



A.S.No.75 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

A.S.No.75 of 2024

and

C.M.P.No.2613 of 2024 & C.M.P.No.29365 of 2024

P. Balakrishnan

..... Appellant / 1st defendant

-Versus-

1. M. Susairaj

..... 1st Respondent / plaintiff

2. Gopalakrishnan

..... 2nd Respondent / 2nd defendant

Appeal filed under Section 96 r/w Order XLI, Rule 1 of the Code of Civil Procedure, 1908, praying to set aside the judgement and decree dated 06.10.2023 in O.S.No.235 of 2016 on the file of the learned III Additional District Judge, Coimbatore and dismiss the suit in O.S.No.235 of 2016 on the file of the III Additional District Judge, Coimbatore.

For Appellant : *Mr.T.Saikrishnan*

For Respondent : *Mr.A.Muthukumar for R1*

No appearance for R2



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JUDGEMENT

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Challenging the judgement and decree passed by the learned III Additional District Judge, Coimbatore, dated 06.10.2023 in O.S.No.235 of 2016 granting a decree for specific performance of contract, the 1st defendant is before this court with the present appeal suit. The 1st respondent is the plaintiff and the 2nd respondent is the 2nd defendant in the suit.

2. No appeal suit or cross objection from the partly unsuccessful plaintiff as against the dismissal part of the suit refusing to grant a decree of permanent injunction against the defendants.

3. For clarity and ease of reference, the parties involved in this appeal suit will hereinafter be referred to according to their status in the original suit.

4. The suit in O.S.No.235 of 2016 has been filed against the defendants praying for a judgement and decree of (a) specific performance of agreement of sale dated 21.07.2015 directing the 1st defendant to execute a sale deed after receiving balance sale consideration of Rs.9,30,000/- within the time frame fixed by the court and if the defendants fail to execute the sale deed, the court should execute the sale deed or in the alternative, directing the 1st defendant to pay a sum of Rs.7,70,000/- to the plaintiff together with interest @ 24% per annum from the date of plaint till date of realisation; (b) permanent injunction



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restraining the defendants, their men, agents, servants or anybody claiming any right through them from in any way disturbing the plaintiff's peaceful possession and enjoyment of the suit property; and (c) for costs of the suit.

5.0 The case of the plaintiff in brief is as follows: -

5.1 The suit schedule mentioned property belongs to the 1st defendant. The suit property is situated in Coimbatore District. Since the 1st plaintiff has been residing in Erode District, the 2nd defendant, who is none other than the brother of the 1st plaintiff was asked to look after the suit property.

5.2. The plaintiff has been inducted as a tenant for the suit schedule mentioned property in 2012 under the 2nd defendant on a monthly rent of Rs.3,500/-. The plaintiff was paying the rent without any default. Thereafter, on 21.05.2015, the plaintiff entered into a lease agreement with the 2nd defendant. While so, in the month of June 2015, the 2nd defendant informed him that his brother (1st defendant) decided to sell his property which is the suit schedule mentioned property. The plaintiff expressed his willingness to purchase the same. Subsequently, the plaintiff and the 1st defendant entered into a sale agreement on 21.07.2015. The total sale consideration was fixed as Rs.17,00,000/- and on the same day a sum of Rs.2,00,000/- was paid as advance under agreement. It was agreed between the plaintiff and the 1st



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defendant to complete the sale transaction by six months.

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5.3 Thereafter, on 01.10.2015 the 1st defendant received another Rs.3,50,000/- as a part of sale consideration and made an endorsement on the sale agreement. Following that, on 28.12.2015 and 01.01.2016, the 1st defendant received Rs.5,000/- and Rs.15,000/- respectively as part sale consideration from the plaintiff. The plaintiff had spent Rs.1,50,000/- to get the suit property repaired. The plaintiff paid a premium of Rs.1,50,000/- on 21.05.2015 while entering into the lease agreement with the 2nd defendant. Thus, in total, the plaintiff paid Rs.7,20,000/- a sum of Rs.7,20,00/- to the 1st defendant and the balance to be paid was Rs.9,30,000/- only.

5.4 The plaintiff secured a home loan from Religare Home Loans Bank. This fact was informed to the 1st defendant. The bank requested the vendor's appearance so as to issue the loan amount in the form of cheque in the name of the 1st defendant. Initially, the 1st defendant agreed to accept the cheque, but then declined to visit the bank. The 1st defendant purposefully neglected to appear. The loan was briefly stopped by bank officials. When asked, the 1st defendant insisted on payment of the balance sale consideration in cash. The plaintiff agreed to pay the balance of the sale amount in cash. The plaintiff then arranged for the balance sale consideration and on 12.02.2016, he requested the



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1st defendant to come and receive the balance sale consideration in cash and execute a sale deed. However, the 1st defendant has started demanding Rs. 5,00,000/- per cent. Because of the change in the attitude of the 1st defendant, the plaintiff endured severe mental anguish and became unwell.

5.5 On 03.03.2016, the plaintiff issued a legal notice to the 1st defendant, requesting him to execute a sale deed after receiving the balance sale consideration. However, the 1st defendant sent a reply with false averments particularly denying the execution of the agreement of sale and receipt of advance amount and part sale consideration. The plaintiff issued a rejoinder through his counsel. Thereafter, the plaintiff approached the local police on 12.04.2016 before whom the 1st defendant informed that he would seek remedy before the court of law. In those circumstances, the plaintiff had no other option except to file the suit. The plaintiff has been always ready and willing to perform his part of contract from the date of agreement. Hence, the suit.

6.0 The case of the 1st defendant in brief is as follows:

6.1. The 1st defendant denied the execution of agreement of sale. According to him, since the alleged sale agreement is an unregistered document, it is not valid in the eyes of law and suit is not maintainable. He, however, admitted that the plaintiff was inducted as a tenant for the suit



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property and he has been residing thereon.

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6.2 The 1st defendant, however, *inter alia* contended that the plaintiff occupied the suit property as a tenant through the 2nd defendant and the 1st defendant never inducted the plaintiff as a tenant for the suit property. The sale agreement is a fabricated one. The alleged agreement has been created in order to grab the suit property. He had never entered into any agreement and received any advance. He further denied the payment of part sale consideration. He never agreed to come over to the bank and receive the cheque towards the balance sale consideration and requested the plaintiff to pay the balance sale consideration by cash. The plaintiff's assertion that he paid Rs.50,000/- to restore the suit property is not genuine. The plaintiff made this assertion just to avoid being held liable for rent.

6.3 He never intended to sell the suit property. The true value of the suit property is Rs.30,00,000/-. The plaintiff's assertion that he was ready and willing to purchase the suit property is false. The suit is liable to be dismissed.

7. Despite summons, the 2nd defendant remained ex parte in the suit.

8. Based on the above pleadings, the following issues were framed for trial: -

(1) Whether the suit agreement dated



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21.07.2015 is true, valid, and binding on the defendants?

(2) Whether the suit agreement dated 21.07.2015 is not enforceable for want of registration?

(3) Whether the plaintiff is ready and willing to perform his part of contract?

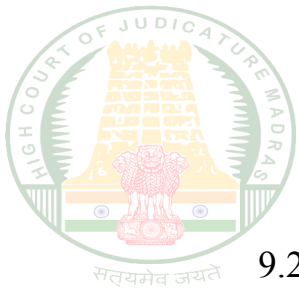
(4) Whether the plaintiff is entitled for the relief of specific performance of the suit agreement?

(5) Whether the plaintiff is entitled for the alternate relief as sought for by the plaintiff?

(6) Whether the plaintiff is entitled for the relief of permanent injunction restraining the defendants from interfering with his possession of the suit property?

(7) To what other reliefs the plaintiff is entitled?

9.1 During the trial before the trial court, on the side of the plaintiff, the plaintiff-Susairaj examined himself as P.W.1 and in support of his plea that he was always ready and willing to perform his obligations to get the sale completed, he examined P.W.2-Veeranan, P.W.3-Suresh Kumar, P.W.4-C.R.Gandhi and P.W.5-Murugan and marked Ex.A1 to Ex.A28, while on the side of the defendants, the 1st defendant-Balakrishnan, examined himself as D.W.1 and Ex.B.1 to Ex.B3 were marked.



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9.2 Upon considering both oral and documentary evidence adduced by the plaintiff and the 1st defendant, the learned Additional District Judge found that the agreement of sale (Ex.A.4) was true, and that the plaintiff was always ready and willing to perform his obligations under the agreement of sale to get the sale completed. The learned judge while holding that the plaintiff is entitled to specific performance of contract to get the agreement of sale executed in his favour, directed the plaintiff to pay the balance sale consideration of Rs.11,35,000/- within two months from 06.10.2023. The learned Judge found that out of the total consideration, the plaintiff up to the date of plaint paid only a sum of Rs.5,65,000/- as part sale consideration and refused to take into account the premium of Rs.1,50,000/- alleged to have been paid under the agreement of lease and the agreement regarding adjustment of the same in the balance sale consideration on the ground that there was no such specific agreement under Ex.A.4-Agreement of Sale. The learned Judge, however, dismissed the suit as far as the suit for a decree of permanent injunction on the ground that there was no evidence on record to show that the defendants are disturbing the possession and enjoyment of the suit property by the plaintiff. Challenging the decree of specific performance the 1st defendant is before this court with the present appeal suit. As already stated above, the plaintiff did not



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file any appeal suit or cross objection as against the dismissal part of the suit with respect to the relief of permanent injunction.

10. This court has heard the learned counsel for the appellant/1st defendant and the learned counsel for the 1st respondent/plaintiff.

11. The judgement of the trial court is assailed mainly on the grounds that (i) there was no agreement of sale and that the 1st defendant never intended to sell his property; (ii) the suit property is worth more than Rs.30,00,000/- and there was no need for the 1st defendant to enter into an agreement of sale agreeing to sell the property worth more than Rs.30,00,000/- for Rs.17,00,000/- (iii) the 2nd defendant is none other than the brother of the 1st defendant with whom the plaintiff had no love lost and that the suit has been filed in collusion with the 2nd defendant; (iv) Ex.A.4-Agreement of Sale is nothing but a fabricated one.

12. The learned counsel for the appellant/1st defendant would submit that there are lot of improbabilities found in the 1st respondent/plaintiff's case. According to him, the improbabilities are

(i) The plaintiff in his plaint has averred that he was inducted as a tenant on a monthly rent of Rs.3,500/- but on the contrary in his evidence he would state that there was a



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lease agreement entered on 21.05.2015, but, in fact only a bogiyam agreement (Ex.A.2) was executed.

(ii) The evidence of P.W.2 would indicate that D.W.1 was also available when Ex.A.4 was entered and such being the position, there was no necessity to enter an agreement with the 2nd defendant who was not at all the owner of the suit property.

(iii) Further, the endorsement under Ex.A.4 would indicate as if the payment was made on 11.01.2016. when the plaintiff refused to come to the bank, the question of plaintiff receiving the amount on the same date is highly improbable.

(iv) Furthermore, though the plaintiff admitted the receipt of amount of Rs.15,000/- through cheque, According to the plaintiff, the same was only towards rent and the amount encashed under the cheque was not for part sale consideration as put forth by the 1st respondent/plaintiff.

Therefore, according to the learned counsel, once the agreement was denied



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and there were improbabilities found in the case of the plaintiff, a decree of specific performance ought not to have been granted by the trial court.

13. Per contra, the learned counsel for the plaintiff would contend that, admittedly, the 1st defendant was residing away from the suit property, and it was only his brother, the 2nd defendant, who looked after the suit property. The plaintiff was inducted as a tenant for the suit property. This was admitted by the 1st defendant. It was only the plaintiff who paid the property tax and water tax. Ex.A.2 Bogiyam Agreement was also not disputed.

14. The learned counsel for the plaintiff would further contend that except for an evasive denial of the execution of the agreement, there was no specific denial of the execution of the agreement of sale and the subsequent endorsement for having received part sale considerations. The evidence of P.W. 2 not only would go to prove the execution of the agreement of sale but also payments under the agreement and also the subsequent payments of (i) Rs.3,50,000/- made on 01.10.2015, (ii) Rs. 5,000/- made on 28.12.2015, and Rs.15,000/- made on 01.01.2016 by the plaintiff to the 1st defendant towards part sale consideration.

15. The learned counsel would moreover contend that the evidence of P.Ws.3 to 5 would also clearly go to show that the plaintiff has made



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arrangements to pay the balance sale consideration. Ex.A.12, letter would clearly show that the plaintiff has also made arrangements to avail a bank loan, and a sum of Rs.10,50,000/- has also been sanctioned in his favour. Ex.A.21 to Ex.A.27 would prove the readiness and willingness on the part of the plaintiff. The trial court in fact has directed the plaintiff to pay the balance consideration of Rs.7,35,000/- after holding that Rs.1,50,000/- was paid under Ex.A.2 only to the 2nd defendant and not to the 1st defendant, and the trial court has also disbelieved the amount of Rs.50,000/- allegedly spent towards repairs of the suit property. At any event, the trial court has, on appreciation of the entire evidence, held that the plaintiff was always ready and willing to perform his obligations under the agreement of sale. Therefore, the trial court has proceeded to grant a decree of specific performance and it does not require any interference at the hands of this court.

16. In the light of the above submissions, now, the points that arise for consideration are:

(1) Whether the agreement of sale (Ex. A.1) dated 21.07.2015 was not executed by the 1st defendant and it was a fabricated document?

(2) Whether the plaintiff was always ready and willing to



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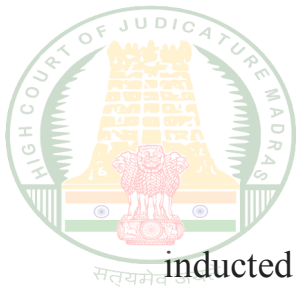
perform his part of the contract?

(3) What other reliefs are the parties entitled to?

Point Nos.1 and 2:

17. It is not in dispute that the plaintiff was inducted into the suit property as a tenant in the year 2012. It is the specific case of the plaintiff that he was inducted as a tenant into the suit property by the 2nd defendant, who is none other than the brother of the 1st defendant and was looking after the suit property since the 1st defendant was residing away from the suit property in another district. This was, in fact, admitted by D.W.1, and it was the plaintiff who has been paying the house tax, water tax and other charges. The only contention of the 1st defendant in the entire written statement is that the plaintiff was not inducted as a tenant by the 2nd defendant, and he (1st defendant) himself inducted the plaintiff as a tenant into the suit property in 2012.

18. Be that as it may, the fact remains that the plaintiff was originally inducted as a tenant into the suit property in 2012. Ex.A.2 was entered into between the plaintiff and the 2nd defendant in 2015. A sum of Rs.1,50,000/- was said to have been paid under the Ex.A.2 bogiyam agreement as a premium. It is, however, the specific case of the plaintiff that though he was originally



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inducted into the property as a tenant, the 2nd defendant informed him that his brother (1st defendant) has decided to sell the suit property; the plaintiff has agreed to purchase the suit property for a valuable consideration. Accordingly, the Ex.A.3 agreement of sale was entered by the 1st defendant with the plaintiff on 21.07.2015 for the sale of the property for a total sale consideration of Rs.17,00,000/- and a sum of Rs.2,00,000/- was paid as advance under the agreement itself on the same day.

19. In view of the doctrine of non-traversal encapsulated in Order VIII, Rule 5 of the CPC, any factual averment in a plaint, if not specifically denied by the defendant, is deemed admitted.

20. Contrary to this, the attesting witness P.W.2 has clearly spoken about the execution of the agreement of sale and also the passing of part sale consideration. Therefore, once the execution has been established, the burden shifts to the 1st defendant, who denied the execution of the document, to prove that the document was not executed by him. The 1st defendant has not taken any step in this regard to disprove the factum of execution of the agreement of sale proved by the plaintiff. Under Ex.A.4 Agreement of Sale, in fact, the 1st defendant has agreed to execute the sale deed for a total sale consideration of Rs.17,00,000/- and the time was also fixed by the parties to complete the sale.

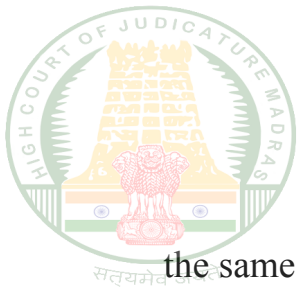


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It was agreed between the plaintiff and the 1st defendant to complete the sale within six months. Ex.A.4 is an endorsement made by the 1st defendant in respect of receipt of Rs.3,50,000/- by the 1st defendant from the plaintiff towards part sale consideration on 01.10.2015. P.W.2 has spoken about this. The evidence of P.W. 2 was not at all shattered during cross-examination. No probabilities adverse to the plaintiff were brought on record from P.W. 2 to disbelieve the evidence of P.W. 2. No motive whatsoever was also attributed to this witness to depose against the 1st defendant during his cross-examination. In the absence of any materials to discard the execution of the agreement of sale and the subsequent payments, this court has no other option except to hold that Ex.A.2 and Ex.A.3 have been clearly established by the plaintiff as per the law. The fact that the plaintiff has been in possession of the suit property since 2012 in a different capacity was also not disputed by the 1st defendant.

21. Ex.A.3-Agreement of Sale, when carefully perused, it is seen that the 1st defendant had, in fact, agreed to sell his property for a total sale consideration of Rs.17,00,000/- and received a sum of Rs.2,00,000/- as advance on the same day under the agreement of sale itself. It was agreed between the parties to complete the sale within 6 months from the date of agreement. It was also averred in the agreement that any further payment made,



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the same shall be endorsed on the reverse of the agreement itself.

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22. Ex.A.4 dated 01.10.2015 also proved the fact that a further sum of Rs.3,50,000/- was received by the 1st defendant. The execution of the documents has been clearly spoken to by P.W. 1 and P.W. 2. No material was brought on record to disprove the same.

23. It is the further case of the plaintiff that he has also applied for a loan to mobilise the amount towards balance sale consideration, and a loan of Rs.10,50,000/- was also made ready by the Religare Home Loans.

24. It is also the further case of the plaintiff that the 1st defendant, who initially agreed to come to the bank to receive the cheque, refused to come to the bank when the bank asked him to come and receive the cheque. Instead, the 1st defendant insisted on payment of the remaining sale consideration by cash.

25. To prove the above-said facts, P.W.3 to P.W.5 have been examined on the side of the plaintiffs. From a careful perusal of the entire evidence of P.W. 3 to P.W. 5, it is seen that their evidence was not at all disproved. Therefore, the evidence in fact proves the fact that in order to pay the remaining sale consideration by cash, the plaintiff had made arrangements; the plaintiff had adduced documentary evidence Ex.A.23 to Ex.25 and Ex.A.27.

26. It is also the case of the plaintiff that he had paid a sum of Rs.5,000/-



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on 28.12.2015 and Rs.15,000/- on 01.01.2016 towards part sale consideration through cheque. Though the 1st defendant had set up a defence that a sum of **Rs. Rs.15,000/-** paid by the plaintiff to him by way of cheque was towards rent for three months, the same cannot be countenanced for the simple reason that D.W.1 in his evidence has admitted that the plaintiff has not paid rent from 2015 onwards. Further, there is also absolutely no pleading in the written statement of the 1st defendant that Rs.15,000/- which was paid on 01.01.2016, was towards rent, and for the first time, in his evidence, D.W. 1 has taken such a stand that Rs. 15,000 was paid towards rent for three months.

27. Be that as it may, when an admission was made by D.W.1 in his cross-examination to the effect that he had not received rent from the plaintiff since 2015, the contention that Rs. Rs.15,000/- paid by the plaintiff by way of cheque was towards rent for three months is highly improbable. The very execution of the agreement of sale is not specifically disputed. On the other hand, a defence was set up since the agreement was not a registered one; it is not valid in the eye of the law. Except that there is no serious denial of the agreement of sale. Therefore, when the agreement of sale had been established by the plaintiff and the plaintiff had also taken steps to perform his part of the obligation to pay the balance sale consideration and promptly applied for a



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loan, which is evident under Ex.A.12, and when the 1st defendant had refused to receive the cheque from the Religare Home Loans on the date fixed and insisted on payment of the balance sale consideration by cash, the plaintiff made arrangements to raise a loan from P.W. 3 to P.W.5 to mobilize the amount towards the balance sale consideration by cash. These facts were also clearly established by oral and documentary evidence. Thus, the available oral and documentary evidence sufficiently prove that the plaintiff was always ready and willing to perform his part of the contract.

28. Further, it is also to be noted that the suit property is only a small extent that was originally allotted to the share of the 1st defendant under a partition deed (Ex.A.1) and in the other portion of the property covered under the partition deed, the 2nd defendant has been residing. This was also admitted by the 1st defendant (D.W.1) in his evidence. The extent of suit property covered under the agreement is hardly 1 ½ cents with an old house constructed by using mud. The 1st defendant (D.W.1) has also admitted in his chief examination that he used to visit the suit property once in a month. This would go to show that the suit property was not under his control and it was looked after only by his brother, the 2nd defendant, who was residing next to the suit property. All these facts would only probabalise the plaintiff's case that was



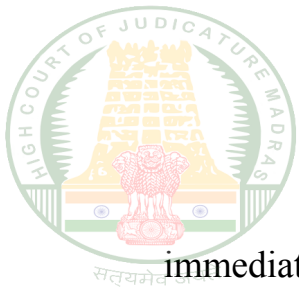
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only the 2nd defendant who inducted the plaintiff into the property as a tenant.

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At any rate, when the agreement has been established and the plaintiff has proved the facts that he was always ready and willing to perform his part of obligations under the agreement of sale and when there is no specific denial on the part of the 1st defendant regarding the execution of the agreement and passing of advance and part sale considerations in his written statement and nothing was brought on record in support of his contention in the cross examination of P.W.1 to P.W.5 and the suit has also been filed in time. It has to be necessarily held that the plaintiff is entitled to a decree of specific performance of contract.

29. The plaintiff has filed the suit seeking a decree of specific performance of the agreement of sale on 10.05.2016, which was well within the period of limitation prescribed under the Limitation Act, Act,1963. There was no delay on the part of the plaintiff. Though the plaintiff made every endeavour to get the premium towards the lease under Ex.A.2, the learned Judge did not agree for the same, as that amount was paid through the 2nd defendant, and therefore, the learned Judge directed the plaintiff to pay the balance sale consideration of Rs.11,35,000/-. As seen from the records, the balance sale consideration of Rs.11,35,000/- as directed by the learned Judge was deposited



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immediately after the decree.

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30. All these facts would prove that the plaintiff is entitled to a decree of specific performance as prayed for, and the contention of the 1st defendant that the agreement was fabricated has no legs to stand.

31. The points Nos.1 and 2 are answered accordingly in favour of the plaintiff and against the 1st defendant.

Point No.3:

32. In the light of the above discussions, the 1st defendant is not entitled to any relief and the appeal suit deserves to be dismissed. This point is answered accordingly.

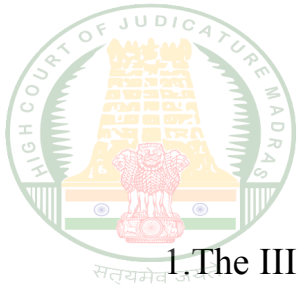
In the result, the appeal suit is dismissed with costs. The judgement and decree dated 06.10.2023 passed in O.S.No.235 of 2016 on the file of the learned III Additional District Judge, Coimbatore, are confirmed. Consequently, connected CMPs are closed.

Index : yes / no
Neutral Citation : yes / no

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To



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1 The III Additional District Judge, Coimbatore, Coimbatore District.

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