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A.S.No.330 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.330 of 2011 & MP.No.1/2011

P.Varadharajan

... Appellant /
Plaintiff

Vs.

1.Senthilkumar
2.Tmt.Arthi,
3.C.V.Radhakrishnan,
4.M.Nagarajan
5.N.Pandurangan
6.R.Subramaniam

.. RR 1 to 6 /
Defendants 1 to 6

7.U.Balaji

.. Respondent No.7

(R7 impleaded as per order dated
10.02.2012 in M.P.No.2 of 2011)



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Prayer : Appeal Suit filed under Order 41 Rules 1 & 2 r/w Section 96 of Code of Civil Procedure against the judgment and decree dated 31.03.2011 in O.S.No.755 of 2007 on the file of the Additional District cum Sessions Judge (Fast Track Court No.1), Coimbatore.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
for Mr.J.Ramakrishnan

For Respondents : Mr.S.Mukunth,
for M/s.Saravabhauman Associates
for R5 and R6

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

(1)This appeal arise out of the judgment and decree dated 31.03.2011 in O.S.No.755 of 2007 on the file of the Additional District cum Sessions Judge (Fast Track Court No.1), Coimbatore.

(2)The plaintiff in the Suit in O.S.No.755 of 2007 on the file of the Additional District Court, Coimbatore is the appellant in the above appeal. The appellant filed the Suit for specific performance of the Agreement of Sale dated 26.02.2007 and for consequential reliefs.



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Alternatively, the plaintiff also prayed for recovery of a sum of Rs.16,59,780/- to the plaintiff with subsequent interest from the date of the Suit till payment.

(3)The case of plaintiff in the plaint is as follows. The 4th defendant is the brother-in-law of the 1st defendant and defendants 2 and 3 are their close relatives. The 4th defendant approached the plaintiff, offering the Suit property under the pretext that he could arrange for sale of the property which belongs to the defendants 1 to 3. After negotiations, the plaintiff agreed to purchase the Suit property for a total sale consideration of Rs.50 Lakhs and also offered to pay an advance of Rs.15 Lakhs i.e., a sum of Rs.5 lakhs to each of the defendants 1 to 3. The 4th defendant represented that he was in the process of securing power of attorneys from the defendants 1 to 3 and also represented that he would execute the agreement of sale in favour of the plaintiff, on securing such power of attorney.

(4)The plaintiff on scrutiny found defect in the title of the defendants 1 to 3 as one of the Sale Deed was obtained from a minor and the plaintiff wanted ratification from the minor and the plaintiff had to pay substantial



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amount to clear the encumbrance. Since the 4th defendant informed the plaintiff that he had obtained power of attorney from the defendants 1 to 3, a written agreement of sale signed by the 4th defendant was executed on 26.02.2007. The original documents of title were also handed over to plaintiff by the 4th defendant.

(5) As per the terms of the agreement of sale, the total consideration was Rs.50 Lakhs and the plaintiff agreed to complete the sale within six months from the date of the agreement and the plaintiff was ready and willing to perform his part of obligation by paying the balance sale consideration and complete the same in terms of the agreement of sale. However, plaintiff received a notice dated 14.07.2007 from the 4th defendant addressed to the lawyer of the defendants 1 to 3 and realised that there was some inter se dispute between defendants 1 to 4 and as a result of which, the defendants 1 to 3 had cancelled the power of attorney executed in favour of the 4th defendant.

(6) It was in the said context, the plaintiff issued a lawyer's notice dated 24.07.2007, calling upon the defendants 1 to 3 to execute the sale deed in favour of the plaintiff after receiving the sale consideration. A reply



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notice was issued by the defendants 1 to 3. In the reply, the defendants 1 to 3 contended that the sale agreement had been executed in connivance with the 4th defendant and that the defendants are not bound by the agreement. The plaintiff also realised that defendants 1 to 3 executed the sale deed in favour of the defendants 5 and 6. The plaintiff, by contending that the alleged sale subsequent to the agreement dated 26.02.2007 is not valid and binding on him, filed the Suit for specific performance of the agreement dated 26.02.2007 and in the alternative, prayed for recovery of a sum of Rs.16,59,780/-, which was the amount paid by the plaintiff as advance with interest.

(7)The Suit was contested by the defendants 1 to 3 through their power agent, who executed the sale deed in favour of defendants 5 and 6 as the power of attorney agent of defendants 1 to 3. The defendants 1 to 3 denied all the averments made in the plaint as regards the agreement and questioned the genuineness of the sale agreement and the receipt of consideration. Apart from the genuineness of the sale agreement, the defendants 1 to 3 questioned the financial capacity of the plaintiff and the readiness and willingness of the plaintiff as pleaded in the plaint. It is a



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specific plea that the 4th defendant had created the sale agreement with

the connivance of the plaintiff to defeat and defraud defendants 1 to 3. It

is also stated that defendants 5 and 6 are bonafide purchasers for value.

With regard to original title documents stated in the plaint, it is contended

by defendants 1 to 3 that the sale agreement does not refer to title deeds

being handed over and that the 4th defendant has colluded with the

plaintiff just for the purpose of the case. The defendants 1 to 3 also

contended that the Power of Attorney Deeds executed by them in favour

of the 4th defendant was cancelled.

(8)The 6th defendant filed a written statement in the same lines as pleaded in

the written statement of the defendants 1 to 3. The defendants 5 and 6

specifically pleaded in the written statement that they are bonafide

purchasers for value without notice of agreement of sale in favour of the

plaintiff and therefore, their sale is protected under Section 19(b) of the

Specific Relief Act.

(9)The subsequent purchaser also has raised a specific plea with regard to

the readiness and willingness of the plaintiff by stating that the plaintiff

has no financial capacity to pay Rs.15 lakhs as advance or to purchase the



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suit property for the sum of Rs.50 lakhs. Defendants 1 to 3 have executed the Power of Attorney Deeds dated 10.07.2007, 11.08.2007 and 11.08.2007 respectively in favour of one Mr.K.Selvaraj under Exs.B5 to B7 and the Power of Attorney Agent sold the suit property in favour of defendants 5 and 6 under Ex.B8 dated 17.08.2007. It is also stated by defendants 5 and 6 that they have done several improvements after reclamation of soil and after putting up barbed wire fencing around the entire suit property by spending several lakhs of rupees. They specifically stated that the plaintiff is not entitled to seek charge over the property. In sum and substance, the defendants have disputed the genuineness of transaction under the suit Agreement dated 26.02.2007 marked as Ex.A7 and contended that defendants 5 and 6 are bona fide purchasers for value without notice of suit agreement. Defendants have repeatedly stated that the plaintiff is a partisan and stooge of the 4th defendant.

(10)Before the Trial Court, the plaintiff examined himself as PW1 and one R.Selvaraj as PW2. Exs.A1 to A14 were marked on behalf of plaintiff. On behalf of defendants, Dws.1 and 2 were examined and Exs.B1 to B18



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were marked on their behalf. The Trial Court, after referring to the pleadings, framed issues:-

- 1)வாதி கோரியுள்ளவாறு ஏற்றதை ஆற்றுக பரிகாரம் வாதி பெறக்கூடியவரா?
- 2)வாதிக்கு மாற்றும் பரிகாரமாக முன் பணம் பெறக்கூடியவரா?
- 3)வாதி தாவா சொத்தில் மீது ஒரு சார்ஜ் டிகிரி பெறக்கூடியவரா?
- 4)என்ன பரிகாரம்?

(11)After carefully examining the pleadings and evidence, the Trial Court noticed several inconsistencies between the pleading in the plaint and the evidence given by Pws.1 and 2. After holding that defendants 5 and 6 are bona fide purchasers for value without notice of the suit Agreement, the Trial Court further held that the plaintiff has not proved the genuineness of the Agreement under Ex.A7. Since the suit Agreement itself was written in a stamp paper purchased in the name of the 4th defendant long prior to the Agreement and the case of the plaintiff that a sum of Rs.15 lakhs was paid in cash to the 4th defendant four months prior to the suit



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Agreement is not proved, the Trial Court disbelieved the oral Agreement and the payment of a sum of Rs.15 lakhs as advance under the Agreement. Since the plaintiff has not produced any document to show that he was having the balance amount ready at any point of time before or after institution of the suit for specific performance, the Trial Court also held that the plaintiff has not proved his readiness and willingness to pay the balance of sale consideration as per terms of Agreement – Ex.A7. Therefore, the suit in entirety, was dismissed by the Trial Court. Aggrieved by the judgment and decree of the Trial Court dismissing the suit filed by the plaintiff for specific performance, the above Appeal Suit is preferred by the plaintiff.

(12) During the pendency of the Appeal, the appellant filed a Miscellaneous Petition in CMP.No.20877/2022 under Order 41 Rule 27 of CPC for reception of additional documents, namely, original documents of title. The said application is filed mainly for the purpose of showing that the original documents of title were handed over to the plaintiff pursuant to the suit Agreement under Ex.A7 to focus that defendants 5 and 6 who had not obtained the original title deeds, cannot claim to be bona fide



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purchasers of suit property for value without notice of the Sale Agreement.

(13)Learned Senior Counsel appearing for the appellant/plaintiff raised several grounds particularly by referring to the original documents of Title Deed and submitted that the findings of the Trial Court that the subsequent purchasers are bona fide purchasers is perverse. Learned Senior counsel also submitted that the conclusion of Trial Court that the suit Agreement is not a bona fide transaction, is also perverse inasmuch as the Trial Court has failed to consider relevant facts particularly the non-examination of defendants 1 to 4 which is fatal to the case of defendants. When the Agreement-Ex.A7 is executed through the Power of Attorney Agent, the 4th defendant herein, it is contended by the learned Senior counsel that the genuineness of the Agreement cannot be inferred especially when the Power of Attorney Deed executed by defendants 1 to 3 in favour of the 4th defendant was in force when the Sale Agreement-Ex.A7 was executed.

(14)***Per contra***, Mr.S.Mukunth, learned counsel for the respondents referred to almost the relevant portions of the evidence of PW1 and PW2 and the



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plaint averments to project the inconsistencies regarding the execution of the Sale Agreement and the payment of a sum of Rs.15 lakhs. Referring to the specific plea that the plaintiff is the henchman or stooge of the 4th defendant, the learned counsel submitted that the findings of the Trial Court regarding the collusion and creation of Ex.A7-Agreement is fortified by the conduct of plaintiff and 4th defendant and the fact that the suit Agreement itself was typed in a stamp paper which was purchased in the name of the 4th defendant long prior to the date of Agreement.

(15) Considering the pleadings, evidence and the submissions of the learned Senior counsel for the appellant and the learned counsel appearing for respondents, this Court finds it appropriate to frame the following points for determination:-

- A) Whether the suit Agreement is a bona fide Agreement of Sale?***
- B) Whether the plaintiff was ready and willing to perform his part of the contract in terms of the Sale Agreement?***
- C) Whether defendants 5 and 6 are bona fide purchasers for value without notice of suit Agreement?***



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D) Whether the plaintiff is entitled to the equitable relief of specific performance?

E) Whether the petition filed in CMP.No.20877/2022 for reception of additional documents namely, original documents of title in relation to the suit property can be allowed?

POINT [A]:-

(16)Learned Senior counsel for the appellant submitted that the 4th defendant is none else than the brother-in-law of the 1st defendant and defendants 2 and 3 are close relatives of the 4th defendant. Since defendants 1 to 4 are close relatives, the Trial Court, without there being enough evidence to substantiate collusion, proceeded as if the plaintiff is the 4th defendant's man and that the suit itself is engineered only by the 4th defendant who has planned to grab the property with the connivance of the plaintiff. Referring to the fact that the plaintiff is doing business, the learned Senior counsel submitted that the Trial Court has not appreciated the material facts before rendering finding on material issues.



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(17) From the sequence of events pleaded in the plaint, it is seen that the plaintiff has pleaded payment of a sum of Rs.15 lakhs out of the total consideration of Rs.50 lakhs in November 2006. The date of payment of Rs.15 lakhs is not mentioned in the plaint or during evidence. The plaintiff though refers to the sum of Rs.15 lakhs as advance to be paid to defendants 1 to 3 at the rate of Rs.5 lakhs to each of the defendants 1 to 3, it is admitted that not even a single penny is paid as sale consideration to defendants 1 to 3.

(18) Defendants 1 to 3 are close relatives and the 4th defendant is none else than the brother-in-law of the 1st defendant. No document is filed to show that defendants 1 to 3 had authorised the 4th defendant to negotiate for the sale of property even before the Power of Attorney Deeds were executed by defendants 1 to 3 in favour of the 4th defendant. No evidence is brought to the notice of this Court to convince that the 4th defendant entered into an Agreement with the plaintiff even in November 2006 as Power of Attorney Agent of defendants 1 to 3. The suit Agreement is dated 26.02.2007. The suit Agreement is written in a Rs.20/- Stamp Paper purchased in the name of 4th defendant on 20.01.2007. Normally,



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the purchaser used to prepare the sale Agreement. Immediately after the cancellation of Power of Attorney Deeds, learned counsel appearing for defendants 1 to 3 issued a legal notice to the 4th defendant on 09.07.2007 on behalf of defendants 1 to 3. In response to the notice issued on behalf of defendants 1 to 3 by their counsel, the 4th defendant gave a reply through his Advocate on 14.07.2007. It is in the said reply, the 4th defendant made a specific reference to the suit Agreement dated 26.02.2007 entered into by the 4th defendant with the plaintiff and receipt of a sum of Rs.15 lakhs as advance under the Agreement. Even though it was suggested in the said notice that a sum of Rs.15 lakhs was received on behalf of defendants, there is no reference to payment of such amount to the defendants 1 to 3. The Power of Attorney agent is liable to account to his principal. However, he has not given any particulars as to the amount which he had received by way of advance. Rather than accounting for the amount which he has received as advance as an Agent, the 4th defendant was eager in referring to the Sale Agreement dated 26.02.2007 and accused defendants 1 to 3 for cancelling the Power of Attorney Deeds making unwarranted accusations. The conduct of the 4th



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defendant as the Power of Attorney Agent of defendants 1 to 3 shows that he did not bother to account for the money which he had received on behalf of defendants 1 to 3, but is interested in saving the Sale Agreement dated 26.02.2007 in favour of plaintiff. Further reference to possession of Agreement of Sale dated 26.02.2007 by defendants 1 to 3 [without indicating how the agreement was sent to defendants 1 to 3 who were in USA] and marking of a copy of reply notice to the plaintiff would clearly indicate possible collusion between the plaintiff and the 4th defendant and this Court finds truth in the specific case of defendants 1 to 3 that plaintiff is just a henchman of the 4th defendant who is the brain behind the suit Agreement which could have been fabricated after the cancellation of Power of Attorney Deeds.

(19) In the reply notice which is marked as Ex.A3, there is no reference to the Agreement the plaintiff had with 4th defendant in November 2006. It is the case of plaintiff that he paid a sum of Rs.15 lakhs even in November 2006. However, an explanation from the 4th defendant in the reply notice about the receipt of advance in November 2006, is missing. Normally, the document of title will be handed over only after the



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execution of Sale Deed and registration of Sale Deed. In the present case, the Power of Attorney Deeds in favour of 4th defendant is admitted.

The conduct of 4th defendant in handing over documents of Title Deed pursuant to the Agreement of Sale is unnatural and the Sale Agreement-Ex.A7 does not refer to handing over of Title Deed. The 4th defendant who admitted receipt of Rs.15 lakhs on behalf of defendants 1 to 3 did not file written statement and remained exparte. Therefore, the allegation that the 4th defendant has colluded with plaintiff to admit handing over documents of title is justified.

(20)The 4th defendant was not examined by the plaintiff to prove his case, particularly, the genuineness of the Agreement [Ex.A7]. During evidence, PW1 categorically admitted that he has never contacted defendants 1 to 3 in relation to the Agreement any time before the Agreement and payment of substantial amount of Rs.15 lakhs. Even though it is pleaded that the said sum of Rs.15 lakhs was paid in November 2006, the date of payment was not mentioned either in the pleading or in the evidence. The evidence of PW2 during cross examination that the original documents were obtained from the 4th



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defendant at the time of execution of sale Agreement on 26.02.2007, is

contrary to the case of the plaintiff in the pleading. After admitting that 4th defendant has informed him that there is no encumbrance in respect of property, the plaintiff during further cross examination, refers to a further payment of Rs.3 lakhs to discharge the encumbrance in relation to one of the Sale Deed which was obtained by predecessors in interest of the defendants 1 to 3. It is stated that a Sale Deed was obtained from the mother of a minor and that a consent letter was later obtained from the minor after becoming major. If a sum of Rs.3 lakhs is paid by plaintiff to discharge the encumbrance over the suit property, the plaintiff would have certainly called upon defendants 1 to 4 to reimburse that amount or to deduct the said sum out of the total consideration payable by plaintiff as per the Suit Agreement. In the absence of any reference to the said sum in the notice in Ex.A3, this Court is inclined to accept the case of contesting defendants that the 4th defendant has colluded with plaintiff and the Suit Agreement appears to be a concocted Agreement at the behest of 4th defendant in collusion with plaintiff with ulterior motive, taking advantage of the fact that defendants 1 to 3, the true owners of the



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property, were in abroad and that the 4th defendant had obtained the Power of Attorney Deed from defendants 1 to 3. **Hence, Point [A] is answered in the negative and this Court holds that the Suit Agreement is a product of collusion between plaintiff and 4th defendant.**

POINT [B]-Readiness and Willingness:-

(21)The Trial Court specifically referred to the documents and held that the plaintiff has not proved his readiness and willingness by producing any document. This Court has already seen that the plaintiff has not established any payment to defendants 1 to 3 pursuant to the Suit Agreement under Ex.A7. When a sum of Rs.15 lakhs was paid according to plaintiff even in November 2006 and it is not the case of 4th defendant that the Power of Attorney Deeds in favour of 4th defendant coupled with interest, there was no reason why the plaintiff or 4th defendant has not come forward to prove the payment of any money to defendants 1 to 3. In the instant case, 4th defendant is made as a party. No document is



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produced to show that the plaintiff had the balance amount of Rs.35 lakhs before the time specified in Ex.A7-Agreement. Ex.A3 is the Consent Deed dated 17.02.2007. This document is prior to the Sale Agreement under Ex.A7. It is not known as to why the plaintiff should pay a sum of Rs.3 lakhs to discharge the encumbrance. The person who executed the Consent Deed was not examined. Therefore, this Court cannot give any credence or importance to Ex.A3 which was relied upon by the learned Senior Court appearing for the appellant. List of documents annexed to the plaint does not show document-Ex.A3.

(22)As pointed out by the Trial Court, the plaintiff though produced some documents to show that he is doing business and has been awarded some contract, no evidence is marked to prove that the plaintiff was having funds to perform his part of the contract. The glaring discrepancies between the evidence of PWs.1 and 2 and the contradiction between the pleading and the evidence pointed out by the Trial Court would show how the plaintiff miserably failed to prove his means or wherewithal to pay the balance of Rs.35 lakhs pursuant to the Suit Agreement. Since the Agreement itself is held to be unenforceable for want of bona fides, the



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little evidence available to show plaintiff's readiness and willingness appears to have been created as the 4th defendant is an Auditor by profession. PW2 is the friend of plaintiff and he admits in evidence that a sum of Rs.15 lakhs was paid when Ex.A7 was executed. He does not remember as to how the Agreement under Ex.A7 dated 26.02.2007 was executed. From the overall evidence, this Court is unable to find any irregularity in the finding of the Trial Court holding that the plaintiff has not proved his readiness and willingness to perform his part of contract.

Hence, Point [B] is answered against the appellant/plaintiff.

POINT [C]-Whether defendants 5 and 6 are bona fide purchasers for value without notice of suit Agreement:-

(23)The Trial Court has held that defendants 5 and 6 are bona fide purchasers for value without notice of the Sale Agreement. However, the reason given by the Trial Court may not be appropriate as it was pointed out by the learned Senior Counsel for the appellant. In the present case, the plaintiff has impleaded defendants 5 and 6 and it is not stated in the



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plaint that defendants 5 and 6 had notice or knowledge of the Sale Agreement under Ex.A7 dated 26.02.2007. However, defendants 5 and 6 have specifically stated in the written statement that they purchased the property without notice or knowledge of the alleged Suit Agreement under Ex.A7. The 5th defendant was examined as DW1. In his proof affidavit, he has specifically referred to the execution of Sale Deed in their favour through the Power of Attorney Agent of defendants 1 to 3 and stated that they are bona fide purchasers for value without notice of Sale Agreement. Learned Senior Counsel appearing for the appellant referring to the fact that the original documents of Title have been handed over to plaintiff, submitted that subsequent purchasers have not even verified the original Title Deeds and they cannot claim that they are bona fide purchasers for value without notice of prior Agreement. In the course of evidence, the 5th defendant/DW1 has stated that they have taken possession of suit property pursuant to the Sale Deed and they are in enjoyment of the property by fencing the entire land. They have purchased the property through the Sale Deed executed through Power of Attorney Agent of defendants 1 to 3. In the cross-examination, when a



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suggestion was put to DW1, he has stated that the copy of documents of Title Deeds were inspected by him and that he was informed that original documents are available only with the defendants 1 to 3 who were in abroad. Therefore, this Court cannot give much importance to the fact that subsequent purchasers have not obtained the original documents of title.

(24) In the absence of any evidence or suggestion to doubt the bona fides of the transaction or knowledge of defendants 5 and 6 about the Suit Agreement under Ex.A7, this Court is unable to interfere with the findings of the Trial Court and hence, hold that defendants 5 and 6 are bona fide purchasers for value without notice of Suit Agreement under Ex.A7 and defendants 5 and 6 are therefore entitled to the protection under Section 19[b] of the Specific Relief Act. **Hence, Point [C] is answered in favour of defendants 5 and 6.**

POINT [D]:-

(25) Since this Court has already held that Suit Agreement under Ex.A7 is not a bona fide transaction and no amount was paid by plaintiff to defendants 1 to 3, defendants 1 to 3, 5 and 6 are not liable to pay any



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money to the plaintiff. The prayer in the suit is to direct defendants 1 to 4 to receive the balance sale consideration namely, a sum of Rs.35 lakhs and to register the Sale Deed in favour of plaintiff. The suit was filed on 04.10.2007 and the suit property has already been sold in favour of defendants 5 and 6 on 17.08.2007. Defendants have produced documents to show that defendants 5 and 6 have obtained orders for mutation of revenue records on 20.09.2007. However, no relief is prayed for in the suit as against defendants 5 and 6. When defendants 1 to 3 have already sold the property in favour of defendants 5 and 6, the suit without seeking any relief against defendants 5 and 6 for execution of the Sale Deed, is not appropriate. The Hon'ble Supreme Court in a decision in 1954, has pointed out the nature of relief that is to be prayed in a suit for specific performance when the vendors have already sold the suit property in favour of third parties. Without seeking any specific relief as against defendants 5 and 6 for execution of Sale Deed, the suit against defendants 1 to 4 who have no interest in the property to be conveyed, is not maintainable. Though the 4th defendant admits receipt of Rs.15 lakhs from the plaintiff, having regard to the findings that the suit Agreement is



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not enforceable as against the contesting defendants and the learned counsel appearing for plaintiff has not prayed for any decree as against 4th defendant for recovery of money before the Trial Court, this Court is unable to grant any decree in favour of plaintiff even though the 4th defendant remained exparte throughout the proceedings. **Hence, Point [D] is also answered against plaintiff.**

POINT [E]:-

(26)CMP.No.20877/2022 is filed for reception of original documents, namely, Exs.A3, B10, B11, B12, B13 and B14 as additional evidence in the above Appeal Suit under Order 41 Rule 27 of CPC. This Court has already held that the case of 4th defendant that the suit Agreement is not a bona fide sale transaction and it is product of collusion between plaintiff and 4th defendant. The 4th defendant though in the reply notice stated that original documents had been handed over to plaintiff, this Court is unable to accept the case of 4th defendant that the documents were really handed over to plaintiff even in November 2006. Since there is collusion



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between plaintiff and 4th defendant, the 4th defendant could have obtained the documents any time from the plaintiff. This court has also held that the failure to produce the original documents cannot be a valid reason in the circumstance of the present case where defendants 5 and 6 have otherwise proved that they are bona fide purchasers for value without notice of suit Agreement and entitled to protection under Section 19[b] of the Specific Relief Act. In such circumstances, production of original documents may not be relevant or necessary in the present Appeal. Further, the plaintiff/appellant has not even explained why these documents were not filed before the Trial Court. The appellant/plaintiff has obtained certified copies of the original documents and produced before the Court when the original documents are available. They could have very well produced original documents and marked the Xerox copies of the documents. Even that is not done. It is possible that the appellant/plaintiff has now obtained original documents from the 4th defendant and seeks to produce the same as additional documents before this Court. Further, this Miscellaneous Petition is presented only after the hearing of the Appeal Suit on merits and this Court finds that the



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appellant/plaintiff has not satisfied the requirement of Order 41 Rule 27

(27)For the said reasons this Court is not inclined to entertain this Civil Miscellaneous Petition for reception of documents as additional evidence at the appellate stage. Hence, **CMP.No.20877/2022 stands dismissed and Point [E] is also answered in negative as against the appellant/plaintiff.**

(28)Registry is directed to return the original documents, namely, Exs. A3, B10, B11, B12, B13 and B14 to the learned counsel appearing for appellant/plaintiff on record subject to production of Xerox copies of the said documents by the learned counsel to be placed in the Civil Miscellaneous Petition.

(29)In the result, the Appeal Suit stands dismissed with cost.

Consequently, connected miscellaneous petition is closed.

[SSSRJ] [AANJ]
12.01.2023

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Index : Yes / No



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To

- 1.The Additional District cum Sessions Judge
(Fast Track Court No.1), Coimbatore
- 2.The Section Officer,
VR Section, High Court,
Chennai.



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S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

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