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

**RESERVED ON : 29.08.2025**
**DELIVERED ON : 23.09.2025**

**CORAM:**

**THE HON'BLE MR. JUSTICE M.JOTHIRAMAN**

**<u>A.S.No.47 of 2021</u>**

R.Ramiah ... 3rd Defendant / Appellant

vs.

1.S.Raja Mohamed ... Plaintiff / 1st Respondent

2.Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

3.Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008. ... Defendants 1 and 2 / Respondents 2 & 3

**<u>Prayer:</u>** Appeal Suit filed under Order XL1 Rule 1 r/w. Section 96 of the Code of Civil Procedure Code, 1908 against the Judgment and Decree made in O.S.No.3925 of 2015 dated 30.09.2020 on the file of the II Additional City Civil Court, Chennai.

For Appellant : Mr.A.K.Sriram, Senior Counsel
for M/s.A.S.Kailasam and Associates

For Respondent : Mr.R.Subramaniam,
for Mr.C.Jagadish

**JUDGMENT**

The unsuccessful 3rd defendant has preferred this appeal. The Suit is filed for specific performance directing the 3rd defendant to get the sale deed executed in his favour by the defendants 1 and 2, after such execution to execute the sale deed in favour of the plaintiff or in the alternative, directing the 3rd defendant to refund the entire sale consideration which was paid by the plaintiff along with interest @ 18% p.a. and for permanent injunction restraining the defendants from alienating the suit schedule property. The suit is decreed for the relief of specific performance and the plaintiff is also entitled for a decree of permanent injunction. The parties are referred to as per their ranking before the Trial Court.

2. Brief facts of the plaintiff is as follows:

2.1. The 2nd defendant has allotted Shop No.A-5 to an extent of 150 Sq.Ft. to the 3rd defendant / Ramiah. Since the said shop situated in an interior place where much business cannot be generated, the 3rd defendant sought for alternate shop and hence, the suit property in Shop No.AU-19 was allotted on Hire Purchase basis @ Rs.14,00,548/- and a sum of Rs.2,47,953/- was paid as initial deposit and remaining sum in 40 quarterly instalments. On 05.06.2000, the 1st defendant issue a show cause notice calling upon the 3rd defendant in view of the default made by him.

2.2. The 3rd defendant approached the plaintiff for sale of suit property and the same was reduced in writing by an agreement of sale dated 13.11.2000 and immediately, he paid a sum of Rs.85,000/-. A sum of Rs.2,00,000/- was paid pursuant to the said agreement of sale on 10.12.2000 and the physical possession of the suit property was handed over to the plaintiff. It was mutually agreed that as and when the defendants 1 and 2 execute the sale deed in favour of the 3rd defendant, he should convey the same in favour of the plaintiff. The 3rd defendant executed a Power of Attorney dated 17.11.2000.

2.3. The plaintiff has been carrying on vegetable wholesale trade in the suit property. The Power of Attorney executed by the 3rd defendant in favour of the plaintiff is coupled with interest and therefore, the same is an irrevocable power of attorney and based upon the same and the sale agreement, the plaintiff had paid the entire sale consideration of the suit property.

2.4. Due to escalation of market value of the suit property, the 3rd defendant tried to interfere with the plaintiff's possession over the suit property. Hence, the plaintiff has filed a Suit in O.S.No.2676 of 2003 on the file of the XIII Assistant City Civil Court at Chennai for permanent injunction. Subsequently, on 17.03.2003, the 3rd defendant unilaterally cancelled the Power of Attorney. Hence the plaintiff filed a Suit In O.S.No.1902 of 2004 declaring the cancellation of Power of Attorney as null and void. The XVII Assistant City Civil Court at Chennai, vide Common Judgment dated 30.08.2006, dismissed the suit for permanent injunction and decreed the relief of declaration. Aggrieved against the dismissal of the relief of injunction, the plaintiff has filed the First Appeal in A.S.No.285/2018. Aggrieved against the decree of declaration, the 3rd defendant has filed A.S.No.309 / 2007 and vide common judgment and decree dated 16.04.2011, the appeal filed by the 3rd defendant was dismissed and the appeal filed by the plaintiff was allowed.

2.5. The plaintiff has filed a writ petition in W.P.No.10241 of 2011, directing the 2nd defendant and another to pass orders on his representation dated 04.08.2010 and to grant Registration Certificate and Trade Licence in respect of the suit property in favour of the plaintiff. This Court, vide order dated 25.04.2011, had directed the 2nd defendant to consider the said representation. Since the Chief Administrative Officer, CMDA failed to issue Registratiossn Certificate in favour of the plaintiff, he was again constrained to file the writ petition in W.P.No.20559 of 2011, directing the Chief Administrative Officer, CMDA to dispose of the representation of the plaintiff dated 11.05.2011 and this Court has allowed the said writ petition. Meanwhile, the 3rd defendant filed two second appeals before this Court in A.S.Nos.1172 and 1173 of 2011.

2.6. The 3rd defendant represented to the 2nd defendant on 08.10.2010 and 10.06.2011 to issue the sale deed in his favour. Since no action was taken, the 3rd defendant has filed a writ petition in W.P.No.17339 of 2011 seeking a writ of mandamus to consider the representations submitted by the 3rd defendant dated 08.10.2010 and 10.06.2011. Pursuant to the orders passed by this Court, the 2nd defendant has passed an order holding that the 3rd defendant is not entitled to get the sale deed executed in his favour, vide communication dated 18.08.2011. In the said communication, even before 18.08.2011, the 2nd defendant has held that the plaintiff is entitle to get the sale deed in respect of the suit property on the basis of the findings of the Civil Court.

2.7. The 3rd defendant colluded with the defendants 1 and 2, who issued a communication dated 02.04.2012 asking upon the 3rd defendant to furnish the original registration and licence for the period from 2012 to 2015. The plaintiff challenged the said communication by filing a writ petition in W.P.No.12080 of 2012 and this Court, vide order dated 24.03.2015, held that the 2nd defendant and others were directed to consider the application submitted by the plaintiff for renewal of application dated 10.03.2015. Pursuant to the said order, the defendants 1 and 2 issued a licence to the plaintiff for the period from 01.04.2015 to 31.03.2018. The 3rd defendant has tried to sell the suit property for higher price in breach of the sale agreement. Hence the suit.

3. Brief facts of the 1st defendant is as follows:

3.1. The suit is not maintainable either in law or on facts. The 3rd defendant was allotted A5 type shop in the Vegetable Market, vide letter dated 11.01.1988 and letter dated 15.03.1994. The aforesaid allottee / 3rd defendant was given conversion of Shop No.AU-19 in lieu of L/18 under Lower to Higher category conversation vide order dated 13.07.2009. The 3rd defendant / allottee has paid the initial amount of Rs.2,50,000/- and took possession of the shop on 13.07.2000. On 05.06.2003, a Show Cause Notice was issued to the allottee to pay the arrears of Rs.82,201/- and penal interest of Rs.5,410/- as on 03.06.2003. In response to the show cause notice, the allottee has remitted Rs.41,100/-, Rs.41,100/- and Rs.1,00,000/- on 04.08.2003, 30.10.2003 and 31.12.2003 respectively.

3.2. There are different cases filed by the plaintiff / S.Rajamohamed, and the 3rd defendant. In W.P.No.12080/2012 and M.P.No.1/2015, this Court vide order dated 24.03.2015, had disposed of the writ petition by directing that till final orders are passed, the parties are directed to maintain status quo as on today. Thereafter, licence was issued by the Market Management Committee to the plaintiff. As per the Tamil Nadu Specified Commodities Market (Regulation of

Location) Act, 1996, the sale deed will be issued to those to whom shops are allotted. In this case, the 3rd defendant / R.Ramaiah is the allottee of the shop.

4. Brief case of the 3rd defendant is as follows:

4.1. The plaintiff has not made out any *prima facie* case. The plaintiff is not the lawful allottee and on refund of the entire sale consideration since he had not paid any payment except few and major payments to the defendants 1 and 2, was paid by the 3rd defendant and some payments by the plaintiff at the 3rd defendants instance as his Power of Attorney. There is no privity of contract between the plaintiff and the defendants 1 and 2. The plaintiff is not entitled to seek any direction against him for executing the registering the sale deed. Even assuming there is an agreement between the plaintiff and the 3rd defendant, the same is not legally enforceable as at that time, the 3rd defendant was only allotted Shop No.A5 and later, the allotment was changed to Shop No.AU-19 and since the agreement is not valid and binding on the defendants 1 and 2 to claim for executing the sale deed in favour of the plaintiff.

4.2. The show cause notice issued by the 3rd defendant by the defendants 1 and 2 is a matter between the 3rd defendant and the defendants 1 and 2 and the plaintiff cannot take advantage of the suit and seek for execution of sale deed when the final payment was towards the demand of the CMDA still pending with them. Any monetary payment made by the plaintiff on behalf of the 3rd defendant cannot confer the plaintiff's any valid rights to claim against the defendants 1 and 2 and the remedy available to the plaintiff at the most is to claim the said amount from him that too on production of documentary evidences in the manner known to law. The 3rd defendant at no point of time was ready and willing to sell the shop to the plaintiff and on account of his long friendship with the plaintiff and due to his ill health and for the purpose of taking treatment, the 3rd defendant took some financial loan and assistance from the plaintiff, for which he permitted the plaintiff to take care of his shop as his Power Agent, besides signing in few stamp papers and created security which in turn used by the plaintiff for the purpose of making allegations against him. The 3rd defendant revoked the Power of Attorney executed in favour of the plaintiff and informed the same to the defendants 1 and 2. The plaintiff's occupation was not at all lawful and the question of refund of the entire sale consideration will not arise and the relief is untenable in law. The Suit has not been properly valued and hopelessly barred by limitation and there is no cause of action.

4.3. The 3rd defendant admitted the filing of the suits and the appeals and the filing of second appeals before this Court in SA.Nos.1172 and 1173 of 2012, which are pending consideration. The defendants 1 and 2 are not parties to the suit filed by the plaintiff and the judgment and decree is not binding on them. The plaintiff is not a party to the allotment proceedings and as per the terms and conditions of the lease agreement, except the allottee, no one is entitled to claim any legal rights and claim sale deed for the same from the defendants 1 and 2. The writ petition seeking for licence and consideration of the representation has nothing to do with the present suit. The issuance of Registration Certificate and Licence issued for running of the shop has nothing to do with the interest and title of the shop. The suit is barred under Section 10 CPC. The plaintiff is not entitled to seek injunction from the defendant from alienation, since he is the lawful allottee to the suit property. It is further contended in the additional written statement that the prayer is barred by limitation and prayed for dismissal of the Suit with costs.

5. Based on the pleadings, the Trial Court has framed the following issues:

*(1) Whether the suit is barred under Section 10 of CPC?*

*(2) Whether the plaintiff is entitled to the relief of specific performance directing the defendants to execute and register the sale deed in favour of the plaintiff in respect of the suit schedule property or alternative prayer directing the 3rd defendant to refund the entire sale consideration which was paid by the plaintiff along with 18% per annum in respect of suit schedule property as claimed?*

*(3) Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants from alienating the suit schedule property to third parties?*

*(4) To what relief?*

The Trial Court has also framed the following Additional Issue:

*Whether the 3rd defendant on getting registered Sale Deed in respect of the Plaint Schedule Property from the defendants 1 and 2 is liable to execute a Sale Deed in favour of the plaintiff as per the agreement for sale dated 13.11.2000?*

6. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and one K.Rathinasamy was examined as PW2 and one V.Chandran was

examined as PW3 and Exs.A1 to A26 were marked. On the side of the defendants 1 and 2, one Tmt.S.Vasanthi was examined as DW1 and the 3rd defendant himself examined as DW2 and Exs.B1 & B2 were marked.

**Findings of the Trial Court.**

7. The 3rd defendant had executed Ex.A3 – Sale Agreement deed 13.11.2000 and Ex.A4 – Power of Attorney dated 17.11.2000 in favour of the plaintiff. Ex.A3-Sale Agreement is valid. PW1 admitted his signature in Ex.A3. The evidence of PW1 reveals that he is always ready and willing to perform his contract. There is no time limit fixed in Ex.A3 for the performance of the contract and as per the recitals contained in Ex.A3, the plaintiff has undertaken to pay the instalments. Accordingly, plaintiff has paid entire instalments. The Suit is not barred by limitation. In Ex.A3-Sale Agreement, no time has been fixed. Only after the 3rd defendant obtains sale deed from the defendants 1 and 2, he has to execute the Sale Deed. The Suit is not barred under Section 10 CPC.

8. During the pendency of this appeal, the 1st respondent / plaintiff has filed an application in CMP.No.16651 of 2025 in A.S.No.47 of 2021, under Order 41

Rule 27 CPC to receive three additional documents.

9. Counter Affidavit has been filed by the 3rd defendant wherein it has been stated that the second appeals in S.A.Nos.1172 & 1173 of 2012 were dismissed for default on 29.07.2019. Subsequently, application in CMP.No.19620 of 2019 was filed to restore the same was taken out and the same is still pending consideration. The plaintiff has not mentioned that how he is in possession of the letter dated 18.08.2011, to which he is not a party. The plaintiff has deliberately given interpretation to the letter issued by CMDA that they would execute the sale deed in favour of the power of attorney holder, whereas the letter only states that the Sale Deed in the name of the allottee may be handed over to the concerned Agent of the allottee. The order passed in W.P.No.19069 of 2010 was closed for the reason that a Civil Suit was pending The order passed in CRP.No.2438 of 2018 has also not substantiated the present dispute. There shall be absolutely no necessity to file and receive the order of the revision petition or the writ petition, as they bear no substantial cause to adjudicate the present appeal.

10. The learned Senior Counsel appearing for the appellant/3rd defendant has

put forth the following contentions:

(1) The Court below has not considered the question of maintainability of the Suit as against the defendants 1 and 2, in view of the fact there is no Privity of Contract between the plaintiff and the defendants 1 and 2. The defendants 1 and 2 were not parties to Ex.A3/Sale Agreement and therefore, could not have denied the Suit thereby granting a prayer based on the covenants of Ex.A3 as against the defendants 1 and 2.

(2) In a Suit for Specific Performance, third parties to a agreement of sale cannot be a party. Since the plaintiff was not an allottee, the question of seeking any direction as against the defendants 1 and 2 could not legally arise.

(3) The Trial Court has not considered the validity of Ex.A3 / Sale Agreement and the same was legally valid or enforceable, in view of the specific bar contained in Ex.B2, which was the allotment order. The said Ex.B2 prescribes the terms and conditions in favour of the third defendant.

(4) The Court below has failed to consider the readiness and willingness with reference to Section 16C of the Specific Relief Act r/w. requirements as per Forms 47 and 48 of the Schedule I of CPC.

(5) The Court below has not appreciated the plea and issue in respect of limitation and in this context, has totally ignored the fact that Ex.A3 is of the year 2000, while the Suit was filed on 01.09.2015.

(6) The Court below ought to have seen that Ex.A6 - Instalments Intimation sent by CMDA to the 3rd defendant dated 25.06.2001 would show that the instalments will be payable over a period of 10 years with effect from 01.10.2001, which ended on 01.10.2011, due to which even as per the payment clause, the Suit has to be filed in October, 2014.

(7) The plaintiff has colluded with the defendants 1 and 2, avoided executing the Sale Deed and as a consequence, the defendants 1 and 2 issued Ex.A21- letter dated 02.04.2012 from the 2nd defendant, Chief Administrative Officer, CMDA, the cause of action for filing the Suit for Specific Performance arose from that date. There was no averment in the plaint and cause of action to show that demand and refusal, which was mandatory as per Forms 47 and 48 of Schedule I of CPC and ought to have drawn adverse interference against the plaintiff.

(8) The Court below ought to have seen that based on Exs.A9 to A12 and A13, the Suit was barred under Order 2, Rule 2 CPC, since the averment and cause of action in Ex.A9 / Plaint in O.S.No.1902/2004 filed by the plaintiff would show that the relief of Specific Performance was available to the plaintiff at the time of filing of Ex.A9. The consideration mentioned in Ex.A3 was not the amount mentioned in the plaint with specific reference to the valuation and also highlighted by the evidence of PW1 in respect of values in

Ex.A3.

(9) The Court below ought to have considered the legal status of the plaintiff on the basis of Ex.A4, which was the Power of Attorney and the plaintiff was seeking to exercise his right based on Ex.A4 only and the same is impermissible under law.

(10) The Court below has not considered the validity and enforceability of two important documents, namely Ex.A3 and Ex.B2. The Court below has not even referred to Ex.B2 in proper perspective since Ex.B2 is the basis on which the suit prayer could be maintained. The conditions stipulated in Ex.B2 were violated on execution of Ex.A3 and ought to have held that Ex.A3 is invalid.

The learned Senior Counsel for the appellant to strengthen his conditions, has relied upon the following judgments:

***Jumma Masjid, Mercara v. Kodimaniandra Deviah and Others [1962 SCC Online SC 157]***

***Bhiku Keru Gade v. Dasharath Dattugiri [1965 SCC Online Bom 127]***

***Smt.Sandhya Rani Sarkar v. Smt. Sudha Rani Debi and Others [(1978) 2 SC 116]***

***Ram Pyare v. Ram Narain and Others [(1985) 2 SCC 162]***

***Abdul Khader Rowther v. P.K.Sara Bai and Others [(1989) 4 SCC 313]***

***Punjab Urban Planning & Development Authority v. Shiv Saraswati Iron & Steel Re-Rolling Mills [(1998) 4 SCC 539]***

***Delhi Development Authority v. Ravindra Mohan Aggarwal and***

***Another [(1999) 3 SCC 172]***

***Abdul Dadamiya Shaikh v. Jagannath Murlidhar Rathi by Lrs. [2002 SCC Online Bom 232]***

***Ganesh Patra and Others v. Banabihari Patra (deceased by Lrs.) and Others [2003 SCC Online Ori 61]***

***Renu Devi v. Mahendra Singh and Others [(2003) 10 SCC 200]***

***Pukjraj D.Jain and Others v. G.Gopalakrishna [(2004) 7 SCC 251]***

***Waheed Baig v. Bangi Lakshmamma and Others [(2008) 14 SCC 435]***

***M.Rathnam and Ors. v. Smt. Susheelamma [2008 SCC Online Kar 449]***

***S.Kanaka Durga Manikyhamba & Ors. v. Ramapragada Surya Prakasa Rao & Ors. [2009 SCC Online AP 735]***

***Suraj Lamp and Industries Private Limited v. State of Haryana and Another [(2012) 1 SCC 656]***

***Radha Lakshmanan v. M.S.Gurusamy [2015-1-L.W. 881]***

***Satish Kumar v. Karan Singh and Another [(2016) 4 SCC 352]***

***M.V.Krishnamurthy and Others v. C.R.Satyanarayanan and Others [2016—L.W. 615]***

***P.M.Thangavel v. M.Ramamoorthy and 3 others [Judgment dated 08.08.2019 in S.A.Nos.624 and 626 of 2019]***

***Narayanamma and Another v. Govindappa and Others [(2019) 19 SCC 42]***

***S.Saraladevi Surana v. G.S.Sundararaj and Others [Judgment dated 01.07.2021 made in A.S.No.371 of 2005]***

***G.T.Girish v. Y.Subba Raju (Dead) by Lrs. And Another [(2022) 12 SCC 321]***

11. *Per contra*, learned counsel for the 1st respondent / plaintiff has put forth

the following contentions:

(1) The 3rd defendant had admitted the execution of Sale Agreement as well as the Power of Attorney. There is absolutely no evidence in both oral and documentary evidence regarding the particulars of the alleged loan pleaded by the 3rd defendant.

(2) The execution of Ex.A3-Sale Agreement has been proved by examined the attesting witnesses PWs.2 and 3, who have categorically deposed about the execution of the sale agreement.

(3) The contention of the 3rd defendant that the suit agreement is not enforceable in view of the specific condition in the allotment order Ex.B2 that the allottee shall not part with possession and encumber the property without written approval from CMDA, is unacceptable one, since in the written statement of CMDA / defendants 1 and 2, there is no such plea that the suit agreement is not enforceable in view of the condition stipulated in the allotment order under Ex.B2. The 1st defendant only stated that they would execute the sale deed in the name of the all ottee, and they never whispered anything about the condition in the allotment order are a bar to the suit for specific performance.

(4) The appellant/3rd defendant raised in the appeal grounds that Ex.A3 is not legally valid and enforceable in law in view of the bar contained in Ex.B2. This plea of the bar under Ex.B2 has not been raised in the written statement. It is stated in the written

statement that the agreement is unenforceable since he was only an allottee. In the absence of a specific plea, the appellant is estopped from raising the plea now; even otherwise the plea is unsustainable.

(5) Under Section 43 of the Transfer of Property Act r/w. Section 13 of the Specific Relief Act, the transferor, even though he had no title at the time of entering into an agreement, is bound to convey the property if he becomes the owner subsequently.

(6) The defendants 1 and 2 / CMDA are also fully aware of the sale agreement as well as the Power of Attorney. CMDA official / DW1 has also categorically admitted in her cross examination in this regard. DW1 has also categorically admitted in her cross examination about the letter dated 18.08.2011 and stated that the practice followed by them in executing the sale deed in favour of Power of Attorney holder of allottee. DW1 also admitted that the condition imposed in Ex.B2 was not insisted upon and was impliedly waived by them, as evidenced by their appearance of the power of attorney to obtain the sale deed from them on behalf of allottee.

(7) The authorities concerned i.e., the defendants 1 and 2 have received the instalment amounts from the plaintiff, issued a licence and certificate and put him in possession. DW1 in his evidence admits that the licence of the shop stands in the name of the plaintiff and possession is also with him. Therefore, authorities were aware from the inception that the 3$^{rd}$ defendant executed sale agreement and

power of attorney in favour of the plaintiff, invoking Clause 8, in other words, they have acquiesced and there is deemed approval.

(8) In the previous Suit in O.S.No.1902 of 2004, the Trial Court negatived the relief of injunction, holding that the sale agreement and power of attorney were executed without the consent of CMDA and the said finding was reversed in a common judgment passed in appeal, marked as Ex.A13. Even assuming there is a condition in Ex.A3, the same will not affect the grant of specific performance in favour of the plaintiff. The contention of the 3rd defendant that Section 43 of the Transfer of Property Act would apply only when there was a fraudulent or erroneous representation. The principles of Section 43 of the Transfer of Property Act would be considered in the light of Section 13 of Specific Relief Act.

The learned counsel for the respondent, in support of his contentions, placed reliance on the following judgments:

***Vishwa Nath Sharma v. Shyam Shanker Goela and another [2007 (10) SCC 595]***

***Mrs.Chandnee Widya Vati Madden v. Dr.C.L.Katial and Others [AIR 1964 SC 978]***

***R.C.Chandiok and another v. Chuni Lal Sabharwal and Others [1970 (3) SCC 140]***

***Bhagat Ram v. Kishan [(1985) 3 SCC 128]***

***Andhra Pradesh Electronics Development Corporation Ltd. v.***

***M.K.Mohan and another [2010 (2) MWN (Civil) 676]***

***Kuldip Singh Suri v. Surinder Singh Kalra [1999 (48) DRJ 463]***

***Balwant Vithal Kadam v. Sunil Baburaoi Kadam [2018 (2) SCC 82]***

***Cauvery Cofee Traders, Mangalore v. Hornor Resources (International) Company Limited [2011 (10) SCC 420]***

***R.N.Gosain v. Yashpal Dhir [1992 (4) SCC 683]***

***Kannappa Chettiar v. Abbas Ali and Others [1952 (2) SCC 124]***

***Renu Devi v. Mahendra Singh and Others [2003 (10) SCC 200]***

***Motilal Jain v. Ramdasi Devi (smt) and Others [2000 (6) SCC 420]***

***Aniglase Yohanna v. Ramlatha and Others [2005 (7) SCC 534]***

***Zarina Siddiqui v. A.Ramalingam alias Amarnathan [2015 (1) SCC 705]***

12. This Court gave its anxious consideration to the rival submissions and also perused the materials available on record.

13. The points for determination arises in this appeal is as follows:

*(1) Whether the petition filed under Order 47 Rule 21 CPC is to be allowed or not?*

*(2) Whether Ex.A3- Sale Agreement is valid and enforceable?*

*(3) Whether there is a specific bar in Ex.B2-Allotment Order that the allottee cannot handover possession to a third party?*

*(4) Whether the Suit is barred by Limitation?*

*(5) Whether the Suit is hit by Order II Rule 2 CPC?*

*(6) Whether the 3rd defendant is ready and willing to execute the sale deed in favour of the plaintiff ?*

14. In the plaint, the Schedule of Property is stated has hereunder:

All that shop bearing Shop No.AU-19 in the Periyar Vegetable market complex within Koyambedu Vegetable Market Complex, having built up area of 646.60 SFT, loading and unloading area of 66.203 Sq.Ft.

**Point No.1 – Order XLI Rule 27 CPC**

15. It is stated in the affidavit that on behalf of CMDA, one S.Vasanthi, has been examined as DW1. During her cross examination, she deposed that when the 3rd defendant requested them to execute the sale deed in his favour, vide his letter dated 10.06.2011, they had sent a reply on 18.08.2011 making it clear that they would execute the sale deed only in the name of the Power of Attorney holder. She produced a letter dated 18.08.2011, in which she admitted that as per the prevailing procedure adopted by CMDA, the Sale Deed would be executed in favour of the Power of Attorney holder from the Allottee. Though the communication dated 18.08.2011 was referred to by DW1, the said document was not marked due to oversight. The said document in an admitted document. It is

also stated that earlier the petitioner/plaintiff filed I.A.No.16438 of 2017 in O.S.No.3925 of 2015, to amend the plaint prayer by directing the 3rd defendant to get the Sale Deed in his favour and consequently, executed the sale deed in favour of the plaintiff / petitioner. Though the said IA was dismissed, the same was reversed in CRP.No.2438 of 2018 and while allowing the said CRP vide order dated 08.01.2019, this Court has referred the letter dated 18.08.2011.

16. It is also stated that the 3rd defendant has also filed W.P.No.19069 of 2010 and the same was disposed of by this Court, vide order dated 27.06.2018, by mentioning the reason that the Civil Suit in O.A.No.3925 of 2015 is pending. The petitioner /plaintiff has not exhibited the final order passed in W.P.No.19069 of 2010 dated 27.06.2018 and the order passed in CRP.No.2438 of 2018 dated 08.01.2019, during the course of trial, as it is part of the Court records. All the above documents are very much necessary to have effective adjudication in this appeal. The above documents are necessary to enable this Court to appreciate the issues involved in this appeal. Along with CMP.No.16651 of 2025, the following documents are annexed:

(I) Letter dated 18.08.2011 sent by the Chief Executive Engineer, CMDA in favour of the 3rd defendant.

(II) Order dated 27.06.2018 passed in W.P.No.19069 of 2010.

(III) The order passed in CRP.No.2438 of 2018 dated 08.01.2019.

17. At this juncture, it is relevant to refer Order XL1 Rule 27 CPC, which reads hereunder:

> ***Order XLI R.27. Production of additional evidence in Appellate Court:-*** (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-
>
> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
>
> [(aa] the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
>
> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,
>
> the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

18. It is also relevant to refer to the decision of the Hon'ble Apex Court in

the case of ***Malayalam Plantations Ltd. vs. State of Kerala and Ors. [AIR 2011 SC 559]***, wherein it was held as under:

> " 11. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance / bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted ; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.
>
> 12. Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary too the requirements of Order 41 Rule 27 of CPC. Additional

evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case.

13. In the light of the separate application filed under Order 41 Rule 27 of CPC for reception of additional evidence by both sides, it is for the High Court to consider and take a decision one way or other as to the applicability of the same and decide the appeal with reference to the said conclusion. In this view of the matter, we refrain from going into the merits of the materials placed by both sides and it is for the High Court to consider and take a decision one way or other as per the mandate of the said provision."

19. In the plaint, in para 10, it has been stated that the 3rd defendant filed a writ petition in W.P.No.17339 of 2011 to consider the representations dated 08.10.2010 and 10.06.2011 for executing the sale deed in favour of the 3rd defendant. This Court, vide order dated 25.07.2011, has disposed of the writ petition giving direction to CMDA to consider the representations of the 3rd defendants dated 08.10.2010 and 10.06.2011 and pass orders on merits and in accordance with law. It has also been stated that pursuant to the orders passed by this Court, the 2nd defendant / Executive Officer, CMDA has passed the order holding that the 3rd defendant is not entitled to get the sale deed executed in his

favour, vide communication dated 18.08.2011.

20. A perusal of the first document dated 18.08.2011 shows that the Chief Executive Engineer, CMDA had addressed the said letter to the 3rd defendant. The said letter was not addressed to the petitioner / plaintiff and the petitioner has not mentioned about how he is in possession of the said letter, to which he is not a party. The 2nd document pertains to the order dated 27.06.2018 passed in W.P.No.19069 of 2010. The order passed in the aforesaid writ petition was closed for the reason that the civil suit is pending. Similarly, the 3rd document, namely the order passed in CRP.No.2438 of 2018 dated 08.01.2019 was not substantiating the issues involved in this appeal.

21. The reasons stated in the affidavit have not attracted the legal requirements mandated under the aforesaid provision under Order 41 Rule 27 CPC. The petitioner has not made any substantial reason to adduce evidence in appeal and also not stated on what grounds, these documents shall be necessary for this Court to appreciate or how these documents may make effective adjudication of the dispute between the parties. The petitioner, after a lapse of

almost a decade, trying to produce the documents and has not established despite due diligence was unable to adduce evidence before the Trial Court during trial. Mere oversight cannot be a valid ground to entertain an application to adduce additional evidence in the appeal. The petitioner has not satisfied any of the ingredients mandated under the provision under law to adduce additional evidence and there is no merit in this petition and the same is liable to be dismissed. ***Point No.1 is answered accordingly and consequently, CMP.No.16651 of 2025 stands dismissed.***

22. It is the specific case of the plaintiff that on 05.06.2000, the 1st defendant issue a show cause notice calling upon the 3rd defendant to give explanation in view of the default made by him. The 3rd defendant approached the plaintiff for sale of the suit property and the same was reduced into writing by the Sale Agreement dated 13.12.2000 and he paid a sum of Rs.85,000/-. A sum of Rs.2,00,000/- was paid pursuant to the said Agreement of Sale dated 10.12.2000 and physical possession was also handed over to the plaintiff. It was mutually agreed that as and when the defendants 1 and 2 executed the sale deed in favour of the 3rd defendant, he should evade the same in favour of the plaintiff. The 3rd

defendant executed the Power of Attorney in favour of the plaintiff on 17.11.2000 with respect to the suit property.

23. It is not in dispute that the 3rd defendant tried to interfere with the plaintiff's possession and hence he filed the Suit in O.S.No.2676/2003 for Permanent Injunction. Subsequently, on 17.03.2003, the 3rd defendant unilaterally cancelled the Power of Attorney dated 19.11.2000 by executing the revocation deed and hence filed another suit in O.S.No.1904/2004 declaring the cancellation of the Power of Attorney dated 17.11.2000 as null and void and not binding upon him and for Permanent Injunction. By common judgment and decree dated 30.08.2006, it was held that the plaintiff possession over the suit property was against law and decreed the relief of declaration of cancellation of Power of Attorney as null and void and not binding upon the plaintiff. Aggrieved against the dismissal of relief of injunction in O.S.No.1904/2004, the plaintiff filed an appeal in A.S.No.282/20008. Aggrieved against the decree of declaration passed in respect of cancellation of Power of Attorney as null and void, the 3rd defendant filed an appeal in A.S.No.309/2007, before the III Additional City Civil Court, Chennai and vide common judgment and decree dated 16.04.2007, the appeal

filed by the 3rd defendant was dismissed and the plaintiff appeal was allowed. The 3rd defendant filed Second Appeals in S.A.No.1172 and 1173 of 2012 before this Court and the same were dismissed for default on 29.07.2019, subsequently an application in CMP.No.19620 of 2019 was filed for restoration and the same is still pending before this Court.

24. Admittedly, the plaintiff filed a writ petition in W.P.No.10241/2011 for a Writ of Mandamus directing the 2nd defendant and another to pass orders on the representation dated 04.08.2010 submitted by the plaintiff and to grant registration certificate and trade licence in respect of the suit property. This Court, vide order dated 25.04.2011, directed the Chief Administrative Officer, CMDA to consider and dispose of the same. Since the Chief Administrative Officer. CMDA failed to issue the registration certificate in favour of the plaintiff, he was again constrained to file another writ petition in W.P.No.20559 of 2011, seeking a Writ of Mandamus directing the Chief Administrative Officer, CMDA to dispose of the representation of the plaintiff dated 11.05.2011 and this Court, vide order dated 09.11.2011, allowed the writ petition.

25. The 3rd defendant represented to the 2nd defendant on 08.10.2010 and 10.06.2011 to issue the Sale Deed in his favour in respect of the suit property and thereafter, the 3rd defendant filed a writ petition in W.P.No.17339 of 2011, for a Writ of Mandamus directing the 2nd defendant to consider his representations dated 08.10.2010 and 10.06.2011. This Court,vide order dated 25.10.2011, passed the following order:

> *"4. Since the limited prayer made to consider the representation of the petitioner dated 08.10.2010 and 10.06.2011, the learned Additional Government Pleader is directed to take notice, who in-turn submitted that four weeks time may be granted to consider the representation of the petitioner by the respondent.*
>
> *5. Recording the said submission, the writ petition is disposed of giving direction to the respondents to consider the representation of the petitioner dated 08.10.2010 and 10.06.2011 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order."*

26. Pursuant to the aforesaid order, the 2nd defendant has sent the communication dated 18.08.2011 to the plaintiff. The defendants 1 and 2 have issued a communication dated 02.04.2012 asking upon the 3rd defendant to produce the original registration certificate for the period from 2012 to 2015. The

plaintiff challenged the aforesaid communication in W.P.No.12080 of 2012 and this Court, vide order dated 24.03.2015 directed that the 2nd defendant and others were directed to consider the application submitted by the plaintiff for renewal application dated 10.03.2015 and pass orders on merits. In pursuance of the aforesaid order, the defendants 1 and 2 issued licence under Section 21(2)(3) of the Tamil Nadu Specified Commodities Markets (Regulation of Location) Act, 1996 (Tamil Nadu Act 24 of 1996) was issued to the plaintiff for the year from 01.04.2015 to 31.03.2018.

27. It is the specific case of the defendants 1 and 2 that the plaintiff and the 3rd defendant have filed different cases and in WP.No.12080 of 2012 and M.P.No.2015, this Court has disposed of the writ petition till final orders are passed and the parties are directed to maintain Status Quo. Further, as per the Tamil Nadu Specific Goods (Market Regulation) Act, 1996, Sale Deed will be issued to those whom shops were allotted. In this case, one Mr.Ramaiya / 3rd defendant is the allottee of the shop.

28. It is the specific case of the 3rd defendant that the plaintiff is not a lawful

allottee and on refund of the entire sale consideration, since he has not paid any payment except few and major payments to the defendants 1 and 2 was paid by the 3rd defendant and some payments by the plaintiff at the instance of the 3rd defendant as his Power Agent. There is no Privity of Contract or Agreement between the plaintiff and the defendants 1 and 2. On account of long friendship with the plaintiff and due to his ill health and for the purpose of payment, he took some financial loan and assistance from the plaintiff for which he directed the plaintiff to take care of the shop allotted to him as his Power Agent. Besides signing in few stamp papers and created security cheques, which in-turn used by the plaintiff and now for the purpose of making allegations against him. The plaintiff also revoked the Power of Attorney executed in favour of the plaintiff and informed the same to the defendants 1 and 2. The plaintiff took advantage of the Power of Attorney and utilized the 3rd defendant friendship and oral permission, occupied and maintained the suit property and started doing vegetable business and his occupation was not at all lawful, the agreement alleged is not legally valid and unenforceable one. For issuance of registration certificate to run the shop is or creating any right or interest or making personal right to claim the sale deed.

**Point No.2 -Enforceability of the suit agreement / defects in Ex.A3 can be overlooked**

29. According to the appellant / 3rd defendant, Ex.A3-Sale Agreement specifies the sale consideration to be Rs.2.85 Lakhs, but the plaint was valued at Rs.14,00,548/-. Ex.A3 does not mention about the sale consideration of Rs.14,00,548/-. Further, illustration (g) and Explanation 2 to Section 25 of the Indian Contract Act is pressed into service in this case.

30. At this juncture, it is relevant to refer to Section 25 of the Indian Contract Act reads hereunder:

> ***25.Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.-*** An agreement made without consideration is void, unless -
>
> (1) it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
>
> (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
>
> (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor

might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

*Explanation 1*.- Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

*Explanation 2*.- An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Courts in determining the question whether the consent of the promisor was freely given.

31. According to the appellant / 3rd defendant, Ex.A2-allotment order contains a bar on alienation and transfer of possession. Ex.B2 is based on Sections 25 and 26 of the Tamil Nadu Specified Commodities Market (Regulation of Location) Act, 1996. At this juncture, it is relevant to refer to Sections 25 and 26 of the said Act, which are extracted hereunder:

"**25.**(1) Notwithstanding anything contained in sub-section (2) of section 5, a market committee shall not, except with the concurrence of the local authority and the previous sanction of the Government, transfer by sale, lease, exchange, mortgage or otherwise any land or building vested in it or acquired by it and situated in the market area.

(2) Subject to the provisions of sub-section (1), the market committee may dispose of by sale, lease, exchange, mortage or otherwise any building, stall, shop, stand, enclosure or things attached to the land or permanently fastened to anything attached to the land, subject to such conditions and such limitations as may be determined

bylaws made in that behalf."

> **26.** (1) Every contract entered into by the market committee shall be in writing and shall be signed on behalf of the market committee by the Chairman, the Chief Administrative Officer and one other member of the market committee, or where a Special Officer has been appointed under sub-section (1) of section 42 in respect of a market committee, such Special Officer and the Chief Administrative Officer.
>
> (2) No contract other than a contract executed as provided in sub-section (1) shall be binding on the market committee.

32. It is to be noted that the 3rd defendant in his evidence has admitted that his signature found in Ex.A3, which has been marked as Ex.A26. But his only contention is that the document was executed for some loan transfer. It is well settled that once the document is admitted, the onus lies on him to prove that it has been executed for different purposes. In this regard, the 3rd defendant has not placed any documentary evidence or oral evidence regarding the particulars of the alleged loan. The execution of Ex.A3- Sale Agreement has been supported by the evidence of PW3, who is the first witness of Ex.A3 and PW2 is the second witness of Ex.A3. It is to be noted that in the written statement of the 1st defendant / CMDA, there is no plea mentioned that the suit sale agreement in Ex.A3 is not enforceable in view of the conditions stipulated in the allotment order. It is also to be noted that 3rd defendant also never whispered anything that

the conditions in the allotment are a bar to the suit.

33. At this juncture, it is relevant to cite Clause 8 of the Allotment Order in Ex.B2, which reads hereunder:

> "8. The shop shall be used only for the wholesale trade of vegetables specified commodity notified under TNSC Act. An allottee shall not part with possession, alienation, assign or otherwise encumber the rights of the shop with any third parties without the prior approval of CMDA."

34. In the absence of a specific plea in the written statement of the 3rd defendant, the contention of the appellant / 3rd defendant that Ex.A3 is not legally valid and enforceable in view of the bar contained in Ex.B2, is not acceptable one. ***Point No.2 is answered accordingly.***

**Point No.3: Specific Bar in Ex.B2-Allotment Order**

35. It is relevant to refer Section 43 of the Transfer of Property Act, r/w. Section 13 of the Specific Relief Act, which reads hereunder:

> ***Section 43 of the Transfer of Property Act*** – Transfer by unauthorised person who subsequently acquires interest in property transferred.- Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property to consideration, such transfer such, at the option of the transferee, operate or any interest which the

transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

***Section 13 of the Specific Relief Act..- Rights of purchaser or lessee against person with no title or imperfect title.***- (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:-

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount no exceeding, the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has the right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject matter of the contract."

36. From reading of the above said provisions, the transferor, even though, he had notice at the time of entering into an agreement, is bound to convey the property, if he becomes the owner subsequently under the principle of "Equitable Estoppel". In the instant case on hand, the 3rd defendant had full knowledge about that he had no title and he was an allottee and the condition stipulated in the allotment order at the time of entering into an agreement and also executed the Power of Attorney in favour of the plaintiff. Therefore, the 3rd defendant, once he becomes the owner by virtue of a sale deed executed by the authorities / CMDA, is estopped from stating that he was only an allottee and the agreement is not enforceable. It is to be noted that the defendants 1 and 2 / CMDA are also fully aware of the sale agreement as well as Power of Attorney and the above said facts has been admitted by the DW1/official in her cross examination. Therefore, the authorities categorically admitted that the condition imposed in Ex.B2 allotment order was not insisted upon and was impliedly waived by them as per the evidence of DW1.

37. The 3rd defendant has benefited from the agreement that the plaintiff

paid the instalments, otherwise the allotment would have been cancelled. A perusal of Ex.A2 cash receipts issued by CMDA, DD receipt and Certificate issued by ICICI Bank originals, shows that the defendants 1 and 2 have received the instalment amounts. In such circumstances, it has been presumed that the plaintiff has paid the instalments to the suit shop and also issued a licence and certificate and put him in possession. In this regard, DW1 also admits that the licence of the suit shop stands in the name of the plaintiff and possession is also with the plaintiff. DW1 also deposed that the 3rd defendant sent a letter on 02.12.2003, stating that he is unable to pay the instalments and therefore, he has requested the plaintiff to pay the same. DW1 also deposed that they have issued a letter dated 18.08.2011 stating that if the allottee had given power, then they will not execute the sale deed in favour of the allottee.

38. It is to be noted that Section 43 of the Transfer of Property Act would apply only when there was a fraudulent (or) erroneous representation. In the case on hand, there was no fraudulent or erroneous representation by the 3rd defendant while entering into Ex.A3-Sale Agreement with the plaintiff and the aforesaid fact was subsequently known to the defendants 1 and 2 /CMDA also. In view of the

above facts and circumstances of the case, Section 13(1)(a) of the Specific Relief Act alone would apply in this case. ***Point No.3 is answered accordingly.***

**Point No.4 - Limitation Aspect**

39. According to the appellant, Ex.A3-Sale Agreement is dated 13.11.2000, whereas suit has been filed on 01.09.2015. Ex.A4 – Power of Attorney was the subject matter of Ex.A9 – Plaint in O.S.No.1902 0f 2004, Ex.A12 is the Decree in O.S.No.1902 of 2004 dated 30.08.2006. Ex.A13 is the Common Judgment in A.S.Nos.309 of 2007 and 282 of 2008 dated 16.04.2010. Ex.A24 - Case Status in SA.No.1172 of 2012 dated 03.11.2016 is misconceived in view of the judgment of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Private Limited v. State of Haryana and Another [(2012) 1 SCC 656].***

40. It is to be noted that Article 54 of the Limitation Act, 1963 prescribes the period of limitation for specific performance of contract, which reads hereunder:

> ***Art.54. For Specific Performance of Contract*** – *(Period of*

*Limitation* - Three years) and (*Time from which period begins to run* - The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

41. A perusal of Ex.A3-Sale Agreement shows that there is no time limit prescribed in the agreement. It has been stated that the 3rd defendant has to execute the sale deed in favour of the plaintiff, after obtaining the sale deed from the defendants 1 and 2. It has also been stated that the plaintiff should pay initial deposit and other instalments to CMDA. It is to be noted that so far, the defendants 1 and 2 have not executed any sale deed in favour of the 3rd defendant.

42. It is relevant to refer to Section 31 of the Indian Contract Act, which defines the "contingent contract"..

> ***Section 31.Contingent contract*** – A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

43. It is pertinent to mention that the plaintiff was granted a registration certificate, as well a a licence to run the suit shop in the year 2012. It is also pertinent to mention that the defendants 1 and 2, in their written statement, stated

that they wold execute the sale deed in the name of the allottee / 3rd defendant. Ex.A3 is in the nature of a contingent contract, it may be ascertainable on the happening of a contingent event specified in the agreement. In the instant case on hand, the contingency of getting sale deed from CMDA is yet to be happened. Therefore, the contention of the appellant that the Suit is barred by limitation is not acceptable one. ***Point No.4 is answered accordingly.***

**<u>Point No.5 - Bar under Order 11 Rule 2 CPC</u>**

44. According to the 3rd defendant that the Suit is barred under Order II Rule 2 CPC, 1908, the plea is available in the written statement and the plaint in earlier Suit in Ex.A9, written statement in Ex.A10 and the judgment in Ex.A11 and Decree in Ex.A12 were available. PW1 also aware that the 3rd defendant did not want to perform his part of contract in Ex.A3. Under the terms of the agreement, the Vendor, had undertaken the obligation of getting the sale deed from CMDA. Therefore, there was a obligation to execute the sale deed.

45. As a general proposition of law, in the case of sale of immovable property, there is no presumption as to time being the essence of contract. Even if

it is not of the essence of the contract, we may infer that it is to be performed in a reasonable time, if the considerations are evident (i) from the express terms of the contract (ii) from the nature of property (iii) from the surrounding circumstances i.e., object of making the contract, (iv) when the demand notice issued and (v) on the date of filing the suit.

46. The bar of Order II Rule 2 CPC comes into operation when the cause of action on which the Suit was filed, forms the foundation for the subsequent suit and when the plaintiff could have claimed the relief sought for in the subsequent suit in the earlier suit, and both suits are between the same parties. Further, the bar under Order II Rule 2 CPC should be specifically pleaded by the defendant in the Suit and the Trial Court should be specifically frame a special issue in that regard. ***[Coffee Board v. Ramesh Exports Private Ltd. reported in (2014) 6 SCC 424].*** The principle underlying Order II Rule 2 CPC is that no man can be vexed twice over the same cause of action.

47. In the written statement, there is a specific plea regarding Order II Rule 2 CPC. In the absence of plea, no issues were framed in the Suit. The previous

suits were filed for Permanent Injunction as well as challenging the revocation of the Power of Attorney Deed. The present suit on hand pertains to execution of sale deed. Therefore, the contention of the appellant that the Suit is hit by Order II Rule 2 CPC is not acceptable.

48. The appellant / 3rd defendant, who was examined as DW2, though he has raised the plea that the transaction was only a loan transaction and the Suit Agreement was executed only in pursuance of the loan transaction, however, he has admitted the sale agreement in his cross examination and also admitted that he has neither paid the initial amount nor the instalments. The 3rd defendant has not produced any document to prove his alleged willingness. Hence, ***Point No.5 is answered accordingly.***

**Point No.6 – Ready and Willingness**

49. According to the plaintiff, the question of readiness and willingness does not arise since the 3rd defendant can execute the sale deed only after getting the sale deed from the defendants 1 and 2. In the Power of Attorney Deed / Ex.A4, it has been clearly stated that there is a recital regarding sale of the shop in

favour of the plaintiff. According to the 3rd defendant, the said Power of Attorney cannot have any effect except to act on behalf of the appellant and the stand taken by the plaintiff is contrary to ***Suraj Lamp and Industries Private Limited v. State of Haryana and Another [(2012) 1 SCC 656].*** It is to be noted that the issues regarding Power of Attorney and Permanent Injunction between the parties in respect of the suit property, second appeals in S.A.Nos.1172 and 1173 of 2012 are pending. The plaintiff has relied upon Ex.A2 recitals to show that payment of instalments has already been paid and no amount is in due. In the plaint, it has been stated that the plaintiff shall pay the entire 40 instalments i.e., once in three months from the year 2001 and after making the entire payment of CMDA, plaintiff had approached the CMDA based on the Power of Attorney under Ex.A4.

50. It is relevant to mention that Section 16(c) of the Specific Relief Act, 1963 mandates the plaintiff always been ready and willing to perform the essential terms of the contract. Under Section 16(c) of the Act it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract ; ***Coromandel Indang Products (P) Ltd. Vs.***

***Garuda Chit and Trading Co. Pvt. Ltd. (2011) 8 SCC 601.*** Section 16(c) of the Act mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. In a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff ; ***J.P.Builders v. A.Ramadas Rao JT 2010 (12) SCC 588***. In the plaint, the plaintiff must allege that he was ready and willing to perform his part of contract from the date of agreement till the date of institution of the suit; ***Sandhyarani v. Sudharani, (1978) 2 SCC 116.***

51. It is pertinent to mention that as per Section 16(c) of the Specific Relief Act, the plaintiff has to establish that he was ready and willing to perform his part of contract. It is relevant to cite the judgment of the Hon'ble Supreme Court reported in ***AIR 2019 SC 1280 (Urvashi Aggarwal (since deceased) through L.Rs and Ors. v. Kushagr Ansal and Ors.)***, wherein it has been held that even in cases where it is not possible to order specific performance, the plaintiff is entitled for refund of advance amount in a suit for specific performance. The contract must be performed within a reasonable time as observed by the Hon'ble Supreme

Court in case of ***K.S.Vidyanadam and Ors. v. Vairavan reported in (1997) 3 SCC 1***.

52. The Hon'ble Supreme Court in the decision reported in ***AIR 2020 SC 5041 [Ferrodous Estates (Pvt.) Ltd. vs. P.Gopirathnam (dead) and others]*** reiterated that inadequacy of consideration cannot be a valid defence for the relief of specific performance. It is also relevant to cite the judgment of the Hon'ble Supreme Court in ***R.Shama Naik v. G.Srinivasiah [2024 INSC 927]***, wherein it was held as under:

> "11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.
>
> 12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff."

53. In yet another judgment, in the case of ***Kamal Kumar v. Premlata Joshi and Others reported in 2019 (3) SCC 704,*** the Hon'ble Apex Court has considered the scope of Section 20 of the Specific Relief Act and the material questions which are required to be looked into by Court. It is useful to refer to paragraph

No.7 of the said judgment:-

*"7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are :*

*7.1. First, whether there exists a valid and concluded contract between the parties for sale / purchase of the suit property.*

*7.2. Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.*

*7.3. Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;*

*7.4. Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff ;*

*7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.*

*67. On the question of exercising discretion to grant equitable* *relief of specific performance, Section 20 of the Specific Relief Act prescribes statutory guidance. A discretion which is required to be exercised by Courts before granting specific performance should be governed by the Rule of law and equity. The law and equity are subservient to the other. The relief of specific performance need not be granted merely because it is lawful. The discretion should be exercised on the basis of sound judicial principles. Courts have repeatedly held that the plaintiff, in a suit for specific performance, is not entitled to the relief as a matter of right. While exercising discretion, the Courts are expected to keep in mind the material and peculiar facts and circumstances of the case, the conduct of the parties and consequences or the fallouts by granting specific relief to a party to the contract. In no case the relief can be used as an instrument of oppression to have an unfair advantage to the plaintiff or to the defendant....."*

54. Though the plaintiff contended that he has paid 40 instalments to CMDA commencing from the year 2001 and completed the entire payments in the year 2011. Even after paying the entire instalments, the appellant / 3$^{rd}$ defendant has not chosen to have the sale deed executed from CMDA and in-turn to have

executed in favour of the plaintiff, in breach of the agreement. Admittedly, after completion of entire payments in the year 2011, the plaintiff has neither chosen to send any notice to the 3rd defendant nor to CMDA for demanding execution of sale deed as per Ex.A3- Sale Agreement. It is to be noted that Ex.A3 satisfies the sale consideration to be Rs.2.85,000/- and the plaintiff valued at Rs.14,00,548/-. The alternative prayer is also to repay the entire sale consideration, however Ex.A3 did not mention about the sale consideration of Rs.14,00,548/-. The evidence of PW1, DW1 and DW2 and as per Ex.A2 shows that the plaintiff has paid the sum of Rs.14,00,548/- to CMDA/ defendants 1 and 2. The conduct of the plaintiff from 2011 to till filing of the Suit in the year 2015, is unexplained, since the plaintiff had chosen to file two suits as against the 3rd defendant in the years 2003 and 2004 itself.

55. Keeping in mind, by applying the principles laid down in the aforecited decisions, the conduct of the plaintiff from 2011 to till filing of the suit shows that he was not ready and willing to perform the contract as per the requirements mandated under Section 16(c) of the Specific Relief Act. In the light of the above, the plaintiff is not entitled to the relief of specific performance and he is entitled

only for refund of the entire sale consideration with reasonable interest. There are merits in this appeal and the judgment and decree passed by the Court below is liable to be set aside. ***The point No.6 is answered accordingly.***

56. In the result, this ***Appeal Suit stands partly allowed***. The decree dated 30.09.2020 passed in O.S.No.3925 of 2015 on the file of the II Additional City Civil Court, Chennai is modified in the following terms:

(a) The Suit is dismissed for the relief of Specific Performance and the plaintiff is not entitled for the relief of Specific Performance.

(b) The suit is decreed for the relief of alternative prayer of refund of entire sale consideration from the 3rd defendant.

(c) The 3rd defendant is directed to pay the entire sale consideration of Rs.14,00,548/- mentioned in the plaint along with interest @ 6% p.a. from the date of filing of the suit till the date of realisation.

No costs.

**23.09.2025**

Intex : Yes/No
Internet : Yes/No
Jvm

To
II Additional Judge,
City Civil Court,
Chennai.

**M.JOTHIRAMAN, J.**

Jvm

**Order in**
**Appeal Suit No.47 of 2021**

**23.09.2025**