



A.S.No.283 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.283 of 2014

and

M.P.No.1 of 2014

Mrs.G.Visalakshi

... Appellant/Plaintiff

Vs

1.Mrs.V.Devika
2.Mrs.M.Bhuvaneshwari
3.Mr.C.Nagaraj
4.N.Kamesharan(Minor)
5.N.Gowthamprakash (Minor)
6.N.Anithasree(Minor)
(Defendants 4, 5 & 6 minors
Rep.bytheir father and Natural Guardian
Mr.C.Nagaraj)

7.Mr.R.Venkatesan

... Respondents / Defendants



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Prayer: Appeal Suit is filed under Section 96 of Civil Procedure Code under Section 43 Rule 1 of C.P.C., against the order passed in O.S.No.8722/2010 dated 07.11.2013 on the file of the XVIII Additional City Civil Court Judge, Chennai.

For Appellant : Mr.C.P.Sivamohan

For Respondents 1 to 3 : Mr.G.Vijayanand
for M/s. G.Vijayanand Associates

For Respondents 4 to 6 : Minors rep.by R3

For 7th Respondent : Not Ready in Notice

JUDGMENT

The plaintiff, whose suit for specific performance and permanent injunction had been dismissed is the appellant before this Court.

2. The facts upon which the plaintiff had approached the Court are narrated herein below, and the parties are referred to as plaintiff and defendants, respectively, as set out in the suit O.S.No.8722 of 2010 on the file of the XVIII Additional City Civil Court, Chennai.



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Plaintiff's case:

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3. The plaintiff would submit that one late P.C.Ramalingam Achari had entered into a lease-cum-sale agreement dated 01.03.1982 with the Tamil Nadu Slum Clearance Board in respect of an extent of 2120 sq.ft bearing plot No.182, Old Door No.16, New No.64, Nethaji 6th Street, Lakshmipuram, Thiruvannamiyur, Chennai 600 041.

4.The said P.C.Ramalingam Achari had thereafter constructed two separate dwelling units each consisting of a ground and first floor, with the common passage measuring 6 feet in width and 44 feet in length between the two houses. One house consisted of ground and first floor, both measuring 512 sq.ft and the other house measuring 506 sq.ft and 480 sq.ft in the ground and first floor respectively. The said Ramalinga Achari was residing with his son, the 7th defendant herein in the said property. Besides his son, Ramalinga Achari had three daughters, who are the first and second defendants and another



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daughter, Sundari who had passed away on 04.07.2005 leaving behind her husband and children, who had been arrayed as defendants 3 to 6 in the suit.

5.The plaintiff would submit that Ramalinga Achari had entered into an agreement of sale on 23.04.2001 with the plaintiff for the sale of an extent of 1260 sq.ft together with the building consisting of ground and first floors measuring 512 sq.ft each together with the 6 feet passage. The total consideration agreed upon was a sum of Rs.6,50,000/- and on the date of the agreement, a sum of Rs.6,00,000/- was paid. Out of this amount, the plaintiff had paid a sum of Rs.1,50,000/- to each of the daughters, and each of them had signed the receipts, which were witnessed by their respective husbands and the 7th defendant, the son of Ramalinga Achari. A cheque was issued for the sum of Rs.1,00,000/- and the balance sum of Rs.50,000/- was paid by cash. The said Ramalinga Achari had put the plaintiff in possession of



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the property. The plaintiff had also rented out the property and has been collecting the rents.

6.The plaintiff would submit that on 27.06.2007, the sale deed was executed by the Tamil Nadu Slum Clearance Board in favour of Ramalingam Achari. On 05.07.2007, the plaintiff had paid the balance sale consideration to the said Ramalinga Achari, who had made an endorsement in the reverse of the agreement. Ramalinga Achari had sought time to execute the sale deed and get it registered as he was not keeping good health. Thereafter, the said Ramalinga Achari passed away on 25.12.2007. The plaintiff thereafter requested the defendants to execute the sale deed and to her shock, the defendants informed the plaintiff that the said sum of Rs.6,00,000/- was a loan and not towards the sale consideration for the purchase of the suit schedule property. They had followed it up with the notice dated 27.01.2009 demanding the plaintiff to vacate the property. A suitable reply was issued by the



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plaintiff on 16.02.2009 and this was immediately followed up with the filing of the suit.

Written statement of defendants 1 to 6:

7. The 7th defendant remained *ex-parte*, and it was only defendants 1 to 6 who had contested the suit and filed a common written statement. It was their categoric contention that the sum of Rs.6,00,000/-, which was received by Ramalingam Achari was towards a loan. They had also contended that since Ramalinga Achari was not in a position to pay the monthly interest, he had permitted the plaintiff to reside in the suit premises (in short, the defendants had pleaded a usufructuary mortgage). It is their further contention that the said Ramalinga Achari had repaid the entire loan during his life time. They had further gone on to state that the signature of Ramalinga Achari and themselves had been obtained in the blank stamp papers and blank papers, which have been utilized to create the document. The



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defendants would further submit that, despite receiving the entire loan amount, the plaintiff and her husband were not vacating the premises and had further inducted a tenant in the said property.

8. The defendants further pleaded collusion between the plaintiff, her husband and the 7th defendant, which, according to them, was with the intention of usurping the entire property. The defendants would submit that they had filed C.S.No.579 of 2009 on the file of this Court for partition and separate possession of their 3/4th share in the suit schedule property. The defendants would further submit that if the agreement was intended to be an agreement of sale, the plaintiff would have immediately issued a legal notice after the death of Ramalingam Achari. The fact that the plaintiff had waited till the notice had been issued by the defendants only goes to show that she was not willing to proceed with the agreement of sale. The two years of silence on the part of the plaintiff would go a long way to prove her lack of readiness



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and willingness. They had further raised a defense in the tail end of their written statement, stating that when the agreement of sale was entered into, Ramalinga Achari was not even the owner of the property and therefore, the agreement was not a valid agreement. Therefore, they sought to have the suit dismissed.

Trial Court:

9. The trial Court had framed the following issues on 22.11.2011. However, on 28.10.2013 the same was recasted, as the learned Judge was of the opinion that the issues framed on 22.11.2011 were irrelevant to the adjudication of the suit.

“1. Whether late Ramalingam Achari was the absolute owner of the suit property?”

2. Whether the plaintiff and 1st defendant alone are the legal heirs of Ramalingam, Achari?”



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3. *Whether it is true that the 2nd and 3rd defendants are in illegal occupation, permitted by the 1st defendant?*

4. *Whether the plaintiff is entitled for $\frac{3}{4}$ the share in the suit property?*

5. *Whether sale agreement dated 23.04.2001 between the Late Ramalingam Achari and the plaintiff is true?*

6. *Whether it is true that the plaintiff and her husband have based the suit property to Murugan and collecting rent?*

7. *Whether it is true that, at the time of execution of the sale agreement on 23.04.2001, the Slum Clearance Board was the owner of the property?*



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8. Whether the defendants are entitled for 3/4th share of the entire property and that, C.S.No.579/2009 is pending in the stage of trial before High Court?

9. To what other reliefs the parties are entitled for?

The recast issues are as follows:

“1. Whether the plaintiff is entitled for specific performance of the contract as per the suit sale agreement regarding the suit property?

2. Whether the plaintiff is entitled for permanent injunction to restrain the defendants in any way dealing with the suit property by sale, transfer, lease,



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*mortgage, gift, franchise, constructing or alienating
pending disposal of the suit?*

*3. Whether the plaintiff is entitled to get a
damage of Rs. 4,00,000/- as prayed in the plaint?*

*4. Whether it is true that there is no readiness
and willingness on the part of plaintiff to get the sale
deed executed in her favour?*

*5. Whether it is true that the suit transaction is
not for sale, but only loan transaction as alleged by
defendants 1 to 6?*

6. To what relief the plaintiff is entitled?



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10. The plaintiff had examined herself as P.W1. Her husband, K.Ganesan was examined as P.W2 and the attesor of Ex.A1 one Sayiram as P.W3 and she had marked Exs.A1 to A8. On the side of the defendants, the first defendant had examined herself as D.W1. The 2nd defendant had examined herself as D.W2 and the 3rd defendant had examined himself as D.W3 and Exs.B1 to B5 were marked on their side. The learned Judge, on considering the evidence, had proceeded to dismiss the suit against which the present appeal has been filed.

Submissions of the learned counsel for the appellant / plaintiff:

11. Mr.C.P.Sivamohan, learned counsel for the appellant / plaintiff would submit that on the date of executing the agreement of sale, 90% of the sale consideration had been paid and on account of the same, possession was handed over to the plaintiff. That apart, out of the sum of Rs.6,00,000/-, Rs.4,50,000/- was paid to the three daughters as directed by the deceased Ramalingam Achari. This sum was paid by

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3 cheques of Rs.1,00,000/- each to the three daughters and Rs.50,000/- each by way of cash. The very fact that the amount was paid in this fashion would clearly disprove the case of the defendants that the sum of Rs.6,00,000/- had been given as a loan. That apart, on 05.07.2007, the balance sum of Rs.50,000/- had been paid and receipt signed by Ramalinga Achari. He would submit that receipts issued by the three daughters for the amounts received by them have been witnessed by their respective husbands and the 7th defendant. All this would only go to show that the agreement of sale was intended to be acted upon only as an agreement of sale and not as a security for the loan. He would submit that the defendants have not denied the execution of the receipts. He would further submit that as per Ex.A1, the balance amount was to be paid after the said Ramalingam Achari had obtained a sale deed from the Tamil Nadu Slum Clearance Board, hereinafter referred to as “TNSCB”, and thereafter, the sale deed was to be executed in favour of the plaintiff. It is in keeping with this clause that



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the sum of Rs.50,000/- was paid on 05.07.2007 after the sale deed was executed by the TNSCB in favour of Ramalingam Achari. He would draw the attention of this Court to the cross examination of D.W1 where, for the first time, an argument was made that the property was given on lease to the plaintiff. Thereafter, she would contend that it was a hand loan. She has clearly and categorically accepted the receipt of the sum of Rs.1,50,000/-. She has also admitted the possession of the suit property by the plaintiff. D.W1. In her cross examination, she has stated that the signature in Ex.A1 looks like that of her father. The second defendant as D.W2 admits the signature of the father. D.W3, the husband of the deceased daughter Sundari admits the receipt of Rs.1,50,000/- and also admits that after receiving the sum of Rs.1,50,000/-, Ex.A1 had been executed by P.C.Ramalingam Achari. He has also admitted that he has attested the receipt Ex.A3 as a witness. He would submit that the argument that the agreement of sale was not valid since it was entered into when P.C.Ramalingam Achari



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had not got the sale deed in his favour is without any basis. Even as per the recitals of the agreement of sale-Ex.A1, Sale Deed was to be executed only after TNSCB executed a sale deed in favour of the plaintiff. He would also rely upon the judgment of the Andhra Pradesh High Court reported in ***AIR 2005 ANDHRA PRADESH 508 [S.Mohammed Anwaruddin (Deceased by LRs) and Others Vs. Smt.Dr.Sabiha Sultana]*** with particular reference to paragraphs 32 onwards and pressing the contents of Paragraph 34. He would submit that the argument that the plaintiff was not ready and willing is without any basis. On 27.06.2007, sale deed had been executed in favour of Ramalingam Achari. Thereafter, on 05.07.2007 (within a few days), the balance sale consideration of Rs.50,000/- was paid to Ramalingam Achari. Ramalingam Achari acknowledged the receipt of the same and has made an endorsement on the reverse of the agreement Ex.A1. He stated that since he was not keeping good health, he would execute the sale deed once he recovered. On 25.12.2007, Ramalingam Achari



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died. The plaintiff had been requesting the defendants to execute the deed and on 27.01.2009, she was served with a legal notice in which the defendants 1 to 6 contended that the sum of Rs.6,00,000/- had been received as a loan and that the same had been repaid and therefore, the plaintiff should vacate and handover the vacant possession of the property. Immediately, the suit has been filed. He would submit that since the entire sale consideration had been paid and as the suit has been filed as soon as the refusal by the defendant, the readiness and willingness stand proved. He would therefore submit that the trial Court has committed a grave error in dismissing the suit on the ground that the vendor did not have the right to execute the agreement of sale as he was not the owner of the property and that the plaintiff was not ready and willing to proceed with the agreement.

Submissions of the learned counsel for respondents 1 to 3:

12. Per contra, Mr.G.Vijayanand for M/s.G.Vijayanand



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Associates, learned counsel for respondents 1 to 3 would contend that sum of Rs.6,00,000/- was only a hand loan and not towards the sale consideration. The possession was handed over to the defendants only in lieu of the interest payable towards the loan. He would further submit that on 23.04.2001, Ramalingam Achari was not even the owner of the property and therefore, he did not have locus standii to execute the agreement of sale and that being the case, no right would flow under the agreement to the plaintiff. He would submit that the plaintiff has not proved readiness and willingness. Though the sale deed had been executed in favour of Ramalingam Achari in June 2007, the suit for specific performance has been filed only in the year 2009, i.e nearly after 2 years. It would clearly prove that the plaintiff was not ready and willing to proceed with the agreement. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court reported in *(1995) 5 SCC 115 [N.P.Thirugnanam (Dead) by Lrs Vs. Dr.R.Jagan Mohan Rao and Others]* and *(2005) 7 SCC 534*



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[Aniglase Yohannan Vs Ramlatha and Others]. He would further submit that the signatures of the parties had been obtained in blank papers when the loan was given. He would argue that the amount was received by the father and given to them. He would also submit that the father had repaid the said loan. Therefore, he would submit that the trial Court has rightly held against the plaintiff.

Points for consideration:

13. The following points for consideration arises in the above first appeal.

(i) *Whether Ex.A1 was executed as a security for hand loan or was intended to be proceeded with as an agreement of sale?*

(ii) *The plaintiff, by not taking steps to file the suit till the year 2009 in respect of an agreement in the year 2001, has proved that she was not ready*



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and willing to proceed with the sale.

(iii) Whether the agreement of sale is invalid since Ramalingam Achari was not the owner of the property when he had entered into the agreement of sale?

14. Heard the learned counsels on both sides and perused the materials available on record.

Discussions:

15. The agreement of sale Ex.A1 has been executed by the said Ramalingam Achari and the plaintiff on 23.04.2001. Under this agreement, Ramalingam Achari has agreed to covey $\frac{1}{2}$ of the property that has been allotted to him under the TNSCB, ie 1260 sqft together with a passage measuring 6 inches in width and 44 feet in length. The



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four boundaries would clearly show that the property was to be conveyed is situate on the north of the property retained by Ramalingam Achari. The recitals would further read that out of the sale consideration of Rs.6,50,000/-, Rs.6,00,000/- has been paid as advance and as per the instructions of Ramalingam Achari, a sum of Rs.1,50,000/- each was paid to his daughters and late Sundari. The balance sum of Rs.50,000/- was to be paid after TNSCB had executed the sale deed in favour of the plaintiff and thereafter, the sale deed would be executed in favour of the plaintiff. As per the instructions of the said Ramalingam Achari, the sum of Rs.1,50,000/- was issued to three daughters and each of them had executed receipts on the very same day. The receipts have also been signed by their respective husbands and the same are witnessed by the 7th defendant, the son of the said Ramalingam Achari and the plaintiff's husband. On 05.07.2007, Ramalingam Achari had received a further sum of Rs.50,000/- as he had got the sale deed executed in his favour on



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27.06.2007 from TNSCB and an endorsement has been made on 05.07.2007. In the endorsement, he has stated that he has received the entire sale consideration and would execute the sale deed once he recovered from his poor health. The said Ramalingam Achari had passed away on 25.12.2007. The plaintiff would plead that thereafter, she had approached the defendants to execute the sale deed. However, they had contended that it is a loan and had issued a legal notice under Ex.A5. It is seen that the plaintiff after sending the reply on 09.02.2009 has filed this suit on 23.10.2009.

16. The fact that the sale consideration has been disbursed to the three daughters clearly indicates that it was not a hand loan. If it was intended as a loan, there was no necessity to adopt this elaborate process of issuing cheques in favour of each of the daughters and obtaining their signatures in the receipts and witnessed by their respective husbands and their brother, the 7th defendant. The



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defendants have not been able to establish the fact that the sum of Rs.6,00,000/- had been extended as a loan. In the written statement, they have contended that the entire loan amount has been repaid. However, there is no proof of such repayment. This assumes significance, since, admittedly Rs.3,00,000/- had been paid by cheque. That apart, during the arguments, the learned counsel for the defendants would concede that the loan had not been repaid and that they are ready and willing to repay the same. Further, the recitals in Exs.A2 to A4 would clearly show that the daughters are aware of the sale of the property situate on the rear side of Old Door No.16, New No.64, Nethaji 6th Street, Lakshmipuram, Thiruvanmiyur, Chennai 600 041 together with 6 feet width passage running to a length of 44 length. They would also state that this is towards their share and that they have no further claim on their father's property. This coupled with the recitals in the agreement of sale clearly indicates that Ramalingam Achari being their father, was paying cash to the daughters in lieu of



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their share in his property. The defendants have raised a plea that they have signed in blank papers. However, the evidence of D.W3 in his cross examination would clearly show that on the very same day, the agreement of sale was executed and the daughters had received a sum of Rs.1,50,000/-. D.W3 admits the agreement-Ex.A1 and also admits his signature in Ex.A3. Therefore, it is clear that Ex.A1 was not intended to be security for a loan but was intended to be acted as an agreement of sale. The point for consideration No.1 is answered in favour of the plaintiff.

17. The learned counsel for the defendants has argued at length regarding the lack of readiness and willingness on the part of the plaintiff. The records would indicate that on the date of the agreement of sale, Rs.6,00,000/- had been paid as per the recitals in Ex.A1 which reads as follows.

“ஆக மேற்கொண்டுள்ள விதத்தில் எனக்கு



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ரூ.6,00,000/- (எழுத்தால் ரூபாய் ஆறு லட்சம் மட்டும்)

எனக்கு பற்றாகி எனவசம் வரவாகிவிட்டது. பாக்கிக்

கிரையத்தொகையான ரூ.50,000/- (எழுத்தால் ரூபாய்

ஐம்பதாயிரம் மட்டும்)ஐ எனது பெயருக்கு தமிழ்நாடு

குடிசைமாற்று வாரியத்தால் கிரையப்பத்திரம் எழுதிக்

கொடுக்கும் படச்சத்தில் உங்களிடமிருந்து பெற்றுக்கொண்டு

உங்களது பெயரிலோ அல்லது நீங்கள் விரும்பும் நபர்

அல்லது நபர்கள் பெயரிலோ வந்து உங்களுக்கு

கிரையப்பத்திரம் பதிவு செய்து கொடுக்க சம்மதிக்கிறேன்.”

On 27.06.2007, the sale deed was executed in favour of Ramalingam by TNSCB. Thereafter, on 05.07.2007, the remaining amount has been paid by the plaintiff to the said Ramalingam Achari. On the said date, he has also mentioned that he would execute the sale deed once he recovered, as he was not keeping good health. The evidence of P.W2,



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the husband of the plaintiff would indicate that he had gone along with Ramalingam Achari to TNSCB to get the sale deed executed. Thereafter, on coming to know about the sale deed, the balance payment has been made. In fact, in his cross examination, he would state that when Ramalingam Achari had died, he (P.W2) had been hospitalized in Apollo. Therefore, in December 2009, the plaintiff's husband has been hospitalized. In January 2009, a notice to vacate has been issued by the defendants and from the evidence of P.W2, it is clear that thereafter, the 7th defendant had informed the plaintiff's husband about the suit for partition that had been filed by defendants 1 to 6 and immediately, the plaintiff filed the suit in question. Therefore, there has been no inordinate delay or unexplained delay on the side of the plaintiff. On the contrary, the plaintiff has performed her obligation under the contract without much delay and it is the defendants who have reneged on the agreement taking advantage of the death of the father and the rise in price. The evidence of P.W2 would



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further reveal that he has a factory next to the suit property and he has been acquainted with Ramalingam Achari for over 15 years and the two families have been very close. Therefore, the plaintiff has proved the readiness and willingness. The 2nd point for consideration is therefore answered in favour of the plaintiff. The trial Court has proceeded to hold that there is no readiness and willingness only on the ground that the suit has not been filed as soon as Ramalingam Achari had died in the year 2007. The learned Judge has failed to take note of the fact that the entire sale consideration had been paid and P.W2 had deposed to the fact as to why he was not able to take steps to have the sale deed executed during the life time of Ramalingam Achari and thereafter, it was Ramalingam Achari who sought time to execute the sale owing to his ill health. Thereafter, he had died within a period of 5 months. At the time of his death, P.W2 has deposed that he was unwell and hospitalized. The refusal by the defendants was in the month of July 2009 and the suit was filed in October 2009. Therefore,



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the defense with reference to the readiness and willingness is without any basis. The recitals in the sale deed which has been extracted above would clearly show that the parties had agreed that the sale would be completed only after the sale deed had been executed by TNSCB in favour of Ramalingam Achari. Therefore, they were conscious about the fact that the sale deed could be executed only after the sale deed had been executed in favour of the deceased Ramalingam Achari. The final payment has also been made only after the sale deed had been executed in favour of Ramalingam Achari. In the judgment cited by the learned counsel for the appellant, the High Court of Andhra Pradesh, relied upon the earlier judgments of the Hon'ble Supreme Court dealing with the case of an oral agreement to sell the property of the Housing Board where a similar defense has been taken. The learned Judges have observed as follows:-

“34. Admittedly, agreement to sell is not a transfer of any rights in immovable property and, therefore,



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the agreement could not be held to be bad in law and altogether opposed to public policy. Agreement as pleaded is that after the property is conveyed in favour of the defendant on his paying all the instalment dues to the Housing Board he agreed to transfer the same to the plaintiff. If that be the case, the said agreement to transfer at a future date after acquiring the ownership by the defendant at no stretch of imagination can be said to be opposed to Regulations framed or lease-cum-sale agreement. The prohibition, if any, under Clauses 11 and 22 of the lease-cum-sale agreement has disappeared on execution of sale deed in favour of defendant by the Housing Board during the pendency of the suit and now there is no embargo for transferring the property in favour of



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the plaintiff as per the oral agreement as entered by the plaintiff's father for the benefit of the plaintiff. In view of the same, decreeing the suit of the plaintiff for specific performance cannot be said to be opposed to public policy and Point No. 4 is accordingly answered.

The facts of that case would squarely apply to the facts of the instant case. I am inclined to concur with the above judgment of the High Court of Andhra Pradesh. With reference to the agreement of sale being invalid, the decision referred above would render the above finding as erroneous. The 3rd point for consideration is answered against the defendants. Therefore, the appeal is allowed with costs. The judgment and decree of the Court below is set aside. Consequently, connected miscellaneous petition is closed.

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Speaking order/non-speaking order
srn

To

The XVIII Additional City Civil Court Judge,
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