



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2022
DELIVERED ON : 24.03.2022

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

A.S.Nos.38 & 83 of 2015

M.N.Ramalingam ... Appellant / 1st Defendant
in both A.S

Vs.

1.Mrs.Latha Rani
W/o. R.Kumar ...1st Respondent / Plaintiff /
Respondent in A.S.No.38 of 2015

2.Dr.Sanjay Vijayaraj
S/o. L.Vijayaraj ...Respondent No.2 / Defendant No.2
in A.S.No.38/2015
...Respondent / Plaintiff
in A.S.No.83/2015

PRAYER in both A.S: Appeal Suit filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 & 2 of Civil Procedure Code, to set aside the decree and judgment dated 25.09.2014 in O.S.Nos.24 of 2011 (38/2015) and 37 of 2013 (83/2015) on the file of the learned District Judge, Nilgris at Udagamandalam.

For Appellant in both Appeals : Mr.R.Subramanian
For Respondents : Mr.C.A.Diwakar
in A.S.No.38 of 2015
: Mr.S.B.Viswanathan for R2
in both Appeals

COMMON JUDGMENT

These Appeals are filed against the judgment and decree of the learned District Judge, Nilgris at Udagamandalam in O.S.Nos.24 of 2011 and 37 of 2013 dated 25.09.2014.

2. The brief facts which are relevant to the case are as follows:

This is an Appeal filed by the First Defendant against the Judgment and decree of the learned trial Judge, Nilgris in O.S.No.24 of 2011. As per the plaint averments, the Plaintiff



WEB COPY

had entered into a sale agreement with the First Defendant in O.S.No.24 of 2011 dated 16.02.2011. As per the recitals in the sale agreement, the First Defendant sought payment of an advance amount of Rs.3,00,000/- on the date of execution of sale agreement dated 16.02.2011. Accordingly, Rs.3,00,000/- was paid and the balance amount of Rs.17,00,000/- is to be paid within three months. Accordingly, Plaintiff has paid Rs.7,00,000/- on 16.04.2011, the First Defendant had acknowledged the same and the balance amount of Rs.10,00,000/- has to be paid within three months from the date of execution of the sale agreement (i.e.,) on 16.05.2011. In the mean while, the First Defendant had sent a legal notice claiming that the Plaintiff had not acted as per the terms of the sale agreement, therefore, he is rescinding the sale agreement entered into with the Plaintiff and also refunding the advance amount already paid to the First Defendant and accordingly, the First Defendant paid back the same through cheque in favour of the Plaintiff. Subsequently, the First Defendant entered into sale agreement with the Second Defendant. Therefore, the Plaintiff had immediately filed the Suit seeking Specific Performance of the contract. The first and Second Defendants entered appearance and engaged counsel and filed the written statements. Thereafter, issues were framed and subsequently trial was conducted.

2.1. In the trial, the Plaintiff examined himself as P.W-1 and marked documents under Ex.A-1 to Ex.A-4. On the side of the Defendants, the First Defendant had examined himself as D.W-1, Second Defendant had examined as D.W-2 and another independent witness was examined as D.W-3 and as Ex.B-1 to Ex.B-6 were marked as documents.

2.2. On appreciation of the evidence, the learned trial Judge decreed the Suit for Specific Performance. Also, it is to be noted that the Second Defendant also filed a Suit in O.S.No.37 of 2013 for Specific Performance. Both the Suits were taken up for trial and by the Common Judgment dated 25.09.2014, the learned trial Judge had decreed the Suit for Specific Performance filed by the Plaintiff/First Respondent and dismissed the Suit for Specific Performance filed by the Second Defendant against the First Defendant.

3. Aggrieved by the judgment and decree of the learned trial Judge in O.S.No.24 of 2011 filed by the Plaintiff and dismissal of the Suit for Specific Performance in O.S.No.37 of 2013 filed by the Second Defendant, First Defendant had preferred both these Appeals.



4. The First Defendant in O.S.No.24 of 2011 on the file of the learned District Judge, Nilgris is the Appellant in A.S.No.38 of 2015. The Respondents are the Plaintiff and the Second Defendant in O.S.No.24 of 2011 is the Appellant in A.S.No.38 of 2015. The First Respondent filed the Suit for Specific Performance of the agreement of sale entered into between the First Respondent and the Appellant dated 16.02.2011 with an alternative prayer for refund of the advance amount with 18% interest. At the time of entering into the sale agreement, the sale price of the properties was fixed at Rs.20,00,000/-. On the date of the execution of the sale agreement i.e., on 16.02.2011, the Plaintiff had paid an advance amount of Rs.3,00,000/- and agreed to pay the balance amount in installments viz., Rs.7,00,000/- to be paid on or before 31.03.2011 and the balance 10,00,000/- within three months from the date of the agreement. Clause 8 of the agreement states that if the Purchaser does not pay the balance sale consideration within the stipulated time, the vendor is entitled to rescind the agreement and appropriation of 10% of the advance amount. The above Clause also states that if the vendor failed to execute the sale deed, the Purchaser is entitled to Specific Performance of contract for sale. Clause 11 of the above agreement states that vendor shall discharge the mortgage created in favour of the Indian Overseas Bank, Kurudampalayam before the stipulated date. According to the Plaintiff, though he was ready and willing to perform his part of the contract, the First Defendant did not come forward to execute the sale deed. Instead the First Defendant cancelled the sale agreement. Therefore, the Plaintiff was forced to file the Suit seeking the relief of Specific Performance of the contract for sale.

5. The First Defendant contended that the sale consideration is Rs.22,00,000/- and not Rs.20,00,000/-. The sum of Rs.7,00,000/- was not paid before 31.03.2011 as per the agreement, but the same was paid only on 16.04.2011. The First Defendant had made available copies of the title deed, chitta, etc., but Plaintiff did not come forward to pay the balance amount and get the sale deed executed in his favour before the stipulated date i.e., on 16.05.2011. Therefore, the First Defendant returned the advance amount of Rs.3,00,000/- as per Clause 8, by a cheque dated 11.06.2011 and revoked the agreement of sale dated 16.02.2011. Thereafter, the First Defendant entered into a sale agreement with the Second Defendant.

6. After filing of the written statement by the first and Second Defendants, the trial Court had framed issues. On the side of the Plaintiff, except the ipsi-dixit of the Plaintiff,



no evidence was adduced. On the side of the Defendant, the First Defendant examined himself as D.W-1, other supporting witnesses were examined as D.W-2 and D.W-3. On the side of the Plaintiff documents were marked as Ex.A-1 to Ex.A-4 and on the side of the Defendants documents were marked as Ex.D-1 to Ex.D-6.

7. The Suit in O.S.No.37 of 2013 has been filed by the Second Defendant in O.S.No.24 of 2011 against the First Defendant seeking the relief of Specific Performance of contract of sale entered into with the Second Defendant in O.S.No.24 of 2011 by the First Defendant dated 23.05.2015. The learned trial Judge by his judgment decreed the Suit in O.S.No.24 of 2011 and dismissed the Suit in O.S.No.37 of 2013 filed by the Second Defendant. The First Defendant in O.S.No.24 of 2011 had filed the present Appeal.

8. Thiru. R.Subramaniam, learned counsel appearing for the First Defendant who is the Appellant in A.S.No.38 of 2015, had submitted his written arguments. As per the submission of the learned counsel for the Appellant, the trial Court failed to see that Section 16 (c) of Specific Relief Act is mandatory, unless the Plaintiff establishes readiness and willingness, the Plaintiff is not entitled to Specific Performance. The Court below ought to have seen that the Plaintiff had not established readiness and willingness as per the recitals in the agreement, time is the essence of the contract. Clause 8 states that if the Purchaser does not pay the sale consideration within the stipulated time, the vendor is entitled to rescind the agreement. Therefore, the parties have agreed that the time is the essence of the contract. Further, as per the sale agreement, the Plaintiff has to pay the balance sale consideration within three months from 16.02.2011 i.e., on or before 16.05.2011. Therefore, as per Clause 8, the Appellant, who is the vendor, has rescinded the agreement.

8.1. The Court below over-looked that when there is a specific Clause stipulating the payment of sale consideration within the stipulated time, otherwise, the agreement works out itself. Further, the Appellant, exercising Clause 8 has rescinded the agreement on 13.06.2011 and also returned the advance amount. This clearly proves that the Plaintiff is not entitled to Specific Performance of the contract. The Plaintiff ought to have challenged the cancellation of the agreement since it had been executed prior to the Suit. The reported decision in 2019 (6) CTC 348 in the case of Mohindar Kaur Vs. Sant Paul Singh, the Hon'ble Supreme Court had held that in the absence of



challenge of cancellation of agreement, the Suit for Specific Performance has to fail. The Hon'ble Supreme Court is reiterated its earlier Judgment reported in 2013 (15) SCC 27 in the case of I.S.Sikandar (Dead) by Lrs. Vs. K.Subramani and others wherein it had been held that the Suit for Specific Performance simplicitor is not maintainable in the absence of any challenge to the cancellation of agreement and seeking consequential declaratory relief. In this case, the First Defendant vide notice dated 13.06.2011 revoked the agreement invoking the Clause 8 of the agreement, thereby informing the Plaintiff about the revocation of the sale agreement. The First Defendant also returned the advance amount. Hence the following Judgments reported in 2019 (6) CTC 348 in the case of Mohindar Kaur Vs. Sant Paul Singh and 2013 (15) SCC 27 in the case of I.S.Sikandar (Dead) by Lrs. Vs. K.Subramani and others, the Suit filed by the Plaintiff seeking Specific Performance of the contract had to be dismissed. Though the First Defendant returned the advance amount on 11.06.2011, the Plaintiff sent a reply only on 06.07.2011. The Court below overlooked that on 25.05.2011 itself the mortgage had been discharged and after the failure of the Plaintiff to perform his part of the contract, the Appellant had to enter into the sale agreement with the Second Defendant. P.W-1 had admitted in his evidence that the parties agreed to complete the transaction within three months, failing which the Defendant is entitled to revoke the agreement. P.W-1 also admitted that the First Defendant issued notice on 13.06.2011. He had not even stated in his evidence as to why he did not complete the transaction within the stipulated time. D.W-1 in his cross examination had stated that after issuing notice of revocation on the Plaintiff, the First Defendant entered into a sale agreement with the Second Defendant one month thereafter and he had informed the Plaintiff. The First Defendant had also examined the independent witness as D.W-3 who had stated that the First Defendant after cancelling the agreement with the Plaintiff entered into the sale agreement with D-2. The Plaintiff had not even sent a notice seeking Specific Performance of contract for selling the property. On the other hand, it was the Appellant/First Defendant who sent the first notice on 13.06.2011 stating that as per Clause 8, he had revoked the sale agreement entered into between the First Defendant and the Plaintiff. Therefore, the learned trial Judge failed to appreciate the evidence in proper perspective and had decreed the Suit. The Suit for performance favouring the Plaintiff. Aggrieved by the same, the First Defendant had preferred this Appeal, the Appeal is to be allowed and the Judgment of the learned trial Judge decreeing the Suit for Specific Performance of the contract has to be set aside. The learned counsel for the Appellant/First Defendant had also relied on the reported ruling of the Hon'ble Supreme Court in 2019-9-SCC-358 in the case of Mohindar Kaur Vs. Sant Paul Singh



Therefore, no revocation had taken place. The First Defendant is well aware of the same as seen from his reply notice dated 19.08.2011 to the Second Defendant under Ex.B-4 clearly stating that he is negotiating a revocation of Ex.A-1 with the Plaintiff. The First Defendant had tampered with his copy of the Agreement under Ex.B-1 to claim that the sale consideration is Rs.22,00,000/- and Rs.12,00,000/- is the balance sale consideration. The First Defendant had filed the same in Court in order to mis-lead the Court. Thus, the Plaintiff having paid an advance amount of Rs.3,00,000/- on 16.02.2011 and an additional advance of Rs.7,00,000/- on 16.04.2011 was awaiting for the First Defendant to clear the mortgage and to furnish copies of title deeds to have the sale executed in her favour. The First Defendant having failed (i) to clear the mortgage and intimate the same to the Plaintiff (ii) to furnish the copies of the documents of title deeds, Chitta, etc., and having tampered with the agreement under Ex.B-1, the First Defendant had absolutely no right to unilaterally revoke the agreement under Ex.A-1. The First Defendant for the first time claimed in the written argument filed before this Court that the mortgage was cleared on 25.05.2011 itself (at para -7-H) and after failure of the Plaintiff to perform her part of contract, the First Defendant entered into the agreement of sale with the Second Defendant. This is apparently falsehood as seen from the fact (i) First Defendant entered into the sale agreement under Ex.B-2 with the Second Defendant on 23.05.2011 (ii) the alleged clearing of mortgage is on 25.05.2011. Therefore, the claim of the First Defendant that he had cleared the mortgage and had informed the Plaintiff that he was ready to execute the sale deed in favour of the Plaintiff and that the Plaintiff failed to perform his part of contract under Ex.A-1 is ex-facie an absolute falsehood. The agreement under Ex.A-1 remains valid and subsisting as seen from the First Defendant's reply notice dated 19.01.2011 to the Second Defendant under Ex.B-4, claiming that the revocation of Ex.A-1 is being negotiated with the Plaintiff. The Second Defendant had entered into the agreement for sale under Ex.B-2 being fully aware of it. Ex.A-1 is valid and subsisting on the date of filing of the Suit. There is no valid revocation and hence, necessity to seek declaration of alleged revocation did not arise. The Plaintiff placed reliance on the reported ruling of Hon'ble Supreme Court reported in 2017 SCC Online Mad 35906 (DB) in the case of Gajendran and others Vs. Thangavel (Para Nos.16 and 17) and 2019 SCC Online Mad 23242 (SJ) in the case of Syed Ibrahim and others Vs. R.M.SP.Natarajan Chettiar and others (Para Nos.21 to 31).

9.1. The question whether the revocation, if any, is valid and binding was issue 5 in O.S.No.24 of 2011. The Plaintiff and the First Defendant had led evidence on the Issue.



The trial Court had rendered specific finding on sale agreement under Ex.A-1 dated 16.02.2011 was not validly revoked by the First Defendant. Therefore, the First Defendant's claim that the agreement under Ex.A-1 having been revoked by First Defendant, Specific Performance of Ex.A-1 cannot be sought without seeking relief of declaration that the revocation as not valid is not tenable. The trial Court after discussing the evidence that had been let in found Issue 5 in favour of the Plaintiff. Therefore, the ratio laid down in the Judgments in 2013 (15) SCC 27 and 2019 (9) SCC 358 cited by the First Defendant is not applicable to the facts of this case. The contention in the written argument in Para No.7(f) that the Suit is not maintainable for failure to seek a declaration is liable to be rejected as its contention is raised for the first time in the written argument and have never been raised in the written statement nor even in the grounds of Appeal in the Appeal Suit. The Plaintiff reliance on the reported ruling of the Hon'ble Supreme Court reported in (2017) 4 SCC 654 (Para No.30) and 2018 SCC Online Del 9442 (Para Nos.31 and 32). Therefore, the First Respondent in the Appeal/Plaintiff seeking for dismissal of this Appeal as having no merits and confirmation of the decree of the trial Court in O.S.No.24 of 2011.

10. Mr.S.B.Viswanathan, learned counsel for the Plaintiff in O.S.No.83 of 2015 who is the Second Respondent in this Appeal submitted his arguments. As per his arguments, he had entered into the sale agreement with the First Defendant. He was not aware of the sale agreement entered into by the First Defendant with the Plaintiff in O.S.No.24 of 2011 which was a sale agreement entered into with the Second Defendant by the First Defendant. Further, he came to know about the earlier agreement entered into with the First Defendant, only after receipt of grounds in O.S.No.24 of 2011 as the Second Defendant.

11. On consideration of the rival submissions, the point for determination are as follows:

Whether the Suit for Specific Performance filed by the Plaintiff in O.S.No.24 of 2011, which was decreed by the learned trial Judge is to be upheld in Appeal and this Appeal is to be dismissed?

12. On consideration of the entire evidence under P.W-1, the documents under Ex.A-1 to Ex.A-4 and D.W-1 to D.W-3 and the documents under Ex.B-1 to Ex.B-6 and on perusal of the entire Judgment, it is found that the learned trial Judge had properly appreciated the evidence and had arrived at a just conclusion that the Suit for Specific Performance filed by the



WEB GATES

Plaintiff in O.S.No.24 of 2011 is maintainable. Particularly, when the Plaintiff was willing and ready to perform his part of contract, the sale agreement entered into with the Plaintiff in O.S.No.24 of 2011 by the First Defendant dated 16.02.2011 was subsisting. The terms of the contract under Clause 6, the First Defendant had to furnish the copies of the title deed, Chitta, etc., after clearing the mortgage with the Indian Overseas Bank as agreed under Clause 11 and intimate to the Plaintiff. Especially, as per the terms of the agreement, the amount received as advance on 16.02.2011, Rs.3,00,000/- on the date of execution of sale agreement under Ex.A-1 and further Rs.7,00,000/- on 16.04.2011 which was acknowledged by the First Defendant towards clearance of the mortgage. Particularly, within three months time specified by the First Defendant from 16.02.2011 and thereafter balance amount to be paid within 16 days. After receiving Rs.10,00,000/- in total, when the First Defendant had not cleared the mortgage executed by him with the Indian Overseas Bank under Clause 11. Also the first Defendant had not furnished the copies of the title deed and Chitta, etc., in accordance with the Clause 6 and had altered the recitals in the sale agreement entered into with the Plaintiff under Ex.A-1 in its copy under Ex.B-1. Also the First Defendant altered the figure as Rs.22,00,000/-. By way of the manipulation, without the knowledge of the Plaintiff in O.S.No.24 of 2011, the endorsement made on 16.04.2011 in Ex.B-1 by adding the line, "balance amount payable is Rs.12,00,000/-". During the subsistence of Ex.A.1 sale agreement dated 16.02.2011, the First Defendant had entered into the sale agreement with Second Defendant on 23.03.2011. The First Defendant had cleared the mortgage with the Indian Overseas Bank only on 25.05.2011. Without informing the mortgage clearance and without furnishing the copies of the title deeds and Chitta, etc., to the Plaintiff in O.S.No.24 of 2011 and merely sending a notice under Ex.A-2 cancelling or rescinding the contract of sale agreement entered into with the Plaintiff under Ex.A-1 and without furnishing the copies of title deed and copies of other revenue document is found unacceptable as per the terms of contract of the sale agreement under Ex.A-1. Further, the manipulation resorted to by the First Defendant under Ex.B-1 including the line as though the First Defendant had informed the Plaintiff for fixing the sale price as Rs.22,00,000/-, without the knowledge of the Plaintiff is found illegal, unfair, unacceptable and unreasonable. The fact that the First Defendant suppressed the sale agreement entered into with the Second Defendant dated 23.05.2011 in his legal notice rescinding the contract of sale agreement under Ex.A-1 in the notice under Ex.A-2 is found to be unlawful and unfair, when the earlier agreement was subsisting, before the expiry of the sale agreement. Further the contention of the learned counsel for the First Respondent/Plaintiff that after receiving the notice under Ex.A-2, the Plaintiff had sent



reply to A-2 under Ex.A-3. Also the cheque for a sum of Rs.9,70,000/- was sent back to the First Defendant, insisting that the sale agreement is subsisting. Therefore, the notice to the Second Defendant in the Suit by the First Defendant in the sale agreement entered into with the Second Defendant, dated 23.05.2011 as reply to the Second Defendant who had filed O.S.No.24 of 2011 stating that he had sought communication with the Plaintiff in O.S.No.24 of 2011 for the cancellation of the sale agreement dated 16.02.2011 is found acceptable before this Court. At the instance of the Plaintiff, the sale agreement entered into with the Plaintiff by the First Defendant dated 16.02.2011, is subsisting, because, he denied the claim of the First Defendant in his notice under Ex.A-2. Therefore, the learned trial Judge had on proper appreciation of the materials available before him, had arrived at a just conclusion with the conduct of the First Defendant having received advance amount of Rs.10,00,000/- by way of two installments and without furnishing copies of the documents under Clause 6 of the sale agreement dated 16.02.2011 and when clearing the mortgage with the Indian Overseas Bank by the First Defendant and without informing the Plaintiff in O.S.No.24 of 2011 as per the Clause 6 of the sale agreement, the conduct of the First Defendant cancelling the sale agreement, as though the Plaintiff was not willing and ready to perform his part of contract is found to be unacceptable, unfair and unreasonable in the terms of contract entered into with the Plaintiff in O.S.No.24 of 2011 dated 16.02.2011. Therefore, when the earlier contract dated 16.02.2011 for the same property is subsisting, the contract entered into by the First Defendant with the Second Defendant dated 23.05.2011, by violating the terms and conditions by the First Defendant himself cannot at all be accepted, by any Court exercising its discretion under the principle of fairness, equity and good conscience which governs the civil Court which exercising the discretion. Therefore, the same is upheld by the Civil Court.

13. The rulings cited by the First Respondent/Plaintiff is found applicable to the facts and circumstances of the case. Particularly, the points raised in the Appeal that the Suit for Specific Performance of contract by the Plaintiff in O.S.No.24 of 2011 without seeking a declaration of the alleged revocation of the sale agreement under Ex.A-1 by the First Defendant was null and void, cannot be accepted as per the reported ruling of the Hon'ble Supreme Court in 2017 SCC Online Mad 35906 in the case of Gajendran and others Vs. Thangavel and 2019 SCC Online Mad 23242 in the case of Syed Ibrahim and others Vs. R.M.SP.Natarajan Chettiar and others wherein no ground was raised either in the written statement before the trial Court or in the grounds of Appeal by the First Defendant. Therefore, the



same is applicable to the fact of this case. Ruling relied on by the learned counsel for the Appellant/First Defendant in 2019 (9) SCC 358 in the case of Mohinder Kaur Vs. Sant Paul Singh regarding the proposition of law is as follows:

WEB COPY

Contract and Specific Relief - Specific Relief Act, 1963 - Ss.10, 16 (c) and 20 - Suit for Specific Performance of agreement for sale, where agreement for sale has been cancelled by vendor - Need to seek relief of declaration of such cancellation as being bad in law, in addition to seeking relief of Specific Performance of such agreement - Civil Procedure Code, 1908, Or.7 R.7.

That cannot be considered by this Court on the same ground as argued by the learned counsel for the First Respondent/Plaintiff that no such ground was raised either in the grounds of Appeal or in the written statement filed before the trial Court. Only for the first time, during written arguments, the reliance was placed for the proposition of law that the Suit for Specific Performance is not maintainable, when seeking a declaration with the revocation of the sale agreement by the vendor is null and void. Therefore, the reliance placed by the learned counsel for the Appellant/First Defendant in 2019 9 SCC 358 is rejected, as not applicable on the ground that the grounds are raised only in the written arguments for the first time without pleading in the grounds of Appeal. The reliance placed by the learned counsel for the Appellant/First Defendant in 2013 15 SCC 27 in the case of Sikkandar Vs.Subramaniam is also rejected on the same grounds. Therefore, in the light of the above discussion, the Appeal lacks merits.

14. The case before this Court in Appeal No.38 of 2015 is that the first Respondent who is the Plaintiff in O.S.No.24 of 2011 had entered into a sale agreement on 16.02.2011, had paid Rs.3,00,000/- to the First Defendant/Ramalingam and as per the terms of the sale agreement ought to have paid Rs.7,00,000/- on or before 31.03.2011. After 31.03.2011, if the First Defendant/Ramalingam had issued notice under Ex.A-2, cancelling the sale agreement dated 16.02.2011, the ratio laid down in the said ruling can be accepted as applicable, but, the First Defendant/Ramalingam had not done so. After 31.03.2011, the Plaintiff/Latha Rani had paid Rs.7,00,000/- i.e., out of balance amount on 16.04.2011 and made an endorsement on the copy of the sale agreement in the custody of Plaintiff/Latha Rani under Ex.A-1. Therefore, beyond 31.03.2011, the First Defendant/Ramalingam had obtained Rs.7,00,000/- towards balance sale consideration. Totally, Rs.10,00,000/- was in the custody of the First Defendant/Ramalingam towards clearing the mortgage executed by First Defendant/Ramalingam with the Indian Overseas



Bank, Kurudampalayam. Only after clearing the mortgage, the First Defendant can hand over the parent deeds of the property along with Chitta, Patta and Adangal to the Plaintiff. Therefore, the First Defendant himself having received Rs.7,00,000/- after 31.03.2011, the condition No.3 in the sale agreement, i.e, the principle that time is essence of contract was given a go-by by the conduct of the Plaintiff as well as first Defendant.

15. The Plaintiff/Latha Rani had paid Rs.10,00,000/- only on the instance of the First Defendant to clear the mortgage deed with Indian Overseas Bank, so as to take custody of the parent document as well as Revenue Documents viz., Chitta, Patta, Adangal from the Bank concerned to hand over the same to the Plaintiff/Latha Rani.

16. Having made the Plaintiff/Latha Rani to believe the conditions set forth by the First Defendant and after having received Rs.10,00,000/-, without handing over the parent deeds as well as Revenue Documents viz., Chitta, Patta, Adangal to the Plaintiff/Latha Rani, the notice issued by the first Defendant under Ex.A-2 rescinding the contract as though the Plaintiff was not willing to perform her part of the contract amounts to violation of the condition set forth in the sale agreement by the First Defendant and it is not the Plaintiff who had violated the condition. It is the First Defendant who had violated the condition by not handing over the title deeds and the Revenue Records after clearing the dues with the Indian Overseas Bank, after receiving Rs.10,00,000/- with the Plaintiff beyond 31.03.2011. Therefore, the conduct of the First Defendant attracts the Provision of Promissory estoppel under Section 115 of Indian Evidence Act which cannot be accepted any Court of law. The notice under Ex.A-2 rescinding the contract is hit by the principle of promissory estoppel under Section 115 of Indian Evidence Act. Therefore, the reliance placed by the learned Counsel for the First Defendant/Appellant in 2013 (15) SCC 27 in the case of I.S.Sikandar (Dead) by Lrs. Vs. K.Subramani and others will not help the case of the Appellant/First Defendant. Mere reliance on the ratio in the ruling will not help, hence, rejected in the facts and circumstances of the case before this Court and also there are no pleadings in the written statement filed by the First Defendant regarding the same. Without seeking declaration relief with permanent injunction, the agreement is bad in law and the Suit for specific performance is not maintainable cannot be accepted in the absence of the pleadings in the written statement of the First Defendant and the grounds in the appeal. Therefore, reliance placed by the learned counsel for the Appellant/First Defendant is rejected. On the same ground, the second ruling relied on by the learned counsel for the Appellant in 2019 (6) CTC 348 in the case of



Mohindar Kaur Vs. Sant Paul Singh is also rejected. Also the ruling relied on by the learned counsel for the Petitioner in 2019 (6) CTC 348 in the case of Mohindar Kaur Vs. Sant Paul Singh which is relied on for the purpose that power of attorney leading evidence on behalf of the principal. Here, the Plaintiff/Latha Rani herself had deposed evidence. Therefore, the ruling in 2019 (6) CTC 348 in the case of Mohindar Kaur Vs. Sant Paul Singh is not applicable to the facts and circumstances of the case, hence rejected. Reliance placed by the First Defendant is not applicable and hence rejected.

17. The point for determination is answered against the Appellant/First Defendant and infavour of the First Respondent/Plaintiff in O.S.No.24 of 2011.

18. In the Suit filed by the Respondent in A.S.83 of 2015, he had sought refund of money that he had already paid towards the sale consideration for the sale agreement entered into First Defendant/ Ramalingam since he was not aware of the earlier sale agreement and had entered into another sale agreement. Therefore, the trial Court had rightly decreed the Suit of the Plaintiff in O.S.No.37 of 2011 with an alternative relief of refund of money that he had already paid. At the same time, the Court had not decreed the Suit with the interest as sought by the Plaintiff at 21%. As per the reported ruling of this Court in 2020 (3) MWN (Civil) 276 in the case of Isravel Jayakumar Vs. R.Rasalraj, the Suit is decreed with 18% interest from the date of the plaint till the date of realisation.

In the result, Appeal in A.S.No.38 of 2015 against O.S.No.24 of 2011 is dismissed with costs throughout to the Respondents 1 & 2. Appeal in A.S.No.83 of 2015 against O.S.No.37 of 2013 is dismissed with costs to the sole Respondent.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dh

To

The District Judge,
Nilgris at Udagamandalam.



Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

WEB COPY

+2ccs to Mr.R.Subramanian, Advocate, S.R.No.20058,20059
+1cc to Mr.C.A.Diwakar, Advocate, S.R.No.20000

A.S.Nos.38 & 83 of 2015

KJ[co]
NSK/24/06/2022