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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 07.07.2025

Pronounced on : 29.08.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.375 of 2005

1.Suresh Kumar
2.Rekha Jain
3.Chandan Kumar
4.Pramila Jain
5.Naresh Kumar
6.Varsha Jain

... Plaintiffs

Vs

1.Vikram Jesudasen
2.Ajit Jesudasen
3.Ranjit Jesudasen
4.Tara Lindsay
5.Maya Kumarswami
6.Cecil Joseph
7.Tamara Lindsay

Amended as per order dated 28.11.2017
in Appln. No.7814 of 2017

... Defendants



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This Civil Suit has been filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule I of CPC, prayed for a judgment and decree against the defendants:

(a) Granting Specific Performance of sale of the schedule mentioned property in favour of the plaintiffs for a consideration of Rs.1.6/- crores and the additional sum of Rs.10 lakhs already paid, by ordering the defendants 1 to 5 to execute the sale deed and do all such acts as are necessary to transfer title of the schedule mentioned property in favour of the plaintiffs and upon their failure, to direct the Registrar, High Court to execute the sale deed in favour of the plaintiffs;

b) Directing the defendants to pay to the plaintiffs the costs of the suit.

For Plaintiffs : Mr.R.Parthasarathy, Senior Counsel
for Ms.S.Rekha

For D1 to D5 :Mr.George Cheriyan,
for Ms.S.Sruthi

For D6 and D7 : No appearance

JUDGMENT

The suit had been filed seeking specific performance of sale of the property described in the schedule in favour of the plaintiffs for a consideration of Rs.1.60/- crores and an additional sum of Rs.10/- lakhs



already paid by directing the 1st to 5th defendants to execute Sale Deed to transfer title of the schedule mentioned property in favour of the plaintiffs and on their failure to direct the Registrar, High Court, to execute the Sale Deed in favour of the plaintiffs and also direct the defendants to pay to the plaintiffs the costs of the Suit.

2.The 2nd, 4th and 6th plaintiffs are the wives of the 1st, 3rd and 5th plaintiffs respectively.

3.The 1st, 2nd, 3rd, 4th and 5th defendants are brothers and sisters. The 7th defendant is the daughter of the 4th defendant. The 6th defendant is a Chartered Accountant and it is the case of the plaintiffs that the 6th defendant had been authorized by the 1st to 5th defendants to negotiate with the plaintiffs for sale of the schedule property.

4.The suit schedule property is land and ground at No.6, Victoria Crescent Road, Egmore, Chennai, measuring about 3 and ½ grounds together with undivided 1/5th share in the common road measuring two grounds and 674 sq.ft., or thereabouts.



5. It had been contended that the 1st to 5th defendants are the owners of the said property which the plaintiff had agreed to purchase for a total consideration of Rs.1.70/- crores out of which, a sum of Rs.10/- lakhs had been paid. It had been stated by the plaintiffs that the 1st plaintiff came to know that the 1st to 5th defendants were desirous of selling the property and had entrusted the marketing of the property to the 6th defendant. The 1st plaintiff had approached the 6th defendant in the second week of June 2004 expressing interest to purchase the property to construct individual residential houses for himself and for the other plaintiffs.

6. It had been further contended that the plaintiffs were provided with the copies of the title deed and the 1st, 3rd and 5th plaintiffs had also inspected the suit schedule property and measured the same. The total sale consideration was determined at Rs.1.60/- crores. It was agreed that the payment was to be a one time payment at the time of execution of the sale deed. The 6th defendant also assured that he would obtain Powers of Attorney from the 2nd, 4th and 5th defendants who were non-resident owners. The 6th defendant also provided copies of the E-mails exchanged between him and the 7th defendant in this regard.



7.The 7th defendant was the daughter of the 4th defendant and was coordinating the sale with the other defendants. It had been further stated that the plaintiffs informed the 6th defendants that they intended to execute the sale on 28.06.2004. The 6th defendant informed the 1st plaintiff that he was in the process of getting necessary documentations from the 4th and 5th defendants and furnished copies of the E-mails exchanged in this regard.

8.Thereafter, the 6th defendant informed that there was a Court order restraining sale of the property and furnished the information received in this regard. Thereafter, the 1st plaintiff was informed by the 6th defendant on 22.06.2004 that the property was the subject matter of a litigation at the instance of one Vijaykumar, Proprietor of M/s.Vijay Enterprises and the High Court by order dated 17.03.2003 in C.M.P.Nos.1874 to 1876 of 2003 in OSA.Nos.46 and 47 of 2002 had granted injunction against the 1st and 3rd defendants from alienating their shares in the property. It was informed that the dues were minimal and the issue could be sorted out. It was however informed that the sale deeds could not be registered on 28.06.2004 since the powers of attorney had not been obtained from the defendants who were not residing in Chennai.



9.The plaintiffs then forwarded copies of draft deeds to the 6th defendant who in turn forwarded the same to the 1st to 5th defendants. The 6th defendant kept assuring the plaintiffs that the sale deed could be entered into as agreed.

10.Thereafter, the plaintiffs were informed that there was a disagreement with the family of the defendants as to who would settle the dues to Vijaykumar. The plaintiffs then agreed to bear that burden of paying a sum of Rs.10/- lakhs to Vijaykumar in addition to the sale consideration already agreed. This proposal was also agreeable to the 1st to 5th defendants. The 6th defendant was coordinating with the other defendants regarding the documentation.

11.Thereafter, a Memorandum of Understanding was entered into on 14.03.2004 between the 1st and 3rd defendants and the 1st plaintiff regarding the payment of Rs.10/- lakhs to Vijaykumar and that the sale consideration would be Rs.1.60/- crores. The Memorandum of Understanding was with respect to 2/5th undivided share of the property being the share of the 1st and 3rd defendants.



WEB COPY 12.The 1st and 3rd defendants also filed affidavits that there were no encumbrances and also to indemnify the plaintiffs from any claim. The plaintiffs then paid the sum of Rs.10/- lakhs to Vijaykumar by way of a pay order dated 18.10.2004 and thereafter, the suit filed by M/s.Vijay Enterprises was dismissed as settled out of Court and the interim orders were vacated on 20.10.2004.

13.The plaintiffs then proceeded to arrange for finance and applied for Housing Loan from ICICI Bank Limited by applications dated 31.10.2004. They then informed the 6th defendant that the sale could be concluded on 16.11.2004 and requested him to prepare the documents relating to the same. The plaintiffs were informed that the 1st, 2nd and 3rd defendants would be physically present to execute the sale deeds and the other two defendant would be forwarding powers of attorney and then thereafter, the sale deeds could be executed. On 02.11.2004, the plaintiffs were given a copy of the powers of attorney executed by the 4th and 5th defendant. It is contended that this provided a concluded contract between the parties.



14. It was then indicated that the sale deed could be executed by the end of December 2004. The plaintiffs sent a letter dated 12.12.2004 in this regard. The plaintiffs then sought to defer the loan facility and again applied on 18.12.2004 for a total sum of Rs.1.45/- crores which was also sanctioned by ICICI Bank Limited. The plaintiffs had also commenced repaying the Earnest Monthly Installments towards the said loan.

15. The 2nd defendant came to India in the month of October to execute the said deed but since the whole issue was delayed, he went back. The plaintiffs were informed that the 5th and 6th defendants would be in India in December and that the sale deed could be executed on 29.12.2004. The plaintiffs were provided with the copy of the power of attorney executed by the 2nd defendant in favour of the 5th defendant on 31.12.2004. The schedule was also wrong since it did not contain the particulars relating to the pathway. The order of the Court in the suit filed by Vijaykumar was also not provided.

16. The sale deed could not be executed and the 4th and 5th defendants went back abroad in the first week of January 2005. The power of attorney



of the 4th defendant was amended and was provided to the plaintiffs. It was contended that this also indicated a concluded contract between the parties.

17. The plaintiffs then sent a letter on 02.02.2005 reiterating readiness and willingness and furnishing proof of sanction of loan. The copy of the order of the Court was furnished to the plaintiffs on 10.02.2005. The 6th defendant then informed that some of the other defendants were reconsidering the sale of the property. The 1st plaintiff then stated that the terms of the sale had already been concluded and advance had already been paid and Memorandum of Understanding had also been entered into with the 1st and 3rd defendants. The 6th defendant expressed helplessness. The plaintiffs issued a letter dated 16.02.2005. There was no reply.

18. The 6th defendant then called the 1st plaintiff and handed over copies of E-mails dated 22.04.2005 and 25.02.2005 exchanged between him and the 7th defendant wherein though he had conveyed that it would not be appropriate to go back on the agreement, the 7th defendant had conveyed that after internal discussions it had been decided not to go forward with the agreement and the defendants were willing to face the consequences. The



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plaintiffs were shocked by this conduct and informed the 6th defendant that they may have to proceed legally to assert their rights.

19.It had been further stated that on 28.03.2005, the 1st plaintiff who was in the construction business, was informed by a property broker that the defendants were looking for buyers. It was at that stage that the suit had been filed seeking performance of the agreement of sale of the suit schedule property for a total consideration of Rs.1.60/- crores in addition to the Rs.10/- lakhs already paid by the plaintiffs and for consequential reliefs.

20.The 1st and 3rd defendants filed their written statement. It had been contended that the suit was not maintainable since no cause of action had been made out by the plaintiffs against the 1st to 5th defendants and that in the plaint there was no disclosure of any agreement of sale between the 1st to 6th plaintiffs and the 1st to 5th defendants. The date of the alleged agreement had also not been stated. It had been very specifically contended that there was no agreement of sale between the plaintiffs and 1st to 5th defendants. It had been stated that there was only a Memorandum of Understanding and not agreement of sale between the 1st plaintiff and 1st and 3rd defendants. It



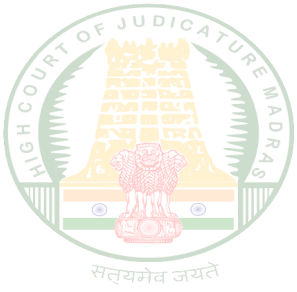
had been further stated that the 6th and 7th defendants are not necessary parties in the suit for specific performance. It had been further stated that communications between the 6th defendant and the 1st plaintiff would not come to the advantage of the plaintiffs since the 6th defendant was not the owner of the property and therefore, the said communications are not binding on the 1st to 5th defendants. It had been further stated that the 2nd, 4th and 5th defendants were not parties to the Memorandum of Understanding.

21. It had been further stated that the suit schedule property cannot be partitioned and is a residential house with appurtenant land. It had been very specifically contended that no advance had been received by the 1st and 5th defendants towards the sale. It had also been stated that there was no consensus ad idem between the 1st to 5th defendants on the one hand and the plaintiffs on the other hand. It had been further stated that the plaintiffs are connected with the construction company and have jointly filed the suit only for speculative reasons without disclosing any real cause of action. It had been stated that the letters sanctioning home loan had been acknowledged by the plaintiffs in their capacity as Directors of the construction company and not in their individual capacity. It had been stated that the 1st to 5th



defendants never had any intention to receive any advance amount nor to enter into an agreement of sale. The sale consideration had never been tendered by the plaintiffs. No document had also been executed between the 1st to 5th defendants and 1st to 6th plaintiffs.

22. In the written statement there has been a specific denial of the assertion that the marketing of the property was entrusted to the 6th defendant. It was contended that he had no locus standi to negotiate for and on behalf of the defendants. The 6th defendant was a Chartered Accountant and had conveyed to some of the family members that he had clients who were interested in purchasing the suit schedule property. He was never authorized to arrive at any agreement with any third party. Similarly, the 7th defendant was neither the owner nor authorized by the 1st to 5th defendants to negotiate and enter into any agreement of sale. It had thus been stated that the correspondences exchanged between the 6th and 7th defendants would not bind the 1st to 5th defendants and that they were also not aware of the correspondences. Some of the defendants had, out of trust, handed over copies of the title deeds of the property to the 6th defendant but it was asserted that they alone have the right to negotiate and proceed with the sale of the suit schedule property.



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23. With respect to the suit in the High Court, it was stated that it was not a litigation between the owners of the suit schedule property. It was a litigation between a Private Limited Company wherein the 1st, 2nd and 3rd defendants were directors and one Vijaykumar. The property had not been offered as collateral security.

24. The defendants denied that they had informed the 6th defendant to conclude the sale consideration at sum of Rs.1.60/- crores to the plaintiffs. It had been stated that any commitment given by the 6th and 7th defendants would not bind the other defendants.

25. With respect to the Memorandum of Understanding, it was stated that it had been signed only by the 1st and 3rd defendants and it was not an agreement of sale. It only recorded the amount outstanding by the third party company to Vijaykumar. None of the other plaintiffs except the 1st plaintiff was also the signatory to the Memorandum of Understanding. It had been contended that it could never be construed as an agreement of sale. The debt which was discharged was not the personal debts of the 1st and 3rd defendants but of the third party company. It was also stated that the sum of



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Rs.10/- lakhs was never intended to be treated as part of the sale consideration.

26.It had been further stated that no communication had been addressed by the plaintiffs to the defendants that they were desirous of concluding the sale on 16.11.2004. It was also denied that the plaintiffs had communicated their readiness and willingness to complete the sale or that they had arranged home loans to purchase the suit schedule property.

27.It was further contended that the 6th defendant had conveyed to the 7th defendant that the 1st plaintiff was not interested in the suit schedule property since it was not a prefect rectangular property and they would be interested only if the defendants also acquired a part of the common road which also belongs to several other owners. The 6th defendant also claimed that the 1st plaintiff wanted a separate patta for the road. It was again reiterated that no specific date had been determined to execute a registered sale deed and no advance had been received by the defendants.



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28.It was further contended that the suit schedule property was centrally located to business establishments, schools, colleges, clubs, hotels, hospitals, bank etc., and the rate per ground would be about Rs.6/- crores and the total value of the suit property is Rs.18/- crores which the plaintiffs were trying to acquire for a lesser consideration. It was thus prayed that the suit should be dismissed with costs.

29.A memo had been filed by the 2nd, 4th and 5th defendants adopting the written statement filed by the 1st and 3rd defendants.

30.The written statement had not been filed by the 6th and 7th defendants.

31.On the basis of the pleadings, the following issues were framed for trial:

“(i)Whether the plaintiffs are entitled to specific performance of the sale of the suit property as prayed for?

(ii)Whether there was an agreement of sale as mentioned in the plaint between plaintiffs and the defendants?



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(iii) Whether the alleged agreement of sale is specifically enforceable?

(iv) Whether the plaintiffs are entitled for the suit claim?

(v) To what other reliefs, the plaintiffs are entitled to?"

32. During trial, the 1st plaintiff examined himself as PW-1 and marked Exs.P1 to P34. The 6th defendant was then examined as CW-1 on behalf of the plaintiffs and he marked Exs.C1 and C2 series and thereafter was recalled for further examination and marked the certificate under Section 65(B) of the Indian Evidence Act, 1872 with respect to the documents marked as Ex.C2 series. The 1st defendant was examined as DW-1. The defendants did not mark any documents.

33. Heard arguments advanced by Mr.R.Parthasarathy, learned Senior Counsel for Ms.S.Rehka learned counsel for the plaintiffs and Mr.George Cheriyan, learned counsel for Ms.S.Sruthi, learned counsel for the 1st to 5th defendants.

34. The 6th and 7th defendants had been served on 30.04.2005 and 25.06.2005 respectively and did not participate in the suit proceedings. They had not been set exparte by any specific order.



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35.Mr.R.Parthasarathy, learned Senior Counsel for Ms.S.Rekha

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learned counsel for the plaintiffs took the Court through the facts of the case. He pointed out that the suit schedule property namely land and building measuring 3 ½ grounds at No.6, Victoria Crescent Road, Egmore, Chennai, belonged to the 1st to 5th defendants. The plaintiffs who were in the construction business came to know that the property was put up for sale. It was also informed that the 6th defendant who is a Chartered Accountant had been entrusted by the 1st to 5th defendants to negotiate with prospective purchasers. The learned Senior Counsel stated that the 1st plaintiff therefore opened negotiations with the 6th defendant. The learned Senior Counsel stated that this fact can never be denied or disputed and is substantiated by a series of E-mails and correspondences exchanged between the 1st plaintiff and the 6th defendant and also by the conduct of the 6th defendant in forwarding to the plaintiffs the correspondences he had with the 7th defendant.

36.The learned Senior Counsel stated that the 7th defendant was the daughter of the 4th defendants and was negotiating with the 1st to 5th defendants for effecting the sale of the property. The learned Senior



Counsel stated that it had been held out by the 1st to 5th defendants that they would not enter into any agreement of sale and expected a sale consideration of Rs.1.60/- crores to be paid at the time of execution of the sale deed. The learned Senior Counsel stated that there was no pathway to enter the house and therefore, the plaintiffs also reasonably expected a right to be given to use the common pathway which was also used by other owners of the houses in that area.

37.The learned Senior Counsel argued that the plaintiffs had expressed their readiness and willingness to purchase the property. In this regard, they had also determined the date on which they would come forward to execute the sale deed. It was then informed that there was a Court order restraining the 1st and 3rd defendants from alienating their shares over the suit property and negotiations with one Vijaykumar were opened to settle that particular issue. After protracted negotiations, the plaintiffs had paid the amount due and payable to the said Vijaykumar to a sum of Rs.10/- lakhs. The learned Senior Counsel pointed out this one substantial circumstance to prove the bonafide intention of the plaintiffs. He further pointed out that the plaintiffs wanted to purchase the property to build



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separate residential houses for themselves and therefore, inspite of the continuous hurdles put up by the defendants, the plaintiffs proceeded towards concluding the contract and to purchase the property.

38. The learned Senior Counsel took the Court through a series of E-mails exchanged between the 6th and 7th defendants which indicated that even the other defendants were in agreement to sell the property. Further, on the payment of Rs.10/- lakhs to Vijaykumar, the 1st and 3rd defendants had entered into a Memorandum of Understanding with the 1st plaintiff and learned Senior Counsel stated that this brought about a concluded agreement atleast with the 1st and 3rd defendants with respect to their undivided share over the property. The date of execution of the sale deed had to be again re-fixed since three of the defendants were residing abroad and they had to forward their powers of attorney for execution and registration of the sale deed. It was stated that there were some formal defects in the powers of attorney and that the plaintiffs wanted that to be corrected and fresh powers of attorney to be forwarded. The 4th defendant had however forwarded the corrected power of attorney after correcting the schedule by including the right to use the common pathway. The learned



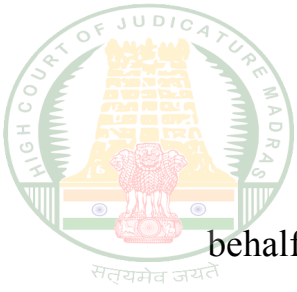
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Senior Counsel stated that this constituted a concluded agreement by the plaintiffs with the 4th defendant. The learned Senior Counsel stated that again the sale could not go through since the power of attorney from the 2nd defendant came later than the date determined for the registration of the sale deed.

39. However, the learned Senior Counsel was emphatic in his submission that the plaintiffs were always ready and willing to purchase the property. It was the defendants who refused any advance, but still the plaintiffs had come forward to pay Rs.10/- lakhs to Vijaykumar to settle the suit which he had filed against the company in which the 1st and 3rd defendants were directors. The learned Senior Counsel stated that payment to Vijaykumar was effected in continuity of the agreement to purchase the property from the 1st to 5th defendants.

40. The learned Senior Counsel stated that all elements of a valid contract were present namely, property to be conveyed, the vendors, purchasers, the sale consideration and the readiness and willingness by the purchasers to purchase the property.

41. The learned Senior Counsel argued that the 6th defendant had never stated at any point that he had no right or authority to negotiate on



behalf of the 1st to 5th defendants. He had always projected that he had been authorized to negotiate on their behalf and had voluntarily forwarded the copies of the E-mails exchanged between him and the 7th defendant. The learned Senior Counsel took the Court extensively through a reading of the E-mails and asserted that they indicated an agreement by the 1st to 5th defendants to convey the property specifically to the plaintiffs.

42.The learned Senior Counsel further stated that however, the defendants had looked out for an alternate purchaser and this had necessitated the plaintiffs to institute the suit. The learned Senior Counsel was therefore emphatic that in view of the surrounding circumstances, the plaintiffs have made out a case for a direction against the defendants to execute sale deed with respect to the suit schedule property and that therefore the suit should be decreed.

43.Mr.George Cheriyan, learned counsel for the 1st to 5th defendants disputed the contentions of the learned Senior Counsel for the plaintiffs. The learned counsel pointed out that there was no agreement or even any correspondence between the plaintiffs and the 1st to 5th defendants towards



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sale of the property. He contended that the 1st to 5th defendants had never authorized the 6th defendants to negotiate with the plaintiffs for sale of the property. He was never given any written agreement nor power of attorney. The learned counsel further pointed out that even the 7th defendant had no right or authority to speak for the defendants and to commit them for sale of the property. The learned counsel also took the Court through the e-mails exchanged primarily between the 6th and 7th defendants and stated that there was not even one correspondence which committed the defendants to sell the property.

44.He further pointed out that one of the terms the plaintiffs had stated was transfer of right in a common passage. He contended that the defendants had no such intention since the passage was used in common by the other house owners also in the locality.

45.With respect to the loan had paid to Vijaykumar the learned counsel stated that the borrower was the company and the suit had been filed only against the company in which incidentally the 1st and 3rd defendants were Directors. It was contended that the said amount of Rs.10/-



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lakhs was never paid towards the sale consideration. The defendants had fixed the sale consideration of Rs.1.60/- crores alone and nothing more and nothing less.

46.The learned counsel was also very emphatic in his submission that the 7th defendant never had any authority to negotiate with the plaintiffs. He further pointed out that there was no correspondences between the 7th defendant and the plaintiffs over the sale of the property. It was only the 6th defendants who kept corresponding and who had also forwarded the private communications between him and the 7th defendant to the plaintiffs without any authority or permission being granted. The learned counsel also took the Court through the correspondences between the 6th and 7th defendants and between the 1st plaintiff and the 6th defendant and stated that there was no document binding the 1st and 5th defendants to execute the sale deed.

47.With respect to the Memorandum of Understanding, the learned counsel stated that it could be never termed as an agreement of sale and could never bind the other defendants. The learned counsel stated that it is only an acknowledgement of Rs.10/- lakhs paid to Vijaykumar and it could



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never be inferred that the said amount would be part of the sale consideration.

48. With respect to the power of attorney given by the 4th defendant, the learned counsel stated that the said document had not been acted upon. It was an agreement between the principal and agent and would never bind the principal to any third party unless acted upon. The 6th defendant had not acted upon the power of attorney. The learned counsel contended that in the absence of any agreement between the plaintiffs on the one hand and the 1st to 5th defendants on the other hand there could never be a decree passed calling upon the 1st to 5th defendants to execute the sale deed in favour of the plaintiffs. He urged that the suit should be dismissed with costs.

49. I have carefully considered the arguments advanced and perused the material records.

50. The first issue which had been framed was whether the plaintiffs were entitled to specific performance of the sale of the suit property and the second issue was whether there was an agreement as stated in the plaint



between the plaintiffs and the 3rd defendant and the third issue was whether the alleged agreement of sale was specifically enforceable. The fourth issue was whether the plaintiffs was entitled for the suit claim.

Issue Nos.1, 2 and 3:

51.The 1st, 3rd and 5th plaintiffs are deep in construction business running a construction business called M/s.Vijayshanti Builders. The 2nd, 4th and 6th plaintiffs are their respective wives.

52.It is the case of the 1st plaintiff who had tendered evidence and who had been in correspondence with the 6th defendant towards the purchase of the suit property, that the plaintiffs wanted to purchase the suit property to build separate residential houses for themselves. They had need to purchase the property not as a business venture but for themselves.

53.The suit property is owned by the 1st to 5th defendants. The 2nd, 4th and 5th defendants were residents of the United States of America. The 7th defendant also a resident of the United States of America, is the daughter of the 4th defendant. There is no dispute over the fact that the property belongs



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absolutely to the 1st to 5th defendants. The property had been described in the schedule to the plaint and the suit had been filed seeking a direction against the defendants to specifically perform the sale of the suit schedule property in favour of the plaintiffs and direct them to execute sale deed for a consideration of Rs.1.60/- crores in addition to a sum of Rs.10/- lakhs which had been earlier paid by the plaintiffs, not to the defendants but according to the 1st plaintiff on behalf of the defendants to their creditor, Mr.Vijaykumar with whom the company, South India Export Private Company Limited, in which the 1st and 3rd defendants are directors had a debt for the said sum.

54.The plaintiffs have described the property which they wanted the defendants to convey in the schedule to the plaint. The property was house ground and premises at No.6, Victoria Crescent Road, Egmore, Chennai, measuring about 3 and ½ grounds with specific boundaries together with undivided 1/5th share in the common road measuring two grounds and 674 sq. ft., or thereabouts for which also specific boundaries had been given.



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55. Thus, though there was one schedule mentioned in the plaint, the suit was for specific performance to execute sale deed with respect to two distinct properties, the first being house and ground at No.6, Victoria Crescent Road, Egmore, Chennai and the second being an undivided 1/5th share in the common road measuring two grounds and 674 sq. ft., or thereabouts which also had specific boundaries.

56. The defendants were the absolute owners of the house and ground at No.6, Victoria Crescent Road, Egmore, Chennai, but were not the absolute owners of the common road measuring two grounds and 674 sq. ft. It has not emanated during evidence whether they had a right to execute sale deed for the undivided 1/5th share in the common road or whether the plaintiffs only owned a right to use the common road. But having included the undivided 1/5th share of the common road in the schedule to the plaint and having sought the relief of executing the sale deed with respect to the “*schedule mentioned property*”, the plaintiffs reasonably expected the defendants to execute sale deed not only of the house and ground at No.6, Victoria Crescent Road, Egmore, Chennai, but also to convey the undivided 1/5th share in the common road measuring two grounds and 674 sq. ft.



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57. Among the documents filed along with the plaint, the 1st document was a copy of the family partition deed relating to the suit schedule property dated 30.08.1971. The 2nd to 13th, 23rd, 24th documents are copies of E-mails exchanged between the 6th defendant and the 7th defendant. In none of these documents, were the plaintiffs or the 1st to 5th defendants parties or addressees. Some of the E-mails copies could have been marked to some of them, but the correspondences was only between the 6th and 7th defendants. The 14th document is a Memorandum of Understanding dated 18.10.2004 along with sworn affidavits. The 5th document is an order of this Court in C.S.No.564 of 2002 dated 20.10.2004. The 16th document is a Home Loan application by the 1st to 3rd plaintiffs with ICICI Bank and the 20th document is a loan sanction letter and proof of repayment of EMI by the plaintiffs. The 17th, 18th and 21st document were powers of attorneys executed by the 4th and 5th defendants. The 19th document dated 12.12.2004 is a letter from the 1st plaintiff to the 6th defendant. The 22nd document dated 16.02.2005 is a letter from the plaintiff to the 1st to 6th defendants. This is the only letter communicated by the plaintiffs to the 1st to 5th defendants who are the title holders to the properties.



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58. In the plaint, it had been contended that the plaintiffs came to know that the 1st to 5th defendants were desirous of selling the suit schedule property. They had also come to know that the 1st to 5th defendants had entrusted the marketing of the property to the 6th defendant. The 1st plaintiff then approached the 6th defendant expressing interest to purchase the property. The 6th defendant had given copies of the title deeds in the second week of June 2004. It is also stated in the plaint that the 1st, 3rd and 5th plaintiffs inspected the suit schedule property and also measured the same. It is stated in the plaint that the total consideration was Rs.1.60/- crores and the 1st to 5th defendants were not inclined to enter into any agreement of sale and the entire sale consideration should be paid at the time of registration of the sale deed.

59. Thus, obviously there was no agreement of sale by the plaintiffs on the one hand and the 1st to 5th defendants on the other hand. There was no correspondences between the plaintiffs on the one hand and the 1st to 5th defendants on the other hand. It is not the evidence of PW-1 that he was prevented from communicating directly with any of the 1st to 5th defendants. Even in the plaint, he had stated that he had inspected the property along

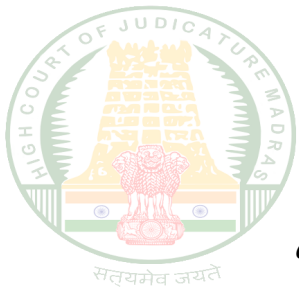


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with the 3rd and 5th plaintiffs in the second week of June 2004 and had also measured the property. It is not known why a logical step to atleast open up a window of communication with any of the 1st to 5th defendants was not taken by the plaintiffs who are not novices in trade but deeply involved in real estate and construction business. They cannot plead ignorance or innocence of the procedure and requirements in the trade.

60. At any rate, it is the case of the plaintiffs that they had been in correspondence only with the 6th defendant. Even in his proof affidavit, PW-1 had only spoken about his communications and discussions with the 6th defendant. He had stated as follows in his proof affidavit:

“3. We wanted an assurance from the 6th defendant that he was authorized to act on behalf of the owners and he assured the same and also showed us the entire set of title deeds that were available with him, which are filed as Exhibit P2 and also assured them that he would obtain necessary powers of attorney from the non-resident owners viz., the 2nd, 4th and 5th defendants and the sale deeds could be executed. The 6th defendant also provided us from time to time the emails and faxes in respect of the transactions that were being exchanged between him and the 7th defendant who is the daughter of the 4th



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defendant and was coordinating the sale with the owners as proof thereof.”

61.This assurance was only with respect to the locus of the 6th defendant. It could never be stretched to imply that the 1st to 5th defendants must be bound to the commitments, if any, made by the 6th defendant.

62.As a hopefully, prudent real estate businessman, it does touch a strange cord that the 1st plaintiff had never thought it necessary to directly communicate with anyone of the five defendants to atleast verify from their end, whether they had specifically authorized the 6th defendant to deal with the property.

63.In the written statement, the 1st and 3rd defendants had very specifically denied that the 6th defendant was authorized by them to deal with the property. This written statement had also been adopted by the 2nd, 4th and 5th defendants. The 6th defendant had not filed his written statement or any affidavit regarding whether he had been specifically authorized by the 1st to 5th defendants to deal with the property. In the written statement of



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the 1st and 3rd defendants they have very specifically stated as follows:

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“It is denied that the defendants had entrusted the marketing of the property to the 6th defendant Mr. Cecil Joseph. It is submitted that the 6th defendant is a Chartered Accountant by profession and used to advise Mrs. Tara Lindsay the 4th defendant herein. Accordingly the 6th defendant had no locus standi to negotiate for and on behalf of the defendants herein, for the sale of the suit schedule property. Accordingly, these defendants do not wish to comment on any alleged communication between the plaintiffs and the 6th defendant relating to the sale of the suit schedule property, which are not binding on the defendants herein. It is pertinent to mention there were several people interested in purchasing the suit schedule property and the 6th defendant had conveyed to certain family members that he had clients who may be interested in purchasing the suit schedule property. At no time did the defendants herein give the 6th defendant any mandate or authorization to arrive at any agreement with any third party for the sale of the suit schedule property.”

64.To this specific statement made in the written statement whereby the 1st to 5th defendants had completely disowned the acts of the 6th defendant, the plaintiffs have not filed reply statement.



65.This is very significant. Any assertion by the 1st plaintiff in his evidence that the 6th defendant acted on behalf of the 1st to 5th defendant will have to be rejected owing to failure to have responded to the very categorical statements made in the written statements by the 1st and 3rd defendants and adopted by the 2nd, 4th and 5th defendants that the 6th defendant had no locus to act on their behalf.

66.During his cross examination PW-1/1st plaintiff was specifically questioned about the agreement of sale. The questions and answers were as follows:

“Q:Can you tell me what was the relief sought by you in the suit?

A:To execute sale deed in my favour.

Q:Is there any agreement of sale stated in the relief for specific performance prayed for in your prayers?

A:In the prayer there is no agreement stated.

Q:Is it correct in para 3 of your plaint you have stated that you are filing the present suit seeking for specific enforcement of an agreement of sale entered into defendants 1 to 5 in respect of the plaint schedule property?

A:Yes.



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Q: Have you produced along with the plaint documents or the proof affidavit the said agreement of sale entered into between plaintiffs 1 to 6 and defendants 1 to 5 in respect of suit schedule property?

A. No.

67. It is thus clear that the plaintiffs have based their case on no basis. There was no agreement of sale. They are calling upon the 1st to 5th defendants to convey a property without the plaintiffs themselves ever communicating to the owners of the property namely, the 1st to 5th defendants to so convey the property.

68. PW-1 was further questioned about the agreement of sale since he spoke about the Memorandum of Understanding. The further question was as follows:

“Q: I am reiterating the question to you that you have averred in the plaint that the present suit for the specific performance of agreement of sale is entered into between defendants 1 to 5 in respect of suit schedule property owned by defendants 1 to 5. What is the date of the agreement of sale?”

A: There is no date for the agreement of sale.”



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69. The witness knew that both the 6th and 7th defendants were not the owners of the property and therefore had no right or title to even consent to transfer the property. Specific questions were put to him and these were his answers:

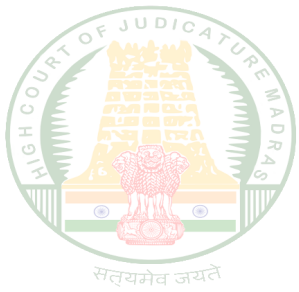
“Q: Is it correct that the 6th and the 7th defendant who have been arrayed as parties are not the owners of the suit schedule property?”

A: They are not the owners, but my entire negotiation on behalf of the owners has been through D6.

Q: Have you ever negotiated with the 7th defendant on the sale of the suit schedule property?”

A: No. All negotiations were through D6.”

70. It is thus seen that the 1st plaintiff was corresponding with the 6th defendant alone. He admitted that there was no marketing agreement between the 1st to 5th defendants and the 6th defendant and he only had the benefit of the copies of E-mail correspondences between the 6th and 7th defendants which according to him confirmed the sale of a property by non-title holders for Rs1.60/- crores. The questions and answers are as follows:



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“Q: You have stated that you learnt the defendants 1 to 5 were desirous of selling the schedule mentioned properties and that they have entrusted the marketing of the property to the 6th defendant?

A: Yes.

Q: Have you produced with the plaint document any marketing agreement entered into defendants 1 to 5 and defendant 6?

A: There is no marketing agreement as such and D6 had given me all the e-mail correspondences confirming the sale of the property for Rs.1.60/- crores to me.”

71. He was further asked whether in the plaint, he had stated that the 1st to 5th defendants had authorized the 7th defendant to negotiate the sale of the plaint schedule property. Again he had given an evasive answer. The question and answer was as follows:

“Q: Have you made any averment in the plaint that D1 to D5 had duly authorized D7 to negotiate the sale of the plaint schedule property for and on behalf of defendants 1 to 5?

A: I do not know the legal terms, but D6 and D7 were negotiating with me.”

72. He was then asked whether there was any direct communication



atleast by the 7th defendant who is a member of the family with him. He admitted that there was no direct communication but it was only through the 6th defendant. The question and answer was as follows:

“Q: Was there any communication addressed by D7 to you which you have produced along with the plaint documents?”

A: There was nothing directly to me. But it was through D6.”

73. He then claimed that the power of attorney which had been marked as Ex.P31, 32 and 33 indicated an agreement of sale. But again they were not in favour of the 7th defendant. The questions and answers are as follows:

“Q: Can you produce the power of attorney executed by D1 to D5 in favour of D7 to enter into an agreement of sale?”

A: Ex.P31, Ex.P32 and Ex.P33 are the three power of attorney I am referring to.

Q: I put it to you that none of the three power of attorney namely Ex.P31, Ex.P32 and Ex.P33 have been executed by D1 to D5 in favour of D7. Is that correct?

A: Nothing in favour of D7.”

74. He was then asked whether he had atleast enquired the 6th



defendant to verify the power of attorney and whether he was authorized to enter into an agreement of sale. He then admitted that there was no question of entering into any agreement. The question and answer was as follows:

“Q. At any point of time did you ask D6 to verify the Power of attorney to purportedly granted in favour of D6 by D1 to D5 to negotiate and enter into an agreement of sale in respect of the plaint schedule property?

A: There was no question of entering into an agreement. They had authorised D6 to negotiate and we had finalised the negotiation and that is why they gave the Power of attorney in favour of D6 for execution of sale deed.”

75.He further admitted that he was not a party to any of the emails exchanged between the 6th and 7th defendants. The question and answer was as follows:

“Q: Were you a party to any of the E-mails exchange between the 6th and 7th defendant?

A: No”.

76.He was then asked whether any of those correspondences were marked to him. He gave a very evasive answer by stating that copies were



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later given to him by the 6th defendants. The question and answer was as follows:

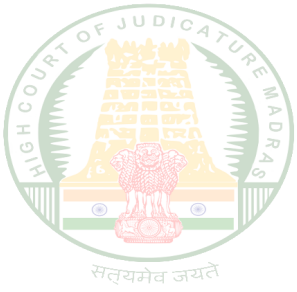
“Q: Were any copies of the E-mails exchanged between the 6th and 7th defendant marked to you?”

A: D6 had given me all the copies of E-mail and Fax conversation between D6 and D7.”

77.This answer makes it clear that he was never directly involved in the E-mail correspondences between the 6th and 7th defendants. The bunch of E-mails handed over later to him are just worthless papers. They can never be read to bind the 1st to 5th defendants to convey their property to him. In their eyes he was a third party unknown, unwanted stranger.

78.He again evaded a direct question when asked whether there was any correspondences between the 1st to 5th defendants and to 7th defendant. He never gave a direct answer but stated that the correspondences were only between the family members. The questions and answers were as follows:

“Q: Was any exchange of correspondence handed over to you by D6 which was between D1 to D5 and D7?”



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A: All the correspondence handed over to me by D6 were only between the family members.

Q: I put it to you that you are falsely stating that exchange of correspondence between D1 to D5 and D7 were handed over to you by answering all correspondence handed over to me by D6 only between the family members.

A: I deny.

Q: Could you show me a single document filed along with the plaint documents exchanged between D1 to D5 and D7?

A: I am referring to Ex.P15 to Ex.P28.

Q: All the correspondence that you have stated that is Ex.P15 to Ex.P28 are between D6 and D7 and not between D1 to D5 and D7?

A: All the E-mails given to me show that D7 was negotiating on behalf of the owners who were in U.S. Entire correspondence were confirmed by D7 to D6 and D7 was authorised to negotiate on behalf of the owners living in the U.S.

Q: Is it correct to state that you have not filed any exchange of correspondence between D1 to D5 and D6 along with the plaint documents?

A: These E-mails are related to the owners and that is what I have filed.



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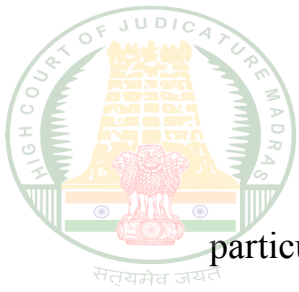
Q: Have you produced with the plaint documents any correspondence exchange between you and the 6th defendant relating to the negotiation of the sale of the suit schedule property?

A: There is no correspondence. We were meeting in person.”

79. Thus the witness had not directly answered whether there was any correspondence between D1 to D5 and either with D7 or between him and D6. These evasive answers only dented his credibility.

80. It is clear from the evidence of PW-1 that there was no direct agreement of sale even to register the sale deed on any particular date directly between the plaintiffs on the one hand and the 1st to 5th defendants on the other hand. There is also no document produced that the 6th defendant was authorized to negotiate the sale of the property.

81. The 6th defendant was examined on subpoena as CW-1. He tendered evidence on behalf of the plaintiffs. He marked Exs.C1 and C2, copies of a series of E-mails exchanged between him and the 7th defendants,



particularly in Ex.C2, the copies of which he had given to the 1st plaintiff. In his chief examination when asked whether the transactions proceeded and whether it was concluded, he gave the following explanation:

“Q: Did the transaction with the plaintiffs proceed and was it concluded?”

A: A legal problem was raised by the lending bankers (plaintiffs' bankers legal department) that the schedule of property furnished in the power of attorney did not include the defendants' undivided share of access to the common path way. Hence, the sale deed could not be registered on the schedule day towards the end of December 2004.

Q: What happened thereafter?

A: The defendants 2, 4 & 5 were required to give fresh powers of attorney correcting the omission in the schedule of property. It was reported by defendants 1 & 3 that defendant No.2 (Mr. Ajith Jesudasan) was not agreeable to give a fresh power of attorney and that the defendants were not agreeable to proceed with the transaction thereafter.

82. This answer is very significant. In the schedule to the plaint, the plaintiffs have very specifically stated about conveying 1/5th share in the common road measuring two grounds and 674 sq.ft. On this issue, when PW-1 was confronted, he had stated as follows:



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“Q: I invite your attention to the plaint schedule "together with an undivided 1/5th share in the common road measuring 2 grounds and 674 sq. ft. or thereabouts comprised in R.S. No.1633/25" is not there in Ex.P31.

A: In the schedule "1/5th share in the common passage" were missed out.

Q: Is it correct that in the plaint, you wanted the said 1/5th share in the common passage also conveyed to you?

A: Yes. It had to be conveyed. That is why D4 executed a new Power of attorney including "1/5th share in the common passage" that is Ex.P33.

Q: Are you aware that there are several other buildings abutting the said common passage. Was there any conveyance of any undivided share in the common pathway to any of the other developers?

A: I am not aware.”

83.These answers are very strange since in the plaint the plaintiffs have stated that the 1st, 3rd and 5th plaintiffs had personally visited the property and had also measured the property.

84.During the course of arguments, when the issue of the power of



attorney not containing the conveyance of the undivided 1/5th share in the common pathway came up, the learned Senior Counsel for the plaintiffs stated that the plaintiffs had never insisted on conveyance of said undivided 1/5th share but they wanted a right to use the 1/5th share. That contention runs contrary to what the witness PW-1 stated on oath namely, that this 1/5th share in the common road should be conveyed to the plaintiffs.

85. Thus, there was no consensus ad idem between the parties, much less even with the plaintiffs on the one hand and the 6th defendant or the 7th defendant on the other hand about the nature of property or the schedule of the property to be conveyed. The 1st to 5th defendants were emphatic that they had no right to convey the undivided share in the common road but the plaintiffs had insisted that unless that portion is also conveyed, they would not be in a position to proceed further with the transaction.

86. Thus, there a dispute had been raised and there was no clarity over the property which had to be conveyed by the defendants to the plaintiffs. It was not just the house but also the undivided 1/5th share which had to be sold to the plaintiffs. In the plaint, the specific boundaries had been given to



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that particular undivided 1/5th share in the common road.

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87.The 1st to 5th defendants never had any intention to convey that particular common road. There was no agreement to sell the house. There was never any intention to sell the undivided 1/5th share of the common road to the plaintiffs by the 1st to 5th defendants. The plaintiffs will have to fall on their own folly as they placed reliance on the 6th defendant and had never thought it required or prudent to communicate directly with any one of the 1st to 5th defendants. There was no agreement at all with respect to the property to be conveyed.

88.The 6th defendant / CW-1 was further cross examined as to when he came into contact with the plaintiffs. He stated as follows:

“Q: According to you from when were you in touch with the plaintiffs relating to the suit property?

A: From the middle of 2004.

Q: Do you remember the month in the year 2004?

A: I do not remember.

Q: Did you independently forward to first plaintiff by E-mail the purported E-mails exchanged between yourself and D7?



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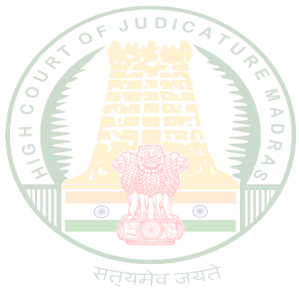
A No.”

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89.He then stated that he had handed over the correspondences between him and the 7th defendant to establish not the factum of agreement of sale but to establish his integrity and the integrity of the 7th defendant. This would directly imply that the copies of E-mail correspondences were not handed over as proof of any agreement but only to protect the conduct of the 6th defendant. Thus, the correspondences did not speak about any agreement of sale. The plaintiffs have misused them for the purpose of the case. They had been handed over only to show the bonafide and integrity of the 6th and 7th defendants. The questions and answers are as follows:

“Q: How did first plaintiff come in possession of the purported Electronic correspondence exchange between yourself and D7?

A: The entire negotiations between the plaintiffs and the defendants 1 to 5 in respect of the suit property was conducted through me and D7. The plaintiffs demanded evidence for obtaining the consent and agreement of all the defendants by me and D7. For this reason, I handed over the copies of E-mails exchanged between me and D7 to establish our own integrity and bonafides in the matter.



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Q: When did you handover the copies of E-mails to first plaintiff which had been produced by you under Ex.C1 and Ex.C2 series?

A: I do not remember.”

90.He was then questioned whether there was any correspondence between the 1st plaintiff and himself and whether the 7th defendant had any correspondences with the plaintiffs. The questions and answers are as follows:

“Q: Have you read the contents of the plaint filed by the plaintiffs against defendants 1 to 5?

A: No.

Q: Is there any Electronic correspondence exchanged between P1 and yourself regarding the suit property?

A: No.

Q: Did D7 ever correspond with or meet any of the plaintiff to negotiate the sale of the suit property?

A: No.”

91.He was then asked whether he had raised bills for self assumed professional service. His answer was a definite 'No'. The question and



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answer was as follows:

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“Q:Have you raised any bills for professional services rendered on D1 to D5?

A:No.”

92.Thus, the 6th defendant / CW-1 had not established that authority was given to him by the 1st to 5th defendants to negotiate about the conveyance of the property. He was also a third party unwanted stranger.

93.The 1st defendant had grazed witness box as DW-1. During his cross examination a suggestion was put that the 6th defendant was negotiating with the plaintiffs under specific authority. The question and answer was as follows:

“Q104: Attention of the witness is drawn to page 130 of Ex.C2, which is an e-mail dated 16.06.2004 from the 6th defendant to the 7th defendant. I suggest to you that the 6th defendant was negotiating for sale of the suit property with the 1 plaintiff, who was the Managing Director of M/s. Vijayashanthi Builders Ltd., as well as with plaintiffs 3 and 5, who are the brothers of the 1^a plaintiff and the other Directors of M/s. Vijayashanthi Builders Ltd.



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A: No. We did not give him any authority to negotiate.”

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94. With respect to the specific transactions with the plaintiffs, he had very categorically stated that the plaintiffs did not provide any proof that they had the funds. He further asserted that they had not entered into any agreement of sale. The questions and answers were as follows:

“Q106: I suggest to you that the plaintiffs were ready to pay the sale consideration of Rs.1.60 Crores in June 2004 and have the property registered in their names. What do you say?

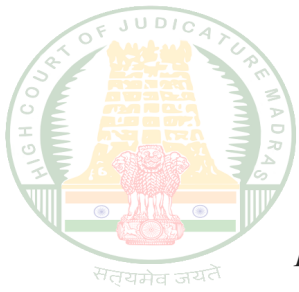
A: I do not agree. They did not give us any proof that they had the funds. They did not enter into any sale agreement.

Q107: To whom were the plaintiffs expected to give proof that they had the funds?

A: They were supposed to give the demand drafts for the full amount across the table to us and that is proof. We, in turn, were to sign the property in their favour across the table.”

95. A further question was put to him giving the reason why the sale could not be taken place on 16.11.2004. The question and answer was as follows:

“Q172: I suggest to you that the sale could not take place on 16.11.2004 because of 3 reasons, (a) vacant



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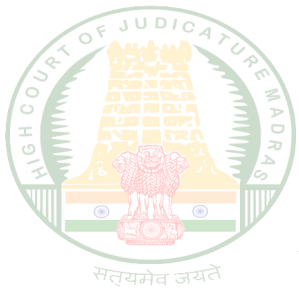
possession of the suit property was not ready, (b) the High Court order removing the restraint was not available and (c) the 2 Powers of Attorney given by D4 and D5 did not contain the pathway in the schedule?

A: Vacant possession was available. With regard to the High Court order the buyers were fully aware that High Court order would take some time to obtain but never the less their lawyer and our lawyer were the same. In so far as the Powers of Attorney were concerned, the defendants 1-5 never had the ownership right to the pathway”

96. It is thus clear that the 1st to 5th defendant had no title and no authority and no intention to convey a share in the common road. The plaintiffs had however insisted that a share in the common road must also be conveyed. It is thus clear that there was no consensus over the identity of the property.

97. A question was again put to DW-1 and he again reiterated that the 1st to 5th defendants had no title to the common road. The question and answer was as follows:

“Q181: Attention of the witness is drawn to page 41 and



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42 of Ex.C2, which is a fax dated-04.01.2005 from D6 to D7. Am I right in stating that the 3 reasons given for not executing the sale deed by the defendants in favour of the plaintiffs', have not been denied or refuted by the defendants at any of time till filling of their written statement?

A:Yes. Witness adds, There was no question of obtaining the court order as the MOU stated evidence / court order being produced. Both the defendants and plaintiffs had the same lawyer representing the same matter in the court that is Mr. Subba Reddy this automatically amounts to evidence. Then there is no question of conveying an undivided 1/5 th share in the common road as the defendants have no title to the common road and all owners of property there on have only eastmentary rights. There was no question of effective delivery of vacant possession as the property was always vacant for delivery. ”

98.It is thus evident that there was no consensus over the property which had to be conveyed. This is clear from the assertion of DW-1 that he was not ready to convey the common road but only the property, but the plaintiffs wanted a share in the common road to also be conveyed. The question and answer was as follows:



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“Q185: Were you ready to execute a sale deed with rights over the pathway in favour of the plaintiffs' for your share of the suit property?

A: No. I have no title to the pathway. As far as the main property concern I was ready to convey my share.”

99. The learned Senior Counsel for the plaintiffs had placed strong reliance on Ex.C2 series which were the copies of the E-mails exchanged between the 6th and 7th defendant regarding the sale transaction. It must be pointed out that the 6th and 7th defendants are not the owners of the property. They had no right, title or interest to convey the property to anybody. No document had been produced authorizing them to negotiate the sale of the property with anybody. The 6th defendant when examined as CW-1 had stated that he had earlier done transactions for the family, but even if he had been authorized to negotiate on behalf the 1st to 5th defendants, no reason had been advanced as to why he had screened the 1st to 5th defendants completely away from the plaintiff or why the plaintiffs did not even thought it prudent to open negotiations through the 6th defendants with any of the 1st to 5th defendants.



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100.This is very significant. Though powers of attorney had been executed, the sale fell through only because there was no clarity over the identity of the property to be conveyed, particularly over the conveyance or otherwise of the 1/5th share in the common road which the plaintiffs wanted to be conveyed but the 1st to 5th defendants had no right to sell.

101.The plaintiffs could have ironed out this difference if they had communicated their requirement directly to the 1st to 5th defendants. There has no direct correspondence in this regard. They did not even convey that they would rest if easementary rights were granted. An argument was created by the learned Senior Counsel for the plaintiffs which was directly contradictory to the very answers given by PW-1 when he asserted that he wanted the right of way to be conveyed by a sale deed to the plaintiffs. To repeat, in the schedule to the plaint, the undivided 1/5th share in the road was given with measurements and with boundaries. The plaintiffs wanted to buy it. The 1st to 5th defendants never had title to sell it. The entire transaction fell through also because the identity of the property to be conveyed was not clear and not definite, with the plaintiffs insisting on the 1/5th share in the common road to be conveyed and the defendants refusing and asserting that



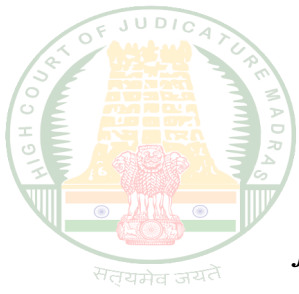
they had no right to convey any share in the common road.

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102. The learned Senior Counsel for the plaintiffs placed reliance on the judgment of the Hon'ble Supreme Court reported in **(2016) 1 SCC 762, K.Nanjappa (Dead) By Legal Representatives and Another Vs. R.A.Hameed Alias Ameersab (Dead) By Legal Representatives and Another**, with specific reference to paragraph Nos.21 and 22 regarding the degree of proof of an oral agreement. The Hon'ble Supreme Court had held as follows:

“21. There is no dispute that even a decree for specific performance can be granted on the basis of oral contract. Lord Du Parcq in a case [Shankarlal Narayandas Mundade v. New Mofussil Co. Ltd., 1946 SCC OnLine PC 7 : (1945-46) 73 IA 98 : AIR 1946 PC 97] observed, while deciding a suit for specific performance, that an oral contract is valid, binding and enforceable. A decree for specific performance could be passed on the basis of oral agreement. This view of a Privy Council was followed by this Court in Kollipara Sriramulu v. T. Aswatha Narayana [AIR 1968 SC 1028] and held that an oral agreement with a reference to a future formal contract will not prevent a binding bargain between the parties.

22. However, in a case where the plaintiff comes



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forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement or a written contract, heavy burden lies on the plaintiff to prove that there was consensus ad idem between the parties for the concluded agreement for sale of immovable property. Whether there was such a concluded contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties.”

103.It is seen that it had been held that if a contract of sale is on the basis of an oral agreement, heavy burden lies on the plaintiffs to prove that there was consensus ad idem between the parties on every aspect. There must be consensus with respect to the sale consideration. There must be consensus with respect to the time for performance of the sale. There must be consensus with respect to the identity of the property.

104.In the instant case, there was no consensus over the identity of the property. The plaintiffs in their plaint had very categorically stated that



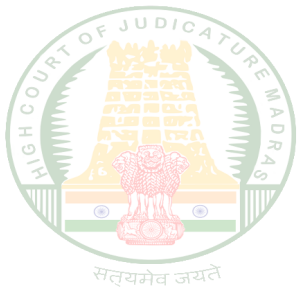
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the defendants must be called upon to convey the undivided 1/5th share even in the common road which assertion the defendants have denied and had refused and had stated that they would not convey any share in the common road. The two powers of attorney were originally presented without that particular schedule and they were rejected by the plaintiffs because they did not contain the right to convey undivided share in the common road. One further power of attorney was presented but the relationship had failed by that time and it could never bind even the executant of the power of attorney since there has been no direct agreement by him with the plaintiffs.

105. Therefore, in the light of the evidence, it is clear that there has been no agreement between the plaintiffs who wanted to purchase the property and the 1st to 5th defendants who alone had the authority to convey the property. Correspondence between the 6th and 7th defendants are irrelevant and worthless pieces of paper to decide these particular issues.

106. In view of the above discussion,

i). With respect to Issue No.1, I hold that the plaintiffs are not entitled to specific performance of sale.



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ii).With respect to Issue No.2, I hold that there was no agreement of sale as stated in the plaint between the plaintiffs and the 1st to 5th defendants.

iii).With respect to Issue No.3, I hold that since there was no agreement there cannot be a direction for specific enforcement to execute a sale deed by the 1st to 5th defendants in favour of the plaintiffs.

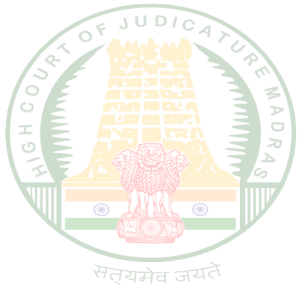
107.In view of the above findings, I hold that the plaintiffs are not entitled for specific performance of the sale of the suit property as prayed for.

Issue No.4:

108.In view of the discussion and answers given to Issue Nos.1, 2 and 3, I hold that the plaintiffs are not entitled for the suit claim.

Issue No.5:

109.I hold that the Suit will have to be necessarily dismissed.



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110.In the result, the Suit is dismissed with costs of the 1st to 5th

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defendants.

29.08.2025

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Index: Yes/No

Internet: Yes/No

Speaking order: Yes/No



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List of witnesses examined:

P.W.1 – Mr.Suresh Kumar

C.W.1 - Mr.Cecil Joseph

D.W.1 – Mr.Vikram Jesudasan

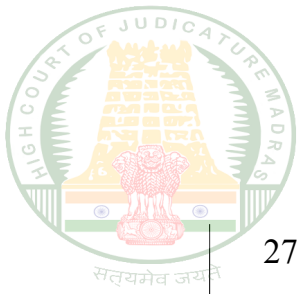
Plaintiffs side Documents:

S.No	Exhibits	Description of documents
1	P1	Notice dated 13/7/2017.
2	P2	Photo copy of Deed of partition dated 30/8/1971 between the family members of the defendant.
3	P3	Original Home Loan agreement dated 31/10/2004 between plaintiffs 1 and 2 and M/s.ICICI Bank.
4	P4	Original Home Loan agreement dated 31/10/2004 between plaintiffs 3 and 4 and M/s.ICICI Bank.
5	P5	Original Home Loan agreement dated 31/10/2004 between plaintiffs 5 and 6 and M/s.ICICI Bank.
6	P6	Original Letter Nos.4467520 and 4471381, given by ICICI Bank to the first plaintiff.
7	P7	Original Letter Nos.4289618 and 4289694, given by ICICI Bank to the third plaintiff.
8	P8	Original Letter Nos.4289733 and 4471340, given by ICICI Bank to the fifth plaintiff.
9	P9	Xerox copy of letter dated 12/12/2004 written by me to the sixth defendant.
10	P10	Xerox copy of letter dated 6/12/2004 from plaintiffs to ICICI Bank for refund of payment of EMIs by the plaintiffs.



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11	P11	Xerox copy of letter dated 16/12/2005 by all the plaintiffs to D2.
12	P12	Original Letter Nos.4406259, given by ICICI Bank to the first plaintiff for cancellation of loan.
13	P13	Original Letter Nos.4406292, given by ICICI Bank to the third plaintiff for cancellation of loan.
14	P14	Original Letter Nos.4406275, given by ICICI Bank to the fifth plaintiff for cancellation of loan.
15	P15	Photo copy of E-mail dated 16/6/2004 from D6 to D7.
16	P16	Photo copy of E-mail dated 20/6/2004 from D6 to D7 containing other trail E-mails.
17	P17	Photo copy of Fax message dated 21/6/2004 from D6 to D7.
18	P18 (Series)	Photo copy of two E-mails dated 21/6/2004 between D6 and D7.
19	P19	Photo copy of E-mail dated 23/6/2004 from D6 to D7.
20	P20	Photo copy of E-mail dated 25/6/2004 from D7 to D6.
21	P21	Photo copy of E-mail dated 30/6/2004 from D6 to D7.
22	P22	Photo copy of E-mail dated 25/8/2004 from D6 to D7.
23	P23	Photo copy of E-mail dated 27/8/2004 from D7 to D6.
24	P24	The photo copy of E-mail dated 8/9/2004 from D7 to D6.
25	P25	Photo copy of E-mail dated 15/9/2004 from D6 to D7.
26	P26	Photo copy of E-mail dated 14/10/2004 from D7 to D6.



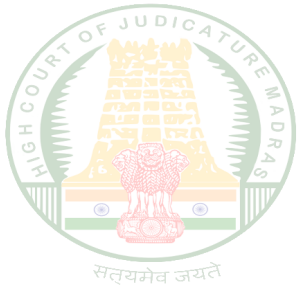
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27	P27	Photo copy of E-mail dated 24/2/2005 from D7 to D6.
28	P28	Photo copy of E-mail dated 25/2/2005 from D7 to D6.
29	P29	Photo copy of Memorandum of Understanding dated 18/10/2004 between D1, D3 and first plaintiff.
30	P30	Certified copy of Judgment and Decree in C.S. No.564 of 2002 dated 20/10/2004.
31	P31	Xerox copy of Power of attorney dated 27/12/2004 executed by D2 in favour of D5.
32	P32	Xerox copy of Power of attorney dated 25/10/2004 executed by D4 in favour of D6.
33	P33	Photo copy of amended Power of attorney dated 25/1/2005 executed by D4 in favour of D6.
34	P34	Photocopy of the home loan applications of the plaintiffs 1 to 3 with ICICI Bank Ltd dated 31.10.2004.
35	C1	Copies of E-Mail correspondence
36	C2	Copies of E-Mail correspondence with certificate under Section 65B of the Indian Evidence Act, 1872.

Defendants side documents:

Nil.

29.08.2025



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C.V.KARTHIKEYAN,J.

smv

Pre-delivery Judgment in

C.S.No.375 of 2005

29.08.2025