



CRP. Nos.916, 919, 923,928 & 938 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. Nos.916, 919, 923,928 & 938 of 2023

&

CMP Nos. 6899, 6949, 6869, 6878 & 6837 of 2023

CRP. No. 916 of 2023

S.Kalpana

...Petitioner

Vs.

Ramados Naidu

T.K. chandrasekaran (Died)

... 1st respondent

2. T.R.Jagadeesan

3. R.Latha

4. P.Nirmala

5. K.Rekha

...Respondents 2 to 5

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition and set aside the order and decretal order dated 14.10.2022 passed in E.A No. 9 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 on the file of the I Additional District Judge, Tiruvallur.



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For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.E.Prabu

CRP. No. 919 of 2023

Sivagami Ammal (died)

- 1.T.R.Jagadeesan
- 2.Latha
- 3.S.Kalpana
- 4.P.Nirmala
- 5.K.Rekha

...Petitioner

Vs.

Ramadoss Naidu

...Respondent.

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition and set aside the order and decretal order dated 14.10.2022 passed in E.A No. 7 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 on the file of the I Additional District Judge, Tiruvallur.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.E.Prabu

CRP. No. 923 of 2023

R.Latha

...Petitioner



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Vs.

Ramadoss Naidu
T.K. chandrasekaran (Died)

... 1st respondent

2. T.R.Jagadeesan
3.S.Kalpana
4. P.Nirmala
5. K.Rekha

...Respondents 2 to 5

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition and set aside the order and decreetal order dated 14.10.2022 passed in E.A No. 8 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 on the file of the I Additional District Judge, Tiruvallur.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.E.Prabu

CRP. No. 928 of 2023

P.Nirmala

...Petitioner

Vs.

Ramadoss Naidu
T.K. chandrasekaran (Died)

... 1st respondent

2. T.R.Jagadeesan
3. R.Latha
4.S.Kalpana
5. K.Rekha

...Respondents 2 to 5

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition and set aside the order and decreetal order dated 14.10.2022 passed in E.A No. 10 of 2018 in E.P No. 8 of 2017



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in O.S No. 111 of 2007 on the file of the I Additional District Judge,
Tiruvallur.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.E.Prabu

CRP. No. 938 of 2023

K.Rekha

...Petitioner

Vs.

Ramadoss Naidu
T.K. chandrasekaran (Died)

... 1st respondent

2. T.R.Jagadeesan
3. R.Latha
4. P.Nirmala
5. S.Kalpana

...Respondents 2 to 5

PRAYER : This Civil Revision Petition is filed under Section 115 of CPC, to allow the Civil Revision Petition and set aside the order and decreetal order dated 14.10.2022 passed in E.A No. 11 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 on the file of the I Additional District Judge, Tiruvallur.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mr.E.Prabu

COMMON ORDER

These petitions have been filed to set aside the order and decreetal



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order dated 14.10.2022 passed in E.A No. 7,8, 9,10 &11 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 on the file of the I Additional District Judge, Tiruvallur. The facts involved in all these petitions are one and the same hence this Court dispose the above petitions in common order.

2. The petitioners herein are the defendants 3 to 7/judgment debtors in suit O.S No. 111 of 2007, who filed E.A No. 7, 8, 9, 10 and 11 of 2018 in E.P No. 8 of 2017 in O.S No. 111 of 2007 against the plaintiff and the first defendants to declare the decree dated 22.04.2009 in O.S No. 111 of 2007 as null and void and inexecutable. During the pendency of the proceedings first defendant and seventh defendant/Sivagami Ammal were died. The petitioners herein are the legal heirs of the said Sivagami Ammal. The said application was contested by the decree holder/plaintiff/first respondent herein by filing counter. On hearing both sides, the executing court finally concluded that the executing Court cannot make a factual enquiry under Section 47 of CPC for holding decree as nullity. Accordingly, dismissed the said applications as no merits. Challenging the said findings, the petitioners herein filed this petition.

3. The learned counsel for the petitioners prayed to allow this petition on the following grounds:



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i. The executing Court ought to have seen that the decree holder has played a fraud on Court in collusion with the counsel, who volunteered to issue an alleged notice under Ex.A7 dated 13.02.2007 as if the judgment debtor 3 to 7 have authorised the judgment debtor 2 to enter into an contract, which is ab initio void and the claim on the basis of the non-existing fact, which amounts to practising fraud on court especially when the judgment debtors 3 to 7 are not parties to any alleged agreement of sale till date. Thus the decree holder has secured a decree by playing fraud on the court and as such the decree is nullity and the petitioners herein have questioned such a decree in execution of a fraudulent decree.

ii. The executing Court ought to have seen that there no privity of contract between the plaintiff and the defendants 3 to 7 for selling the scheduled property to the plaintiff.

iii. The Trial court ought to have seen that in the entire proceedings reliance was made on Ex.A7 leading to a fraudulent decree. The judgment debtors 3 to 7 namely 4 daughters of late Rukmangadhan and mother have not received a single rupee from the decree holder for making any contract to sell their shares in the property. The said judgment debtors 3 to 7 have not executed any agreement of sale in favour of the decree holder. Admittedly,



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the decree holder has also not seen the said judgment debtors 3 to 7 in person. In spite a decree for specific performance was granted as such is unjust and liable to be set aside.

iv. The Trial court ought to have seen that the decree holder/plaintiff herein one Ramdoss Naidu filed a suit for specific performance claiming an extent of 39 acres under an alleged letter of agreement dated 17.08.2006 marked as Ex.A1.

v. The Trial Court ought to have seen that originally petitioner's father was the owner of agricultural lands of an extent of 20 acres and 31 cents, which he produced under Ex.B2. The petitioner's mother was also the owner of another agricultural lands of extent of 17 acres and 55 cents, which she purchased under Ex.B4, both the properties were at Punnnapakkam Village, Tiruvallur District. After the death of petitioner's father and mother, the petitioners are entitled to succeed to the share of their father of 20 acres and 31 cents. The petitioner's mother is an independent owner of land to an extent of 17 acres and 55 cents.

vi. Section 47 of CPC read as follows:



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Section 47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

1 * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

2[*Explanation 1.*-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

4. Further he relied the following judgments:

- i. S.P.Chengalvarya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRS. and Others reported in 1994 (1) SCC 1
- ii. Hamza Haji Vs. State of kerala and Another reported in (2006) 7 SCC 416



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iii. Pemmada Prabhakar and others Vs. Youngmen's Vysya

Association and others reported in (2015) 5 SCC 355

iv. Himalayan Coop. Group Housing Society Vs. Balwan Singh and others reported in (2015) 7 SCC 373

5. Based on the above legal proposition the learned counsel for the petitioners argued that Trial Court as well as executing Court failed to appreciate the legal aspects and erroneously dismissed the application as such is illegal and unjust and liable to be set aside. Accordingly, prayed to allow this petition.

6. By way of reply, the learned counsel for the first respondent/plaintiff submitted that the plaintiff has filed the suit for specific performance to direct the defendants 2 to 7 to execute the sale deed in respect of suit property with an extent of 66 acres 38 cents in S.No. 333/2, 334, 335, based on the agreement executed by the first and second defendant and the defendants 3 to 7 also gave an authorisation to the second defendant to dealt with the property. Accordingly, sale agreement was entered on 17.08.2006. Thereafter, defendants 2 to 7 failed to execute the sale deed despite issuing the notice. Hence, the plaintiff filed the suit and all the defendants 2 to 7 appeared through their counsel and also filed their



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respective written statement and full-fledged trial was conducted. On hearing both sides, the Trial Court decreed the suit in favour of the plaintiff/first respondent herein. Challenging the same they filed the appeal in A.S No. 1059 of 2009 and the same also dismissed on 11.08.2016. Against which, they preferred an SLP before the Apex Court and the same was dismissed at the admission stage itself thereby confirming the findings of the Court below. Further, he argued that the plaintiff filed the EP before the executing Court where the petitioners appeared and submitted their objections by filing counter but the Court not accepted the objections and the draft sale deed also preferred, at this stage the petitioners filed the application under Section 47 of CPC and the same was rightly dismissed by the Court below. Hence, he prays to dismiss this petition as no merits. Further, he argued that the execution Court cannot go beyond the decree and same was rightly appreciated by the Court below. Hence, he prayed to dismiss this petition as no merits.

7. The first defendant Chandrasekaran and the plaintiff Ramadass Naidu are brothers, the Rukmangadan died leaving behind the defendants 2



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to 7 as his legal heirs, the seventh defendant T.R.Sivagami Ammal is the wife of Rukmangadan, who also died and the petitioners herein are their legal heirs. The case of the plaintiff is that first and second defendant represented themselves as absolute owner of the suit property which is vacant land, with an intention to promote the said land in Punnapakkam Village, the plaintiff approached the defendants 1 and 2 through one Mr.Subash Chandra Bose to purchase the suit property. After negotiations the plaintiff fixed the sale price of Rs.1,700/- per cent and the total sale consideration for 66 acres and 38 cents works out to Rs.1,12,84,600/- and entered into agreement of sale on 17.08.2006 with the defendants 1 and 2, and on the same day the plaintiff paid a sum of Rs.5 lakhs as advance to the defendants 1 and 2 and shared the said amount. The remaining sale consideration is to be paid within 90 days and to get the sale deed executed in his name. The plaintiff always ready and willing to perform the contract but the defendants 1 and 2 evaded to execute the contract. Hence, the plaintiff issued notice on 19.12.2006 and thereafter conveyed the message through mediator Subash, in spite of the request they informed that they were not absolute owners of the entire extent of 66 acres. Again the plaintiff issued second notice on 06.02.2007 requesting the property particulars, for



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which, reply was sent on 13.12.2007 by the defendants 1 and 2 stating that they were not absolute owners of the entire extent. On the same day, the defendants 3 to 7 issued notice for which reply was given by the plaintiff on 26.02.2007 in which they stated that all the legal heirs of Rukmangdan are in joint possession and enjoyment of the suit property and with an intention to sell the said land they authorised the second defendant to deal with the suit property but the plaintiff failed to comply with the terms. Hence, they are not inclined to proceed with the agreement. While so, the first defendant and Padmini executed sale deed in favour of the plaintiff on 05.04.2007 in respect of 20.74 acres which belong them but the defendants 2 to 7 evaded to perform their part of the agreement by colluding each other therefore the plaintiff filed suit for specific performance in respect of remaining 39 acres. The said suit was contested by the second defendant 3 to 7 by filing written statement. According to the second defendant, he has not received any amount from the plaintiff through the first defendant his paternal uncle approached him and expressed that he is going to sell the property to the plaintiff also requested him to give consent for the transactions, at that time he insisted to get signature in the alleged agreement dated 17.08.2006. On his compulsion he signed in the said document. In fact, the plaintiff not



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approached him for purchase the suit property thereby he denied the alleged sale agreement with the plaintiff. The defendant 3 to 7 contended that they are co-sharers of the suit property and the plaintiff not approached them at any point of time nor they offered to sell the property to the plaintiff. Further, they also submitted that they have not authorised the second defendant on behalf of them to sell the property to the plaintiff or any party nor they received any advance from the plaintiff for their share. Thereby, they contend that alleged sale agreement said to be signed by the first and second defendants would not bind them, till date they enjoyed the property jointly. They had heard about the dispute between the first and second defendant and the plaintiff, then they approached the advocate who advised to sign in the legal notice dated 26.02.2007 and they were signed. Thereafter, they came to know that they were misled by the counsel and also they have not authorised the second defendant to sell the property on behalf of them. So also notice issued by the advocate also not upto their instructions. Hence, they prayed to dismiss the suit.

8. Considering the submissions on either side, the Trial Court not agreed with the contention of the defendant 3 to 7 that they have not known



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about the transactions entered by the second defendant on behalf of them and also not accepted their plea that they have not issued Ex.A7 under coercion and compulsion and finally held that second defendant entered into sale agreement with plaintiff for himself and on behalf of the defendant 3 to 7 who gave authorisation to him thereby they also bound to execute the sale agreement accordingly the suit was decreed in favour of the plaintiff. First defendant remains exparte in the suit. Challenging the said findings, the defendant filed the appeal in A.S No. 1059 of 2009 before Division Bench and after considering oral and documentary evidence, dismissed the appeal. Against which, the defendant filed the SLP before the Apex Court and the same was dismissed at admission stage itself. Thereafter, the plaintiff filed the execution petition in EP No. 8 of 2017 before the Executing Court wherein the defendant 2 to 7 preferred an application under Section 47 CPC, raised objection to execute the decree and stating that the Trial Judge has not framed issue in respect of nature of the suit property more particularly with regard to right of the seventh defendant/mother of the other defendants in respect of 17 acres and 55 cents. All the suit properties which is absolutely belongs to her and there is no proper issues were framed in this respect, so the decree cannot be executed on the ground of nullity and the plaintiff also



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not approached the Court with clean hands in order to avail the remedy of specific performance pleaded same also not been properly appreciated by the Court below as well as appellate Court, the executing court is empower to decide those issues. Those applications also objected by the decree holder. On hearing both sides, executing court held that the Trial Court rightly framed issues in respect of defendants 2 to 7 and rightly held that all the defendants bound to execute the sale deed who gave authorisation to second defendant. Therefore, the decree is not sustained with nullity and it is executable decree. Accordingly, dismissed the said application.

9. Considering the submissions on either side, the point to be decided is whether the decree is nullity obtained by fraud upon the Court by the plaintiff.

10 According to the defendants 3 to 7, they are legal heirs of one Rughmangdan, who is owner of the agriculture land to the extent of 20 acre 31 cents by way of purchase through Ex.B2/Sale deed and their mother seventh defendant is a absolute owner of agriculture land with an extent of 17 acres 55 cents by way of purchase through Ex.B4 and those properties are situated at Punnapakkam village which is suit property herein. Further, the suit property described in the suit is 39 acres with proper boundaries



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identification. Through Ex.B2 & Ex.B4 the defendant 3 to 7 claimed right over the property. According to the plaintiff, he approached the first defendant and second defendants through one Mr.Subash Chandra Bose to purchase the suit property and also contend that defendants 1 and 2, offered to sell the total extent of 66 acres 38 cents and amount was fixed as Rs.1700/- per cent and thereafter entered into a letter of agreement/Ex.A1 on 17.08.2006 which was marked as Ex.A1. Admittedly, in the letter of agreement the plaintiff is not a signatory but the same was already decided by the Court needs no interference. The plaintiff stated that both the defendants 1 and 2 not complied with the terms as well as he issued notice after completion of stipulated period of 90 days that notice was replied by the defendants 1 and 2. Thereafter exchange of notice between the plaintiff and the defendants. While exchange of notice, notice dated 13.02.2007 came into picture, that notice said to be issued on behalf of the defendants 3 to 7/petitioners herein and other legal heirs of the Ruthmangadan, after receipt of the said notice the plaintiff issued reply notice on 26.02.2007. In the reply notice dated 26.02.2007, the plaintiff stated that now only he came to know that the second defendant was authorised to represent defendant 3 to 7 and they are also having share in the suit property, both the



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notice were marked as Ex.A7 & Ex. A8 which is an undisputed fact.

Therefore, the plaintiff was not aware who are having share in the suit property at the time of alleged execution of letter of agreement. Even, there is no recital in the letter of agreement that the second defendant entered into agreement on behalf of the other sharers/defendants 3 to 7. It is pertinent to mention here that the second defendant also raised objection that he has not voluntarily signed in Ex.A1 and he was authorised to sign by his maternal uncle. Moreover, the defendants 3 to 7 also contended that they have not given such instructions through advocate Dhanajayan nor they gave any instructions to sell the suit property on behalf of them but the Trial Court entirely depend upon the said notice alone concluded that the defendants 3 to 7 gave authorisation to the second defendant to sell the property. But on perusal of the records, it reveals that after issuance of notice Ex.A7, immediately the plaintiff filed the suit for specific performance in which the defendants filed written statement, wherein they categorically stated that they have approached the advocate for legal advice where they advised to sign in a legal notice in order to set out the problem but thereafter shock and surprise the defendants 3 to 7 came to know that they were mis-leaded and also contended that their signature put in the



notice is not voluntary one.

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11. Admittedly, Ruthmangadan have only one son/second defendant and four daughters and wife Sivagami but the plaintiff entered into a alleged agreement only with the second defendant and not with other legal heirs of Ruthmangadan. Even as per his own pleadings, it reveals that on the date of alleged letter of sale he was not aware of the other legal heirs of Ruthmangadan, who are having right in the property. If plaintiff is the bonafide purchaser he should have enquired about the entire particulars of the suit property and who are all having right over the property with correct extent, identification of the property. But no such efforts were taken by the plaintiff before alleged letter of sale agreement. Having approached the Court for relief for specific performance the plaintiff bound to prove his case and stand on his own leg shall not fall upon the weakness of the defendants, the case pleadings, notice itself clearly reveals that he was not enquired about property before entered into alleged agreement with the second defendant. Even assuming that the second defendant was entered into an agreement on behalf of the other legal heirs there is no evidence on the side of the plaintiff that advance amount of Rs.2.5 lakhs was shared by other sharers. Moreover, Ex.A4 clearly established that their mother seventh



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defendant/Sivagami is a absolute owner of part of the suit property/(i.e., 17 acres 55 cents), at the time of the execution of Ex.A1 she was alive. Further, Ex.A7 notice alone is not sufficient, it requires some more evidence to establish that mother has given authorisation to deal with the property to her son but there is no issues were framed in that regard. As rightly pointed out by the counsel for the petitioners there is no separate issues were framed in respect of property belongs to the seventh defendant/Sivagami though it was raised before the Trial Court. Therefore, the defendants 1 and 2 have no right to deal with the entire suit property since because his mother is having right over 17 acres 55 cents absolutely, nor there is any specific evidence on the side of the plaintiff that mother also parted with advance amount. Even assuming that agreement is valid, within 90 days of stipulated period the plaintiff not come forward to execute his part of the agreement after completion of the said period he issued notice which itself shows that he was also not performed his part of the agreement. Therefore, the Trial court should have framed issues in respect of right and title of seventh defendant who is absolute owner of part of the suit property i.e., 17 acres 55 cents. Therefore, the agreement is not enforceable in law in respect of the seventh defendant who is not a party in the Ex.A1/agreement. Moreover, the plaintiff



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as a bonafide purchaser has not taken any steps to verify the title of the property even after issuance of the alleged notice. Therefore, the Trial Court should have framed issues in respect of defendant's parties who are having share in the suit property when the defendant's 3 to 7 specifically claimed that they are co-sharers of the property the nature of the properties is to be decided before granting decree in favour of the plaintiff because title of the properties are necessary to avail the such relief but the Trial Court failed to frame the said issue. Therefore the judgment debtor rightly approached the executing Court under Section 47 CPC to declare the decree as nullity as proper issues were not adjudicated. Section 17 of Specific relief Act read as follows:

17. Contract to sell or let property by one who has no title, not specifically enforceable. —

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—(a) who, knowing not to have any title to the property, has contracted to sell or let the property; (b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt. (2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.



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12. Furthermore, on the side of the plaintiff, it was argued that through Ex.B7 notice the defendants 3 to 7 admits that they were authorised the second defendant to deal with the suit property accordingly second defendant offered to sell the property on behalf of the petitioners herein by receiving advance amount from the plaintiff. Ex.A7 notice is not admitted by the defendants 3 to 7, they said they were advised to sign for the purpose of legal notice but later they came to know that recitals of the notice were not according to their instructions. Even in the written statement of defendant's, they disputed the notice/Ex.A7 and also during the trial. In her Evidence of DW.2/sister of the second defendant she categorically stated that as follows:

.....என் அண்ணனுக்கு பிரச்சனை என்பதால் என்னை கையெழுத்து போடச் சொன்னார்கள். அதனால் கையெழுத்து போட்டேன்.....

.....மற்றபடி இந்த வழக்கு பற்றி எனக்கு தெரியாது.....

....ஏ7ல் கொடுக்கப்பட்டுள்ள சங்கதிகளை நான் வழக்கறிஞரிடம் கூறவில்லை.....

13. Therefore as per the evidence of D.W.2, she categorically stated that they signed in the paper at request of his elder brother and was not aware of the advocate Dhananjayan nor particulars typed in the notice. Naturally second defendant is the only male and others are female in the said Ruthmangadan family so there is probability that all the sisters are



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followed the brothers advice after demise of their father. Therefore, Ex.B7 notice alone is not sufficient to conclude that all the co-sharers gave a consent to the second defendant to deal with the suit property, and from the beginning itself defendants 3 to 7 denied Ex.B7 notice. In fact, the plaintiff issued notice to first and second defendant all of sudden another notice Ex.B7 came into picture and there is no proof on the side of the plaintiff as to how the defendants 3 to 7 came to know about the alleged sale as there is lot of possibility that the fraud played upon the defendants 3 to 7 because as per the statement of second defendant there is no paternal uncle/first defendant. Moreover, the first defendant sold his portion in favour of the plaintiff Ex.A7/notice alone is not sufficient to prove his case, the plaintiff is bound to prove that cosharers also gave consent to sell their share in his favour but he has not taken any steps to examine the advocate Dhananjayan to prove Ex.B7. On the other hand, the learned counsel for the respondent submitted that it is bounden duty of the defendant 3 to 7 to examine the aid advocate but the person who approached the Court to avail the remedy is bound to prove his case and not stick on that weakness of the defendants.

14. Therefore, the conduct of the plaintiff raised doubts in the minds of the Court that he has not approached the Court with clean hands but such



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discretionary relief is equitable, the plaintiff not approached the Court with court with clean hands and also the plaintiff failed to establish that as a bonafide purchaser he entered into the sale agreement with the defendants 1 and 2 nor he established that other sharers also benefited by the alleged advance amount. Further, the defendants 3 to 7 able to establish that the first defendant who is brother of the second defendant's father forced the defendants 3 to 7 and entered into the alleged sale agreement with the plaintiff without obtaining consent from the legal heirs and the plaintiff also not verified the right and title of the property. When there is strong objection on the side of the defendants 3 to 7 that they have not authorised second defendant on behalf of themselves nor they benefitted by the alleged sale consideration accepted from the plaintiff. The Trial Court failed to frame the proper issues. Therefore, the decree is sustained nullity as argued by the petitioners. The revision petitioners/defendants 3 to 7 able to establish that they are not party to Ex.A1 agreement, therefore decreed cannot be enforceable against them. Moreover, the mother of the seventh defendant is absolute owner of the 17 acres and 55 cents of suit property for which the second defendant has no right to dealt with during the life time of his mother. Therefore, alleged sale agreement would not bind her share also



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there is no proper issues were framed by the plaintiff in respect of right and title in suit property before granting specific performance relief. Thus, the decree is sustained with nullity. Besides, the plaintiff also not approached the Court with clean hands he is also not entitled to avail remedy of specific performance. Mere rejection of SLP at admission stage would not be considered to be approval of the view expressed by High Court to that effect the petitioners counsel relied the judgement of the Supreme Court reported in 2019 7 SCc 535 in the case of Craft Interiors Private Limited Vs. Joint Commissioner of Commercial Taxes (Intelligence) and Anothers. The above judgement squarely applicable to the facts of the present case. Therefore, the execution court failed to appreciate the above legal proposition erroneously dismissed those applications needs interference. Accordingly, these petitions are allowed. The decree obtained by the plaintiff is declared as nullity. Consequentially, E.P. is dismissed.

15. In the result, these petitions are allowed. No Costs. Consequentially, Connected miscellaneous petitions are closed.



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