



A.S.No.514 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02-06-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 514 of 2011
and
M.P. No. 1 of 2011

1.Dr. I. Mohammed Thaslim (Died)
2.Shajitha Parveen

.. Appellants

(3rd Respondent transposed as
Second Appellant *vide* order dated
23.03.2022 made in CMP No.8876
of 2020 in A.S.No.514/2011)

Versus

1. E. Abdul Naseer
2. Paroja Begam (Died)
3. Shajitha Parveen

.. Respondents

Appeal Suit filed under Order 41, Rule 1 of the Code of Civil Procedure to set aside the Judgment and Decree dated 12.07.2010 in O.S. No. 14 of 2009 on the file of the learned III Additional District Judge at Puducherry.

For Appellants : Ms. Mitraneshaa, B.S.,
for Mr. V. Raghavachari

For Respondent No. 1 : Mr. T.M. Naveen



A.S.No.514 of 2011

JUDGMENT

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This is an Appeal filed by the 1st Defendant in O.S. No. 14 of 2009 to set aside the Judgment and Decree dated 12.07.2010 passed thereof by the learned III Additional District Judge at Puducherry.

2. The first Respondent in this appeal, as Plaintiff, has filed the suit in O.S. No. 14 of 2009 for the relief of specific performance by directing the Defendants 1 to 3 to execute a sale deed conveying due title in respect of the plaint scheduled property in favour of the Plaintiff by accepting the balance sale consideration of Rs.2,50,000/- within a period as may be directed by the Court and in default the Court may be pleased to execute the sale deed and to cause registration of the same in favour of the Plaintiff; to direct the Defendants to deliver symbolic possession of the plaint scheduled property to the Plaintiff through process of law; consequently to pass a decree for permanent injunction restraining the Defendants 1 to 3 from dealing and encumbering the plaint described properties in any manner other than that specified in the suit agreement deed dated 17.07.2008 and for costs.

3. For the sake of convenience, the parties shall be referred to as per their litigative status in the suit as 'Plaintiff' and 'Defendants'.



A.S.No.514 of 2011

WEB COPY4. The brief facts, which are necessary for the disposal of this Appeal Suit, are as follows:-

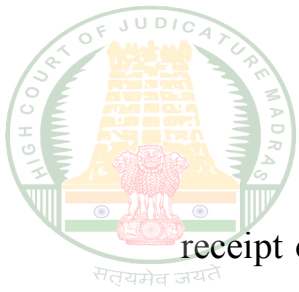
4.1. According to the Plaintiff, the Defendants are the joint owners of the plaint scheduled property having acquired the same by inheritance in their capacity as legal heirs of deceased Dr. Mohammed Ismail, father of the Defendants 1 and 3 and husband of second Defendant. It was stated that the first Defendant approached the Plaintiff and offered to sell the plaint scheduled property. The first Defendant approached the Plaintiff and offered to sell the plaint scheduled property mainly for the reason that the properties are under the exclusive control and possession of the Plaintiff and one can enter into the plaint scheduled property only through the personal property of the Plaintiff's elder brother Mr. Habeeb Rahman. Further, the plaint described properties are allotted to the share of the Plaintiff as per the Jamal Masjid Nirvaga Sabai, Kottakuppam Village by effecting a deed of partition dated 01.06.1990. Therefore, the first Defendant entered into an agreement of sale with the Plaintiff on 17.07.2008. As per the agreement dated 17.07.2008, the first Defendant agreed to sell the plaint scheduled property to the Plaintiff along with his mother and sister viz., Defendants 2 and 3 for a sum of Rs.6,00,000/-.



A.S.No.514 of 2011

On the date of agreement on 17.07.2008, the first Defendant also received Rs.1,55,000/- as advance from the Plaintiff and agreed to receive the balance sale consideration of Rs.4,45,000/- within a period of three months from the date of the agreement dated 17.07.2008 by producing all the title deeds, parents deeds, encumbrance certificate etc., According to the Plaintiff, at the time when the agreement of sale dated 17.07.2008 was executed, the second Defendant was admitted in Apollo Hospital, Chennai as an in-patient and taking treatment for her ailment and the third Defendant was staying with the second Defendant in the hospital. As the Plaintiff was aware of the fact that the second Defendant was hospitalised and the third Defendant was looking after the second Defendant, he did insist the execution of the agreement of sale dated 17.07.2008 by the Defendants 2 and 3.

4.2. According to the Plaintiff, after receipt of Rs.1,55,000/- on 17.07.2008, the first Defendant received various amounts from the Plaintiff. To be specific, on 31.07.2008 a sum of Rs.50,000/- was received by the first Defendant from the Plaintiff. Similarly, on 04.08.2008, Rs.25,000/- was received. On 05.08.2008 and 25.08.2008 Rs.20,000/- and Rs.10,000/- respectively were received. Further, on 26.08.2008 a sum of Rs.25,000/- was received and on 11.10.2008 Rs.20,000/- was received. All the aforesaid



A.S.No.514 of 2011

receipt of amount were duly acknowledged in writing on the back side of the agreement of sale dated 17.07.2008. Thus, a total sum of Rs.3,05,000/- out of Rs.6,00,000/-.

4.3. According to the Plaintiff, he was always ready and willing to pay the balance sale consideration and to get the sale deed executed in his name. However, the Defendants were evasive and refuse to come forward to execute the sale deed. As the acts of the Defendants are detrimental to the interest of the Plaintiff, as an agreement holder, on 17.11.2008, he has taken a paper publication in local Daily Dhina Malar informing the general public that he has entered into an agreement of sale dated 17.07.2008 with the Defendants and he has a right to purchase the property in question. Subsequently, on 17.11.2008, the Plaintiff had sent a notice to the Defendants calling upon them to receive the balance sale consideration and to execute the sale deed in his favour. On receipt of the notice, on 21.11.2008, the first Defendant sent a reply stating that the value of the plaint scheduled property is manifold than the agreed amount and therefore, the first Defendant is ready and willing to repay the advance amount received by him. According to the Plaintiff, after sending the reply notice, the Defendants attempted to alienate the property in question and therefore, he has filed the suit for specific performance.



A.S.No.514 of 2011

WEB COPY 4.4. On notice, the first Defendant filed a written statement contending *inter alia* that Dr. Mohamed Ismail, father of the first Defendant was the owner of the plaint scheduled property and after his death, the property devolved on the Defendants. The suit property was not in possession of the Plaintiff, as alleged. As regards the agreement of sale dated 17.07.2008, it was stated that the Plaintiff cannot seek for the relief of specific performance as there was no agreement of sale deed entered into by the first Defendant with an intention to alienate the plaint scheduled property. The mother of the first Defendant was admitted in N.M.O. Hospital, Puducherry and she was in intensive care unit for treatment. In order to meet the medical expenses, the first Defendant approached the Plaintiff, who is none other than his uncle, to pay money. Further, the first Defendant is not the exclusive owner and he has no saleable right to convey the property to the Plaintiff. This is the only property available for the first Defendant to be shown as a security for prompt repayment of the loan amount and at no point of time the first Defendant agreed to sell the suit property to the Plaintiff. As on the date of the agreement dated 17.07.2008, the plaint scheduled property was worth Rs.70 lakhs and no illiterate person could agree to sell it for Rs.6 lakhs. The first Defendant also stated that he is ready and willing to repay the sum of Rs.3,05,000/- received



A.S.No.514 of 2011

from the Plaintiff. It was also stated that the suit agreement can be construed as a contingent contract and such contract is not enforceable under law. The suit filed as against the Defendants 2 and 3 are not maintainable especially when they are not parties to the so-called agreement of sale dated 17.07.2008. A suit for specific performance cannot be maintained against the persons who are not parties to the agreement. The Plaintiff, who has advanced loan amount of Rs.3,05,000/- on various dates is greedy to snatch away the prime property for a throw away price. The Defendants are in possession of the property in question. At no point of time, the Plaintiff was in possession of the property. Further, the second Defendant settled her share in the suit property to the third Defendant on 18.09.2008 and the settlement deed was also accepted and acted upon. In such circumstances, the suit is not maintainable and it is liable only to be dismissed. Accordingly, the first Defendant prayed for dismissal of the suit filed by the Plaintiff for specific performance.

4.5. Before the Trial Court, the Plaintiff examined himself as P.W-1 and one V. Ashok Kumar as P.W-2 and marked 15 documents on his side as Exs. A-1 to Ex.A-15. On behalf of the Defendants, the first Defendant examined himself as D.W-1 but no document was marked. The trial court, on analysing the oral and documentary evidence, concluded that the agreement of



A.S.No.514 of 2011

sale, Ex.A-1 entered into between the Plaintiff and first Defendant is legally enforceable. However, the agreement of sale, under Ex.A-1 was not signed by the Defendants 2 and 3 who have also got a share in it. Therefore, it was held that Ex.A-1 is valid only in respect of one half share of the first Defendant. As far as the plea that the property was valued at Rs.75 lakhs and the agreement was entered into only for Rs.6 lakhs, it was observed that such a plea cannot be gone into after execution of the agreement of sale with open eyes. When once the agreement vendor was satisfied with the consideration agreed on the date of execution, he is bound by it and he cannot go against the same. Accordingly, the Trial Court passed a Preliminary Decree for partition and issued the following directions:-

“(i) The Plaintiff is directed to deposit into any Nationalized Bank, the balance sale consideration of Rs.2,95,000/- as per the terms of the contract, within one month from the date of the judgment.

(ii) The suit properties shall be divided into four equal shares and one half share of the first Defendant in the suit properties be demarcated by metes and bounds.

(iii) The first Defendant is directed to execute the sale deed in respect of this one half share in the suit properties on receiving the balance sale consideration that would lie in the deposit.

(iv) In case, the Defendants are not amenable for an amicable partition, the Plaintiff is allowed to apply for passing a final decree for effecting partition and separate possession of the first Defendant's one half share in the suit properties by appointment of an advocate commissioner.

(v) The first Defendant is directed to execute the sale deed of his one-half share in the suit property allotted to him in the final decree.



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(vi) In case the first Defendant fails to execute the sale deed in respect of his one-half share in the suit property allotted to him in the final decree within two months from the date of passing of the final decree, the Plaintiff is allowed to get the sale deed executed for the Plaintiff's half share through Court and the Plaintiff is entitled to get delivery of that property from the first Defendant in execution of this decree

(vii) The suit against the Defendants 2 and 3 is dismissed without costs.

(viii) Considering the relationship between the parties and the facts and circumstances of the case, both parties are directed to bear their own costs.”

4.6. Aggrieved by the Judgment and Decree dated 12.07.2010 passed in O.S. No. 14 of 2009, the present Appeal Suit is preferred by the first Defendant.

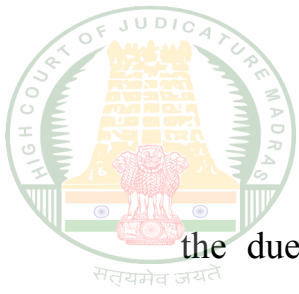
5. Ms. Mitraneshaa, B.S., learned Counsel, representing Mr.V.Raghavachari, learned Counsel appearing for the Appellants submitted that it is the contention of the Plaintiff that the sale agreement was executed to provide access to the Plaintiff's property. In other words, the Plaintiff claimed access to his property through the Defendant's property. The first Defendant in the suit is the elder brother's son of the Plaintiff. The second Defendant is the elder brother's wife of the Plaintiff and the mother of first Defendant. The third Defendant is the elder brother's daughter of the Plaintiff and the daughter



A.S.No.514 of 2011

of second Defendant. It is the contention of the learned Counsel for the Appellants that the Plaintiff sought the relief of specific performance of contract for sale of the property. The agreement of sale, Ex.A-1 was executed only by the first Defendant. The agreement of sale under Ex.A-1 was not signed by the Defendants 2 and 3, who have also got a share in the suit property. Further, it is an admitted fact that the plaint scheduled property was not divided among the Defendants and it remain undivided at the time of entering into the agreement of sale under Ex.A-1. Therefore, the Trial Court, rightly dismissed the suit as against the Defendants 2 and 3 and the preliminary decree was confined only in respect of the share of the first Defendant.

6. The learned Counsel for the Appellants further submitted that even in the plaint, the Plaintiff has referred to the ailment of the second Defendant and the treatment extended to her in the hospital. Therefore, the defence of the first Defendant that the amount was borrowed only as a loan to meet the hospital expenses of the second Defendant is probable and reasonable. The Plaintiff, as paternal uncle of first and third Defendant and brother-in-law of second Defendant financially assisted the first Defendant. Further, after filing of the suit, the first Defendant was always willing to settle



A.S.No.514 of 2011

the dues to the Plaintiff. However, the Plaintiff declined to receive the amount. Even during trial, when the Plaintiff was examined as P.W-1, he had expressed his intention to get the sale deed executed in respect of the plaint scheduled property. On the other hand, the first Defendant during the course of his examination has asserted that he is ready and willing to pay the amount received as loan from the Plaintiff.

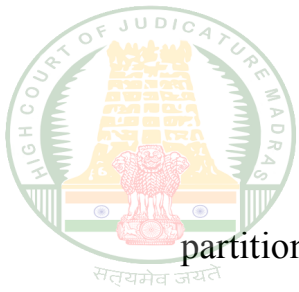
7. The learned Counsel for the Appellants further submitted that the suit was filed for specific performance. The suit was opposed by the first Defendant on the ground that the transaction between the Plaintiff and the first Defendant is only a loan transaction and the first Defendant never consented to sell the suit property. Further, the suit property was valued at Rs.70 lakhs while so, even if there is any pressing urgency, no one will attempt to sell the property worth about several lakhs for a paltry sum of Rs.6 lakhs. Further, the suit agreement of sale under Ex.A-1 was signed only by the first Defendant and therefore, the sale of the property would deprive the right, title and interest of the Defendants 2 and 3. On the basis of such pleading, the trial court, instead of dismissing the suit, has proceeded to pass a preliminary decree for partition of the property by metes and bounds, which was not even prayed for by the Plaintiff. Thus, the trial court has exceeded its jurisdiction and granted



A.S.No.514 of 2011

relief which is beyond the scope of the suit. There was no issue framed as to

whether the Plaintiff is entitled for a partition of the plaint scheduled property and consequently the first Defendant has no option to deny the right of the Plaintiff to seek for a partition of the plaint scheduled property. It is true that the first Defendant was in dire need of money and taking advantage of the same, the Plaintiff with an deceitful intention obtained the signature of the first Defendant in certain documents purported to be a security for the loan. The first Defendant, reposing faith and confidence in his maternal uncle, the Plaintiff, signed the dotted lines. However, much to the chagrin of the first Defendant, the Plaintiff claimed it to be an agreement of sale. On coming to know about the unlawful claim of the Plaintiff, the first Defendant repudiated it in the reply notice dated 21.11.2008. In the reply notice, it was clearly stated that the mother of the first Defendant was admitted in the hospital and to meet the medical expenses, amount was borrowed from the Plaintiff. The first Defendant also filed written statement reiterating the facts which he had already mentioned in his reply notice. Thus, the Plaintiff has filed the suit by misusing the signature of the first Defendant, while so, a person like the first Defendant is not entitled to the equitable relief of specific performance. This was not taken note of by the Trial Court while passing the preliminary decree for partition and specific performance. Even though Plaintiff had not sought



A.S.No.514 of 2011

partition, the Trial court granted such relief, which is against the provisions of the Specific Relief Act.

8. In support of her contentions the the learned Counsel for the Appellants invited the attention of this Court to Section 22 of the Specific Relief Act which is extracted as under:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

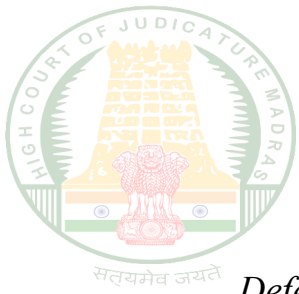
(a)possession, or partition and separate possession, of the property, in addition to such performance; or

(b)any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:Provided that where the Plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3)The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

9. The learned Counsel for the Appellants also invited the attention of this Court to the issues framed by the learned Principal District Judge, Pondicherry as follows:-



A.S.No.514 of 2011

1. Whether there is any sale agreement between the first Defendant and the Plaintiff on 17.07.2008 regarding the suit schedule property?

2. Whether the Plaintiff has filed the suit within time?

3. Whether the suit is maintainable?

4. Whether the Plaintiff is entitled for permanent injunction against the Defendants?

5. To what other relief the Plaintiff is entitled for?

10. Thus, even without framing an issue, the Trial Judge had erroneously granted a relief of partition and separate possession of the share of the first Defendant. Further, while answering the issues 1 and 2, the learned Trial Judge had discussed and decided them in favour of the Plaintiff. Similarly, the other issues 3 to 5 were elaborately discussed in the light of several decisions relied on by the Counsel for the Plaintiff and arrived at a conclusion that the suit as against the Defendants 2 and 3 is liable to be dismissed. In any event, without a prayer for partition and separate possession the Judgment and Decree granted by the Trial Court is *per se* erroneous. Instead of granting a relief of partition, the Trial Court could have directed the Plaintiff to amend the plaint in which event, the first Defendant would have got an opportunity to defend the suit accordingly. However, without even framing an issue, the learned Trial Judge granted a decree for partition, which is beyond the scope of the suit filed by the Plaintiff for the relief of specific



A.S.No.514 of 2011

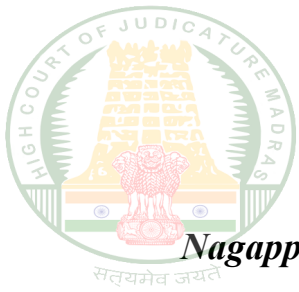
performance.

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11. The learned Counsel for the Appellants submitted that the property in question was worth about 70 lakhs even as on the date when Ex.A-1, agreement of sale dated 17.07.2008 was executed. It is situated in a prime location in the heart of Puducherry. While so, no prudent owner would offer to sell such a property for a throw away price of Rs.6 lakhs. Thus, it is evident that the Plaintiff only attempted to grab the property by taking advantage of the financial doldrums confronted by the first Defendant to treat his ailing mother, the second Defendant. This was not properly taken note of by the Trial Court while passing a preliminary decree in the suit. In fact, the first defendnat, as D.W-1, has specifically stated that he has no intention to alienate the property by executing a sale deed in favour of the Plaintiff. Further, he has obtained the amount on various dates and offered the property as a security. While so, the Trial Court ought not to have passed a preliminary decree for partition and separate possession in favour of the Plaintiff.

12. In support of her contentions, the learned Counsel appearing for the Appellants relied on the following decisions:

(i) In the case of *Messrs. Trojan & Company -vs- RM. N.N.*

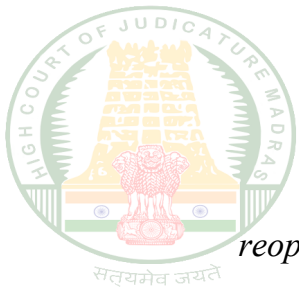


A.S.No.514 of 2011

Nagappa Chettiar reported in **1953 SCR 789** wherein the Hon'ble Supreme

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“22. The second question canvassed before the High Court and also before us was in respect of the Associated Cement shares. As abovestated, the Plaintiff's account was credited in the sum of Rs 6762-8-0 on account of the purchase of these shares. The Plaintiff had pleaded that the transaction was not authorised by him and that it had been made in contravention of his instructions. He had claimed compensation on the ground of breach of instructions; he did not in the alternative claim on the ground of failure of consideration the amount credited by the Defendants in the promissory note account and which credit disappeared by reason of the failure of the suit on the promissory note. At the hearing of the case before Bell, J. the contention that the purchase was unauthorised was abandoned by the Counsel and the same position was adopted before Clark, J. During cross-examination of the Plaintiff it was elicited that he either instructed the Defendants to purchase the shares or at any rate ratified the purchase which the Defendants had made on his behalf. It was argued before the Appellate Bench of the High Court that having pleaded one thing and having led evidence in support of that thing but later on having been forced to admit in the witness box that the true state of things was different the Plaintiff had disentitled himself to relief as regards these shares and he could not be granted the relief that he had not asked for. The High Court negatived this contention on the ground that though a claim for damages in respect of a particular transaction may fail, that circumstance was no bar to the making of a direction that the Defendants should pay the Plaintiff the money actually due in respect of that particular transaction. It also held that the Plaintiff's claim in respect of this item of Rs 6762-8-0 was within limitation. We are unable to uphold the view taken by the High Court on this point. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. The allegations on which the Plaintiff claimed relief in respect of these shares are clear and emphatic. There was no suggestion made in the plaint or even when its amendment was sought at one stage that the Plaintiff in the alternative was entitled to this amount on the ground of failure of consideration. That being so, we see no valid grounds for entertaining the Plaintiff's claim as based on failure of consideration on the case pleaded by him. In disagreement with the courts below we hold that the Plaintiff was wrongly granted a decree for the sum of Rs 6762-8-0 in respect of the Associated Cement shares in this suit. Accounts settled could only be



A.S.No.514 of 2011

reopened on proper allegations.”

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(ii) In the case of ***P.C.Varghese -vs- Devaki Amma Balambika Devi and other*** reported in **(2005) 8 SCC 486** wherein this Court held as follows:

“31.The Trial Court not only granted a decree for specific performance of contract but also a preliminary decree for partition.

32.The submission of Mr. Reddy to the effect that the learned Trial Judge committed a serious error in granting a decree for partition along with a decree for specific performance of contract need not detain us long as in view of [Section 22\(1\)\(a\)](#) of the Act a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract. As in this case, the Appellant herein in view of amended prayer 'C' relinquished his claim in respect of the property belonging to the minor - Respondent No. 4, he also prayed for a decree for partition and such a prayer having been allowed, no exception thereto can be taken. In any event, the said question has not been raised by the Respondents before the High Court at all. [Section 22](#) enacts a rule of pleading that in order to avoid multiplicity of proceedings, the Plaintiff may claim a decree for possession and/ or partition in a suit for specific performance. Even though strictly speaking, the right to possession accrues only when a suit for specific performance is decreed, indisputably such a decree for possession and/ or partition is prayed for in anticipation of the grant of prayer for specific performance of contract. [See Babu Lal Vs. M/s. Hazari Lal Kishori Lal and Others (1982) 1 SCC 525]”

(iii) In the case of ***Lavu Sri Krishna Rao -vs- Dr.Moturi Nagendra Rao*** reported in **2006 SCC OnLine AP 669** wherein this Court had held as follows:

“20. In Nagayasami v. Kochadai (2) AIR 1969 Mad. 329, it was held by High Court of Madras that:

“It has to be recognized that a party cannot be awarded relief on a basis not pleaded by him and on which there is no issue, merely taking advantage of some statements in the pleadings or in the evidence made or given for a different purpose and with reference to a different issue. Such deviation from the pleading is permissible, very rarely and only in exceptional circumstances, if it cannot be postulated that the other side has unambiguously and unequivocally admitted completely the factual or the



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legal basis on which relief could be moulded. In other words, it is the clear admission of the opposite party in the pleadings that confers jurisdiction upon the Court to award relief on a basis different from one covered by the issues on which parties went into trial”.

21. It is well settled that the relief granted must be founded on the pleadings and the Court is not at liberty to grant relief not pleaded in the plaint or that does not follow naturally from the claim as stated in the plaint. In other words, the Court cannot make out a new case altogether. It is not even a case, where-alternative relief of partition is granted based on any admission by the Defendants in their pleadings, which admission, may in a given case, confer jurisdiction on the Court to grant an alternative relief. When the pleadings are confined to the relief of permanent injunction claimed by the Plaintiff and opposed by the Defendants and when specific issues were framed in respect of specific pleadings and the parties have gone to trial adducing evidence in support of their respective contentions pertaining to those issues, there is absolutely no justification for the trial Court in travelling beyond the pleadings, the issues and the evidence and grant a totally different relief not asked for by either of the parties. The parties were not required to adduce any evidence beyond the scope of the pleadings. Hence, they had no opportunity to put forth any evidence regarding the partition proposed by the Court. In fact, two other sons, who are said to be members of the joint family of the Defendants, are also not parties to the suit. However, the trial Court, unmindful of the limited scope of the pleadings and the issues arising therefrom went on to grant a larger relief of partition of the suit property. When a larger relief is prayed for and the claim for the same is not duly established, but when the evidence justifies grant of a smaller relief, granting of such smaller relief is permissible under Order VII Rule 7 CPC; which reads as under:

Order VII Rule 7 CPC:

Relief to be specifically stated.—Every plaint shall state specifically the relief which the Plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the Defendant in his written statement.

22. However, under the guise of the said provision, a relief larger than the one claimed by the Plaintiff in the suit cannot be granted.

23. In *Rajendra Tiwary v. Basudeo Prasad* (3) AIR 2002 S.C. 136, the Apex Court held:



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“Where the relief prayed for in the suit is a larger relief and if no case is made out for granting the same but the fact, as established, justify granting of a smaller relief, Order VII Rule 7 permits granting of such a relief to the parties. However, under the said provisions a relief larger than the one claimed by the Plaintiff in the suit cannot be granted”.

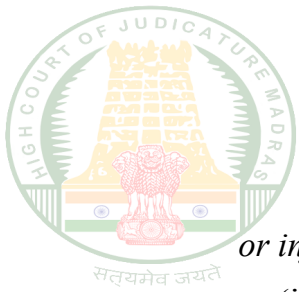
24. In view of the above decision of the Apex Court, it is not open for the trial Court to have granted a larger relief of partition deciding the question of title, that too, in the absence of other two sons of Defendant No. 3, who are also members of the joint family, in a suit filed for bare injunction. In a given case, the Court may, look into the aspect of title incidentally while considering grant of relief of injunction; but, however, deciding contentious questions of title on the face of rival and opposite claims, that too, in the absence of necessary pleadings and issues and evidence, and fixing the shares among some of the parties in respect of the suit property and granting a decree for partition, which is not prayed for by either of the parties is totally unwarranted and impermissible under law.

25. Learned Counsel for the Respondent-Plaintiff relied upon a decision in *P. Narasimham v. P. Venkata Narasimha Rao* (4) 1962 (1) 425 ALT, wherein it was held as follows:

“Even without an amendment, in a suit for possession of certain property with sole and exclusive rights therein, a decree for partition could be granted notwithstanding the absence of an alternative prayer, provided such a relief would not result in such prejudice or injustice to the other side”.

26. Relying upon the above decision, learned Counsel contended that applying the same analogy to the present case, the decree for partition granted by the trial Court is sustainable.

27. In the above case, the suit was filed for recovery of possession. The trial Court granted a decree for ‘partition. During the hearing of the appeal, the Plaintiff in the above suit applied for permission to amend the plaint by adding the relief of partition and separate possession of half share in the suit property in the alternative in order to obviate the difficulties arising out of the original frame of the suit. On the basis of the factual matrix and evidence available on record in the above case, the High Court held that it would be meaningless to drive the Plaintiff to another suit and therefore allowed the proposed amendment to the plaint holding that the amendment should be allowed in order to adjudicate upon the real issues arising in a case and there cannot be any insuperable difficulty to allow a Plaintiff to amend the plaint seeking an alternative relief in furtherance of justice and if it does not involve the other side in real hardship. It was further observed that even without an amendment, in a suit for possession of certain property, decree for partition could be granted notwithstanding the absence of an alternative prayer, provided such a relief would not result in such prejudice



A.S.No.514 of 2011

or injustice to the other side.”

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(iv) In the case of **Union of India vs. Ibrahim Uddin and another** reported in **(2012) 8 SCC 148** wherein this Court had held as follows:

“55. The Section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so. In *Ram Saran & Anr. v. Smt. Ganga Devi*, AIR 1972 SC 2685, this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of *Section 34* of Specific Relief Act, 1963 (hereinafter called ‘*Specific Relief Act*’) and, thus, not maintainable. In *Vinay Krishna v. Keshav Chandra & Anr.*, AIR 1993 SC 957, this Court dealt with a similar issue where the Plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to *Section 34* of the Specific Relief Act. (See also: *Gian Kaur v. Raghubir Singh*, (2011) 4 SCC 567).

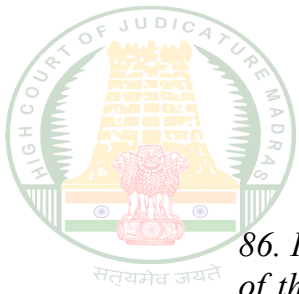
85. To sum up, in view of the above discussion, we reach the following conclusion:

85.1. The first appellate court as well as the High Court committed grave error in shifting the burden of proof on the Union of India, Appellant/Defendant No.1, though it could have been exclusively on the Plaintiff/Respondent No.1 to prove his case.

85.2. There is nothing on record to prove the grant/gift by the Maratha Government in favour of ancestors of Plaintiff/Respondent No.1 in the year 1800. Plaintiff/Respondent No. 1 miserably failed to prove the pedigree produced by him.

85.16. The courts below had wrongly drawn adverse inference against the Appellant/Defendant No.1 for not producing the documents as there was no direction of the court to produce the same. Neither the Plaintiff/Respondent No.1 had ever made any application in this respect nor he filed any application under *Order XI CPC* submitting any interrogation or for inspection or production of document.

85.17. The appellate courts have decided the appeals in unwarranted manner in complete derogation of the statutory requirements. Provisions of CPC and Evidence Act have been flagrantly violated.

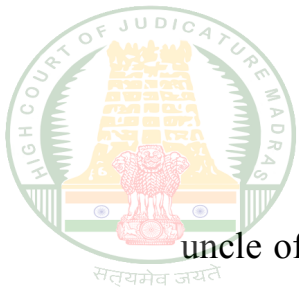


A.S.No.514 of 2011

86. *In view of above, appeal succeeds and is allowed, judgments and decrees of the first and second appellate courts are set aside and the judgment and decree dated 20.1.1998 passed by Civil Court in Original Suit No.442 of 1995 is restored. No costs.*”

13. By pointing out the aforesaid decisions, the learned Counsel for the Appellant submitted that the decree for partition and separate possession as well as specific performance granted by the Trial Court is legally not sustainable. Such decree passed by the Trial Court is beyond the scope of the suit. Further, no issue was framed by the Trial Court as to whether the Plaintiff is entitled for a decree for partition. In the absence of any issue having been framed, the Judgment and Decree passed by the Trial Court has to be set aside. Accordingly, the learned Counsel for the Appellants prayed for allowing this Appeal.

14. Per contra, the learned Counsel appearing for the first Respondent/Plaintiff submitted that the transaction between the Plaintiff and the first Defendant cannot be termed as a loan agreement. The first Defendant knowing fully well about the alienation of the property in favour of the Plaintiff, executed Ex.A-1 agreement of sale. The first Defendant is not an illiterate and he is a qualified Doctor and a holder of MBBS Decree. The father of the first Defendant was also a Doctor by profession. The Plaintiff is none other than the own brother of father of the first Defendant and paternal



A.S.No.514 of 2011

uncle of first Defendant. For the treatment of his mother – second Defendant, the first Defendant borrowed money on various occasions and executed the sale agreement. The first Defendant read over the endorsements on the sale agreement by himself and he is fully aware of the nature of document executed by him. In this context, the learned Counsel appearing for the first Respondent/Plaintiff invited the attention of this Court to the deposition of first Defendant as D.W-1.

15. The learned Counsel for the first Respondent/Plaintiff further submitted that the Appellants cannot be permitted to argue contrary to Section 92 of the Indian Evidence Act. When once a document has been executed, thereafter, the parties to the document cannot be allowed to turn around and deny the recitals contained in such document. In this case, the contention of the first Defendant with reference to Ex.A-1 is against the provisions of Section 92 of the Indian Evidence Act and it cannot be accepted. Therefore, the learned trial Judge had on appreciation of evidence concluded that Ex.A-1, agreement of sale is legally enforceable and decreed the suit filed by the first Respondent-Plaintiff for specific performance.

16. The learned Counsel appearing for the first Respondent/Plaintiff



A.S.No.514 of 2011

invited the attention of this Court to Ex.A-1 recitals as well as the deposition of DW1 wherein it is stated that the property is in the control of the Plaintiff.

Regarding the contention that the Plaintiff had attempted to knock off the property through the Court, there is no documentary evidence to show that the property in question was worth about Rs.70,00,000/- (Rupees Seventy Lakhs only) as on the date of Ex.A-1, agreement of sale. The first Defendant examined himself as DW1 but he has not filed any document in support of his defence. While so, the conclusion reached by the Trial Court is probable and reasonable. The appeal lacks merit and it has to be dismissed with costs for the first Respondent-Plaintiff.

17. In support of his contention, the learned Counsel for the First Respondent/Plaintiff relied on the following rulings:-

(i) In the case of *Nanjammal, etc & another -vs- Palaniammal* reported in **1993 (2) LW 205** wherein this Court had held as follows:

“5. It was one of the contentions urged in the court below that the Plaintiff had not even obtained encumbrance certificate before the execution of Ex.A-1 and she had not taken the title deed from the Defendant. The Court below has pointed out the recital in Ex.A-1 under which the Defendant had undertaken to obtain an encumbrance certificate and give it to the Plaintiff. The fact that the Plaintiff had not taken the title deed in advance does not in any way discredit the truth of the agreement in Ex.A-1. In fact, the evidence of the Defendant is that what was written was really an agreement though it was only for the purpose of securing the loan. She (Defendant) has admitted that the Plaintiff wanted her to execute an agreement for sale by way of security



A.S.No.514 of 2011

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for the loan and she did execute such an agreement. When that is the fact, it is not open to the Defendant to raise a plea that the terms of the agreement should be ignored as the real purpose was to secure the loan transaction. It is conceded by learned Counsel for the Appellants that the Defendant is barred from raising such a plea by [Section 92](#) of the Indian Evidence Act.”

(ii) In the case of **A. Abdul Rashid Khan (Dead) and others -vs-**

P.A.K.A. Shahul Hamid and others reported in (2000) 10 SCC 636 wherein

this Court had held as follows:

“4. At the outset, we may consider the case of the Appellants, as contained in the additional written statement that it was understood between the parties that Plaintiff would obtain the signatures of Respondent Nos. 2 and 3 and that the sale deed would be executed as one composite sale deed of the entire property. On the contrary, the case of the Respondent No. 1 is that Appellants undertook to get the signatures of their sisters. They are all plea and contentions, which are not born out of the agreement and sale. These are pleas by both the parties beyond the said written agreement. The law in this regard is well settled, in view of [Section 92](#) of Indian Evidence Act, where any contract which is required by law to be reduced in writing, then no oral evidence or understanding to the contrary or what is apart from the said contract would be admissible in law. It is not in dispute in the present case, the agreement of sale was reduced in writing which was for an immovable property. Hence, these pleas, both of the Appellants and Respondent No. 1, as aforesaid being beyond the written agreement of sale cannot be taken into consideration.

14. Thus we have no hesitation to hold, even where any property is held jointly, and once any party to the contract has agreed to sell such joint property agreement, then, even if other co-sharer has not joined at least to the extent of his share, he is bound to execute, the sale deed. However, in the absence of other co-sharer there could not be any decree of any specified part of the property to be partitioned and possession given. The decree could only be to the extent of transferring the share of the Appellants in such property to other such contracting party. In the present case, it is not in dispute that the Appellants have 5/6 share in the property. So, the Plaintiffs suit for specific performance to the extent of this 5/6th share was rightly decreed by the High Court which requires no interference.

15. So far the other part of the High Court's order by which it decreed the alternative relief of Respondent No.1 for partition of the suit



property in six equal share by metes and bounds and delivering separate possession over these such shares, on the face of it is erroneous and cannot be sustained, in a suit for specific performance. The vendee on the date of filing this suit has yet not become the owner of this property, as he merely seeks right in the said property though the decree of specific performance. When the sale deed itself has yet to be executed, whose right in the property has yet not matured, how can he claim partition and possession over it? Even after decree is passed, his right will only mature when he deposit the balance consideration and the sale deed is actually executed. This apart how could be any partition in the property, without other co-sharer joining, who are not part of the disputed agreement. No issue is framed between them. No evidence led. Hence, we find that the High Court was not right in decreeing this alternative prayer of partition in this suit.”

(iii) In the case of **P.C.Varghese -vs- Devaki Amma Balambika Devi**

and other reported in (2005) 8 SCC 486 wherein this Court had held as follows:

“22. Sub-section (3) of Section 12 of the Specific Relief Act, 1963 (for short “the Act”) was enacted with a view to meet such eventualities when the whole of the contract cannot be performed by the vendor. It reads as under:

“12. (3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the Defendant.”



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The said provision has been enacted for the benefit of the purchaser and, thus, cannot operate to his detriment. We may notice that under the old Specific Relief Act, the Plaintiff was not only required to relinquish his claim of specific contract as regards that part of the contract which cannot be performed but also was required to pay the entire amount of consideration; whereas in terms of Section 12(3) of the new Specific Relief Act, 1963 he is now required to pay the amount of consideration proportionately.

31. The trial court not only granted a decree for specific performance of contract but also a preliminary decree for partition.

32. The submission of Mr Reddy to the effect that the learned trial Judge committed a serious error in granting a decree for partition along with a decree for specific performance of contract need not detain us long as in view of Section 22(1)(a) of the Act a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract. As in this case, the Appellant herein in view of amended prayer 'C' relinquished his claim in respect of the property belonging to the minor Respondent 4, he also prayed for a decree for partition and such a prayer having been allowed, no exception thereto can be taken. In any event, the said question has not been raised by the Respondents before the High Court at all. Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings, the Plaintiff may claim a decree for possession and/or partition in a suit for specific performance. Even though strictly speaking, the right to possession accrues only when a suit for specific performance is decreed, indisputably such a decree for possession and/or partition is prayed for in anticipation of the grant of prayer for specific performance of contract. (See Babu Lal v. Hazari Lal Kishori Lal [(1982) 1 SCC 525] .)

33. The only person who could question the said decree for partition was Respondent 4. As noticed hereinbefore, a decree as against her has attained finality as she did not prefer any appeal thereagainst.

34. The said decree for partition, therefore, has attained finality. No decree for specific performance of contract, however, has been passed as against Respondents 4 and 5. They are, however, otherwise bound by the decree passed by the learned trial Judge. Therefore, they are also proper parties, though not necessary parties."

(iv) In the case of **Chanda (Dead) through LRs., -vs- Rattni and another** reported in (2007) 14 SCC 26 wherein this Court had held as follows:

"A. Specific Relief Act, 1963 – S.28 – Scope of, compared with S. 35(c) of



A.S.No.514 of 2011

Specific Relief Act, 1877 – Object of new section i.e., S.28 stated – Held, the present section seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring any of the parties to initiate separate proceedings – The object is to avoid multiplicity of suits – Specific Relief Act, 1877, S.35(c)

Section 28 of the Specific Relief Act, 1963 corresponds to Section 35(c) of the Specific Relief Act, 1877 under which it was open to the vendor or lessor in the circumstances mentioned in that section to bring a separate suit for rescission. But Section 28 of the new Act goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the Plaintiff fails to pay the purchase money within the period fixed. Likewise under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession, etc. Thus, the present seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring any of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits.”

“8. *The present section corresponds to Section 35(c) of the Specific Relief Act, 1877 (hereinafter referred to as “the repealed Act”) under which it was open to the vendor or lessor in the circumstances mentioned in that section to bring a separate suit for rescission; but this section goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the Plaintiff fails to pay the purchase money within the period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings. The object is to avoid multiplicity of suits. Likewise under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession, etc. A suit for specific performance does not come to an end on passing of a decree and the court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed.”*

(v) In the case of **T.G.Pongiannan -vs- K.M.Natarajan** reported in

2009 (6) CTC 301 wherein this Court had held as follows:

“Held: All the above decisions would exemplify and demonstrate that



A.S.No.514 of 2011

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the Plaintiff's right to get specific performance cannot simply be ignored on the mere plea of the Defendants that it was not intended to be an agreement to sell, but it was only to secure repayment of the loan

The conduct of the Defendants should be taken note of Even though the registered Agreement to Sell-Ex. A1 emerged as early as 30.8.1999, the Defendants have it chosen 10, as per their own version, repay the loan or send any notice calling upon the Plaintiff to return Ex.A-1.

The Defendants have not proved by any shard or shred, scintilla or pint-sized, iota or molecule extent of evidence that any interest was paid by them to Plaintiff towards the alleged loan. As such, this Court can only treat their plea as a false one. Had really DWI (DI), claimed in his Chief Examination Affidavit, paid 18% interest for the sum of Rs. 75,000/-or so, then there would have been at least some passbook or note book or any chit, evidencing the same."

18. By relying on the above decisions, it was contended by the learned Counsel for the Plaintiff-first Respondent that the claim of the Plaintiff is borne out of material documents and it cannot be simply ignored on the plea of the first Defendant that Ex.A-1 was not intended for sale of the plaintiff scheduled property but it was executed for borrowal of money. When the first Defendant-Appellant did not produce any documentary evidence to strengthen his defence, the Trial Court is wholly justified in passing a preliminary decree for partition and separate possession. Further, the Trial Court did not grant such a decree for the entire property but excluded the property to be fell to the share of the Defendants 2 and 3 by taking note of the fact that the Defendants 2 and 3 are not signatories to the agreement of sale under Ex.A-1. Thus, it is submitted by the learned Counsel for the First Respondent-Plaintiff that the preliminary decree passed by the Trial Court is legally sustainable and it does



A.S.No.514 of 2011

not call for any interference by this Court. Accordingly, he prayed for dismissal of this appeal.

Point for determination:

Whether the Judgment and Decree dated 12.07.2010 made in O.S. No. 14 of 2009 on the file of the learned III Additional District Judge at Puducherry is liable to be interfered with as perverse?

19. Heard the learned Counsel for the Appellants and the learned Counsel for the first Respondent-Plaintiff. Perused the Complaint, written statement and deposition of P.W-1 as well as D.W-1 and also the Judgment dated 12.07.2010 passed in O.S. No. 14 of 2009, which is impugned in this appeal.

20. Before proceeding with this appeal, it must be necessary to state that pending suit, the first Defendant/Appellant died on 31st December 2011 as a bachelor. Subsequently, the second Defendant namely the mother of the first Defendant also died. Therefore, for the purpose of adjudication of this appeal, the third Defendant in the suit was transposed as the second Appellant as per



A.S.No.514 of 2011

the order dated 23.02.2022 passed by this Court.

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21. It is an admitted fact that the plaint scheduled property belongs to the father of the first Defendant, who is also the brother of the Plaintiff. The relationship between the Plaintiff and Defendants is not disputed. It is also an admitted fact that on the death of the father of the first Defendant, the property in question devolved on the second Defendant-wife, first Defendant-son and third Defendant – daughter. It is also an admitted fact that the second Defendant was seriously ill and she was admitted in the hospital. According to the first Defendant to meet the medical expenses of his ailing mother, he borrowed amount from the Plaintiff by reposing absolute faith in him. However, the first Defendant obtained his signature and made a claim that the first Defendant had entered into an agreement of sale. It was also submitted that the sale consideration was fixed at Rs.6 lakhs out of which a sum of Rs.3,05,000/- was received as advance. Even prior to institution of suit, a pre-suit notice dated 17.11.2008 was sent by the Plaintiff for which a reply notice dated 21.11.2008 was sent by the first Defendant. In the reply notice the first Defendant repudiated all the averments made by the Plaintiff.

22. In the notice dated 17.11.2008, the Plaintiff-first Respondent has



A.S.No.514 of 2011

referred to the execution of the agreement of sale dated 17.07.2008 by the first Defendant, the receipt of various amount by the first Defendant on various dates and the fixation of sale consideration of Rs.6,00,000/-. It was further stated that after receipt of the advance sale consideration, the first Defendant evaded to execute the sale consideration. Therefore, by the notice dated 17.11.2008, the first Defendant was called upon to receive the balance sum of Rs.2,95,000/- and to execute the sale deed in his favour.

23. On receipt of the notice dated 17.11.2008, a reply notice dated 21.11.2008 was sent by the first Defendant. The reply notice dated 21.11.2008 of the first Defendant is required to be looked into to conclude as to whether Ex.A-1, agreement of sale has been executed by the first Defendant with an intention to alienate the property described in the plaint. In the reply notice, among other things, it was stated that in connection with the property in question, already a suit in O.S. No. 682 of 2002 has been filed and it is pending. It was further stated that the property is worth about Rs.70 lakhs as on the date of the so-called agreement of sale dated 27.11.2008. It was further stated that the transaction between the first Defendant and the Plaintiff is a loan transaction and the first Defendant had received the amount for the purpose of treatment of the second Defendant. It was also submitted that the



A.S.No.514 of 2011

second and third Defendants are not parties to the agreement of sale.

However, when they were asked about their intention to alienate the property, they have clearly stated that they have no intention to sell the properties. Thus, it was stated that there are so many infirmities in the alleged contract between the Plaintiff and the first Defendant and therefore also, the property could not be sold.

24. Thus, it is evident that the purpose for which the so-called agreement was created is not for sale of the plaint scheduled property. It is further evident that it is not as if the first Defendant alone is the sole and exclusive owner of the property but the Defendants 2 and 3 are also having a share in it. Further, in connection with the property in question, a suit in O.S. No. 682 of 2002 in which the brother of the Plaintiff was also a party. It is not known or there was no evidence made available as to whether O.S. No. 682 of 2002 was disposed of and if so, what was the outcome of the same.

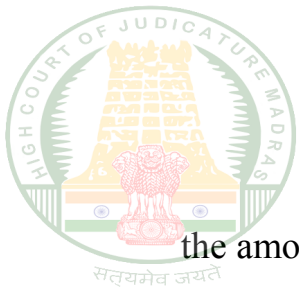
25. Be that as it may. It is an admitted fact that at the time when Ex.A-1 agreement of sale was entered into between the Plaintiff and first Defendant, the second Defendant was in hospital and was taking treatment. According to the first Defendant, he borrowed amount from the Plaintiff for



A.S.No.514 of 2011

the purpose of treatment of her mother and there was no intention to alienate the property to the Plaintiff. Further, the first Defendant admitted that he received money as loan from the Plaintiff and he is also ready and willing to repay the amount to the Plaintiff. The Plaintiff who has come forward with the suit for specific performance is bound to prove that Ex.A-1 was whole heartedly executed by the first Defendant for alienating the plaint scheduled property. Further, the first Defendant has no exclusive saleable right in the property in question. The second and third Defendants also have got a share in the property. While so, the Plaintiff has not even chosen to obtain the concurrence of the second and third Defendants the intention of the first Defendant to alienate the property. Even in the reply notice, it was stated that when the Defendants 2 and 3 were informed about the claim of the Plaintiff they have unequivocally expressed that they are not interested to sell the plaint scheduled property to the Plaintiff. In such circumstances, whether a preliminary decree could be passed by the Trial Court is required to be examined.

26. Section 22 of the Specific Relief Act empowers the Court to pass a decree for specific performance. Section 22 empowers the Trial Court to even grant a decree for possession, partition, separate possession or refund of



A.S.No.514 of 2011

the amount paid as sale advance, depending upon the evidence made available.

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At the same time, it is an equitable relief and it cannot be awarded for the sake of filing the suit. At the same time, Sub-Section 2 of Section 22 contemplates that an equitable relief of specific performance or the allied relief of partition need not be granted unless it was sought for by the Plaintiff. However, if the Plaintiff did not sought for the allied relief of partition, the Court can permit the Plaintiff to amend the plaint before granting such a relief. In this case, the Trial Court granted a preliminary decree for partition even without amending the plaint. Further, there is no specific issue framed in the suit for partition of the plaint scheduled property. In the absence of any issue having been framed for grant of partition, the Trial Court is legally precluded from granting the relief of partition. Thus, this Court is of the view that the preliminary decree for partition granted without framing an issue is beyond the nature and scope of the plaint filed by the Plaintiff and it is liable to be interfered with.

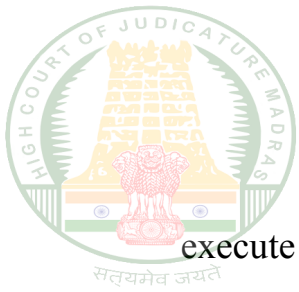
27. Yet another circumstance that impels this Court to interfere with the Judgment and Decree of the Trial Court is that the first Defendant, in the reply notice as well as written statement has clearly stated that the worth of the property is Rs.70 lakhs but the Plaintiff is attempting to grab it for a sum of Rs.6 lakhs. This was not specifically denied by the Plaintiff by filing a



A.S.No.514 of 2011

rejoinder or any other document to show that the value of the property is exaggerated by the first Defendant. While so, it shall be presumed that the value of the plaint scheduled property is manifold and it is sought to be snatched by the Plaintiff for a throw away price of Rs.6 lakhs. Consequently, the Court below ought not to have granted the equitable relief of specific performance of the agreement, when the first Defendant has not come forward with clean hands.

28. Yet another circumstances required to be considered in this case, the first Defendant has not disputed or denied the amount received from the Plaintiff. It is his contention that he is ready to repay the amount. In such circumstances, having regard to the fact that the first Defendant alone is not the owner of the property and the Defendants 2 and 3 are not inclined to alienate the property to the Plaintiff, the trial court ought to have granted the alternative relief of refund of the amount. Having regard to the over all facts and circumstance of the case, this Court is of the view that the agreement of sale under Ex.A-1 cannot be legally enforced against the Defendants. The documents made available only indicate that it was a loan transaction and the Defendants never intended to alienate the property to the Plaintiff. The first Defendant was exploited by the Plaintiff by exerting pressure on him to



A.S.No.514 of 2011

execute a document as security towards the borrowed money but converting it into an agreement of sale. In such circumstance, this Court is of the view that the Plaintiff is only entitled for refund of the amount he paid to the first Defendant and he is not entitled for the relief of partition, specific performance or possession of the plaint scheduled property.

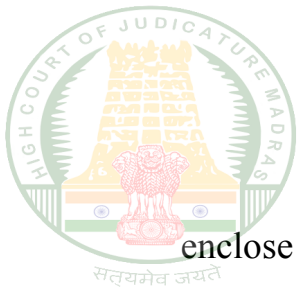
29. The learned Counsel for the Plaintiff/first Respondent submitted that the first Defendant is not an illiterate but a Doctor by profession. The first Defendant, having executed Ex.A-1 agreement with full knowledge, cannot be permitted to turn around and dispute it contrary to Section 92 of the Indian Evidence Act. This submission of the Counsel for the Plaintiff-first Respondent cannot be accepted. As per the Principles of Contract, both parties to a contract must be equally placed. Here, the Plaintiff had the money and resources whereas the first Defendant was at the mercy of the Plaintiff, as he require money for treatment of his mother. The Plaintiff exploited this situation to create Ex.A-1 to his advantage. On the other hand, the first Defendant, due to the urgency was forced to sign the dotted lines styled as sale agreement instead of a simple promissory note. As mentioned above, the first Defendant was not an exclusive owner of the property. The agreement under Ex.A-1 precludes and deprives the right of the Defendants 2 and 3 over



A.S.No.514 of 2011

the plaint schedule described property. In such circumstances also, the provisions of Section 92 of the Indian Evidence Act cannot be pressed into service in this case. In such a situation, the execution of such a sale agreement itself is unenforceable.

30. On consideration of the over all facts, it could be evident that the first Defendant was in financial doldrum and was unable to afford the medical treatment of his mother, the second Defendant. This has prompted him to avail loan from the Plaintiff. The Plaintiff exploited the financial shortcoming of the first Defendant and created Ex.A-1, agreement of sale. Invariably in specific performance cases, for the money advanced by a party, the person who receives money executes documents without knowing the repercussions. It is in this context, the principles underlying the Indian Contract Act is to be ensured that both the parties to the contract are placed in equal position and the vulnerability or otherwise of the other is not exploited. In such circumstances, the agreement under Ex.A-1 cannot be considered as a genuine or the one executed by the first Defendant voluntarily. Considering the fact that the first Defendant was in a disadvantageous position due to lack of resources at his command for the treatment of his mother this Court holds that the Plaintiff had taken advantage of such a position of the first Defendant to



A.S.No.514 of 2011

enclose the property which is worth more than Rs.70 lakhs. The contract was not entered into between equally placed individuals. The Defendant was at the mercy of the Plaintiff when he was executing the sale agreement deed to mobilise amount to treat his ailing mother. In such circumstances, the Judgment and Decree granted by the Trial Court is liable to be interfered with.

31. The rulings on which the learned Counsel for the Respondent relied will not help the Respondent in this case. The parent document or Encumbrance Certificate had not been handed over to the Plaintiff at the time of execution of Ex.A-1. Therefore, in the light of the rulings cited by the learned Counsel for the Appellant in (i) ***Messrs. Trojan & Company -vs- RM. N.N. Nagappa Chettiar*** reported in ***1953 SCR 789***, (ii) ***P.C.Varghese -vs- Devaki Amma Balambika Devi and other*** reported in ***(2005) 8 SCC 486***, (iii) ***Lavu Sri Krishna Rao -vs- Dr.Moturi Nagendra Rao*** reported in ***2006 SCC OnLine AP 669***, the judgment of the trial Court is found unacceptable. When the Plaintiff has sought specific relief for enforcement of contract for sale of the property which was valued Rs.70,00,000/-, the Court cannot pass a preliminary decree without conducting any enquiry as to the real value of the property and the price at which it was sought to be purchased by the Plaintiff. Therefore, this Court is of the view that the Plaintiff is only entitled for the



A.S.No.514 of 2011

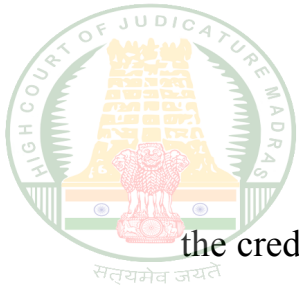
alternative relief of refund of the amount paid to the first Defendant.

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32. The ruling cited by the learned Counsel for the Respondent in the cases of *P.C.Varghese -vs- Devaki Amma Balambiga Devi Chandra* and *T.G.Pongiannan -vs- K.M.Natarajan* reported in 2009 (6) CTC 301 will not hold good in the facts of this case. When the property in question was worth Rs.70,00,000/- on the date of the execution of the sale agreement, the Plaintiff cannot be allowed to get it for a paltry sum of Rs.6,00,000/-.

33. In the light of the above discussion, the point for consideration is answered partly in favour of the Appellants and against the Respondents. The Judgment and Decree dated 12.07.2010 made in O.S. No. 14 of 2009 on the file of the learned III Additional District Judge at Puducherry is modified.

In the result, **the Appeal Suit is partly allowed** modifying the Judgment and Decree dated 12.07.2010 in O.S. No. 14 of 2009 on the file of the learned III Additional District Judge at Puducherry. The Plaintiff is entitled to the sum of Rs.3,05,000/- paid by him to the first Defendant with interest from the date of plaint till the date of realisation at 18% per annum. The Plaintiff is also permitted to withdraw the amount, which he had deposited to



A.S.No.514 of 2011

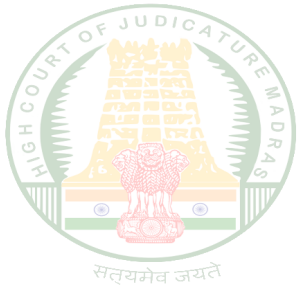
the credit of the suit, if any. No costs. Consequently, connected miscellaneous petition is closed.

02.06.2025

Index: Yes/No
srm/shl

To

- 1.The III Additional District Judge at Puducherry
- 2.The Section Officer,
Vernacular Records,
Madras High Court.



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A.S.No.514 of 2011

SATHI KUMAR SUKUMARA KURUP, J

srm/shl

Judgment made in
A.S. No. 514 of 2011

02.06.2025