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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On :	18.10.2022
Pronounced On:	111122

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.S.No.690 of 2012

Ramesh Kumar Darda ...Plaintiff

Vs.

1.G.Krishnaveni alias D.S.Kumari

2.D.S.Gokul

3.Meera D.S.Kalikiri ...Defendants

PRAYER: This is a suit filed under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 1 of C.P.C. to,

a)Pass a decree of specific performance directing the defendants to execute and register a sale deed in favour of the plaintiff or his nominee in respect of the property, viz., No.28 (Old No.12) Erulappan Street, Chennai 600 079, more particularly described in the schedule hereunder, after receiving the balance sale consideration of Rs.71,00,000/- (Rupees Seventy One Lakhs only) and in default thereof direct the Registrar of this Hon'ble Court to execute and register the sale deed on behalf of the

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Defendants in favour of the plaintiff or his nominee;

b)Direct delivery of possession of the property, viz., No.28 (Old No.12) Erulappan Street, Chennai 600 079, more particularly described in the schedule hereunder, to the plaintiff;

c)For costs of the suit, including counsel's fee.

For Plaintiff : M/s.Prakash Goklaney

For D1 & D2 : Set ex-parte

For D3 : Mr.Pranava Charan

JUDGMENT

This is a suit for specific performance.

2.Plaintiff's case is that the defendants agreed to sell the suit property to the plaintiff for a total consideration of Rs.1,31,00,000/-. The agreement for sale was entered into between the plaintiff and the defendants on 09.06.2011. The time for completion of sale is six months. The defendants have to clear the pending loan with the South Indian Bank, City Branch, Bangalore–53 within a period of six months and hand over the original documents before the registration of sale. An advance of Rs.35,00,000/- was paid. The plaintiff was put in possession of two shop portions in the property. The defendants promised to negotiate with the

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bank for one time settlement to enable the transaction to go through. The plaintiff tendered a payment of Rs.60,00,000/- on behalf of the defendants to the bank. However, the bank declined to receive the same stating that the defendants have to comply with certain conditions. As per the arrangement between the defendants and the bank, Rs.75,00,000/- was to be paid by the defendants, after taking into account the sale proceeds of another property at Jayanagar, Bangalore. At the request of the defendants, the plaintiff provided an additional sum of Rs.25,00,000/- to enable them to settle with the bank. The plaintiff was promised that the documents would be obtained from the bank and handed over to him. Since that was not happening, he issued a notice dated 06.01.2012, calling upon the defendants to hand over the documents. During December 2011, defendants handed over one more portion of the suit property and permitted the plaintiff to let out to a person of his choice, in view of the delay caused. The defendants issued notice dated 03.02.2012 making wholly false and untenable allegations. Therefore, a suitable reply dated 16.02.2012 was sent. On 22.08.2012, the plaintiff issued a notice to the defendants to execute the sale deed in his favour or his nominee. The

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defendants issued a reply dated 07.09.2012 reiterating their earlier stand and refusing to comply with the terms of the agreement. Therefore the suit.

3.The case of the defendants 1 and 2 in brief is as follows:

The defendants 1, 2 and 3 are the wife, son and daughter of Mr.D.T.Sreenivas. The suit property was in the name of Mrs.Subbarathinamma, the mother of the 1st defendant and grand mother of the 2 & 3 defendant. Mrs.Subbarathinamma settled the property in favour of the 1st defendant on 12.10.1971. The property was managed by Mr.D.T.Sreenivas, husband of the 1st defendant. In the year 2000, 3rd defendant executed a power of attorney in favour of her mother granting her full authority to deal with the property in dispute. To develop the business, loans were taken on behalf of M/s.Sudha and Co., by providing the property as security with South India Bank Ltd. The plaintiff was introduced to Mr.D.T.Sreenivas through a common friend and he agreed to purchase the property after scrutinising the documents. Thereafter, the defendants 1 and 2 entered into an agreement for sale based on the promises/assurances given by the plaintiff as per the terms and conditions

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in the agreement. As per the agreement, plaintiff paid a sum of Rs.30,00,000/- to South India Bank Ltd. for the loan taken by M/s.Sudha and Co. and Rs.3,50,000/- as cash to the defendants instead of Rs.5,00,000/-. The plaintiff also paid Rs.25,00,000/- to the first defendant's husband for settling the loan and it was paid to South India Bank Limited. Totally, the plaintiff paid a sum of Rs.58,50,000/-. The plaintiff started taking undue advantage over the property and sought rents from the tenants. The plaintiff has to pay Rs.1,31,00,000/- within a period of six months, but he paid only Rs.58,50,000/-. It was orally agreed between the parties that the plaintiff will be in possession of two shops and the defendants will retain the remaining shops and would not change the tenants in the property in dispute. However, the plaintiff transferred one shop occupied by the tenant Mr.Anand Sanghvi to Moksha Marketing. Therefore, the defendants issued a legal notice on 03.02.2012 seeking the plaintiff to desist from dealing with the property. The plaintiff sent a letter on 16.02.2012 to counter blast the legal notice sent by the defendants. Then the plaintiff sent a notice dated 22.08.2012 and that was replied by the defendants on 07.09.2012. The agreement dated 09.06.2011 is not

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valid. Assuming without admitting that the agreement is valid, it is time barred. Therefore, the plaintiff is not entitled for the relief of specific performance.

4.It is seen from the written statement of the 3rd defendant that she admitted the relationship between the defendants and that the suit property was originally in the name of Mrs.Subbarathinamma. It is her case that Mrs.Subbarathinamma transferred only the life interest in the suit property in favour of the first defendant, vide a registered deed dated 12.10.1971. The first defendant was precluded from alienating the property in dispute. In the year 2000, Mr.D.T.Sreenivas, the father of the 3rd defendant, by undue influence made his son and daughter to execute a power of attorney in favour of the 1st defendant granting her full authority to deal with the property in dispute. At that point of time, the 2nd & 3rd defendants had no right in the suit property. The power of attorney deed was executed three days prior to her marriage in the year 2000. The 1st defendant executed a power of attorney deed authorising the third defendant to deal with the

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property through the power of attorney deed dated 28.09.2007. Subsequently, Mrs.Subbarathinamma revoked the settlement deed dated 12.10.1971 by a deed of revocation of settlement deed dated 15.12.2008 and executed a settlement deed in favour of the 3rd defendant. The third defendant was given absolute right in respect of the suit property through this settlement deed. In the year 2012, the 3rd defendant was shocked to receive a notice from the plaintiff intimating the suit. She had not executed any agreement as alleged by the plaintiff. She found that Mr.D.T.Sreenivas illegally mortgaged the suit property in dispute with South India Bank Ltd., as collateral security for the loan obtained in the name of M/s.Sudha & Co. She also found that the defendants 1 & 2 and Mr.D.T.Sreenivas and the plaintiff entered into a sale agreement. All of them colluded to usurp the suit property in the name of the third defendant. The power of attorney executed by the 3rd defendant in the year 2000 is non-est and unenforceable in law. The sale agreement is vitiated by fraud and misrepresentation. The third signature is neither the signature of the 3rd defendant nor the signature of the 1st defendant. The parties have fraudulently misrepresented the signature of someone as the signature of

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the 3rd defendant. Assuming without admitting that the agreement is valid, in terms of the express default clause, the defendants are liable to repay the advance amount of Rs.35,00,000/- and a sum of Rs.5,00,000/- as liquidated damages, in case of default in the performance of the agreement. The plaintiff has no locus standi to seek specific performance of the agreement. Time is the essence of the contract. The plaintiff has not taken steps within the time stipulated by enforcing the performance of the contract. The suit has no merits and is liable to be dismissed.

5.On the basis of the pleadings, the following issues are framed:

1.Whether the agreement of sale dated 09.06.2011 is true, valid and binding on the defendants?

2.Whether the agreement of sale dated 09.06.2011 is vitiated by fraud, misrepresentation and unenforceable as claimed in the written statement?

3.Whether the plaintiff has been always ready and

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willing to perform his part of the contract in respect of agreement of sale dated 09.06.2011?

4.Whether the plaintiff is entitled to obtain the relief of specific performance in respect of sale agreement dated 09.06.2011 as claimed?

5.Whether the plaintiff is entitled to recover the possession of the suit property from the defendants as claimed in the plaint?

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

6.P.W.1 was examined on the side of the plaintiff and D.W.1 was examined on the side of the defendants. Ex.P1 to Ex.P8 were marked on the side of the plaintiff and Ex.D1 to D10 were marked on the side of the defendants.

Issue Nos.1 to 3:-

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7.The learned counsel for the plaintiff submitted that plaintiff had examined himself as P.W1 to prove the execution of Ex.P1 sale agreement. It is seen from the written statement of D1 and D2 they admitted the execution of Ex.P1 sale agreement, receipt of the amount as part of sale consideration for discharging the subsisting loan with South Indian Bank. However, the defendants 1 and 2 conveniently and in collusion with third defendant remained *ex-parte.* Third defendant disputed the execution of sale agreement and set up independent title on the basis of settlement deed said to have been executed by the ertswhile owner Subbarathinamma. The settlement deed in favour of third defendant is not legally valid, for the reason that the original settlement deed executed by the erstwhile owner in favour of the defendants, giving life interest to the first defendant and vested remainder to the defendants 2 and 3, is an irrevocable settlement deed. An irrevocable settlement deed cannot be cancelled by a document, that too after a long gap of 37 years and a fresh settlement deed in favour of third defendant be executed. The settlement deed in favour of third defendant was executed only to jeopardize the claim of the plaintiff in collusion and connivance among the defendants 1 to 3. Therefore, the

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learned counsel for the plaintiff prayed for grant of specific performance decree in favour of the plaintiff as prayed in the plaint.

8.In support of his submission that an irrevocable settlement deed cannot be cancelled and a new right be created, he relied on the following judgments:-

This Court in ***[D Janani Vs. The Inspector General Registration] in W.P.No.41498 of 2016*** on ***20.06.2018*** observed that,

> *13.According to the learned counsel for the petitioner, it is n ot only based on the judgment of the Apex Court reported in **2014 (4) CTC 572 (SC)** that this Court has rendered a finding with regard to the cancellation of settlement deed, in W.P.No.6230 and 6231 of 2011, but also referring to the judgment of the Full Bench of this Court reported in **2011 (2) CTC 1** to show that when once the property is settled, it cannot be over-ruled or ignored that a unilateral cancellation at the instance of the person who has settled the property, can be cancelled, unless and otherwise it establishes fraud or against the public policy.*
>
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>
> ……

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16.In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely deed of cancellation of settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void. All the entries have got to be removed and this has got to be done within one month from the date of receipt of a copy of this order.

ii)Latif Estate Line India Ltd., represented by its Managing Director Mr.Habib Abdul Latif Vs. Hadeeja Ammal and others reported in ***2011 (2) CTC 1,*** it is observed as follows:-

31.When cancellation may be ordered:- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

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(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument ie., (1) An instrument is avoidable against the plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and

(3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.

9.With regard to the readiness and willingness for granting specific performance, he relied on the following judgment:-

A.Kanthamani Vs. Nasreen Ahmed reported in ***(2017) 4 Supreme Court Cases 654,*** it is observed as follows:-

24) The expression "readiness and willingness" has been the subject matter of interpretation in many cases even prior to its insertion in Section 16 (c) of the Specific Relief Act, 1963. While

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examining the question as to how and in what manner, the plaintiff is required to prove his financial readiness so as to enable him to claim specific performance of the contract/agreement, the Privy Council in a leading case which arose from the Indian Courts (Bombay) in Bank of India Limited & Ors. Vs. Jamsetji A.H. Chinoy and Chinoy and Company, AIR 1950 PC 90, approved the view taken by Chagla A.C.J., and held inter alia that " it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness."

25) The following observations of the Privy Council are apposite:

"…………..Their Lordships agree with this conclusion and the grounds on which it was based. It is true that the plaintiff 1 stated that he was buying for himself, that he had not sufficient ready money to meet the price and that no definite arrangements had been made for finding it at the time of repudiation. But in order 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. The question is one of fact, and in the present case the Appellate Court had ample material on which to found the view it reached. Their Lordships would only add in this connection that they fully concur with Chagla A.C.J. when he says:

> *"In my opinion, on the evidence already on record it was sufficient for the court to come to the conclusion '*

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that plaintiff 1 was ready and willing to perform his part of the contract. It was not necessary for him to ' work out actual figures and satisfy the court what specific amount a bank would have advanced on the mortgage of his property and the pledge of these shares. I do not think that any jury--if the matter was left to the jury in England--would have come to the conclusion that a man, " in the position in which the plaintiff was, was not ready and willing to pay the purchase price of the shares which he had bought from defendants 1 and 2."

For the foregoing reasons, their Lordships answer question(4) in the affirmative." (Emphasis supplied)

10.On the other hand, the learned counsel for the third defendant submitted that Ex.P1 sale agreement is fraudulent document. It is an unregistered document and executed after coming to know about the existence of cancellation of the earlier settlement deed and execution of subsequent settlement deed in favour of third defendant. The sale agreement was executed in favour of the plaintiff on the basis of alleged power of attorney deed dated 06.03.2000, executed by the defendants 2 and 3 in favour of first defendant. Third defendant had signed in this power

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of attorney deed just three days prior to her marriage due to undue influence exercised by her father. Therefore, the power of attorney deed and the sale agreement executed on the basis of power of attorney deed by first defendant will not bind her right in the suit property. On the basis of the settlement deed in favour of the third defendant there is mutation in the revenue records and the encumbrance certificate reflects the name of the third defendant as the owner of the property. There is no evidence produced to prove the claim of the plaintiff that he paid Rs.75,00,000/- towards sale consideration. Plaintiff has not taken steps to send notice to her address at Malaysia, but sent to the address at Chennai. Address is given in the sale agreement. Third defendant has not received any amount in connection with the sale agreement. The sale agreement is a fraudulent document executed despite knowing the encumbrances. That apart, plaintiff has not chosen to perform his part of the contract within the time stipulated in the sale agreement. There is a delay of nine months in filing the suit. Time is considered as essence of the contract. At the most, the plaintiff is entitled only for the amount alleged to have been paid by him subject to his proof and also additional sum of Rs.5,00,000/- as damages

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and he is not entitled for the relief of specific performance. Thus, the learned counsel for the third defendant prayed for dismissal of the suit.

11.The learned counsel for the defendants in support of his submission produced the following judgments with regard to the requirements for the grant of specific performance decree and that fraud and misrepresentation will dis-entitle the grant of specific relief.

> *i)**Ram Chandra Singh Vs. Savitri Devi and Others** reported in **[MANU/SC/0802/2003]**, it is held that,*
>
> *15.Commission of fraud on Court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.*
>
> *16.Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.*
>
> *17.It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.*
>
> *18.A fraudulent misrepresentation is called deceit*

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and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

*ii)**Bhagwandas Fatechand Daswani Vs. H.P.A. International*** *reported in* ***MANU/TN/0161/2001,*** *it is observed that,*

23.The foundation for a decree for specific performance is a subsisting legally enforceable contract. Absent such a contract, there can be no decree for specific performance for part or whole. The plaintiffs suit when instituted was maintainable. The contract that was relied upon was legal and enforceable on its terms. The condition requiring the vendor to obtain sanction of the Court for the sale of reversionary interest was a condition subject to which a decree for specific performance could have been made. Such a decree would have directed the vendor to apply to the Court, for sanction, and if sanction was forthcoming, then execute the sale deed. In the even of sanction not being accorded compensation if justified would be the only remedy that would have been available to the plaintiff. That such is the legal position is evident

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from the decision of the Apex Court in the case of Mrs.Chandnee Widya Vati v, Dr.C.L.Kattal, MANU/SC/0257/1963.

*iii)**Satish Kumar Vs. Karan Singh and others** reported in **MANU/SC/0072/2016,** it is held that,*

*9.This Court in **Mayawanti Vs. Kaushalya Devi MANU/SC/0453/1990 : (1990) 3 SCC 1,***

> *8.In a case of specific performance it is settled law, and indeed it cannot be doubted, that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. The Law of Contract is based on the ideal of freedom of contract and it provides the limiting principles within which the parties are free to make their own contracts. Where a valid and enforceable contract has not been made, the Court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the Court will be there even though the contract is otherwise valid and enforceable and it can pass a decree of specific performance even before thee has been any breach of the contract. It is, therefore, necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it. The contract being the foundation of the obligation the order of specific performance is to enforce that obligation.*

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*iv)**P.Meenakshisundaram Vs. P.Vijayakumar and ors** reported in **MANU/SC/0306/2018,** it is observed that,*

8.As regards suit for specific performance, the law is very clear that the plaintiff must plead and prove his readiness and willingness to perform his part of the contract all through i.e., right from the date of the contract till the date of hearing of the suit. If respondent No.1 was well aware about the encumbrance and the parties had chosen that the balance consideration be paid to the appellant before 20.03.2001 so that the sale deed could be registered without any encumbrance, it was for respondent No.1 to have taken appropriate steps in that behalf for completion of transaction. The facts on record disclose that the first step taken by respondent No.1 after the suit agreement was well after four months, when further amount of Rs.2 lakhs was paid on 21.01.2001. Thereafter nothing was done till 20.03.2001 by which the transaction had to be completed. The record is completely silent about any communication sent around 20.03.2001 towards completion of transaction. As a matter of fact the first step thereafter was six months after the deadline namely on 22.09.2001 when the communication (Ex.A6) was sent along with amount of Rs.10 lakhs. The written submissions filed on behalf of respondent No.1 also do not

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indicate any steps till this time so as to say that he was all the while ready and willing to complete the transaction.

*v)**Sasikala Vs.The Revenue Divisional Officer, Cum Sub Collector, Devakottai and others,** reported in **MANU/TN/6694/2022,** it is observed that,*

41.Regarding gift or settlement: With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

"126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

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42.Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarifies that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or descernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a)There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b)Such agreement shall be mutual and expressive and

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seen from the document of gift.

(c)Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

12.Ex.P1 is the original sale agreement dated 09.06.2011. Perusal of the sale agreement shows that this sale agreement was executed between the plaintiff and defendants. Second and third Defendants were represented by their mother/the first defendant M/s.G.Krishnaveni, name changed as D.S.Kumari. The reading of this sale agreement shows that the suit property originally belonged to M/s.Subbarathinamma, mother of first defendant and grand mother of second and third defendants. She executed a registered settlement deed dated 12.10.1971, in respect of this property giving life interest to the first defendant and vested remainder to the second and third defendants, with full power of alienation to second and

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third defendants. It is mentioned in the sale agreement that there is a subsisting loan in respect of the suit property by depositing documents of title in South Indian Bank, City Branch, Bangalore. There is also reference about revocation of settlement deed dated 12.10.1971 by Subbarathinamma on 14.02.2008 and execution of a fresh deed of settlement on the same date. It is mentioned that the revocation deed and execution of fresh settlement deed are non-est and un-enforceable in law. The South Indian Bank has also initiated coercive steps to realize the loan initiating action against the vendors namely defendants 1 to 3. In the said circumstances, sale agreement came to be executed in respect of suit property for sale consideration of Rs.1,31,00,000/-.

13.As per the terms of the sale agreement Rs.30,00,000/-was paid by D.D in favour of South Indian Bank account in connection with the pending loan of M/s.Sudha and Groups. Rs.5,00,000/- was paid as a cash. The vendors agreed to discharge the Bank loan and get back the documents deposited with the Bank and handover to the purchaser. Vendors have also put the purchaser in possession of two shops by way of

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part performance. They agreed to deliver vacant possession of remaining portions before registration of sale deed. It was also agreed that the first defendant shall release her life interest in the suit property in favour of the defendants 2 and 3, at their cost prior to the registration of the sale deed. These are some of the important terms and conditions of the sale agreement.

14.As said earlier, the defendants 1 and 2 have not contested this case and in fact it is seen from their written statement that they have admitted the execution of sale agreement, the execution of power of attorney deed by third defendant in 2000 in favour of first defendant giving her full authority to deal with the property in dispute. Though the sale agreement stated that the defendants received Rs.5,00,000/- in cash, it is claimed in the written statement of defendants 1 and 2 that they received only Rs.3,50,000/- as cash. The third defendant denied the execution of sale agreement. It is her case that the power of attorney deed dated 06.03.2000, was executed by exercising undue influence on her and therefore she is not bound by either the power of attorney deed and sale

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agreement executed by her mother on the basis of the power of attorney deed.

15.One of the contentions raised by the learned counsel for the third defendant is that when Defendants 2 and 3 had executed power of attorney deed in favour of first defendant, and on the basis of power of attorney deed, first defendant had executed the sale agreement, what is the necessity for the defendants 2 and 3 to join in the execution of sale agreement? It is claimed by the third defendant that the signature found in Ex.P1 sale agreement is not her signature. When the power of attorney deed was executed in 2000, third defendant had no right in the property and therefore sale agreement has no force at all. It is true that first defendant was executing the Ex.P1 sale agreement as power agent of defendants 2 and 3. The signature of defendants 2 and 3 also found in the sale agreement. It may not be necessary for defendants 2 and 3 to join in the execution of the sale agreement. However, it is claimed that they had also joined in execution of sale agreement. Third defendant now says that someone had made her signature. However, both the plaintiff and

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defendants had not taken any steps to send Ex.P1 sale agreement to the handwriting expert's opinion with regard to the signature of third defendant.

16.Be that as it may, apart from this sale agreement there were exchange of notices between the parties and prior to that there were communications between the South Indian Bank and the parties. Ex.P2 is the copy of the notice from first defendant's husband D.T.Srinivasa and the first defendant to the Assistant General Manager of South Indian Bank with regard to the proposal for settlement of NP accounts of M/s.Sudha and other Enterprises. Ex.P3 is the communication from South Indian Bank to D.T.Srinivasa and D.S.Kumari with regard to acceptance of one time settlement on the terms and conditions found in the letter. Ex.P4 is the copy of the notice sent on behalf of the plaintiff to the Assistant General Manager, South Indian Bank informing that despite remitting Rs.75,00,000/-, the Bank had not released the documents for registration of sale deed and request was made for release of documents.

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17.Ex.P5 is a notice sent on behalf of defendants 1 to 3 to the plaintiff. It is seen from this notice that the execution of sale agreement dated 07.06.2011, between the plaintiff and defendants is admitted by the defendants. It is also admitted a sum of Rs.58,50,000/- was paid towards sale consideration, for settling the existing due with South Indian Bank. Putting the plaintiff into possession of two shops is also admitted. It is further claimed that despite the completion of six months period plaintiff has not come forward to pay the balance sale consideration of Rs.72,50,000/- and neglected to get the sale deed executed. It is further stated that plaintiff started collecting rents from the tenants and he is not entitled to that and called upon him to restrain from dealing with the property.

18.Ex.P6 is the reply to this notice intimating the circumstances under which the sale agreement came to be executed on payment of Rs.60,00,000/- to the defendants. A sum of Rs.25,00,000/- was paid on 12.09.2011. It is claimed by the plaintiff that an endorsement to that effect was made in the sale agreement. It is further stated that plaintiff was

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always ready and willing to perform his part of contract. However, the defendants have not taken any steps to get the original documents from the Bank and it contributed to the delay in execution of sale deed. Still plaintiff is ready and willing to perform the contract subject to production of original documents.

19.Ex.P7 is notice from the plaintiff to the defendants intimating the efforts made by him to get original sale deeds from the Bank and the non co-operation of the defendants for getting original documents from the Bank. Ex.P8 is reply from defendants 1 and 3 to the plaintiff. It is claimed that Ex.P1 sale agreement is not valid and unenforceable as it is inchoate in nature. It is claimed that plaintiff has failed and neglected to act by paying the balance sale consideration.

20.From these documents especially Ex.P5, it is clear that third defendant knew about the Ex.P1 sale agreement dated 07.06.2011 and on her instruction also this notice was issued to the plaintiff. Therefore it is not open to the third defendant to claim that she is not bound by Ex.P1 sale

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agreement.

21.The plaintiff has not produced the settlement deed dated 12.10.1971 executed by Subburathinama in favour of the defendants and the general power of attorney deed dated 06.03.2000 executed by defendants 2 and 3 in favour of the first defendant. However, the third defendant has produced the copies of these documents as Ex.D1 and Ex.D3 respectively. That apart, third defendant produced the copy of deed of revocation of settlement deed dated 14.12.2008 executed by G.Suburathinamma cancelling the settlement deed dated 12.10.1971, the settlement deed executed by G.Subburathinamma on 15.12.2008 in favour of third defendant as Ex.D4 and Ex.D5. The copy of the lease agreement executed between one Ajith Kumar and plaintiff is produced as Ex.D6. The copy of passport of third defendant is produced as Ex.D8. The copy of death certificate of G.Subbarathinamma is produced as Ex.D9. To show that suit property is in the name of the third defendant, she produced encumbrance certificate as Ex.D10.

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22.We had seen that the case of the third defendant is that, her father obtained power of attorney deed from her in favour of her mother by exercising undue influence.

i)at that point of time, she had no subsisting right in the suit property.

ii)on 28.09.2007 her mother had executed power of attorney deed in respect of the suit property in her favour.

iii)Subbarathinamma had cancelled the settlement deed dated 12.10.1971 by revocation of settlement deed and executed a settlement deed in her favour in respect of the suit property.

iv)she had not executed any sale agreement as alleged by the plaintiff.

v)her father D.T.Sreenivas illegally mortgaged the suit property with South Indian Bank.

vi)the sale agreement is vitiated by fraud and misrepresentation.

vii)there is collusion between plaintiff and defendants 1 and 2.

viii)time is the essence of contract.

ix)plaintiff is entitled for relief only on the basis of default clause in

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the sale agreement.

23.When the evidence of D.W.1 is perused, it is seen that she had not independently, de hors this suit, taken any action against defendants 1 and 2 and plaintiff for colluding and fabricating the alleged sale agreement. She had not taken any steps to cancel the power of attorney deed executed by her in favour of her mother till date. She admitted that her mother gave her power of attorney deed for the reason that she had some interest in the property. She admitted that she had not acted on the power of attorney deed given by her mother. She admitted that her mother did not force her, at any time, with regard to the power of attorney deed. She stated that she had not taken any action against South Indian Bank stating that her parents have no right to mortgage the property to the Bank. She admitted that her mother had signed in Ex.P1 agreement of sale on the strength of power given to her by D.W.3. She stated that she had not claimed any rent from the suit property even after she became the owner under Ex.D5. She stated that she cannot answer as to whether she is prepared to pay the amount as per the default clause in the agreement, until she discuss with her husband.

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24.The reading of her evidence shows that she had not taken any steps for cancelling Ex.D2 power of attorney deed executed by her in favour of her mother. She had not acted on the power of attorney deed executed by her mother in favour of her. Despite claiming ownership to the suit property as per Ex.D5, she has not made any claim for collecting a rent. She was not even given the original documents of title deeds of the suit property. We have already seen that Ex.P5 notice and Ex.P8 reply were given on behalf of the three defendants, including the third defendant. Therefore, third defendant cannot feign innocence about the existence of Ex.P1 sale agreement. Ex.P1 sale agreement was executed by her mother for herself and on behalf of defendants 2 and 3. There were terms of conditions as narrated above. The property was mortgaged with the South Indian Bank on the basis of the power of attorney deed and only to discharge the loan, defendants came forward to sell the suit property to the plaintiff and Ex.P1 sale agreement came to be executed. There is no right reserved for revocation / cancellation of Ex.D1 settlement deed. Conditions required under Section 31 of Specific Relief Act, 1963 are not

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present in this case for revocation / cancellation of Ex.D1 settlement deed. As seen from the judgment relied by the learned counsel for the plaintiff and referred above unilateral cancellation of settlement deed is not permissible. It is clear that Ex.D4 deed of revocation of settlement deed and Ex.D5 settlement deed were created only to avoid payment of bank dues and to cheat the creditors.

25.From the judgments relied by the learned counsel for the plaintiff especially the order passed in W.P.(MD).Nos.6889 etc., of 2015 it is clear that document revoking gift can be entertained only under certain conditions stated supra. None of this conditions is present in this case for revoking the settlement deed executed in favour of defendants on 12.10.1971. Therefore, this Court finds that Ex.D4 deed of revocation of settlement deed and Ex.D5 settlement deed in favour of the third defendant are not valid documents and liable to be set aside.

26.The sale agreement was executed by first defendant on behalf of defendants 2 and 3 on the basis of power of attorney deed executed by

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defendants 2 and 3 in favour of the first defendant. Therefore the sale agreement is valid and enforceable in law. It is seen from the documents produced and discussed above that plaintiff was always ready and willing to perform his part of the contract. However, it was the defendants who have not performed their part of contract like cooperating with the plaintiff in getting original documents from the Bank to facilitate the completion of sale. When the performance of contract within the time stipulated could not take place as a result of defendants' inaction in getting the original documents from the Bank, we cannot say that time is the essence of the contract. Plaintiff has filed the suit at the earliest possible opportunity and within the period of limitation. We can gather from the evidence produced in this case that the husband of the first plaintiff and father of the defendants 2 and 3, D.T.Srinivasa is the man behind execution of settlement deed in favour of defendants, execution of power of attorney deed by defendants 2 and 3 in favour of first defendant, creation of mortgage in favour of South Indian Bank Limited, cancellation of settlement deed in favour of defendants 1 to 3 and execution of settlement deed in favour of third defendant. It appears that he is also the man

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responsible for execution of sale agreement between the plaintiff and defendants. His primary object is to settle the Bank loan through the money received. Therefore this suit is maintainable and the plaintiff is entitled to enforce the specific performance of the contract as per Ex.P1 sale agreement. There is no fraud or misrepresentation or any illegal act can be attributed against the plaintiff in executing Ex.P1 sale agreement. Even as per the admitted case, plaintiff parted with a sum of Rs.58,50,000/- and he is prepared to pay the balance sale consideration and get the sale deed executed. Thus, this Court finds that judgments relied by the learned counsel for the third defendant are not applicable to the facts and circumstances of this case. For all the reasons stated above, this Court finds that the Ex.P1 sale agreement dated 09.06.2011 is true and valid and binding on the defendants for issue No.1. This sale agreement is not vitiated by fraud and misrepresentation and therefore it is enforceable for issue No.2. Plaintiff is always been ready and willing to perform his part of contract as per the sale agreement dated 09.06.2011 for issue No.3.

27.Issue Nos.4-6:-

In view of the findings arrived at issue Nos.1 to 3, this Court finds

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that plaintiff is entitled to obtain the relief of specific performance on the basis of sale agreement dated 09.06.2011 and for possession of the suit property for issue Nos.4 to 6 with the costs of the suit.

28.In the result,

i)The suit is decreed as prayed for with the costs of the suit.

ii)Plaintiff shall deposit the balance sale consideration of Rs.71,00,000/- to the credit of the suit within a period of three months from today.

iii)Defendants are directed to execute the sale deed in favour of the plaintiff or his nominee in respect of the suit property, within a period of one month from the date of deposit of balance sale consideration by the plaintiff, failing which, the sale deed will be executed through the Assistant Registrar (O.S-I) of this Court.

iv)Defendants are also directed to deliver the possession of the suit property immediately after the execution of sale deed.

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Index:Yes/No
Speaking Order: Yes/No

List of Witnesses examined on the side of the plaintiff:-

1)Ramesh Kumar Darda (PW1)

List of Exhibits marked on the side of the plaintiff:-

i)Ex.P1 – Agreement for sale dated 09.06.2011 entered between the plaintiff with all the defendants (Original).

ii)Ex.P2 – Letter dated 13.09.2011 sent by the 1st defendant and her husband to the South Indian Bank (Photocopy).

iii)Ex.P3 – Letter dated 14.09.2011 sent by the South Indian Bank to the 1st defendant and her husband(Photocopy)

iv)Ex.P4 – Legal notice dated 06.01.2012 sent by the plaintiff's counsel to the South Indian Bank (Photo Copy).

v)Ex.P5 – Legal notice dated 03.02.2012 sent by the defendant's counsel to the plaintiff (Original).

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vi)Ex.P6 – Reply dated 16.02.2012 sent by the plaintiff's counsel to the defendant's counsel (Photocopy).

vii)Ex.P7 – Notice dated 22.08.2012 sent by the plaintiff's counsel to the defendant's (photocopy).

viii)Ex.P8 – Reply dated 07.09.2012 sent by the defendant's counsel to the plaintiff's counsel (Original) .

List of Witnesses examined on the side of the Defendants:-

1)Meera D.S.Kalikiri (D.W.1)

List of Exhibits marked on the side of the defendants:-

i)Ex.D1 – Certified copy of the registered settlement deed dated 12.10.1971 executed by G.Subburathinamma in favour of G.Krishnaveni

ii)Ex.D2 – Power of attorney dated 06.03.2000 executed by the 2nd and 3rd defendant in favor of the 1st defendant (Photocopy).

iii)Ex.D3 – Power of attorney dated 28.09.2007 executed by the 1st defendant in favour of the 3rd defendant (Photocopy).

iv)Ex.D4 – Revocation deed dated 14.12.2008 executed by Mrs.Subbarathinamma revoking the settlement deed dated 12.10.1976.(certified copy)

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v)Ex.D5 – Settlement deed dated 15.12.2008 executed by Mrs.Subbarathinamma in favour of the 3rd defendant (certified copy)

vi)Ex.D6 – Rental Agreement dated 14.12.2011 entered between Mr.Ajith Kumar Jain and the plaintiff (Photocopy).

vii)Ex.D7 – Private notice dated 21.11.2012 from the counsel for the plaintiff to the 3rd defendant (Photo copy).

viii)Ex.D8 – Passport dated 16.03.2017 of the 3rd defendant (Notarized copy).

ix)Ex.D9 – Death certificate dated 27.10.2016 of the deceased Mr.Subbarathinamma (Photocopy).

x)Ex.D10 – Encumbrance certificate dated 17.03.2017 pertaining to S.No.232B of Muthialpet village for the period from 01.01.1986 to 31.12.1986 (Original).

11.11.2022

sli/ep

To
The Section Officer,
VR Section,
High Court of Madras.

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G.CHANDRASEKHARAN.J.,

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