49 of Registration Act, 1908, the learned counsel for the defendant submitted that an unregistered document cannot be accepted as evidence before the Court. Per contra, the learned counsel for the plaintiff, by placing



reliance on the judgments of this Court in Minor Ravi Bharathi v. P.Balasubramani and another [2014 (3) MWN (Civil) 578] and K.Rangasamy v. A.Shanmugam and others [C.R.P. (NPD) No.3799 of 2016, dated 05.12.2016], submitted that unregistered documents can be accepted in a suit for specific performance.

19. In Minor Ravi Bharathi (supra), after analysing the provisions under Section 49 of the Registration Act, 1908, and the ratio laid down by the Hon'ble Supreme Court in Bondar Singh and others v. Nihan Singh [2003 (2) CTC 635 (SC)] and R.Munusamy v. G.Krishttapillai [2014 (7) MLJ 861], this Court has held as follows :

"9.The very same provision of law was considered by this Court in a recent decision reported in 2014 (7) MLJ 861 : 2014 (5) LW 59 (R.Munusamy Vs. G.Krishttapillai), wherein this Court followed the decision of the Honourable Supreme Court reported in AIR 2003 SC 1905 : 2003 (2) MLJ 122 : 2004 (1) LW 706 (SC) (Bondar Singh and others Vs. Nihal Singh). This Court observed in paragraphs 8 and 9 of this said decision as follows:

"8. A careful perusal of the abovesaid provision of law would indicate that a document required to be registered under Section 17 of the Registration Act, 1908, if not registered, it shall not be received as evidence of any transaction affecting such property or conferring such power. Though such an embargo is put under Section 49(c) of the said Act, the proviso made to the said Section however contemplates that such unregistered document affecting immovable property may be received as evidence either in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. Thus, it is evident that the proviso to Section 49 permits receipt of such unregistered document as evidence of any collateral transaction.

9. Keeping the above provision of law in mind, if the facts and circumstances of this case are considered, it would only show that the order passed by the Court below cannot be sustained. The contention of the learned counsel for the respondents, confining his submissions based on Section 49(c) alone, cannot be accepted, especially when the



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proviso, as discussed supra, permits marking of such document for collateral purpose. The other contention of the learned counsel for the respondents, namely the proviso to Section 49 of the said Act is applicable only to the suits for specific performance, is also liable to be rejected, since a careful reading of the said proviso would show that the same is applicable not only in respect of the suit for specific performance, but also in respect of the other suits where such document is intended to be marked as evidence for any collateral transaction."

10. In view of the specific provision made under the proviso to Section 49 of the Registration Act, 1980, allowing the unregistered document affecting immovable property, to be received as evidence of a contract in a suit for specific performance, the contentions raised by the learned counsel for the petitioner cannot be sustained and the same is liable to be rejected. The trial Court has rightly rejected the application filed by the petitioner seeking to discard the unregistered agreement of sale, dated 31.8.2005, with which I find no infirmity or illegality."

The above decision has been followed in K.Rangasamy's case (supra) also.

20. Therefore, in the light of the above decisions of this Court, the contention of the learned counsel for the defendant, that the unregistered sale agreement Ex.A2 cannot be relied upon, stands rejected. Point No.4 is answered accordingly.

Point No.5:

21. Time and again, it has been held by the Hon'ble Supreme Court that, in a suit for specific performance, the plaintiff should show his readiness and willingness to perform his part of the contract. However, it is surprising to note that the trial Court has not even framed an issue with regard to the readiness and willingness of the plaintiff. Anyways, this Court, being an appellate Court, takes up the said issue and proceeds to test the readiness and willingness of the plaintiff in performing his part of the contract.

22. The learned counsel for the defendant placed reliance upon the judgment of the Hon'ble Supreme Court in Sukhwinder



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Singh v. Jagroop Singh & another [2020 (2) L.W. 796] and submitted that the balance sale consideration has been paid by the plaintiff only after the decree was passed and the plaintiff has not shown his readiness or financial capacity as on the date of the institution of the suit or before that. The learned counsel further relied on the judgment of the Hon'ble Supreme Court in the case of Shenbagam & others v. K.K.Rathinavel [Civil Appeal No.150 of 2022, dated 20.01.2022] and submitted that the plaintiff has to show continuous readiness and willingness in performing his part of the contract and the conduct of the plaintiff throughout the transaction has to be taken into account, however, in this case, the plaintiff has only made mere assertion regarding readiness and willingness but has not sent any communication till he sent the legal notice, nor the plaintiff has shown his financial capacity at the relevant point of time.

23. Contrarily, the learned counsel for the plaintiff relied on the judgment of the Hon'ble Supreme Court in the case of Nathulal v. Phoochand [1969 (3) SCC 120], wherein, it is held that "To prove himself ready and willing, a purchaser has not necessarily to produce the money or to vouch a concluded scheme for financing the transaction." He further relied upon the judgment of the Hon'ble Supreme Court in the case of Motilal Jain v. Ramdasi Devi (Smt) and others [2000 (6) SCC 420], wherein, it is held that averment as to readiness and willingness in plaint is sufficient, if the plaint, read as a whole, clearly indicates that the plaintiff was always and is still ready and willing to fulfill his part of the obligations. The learned counsel also relied upon the judgment of this Court in the case of Adilingam and another v. Narayanan and others [2011 (3) MWN (Civil) 559], wherein, it is held that it is not mandatory for the plaintiff to actually tender to the defendant or to deposit in Court any money, except when there is direction to such effect by Court; when Statute does not compel or prescribe person to deposit balance sale consideration before filing of suit, then even if there is agreement to contrary, there is no necessity to deposit such amount.

24. With the above backdrop, it can be seen that the plaintiff, apart from making averments in plaint as to his readiness and willingness to perform his part of the contract, has stated in his legal notice (Ex.A3), as follows :

"My client hereby calls upon you to come forward to execute the absolute sale deed registered in favour of my client or his nominee or nominees in respect of the schedule property by receiving the remaining amount of Rs.16,20,000/- (Rs.Sixteen lakhs and



twenty thousand only) within 10 days from the date of receipt of this notice ..."

Further, the plaintiff (P.W.1) has deposed in his evidence as follows :

"I submit that I was always and am still willing and ready by all means to perform my part of the contract. I am having the balance money. I am ready to deposit the balance sale consideration with this Hon'ble Court, if ordered so."

It is pertinent to note that the plaintiff has deposited the balance sale consideration of Rs.16,20,000/- before the trial Court on 10.02.2016. As held in Nathulal (supra) and Adilingam and another (supra), it is not mandatory on the part of the plaintiff to pay the entire balance sale consideration to the defendant or deposit the same with the Court before institution of the suit itself. However, the plaintiff has fairly tendered his readiness to deposit the balance sale consideration with the Court in his proof affidavit, as extracted supra.

25. Though it is found in foregoing paragraphs of this order that time is not the essence of the contract herein (Ex.A2), the plaintiff, after paying the initial advance amount of Rs.2,00,000/- on the date of the agreement Ex.A2, has further acted upon the contract within the time stipulated therein, by performing the contract in-part, by paying a sum of Rs.2,80,000/- on 10.06.2012 and admittedly, the same has been received and acknowledged by the defendant. The judgment in Sukhwinder Singh's case (supra) relied upon by the learned counsel for the defendant cannot be applied to the facts of the case, since time is not the essence of the contract herein and the conduct of the parties herein, as a whole, does not give even a shred of significance to the period of six months mentioned in the agreement. It can also be seen from the evidence of both sides that the plaintiff was an erstwhile Village Administrative Officer and now doing real estate business. Moreover, there is no evidence on the contrary to show that the plaintiff did not have sound financial capacity to pay the balance sale consideration, and when the plaintiff has actually paid the balance sale consideration before the Court, this Court can safely hold that the plaintiff has always been ready to perform the contract Ex.A2.

26. Insofar as willingness is concerned, as held in the case of Shenbagam and others (supra), the conduct of the parties have to be taken note of. The sale agreement (Ex.A2) was entered into between the parties on 31.03.2012 and on demand, a further advance amount was paid on 10.06.2012, which was received by the



defendant without any denial. The plaintiff (P.W.1) has stated in his proof affidavit as follows :

"During the third week of November, 2012, I approached the defendant and informed him that he must be ready to execute the sale deed in my favour by the first week of December, 2012. But, the defendant started giving elusive replies. Then continuously for five days, I was making frantic efforts to get in touch with the defendant, but the defendant was evading me."

Thereafter, the plaintiff has caused a legal notice on 04.12.2012 (Ex.A3) calling upon the defendant to receive the balance sale consideration and execute the sale deed in his favour, based on the sale agreement Ex.A2. After receipt of reply notice from the defendant stating that he is not aware of Ex.A2, the plaintiff has filed the suit on 23.01.2013.

27. Therefore, it can be clearly seen that the plaintiff has followed up the contract continuously and has shown his willingness to pay the balance sale consideration and get the sale deed executed in his favour. The learned counsel for the defendant, relying upon the judgment in Shenbagam and others (supra) would submit that the plaintiff has not sent any written communication to the defendant within the time period of six months or till the issuance of legal notice (Ex.A3), which shows his non-willingness. In that context, the judgment in Shenbagam and others (supra) is distinguishable on facts obtaining in the case on hand, since, the plaintiff therein has remained totally inactive without any oral or written communication for more than 2½ years, whereas, in this case, there is no significant delay or inactivity on the part of the plaintiff from the date of the payment of further advance amount, i.e., on 10.06.2012 till the issuance of legal notice, i.e., on 04.12.2012, which is less than six months, more particularly, when time is not the essence of the contract. If the time had been the essence of the contract or if it was the case of the defendant that the entire contract was for some urgent need of money, particularly within the stipulated time period, or if there were specific clauses in Ex.A2 like automatic cancellation or expiry of the contract to accentuate the period of six months to be a significant one for performance, or if the conduct of the parties throughout the suit or appeal throws some force on the stipulated time period, this Court could have taken a different approach, however, in the present case, there is nothing as stated above, therefore, this Court need not lay much emphasis on the minor laches or delays on the part of the plaintiff to hold against the plaintiff. Such a view of this Court has been fortified by the judgment of the Hon'ble Supreme Court in the case of Ferrodous



Estates (Pvt.) Ltd. v. P.Gopirathnam (dead) and others [Civil Appeal No.13516 of 2015, dated 12.10.2020], wherein, it has been held as follows :

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"The resultant position in law is that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay or laches."

28. Therefore, in the light of the above, this Court holds that the plaintiff has shown his readiness and willingness to perform his part of the contract. Point No.5 is answered accordingly.

Point Nos.6 to 8 :

29. When it comes to the question of grant of relief of specific performance, which is an equitable relief, the conduct of the defendant also comes into play, in view of the decisions of the Hon'ble Supreme Court in the cases of Pachiappan & others v. S.P.Koon Mari reported in [1996 (2) LW 1] and Silvey & others v. Arun Varghese and others [(2008) 11 SCC 45]. The defendant, in his reply notice (Ex.A4) as well in his written statement, has taken a specific plea that he is not aware of the sale agreement dated 31.03.2012 (Ex.A2). The defendant has further stated in the written statement that the advance amounts were received only by his father and not by him. However, this Court while answering Point Nos.1 and 2, has found that the defendant has executed the sale agreement (Ex.A2) with the plaintiff on 31.03.2012 and has received the amount of Rs.4,80,000/- from the plaintiff. The defendant has also taken a plea that his signature was obtained in blank papers for obtaining patta for his land, however, the said allegation has also been found to be false. Therefore, the defendant has not approached the Court with clean hands. He has taken inconsistent rather false pleas before this Court. In Shoba Viswanathan v. D.P.Kindgly [1996 (1) LW 721], the Hon'ble Supreme Court has held that the discretionary relief in equity cannot be granted to a person who has come with unclean hands.

30. The learned counsel for the defendant contended that the relief of specific performance cannot be granted, when the plaintiff himself has sought for an alternative remedy. However, the learned counsel for the plaintiff has relied upon the judgment of the Hon'ble Supreme Court in the case of P.C.Varghese v. Devaki Amma Balambika Devi and others [2005 (8) SCC 486], wherein, it has been held that "an alternative plea of refund of earnest amount and damages cannot itself be a bar to claim a decree for specific performance of contract."



Therefore, the contention of the learned counsel for the defendant in this regard, has no legs to stand.

31. Having found a true and valid contract between the plaintiff and the defendant and having found that the plaintiff has shown his readiness and willingness to perform his part of the contract and also having regard to the conduct of the defendant, equity shifts in favour of the plaintiff and hence, this Court finds that the plaintiff is entitled to the relief of specific performance and the finding of the trial Court to that effect, warrants no interference.

32. Consequently, the finding of the trial Court entitling the plaintiff to the relief of permanent injunction also does not warrant any interference by this Court. Point Nos.6 to 8 are answered accordingly.

Point No.9 :

33. Having regard to the facts and circumstances of the case and as the plaintiff (P.W.1) has admitted in his evidence that it is not proper for him to have claimed compensation, this Court is not inclined to grant any compensation to the plaintiff. Point No.9 is answered accordingly.

Point No.10 :

34. Since the plaintiff is entitled to the relief of specific performance and injunction, no other reliefs are necessary to be granted. Therefore, this Court concurs with the finding of the trial Court to that effect. Point No.10 is answered accordingly.

35. When this Court has already found that the defendant has executed an independent sale agreement (Ex.A2) with his full knowledge with an intention to sell the suit property to the plaintiff and has received the advance sale consideration and the plaintiff has deposited the balance sale consideration for the purpose of purchase of the suit property, the vague contentions of the learned counsel for the defendant with regard to non-furnishing of a copy of the sale agreement to the defendant and that the suit property suffers from certain issues with regard to passage rights and the non-joinder of Baskaran, who is the defendant's father and owner of the adjacent properties, and that the plaintiff is a broker and is not interested in purchasing the property, do not go to root of the case of the plaintiff, nor do they have any impact on a suit for specific performance.



36. Therefore, for all the reasons set out above, this Court does not find any merit in the appeal and the impugned judgment and decree of the trial Court do not warrant interference by this Court.

37. Accordingly, this appeal is dismissed and the judgment and decree of the trial Court, dated 12.01.2016, passed in O.S.No.14 of 2013, are confirmed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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2. The Section Officer , | with a direction to send back
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High Court, Madras. | below, if any, immediately

+3ccs to Mr.J.Thilagaraj, Advocate, S.R.No.28268
+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.28322

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