



S.A.Nos.533 and 542 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.02.2022

Pronounced on : 05.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.Nos.533 & 542 of 2021

and

C.M.P.No.14101 of 2021

Ramesh Rao

... Appellant
in both appeals

Vs.

1.A.Manirajan
2.A.Rengaraj
3.A.Swaminathan
4.A.Krishnamoorthy
Tulasiammal (died)
5.B.Sathasivam
6.A.Ramamoorthy
7.R.Maheswari
8.Kamalam
Periyakkal (died)
9.Radhamani
Velumani (died)
10.K.Kannan
11.N.Palanichamy
12.Velumani
13.Keerthika

... Respondents
in both appeals

Prayer in S.A.No.533 of 2021 : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 10.04.2019



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made in Cross Appeal No.26 of 2019 on the file of the I Additional District Judge, Coimbatore, in modifying the judgment and decree dated 14.03.2017 made in O.S.No.66 of 2003 on the file of Principal Subordinate Judge, Coimbatore.

Prayer in S.A.No.542 of 2021 : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 10.04.2019 made in A.S. No.45 of 2017 on the file of the I Additional District Judge, Coimbatore, in confirming the judgment and decree dated 14.03.2017 made in O.S.No.66 of 2003 on the file of Principal Subordinate Judge, Coimbatore.

For Appellant : Mr.R.Govindaraj
in both appeals

For R6 and R7 : Mr.P.Vijay Raghunathan
for M/s.Sarvabhauman Associates
in S.A.No.533 of 2021

For R3, R4, R9 & : Mr.P.Vijay Raghunathan
R13 for M/s.Sarvabhauman Associates
in S.A.No.542 of 2021

COMMON JUDGMENT

The plaintiff in the suit in O.S.No.66 of 2003 on the file of the Principal Sub-Court, Coimbatore, is the appellant in both the Second Appeals. Since these two appeals arise out of the judgment and decree in the suit in O.S.No.66 of 2003, these appeals are disposed of by this common judgment.



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2.The appellant filed the suit in O.S.No.66 of 2003 on the file of the Principal Sub-Court, Coimbatore, for specific performance of an agreement of sale, directing the defendants to receive the balance sale consideration of Rs.7,500/- and to execute a registered sale deed in favour of plaintiff in respect of the suit property free from encumbrance; for an injunction restraining the defendants from in any manner causing any encumbrance or alienation over the suit property in favour of third parties. An alternative relief is also prayed for in the suit to direct the defendants to pay the advance amount of Rs.1,50,000/- to the plaintiff with interest on the said sum at the rate of 24% p.a. from the date of agreement till realisation, and for other consequential reliefs.

3.The suit property is described as specific plots, namely, Plot Nos.G1 to G3 and G5 to G7, all measuring an extent of 31 cents and 222 sq.ft. in a layout by name “SRI RAM LAYOUT”, situated in Saravanampatti Village, Coimbatore Taluk.

4.The case of the appellant as set out in the plaint is as follows :

4.1.Defendants 2 to 15 are the absolute owners of the suit property and they executed a registered Power of Attorney Deed, dated 30.08.1996, in



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favour of 1st defendant, registered as Doc.No.626 of 1996 before the Sub-Registrar's Office, Gandhipuram.

4.2.The 1st defendant formed a layout in the name of “SRI RAM LAYOUT”. As Power Agent of defendants 2 to 15, the 1st defendant entered into an agreement of sale with the plaintiff, dated 20.01.1999, agreeing to sell the suit property for a sum of Rs.1,57,000/-. On 11.03.1998, the 1st defendant received an advance of Rs.1,00,000/- from the plaintiff and acknowledged the same by issuing a receipt and on the date of agreement, the 1st defendant received further advance of Rs.50,000/-. The period for completion of sale was fixed as 12 months from 20.01.1999 and the 1st defendant agreed to execute the sale deed in favour of plaintiff on receiving the balance sale consideration free from encumbrance. As per the agreement, the plaintiff has to forgo the advance amount, in case the plaintiff fails to perform his part of the contract. The plaintiff was given liberty to get the sale deed through Court of Law, in case the 1st defendant fails to comply with the terms of agreement. The 1st defendant also agreed to measure the suit property and to fix boundaries by appointing a Surveyor.

4.3.The plaintiff was always ready and willing to perform his part of the contract even from the date of sale agreement with the balance of sale consideration and has expressed his readiness and willingness to the 1st



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defendant on several occasions. However, the 1st defendant delayed the execution of sale by colluding with other defendants under one pretext or another, without any justifiable cause. The plaintiff is always having sufficient funds to pay the balance sale consideration and other incidental expenses.

4.4. When the plaintiff issued a legal notice through his counsel on 23.10.2000, calling upon the defendants 1, 9 and 10 to fix a date and time for registration, defendants 4, 7, 9 and 10 issued a reply notice through their Advocate, containing false and untenable allegations.

4.5. After paying a sum of Rs.1,00,000/- on 11.03.1998, the plaintiff met with an accident in Palani and the plaintiff was bedridden for more than three years and taking advantage of the situation, the 1st defendant got the sale agreement without mentioning the advance amount of Rs.1,00,000/-. Later, the plaintiff came to know that the 1st defendant, in collusion with other defendants, committed fraud in executing the agreement of sale, as the plaintiff could not read Tamil.

4.6. Since the plaintiff has already paid an advance of Rs.1,50,000/- out the total sale consideration of Rs.1,57,000/-, the plaintiff is entitled to a decree for specific performance, as he undertakes to pay/deposit the balance amount of Rs.7,500/-, as and when the Court directs the plaintiff to do so.



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5.The suit was contested by defendants 2 to 15. The written statement filed by the 2nd defendant was adopted by defendants 3, 4 and 6 to 15. In the written statement of 2nd defendant, the genuineness of the agreement, dated 20.01.1999, is seriously disputed. It is the specific case of the contesting defendants that the plaintiff never asserted his claim under the suit agreement until 23.10.2000. It is also the specific case in the written statement that the plaintiff is a partisan of 1st defendant and that the alleged agreement of sale, dated 20.01.1999, is fabricated and a cooked up document fraudulently brought about by the plaintiff and 1st defendant to make an illegal claim. It is also stated that the suit agreement is not binding on the defendants. Referring to the contents of the suit notice dated 23.10.2000 and the plaint, it is pointed out in the written statement filed by 2nd defendant that the plaintiff has come forward with a new case in the plaint quite contrary to the terms of the alleged agreement dated 20.01.1999 and the contention of the plaintiff in the suit notice. Since the agreement dated 20.01.1999 does not refer to the alleged payment of Rs.1,00,000/- on 11.03.1998 and the agreement only refers to a payment of Rs.50,000/- as advance and the balance sum of Rs.1,07,500/- is payable by plaintiff even as per the suit agreement dated 20.01.1999, it is contended by the 2nd defendant that the



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plaintiff and 1st defendant are acting in collusion by fabricating documents.

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6.A further defence was taken in the written statement filed by the 2nd defendant that the defendants 2 to 15 executed a registered Power of Attorney Deed on 30.08.1996 only to arrange for sale of plots in the layout to third parties. It is stated that the Power of Attorney Deed empowers the 1st defendant only to negotiate with third parties, to finalise the price, and to enter into agreement of sale. It is contended that the Power of Attorney did not empower the 1st defendant to execute the sale nor to receive the sale consideration from the prospective purchasers. Since the 1st defendant was only authorised to receive token advance from the prospective buyers, the substantial payment allegedly received by the 1st defendant is not authorised. It is the specific case in the written statement filed by the 2nd defendant that, on 30.08.1996, a registered Power of Attorney Deed was executed in favour of Mr.R.Shanmugam and Mrs.A.Kalyani to execute and register sale deeds in respect of plots in the Layout, by receiving the sale consideration from the prospective purchasers. The defendants not only denied the receipt of a sum of Rs.1,00,000/-, but also contended that the alleged receipt given by the 1st defendant is a fabricated document created in collusion with the plaintiff and brought about by 1st defendant.



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7. In the written statement filed by 2nd defendant, it is contended that the 1st defendant was just a broker bound by the terms of Power of Attorney and that the 1st defendant is not competent to receive substantial consideration from the plaintiff as per the terms of Power of Attorney Deed. It is further stated that the 1st defendant could secure only five purchasers and arrange for sale of 12 plots for the period upto 24.11.1998. It is further contended that the sale deeds were also executed only through the other two Power of Attorney Agents of the defendants. The case of contesting defendants shows that, in lieu of the services rendered by the 1st defendant, two plots measuring in all 11.01 Cents were sold in favour of 1st defendant and his wife, without payment of any consideration and that the defendants cancelled the Power of Attorney given to the 1st defendant on 07.05.1999 and gave a registered Power of Attorney to another person by name S.Raju on the same date. It is also contended by contesting defendants that the 1st defendant could not bring any prospective buyers.

8. It is also contended by the contesting defendants that the 1st defendant fraudulently manipulated antedated agreements of sale in the name of 22 other persons, who issued lawyer's notice in October, 2000. Therefore,



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the contesting defendants have taken a stand that the plaintiff is also a similar person, who has been instigated by the 1st defendant by creating false documents, and the plaintiff, who has been set up by the 1st defendant, is trying to knock away a substantial property of defendants for a meagre price. The other contentions raised by the plaintiff are also specifically denied in the written statement. Apart from disputing the readiness and willingness of plaintiff, the contesting defendants contended that the suit is liable to be dismissed on the ground of delay and laches on the part of plaintiff and that the suit is barred by limitation.

9.The trial Court has not even framed specific issues having regard to the pleadings and the evidence adduced by parties. The trial Court framed only two issues. The first issue is whether the plaintiff is entitled to a decree as prayed for in the suit. The second issue is about the reliefs that can be granted to the plaintiff. From the judgment of the trial Court, this Court is unable to find a nexus between several observations made by the trial Court and the findings on merits with regard to the genuineness of the transaction under the suit agreement, dated 20.01.1999, marked as Ex.A4.



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10. Before the trial Court, the plaintiff examined himself as P.W.1.

P.W.2 is one of the attesting witness to the sale agreement under Ex.A4. The plaintiff marked Exs.A1 to A7. On behalf of defendants, 7th defendant was examined as D.W.1. Defendants marked Exs.B1 to B20.

11. Quite contrary to the recitals of the suit agreement under Ex.A4, dated 20.01.1999, the trial Court accepted the payment of Rs.1,00,000/- on the basis of Ex.A2 receipt. However, the trial Court held that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. Therefore, the trial Court, while refusing to grant the relief of specific performance, granted alternative relief for repayment of advance amount of Rs.1,50,000/- with interest. The trial Court granted a decree by directing the defendants to pay the plaintiff a sum of Rs.1,50,000/- with interest @ 24% p.a. towards the amount allegedly paid as advance.

12. Aggrieved by the judgment and decree of the trial Court refusing to grant specific performance, the appellant/plaintiff filed an appeal in A.S.No.45 of 2017 before the I Additional District Court, Coimbatore.

Defendants 2 to 13, 15 and 16 filed a Cross Appeal in Cross Appeal No.26 of



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2019 as against the judgment and decree of trial Court granting alternative relief for refund of amount with interest @ 24% p.a.

13.The lower Appellate Court, after elaborately considering the pleadings and the evidence on record, came to the conclusion that the case of plaintiff that he paid a sum of Rs.1,00,000/- as per the receipt under Ex.A2, is not acceptable. Pointing out several discrepancies in the plaint, suit notice and evidence on the side of plaintiff, the lower Appellate Court found that the judgment and decree of the trial Court refusing to grant specific performance is proper. However, the lower Appellate Court held that the plaintiff is only entitled to ask for refund of Rs.50,000/- as per the recitals under Ex.A4 agreement with 12% p.a. simple interest and accordingly, dismissed the Appeal but partly allowed the Cross Appeal in favour of defendants.

14.Aggrieved by the judgment and decree of the lower Appellate Court in A.S.No.45 of 2017, plaintiff has preferred the Second Appeal in S.A.No.542 of 2021. As against the judgment and decree of the lower Appellate Court in Cross Appeal in Cross Appeal No.26 of 2019, plaintiff has preferred the Second Appeal in S.A.No.533 of 2021.



15.In both the appeals, the following substantial questions of law

have been raised by the plaintiff/appellant :

- i. *Whether the Courts below are justified in ignoring the registered sale agreement executed between the parties on the basis of oral evidence given by the D.W.1 ?*
- ii. *Is not the respondents are estopped from disputing the receipt issued by Power of Attorney under Ex.A2 dated 11.03.1998 ?*
- iii. *Is not the principle of agency by holding over is applicable and thereby debarring the respondents to deny their liability on the basis of documents Ex.A2 and Ex.A4.*
- iv. *Whether the Court below are on justified in ignoring the principles of agency by holding over is squarely applicable to the facts of the present case ?*
- v. *Whether the judgment and decree of the Courts below are in conformity with Order 41 Rule 31 CPC ?*
- vi. *Is not the documents produced by the plaintiff (Ex.A2) exclude the oral witness as per Section 91 of the Evidence Act ?*

16.Learned counsel appearing for the appellant/plaintiff submitted that the lower Appellate Court has not considered the document Ex.A2 receipt and contended that the lower Appellate Court erred in holding that the plaintiff has not proved the payment of a sum of Rs.1,00,000/- prior to the agreement. Learned counsel for the appellant submitted that the receipt



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issued by Power of Attorney Agent under Ex.A2, dated 11.03.1998, showing the acknowledgment of receipt of a sum of Rs.1,00,000/- by 1st defendant, cannot be disputed by defendants who are bound by the receipt. The learned counsel submitted that the lower Appellate Court is not proper in rejecting the relief of specific performance on the ground of laches, ignoring the fact that substantial amount of money was already paid as advance. Learned counsel for the appellant pointed out that the Appellate Court has not framed points for consideration as required under Order XLI Rule 31 CPC. He also submitted that the document produced by the plaintiff under Ex.A2 cannot be rejected in view of Section 91 of Indian Evidence Act.

17.Learned counsel appearing for the plaintiff/appellant relied upon a judgment of this Court in the case of ***Munivel v. Munusamy Mudaliar and others*** reported in ***CDJ 1996 MHC 685*** for the proposition that the judgment of the lower Appellate Court which has failed to formulate necessary points for consideration, is liable to be set aside. He also relied upon the judgment of a Division Bench of this court in the case of ***K.M.M.Kadar Hussain v. O.M.R.Selvaraj and others*** reported in ***1997 (1) CTC 559*** to show that failure to follow mandatory provisions of Order XLI Rule 31 CPC would render the judgment defective. A few more judgments were also cited by the



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learned counsel appearing for the appellant in this regard.

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18.Per contra, learned counsel appearing for the contesting respondents pointed out that there are several inconsistencies in the case pleaded and the case projected during arguments by the appellant/plaintiff based on oral and documentary evidence. Learned counsel appearing for the contesting respondents submitted that both the Courts have concurrently held that the plaintiff was not ready and willing to perform his part of the contract in terms of the suit agreement under Ex.A4 and that this Court, sitting in Second Appeal, cannot interfere with the findings on facts, especially when the findings of Courts below are supported by material evidence. The learned counsel then submitted that the suit for specific performance was engineered only by 1st defendant and therefore, the lower Appellate Court has rightly refused to grant relief of specific performance. Learned counsel for the contesting respondents pointed out that the suit agreement under Ex.A4 itself is a document fatal to the case of plaintiff, inasmuch as Ex.A4 clearly refers to the payment of only a sum of Rs.50,000/- as advance. In the absence of any independent evidence to prove the payment of a sum of Rs.1,00,000/-, learned counsel submitted that the plaintiff cannot be allowed to give oral evidence quite contrary to the recitals of registered sale agreement under



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19.This Court has considered the rival submissions and has perused the entire materials available on record.

20.On perusal of judgments of Courts below, it is seen that the trial Court has not framed proper issues. In a suit for specific performance, there has to be a definite finding on the issue whether the plaintiff was ready and willing to perform his part of the contract. The Appellate Court also did not frame the points for determination. However, this Court is unable to countenance the argument of the learned counsel appearing for the appellant/plaintiff, having regard to the admitted facts and the findings of Appellate Court on specific issues in detail. The object behind Order XLI Rule 31 CPC requiring the Appellate Court to frame points for determination, is to afford the parties an opportunity of knowing and understanding the reasons for the decision and to enable the High Court in the further appeal to analyse how the lower Court has considered and decided the issues that arise for consideration while arriving at a final conclusion. The First Appellate Court is the final authority on facts and therefore, for proper appreciation of evidence. However, it has been repeatedly held by this Court and Hon'ble



Supreme Court that substantial compliance of the Rule is enough, if it is evident from the judgment of the Appellate Court that the Appellate Court has considered every issue with reference to the entire evidence projected by parties in support of their respective cases and that the judgment need not be interfered with merely because it does not strictly fulfill the formalities prescribed under Order XLI Rule 31 CPC.

21.In the present case, the following points arise for consideration before the lower Appellate Court :

- i. Whether the suit agreement under Ex.A4 is binding on defendants 2 to 15 ?*
- ii. Whether the payment of a sum of Rs.1,00,000/- under Ex.A2 is proved by plaintiff ?*
- iii. Whether the plaintiff was ready and willing to perform his part of the contract in terms of the agreement under Ex.A4 ?*

22.The trial Court, as well as the lower Appellate Court, have given a definite finding to the effect that the plaintiff has not proved his readiness and willingness to perform his part of the contract in terms of Ex.A4. The Appellate Court has given a specific finding that the case of plaintiff that he paid a sum of Rs.1,00,000/- to the 1st defendant, as acknowledged by 1st defendant under Ex.A2, is proved. From the judgment of lower Appellate



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Court, it is seen that the Appellate Court has applied its mind on all the above issues that are required to be answered and relevant. Having regard to the object behind the requirement under Order XLI Rule 31 CPC and the specific findings rendered by the lower Appellate Court on vital issues, this Court is unable to interfere with the judgment of lower Appellate Court only for the reason that the lower Appellate Court has failed to frame the points for determination.

23.On the question of readiness and willingness, both the Courts have concurrently held that the plaintiff has not proved his readiness and willingness in terms of the suit agreement. In the present case, the discrepancies in the case pleaded and projected by the appellant/plaintiff at different stages, cannot be ignored. The suit agreement is dated 20.01.1999. However, in the lawyer's notice marked as Ex.A5, the suit agreement is referred to as an agreement dated 30.03.1999. The suit agreement itself is marked as Ex.A4 and it shows the date as 20.01.1999. In Ex.A5, the pre-suit notice, it is stated that the agreement is in respect of four sites, namely G1, G2, G6 and G7, whereas, in the plaint as well as in the agreement under Ex.A4, it is stated that the agreement is in respect of six sites, namely G1, G2, G3, G5, G6 and G7. As per the suit agreement Ex.A4, the total sale



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consideration is Rs.1,57,500/-. As per notice under Ex.A5, the consideration according to plaintiff was Rs.6,000/- per Cent. Plaintiff, who was examined as P.W.1, says in evidence that consideration agreed was Rs.5,000/- per Cent. If the consideration is Rs.6,000/- per Cent, the total consideration for an extent of 31.5 Cents will be Rs.1,89,000/-. Under Ex.A4 agreement, only a sum of Rs.50,000/- is acknowledged. In the pre-suit notice, it is stated that a sum of Rs.1,00,000/- was paid by plaintiff to 1st defendant on 30.03.1999. However, in the plaint, it is stated that a sum of Rs.1,00,000/- was paid on 11.03.1998 and the advance of Rs.50,000/- under suit agreement dated 20.01.1999 was paid subsequently. During evidence, P.W.1 states that a sum of Rs.1,00,000/- was paid on 11.03.1998, then he says that he does not remember the date and year regarding payment of Rs.1,00,000/-. He states further that, all the payments were made in the year 1998. Even regarding completion of sale, as per the suit agreement, the time fixed was 12 months from 20.01.1999. However, in the notice under Ex.A5, it is stated that the balance amount is payable on or before 30.10.2000. During evidence, plaintiff (P.W.1) admits that he did not know the date before which he should perform his part as per the agreement. The discrepancies pointed out by the learned counsel appearing for the respondents are fatal and shows how the plaintiff has no definite case.



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24.It is admitted that, as per suit agreement under Ex.A4 dated 20.01.1999, only a sum of Rs.50,000/- is paid as advance. Under Ex.A4, plaintiff undertakes to pay a sum of Rs.1,07,500/- on or before 20.01.2000 to get the sale deed. As pointed out earlier and found by the lower Appellate Court, the case of contesting defendants that there is collusion and the suit agreement is a product of collusion between plaintiff and 1st defendant, is more probable. The plaintiff, who has not mentioned the payment of a sum of Rs.1,00,000/- as per Ex.A2 receipt, comes forward with a case that he had paid a sum of Rs.1,00,000/- even in the year 1998 towards sale consideration. The genuineness of document under Ex.A2 is not proved by actual payment.

25.The evidence of P.W.2, the attesor, cannot be believed, as the material discrepancies in his evidence have not been explained by the plaintiff. Since it is the specific case of the contesting defendants that 1st defendant, on the basis of Power of Attorney Deed, has created so many fictitious agreements with third parties and called upon the land owners to execute the sale deeds in their favour, this Court finds that the findings of the lower Appellate Court disbelieving Ex.A2 is proper and supported by strong



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reasons. The 1st defendant had remained *ex parte* throughout and the plaintiff has not chosen to examine him atleast to prove the actual payment under Ex.A2. When the recitals in sale agreement Ex.A4 do not corroborate the plaint averments, the burden lies on the plaintiff to prove actual payment by examining 1st defendant. In the absence of any effort being taken by plaintiff, the finding of lower Appellate Court rejecting the case of plaintiff as to the payment of a sum of Rs.1,00,000/- as advance even in the year 1998, is unassailable. When the Power of Attorney Deed is examined, it is seen that the 1st defendant was only authorised to receive token advance while entering into agreement. This will also strengthen the case of contesting defendants.

26.Since the plaintiff has come forward with a suit for specific performance on the basis of a substantial payment that was made in 1998 which is not even mentioned in Ex.A4, it cannot be said that the plaintiff is ready and willing to perform his part of the contract in terms of the suit agreement Ex.A4. In other words, the plaintiff, who has agreed to pay the remaining balance of Rs.1,07,500/- under the suit agreement, has come forward with a false case that he had paid further advance of Rs.1,00,000/- even before the agreement and that therefore, he has to pay only a sum of Rs.7,000/- for getting the sale deed, cannot be believed. Therefore, the



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finding of Courts below that the plaintiff is not ready and willing to perform his part of the contract, is perfectly in order and the findings of the Courts below do not warrant interference.

27.The plaintiff, though prayed for alternative relief for refund of Rs.1,50,000/- with interest @ 24% p.a., the lower Appellate Court, based on the recitals of Ex.A4, has granted a decree in favour of plaintiff by directing the defendants to pay a sum of Rs.50,000/- as acknowledged by the 1st defendant in the agreement Ex.A4. However, as per the suit agreement under Ex.A4, the plaintiff has agreed to forgo the advance, in case if he does not come forward to pay the balance within the stipulated time. Since this Court confirms the findings of lower Appellate Court that the plaintiff has not proved any further amount beyond Rs.50,000/-, the plaintiff is not even entitled to ask for refund of Rs.50,000/- paid under Ex.A4. However, since the contesting defendants have not filed any appeal as against judgment and decree of lower Appellate Court granting alternative relief, this Court is unable to grant any relief to contesting defendants. When there is no agreement for payment of interest, the trial Court has awarded interest @ 24% p.a., whereas the Appellate Court has modified the rate of interest as 12% p.a. This Court is not inclined to interfere with the same.



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28.As a result, this Court finds no substance in any of the substantial questions of law raised by the appellant. Therefore, these Second Appeals are liable to be dismissed as devoid of merits. Accordingly, **these Second Appeals are dismissed with costs.** Consequently, connected miscellaneous petition is closed.

05.06.2023

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Internet : Yes

Index : Yes / No

To

1.The I Additional District Judge,
Coimbatore.

2.The Principal Subordinate Judge,
Coimbatore.

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Common Judgment in
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