BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED**: 28.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.Nos.665 and 666 of 2001
and
Tr.AS(MD)No.208 of 2020

A.S.No.665 of 2001

1.S.Natarajan(died)

2.N.Kannamal

3.N.S.Sivaraj

4.N.Udayakumar

5.N.Valarmathi

6.N.Nagarajan :Appellants/defendants

(A2 to A6 are brought on record as legal representatives of the deceased sole appellant as per order of this Court made in C.M.P(MD)Nos.7924 to 7926 of 2017 in A.S.No.665 of 2001, dated 20.12.2019

/vs/

Inbasegaran (Died)

2.I.Meenakshi

3.I.Rajesh

4.I.Rajee :Respondents/Plaintiffs

(R2 to R4 are brought on record as legal representatives of the deceased respondent as per order of this Court made in C.M.P(MD)Nos.7442 to 7444 of 2023 in A.S.No.665 of 2001, dated 26.06.2023)

A.S.NO.666 of 2001

1.S.Natarajan(died)

2.N.Kannamal

3.N.S.Sivaraj

4.N.Udayakumar

5.N.Valarmathi

6.N.Nagarajan :Appellants/ plaintiffs

(A2 to A6 are brought on record as legal representatives of the deceased sole appellant as per order of this Court made in C.M.P(MD)Nos.7927 to 7929 of 2017 in A.S.No.666 of 2001, dated 20.12.2019

/vs/

1.Inbasegaran (Deceased)

2.Neethimohan

3.I.Meenakshi

4.I.Rajesh

5.I.Rajee :Respondents/ defendants

(R3 to R5 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in C.M.P(MD)Nos.7445, 7448 & 7449 to 7444 of 2023 in A.S.No.666 of 2001, dated 26.06.2023)

Tr.A.S.(MD)No.208 of 2020

1.Inbasegaran(died)

2.Neethimohan

3.I.Meenakshi

4.I.Rajesh

5.I.Rajee :Appellants /Plaintiffs

(Appellants 3 to 5 are impleaded as legal representatives of the deceased first appellant as per order of this Court made in
I.A.No.194 of 2006, dated 20.4.2017)

/vs/

1.S.Natarajan(died)

2.N.Kannamal

3.N.S.Sivaraj

4.N.Udayakumar

5.N.Valarmathi

6.N.Nagarajan :Respondents/Defendants

(Respondents 2 to 6 impleaded as legal representatives of the deceased first respondent as per order of this Court made in I.A.No.95 of 2006, dated 10.11.2006)

PRAYER in A.S.No.665 of 2001 Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Civil Procedure Code against the judgment and decree made in O.S.No.252 of 1986, dated 28.7.2000, on the file of the Second Additional Subordinate Judge, Madurai.

PRAYER in A.S.No.666 of 2001 Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Civil Procedure Code against the judgment and decree made in O.S.No.3 of 1986, dated 28.7.2000, on the file of the Second Additional Subordinate Judge, Madurai.

PRAYER in Tr.A.S(MD)No.208 of 2020 Appeal Suit filed under Section 96 and Order 41 Rule 1 of the Civil Procedure Code against the judgment and decree made in O.S.No.445 of 1985, dated 28.7.2000, on the file of the Second Additional Subordinate Judge, Madurai.

A.S.(MD)No.665 of 2001

For Appellants : Mr.M.S.Krishnan,
Senior Counsel for
Mr.M.Dinesh Harisudarsan

For Respondents : Mr.J.Barathan

A.S.(MD)No.666 of 2001

For Appellants : Mr.J.Sivanandaraj,
Senior Counsel
Assisted by Mr.Koushik Advaith
for Mr.M.Dinesh Harisudarsan

For Respondents : Mr.J.Barathan

Tr.A.S.(MD)No.208 of 2020

For Appellants : Mr.J.Barathan

For Respondents : Mr.J.Sivanandaraj,
Senior Counsel
Assisted by Mr.Koushik Advaith
for Mr.M.Dinesh Harisudarsan

COMMON JUDGMENT

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Aggrieved over the common judgment and decree made in O.S.No. 252 of 1986, O.S.No.445 of 1985 and O.S.No.3 of 1986,the present appeals have been filed by both the plaintiffs and defendants.

2.The parties are referred to as per their ranking before the trial Court.

3. The brief facts of the case are as follows:

3.1. Originally, the suit has been filed in O.S.No.252 of 1986 seeking the relief of specific performance of the agreement, dated 19.01.1984 , entered into between the parties. O.S.No.3 of 1986 has been filed by the owner of the property for the relief of permanent injunction claiming that he is in possession of the property. Similarly, O.S.No.445 of 1985 was filed by the agreement holder for the relief of permanent injunction as against the vendor not to disburb the possession of the suit property. All the three suits were tried together and disposed of by a common judgment by the Second Additional Subordinate Judge, Madurai. By judgment dated 28.07.2000, the suit filed for specific performance by the agreement holder has been decreed and the two other suits filed by the plaintiffs and defendants for bare injunction were dismissed.

3.2. Challenging the said judgments, appeals have been filed before this Court and this Court had disposed of the appeals by Judgment dated 30.04.2004 and set aside the decree and judgement passed in the suit for specific performance on the ground that the suit is hit by Order 2 Rule 2 of Civil Procedure Code. While allowing the appeal, this Court has directed the vendor to deposit a sum of Rs.8 lakhs to the credit of O.S.No.252 of 1986 and has also held that if the amount is not deposited within the time, the vendor cannot claim any benefit out of the judgment and the agreement holder can enforce the decree for specific performance granted by the trial Court.

3.3. Challenging the above findings, appeals were filed before the

Honourable Apex Court by way of three separate appeals. The Honourable Apex Court set aside the finding of this Court and held that the High Court has not considered the point in right perspective and High Court, being the Court of facts, has to decide the points formulated by it in its entirety and also set aside the finding of the High Court that the suit was barred under Order 2 Rule 2 of Civil Procedure Code and the matter has been remanded back to the High Court to decide the appeals by recording its finding on other points formulated by it. After remand, the matter has been once-again argued before this Court.

4. The brief facts leading to the filing of the suit for specific performance in O.S.No.252 of 1986 is as follows:

4.1. The suit property was originally a house site which was allotted to the defendant on lease-cum-sale agreement, dated 04.07.1983 by the Tamil Nadu Housing Board. Under the terms of the said agreement, the defendant has to pay the cost of the site in ten half yearly instalments from 10.01.1974 to 10.07.1978 and the defendant has also to construct a building in the house site within a period of five years from the date of allotment. The defendant paid all the instalments due from him to the Housing Board, but not constructed the building as agreed in the housing plot allotted to him, as he did not have necessary funds. Since he has not constructed the building thereon, the Housing Board did not execute the sale deed in favour of the defendant.

4.2. In the above circumstances, the defendant entered into a sale agreement with the plaintiff on 19.01.1984, in respect of the housing site, agreeing to sell the suit property for a total sale consideration of Rs.3,84,220/- and received a sum of Rs.1 lakh as advance in cash. The time for performance of the agreement is fixed as four months. Further, it is also agreed in the agreement that in the event of delay of execution of the sale deed by the Housing Board, the time for completiton of the sale will be extended by the defendant to get the sale deed from the Housing Board. It is also agreed between the parties that the plaintiff should prepare a building plan approval for the construction of the building in the housing site and the plaintiff has to construct the said bulding at his own expenses. Both the parties contemplate for the construction of the building in the vacant site in order to facilitate the defendant to get the sale deed from the Housing Board. Thereafter, he can execute the sale deed in favour of the plaintiff. The plaintiff has entered into the said agreement with a view to construct a Kalyana

Mandapam in the name of his deceased parents Velayutha Nadar and Rajalakshmi Ammal.

4.3. In pursuance of the sale agreement, as a part performance thereof, the plaintiff took possession of the Housing Board site in the month of April 1984 and began construction of Kalyana Mandapam. The plaintiff has completed the construction in the year 1985, except for remaining works, like elevation of the front portion and flooring with mosaic tiles. The plaintiff has performed the Grahapravesam on 28.08.1985. The defendant entered some secret intention of extracting some more money from the plaintiff than the agreed once. With such an ulterior and malafide motive that he would execute the sale deed after getting the sale deed from the Housing Board and after completion of the Kalyana Mandapam in the suit Housing Board Plot by the Plaintiff. The plaintiff made repeated demands to the defendant to complete the sale transaction by getting the sale deed executed from the Housing Board. The defendant demanded a sum of Rs.1,10,000/- as extra amount on 01.09.1985. However, the defendant forcibly tried to take possession of the building constructed by the plaintiff in the Housing Board plot and thus made an attempt on 02.09.1985 to forcibly take possession of the building.

4.4. After the said incident, the plaintiff made a demand to the defendant to register the sale deed, however, his attempt was thwarted by the defendant with the help of the Police. After that, the plaintiff demanded to execute sale as per the sale agreement and to hand over the sale agreement obtained from the Housing Board. The defendant promised to amicably settle the matter and perform his part of contract and requested time to complete the sale transaction. However, at the request of the defendant, the plaintiff has decided to wait for completion of the sale transaction by the defendant. However, the defendant once-again made an attempt to take possession of the Kalyana Mandapam. Therefore, the plaintiff having no other option, except to file a suit and accordingly, filed a suit in O.S.No.445 of 1985 on 11.09.1985 for permanent injunction against the defendant and also filed I.A.No.582 of 1985, praying for interim injunction and obtained an order of interim injunction against the defendant.

4.5. In the mean time, the defendant has also filed O.S.No.1385 of

1985, on the file of the District Munsif Court, Madurai for permanent injunction wherein, in the above suit, the defendant had suppressed the sale agreement totally. The plaintiff has sent two legal notices on 30.09.1985 and 21.10.1985 to the defendant. The defendant has also sent a legal notice and denied the very agreement itself. The Plaintiff is always ready and willing to pay the remaining sale consideration by performing his part of contract. However, the defendant has delayed the execution of the sale deed. Hence the suit for specific performance.

5. It is the contention of the defendant in the written statement that the suit property is no longer a vacant site, but it consists of a building put up by the defendant and that the alleged sale agreement is not legally enforceable. The alleged said sale agreement is not a valid document and the plaintiff has also relinquished his right. It is the further stand of the defendant that at the time of agreement, the defendant was not the owner of the said vacant site and any sale made by the defendant is prohibited by the conditions entered into with the Housing Board and the sale agreement in question is not sustainable in law.

5.1. It is the further contention of the defendant that the plaintiff did not pay a sum of Rs.1 lakh as cash, as advance amount, but he has paid the same by way of construction materials from time to time. The allegation that the plaintiff put up the construction of Kalyana Mandapam in the vacant site is also denied. There is no such agreement entered into between the parties. Further allegation that an agreement was entered by the plaintiff to put up construction in the memory of his deceased parents is also denied. Further it is also denied that as per the part performance of the sale agreement, the possession was handed over to the plaintiff.

5.2. It is the specific contention of the defendant that he never handed over the possession to the plaintiff at any point of time. The contention of the plaintiff that he is always ready and willing to get the sale deed executed, is also denied and the agreement in question was given up long ago when the buildings are put up by the defendant. The contention that the plaintiff has prepared two draft documents and sent the same to the defendant. This defendant had agreed for the same but the plaintiff has not prepared the draft agreements, signed by him. Hence it is the contention of the defendant that by sending two draft sale agreements, the plaintiff cannot claim right from the year 1984. The allegation that the defendant tried to tresspass into the suit property is also denied. Further it is also denied by the defendant that the suit is hit by Order 2 Rule 2 of Civil Procedure Code.

6. The suit in O.S.No.3 of 1986 was filed by the vendor namely, the defendant in the main suit for permanent injunction alleging that he is in possession of the property and his intention was to put up construction on his behalf on the strength of the relief of specific performance, whereas, the suit in O.S.No.445 of 1985 has been filed by the plaintiff/agreement holder for the similar relief on the basis of his possession on the strength of the sale agreement.

7. The trial Court, on the basis of the pleadings by both the parties, framed the following issues in the suit for specific performance viz., in O.S.No.252 of 1986:

> *"1.Whether the plaintiff is entitled for the relief of specific performance?*
>
> *2.Whether the sale agreement, dated 19.01.1984 is true and valid*
>
> *3.Whether the suit is maintainable?*
>
> *4.Whether the suit is barred under Order 2 Rule 2 of Civil Procedure Code?*
>
> *5.To what other relief, the plaintiff is entitled to?"*

8. In O.S.No.445 of 1985, the following issues were framed for consideration:

> *"1.Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
>
> *2.Whether the plaintiff was in possession of the suit property?*
>
> *3.To what other relief, the parties are entitled to?"*

9. Similarly, in O.S.No.3 of 1986, the following issues were framed:

> *"1.Whether the plaintiff is entitled for the relief of specific performance as prayed for?*
>
> *2.Whether the defendant was in possession of the suit property?*
>
> *3.To what other relief, the parties are entitled to?"*

10. A Joint trial was conducted by the trial Court in all the three suits and on the side of the plaintiff, P.W.1 to P.W.7 were examined and Ex.A1 to Ex.A166 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B43 were marked.

11. Based on the evidence and materials on record, the trial Court has granted a decree for specific performance in O.S.No.252 of 1986 and dismissed the suits filed for permanent injunction filed by both sides.

12. Challenging the same, appeals have been filed before this Court and this Court, as referred above, held that the suit is not maintainable on the ground of Order 2 Rule 2 of Civil Procedure Code and a conditional decree has been passed.

13. In the above appeal suits, the following points were framed by this Court:

> *"1. Whether Ex.A1 is enforceable in law?*
>
> *2.Whether the suit in O.S.No.252 of 1986 is maintainable on the basis of Ex.A1 in view of the variation made in Ex.B7 and Ex.B9?*
>
> *3.Whether the respondent / Plaintiff was ready and willing to perfome his part of contract?*
>
> *4.Whether the suit in O.S.No.252 of 1986 is maintaible in view of Order 2 Rule 2 of the Code of Civil Procedure?*
>
> *5.Whether the relief for the specific performance of the agreement suit in O.S.No.252 of 1986 can be rejected on the ground that the respondent / plaintiff has not come to the Court with clean hands?*
>
> *6.Whether the appellant is entitled for injunction as prayed for in O.S.No.3 of 1986?"*

14. This Court only dealt with Point Nos.5 and 6 and held that the suit is not maintainable.

15. In the appeals, the Honourable Apex Court set aside the judgment and remanded the matter back to this Court and required to decide all the points formulated in its right perspective and ultimately, held that the decision of the High Court holding that the suit is barred under Order 2 Rule 2 of C.P.C is set aside and directed this Court to decide the appeals by recording its finding on the other points formulated by it.

16. In such view of the matter, now the points that are required to be decided in these appeals are as follows:

1.Whether Ex.A1 is enforceable in law?

2.Whether the suit in O.S.No.252 of 1986 is maintainable on the basis of Ex.A1 in view of variation made in Ex.B7 and Ex.B9?

3.Whether the respondent / Plaintiff was ready and willing to peform his part of the contract?

4.Whether the suit in O.S.No.252/1986 is maintainable in view of order 2 Rule 2 of the Code of Civil Procedure?

5.Whether the relief for the specific performance of the agreement suit in O.S.No.252/1986 can be rejected on the ground that the respondent/Plaintiff has not come to the Court with clean hands?

6.Whether the appellant is entitled for injunction as prayed for in the suit in O.S.No.3 of 1986?

17. The learned Senior Counsel for the appellants / defendants in A.S.No.665 of 2001 mainly submitted that the plaintiff who come to the Court for the relief of specific performance must show his readiness and willingness from the inception of the agreement till the end. It is his contention that the plaintiff has rushed to court for filing of the suit for bare injunction in O.S.No.445 of 1985 on 11.9.1985. Prior to that, the defendant has filed the suit in O.S.No.3 of 1986 for permanent injunction on 05.09.1985. Despite such filing of suits, the plaintiff has not taken any steps to file the suit immediately to enforce the contract, dated

19.01.1984 namely, Ex.A1. These facts clearly indicate that the plaintiff was never ready and willing to perform his part of contract. Even at the time of filing the suit, the remaining sale consideration has not been deposited by the plaintiff. The amount has been deposited only after the direction of this Court when the orders challenging the appointment of receiver before this Court. The deposit has been made in the year 1988. Till such deposit, from the date of agreement Ex.A1 viz., from the year 1984, for three years, no amount whatsoever was paid.

18. It is the further contention that even to show that at the relevant point of time, the plaintiff has the capacity to mobilise the fund, no evidence is available. Even bank accounts was also not available, whereas, only in the year 1987, the plaintiff has voluntarily disclosed the income tax returns to the Income Tax Authorities and got some assessment orders on 25.6.1987. Therefore the contention that when a person who violates the Income tax law is not entitled for the relief of specific performance. According to the learned Senior Counsel, the Income Tax records have been created only for the purpose of this case.

19. It is his further submission that even no evidence whatsoever is available on record to show that the plaintiff has ready money in his hand either to pay the advance amount or to pay the remaining sale consideration. The plaintiff's case is totally contrary as to the date of possession of the property. As per Ex.A1, agreement, there is no whisper about the handing over of possession of the suit property, whereas, in the suit filed for permanent injunction, in O.S.No.445 of 1985, different date has been given which is contrary to the evidence. Admittedly, the plaintiff has obtained approved building plan approval for the construction of the house under Ex.B4, dated 16.04.1982. Therefore, the plaintiff constructing the Kalyana Mandapam is highly improbable.

20. It is the further contention that the planning permission for the construction of kalyana Mandapam is also rejected, however, the plaintiff is running the Kalyana Mandapam. Ex.B7 and Ex.B9-draft sale agreements sent by the plaintiff, wherein, he has clearly admitted the variations. Ex.B10, dated 31.05.1985 is also admitted, by the plaintiff, wherein, it is agreed to handover the possession of the suit property. Therefore the contention is that, as a part performance of the contract, he took possession of the property and he constructed the Kalyana Mandapam is highly improbable. No document whatsoever was placed before this Court to show that he had ready cash in his hand at the relevant point of time. Further all the income tax returns were filed on the same day for the assessment years 1978-79, 1979-80, 1980-81, 1981-82, 1982-1983 and 1983-84. This was after P.W.1 examined on 17.2.1997. Further, to show that he had spent a sum of Rs.7.6 lakhs for constructing the Kalyana Mandapam, there is no evidence. When the very construction is an illegal construction and the plaintiff claimed to have paid the amount in cash, all the construction has been done with his black money which is an unaccounted money and hence, it has to be held that he has come to the Court with unclean hands. The Plaintiff got the property only at the intervention of the Court and he is letting out the property from the year 1985 onwards and till today, he is enjoying the benefits, just parting out a sum of Rs.1 lakh on the basis of the sale agreement.

21. It is the further contention of the plaintiff that he had ready cash on his hand is also falsified in his evidence. When a person said to have parted with cash transaction, which is an unaccounted money and violates the income tax laws, in equity, he is not entitled to any relief. Further, the building allegedly put up is an unauthorized and illegal one as the plan has been rejected. Such being the position, the plaintiff, who has come to the Court with unclean hands, is not entitled to any relief of specific performance. The trial Court has not considered these aspects in proper perspective and granted the relief. Hence prayed for allowing the appeal. The learned Senior Counsel would further submit that since the defendant's vendor is the absolute owner of the suit property, he is entitled to the relief of injunction.

22. In support of his contention, the learned counsel placed reliance on the following judgments:

1.Judgment of the Honourable Apex Court in the case of ***Indian Financial Association of Seventh Day Adventists .vs. M.A.Uneerikutty and another*** reported in ***(2006) 6 Supreme Court Cases, 381***;

2.Judgment of the Honourable Apex Court in the case of ***Umabai and another .vs. Nilkanth Dhondikba Chavan (dead) by Lrs and another;***

3.Judgment of the Honourable Apex Court in the case of ***Bal Krishna and anothyer .vs. Bhagwan Das(dead) by Lrs and another*** reported in ***(2008) 12 Supreme Court Cases 145;***

4.Judgment of the Honourable Apex Court in the case of ***Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman .vs. Ponniamman Educational Trust, represented by its Chairperson/Managing Trustee*** reported in ***(2012) 8Supreme Court cases, 706;***

5.Judgment of the Honourable Apex Court in the case of ***G.Jayashree and others .vs. Bhagwandas Patel and others*** reported in ***(2009) 3 Supreme Court Cases, 141;***

6.Judgment of the Honourable Apex Court in the case of ***I.S.Sikandar (dead) by Lrs. .vs. K.Subramani and others*** reported in ***(2013) 15 Supreme Court Cases 27;***

7.Judgment of High Court of Delhi in the case of ***Indian Olympic Assication .vs. Union of India*** reported in ***2014 SCC Online Del 2967 : 212 DLT 389(DB) :(2014) 24 AIR Del R.682;***

8.Judgment of the Honourable Apex Court in the case of ***Nanjappan .vs. Ramasamy and another*** reported in ***(2015) 14 Supreme Court Cases, 341;***

9.Judgment of the Honourable Apex Court in the case of ***Narayanamma and another .vs. Govindappa and others*** reported in ***(2019) 19 Supreme Court Cases, 42;***

10.Judgment of the Honourable Apex Court in the case of ***Atma Ram .vs. Charanjit Singh*** reported in ***(2020) 3 Supreme Court Cases 311;***

11.Judgment of the Honourable Apex Court in the case of ***Vijay Kumar and others .vs. Om Prakash*** reported in ***(2019) 17 Supreme Court Cases 429;***

12.Judgment of the Honourable Apex Court in the case of ***Saradamani Kandappan .vs. S.Rajalakshmi and others*** reported in ***(2011) 12 Supreme Court Cases 18***.

13.Judgment of the Honourable Apex Court in the case of ***Ritu Saxena .vs. J.S.Grover and another*** reported in ***(2019) 9 Supreme Court Cases 132*** and

14.Judgment of the Honourable Apex Court in the case of ***Mehboob UR Rehman (dead) through legal representatives .vs. Ahsanul Ghani*** reported in ***(2019) 19 Supreme Court Cases 418***.

23. Whereas, it is the contention of the learned counsel for the respondent / plaintiff that the suit agreement has been clearly admitted. Now a stand has been taken in the written statement that the agreement is not valid, since at the time of agreement, the vendor has no title to the suit property. Readiness and willingness pleaded is not denied, except some evasive denial. The evidence of the defendant clearly shows that construction of the Kalyanamandapam was completed by the plaintiff at his own expenses. The evidence of P.W.1 to P.W.7 clinchingly established the above fact. On 28.08.1985, the constrution of the Kalyana Mandapam was completed and Grahapravesam was conducted. On 01.09.1985, the first marriage of one Mohan and Uma was conducted in the said marriage hall. Whereas the defendant had suppressed the very agreement itself in the suit filed by him in O.S.No.3 of 1986.

24. The Plaintiff, has in fact, sent a legal notice on 30.09.1985 expressing his readiness and willingness to tender the balance sale consideration. However, the legal notice was not received and a second notice, dated 21.10.1985 was sent to the defendant, was received by him, wherein also the defendant took only stand that the sale agreement is not valid and readiness and willingness of the plaintiff is not disputed in the reply. Hence it is his contention that the plaintiff is a trader and small time retailer and he constructed the entire Kalyana Mandapam. Merely because at the relevant point of time, he was not an income tax assesse, it cannot be said that the plaintiff has not come to the Court with clean hands and he has no money to tender the balance sale consideration.

25. The plaintiff has spent substantial amount to the tune of Rs.7.6 lakhs towards the construction of the Kalyana Mandapam in the year 1985 itself. This aspect has been clearly established on record. In fact, the defendant has also deposited that amount, in pursuance of the direction of this Court in the appeal. It is his contention that the balance sale consideration also deposited in the year 1988, though the deposit of the balance sale consideration is not mandatory at that point of time and what was required is only to show the readiness and willingness. In fact, the plaintif has built the construction of the Kalyana Mandapam by spending more than Rs.7.6 lakhs and that itself clearly indicates that he had ready money in his hand. Whereas the defendant intention was to somehow or other to knock out the building constructed by the plaintiff. Hence the overall evidence adduced on record clinchingly established the fact that the plaintiff is certainly entitled to the relief of specific performance. The plaintiff is in possession of the property for more than thirty years, which has been clearly established on record.

26. The property was originally purchased as a house site for a value of Rs.21,450/-, but, the plaintiff has purchased the same for a sale consideration of Rs.3,84,220/-. Having taken undue advantage, the defendant has tried to tresspass into the possession of the suit property to knock out the property. Hence it is contention that the plaintiff has clearly established the readiness and willingness to perform his part of contract and no evidence whatsoever was available on record on the side of the defendant to establish the fact that he has constructed the Kalyana Mandapam. He has admitted the construction of the Kalyana Mandapam by the plaintiff. Hence it is his submission that the question of unclean hands also does not arise at all. Though the earlier Bench held that the plaintiff has not come to the Court with clean hands, since the matter has been remanded back, this Court has to decide all the issues on the basis of the established facts. Hence the learned counsel submitted that the finding of the trial Court in decreeing the suit for specific performance has to be confirmed. The learned counsel would also submit that since the possession is also established in favour of the plaintiff, the suit for permanent injunction filed by him has also to be decreed.

27. In support of his submissions, he has also placed reliance on the following judgments:

1.Judgment of the Honourable Apex Court in the case of ***Shivaji Yallappa Patil .vs. Ranajeet Appasaheb Patil and others*** reported in ***(2018) 16 Supreme Court Cases 725;***

2.Judgment of the Honourable Apex Court in the case of ***Shrimant Shamrao Suryavanshi and another .vs. Pralhad Bhairoba Suravanshi(Dead) by Lrs and others*** reported in ***(2002) 3 Supreme Court cases 676;***

3.Judgment of the Honourable Apex Court in the case of ***A.Kanthamani .vs. Nasreen Ahmed*** reported in ***(2017) 4 Supreme Court Cases 654 :(2017) 2 Supreme Court Cases(Civ) 596: 2017 SCC Online SC 212;***

4.Judgment of the Honourable Apex Court in the case of ***P.Daivasigamani .vs. S.Sambandan*** reported in ***2022 SCC OnLine SC 139;***.

5.Judgment of the Honourable Apex Court in the case of ***Kannappa Chettiar .vs. Abbas Ali and others*** reported in ***(1952) 2 SC 124 : 1952 SCC Online SC 62;***

6.Judgment of the learned Single Judge of this Court ***dated 14.06.2023*** made in ***A.S(MD)No.240 of 2021;***

7.Judgment of the Honourable Apex Court in the case of ***Sukhbir singh and others .vs. Brij Pal Singh and others*** reported in ***(1997) 2 Supreme Court Cases 200*** and

8.Judgment of the Honourable Apex Court in the case of ***Hardev Singh .vs. Gurmail Singh (Sead) by Lrs.***, reported in ***(2007) 2 Supreme Court Cases 404.***

28. In the light of the above submissions, now the points arise for consideration in this Appeal Suit are as follows:

1. Whether EX.A1 is enforceable in law?

2. Whether the suit in O.S.No.252 of 1992 is maintainable on the basis of Ex.A1 in view of variations made in Ex.B7 and Ex.B9?

3. Whether the respondents / plaintiffs was ready and

willing to perform the part of the contract?

4. Whether the relief of specific performance of the agreement in O.S.No.252 of 1999 can be rejected on the ground that respondent / plaintiff have come to the Court with unclean hands?

5. Whether the defendant is entitled to injunction as prayed in O.S.No.3 of 1986?

Point Nos.1 and 2:

29. Considering the evidence of both sides, it is not in dispute that the suit property originally allotted as a vacant site by allotment order in favour of the defendant, who is the vender, on 04.07.1973 by the Tamil Nadu Housing Board under Ex.B34 allotment order. On a perusal of the above order viz., Ex.B34, makes it clear that Housing Board has allotted Plot for total consideration of Rs.21,450/- with monthly installments of Rs.1,716/- with interest at 7% has to be paid in 10 half yearly instalments. In pursuant to that allotment order, a lease-cum-sale agreement was also executed on 24.01.1974, under Ex.B6 in favour of the defendant. On perusal of Ex.B6-lease-cum-sale agreement, one of the condition is to the effect that the purchaser shall not keep the plot vacant indefinitely and shall construct a building for the purpose the plot is allotted within a period of five years from the date of allotment. The allotment was made in the year 1973. But the fact remains that as per the conditions stipulated in the lease-cum-sale agreement, the construction was not put up by the vendor viz., the defendant in O.S.No.252 of 1986. Whereas he obtained building plan approval for construction of house only on 16.04.1982, under Ex.B4. He obtained a plan for construction of the house in the year 1982. However, admittedly, the house has not been constructed as per the plan.

30. In the meanwhile, the sale agreement dated 19.01.1984-Ex.A1 entered between the parties. The very recitals in the agreement makes it clear that though the plan was obtained by the vendor on 16.04.1982, he has not put up any construction, wherein the sale agreement has been entered into for a total consideration of Rs.3,84,220/- and advance amount of Rs.1 lakh has been received. The time to complete the sale has been fixed effectively as four months. Within such time, the vendor has agreed to get the sale deed in his favour from the Housing Board and thereafter, sell the properties. It is also agreed between the parties in the agreement that in the event there is a delay in getting the sale deed from the Housing Board till the sale deed executed by the Housing Board, the agreement stand renewed. It is also specifically agreed in the agreement-Ex.A1 that the first party viz., purchaser has to prepare the plan at the choice of the vendor and thereafter, submit the same in the corporation and obtain necessary plan for construction.

31. Further it is also specifically agreed in the agreement that the purchaser viz., the plaintiff has to construct the building at his own expenses. The recitals make it very clear that only in order to get the sale deed, a construction has been arranged and in fact, the defendant has agreed to sell the entire property for the total consideration of

Rs.3,84,220/-. If really, the defendant has constructed the building as per the plan Ex.B4, there were no necessity for entering into such a contract permitting the plaintiff to put up a construction on his own expenses as per the plan prepared by him. The vendor has agreed to get the plan approval in his name. It is relevant to note that at the relevant point of time, the title has not absolutely vested with the vendor, i.e.,.sale deed has not been executed by the Tamil Nadu Housing Board.

32. The only contention of the defendant in the written statement is that the suit agreement is not valid, since at the time of entering into the contract, the defendant was not owner of the site and any sale by the defendant was prohibited as per the terms and conditions of the lease agreement entered into with the Housing Board. Hence, it is his contention that agreement is invalid and opposed to law.

33. It is relevant to note that such defense of the defendant is not permissible under law. The defendant himself has written to the Housing Board that the construction of the work has been completed in the house site. Based on that, a sale deed was executed by the Tamil Nadu Housing Board to the defendant for a sum of Rs.24,444/- under Ex.B2 dated 18.02.1995. Therefore, the contention that the contract is not enforceable, since the vendor did not have a title at the relevant point of time, cannot be countenanced and there is no legal force at all. In fact the doctrine of Feeding the Grant by estoppel will come to play and plaintiff is certainly seek to enforce a contract.

34. It is the specific case of the plaintiff that as a part performance of the contract, he took possession of the property and though the plan was in the name of the defendant, he put up a Kalyana Mandapam by spending huge amount and construction was over in the year 1985 itself and he conducted Grahapravesam on 28.08.1985. It is the specific evidence of the plaintiff that he took possession of the housing plot in the month of April 1984 and started construction on the same week and completed the construction in the month of August 1985 and Grahapravesam was done.

35. Much emphasis has been made to the draft agreement Ex.B7, dated 31.03.1984, which is not signed by any of the parties. Further, the signing of the draft agreement has been subsequently admitted. On a perusal of the same, what has been agreed that the plaintiff has to prepare the plan as per his wish and the defendant has to sign the plan and get the plan approved. It is also specifically admitted that before 30.04.1984, the plaintiff has to construct the basement at his own expenses. Thereafter, similarly, the other draft sale agreement has been made, which was marked as Ex.B9, dated 31.04.1984. On a careful perusal of Ex.B7 and Ex.B9, it is seen that the intention of the parties were only to get the plan and put up construction by the plaintiff. Therefore, comparing those documents with the sale agreement, this Court is of the view that there is no variation or deviation. Such view of the matter, execution of the sale agreement is not disputed and it is enforceable under law. The only defence taken is that it is void, since the vendor is not the owner of the house site at the relevant point of time and in Ex.B7 and Ex.B9, it was the intention of the parties is to get the plan and should be processed by the plaintiff. Therefore, Ex.B7 and Ex.B9 cannot be construed to vary the sale agreement-Ex.A1 and hence, the same is enforceable.

Point No:3

36. It is the specific case of the plaintiff that he took possession of the property in the month of April 1984, in pursuance of the contract and started construction of the building. It is relevant to note that the defendant in a suit in O.S.No.252 of 1986 viz., the vendor has filed a suit for bare injunction in O.S.No.1385 of 1985 on 05.09.1985, which is later renumbered as O.S.No.3 of 1986.

37. In the above suit, the existence of agreement dated 19.01.1984 is totally suppressed. Wherein it is the specific case of the defendant in the above suit that he started to construct a Kalyanamandapam in the suit property and he obtained sanction from the Madurai Corporation. Whereas plaintiff demanded the sale of property to which the defendant is not willing. It is relevant to note that this pleadings in the above suit are totally contrary to the evidence and also documents. Wherein defendant has taken a stand in the injunction suit to the effect that he started to construct a Kalyana Mandapam on the basis of the plan sanctioned by the Madurai Corporation. Admittedly, as per Ex.B4, he has obtained plan only for construction of the house not for Kalyana Mandapam.

38. Similarly, the contention that the Plaintiff was helping the plaintiff for constructing the building and obtained sanction from the Corporation is also against the evidence and other documents. The very existence of agreement dated 19.01.1984 was suppressed in the above suit. Whereas the relief of injunction has been sought merely on the ground that defendants are trying to construct a Kalyana Mandapam for wedding and other purposes. It is relevant to note that if really, the construction was put up as per the plan approved in the year 1982, the same should have been reflected in the agreement Ex.A1. Whereas the agreement was entered only for the purpose of sale of property of vacant site. Wherein, it is specifically agreed to construct the building at the cost of the plaintiff in specific performance suit in O.S.No.252 of 1986. From these pleadings, the intention of the parties can be easily ascertained.

39. In a suit for specific performance, the conduct of both sides are relevant. As already observed, the very agreement itself was suppressed in an earlier suit filed by the defendant before the Principal District Munsif Court, Madurai and obtained interim injunction on 05.09.1985. However, the same has been served on the plaintiff on 15.09.1985 as could be seen under Ex.A119 and Ex.A120. In the meanwhile, the plaintiff has also filed a similar suit for injunction on 11.09.1985 on the file of the Sub Court and obtained interim injunction. These facts are not disputed, under Ex.A121, the plaintiff has sent a legal notice to the defendant, dated 29.09.1985, calling upon him to execute the sale deed after receiving the sale consideration, which has not been received by the defendant. Therefore, once again under Ex.A122, another legal notice was sent on 21.10.1935, which has been received by the defendant.

40. In the said notice, the plaintiff has pleaded about all the transactions right from the agreement and the manner in which construction was put up by the plaintiff and he was always ready and willing to perform the part of the contract. The same was replied by the defendant under Ex.A123. In the above reply notice, a stand has been taken that advance was paid in cash. The said amount has been retained by the plaintiff himself for the purpose of construction of the building. The readiness and willingness pleaded in the notice and ready to pay the remaining sale consideration has not even disputed seriously in the entire proceedings. Wherein a stand has been taken that entire construction has been put up by the defendant.

41. It is relevant to note that the defendant in a suit for specific performance is a retired Superintendent of Police. The plaintiff is a small trader. When he specifically pleaded in the legal notice about the readiness and willingness and capacity to pay the remaining sale consideration, which has not been seriously disputed, the only contention was raised in the reply notice that the building was put up by him. In the above background, the suit has been filed for specific performance on 25.04.1986. In the above suit, the plaintiff has asserted that he was in possession of the property, he has constructed a Kalyana Mandapam and the construction was almost over in the Month of August 1985 and he has conducted Grahapravesam and started laying out the premises. In the entire written statement, except evasive denial about the readiness and willingness and other aspects, it is the stand of the defendant that he is in possession of the property. He has nowhere pleaded in the entire written statement that he has put up a Kalyana Mandapam in the property and there is no specific denial made as required under law.

42. In the above background, when the evidence of the parties is scanned, on the side of the plaintiff, P.W.1 to P.W.7 were examined. P.W.1 asserted the agreement as well as the subsequent part performance of the contract and taking possession of the property and putting up Kalyana Mandapam. It is also the case of the plaintiff that Grahapravesam was conducted on 28.08.1985. To substantiate the same, photographs along with negatives have also been filed under Ex.A8 to Ex.A.30. Thereafter, the first marriage between Mohan and Uma was also solemnized in the Mandapam. To substantiate the same, invitations were also filed under Ex.A5, A6 and Ex.A49 to Ex.A54. The telegrams received for wishing the marriage were also filed under Ex.A31 to Ex.A47. To show that the plaintiff has paid the tax for the said Kalyana Mandapam, Ex.A55 to Ex.A57 were also filed. Ex.58 to Ex.118 bills have been filed to show that all the constructions were made by the plaintiff. In the cross examination, it is suggested that after Grahapravesam, the defendant was in possession of the property. The entire evidence has not been shaken in the cross examination.

43. P.W.2 has spoken that he has taken the Mandapam on lease for marriage purpose and the marriage was conducted on 01.09.1985. P.W.3 has spoken about the preparation plan Ex.A2 and he only prepared the plan for construction of the Mandapam. P.W.4 is a Mazon worked in the Mandapam, he has constructed the building and P.W.5 is a neighbour. He has also spoken about the construction by the plaintiff. P.W.6 was examined to prove Ex.A1, who is the one of the attesting witnesses. He has also spoken about the payment of advance amount. The evidence of P.W.6 that advance amount of Rs.1 laksh was paid in his presence is not even disputed in the cross examination. P.W.7 is also examined to show that the plaintiff has given a sum of Rs.3 lakhs to him and thereafter, he has returned the said amount to the plaintiff for depositing the same to the Court.

44. The evidence of D.W.1, when carefully perused, he has admitted in the chief examination that he has permitted the plaintiff to conduct Grahapravesam on 28.08.1985 and he has also aware of the invitation printed for the Grahapravesam and he has already given a complaint to the police on 27.08.1985. it is relevant to note that if really, the defendant was already in possession and the defendant has already constructed the building and have given a complaint on 27.08.1986, no prudent man will allow the persons against whom the complaint has already been given before police to conduct Grahapravesam on 28.08.1985.

45. Further, the evidence of D.W.1 also has stated that all the receipts have been taken by the plaintiff for the purpose of income tax. Therefore, he has given all the bills, he has also admitted that as per the terms of the lease cum sale agreement, he has not put up any construction within five years. Besides, he has also admitted that three people were signed as witnesses in his house in the document Ex.A1. He has also admitted that he has not produced any document to show the existence of any construction and he has also not aware whether Ramachandran is an adjacent plot owner and he has also admitted that the building has been used as Kalyana Mandabam till now. The evidence clearly shows that except denying the possession of the plaintiff, the alleged construction by defendant in the suit has not been established.

46. It is also admitted in his cross examination that the possession is not with him. Therefore, if really, the defendant has put up the entire construction at his own expenses, being a prudent man and a retired police officer he ought to have maintained all the bills and accounts. Whereas all the bills and accounts has been filed by the plaintiff. This facts clearly shows that the construction were made only by the plaintiff. Though there is some inconsistency as to the date as to when possession was handed over from the date of contract, the fact remains that after the contract Ex.A1, the construction was started and Grahapravesam was completed on 28.08.1985. It is also admitted by the defendant himself. The very evidence of D.W.1 that he only permitted to conduct the Grahapravesam for one day for celebrating the memory of the plaintiff's parents is highly improbable and the same cannot be countenanced. No prudent man will allow any third party who have no right in the property to conduct the Grahapravesam in the building constructed by the other persons. Therefore, the very contention of the defendant that he put up a construction in the suit property has not been established.

47. Now, in the above background it has to be seen whether the plaintiff has established the readiness and willingness from the inception of the contract. It is relevant to note that the readiness and willingness has to be shown from the very inception. Absolutely there is no dispute at all. Ex.A1 contract was executed on 19.01.1984 and the very contract itself makes it clear that construction should be put up by the plaintiff at his own expenses. Though the tentative time is agreed in the contract, it is clearly understood by the parties that till the title transferred in the name of the defendant, the contract would be extended. The construction completed in the year 1985 itself and only after Grahapravesam, trouble started. An injunction suit has been filed by the parties claiming possession in O.S.No.3/1986 and O.S.No.445 of 1985. Thereafter, the suit has been filed for specific performance on 25.04.1986. It is the specific case of the plaintiff that the advance amount of Rs.1 lakh has been paid and the remaining sale consideration is also ready with him and he was always ready and willing to perform the part of his contract.

48. It is relevant to note that having allowed the plaintiff to put up construction and substantial amount has already been spent, the evidence also indicates that sum of Rs.7,60,000/- has already been spent towards construction by the plaintiff, it cannot be said that plaintiff was never ready and willing to perform the part of contract. Much emphasis has been made by the learned Senior counsel that though injunction suits were filed as early as on 05.09.1985 and 11.09.1985, in both suits interim orders have been obtained. Despite the above fact, the specific performance suit has been filed only on 25.04.1986. According to the learned senior counsel, there is a delay in filing the suit for specific performance. Further on the date of filing the suit, the remaining sale consideration not been deposited in the Court. Therefore, the readiness and willingness was absent on the part of the plaintiff to seek a relief of specific performance.

49. It is relevant to note that in both the injunction suits both of them got interim orders. The plaintiff filed a suit before the Sub Court in

O.S.No.445 of 1985 on 11.09.1985. The defendant has filed a suit in O.S.No.3 of 1986 on 05.09.1985. In both the suits, injunction were granted in favour of the plaintiffs. Thereafter, it appears that the receiver has been appointed by the trial Court. It appears that when the appointment of the receiver was challenged before this Court in A.A.O.No.504 of 1998, this Court directed the plaintiff to deposit the remaining sale consideration in two installments. This order has been passed on 16.06.1988. pursuant to that order, the amount has been deposited into the Court. This fact has not been disputed. Prior to the filing of the suit, the plaintiff has issued a legal notice-Ex.A122, wherein he has clearly exhibited his intention to pay the remaining sale consideration. However, the readiness and willingness has not been seriously disputed even in the written statement.

50. It is the contention of the learned counsel that the plaintiff is not having any income tax accounts as assessee at the relevant point of time. Therefore, the readiness has not been established on the part of the plaintiff. On a careful perusal of the evidence of the plaintiff makes it very clear that he was a trader at the relevant point of time. He has admitted that at the time entering into a contract, he did not have an account, but he was having a ready cash and advance amount has also been paid as cash. P.W.6 is also clearly spoken about the advance amount paid by the plaintiff, which has also not been disputed. But his defense was that advance amount has been utilized for the construction of the house. Therefore, small trader merely because he has not filed any income tax returns at the relevant point of time or did not have bank account, it cannot be said that the person was not in a position to mobilize the fund. The very factum of putting up the construction by spending huge amount makes it very clear that the plaintiff was able to mobilize the fund at the relevant point of time.

51. The another contention of the learned Senior Counsel is to the effect that the income tax returns were filed at later point of time only to show the readiness and willingness. According to him, all the income tax returns were filed on the same day under voluntary disclosure scheme that itself, clearly shows that he has created a document only for the purpose of this case. Income tax assessment order were filed under Ex.A126 to Ex.A142. On perusal of the same, by the order dated 25.06.1987, income tax returns were filed under voluntary disclosure scheme and the plaintiff was assessed and the assessment was accepted by the Income Tax Department. Though all the assessment orders are of the same day or the same year, the fact remains that the assessment order has been passed by the authorities accepting the income of the plaintiff. Therefore, merely because, the person who has not filed the income tax returns earlier, which has been ratified by way of assessment order, it cannot be said that those documents have been created later. When the statute itself gives such process of voluntary disclosure, mere voluntary disclosure of the income at the later point of time cannot be construed to show that the documents have been created for the purpose of the case and the plaintiff has not come to the Court with clean hands.

52. It is relevant to note that when the defendant has executed an agreement Ex.A1, and permitted the plaintiff to put up construction by investing huge amount, he has totally suppressed the very agreement in the earlier suit filed in O.S.No.3 of 1986 and obtained an order of *ex-parte* injunction against the plaintiff. But, no document whatsoever has been filed by the defendant. The very suppression of the fact by the defendant is also relevant to assess his conduct. The defendant is not an ordinary lay man, he is a retired Superintendent of Police. Therefore, the entire contention is that he built a Kalyana Mandapam and agreement is void and not enforceable, cannot be countenanced.

53. When the plaintiff was able to prove that he has put up a construction by spending huge amount, merely because the remaining sale consideration was not deposited at the time of filing the suit for specific performance, this Court is of the view that the same cannot be held against the plaintiff to hold that he is not ready and willing to perform the part of his contract. When the plaintiff was able to spend so much of amount in putting up construction and he has also shown the readiness and willingness in the legal notices viz., Ex.A121 and Ex.A122, which ware also not denied except setting a defense of independent right over the building and further, the plea of readiness and willingness was also not seriously disputed in the entire written statement, except evasive denial, mere non-deposit of the amount in the Court while filing the suit for specific performance, it cannot be held that the plaintiff was not ready and willing to perform the part of his contract. Of course, the plaintiff is not voluntarily deposited the remaining sale consideration and he has deposited the remaining amount in two installments as directed by the Court in the order passed by this Court in A.A.O.No.504 of 1988 from the date of the suit i.e., on 25.04.1986. On

16.06.1988, when the deposit was made, the plaintiff was little bit lethargic in not depositing the amount voluntarily.

54. It is relevant to note that actual tender of money is always not required. What is important is only to show the capacity to pay the amount. When the entire defense is appears to be false with regard to the construction of the building, the plaintiff has shown the capacity about spending the huge amount in construction of the Kalyana Mandapam. Mere delay in depositing of the amount in the Court when the suit was filed, the same cannot be pitted against the plaintiff to hold that he is not ready and willing to perform the part of the contract.

55. It is also another submission of the appellants / defendants that even for construction of the Kalyana Mandapam, the plan was not sanctioned and rejected and therefore, the construction was illegal and hence, the plaintiff is not entitled to any relief. It is relevant to note that the plan has been submitted which has been rejected. However, the construction has been completed and the building is in existence for more than 30 years. It is for the Corporation or local bodies to take appropriate action for such illegal construction. That cannot be a ground to non-suit the plaintiff.

56. It is another submission of the learned counsel for the appellants / defendants the sale is prohibited under the lease-cum-sale agreement. On perusal of above lease cum sale agreement same stipulates that he has to put up only a house, however different construction, like Kalyana Mandapam has come up. It is relevant to note that Housing Board itself transferred the property by way of absolute sale. Therefore, any restrictions of enjoyment of the property is void *abinitio*. Therefore, mere condition in the lease agreement will not take away the right of the subsequent purchasers who became the absolute owner of the property.

57. In ***Narayanamma and another .vs. Govindappa and others*** reported in ***(2019) 19 Supreme Court Cases, 42,*** the Hon'ble Apex Court has held that when the agreement to sell is contrary to statutory provisions i.e., when interest of the seller is a non-alienable grant passive assistance of Court in favour of the defendants, as opposed to its active assistance in favour of the plaintiff seeking specific performance and held that when the parties entered into an illegal contract, specific performance cannot be granted. The above case entirely on different set of facts. Wherein, the very agreement itself entered illegally between the parties. On perusal of the sale agreement further in the lease-cum-sale agreement, there is no prohibition for sale of property. Therefore, the above judgment is not applicable to the facts of the case.

58. In ***Ritu Saxena .vs. J.S.Grover and another*** reported in ***(2019) 9 Supreme Court Cases 132***, the Hon'ble Apex Court has held that non-establishment of financial capacity of vendee, specific performance cannot be granted.

59. In ***Vijay Kumar and others .vs. Om Prakash*** reported in ***(2019) 17 Supreme Court Cases 429***, the Hon'ble Apex Court has held that the purchaser has to produce relevant documents to prove that he had sufficient funds at the relevant time to perform his part of contract. In paragraph 6 of the said judgent, the Hon'ble Supreme Court has held as follows:

> *"6. In order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the*

readiness and willingness has to be shown through out and has to be established by the plaintiff. In the case in hand, though the respondent- plaintiff has filed the suit for specific performance on 29 th April, 2008, the respondent-plaintiff has not shown his capacity to pay the balance sale consideration of Rs.22,00,000 (Rupees Twenty Two Lakhs). In his evidence, the respondent- plaintiff has stated that he has borrowed the amount from his friends and kept the money to pay the balance sale consideration. As rightly pointed out by the Trial Court, the respondent-plaintiff could not produce any document to show that he had the amount of Rs.22,00,000 (Rupees Twenty Two Lakhs) with him on the relevant date; nor was he able to name the friends from whom he raised money or was able to raise the money. Further more, as rightly pointed out by the Trial Court, the respondent-plaintiff could have placed on record his Accounts Book, Pass Book or the Statement of Accounts or any other negotiable instrument to establish that he had the money with him at the relevant point of time to perform his part of the contract. We are, therefore, in agreement with the view taken by the Trial Court that the respondent-plaintiff has not been able to prove his readiness and willingness on his part."

60. In ***Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman .vs. Ponniamman***

Educational Trust, represented by its Chairperson/Managing Trustee reported in ***(2012) 8 Supreme Court cases, 706***, the Hon'ble Apex Court has held that the plaintiff must aver clear facts necessary to enable him to obtain decree and must produce documents on which cause of action is based. In the absence of the same, the suit is liable to be rejected.

61. In ***Saradamani Kandappan .vs. S.Rajalakshmi and others*** reported in ***(2011) 12 Supreme Court Cases 18***, the Hon'ble Apex Court has held that term in agreement providing the balance sale consideration was to be paid on scheduled dates in three installments. Once the appellant purchaser has failed to make last two installments on time as agreed, it is held that payment of balance of sale consideration was essence of contract.

62. In ***N.P.Thirugnanam (Dead) by Lrs. Vs. Dr.R.Jagan Mohan Rao and Others*** reported in ***(1995) 5 SCC 115***, the Hon'ble Apex Court has held as follows:

> *"5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles*

of law and not arbitrarily as adumbrated under s.20 of the Specific Relief Act 1963 (for short, 'the Act'). Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."

63. In ***G.Pankajakshi Amma and Others Vs. Mathai Mathew (Dead) Through Lrs. and another*** reproted in ***(2004) 12 SCC 83***, the Hon'ble Apex Court in paragraph 10 has held as follows:

> *“10. There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these transactions were to be unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons also the suit was required to be dismissed”*

64. It is relevant to note that in the above case, suit has been filed for recovery of certain amount based on certain promissory notes and no books of accounts maintained as required under Section 9 of Kerala Moneylenders Act. Only in those circumstances, the Hon'ble Apex Court has held as above.

65. All other judgments cited with regard to readiness and willingness. It is also the other submission of the learned counsel for the appellant that as per Form Nos.47 and 48 appendix, no detail as to the cause of action has been averred in the suit. Therefore, the suit has to necessarily fail. On perusal of the entire pleadings, this Court is of the view that the contention that necessary pleadings has not been made, cannot be countenanced.

Point No: 4

66. With regard to the submissions that the plaintiff has not come to the Court with clean hands, it is relevant to note that in fact the defendant has filed a suit at the first instance in O.S.No.3 of 1986 on the file of District Munsif Court, Madurai suppressing the entire sale agreement and he projected the case, as if he is in exclusive possession of the property and the plaintiff in specific performance suit making attempt to take possession. This Court, in earlier, has held that the plaintiff has not come to the Court with clean hands merely on the ground that though the plaint filed in O.S.No.3 of 1986, which was filed on 05.09.1985, it is specifically stated that conditional sale deed dated 18.02.1985 was executed in favour of the defendant by the Tamil Nadu Housing Board. Whereas the suit for specific performance was filed on 25.04.1986, wherein the plaintiff has come forward with the false plea that the appellant / defendant has been representing the plaintiff and he has not yet received the sale deed executed by the Tamil Nadu Housing Board, which is contrary to the averment made in the earlier suit. Only on that ground, this Court has held that the plaintiff has come to the Court with clean hands.

67. It is relevant to note that though the conditional sale deed was executed on 18.02.1985, it is the specific case of the plaintiff in specific performance suit that the plaintiff was not intimated the sale. It is relevant to note that the suit in O.S.No.3 of 1985 has ben filed on 05.09.1985 and the copies have been served later and written statement in the above suit has been filed in 1986, whereas the cause of action alleged in the suit is that the defendant has not intimated the sale executed in his favour therefore, there was a delay. Hence, he has sent a legal notice on 21.10.1985, which was also filed as Ex.A122. The above legal notice was also not properly denied, except setting up independent possession over the Kalyana Mandapam. Such view of the matter, this Court is of the view that what has stated in the plaint for delay in filing the suit, cannot be construed as suppression of material facts. Therefore, the plaintiff has come to the Court with clean hands. Accordingly, this point is answered.

Point No.5

68. Admittedly, the possession is with the plaintiff and he is running the Kalyana Mandapam. This fact is admitted and possession was also parted in pursuant to the agreement. Though there is some difference in the pleadings as to the date of the possession, but the fact remains that possession was handed over and construction has been put up by the plaintiff and he is running the Kalyanamandapam, till now. It is an admitted fact. Such view of the matter, the plaintiff in specific performance suit is certainly entitled to injunction also.

69. Mr.Barathan, learned counsel appearing for the respondent / plaintiff in A.S.(MD)No.665 of 2001 submitted that at present, the guide line value of the property is Rs.3,000/- per sq.ft., and the total extent of the land is 16 cents 4 sq.ft., and therefore, the total value of the land is about Rs.2,94,00,000/-. He fairly submitted that his client is willing to part with further sum of Rs.20 lakhs to the appellant.

70. Now considering the above fact and also taking note of the fact that there was some delay in depositing the remaining sale consideration for more than two years from the date of filing of the suit and construction has also been put up by the plaintiff / respondent and running the Kalyana Mandapam and also considerating the escalation of the prices, in order to balance the rights of both the parties, this Court is of the view that apart from the money already deposited, the plaintiff / respondent shall pay a sum of Rs.50 lakhs, in addition to the sale consideration already made to the appellant / defendant within a period of four months from the date of receipt of a copy of this judgment. On such payment, the appellant / defendant shall execute the sale deed in favour of the plaintiff / respondent. It is also admitted that the respondent / plaintiff has deposited a sum of Rs.8 lakhs towards construction charges. The respondent / plaintiff is entitled to withdraw that amount with accrued interest from the Court.

71. Accordingly, A.S.No.665 of 2001 is dismissed confirming the specific performance granted by the trial Court with a direction to the respondent to pay a sum of Rs.50 lakhs in addition to the amount already deposited towards balance sale consideration to the appellant within a period of four months from the date of receipt of a copy of this judgment. Defendant/Appellant who entitled to withdraw the remaining sale consideration deposited by Plaintiff/Respondent from lower Court. On such payment, the appellant shall execute the sale deed in favour of the respondent / plaintiff and the appellant / defendnat shall also hand over the sale deed executed by the Tamil Nadu Housing Board to the respondent / plaintiff.

72. As far as Tr.A.S.(MD)No.208 of 2020 is concerned, the judgment of trial Court is set aside and this Appeal suit is allowed. Accordingly, permanent injunction is granted subject to the deposit of Rs.50 lakhs as directed in A.S.No.665 of 2001. Consequently, A.S.No. 666 of 2001 is dismissed. No costs.

28.06.2023

Index:Yes/No
NCC:Yes
vsn/vsm

To

1.The Second Additional Subordinate Judge,
Madurai.

2.The Section Officer,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

vsm

A.S.Nos.665 and 666 of 2001
and
Tr.A.S(MD)No.208 of 2020

28.06.2023