



C.S.No.190 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgement Reserved on 18.11.2022	Judgment pronounced on 20.12.2022
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CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

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Metrohm India Ltd., rep.
By its Chief Executive Officer,
And Authorised Signatory,
Mr.Deepak Parab,
'Origin Sri Towers',
3&4, Fourrts Avenue,
Annai Indira Nagar,
Okkiyam Thoraipakkam,
Chennai – 600 096.
Plaintiff

...

VS.

1.M.Sivakumari

2.M.Sivabalaji

3.M.Prasanth Balaji

...

Defendants

This Civil Suit is filed under Order IV Rule 1 of the O.S.Rules r/w
Order VII of Code of Civil Procedure, for a decree and judgment,



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(a) Declaring the registered sale deed dated 18.12.2008 registered as document No.1563 of 2009 before the Sub-Registrar office, Neelankarai executed by the defendants in favour of the plaintiff is void and set aside the same and consequently direct the defendants to repay the plaintiff a sum of Rs.6,80,55,000/- together with subsequent interest at 18% per annum on Rs.3,90,00,000/- from the date of the plaint till date of realisation;

(b) directing the defendants to pay the plaintiff a sum of Rs.2,00,00,000/- together with subsequent interest @ 18% per annum on Rs.2,00,00,000/- from the date of plaint to till date of realisation, towards damages;

(c) directing the defendants to pay costs of this suit.

For Plaintiff : M/s.T.V.Krishnamachari,
Senior Advocate
for C.Jagadish

For Defendants : M/s.Nathan and Associates



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J U D G M E N T

This suit is filed for the relief of declaration that the registered sale deed, dated 18.12.2008, registered as document No.1563 of 2009, before the Sub-Registrar office, Neelankarai executed by the defendants in favour of the plaintiff is void and to be set aside with a consequential relief of directing the defendants to repay the plaintiff a sum of Rs.6,80,55,000/- together with subsequent interest at 18% per annum on Rs.3,90,00,000/- from the date of the plaint to till the date of realisation; directing the defendants to pay the plaintiff a sum of Rs.2,00,00,000/- together with subsequent interest @ 18% per annum on Rs.2,00,00,000/- from the date of plaint to till the date of realisation towards damages and for the costs of the suit.

2. The case of the plaintiff is that the defendants represented that they are the owners of the property at old S.No.415/3, later S.No.415/3C/2, new survey No.415/3B in Sholinganallur Village, Tambaram Taluk, Kancheepuram District described in the schedule. The



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property was sold to the plaintiff on 18.12.2008 for a sale consideration of Rs.3,90,00,000/-. Defendants handed over certain revenue records and title deed representing that they pertain to the suit property. The boundaries of 40 cents purchased in the aforesaid S.No. are mentioned in the sale deed. The defendants handed over the property with a factory shed representing that it is the property covered and conveyed under the sale deed. Plaintiff approached various departments in order to develop the property and to comply with the formalities for the purpose of development of the property. The patta which stood in the name of the defendants in patta No.4629 was also transferred in the name of the plaintiff. When certain department officials came to the property with the sketch, they informed the plaintiff that the land and the factory shed, which were handed over to the plaintiff, is not situated in S.No.415/3B, but situated in S.No.415/15. The authorities after verifying the records informed the plaintiff that S.No.415/3B is situated elsewhere and they located it and showed the same, which is 4 blocks away from the property covered by the sale deed. When the plaintiff went to the area to identify S.No.415/3B, there were objections from some persons and the plaintiff was not allowed to fence that area. He was informed that the



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area was acquired by the Tamil Nadu Housing Board. Plaintiff gathered information under the Right to Information Act from the Tamil Nadu Housing Board. The Executive Engineer cum Public Information Officer, Tamil Nadu Housing Board sent a reply stating that S.No.415/3B and S.No.415/3C are not referred to in the acquisition proceedings, but S.No.415/15 - 40 cents is forming part of the acquisition proceedings. It is further stated that the land acquisition officer has not handed over the possession of the said 40 cents in S.No.415/15 to the Tamil Nadu Housing Board. Plaintiff was shocked to learn that the property conveyed by the defendants to the plaintiff under the sale deed is in S.No.415/15 and not in S.No.415/3B. In fact, as per the revenue records and physical features, there is no building in S.No.415/3B. Thus, it is clear that the defendants have misrepresented the facts and conveyed the property in S.No.415/15 misrepresenting it as in S.No.415/3B and extracted a sum of Rs.3,90,00,000/- from the plaintiff. It is clear that the defendants have no title to the land in S.No.415/3B. This is a gross misrepresentation. There is no entry in the land survey register correlating S.No.415/3C with 415/3B. Plaintiff issued a legal notice dated 21.03.2012 to the defendants calling



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upon them to refund the sale consideration of Rs.3,90,00,000/- together with interest and to pay damages. The defendants sent a reply dated 10.04.2012 assuming that they were the owners of old No.415/3C/2, which later became 415/3B, measuring 40 cents, and wanted it to be correlated as S.No.415/3B. The defendants traced their title from one H.Vimala Devi and two others. In the earlier title deeds relied by the defendants, survey number is mentioned as 415/3 and the present S.No.415/3C/2 is interpolated with 'C' written in ink. There is no reference to S.No.415/3B. There is no S.No.415/3C/2 in FMB sketch. Thus, it is clear that the defendants sold the property, for which they have no title. The sale was made by misrepresentation and fraud and is liable to be set aside and the plaintiff is entitled for refund of the sale price and damages.

3. The case of the defendants is that they executed a sale deed with the factory premises of the defendants, situated at S.No.415/3B, Shollinganallur Village, Tambaram Taluk, Kancheepuram. Defendants mortgaged the suit property with the Andhra Bank, Besant Nagar Branch, Chennai. Even at the time of mortgaging the suit property, S.No. was



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mentioned as 415/3B, admeasuring 40 cents. The said loan was sanctioned after due diligence on the part of the bank. The suit property was originally belonged to one H.Vimala Devi, who bought the same from Govindarajalu Naidu and another on 28.03.1985. Vimala Devi sold the suit schedule property to Aravind on 20.04.1990. The defendants purchased the suit property from Aravind on 30.03.1998. There were necessary mutations in the revenue records. The defendants had also carried on business at the schedule mentioned property for quite a few years. No discrepancy was raised by the banks pertaining to the survey number. Plaintiff approached the defendants for purchase of this property through their representative. The sale consideration was fixed at Rs.3,90,00,000/- and sale was executed in favour of the plaintiff on 18.12.2008. The possession of the suit property was handed over to the plaintiff on the same day. The defendants handed over the patta in respect of the property to the plaintiff. From 1985, the suit property was transferred from one hand to another and there had been necessary mutations in the revenue records. The defendants are not aware of the discrepancies in the survey number till the receipt of the notice. During the previous transactions, same survey numbers are mentioned and



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there is no possibility of quoting wrong survey number. Before purchase, plaintiff made a thorough scrutiny of the title documents relating to the suit property as well as the location and physical conditions of the suit property. The property was purchased through bank loan and it is impossible to believe that a nationalized bank would tender loan of such huge quantum without going into the credentials of the said land. The claim that 40 cents comprised in S.No.415/15 (actually 415/3B) was acquired by the Tamil Nadu Housing Board is false and untenable. 40 cents conveyed by the defendants was included in the acquisition proceedings, but the acquisition officer has not handed over the possession of the said 40 cents in S.No.415/15 to the Tamil Nadu Housing Board. Plaintiff failed to provide the details with regard to the acquisition and to whom the Government paid the compensation for acquiring the land in S.No.415/15 (actually S.No.415/3B). The allegation that the defendants misrepresented the plaintiff and extracted a sum of Rs.3,90,00,000/- is false. There is no misrepresentation or suppression of facts by the defendants. This suit is filed by the plaintiff to extract lump sum money by furnishing misleading facts. The sale in favour of the plaintiff was registered after following due



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procedures of law. Plaintiff enjoyed the property for almost four years and now filed the suit with a false and untenable allegations. Therefore, the suit is liable to be dismissed.

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

1. Whether the plaintiff is entitled for declaration that the sale deed dated 18.12.2008 executed by the defendants to the plaintiff registered as document No.1563 of 2009 is null and void?

2. Whether the plaintiff is entitled for recovery of a sum of Rs.6,80,55,000/- together with subsequent interest at 18% per annum on Rs.3,90,00,000/- from the date of the plaint till date of realization?

3. Whether the plaintiff is entitled for a sum of Rs.2,00,00,000/- towards damages from the defendants?



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4. Whether the plaintiff has done proper due diligence before purchasing the schedule mentioned property?

5. Whether the possession of the schedule mentioned property is handed over to the plaintiff on the date of the sale?

6. Whether the plaintiff is entitled for the any other relief?

5. PW1 to PW3 were examined on the side of the plaintiff and Exs.P1 to P22 were marked. DW1 was examined on the side of the defendants 1 to 3 and no document was marked. Commissioner's report was marked as Ex.C1.

6. **Issue Nos.1, 2, 4 and 5:**

Learned senior counsel for the plaintiff submitted that believing the representation of the defendants that they are the owners of property in



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old S.No.415/3, later S.No.415/3C/2, new S.No.415/3B, purchased the property measuring 40 cents for a consideration of Rs.3,90,00,000/- under Ex.P1 sale deed. At the time of the purchase, plaintiff had verified the title deeds, revenue records etc. After the purchase, patta was also changed in the name of the plaintiff. When the plaintiff wanted to develop the property and initiated action in this regard for surveying the property, it came to the knowledge of the plaintiff that though the property sold to the plaintiff was shown as in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B, the possession of this property was not handed over to the plaintiff, but possession in S.No.415/15 was alone handed over to the plaintiff. S.No. 415/15 was already acquired by Tamil Nadu housing board. Plaintiff brought this fact to the notice of the defendants and sought them to clarify this aspect. They continued to state that that the property sold in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B was alone handed over to the plaintiff. However the oral and documentary evidence in this case, report of the Advocate Commissioner, evidence of Advocate Commissioner and officials from survey department proved that the the plaintiff was handed over possession of S.No.415/15 and not old S.No.415/3, later



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S.No.415/3C/2, new S.No.415/3B. It Appears that even the defendants were under the mistaken impression that the property in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B is the property in S.No. 415/15. S.No. 415/15 was acquired for the Tamil Nadu Housing Board even in the year 1991, but the property was in the hands of the defendants' previous owners. Though the notification was not marked as Exhibit, the court can always take judicial notice of notification. The defendants had sold the property to the plaintiff, for which they have no title. Therefore plaintiff filed the suit for the aforesaid reliefs.

7. In support of his submission that the court can take judicial notice of notification, learned senior counsel for the plaintiff produced the judgments reported in

(i) ***(2001) 4 CTC 399: (2002) 1 LW (Cri) 142 (B.Shambu Kumar ..vs.. M/s.Raghvendra Steels Ltd.,)*** , wherein it is observed as follows:-

“3. Learned Counsel appearing for the respondent submits that this Gazette notification has to be proved before the trial court and then



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only the petitioner can get the benefit of the gazette notification. In support of his contention, he relies on the ruling of the Andhra Pradesh High Court reported in Bharat Kumar Modi v. Pennar Peterson Securities Limited, 2000 C.L.C. 88, wherein it was held that form No. 32 produced by the accused and the other documents kept at the Registrar of Companies under the Act, though admissible in evidence, ought to be proved in trial. Insofar as the gazette notification is concerned, they are public document and they can be taken judicial notice of at any time by the courts concerned. The veracity of the gazette notification has not been disputed. Once it has been notified in the official gazette that the petitioner ceased to be a partner with effect from 30.9.98 it has to be taken note of by this Court also. ”

and

(ii) In (2011) 5 CTC 620 (Easha Kumar .. vs.. The Assistant Commissioner, Coimbatore City Municipal Corporation), it is observed as follows:-



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“8. At this stage, it would be relevant to note that a Gazettee is admissible in evidence, the facts stated in the Gazette can be looked into to discover facts/materials. A Gazette Notification is a public document any they can be taken judicial notice of at any time by the Courts concerned. Therefore, the Petitioner's parents could produce the Gazette Notification, wherein their changed name has been notified along with the Petitioner's Birth Certificate and there is no legal bar for any authority to take note of the entries in the Gazette Notification for the purpose of ascertaining the names of the Petitioner's parents.”

8. He also relied on the judgment reported in (1998) 3 SCC 471 (*Tarsem Singh ..vs.. Sukhminder Singh*) for the proposition that when both the parties to an agreement are under mistake as to the matter of fact, then the agreement becomes a void agreement. In that case, the parties who suffered under mistaken agreement is entitled for compensation. It is observed in this judgment as follows:

“20. Section 20 of the Act lays



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down as under:-

"20. Agreement void where both parties are under mistake as to matter of fact.- Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.- An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact."

21. *This Section provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this Section.*

22. *The other requirement is that the mistake, apart from being mutual, should be in respect of a matter which is essential to the agreement.*

23. *Learned counsel for the*



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petitioner contended that a mistake of fact with regard to the "price" or the "area" would not be a matter essential to the agreement, at least in the instant case, as the only dispute between the parties was with regard to the price of the land, whether the price to be paid for the area calculated in terms of "bighas" or "kanals".

.....

.....

33. *Mutual consent, which should also be a free consent, as defined in [Section 13](#) and [14](#) of the Act, is the sine qua non of a valid agreement. One of the essential elements which go to constitute a free consent is that a thing is understood in the same sense by a party as is understood by the other party. It may often be that the parties may realise, after having entered into the agreement or after having signed the contract, that one of the matters which was essential to the agreement, was not understood by them in the same sense and that both of them were carrying totally different impressions of that matter at the time of entering into the agreement*



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or executing the document. Such realisation would have the effect of invalidating the agreement under [Section 20](#) of the Act. On such realisation, it can be legitimately said that the agreement was "discovered to be void". The words "discovered to be void", therefore, comprehend a situation in which the parties were suffering from a mistake of fact from the very beginning but had not realised, at the time of entering into the agreement or signing of the document, that they were suffering from any such mistake and had, therefore, acted bona fide on such agreement. The agreement in such a case would be void from its inception, though discovered to be so at a much later stage."

9. Learned senior counsel for the plaintiff further submitted that the plaintiff has now conceded that even the defendants were under the mistake with regard to the identity of the property, without realising the fact that the property purchased by the defendants is in S.No. 415/15, they executed the sale in favour of the plaintiff for the property in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B. Therefore, it is



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submitted by the learned senior counsel for the plaintiff that the plaintiff is not particular about the claim of damages.

10. Learned counsel for the defendants submitted that the sale in favour of the plaintiff was executed in accordance with law for a valid consideration. Defendants purchased this property through Ex.P2 sale deed dated 30.03.1998. Vendor of the defendants purchased this property through Ex.P3 on 20.04.1990. Vendor of the defendants' vendor purchased this property through Ex.P4 on 28.03.1985. There was no dispute whatsoever with regard to the identity of the property. This issue has popped up only after the purchase by the plaintiff, through Ex.P1 dated 18.12.2008. But the plaintiff has not made a complaint with regard to the identity of the property immediately after the purchase. Only after 4 years, plaintiff sent Ex.P15 notice on 21.03.2012 and thereafter, filed the suit in 2013. After the defendants purchased this property on 30.03.1998, the defendants obtained loan from Andhra Bank, Besant Nagar Branch by mortgaging the property. The bank officials have also not raised any issue with regard to the identity of the property. Defendants bonafidely believed that S.No.415/15 is S.No.



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415/3B. Plaintiff had verified the title deeds of the defendants, title deeds of the vendors' of the defendants, revenue records, made physical inspection of the property, obtained legal opinion and only thereafter, purchased the property. Plaintiff should have taken proper care before purchasing the property. Defendants have not done any wrong knowingly and therefore, it is submitted by the learned counsel for the defendants that the plaintiff is not entitled for any relief.

11. From the pleadings and submissions made by the learned counsel appearing for the parties, there is no denial of the fact that the plaintiff purchased the property covered under Ex.P1 from the defendants for a sale consideration of Rs.3,90,00,000/-. The issue is whether the property shown in Ex.P1 sale deed was delivered to the plaintiff? It is necessary to survey the documents filed in this case, to find an answer to this issue.

12. Ex.P1 is the sale deed executed by the defendants in favour of the plaintiff on 18.12.2008. The description of the properties



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shows that the survey number of 40 cents sold under this sale deed is old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B. Four boundaries given to this property shows that it is surrounded,

On the north by : land in S.No.415/2 (part);

On the south by : land in S.No.415/19 (part), 415/18, 415
(part) and 415/16 (part);

On the east by : road

On the west by : land in S.No. 415/3A.

13. Defendants purchased this property from one Aravind through Ex.P2 on 30.03.1998. This sale deed shows the Survey Number of the property sold, as old S.No.415/3, present S.No.415/3C/2. There is no mention about S.No.415/3B in this sale deed. Four boundaries of this property are given as follows:-

North by : Hussain Sahib land;

South by : Subramani Rao land;

East by : Road (VOC Street);

West by : Subramani Rao land.



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14. Defendants' vendor name is S.Aravind and this Aravind purchased this property from one Vimala Devi through Ex.P3 on 20.04.1990. The description of the property in Ex.P3 gives the Survey Number of the property as S.No.415/3, S.No.415/3C/2. The boundaries remain the same as we found in Ex.P2. Vimala Devi purchased this property from one Govindarajulu and another through Ex.P4 on 28.03.1985. The description of the property shows the survey number of the property as 415/3 alone. S.No.415/3C/2 and S.No.415/3B are not given in this sale deed. Four boundaries remain the same as we have found in Ex.P2. Therefore, the perusal of these sale deeds shows that the property sold under these four documents had the original survey number as S.No.415/3 then 415/3C/2 and finally it is claimed by the defendants that survey number was changed as 415/3B. Learned counsel for the plaintiff submitted that the defendants have not produced any material evidence to show that S.No.415/3 became S.No.415/3C/2 and then to S.No.415/3B. Not only that the possession handed over to the plaintiff was not S.No.415/3, later S.No. 415/3C/2 and then new S.No.415/3B, but S.No. 415/15.



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15. The FMB extract for S.No. 415/3B and the whole of S.No.415 are produced as Exs.P8 and P9. The four boundaries of S.No. 415/3B are as follows:-

On the North by : land in S.No. 415/2;
On the South by : lands in S.Nos.415/19, 415/18, 415/16B and 415/16A;
On the East by : road;
On the West by : S.No. 415/3A.

16. It is the claim of the plaintiff that the property in S.No.415/3B was not given possession by the defendants, but the property in S.No. 415/15 was given possession. Ex.P9-FMB sketch for S.No. 415 shows that between S.No.415/3B and S.No. 415/15, S.Nos.415/16, 415/17, 415/18, 415/16A, 415/16B and 415/16D situate. The four boundaries of S.No.415/15 as seen from Ex.P9-FMB sketch are as follows:-

On the North by : lands in S.No. 415/16 B1 and 415/16 B2;
On the South by : lands in S.No. 415/24;
On the East by : road;



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On the West by : lands in S.No. 415/22.

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17. If the plaintiff is not handed over possession of S.No.415/3B but handed over possession of S.No.415/15 as claimed by the plaintiff, then it is sure that there is a mistaken identity with regard to the property sold to the plaintiff by both the plaintiff and the defendants. This Court is not able to find the subdivision number 415/3C/2 from Ex.P9. The four boundaries of S.No. 415/3B and 415/15 totally differ. Of course it is seen from Exs.P10, P11 and P12 that the patta was changed from the name of the defendants to the name of the plaintiff in respect of S.No.415/3B. Ex.P14-Encumbrance Certificate also shows that the property in S.No.415/3 415/3C/2 415/3B was conveyed by the defendants to the plaintiff.

18. On coming to know about the discrepancy, plaintiff sent Ex.P15 notice to the defendants claiming that the plaintiff was not handed over property in S.No. 415/3B, but handed over the property in S.No.415/15. Defendants claim that S.No.415/3C/2 is equal to S.No.415/3B



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is not supported by any revenue records. It is also stated that 415/15 was acquired by Tamil Nadu Housing Board. Defendants sent Ex.P16 reply to this notice claiming that the plaintiff was put in possession of land measuring 40 cents in old S.No. 415/3, later S.No.415/3C/2. It is also claimed that the correlation of survey numbers in the sale deeds are supported by relevant records.

19. Plaintiff sent rejoinder in Ex.P17 to the defendants on 01.05.2012 seeking the correlation of old S.No.415/3 is equal to S.No. 415/3C/2 and S.No.415/3B. It is stated that S.No.415/3B is not recorded in the names of the defendants. The building exists only in S.No.415/15, which was given possession to the plaintiff by the defendants. There is no building in S.No.415/3B. Somebody else is making claim for S.No.415/3B. Defendants were requested to make arrangements to correlate old S.No.415/3 with S.No.415/3C/2 and then with new S.No. 415/3B. This notice was followed by Ex.P18-notice seeking refund of Rs.3,90,00,000/- and damages of Rs.1,00,00,000/-. Finally through Ex.P19-letter, plaintiff reiterated his claim that the defendants have not produced any document to



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correlate S.No.415/3 with S.No.415/3C/2 and S.No.415/3B.

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20. After the filing of the suit, plaintiff filed A.No.2309 of 2013 for appointment of advocate commissioner to inspect the property covered under the sale deed dated 18.12.2008 with the help of a surveyor and correlate whether the suit property is located in S.No. 415/15 or 415/3B with the help of Survey Land Register, FMB and other revenue records and further locate S.Nos.415/3C/2, 415/3B and 415/15 and to note down the physical features and file a report. Accordingly, Advocate Commissioner inspected these properties and filed a report. The report of the advocate commissioner is produced as Ex.C1.

21. Reading of the advocate commissioner's report shows that she inspected the property with the help of Mr.M.Kannappan, Sub-inspector of survey, sholinganallur taluk, Village Administrative Officer and his assistant, with the help of FMB, Survey Land Register and other revenue records. Boundary of S.No.415 and its sub-divisions were marked.



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S.Nos.415/1 and part of 415/2 is a road running east-west. S.No.415/3 has been subdivided as 415/3A and 415/3B. S.No.415/3B is abutting S.No.415/2. S.No.415/3B is a vacant land and there are some coconut trees. Then S.No.415/15 was identified. There is an RCC building in S.No.415/15. This portion consists of asbestos shed fully covered with the compound wall. Applicant/plaintiff's company's name board was found there. The surveyor reported that there is no S.No.415/3C/2 in the record. S.No.415/3 was subdivided only as S.Nos.415/3A and 415/3B and the surveyor reported that S.No.415/15 was acquired by Tamil Nadu Housing Board, but S.No.415/3B was not acquired. Even though the sale deed dated 18.12.2008 shows that survey number of the property is 415/3B, the plaintiff was in occupation of S.No.415/15. The building is only in S.No. 415/15 and there is no building in S.No.415/3B. The photographs of S.No.415/15 and 415/3B are also produced. Thus, it is seen from the report of the Advocate Commissioner that the plaintiff was put in possession of S.No. 415/15 and not in S.No.415/3B. The photographs show the plaintiff's name board in S.No.415/15 and coconut trees are in S.No. 415/3B.



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22. At this juncture, learned counsel for the defendants submitted that the Advocate Commissioner's report cannot be relied for deciding possession. In support of his submission he pressed into service the judgement reported in *(1994) 1 SCC 575 (United Bank of India ..vs.. Official Liquidator)* for the proposition that the purchaser has to satisfy himself in all respect as to the title, encumbrance in respect of the immovable property he proposes to purchase.

23. No doubt that the Advocate Commissioner's report cannot be relied to find out the possession. Of course, learned Advocate Commissioner has said about the possession of S.No.415/15 by the plaintiff. However, there are other aspects that we get to know from the report are that, there is no survey number such as S.No.415/3C/2; there is an RCC building in S.No.415/15 and only coconut trees in S.No.415/3B; S.No.415/15 was acquired by Tamil Nadu Housing Board. The consistent case of the plaintiff is that though the plaintiff purchased the property in new S.No.415/3B, the possession of S.No.415/3B was not given to the plaintiff, but the plaintiff was given possession of S.No.415/15. Whether this



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version is true. This aspect has to be considered now.

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24. PW.1 has given evidence in this regard. Though he claimed that he has no personal knowledge about the sale transaction and he was speaking from the documents, the crux of his evidence is that the plaintiff was not handed over the possession of the property it purchased, but given the possession of S.No.415/15, which was acquired by Tamil Nadu Housing Board. PW.2 is the Commissioner, who inspected the properties and filed Ex.C1 (series) report. Though she was extensively cross-examined, nothing incriminating was obtained during the course of her cross-examination to create doubt in her evidence. PW3- Surveyor has confirmed the inspection of the properties with the help of survey records. She produced the original adangal book relating to S.Nos.415/3B and 415/3. Ex.P22 adangal shows that S.No.415/3B stands in the name of plaintiff and S.No.415/15 stands in the name of Tamil Nadu Housing Board.

25. DW.1, though reiterated the defendant's case in proof



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affidavit, during the cross examination, he was not able to give a direct and plain answer to many of the questions. He is not aware of many things and do not know answer for many questions. When he was asked whether the property in S.No.415/15 was acquired by the Tamil Nadu Housing Board, he answered that he was not aware of it. He answered that he was not aware whether the house site and building in S.No.415/15 was handed over to the plaintiff. He stated that he did not see the extract of Survey Land Register to correlate S.Nos.415/3B and 415/3C/2. He did not know on what basis it is stated in Ex.P1 sale deed that old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B. He did not know how the old S.No.415/3 became S.No.415/3C/2 and S.No.415/3B. He did not see the Advocate Commissioner's report and Ex.P21-sketch and Ex.P22-adangal filed in the court. The evidence of DW.1 is in noway helpful in advancing the case of the defendants, especially to dispel the allegations made by the plaintiff against the defendants that the defendants had handed over possession of S.No.415/15 instead of S.No.415/3 B.

26. Plaintiff obtained information through Public



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Information Officer, Tamil Nadu Housing Board with regard to the land acquisition in S.Nos.415/3, 415/3B, 415/3C/2 and 415/15. The information is marked as Ex.P13. It is seen from Ex.P13 that 72 cents in S.No.415/3A was acquired and possession was handed over to the Tamil Nadu Housing Board on 16.09.2004. There is no mention about acquiring land in S.Nos.415/3B and 415/3C/2 in the award. 40 cents in S.No.415/15 was acquired, however this land was not given possession by the Tahsildar to the Housing Board. This reply makes it clear that 40 cents in S.No.415/15 was acquired by Tamil Nadu Housing Board, but the possession was not handed over till date. The land in S.No.415/3B and 415/3C/2 is not acquired. We are concerned about only these survey numbers. We gather from this information that the property in possession of the plaintiff i.e. 40 cents land in S.No.415/15 was also already acquired for Tamil Nadu Housing Board.

27. Learned counsel for the plaintiff submitted a copy of the Tamil Nadu Government Gazette Extraordinary published on 11.06.1991 containing notifications by the Government. One notification is the notification relating to the Housing and Urban Development Department



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with regard to the acquisition of lands in G.O.Ms.No.948, Housing and Urban Development dated 07.06.1991. As per this notification, several lands were acquired for Tamil Nadu Housing Board. One such land is S.No.415/15 ie., the disputed land in this case. It shows the lands of Aravind, Vimala Devi and Murugesan. They were the previous owners of the defendants 1 to 3. It makes it clear that even when the defendants' predecessors in title, viz., Aravind and Vimala Devi were owning the property in S.No.415/15, the land measuring 0.16.0 hectares was notified for acquisition in 1991. The four boundaries given in the notification tally with the four boundaries of S.No.415/15. From the analysis of entire evidence, the only conclusion that can be drawn is that the defendants and their predecessors in title had dealt with the property in S.No.415/15, but giving the wrong S.No.415/3 and then S.No.415/3C/2 and 415/3B. Defendants had also, on the mistaken belief that they are dealing with the property in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B, dealt with the property in S.No.415/15 and handed over possession of S.No.415/15 to the plaintiff knowingly or unknowingly the fact that the property was already acquired by Tamil Nadu Housing Board.



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28. There is no evidence produced on the side of the plaintiff or defendants that before purchasing the property from the defendants, plaintiff had conducted survey of the property for identifying the property. This Court is of the view that it was not done for the reason that if the survey had been conducted, this discrepancy could have been noticed at the time of survey and the sale could have been avoided. It appears that just by going through the title deeds and revenue records, the plaintiff proceeded with the purchase of the property. The perusal of the title deeds and revenue records gives an impression that there is marketable title to the property in old S.No.415/3, later S.No.415/3C/2, new survey No.415/3B. Therefore, the plaintiff cannot be blamed for the purchase of the property. Plaintiff though not exercised utmost care, but exercised reasonable care expected from the purchaser before purchasing an immovable property. It appears from the evidence that the defendants had also not properly verified the identity of the property before purchase. Without verifying the identity, purchased and sold the property in old S.No.415/3, later S.No.415/3C/2, new S.No.



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415/3B, but handed over possession of the property in S.No.415/15 believing it to be the property in old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B. There is evidence to show that S.No.415/15 was already acquired by Tamil Nadu Housing Board. Thus, now the plaintiff is the person who suffered loss by paying sale consideration of Rs.3,90,00,000/- for a property, which was acquired for Tamil Nadu Housing Board. Therefore, this Court is of the considered view that the defendants are liable to make good the loss caused to the plaintiff due to the sale transaction.

29. We have seen that when a similar situation arose, the Hon'ble Supreme Court in a judgment reported in **(1998) 3 SCC 471** (*cited supra*) found that if an agreement held to have been (discovered to be void), a decree for compensation in favour of the vendee can be granted. As per section 65 of Indian Contract Act, the person, who received advance under void agreement/contract is bound to restore or to make compensation for it, from the person from whom he received it. Therefore, this Court finds that the plaintiff is entitled for the relief of declaration that the sale deed dated 18.12.2008 executed by the defendants in favour of the plaintiff registered



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as document No.1563/2009 before the Sub-Registrar, Neelankarai is null and void and for recovery of a sum of Rs.6,80,55,000/- together with subsequent interest at 6% p.a on Rs.3,90,00,000/- from the date of plaint till the date of realisation.

30. For all these reasons stated above, this Court finds that the plaintiff had done proper and due diligence before purchasing the property for Issue No.4; the plaintiff was put in possession of the property in S.No.415/15 for Issue No.5; Plaintiff is entitled for declaration that Document No.1563/2009 executed before the Sub-Registrar Office, Neelankarai, in favour of the plaintiff by the defendants is void for Issue No.1; the plaintiff is entitled for recovery of a sum of Rs.6,80,55,000/- together with subsequent interest at 6% p.a on Rs.3,90,00,000/- from the date of plaint till the date of realisation for Issue No.2.

31. **Issue No.3:**

It is fairly conceded by the learned counsel for the plaintiff that the defendants were also under the mistaken impression with regard to the



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identity of the property. The analysis of the evidence also points to the fact that the defendants were also under the mistaken impression as to the identity of the property. Agreement entered into between the parties without consensus ad-idem or under the mistake as to the matter of fact is void as per Section 20. This Court already found that the plaintiff is entitled for the recovery of sale consideration along with interest. However, with regard to the claim of damages of Rs.2,00,00,000/-, this Court finds that there was identity issue even when the defendants purchased the property. It appears that the defendants were also under bonafide impression that they are given possession of old S.No.415/3, later S.No.415/3C/2, new S.No. 415/3B, but in real, they took possession of S.No.415/15 and later, handed it over to the plaintiff. Therefore, this Court finds that the plaintiff is not entitled for the damages claimed.

32. **Issue No.6:**

In the result,

- (i) The suit is decreed in part with proportionate costs.
- (ii) The plaintiff is entitled for the relief of declaration that



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the sale deed dated 18.12.2008 executed by the defendants in favour of the plaintiff registered as document No.1563/2009 before the Sub-Registrar, Neelankarai as null and void.

(iii) The plaintiff is entitled for recovery of a sum of Rs.6,80,55,000/- together with subsequent interest at 6% p.a on Rs.3,90,00,000/- from the date of plaint till the date of realisation.

(iii) The plaintiff is not entitled for the damages claimed. Therefore, the suit with regard to the claim of damages is dismissed.

(iv) The Sub-Registrar, Sub-Rgistrar Office, Neelankarai is directed to cancel Document No.1563/2009 executed by the defendants in favour of the plaintiff.

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20.12.2022

List of witnesses examined on the side of the plaintiff :

PW.1	-	Mr.Deepak Parab
PW.2	-	Mrs.K.Anees Fathima
PW.3	-	Mrs.N.Vidhya



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List of Exhibits marked on the side of the plaintiff:

<i>Exhibits</i>	<i>Date</i>	<i>Particulars of documents</i>
Ex.P1	18.12.2008	Original sale deed executed by the defendants in favour of the plaintiff
Ex.P2	30.03.1998	Certified copy of the sale deed executed by one S.Aravind in favour of the defendants.
Ex.P3	20.04.1990	Photocopy of the sale deed executed by one Vimala Devi in favour of S.Aravind.
Ex.P4	28.03.1985	Photocopy of the sale deed executed by one Govindarajulu in favour of Vimala Devi.
Ex.P5	18.12.2008	Original Certificate dated 18.12.2008 issued by Andhra Bank
Ex.P6	-	Original Statement of Account
Ex.P7	-	Photocopy of the demand drafts (5 Nos.) under which the sale consideration was being paid
Ex.P8	-	FMB extract for S.No.415/3B
Ex.P9	-	FMB extract for S.No.415
Ex.P10	-	Adangal extract in respect of S.No.415/3B
Ex.P11	-	Patta stood in the name of defendants



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<i>Exhibits</i>	<i>Date</i>	<i>Particulars of documents</i>
Ex.P12	-	Patta in the name of plaintiff
Ex.P13	-	Copy of reply received from TNHB under RTI Act with enclosures
Ex.P14	-	Photocopy of Encumbrance Certificate from 01.11.1996 to 20.04.2011 regarding S.Nos.415/3B and 415.
Ex.P15	21.03.2012	Notice issued by the counsel for the plaintiff to the defendants
Ex.P16	10.04.2012	Reply notice issued by the counsel for the defendants to the counsel for the plaintiff.
Ex.P17	01.05.2012	Rejoinder issued by the counsel for the plaintiff to the counsel for the defendant with postal acknowledgement
Ex.P18	05.12.2012	Notice issued by the counsel for the plaintiff to the defendants
Ex.P19	04.03.2013	Office copy of the letter written by the plaintiff to the defendants along with postal acknowledgement
Ex.P20	-	Copy of the resolution passed in the meeting of the board of directors of plaintiff company held at New Delhi on 25.04.2012.
Ex.P21	-	Photocopy of FMB Sketch filed by the previous Sub-



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<i>Exhibits</i>	<i>Date</i>	<i>Particulars of documents</i>
		Inspector of Survey.
Ex.P22	-	Photocopy of Adangal Extract filed by the previous Sub-Inspector of Survey.

List of witnesses examined on the side of the defendants:

DW.1 - Mr.M.Prasanth Balaji

List of documents marked on the side of the defendants:

NIL

List of documents marked by the Court:

Ex.C1 (Series) - Advocate Commissioner's report.

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Index : yes

Internet : yes

Speaking/Non-speaking



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G.CHANDRASEKHARAN, J.,

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