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AS.No.982 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2023

PRONOUNCED ON : 23.02.2024

CORAM:

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

AS.No.982 of 2012 and  
M.P.No.1 of 2012

R.Manoj Kumar

... Appellant/ Defendant No.2

Vs.

1. S.Durairaj

.... Respondent / Plaintiff

2. T.Rajendran

.... Respondent / Defendant No.1

**PRAYER:** Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 30.08.2011 passed in O.S.No.882 of 2008 on the file of the First Additional District Judge, Coimbatore.

For Appellant

: Mr.V.C.Janardhanan,  
Senior counsel for  
Mr.P.Srinivas

For Respondent 1

: Mr.S.Parthasarathy,  
Senior Counsel for  
M/s.Saravabhauman Associates

For Respondent 2

: Ms.T.Surekha



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## JUDGMENT

The Appeal suit is filed against the judgment and decree dated 30.08.2011 passed in O.S.No.882 of 2008 on the file of the First Additional District Judge, Coimbatore.

2. The 1st respondent is the plaintiff and the Appellant is the 2nd defendant and the 2nd respondent is the 1st defendant in the suit. The case of the plaintiff is that the suit was filed for specific performance directing the defendants to execute the sale deed in respect of the suit property in terms of the agreement of sale deed dated 07.01.2008 and directing the defendants to pay the cost of the suit. In alternative to direct the defendants to pay a sum of Rs.8,99,457.85/- with subsequent interest of Rs.4,00,000/- at the rate of 24% per annum till the date of realization. Creating charge over the property for a sum of Rs.8,99,457.85/- with subsequent interest on Rs.7,50,000/- at the rate of 24% per annum.

3. According, to the plaintiff, the first defendant T.Rajendran



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approached the plaintiff to sell his property to discharge their debts and promised to execute a sale deed within a period of three months from the date of agreement. The plaintiff agreed to purchase the suit property from the defendants. The defendants are father and son. They constitute a Hindu Joint Family. The suit property is the joint family property of the defendants and obtained the same by virtue of registered partition deed dated 12.10.1984.

4. The further contention of the plaintiff is that, the defendants offered to sell the suit property to the plaintiff for a sale consideration of Rs.17,25,000/-. Accordingly, on 07.01.2008 the plaintiff and the defendants have entered into a sale agreement and a sum of Rs.5,00,000/- was received as advance under the said agreement. It was agreed between the parties to pay a further additional advance amount for a sum of Rs.2,00,000/- on or before 29.02.2008 and the sale will be completed within ten months. In the sale agreement, the plaintiff was empowered to put up layout in the suit property and also entered into agreements with third parties for sale of layout plots and to receive advance from the prospective purchasers of the sites in the said layout. As agreed the



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plaintiff paid a sum of Rs.2,00,000/- as additional advance on 28.02.2008 which has been duly acknowledged by the defendants by making endorsement in the sale agreement dated 07.01.2008. Again, on 23.05.2008 the plaintiff paid another advance amount of Rs.50,000/- and the same was also acknowledged by the defendants by making endorsement in the sale agreement. The plaintiff in total paid a sum of Rs.7,50,000/- as advance to the defendants. The plaintiff was always ready and willing to pay the balance sale consideration and to complete the sale as agreed by them. The plaintiff started to form the layout by leveling the land, forming house sites by digging and ditching etc., which had incurred a considerable expenditure thereof. Though the plaintiff was ready and willing to pay the balance sale consideration and complete the sale transaction so as to enable him to sell the sites in favour of the prospective purchasers, the defendants were postponing the sale, on one pretext or the other.

5. On 05.07.2008, the 1st defendant in order to avoid the agreement, issued a legal notice in the name of the 2nd defendant represented by his guardian, alleging that the sale agreement dated



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07.01.2008 was not in the interest or for the benefit of the minor. Hence, the plaintiff issued a reply notice on 12.07.2008 pointing out that the defendant being the Karta/Guardian of the 2nd defendant was empowered under law to enter into an agreement to sell the suit property and the sale of the suit property was in the interest and for the benefit of the minor namely the 2nd defendant. It is further submitted that the 1st defendant has utilized the advance money to discharge the mortgage loan obtained from the Udumalpet Primary Co-operative Agricultural Bank.

6. It is further submitted that the family of the defendants had incurred debts for the business done by the 1st defendant and hence the suit property was mortgaged. It is also submitted that the 1<sup>st</sup> defendant repurchased the properties allotted to him under a deed of partition dated 12.10.1984. The said properties were sold by him to one Indirani and to one Chandrasekaran to meet out his son's educational expenses. The mother of the 2<sup>nd</sup> defendant namely R.Jothiswari was also present and directly involved in the negotiations while arriving at the terms of sale and also aware that the sale of the minor share is in the interest and for the benefit of the minor. The plaintiff is always ready and willing to deposit



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the minor's share in the sale consideration in the form of fixed deposit.

The notice issued by the plaintiff was received by the 1st defendant for himself and on behalf of the 2<sup>nd</sup> defendant. The defendants are bound to execute the sale in favour of the plaintiff in terms of the agreement dated 07.01.2008. Since, the defendants failed to perform their part of contract, the plaintiff was constrained to file the above suit for specific performance. The plaintiff also deposited the balance sale consideration of Rs.9,75,000/- in pursuant to the sale agreement dated 07.01.2008.

7. On the other hand, the contention of the defendant is that, the plaintiff approached the defendants to sell their property for a good sale price and also promised to execute the sale deed within a period of ten months from the date of agreement. The factum is that the suit property is an ancestral property and the same was well known to the plaintiff. However, the plaintiff failed to take any steps to deposit the minor share. The plaintiff prepared an agreement of sale and agreed to pay the balance sale consideration as per agreement dated 07.01.2008. As per the understanding between the parties the plaintiff was permitted to put up layouts and execute sale deeds in favour of prospective purchasers. In the mean time, the 2<sup>nd</sup> defendant's mother on his behalf sent a legal notice for



partition as they were not aware of the agreement of sale. Since, the share of the 2<sup>nd</sup> defendant was not deposited, the 1<sup>st</sup> defendant could not execute the sale deed. The 2<sup>nd</sup> defendant was not aware that the plaintiff has deposited the balance sale proceeds in his account. It is not established by the plaintiff that he was ready and willing to perform his part of contract within the specified time. The 1<sup>st</sup> defendant was always ready and willing to sell his share in the property. However, the plaintiff did not come forward to complete the sale transaction. The 1<sup>st</sup> defendant was never a spendthrift wasting his earnings, through out his life time. The 2<sup>nd</sup> defendant issued a legal notice for partition, 1<sup>st</sup> defendant has no authority to sell the share of the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant also had agricultural income, and sufficient income from his business to meet out his debts. Hence, he had no necessity to sell the property to discharge his debts. The 1<sup>st</sup> defendant never used the advance amount received from the plaintiff to discharge the mortgage debt or for repurchasing the portion of the property by utilizing the advance amount from the plaintiff as alleged in the plaint.

8. On the side of the 1<sup>st</sup> defendant, it is further submitted that the



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plaintiff never formed layouts in the suit property, and incurred any expenditure for the same. Therefore, the plaintiff did not suffered any loss. It is also not true that the mother of the 2nd defendant had knowledge about the alleged sale agreement. The 1st defendant had not consulted his wife before entering into the sale agreement with the plaintiff. The first defendant is always ready to execute the sale deed in respect of his half share in the suit property. However the plaintiff is not willing to perform his part of contract with respect to half share of the 1<sup>st</sup> defendant.

9. On the side of the 2<sup>nd</sup> defendant it is submitted that the alleged sale agreement is not binding on him, since the same is not for the benefit of the 2<sup>nd</sup> defendant. There is no legal necessity to sell the 2<sup>nd</sup> defendant's undivided share in the suit properties. The 1<sup>st</sup> defendant has no legal authority to enter into any sale agreement with regard to the half share of the 2<sup>nd</sup> defendant in the suit properties. The 2<sup>nd</sup> defendant is not willing to sell his shares. Hence, the defendants prayed for dismissal of the suit.

10. The trial court on the basis of the above pleadings framed the



following issues:

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*i) Whether the plaintiff is entitled for specific performance as prayed for?*

*ii) Whether the plaintiff is always ready and willing to perform his part of contract?*

*iii) Whether there was no legal necessity to sell the second defendant's share?*

*iv) What relief?*

Thereafter, the trial court framed following additional issues

*i) Whether the second defendant has the right to oppose first defendant's intended sale?*

*ii) Was there any family necessity justifying suit agreement? Or, does it confer any benefit to the family?*

*iii) Is the plaintiff ready and willing to perform his part of the contract?*

*iv) To what relief is the plaintiff entitled to?*

11. During trial the plaintiff examined himself as P.W.1 and marked exhibit A-1 to A-27. The 1<sup>st</sup> defendant examined himself as D.W.1 and the 2<sup>nd</sup> defendant was examined as D.W.2 and the wife of 1<sup>st</sup> defendant was examined as D.W.3. Exhibits B.1 to B.19 were marked on the side of the defendants. The trial court based on the oral and



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documentary evidence and submission made by the respective parties decreed the suit in favour of the plaintiff directing the defendants to execute the sale deed in favour of the plaintiff and also directed the plaintiff to deposit the balance sale consideration within a period of one month from the date of judgement. Aggrieved by the same, the present appeal suit is preferred by the 2<sup>nd</sup> defendant.

12. The learned counsel for the 2<sup>nd</sup> defendant submitted that 2<sup>nd</sup> defendant's mother was not present at the time of alleged negotiations took place between the plaintiff and she was not aware of the suit agreement. The 2<sup>nd</sup> defendant is not willing to sell his share. Hence, the mother of the 2<sup>nd</sup> defendant issued a legal notice on behalf of her minor son, disputing and objecting the sale agreement. He wanted to divide his share from his father's possession i.e., from the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is not aware of the deposit of balance sale consideration by the plaintiff. The plaintiff can demand for execution of sale only in respect of the half share of the 1<sup>st</sup> defendant. There is no legal necessity to sell the 2<sup>nd</sup> defendant's undivided share in the suit properties and the sale agreement do not bind upon the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant has no



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legal authority to enter into any sale agreement with regard to the share of the 2<sup>nd</sup> defendant's.

13. The learned counsel appearing for the 2<sup>nd</sup> defendant while assailing the impugned judgement of the trial court, submitted that the trial court has mislead itself by framing issues in favour of the plaintiff and casting the burden on the defendant to prove the negative. The trial court failed to see that the family was not in any manner of financial distress that required the sale of the entire suit property and it was not proved by the plaintiff that the first defendant did not have the wherewithal to satisfy the debts incurred by the first defendant. The 1<sup>st</sup> defendant was having sufficient funds during the time of alleged agreement for sale. The trial court failed to take into consideration about the subsequent waiver of the agricultural loan in favour of the defendants. Moreover, the sale for inadequate consideration shows that the action of the father being not as a prudent man and hence the entire transaction becomes void. Any alienation of minor's property by defacto manger/guardian is *per se* invalid and void ab-initio. The legal necessity is not relevant and the minor can repudiate the alienation on attaining age



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of majority as and when occasion arises. Therefore any such sale of minors property by his natural guardian is voidable under section 8(3) of Hindu Minority and Guardianship Act, 1956. The intended alienation in pursuant to the sale agreement is neither for the benefit of the 2<sup>nd</sup> defendant (then minor) nor for any legal necessity. Hence, the 1<sup>st</sup> defendant (father of the 2<sup>nd</sup> defendant) has no legal authority to enter into any sale agreement with regard to the 2<sup>nd</sup> defendant's half share in the suit properties. He would further contend that, the father by reason of his paternal relationship and his position as the head of the family or its Manager, he is entitled to alienate joint family property so as to bind the interests of both adult and minor coparcenars in the property, provided that the alienation is made for legal necessity or for the benefit of the estate or for meeting an antecedent debt. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity. If the alienation is found to be unjustified then it would be declared void. **[Ref: 1988 2 SCC 77].**

14. His further contention is that, the privilege of alienating the whole of the joint family property for payment of debt is available to the



father, including the son's interest therein to discharge a debt contracted by him for his own personal benefit and such alienation binds the sons provided,

- a. the debt was antecedent to the alienations
- b. it was not incurred for an immoral purpose
- c. the father acted like a prudent man and did not sacrifice the property for an inadequate consideration. *[Ref: (1982) 1 SCC 185].*

15. His further contention is that while the father enters into a sale agreement including the minor son's share, permission of Court for alienation is essential. *[Ref: 2001 (1) CTC 601, (2002) 1 SCC 178, 1996 (8) SCC 54].* Therefore, any alienation of immovable property of minor by his natural guardian (father) in contradiction of Section 8(2) of the Hindu Minority and Guardianship Act, 1956, is voidable under Section 8(3) of the Act. *[Ref: 2019 (20) SCC 633, 2020 (11) SCC 103].*

16. The further contention of the learned counsel for the 2<sup>nd</sup> defendant is that under Ex.A.2 sale agreement, the area of land to be sold is not ascertained. Hence, there is a recital in the sale agreement that it is agreed between the parties, to exclude the 10 feet of land abutting the



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road and to measure the remaining part of the land and fix the sale consideration at Rs.5,75,000/- per acre and complete the sale transaction.

Furthermore, the plaintiff has submitted Ex.A5 layout, plan and according to it, the total extent inclusive of sites, roads and reservation site comes to only 2.30 acres. However, the plaintiff would contend for the first time without any pleadings that there is an extent of 70 cents of vacant land situated in the North and East of 2.30 acres, which the plaintiff claims to be entitled to. In fact, there is no such extent of 70 cents on the North and East of 2.30 acres belonging to the defendant. So also, on the East of 2.30 acres, there is 10 ft space left by the parties as per the agreement. There is a coconut farm of 70 cents North to East 10 ft space which belongs to the defendants. When the recital of Ex.A.2 sale agreement shows that, the agreement was entered only with regard to vacant land, the plaintiff cannot claim any right over the coconut farm of the defendants. Moreover, neither in the plaint nor in the evidence the plaintiff has claimed the excess 70 cents available to him. Even a suggestion was not put to the witness examined as D.W.5. Further, on perusal of Ex.A5 layout a portion measuring 1309 sq ft., equal to 3 cents shown to be left on the North Eastern corner of the layout plan. While so,



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the area left for owner's use to the extent of 70 cents would have been mentioned. However, the same is not mentioned in the layout plan.

Therefore, as per Ex.A.5 lay out, the only 2.30 acres of land is available extent, which is the subject matter of the sale. Even in the description of boundary in Ex.A2 sale agreement, the eastern boundary is shown to be the property of the defendant. Therefore, without specification of area agreed to be sold, the Courts are not expected to pass a decree which is not capable of enforcement in Courts of law. The property must be identifiable in order to avail the relief under the Specific Relief Act 1963.

***[Ref: 2010 (15) SCC 601; 2006-2-LW-191; (1996) 6 SCC 699]***

17. The further contention of the learned counsel for the 2<sup>nd</sup> defendant is that, Section 20 of the Specific Relief Act, 1963, deals with discretion and jurisdiction to the Court and the Court is not bound to grant such relief merely because it is lawful to do so. Since the plaintiff has claimed for alternative relief by way of compensation and damages, such alternative reliefs shows that plaintiff recognize that he may not be able to secure relief of specific performance. Therefore, the plaintiff would be entitled to only for compensation. ***[Ref: 1996 6 SCC 218; 2001 (1)***



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**CTC 601/.**

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18. The learned counsel appearing for the 1<sup>st</sup> defendant(2<sup>nd</sup> respondent herein) would submit that, it is admitted fact that on 07.01.2008, the 1<sup>st</sup> defendant entered into a sale agreement with the plaintiff to sell the suit property for a sale consideration of Rs.17,25,000/- . As per the understanding, the plaintiff shall form layout plots and would execute the sale deed in favour of prospective purchasers. While so, the 2<sup>nd</sup> defendant's mother issued a legal notice on behalf of the 2<sup>nd</sup> defendant who was a minor at the relevant time, demanding for partition as they were not aware of the sale agreement. The plaintiff did not deposit the minor share and therefore, the 1<sup>st</sup> defendant could not execute the sale deed. The plaintiff failed to establish that he was ready and willing to perform his part of contract. The 1<sup>st</sup> defendant is always willing to sell his share in the property. Since the 2<sup>nd</sup> defendant is not willing to sell his share in the suit property, the 1<sup>st</sup> defendant is unable to execute the sale deed as per the sale agreement. The 1<sup>st</sup> defendant never lived a wayward life or he was a drunkard or spend thrift and never wasted the earnings through out his life. Apart from the agricultural income, the 1<sup>st</sup> defendant



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incurred income from his business. Hence, the 1<sup>st</sup> defendant never had the necessity to sell the property to discharge the debts. He never utilized the advance amount received from the plaintiff to discharge any mortgage debt or to repurchase the portion of the suit property from One Indirani and Chandrasekar. He never made use of the advance money for his son's education. The 1<sup>st</sup> defendant availed loans for the above said purposes and repaid them with the profits derived from his business and from his agricultural income. The 1<sup>st</sup> defendant discharged the loan availed from Udumalpet Co-operative Land Development Bank for which he had mortgaged the entire 4 acres belonging to the joint family for Rs.4.66 lakhs. The said loan was discharged after executing the sale agreement on 19.06.2018 under the loan waivers scheme introduced by the Government. The loans were discharged only from his business profits and there was no necessity to discharge the loan from the advance received from the plaintiff.

19. Moreover, the plaintiff failed to prove that he was always ready and willing to complete the sale transaction and that he had sufficient funds to complete his part of contract. The development of land into plots cannot give the plaintiff the right to get the lands executed in



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his favour. The plaintiff can only seek for damages in case he proves that he had suffered any losses in view of the refusal to complete the transaction. Therefore, the judgement and decree of the trial court in O.S.No.882 of 2008 has to be set aside.

20. On the other hand, the learned counsel appearing for the plaintiff would submit that, having entered into a sale agreement on 07.01.2008 for a sale consideration of Rs.17, 25,000/- and receiving a sum of Rs.7,50,000/- as advance, the defendants failed to come forward to complete the sale transaction in respect of the suit property. The further submission is that as Karta of the family and guardian of the 2<sup>nd</sup> defendant, the 1<sup>st</sup> defendant, father of the 2<sup>nd</sup> defendant is empowered to enter into a sale agreement including the minor share in the suit property for legal necessity or for betterment of the estate or for the benefit of the minor. The family of the defendants had antecedent debts which was discharged by the defendants utilizing the advance amount received from the plaintiff. It is further submitted that the plaintiff had also deposited the minor's share (2<sup>nd</sup> defendant) in the form of fixed deposit. The plaintiff is always ready and willing to perform his part of contract. The mother of the 2<sup>nd</sup> defendant was well aware of the sale transaction,



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and the defendants with intention to make an illegal gain taking advantage of the escalation in prices because of the development carried out by the plaintiff in the suit property by converting the same into the housing plots, refusing to complete their part of contract. The defendants are bound to execute the sale deed in pursuant to the sale agreement dated 07.01.2008. The learned counsel further argued that, the signature of the 2<sup>nd</sup> defendant in the sale agreement is not required, since the 1<sup>st</sup> defendant being the Karta is entitled to execute the agreement to sell and even alienate the suit property. Therefore, the absence of signatures of 2<sup>nd</sup> defendant in the sale agreement would not matter and in consequential.*[Ref: AIR 2022 SC 65]*.

21. He would further submit that once the factum of existence of legal necessity stood proved, then, no coparcenar has a right to challenge the same made by the Karta of his family.*[Ref: (2018) 14 SCC 445]*.

22. In the present case, the existence of legal necessity is proved by oral and documentary evidence and therefore, the 2<sup>nd</sup> defendant being the son of the 1<sup>st</sup> defendant has no right to challenge the sale transaction



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in the light of the findings of legal necessity being recorded against him.

Hence, the reasoning and the conclusion arrived by the trial Court is just and proper, which calls for no interference.

23. Heard on both sides, records perused.

24. Based on the above submission the following points for consideration arises.

*1. Whether the 1<sup>st</sup> defendant has legal authority to execute a sale agreement in favour of the plaintiff?*

*2. Whether the 2<sup>nd</sup> defendant has a right to raise obstruction against the intended the sale of the Karta including his share in a suit for specific performance?*

*3. Whether the intended sale is justifiable as necessitated for the benefit of the minor coparcenor or legal necessity of the family ?*

*4. Whether the description of suit property is not correct in that the extent of property agreed upon in Ex.A.2 agreement is uncertain and the property cannot be identified?*



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*5.whether the trial Court is justified in granting the decree for specific performance?*

For the sake of convenience, the parties are referred as per ranking in the trial Court.

**Point Nos.1 to 3**

25. The undisputed facts are that on 07.01.2008 the 1<sup>st</sup> defendant T.Rajendran (2<sup>nd</sup> respondent herein) as a karta of the joint Hindu Family had executed the sale agreement to sell the suit property for Rs.17,25,000/- and had received a sum of Rs.7,50,000/- in advance from the plaintiff namely S.Durairaj (1<sup>st</sup> respondent herein). It is also not in dispute that the defendants are father and son and the suit property is the coparcenary property. The 2<sup>nd</sup> defendant namely Minor R.Manoj Kumar represented by his father/guradian T.Rajendiran is on appeal.

26.The legal issue which arises for consideration in the present appeal is whether the 1<sup>st</sup> defendant, as a karta has legal authority to



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execute the sale agreement in respect of the suit property. As rightly pointed out by the learned counsel appearing for the 2<sup>nd</sup> defendant/appellant, when an alienation is challenged as being unjustified or illegal it would for the plaintiff/ alienee to prove that there was legal necessity. No doubt, the karta has not only the power to manage but also power to alienate joint family property. But the alienation may be either for family necessity or for the benefit of the estate. It is well settled law that karta of the joint Hindu family cannot alienate the coparcenary property without legal necessity and coparcenar has right to restrain the karta from alienating the coparcenary property if the sale is without legal necessity and it is not for the benefit of the estate. **[Ref : AIR 1972 P&H 147].**

27.In the present case, the plaintiff's contention is that the defendants had outstanding loan and the business income of the 1<sup>st</sup> defendant was insufficient to discharge the said loans. It is not in dispute that out of 4.0 acres in the suit survey number, the 1<sup>st</sup> defendant had sold 60 cents in total in the year 1999 to one Indirani and to one Chandrasekar, each 30 cents. It is also admitted fact that on 09.01.2008



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the 1<sup>st</sup> defendant repurchased the same from them. But according to the

1<sup>st</sup> defendant, he repurchased the same from his business and agricultural income. But it is found on record that the said purchase was on the second day of executing Ex.A2 sale agreement. The specific contention of the plaintiff is that, the 1<sup>st</sup> defendant repurchased the said property from the advance amount of Rs.5,00,000/- tendered by him at the time of executing the sale agreement. While so, the burden is on the 1<sup>st</sup> defendant to establish that he had sufficient income of his own for purchasing the said property. Apart from that, it is also not in dispute that on 24.02.1997 the 1<sup>st</sup> defendant had obtained a loan of Rs.4.66 Lakhs from Udumalpet Co-operative Development Land and for securing which he had mortgaged the entire 4.0 acres belonging to the joint family under mortgage deed registered as Document No.1567/97 of Udumalpet Sub Registry. The same is marked as Ex.A24 before the trial Court. The defendant failed to establish that, the said loan was discharged even before the sale agreement date. Which means, the said mortgage loan was outstanding even on the date of the sale agreement i.e., on 07.01.2008. Admittedly, the said mortgage loan was discharged only on 19.06.2008 and from Ex.A.21 it could be seen that the loan was discharged under the



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loan waiver scheme introduced by the Government. Therefore, the said loan was not discharged by the 1<sup>st</sup> defendant from his income. Another loan of Rs.50,000/- due to Jallipatti primary Agricultural Co-operative Bank, obtained by the 1<sup>st</sup> defendant on 19.02.2001 for the same property, which is evidenced by Ex.A.27, a copy of the said mortgage deed. The above two loans are reflected in the encumbrance certificate marked as Ex.A7 before the trial Court. Moreover, Ex.B.18 reveals that, the 1<sup>st</sup> defendant had also availed overdraft facility from Karur Vaishya Bank, Udumalpet Branch to the tune of Rs.2.75 Lakhs and the 1<sup>st</sup> defendant was liable to discharge the said amount. While so, the 1<sup>st</sup> defendant must establish that he had sufficient income to discharge the above mentioned loans. Except Ex.B..1 and B2, the IT returns for the year 2006-2007, 2007-2008, which would reveal that the gross income for the said period was Rs.1,46,915/- and Rs.1,60,462/-. With this income, it is not possible for the 1<sup>st</sup> defendant to discharge the loans incurred by him. The 1<sup>st</sup> defendant had to meet out his family expenses also. Moreover, the receipts marked as Ex.B.14 and B.15 for discharging the loan obtained from Jallipatti Bank are after execution of Ex.A2 sale agreement. The 1<sup>st</sup> defendant failed to establish that he had sufficient income other than the



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advance amount received from the plaintiff to discharge the said loans.

Moreover, Ex.B7 and B8 letters issued by the Udumalpet Co-operative Bank would reveal the pressure on the estate of the defendants. The 1<sup>st</sup> defendant examined as D.W.1 categorically admitted that there was a Court order to bring the mortgaged property for sale and also admitted that the Udumalpet Co-operative Bank, loan was discharged only after the execution of sale agreement on 07.01.2008. On the facts proved in this case the 1<sup>st</sup> defendant had two loans on the date of the sale agreement, obtained from two Cooperative Banks as evidenced by Ex.A24 and A.27, which amounts to Rs.5.16 Lakhs. It is the principle amount alone. There is no evidence as to the interest part. The 1<sup>st</sup> defendant has mortgaged the entire 4.0 acres for securing the above loans, including the minor share. The said loans were discharged few months after execution of Ex.A.2 sale agreement. Though the loan was waived by the Government, the 1<sup>st</sup> defendant was still liable to pay a sum of Rs.1.0 Lakhs to avail the benefit of waiver scheme which is evidenced from Ex.B.14 and B.15 respectively. Moreover, the waiver scheme was availed by the 1<sup>st</sup> defendant after its introduction by the Government post sale agreement. Therefore, the 1<sup>st</sup> defendant could not have anticipated



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about the waiver scheme at the time of entering into the agreement. This would establish that, at the time of entering the sale agreement, the 1<sup>st</sup> defendant was under pressure in discharging the mortgage loans, due to the Court order. Therefore, the fact that in Ex.A.2 sale agreement and Ex.A.11 legal notice that the legal necessity is not mentioned is of no relevance and the contention of the 2<sup>nd</sup> defendant that the debts incurred by the 1<sup>st</sup> defendant was for immoral or illegal purpose is unsustainable.

28. The next consideration is that whether by virtue of sale intended as per Ex.A.2, any benefit accrued to the family. From the recitals of Ex.A.25 and A.26 it is seen that the property mentioned in the above sale deeds were sold to meet out the educational expenses of the minor, namely the 2<sup>nd</sup> defendant. The said property was again repurchased on 09.01.2008, i.e., on the 2<sup>nd</sup> day of the sale agreement. Moreover, at the time of the alleged sale agreement, the 2<sup>nd</sup> defendant was an Engineering student and his educational expenses needs to be met as well and the same is admitted by the 2<sup>nd</sup> defendant examined as D.W.2. The defendants failed to establish that they had other source of income to meet out the family expenses, educational expenses and for discharging



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the loans incurred by the 1<sup>st</sup> defendant. Apart from that, the 1<sup>st</sup> defendant after receipt of Rs.5 Lakhs as advance on the date of agreement, he had repurchased 60 cents from one Indirani and Chandra Sekar, thereby retrieving the lost estate of the family. Therefore, the family had been benefited by the amount received from the plaintiff as advance.

29. Therefore, as karta of the family the 1<sup>st</sup> defendant is authorized to enter into a sale agreement for selling the suit property in favour of the plaintiff to meet out the legal necessity and for the benefit of the estate. Hence, the 2<sup>nd</sup> defendant is prevented from obstructing the intended alienation of the karta in a suit for specific performance. Accordingly, these points are answered.

**Point No.4:**

30. Though it is contented on the side of the 2<sup>nd</sup> defendant that the description of the suit property is incorrect and the extent of property mentioned in Ex.A2 is uncertain and therefore, the plaintiff is not entitled for a decree of specific performance. However, the said plea was not pleaded in the written statement of the defendants. It is not in dispute that



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the suit property mentioned in Ex.A2 sale agreement is in S.No.110

having total extent of 4 acres, belong to the joint family of the defendant.

As per Ex.A2 sale agreement, an extent of 3.0 acres out of 4.0 acres was agreed to be sold in favour of the plaintiff by the 1<sup>st</sup> defendant.

Admittedly, the boundaries are only with reference to the entire extent of 4.0 acres and not with reference to 3.0 acres. According to the plaintiff, in his evidence that he had taken possession of the suit property in pursuant to ExA2 sale agreement and converted 2.30 acres into lay out plots and retained 70 cents on the North of the lay outs for his personal use. The lay out plan is marked as Ex.A5. Though the 2<sup>nd</sup> defendant would contend that there is no vacant plot to the extent of 70 cents to the North of 2.30 and one Parthasarathy's property lies in the North of 2.30 acres, but, in the suit schedule, the Northern boundary to the entire extent of 4 acres, is shown as the property of Parthasarathy. Therefore, the contention made by the 2<sup>nd</sup> defendant in this regard, cannot be accepted.

### **Point No.5**

31.Now, it has to be considered whether the plaintiff is entitled to a decree of specific performance under Ex.A.2 sale agreement. The plaintiff



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and the 1<sup>st</sup> defendant has entered into a sale agreement and the 1<sup>st</sup> defendant has received a sum of Rs.7.5/- Lakhs as advance on different dates. The plaintiff has clearly established that the intended sale was for the legal necessity of the 1<sup>st</sup> defendant family and also to benefit the estate of the defendants. It is not proved by the defendants that the 1<sup>st</sup> defendant entered in to a sale agreement which is not for legal necessity or for the benefit of the family for satisfying antecedent debts which are not incurred for immoral or illegal purposes. Therefore, the power exercised by the 1<sup>st</sup> defendant as karta of the family on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparcenar namely the 2<sup>nd</sup> defendant. Once the factum of existence of legal necessity stood proved, then, no coparcenar has a right to challenge the sale or sale agreement made by the karta of his family. Therefore, the trial Court has rightly exercised its discretion by granting the specific relief to the plaintiff which is found to be reasonable, guided by judicial principles.

32.In the light of the aforesaid discussion, the present appeal is



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dismissed. No cost. Consequently, connected miscellaneous petition is

closed.

**23.02.2024**

Index : Yes / No

Internet : Yes / No

Speaking order /Non-speaking order

gvn/gvn

To

The Sub Judge, Mettur.



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**K.GOVINDARAJAN THILAKAVADI, J.**

gvn/vsn

**Pre-delivery order made in**

**AS.No.982 of 2012**

**23.02.2023**