



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S.(MD)No.82 of 2019

and

C.M.P.(MD)No.4525 of 2019

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Thengapattanam Educational and Service Trust,
Represented by its Managing Trustee,
A.Akbar Ali,
S/o, Alihasan,
No.22/56, Thoppuveedu,
Thengapattanam & Post,
Painkulam Village,
Vilavancode Taluk,
Kanyakumari District.

..Appellant/Plaintiff

Vs.

1.Kose Mohumed
2.Abdul Reguman

..Respondents /Defendants

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree, dated 14.03.2019 passed in O.S.No.154 of 2010, on the file of the learned Principal District Judge, Kanyakumari District at Nagercoil.

For Appellant : Mr.M.P.Senthil

For Respondents : M/s.P.Malini

J U D G M E N T

This Appeal Suit has been preferred challenging the judgment of the learned Principal District Judge, Kanyakumari, dated 14.03.2019, made in O.S.No.154 of 2010.

2.The Appellant is the plaintiff in the suit. He has filed the suit for specific performance on the basis of the sale agreement, dated 04.03.2010, executed by him in favour of the first defendant herein. The case of the plaintiff is that on 04.03.2010, the first defendant entered into a sale agreement with the plaintiff, in respect of his 53 cents of lands in Survey No.486/1, Painkulam Village, Vilavancode Taluk, Kanyakumari District, at the rate of Rs.40,000/- per cent; on the date of sale agreement itself, the plaintiff paid an earnest amount of Rs.25,000/- and it was agreed between the parties that the balance sale consideration should be paid within a period of four months; on 07.04.2010, at the instance of the first defendant, his wife Zeenath Beevi sent a legal notice, stating that a portion of the said property belonged to her and she had not agreed to sell the



property in favour of the plaintiff and she did not sign the agreement also; the plaintiff sent a reply notice to Zeenath Beevi, dated 12.05.2010; the plaintiff also sent a suit notice to the first defendant and called upon him to execute the sale deed, in respect of 41 cents, in the said suit survey Number, in accordance with the sale agreement, dated 04.03.2010; on receipt of the said notice, the first defendant sent a reply notice, dated 25.10.2010 with false and frivolous allegations; later, the plaintiff came to know that the first defendant has got a saleable interest only in respect of 36 cents alone; hence in the suit schedule properties, the extent of lands is shown as 36 cents; the plaintiff is ready and willing to perform his part of contract by paying the balance sale consideration to the first defendant; despite the plaintiff was ready and willing to perform his part of contract, the first defendant failed to execute the sale deed in his favour; on 16.09.2010, he executed the fraudulent sale deed in favour of the second defendant, in order to defraud the interest of the plaintiff; the second defendant is none other than the cousin brother of the first defendant and he is not a bonafide purchaser for a valuable sale consideration; the second defendant is also added as a party to the suit in order to get effective decree for specific performance; since the first defendant failed to execute the sale agreement as agreed by colluding with the second defendant, the plaintiff has filed the suit for specific performance.

3. The first defendant contested the suit by alleging that the intention for executing the sale agreement is not true; on 30.03.2010, the plaintiff along with some rowdy elements caught hold of the first defendant and obtained his signatures in stamp papers and blank white papers; by making use of the signed papers so obtained from the first defendant, the plaintiff created the sale agreement; on 07.04.2010, the first defendant's wife sent a legal notice, because she has an extent of 36 cents in Survey No.486/1; thereafter, the plaintiff had sent notice to the first defendant and his wife with false and frivolous allegations. So, the suit has to be dismissed.

4. The second defendant has stated in his written statement that he is a bonafide purchaser of the suit property; after verifying the documents in respect of the title of the first defendant and his wife, Zeenath Beevi, the second defendant came to know about the sale agreement, only after the receipt of summons in this case; on enquiry, he came to know that the plaintiff got the sale agreement from the first defendant by force; the suit has to be dismissed.

5. On the basis of the above plea, the learned trial judge has framed the following issues:-

- 1) Is it true to say that the defendants' signature was obtained by the plaintiff by way of coercion and undue influence?*



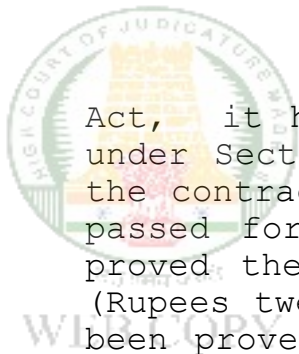
- 2) *Whether the suit is bad for non-joinder of necessary parties?*
- 3) *Whether the plaintiff was always willing and ready to execute the sale deed?*
- 4) *Whether the plaintiff is entitled to get a decree for specific performance of contract based on the sale agreement deed, dated 04.03.2010.*
- 5) *To what any other relief, the plaintiff is entitled to?*

6. During the course of trial, on the side of the plaintiff, three witnesses were examined as PW.1 to PW 3 and 10 documents have been marked as Ex.A1 to Ex.A10. On the side of the defendants, two witnesses were examined as D.W1 and D.W.2 and Ex.B1 to Ex.B4 were marked.

7. The learned trial judge after considering the evidence and documents placed on record dismissed the suit. Aggrieved over the same, the plaintiff has preferred this appeal suit.

8. The learned counsel appearing for the appellant submitted his arguments on the basis of the grounds of appeal. It is submitted on behalf of the appellant/plaintiff that despite the learned trial judge had recorded a finding that Ex.A1 is a genuine agreement, he denied the relief on some wrong premise, though the plaintiff was ready and willing to perform his part of contract, the learned trial judge did not appreciate the evidence in a proper and perspective; the learned trial judge overlooked the conduct of the first defendant who dodged to perform his part of contract by sending notice through his wife and by executing the sale deed in favour of the second defendant, during the pendency of the suit; the plaintiff has filed the suit before the expiry of the agreed time limit of four months and that would show his readiness and willingness to perform his part of contract; even if the first defendant did not have title to the whole of 53 cents of lands, his title is clear with regard to the extent of 36 cents; hence, the learned trial judge ought to have decreed the suit for specific performance in respect of 36 cents by invoking his power under Section 12 of Specific Relief Act; the second defendant is not a bonafide purchaser to the suit property and that was also overlooked by the learned trial judge; so, the appeal has to be allowed.

9. The learned counsel for the respondent submitted that the sale agreement was obtained by coercion. The genuineness of the sale agreement was not proved. Even for the sake of argument, the sale agreement is proved to be true, the appellant/ plaintiff has not proved his readiness and willingness. The appellant has not proved his readiness and willingness; the appellant has not proved his capacity as the Managing Trustee of the plaintiff's Trust and his *locus standi* to represent the Trust by producing any document; in order to avail the benefits of Section 12 of the Specific Relief



Act, it has to be shown before the court that the relinquishment under Section 12(3) of the Act in respect of the remaining part of the contract is done; without such relinquishment, no decree can be passed for the rest of the suit property; the plaintiff has not proved the passing of the part sale consideration of Rs.25,000/- (Rupees twenty five thousand only) as seen in Ex.A.1; so it has not been proved that the sale agreement is supported by consideration; hence, the learned trial Judge has rightly dismissed the suit and it does not require any interference.

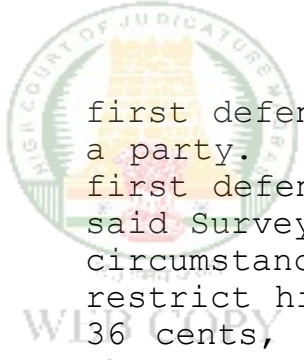
10. Points for consideration:

- 1) Whether the appellant/plaintiff proved that he was ready and willing to perform his part of contract?*
- 2) Whether the plaintiff is entitled to get a decree for specific performance, in respect of 36 cents alone, though the sale agreement was entered for a larger extent of 53 cents?*
- 3) Whether the second defendant is a bonafide purchaser for valuable consideration?*
- 4) Whether the plaintiff is entitled to specific performance of part of the contract?*

11. The execution of the sale agreement and its terms were proved to be true before the trial Court. Hence the learned trial judge has recorded a finding that the sale agreement, dated 04.03.2010 (Ex.A1) is a true and valid document. Though the defendants claimed that Ex.A.1 is not a valid document, findings have been rendered by the learned trial judge in favour of the plaintiff, even though the suit was dismissed. However, the respondents/defendants have not filed any cross objection challenging the above findings. So, this Court need not labour much to test once again whether Ex.A1 Sale Agreement is a true and valid one.

12. At the time of the execution of sale agreement by the first defendant in favour of the plaintiff, the wife of the first defendant was not a party to the same. Subsequent to the execution of the sale deed, i.e, on 07.04.2010, the wife of the first defendant sent a legal notice to the plaintiff and claimed that a portion of the property belonged to her. Though she claimed that Ex.A1, Sale Agreement was obtained from her husband by force, the said contention was not proved and hence it was not accepted by the learned trial Judge.

13. So, the limited scope of this appeal is to see whether the appellant/plaintiff was all along ready and willing to perform his part of contract, atleast in respect of 36 cents, for which the first defendant has title. The title of the first defendant to the extent of 36 cents in Survey No.486/1, Painkulam Village, Vilavancode Taluk, Kanyakumari District is asserted by the first defendant by his own conduct of executing a sale deed for the said extent in favour of the second defendant. In the sale deed executed by the



first defendant in favour of the second defendant, his wife was not a party. From the title deed, Ex.A8, in favour of the wife of the first defendant, it is shown that she had purchased 12 cents in the said Survey Number and hence she is entitled to the same. Under such circumstances, it is the right for the appellant/plaintiff to restrict his relief for specific performance to a limited extent of 36 cents, though in the sale agreement, an extent of 53 cents is shown.

14. The appellant/plaintiff has entered into a sale agreement in his capacity as the Managing Trustee of the Trust. The learned trial judge has observed that the plaintiff did not prove his bonafideness to act on behalf of the Trust in his alleged capacity as Managing Trustee. The fact remains that the defendants themselves did not object his capacity as Managing Director of the Trust. Even if there is any issues about his capacity to represent the Trust, the same can be questioned by the other trustees of the Trust or any other person, who is interested in the affairs of the Trust. In the case in hand such issues did not arise. Even if the appellant suffers any incapability in entering into the contract or represent himself on behalf of the Trust, it may not be possible for him to get the sale deed registered without producing any documents before the Sub Registrar. So it is open to the appellant to prove his capacity that he is the Managing Trustee of the plaintiff's Trust and he is entitled to get the sale deed in the said capacity.

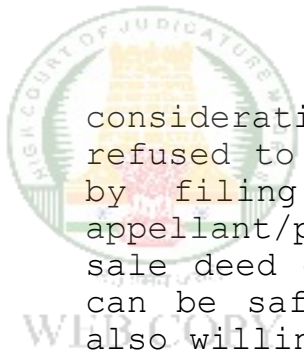
15. It is the categorical submission of the learned appellant/plaintiff that he is always ready and willing to perform his part of contract by paying the balance sale consideration. Since the sale agreement is proved to be true, the payment of Rs.25,000/- as seen in the sale agreement should also be considered as true. The other terms of the sale agreement can also be taken to be true as seen in the sale agreement. The first plaintiff had agreed to purchase the property at the rate of Rs.40,000/- per cent. Subsequent to the sale deed, it came to the knowledge of the plaintiff that the executant of sale agreement, namely the first defendant has got a saleable interest only in respect of 36 cents.

16. It is not the contention of the first defendant that the plaintiff's Trust did not have any financial capability to meet the sale consideration. The first defendant had denied the very execution of the sale agreement. Hence the pleadings as to the absence of readiness and willingness did not emanate from the defendants. The learned counsel for the respondent submitted that the appellant was not ready and willing to perform his part of contract any time before or after the suit. In respect of his contention, he relied on the judgment in **M.Jeyaprakash Narayanan Vs. Santhammal and 3 others** reported in **2018(1) CTC 701** and the judgment in the **S.Palanivel and another Vs. P.Ntesan and 4 others** reported in **2018(1) CTC 50**. In the judgment reported in **2018 (1) CTC 701**, it is held as follows:



13. As abovenoted, the parties have entered into the sale agreement in respect of the extent of 1 Acre and 11 Cents in the suit survey number. Now, according to the plaintiff, the parties had agreed to go for the sale deed of an extent of 20 $\frac{1}{4}$ Cents and accordingly, it is found that the sale deed, dated 06.06.2002, had come into existence only for an extent of 16 $\frac{1}{4}$ Cents. However, with reference to the abovesaid case of the plaintiff, with reference to the alleged agreement or understanding entered into between the parties as regards the conveyance of 20 $\frac{1}{4}$ Cents of land in the suit survey number, there is no clear cut case projected by the plaintiff as to where the abovesaid extent lies in the suit survey number and within what boundaries the same lies and what is the nature of the agreement or understanding entered into between the parties with reference to the same following Ex.A1 and in such view of the matter, when the parties are at issue as regards the lie of the abovesaid land, particularly, the first defendant disputing that 4 Cents of land in respect of which, the plaintiff has come forward with the suit, forms part of the road portion and he had agreed to convey only the 4 Cents of land on the western side and on the other hand, the plaintiff would claim that the parties had agreed as regards the conveyance of 4 Cents of land on the south-eastern side and with reference to the abovesaid alleged agreement between the parties, there is no acceptable and reliable material putforth by the plaintiff one way or <http://www.judis.nic.in> the other either by way of pleadings or by way of the convincing evidence, in such view of the matter, the case of the plaintiff that the first defendant had agreed to convey the extent of 20 $\frac{1}{4}$ Cents of land in favour of the plaintiff's nominee, inclusive of 4 Cents of land, as described in the plaint, as such, cannot be countenanced and in such view of the matter, it could be seen that the plaintiff has failed to establish the consensus ad idem between the parties with reference to the conveyance of 4 Cents of land described in the plaint following Ex.A1 - sale agreement. On the above score also, the plaintiff's suit has to fail.

17. It is to be noted that the time for performing the contract was agreed at four months and the date of sale agreement is 04.03.2010. Within one month, i.e on 07.04.2010, the first defendant's wife sent a legal notice, claiming her entitlement in the subject/suit property. The first defendant was not a party to the notice, dated 07.04.2010. The appellant/plaintiff sent a reply notice on 12.05.2010 to the wife of the first defendant and on the same day he also called upon the first defendant to receive the balance



consideration and execute the sale deed. Since the first defendant refused to execute the sale deed, he knocked the doors of the Court by filing the suit on 01.07.2010. So, the conduct of the appellant/plaintiff in seeking the legal recourse for getting the sale deed executed cannot be overlooked. From the said conduct, it can be safely inferred that the plaintiff is not only ready, but also willing to perform his part of contract.

18. The appellant /plaintiff did not stop with calling upon the first defendant to execute the sale deed. He also initiated the legal proceedings and the same would show his willingness. It has been held in catena of decisions of the Honourable Supreme Court that to prove readiness and willingness, the plaintiff need not deposit the balance sale consideration in the Court, unless he has been ordered to do so. The learned counsel for the appellants emphasised the above point by relying on the judgment of the Honourable Division Bench of this Court, rendered in the case of **R.Leela Ammal Vs. V.Gopal**, reported in **2017 (6) MLJ Page 134**, wherein it is held as follows:-

"In this context, it is worthwhile to refer to Explanation (i) to Section 16(c) of the Specific Relief Act, 1963 which reads as follows:-

"16. Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person:-

...

(c) Who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of contract which are to be performed by him, other than terms of performance of which has been prevented or waived by the defendant.

Explanation: For the purpose of clause (c)

(i) Where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court.

(ii) The plaintiff must aver performance of, or readiness and willingness to perform the contract according to its true construction.

28. Thus, as per the explanation appended to Section 16(c) of the Specific Relief Act, even though the recitals contained in the agreement of sale, Ex.A-1, dated 05.04.2008 requires the plaintiff to deposit the amount in the event of the failure or refusal of the defendant to come forward to execute the sale deed, It is not essential to deposit the amount by the plaintiff before filing the suit unless it is ordered by the Court.

Further, in this context, the recent decision of the



Honourable Supreme Court in the case of (Mrs.A.Kanthamani Vs.Mrs. Nasreen Ahmed) Civil Appeal No.2714 of 2008 dated 6th March 2017 would be a fitting answer to the issue. The relevant portion of the order dated 06.03.2017 of the Honourable Supreme Court reads as follows:-

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"28.The expression "readiness and willingness" has been the subject matter of interpretation in many cases prior to its insertion in Section 16(c) of the Specific Relief Act, 1996. While examining the question as to how and in what manner, the plaintiff is required to prove his financial readiness so as to enable him to claim specific performance of the contract/ agreement, the Privy Council in a leading case which arose from the Indian Courts (Bombay) in Bank of India and others V.Jamsetji A.H.Chinoy and Chinoy and Company) AIR 1950 PC 50, approved the view taken by Chagla, A.C.J, and held inter alia that "it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness."

29.In the light of the above decision of the Honourable Supreme Court and taking note of the evidence of the plaintiff, we hold that the plaintiff was always ready and willing to perform his part of the contract. Moreover, it is not the case of the defendant that the plaintiff was never ready and willing to perform his part of the contract. Further, the evidence on record shows that it is the defendant who issued the notice dated 05.05.2008, Ex.A4 calling upon the plaintiff to cancel the agreement even before expiry of the time stipulated under the agreement, Ex.A-1.Further, as observed earlier, in this case, in the oral evidence adduced by the plaintiff, he has stated that he is in possession of funds received from his sambandhi and daughter to perform his part of the contract and hence, considering the factual aspects of this case, we are of the opinion that this is sufficient to come to a conclusion that the plaintiff was always ready and willing to perform his part of the contract."

19. The above judgement is squarely applicable to the facts of this case. Thus, the point No.1 is answered in favour of the appellants.

20. In the sale agreement Ex.A1, the extent of the property is shown as 53 cents. But in reality, the whole of 53 cents did not belong to the first defendant and the wife of the first defendant is also entitled to a portion of the same. The first defendant had executed Ex.B.1, Sale Deed in favour of the second defendant, during the pendency of the suit and the extent of property is shown in the

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his title for 36 cents at the time when he executed Ex.A1 sale agreement. The sale deed in favour of the wife of the first defendant, Zeenath Beevi, which is produced as Ex.A8 would show that she is entitled to only 12 cents. The said Zeenath Beevi did not raise any objection for the sale deed executed by her husband in favour of the second defendant. These facts would confirm that the first defendant had his title in respect of 36 cents out of 53 cents mentioned in Ex.A1.

21.The learned counsel for the appellant / plaintiff submitted that by virtue of two different title deeds in respect of 36 cents and 12 cents, vide Ex.A6 & Ex.A8, it can be safely presumed that the extent belong to the first defendant and his wife are severable and they have specific boundaries. As per Section 12(2) of Specific Relief Act, if a party to the contract is unable to perform the whole of the contract, but the part which must be left unperformed bears only a small proportion, the Court can direct specific performance of so much of contract as can be performed and award compensation for the deficiency. Though the plaintiff was ready and willing to get the whole of 53 cents, he came to know later that the vendor has a saleable interest only to an extent of 36 cents. The person who is entitled to the portion left out is none other than the wife of the first defendant. And this was already in the knowledge of the first defendant. So, for his inability to execute the sale deed in respect of the whole of 53 cents, the appellant/plaintiff cannot be blamed. But, it is open to first defendant to limit the sale price only in respect of 36 cents at the rate per cent as agreed vide Ex.A1/sale Agreement.

22.In this context it is worthwhile to refer to the judgment of the Honourable Supreme Court rendered in the case of **Surinder Singh Vs. Kapoor Singh (D) through LRs and others**, reported in **2005 (2) STC Page 801**. In the said judgement it is held as follows:-

"9.Section 12(3) of the Act is a beneficial provision so far as the purchasers are concerned. In the instant case, in view of the findings of fact arrived at by the High Court, the decree for specific performance of contract in respect of the entire suit land could not have been granted as the Appellant herein was not authorized by his sister to enter into the agreement for sale. The relinquishment of claim as contemplated under Section 12(3)(ii) of the Act as regard performance of the remaining part of the contract and all rights to compensation need not specifically be pleaded and can be made at any stage of the litigation. Such a plea can also be raised at the appellate stage. Delay by itself, it is trite, may not stand in the way of the plaintiff from claiming the relief unless the defendant establishes prejudice.



contract between the appellant and the respondent's sister and the only valid contract was with respondent in respect of his share in the property."

23. In the subsequent judgment of the Honourable Supreme Court held in **B.Santhoshamma and another Vs. D.Sarala and another** and reported in **2021 (1) LW 435**, it is held as under:-

It is well settled that the Court ordinarily enforces a contract in its entirety by passing a decree for its specific performance. However, Section 12 of the Specific Relief Act carves out exceptions, where the Court might direct specific performance of a contract in part. Section 12 of the Specific Relief Act, 1963 is set out herein below for convenience.

12. Specific performance of part of contract.-

(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either-

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party-

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), [pays or had paid] the consideration for the whole of the contract without any abatement; and



(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

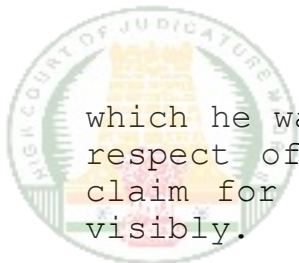
(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.- For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

72. Where a party to the contract is unable to perform the whole of his part of the contract, the Court may, in the circumstances mentioned in Section 12 of the S.R.A., direct the specific performance of so much of the contract, as can be performed, particularly where the value of the part of the contract left unperformed would be small in proportion to the total value of the contract and admits of compensation."

24. It is proved from the facts and evidence of this case that the left out portion of 12 cents belongs to the wife of the first defendant and it was smaller in size than the portion belonged to the first defendant. But, the learned trial judge without considering the above fact, non-suited the appellant/plaintiff to get the specific performance for part of the contract in accordance with Section 12(2) of Specific Relief Act and it is not correct.

25. The learned counsel for the respondent submitted that in order to get the benefits of Section 12(3) of the Specific Relief Act, it should be proved that the appellant has relinquished the remaining part of the contract and his right to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant. Section 12(3)(b)(ii) of the Specific Relief Act also mandates the above condition in order to get the relief of specific performance for the portion of the contract. In the plaint filed by the appellant/plaintiff itself, it is stated that the appellant restricts his right for specific performance in respect of 36 cents alone. In the particulars of property also he has stated about only 36 cents for which the first respondent has got the saleable interest. It has to be noted that the appellant has



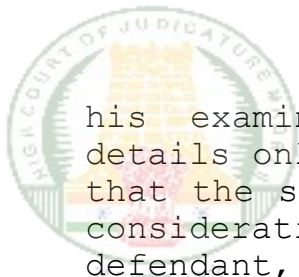
which he was unable to get a decree. So, both the relinquishments in respect of the receiving part of the contract and the right to claim for the deficiency or for the loss or damage have been seen visibly.

26. Since the decree for specific performance can be granted only in respect of 36 cents, it is needless to point out that the appellant is bound to pay the sale consideration only in respect of 36 cents alone. Hence, I feel there is no difficulty in giving the benefit of Section 12 of the Specific Relief Act to the appellant. Thus point No.2 is answered.

27. Prior to Specific Relief Amendment Act, 2018, the Courts have wider power to exercise discretion in giving the reliefs of specific performance. Though the sale agreement relies to the period prior to Specific Relief Amendment Act 2018, the Honourable Supreme Court in **Sughar Singh Vs. Hari Singh (Dead) through LRs and others**, reported in **2021 AIR SC 5581**, has held that the amendment brought to the Specific Relief Act, especially to Section 10(a) can be a guide. Even, when the discretion was available to the Courts, the same has to be exercised judicially and reasonably. In the wordings of the above Judgment of the Honourable Supreme Court it is said as under:

".....For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide."

28. For the judicious exercise of power of discretion, it is ideal for the Courts to look into the conduct of the parties. In the reply notice sent by the first respondent/first defendant, he denied the very execution of the sale agreement. The above stand was taken by the first defendant by making use of the notice sent by his wife. This conduct on the part of the first defendant would show that he was instrumental in sending notice through his wife, shortly after execution of the sale agreement. The second defendant was examined as DW 2. During his cross examination, he gave a spontaneous answer that the first defendant is his brother in law. Though, he tried to retract his statement, thereafter the above evidence of D.W 2 would only reveal that the second defendant is a close relative of the first defendant. The second defendant /DW 2 was not even able to tell the survey numbers and boundaries of the suit property, during



his examination. He stated in his evidence that he could tell those details only by looking at the document. These facts would also show that the second defendant was not a bonafide purchaser for valuable consideration, but he had acted in collusion with the first defendant, in order to defeat the interest of the plaintiff. So no validity can be attached to the sale deed executed in favour of the second defendant and he is not a bonafide purchaser. The sale deed was also executed in his favour during the pendency of the suit and that will not bind the interest on the appellant / plaintiff.

29. Since the appellant / plaintiff has proved the genuineness of the sale agreement, his readiness and willingness and severability of contract, in tune with Section 12(2) of Specific Relief Act, I feel that he is entitled to get the relief of specific performance in respect of 36 cents as prayed by him. Thus, the point Nos.3 & 4 are answered accordingly.

In the result, the appeal suit is allowed. The judgment of the learned Principal District Judge, Kanyakumari in O.S.No.154 of 2010 dated, 14.03.2019 is hereby set aside. The suit is decreed for the relief of specific performance in respect of 36 cents alone. Time for payment of sale consideration is fixed as one month from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn/CM
To

1.The Principal District Judge, Kanyakumari District, Nagercoil.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-21517[F] dated 27/04/2022)

+1 CC to M/s.P. MALINI, Advocate (SR-22047[F] dated 28/04/2022)

A.S. (MD)No.82 of 2019

and

C.M.P. (MD)No.4525 of 2019

26.04.2022