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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11 / 04 / 2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.829 OF 2017

AND

CMP NO.20756 OF 2017

1.Navaneethakrishnan

1st appellant LRs of the deceased

2nd appellant viz., Amsavalli

vide order dated 24.11.2021 made in

CMP No.1208/2021 in SA No.829/2017)

2.Amsavalli (Died)

..Appellants 1 & 2/Defendants 1 & 2

(Appellants 1 & 2 rep.by their Power Agent S.Jagannatham)

Lakshmikantham (died)

3.P.Renukadevi

4.Ramakrishnan

5.Kasthuri

6.Santhanam

7.Dhanalakshmi

8.Purushothaman

9.Pushparaj

10.Parimala

...Appellants 3 to 10

VS.

1.Dharadevi

2.Kala

3.Kannan

4.Devandran

... Respondents 1 to 3/Plaintiffs /
4th Respondent/5th Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned District and Sessions Judge, Tiruvarur, made in A.S.No.1 of 2014 dated 15.11.2016 in confirming the judgment and decree of the learned Sub Court, Mannargudi, made in O.S.No.83 of 2006 dated 14.03.2012.



For Appellants : Mr.J.Ramakrishnan

For Respondents : Ms.P.T.Ramadevi

J U D G M E N T

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Aggrieved over the concurrent findings of the Courts below in a Suit for specific performance, the defendants have preferred the above Second Appeal.

2.The plaintiffs filed a Suit for specific performance on the basis of an agreement dated 01.12.2003 executed by the appellants herein to sell the Suit property for a total sale consideration of Rs.1,50,000/-. According to them, on 28.11.2003, the first plaintiff's husband and her brother have negotiated with the respondents. Pursuant to the oral agreement dated 28.11.2003, the first respondent / first plaintiff's husband paid a sum of Rs.75,000/- under Cheque No.140208 to the first defendant and Rs.25,000/- under Cheque No.140209 to the second defendant, Rs.25,000/- under Cheque No.140210 to the third defendant and Rs.25,000/- to the fourth defendant under Cheque No.140211 totalling a sum of Rs.1,50,000/-. The defendants have agreed to execute the power of attorney in favour of Late Rajappa as they were residing in Chennai. On the same date of sale agreement, handed over the original title deeds and encumbrance certificate. Since the defendants have failed to execute the sale deed as promised, Late Rajappa issued a legal notice on 29.01.2004 fixing the last date as 13.02.2004 for executing the sale deed. On 10.02.2004, the defendants replied the legal notice with untenable allegations that the amount mentioned in the agreement is only an advance and not the sale consideration. Thereafter, Rajappa died due to certain ailments on 02.03.2005. As legal heirs, the plaintiffs have issued a legal notice dated 21.11.2005, fixing 30.11.2005 as date for execution and registration of sale deed. But the defendants have not replied the legal notice. Hence, they filed a Suit for specific performance or in the alternative to refund the sale consideration of Rs.1,50,000/- along with interest @ 12% per annum.

3.Resisting the averments, the defendants / appellants contended that the agreement was created by two brokers, namely, Durai Raj and Rajappa with an ulterior motive to grab the property from them. Since the agreement is fraudulent, the Suit shall be dismissed in limine. The property originally belonged to their mother and after her death, it was inherited by five of her legal heirs. The eldest son Gopalakrishnan is living separately due to misunderstanding in the family and he is entitled to 1/5th share. The said Durai Raj, broker, had approached the appellants/defendants on the pretext that their



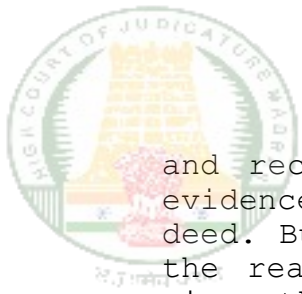
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elder brother had consented for sale of the property and therefore, if a power of attorney is given to him, he will facilitate the sale of the property for a good price and pay equal share. He paid a sum of Rs.75,000/- to the first defendant and Rs.25,000/- each to defendants 2 to 4 as advance. Believing his words, they have executed a general power of attorney in favour of Durai Raj. Later, on knowing that the said Durai Raj and Rajappa were trying to exploit the old age of the defendants and attempted to cheat the defendants 1 to 4 by selling the property for a huge amount, they have immediately cancelled the power of attorney executed in favour of Durai Raj and communicated the same to him. The original title deeds were with their elder brother Gopalakrishnan. When he refused to sell the property, the said Durai Raj and Rajappa have threatened to kill him and coerced him to sell his 1/5th share in favour of one Vasunthara Devi and forcibly obtained his signature. The said Gopalakrishnan was heart broken and suffered serious illness and died due to the above incident. He had written a letter before his death stating that Durai Raj, Rajappa and Kaliaperumal are responsible for his death. Thereafter, the said Durai Raj and Rajappa were attempting to grab the property from the defendants 1 to 4. They filed a Suit in O.S.No.17 of 2005 on the file of District Munsif Court, Mannargudi. During the pendency of the suit, Rajappa died. Thereafter, the plaintiffs have filed the above suit. The property worth more than Rs.12,00,000/- during 2003 itself. There was no necessity for the defendants to sell it for a meagre sum of Rs.1,50,000/- and they have not agreed to sell the property or executed the sale agreement for selling the property for a sale consideration of Rs.1,50,000/- and on this ground, they sought dismissal of the suit.

4.The Trial Court framed three issues viz.,

- (i) Whether the plaintiffs are entitled to the relief of specific performance?
- (ii) Whether the sale agreement is true and valid ?
- (iii) To what relief ?

and held that the execution of the sale agreement and receipt of money is agreed and after knowing that it was forged and obtained by fraud, they have not taken any action to cancel the same. Therefore, it was held that the sale agreement was genuine and that the plaintiffs are entitled to the relief of specific performance.

5.The defendants filed an appeal in A.S.No.1 of 2014 on the file of District and Sessions Judge, Tiruvarur. The First Appellate Court concurred with the findings of the Trial Court on the very same ground that the execution of the sale agreement



and receipt of money was admitted by the defendants in their evidence and therefore, they are liable to execute the sale deed. But the argument that the plaintiffs shall plead and prove the readiness and willingness is concerned, it was found that since they have taken action for execution of the sale deed, the readiness and willingness stood proved and therefore, the findings of the Trial Court is correct and holding so, the appeal was dismissed.

6. Aggrieved over the same, the defendants have preferred the above Second Appeal with the following substantial questions of law:-

"(a) When the alleged agreement Ex.A1 itself is not a genuine document of agreement for sale, never intended to be acted upon and absolutely there was no consensus ad-idem between the parties for the sale of the suit property as alleged by the plaintiffs. Since it was manipulated, camouflaged and fabricated by the collusive act of PW-2 Durairajan with the husband of 1st Plaintiff Rajappa while the parties entering altogether different transaction, whether such an agreement is not fraudulent one and is specifically enforceable in the eye of law?

(b) Whether the courts below are justified in decreeing the suit overlooking scope of section 16(c) of the Specific Relief Act when the fact remains that the alleged agreement of the year 2003 and despite the defendants disputing the agreement right from the 2003 itself as evidenced under Ex.B-14, Ex.A-4, Ex.B-6, Ex.B-2, Ex.B-7 to Ex.B-13, the suit has been filed in the year 2006 only and hence when there exists substantial laches and delay and not ready and willing on the part of the plaintiffs.

(c) In the light of Order 14 Rules 1 to 4 of C.P.C., whether the Judgments and decree of the learned Court and First appellate court are sustainable when they have failed to frame and decide the necessary issues involved in the case and also when failed to determine the points for consideration?

(d) When the plaintiffs themselves failed to prove their case as required under sections 101 to 103 of the Indian Evidence Act and more particularly when the oral evidence of plaintiffs witnesses themselves disprove the plaintiffs own case, whether the courts below are justified in



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decreeing the suit especially when the defendants disputing the very genuineness and binding nature of Ex.A-1?

(e) Having regard to the scope and ambit of Section 20 of the Specific Relief Act, whether in law the judgment and decree of the courts below in granting discretionary of relief specific performance is sustainable, when the plaintiffs have come forward with false case and also deliberately suppressed the various material particulars?

(f) Have not the courts below totally misconstrued and omitted to consider the case of the defendants 1 to 4 and failed to appreciate the oral evidence of DW1 & DW2 in whole and in proper perspective as envisaged under the provision of Indian Evidence Act and hence the adverse findings of the courts below are not perverse?

(g) Whether in law the judgment and decree of first appellate court is sustainable for want of substantial compliance of Order 41 Rule 31 read with section 96 of CPC since it has merely concurred with the trial court without analyzing all the oral and documentary evidence available on record independently?. "

7.Mr.J.Ramakrishnan, learned counsel appearing for the appellants would contend that the unregistered sale agreement is fabricated and fraudulent one and there is manipulation in payments and corrections without attestation. Taking advantage of the old age of the parties, the unscrupulous elements have fraudulently obtained their signatures by paying a sum of Rs.1,50,000/-. According to him, Ex.A1 signed by the parties was not a sale agreement, but it was created for a different purpose and later, it was manipulated as sale agreement. Secondly, the plaintiffs throughout the plaint have not pleaded and proved that they were ready and willing to perform their part of contract and also suppressed the material facts that the power of attorney given to Durai Raj was cancelled within a week's time and it was communicated to him. In the reply notice given by the appellants to the legal notice dated 29.01.2004 issued by Rajappa, it is specifically denied. The said Durai Raj had promised to sell the property for higher price if a power of attorney is given in favour of him and bear the sum of Rs.1,50,000/- as advance amount. Believing his words, they have executed a power of attorney. But, within a week of knowing his



fraudulent activity, they have cancelled the power of attorney and communicated the same to him. The money paid was only an advance towards sale consideration and that they have not handed over possession or the title deeds to him. They have further replied that they were ready to sell the property, if a valid consideration is paid to them. Thereafter, the said Rajappa had not taken any action. After the death of Rajappa on 02.03.2005, the plaintiffs have issued a notice only on 21.11.2005.

8.Per contra, learned counsel appearing for the respondents / plaintiffs would submit that the agreement holder has paid the entire sale consideration by virtue of cheques and the same was appropriated by the respondents. Having received the total sale consideration, the respondents have failed to perform their part of contract. Further, the respondents have categorically admitted the execution of the agreement and their signatures. Once the execution of the agreement is admitted, then the respondents are bound to perform their part of contract and the plaintiffs are entitled to the relief of specific performance. When the entire sale consideration has already been paid, there is no question of readiness and willingness and it is only execution of the sale deed and therefore, the delay cannot be attributed on the part of the plaintiffs. It is only the defendants have failed and neglected to perform their part of the contract. The Courts below have rightly considered the issue in proper perspective and granted the relief. Therefore, the well considered judgment does not require any interference.

9.Heard the submissions made on either side and perused the materials available on record.

10.From the perusal of the materials, it is noted that an agreement was entered between the appellants and the respondents on 01.12.2003. As per the agreement, the appellants have received a sum of Rs.1,50,000/- pursuant to the acceptance to sell the property. The remaining recitals of the agreement would go to show that possession was handed over to the agreement holder, parent document was also handed over and crucially it was agreed by the appellant that they will not cancel the power of attorney at any cost and if it is cancelled, the agreement holder is entitled to enforce the agreement by filing the Suit for specific performance. The wholesome reading of the agreement does not specify any date for its performance. It gives an impression that it was a concluded contract and the power of attorney can get the sale deed executed at his free will. As such, the purport of the agreement and genuineness of the agreement has to be proved by the plaintiffs, who seek specific performance.

11.In that view of the matter, it is the duty of the



plaintiffs to prove the genuineness of the sale agreement beyond all reasonable doubt. If the Court finds that there are suspicious circumstances, which creates cloud over the genuineness of the agreement, it is open to the Court to refuse the relief of specific performance. Both the Courts have proceeded on the basis that the execution of the agreement is admitted and therefore, it is a sale agreement and it liable to be performed by the defendants / appellants. But, as noted above, the agreement does not conform to the requirements of the sale agreement. It appears like a concluded contract and on receipt of the entire sale consideration, the land owner has given Power of Attorney instead of sale deed. Therefore, the agreement dated 01.12.2003 draws importance. At page no.2 of the agreement, there is interpolation by striking off certain words. The interpolation reads as under:

..... ஆகிய நாங்கள் 4 பேரும் ஏகோபித்தும். சம்மதித்தும் எழுதிக் கொடுக்கும் விற்கிரய அக்ரிமெண்ட் என்னவென்றால் :- இதில்கண்ட சொத்துக்களை தங்களுக்காவது அல்லது தாங்கள் குறிப்பிடும் நபருக்காவது பத்திர பதிவு செய்து கொடுக்க சம்மதிக்கிறோம்

12.De hors the above interpolation, nowhere else it was found that the parties have agreed to execute a sale deed in favour of others. Further, at page no.4 of the agreement, five lines are struck off and the survey number has been changed. In the body of the agreement, the recitals gives an impression that the appellants were selling the entire property, whereas, in the schedule there is a correction that they have agreed to convey 4/5th of their share. There is a suggestion made during the cross examination of the plaintiffs' witness that there is interpolation and the typing is darker than the original typing, which was denied. But on the other hand, a reading of the boundaries, discloses lot of corrections and striking off, which probabilises the alteration subsequently. It is relevant to note that the agreement is dated 01.12.2003. The southern boundary was originally typed as south of some other property. Later, it was altered as south of Vasunthara Devi's Plot. Ex.B1 is the sale deed executed by Gopalakrishnan, the eldest brother of the appellants in favour of Vasunthara Devi. The said sale deed was executed on 08.02.2005 i.e., two years after execution of Ex.A1-sale agreement. If the sale agreement is true, the original southern boundary should be the property of the said Gopalakrishnan, who executed Ex.B1 dated 08.02.2005, whereas it is struck off and corrected as southern boundary is Vasunthara Devi plot. Further, the extent of property was originally mentioned as vacant plot measuring 5774 sft, whereas it was altered as 4/5 share in that 5774 sft vacant land. As suggested during the cross examination, it is noted that the typing of the corrections in the foot note and corrections made in the schedule and corrections made in page nos.2 and 4 of the



agreement disclose the interpolation made in the agreement.

13. This Court in N.H.M.YAKOOB AND OTHERS VS. M.KRISHNAN AND OTHERS [1991 (II) MLJ 249] has observed as under:

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"Ultimately it was held on the facts of that case that the alterations were not material and that the deed of release could be relied on for the purpose of the redemption action. In Kalianna Gounder v. Palani Gounder, the interpolation was "clear the debts and execute the sale deed free from encumbrance." That undoubtedly is a statutory duty cast upon every vendor under S. 55 of the Transfer of Property Act. Therefore, their Lordships of the Supreme Court held that it cannot be regarded as a material alteration. But, there is a great difference between the above quoted case and this case where even before executing the sale deed, by introducing the said clause, the possessory title was conveyed to the plaintiffs so as to enable him to acquire part performance under S. 55(1)(f) of the T. P. Act and prevent the defendants from claiming any right to possession over the suit property. In the above quoted case, it was observed as follows:

"As observed in Halsbury's Laws of England, Vol. 11, 3rd Edn., Art. 599 at 368 :

"A material alterations is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainly some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration, without the consent of the party bound is exactly the same as that of cancelling the deed."

In the above quoted case, while referring to the decision of the Privy Council in Nathu Lal case has observed as follows:

"This rule has been applied by the Privy Council in Nathu Lal v. Mussamat Gombti Kuar (LR67 IA 318). The Judicial Committee observed in that case at page 331:



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"A deed is nothing more than an instrument or agreement under seal; and the principle of those cases is that any alteration in a material part of any instrument or agreement avoids it, because it thereby ceases to be the same instrument."

The Judicial Committee observed at page 333 :

"A material alteration has been defined in the rule as one which varies the rights, liabilities or legal position of the parties ascertained by the deed, etc." and after applying that test they held that the alteration in that case was not material in the sense of altering the rights, liabilities or legal position of the parties or the legal effect of the document."

In *Loon Karan Sethia v. Ivan E. John*, :

"Question No. 5 : Before proceeding to determine this question, it would be well to advert to the legal position bearing on the matter. As aptly stated in paragraph 1378 of Volume 12 of Halsbury's Laws of England (Fourth Edition)." If an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration, and those claiming under him, from putting the deed in suit to enforce against any party bound by it, who did not consent to the alteration any obligation, covenant, or promise thereby undertaken or made.

A material alteration, according to this authoritative work, is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed."



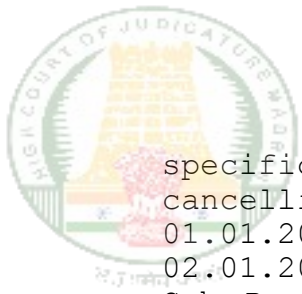
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In S. K. Panchaksharam v. T. V. Kanniah , a Division Bench of this court, after considering the earlier three decisions held :

"Held that the plaintiff had made interpolations in the agreement which amounted to material alterations. By reason of the fact that he had come forward with a false case and unclean hands, he had denied himself the equitable relief of specific performance."

The interpolation in the agreement in the above quoted case is about evicting owner Perumal and thereafter executing the sale deed. As per the original agreement, the understanding between the parties was that after the completion of the sale, the first defendant was willing to deliver possession to the plaintiff and by virtue of the interpolation the first defendant had to evict the fourth defendant Perumal, after which event alone the sale can be concluded. The Division Bench in the circumstances held that "they have not the slightest hesitation in holding that the interpolation is a material alteration acting to the prejudice of the first defendant and therefore the plaintiff cannot enforce his right on the suit agreement Ex. A-1." The said decision is in all fours applicable to the facts of this case, as the interpolation in this case is a material alteration acting to the prejudice of the defendants, in the sense, by introducing that clause the plaintiff claimed part performance u/S. 53-A of the Transfer of property Act. Since we have held that the interpolation is a material alteration and that the plaintiff cannot enforce his right under the suit agreement, we have no hesitation in upholding the finding of the Subordinate Judge in this regard. For all these reasons, we conclude that there is no merit in the appeal and it is liable to be dismissed."

14.Coming to the readiness and willingness is concerned, the Trial Court has not framed any issue with regard to the readiness and willingness. The admission made by the appellants with regard to the execution of Ex.A1 is taken as gospel truth and nothing more is required to be proved. Here, Exs.B6 to B10 gains importance to decide the issue of readiness and willingness. As per Ex.A1 - sale agreement, there is a clause that the land owners will not cancel the power of attorney and in breach of that condition, the agreement holder is entitled to enforce the agreement for filing the suit for



specific performance. But, Ex.B6 is the cancellation deed cancelling the power of attorney given to one Durai Raj on 01.01.2004. A legal notice was issued by one Amsavalli on 02.01.2004 vide Ex.B7 to Durai Raj. This was communicated to the Sub Registrar, Mannargudi on 05.0.2004 vide Ex.B8 and Ex.B9 is the acknowledgment for having received the said notice. The power of attorney issued in favour of Durai Raj was revoked on 30.12.2003 and 02.01.2004. It is also important to note that the agreement holder Rajappa had issued a legal notice on 29.01.2004 vide Ex.A2 = Ex.B11, wherein it is stated that the land owners/appellants had agreed to execute a power of attorney in favour of him, but they have not executed the power of attorney as agreed. In the said notice, the date viz., 13.02.2004 was fixed as date for specific performance. After this date, the said Rajappa, the agreement holder had not taken any action towards enforcement of the sale agreement. The present plaintiffs, the legal heirs of Rajappa had issued a legal notice thereafter only on 21.11.2005. The long gap between 10.02.2004 and 21.11.2005 was not explained. There is no averment in the plaint explaining the reason for the inaction.

15.It is stated that on 02.03.2005, the said Rajappa died due to ill health. Even assuming that Rajappa could not act up to 2005, there is no explanation for the further delay of issuing notice - Ex.A5 and filing the Suit after two months. Therefore, the Trial Court ought to have framed the issue of readiness and willingness but had proceeded on the presumption that the agreement was admitted and proved and the issue of readiness and willingness was irrelevant.

16.Ex.B2 is the plaint filed in O.S.No.17 of 2005 on the file of District Munsif Court, Mannargudi, on 13.09.2004, during the lifetime of Rajappa, the original agreement holder. Ex.B3 is the written statement filed by Durai Raj, who is none other than the brother-in-law of Rajappa, the agreement holder and husband of the first plaintiff and father of the other plaintiffs. Even in that written statement, it was pleaded that the entire sale consideration was paid to the land owners, decision was taken and it was agreed to execute a power of attorney and power of attorney executed in favour of Rajappa to execute the sale deed in favour of Durai Raj.

17.The first plaintiff Dharadevi filed a written statement in the year 2006 informing that she had filed a Suit for specific performance in O.S.No.83 of 2006. In view of the present suit, the suit filed by the appellants was not pursued. It is important to note that even in the written statement filed by Durai Raj in that suit, it was affirmed that possession was handed over to the appellants and what was agreed is that the agreement was to execute a sale deed in favour of Durai Raj and



for that purpose, power of attorney was executed in favour of Rajappa. The averments leads this Court to infer that there is ambiguity in payment of the sale consideration made by the party. It is further aggravated by the deposition made by P.W.2 - Durai Raj that the original title deed was in favour of Navaneethakrishnan and that it was not obtained by them from him. Further, it was not received even after the power of attorney executed in their favour. They have not taken any action for handing over the original parent deeds. Further, he would depose that he was not aware as to whether possession was handed over on the date of agreement or not. He has not taken any action after cancellation of power of attorney and that he has not issued any reply notice to the legal notice issued by the land owners, the appellants herein, through their lawyer.

18. Whereas, in the plaint and in the written statement filed in O.S.No.17 of 2005 - Ex.B3, it is the case of the plaintiffs that the original parent deeds were handed over to them on the date of the agreement and they were also put in possession of the Suit property. This fact that the original title deed was still in possession of the land owner and that possession of the suit property was not handed over to the agreement holder raises suspicion as to the genuineness of the transaction. P.W.2 would further depose that he was a witness to Ex.B1 - sale deed executed by Gopalakrishnan in favour of Vasunthara Devi. In that event, the agreement Ex.A1, which was attested by P.W.3 either should have been made after 08.02.2005 or altered after 08.02.2005. Either way, the agreement does not appear to be genuine. The Trial Court should have framed the issues with regard to the readiness and willing of the plaintiffs to perform their part of the contract and the genuineness of the agreement.

19. The evidence of P.W.2 with regard to the sale consideration is concerned, a serious doubt was raised through cross examination. As admitted by P.W.2, the sale deed in favour of Vasunthara Devi was executed for 1/5th share of Gopalakrishnan in the suit property through Ex.B1. The value for 1/5th share according to P.W.2 was fixed as Rs.3,23,120/-. The property of 1/6th share was sold for Rs.3,23,120/- and witnessed by P.W.2 as found in Ex.B1. If it is true that 1/5th share was Rs.3,23,120/-, 4/5th share should be four times the value of 1/5th share. That means, it should be around Rs.12 Lakhs and more. P.W.2 would admit that the market value of the property was mentioned as Rs.5,77,000/- in Ex.B1. Therefore, the case of the appellants that the amount mentioned in Ex.A1 is only an advance amount and it was not the entire sale consideration. Further, the inaction on the part of the agreement holder Rajappa after cancellation of the power of attorney and even after the Suit filed by the appellants / defendants raises a



serious doubt as to the genuineness of the transaction through Ex.A1. Therefore, it is clear that both the Trial Court as well as the First Appellate Court proceeded on an erroneous basis holding that the sale agreement Ex.A1 is genuine and the readiness and willingness of the agreement holder has already been proved is not correct.

20.As noted above, the interpolation and corrections made in the agreement particularly after execution of Ex.B1 dated 08.02.2005 itself disentitles the plaintiffs to claim the relief of specific performance. Ex.B1 cannot be construed as a sale agreement as it appears that it was purported to have been executed for a different purpose. The agreement holder has failed to prove the readiness and willingness from the beginning.

21.The Hon'ble Supreme Court in A.C.ARULAPPAN VS. AHALYA NAIK [AIR 2001 SC 2783] has held that merely because it is lawful to grant Specific Relief, the Court need not grant such an order, thereby allowing the plaintiff to take an unfair advantage over the defendants. In this case also, the Trial Court had given unfair advantage to the plaintiffs only on the finding that the execution of the sale agreement was admitted by the defendants. Such a finding is not correct in the eye of law.

22.As per the deposition of P.W.2, it is noted that the agreement was to execute the sale deed in favour of him and that he has paid the money. The land owners / defendants agreed to execute the power of attorney in favour of Rajappa, the agreement holder. But the land owners, who are all senior citizens were residing in Chennai and therefore, they could not come and execute the sale deed and Mannargudi. They executed a power of attorney in favour of Durai Raj. There is no evidence to prove that the defendants have met Rajappa, the agreement holder and agreed to sell the property for the value mentioned in Ex.A1. This raises a serious doubt as to the consensus ad-idem between the parties.

23.Further, as already observed, the variation in the boundaries in the schedule and improbability of mentioning Vasunthara Devi's property as southern boundary makes it more clear that there was no consensus ad-idem between the parties and it was vitiated by misrepresentation and the agreement was misappropriated by misrepresentation and fraud. Further, Ex.A7 is the power of attorney executed in favour of Rajappa by the defendants. But nowhere in the plaint, it was mentioned that there was an agreement between the defendants and Rajappa dated 05.12.2003. Contrary to the same, Ex.A2 = Ex.B11 dated 29.01.2004 states that the defendants have failed to execute a power of attorney in his favour as agreed. If that is taken as



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true, Ex.A7 - dated 05.12.2003 anterior to Ex.B11 is a fabricated document. Therefore, it is very clear that the plaintiffs have not approached this Court with clean hands. On the other hand, they have approached this Court with the support of manipulated, interpolated sale agreement taking advantage of the old age of the defendants. They are not entitled to the discretionary relief of specific performance. Further, the misrepresentation as to handing over of parent title deed and possession aggravates it further.

24.The Courts should have refused to grant the discretionary relief as held by the Hon'ble Supreme Court in SURINDER KAUR VS. BAHADUR SINGH [2019 (8) SCC 575] as under:

"14. A perusal of Section 20 of The Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of subsection (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

It is also relevant to note that the conduct of parties gathers importance in the grant of the discretionary relief.

25.This Court in T.BASKER VS. S.VENKATAMMAL [2016 (6) CTC 58] has held as under:

"14. Being a plaintiff in a suit for specific performance, it is expected by the plaintiff/appellant to have come to Court with clean hands and to have removed all suspicion that arise on attending circumstances of the execution of Ex.A-1. Upon perusal of the oral evidence and conduct of the plaintiff in coming out with different versions and different demands at various stages, this Court is of the opinion



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that the plaintiff has miserably failed to establish a fool proof case that would enable him to obtain the discretionary relief of specific performance.

16.1. There is no quarrel over the said proposition. But, at the same time, it is the conduct of the plaintiff which matters the most when it comes to grant or refusal of the specific performance. The plaintiff takes a different stand in each one of his notices and files a suit, for a totally different extent namely for 4 acres and 4 cents, seeking specific performance.

18.1. In the oral evidence, particularly, in his cross examination, the plaintiff gave contradicting answers and the answers given by him to various pointed questions during cross examination, read as a whole, would impress the Court that the plaintiff has not come forward with clean hands, so as to enable him to get the discretionary relief of specific performance. Therefore, the point No.1 is answered against the plaintiff.

26. This Court in FAROOQUE DADABHOY VS. DR. USHA S. BHAT [2014 (4) CTC 290] has held as under:-

"30. It is trite that remedy of specific performance is purely an equitable remedy. The plaintiff in such a suit must come to the Court with clean hands. Entire facts of the case have to be pleaded without any kind of reservation. There should be no attempt on the part of the plaintiff to conceal or suppress material facts. Similarly, there should not be any kind of attempt to mislead the Court. Whether it is favourable or unfavorable, the plaintiff must disclose the entire details of the transaction. The conduct of the plaintiff should be trustworthy. The course of conduct adopted by the plaintiff should be fair. Any suppression of material particulars would be treated as unfair, which would dis-entitle him from seeking the equitable remedy of specific performance.

31. Since the remedy of specific performance is a discretionary remedy on equitable grounds, plaintiff has to produce materials with respect to his readiness and willingness at all point of



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time. The conduct of the plaintiff also assumes significance in a case of this nature. The Court was expected to weigh the materials produced by the plaintiff to come to a definite conclusion with regard to the readiness and willingness to perform the contractual obligation voluntarily undertaken by the plaintiff. Any action on the part of the plaintiff to take undue advantage of the situation would result in denial of the equitable remedy. In short, the conduct of the plaintiff throughout should be taken note of to decide the genuineness of the claim and his bonafides."

The observation made in the above judgments will squarely apply to the present case on hand.

27.As held by the Hon'ble Supreme Court in GARRE MALLIKHARJUNA RAO VS. NALABOTHU PUNNIAH [2013 (4) SCC 546] the Trial Court had relied on untrustworthy, shaky and vague evidence of the respondent / plaintiff to grant the discretionary relief of specific performance in contravention of the mandate of Section 20 of the Specific Relief Act, 1963. Such a judgment deserves to be interfered with. Therefore, it is clear that the plaintiffs have failed to prove the genuineness and enforceability of Ex.A1 - sale agreement and failed to prove the readiness and willingness and their entitlement to get the discretionary relief of specific performance within the ambit of Section 20 of the Specific Relief Act.

28.In view of the above discussions, the questions of law raised in the Memorandum of Grounds of Appeal are answered in favour of the appellants. The judgment and decree dated 15.11.2016 passed in A.S.No.1 of 2014 by the learned District and Sessions Judge, Tiruvarur, confirming the judgment and decree of the learned Sub Court, Mannargudi, made in O.S.No.83 of 2006 dated 14.03.2012 stands set aside. Since the plaintiffs have sought for alternative relief of refund of advance amount of Rs.1,50,000/- with 12% interest per annum, the Suit is decreed for the prayer of refund of advance amount.

29.In fine, the Second Appeal is partly allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

TK

Sub Assistant Registrar



To

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1. The District and Sessions Judge
Tiruvarur.
2. The Subordinate Judge
Subordinate Court
Mannargudi.

+1cc to M/s.P.T.Ramadevi, Advocate, S.R.No.24844

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.24943

SA NO.829 OF 2017

SV(CO)
SB(08/07/2022)