



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

PRONOUNCED ON : .08.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S. No. 194 of 2015

S. Pramila

.....Plaintiff

..Vs..

K. Bala Venkatesh

B.

Vetrivelar

.....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 below:

(a) For directing the First and Second defendants to execute and register the sale deed in favour of the plaintiff after receiving balance sale consideration amount of Rs.2,05,00,000/-(Rupees Two Crore Five Lakhs only) in respect of the Property of House, Ground and premises bearing Door No.77, Parthasarathi Puram 1st Street, T, Nagar, Chennai 600 017 in extent of 3253 sq.ft or thereabouts comprised in Old T.S.No.4675 of



WEB COM

Pulliyur Village, New T.S.No.7869 of Thyagaraya Nagar, Revenue Division, Mambalam- Guindy Taluk, Chennai District morefully described in Item No.1 in the schedule hereunder and Door No.77, Parthasarathi Puram 1st Street, T,Nagar, Chennai 600 017 in extent of 680 sq.ft comprised in Old T.S.No.4678 of Pulliyur Village, New T.S.No.7866 part of Thyagaraya Nagar Revenue Division, Mambalam-Guindy Taluk, Chennai District morefully described in Item No.2 in the schedule hereunder and on their failure this Hon'ble Court may execute the sale deed in favour of the plaintiff; or

b)In the alternative, the plaintiff prays for recovery of Rs.20,00,000/- (Rupees Twenty lakhs only) and 24% interest per annum paid as advance to the defendants from the date of filling the suit till the date of realization of amount;

c) For consequential relief of permanent injunction restraining the defendants, their man, agents and servants from alienating or to encumbering the property situated the Property of House, Ground and



WEB COURT

premises bearing Door No.77, Parthasarathi Puram 1st Street, T, Nagar, Chennai-600 017 in extent of 3253 sq.ft or thereabouts comprised in Old T.S.No.4675 of Pulliyur Village, New T.S.No. 7869 of Thyagaraya Nagar, Revenue Division, Mambalam-Guindy Taluk, Chennai District morefully described in Item No.1 in the schedule hereunder and Door No.77, Parthasarathi Puram 1st Street, T, Nagar, Chennai-600 017 in extent of 680 sq.ft comprised in Old T.S.No.4678 of Pulliyur Village, New T.S.No.7866 part of Thyagaraya Nagar Revenue Division, Mambalam-Guindy Taluk, Chennai District morefully described in Item No.2 in the schedule hereunder and

(d) To pass an order directing the defendants to pay the costs of the suit and pass such other order or orders as it may deem fit under the circumstances of the case in the interest of justice.
therein.

For Plaintiff	: Mr. T.S. Baskaran
For Defendants	: Mr. M.S. Subramanian, (for M/s. V. Chandrakanthan)



WEB COPY

JUDGMENT

This Civil Suit is filed seeking for relief of Specific performance as stated therein.

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

(i) The plaintiff has entered into a Sale Agreement with First Defendant and Second Defendant on 18.03.2014 for the purchase of the Property of House, Ground and premises bearing Door No.77, having entrance from Parthasarathi Puram 1st Street, Backside Kodambakkam High Road, T, Nagar, Chennai 600 017 in extent of 3253 sq.ft or thereabouts comprised in Old T.S.No.4675 of Pulliyur Village, New T.S.No.7869 of Thyagaraya Nagar, Revenue Division, Mambalam-Guindy Taluk, Chennai District admeasuring morefully described in Item No.1 in the schedule hereunder and Door No.77, Parthasarathi Puram 1st Street, T, Nagar, Chennai 600 017 in extent of 680 sq.ft comprised in Old T.S.No.4678 of Pulliyur Village, New T.S.No.7866 part of Thyagaraya Nagar Revenue Division, Mambalam-Guindy Taluk, Chennai District



WEB.COM

morefully described in Item No.2 in the schedule hereunder for total sale consideration of Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs only) and the Defendants have acquired and possessed the said property by way of Settlement Deed dated 23.10.2000 registered as document No.2357 of 2000 in the Office of the Sub- Registrar, Thyagaraya Nagar and the first defendant has life interest enjoyment right and the second defendant has absolute right and ownership thereafter.

(ii)The Plaintiff states that out of above said total sale consideration of Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakhs only), the plaintiff has paid a total sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as advance to the Defendants under the above said sale agreement as follows:- i.Rs.5,00,000/-(Rupees Five Lakhs only) by way of cheque No.464106 dated 14.3.2014 drawn on Indian Bank, Choolaimedu Branch, Chennai and ii. Rs. 15,00,000/-(Rupees Fifteen Lakhs only) by way of Demand Draft No.843520 dated 18.3.2014 drawn on Indian Bank Choolaimedu Branch, Chennai. As per clause 6 in the said sale agreement, the plaintiff and the defendants mutually agree to complete the sale transaction within nine months from the date of execution of the sale



WEB COPY

agreement. As per clause 7 in the said sale agreement the defendants agreed to settle mortgage loan dues in the schedule property before registration and to give clear title over the property and as per clause 8 and 9 the balance sale consideration of Rs.2,05,00,000/-(Rupees Two Crore Five Lakhs only) the purchaser agreed to pay the same on the date of Registration of sale deed.

(iii)The plaintiff states that in spite of the plaintiff's repeated request the defendants have not paid mortgage loan amounts and cleared mortgage encumbrance on the schedule mentioned property and the plaintiff is always ready and willing to pay balance sale consideration at the time of execution of sale deed to the Defendants as per terms and conditions of the above said sale agreement. The plaintiff has arranged the housing loan from the Bank as per sanctioned letter dated 15.11.2014. Therefore, the plaintiff has caused legal notice dated 30.9.2014 to the defendants called upon to specific perform as per terms and conditions of the above said sale agreement and the said notice were received by the defendants. The first defendant by suppressing the above said sale agreement and legal notice, sent a letter though dated 09.10.2014 posted only on 11.11.2014 therein made false, frivolous and afterthought allegations and averments and the plaintiff has



WEB CODE

sent legal notice dated 27.11.2014 to the defendants with draft sale deed for reference and the said notice was received by the defendants on 29.11.2014 and the defendants neither replied nor consented and come forward to execute sale deed.

(iv)The plaintiff came to understand that after receiving the above said legal notice, the defendants are trying to alienate the suit schedule property to some third party. Hence, the present suit has been filed against the defendants for specific performance and permanent injunction or recover the advance amount of Rs.20,00,000/-(Rupees Twenty lakhs only) alternatively. No other similar suit has filed before this Hon'ble Court or any other courts in respect of the subject matter.

3. In the Written Statement filed by the defendants, it is stated as follows:

(i) The first defendant is father of the second defendant. The 1st defendant, a life interest holder of the suit property had approached one Mr. Babu, Manager of Indian Bank, Vadapalani Branch, during 2012 for loan to discharge loan taken from Park Town Benefit Fund Ltd. The said Mr. Babu,



WEB COURT

during 2013 introduced one Mr. E. Sundaravadivelu, an Auditor, the husband of the plaintiff who promised to arrange the loan. Mr. E. Sundaravadivelu investigated the title documents and inspected the suit property and found that first defendant is the life interest holder and the second defendant is the ultimate absolute owner of the suit property.

(ii) Mr. E. Sundaravadivelu promised to arrange Rs.20,00,000/- to discharge the mortgage and other family expenses. However, Mr. E. Sundaravadivelu paid only Rs.15,00,000/- and directed the first defendant to come to Sub-Registrar Office, T.Nagar for registering the mortgage for Rs.15,00,000/-. Accordingly the first defendant went to Sub-Registrar Office, T.Nagar and signed the mortgage deed prepared and drafted by Mr. E. Sundaravadivelu Advocate (M/s. Liberty Law Associates, Chitra Avenue, Suresh Block-103, First Floor, Choolaimedu, Chennai 600 094) for Rs. 15,00,000/-. Only then the first defendant came to know that E. Sundaravadivelu is a lawyer. After registration of the mortgage deed dated 4.12.2013, the first defendant came to know that the mortgage was registered in favour of Mr. E. Sundaravadivelu's mother-in-law Rani, mother of the plaintiff herein. Mr. E. Sundaravadivelu did not inform the first



WEB COPY

defendant about the name of the mortgagee till the registration of mortgage.

(iii) First Defendant asked Mr. E. Sundaravadivelu to arrange for the remaining loan of Rs.5,00,000/- as promised by him through any nationalized bank. Mr. E. Sundaravadivelu issued a cheque for Rs.2,00,000/- bearing No.347990 drawn on Karnataka Bank Ltd, Kodambakkam Branch, dated 19.09.2014. The 1st defendant had leased out the property to Mrs. Shanthi for running a lady's hostel in the name and style of Shanthi Ladies hostel. The lessee wanted to vacate the premises and insisted for return of the advance amount paid to the first defendant. Therefore, the first defendant once again approached Sundaravadivelu to arrange for bank loan and Mr. E. Sundaravadivelu promised that he would arrange bank loan of Rs.35,00,000/- at the earliest to discharge the mortgage created in favour of his mother-in-law and to repay the advance received from the lessee. As there was a delay in arranging the loan of a sum of Rs.35,00,000/- to discharge the mortgage and repayment of advance to lessee, he said that he would arrange Rs.20,00,000/- immediately and as a security he insisted the defendants to execute a formal sale agreement in his name, as a stop gap arrangement.



WEB COPY

(iv).Believing the assurances made by Mr. E. Sundaravadivelu to arrange loan by Mr. E. Sundaravadivelu, the first defendant agreed to sign the document termed as sale agreement. Initially Sundaravadivelu drafted a sale agreement in Rs.20/- non-judicial stamp paper in the name of G.Rani and S. Pramila. Subsequently, Mr. E. Sundaravadivelu brought a deed in Rs.100/- non-judicial stamp paper termed as sale agreement and obtained the defendants signatures in the sale agreement. The alleged sale agreement dated 18-3-2014 in the name of the plaintiff was Notarized by Mrs. S. Poongodi, Advocate having office No.111/188, Dr Besant Road, Royapettah, Chennai 600 014. One N. Kannan, advocate is one of the witnesses to the sale deed who subsequently issued notice on behalf of the plaintiff. Mr. E. Sundaravadivelu had also obtained signatures in blank twenty rupees non-judicial stamp paper and green sheets and blank cheques signed by the defendants.

v)The defendants does not know or seen Mrs. Pramila the plaintiff herein till this date. Mr. E. Sundaravadivelu alone done all the transactions with the first defendant at his office situate at Suresh Block, No.103, Choolaimedu High Road, Chennai 600 094. The CCTV installed in



WEB CONTENT

his office will disclose that on the date of the alleged agreement of sale dated 18-3-2014 neither Mrs Pramila nor the second defendant visited Mr. E. Sundaravadivelu's office to sign the alleged agreement of sale.

(vi) While so, Mr. E.Sundaravadivelu through his Advocate Mr.Ganesh Babu, issued notice dated 30.09.2014 to the first defendant calling upon him to pay Rs.2,00,000/-. Mrs. Pramila, Wife of Sundaravadivelu through his counsel Mr.N. Kannan, Advocate, who was one of the witnesses to the alleged sale deed, issued notice dated 30.9.2014 to the defendants calling upon them to hand over title deeds for scrutiny and execute the sale deed in their favour. It is relevant to state that the original title deeds were already handed over to Sundaravadivelu at the time of raising the alleged mortgage loan. The first defendant sent reply dated 9.10.2014 to Mrs. Rani and Mrs. Pramila stating that he had borrowed Rs.37,00,000/-(Rs.15,00,000/- under mortgage, Rs.2,00,000/- by cheque and Rs.20,00,000/- under the alleged sale agreement) as a loan only. It was further stated by the defendants that the second defendant was minor at the time of execution of mortgage and the first defendant was forced to execute the mortgage for availing loan of Rs.15,00,000/- as stop gap arrangement.



WEB COPY

The Defendants further stated that he has repaid Rs.1,25,000/- by a cheque Rs.50,000/- by cash and Rs.1,00,000/- by cheque in all the first defendant repaid a sum of Rs.2,75,000/- to Mr. E. Sundaravadivelu.

(vii) Mrs. Pramila through her Advocate Mr. N. Kannan issued notice dated 28-11-2014 to the defendants calling upon them to execute a register sale deed in respect of suit schedule property. Mrs. Rani mother of the plaintiff herein through her Advocate Mr. Ganesh Babu (counsel on record for the plaintiff herein) issued a notice dated 01-12-2014 to the defendants calling upon them to pay a sum of Rs.15,00,000/- with interest covered by the Mortgage deed.

viii) Mrs. Rani is the mother of Mrs. Pramila. Mrs. Pramila is the wife of Mr. E. Sundaravadivelu. Mr. N. Kannan, Advocate who had issued notice on behalf of Mrs. Pramila and Mr. Ganesh Babu Advocate issued notice on behalf of Mrs. Rani and Mr. E. Sundaravadivelu Advocate belong to same office. Mr. N. Kannan who issued the legal notices dated 30.09.2014 and 28.11.2014 is the witness in the alleged sale agreement dated 18.03.2014. Mr. Ganesh Babu Advocate, who issued notice on behalf of Rani filed the present suit on behalf of Mrs. Pramila.



WEB COPY

ix) Mr. E. Sundaravadivelu started threatening the first defendant over phone and sent SMS that he would file suit for specific performance and demanded the repayment of mortgage amount. The defendants received the summons in the above suit on 20.04.2015. The first defendant borrowed the amount as a loan and not as advance towards sale consideration under agreement of sale to sell the property. The defendants submit that the suit property admeasuring 1 ground 1533 sq.ft. situate at No.77, Parthasarathipuram First Street, T. Nagar, Chennai-600 017 along with a 3 storied building of 7000 sq.ft. (approx), is valued at Rs.12 crores as on the date of agreement and the present Market Value is Rs.15.00 crores.

x). The suit property is worth about more than 12 Crores. The alleged agreement of sale is for Rs.2,25,00,000/-. These defendants deny that the plaintiff paid Rs.20,00,000/- as advance to the defendants. It is only a loan. Mr. E. Sundaravadivelu paid a sum of Rs.20,00,000/- apart from Rs.15,00,000/- under mortgage and Rs.2,00,000/- by cheque and in all Rs.37,00,000/- to the first defendant. It is false to state that these defendants promised to sell the property to the plaintiff.

xi). The defendants approached Mr. Sundaravadivelu, Advocate



WEB COURT

through the Bank Manager (Indian Bank) only to arrange for a loan through bank to discharge the loan liability to Park Town Benefit Fund to avoid heavy interest. Sundaravadivelu (Advocate) also looked after the first defendant's income tax and filed returns. The 1st defendant's intention was to consolidate all the small loans and after obtaining one bank loan, discharge all the loans. Only on that assurance, the mortgage deed and alleged sale deed were executed. These loan arrangements were only a stop-gap arrangement. Therefore, the alleged mortgage deed and agreement of sale are sham and nominal documents. These documents do not create any right or obligation on the parties to the agreements. The mortgagee and Sundaravadivelu are aware that the 1st defendant is a life interest holder and the 2nd defendant, a minor at that time will get only vested remainder after the life time of 1st defendant. The mortgagee, the mother-in-law of Sundaravadivelu and Sundaravadivelu are aware of the legal impediment and that the mortgage executed by the 1st defendant without any right is a sham and nominal document will not be valid in law and not to be enforced.

(xii). Only after the 1st defendant received notice claiming the mortgage amount with 3% interest and 5% penal interest and also the notice



for specific performance, the 1st defendant realized the evil design of Sundaravadivelu, who created all the documents with a pre-determined intention to grab the suit property. The said Sundaravadivelu from the beginning acted in furtherance of cornering the property by making the 1 defendant to execute the documents under misrepresentation and false assurances. Under the above circumstances, Sundaravadivelu is a necessary and proper party to the proceedings, without whose presence the issues cannot be decided. Unless he is impleaded as a party to the suit, the same is liable to be dismissed for non-joinder of necessary and proper parties to the proceedings.

(xiii). The clauses made in the alleged sale agreement are incorrect and false. In Clause 13 of the alleged sale agreement it is stated that these defendants agreed to help the plaintiff in all reasonable aspects to raise the loan for the purchaser of the schedule mentioned property. It is pertinent to note that 1st defendant approached one Mr. Babu the Manager of Indian Bank, Vadapalani Branch, now Branch Manager, Kulathur, who introduced Mr. E.Sundaravadivelu as an Auditor for availing loan from the nationalized bank for the suit property. The mortgagee is the mother-in-law,



WEB CODE

wife of Sundaravadivelu the plaintiff is the alleged agreement holder and the entire transactions were done by Sundaravadivelu with the connivance of his colleague Advocates. There incorporating a clause in the sale agreement that the defendants will help the plaintiff to raise loan, is ridiculous and reveals that it is not went to be an agreement of sale.

xiv). After institution of the above suit, Sundaravadivelu made C.V.Kumar, Advocate to issue the notice dated 21.06.2017 on behalf of G.Rani calling upon the defendants to discharge the amount due under the alleged mortgage deed dated 04.12.2013. Thereafter G.Rani issued another notice dated 01.07.2017 to the Alagar Hotel, tenant stating that the lease of the suit property without consent from the mortgagee will not bind her and will bring the suit property for sale in exercise of the power under mortgage deed. The 2nd defendant through his counsel issued a reply dated 3/7/17 challenging the mortgage deed executed by the D1 as null and void and not binding on the 2nd defendant and called upon G.Rani to cancel the mortgage. Thereupon in order to safeguard his interest the 2nd defendant filed O.S.No. 4354 of 17 on the file of the XI Assistant, City Civil Court, Chennai challenging the mortgage deed dated 4/12/13 which is pending



adjudication.

WEB COPY

xv). The said Sundaravadivelu made the plaintiff to move O.A.No. 279/15 in the above suit for an order of injunction against the defendants not to alienate the suit property. The application was dismissed on 07/3/2016. Aggrieved by the dismissal, the plaintiff filed O.S.A. No. 62 of 2016 which was dismissed on 09/08/2017 confirming the order made in O.A.No. 279/15. In the counter the defendant exposed the intention of Sundaravadivelu. When the plaintiff came to know that the specific performance suit prima facie cannot stand, Sundaravadivelu made his mother-in-law Rani and issued notice dated 26-10-2017 and issued auction notice dated 26/10/2017 by Alwin & Company, calling upon the defendants to pay the mortgage amount failing which the suit property would be brought to sale. He made Alwin & Company to issue auction notice for public sale on 29/11/2017. From the auction notice issued, it is seen that ultimately the said Sundaravadivelu decided to conduct a fake public auction and make his nominee to purchase the suit property and achieve his intention of grabbing the suit property.

xvi)The plaintiff before filing the above suit, issued notice dated



WEB COURT

30/9/2014 to the defendants calling upon them to clear the mortgage and hand over title deeds for scrutiny. The mortgage deed was drafted by Sundaravadivelu. The original title deeds were already handed over to Sundaravadivelu at the time of execution of mortgage deed. The copy of notice filed by the plaintiff, calling upon the defendant to execute the sale deed, notarized by advocate states the date of notice as 27/11/14 while the notice received by defendant is dated 28.11.2014. In the notice dated 27.11.14 the date of alleged sale agreement mentioned as 17.03.2014 and whereas in the notice dated 28.11.2014 the date of alleged sale agreement mentioned as 18.03.2014. Sundaravadivelu also issued a notice dated 30/9/2014 calling upon the 1 defendant to pay Rs. 2,00,000/- alleging dishonor of cheque issued by him. The amount paid said to be appropriated towards interest on the mortgage deed.

xvii). The second defendant derived title to the suit schedule property under a settlement deed dated 23/10/2000 in document No. 2357/2000 under which first defendant is having life interest without any right of alienation or deal with the property. The alleged sale agreement was made as a security to the loan amount. Mr. E. Sundaravadivelu promised



WEB COPY

that he would arrange the loan from a Nationalized Bank to discharge the mortgage loan and amounts due to Mrs. Pramila under the alleged sale agreement. Mr. E. Sundaravadivelu in order to grab the suit property in connivance and in collusion with his family and Advocate colleagues prepared the alleged mortgage deed agreement of sale and made the defendants to sign the same. The agreement of sale is only a security document and not an agreement agreed to sell the property in favour of Mrs. Pramila.

xviii). The suit is not maintainable on the basis of unregistered sale agreement. Since it is not an intended agreement of sale and is treated only recording a loan transaction, the same was not registered. An agreement of sale without registration under Section 17 of the Registration Act is unenforceable in law. The clauses incorporated in the sale agreement proves that it is not a regular sale agreement. The defendants never agreed to sell the property to the plaintiff as stated in the agreement of sale dated 18.03.2014. Mr. E. Sundaravadivelu along with his group Advocates are attempting to grab the suit property illegally and by misusing the alleged sale agreement and mortgage deed. Hence, the suit for specific performance



WEB.COM

filed by the plaintiff is unsustainable and untenable in law and on facts. The plaintiff who approached this Court with suppression of facts and on false averments and allegations with unclean hands deserves no indulgence and the relief of specific performance, being a discretionary relief cannot be granted. Hence, it is prayed that this Hon'ble Court may be pleased to dismiss the above suit with exemplary costs.

4. This Court framed the following issues for consideration in this suit:

- 1. Whether the agreement dated 18.03.2014 is true and valid?*
- 2. Whether the suit agreement dated 18.03.2014 is enforceable?*
- 3. Whether the plaintiff is always ready and willing to perform the agreement?*
- 4. Whether the claim of the defendant's that the suit agreement was not intended to be acted upon as an agreement of sale, but was executed as a security for her borrowings?*
- 5. Whether Sundaravadivelu, is a necessary party to the suit?*



WEB COPY

5. On the side of the plaintiff, the plaintiff examined as P.W1 and Ex.P1 to Ex.P5 were marked and on the side of the defendant, the 1st defendant was examined as D.W.1 and Ex.D1 to Ex.D3 were marked.

6. Heard the learned counsel for the plaintiff and the learned counsel for the defendant as well as perused the material placed on records.

7. The learned counsel for the plaintiff would submit that the Plaintiff entered into the suit Sale Agreement dated 18.03.2014 with the Defendant for the purchase of their property at T. Nagar, Chennai - 600 017.

As per the Sale Agreement dated 18.03.2014, Defendants agreed to convey the suit property for a total sale consideration at Rs.2,25,00,000/- (Rupees Two Crore Twenty-Five Lakhs Only) for which purpose, an advance sale consideration of Rs.20,00,000/- (Rupees Twenty Lakhs Only) was paid to the Defendants and the period for completion of the sale was nine months. The Plaintiff was always ready and willing to pay the balance sale consideration to the Defendants and to obtain the sale deed in her name.



WEB COPY

Further, the Plaintiff issued a legal notice dated 30.09.2014 to the Defendants expressing her readiness and willingness to purchase the suit property. Despite the same, they have denied to perform specific performance as per the terms and conditions of the said Sale Agreement.

8.It has been further submitted by the learned counsel for the plaintiff that even there is unregistered sale agreement, as per proviso to section 49, an unregistered document affecting the immovable property and required by the registration act to be registered may be received as evidence of a contract in a suit for specific performance under chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be affected by registered document. Further, the Hon'ble High Court Madras had passed a Judgement dated 13.02.2020 in A.S. No.1026 of 2019 wherein it is held that suit based unregistered document is maintainable. The relevant para is as follows:

"13.Considering the said arguments, this court is of the opinion that the Trial Court has committed an error in respect of dismissing the suit on the ground that the said sale agreement is not a registered document. Such registration is not mandatory as per judgements cited supra and therefore the Trial Court ought to have considered the merits as well as



WEB COPY

the terms and conditions and the defense raised by the defendants and arrived at a finding. Contrarily, the judgement was delivered on the grounds that the suit sale agreement is not a registered document".

9.The learned counsel for the plaintiff would further submit that as per the settlement deed dated 23.10.2000, the 1st defendant only has a life interest over the suit property and has no right to alienate the same. After his lifetime, the 2nd Defendant has absolute right over the suit property. Since the 2nd Defendant is also a signatory to the Suit Sale Agreement and the 2nd Defendant was a major at the time of being an executant of the suit Sale Agreement, both the defendants can execute the Sale deed in favour of the plaintiff as per the Sale Agreement.

10.It has been further submitted by the learned counsel for the plaintiff that as per section 120 of the evidence act, the husband or wife of the plaintiff is entitled to lead evidence on behalf of their spouse. The same is legally valid. Hence the evidence of E. Sundaravadivelu is valid as per section 120 of the Evidence Act. Thus, he seeks to grant relief for specific



WEB COURT

performance of the suit Sale Agreement by the Defendants by executing the Sale Deed in favour of the Plaintiff on receiving the balance sale consideration or in alternative for refund of the advance sale consideration together with interest at 24% per annum.

11. The learned counsel for the defendants would submit that there was no intention to sell the suit property and that the defendants had approached Sundaravadivelu for a loan to discharge their liability and at that time Sundaravadivelu obtained his signature in the document. The defendant signed the document but his signature was obtained in blank paper. Further, the suit sale agreement is an unregistered document and therefore the same is unenforceable. The registration Act has been amended in 2012 (with effect from 01.12.2012) by virtue of which sub clause f, g, h, i, J have been added to Sub Section 1 of Section 17 of Registration Act 1908. Clause (g) of Sub Section 1 of Section 17 of Registration Act is as follows;

"Instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards."



WEB COPY

Therefore, an agreement of sale of immovable property is compulsorily registrable. If the agreement is not registered, it has no effect as mentioned in Section 49 of the Registration Act. As per section 49 that non registered document cannot be received as evidence for any transaction affecting the said property. Therefore, the suit agreement dated 18.03.2014 is unenforceable in law and therefore it is void. Hence the specific performance cannot be granted on such a void agreement dated 18.03.2014 being after the amendment of Section 17 of Registration Act.

12.The learned counsel for the defendants would further submit that even if the Agreement is held to be valid, the Plaintiff had never been ready and willing to perform her part of the agreement. She had no money at all relevant time for payment of balance sale consideration of Rs.2,05,00,000/- (Two Crores Five Lakhs). Relying upon Clause 13 of the Suit Agreement, which reads as:-

"The Vendors hereby agree to help the purchaser in all reasonable respects to raise loans for the purchase of the Schedule mentioned property",

he contended that the Plaintiff even at the time of the agreement, the



plaintiff would not be able to pay the sale consideration as agreed.

WEB COPY

13. It has been further submitted by the learned counsel for the defendants that according to the specific relief, only a contract is enforceable as provided under Section 10 of the contract Act. All agreement are not contracts and only that which is enforceable, is a contract under Section 10 of the Contract Act. As per Section 2g of the contract Act " An Agreement not enforceable by law is said to be Void". An agreement which is unregistered after 01.12.2012 is unenforceable in law and such an agreement is void. All agreements are not contracts and only an agreement which is enforceable, is a contract under section 10 of the Contract Act.

14. It has been further submitted by the learned counsel for the defendants that as far as the 2nd defendant is concerned, he does not get any right to execute the sale deed in favour of the plaintiff during the life time of the father of 1st Defendant. Only after the life time of 1st Defendant, the 2nd defendant gets right to the property and as such neither the 1st defendant



WEB COPY

nor the 2nd defendant can validly alienate the property as both of them had no right, title or interest to alienate at the time of agreement. In view of the above, the Plaintiff cannot seek for Specific performance of the agreement enforcing the defendants to sell the property. The relief for specific performance cannot be granted and the defendants are ready to refund the amount of Rs.20,00,000/- without interest. Hence, the suit is liable to be dismissed.

Issue No.5:

15. On perusal of the records, it is seen that even though Sunderavadivelu has not been impleaded as a party in the suit, he has filed Proof Affidavit and entered in the Witness Box as P.W.1 on behalf of the plaintiff gave evidence and was cross examined. Hence, there is no necessity to implead him as party in suit. Accordingly, Issue No.5 is answered.

Issue No.3:

16. Even though in the plaint it is stated that the Bank loan was obtained for the balance consideration, the plaintiff has not produced any



WEB CODE

oral and documentary evidence to prove that she was ready to settle the balance consideration for execution of Sale deed. Hence, the Issue No.3 is answered against the plaintiff.

Issue Nos.1, 2 and 4:

17. There is no dispute in the amount transaction of Rs.20,00,000/- (Rupees Twenty Lakhs Only) between the plaintiff and the defendants. However, there is only dispute whether the said amount has been made against the loan security or Sale agreement relating to the suit property. It is seen from the records that the 1st defendant was having various liabilities in settling dues over the suit property. Even very well knowing this fact, by virtue of Mortgage of Property on 14.12.2013, an amount of Rs.15,00,000/- was given to the defendants. In this Transaction, it is said that entire original Title Deeds of the suit property have been handed over with the plaintiff's husband during the time of execution of Mortgage. Further, even if the defendants have not settled the Mortgage amount of Rs.15,00,000/- against the Suit property, after knowing the financial needs of the defendants, the plaintiff has executed the Sale Agreement dated 18.03.2014 by advancing a sum of Rs.20,00,000/- in



WEB COPY

reducing to writing on various terms and conditions therein. As per clause 7 in Sale Agreement, the Sale Deed cannot be executed without settling the Mortgage Amount. However, there is no whisper with regard to settlement of the Mortgage amount and legal proceedings taken by the plaintiff's mother for not settling the Mortgage amount. In view of the above facts, it is seen that the plaintiff has taken advantage of needs of money for the defendants and executed Mortgage deed and thereafter, Sale Agreement. It seems that under the pretext of helping to the defendants by well knowing their financial needs, the husband of the plaintiff devises to swindle the suit property by way of execution of the Mortgage Deed and Sale Agreement. Further, while the plaintiff is not a layman wife and doing the real estate business, there is cloud over the Sale Agreement which is not registered and creates suspicious circumstances in executing the same having eye on the suit property from the beginning under the pretext of helping financial needs of the defendants. On seeing the fact that the husband of the plaintiff gave money as and when the defendants asked for his financial needs, the ultimate goal of the plaintiff is to swindle the suit property at the lowest cost on the pretext of the Sale Agreement from the Market Value. Hence, it



WEB COPY

reveals that since there is some cloud over the Sale Agreement, it cannot be treated as Sale Agreement. Accordingly, Issue Nos.1, 2 and 4 are answered as against the plaintiff.

19. Having considered the entire facts and circumstances of the case and the plaintiff also seeks the alternative remedy to refund the advance amount and the defendants also have not denied the advance amount paid by the plaintiff, the defendants are hereby directed to pay the advance amount of Rs.20,00,000/- along with interest @9% to the plaintiff within a period of two months from the date of receipt of copy of this Judgment.

19. In view of the aforesaid observation, the Suit is partly decreed. No costs.

.08.2024

Index: Yes/No

Web: Yes/No

30/33



WEB COPY

Witnesses examined on the side of the plaintiff and defendant:-

P.W.1. - Sundaravadivelu
D.W.1. - K.Bala Venkatesh

Exhibits produced on the side of the plaintiffs and Defendants:-

<i>S. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1.	EX.P1	Original Authorization Letter.	25.03.2019
2.	EX.P2	Original Sale Agreement between the Plaintiff and Defendant .	18.03.2014
3.	EX.P3	Original Notice sent by the plaintiff to the defendants with original Acknowledgment.	30.09.2014
4.	EX.P4	Original letter sent by 1st defendant to plaintiff with original cover.	09.10.2014
5.	EX.P5	Original letter notice sent by plaintiff to defendant with original acknowledgment.	27.11.2014
1.	EX.D1	Certified copy of the simple mortgage deed.	04.12.2013
2.	EX.D2	Certified copy of the gift settlement deed.	23.10.2000
3.	EX.D3	Office copy of the notice.	28.11.2014

.08.2024



WEB COPY



A.A. NAKKIRAN, J.

Lbm



WEB COPY



C.S. No. 194 of 2015

.08.2024