IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 08.12.2021	Judgment Pronounced on 16.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

S.A.No.441 of 2020
and
CMP.Nos.9367 and 9368 of 2020

M/s.LVR and DONG-IN STONE LIMITED
represented by its Managing Director
L.R.Sivaprasad ...Appellant/Appellant/Plaintiff

..vs..

1. M/s.Universal Granites Industries (P) Ltd
rep.by its Managing Director
S.Janardhana Reddy
No.48, Vanguard House
II Line Beach Road
Chennai-600 001.

2. S.S.Anthoni

3. State Bank of India
Siruthozhil (Chennai) branch
rep. by its Manager
No.2(Old No.320)
Valluvar Kottam High Road
Nungambakkam,
Chennai 600 034.

4. The Collector
Kancheepuram District
Kancheepuram.

5. State Industrial Promotion
Corporation of Tamilnadu (SIPCOT)
rep.by its Mananging Director
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008.

6. The District Revenue Officer
Kancheepuram District,
Kancheepuram.

...Respondents/Defendants/Defendants

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.11.2019 made in A.S.No.14 of 2016 on the file of the learned Sessions Judge, Mahila Court, Chengalpattu, confirming the judgment and decree dated 20.11.2015 made in O.S.No.181 of 2010 on the file of the learned Principal Subordinate Judge, Chengalpattu.

For Appellant	:Mr.R.Thiagarajan
For Respondent-1	:Mr.V.Raghavachari
For Respondent-2	:Mr.R.Munuswamy
For Respondent-3	:No appearance
For Respondents 4 & 6	:Mr.D.Gopal Government Advocate
For Respondent-5	:Mr.M.Karthikeyan

JUDGMENT

This Second Appeal is filed challenging the judgment and decree in A.S.No.14 of 2016 dated 26.11.2019 on the file of learned Sessions Judge, Mahila Court, Chengalpattu, confirming the judgment and decree of the learned Principal Subordinate Judge, Chengalpattu in O.S.No.181 of 2010 dated 20.11.2015.

2. Appellant/plaintiff filed the suit for the reliefs of directing the defendants 1 and 2 to specifically perform the agreement for sale dated 11.01.1985 in respect of the suit property by executing a sale deed, permanent injunction restraining the defendants 1 and 2 from interfering with the appellant's peaceful possession and enjoyment of the suit property described in plaint schedule-1, restraining the defendants 1 and 2 from interfering with smooth running of its factory, group companies in suit schedule-1 property, restraining defendants 1 and 2 from interfering with the custody of the original title deeds in respect of the suit properties, restraining defendants 1 and 2 from alienating or encumbering or dealing with the suit properties, for permanent injunction

restraining the defendants 4 to 6, their men, agents, servants, subordinates or anyone claiming through them or authorized by them from interfering with the plaintiff's right to have free ingress and egress to reach its property comprised in S.No.55/1, 55/2 and 53/1 passing through the property comprised in S.No.48, Ekattur Village, Kancheepuram Village, and for other reliefs.

3. Appellant/plaintiff company is incorporated under the Indian Companies Act, 1956 as a private limited company and became a deemed public limited company. It is engaged in the manufacture of granite monuments, also manufacturer of handicrafts ornamental granite monuments and exports finished products to foreign countries. Its group companies M/s.G.Tech Stone Ltd., and M/s.Perfect Stone Ltd., are deemed Public Limited Companies and owning properties at Egathur, adjacent to the suit properties. Directors of first respondent/first defendant company were introduced to the appellant/plaintiff by its foreign colloborators. Appellant purchased the property measuring 3.86 acres at Egathur village from first respondent's group company. When the appellant decided to expand its business unit, first respondent came forward to sell its property, which is located adjacent to the property of the appellant. First respondent, acting through its Director Mr.N.S.N.Sharma, held the discussions and negotiations with the appellant company and offered to sell the suit property for a total consideration of Rs.2,31,600/-. The price per acre was fixed at Rs.60,000/-. Appellant made an advance of Rs.2,00,000/- and entered into an agreement for sale at Chennai on 11.01.1985 with the first respondent. The sale shall be free from all encumbrances and the time for completion of sale transaction was fixed at 24 months from the date of obtaining legal opinion by the purchaser. First respondent agreed that they would produce patta, chitta, adangal extract besides Income Tax Clearance Certificate and No Objection Certificate from revenue authorities with regard to the land acquisition proceedings. In pursuance of the sale agreement dated 11.01.1985, appellant was put in possession of the suit property in part performance of the contract. Original title deeds were handed over to the appellant on the date of execution of sale agreement dated 11.01.1985. Appellant had extensively developed the suit property, erected shed and put up structures for using it as separate manufacturing unit. Appellant entered into lease agreement with its group companies M/s.G.Tech Stone Ltd., and M/s.Perfect Stone Ltd. Appellant commenced production of granite monuments and procured granite blocks in bulk from various parts of the country and goods had been hypothecated in favour of State Bank of India. After the demise of founder Director of

the appellant company on 31.08.2004, he was buried inside of the property, after obtaining necessary permission from the appropriate authorities. Recently, first respondent has given a power of attorney in favour of one S.S.Anthoni. He is trying to create litigation over the suit property and threatening the appellant by instigating local rowdy elements. From the date of entering into the sale agreement, appellant has been constantly reminding the first respondent for fulfilling the contractual obligations. However, first respondent has been giving promises and assurances, but not complying them. Appellant has also been insisting on clearance of any other legal embargo, like land acquisition notification and sought enforcement of the contract at an early date. Appellant has always been ready and willing to perform its part of contract by paying balance sale consideration. On 04.05.2006, first respondent issued paper publication mentioning about misplacing or losing the documents of title relating to suit property. It is a false and incorrect publication, issued knowing fully well that the documents of title were handed over by first respondent/first defendant to the appellant/plaintiff. Appellant is in possession and enjoyment of the suit property. The so-called power of attorney of the first respondent, namely, second respondent is trying to interfere and invade into the suit property during September 2007. Time is not the essence of contract. In the said circumstances, the suit is filed for the aforesaid reliefs.

4. The case of the first respondent/first defendant, in brief, is as follows:-

First respondent/first defendant denies about the execution of sale agreement. It is denied that body of the founder Director of the appellant company is buried in the suit property and director of the first respondent company has attended his funeral. It is denied that original title deeds of the suit property had been handed over to the appellant by the first respondent. All other allegations regarding the alleged execution of sale agreement are denied. It is admitted that first respondent effected paper publication on 04.05.2006 with regard to the misplacing or losing the title deeds of the suit property. The allegation with regard to the first respondent handing over title deeds and not handing over revenue records and other records are all denied as false. First respondent states the following allegations as incorrect and false:-

> "a) The alleged existence of an agreement and its execution by this defendant.
>
> b) The alleged receipt of an amount of Rs.2 lakhs as an advance.

c) The alleged part performance of the contract by handling over possession of the suit properties and the original title deeds.

d) The alleged demands set to have been made by the plaintiff for performance of the contract and the readiness and willingness claimed by the plaintiff.

e) The alleged undertaking said to have been given by this defendant for production of patta, adangal, chitta and income tax clearance certificate.

f) The alleged occupation of the suit property by the plaintiff and the alleged construction said to have been made etc.

g) The alleged conversion of the suit land from agricultural land into an industrial area.

h) The alleged interference and trespassing in the suit property by the 2^{nd} defendant and his men.

i) The alleged cause of action as narrated by the plaintiff."

First respondent is a private limited company. If a company wants to sell or acquire any immovable property, there must be a proper resolution in this regard by the Board. Any payment above Rs.20,000/- has to be necessarily paid by cheque and postal order. The sale agreement in question is forged and fabricated one. Mr.N.S.N Sharma was one among the co-directors of the first respondent company. He was not in-charge of the affairs of the company and no power or authority was given to him at any point of time to deal with the suit property on behalf of the first respondent. There is no resolution by the first respondent as claimed by the appellant. First respondent or any one of its directors never received any money in furtherance of the sale agreement. There is no necessity for the first respondent to sell the suit property. Original documents relating to the suit property were kept in the office and nobody noticed the missing of documents till the death of Mr.Raghu Ramachandra Naidu, the chairman of first respondent company. Therefore, the publication was given. Documents in possession of the appellant came to be possessed through illegal means and it amounts to commission of theft. Possession of the suit properties is always with the first respondent. There is no question of constructing a factory premises in the suit property by the appellant. TIN sheet is put up by the first respondent all over the suit property and guarded by security men. First respondent is manufacturing hollow bricks, concrete slabs and for machine cutting of the sheets for their projects. No prudent person will wait for 22 years for enforcing of contract. Appellant has not come to Court with clean hands. First respondent filed a complaint against Mr.Sivaprasad, Managing Director of the appellant company for attempting to criminal trespass into the suit property. Appellant has not chosen to file the original agreement at the time of filing the suit. The suit is not maintainable, barred by limitation and it is an abuse of process of law. The value of the land is Rs.5crores per acre after 2000. The suit has no merits and is liable to be dismissed.

5. The case of the fifth respondent/fifth defendant, as per its written statement, in brief is as follows:-

Fifth respondent/fifth defendant has no interest in S.Nos.55/1A and 55/2A of Egattur Village. As per the orders issued in G.O.Ms.No.10, Revenue LD 5(2) Department, dated 3.1.2002, 209.04.0 hects (516.33 acres) of Government Poramboke lands in Siruseri, Egattur, Navalur, Pudhupakkam and Kazhipattur villages of Chengalpet Taluk (now Thiruporur Taluk) were alienated in favour of SIPCOT for establishment of this Information Technology Park at Siruseri. This includes Survey No. 48, measuring 0.66.5 hects (1.64 acres) in Egattur Village, classified as “Arasu Thope” as per the revenue records and the land in this survey number was handed over to SIPCOT on 4.6.2008. The land in Survey No.48 of Egattur Village now forms part of SIPCOT Information Technology Park, Siruseri and this defendant is developing the same for the purpose for which it was alienated to it and the process is going on. The appellant has no locus standi to claim right over the land in Survey No. 48. The land comprised in S.Nos.55/1A and 55/2A of Egatur Village is not covered in any land acquisition proceedings relating to SIPCOT project. As an agreement holder, appellant/plaintiff cannot claim any right in the suit properties.

6. On the basis of these pleadings, the trial court framed the following issues and additional issues:-

Issues:-

1. Whether the plaintiff is entitled for the relief of specific performance of Agreement of sale dated 11.01.1985 as prayed for?

2. Whether the plaintiff is entitled for relief of permanent injunction as prayed for in prayers mentioned in para 32 (b), (c), (d), (e), and (f) ?

3. To what other relief and costs ?

Additional Issues:-

1. Whether the suit is maintainable?

2. Whether there is misjoinder of parties?

3. Whether there is subsisting, valid and enforceable agreement for sale dated 11.01.1985 between the plaintiff and the defendants 1 and 2 ?

4. Whether the plaintiff has been ready and willing to perform its part of obligations and duties enjoined upon the agreement for sale dated 11.01.1985 from the date of contract till date ?

5. Whether the plea of the first defendant that the suit agreement is vitiated by collusion and connivance between its erstwhile Managing Director and the plaintiff company ?

6. Whether the suit for specific performance is dependent on the defendants 1 and 2 obtaining NOC from the Government Industrial Department ?

7. Is the suit barred by law of limitation ?

8. Is the suit for specific performance is permissible in view of the impending Tamil Nadu Acquisitions of Land for Industrial Purposes Act, 1997 ?

9. Whether the suit filed by the plaintiff discloses valid and plausible cause of action ?

10. Whether the plaintiff is entitled for permanent injunction from interfering with their peaceful possession and enjoyment of the suit property ?

11. Whether the plaintiff is entitled for permanent injunction as against the defendants 1 and 2, their men, agents, servants or any other persons claiming through them or authorised by them from interfering with the smooth function of the plaintiff's factory so also its group of companies in the suit schedule I property ?

12. Whether the defendants 1 and 2 are entitled to interfere with the custody of the title deeds handed over to the plaintiff pursuant to the agreement for sale dated 11.01.1985 ?

13. Whether the defendants 1 and 2 are entitled to alienate or deal with the property without reference to the agreement for sale dated 11.01.1985 entered into with the plaintiff ?

14. To what relief, the parties entitled ? and cost?

7. During the trial, PW.1 to PW.3 were examined and Exs.A1 to A32 were marked on the side of plaintiff. DW.1 and DW.2 were examined and Exs.B1 to B9 were marked on the side of defendants. Apart from these documents, Exs.C1 to C5 were also marked as Court exhibits.

8. On going through the oral and documentary evidence, the trial Court found that the suit cannot be maintained on the basis of photocopy of the sale agreement, no document of possession was brought in evidence, appellant failed to establish readiness and willingness to perform its part of the contract, 22 years of unexplained silence has to be treated against the appellant and therefore, dismissed the suit. Appellant/Plaintiff filed appeal in A.S.No.14 of 2016. Learned appellate Judge also found that the appellant is not entitled for the reliefs claimed in the suit and therefore, dismissed the appeal. Challenging the said judgment, appellant has filed this Second Appeal.

9. At the time of admission of the Second Appeal, following substantial questions of law were framed:-

> "a) Whether the Courts below are right in dismissing the suit for Specific performance of the agreement for sale dated 11.01.1985 under Exhibit A13, despite the Appellant having satisfied the requirements of law for production of secondary evidence?
>
> b) When it is specific case of the plaintiff that sale agreement is a conditional sale agreement, on the performance of certain conditions by the vendor, whether dismissal of the suit on the ground that plaintiff was not ready and willing to perform its part of contract and that suit is barred by Limitation can be sustained?

c) Whether the Courts below failed to exercise judicial discretion on sound judicial principles and reasoning as enunciated under Section 16(c) and Section 20 of the Specific Relief Act read with Article 54 of the Limitation Act and Section 55 of the Contract Act and Section 55 of the Transfer of Property Act?

10. Learned counsel for the appellant submitted that in a suit for specific performance relating to immovable property, time is not the essence of contract, unless parties provided specific terms for making the time as essence of the contract. In the case before hand, there was a sale agreement between the appellant and first respondent. Appellant is a public limited company and first respondent is a private limited company. The sale agreement in respect of the suit property was entered into between the appellant and first respondent on 11.01.1985. The sale agreement is marked as Ex.A13. As per the terms of the sale agreement, first respondent has to perform certain acts before the execution of sale deed. First respondent has to produce patta, chitta and adangal extract of the suit property besides income tax clearance certificate and No Objection Certificate from the revenue authorities with regard to the land acquisition in respect of the suit property. The period of 24 months time from the date of legal opinion given by appellant advocate, though fixed for completion of the sale transaction in the sale agreement, this time period was not treated as essence of contract by the parties to the agreement. The sale transaction has to be completed only after the production of the aforesaid documents by the first respondent. However, first respondent has not produced these documents, despite various requests by the appellant. Therefore, the sale could not be completed. In pursuance of the sale agreement, appellant was put in possession of the suit property. Appellant developed the land, erected shed, put up structures and using it as manufacturing unit. It has also got separate three phase power supply for running the unit. Quarters for the staffs is also constructed. Surrounded the property with barbed wire fencing and erected a huge gate at the entrance.

11. Learned counsel for the appellant also submitted that first respondent has also handed over original documents of the title deeds of the suit property to the appellant. Only because of non-production of documents mentioned above, the sale could not be completed. Whenever the appellant approached the first respondent to execute the sale deed, first respondent used

to say that since the appellant is in possession and enjoyment of the suit property, appellant had nothing to worry about the execution of sale deed. However, when the first respondent issued paper publication on 04.05.2006 and 04.05.2007 claiming that they have misplaced or lost its original title deeds in the suit property, the appellant realised that first respondent is playing ruse and not interested in executing the sale deed. Therefore, the suit was filed.

12. Learned counsel for the appellant further submitted that though there is a delay in filing the suit from the date of execution of sale agreement, since the time was not considered to be the essence of contract, the fact that the sale has to be executed on the first respondent performing certain acts mentioned above and the fact that the first respondent has not produced those documents and when the appellant came to know that by issuing paper publication about misplacement or loss of document, appellant realised that first respondent intended to refuse the performance of contract, therefore, limitation for filing the suit arises in this case within a period of three years from the date when the appellant/plaintiff has noticed that performance is refused. From Exs.A22, A23 publications, appellant came to know that the first respondent has refused to complete the performance of its part of contract of executing the sale deed after receiving valid consideration. The suit is filed within three years from the date of Exs.A22 and A23, paper publications. Therefore, the suit was filed within the time. However, both the Courts below have not considered this aspect under Section 54 of Indian Contract Act, Section 55 of Transfer of Property Act and Section 54 of Limitation Act and Section 16(c) of Specific Relief Act and held that the appellant has failed to establish that the appellant was ready and willing to perform its part of contract and held that the suit was barred by limitation. This finding of the courts below is contrary to evidence and law.

13. Learned counsel for the appellant also submitted that after filing the suit, first respondent filed petition for rejection of plaint under Order VII Rule 11 CPC and petition under Article 227 of the Constitution of India for striking the plaint. These petitions came to be dismissed. Dismissal of the petitions filed for rejection of plaint and striking of plaint operate as res-judicata. It is a case of constructive res-judicata applying at different stages of same proceedings. Ex.A13-xerox copy of the sale agreement was marked as an exhibit. After an exhibit was marked, the Court is expected to give finding on the document. However, the trial Court has

simply rejected Ex.A13 sale agreement only on the ground that it was xerox copy. This finding of the trial Court, which was later confirmed by the appellate Court, is not correct. Both the Courts below have also wrongly decided on misjoinder of parties. When the first respondent totally denies the execution of sale agreement, it is not open to the first respondent to set up a plea that the appellant is not ready and willing to perform its part of contract. The local panchayat president has given Ex.A6-No Objection Certificate for using panchayat road to have ingress and egress to the suit property by the appellant. This aspect was not considered by the Courts below. The sale agreement was executed in duplicate, first respondent is also in possession of the sale agreement, which was signed by the parties to the document. A notice to produce the sale agreement was given to the first respondent. However, first respondent has not produced the duplicate/ counter part of the sale agreement. An adverse inference has to be drawn against the first respondent. However, both the Courts below have not addressed this issue properly.

14. When the first respondent denies that Ex.A13 sale agreement was executed and claims that it is a forged and fabricated document, it ought to have examined Mr.N.S.N. Sharma, who signed the sale agreement on behalf of the first respondent. Curiously first respondent has not examined Mr.N.S.N. Sharma. Thus, it can be gathered that the suit sale agreement is true and valid sale agreement. The sale agreement and other original title deeds were taken by income tax authorities during income tax raid and therefore, they could not be produced. The non-production of original sale agreement and original title deeds of the suit properties cannot be held against the appellant. Further, it is the case of the first respondent that Mr.N.S.N. Sharma has no authority to execute the sale agreement. There is no evidence produced to show that Mr.N.S.N. Sharma has no authority to execute the sale agreement. On the other hand, it is seen from the evidence of DW.1 that Mr.N.S.N. Sharma was in good relationship with other directors and his shares were allotted to his legal heirs after his death. Appellant has produced documentary evidence, photos, to show possession and enjoyment of the suit property. The sale could not be completed only because of non cooperative attitude of the first respondent. Second respondent claiming to be the power agent of the first respondent is trying to interfere with the possession and enjoyment of the suit property by the appellant. Despite producing sufficient oral and documentary evidence, both the Courts have not considered the evidence in proper perspective and wrongly dismissed the suit.

15. Learned counsel for the appellant produced the judgment reported in AIR 2020 SC 5041 (Ferrodous Estates (Pvt.) Ltd., ..vs.. P.Gopirathnam (dead) and others) for the proposition that when the first respondent failed to perform its part of obligation, enforcement of contract by the appellant/plaintiff is maintainable when the appellant/plaintiff is ready and willing to perform its part throughout. This judgment is also relied for the proposition that when a suit for specific performance was not filed within limitation, it cannot be dismissed for the sole ground of delay or latches. Once a suit for specific performance was filed, any delay as a result of the court process, cannot be put against the plaintiff. The relevant portions is extracted for better understanding:-

> "31. The resultant position in law is that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay or laches. However, an exception to this rule is where immovable property is to be sold within a certain period, time being of the essence, and it is found that owing to some default on the part of the plaintiff, the sale could not take place within the stipulated time. Once a suit for specific performance has been filed, any delay as a result of the court process cannot be put against the plaintiff as a matter of law in decreeing specific performance. However, it is within the discretion of the Court, regard being had to the facts of each case, as to whether some additional amount ought or ought not to be paid by the plaintiff once a decree of specific performance is passed in its favour, even at the appellate stage.
>
> 32. Shri Giri's fervent appeal that we should not exercise our discretionary jurisdiction under Article 136, given the fact that Rs.2 crores plus interest is to be paid almost by way of solatium to the appellant, has also to be rejected. As has been found earlier in this judgment, the defendants were held to have taken up dishonest pleas and also held to have been in breach of a solemn agreement in which they were to obtain the Urban Land Ceiling permission which, if not obtained, would, under the agreement itself, not stand in the way of the specific performance of the agreement between the parties. He who asks for equity must do equity.

Given the conduct of the defendants in this case, as contrasted with the conduct of the appellant who is ready and willing throughout to perform its part of the bargain, we think this is a fit case in which the Division Bench judgment should be set aside. As a result, the decree passed by the Single Judge is restored. Since the appellant itself offered a sum of Rs.1.25 crores to the Division Bench, it must be made to pay this amount to the respondents within a period of eight weeks from the date of this judgment."

16. Learned counsel for the appellant also relied on the judgment reported in AIR 2019 SC 1280 (Urvashi Aggarwal (since deceased) through L.Rs and Ors. ..vs.. Kushagr Ansal and Ors.) for the proposition that even in cases where it is not possible to order specific performance, plaintiff is entitled for refund of enhanced advance amount taking into consideration the long period from the date of giving the advance amount till the matter was adjudicated.

"13. The Courts below have found that the Plaintiffs failed to prove their readiness and willingness to perform their part of the Agreement. The failure on the part of the Plaintiffs in not paying the monthly instalments of Rs.7,000/-, not collecting the rent from the tenant on the ground floor, not paying the house tax etc., and not taking any action for eviction of the tenant on the ground floor are some of the points held against the Plaintiffs by the Courts below which show that they were not ready and willing to perform their part of the Agreement. There is no compelling reason to re-examine the said findings of fact by the Courts below in exercise of our jurisdiction under Article 136 of the Constitution of India. We are in agreement with the view of the Courts below that the Plaintiffs have not proved their readiness and willingness to perform their part of the Agreement and, therefore, are not entitled to a decree of specific performance.

14. The High Court directed a refund of Rs.70,000/- which was paid by the Plaintiffs to the Defendants in 1975 with interest at the rate of 24% p.a.. In view of the peculiar facts of this

case in which the Plaintiffs have paid Rs.70,000/- way back in 1975 and the steep increase in the price of the property over time, we are of the considered opinion that the Plaintiffs are entitled to a higher amount than what was granted by the High Court. Instead of the refund of Rs.70,000/- with interest at the rate of 24% p.a., we direct the Defendants to pay Rs. 2,00,00,000/- (Rupees Two Crores) to the Plaintiffs within a period of eight weeks from today.”

17. By way of final submissions, learned counsel for the appellant submitted that principal submission is for specific performance of the contract and incidental submission would be to consider the refund of enhanced advance amount as indicated in the aforesaid judgment.

18. In response, learned counsel for the first respondent submitted that suit sale agreement is not a true and genuine sale agreement. The suit sale agreement is forged and fabricated sale agreement. Suit sale agreement was said to have been entered into between the appellant and Mr.N.S.N. Sharma, one of the directors of the first respondent. Mr.N.S.N. Sharma was dead and gone and therefore, the suit sale agreement is created in his name. It is claimed by the appellant that the first respondent had handed over original documents at the time of execution of the sale agreement. But those original documents have not yet been produced by the appellant. Even the original sale agreement was not produced either at the time of filing the suit or at the time of trial. A specific return was made by the trial Court at the time of numbering the plaint to produce the original sale agreement. Appellant though agreed to produce the original sale agreement before the commencement of trial, the original sale agreement has not been produced till now. First respondent has not noticed the missing/loss of original title deeds relating to the suit properties. Immediately on coming to know about this, paper publications have been given about its missing/loss. Some other properties of other persons were included in the suit only to protract the proceedings. Certified copy of Ex.A2-sale deed dated 22.10.1979 in favour of first respondent by one Ramdoss was obtained only on 30.07.2007 in the name of the first respondent. It is not the case of the appellant that first respondent had handed over Ex.A2 to appellant. Thus, it is clear that Es.A2 was obtained wrongly in the name of the first respondent by the appellant, only on 30.07.2007. When it is claimed in the sale agreement

that board resolutions empowering the sale of the suit properties were handed over, those resolutions are not produced before the Court. There are no resolutions passed by the first respondent empowering the sale of the suit property, as claimed in the sale agreement. A company cannot pay Rs.2,00,000/- without any entries made in its account. No such authenticated account was produced to show the payment of Rs.2,00,000/- as advance. Ex.A30 account produced by the Chartered Accountant, without supporting material, cannot be accepted with regard to payment of advance of Rs.2,00,000/- as advance. From 1995 to 2007, there is absolutely no demand for the execution of sale deed from the appellant. Suit notice was given only on 09.09.2007 and the suit was filed on 17.09.2007. The documents filed by the appellant would not show that the appellant is in possession and enjoyment of the suit property. No acceptable evidence was produced to show the alleged burial of body of founder chairman of appellant company. There is absolutely no pleadings in the plaint that the sale agreement was prepared in duplicate. Only to divert the issue, appellant has filed petition to issue notice to produce the copy of the sale agreement. When the case of the first respondent is that there is no sale agreement at all, giving notice to produce the sale agreement is nothing but an ingenuous way of diverting the issue. Thus, the learned counsel for the first respondent submitted that the suit sale agreement is not a true and genuine sale agreement and both the courts have concurrently found that the suit sale agreement is not a true and genuine sale agreement and also the appellant has not shown its readiness and willingness to perform its part of contract. Assuming that the sale agreement is a true and genuine sale agreement, the suit is barred by limitation. Both the Courts below have properly appreciated the evidence, applied the law and rightly dismissed the suit. Therefore, learned counsel for the first respondent prayed for confirming the judgment of the courts below and for dismissal of the Second Appeal.

19. Learned counsel for the second respondent adopted the arguments of learned counsel for the first respondent and further submitted that PW.3 admitted that he is not the Chartered Accountant of the appellant and did not see the records. There is no pleadings with regard to the income tax raid and the income tax authorities taking the original documents. PW.2 says that the sale agreement was written in pen, but in fact Ex.A13 sale agreement is a typed sale agreement. The suit property is not covered under land acquisition proceedings and therefore, appellant's claim that the first respondent failed to produce No Objection Certificate

from Government with regard to land acquisition proceedings is not true. Thus, he prayed for dismissal of the Second Appeal.

20. The submission of respondents 4 to 6 is that they have no interest in the suit property.

21. Considered the rival submissions and perused the records.

22. It is submitted by the learned counsel for the appellant that completion of sale is subject to the performance of certain acts by the first respondent. In other words, Ex.A13 sale agreement is a conditional sale agreement, its execution depends upon the performance of certain acts like the production of patta, chitta and adangal extract of the suit property, income tax clearance certificate and No Objection Certificate from concerned authorities for exempting the suit property from land acquisition proceedings. Despite several requests, first respondent has not produced these records and therefore, avoided performing its part of contract resulting in delay in filing the suit. Appellant is in no way responsible for the delay in filing the suit, but the delay occasioned because of the failure of the first respondent to perform its part of contract. Therefore, it is necessary to find out from the sale agreement, what are the acts that are required to be performed by the first respondent, assuming without admitting that the sale agreement is a true and valid sale agreement. As indicated above, first respondent totally denies the execution of sale agreement and claims that the sale agreement is a forged and fabricated document. We will take up this issue later.

23. Coming to the terms of sale agreement. There is no dispute with regard to the fact that the first respondent is the owner of the suit property. Suit property is an extent of 3.86 acres situated in No.34, Egathur Village, Chengalpattu Taluk and District in S.Nos.55/1A and 55/2. There is no dispute with regard to the ownership and identification of the suit property. Reading of the sale agreement shows that the sale agreement was signed by Mr.N.S.N.Sharma allegedly representing the first respondent and Mr.L.R.Sivaprasad representing the appellant. One Deenabandu has signed as a witness. Deenabandu is the staff of the appellant company. The recitals in this sale agreement shows that in an extraordinary general body meeting of the first respondent held on 08.01.1995, it was resolved that for the purpose of raising funds for the company, the board of directors of the first respondent company were authorised to sell the suit property. This resolution was followed by a special resolution of the board of directors of

the company authorising its Director Mr.N.S.N. Sharma to sell the suit property and he was also authorised to fix the sale price and other terms with regard to the sale.

24. In a sale of property of a company, certain procedures have to be necessarily followed. Property of a company cannot be sold like the sale between two private individuals. It is seen from the sale agreement that there were two resolutions said to have been passed by the first respondent company, one authorising the Board of Directors of the first respondent company to sell the suit property and a special resolution authorising one of its Directors Mr.N.S.N.Sharma to sell the property by fixing sale price and other terms. Therefore, these two resolutions are very vital resolutions for completing the sale transaction. However, none of these resolutions have been produced before this Court as exhibits.

25. There were atleast 10 conditions incorporated in Ex.A13 sale sale agreement. First condition relates to fixing the sale consideration as Rs.2,31,600/-. Second condition is that payment of Rs.2,00,000/- as advance to the first respondent and balance of Rs.31,600/- to be paid at the time of registration. Third condition stipulates that the sale should be free from all encumbrances. Fourth condition is that parties agreed for 24 months time from the date of legal opinion by the purchaser's advocate. This is a strange condition. When the purchaser will get legal opinion from his Advocate ? and how long it will take for getting the legal opinion ? When the time of 24 months start to run ?. There are no details. It is like giving a long rope to the purchaser to take his own time to get legal opinion from his advocate. Normally we cannot find this sort of conditions in any sale agreement. Fifth condition relates to selling the property to purchaser or its nominees.

26. Sixth condition stipulates that the vendor must pay property tax and all taxes and will obtain and deliver the purchaser the income tax clearance certificate, if necessary, on or before the registration of sale deed. The condition that income tax clearance certificate should be produced is applicable only when it is necessary and not otherwise. There is no material produced by the appellant to show that did he ever demand the first respondent to produce income tax clearance certificate. Seventh condition relates to selling the land free from land acquisition notification. However, it is seen from the written statement filed by the fifth respondent that it has no interest in S.Nos.55/1A and 55/2A of Egattur village and these lands are not covered under any land acquisition

proceedings relating to SIPCOT project. Therefore, there is no question of getting No Objection Certificate from appropriate authority for exempting the suit property from land acquisition proceedings. Ninth condition relates to putting the purchaser in possession of the suit property on the date of sale agreement and tenth condition relates to handing over the original documents of the suit property to the purchaser by the vendor.

27. Of these conditions, production of income tax clearance certificate is necessary only if it is necessary to be produced. Since the suit property is not covered under land acquisition proceedings, production of No Objection Certificate from the authorities for exempting the suit property from land acquisition proceedings does not arise. Patta, Chitta and Adangal are public records and copies can be obtained by anyone. Therefore, the very claim of the appellant that the sale deed could not be executed for the production of patta, chitta, adangal, income tax clearance certificate, No Objection Certificate from the authorities relating to land acquisition proceedings, do not stand to reason at all.

28. It is pertinent to refer to the evidence of PW.1 in this regard. It is seen from the evidence of PW.1 that the payment of advance amount would not have been entered into the records of the appellant company. He does not remember as to whether the copy of the accounts submitted to the Registrar of Companies, especially the accounts relating to suit transaction is produced before the Court or not. He admitted that Mr.N.S.N. Sharma handed over the copy of resolution dated 18.01.1985 passed by the first respondent. However, as stated above, this resolution is not produced before the Court. He also admitted that he has not produced any material to show that he was authorised by the appellant company to enter into Ex.A13 sale agreement. It is his candid admission that there is no apparent recital in Ex.A13 sale agreement that the first respondent should produce patta, chitta, adangal, No Objection Certificate from the authorities relating to Land Acquisition and Industries Department. When he was asked as to whether there was an Act enacted exempting production of income tax clearance certificate, at the time of sale in the year 2000, he expressed his innocence about this Act. He admitted that he has not produced any document to show that he was demanding the first respondent to produce patta, chitta, adangal, income tax clearance certificate, No Objection Certificate from Industries Department. He also stated that he has not produced any material to show that there was business relationship between the appellant and first respondent. Thus, it is clear from his

evidence that there is no express condition made in Ex.A13 sale agreement that patta, chitta, adangal, No Objection Certificate from land acquisition authorities should be produced for the completion of sale. Therefore, the claim of the learned counsel for the appellant that Ex.A13 sale agreement is a conditional sale agreement, the performance of appellant's part is dependent upon the production of aforesaid documents by the first respondent is not true. The claim of the appellant that appellant waited for 22 years for the first respondent to perform the aforesaid act and therefore, there is a delay in filing the suit, cannot be accepted at all.

29. With regard to the execution of sale agreement, it is the case of the first respondent that Ex.A13 sale agreement is not a true and valid sale agreement and it is a forged and fabricated sale agreement. It is seen from the evidence of PW.1 that the stamp paper for Ex.A13 sale agreement was issued by treasury in September 1983 and it was produced by the appellant on 24.10.1984. It is also admitted by him that the appellant used to buy stamp papers for the business purpose and one such stamp paper was used for Ex.A13 sale agreement. PW.2 was examined to prove the execution of sale agreement. It is seen from his evidence that he does not remember whether the sale agreement was prepared in green paper or white paper, but he stated that the sale agreement was written using a pen. But Ex.A13 sale agreement is a typewritten sale agreement and it is not a handwritten sale agreement. When he signed the sale agreement, it was already prepared and he did not know who gave details for the preparation of sale agreement. His evidence that sale agreement was a handwritten sale agreement creates a serious doubt in his evidence as to whether he had really witnessed the execution of sale agreement. Admittedly, neither the original sale agreement nor the original title deeds, said to have been handed over to the appellant by the first respondent, are produced before this Court.

30. It is seen from Ex.A13 sale agreement that there is no specific mention that the sale agreement was prepared in duplicate. There is no pleadings in the plaint in this regard as well. However, PW.1 gives evidence in the proof affidavit claiming that the sale agreement was prepared in duplicate and one copy is available with the first respondent. It is also claimed that first respondent has not produced the duplicate sale agreement, despite giving notice to produce the document. In the absence of any material to show that Ex.A13 sale agreement was prepared in duplicate and in the absence of any foundation laid either in the sale agreement or in the plaint

pleadings giving oral evidence stating that the sale agreement was prepared in duplicate and the first respondent has failed to produce duplicate despite giving a notice to produce the document, cannot be accepted.

31. The reason now attributed for non-production of original sale agreement and original title deeds of the suit property is that the income tax authorities said to have seized those documents. Section 132 of Income Tax Act deals with search and seizure. The provisions of Code of Criminal Procedures, 1973 relating to search and seizure shall apply as far as search and seizure under sub section (1) or sub section (1)(a). There is no evidence produced in support of this income tax raid and seizure of the documents. It is admitted by PW.1 that if the income tax authorities seized any properties, they would give acknowledgment of seized properties. Income tax authorities or any law enforcing authorities, while conducting search and seizure, should account for seizure of every property and document and get acknowledgment from the person seized. Otherwise, the seizure may be challenged as illegal. Therefore, the claim of the appellant that the documents and the sale agreement were seized by the income tax authorities, cannot be accepted in the absence of production of any tangible evidence.

32. PW.3 was examined to prove the payment of Rs.2,00,000/- as advance. He produced a certificate Ex.A30. However, it is seen from his evidence that he has not worked as Chartered Accountant of appellant company. There is a separate Chartered Accountant for the appellant company. Though he claimed that he verified the accounts of appellant company and gave Ex.A30 certificate, also admitted that he has not mentioned in Ex.A30 certificate as to the records verified by him and he has not annexed those documents verified by him. He stated that he has not verified whether any resolution was passed by appellant company for purchasing the suit property. He admitted that he has not mentioned as to when he verified the appellant's account with the Registrar of Companies. It is his evidence that he gave evidence at the request of PW.1. We can give credence to his evidence, if he is the appellant company's Auditor. Appellant company's regular Auditor is not examined to prove the payment of Rs.2,00,000/-. PW.3 has not supported Ex.A30 certificate, with the copies of relevant records and therefore, his evidence and Ex.A30 cannot be relied to conclude that appellant paid Rs.2,00,000/- as advance to the first respondent under Ex.A13 sale agreement.

33. Perusal of oral and documentary evidence produced in this case shows that appellant was not in possession of original sale agreement even at the time of filing the suit. A return was made directing the appellant to produce the sale agreement at the time of numbering the plaint. The plaint was re-presented with the reply that the original sale agreement has been misplaced and shall be traced and produced before the Court. It is pleaded in the plaint that the original sale agreement and title deeds are not readily available with the plaintiff and they would be produced before the commencement or conclusion of the trial. Only thereafter, the suit was taken on file. Respondents 1 and 2, challenging the said order dated 31.10.2007 of the learned Principal District Judge, Chengalpattu, filed CRP No.3572/2007. That petition was ordered giving liberty to the respondents 1 and 2 to move an application under Order VII Rule 11 CPC or under any other provisions of CPC to challenge the maintainability of the suit. Thereafter, respondents 1 and 2 filed applications under Section 151 CPC and Order VII Rule 11 CPC for cancelling the numbering of the plaint and rejection of plaint respectively. Both the applications were dismissed and the orders were challenged in CRP Nos.410 and 411 of 2011. Both the petitions were dismissed giving liberty to respondents 1 and 2 to raise the issue of limitation and maintainability before the trial Court.

34. A submission was made by the learned counsel for the appellant that the dismissal of petitions filed under Order VII Rule 11 CPC and Section 151 CPC and petition filed under Article 227 of Constitution of India to strike of the plaint would operate as constructive res-judicata. However, this Court does not subscribe to the submission of learned counsel for the appellant in this regard. Those applications were disposed on the basis of materials prima facie available on record. Orders were not delivered after examining the parties and appreciating the oral and documentary evidence. It is specially mentioned in CRP Nos.410 and 411 of 2011 that the trial Court shall not be influenced by any of the observations or conclusion or finding recorded relating to limitation and maintainability of the suit. The issues are left open to the trial Court to decide independently at the time of final hearing of the suit. Therefore, the claim that the dismissal of petitions filed for rejection of plaint and striking of plaint would operate as constructive res-judicata cannot be accepted.

35. The analysis of oral and documentary evidence clearly shows that the appellant has miserably failed to prove

that the suit sale agreement is true and valid sale agreement. On the other hand, respondents 1 and 2, by producing oral and documentary evidence and through the cross-examination of P.Ws.1 and 3, were able to establish that the suit sale agreement, namely, Ex.A13 sale agreement is fabricated and forged sale agreement. Therefore, this Court is of the considered view that the appellant is not entitled to claim any relief on the basis of Ex.A13 sale agreement.

36. Learned counsel for the appellant brought to the notice of this Court certain portions of cross-examination of DW.1 to point out that Mr.N.S.N.Sharma was one of the directors of first respondent company; that after the death of Mr.N.S.N. Sharma, his shares were given to his son; that DW.1 was not aware of physical features of the suit properties; that no immediate action was taken for tracing the documents or to give complaint against the appellant in police. True it is that DW.1 has said all these things. But the fact remains that in a suit filed by the appellant on the basis of sale agreement claiming possession of the suit property, possession of original title deeds of the suit property, it is primarily for the appellant to prove its case on the basis of oral and documentary evidence produced by it. Appellant/plaintiff cannot pick holes in the case of the respondents/defendants. It is seen from the evidence of PW.1 that most of the documents filed to establish possession do not relate to the suit property. First of all, it was found that Ex.A13 sale agreement is not true and valid document and on that basis, appellant is not entitled to claim any relief. It is the evidence of DW.1 that only the second respondent is taking care of the property and he is not frequently visiting the suit property. Therefore, the evidence of DW.1 with regard to physical features of the suit property cannot be given much importance. Appellant has miserably failed to prove Ex.A13 sale agreement and possession of the suit property in pursuance of the sale agreement. Without properly accounting for possession of the original title deeds, appellant prayed for the relief of injunction against the respondents for protecting possession of the documents. It is a strange prayer that cannot be granted in the facts and circumstances of the case.

37. Even assuming that Ex.A13 sale agreement is a true and valid sale agreement, the suit filed 22 years after the execution of sale agreement cannot be entertained at all. Though time may not be the essence of contract insofar as immovable property is concerned, in a suit for specific performance, the contract must be performed within a reasonable

time as observed by the Hon'ble Supreme Court in a case of Vaidyanandam ..vs.. Vairavan reported in (1997) 3 SCC 1. In the case relied by the learned counsel for the appellant reported in AIR 2019 SC 1280 (cited supra), it was held that silence maintained by the plaintiff for about 12 years amounts to abandonment of agreement. In the case before hand, it was 22 years. Therefore, even if the sale agreement is presumed to be a true and valid sale agreement, due to delay and latches on the part of the appellant, appellant cannot claim the relief of specific performance. It is already found that Ex.A13 sale agreement is not a true and valid agreement and therefore, appellant is not entitled to claim any relief on the basis of sale agreement. In this view of the matter, this Court finds that appellant is not entitled to receive advance amount or the enhanced advance amount on the basis of the aforesaid judgments relied by the learned counsel for the appellant.

38. No relief has been prayed against respondents 3 to 6. Except fifth respondent, other respondents have not filed any written statement. Respondents 4 and 6 adopted the case of fifth respondent. Respondents 4 to 6 have no interest or claim in the suit property. Respondents 3 to 6, in the facts and circumstances of the case, are absolutely not proper and necessary parties to this suit. They are unnecessarily impleaded. The finding of the Courts below, in this regard is absolutely right.

39. For the reasons aforesaid, this Court finds that Ex.A13 sale agreement was rightly rejected by the Courts below and the suit for specific performance was dismissed for the reason that Ex.A13 sale agreement is not a true and valid sale agreement and it is not proved in accordance with law for substantial question of law No.1.

40. When it is found that Ex.A13 sale agreement is not a true and valid sale agreement, the claim that it is a conditional sale agreement does not arise. Assuming that it is a conditional sale agreement, it is found that there are no specific conditions to be performed by the first respondent for completion of sale transaction and therefore, Ex.A13 sale agreement is not a conditional sale agreement and therefore, the dismissal of the suit on the ground that the appellant/plaintiff was not ready and willing to perform his part of contract and the suit is barred by limitation can be sustained for substantial questions of law No.2.

41. Ex.A13 sale agreement is not a true and valid sale agreement and therefore, there is no question of application of Sections 16(c) and 20 of Specific Relief Act, Section 54 of Limitation Act, Section 55 of Contract Act and Section 55 of Transfer of Property Act to this case, for substantial questions of law No.3.

42. In fine, this Court finds that both the Courts below have properly appreciated the evidence and rightly rejected Ex.A13 sale agreement and dismissed the suit and this Court confirms the judgment of learned first appellate Court/Sessions Judge, Mahila Court, Chengalpattu in A.S.No.14 of 2016 dated 26.11.2019 confirming the judgment of learned trial Judge/ Principal Subordinate Judge, Chengalpattu in O.S.No.181 of 2010 dated 20.11.2015 and dismisses the Second Appeal with the costs of the respondents 1 and 2 throughout. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Mra
To

1. The Sessions Judge, Mahila Court, Chengalpattu.
2. The Principal Subordinate Judge, Chengalpattu.
3. The Section Officer, VR Section, High Court, Madras 104.

+1 CC to Mr.V.Raghavachari, Advocate sr 9712
+1 CC to Mr.R.Thiagarajan, Advocate sr 10600
+1 CC to Mr.R.Munuswamy, Advocate sr 9921.

S.A.No.441 of 2020
and
CMP.Nos.9367 and 9368 of 2020

SPD(CO)
SP(15/03/2022)