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CS.No.23 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2023

PRONOUNCED ON:05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CS.No.23 of 2012

M/s Crescent Auto Repairs and Services India Private Ltd.
by its Director, A.K.Abdullah, Chennai 600 018 ...Plaintiff

...Vs...

1. M/s Chennaivazh Kovilpatti Uravinmurai Nadar Sangam
by its President, L.M. Krishnaswamy Nadar, Chennai 600 020
2. M/s Chennaivazh Kovilpatti Nadar Uravinmurai Sangam
by its President, K.Ramasamy Nadar,
Chennai 600 020 ...Defendants

Prayer:- This Civil Suit has been filed, under Order VII Rule 1 of CPC
read with Order IV Rule 1 of the Original Side Rules, for the reliefs as
stated therein.

For Plaintiff :Mr.AR.L.Sundaresan SC for Mr.R.Sagadevan

For Defendant : Mr.S.Packiaraj-D2
D1-No Appearance



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JUDGMENT

This Civil Suit has been filed, seeking a judgement and decree, for the following reliefs:-

a) Direction to the 1st Defendant to specifically perform its part of the obligations arising out of the sale agreement dated 26.9.2007 and convey the suit property in favour of the Plaintiff on receipt of the balance sale consideration of Rs. 5,37,50,000/- (Rupees Five Crores Thirty Seven Lakhs and Fifty Thousand only) free from all encumbrances and litigation (OR) in the alternative, direction to the 1st Defendant to refund the Plaintiff a sum of Rs.1,12,50,000/- (Rupees One Crore Twelve Lakhs and Fifty Thousand only) together with interest at the rate of 24% p.a. from the date of Complaint till the date of realization.

b) Permanent injunction, restraining the 2nd Defendant from in any manner dealing with or creating any encumbrance over the suit property.

c) Costs of the suit.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

a) The Plaintiff Company carries on the business of Automobiles.

The 1st Defendant Society owns various immovable properties. The 2nd Defendant is a Member of the 1st Defendant society. The suit property belonged to the 1st Defendant. The 1st Defendant had let out the suit



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property to the Plaintiff together with a superstructure thereon under a rental agreement dated 16.7.1999. The 1st Defendant offered to sell the suit property to the Plaintiff. The Plaintiff and the 1st Defendant entered into an sale agreement dated 26.09.2007 for a total sale consideration of Rs.6,50,00,000/- and an advance sale consideration of Rs. 1,00,00,000/- was paid. As on the date of the sale agreement, the property was mortgaged with REPCO Bank and a sum of Rs.27,34,529/- was due and payable in respect of the said mortgage as on 08.09.2007 and the 1st Defendant undertook to discharge the said loan and redeem the mortgage. The balance of the sale consideration was agreed to be paid in 36 equal monthly instalments at the rate of Rs.2,50,000/- per instalment starting from the end of one month from the date of signing of the said agreement, in all amounting to Rs.90,00,000/- and a sum of Rs.1,00,00,000/- (Rupees One Crore only) was to be paid at the end of one year from the date of signing of the said agreement and a further sum of Rs. 1,00,00,000/- (Rupees One Crore only) was to be paid at the expiry of 2 years period from the date of signing of the agreement and a final payment of Rs.2,60,00,000/- (Rupees Two Crores and Sixty lakhs only) was to be paid at the end of 3 years from the date of signing of the agreement.



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b)The Plaintiff made four monthly instalments at the rate of Rs.2,50,000/- per instalment, totalling to Rs. 10,00,000/- While the Plaintiff was always ready and willing to perform its part of the obligations, the 2nd Defendant filed a suit on 15.02.2008 in OS.No.1049 of 2008 on the file of XIII Assistant City Civil Court, Chennai against the 1st Defendant, impleading the Plaintiff as one of the Defendants in the said suit, for permanent injunction to restrain L.M.Krishnaswamy and one S.V.Manoharan, the President and the then Secretary of the 1st Defendant Sangam respectively, from in any way dealing with the suit property. In the said suit, the 2nd Defendant filed IA.No 2667 of 2008 for interim injunction and the said application was dismissed on 15.12.2008. As against the same, the 2nd Defendant has filed an appeal in CM.A. No 10 of 2009 and the same is pending. The 1st Defendant had agreed to convey the property free from all encumbrances. On account of the suit in O.S.No 1049 of 2008, the Plaintiff had not paid the balance sale consideration within time. However, the Plaintiff was ready and willing to pay the balance sale consideration as agreed upon and take the sale deed provided that property was free from all encumbrances. The obligation on both sides are reciprocal.



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c)The Plaintiff continues to be in occupation of the suit property as a Tenant and to show its bonafides, the Plaintiff sent a letter dated 05.11.2011, offering to increase the rental amount and also sent a cheque for Rs.2,50,000/- towards one instalment payment as per the terms of the sale agreement. As there was no response from the 1st Defendant to the said letter dated 05.11.2011, the Plaintiff issued a notice dated 12.12.2011, stating they were always ready and wiling to perform its part of the obligations. As soon as a final solution is reached in respect of the said litigation, the Plaintiff is ready and willing to pay the entire balance sale consideration and take the sale deed and the suit is not barred by Limitation. The 2nd Defendant, who does not have any authority, is contemplating to alienate the property in favour of 3rd parties. In such circumstances, this Civil Suit has been filed, seeking the reliefs, as stated above.

3.In the written statement filed by the 1st Defendant, it is stated as follows:-

a)The 1st Defendant is an registered Association/Sangam. The suit property was purchased by its Treasurer S.Vijayarajan, Secretary



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S.V.Manoharan and President, L.M. Krishnasamy by contributing their own funds. The Plaintiff is a tenant in a part of the suit property under the agreement dated 16.07.1999 and occupies nearly 2½ Grounds of land and building and running a Maruthi Service Station. The said agreement was extended for a period of 3 years on condition to pay Rs.1,25,000/- as rent in the year 2008, Rs. 1,31,250/- in the year 2009, Rs. 1,37,813/- in the year 2010. Earlier, the Secretary of the Sangam, Mathivanan misappropriated the funds of the sangam and the Sangam obtained a loan from REPCO Bank. As per clause 2 of the sale agreement dated 26.09.2007, the sale consideration is fixed at Rs. 6.5 Crores and the period is fixed for 3 years on various terms of payment per month/per year. The REPCO Bank loan was discharged. But, the Plaintiff have no money. The Plaintiff had instigated the 2nd Defendant to file the suit against the Sangam in O.S.1049 of 2008. The I.A.No.2666 of 2008 filed for injunction was dismissed on 15.12.2008 and the appeal filed in CMA.No.10 of 2009 was also dismissed on 16.06.2010. The said suit was also dismissed on 10.10.2011.



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b)As per clause 2 of sale agreement, the Plaintiff should pay sale instalment amount of Rs. 90,00,000/- on or before 26.09.2008 and the further first annual payment of one crore should be made on or before 26.09.2008 and second annual payment of one crore should be made on or before 26.09.2009 and final payment Rs. 2,60,00,000/- shall be made on or before 26.09.2010. But, the Plaintiff has not offered any sale instalment as per the sale agreement. The Plaintiff stopped the payment of monthly rent and the monthly instalment amount as per the sale agreement. Hence, the 1st Defendant filed the RCOP.No.1322 of 2012 against the Plaintiff for wilful default in payment of rent and also filed MP.No.370 of 2012 to deposit the arrears of rent, which was allowed. The Plaintiff was directed to pay the monthly rent on or before 5th of every month and subsequently the Small Causes Court has ordered for eviction for non payment of rent by the Plaintiff.

c)In this suit, the Plaintiff's only grievance is that OS.No.1049 of 2008 is pending and CMA.No.10 of 2009 is pending. But, as on the date of filing of this suit, CMA.No.10 of 2009 or OS No. 1049 of 2008 are not pending. The suit in OS.1049 of 2008 was dismissed on 10.10.2011 and



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the CMA.No.10 of 2009 was dismissed on 16.06.2011. Once the title of the 1st Defendant is denied by the Plaintiff, he has no right to file the specific performance suit against them. The Plaintiff has stopped to pay the sale instalment amount from January 2008 and stopped the monthly rent from March 2012. The Plaintiff has paid sale instalment of Rs.2,50,000/- on 05.04.2012, and renewed the rental agreement on 05.11.2011 and it shows that the 1st Defendant is the owner of the suit property. For non cooperation of the Plaintiff, the mediation before the Lok Adalat was failed. Only after the eviction order passed in the RCOP.No.1322 of 2012, the Plaintiff deposited Rs. 23,51,700/-. At the instigation of the Plaintiff, another suit in CS.No.673 of 2012 was filed by R.Jayaveerapandian and N.Tamizharasan against the 1st Defendant, challenging the authority of the 1st Defendant. The 1st Defendant filed RCOP.No.2099 of 2013 before the XIIIth Small Causes Court, Chennai for fixation of fair rent and enhancement of the rent from Rs.2,01,000/- to Rs.15,26,730/- The Plaintiff came forward to deposit the balance sale consideration into the court in order to avoid the eviction proceedings and fixation of fair rent proceedings.



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d)The Plaintiff had to pay the entire sale consideration for the 3 year period that comes to an end before 25.09.2010. The Plaintiff is not entitled to refund the sum of Rs.1,12,50,000/- with interest at 24% p.a. The suit is barred by limitation. The Plaintiff has not proved his readiness and willingness as per the sale agreement. The 1st Defendant already informed the Plaintiff for the refund of sale advance amount and also demanded the cancellation of sale agreement by its letters dated 06.12.2009 and 13.12.2009. The Plaintiff has not come forward to complete the sale transaction as per the sale agreement. Under these circumstances, it is prayed that this suit is liable to be dismissed.

4.Originally, the plaintiff arrayed S.Thamilarasan as the 2nd defendant as he had filed O.S. No1049/2008 challenging the sale agreement. He has filed his written statement. As the Hon'ble First Bench directed the deletion of his name, accordingly deleted, the written statement of Thamilarasan need not be looked into.



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5.The 2nd Defendant (Originally 3rd defendant in the plaint) has filed a separate written statement, reiterating the averments made in the written statement filed by the 1st Defendant and further stating as under:-

a)The Plaintiff has not described the 1st Defendant herein properly and has deliberately omitted to give its registration number, the sale agreement itself described by L.M.Krishnasamy Nadar for Sangam 61/2006. The 2nd Defendant is the owner of the property and it was registered under the Tamil Nadu Societies Registration Act in 1984 as Reg.No. 45/1984 and Krishnasamy Nadar was nominated as President at the time of registration. It had 120 members at the first instance. The suit property was purchased on 29.01.1987 for valuable consideration which was collected from the members. The Plaintiff was inducted as a tenant on 16.07.1999 and paid Rs.10,00,000/- as advance. Since as on July 1999, the Sangam has to pay Rs.10,00,000/- to REPCO bank for the loan availed to purchase the land, all the members instructed the 1st Defendant to settle the entire loan amount from the rental advance. Since all the members are always busy with their day to day business; they used to attend the Sangam office for the monthly meeting only. Taking advantages of this, the 1st Defendant, with a criminal intention did not submit the annual returns to



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Registrar of Societies from 1994/1995 onwards in order to lapse the Sangam registration. The second step taken was that 1st Defendant got signatures from 10 of his relatives and registered yet another Sangam with the existing same name "Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, Adayar, and registered before the District Registrar, Chennai south as Reg.No.61/2006 on 16.02.2006. This secret registration of the Sangam by Krishnasamy Nadar vide Reg. No. 61/2006 slowly spread among the members and several members criticize his illegal act. To escape from the wrath of the members, the 1st Defendant made a statement before the members that since he failed to submit annual returns to the Registrar of Societies from 1993/1994 onwards, the Registrar threatened to cancel the registration and to save the Sangam and its property he re-registered the Sangam with same name. All the members were kept dark whether the REPCO bank loan account was settled from advance amount received from the tenant and the monthly rent has been deposited to Sangam bank account. Later the members came to know that 1st Defendant did not settle the REPCO bank loan, but took the advance amount for his personal needs.



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b)The 1st Defendant entered into an agreement with the Plaintiff on 26.09.2007. The vendor in the sale agreement is shown to be old Sangam name, but the registration No. 61/2006 of the new Sangam. This itself makes the agreement is invalid. The advance amount received under the agreement has not been credited into Sangam account. The members came to know about this secret transaction later. There was no general body meeting and no resolution authorizing sale and the members were not informed about it prior to the execution of the sale agreement. There was no necessity to sell the property. Even otherwise the property cannot be sold over the counter. No reason for the sale and the date of resolution authorizing the sale of the property were given in the agreement. The 2nd Defendant sent a representation dated 10.04.2012 to the District Registrar of Societies South, Chennai to enquire into the affairs of the Sangam and to conduct election under his supervision so that the dispute could be resolved once for and all. As there is no reaction from the authorities 2nd Defendant filed W.P.No.26992 of 2012 and on 24.01.2014, a mandamus was issued directing the Registrar to act on the 2nd Defendant's representation. By proceedings dated 22.08.2014, the Registrar categorically informed that the two Societies were separate units and that



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there was no amalgamation of the two. Sangam 45/1984 is in the roll of register maintained by the Registrar of Societies north Chennai.

c) Since the 1st Defendant failed to submit annual returns from 1994/1995, the life members of Sangam convened a General body meeting on 23.08.2015 and new office bearers were elected. On knowing the general body meeting dated 23.08.2015, the 1st Defendant filed forms VI and VII and other documents on 25.09.2015 and 30.10.2015 from 1994/1995 to 2013/2014 with a condone delay fee of Rs.4,17,700/- before the District Registrar of Societies. On a perusal of the document filed by 1st Defendant, it was found that non- members of the Sangam signed in the alleged general body meeting. According to form VI, there are 120 life members as on 30.09.2014. As per form VII, 11 administrative committee members were elected. On verification of form VI, there they claimed 120 members on the role, which includes expired 35 members. According to the Sangam bye-law of clause 11, 9 administrative committee members would be elected, but they recorded as if the general body elected 11 members, but out of which 9 are not the members of the Sangam. It is evidently proved that to overcome the general body meeting held on



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23.08.2015 and 04.10.2015, Krishnasamy Nadar hurriedly prepared fictitious documents and filed it before the District Registrar of Societies North Chennai. The 1st Defendant refused to hand over the books of account and the bank details to the new office bearers. He locked the Sangam office preventing the new office bearers from entering into the office. The Plaintiff is paying the monthly rent continuously to the 1st Defendant. So far the 1st Defendant and his associates have misappropriated more than Rs.2.65 crores.

d)The 2nd Defendant has issued a charge memo to the 1st Defendant and 2 others who transferred the Sangam funds to their personal account. They never controverted the allegation levelled in the charge memo. After giving sufficient opportunity to the 1st Defendant, S.Vijayarajan and S.V Manoharan were removed from the primary membership of the 3rd Defendant on 11.11.2015. They never challenged the removal order in the manner known to law till now. At present, out of 120 members 35 members have passed away and 6 members left. Chennai to their native village and settled there. Out of remaining 79 members, 60 members sent letters stating that they were objecting to the sale of the



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property and they are ready and willing to file their objections before this court. The 3rd Defendant is not aware of any notice issued by the Plaintiff.

In fact, from the time these office bearers took over the management and the same was intimated to the Plaintiff on 06.11.2015, the Plaintiff has not paid the rent. The 3rd Defendant took steps to bring to the notice of the Registrar of Societies that the Registration of Adayar Sangam was illegal and against Section 9 (1) (C) of the Tamil Nadu Societies Registration Act. There cannot be two Societies with identical names. After hearing both sides, an order was passed on 21.03.2016 by the Registrar of Societies, South Chennai, declaring that the Adayar Sangam 61/2006 should change its name and if it failed to do so, it would be dissolved. Since the L.M. Krishnasamy Nadar refused to change the name of his second Sangam as directed by the Registrar of Societies, South Chennai, the Sangam 61/2006 was cancelled on 24.08.2016 by the Registrar.

e)The Plaintiff has filed the suit based on an illegal transaction and so is not entitled to the equitable relief of specific performance. The suit agreement itself is illegal as the property is sought to be sold by an entity which is not the owner of the property. There is no cause of action for the suit. The suit is barred by limitation. The Plaintiff has not filed any



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document such as the resolution to sell the Sangam property or authorizing L.M.Krshnasamy Nadar to sell the property to the Plaintiff, permission granted by the Registrar of Societies north Chennai to sell the land. In the absence of the above vital documents, the suit itself is not maintainable. For the above reasons, the Plaintiff is not entitled to specific performance or any other relief and accordingly, this suit is liable to be dismissed.

6.On the pleadings of the parties, the following issues were framed:-

- (1) Whether the Plaintiff was ready and willing to perform its part of the sale agreement dated 26.09.2007?*
- (2) Whether the Plaintiff is entitled to Specific Performance of the agreement dated 26.09.2007?*
- (3) Whether the Suit is barred by Limitation as pleaded by the Defendants?*
- (4) Whether the Plaintiff is entitled to the alternative relief of refund of the sum of Rs.1,12,50,000/- together with interest at the rate of 24% p.a. from the date of Complaint till actual realization?*
- (5) Whether the Plaintiff is entitled to a decree for permanent injunction against the 2nd Defendant as prayed for?*
- (6) In the absence of ready and willingness initiated to the 1st Defendant whether the Plaintiff is entitled to a Decree for Specific Performance?*



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(7) In the absence of Privity of contract between the Plaintiff and the 2nd Defendant, whether the suit is liable to be dismissed on the ground of mis-joinder of party?

(8) Whether the suit is bad for non-joinder of Krishnaswami Nadar, who entered into the suit agreement with the plaintiff?

(9) Whether the Plaintiff is entitled to the equitable relief of specific performance, when it had come to the Court with a false case?

(10) Whether the suit is maintainable as the suit schedule property does not belong to the Sangam 61/2006 but to the third defendant?

(11) To what other reliefs, the parties are entitled to?

7. On the side of the Plaintiff, Ex.P1 to Ex.P6 were marked and PW.1 was examined. On the side of the Defendants, Ex.D1 to Ex.D45 were marked and DW.1 to DW.3 were examined.

8. The learned counsel for the plaintiff would submit that while the plaintiff being Tenant under a Rental Agreement dated 16.7.1999, the 1st Defendant offered to sell the suit property to the Plaintiff. The Plaintiff and the 1st Defendant entered into an sale agreement dated 26.09.2007 for a total sale consideration of Rs.6,50,00,000/- (Rupees Six Crores and Fifty Lakhs only) and an advance sale consideration of Rs. 1,00,00,000/-



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(Rupees One Crore only) was paid. The balance of the sale consideration was agreed to be paid in 36 equal monthly instalments at the rate of Rs.2,50,000/- per instalment starting from the end of one month from the date of signing of the said agreement, in all amounting to Rs.90,00,000/- (Rupees Ninety lakhs only) and a sum of Rs.1,00,00,000/- (Rupees One Crore only) was to be paid at the end of one year from the date of signing of the said agreement and a further sum of Rs. 1,00,00,000/- (Rupees One Crore only) was to be paid at the expiry of 2 years period from the date of signing of the agreement and a final payment of Rs.2,60,00,000/- (Rupees Two Crores and Sixty lakhs ally) was to be paid at the end of 3 years from the date of signing of the agreement. Thus, the Plaintiff made four monthly instalments at the rate of Rs.2,50,000/- per instalment, totalling to Rs. 10,00,000/- While the Plaintiff was always ready and willing to perform its part of the obligations, the 2nd Defendant filed a suit in OS.No.1049 of 2008 on the file of XIII Assistant City Civil Court, Chennai against the 1st Defendant, impleading the Plaintiff as one of the Defendants in the said suit, for permanent injunction to restrain L.M.Krishnaswamy and one S.V.Manoharan, the President and the then Secretary of the 1st Defendant Sangam respectively, from in any way dealing with the suit property. In



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the said suit, the 2nd Defendant filed IA.No 2667 of 2008 for interim injunction and the said application was dismissed on 15.12.2008. As against the same, the 2nd Defendant has filed an appeal in CM.A. No 10 of 2009 and the same was dismissed on 16.06.2011. Thereafter, the suit was dismissed for default on 10.10.2011.

9. It has been further submitted that after dismissal of the suit for default, under Ex.D16, the plaintiff expressed its willing to perform its part of the agreement and continue to pay the EMI as per the sale agreement dated 26.09.2007 @ Rs 2,50,000/- per month. After receipt of the advance amount, A.No.4703 of 2020 was filed by the 1st defendant in the suit praying for direction to the Plaintiff herein to deposit the balance sale consideration. After filing the counter, the said application was withdrawn by the 1st defendant considering the capable of paying the balance consideration by the plaintiff. However, this Hon'ble Court granted liberty to the Plaintiff herein to file application for depositing the balance sale consideration by order dated 29.11.2013. Thereafter, the plaintiff herein filed A.No.335 of 2014 in this Hon'ble Court in the present suit seeking permission to deposit the balance sale consideration of



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Rs.5,25,67,500/- (Rupees five crores twenty five lakhs and sixty seven thousand five hundred only). Pursuant to the order dated 24.1.2019 of this Court, the Plaintiff had deposited the entire balance sale consideration to the credit of the said Suit C.S.No 23 of 2012 in the name of the Registrar General of this High Court. Thereafter, in view of the internal dispute among the members of the 1st Defendant and the 1st defendant has not come forward to execute the Sale Deed, the Plaintiff had filed A.No. 1108 of 2016 to withdraw the said amount with an undertaking that as and when called upon, the Plaintiff is ready and willing to deposit the money to the credit of the suit for purchasing the property and the same was allowed by order dated 08.04.2016 of this Court.

10. The learned counsel for the plaintiff would further submit that even though the Plaintiff is ready and willing for depositing the balance sale consideration and taking the sale deed in respect of the suit property, the 1 Defendant has failed to execute the Sale Deed with regard to the suit property in favour of the plaintiff without any basis. Hence, the Plaintiff is entitled to the relief of specific performance to purchase the suit property in terms of the said agreement and in the alternative, to refund of the entire



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advance amount of Rs. 1,12,50,000/- which has been paid under the sale agreement dated 26.09.2007 to the 1st Defendant. The Advance amount was paid by way of Cheques on various dates from 01.10.2007 to 05.11.2011 drawn at HDFC Bank, G.N. Chetty Road T.Nagar Branch in favour of Chennai vazh Kovilpatti Nadar Uravinmurai Sangam. Further, during the pendency of the suit, in O A. No 27 of 2012 in C. S.No 23 of 2012 the plaintiff has made a further EMI towards sale agreement by way of Cheque No. 126371 dated 04.04.2012 for a sum of Rs 2,50,000/- (Rupees Two Lakh Fifty Thousand only) drawn at IDBI Bank, Chennai Branch issued in favour of 1st defendant. All payments have been made through Bank to the account of the 1 Defendant.

11. It has been further submitted that the Office bearers may change from time to time but the Society is the same. By orders passed by the Registrar of Societies, the Registration of 61/2006 has been cancelled on account of the fact that the Defendant Society bearing Regn. No 45 of 1984 is validly registered and continuous and all the persons who professed to start the new society were all members of the 45 of 1984 itself and the new society was formed only for the purpose of convenient



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activities of the 1st Defendant Society. As such on facts and under law, there is only one Society viz. the 1 Defendant Society which has been clearly referred in the plaint as Society under Regn. No 45 of 1984. Even though the sale agreement preamble refers to the vendor as Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam under Regn No.61 of 2006, yet the agreement was only with Society under Regn.No.45/1984 as it is rightly shown as represented by Mr.L.M. Krishnaswamy Nadar, who was the President of the said Society 45/1984. All payments have been made through Bank to the account of the Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam and not in favour of Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, Adyar (which is the name of the Society under Regn. No.61 of 2006). Neither in the agreement nor in the cause title in the suit, Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, Adyar is a party. In the above circumstances, he prays that the suit for specific performance may be decreed as prayed for directing the Plaintiff to deposit the balance sale consideration with the 1st Defendant and directing the 1st Defendant to execute the sale deed in favour of the Plaintiff for the suit within such time as may be fixed by this Hon'ble Court or in the alternative, direct competent authority of this Court to execute the sale



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deed in favour of the Plaintiff or in the alternate direct the 1st Defendant to refund the sum of Rs. 1,12,50,000/- with interest @24% per annum from the date of the plaint till the date of realization.

12. The learned counsel for the 2nd defendant would submit that the plaintiff entered into an unregistered rental agreement for 9 years with Chennai VazhKovilpatti Nadar Uravinmurai Sangam 45/1984 on 16.07.1999 as a tenant for the suit schedule property with the superstructure. The plaintiff entered into an unregistered sale agreement Ex. P2 with the 1 defendant on 26.09.2007 for the purchase of the property of Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam Reg. No.61/2006. The 1st defendant is not the owner of the property. The specific case of the 2nd defendant is that the property belongs to it under the sale deed, Ex.D26 and that the Sangam 61/2006 has no right or title to it. The agreement entered into with the 1st defendant is a sham and nominal, concocted by the plaintiff and the 1st defendant to knock off the valuable property of the 2nd defendant. The members were not consulted about this and there was no resolution authorizing the sale of the property and to sign the sale agreement. The amounts alleged to have been paid by the plaintiff



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were not shown in the Sangam's accounts. The alleged advance was not reflected in any of the bank accounts of the 2 defendant. To suppress the fact 1st defendant took away the Sangam document. The money, if paid, must have been pocketed by L.M Krishnaswamy Nadar. Even otherwise the plaintiff was not ready and willing to conclude the sale. The contract that the balance sale consideration will be paid in instalments shows that the plaintiff has no means to purchase the property. The sale consideration was to be paid in instalments for 3 years. Hence the sale agreement itself is void ab initio.

13. It has been further submitted by the learned counsel for the 2nd defendant that only 4 installments' @ Rs.2.5 lakhs each were alleged to have been paid from November 2007 to February 2008 from the date of signing the sale agreement and the last installment was paid by January 2008. The present suit was filed only on 11.01.2012. Hence, the suit is barred by limitation. The registration of the second Sangam with the almost identical name. Taking advantage of the ignorance of the members of the Sangam who were busy with their business and attending only the monthly meetings, the 1st defendant and his Advocate B.Mutharasu



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hatched a scheme to knock away the property of Sangam Reg. No.45/1984.

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Krishnasamy Nadar had not submitted the annual returns to the authority from 1994/1995 onwards. The 2nd step was that the 1 defendant got signatures from 10 of his relatives and registered yet another Sangam with the name "Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam Adyar and registered it before the District Registrar, South Chennai as Reg. No.61/2006 on 16.02.2006. The news about the alleged sale agreement between the plaintiff and the 1st defendant spread among the members and several members questioned his illegal act. To escape from the wrath of the members, the 1 defendant made a false statement to the members that since he had failed to submit the annual returns to the Registrar of Societies from 1994 onwards, the Registrar had threatened to cancel the registration, and that to save the Sangam and its property, he re-registered the second Sangam with the same name with added "Adyar" as 61/2006. Further, the balance consideration was not deposited at the time of filing the suit but was deposited only on the plaintiff's filing Application No.335/2014 dated 24.01.2014. On these facts, the suit is definitely barred by limitation under Art. 54 of the Limitation Act and is liable to be dismissed.



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record.

14. Heard both sides and perused the materials available on

15. Having considered the facts and circumstances of the case and considering the submissions made by the learned counsel for the respective parties as well as the objects of the said Sangam which has been established for the benefit and welfare of the Kovilpatti Nadars residing in and around Chennai, this Court, in the interest of justice, is inclined to partly decree the suit in favour of the plaintiff in the following manner:

Issue Nos.1,2,5,6 and 9.

16. On a perusal of the records, it is admitted fact that even though there are two sangam in the same name under the Registration No.45/1984 and 61/2006, the suit property was purchased and registered as document No. 225/1987 dated 29.01.1987 in the name of Chennai Vazh Kovilpatti Nadar Sangam under Registration No.45/1984. Whereas the plaintiff being a company has entered into the sale agreement with the 1st defendant sangam which has been registered as 61/2006. Hence, The



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maxim **caveat emptor** is clearly applicable to this case of nature.

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Caveat emptor means "Let the purchaser beware." It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing purchased, which is obvious, or which might have been known by proper diligence. While the property belongs to 2nd defendant Sangam under Registration No.45/1984, the plaintiff entered into a sale agreement with the 1st defendant under Registration No.61/2006, which has no property in its name, the plaintiff is not entitled to Specific Performance of the agreement dated 26.09.2007. Accordingly, the Issue No.1 is answered against the plaintiff. Since the 1st issue is answered against the plaintiff, there is no question of its willingness and readiness to perform its part of the sale agreement dated 26.09.2007 and a decree for permanent injunction against the 2nd Defendant and specific performance. Hence, Issue Nos.1,5,6 and 9 become infructuous.



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Issue Nos.7 and 8:

17. As Mr.Krishnaswami Nadar has signed in the said Sale Agreement under the 1st defendant sangam and in the present suit, the 1st defendant is represented by Mr.Krishnaswamy Nadar, it cannot be considered as mis-joinder of party. Accordingly, the Issue Nos.7 and 8 are answered.

Issue Nos.3, 4 and 10:

18. On a perusal of the records of Bank accounts filed by the plaintiff, it is admitted fact that for EMI payment as per the Sale Agreement, the plaintiff has issued various cheques in favour of the 1st defendant from the year 2007 to 2008 and thereafter, a cheque dated 05.11.2011 has been issued for Rs.2,50,000/- totalling to Rs.1,12,50,000/-. Hence, the suit filed in the year 2012 is maintainable and not barred by limitation as pleaded by the defendants. Since the payment made by the plaintiff is accepted by the 1st defendant in his written statement and the 1st defendant is ready to refund the amount to the plaintiff, the plaintiff is entitled to the alternative relief of refund of the sum of Rs.1,12,50,000/- together with interest at the rate of 12% p.a. from the date of Plaint till



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actual realization. Thus, the Issue Nos.3, 4 and 10 are answered.

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19. In the result, the present suit is partly decreed to the extent as indicated above.

.01.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Srcm/Lbm

1. List of Exhibits marked on the side of the Plaintiff:-

1. Ex.P1 is the Authorisation letter dated 17.11.2017.
2. Ex.P2 is the Agreement of Sale Deed dated 26.09.2007.
3. Ex.P3 is the Plaint filed in O.S. No.1049 of 2008 before the learned XIII Assistant City Civil Court at Chennai.
4. Ex.P4 is the letter sent by the Plaintiff dated 05.11.2011.
5. Ex.P5 is the Legal Notice sent by the Plaintiff with acknowledgment dated 12.12.2011.

2. List of Exhibits marked on the side of the Defendants:-

6. Ex.D1 is the Decree passed in CMA No.10 of 2009 by the learned V Additional City Civil Court at Chennai.



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7. Ex.D2 is the Agreement of Sale dated 26.09.2007
8. Ex.D3 is the Letter dated 13.12.2009 sent by the 1st defendant
9. Ex.D4 is the counter filed in RCOP No.1322 of 2012.
- 10.Ex.D5 is the certified copy of the Judgment dated 22.09.2014 in RCOP No.1322 of 2012.
- 11.Ex.D6 is the certified copy of the Decree dated 22.09.2014 in RCOP No.1322 of 2012.
- 12.Ex.D7 is the Certified copy of M.P.No 488 of 2014
- 13.Ex.D8 is the Authorisation letter dated 07.02.2016
- 14.Ex.D9 is the Certified copy of Sale deed dated 29.01.1987.
- 15.Ex.D10 is the Payment schedule dated 17.08.2007
- 16.Ex.D11 is the Sale agreement dated 26.09.2007
- 17.Ex. D12 is the Complaint in O.S.No 1049/2008 dated 15.02.2008.
- 18.Ex.D13 is the Certified copy of Judgement in C.M.A.No 10/2009 dated 16.06.2011.
- 19.Ex.D14 is the Certified Copy Judgement in O.S.No.1049/2008 dated 10.10.2011.
- 20.Ex.D15 is Certified Copy of Decree in O.S.No 1049/200: dated 10.10.2011.
- 21.Ex.D16 is the Rental renewal letter dated 05.11.2011.
- 22.Ex.D17 is the Complaint in C.S.673/2012 dated 12.03.2012



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23.Ex.D18 is Certified copy of Plaintiff letter dated 05.04.2012.

24.Ex.D19 is the Petition in R.C.O.P. No. 1322/2012 dated 02.07.2012.

25.Ex.D20 is the Petition in R.C.O.P. No. 2099/2013 dated 06.11.2013

26. Ex.D21 is the Counter in A. No. 4703/2012 dated 23.11.2013.

27.Ex.D22 is the Xerox copy of certified copy of form VII issued by Registrar of Societies South Chennai dated 19.12.2013.

28.Ex.D23 is the Form II Certificate of registration of society, Chennai south.

29.Ex.24 is the Original authorization letter dated 01.07.2019

30.Ex.D25 is the Certified copy of the bye-law of D2 Sangam dated 29.02.1984.

31.Ex.D26 is the Certified copy of the property document dated 29.01.1987.

32.Ex.D27 is the Certified copy of the order passed by the District Registrar of south, Chennai dated 22.08.2014.

33.Ex.D28 is the Certified copy of the Order passed by this Hon'ble court A. No 7457/2015 dated 06.04.2016.

34.Ex.D29 is the Certified copy of the order passed by the District Registrar of south Chennai dated 24.08.2016.

35.Ex.D30 is the Order passed by the District Registrar of North, Chennai dated 26.09.2016.

36.Ex.D31 is the Statement of account dated 11.08.2017 filed by



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the 1st Defendant.

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- 37.Ex.D32 is the Certified copy of the order passed by this Hon'ble court in A.No.587/2013 in dated 16.08.2017.
- 38.Ex.D33 is the Certified copy of order passed by this Hon'ble court in A.No.3303/2016.
- 39.Ex.D34 is the Certified copy of the order passed by this Hon'ble court in O.S.A.No.5/2018 dated 09.01.2018.
- 40.Ex.D35 is the Certified copy of the order passed by this Hon'ble court in A.No.587/2013 3302,3303,&4824 of 2016 & 1728 of 2017 in C.S.673/2012.
- 41.Ex.D36 is the Certified copy of the order passed by this Hon'ble court in on O.S.A.No 72/2018 dated 03.04.2018
- 42.Ex.D37 is the Certificate copy of the Encumbrance on certificate dated 01.04.2016.
- 43.Ex.D38 is the The photocopy of the power of Attorney given to Thanga Thirupathi to execute the sale deed named as LMK.Nagar dated 13.05.2013.
- 44.Ex.D39 is the photocopy of the 2016 daily sheet calendar Board dated 01.01.2016.
- 45.Ex.D40 is the Authorization letter issued by District Registrar (Admin) dated 29.03.2022.
- 46.Ex.D41 is the District Registrar, South Chennai passed order in Na.ka. No 4574/Ee2/2012 dated 22.08.2014.
- 47.Ex.D42 is the Proceedings of District Registrar, South Chennai conducted enquiry and cancelled the Registration. No 61/2006.
- 48.Ex.D43 is the copy of the letter addressed to the Registrar of societies (Admin)
- 49.Ex.D44 is the Proceeding of District Registrar, South Chennai dated 21.03.2016.
- 50.Ex.D45 is the copy of the I.G. Order



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2. List of Witnesses examined on the side of the Plaintiff and Defendants:-

PW.1 – Mr. B. Murali Kumar

3. List of Witnesses examined on the side of the Defendants:-

- 1.D.W.1 –K. Murugan
- 2.D.W.2 -V. Shankar
- 3.D.W.3 - A. Thanga Thirupathi
4. D.W.4- R. Ashok Kumar

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A.A.NAKKIRAN, J.

Srem/Lbm

Pre-Delivery Judgement in
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