



OSA.Nos.170, 174 & 175/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 09.06.2023

DELIVERED ON 14.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

OSA.Nos.170, 174 and 175/2016 & CMP.No.12427/2016

OSA.No.170/2016:-

P.Ganapathi

.. Appellant
/ 6th Defendant

Versus

1.C.T.Saraswathi Achi
2.Mrs.Rathna Sabesan
3.Dr.S.Parameswaran @ Alappan Sabesan
4.Dr.S.Priyadharshini

.. Respondents
/ Plaintiffs

5.B.Thilagavathy [deceased]
6.A.G.Sambath
7.A.Malliga
8.G.Anbalagan
9.Dr.G.Elangovan

.. Respondents
/ Defendants 1 to 5



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- 10.Mr.Balasubramanian
11.B.Sathish Govindasamy
12.B.Senthil Kumar
13.B.Vasantha Kumar

.. Respondents

****RR 10 to 13 brought on record as
LRs of the deceased 5th respondent
vide order of Court dated 23.08.2017
made in CMP.No.942/2017 in OSA.No.170/2016**

OSA.No.174/2016:-

- 1.Mr.A.G.Sampath
2.Mr.G.Anbalagan

.. Appellants /
Plaintiffs

Versus

- 1.Mrs.C.T.Saraswathi Achi
2.Mrs.Rathna Sabesan
3.Dr.Parameswaran Sabesan
4.Dr.Priyadarshini Sabesan

.. Respondents
/ Defendants

OSA.No.175/2016:-

- 1.B.Thilagavathy [deceased]
2.A.G.Sampath
3.A.Malliga
4.G.Anbalagan
5.Dr.G.Elangovan

.. Appellants /
Defendants 1 to 5

- 6.Mr.Balasubramanian
7. B.Sathish Govindasamy



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8.B.Senthil Kumar
9.B.Vasantha Kumar

.. Appellants

****Appellants 6 to 9 brought on record as
LRs of the deceased 1st appellant
vide order of Court dated 08.03.2018
made in CMP.Nos.987 to 989/2018
in OSA.No.175/2016**

Versus

1.C.T.Saraswathi Achi
2.Mrs.Rathna Sabesan
3.Dr.S.Parameswaran @ Alappan Sabesan
4.Dr.S.Priyadharshini
5.P.Ganapathi

.. Respondents
/ Plaintiffs
.. Respondent / 6th
Defendant

Prayer in OSA.No.170/2016:- Appeal filed under Order 36 Rule 1 of CPC read with Clause 15 of the Letters Patent against the final judgment and decree dated 18.01.2016 in CS.No.1027/2010.

Prayer in OSA.No.174/2016:- Appeal filed under Clause 15 of the Letters Patent read with Order 36 Rule 1 of CPC against the judgment and decreetal order passed by this Court dated 18.01.2016 in CS.No.933/2009.

Prayer in OSA.No.175/2016:- Appeal filed under Clause 15 of the Letters Patent read with Order 36 Rule 1 of CPC against the judgment and decreetal order passed by this Court dated 18.01.2016 in CS.No.1027/2010.



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For Appellant in
OSA.No.170/2016: Mr.S.Ravi
Senior Counsel for
Mr.Gupta Ravi

For Appellants in
OSA Nos.174 &
175/2016 and
For RR 6 & 8 in
OSA.No.170/2016: Mr.A.Navaneethakrishnan
Senior counsel for
Mr.M.Jothikumar

For RR 1 to 4 in all
the Appeals : Mr.B.Harikrishnan

COMMON JUDGMENT

S.S.SUNDAR, J.,

(1) Since all the above three appeals arise out of common judgment of learned Single Judge of this Court in CS.No.933/2009 and CS.No.1027/2010 and the appeals are connected, the above appeals are disposed of by this common judgment.

(2) The appellant in OSA.No.170/2016 is the 6th defendant in the suit in CS.No.1027/2010. The plaintiffs in CS.No.933/2009 are the appellants in OSA.No.174/2016. Defendants 1 to 5 in the suit in CS.No.1027/2010 are the appellants in OSA.No.175/2016.



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(3) During the pendency of this appeal, the 1st respondent in all the appeals, died on 12.12.2021. Since the legal representatives of the 1st respondent are already on record, a Memo was filed on 20.01.2022 by the contesting respondents in all the appeals. Even though the Memo was not recorded by this Court earlier, this Court, having regard to the facts admitted, record the same and the 1st respondent shall be shown as the deceased and respondents 2 to 4 in OSA.Nos.170, 174 and 175/2016 shall be recorded as the LRs of the deceased 1st respondent.

(4) During the pendency of the appeals, the 1st appellant in OSA.No.175/2016 also died and the LRs of the deceased 1st appellant are impleaded as respondents 6 to 9 in OSA.No.175/2016.

(5) Brief facts that are necessary for the disposal of these appeals are as follows:

(6) A property namely, house, ground and premises bearing Plot No.3529 [Door No.J23/18], in the I Main Road of Anna Nagar East, Chennai-102, measuring 2 grounds and 1650 sq.ft., originally belonged to one Tmt.A.G.Padmavathy by virtue of a Sale Deed dated 09.11.1981. During



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her lifetime, the property was offered as security with Indian Bank for the credit facilities extended by the Bank to Mr.G.Anbalagan, one of the sons of Tmt.A.G.Padmavathy, the 2nd appellant in OSA.No.174/2016. Meanwhile, Tmt.A.G.Padmavathy, died and the properties became the absolute property of the legal heirs of Tmt.A.G.Padmavathy who are defendants 1 to 5 in CS.No.1027/2010. After the demise of Tmt.A.G.Padmavathy, notice was issued by the Indian Bank / Mortgagee Bank on 28.02.2003 under Section 13[2] of SARFAESI Act. Since amounts were not settled, a Sale Notice dated 23.09.2005, was also issued to defendants 1 to 5 in CS.No.1027/2010. It appears that Mr.G.Anbalagan, the 2nd plaintiff in CS.No.933/2009, who is the principal borrower, approached the Bank for One Time Settlement. It is in the said context, an Agreement dated 03.10.2007 was entered into between Mr.C.Sabesan and all the legal heirs of Tmt.A.G.Padmavathy for sale of the property for a total consideration of Rs.5 Crores.

(7) Under the said Agreement, the purchaser namely, Mr.C.Sabesan, agreed to pay a sum of Rs.77 lakhs at the instance of and on behalf of vendors



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towards settlement in part of the Bank's claim and agreed to pay a further sum of Rs.73 lakhs on or before 25.10.2007. The purchaser agreed to pay the balance consideration of Rs.3.50 Crores and to conclude the sale on all aspects before 21.01.2008. On receipt of the entire sale consideration of Rs.5 Crores, the vendors agreed to settle the Indian Bank claim pending before the Debts Recovery Tribunal and to redeem the schedule property from the Indian Bank.

(8)It is agreed in the said Agreement that in the event of breach committed by either of the parties, of all or any of the terms of the Agreement, the party not in breach shall be entitled to sue for specific performance against the party committing such breach and the party committing the breach shall be liable to reimburse the expenses, loss and damages suffered by the aggrieved party by reason of such breach.

(9)Very strangely, another Agreement dated 06.10.2007 was entered into between Mr.C.Sabesan as a party of the second part and the two sons of Tmt.A.G.Padmavathy, namely, Mr.A.G.Sambath and Mr.G.Anbalagan as parties of the first part. As per the Supplementary Agreement, the



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purchaser agreed to pay a further amount of Rs.2.15 Crores representing the cost incurred by the first party in constructing the building and other structures [towards reimbursement of expenses in addition to the sale consideration of Rs.5 Crores]. Probably to reconcile the two Agreements, a Memorandum of Understanding was also entered into between the parties to the Supplementary Agreement dated 06.10.2007 on the very same day.

(10)The understanding between the parties while executing the Agreement of Sale is relevant. It is recited in the Memorandum of Understanding that the appellants in OSA.No.174/2016 had negotiated with the Mortgagee Bank for One Time Settlement and for waiver of interest and that the Bank had, in principal, agreed to settle its entire claim in full quit for Rs.1 Crore. After giving credit to Rs.34 lakhs lying under a "No lien Account", the balance amount due and payable to the said Bank was stated to be Rs.66 lakhs. The parties recite that it was at that stage, the Agreement was entered into between the parties. Some of the clauses in the Memorandum of Understanding are relevant and they are extracted



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below:-

2.The Second Party has already paid Rupees eleven lakhs to the First Party in cash to the First Party, the receipt of which sum the First arty jointly and severally admit and confirm.

3.The Second Party, at the instance of the First Party, agrees to pay Rupees sixty six lakhs to the said Bank by Demand Draft favouring the Recovery Officer, Debts Recovery Tribunal, Chennai, during the hearing of S.A.No.66 of 2005 on 08.10.2007 in full settlement of the said Bank's claim in TA.No.28 of 2001 &S.A.No.66 of 2005. pending on the file of the Debts Recovery Tribunal II, Chennai.

4.On payment of Rupees sixty six lakhs to the said Bank in the manner set out in Clause 3 supra, the First Party shall u. authorize the Second Party to collect the original documents of title pertaining to the Schedule property from the said Bank consequent upon the full and final settlement of the dues and the Bank's claim in T.A.No.28 of 2001 & S.A.No.66 of 2005, pending on the file of the Debts Recovery Tribunal II, Chennai,



5.The Second Party agrees to pay the First Party a further sum of Rupees seventy three lakhs to the First Party on or before October 25, 2007.

6.On receipt of Rupees seventy three lakhs in the manner set out in Clause 5 supra, the First Party and other heirs of the deceased A.G.Padmavathy shall execute a Power of Attorney in favour of the Second Party and/or his nominee to apply for and obtain sanctions and approvals from the authorities concerned to demolish the exiting building upon the Schedule property and to construct a new building thereon.

7.The First Party undertake and covenant an Agreement shall be drawn up and entered into at an appropriate time, wherein the First Party and the other heirs of deceased A.G.Padmavathy will be signatories. The Agreement to be entered into to between the Parties herein and the other heirs of deceased A.G.Padmavathy will be for sale of the Schedule property, in its entirety, to the Second Party and/or his nominee. The Agreement to be entered into between the Parties herein and the other heirs of deceased A.G.Padmavathy shall also record the payment of



eleven lakhs made by the Second Party to the the First Party and also payment of sixty four lakhs to be paid by the Second Party to the Recovery Officer, D.R.T., Chennai, on 08.10.2007 towards settlement of the Bank's claim in T.A.No.28 of 2001 & S.A.No.66 of 2007, pending on the file of the Debts Recovery Tribunal II, Chennai.

8.The Second Party agrees and covenants to pay up the balance of the agreed sale consideration and conclude the sale in all respects within three months from the date of this Memorandum of Understanding however, not later than January 21, 2008.

9. On receipt of the entire sale consideration, the First Party and the other legal heirs of deceased A.G.Padmavathy shall:

a.. execute a full fledged Power of Attorney to and in favour of the Second Party and/or his nominee interalia to deal with the Schedule property in all respects;. and

b.. deliver free hold vacant possession of the Schedule property to the Second Party and/or his nominee not later than January 27, 2008.



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(11)As agreed by Mr.C.Sabesan, a sum of Rs.66 lakhs was paid to the Bank directly towards the settlement of the entire claim. It is also to be noted that by an order dated 06.06.2008, the Debts Recovery Tribunal-II, passed an order in the Application filed by one of the vendors in IA.No.65/2005 in TA.No.28/2001 indicating that the payment of a sum of Rs.100 lakhs on various instalments was pursuant to the Lok Adalat Award for a sum of Rs.100 lakhs. There was a direction to one of the vendors to pay interest on the said sum of Rs.100 lakhs at 15% per annum from 28.08.2004 to 10.10.2007 directly to the respondent Bank within six weeks from the date of order. Since the vendors did not comply with the said order, the Bank was authorised to proceed further in terms of the earlier order dated 03.10.2005. However, the vendors appear to have negotiated further with the Indian Bank by a communication dated 03.11.2008 [marked as Ex.A5]. The Bank expressed its willingness to receive a sum of Rs.200 lakhs in full settlement of account subject to the condition that the entire payment should be made within thirty days and



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that the borrowers should withdraw all the claims against the Bank unconditionally. Following this order, the vendors appeared to have approached Mr.C.Sabesan and Mr.C.Sabesan, paid a sum of Rs.20 lakhs by way of Demand Draft dated 01.12.2008 on 02.12.2008 [favouring Indian Bank]. The said payment of Rs.20 lakhs by way of Demand Draft was acknowledged by the appellants in OSA.No.174/2016 and the time was extended by six months from 02.12.2008 [on the date when receipt of Rs.20 lakhs was acknowledged] by way of an endorsement. The endorsement dated 02.12.2008 is made in the Sale Agreement dated 03.10.2007. Mr.G.Anbalagan presented the Demand Draft along with the letter to give six months time to pay the balance amount of Rs.180 lakhs. The Bank permitted the borrowers to pay the balance amount as per the One Time Settlement on or before 30.03.2009 along with the interest compounded quarterly from 03.11.2008. However, the vendors entered into an Agreement with the appellant in OSA.No.170/2016 / 6th defendant in CS.No.1027/2010 and executed a Sale Deed in respect of the same property on 28.05.2009. Therefore, after giving time to



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Mr.C.Sabesan, till 01.06.2009, the vendors have jointly executed the Sale Deed in favour of the appellant in OSA.No.170/2016 on 28.05.2009. There was no communication between the parties after the time was extended by the endorsement dated 02.12.2008.

(12)The entire amount due as per the One Time Settlement namely the balance amount of Rs.1.80 Crores was paid by the appellant in OSA.No.170/2016 to the Bank and the Bank has accepted the payment as full and final settlement as per Ex.A9-Letter. However, on 14.09.2009, a legal notice was issued by the vendors under Ex.A12 accusing the purchaser Mr.C.Sabesan that he failed to pay the balance as agreed and that on account of the failure on the part of purchaser to make payment as per the terms of Agreement, the Sale Agreements dated 03.10.2007 and 06.10.2007 stood cancelled. In the same notice, the appellants in OSA.No.174/2016 called upon the purchaser Mr.C.Sabesan to pay a sum of Rs.433 lakhs to make good the loss and by way of damages for the mental agony sustained by the appellants. The claim was after deducting the amount, namely, the sum of Rs.97 lakhs paid by Mr.C.Sabesan to the



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vendors.

(13)Immediately after issuing the legal notice, the appellants in OSA.No.174/2016 filed a suit in CS.No.933/2009 for recovery of a sum of Rs.150 lakhs by way of loss, damages and mental agony sustained by them due to the failure of the defendant therein [Mr.C.Sabesan] to fulfill his obligations under the Agreements dated 03.10.2007 and 06.10.2007 respectively.

(14)Subsequent to the filing of the suit in CS.No.933/2009, Mr.C.Sabesan died on 03.08.2010. After the death of Mr.C.Sabesan, wife and children of Mr.C.Sabesan filed the suit in CS.No.1027/2010 for recovery of the part of consideration paid by Mr.C.Sabesan to the vendors by directing the vendors as well the subsequent purchaser to jointly and severally pay them a sum of Rs.97 lakhs together with interest @ 18% per annum from the date of suit till the date of realisation. The plaintiffs in CS.No.1027/2010 were also impleaded a defendants 2 to 5 being legal heirs of the defendant.

(15)The case in brief of plaintiffs in CS.No.933/2009 is as follows:-



(16) Mr.C.Sabesan approached the plaintiffs with an offer to purchase the house property for a total consideration of Rs.715 lakhs at the time when the Bank had agreed to receive the One Time Settlement by accepting payment of Rs.100 lakhs within a certain period. Mr.C.Sabesan who had agreed to pay a sum of Rs.77 lakhs towards the settlement in part of the Bank's claim and who had agreed to pay a further sum of Rs.73 lakhs on or before 25.10.2007, as agreed in Clause [3] of the Sale Agreement, did not pay the said sum. Though it is agreed that Mr.C.Sabesan should pay the balance of sale consideration on or before 21.01.2008 and a further sum of Rs.215 lakhs to the plaintiffs as per the Supplementary Agreement dated 06.10.2007, he was not ready and willing to perform his part of the contract under the Sale Agreements dated 03.10.2007 and 06.10.2007 respectively. Though Mr.C.Sabesan disbursed a sum of Rs.20 lakhs towards OTS, due to constant pressure given by the vendors for the release of funds, Mr.C.Sabesan, failed and neglected to release any further amount as agreed. Since the plaintiffs had no other option than to look for an alternative purchaser to safeguard their property from auction,



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they were forced to executed a Sale Deed in favour of the 6th defendant in CS.No.1027/2010 / appellant in OSA.No.170/2016, in order to stop the sale proceedings initiated by the Bank. Even though the plaintiffs had incurred a loss to the tune of Rs.483 lakhs, the plaintiffs restricted their claim to Rs.150 lakhs after adjusting the sum of Rs.97 lakhs which was received as part of sale consideration from Mr.C.Sabesan.

(17)The legal representatives of Mr.C.Sabesan were brought on record in CS.No.933/2009 as defendants 2 to 5 and they had filed a written statement in CS.No.933/2009. They also filed a suit in CS.No.1027/2010. The averments in the plaint filed by the plaintiffs in CS.No.1027/2010 and the written statement in CS.No.933/2009 are almost the same and therefore, the plea taken by the defendants in CS.No.933/2009 can be summarised as follows:-

(18)Mr.A.G.Sampath, the 2nd defendant in CS.No.1027/2010, represented to Mr.C.Sabesan that the Bank had agreed to settle the entire claim in full quit for a sum of Rs.1 Crore plus interest and other charges ; that the 2nd defendant represented that defendants 1 to 5 decided to sell the suit



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property in order to discharge the entire loan as per the OTS to avoid auction sale and other unpleasant situation. At the request of the defendants, a sum of Rs.66 lakhs was paid immediately to the Bank directly believing the assurances and the representation of defendants 2 and 4. A further sum of Rs.11 lakhs was paid to defendants 2 and 4 between 28.09.2007 and 06.10.2007. In the Supplementary Agreement dated 06.10.2007, defendants 2 and 4 alone are parties and defendants 1, 3 and 5 are not parties. The said sum of Rs.215 lakhs, the additional consideration as per the Supplementary Agreement dated 06.10.2007 was to be paid by Mr.C.Sabesan secretly to defendants 2 and 4 without the knowledge of defendants 1, 3 and 5. Defendants 2 and 4 requested Mr.C.Sabesan to defer further payment to Indian Bank as they are negotiating a secret deal with the Bank officials to have the OTS amount reduced further. Defendants 2 and 4 were pressurizing Mr.C.Sabesan to release the money covered under the Supplementary Agreement dated 06.10.2007 in instalments. Defendants 2 and 4 were not keen in settling the Bank's claim, but was insisting Mr.C.Sabesan to get the money



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covered under the Supplementary Agreement dated 06.10.2007. The time specified was extended pursuant to the revised proposal came from the Bank and that Mr.C.Sabesan paid a sum of Rs.20 lakhs [representing 10% of the OTS amount] and got the time extended for a further period of six months from 02.12.2008. Defendants 2 and 4 did not have any intention to perform their part of obligation. Defendants fraudulently with dishonest intention executed Sale Deed in favour of 6th defendant in CS.No.1027/2010. The plaintiffs was constrained to lodge a police complaint against the defendants before the Central Crime Branch, Chennai, for having cheated the plaintiffs to the tune of Rs.97 lakhs under the guise of selling the suit property. The defendants are liable to return the said sum of Rs.97 lakhs together with interest thereon from the date of payment till the date of realisation. A charge is created upon the suit property inasmuch as Mr.C.Sabesan had paid a total sum of Rs.97 lakhs as part of sale consideration. Since the payment of Rs.97 lakhs to the Bank was to redeem the mortgage, the plaintiffs are having right in respect of property by way of subrogation.



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(19)The pleadings are almost common and identical in both the suits. The 6th defendant filed an independent written statement disputing his liability. He also denied personal knowledge and contended that he is a bona fide purchaser and denied the allegation of fraud and collusion.

(20)Based on the pleadings, the learned Single Judge of this Court framed the following issues in CS.Nos.933/2009 and 1027/2010:-

Issues framed in CS.No.933/2009:-

- (1)Whether the defendants are liable to pay a sum of Rs.150 lakhs towards the loss, damages and mental agony sustained by the plaintiffs due to the non-cooperation of the defendants in fulfilling their part of obligation under sale agreement dated 3.10.2007 and 6.10.2007?
- (2)Whether the plaintiffs are entitled to claim any relief for loss and damages sustained by them, as per Clause - 8 of the Sale Agreement dated 3.10.2007, and Clause - 10 of the Agreement dated 6.10.2007, as against the defendants?



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- (3) Whether the defendant are ready and willing to fulfill the conditions stipulated in the Sale Agreement dated 3.10.2007 and 6.10.2007, during the contract period?
- (4) Whether the defendants committed any default in paying the balance sale consideration during the time stipulated in the contract period of the Sale Agreement dated 3.10.2007 and 6.10.2007?
- (5) Whether the time is the essence of the contract to fulfill the obligations between the plaintiff and the defendants, as per the Sale Agreement dated 3.10.2007 and 6.10.2007? (6) Whether the suit can be decreed as prayed for?

Issues framed in CS.No.933/2009:-

- (1) Whether the plaintiffs are entitled to claim refund of Rs.97 lakhs together with 18% interest per annum from the date of the suit till realization on the basis of the sale agreement dated 3.10.2007 and 6.10.2007?
- (2) Whether the plaintiffs have fulfilled their obligation to honour their commitment as per Sale Agreement dated 3.10.2007 and 6.10.2007?



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- (3) Whether the defendants had committed any breach in honouring their commitment as per Sale Agreement dated 3.10.2007 and 6.10.2007?
- (4) Whether the plaintiffs are entitled for any relief for the suit claim in the event of their failure to fulfill the terms and conditions stipulated under Sale Agreement dated 3.10.2007 and 6.10.2007?
- (5) Whether any specific relief can be claimed by the plaintiffs for their failure to pay balance sale consideration during the contract period based on the sale agreement dated 3.10.2007 and 6.10.2007?

Additional Issues:-

- (1) Whether the 6th defendant is liable to pay the amount as claimed in the plaint?
- (2) Whether the statutory charge has been created under Section 55[6][b] of Transfer of Property Act, 1882?
- (21) Evidence was recorded in CS.No.933/2009. On behalf of plaintiffs in CS.No.933/2009, the 2nd plaintiff was examined as PW1. Exs.A1 to 12 were marked. On behalf of the defendants in CS.No.933/2009, the 3rd



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defendant in CS.No.1027/2010 was examined as DW1 and documents, Exs.B1 to 22 were marked.

(22) Taking note of the fact that Mr.C.Sabesan made a payment of Rs.20 lakhs and got the endorsement in Ex.A1-Agreement, extending the time by six months from 02.12.2008 and other aspects, the learned Judge came to the conclusion that the plaintiffs in CS.No.933/2009 are not entitled to forfeit/adjust the advance amount paid by late Mr.C.Sabesan towards any loss or damages. Taking note of the fact that there was no written communication to Mr.C.Sabesan calling upon him to perform his part of obligation, the learned Judge answered Issues No.1 to 3 against the plaintiffs in CS.No.933/2009.

(23) The learned Judge, further taking note of the fact that Mr.C.Sabesan had paid a sum of Rs.20 lakhs and got extension of time under Ex.B22 for a period of six months from 02.12.2008 and the fact that the plaintiffs in CS.No.933/2009 did not approach Mr.C.Sabesan by any written communication to remind him of his responsibilities, held that it cannot be said that defendants in CS.No.933/2009 had committed default in



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payment of balance of sale consideration in the absence of any vital or crucial evidence. The learned Single Judge then held that time is not the essence of the contract to fulfill the obligations by taking note of the extension of time as per Ex.B22. Therefore, Issue No.6 in CS.No.933/2009 was decided in favour of the defendants therein holding that the plaintiffs are not entitled to any relief as they have failed to establish their case.

(24)In CS.No.1027/2010, the learned Single Judge held that the plaintiffs are entitled to claim refund of Rs.97 lakhs even though the learned Judge had observed that the plaintiffs in CS.No.1027/2010 have not fulfilled their obligation to honour their commitment as per the Sale Agreement dated 03.10.2007. In the light of statutory and legal position discussed and on the basis of the findings on other issues, the learned Judge held that the plaintiffs in CS.No.1027/2010 are entitled to the relief of recovery of a sum of Rs.97 lakhs. On the question of interest, the learned Single Judge held that the plaintiffs are not entitled to interest @ 18% per annum, but at 6% per annum, for reasons stated. The learned Judge



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though observed that the defendants had not committed breach in honouring their commitment, on Issue No.3, the learned Single Judge held that the defendants in CS.No.1027/2010 who had used the money to save their property from immediate sale, is liable to pay the money which they have received as part of sale consideration.

(25) Additional Issues No.1 and 2 relates to the liability of the 6th defendant in CS.No.1027/2010 to pay the amount as claimed in the plaint and regarding statutory charge. The learned Judge has held that a statutory charge has been created by virtue of Section 55[6][b] of the Transfer of Property Act and that, there shall be a charge over the suit schedule property at the hands of the 6th defendant till the claim of the plaintiffs in CS.No.1027/2010 is satisfied.

(26) Insofar as Additional Issue No.1, the learned Judge specifically held that plaintiffs in CS.No.1027/2010 are not entitled to get any personal decree against the 6th defendant. Though it was observed in one place that the additional Issues are answered in affirmative and in favour of plaintiffs in CS.No.1027/2010, the learned Judge, in tune with the



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findings in the judgment, held in the operative portion of the judgment that the plaintiffs are entitled to a decree only against defendants 1 to 5 by directing them to jointly and severally pay the plaintiffs the sum of Rs.97 lakhs together with interest thereon at 6% per annum from the date of suit till realisation and that there is no personal decree against the 6th defendant. Aggrieved by the judgment in CS.No.1027/2010 insofar as it relates to creating charge over the property in respect of the suit claim, the 6th defendant has preferred the appeal in OSA.No.170/2016. As against the dismissal of the suit in CS.No.933/2009, the plaintiffs therein have preferred the appeal in OSA.No.174/2016. Defendants 1 to 5 in CS.No.1027/2010 have preferred the appeal in OSA.No.175/2016.

(27) Heard Mr.S.Ravi, learned Senior counsel for Mr.Gupta Ravi, learned counsel for the appellants in OSA.No.170/2016 ; Mr.A.Navaneetha Krishnan, learned Senior counsel for Mr.M.Jothikumar, learned counsel for the appellants in OSA.Nos.174 & 175/2016 and for respondents 6 and 8 in OSA.No.170/2016 ; and Mr.B.Harikrishnan, learned counsel appearing for respondents 1 to 4 in all the appeals.



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(28) Mr. S. Ravi, learned Senior counsel appearing for the appellant in OSA.No.170/2016 elaborately argued not only on behalf of the appellant in OSA.No.170/2016 but also on behalf of the appellants in the other appeals, by referring to the facts in detail. Though he is engaged only by the appellant in OSA.No.170/2016, having regard to the position that the issues to be decided in OSA>No.170/2016 depends upon other issues, elaborately argued by referring to almost all the documents filed along with the typed set of documents.

(29) Primarily, the learned Senior Counsel submitted that in the absence of specific prayer in the plaint for creation of a charge as against the immovable property purchased by the appellant in OSA.No.170/2016, the learned Single Judge ought not to have granted the relief. Referring to the conclusions of the learned Judge that the suit as against the appellant in OSA.No.170/2016 for a personal decree is liable to be dismissed, the learned Senior Counsel submitted that creating a charge against the immovable property purchased by the appellant, is erroneous and unsustainable in law. The learned Senior Counsel then submitted that



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Section 55 of the Transfer of Property Act itself would apply only if there is no contract to the contrary and that the learned Judge failed to discuss the issue whether Section 55 [6][c] of the Transfer of Property Act can be applied on the facts of this case. The learned Senior Counsel then submitted that the learned Judge having held that the claim of the plaintiffs in CS.No.1027/2010 can be sustained under Section 70 of the Indian Contract Act, ought not to have granted a charge decree in terms of Section 55[6][b] of the Transfer of Property Act. He submitted that the plaintiffs in CS.No.1027/2010 who have failed to make payment in terms of the Agreement are not entitled to return of advance money and supported the case of appellants in OSA.Nos.174 and 175/2016.

(30)Mr.A.Navaneetha Krishnan, learned Senior Counsel appearing for the appellants in OSA.No.174 and 175/2016 submitted that the learned Judge having held that the defendants in CS.No.1027/2010 had not committed any breach in honouring their commitments as per the Sale Agreements dated 03.10.2007 and 06.10.2007 respectively, ought to have granted the relief in CS.No.933/2009, in favour of the appellants who have claimed



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damages as against the plaintiffs in CA.No.1027/2010. The learned Senior Counsel projected a case that the original claim as against the vendors by the Bank was about Rs.37 Crores and that, by virtue of OTS, to which the Bank had agreed, the claim was reduced to Rs.200 lakhs and therefore, the plaintiffs in CS.No.933/2009 was constrained to execute the Sale Deed in favour of the 6th defendant in CS.No.1027/2010 and that the defendants in CS.No.1027/2010 cannot be blamed and the suit in CS.No.1027/2010 ought to have been dismissed. Referring to the clauses in the Agreement, the learned Senior Counsel submitted that the claim for damages is in tune with the terms agreed by the defendants in CS.No.933/2009 and that the dismissal of the suit in CS.No.933/2009 is erroneous.

(31)The learned Senior Counsel relied upon a few judgments out of context and this Court is not inclined to deal with them as the learned Senior Counsel himself appears to be convinced that those precedents may not support his arguments on facts. The learned Senior Counsel then submitted that the appellants cannot be saddled with the liability to



refund the amount as they have suffered great loss on account of the failure of purchaser to pay the balance as agreed under the Agreement.

(32) Having regard to the pleadings in both the suits in C.S.Nos.933 of 2009 and 1027 of 2010, the issues framed in the two suits, the grounds raised by the respective appellants in all the three appeals and the submissions of the learned counsel appearing on either side in all the three appeals, this Court is of the view that the following points arise for determination in these appeals :-

- i. *Whether the defendant in C.S.No.933 of 2009 committed any default in paying the balance sale consideration in terms of the sale agreement, dated 03.10.2007, and the supplement agreement, dated 06.10.2007, and the Memorandum of Understanding, dated 06.10.2007 ?*
- ii. *Whether the defendant in C.S.No.933 of 2009 is liable to pay a sum of Rs.150 Lakhs towards loss, damages and mental agony sustained by the plaintiffs due to the failure on the part of the defendant in C.S.No.933 of 2009, i.e, Mr.C.Sabesan in*



fulfilling his obligation under the sale agreement, dated 03.10.2007, and supplement agreement and Memorandum of Understanding, both dated 06.10.2007 ?

iii. Whether the suit in C.S.No.933 of 2009 has to be decreed as prayed for ?

iv. Whether the plaintiffs in C.S.No.1027 of 2010 are entitled to claim refund of Rs.97 Lakhs which was paid by Mr.C.Sabesan to the defendants towards part of consideration, together with interest, pursuant to the sale agreement, dated 03.10.2007, and supplement agreement, dated 06.10.2007 ?

v. Whether a statutory charge has been created under Section 55(6)(b) of the Transfer of Property Act, 1882, in respect of the property which is the subject matter of sale agreement dated 03.10.2007 ?

Point Nos.(i) to (iv) :

(33)The execution of the sale agreement, dated 03.10.2007, and the supplement agreement, dated 06.10.2007, and the Memorandum of



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Understanding, dated 06.10.2007, are not disputed. The agreement, dated 03.10.2007, is between the defendants in C.S.No.1027 of 2010. When the main agreement was executed under Ex.A1 dated 03.10.2007, a supplement agreement under Ex.A2 dated 06.10.2007 was also executed. The supplement agreement cannot be reconciled with the terms of the main agreement dated 03.10.2007. Therefore, the additional consideration which was not referred to in the first agreement under Ex.A1 appears to be at the instance of the plaintiffs in C.S.No.933 of 2009 and that the supplement agreement is without the knowledge of the other three co-owners, namely, the sisters of the plaintiffs in C.S.No.933 of 2009. Therefore, the contention of the plaintiffs in C.S.No.1027 of 2010 that the supplement agreement and the Memorandum of Understanding are without the knowledge of the sisters of the plaintiffs in C.S.No.933 of 2009, is more probable. It is also admitted that even before the agreement dated 03.10.2007, the plaintiffs in C.S.No.933 of 2009 have received a sum of Rs.1,00,000/- on 28.09.2007, a further sum of Rs.2,50,000/- on 29.09.2007, and a further sum of Rs.2,50,000/- on



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01.10.2007. Thereafter, a sum of Rs.2,50,000/- was received on 04.10.2007 and a further sum of Rs.2,50,000/- was received on 06.10.2007. However, the agreement dated 03.10.2007 does not refer to the payments that was already paid to the plaintiffs in C.S.No.933 of 2009 as per the receipts. It is also to be noted that the balance amount payable to the Bank is not mentioned in the first Agreement. The terms of Memo of Understanding gives a picture different from the terms of the first Agreement.

(34)The fact that the plaintiffs in C.S.No.933 of 2009 wanted the purchaser to pay them an additional price for the property, cannot be disputed. A reading of the first agreement shows that the total sale consideration for the entire property is only Rs.5 Crores and that the consideration referred to in the supplement agreement is an arrangement between some of the vendors and the purchaser which is independent of the first agreement. Though the obligation of the purchaser under the two agreements is not disputed, the existence of supplement agreement suggests lack of mutuality among all the parties to the first agreement. Quite surprisingly,



the Memorandum of Understanding again shows that the parties, at the time of entering into the agreement, were on the impression that the balance amount payable to the Bank to settle the entire amount due, was only Rs.66,00,000/-. The following recitals in the Memorandum of Understanding are relevant :-

“in the meanwhile the Party No.2 of the First Party has negotiated with the said Bank for a one time settlement and for waiver of interest. The Party No.2 represents that the said Bank has in principle agreed to settle its entire claim in full quit for Rupees one crore. After giving credit to Rupees thirty four lakhs lying under No Lien Account, the balance amount due and payable to the said Bank is 66 lakhs;

at this juncture the First Party desired to sell the Schedule property to pay up the amounts due and payable to the said Bank as per the terms of One Time Settlement and to avoid auction sale and other unpleasant situation.”

(35)Clauses 3 and 4 of the Memorandum of Understanding are also relevant and hence, extracted below :-

“3.The Second Party, at the instance of the First Party, agrees to pay Rupees sixty six lakhs to the said Bank by



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Demand Draft favouring the Recovery Officer, Debts Recovery Tribunal, Chennai, during the hearing of S.A.No.66 of 2005 on 08.10.2007 in full settlement of the said Bank's claim in T.A.No.28 of 2001 & S.A.No.66 of 2005, pending on the file of the Debts Recovery Tribunal II, Chennai.

4.On payment of Rupees sixty six lakhs to the said Bank in the manner set out in Clause 3 supra, the First Party shall a. authorize the Second Party to collect the original documents of title pertaining to the Schedule property from the said Bank consequent upon the full and final settlement of the dues and the Bank's claim in T.A.No.28 of 2001 & S.A.No.66 of 2005, pending on the file of the Debts Recovery Tribunal II, Chennai.”

(36)It was thereafter, upon payment of further sum of Rs.73,00,000/- to the vendors on or before 25.10.2007, the vendors are required to execute a Power of Attorney in favour of the purchaser to apply for and obtain sanctions and approvals from the authorities concerned to demolish the existing building in the property. As per Clause 7 of the agreement, the parties contemplate drawing of another agreement at the appropriate time.



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(37) Though it is true that the purchaser had agreed to conclude the sale in all respects within three months from the date of Memorandum of Understanding and not later than 21.01.2008, the understanding of all the parties, as seen from the Memorandum of Understanding, did not go well with the terms of the agreement dated 03.10.2007 under Ex.A1, wherein, the purchaser was required to pay a sum of Rs.77,00,000/- at the instance and on behalf of vendors through settlement in part of the Indian Bank's claim. However, in the Memo of Understanding, the plaintiffs in C.S.No.933 of 2009 have independently acknowledged the receipt of a sum of Rs.11,00,000/- and mentioned the requirement of the purchaser to pay a sum of Rs.66,00,000/- to the Bank. Therefore, from the terms of the agreement, this Court can infer that the plaintiffs in C.S.No.933 of 2009 have entered into an agreement dated 06.10.2007 and the Memorandum of Understanding dated 06.10.2007 without the knowledge of the other three vendors who are also co-owners but agreed to execute the sale deed for consideration of Rs.5 Crores for the entire property.



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(38) It is in the said context, the case of the defendant in C.S.No.933 of 2009 that the plaintiffs were more keen in making further payments even before discharging the mortgage out of total consideration, appears to be true. It is admitted that, on payment of Rs.66,00,000/-, the vendors authorised the purchaser to collect the original documents of title pertaining to the suit property from the Bank, consequent upon fulfilling final settlement of the dues and the Bank's claim. Since the amount due to the Bank is not just Rs.66,00,000/- and the vendors had to pay a total sum of Rs.200,00,000/-, the parties could never get the original documents of title pertaining to the property. Therefore, the parties have no consensus *ad idem* at the time of entering into the transaction. Any prudent man, as a purchaser of a property which is mortgaged with the Bank, would give priority to redeem the mortgage. Even the purchaser was not aware of the amount due to the Bank under OTS at the time of Agreement.

(39) It is unfortunate that the purchaser Mr.C.Sabsean died even before the commencement of trial and his only son was examined as D.W.1.



(40) The payment of amounts even before the agreement dated 03.10.2007 to the plaintiffs in C.S.No.933 of 2009 is not even referred to in the agreement dated 03.10.2007. After the execution of agreements dated 03.10.2007 and 06.10.2007 and the Memorandum of Understanding dated 06.10.2007, the Bank has agreed to accept the payment of Rs.2 Crores in full quit of their claim subject to condition that the entire amount shall be paid within three months. It was to accept the one time proposal, the vendors were required to make payment to show their *bona fides* and the purchaser, at the instance of plaintiffs in C.S.No.933 of 2009, had paid a sum of Rs.20,00,000/- on 01.12.2008. On that day, the plaintiffs in C.S.No.933 of 2009 have made an endorsement in Ex.A1 agreement extending the time by six months from 02.12.2008. In the endorsement made by the plaintiffs in C.S.No.933 of 2009 in Ex.A1, the vendors had agreed to extend the time by six months from 02.12.2008. The endorsement is not in dispute and the recitals of the endorsement read as follows :-

“We have received already Rupees Seventy Seven Lakhs and we have received further sum of Rupees



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Twenty Lakhs by demand draft dated 1.12.2008 bearing No.796949 drawn on I.N.G.Vysya bank Limited, Mylapore branch, Chennai – 4, favouring Indian Bank, Asset Recovery Management branch towards part settlement of claim T.A.28/2001 and S.A.No.66/2005 on the file of Debts Recovery Tribunal-2, Chennai and the period mentioned in this agreement is extended further by six months from today (2.12.2008).”

(41)The time given to the purchaser was extended in unequivocal terms as per the endorsement till 01.06.2009. After extending the time that was given to the purchaser to pay the balance as per the endorsement in Ex.A1 sale agreement, the vendors executed a sale deed in favour of 6th defendant in C.S.No.1027 of 2010 on 28.05.2009. Therefore, when the extension of time as per the endorsement dated 02.12.2008 is not in dispute, the sale deed executed by defendants 1 to 5 in C.S.No.1027 of 2010 in favour of 6th defendant in C.S.No.1027 of 2010,without prior intimation to Mr.C.Sabesan cannot be justified. It is admitted that there is no written communication from the plaintiffs in C.S.No.933 of 2009



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calling upon the purchaser to pay the balance and to get the sale deed before executing the sale deed in favour of 3rd defendant in CS.No.1027/2010. This aspect of the case is more crucial and what follows from this fact is that the vendors, instead of demanding the purchaser to pay the balance or to enquire the purchaser whether he is ready and willing to pay the balance before the date agreed, have simply executed the sale deed. When it is admitted that the vendors are entitled to a substantial amount of Rs.6,18,00,000/- from the agreement holder, it is quite astonishing to note that the vendors had executed a sale deed in favour of the 6th defendant in C.S.No.1027 of 2010 for a consideration of Rs.1,85,00,000/-. Therefore, the case of the plaintiffs in C.S.No.1027 of 2010 that the sale deed executed by vendors in favour of 6th defendant in C.S.No.1027 of 2010 is not just for a sum of Rs.1,85,00,000/- but for a fabulous amount, cannot be discarded.

(42)The evidence of P.W.1 that the plaintiffs in C.S.No.933 of 2009 originally requested Mr.C.Sabesan to pay the balance, however, there was no written communication, cannot be believed casually. After making



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payment of Rs.20,00,000/- on 01.12.2008, time for specific performance was mutually agreed to be extended for a period of six months from 02.12.2008. This Court cannot just infer that Mr.C.Sabesan was not ready and willing to pay the balance within the time extended.

(43)In this context, it is useful to refer to Section 53 of the Indian Contract Act, 1872, which reads as follows :-

“53.Liability of party preventing event on which the contract is to take effect.—When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation 1 from the other party for any loss which he may sustain in consequence of the nonperformance of the contract.

Illustration : *A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is*



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entitled to recover from A compensation for any loss which he has incurred by its non-performance.”

(44) Even an act in breach of express terms of the contract will amount to prevention within the meaning of Section 53 of the Contract Act. When a party to a contract who is under obligation commits breach of an essential term of the agreement, the other party is discharged from his obligation to perform his part. Therefore, this Court is of the view that the plaintiffs in C.S.No.933 of 2009 cannot blame the purchaser, when they have conveyed the property even before the date before which the purchaser was asked to remit the balance. Though it was open to the plaintiffs to prove independently that the purchaser has rescinded the contract, it is not the case of the plaintiffs in C.S.No.933 of 2009 that the purchaser has put an end to the contract by his conduct. If a contract stands frustrated having become impossible to perform, the party who has received a benefit under the contract cannot take undue advantage and therefore, the plaintiffs in C.S.No.933 of 2009 along with other vendors are liable to return the money they received as advance from Mr.C.Sabesan.



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(45) Though the learned Single Judge has relied upon Section 70 of the Contract Act, the plaintiffs in C.S.No.933 of 2009, after rendering the contract voidable, cannot plead that Mr.C.Sabesan, the agreement holder, has failed to perform his obligation under the contract and that therefore, the plaintiffs in C.S.No.1027 of 2010 are entitled to seek damages for the alleged loss. On the other hand, on account of the conduct of the vendors in this case, namely defendants 1 to 5 in C.S.No.1027 of 2010, the plaintiffs in C.S.No.933 of 2009 are not entitled to claim any damages.

(46) The case of plaintiffs in C.S.No.933 of 2009 is that they are having 2/5 share in the entire property, as admitted by them. The suit in C.S.No.933 of 2009 is filed only by two of the vendors who are parties to the supplement agreement and the Memorandum of Understanding and the other three vendors who are parties to Ex.A1 are not impleaded as parties. Even the other vendors may not know the nature of claim the plaintiffs have put forth in C.S.No.933 of 2009. From the entire plaint, there is no explanation why the other vendors have not joined with the plaintiffs in



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C.S.No.933 of 2009. In the said circumstances, this Court is unable to find any *bona fides* in the claim by excluding three of the vendors.

(47)After execution of sale deed under Ex.A8/B15, dated 28.05.2009, the plaintiffs in C.S.No.933 of 2009 sent a legal notice under Ex.A12, dated 14.09.2009, terminating the agreement and forfeiting the amount paid by Mr.C.Sabesan towards part of consideration. It is to be seen that the purchaser Mr.C.Sabesan who entered into the Agreement, helped the plaintiffs in C.S.No.933 of 2009 to save the property as well as the liability of plaintiffs in C.S.No.933 of 2009 by making substantial payment of Rs.66,00,000/- believing that the entire liability towards Bank is discharged by the said payment. Even before the date of the agreement, a sum of Rs.11,00,000/- was paid to the defendants in C.S.No.1027 of 2010. The plaintiffs in C.S.No.933 of 2009 have agreed to extend the time by six months upon the purchaser agreeing to pay a substantial amount of Rs.20,00,000/- directly to the Bank. However, after extending the time for making balance payment, the plaintiffs in C.S.No.933 of 2009 have conveyed the property in favour of 6th



defendant in CS.No.1027/2010 without any notice or intimation to the previous Agreement holder.

(48) Having regard to the facts and events narrated above, this Court is unable to find an enforceable contract. When the plaintiffs in C.S.No.933 of 2009, by their own conduct, have put an end to the agreement they had entered into with Mr.C.Sabesan, this Court is unable to accept the case of plaintiffs in CS.No.933/2009, that the purchaser, namely Mr.C.Sabesan, committed breach of the agreement and that therefore, this Court is of the view that the plaintiffs in C.S.No.933 of 2009 are not entitled to claim any damages, whereas, the plaintiffs in C.S.No.1027 of 2010 are entitled to refund of Rs.97,00,000/- together with interest. ***Point Nos.(i) to (iv) are answered accordingly.***

Point No.(v) :

(49) Section 55(6)(b) of the Transfer of Property Act, 1882, reads as follows:-

“55.In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the



rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

...

(6) The buyer is entitled

... (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission."

(50) This Court has already seen that the plaintiffs in C.S.No.1027 of 2010 have not committed any default and in fact, the contract became frustrated as the property itself was sold to 6th defendant in C.S.No.1027 of 2010, even though the purchaser had time to make payment till 01.06.2009. Admittedly, the property was sold by defendants 1 to 5 in



C.S.No.1027 of 2010 in favour of 6th defendant on 28.05.2009. Therefore, in terms of Section 55(6)(b) of the Transfer of Property Act, a statutory charge is created on the property as against the vendors as well as persons claiming under them to the extent of their interest in the property for the purchase price paid by the buyer. Even though the learned Senior Counsel appearing for the 6th defendant submitted that a charge decree was not even prayed, it is seen from the plaint in C.S.No.1027 of 2010 that the plaintiff has specifically pleaded at Para No.20 as follows :-

“(20)The Plaintiffs state that there is a charge upon the suit Schedule property in as much as C.Sabesan has paid a total sum of Rs.97,00,000/- as advance under the Sale Agreement dated 03/10/2007. Out of this Rs.97,00,000/- a sum o Rs.86,00,000/- was paid directly by C.Sabesan to Indian Bank during the pendency of the proceedings before Debts Recovery Tribunal-II, Chennai and Debts Recovery Appellate Tribunal at Chennai. This amount of Rs.86,00,000/- was paid to Indian Bank to the account of Defendants 1 to 5 in part settlement of their liability to Indian Bank. Thus, C.Sabesan rights get subrogated to the extent of



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Rs.97,00,000/- and a charge over the suit property is created by operation of law. Thus, the suit claim has priority over whatever rights the 6th Defendant may have over the suit property.”

(51) In the plaint, the plaintiffs in C.S.No.1027 of 2010 have prayed for such further or other orders as this Court may deem fit and proper. When there is a statutory charge and there is pleading, this Court is unable to find fault with the learned Single Judge to grant a relief creating a charge over the property in respect of the suit claim in C.S.No.1027 of 2010.

(52) The learned Single Judge of this Court, while dismissing the suit in C.S.No.933 of 2009 and granting a decree in C.S.No.1027 of 2010, has elaborately considered all the issues on facts on the basis of pleadings and material documents. This Court is unable to find any procedural or legal infirmity in the conclusions reached by the learned Single Judge supported by reasons. This Court is unable to sustain the submissions of the learned Senior Counsel appearing for the appellants, challenging the decision of the learned Single Judge.



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(53) In view of the conclusions we have reached above, this Court finds no merit in the above appeals and therefore, all the points framed for determination are answered against the appellants and accordingly, these Original Side Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[SSSRJ] [CKJ]
14.12.2023

AP

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OSA.Nos.170, 174 & 175/2016

S.S.SUNDAR, J.,

and

C.KUMARAPPAN, J.,

AP

Common Judgment
in OSA.Nos.170, 174 & 175/2016

14.12.2023



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A.No.3344/2016 in OSA.Nos.170, 174 & 175/2016

S.S.SUNDAR, J.,
and
C.KUMARAPPAN, J.,

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1) The above application is filed by the plaintiffs/applicant to direct the Registry to amend the decree dated 18.01.2016 passed by CS.No.1027/2010 by incorporating the description of the property as found in the schedule to the plaint in CS.No.1027/2010.
- (2) After pronouncement of the judgment in OSA.Nos.170, 174 and 175/2016 today [14.12.2023], the learned counsel appearing for the applicants submitted that the above application in CS.No.1027/2010 is not yet disposed of.
- (3) The learned counsel pointed out that the application is to amend the decree so as to incorporate the description of property as found in the schedule to the plaint in CS.No.1027/2010.
- (4) He also pointed out that since a charge is created over the plaint schedule property, incorporation of the schedule of properties as



described in the plaint in CS.No.1027/2010 is necessary in the interest of justice.

- (5) Even though this application was filed in CS.No.1027/2010 and it was originally posted before the learned Single Judge, the learned Single Judge, on 06.10.2016, observed that there was an earlier order dated 17.08.2016 to list the application along with OSA.Nos.174 and 175/2016 after obtaining appropriate orders. Therefore, this application was placed before the Hon'ble Judge dealing with the subject matter and it was directed to be placed before the Bench dealing with the Original Side Appeals arising out of main cases.
- (6) The amendment which is now sought for in this application sail with the judgment of the learned Single Judge and the judgment of this Court in these Original Side Appeals. Hence, this application is **ordered.**
- (7) The Registry is directed to incorporate the schedule of property as described in the plaint in CS.No.1027/2010, in the decree.



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[SSSRJ]

[CKJ]

14.12.2023

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S.S.SUNDAR, J.,
and
C.KUMARAPPAN, J.,

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A.No.3344/2015 in
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