



A.S.No.531 of 2012

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Dated : 18.03.2025

CORAM:

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Appeal Suit. No.531 of 2012

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C.Mohandas

.. Appellant

Versus

1. Rajkumar Jain  
Son of Srinivas Jain  
Rep. By its Power Agent,  
P.C.Jain

2. B.Gurusamy  
3. A.Hari  
4. A.Natarajan

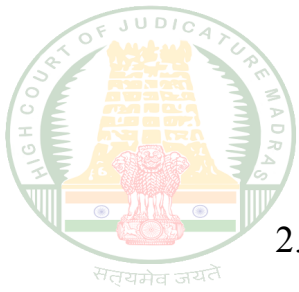
.. Respondents

Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the Judgment and decree dated 20.12.2011 made in O.S. No. 42 of 2010 on the file of the Additional District cum Fast Track Court -II, Poonammallee.

For Appellant : Mr. V. Raghavachari  
For Respondents : Mr. K. Bijai Sunder for R-1  
R-2 & R-3- Ex-parte  
R-4-No Appearance

**J U D G M E N T**

This First Appeal has been filed to set aside Judgment and decree dated 20.12.2011 passed in O.S. No. 42 of 2010 on the file of the learned Additional District Judge, Fast Track Court -II, Poonammallee.



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2. The fourth Defendant in O.S. No. 42 of 2010 on the file of learned Additional District Judge, Fast Track Court – II, Thiruvallur at Poonamallee is the Appellant before this Court.

3. The first Respondent in this Appeal is the Plaintiff, who had instituted the said suit in O.S. No. 42 of 2010 for the following reliefs:-

“(i) Directing the first Defendant to execute the sale deed in respect of the schedule mentioned property to and in favour of the Plaintiff on payment of the balance sale consideration of a sum of Rs.5,50,000/- by the Plaintiff to the first Defendant within a day to be specified by this Honourable Court and in default directing the court official of this Honourable Court to execute the sale deed in respect of the schedule mentioned property to and in favour of the Plaintiff on deposit of the said balance sale consideration.

(ii) Directing the Defendant to deliver vacant possession of the schedule mentioned property.

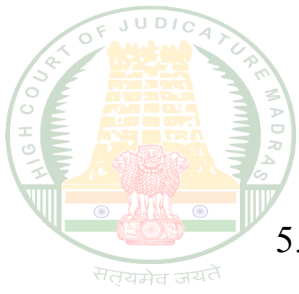
(ii) Alternatively, if the Plaintiff is not entitled for specific performance, directing the first Defendant to repay the advance amount of Rs.5,50,000/- paid by him towards sale agreement with interest at the rate of 18% per annum from the date of agreement i.e., 20.07.2005 till the date of realisation.

(iv) directing the Defendants to pay the liquidated damages to the tune of Rs.50,000/- with future interest at 18% per annum from the date of agreement dated 20.07.2005.

(v) Declaring the sale deed No. 10090/2006 dated 22.11.2006 in favour of the fourth Defendant as null and void.

(vi) Directing the Defendants to pay the costs of this proceedings to the Plaintiff.”

4. For the sake of convenience, the parties to this Appeal shall be referred to as per their litigative status in the suit as 'Plaintiff' and 'Defendants' as the case may be.



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5. The brief facts, which are necessary for disposal of this Appeal

Suit, are as follows:

5.1. The first Defendant was the owner of the suit scheduled property bearing Plot No.3, Door No.55, Defence Enclave, Masuthi Street, Muktha Pudupet Village, Ambattur Taluk, Thiruvallur District comprised in S.No.38/4, measuring 2400 sq. ft. For purchase of this property, the Plaintiff entered into an agreement of sale dated 20.07.2005 with the first Defendant for a total sale consideration of Rs.11,00,000/- and it was registered as Doc. No. 4226/2005 on the file of Sub Registrar, Avadi. On the date of agreement, the Plaintiff paid Rs.4,50,000/- and subsequently, on 09.12.2007, another sum of Rs.50,000/- was received by the first Defendant, which was also duly endorsed in the agreement of sale itself. Again, on 14.07.2008, the first Defendant received additional sum of Rs.50,000/- and thus a total sum of Rs.5,50,000/- was paid as advance sale consideration as against the total sale consideration of Rs.11,00,000/- fixed in the agreement of sale.

5.2. According to the Plaintiff, the first Defendant, in the agreement dated 20.07.2005, gave a specific undertaking in clause 4 for obtaining the encumbrance certificate. Further, as per clause 7 of agreement, the first Defendant assured that the property is free from any encumbrance except mortgage loan with the LIC Housing Finance Limited. Believing the



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representation of the first Defendant to be true, the Plaintiff expressed his readiness and willingness to proceed with the sale transaction, however, the first Defendant gave evasive reply for execution of sale deed in favour of the Plaintiff. The Plaintiff got suspicious in the attitude and behaviour of the first Defendant in procrastinating the execution of the sale deed in his favour. Therefore, the Plaintiff obtained encumbrance certificate but to his shock and surprise, he found that the Plaintiff had entered into an agreement of sale with the second Defendant on 15.02.2005. The said agreement dated 15.02.2005 was executed by the third Defendant, as power of attorney agent of the first Defendant and it was also registered as Doc. No.822/2005 before the Sub Registrar, Avadi. The encumbrance certificate revealed that subsequently, the first Defendant sold the plaint schedule property by executing a sale deed dated 22.11.2006 in favour of the fourth Defendant, which was registered as document No.10090 of 2006 on the file of Sub-Registrar, Avadi. Thus, the first Defendant committed a criminal breach of trust in active collusion with the Defendants 2 and 4 hereunder.

5.3. While, the earlier agreement of sale dated 20.07.2005 between Plaintiff and first Defendant is subsisting, the first Defendant in collusion with the Defendants 2 to 4 have committed fraud and criminal breach of trust. The subsequent sale deed dated 22.11.2006 in favour of the fourth Defendant



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becomes void and invalid. Hence, the sale deed vide Doc. No.10090/2006

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dated 22.11.2006 to be declared as void. Since it was illegal transactions as per the Transfer of Property Act on account of breach of contract committed by the first Defendant, the Plaintiff is entitled to get damages to the tune of Rs.50,000/- with interest at the rate of 18% from the date of agreement of sale dated 20.07.2005 till the date of realization. Apart from the execution of sale deed to be ordered in favour of the Plaintiff, if any justifiable reason exists and this Court holds that the Plaintiff is not entitled to specific performance of contract, then the refund of advance amount paid to the first Defendant to the tune of Rs.5,50,000/- towards sale consideration may be considered with interest. Till the date of realization of the amount a charge on the schedule mentioned property, as per Section 55 (2) of Transfer of Property Act, may be ordered.

5.4. In this context, the Plaintiff issued a lawyer's notice on 14.11.2007 to the first Defendant calling upon him to express his readiness and willingness to perform his part of the contract by executing the sale deed on receiving the balance sale consideration. However, after verification of the encumbrance certificate, the Plaintiff issued another legal notice dated 12.02.2009 to all the Defendants calling upon the first Defendant (a) to have the sale agreement dated 15.02.2005 in favour of the second Defendant and



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sale deed dated 22.11.2006 in favour of the fourth Defendant duly cancelled

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(b) to execute the sale deed in favour of the Plaintiff by receiving the balance sale consideration after discharging the equitable mortgage in favour of LIC Housing Finance Limited. Subsequently, on verification, the Plaintiff came to understand that the equitable mortgage with LIC Housing Finance Limited was discharged. Hence, the Plaintiff had approached this Court for specific performance of the said agreement of sale dated 20.07.2005 and for declaration that the subsequent sale dated 22.11.2006 is null and void.

6. In spite of notice in the suit, the Defendants 1 to 3 have not come forward to contest the suit and they remained ex-parte. The fourth Defendant alone filed written statement.

7. The contents of the written statement filed by the fourth Defendant are briefly set out as follows:-

7.1. The Power of Attorney Agent cannot give evidence on behalf of the principal and the principal alone has to give evidence for his case. The first Defendant was the owner of the Suit property. The fourth Defendant was not aware of the agreement of sale between the Plaintiff and the first Defendant on 20.07.2005. The fourth Defendant further denies the allegation



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by the Plaintiff that on the date of agreement for sale he paid Rs.4,50,000/- to the first Defendant and subsequently paid Rs.50,000/- on 09.12.2007 and paid another sum of Rs.50,000/- on 14.07.2008 as additional advance amount to the first Defendant. According to the fourth Defendant, the first Defendant approached this Defendant and offered to sell the Suit property. After negotiations, the sale consideration was fixed at Rs.8,50,000/-. The first Defendant disclosed that his original sale deeds are mortgaged with LIC Housing Finance Limited. The fourth Defendant therefore approached the LIC Housing Finance Limited for availing loan to purchase the suit property. The fourth Defendant paid Rs.2,66,028/- in cash to the first Defendant on 05.08.2006 and another sum of Rs.33,972/- in cash to LIC Housing Finance Limited to discharge the loan availed by the first Defendant. That apart, a sum of Rs.5,50,000/- was sanctioned by the LIC Housing Finance Limited towards loan payable to LIC Housing Finance Limited by the first Defendant. Upon receipt of such sum, the first Defendant executed a registered sale deed dated 22.11.2006 in favour of the fourth Defendant and put the fourth Defendant in possession of the Suit property.

7.2. According to the fourth Defendant, as the property was already under mortgage with LIC Housing Finance Ltd., and the original sale deed of the first Defendant was with the LIC Housing Finance Ltd., from whom the



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fourth Defendant availed loan, it is not known as to how the Plaintiff entered into an agreement of sale dated 20.07.2005 with the first Defendant. The fourth Defendant purchased the Suit property in a bonafide manner and paid the sale consideration to the first Defendant in good faith. The fourth Defendant was not aware of the transaction that took place between the Plaintiff and other Defendants. The fourth Defendant does not know as to how the Plaintiff could pay the advance sale consideration to the first Defendant when the property is under mortgage with LIC Housing Finance Ltd., The fourth Defendant suspects some foul play by the Plaintiff and the first Defendant. The alleged agreement between the Plaintiff and the first Defendant is not genuine. The Plaintiff is put to strict proof of the alleged agreement and the subsequent endorsement. In any event, the claim for specific performance is time barred. The fourth Defendant is a bonafide transferee for valuable consideration and therefore, the relief of declaration prayed for by the Plaintiff is not maintainable. The Plaintiff was not always ready and willing to perform his part of contract. The fourth Defendant purchased the property on 22.11.2006 and immediately occupied the suit property and house tax assessment is also transferred in the name of the fourth Defendant. The Plaintiff is fully aware of the same and filed the suit belatedly. Therefore, the suit is hopelessly barred by limitation. Accordingly, the fourth



Defendant prayed for dismissal of the suit.

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8. Based on the above pleadings of the Plaintiff and the fourth Defendant, the learned second Additional District Judge, Fast Track Court -2, Tiruvallur at Poonamallee framed the following issues:-

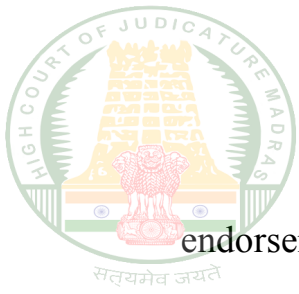
*(i) Whether the Plaintiff is entitled to the relief of specific performance of contract for sale of the property?*

*(ii) Whether the Plaintiff is entitled to get relief of refund of advance amount of Rs.5,50,000/- paid to the first Defendant on 20.07.2005 with interest at the rate of 18% per annum from the date of agreement for sale till the date of refund?*

*(iii) Whether the Plaintiff is entitled to the damages of Rs.50,000/- along with interest at the rate of 18% per annum from the date of sale agreement on 20.07.2005?*

*(iv) Whether the Plaintiff is entitled to the relief of declaration that the sale deed dated 02.11.2006 executed by the first Defendant in favour of the fourth Defendant is null and void?*

9. On the above issues, trial proceeded. The Power of Attorney agent of the Plaintiff/Mr. P.C. Jain examined himself as P.W-1 and marked documents under Ex.A-1 to Ex.A-10. Ex.A-1 is the notarized Power of Attorney deed executed by the Plaintiff/Rajkumar Jain in favour of his brother P.C. Jain. Ex.A-2 is the registered sale agreement deed dated 20.07.2005 registered as document No.4226/2005. Ex.A-3 is the copy of the legal notice sent by the Plaintiff to the first Defendant. Ex.A-4 is the endorsement dated 09.12.2007 made by the first Defendant on the sale agreement. Ex.A-5 is the



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endorsement dated 14.07.2008 made by the first Defendant on the sale agreement deed. Ex.A-6 is the encumbrance certificate and Ex.A-7 is the legal notice sent to the Defendants 1 to 4 on behalf of the Plaintiff. Ex.A-8 is the acknowledgement card signed by the Defendants. Ex.A-9 and Ex.A-10 are the returned registered postal covers to the Plaintiff.

10. On behalf of the Defendants, the fourth Defendant examined himself as D.W-1. During the examination of the fourth Defendant as D.W-1, the documents relied by him were marked as Ex.B-1 to Ex.B-5. Ex.B1 is the loan sanction letter from LIC in favour of the fourth Defendant. Ex.B-2 is the certificate issued by LIC for settling the dues on behalf of D-1 by D-4 dated 05.11.2006. Ex.B-3 is the registered sale deed in the name of the fourth Defendant executed by the first Defendant. Ex.B-4 is the house tax receipt in respect of the Suit property. Ex. B-5 is the receipt of electricity service connection in the property.

11. On assessment of evidence, both oral and documentary, the learned Second Additional District Judge, Fast Track Court – II, Tiruvallur at Poonamallee by the Judgment and decree dated 20.12.2011 declared the sale deed executed by the first Defendant in favour of the fourth Defendant dated



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22.11.2006 as null and void and granted a decree for specific performance in favour of the Plaintiff.

12. Aggrieved by the said judgment dated 20.12.2011, the fourth Defendant is before this Court with this Appeal Suit.

13. Mr. V. Raghavachari, learned Counsel appearing for the fourth Defendant submitted that the Plaintiff in the Suit is Rajkumar Jain Son of Sreenivas Jain. He instituted the Suit through power of attorney agent P.C.Jain, who is none other than his brother. During trial, the Defendants 1 to 3 remained *ex parte*. The fourth Defendant who had purchased the property alone contested the Suit. The fact that the property was mortgaged and the fourth Defendant had scrutinized the title deeds in the office of the mortgagee would prove the circumstances under which the fourth Defendant had purchased the property. The fact that Encumbrance was not applied and scrutinized by the fourth Defendant will not make the position of the Appellant difficult as the same had been duly explained by D.W-1.

13.1. The learned Counsel for the fourth Defendant further submitted that the fourth Defendant and first Defendant are working as CISF Officials. The fourth Defendant had mortgaged the suit property with LIC Housing



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Finance Limited, obtained loan and settled the dues to the first Defendant.

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During trial, the Plaintiff avoided to enter into the witness box and only his brother, as a Power of Attorney Agent, had tendered evidence. The Plaintiff is a money lender and he ought to have verified the mortgage with LIC Housing Finance Limited. If the first Defendant refused to perform his obligations under the agreement of sale dated 20.07.2005, the Plaintiff ought to have filed the Suit within the time stipulated in the sale agreement marked as Ex.A-2, but he had approached the trial court with the suit belatedly. Further, the Plaintiff was not ready and willing to perform his contract. He had paid the advance sale consideration in installments. Even as admitted in the plaint, on the date of agreement of sale on 20.07.2005, Rs.4,50,000/- was paid and subsequently on 09.12.2007 and 14.07.2008, Rs.50,000/- and another Rs.50,000/- were paid. In total, he has paid Rs.5,50,000/-. In the plaint, there is no whisper about the mortgage of the suit scheduled property by the first Defendant with LIC Housing Finance Limited. On the other hand, the fourth Defendant paid the dues on behalf of the first Defendant to LIC Housing Finance Corporation Ltd., released the mortgage deed registered in the name of the first Defendant and got the sale deed executed in his name on 22.11.2006. After execution of sale deed by the first Defendant, fourth Defendant had taken possession of the property, applied for change of the house tax assessment and also change of



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electric service connection. The aforesaid facts would prove that the fourth

Defendant has a valid title to be asserted in his favour. On the other hand, the Plaintiff only holds an agreement in his favour and after five years of entering into the agreement of sale dated 20.07.2005, conveniently filed the suit in the year 2010 for specific performance. By the time when the suit was filed, the fourth Defendant acquired ownership of the property and title to it through the sale deed dated 22.11.2006. In such circumstance, the Trial Court ought not to have granted a decree for specific performance in favour of the Plaintiff. Instead, the Trial Court ought to have granted alternate relief of refund of advance amount. In fact, as the Plaintiff was aware of his own fate of the suit that he had stated in the plaint that if for any reason, the Court arrives at a conclusion that he is not entitled to specific performance of contract for sale of the property, the Court may grant alternate relief of refund of amount along with interest at the rate of 18% and for damages Rs.50,000/-. The learned Judge failed to consider those facts and had mechanically granted the relief of declaration that the sale deed executed in favour of the fourth Defendant is null and void.

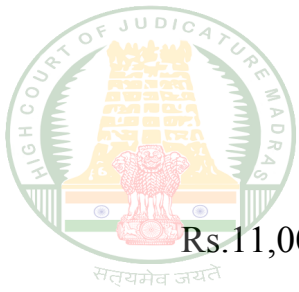
13.2. The learned Counsel for the fourth Defendant also submitted that a duly executed sale deed, after release of mortgage created by the first Defendant in favour of LIC Housing Finance Limited, cannot be set aside as



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illegal. There is no illegality in the conduct of fourth Defendant in getting the sale deed duly executed in his favour. The fact that the fourth Defendant did not verify the encumbrance certificate is immaterial. The fourth Defendant approached LIC, obtained legal opinion and voluntarily discharged the mortgage debt of first Defendant, who is also working along with fourth Defendant in C.I.S.F. There is no blemish in the conduct of fourth Defendant in discharging the mortgage loan of his colleague with LIC Housing Finance Corporation Ltd., and thereafter, getting the sale deed executed in his favour. Therefore, the finding of the learned Trial Judge that the sale deed obtained by the fourth Defendant, by superseding the registered sale agreement between the Plaintiff and the first Defendant, is illegal cannot be proper especially when the Plaintiff, in order to enforce the agreement of sale dated 20.07.2005, had approached the court with the suit for specific performance after five years.

13.3. Further it is the submission of the learned Counsel for the fourth Defendant that the Plaintiff did not enter the witness box apprehending that truth will come out. The Plaintiff is a money lender and he converted the loan transaction with the first Defendant into an sale agreement by slapping exorbitant amount as interest. If what had been claimed by the Plaintiff in the agreement of sale dated 20.07.2005 indicating the value of the property as



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Rs.11,00,000/- is true, then the Sub Registrar would not have entertained the sale deed with the fourth Defendant for Rs.8,50,000/-

13.4. The learned Counsel for the fourth Defendant invited the attention of this Court to the sale agreement dated 20.07.2005 between the Plaintiff and first Defendant, in which, under clause 10, the time for performance is indicated as eleven months. Thus, as per Clause 10, on or before 19.08.2006, if the vendor did not come forward to execute the sale deed in favour of the Plaintiff, he ought to have set the law in motion. Furthermore, in the agreement of sale, there was no reference made to the mortgage subsisting with LIC Housing Finance Limited at all. The fourth Defendant purchased the suit property during November, 2006. If the Plaintiff really has a right on the basis of the agreement of sale dated 20.07.2005 he ought to have instituted the suit within the stipulated time after the expiry of eleven months period by depositing the amount into the Court. However, he had approached the Court only in the year 2010 and therefore, the suit is hopelessly barred by limitation.

13.5. As regards the endorsements said to have been made by the first Defendant in the year 2007 and 2008, the learned counsel for the fourth Defendant submitted that the suit property was sold to the fourth Defendant in the year November 2006. While so, for receipt of Rs.50,000/- the first Defendant would not have made endorsements in the year 2007 and 2008,



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after sale of the suit property. It is a fraud committed by the Plaintiff to show that time is not essence of contract. The signature of first Defendant on the sale agreement deed dated 20.07.2005 is different from the signature found in the endorsements dated 09.12.2007 and 14.07.2008. Therefore, they are forged by the Plaintiff and those endorsements were made by the Plaintiff himself. The endorsement made by the Plaintiff on 14.07.2008 further creates doubt because even after such endorsement, the Plaintiff waited for two years to file the suit. There is no explanation offered by the Plaintiff regarding his readiness and willingness to perform his part of the contract. He ought to have been ready immediately after six months of entering into agreement and filed the Suit before the Court.

13.6. The learned Counsel for the fourth Defendant further submitted that the fact that encumbrance certificate was not verified by fourth Defendant with the Sub Registrar Office will not affect the case of the fourth Defendant in any manner. The fourth Defendant was in possession of the suit property. The Plaintiff has not issued any notice to the fourth Defendant. The conduct of the Plaintiff ought to have been taken into consideration especially when the exhibits under Ex.A-4 and Ex.A-5 are concocted. The Plaintiff had not paid the balance amount and they were made by himself to create a cause of action for filing the suit. The Plaintiff has to independently prove his case and



he cannot pick holes from the weakness of the defence of the Defendant to get the decree. The Plaintiff had filed the Suit in the year 2010 with the claim that the fourth Defendant had purchased the property in the year 2006. Therefore, the Plaintiff ought to have been non-suited.

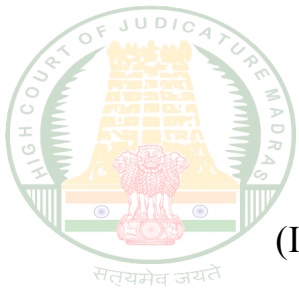
13.7. In support of his contentions, the learned Counsel for the fourth Defendant relied on the following rulings:

(I) In the case of **Surinder Kaur Vs. Bahadur Singh** reported in (2019)

8 SCC 575 it was held as follows:-

*“10. Admittedly, Bahadur Singh did not even pay a penny as rent till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the Plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.*

*14. A perusal of Section 20 of The Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the Plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub clause(c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the Court can refuse to grant such discretionary relief. Explanation (2) to the Section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the Plaintiff.”*



(II) The order passed by the Division Bench of this Court in A.S. No. 848 of 2020 dated 17.11.2022 (S.Muralidaran and another Vs. K.Bhaskaran)

The relevant portion reads as follows:-

*“11(d) (ii). The question of limitation is different from the question of delay and laches. Unless the purchaser approaches the Court immediately after the breach or refusal by the vendor or within a reasonable time, the purchaser is not entitled to equitable relief of specific performance. Further, we have already held that Respondent was not ready and willing to perform his part of contract. For the said reason and delay of Respondent in approaching the Court even after dismissal of Second Appeal by this Court on 06.08.2012, phenomenal increase in the suit property which is an urban vacant land and the Respondent being a Real Estate dealer, we hold that Respondent is not entitled to equitable relief of specific performance. This point is answered against the Respondent.*

*12.The judgments relied on by the learned counsel appearing for the appellants, especially 2022 Live Law (SC) 588 and 2011 (12) SCC 18, are squarely applicable to the facts of the present case. The judgments relied on by the learned counsel appearing for the Respondent do not advance the case of the Respondent.”*

(III) In the case of **Sukhwinder Singh Vs. Jagroop Singh** reported in **2020 SCC Online SC 86**, it was observed as follows:-

*“5. Mr. Rahul Gupta, the learned counsel for the Appellant contends that the Defendant No.2 is the bonafide purchaser without notice of the alleged agreement between the Plaintiff and Defendant No.1. He contends that the entire transaction was entered into in a bonafide manner and the Sale Deed having been registered, the Defendant No.2 was put in possession of the suit schedule property as far back as on 11.06.2004. Nearly 16 years have passed by and the Defendant No.2 has carried out considerable improvement to the property and is residing in the house constructed therein. In that view, at this juncture if the specific performance as sought by the Plaintiff is ordered, greater hardship will be caused to the Defendant No.2. It is pointed out that the Plaintiff had made the alternate prayer for refund of the earnest money and damages which if considered would serve the ends of justice. The learned counsel contends that even to secure leave to file the written statement and defend the suit the*



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Defendant No.2 has already parted with the sum of Rs.1,50,000/- in addition to the sale consideration that was paid to Defendant No.1. In that circumstance, the compensation if any, is a matter to be considered by this Court as the grant of specific performance is not a rule and this Court has the discretion to decline specific performance in view of the provisions contained under [Section 20](#) of the Specific Relief Act. It is also his contention that though the Defendant No.1 has not contested the suit, there was an obligation on the Plaintiff to establish his case which has not been effectively done by proving the readiness and willingness. The learned counsel would contend that though all the three Courts have held against the Defendants, the non-consideration of the relevant facts would amount to a concurrent error committed by the Courts. It is, therefore, contended that the judgment and decree be set aside and the right accrued to the Defendant No.2 under the Sale Deed dated 11.06.2004 be protected.

9. The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the Plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted. In the instant case though the Defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the Plaintiff is with the Defendant No.1 and the contention of the Defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defence put forth, the Plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the Plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the Defendant No.1, even if the payment of Rs.69,500/ and the claim by the Plaintiff of having gone to the office of SubRegistrar on 15.06.2004 is accepted, the fact as to whether the Plaintiff had notified the Defendant No.1 about he being ready with the balance sale consideration and calling upon the Plaintiff to appear before the Sub Registrar and execute the Sale Deed was required to be proved. From among the documents produced and marked as Exhibit P1 to P9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the Plaintiff to be ready and willing to complete the transaction.

11. Further, in a circumstance where the Defendant No.2 had



contested the suit and had put forth the contention that he was a bonafide purchaser without notice and through his evidence had deposed that he had no knowledge of agreement entered into between the Defendant No.1 and Defendant No.2, that aspect required appropriate consideration. However, the Courts below have on the contrary concluded that the Defendants No.1 and 2 being of the same village, the Defendant No.2 would have knowledge of the agreement entered into by the Defendant No.1 in favour of the Plaintiff. Such conclusion is only an assumption and there is no evidence with regard to the knowledge of Defendant No.2 even if he was from the same village. In addition, the Lower Appellate Court has concluded that since the Defendant No.1 has not caused appearance in spite of notice having been issued and he not being examined as a witness it could be gathered that there is connivance amongst the Defendants to defeat the rights of the Plaintiff. Such assumption is also not justified since the Defendant No.2 had purchased the property for a consideration under a registered document and the Defendant No.2 was also put in possession of the property. In that circumstance the Defendant No.1 who had lost interest in the property, if had not chosen to appear and defend the suit the same cannot be a presumption of connivance in the absence of evidence to that effect.”

(IV) In the case of **S. Kalianna Gounder & Ors. Vs. S.Periyasamy & Ors.**, reported in **LNIND 2017 Mad 3435**, it was observed as follows:-

“32. After having referred to the judgment of the Honble Supreme Court in *Chandrani (smt) (dead) by Lrs. v. Kamalrani (smt) (dead) by Lrs.* reported in 1993 (1) SCC 519, it was concluded that the time fixed under the agreement should be given some meaning and if the plaintiffs are found to be wanting in exhibiting their readiness and willingness to perform their part of the contract by showing that they had the sufficient money as well as the willingness to perform their part within the time stipulated under the agreement, they cannot be said to be ready and willing to perform their part of the contract. I had an occasion to consider similar question in *Babulal Tater v. Harakh Chand J. Golecha*, reported in 2017 5 CTC 403, wherein I had followed the above pronouncements of the Honble Supreme Court and concluded that the Plaintiff therein was guilty of absence of readiness and willingness. From the evidence available on record it is seen that the last of the sale deed pursuant to the agreement was dated 16.11.1988 and thereafter the plaintiffs had not taken any steps to seek execution of sale deed till 03.11.1989 for nearly one year. No doubt it is true that the parties had not intended that time is to be the essence of the



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contract, this is obvious from the fact that the Defendants have chosen to execute sale deed after expiry of the time granted under the original agreement dated 15.12.1986, but that by itself will not enable the plaintiffs to seek specific performance without showing that they were ready and willing. There is no evidence to show that any attempt was made by the plaintiffs to seek execution of sale deeds between 16.11.1988 and 03.11.1989, namely the date of issuance of notice. By the reply dated 13.11.1989 the Defendants 1 to 5, who are actually the contesting Defendants, had required payment of the entire balance of sale consideration within 15 days from the date of receipt of the reply and take a sale deed. The plaintiffs have not come forward to pay the balance amount and take a sale deed from Defendants 1 to 5 atleast with reference to their share of the property. This would by itself show that plaintiffs were not ready and willing to perform their part of the contract. From the evidence of P.W.1, extracted above it is very clear that on 14.05.1987 i.e., the last date for performance of the agreement, the plaintiffs were not ready and willing to perform their part of the contract. It is also seen that on 30.04.1988, the plaintiffs knew that they have to pay a larger sum of money to the Defendants for performance of the entire agreement but they paid only Rs.1,20,000/- and took a sale deed for the six grounds alone. This conduct would, in my considered opinion, debars the plaintiffs from seeking the relief of specific performance under [Section 16\(1\)\(c\)](#) of the Specific Relief Act. Therefore, I conclude that the plaintiffs are not entitled to the relief of specific performance."

(V) In **K.S.Vidyanadam Vs. Vairavan** reported in (1997) 3 SCC 1, it was held thus:-

"13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the Plaintiff for 2½ years in clear violation of the term of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices - according to the Defendants, three times - between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the Plaintiff."

(VI) In **Kolli Satyanarayana (Dead) By Lrs. Vs. Valuripalli Kesava Rao Chowdary (Dead) Thr. Lrs. And others** reported in (2022) Live



**Law (SC) 807**, it is relevant to refer the following passage, which reads as follows:-

*“Specific Relief Act, 1963 -Suit for specific performance – The Court should look at all the relevant circumstances including the time limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised- While exercising its discretion, the Court should bear in mind that when the parties prescribe certain time limit(s) for taking steps by one or the other party, it must have some significance and that the said time limit(s) cannot be ignored altogether on the ground that time is not the essence of the contract.”*

(VII) In the case of **U.N. Krishnamurthy Vs. A.M. Krishnamurthy** reported in **(2022) SCC Online SC 840 : 2022 Live Law (SC) 588** the relevant portion reads as follows:-

*“24. **Section 16 (c)** of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of **Section 16**, it may not be essential for the Plaintiff to actually tender money to the Defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the Plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.”*

*43. In **Saradamani Kandappan** (supra) this Court reiterated that (i) while exercising discretion in suits for Specific Performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored;*

*(ii) the Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and (iii) every suit for Specific Performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does*



not mean that a purchaser can wait for one or two years to file a suit and obtain Specific Performance. The three year period is intended to assist the purchaser in special cases, as for example where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.

44. In *Atma Ram v. Charanjit Singh Justice V. Ramasubramanian* speaking for this Court made the following pertinent observation:-

“9... No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13.10.1999) after 20 (2020) 3 SCC 311 issuing a legal notice on 12.11.1996. The conduct of a Plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12.11.1996 claiming readiness and willingness, but who institutes a suit only on 13.10.1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance.”

46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.

47. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on *Umabai v. Nilkanth Dhondiba Chavan* (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. Deposit in court would not establish Plaintiff's readiness and willingness within meaning of [section 16\(c\)](#) of Specific Relief Act. The relevant part of the judgment is reproduced below: -



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*“45. ...Deposit of any amount in the court at the appellate stage by the plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of [Section 16\(c\)](#) of the Specific Relief Act...”*

*48. It is, therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.*

*51. In view of foregoing, this Court is of the considered opinion that the Respondent Plaintiff was not entitled to the relief of specific performance. The Trial Court and the High Court erred both in law and on facts in granting such relief.”*

(VIII) In the case of ***Ranganatha Gounder Vs. Sahadeva Gounder &***

***Ors.***, reported in ***2004 (4) CTC 375*** the relevant portion reads as follows:-

*“Specific Relief Act, 1963, Sections 10 & 20 – Time whether essence of contract – In case of agreement of sale relating to immovable property time is not essence of contract – If concept of time being essence of contract is accepted in toto, it would mean denying discretion vested in Court by Sections 10 & 20 of Act- Even if time is not of essence of contract Court may infer that it is to be performed in reasonable time depending upon express terms of contract, nature of property and surrounding circumstances.*

*Specific Relief Act, 1963, Section 16 (1) (C) -*

*Readiness and willingness to performs obligations under contract – In terms of this Section it is obligatory on the part of Plaintiff to plead and prove his readiness and willingness to perfrom his obligations under sale agreement which includes Plaintiff's ability to prove necessary requirements so as to have relief of specific performance.”*

(IX) In the case of ***Arunachala Mudaliar Vs. Jayalakshmi Ammal and***

***another*** reported in ***2003 (1) CTC 355*** it was held as follows:-

*“Specific Relief Act, 1963, Section 16 (c) - Readiness and willingness – Court cannot grant decree of specific performance to one who is not ready*

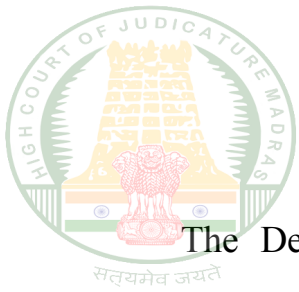


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*and willing to perform essential terms of contract – Plaintiff entered into agreement with first Defendant for purchase of property and filed suits in connection with same – Plaintiff relied on second agreement between same parties brought about by Panchayath whereby enhanced consideration was agreed to be paid – Plaintiff pleaded that possession was given pursuant to agreement – Plaintiff did not deposit sale consideration as per agreement before filing of suit – No averment in plaint regarding readiness and willingness to deposit sale consideration – Issuance of notice prior to filing of suit was not proved – Plaintiff failed to prove readiness and willingness – Plea of Plaintiff regarding to prove readiness and willingness – Plea of Plaintiff regarding possession found to be false – Decree of trial Court declining prayer of specific performance confirmed.”*

13.8. By pointing out the above decisions, the learned Counsel for the fourth Defendant submitted that the Plaintiff is only having a right as an agreement holder, but the fourth Defendant has acquired right of ownership through the sale deed dated 22.11.2006. The fourth Defendant is in possession and enjoyment of the suit scheduled property till this date. Even on 09.07.2012, at the time of admission of this appeal, this Court granted an interim stay. The right and advantage acquired by the fourth Defendant will be over and above the right acquired by the Plaintiff as an agreement holder. The Trial Court, without considering those facts, erroneously granted a decree for specific performance instead of granting the alternative remedy of refund of the advance amount. The learned Counsel for the fourth Defendant therefore prayed for allowing this appeal.

14. Per contra, Mr. K. Bijay Sundar, learned Counsel for the Plaintiff argued that the fourth Defendant is the present owner of the Suit property.



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The Defendants 1 to 3 remained ex-parte. The fourth Defendant alone contested the Suit. On 20.07.2005, first Defendant entered into the agreement to sell the suit property to the Plaintiff which was registered as Document No.4226/2005. Out of the total sale consideration for Rs.11,00,000/- on the date of execution of sale agreement, Rs.4.5 lakhs was paid. Subsequently, the Plaintiff paid Rs.50,000/- which was received by the first Defendant and an endorsement was made on the registered sale agreement deed dated 09.12.2007. Thereafter, another Rs.50,000/- was paid by the Plaintiff on 14.07.2008 and an endorsement was obtained from the first Defendant. Thus, totally Rs.5.5 lakhs was paid out of the total sale consideration of Rs.11,00,000/-. Ex.A-2 was the sale agreement. Identity of the witness was established by Mr. P.C. Jain who subscribed his signature as a witness, which could be evident from Page No.5 of the sale agreement deed dated 20.07.2005. It is contended that the Power of Attorney Agent cannot depose evidence regarding civil dispute. Here in this case, the Power of Attorney Agent of the Plaintiff/Rajkumar Jain, on behalf of his principal Mr. P.C.Jain examined himself as P.W-1 because he had personal knowledge of the transaction covered in the sale agreement dated 20.07.2005. As mentioned above, he was a witness to the sale agreement and also witness during the registration of the sale agreement deed under Ex.A-2. Therefore, it is submitted that P.W-1 is



competent to depose on behalf of his principal in this case. In this context, the

learned Counsel for the Plaintiff invited the attention of this Court to the

recitals in Ex.A-2. The relevant portion is extracted hereunder:

“ 02. The Purchaser has this day paid a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand Only) by cash to the vendors in the following manner as detailed below:-

a). Already paid on several dates -Rs.2,00,000/-

b).On execution of this sale agreement -Rs. 50,000/-

and By Demand Draft bearing No.355401

dated 21.07.2005. Drawn on Bank of

the Karur Vysya Bank, Chennai, in

favour of the vendor.

-Rs.2,00,000/-

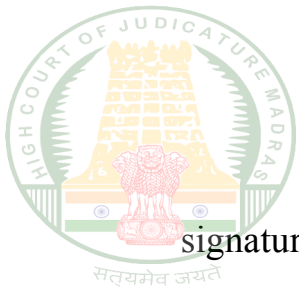
Total - Rs.4,50,000/-”

14.1. The learned Counsel for the Plaintiff also referred to Clauses 4 and 5 of the sale agreement. The relevant portion is extracted hereunder:

*“4. The Vendor has undertaken to apply for and obtain Encumbrance Certificate upto date at her cost and also pay the Property-tax, Ground Rent, and other foregoings till the date of registration and produce the receipts therefor.*

*5. The vendor has on this day handed over xerox of the original title deeds of the said property namely:- Xerox copy of Sale Deed Document No.2275/2002 and agreed to produce the original sale deed and parent Documents together with encumbrance certificate upto date to the purchaser at the time of execution and registration of the sale deed in favour of the purchaser or his nominees.”*

14.2. According to the learned Counsel for the Plaintiff, the first Defendant has not filed written statement even though summons were served on to him. It is to be noted that first Defendant in the Suit had not disputed his



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signature in the endorsements by filing written statement. The first Defendant,

along with Defendants 2 and 3, remained *ex parte*. Therefore, the fourth Defendant is estopped from contending that the endorsements said to have been made by the first Defendant in the sale agreement dated 20.07.2005 and such signatures are fictitious.

14.3. The learned Counsel for the Plaintiff invited the attention of this Court to Order VI Rule 2 of Civil Procedure Code, which is extracted hereunder:

*“2. Pleading to state material facts and not evidence.*

*(I) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.*

*(ii) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.*

*(iii) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words:”*

14.4. By referring to the above statutory provision, it is contended that had the first Defendant specifically denied the signature in the endorsements under Ex.A-4 and Ex.A-5, then the Plaintiff could either substantiate the same or support the contention of the first Defendant. In the present case, the first Defendant did not participate in the trial and remained *ex parte*. While so, the fourth Defendant has no right to offer any remark about the endorsements relied on by the Plaintiff under *Ex.A4 and Ex.A5*.



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14.5. The learned Counsel for the Plaintiff invited the attention of this Court to sale deed executed in favour of the fourth Defendant, wherein it was mentioned as follows:-

*“This sale deed is executed at Chennai on 22nd day of November 2006 by Mr. B. Gurusamy, son of Mr.S. Balaswamy, Hindu, aged about 55 years residing at CIST Quarters, Type-4, Quarter No.48, Bharathi Nagar, TPT, Tuticorin, hereinafter called the “Vendor” of the one part;*

*And*

*Mr.C.Mohan das, son of Mr.E.T.K.Nair, Hindu, aged about 55 years residing at No.14, 3rd Street, Sabhi Nagar, Muktha Pudupet, Avadi, Chennai – 600 055, hereinafter called the “Purchaser” of the other part;*

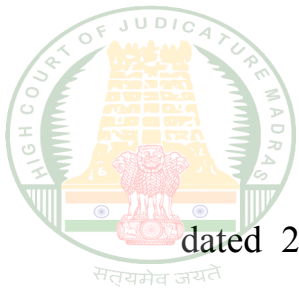
*That in pursuance of the above said agreement and in consideration of Rs.8,50,000/- (Rupees Eight Lakhs and Fifty Thousand Only) already paid by the purchaser to the vendor in the following manner:-*

*(i) Rs.2,66,028/- (Rupees Two Lakhs Sixty Six Thousand and Twenty Eight Only) is paid by cash on 05.08.2006 as an advance;*

*(ii) Rs.33,972/-(Rupees Thirty Three Thousand Nine Hundred and Seventy Two Only) is paid by the purchaser by cash to repay the vendor's loan dues to LICHFL in Loan Account No.400000534 on 03.11.2006, vide Receipt No.0794656;*

*(iii) Rs.5,50,000/- (Rupees Five Lakhs and Fifty Thousand Only) is paid by LIC Housing Finance Ltd., Area Office, Anna Salai, Chennai – 600 002, for and on behalf of the purchaser, to repay the vendor's loan dues to LICHFL, Area Office, Chennai, in Loan Account No.400000534 by a Pay Order drawn on UTI Bank Limited, Mylapore Branch, Chennai – 600 004, having received and acknowledged the above said agreed total sale consideration in the above said manner, the vendor doth hereby admit acknowledge and release the purchaser from further payment thereof, the vendor doth hereby grant, convey, transfer assign and sell the property morefully described in the schedule hereunder together with all drains, ditches, water and water courses, pathway and passages, privileges, advantages and appurtenances thereto, or reputed to, belonging thereto or usually enjoyed there with and all the estates, rights, easement rights, interest, title, claims and demands of the purchaser to have and to hold the same absolutely and for ever free from all encumbrance, charges, lien, claims and demands whatsoever.”*

14.6. According to the learned Counsel for the Plaintiff, the sale deed



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dated 22.11.2006 in favour of the fourth Defendant came to be executed

subsequent to the execution of sale agreement dated 20.07.2005 in favour of Plaintiff. The agreement of sale dated 20.07.2005 was registered and it operate as an encumbrance subsisting over the property. Admittedly, the fourth Defendant did not apply for encumbrance. The fourth Defendant, who claims himself to be a prudent and bona fide purchaser ought to have obtained encumbrance before proceeding with the sale transaction. In fact, the total sale consideration mentioned in the agreement of sale dated 20.07.2005 with the Plaintiff was Rs.11 lakhs, but the fourth Defendant purchased the very same property on 22.11.2006 for a mere Rs.8,50,000/-. Thus, the sale consideration for which the fourth Defendant purchased the property is less than the sale consideration mentioned in the agreement of sale between the Plaintiff and D1 under Ex.A-2.

14.7. The learned Counsel for the Plaintiff also invited the attention of this Court to the recitals in the sale deed dated 22.11.2006 which reads as follows:

*“Whereas the vendor has decided to sell his property i.e., entire landed property of 5 ½ Cents or thereabouts and the appurtenant house at Plot No.3, Defence Enclave Mosque Street, Avadi, Chennai – 600 055, comprised in Survey No.38/4 of No.55, Muktha Pudupet Village, Ambattur Taluk, Thiruvallur District, which has been morefully described in the schedule hereunder for the purpose of repaying the loan dues to LIC Housing Finance Limited, Area Office, Chennai in Loan Account No.400000534, and to meet his family expenses as such he has offered to sell the schedule mentioned property for a total valid sale consideration of*



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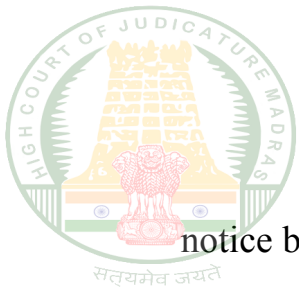
Rs.8,50,000/- (*Rupees Eight Lakhs and Fifty Thousand Only*) and the purchaser herein has accepted to purchase the same for the said sale consideration free from all encumbrances, by availing housing loan from LIC Housing Finance Ltd., Area Office, Anna Salai, Chennai – 600 002, to a tune of Rs.5,50,000/- (*Rupees Five Lakhs and Fifty Thousand Only*) to repay the vendor's loan dues to LICHFL.”

.....

4. *The vendor doth hereby covenant to the purchaser that the property hereby conveyed is free from all encumbrances, claims, liens, lispendence, Court attachment and assures that it is not the subject matter of any panding litigation in any Court of Law and Tribunal, etc., and the vendor further assess that the property is not subjected to any previous sale agreement with any third party or third parties.”*

14.8. By pointing out the above recitals, the learned Counsel for the Plaintiff submits that notwithstanding the encumbrance created by way of registered agreement of sale dated 20.07.2005, the first Defendant had executed the sale deed dated 22.11.2006 in favour of the Fourth Defendant and therefore the remedy for the fourth Defendant is to only proceed against his vendor, the first Defendant to clear the encumbrance made by him. This is more so that the Trial Court had also passed a decree in the present suit filed by the Plaintiff for specific performance. The Trial Court has therefore, rightly granted a decree for specific performance and declared the Sale Deed dated 22.11.2006 in favour of the Fourth Defendant as null and void.

14.9. The learned Counsel for the Plaintiff also invited the attention of this Court to Annexure 1-A which is the statement regarding particulars of the building mentioned in the sale deed and the endorsement made before the Sub Registrar in the sale deed. He also invited the attention of this Court to the



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notice by the Plaintiff to the Defendant-1, dated 14.11.2007, which is extracted

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*“Under instructions from my client Mr. Rajkumar Jain, carrying on business at No.35, Godown Street, Chennai – 600 001. I write to you as follows:*

*My client states that you have entered a registered Sale Agreement in respect of the Schedule mentioned property registered as Document No.226/2005 dated 22.07.2005 before SRO Avadi for a sale price of Rs.11,00,000/-(Rupees Eleven Lakhs only).*

*My client further states that as per agreement you have received Rs.4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) and agreed to take balance of Rs.6,50,000/- (Rupees Six Lakhs Fifty Thousand Only) at the time of registration of the sale deed. On various dates my client approach to you for complete the transactions by directly and over phone that you have failed that execution of the sale deed. My client has not yet got any clearance of encumbrance etc., as per the agreement for the reasons best known to you only.*

*Hence, now my client puts you notice that he is ready and willing to pay the balance consideration on production of NIL encumbrance with all original documents within FIFTEEN days from the receipt of this notice failing which my client will have no other option except to file Specific Performance Suit against you in respect of the Schedule mentioned property, in which event you will be held liable for all cost and consequences thereof.”*

14.10. For the notice issued to the first Defendant, no reply was sent. Had the first Defendant issued a reply indicating the sale made in favour of the fourth Defendant, the Plaintiff would have immediately filed the suit. However, without knowing the sale of the property in favour of the fourth Defendant, the Plaintiff patiently waited to hear from the first Defendant. During trial, the Plaintiff had filed documents, but was unable to file acknowledgment card regarding receipt of notice under Ex.A-3. Here again it is for the first Defendant to deny or dispute the receipt of notice but he did not



participate in the trial and conveniently remained ex-parte. The address in the statutory notice is a official address in Thoothukudi and therefore, it is to be presumed that the first Defendant had received notice.

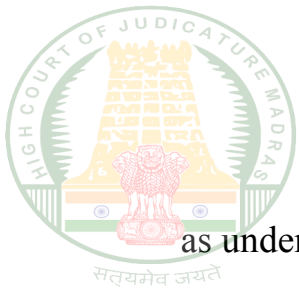
14.11. The learned Counsel for the Plaintiff pointed out that in the encumbrance certificate of the property obtained on behalf of the Plaintiff/ Rajkumar Jain, the registered sale agreement deed between Plaintiff and first Defendant is reflected. He also invited the attention of this Court to the notice on behalf of the Plaintiff to the Defendants dated 12.02.2009 which was marked as Ex.A-7, the relevant portion is extracted hereunder:

*“Our client states that the first of you in collusion with the second third and fourth of has brought into existence the sale agreement dated 15.02.2005 and the sale deed dated 22.11.2006. All of you have conspired together and have committed fraud, cheating, Criminal breach of trust and have deprived out client of a sum of Rs.5,50,000/-.”*

14.12. The legal notice addressed to the Defendants 1 to 4 was marked as Ex.A-7 and the acknowledgment card of D-2 was marked as Ex.A-8. The notice to the D-1 & D-3 were returned as unserved. Further, in the cross-examination of P.W-1, he has stated as under:-

“.....ஒப்பந்தத்திற்கு முன்பாக 1ம் பிரதிவாதி குருசாமி வாதியிடம் கடன் ஏதும் வாங்கவில்லை.”

14.13. He also invited the attention of this Court to the cross-examination of P.W-1 regarding the disputed signature of first Defendant, raised for the first time on behalf of D-4 in this appeal, wherein it was deposed



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as under:

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“...வா.சா.ஆ.4 மற்றும் வா.சா.ஆ.5ல் உள்ளது குருசாமியின் கையெழுத்து கிடையாது என்று சொன்னால் சரியல்ல.....”

14.14. Therefore, according to the learned Counsel for the Plaintiff, the Plaintiff does not have the opportunity to send the documents under Ex.A-2 for comparison with the handwriting expert for obtaining opinion regarding the disputed signature of the first Defendant in the endorsements. Therefore, the Court cannot rely on the contentions raised by fourth Defendant, who casually disputed the signature of first Defendant in the endorsements under Ex.A-4 and Ex.A-5. Also, the learned Counsel for the Plaintiff submitted that without pleadings regarding disputing the signature of first Defendant in the sale agreement deed under Ex.A-2, no evidence or suggestion by the fourth Defendant during cross-examination of P.W-1 cannot at all be considered by the Court. Further, the learned Counsel for the Plaintiff invited the attention of this Court to the averments in the Plaint. The relevant portion is extracted hereunder:

*“In addition to the fraud committed by the first Defendant again entered into a sale transaction by sold the schedule mentioned property to the fourth Defendant for a sum of Rs.8,50,000/- (Rupees Eight Lakhs Fifty Thousand Only) and executed a sale deed in favour of the fourth Defendant on 22.11.2006 vide document No.10090 of 2006 of SRO, Avadi while the earlier agreement of sale subsisting. The Plaintiff states that the Defendant 2 to 4 were evidently known about the existence of sale agreement dated 15.02.2005 in collusion with the first Defendant committed a fraud cheating and criminal breach of trust. The subsequent sale deed dated 22.11.2006 in favour of the fourth Defendant become void in invalid. Hence, the sale deed*



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No.10090 of 2006 dated 22.11.2006 to be declared as void document since it was a illegal transaction as per Transfer of Property Act.”

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14.15. Similarly, attention of this Court is drawn to the written

statement filed by the fourth Defendant, the relevant portion is as follows:

*“.....This Defendant purchased the suit property in a bonafide manner and paid the sale consideration to the first Defendant in good faith and this Defendant is not aware of transaction that took place between the Plaintiff and the other Defendants.....”*

14.16. According to the learned counsel for the Plaintiff, on perusal of the entire written statement filed by D-4, it is only a general denial and not specific denial. The material facts are not pleaded as per Order VI Rule 6 of CPC or as per Order VI Rule 5 of CPC. The entire written statement of the fourth Defendant relates to the signature of the first Defendant in the sale agreement under Ex.A-2, in endorsements under E.A-4 and Ex.A-5 and they have not been denied by the first Defendant, but by the fourth Defendant. Further, in the sale deed between the first Defendant and fourth Defendant, the identity of first Defendant, Gurusamy wearing CISF uniform with ID No. established. Therefore, it is submitted that there is no fraud or collusion as has been projected by the fourth Defendant in this case.

14.17. According to the learned Counsel for the Plaintiff, herein as Plaintiff in the Suit, disputed the claim of the fourth Defendant that he was not aware of the sale agreement between the Plaintiff and the First Defendant. Any person or individual of normal human conduct in the course of similar



transaction is sure but verify the encumbrance before getting a sale deed in his favour. Therefore, the contention of fourth Defendant in the written statement that he was not aware of the sale agreement between the Plaintiff and First Defendant cannot at all be accepted particularly when the First Defendant had entered into the sale agreement with the Plaintiff which was registered before the Sub Registrar concerned.

14.18. The learned Counsel for the Plaintiff referred to the cross-examination of P.W-1 and also the proof of deposit of balance sale consideration of Rs.5,50,000/- by the Plaintiff to the credit of learned Additional District Judge, Fast Track Court – II, Poonamallee in I.A.No.964/2011 in O.S.No.42/2010 dated 29.09.2011. This was pointed out by the learned Counsel for the Plaintiff to show that the Plaintiff had the wherewithal and he is resourceful enough to perform his part of the obligations.

14.19. The learned Counsel for the Plaintiff also invited the attention of this Court to Order XX Rule 12-A of CPC, which is extracted hereunder:

“12-A. Decree for specific performance of contract for the sale or lease of immovable property-

Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.”



14.20. Therefore, it is submitted by the learned Counsel for the

Plaintiff that the Plaintiff has right to deposit the amount into the Court to show his bona fides. By taking note of the above, the Trial Court passed the Decree and Judgment dated 20.12.2011 which cannot be called as perverse. Even before Judgment was pronounced on 29.09.2011, the Plaintiff had deposited the balance sale consideration of Rs.5,50,000/- through the lodgment schedule in the trial Court.

14.21. The learned Counsel for the Plaintiff also referred to the cross-examination of fourth Defendant, as D.W-1, the relevant portion is extracted hereunder:

“எந்த நேரத்தில் கொடுத்தேன் என்று ரூபகம் இல்லை. ரூ.2 லட்சத்திற்கு போட்ட ஒப்பந்தத்தை நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. நான் வில்லங்கம் இருக்கிறதா என்று நான் சரிபார்க்கவில்லை. முதல் பிரதிவாதி யாரிடம் இந்த சொத்தை வாங்கினார் என்று தெரியும். தற்போது பெயர் ரூபகம் இல்லை. சார் பதிவாளர் அலுவலகத்தில் சொத்திற்கான வில்லங்கம் பார்க்கவில்லை. வாதிக்கும் முதல் பிரதிவாதிக்கும் ஏற்பட்ட ஒப்பந்தம் பற்றி எனக்கு தெரியாது, கிரயம் பெறுவதற்கு முன்பாக எல்.ஐ.சி லோன் பற்றி என்னிடம் முதல் பிரதிவாதி சொன்னார். 12.2.2009 ல் வழக்கறிஞர் அறிவிப்பு வாதி எனக்கு கொடுத்துள்ளார். அது பற்றி எனக்கு தெரியும். அதற்கு பதில் அறிவிப்பும் கொடுத்துள்ளேன். அதை நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை.”

14.22. According to the learned Counsel for the Plaintiff, the demeanour of fourth Defendant, as D.W-1 before the trial Court is to be appreciated by this Court. The Fourth Defendant is not an illiterate and he is serving in the Central Industrial Security Force. He had wantonly claimed ignorance regarding encumbrance certificate with respect to the Suit property.



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He admits that he had obtained legal opinion before proceeding with the registration of sale deed, but he feigns ignorance about the encumbrance subsisting in the property. Before proceeding with the loan obtained for purchasing the property. In all probabilities, fourth Defendant had knowledge of the sale agreement dated 20.07.2005 with the Plaintiff. Thus, it can be presumed that the Fourth Defendant colluded along with Defendants 1 to 3 and played fraud in defeating the right of the Plaintiff as an agreement holder. Thus, the Fourth Defendant cannot be presumed to be a bona-fide purchaser for valuable consideration as claimed by him in the written statement and in his evidence. Therefore, the learned Trial Court had rightly decreed the Suit for specific performance in favour of the Plaintiff.

14.23. In support of his contention of the learned Counsel for the Plaintiff had relied on the following rulings:

(i) In the case of ***Khushalchand Bhagchand Marwadi Vs. Trimbak Ramachandra Belapurkar*** reported in ***1945 SCC Online 984***, the relevant portion is extracted hereunder:

*“In other words the question whether a particular section of an Act does or does not apply to the facts as found is a question of law. The finding as to what the transferee did or did not do to ascertain the power of the transferor to effect the transfer is one of fact, but whether from that finding it can be said that reasonable and sufficient inquiry was made by the transferee as to attract the application of s. 41 of the Transfer of Property Act is a question of law.*

*According to the finding of the lower appellate Court on this point*



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Defendant No. 3 looked into the Record of Rights and was satisfied that the name of Defendant No. 1 alone was entered as the owner and occupant of the land and that the rights of none else were shown there and that after making inquiry with the village officers he was satisfied that she had power to mortgage the land. But he did not inquire from whom Defendant No. 1 had purchased the land. He did not take a search of the record in the Sub-Registrar's office nor did he make any inquiry to what rights Chintaman possessed when he sold the land to Defendant No. 1. Although he stated that the Patil and the talati told him that Chintaman had no interest in the land, the Patil and the talati were not examined.

"Reasonable care" means such care as a man of business or a man of ordinary prudence would take and if Defendant No. 3 had notice of the execution of the deed of gift by Chintaman in favour of Ramchandra, it was his duty to see whether the gift could be revoked by him and whether after his death any interest in the land was left to Defendant No. 1 who had purchased it from him. Defendant No. 3 says that he had no knowledge of the gift or its revocation by Chintaman. Explanation (1) which was added to the definition of "notice" in s. 3 of the Transfer of Property Act by Act XX of 1929 provides that where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part thereof, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration. Before this amendment, the Privy Council had laid down in *Tilakdhari v. Khadanlal* that notice should not in all cases be imputed from the mere fact that a document had been registered and that it should be determined in each case whether the omission to search the Register of deeds in the Sub-Registrar's office amounted to gross negligence on the part of the transferee so as to attract the consequences resulting from notice."

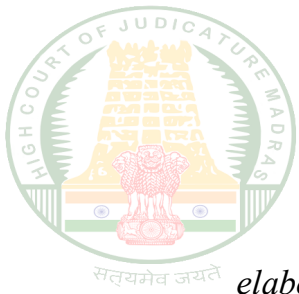
(ii) In ***Kenchegowda Vs. P.Channaiya & Others*** reported in **1952 SCC**

**Online Kar 41: AIR 1953 Mys 22**, it was held as follows:-

"13. On behalf of the Defendants 2 and 3 it was further urged that they are bona fide purchasers for value. Registration of a document which is compulsorily registrable is deemed to be a notice to the persons subsequently acquiring the property comprised in the instrument. These considerations therefore afford no ground for disturbing the view taken by the Judge."

(iii) In ***V.Anantha Raju & Another Vs. T.M.Narasimhan & Others***

reported in **2021 SCC Online SC 969** it was held thus:-



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“34. This Court in the case of *Roop Kumar vs. Mohan Thedani* has elaborately considered the earlier Judgments of this Court on the issue in hand and has held as under:-

.....19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.”

(iv) In ***Rattan Singh and others Vs. Nirmal Gill & Others*** reported in **2020 SC Online SC 936** it was held as follows:-

“33. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in *Prem Singh v. Birbal*. The relevant portion of the said decision reads as below:

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

(v) In ***P.Ramasubbamma Vs. V.Vijayalaksmi and others*** reported in **(2022) 7 SCC 384**, it was observed thus:-

“9. Considering the fact that original Defendant 1-vendor original owner admitted the execution of agreement to sell dated 12-4-2005 and even admitted the receipt of substantial advance sale consideration, the learned trial court decreed the suit for specific performance of agreement to sell dated 12-4-2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the Plaintiff vendee. Therefore, as such the learned trial court rightly decreed



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the suit for specific performance of agreement to sell. The High Court was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.

19. However, in the facts and circumstances of the case narrated hereinabove and when the learned trial court specifically gave the findings that Defendant 1-vendor specifically admitted the execution of agreement to sell dated 12-4-2005 in favour of the Plaintiff by accepting a substantial advance consideration and that Defendant 2 was in the knowledge of the agreement to sell and despite the same, he sold the same in favour of Defendants 3 and 4, who are his sisters-in-law and that too the sale deeds found to be nominal sale deeds, the learned trial court as such rightly decreed the suit for specific performance and also rightly declared that sale deeds dated 3-5-2010 executed by original Defendant 2 in favour of Defendants 3 and 4 are not binding upon the Plaintiff and Defendant 1. The High Court has committed a grave error in reversing the judgment and decree passed by the learned trial court by ignoring the vital facts of the case which are either admitted or proved in the instant case”

(vi) In **R.K. Parvatharaj Gupta vs. K.C. Jayadeva Reddy** reported in **(2006) 2 SCC 428** the relevant portion is extracted hereunder:-

“10. In terms of the said article, a suit for specific performance of a contract is required to be filed within three years; in the event no date is fixed for the performance, within a period of three years from the date when the Plaintiff has notice that performance is refused. The notice dated 24-4-1984, thus, is required to be construed in the context of the agreement dated 13-10- 1982 entered into by and between the parties.

11. There cannot be any doubt whatsoever that in respect of a contract for sale of immovable property, time is not of the essence of the contract, but the question as regards the conduct of the Appellant must be considered in the backdrop of the events noticed hereinbefore.

19. The suit, therefore, in terms of the requirement of Article 54 of the Limitation Act, should have been filed within a period of three years from the date of expiry of fifteen days from the date of receipt of the said notice.”

(vii) In **MMS Investments, Madurai & Others Vs. Veerappan and others** reported in **(2007) 9 SCC 660** the relevant portion is extracted



hereunder:-

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*“6. Questioning the plea of readiness and willingness is a concept relatable to an agreement. After conveyance the question of readiness and willingness is really not relevant. Therefore, the provision of the Specific Relief Act, 1963 (in short "the Act") is not applicable. It is to be noted that the decision in Ram Awadh case relates to a case where there was only an agreement After the conveyance, the only question to be adjudicated is whether the purchaser was a bona fide purchaser for value without notice In the present case the only issue that can be adjudicated is whether the appellants were bona fide purchasers for value without notice. The question whether the appellants were ready and willing is really of no consequence In Ram Awadh case the question of the effect of a completed sale was not there. Therefore, that decision cannot have any application so far as the present case is concerned. Once there is a conveyance the concept would be different and the primary relief could be only cancellation.*

*7. Learned counsel for the appellants submitted that since the purchasers step into the shoes of the vendor, the question of readiness and willingness can be pressed into service. This plea is clearly without substance because the purchasers had to prove that they are bona fide purchasers for value without notice. The readiness and willingness aspect will not give any relief to them. That being the position, the appeal is sans merit and is dismissed There will be no order as to costs.”*

**(viii) (2000) 6 SCC 402 in the case of R.K.Mohammed Ubaidullah &**

***Others Vs. Hajee C. Abdul Wahab (D) by Lrs. & Others.*** The relevant portion is extracted hereunder:-

*“11. However, in the light of the submissions made on behalf of Defendants 2 to 5 before us, we have to consider:*

*(1) Whether Defendants 2 to 5 are bona fide purchasers of the suit property in good faith for value without notice of original contract; and*

*(2) Whether they were not required to make any inquiry as to the equitable or further interest the Plaintiff had in the suit property at the time of execution of the sale deed (Exhibit B-1) in their favour, on the ground that they were already aware of the nature of the possession of the Plaintiff as a tenant.*

*14. .... Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasises due care and attention in relation to good faith.*



*In the General Clauses Act emphasis is laid on honesty.*

19. *In view of what is stated above, it is clear that Defendants 2 to 5 were not bona fide purchasers for value without prior notice of the original contract and that they were required to make inquiry as to the nature of possession or title or further interest, if any, of the Plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the Plaintiff was in possession of the property as the tenant. What is material is the inquiry at the time when the subsequent sale transaction was entered into."*

(ix) In **Joginder Singh Vs. Nidhan Singh** reported in **1995 SCC Online**

**P&H 1022** it was observed as under:-

*"35. Let me now take up issue No. 3 under which the Defendant No. 2 Nidhan Singh had to prove that he was a bona fide purchaser for consideration and without notice of the earlier agreement to sell Ex. PA with the Plaintiff-appellants. Though it is proved that the sale in favour of Nidhan Singh is for consideration, but it has to be seen as to whether Nidhan Singh has been able to prove that he had no prior notice of the agreement to sell Ex. PA, i.e. the agreement which was executed by Puran Singh in favour of the Plaintiff-appellants.*

*36. It may be stated at the outset that where, on the land in respect of which an agreement to sell had been entered into, being sold by the vendor to another person in breach of contract of sale, the person in whose favour an agreement to sell was executed by the vendor earlier brings a suit for specific performance of the contract against the vendor and the transferee from him, the onus is on the transferee to prove that he had no notice of the prior agreement to sell in favour of that person. This onus can only be discharged by the evidence led in the case. The mere denial by the transferee to the effect that he had no notice of the previous contract for sale will not discharge the onus that rests on him.*

*39. The onus was on the Defendant-transferee Nidhan Singh to prove that he had no notice of the prior agreement to sell Ex. PA in favour of the Plaintiff-appellants... The onus being on the Defendant, can only be discharged by the evidence led in the case.*

*43. It was held by Macleod, C.J. as under:- "The result, therefore, must be that the 2nd Defendant having knowledge of the Plaintiff being in possession, and having made no Inquiry why the Plaintiff was in possession must be taken to have had constructive notice of all the equities in favour of the Plaintiff. It would have been a different matter if he had made inquiries and had been told that Plaintiff was only in possession as mortgagee, but if he chooses to make no inquiries at all, then he is liable to all the risks that*



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might result from the discovery that the person in possession was entitled to equities against the vendor. The result therefore, must be that the appeal must be allowed. The Plaintiff will be entitled to a conveyance of the suit property from the 2nd Defendant who has a registered sale deed from the Defendant. The Plaintiff will be entitled to his costs throughout.”

(x) In **D. Kamalvathi Vs. P. Balasundaram (deceased) & Others**

reported in **2011-1-L.W-940** the relevant portion is extracted hereunder:-

“11. Section 19 of the Specific Relief Act has been interpreted by the Honourable Supreme Court in the judgment reported in *R.K.Mo- hammed Ubaidullah v. Hajee C.Abdul Wahab* ((2000) 6 SCC 402= (2000-3-L.W. 675), wherein the Honourable Supreme Court held as follows:-

“14. Section 19 of the Specific Relief Act, 1963, to the extent it is relevant, reads:

“19. Relief against parties and persons claiming under them by subsequent title - Except as other- wise provided by this Chapter, specific perform- ance of a contract may be enforced against--

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original con- tract;

(c)-(e)\*\*\*\*

As can be seen from Sections 19(a) and (b) ex- tracted above specific performance of a contract can be enforced against (a) either party thereto; and (b) any person claiming under him by a title arising subsequent to the contract, except a trans- feree for value who has paid his money in good faith and without notice of the original contract.

12. Therefore, from the above passage, it clear that section 19(b) of the Specific Relief Act is an exception from the general rule and the onus is on the subsequent purchaser to prove that he purchased the property in good faith and also bona fide purchaser for value. Therefore, we have to see whether respondents 2 and 3 have discharged their burden that they are the bona fide purchasers for value and they purchased the property in good faith.

13. Admittedly, the agreement of sale, Ex.A1 was not a registered one. Therefore, it cannot be stated that respondents 2 and 3 must be aware of the agreement of sale had they ob- tained encumbrance certificate. Therefore, we will have to go by the admissions and the con- duct of respondents 2 and 3 to find out whether they are the bona fide purchasers for value and purchased the property in good faith.

15. Therefore, when a person is in possession of the property, the



*purchaser ought to have made enquiries about the capacity of a person in possession and if no enquiry is made, then it cannot be stated that he is a bona fide purchaser, for value. The judgment reported in AIR 1968 Madras 383 = (1968) 81 L.W.90 was relied upon by the Honourable Supreme Court in the judgment reported in (2000) 6 SCC 402 = (2000-3-L.W. 675. Further, no enquiry was made by respondents 2 and 3 about the documents of title. In the written statement, they have stated that after the receipt of the court notice, they enquired about the genuineness of the agreement of sale with the first Respondent and he told that he did not execute an agreement of sale nor received any money from the Appellant and the document was deposited with the Appellant's husband for raising a loan, but, the Appellant has cheated him.*

*16. In evidence, DW1 would say that after the receipt of the court notice, he approached the first Defendant/first Respondent and enquired about the same and he stated that the first defendant demanded a loan from the Appellant's husband and his signature was obtained in blank papers and from that, they might have created the agreement of sale. Therefore, it is made clear from the above admission that prior to the agreement of sale, respondents 2 and 3 did not make any enquiries about the original documents of title. Further, in the cross-examination, DW1 would say that he enquired about the original documents of title from the first Respondent and he informed them that he would hand over the documents later and thereafter, the first Respondent informed him that the husband of the Appellant cheated him and got the original documents of title. Therefore, having regard to the prevaricating answers given in evidence and his admission in the pleading, it is made clear that they have not demanded the original documents of title prior to the sale deed."*

**(xi) In *Sughar Singh Vs. Hari Singh (dead) through Lrs. & Others***

reported in **2021 SCC Online SC 975** it was observed as follows:-

*"4. That, the suit was contested by the Defendant No. 1 by filing a written statement denying the very execution of the agreement to sell dated 10.10.1976 as well as two documents of alleged extension of time dated 30.09.1978 and 29.09.1981. He also denied having received a sum of Rs. 25,000/- at the time of agreement and thereafter Rs. 8000/- and Rs. 7000/- respectively at the time of alleged two extensions as part of the sale consideration.*

*15. The High Court raised two points for determination viz. (1) non-compliance of the provisions of Section 16(c) of the Specific Relief Act, 1963 (for short "the Act") to the effect that the Plaintiff has failed to aver and prove that he was always ready and willing to perform his part of the*



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contract; and (2) with regard to the effect of non- registration of the two extensions of time for executing the sale deed pursuant to the unregistered agreement to sell dated 10.10.1976 in view of the U.P. Act No. 57 of 1976 and to decide the same in accordance with law.

21. It is vehemently submitted by the learned Senior Advocate appearing on behalf of the original Plaintiff that even the reasoning and conclusion recorded by the High Court that the suit has to fail for non-compliance of pleadings as per section 16(c) of the Act is contrary to the record and law laid down by this Court. It is submitted that as per the settled proposition of law laid down by this Court, for determining the readiness and willingness, the suit has to be read as a whole, the pith and substance being that 'readiness and willingness' has to be in spirit and not in the letter and form.

26. It is further submitted that the High Court has even erred in non-suiting the Plaintiff on applicability of proviso to Section 20 of the Act. It is submitted that the High Court has erred in observing that it is not mandatory but discretionary to grant specific relief. It is submitted that the reasoning given by the High Court that even if the agreement to sell is proved and even if the part or major portion of the sale consideration is paid and even if the readiness and willingness is also proved, grant of decree for specific performance is discretionary is unsustainable. It is submitted that if such an interpretation is accepted, in that case, in no case, the decree for specific performance would be passed. It is submitted that even the discretion not to grant relief cannot be exercised de hors the conduct of the parties. It is submitted that every discretion has to be exercised soundly and reasonably.

46. Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the Plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the Defendant/executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The Plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the Plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the Plaintiff rather than in favour of the Defendant



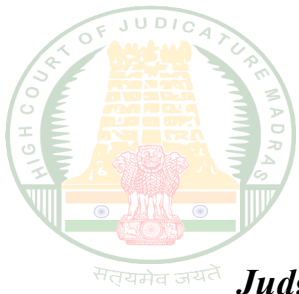
*executant of the agreement to sell, while exercising the discretion judiciously.*

*47. For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is ane no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.*

*48. Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was framed either by the learned Trial Court or by the learned First Appellate Court or even by the High Court. The same has been dealt with by the High Court for the first time in a Second Appeal under Section 100 of the CPC. Even otherwise no cogent reasons have been given as to why the decree of specific performance shall not be passed in favour of the Plaintiff.”*

14.24. By referring to the above decisions, the learned Counsel for the Plaintiff submitted that the Fourth Defendant, knowing fully well the subsisting encumbrance in the form of Agreement of Sale dated 20.07.2005 entered into between the Plaintiff and First Defendant, purchased the property through a sale deed dated 22.11.2006. Such purchase by the Fourth Defendant is not valid as it defeats the right of the Plaintiff as an Agreement holder. The fourth Defendant cannot call himself as a bona fide purchaser. The Trial Court, taking note of the above, has rightly passed a decree for specific performance and it does not call for any interference by this Court. Accordingly, the learned Counsel for the Plaintiff prayed for dismissal of this appeal with costs.

***Point for determination:-***



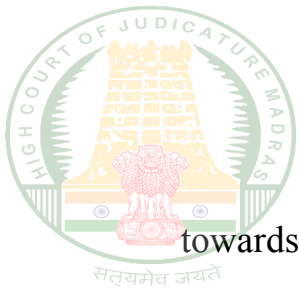
A.S.No.531 of 2012

***Whether the Judgment of the learned Additional District Judge, Fast Track Mahila Court – II, Tiruvallur at Poonamallee granting decree declaring the sale deed executed by the first Defendant in favour of the fourth Defendant as null and void and granting the decree for specific performance of contract is perverse, warranting interference by this Court?***

15. Heard the learned Counsel for the Fourth Defendant and the learned Counsel for the Plaintiff. Perused the material records placed, including the Judgment dated 20.12.2011 made in O.S. No. 42 of 2010 on the file of the Additional District cum Fast Track Court -II, Poonammallee.

16. At the outset, it must be stated that the Plaintiff has instituted the suit during the year 2010 much after the Fourth Defendant purchased the suit property through a Sale Deed dated 22.11.2006. It is also claimed that the fourth Defendant was put in possession of the suit property. The Trial Court, notwithstanding the above, has granted a decree for specific performance in favour of the Plaintiff, which is assailed by the Fourth Defendant in this appeal.

17. It is not in dispute that the Plaintiff and the first Defendant entered into a registered agreement of sale dated 20.07.2005, by which the Plaintiff agreed to purchase the suit property from the first Defendant. It is claimed by the Plaintiff that he has paid a total sum of Rs.5,50,000/- to the first Defendant



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towards advance out of the total sale consideration of Rs.11,00,000/-. At the time of entering into the agreement of sale dated 20.07.2005, the Plaintiff paid Rs.4,50,000/-. The second instalment of advance amount of Rs.50,000/- was paid on 09.12.2007. By this time, the suit property itself was alienated by the first Defendant in favour of the fourth Defendant by executing the sale deed dated 22.11.2006.

18. It is seen from the agreement of sale dated 20.07.2005, that eleven months time has been given for completion of sale deed which may further be extended by six months by mutual consent. Hence, the sale agreement ought to have been concluded into a sale deed on or before 19.08.2006. In the present case, as time is the essence of sale agreement, the Plaintiff ought to have filed the suit for specific performance immediately after the expiry of eleven months period stipulated in the sale agreement i.e., immediately after 19.08.2006. The Plaintiff has not come forward with any evidence to show that the time stipulated in the sale agreement was extended further by mutual consent except for the two alleged endorsements made by the first Defendant allegedly on receiving Rs.50,000/- on two occasions. On verification of the signature found in the sale agreement and on the endorsements under Ex.A-4 and Ex.A-5, the signatures found in the endorsements differ from the



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signatures found in sale agreement. It appears to have been created fictitiously for the purpose of gaining time to file the present suit belatedly so as not to be hit by the Limitation Act. One other factor for this Court to come to such conclusion is that the first Defendant had already sold the property to the fourth Defendant on 22.11.2006. Therefore, there is no possibility of the first Defendant receiving Rs.50,000/- from the Plaintiff on two occasions on 09.12.2007 and on 14.07.2008 and making endorsements after having sold the suit property to fourth Defendant.

19. Further, between 20.07.2005 and 09.12.2007, there is nothing to show that either the first Defendant demanded payment of further amount or the Plaintiff called upon the first Defendant to come forward and execute the sale deed. It is not known as to why the Plaintiff has to wait for 29 months to pay the sum of Rs.50,000/-. Further, yet another instalment of another Rs.50,000/- was alleged to have been paid by the Plaintiff on 14.07.2008. In other words, seven months after paying the second instalment of Rs.50,000/-, the Plaintiff is alleged to have paid yet another sum of Rs.50,000/-. It is claimed by the Plaintiff that on receipt of the amount of Rs.50,000/- on 09.12.2007 and 14.07.2008, the first Defendant had made endorsements on the reverse of the agreement of sale dated 20.07.2005. However, it is not shown as to whether the first Defendant demanded further sum of Rs.50,000/- or the



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Plaintiff paid those amount twice, voluntarily. There is no explanation offered by the Plaintiff as to why the sum of Rs.50,000/- was paid by him in piecemeal manner to the first Defendant. Even though it is claimed that the first Defendant made endorsements on 09.12.2007 and 14.07.2008 on the reverse of the agreement of sale dated 20.07.2005, by that time, the first Defendant is not the owner of the suit scheduled property as he had alienated it to the fourth Defendant by executing the sale deed dated 22.11.2006. Therefore, the averment that the first Defendant has made endorsement and received the sum of Rs.50,000/- from the Plaintiff, twice, is doubtful. When the first Defendant had alienated the suit scheduled property at all, it is not known as to why he should receive the sum of Rs.50,000/- much after sale of the suit scheduled property to the fourth Defendant.

20. The delay in asserting the right as an agreement holder by the Plaintiff has led to the present dispute. The Plaintiff, though paid Rs.4,50,000/- at the time of execution of the sale deed on 20.07.2005, has not taken any steps to either get the sale deed in his favour or demanded the first Defendant to do so. For the first time, on 14.11.2007, the Plaintiff alleges to have caused a legal notice to the first Defendant, demanding him to receive the balance sale consideration and to produce a NIL encumbrance with all original documents. However, no evidence produced by the Plaintiff to show whether

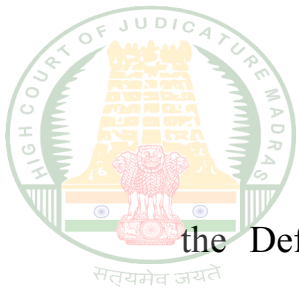


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the said notice was sent by registered post or by speed post and as to whether it was received by the first Defendant. Curiously, even after this notice dated 14.11.2007, the Plaintiff allegedly paid Rs.50,000/- on 09.12.2007 and on 14.07.2008 paid another sum of Rs.50,000/- to the first Defendant, thereby, indirectly giving up his demand for execution of the sale deed in his favour, as has been made in the notice dated 14.11.2007. In the notice dated 14.11.2007, the Plaintiff called upon the first Defendant to receive the balance sale consideration and to furnish all the original documents, within a period of 15 days therefrom failing which, it was stated that he will have no other option except to file a suit for specific performance. Thus, a cause of action has arisen for the Plaintiff to file the suit immediately after issuing the notice dated 14.11.2007, especially when the first Defendant did not respond to the said notice dated 14.11.2007. The Plaintiff, without filing such a suit, has allegedly paid Rs.50,000/- on 09.12.2007 and paid another sum of Rs.50,000/- after eight months on 14.07.2008 towards part of the sale consideration. Thus, the demands which the Plaintiff made in his notice dated 14.11.2007 have been given up. This attitude of the Plaintiff is strange and not befitting a prudent purchaser and as already stated supra is not true and genuine.

21. The next notice issued by the Plaintiff was on 12.02.2009. This notice was issued to all the four Defendants. In this notice, it was claimed that



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the Defendants have colluded together and thereby the sale deed dated 22.11.2006 was executed by the first Defendant in favour of the fourth Defendant. It was stated in the notice dated 12.02.2009 that the Plaintiff was deprived of the sum of Rs.5,50,000/- paid by him as advance. Thus, when the Plaintiff has come to know about the execution of the sale deed dated 22.11.2006 in favour of the fourth Defendant and asserted that he lost the sum of Rs.5,50,000/- paid towards advance sale consideration, he ought to have filed a suit simplicitor for recovery of money instead of filing a suit for specific performance of the agreement dated 20.07.2005, belatedly, in the year 2010

22. It is to be noted that for enforcing the agreement of sale dated 20.07.2005, the Plaintiff has filed the instant suit on 18.03.2010. Absolutely, there is no explanation offered by the Plaintiff as to what made him to wait for about five years to file the suit for specific performance. By the time when the suit was filed, the suit scheduled property was alienated in favour of the fourth Defendant. The fourth Defendant, on the strength of the sale deed dated 22.11.2006 has mutated the revenue records and continued to remain in possession of the property. Thus, there is delay at every stage from the date of agreement on 20.07.2005 till the date of filing the suit on 18.03.2010. Further, it has to be mentioned that after 18 months of filing the suit, on 29.09.2011,



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the Plaintiff has deposited the balance sale consideration of Rs.5,50,000/-

under the impression that even after five years of the agreement dated 20.07.2005, the Plaintiff can still purchase the property for the same price of Rs.11 lakhs, which was fixed between the Plaintiff and the first Defendant. This delay, in the opinion of this Court, vitiates all the claim of the Plaintiff. The Plaintiff was not prudent in asserting his right as an agreement holder at the earliest point of time on the strength of the agreement of sale dated 20.07.2005. The Plaintiff cannot be construed as a prudent purchaser and he can be termed as a person who had slept over his right during the relevant time. Thus, much water had flown under the bridge which disentitle the Plaintiff to seek for specific performance of the agreement of sale dated 20.07.2005 by filing the suit on 18.03.2010.

23. The Plaintiff repeatedly harps upon the flaw committed by the fourth Defendant in ignoring the registered agreement of sale dated 20.07.2005, while getting the sale deed dated 22.11.2006 executed in his favour. It is true that the agreement of sale dated 20.07.2005 between the Plaintiff and the first Defendant was registered before the competent Sub-Registrar. However, when the agreement of sale did not culminate into a sale deed within the stipulated time, then, the owner of the land is having every



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right to alienate it in favour of a prospective purchaser. In the present case, the

agreement of sale between the Plaintiff and first Defendant was on 20.07.2005.

Only after the expiry of the period stipulated in the sale agreement, the sale deed dated 22.11.2006 came to be executed in favour of the fourth Defendant.

It is needless to mention that an agreement of sale will not operate an embargo or treated as an encumbrance unless it gets culminated into a sale deed.

Though the agreement of sale dated 20.07.2005 was registered, the first Defendant can proceed further to sell the property covered under the agreement of sale dated 20.07.2005 in favour of a prospective purchaser, after the expiry of the period stipulated in the sale agreement, when particularly the Plaintiff was not prudent enough to swiftly initiate further course of action pursuant to the sale agreement.

24. The reason for the first Defendant to sell the property to the fourth Defendant are palpable. The property in question was under mortgage with LIC Housing Finance Limited. It is the fourth Defendant, who, on behalf of the first Defendant, cleared the dues to LIC Housing Finance Limited, on behalf of the first Defendant. Subsequently, LIC Housing Finance Limited has sanctioned loan to the fourth Defendant to purchase the suit property. However, the Plaintiff has not referred to the encumbrance subsisting over the



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property with LIC Housing Finance Limited. When the Plaintiff claims that the fourth Defendant, without reference to the registered agreement of sale dated 20.07.2005 had obtained the sale deed dated 22.11.2006, the same mistake was committed by the Plaintiff, who ignored the subsisting mortgage of the property with LIC Housing Finance Limited. The Plaintiff was aware of the mortgage of the property with LIC Housing Finance Limited at the time of entering into the agreement of sale dated 20.07.2005. This is evident from clause 7 of the agreement dated 20.07.2005. Thus, knowing fully well that the property is under mortgage with LIC Housing Finance Limited, the Plaintiff had strangely paid the advance amount of Rs.5,50,000/- to the first Defendant instead of clearing the mortgage with the LIC Housing Finance Limited. No prudent purchaser, in a situation of this nature, would directly pay the advance amount to the vendor, when the encumbrance in the form of mortgage is required to be cleared without which he cannot purchase the property. Therefore, the entire transaction the Plaintiff had with the first Defendant is not normal but it is strange. In the above circumstances, the Plaintiff is not entitled to equitable relief of specific performance. When the hardship that may be occasioned to the Plaintiff and fourth Defendant is considered, the Plaintiff is only an agreement holder but the fourth Defendant is a purchaser, who, upon purchase, has mutated the revenue records in his name. Therefore,



the grant of a decree for specific performance, as prayed for in the suit, would only cause irreparable damage to the fourth Defendant. The Plaintiff, due to his lethargic attitude, has become disentitled to seek for the equitable relief of specific performance.

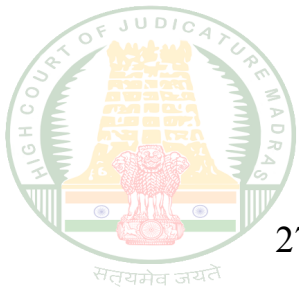
25. It is well settled that in a suit for specific performance, the Court should look at all the relevant circumstances including the time limit if any specified in the agreement or the reasonable time within which the parties are expected to fulfil their part of the obligations under the Contract. While doing so, the discretion to grant specific performance should be exercised sparingly and cautiously. In exercise of such discretion, the Court should bear in mind several attendant facts and circumstances of the case which includes, the time limit set forth in the agreement, the time within which a party demands the other party to perform his contract, the readiness and willingness on the part of the purchaser to perform his or her part of the contract, the legal action initiated by either of the party against the other in the event of the inaction on the part of the other, the relative hardship that may be occasioned in the event of grant of specific performance to the other party. Thus, the greater advantage or disadvantage while granting the relief of specific performance has to be looked into. It must also be mentioned that merely because the Plaintiff has a semblance of right, the Court need not grant him the relief. The



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exercise of such discretionary relief must be on the basis of established principles of law.

26. In the ruling reported in *Surinder Kaur Vs. Bahadur Singh* reported in (2019) 8 SCC 575 the Hon'ble Supreme Court has held that Section 20 of Specific Relief Act laid down that the jurisdiction to decree the suit for specific performance is a discretionary jurisdiction and the Court is not bound to grant such relief merely because it is lawful. On perusal of Section 20 of the Specific Relief Act it clearly indicates that the relief of specific performance is discretionary. Merely because the Plaintiff is legally right, the Court is not bound to grant him the relief. True it is, that the Court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously the discretion cannot be exercised in an arbitrary or whimsical manner. Sub Clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the Plaintiff.



27. In the ruling reported in **2020 SCC Online SC 86 in the case of**

**Sukhwinder Singh Vs. Jagroop Singh and another** cited by the learned

Counsel for the fourth Defendant, it is stated that “*such assumption is also not justified since the Defendant 2 had purchased the property for a consideration under a registered document and the Defendant 2 was also put in possession of the property. In that circumstance the Defendant 1 who had lost interest in the property, if had not chosen to appear and defend the suit the same cannot be a presumption of connivance in the absence of evidence to that effect*”.

This observation of the Hon'ble Supreme Court squarely applies to the facts of this case. Here, the first Defendant with whom Plaintiff entered into the sale agreement had not appeared before the Court and was set *ex parte* whereas the fourth Defendant is a *bona fide* purchaser for valuable sale consideration, while so, the sale deed executed in favour of the fourth Defendant ought not to have been declared as null and void by the learned trial Judge.

28. The ruling cited by the learned Counsel for the fourth Defendant in **2022 SCC online SC 840 in the case of U.N. Krishnamurthy Vs. A.M. Krishnamurthy** regarding the protection to the bonafide purchaser and failure of Plaintiff to prove readiness and willingness. In the facts of the case, the claim of the Plaintiff that he had made two payments after the sale agreement deed under Ex.A-4 and Ex.A-5 on 09.12.2007 and 14.07.2008 are found to be



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fictitious. If the Plaintiff had been diligent, he could have obtained encumbrance certificate within the time specified in the sale agreement deed under Ex.A-2 and would have issued notice to the first Defendant seeking execution of sale deed. Also, he ought to have cleared the mortgage debt with the LIC Housing Finance Limited in which the first Defendant had obtained mortgage loan by mortgaging the property. Since the Plaintiff failed to do so, the fourth Defendant as a *bona fide* purchaser, cleared the dues of the first Defendant and obtained sale deed which cannot be found fault with.

29. As per the reported ruling in **2020 SCC Online SC 86 - Sukhwinder Singh Vs. Jagroop Singh, (1997) 3 SCC 1 - K.S.Vaidyanadam Vs. Vairavan** and **(2022) Live Law (SC) 807 - Kolli Satyanarayana (Dead) by Lrs. Vs. Valuripalli Kesava Rao Chowdary (Dead) Thr. Lrs. and others**, the discretionary relief cannot be exercised mechanically. The injury or damage caused either for the Defendant or Plaintiff had to be weighed. Here, the *bona fide* purchaser/fourth Defendant had discharged the loan of first Defendant with LIC Housing Finance Limited which cannot be considered as a fraud or a suspicious transactions. Thereafter, the first Defendant had executed the registered sale deed in favour of the fourth Defendant for Rs.8,50,000/- which cannot be doubted by this Court, Therefore, to declare such sale deed as null and void by failing to exercise discretion as per Section 20 of Specific Relief



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Act attracts the reported ruling and the ratio laid down by the Hon'ble Supreme Court in the above cited cases. Instead the learned Judge had decreed the suit for specific performance and declared the sale deed in favour of the fourth Defendant as null and void. Therefore, the Judgment of the learned Additional District Judge, Fast Track Court – II, Tiruvallur at Poonammallee is found to be perverse warranting interference by this Court in the light of the above rulings.

30. On perusal of the endorsement made in Ex.A-4 and Ex.A-5, it is found that the signature of Gurusamy differs. The Plaintiff is found not *bona fide* in producing Ex.A-4 and Ex.A-5. The endorsement made under Ex.A-4 and Ex.A-5, on comparison with Ex.A-2, is found fictitious. It is in the light of those endorsements, the suit was laid belatedly in 2010. Therefore, grant of relief of specific performance of contract in favour of the Plaintiff is found to be improper. The learned Trial Judge failed to exercise the discretion vested in her judiciously, fairly and equitably.

31. The ruling reported in **1945 SCC Online 984 - Khushalchand Bhagchand Marwadi Vs. Trimbak Ramachandra Belapurkar**, cited by the learned Counsel for Plaintiff to support the conclusion arrived at by the learned Additional District Judge, Fast Track Court. The ruling relied on by



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the learned Counsel for the Plaintiff will not hold good in the facts and circumstances of this case where the Plaintiff was not assertive in seeking execution of sale deed within eleven months period. For the failure of first Defendant to clear the mortgage loan obtained from LIC Housing Finance Limited, the seller cleared the mortgage debt through the fourth Defendant. In such event, the Plaintiff is not entitled to specific performance of contract. The endorsements under Ex.A-4 and Ex.A-5 only show that the Plaintiff was not ready and willing to perform his part of contract even though he claimed himself to be ready.

32. That apart the Plaintiff did not file suit by himself. He had engaged his younger brother to file the suit by conferring him Power of Attorney so that he will let in evidence on behalf of Plaintiff. It is an accepted principle that the power of attorney agent cannot let in evidence on behalf of his principal. The best evidence that could be tendered is only through the principal and not his agent. In such event, the Court has to draw an adverse inference against the Plaintiff for avoiding to step into the witness box and for having filed the Suit belatedly after five years from the date of execution of the agreement of sale in the year 2005. In any event, much before the filing of the suit, on 22.11.2006, sale deed was executed in favour of the fourth Defendant.



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Under those circumstances, the Trial Judge did not exercise the discretion vested under law, judiciously as per the reported ruling cited by the learned Counsel for the fourth Defendant in **2020 SCC Online SC 86 in the case of Sukhwinder Singh Vs. Jagroop Singh**. It is re-iterated that even if the case of the Plaintiff seeking specific relief is made out, the Court need not exercise discretion for grant of specific relief. The Court has discretion to refuse to grant the relief.

33. It is apt to rely on the decision of the Hon'ble Supreme Court in the case of **Janki Vashdeo Bhojwani v. Indusind Bank Ltd** reported in (2005) **2 SCC 217**, regarding the evidence of Power of Attorney holder wherein it was held as under:

*“that a Power of Attorney holder, who has acted in pursuance of the said power, may depose on behalf of the Principal in respect of such acts but cannot depose for the Principal for the acts done by the Principal and not by the Power of Attorney holder. Likewise, the Power of Attorney holder cannot depose for the Principal in respect of matters of which the Principal alone can have personal knowledge and in respect of which the Principal is entitled to be cross-examined. In our opinion, the failure of the Respondent to appear in the witness box can be considered to raise an adverse presumption against him as further observed therein as follows:*

*15. Apart from what has been stated , this Court in **Vidhyadhar v. Manikrao** observed at SCC pp.583-84, para 17 that:*

*17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....”*

34. In the light of the above discussion, the point for determination is



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answered in favour of the fourth Defendant and against the Plaintiff. The

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Judgment of the learned Additional District Judge, Fast Track Mahila Court –

II, Tiruvallur at Poonamallee granting decree declaring the sale deed executed by the first Defendant in favour of the fourth Defendant as null and void and granting the decree for specific performance of contract is found perverse warranting interference by this Court in the light of the reported ruling of the Hon'ble Supreme Court cited above.

In the result, **this Appeal Suit is allowed.** The Judgment and decree dated 20.12.2011 made in O.S. No. 42 of 2010 on the file of the learned Additional District Judge, Fast Track Court -II, Tiruvallur @ Poonammallee is set aside. The suit in O.S. No. 42 of 2010 filed by the Plaintiff is dismissed. No costs.

18.03.2025

dh

Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

To

1. The Additional District Judge,



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Fast Track Court -II,  
Tiruvallur at Poonammallee.

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2. The Section Officer,  
V.R.Section,  
High Court, Madras.



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**SATHI KUMAR SUKUMARA KURUP, J**

dh

Judgment made in  
A.S. No. 531 of 2012

18.03.2025