



S.A.No.1485 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1485 of 2007
and Caveat Petition No.4561 of 2007
and M.P.No.1 of 2008

Kannammal

... Appellant

Vs

- 1.Mayilathal (Died)
- 2.Sivasubramaniam
- 3.Nithiyanandam
- 4.Easwaran (Died)
- 5.Manikandan
- 6.Maragatham
- 7.Baladhandapani
- 8.Ravi
- 9.Rajeshwaran
- 10.E.Manimegalai
- 11.E.Subashree
- 12.E.Sachin Adhithya

(R1 died, R7 to R9 are brought on record as LRs of the deceased R1 and R4 died R10 to R12 are brought on record as LRs of the deceased R4 vide Court order dated 21.02.2024 made in C.M.P.Nos.11042, 11045, 11048, 11049, 11050, 11052 of 2023 in S.A.No.1485 of 2007 by this Court)

... Respondents



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PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 27.01.2006 in A.S.No.117 of 2003 on the file of I Additional District Court, Coimbatore, confirming the Judgment and Decree dated 18.12.2002 in O.S.No.163 of 1993 on the file of Sub Court, Udumalpet.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.R.Rajaraman

For Respondents : R1 & R4 - Died

Mrs.Hema Sampath, Senior Counsel
for Mr.Prabhu for R2, R3, R5 to R12

JUDGMENT

This Second Appeal is filed challenging the Judgment and Decree dated 27.01.2006 in A.S.No.117 of 2003, on the file of I Additional District Court, Coimbatore, confirming the Judgment and Decree dated 18.12.2002 in O.S.No.163 of 1993 on the file of Sub Court, Udumalpet.

2.The appellant herein is the defendant and the respondents herein are the plaintiffs in the suit in O.S.No.163 of 1993. The plaintiffs filed the



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above suit through their Power Agent viz., Sivaraj, for a relief of specific performance of the suit agreement dated 05.02.1993 and for a relief of permanent injunction restraining the defendant and her men from interfering with the plaintiffs possession in the suit property. The said suit was contested by the defendant by filing her written statement denying the alleged execution of the sale agreement stating that it was obtained by coercion and fraud.

3.Both the parties adduced evidence before the Trial Court. On considering the oral and documentary evidence, the Trial Judge has framed issues and finally held that the plaintiffs are entitled for the relief as prayed for and also held that the plaintiffs are in possession of the suit property and granted relief in their favour.

4.The brief facts of the case are as follows:

(i).The suit property measuring an extent of 12.33 acres, situated at Bodipatti Village, Udumalpet belonged to the defendant. According to the plaintiffs, she offered to sell the property and the plaintiffs agreed to



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purchase the suit property for a sum of Rs.1 lakh and entered into a sale agreement on 05.02.1993 and paid Rs.25,000/- as advance and 3 months time was fixed to complete the sale agreement.

(ii).According to the plaintiffs, the said agreement was registered as per the terms agreed and the plaintiffs put in possession of the suit property by raising crops and they were always ready and willing to perform their part of the agreement. The defendant not produced the list of creditors to whom the lease has to be settled and 3 months period completed on 04.05.1993 before that, the plaintiffs gave a notice on 26.04.1993 calling upon the defendant to perform her part of agreement and notice was received by the defendant and given a reply to the false allegation and also demanded to produce a xerox copy of the agreement but already they had one copy of the same.

(iii)Further, the plaintiffs also gave a publication in Thina Thanthi on 28.03.1993 about the sale terms for that the defendant also gave a publication in Thina Thanthi at the instance of her husband Paramasivam.



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Therefore, the defendant was not inclined to proceed to execute the sale agreement and hence, the plaintiffs approached this Court for specific performance through their Power Agent Sivaraj, who is their brother's son.

(iv).The defendant filed a written statement denying the plaintiffs claim stating that without proper Power of Attorney, the plaintiff's Power Agent represented the case as such is erroneous. According to the defendant, she purchased a property from the plaintiff's brother Shanmugasundaram in 1978 and ever since, she is the absolute owner of the property. Further, the alleged sale agreement dated 05.02.1993 was not voluntarily executed and it was obtained by coercion and fraud.

(v).According to the defendant, originally the property belonged to the plaintiff's relative and due to hike in prices, her vendor's son viz., the Power Agent Sivaraj, who was a political influence person in that locality and wanted to grab the property as there was a previous enmity. But the defendant did not agree to sell the property to him based on his evil intention to get back the property. The defendant and her family members



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were forcibly taken to the Registrar Office with connivance of the Sub Registrar on 05.02.1993, the alleged sale agreement was forcibly obtained from her. The document writer and the Sub Registrar also helped to create the alleged agreement. Thereafter, the defendant and her family members were dropped back to their home with a threat and therefore, according to the defendant, she claimed that the sale agreement dated 05.02.1993 was done by coercion and fraud.

(vi).Immediately, the very next day, she gave a complaint to the Chief Minister's Cell, Registrar and also gave a paper publication through her husband. Neither advance payment made nor the defendant agreed to sell the property for a sum of Rs.1 lakh. In fact, on that day, the value of the property worth was more high. The defendant also denies that the possession was handed over to the plaintiffs and also contended that one Rangasamy enjoyed the portion of the property as a lessee and therefore, the defendant prayed to dismiss the suit.



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5.Before the Trial Court on the side of the plaintiffs, 15 documents were marked as Exs.P1 to P15 and 5 persons were examined as PW1 to PW5. On the side of the respondent, 36 documents were marked as Exs.R1 to R36 and 4 persons were examined as RW1 to RW4 and on the side of witnesses, 9 documents were marked as Exs.X1 to X9.

6.The Trial Judge has framed 6 issues. One of the main issue is whether the plaintiffs are entitled for the relief of specific performance and the another main issue is whether the sale agreement was obtained by coercion and fraud.

7.Considering the evidence on record, the Trial Judge has held that the suit property belonged to the defendant and she agreed to sell the property to the plaintiffs for a sum of Rs.1 lakh and received a sum of Rs.25,000/- as advance in the presence of the Sub Registrar and the defendant's family had obtained a loan and to settle the same, they entered into a sale agreement. To prove their readiness and willingness, the plaintiffs issued a notice within the stipulated period and thereby the

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plaintiffs proved their readiness and willingness as well as the execution of agreement also proved by examining the scribe, attestor and the Sub Registrar and also to prove the payment of advance and within stipulated period they were expressed their readiness and willingness thereby, the plaintiffs proved their claim through the Power Agent.

8.On the contrary, the defendant neither proved the sale agreement was obtained under coercion and fraud nor they proved that they had taken steps against the plaintiffs to cancel the sale agreement legally. Furthermore, the endorsement made in the agreement is valid enough to grant relief in favour of the plaintiffs. Accordingly, the suit was decreed and relief of specific performance was granted in favour of the plaintiffs.

9.Aggrieved by the above findings, the defendant preferred an appeal before the I Additional District Judge, Coimbatore in A.S.No.117 of 2003. The First Appellate Judge has analyzed the oral and documentary evidence relied by both the parties and framed points for consideration and finally held that the sale agreement was executed by the defendant in order to sell



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her property and the plaintiffs proved that there was no coercion on their side and also proved that they were performed their part of agreement. The First Appellate Judge further held that the value of the property was correctly fixed and readiness and willingness was also proved thereby confirming the findings of the Trial Court and dismissed the appeal filed by the defendant.

10.It is seen that during pendency of the proceedings, the first plaintiff died and her legal heirs were impleaded as parties.

11.Challenging the concurrent findings, the defendant has preferred this Second Appeal.

12.For the easy sake of convenience, the parties denoted as addressed before the Trial Court.

13.Learned Senior Counsel for the appellant challenging the concurrent findings of the Courts below on the following grounds:

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(a)Learned District Judge at the outset ought to have seen that the

Power Agent (PW1) has admitted that he was the one who negotiated the deal, took possession of the suit property on the same day of the sale agreement dated 05.02.1993, gave publication in the newspaper on 28.03.1993, forgetting the fact that he was given the power only on 12.05.1993 under Ex.A1.

(b)Learned District Judge failed to see from the evidence of PW1 that it is so unnatural and totally against the principle under the law of contracts. When he said that the offer and acceptance were made, the plaintiffs were not present and another undisputed fact is that he never held the power at the time of talks for the purchase of the suit property.

(c)Learned District Judge also failed to see that the contentions made by the defendants in the written statement are true, when PW1 who became the Power of Attorney holder of the plaintiffs, is competent to represent the plaintiffs only from 12.05.1993, whereas in the cross examination, he had stated that he took possession from the defendant, the very next day of the



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sale agreement and that if it is stated in the agreement that the possession was given on the same day is correct.

(d)Learned District Judge failed to see that it is well settled in law that the relief of specific performance is a discretionary relief and also being a remedy in equity and a person who seek such a relief shall come to Court with clean hands and that he cannot state any falsehood whereas in the instant case, the evidence of PW2 clearly establishes not only falsehood and also the fact that the plaintiff has not come with clean hands.

(e)Learned District Judge ought to have seen that the defendant/appellant had availed her earliest opportunity and had sent a complaint to the Chief Minister Cell, Sub Registrar and Sub Inspector of Police, stating that the plaintiffs had obtained the agreement by coercion and fraud.

(f)Learned District Judge ought not to have relied on the sale agreement, Ex.A2 to decree the suit when there is no answer given by the



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plaintiffs as to why the inclusions, alterations and modifications in the agreement are not initiated by the executant or the attesting witnesses.

(g)Learned District Judge failed to see that the plaintiffs, the Power Agent of the 2nd plaintiff, is a witness to the lease deed executed between Ramasamy and the defendant, where Rangasamy was in possession of 2 acres of the suit property [Ex.B1 dated 16.03.1992].

(h)Learned District Judge failed to appreciate the documents produced by the defendant in Exs.B7 to B9 which shows that the suit properties are punja lands and were plotted and sold for fairly higher prices when compared with the sale consideration fixed in the alleged agreement, i.e. Rs.1 lakh for 5 acres of land.

(i)Learned District Judge failed to see that though the case of the plaintiffs as if he negotiated the transaction, according to PW4, he was said to be absent at the time of registration and receiving of the advance amount before the Sub Registrar.



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(j)Learned District Judge further ought to have seen that the inclusion and alterations in the schedule of properties were admitted as not initiated by either the Attestor or the Sub Registrar as admitted by PW6.

(k)Learned District Judge also failed to see that the defendant side witnesses have categorically stated about the establishment of the industry and the lease over the suit property. The plaintiffs also did not deny that there was a proposal for the establishment of an industry.

(l)Learned District Judge ought to have seen that in Ex.B6, a sale proclamation certificate, the value of the property was determined to be approximately Rs.4,65,000/-.

(m)Learned District Judge further failed to appreciate the document marked in Exs.B11 to B15, which are the various tax receipts from the Revenue Department and that the patta stands in the name of the defendant, which will prove the possession of the defendant in the suit property.



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14.This Second Appeal is admitted on the following substantial questions of law:

(a)Whether the alleged agreement Ex.A2 is enforceable in law, when admittedly the handwritten portions in the agreement even according to PW1 has not been initiated by any of the parties and went unexplained?.

(b)When the evidence clearly indicates the absence of any consensus-ad idem and also obtained without any volition of the defendant, is not the relief of specific relief an unconscionable bargain unenforceable in law?

15.Learned Senior Counsel for the appellant submitted that the Courts below failed to appreciate the fact that the Power Agent Sivaraj was the instrument and instigation of the alleged sale agreement as well as the initiation of suit. The plaintiffs are only the name lenders and in order to grab the property from the defendant for a lesser value and forcibly created the alleged sale agreement and the appellant/defendant established that the document was obtained under coercion and fraud through the oral and documentary evidence in spite of that the relief of specific performance



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granted in favour of the plaintiffs who approached the Court with unclean hands and they are not entitled for the same, thereby both factually and legally, the findings rendered by the Courts below are liable to be set aside by allowing this Second Appeal.

16.Learned Senior Counsel for the respondents contended that before the Trial Court, the offer and acceptance as well as the execution of agreement were proved by the plaintiffs through their Power Agent by examining the scribe, attestor of the document as well as the Sub Registrar and also proved that the value mentioned in the agreement is correct and sustainable. Therefore, the Courts below rightly granted the relief in favour of the plaintiffs.

17.On the contrary, the defendant failed to prove that the document was obtained under coercion and fraud. When the plaintiffs proved the execution as well as the payment of advance on the date of the sale agreement, therefore, the findings rendered by the Court below need no interference and hence prayed to dismiss the appeal as no merits.

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18.The main objection raised on the side of the defendant is that the Power Agent, Sivaraj examined as PW1, who was the instrument of creation of the alleged sale agreement and at the instigation of the plaintiffs who are the paternal aunties are mere name lenders. Neither they were not aware of the alleged sale agreement nor they entered into a sale agreement with the defendant. But the Courts below failed to appreciate the said aspect and also not considered the Power of Attorney given to the plaintiffs only on 12.05.1993. But his own evidence reveals that he was aware of the entire sale agreement prior to that date itself shows that the plaintiffs have not approached the Court with correct facts.

19.On perusal of records, it is seen that the Power of Attorney stands in the name of PW1, which was executed in his favour only on 12.05.1993, thereafter, the suit was instituted within a week. On bare perusal of the Power of Attorney Ex.A1 reveals that the Power of Attorney was given to him to conduct the case and to deal with the suit property. According to the plaintiffs, the defendant is the absolute owner of the suit property and agreed to sell the suit property for a sum of Rs.1 lakh and they entered into

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a sale agreement on 05.02.1993 in the presence of the Registrar, they paid Rs.25,000/- as advance to the defendant.

20.As rightly contended by the learned Senior Counsel for the appellant in the entire plaint averments, there is no single pleading about the Power Agent, PW1, was also present at the time of the alleged sale transaction. But during the trial, the Power Agent was examined as PW1, he deposed that the terms of the sale agreement was arrived between himself and the husband of the defendant viz., Paramasivam and the alleged terms were fixed 15 days prior to the suit agreement to that effect there is no pleading in the plaint. However, the evidence of PW1 reveals that he was actively participated in the alleged sale transaction. Furthermore, it is an admitted fact that the suit property originally belonged to PW1 father's family. The suit property was sold to the defendant for a valid consideration through the Sale Deed dated 09.10.1978, marked as Ex.B2.

21.The total extent of the property comes around 12.33 acres and the said property was sold to the defendant in order to settle their family loan.



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Thereafter, PW1 and the son of the defendant entered into a lease agreement to run a business in the name of ultra chemical in the portion of the suit property but it was objected by the defendant's husband Paramasivam, due to which, the business was not continued. Apart from that, the said Paramasivam and the defendant already having enmity terms. Therefore, even though the Power of Attorney was given to PW1 on 12.05.1993 but his own evidence reveals that before itself, he actively participated in the alleged execution of the sale agreement but those facts were suppressed by the plaintiffs for the reasons best known to them. Therefore, the offer made by the defendant was accepted by the plaintiffs as stated in the plain averment is not true and correct. The evidence of PW1 reveals who alleged that he entered into sale terms with the husband of the defendant which is totally contrary to the plaint averments.

22.According to the plaintiffs, the defendant agreed to sell the suit property for a sum of Rs.1 lakh and within 3 months period they bound to execute the sale agreement and on the date of agreement, they paid a sum of Rs.25,000/- as advance and the remaining amount to be paid within 3

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months. Further, contended that the sale agreement was executed and signed in the presence of the witnesses by both the parties and the same was also registered in the Sub Registrar Office in the presence of Sub Registrar and they paid the advance amount.

23.Learned Senior Counsel for the appellant contended that the sale agreement was obtained by forcibly taking them to the Registrar Office by PW1 and his persons under threat, they were forced to sign the documents. To prove the execution, the plaintiffs examined the attestor as PW4. As per his evidence, a draft agreement was prepared and the particulars were given by the husband of the defendant and then, read over to them and all were agreed, thereafter, the sale agreement was typed and the defendant's husband insisted on making the advance payment in the presence of the Sub Registrar, parties, plaintiffs and the defendant put their signatures as well as thumb impressions and document completed between 12.00 and 1.00 p.m. Therefore, with regard to the advance payment in the presence of the Sub Registrar was not known to him. Further, he stated that at the time of execution of the document, PW1 Sivaraj was not present. But the evidence



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of PW1 reveals that he was present at the time of the execution of the document as well as the registration of the document which is totally contrary to the evidence of PW4.

24.PW5 is the son of the first plaintiff and he also married the sister of PW1. As per his evidence, he was not aware of the alleged sale transaction but the plaintiffs alone entered into the terms with Paramasivam, husband of the defendant which is also totally contrary to the evidence of PW1.

25.PW6 is the Sub Registrar, Udumalpet and as per his evidence, the document was registered between 4.00 p.m. and 5.00 p.m. Further, he admitted that when he was brought to the Court by PW1 Sivaraj, he came to know only about him at the time of issuance of summons. But as per evidence of PW1, he was also present at the time of the registration of document in the Sub Registrar Office and other witnesses also deposed. Therefore, the evidence of PW6 is also contrary to the evidence of PW1 and PW5. The evidence of PW1 further reveals that he also accompanied the



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plaintiffs at the time of registration of sale agreement. Therefore, the witnesses on the side of the plaintiffs are not cogent with regard to the execution of the sale agreement and fixation of alleged sale agreement terms.

26.Furthermore, in respect of Power of Attorney, it was said to be given by the plaintiffs to PW1 to conduct case on behalf of them. But admittedly, the Power of Attorney was drafted at the instigation of PW1 at his Advocate office. After completion of drafting, the witnesses to the document appeared, signed and affixed their signatures. The witnesses to the Power of Attorney viz., PW3 proves that the Power of Attorney was drafted in the Advocate office. On perusal of Power of Attorney Ex.A1, there is only one witness viz., PW3 has signed, but the scribe who drafted and typed the Power of Attorney had not been specifically mentioned in the said document.

27.As rightly pointed out by the learned Senior Counsel for the appellant that the signatures found in the alleged sale agreement and the



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Power of Attorney are different. Preponderance of probability that PW1 might have drafted the document with connivance the Advocate who conducted his case before the Trial Court.

28. According to the defendant, the sale agreement was executed by coercion and fraud. Therefore, the burden of proof is equally upon them to prove that it was obtained under coercion and fraud. The husband of the defendant was examined as RW1, he stated that immediately after the alleged sale agreement, they had given a complaint to the Chief Minister's Cell on 08.02.1993 and the same was marked as Ex.B18. On perusal of the complaint given by RW1 that he gave a complaint to the Chief Minister's Cell stating that PW1 along with his persons trespassed into his house under threat, they demanded to return back his family property and also forcibly taken them to the Sub Registrar Office and obtained their signatures in the document even prior to filing of the suit. RW1 lodged a complaint to the Sub Inspector of Police, Udumalpet on 06.05.1993 stating that the possession of the suit property was disturbed by PW1, Sivaraj and the plaintiffs.

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29. Even before filing of the suit, there was a complaint and also exchange of notice between them with regard to the alleged sale agreement was obtained by coercion and fraud. Therefore, the document was obtained under force and subsequent events proved that the alleged sale agreement was neither entered with free will nor with full consent.

30. When the plaintiffs approached the Court for the relief of specific performance as it is a discretionary relief, the plaintiffs were bound to prove the execution of the sale agreement, readiness and willingness and other terms of the agreement with clean hands. According to the plaintiffs, on the date of execution of the sale agreement, the possession of the property was given to them. On perusal of the records, reveals that on the date of complaint the plaintiffs had not produced any document to show that they were in possession of the property even at the time of the filing of the suit.

31. On the contrary, the defendant had produced a document which shows that from 1978 onwards, she has been continuously paying tax receipts and patta also stands in her name. Even after the alleged sale



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agreement, the tax receipts stands in the name of the defendant was marked as Exs.R25, R26 and R27 and other revenue records also proved that she is in the possession of the suit property. Therefore, the possession was taken by the plaintiffs as such is not true and valid or there is documentary evidence on the side of the plaintiffs that they were in possession of the suit property ever since from the date of sale agreement. Therefore, the possession pleaded by the plaintiffs had not been proved on their side whereas the defendant established that she is in possession of the suit property.

32.The Village Administrative Officer was examined on the side of the defendant as RW2 reveals that in respect of suit property, chitta and adangal stands in the name of the defendant. Further, he stated that per acre would be worth about Rs.2 lakhs. Therefore, the revenue records shows that she is in possession of the suit property not the plaintiffs as alleged.

33.Furthermore, according to the plaintiffs, the property was worth about Rs.1 lakh. Admittedly, the defendant husband borrowed a loan on



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the property. Even though the evidence of the Village Administrative Officer reveals that per acre Rs.2 lakhs but the sale consideration was fixed Rs.1 lakh for the entire 12 acres as claimed by the plaintiffs is not acceptable and it is not true and the true and correct value of the property also not mentioned in the sale agreement.

34.Apart from that there is a school running in the portion of the suit property but in the description of the sale agreement, the building was not mentioned. If really the plaintiffs are the bonafide purchasers they ought to have mentioned the existence of building around 1000 sq.ft. in the portion of the property. Therefore, the properties were also not been properly and correctly described in the sale agreement.

35.To avail equitable remedy, the plaintiffs shall approach the Court with correct facts, besides they shall also prove that they were ready and willing to perform their part of the sale agreement. According to the defendant, there was two insertions in the alleged sale agreement but it has not been signed by the person who made such insertion. Admittedly, the



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scribe Selladurai has not made such insertion and therefore, the alleged insertion was made subsequent to the typing of the document without any initial would create suspicion over the execution of the document and the same was not been removed by the plaintiffs.

36.The fact also reveals that the Power Agent, Sivaraj and the son of the defendant was entered into a lease agreement to run a chemical business in the portion of the suit property but later it was not worked out due to there was an enmity between the defendant family and PW1. Besides the suit property originally belonged to the grandfather of PW1 and due to family debt, the said property was purchased by the defendant for a valid sale consideration long back in the year 1978. Due to hike in prices, her vendor's son, the person viz., Sivaraj, who was a political influence person in that locality wanted to grab the property with the help of the plaintiffs and the alleged sale agreement came into force.

37.Preponderance of probability about the forcible execution of the said agreement was established by the defendant. On the other side, the



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plaintiffs who approached the Court for relief of specific performance not proved the sale agreement is true and valid as stated supra. The oral and documentary evidence adduced on the side of the plaintiffs were not cogent and inspiring the confidence of this Court and possession also not been proved.

38. Apart from that insertion in the document also not been clarified. Above all, the plaintiff's pleaded that they are the bonafide purchases. If so, they ought to have been paid the balance amount of Rs.75,000/- immediately or after filing of the suit. But till the disposal of the suit, the plaintiffs not paid the balance amount which itself shows that they are not the bonafide purchasers. Even assuming that the sale agreement is true and valid, they were not proved their readiness and willingness as it is mandatory under Section 16(3) of the Act which insist that the plaintiffs bound to prove their readiness and willingness always. Either filing of the suit or at the time of passing the final decree, the plaintiffs not taken any steps to pay the balance amount which itself shows that the plaintiffs neither proved their readiness and willingness nor they are the bonafide purchasers.

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39.The Courts below failed to appreciate the facts and evidence properly. When there is improper appreciation of facts and evidence, this Court is inclined to interfere with regard to the factual findings of the Court as discussed supra. Both the Courts below failed to appreciate the facts and evidence properly which necessitated the interference of this Court. Therefore, this Court is of the view that the findings rendered by the Courts below are perverse and liable to be set aside. Accordingly, the alleged sale agreement Ex.A2 is not true and invalid. Neither the plaintiffs nor the Power Agent approached the Courts with clean hands. The first question of law is answered accordingly.

40.The defendants proved that the alleged sale agreement is not true and invalid. The defence of the defendants is that the sale agreement was came into force by coercion and fraud as well as the defendant never intended to sell her property. Therefore, to avail equitable remedy, the plaintiffs shall approach the Court with clean hands as discussed supra. The Courts below failed to appreciate the fact that there was no consent on the side of the defendant and therefore, the plaintiffs are not entitled for any



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relief including relief of specific performance. Thus suit dismissed. The second question of law is answered accordingly.

41.In the result, the findings rendered by both the Courts are set aside and the Second Appeal is allowed with costs. Consequently, the caveat petition and connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

- 1.The I Additional District Court, Coimbatore.
- 2.The Sub Court, Udumalpet.
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