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C.S.No.470 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24..01..2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.470 of 2011

M/s.C.C.Elevations (P) Limited
Rep. by its Director
Mr.C.Chiranjeev
No.172, Broadway, First Floor
Chennai-600 108.

... Plaintiff

..Vs..

1.M.S.M.Thavamani
2.Susila

.. Defendants

Prayer: Civil Suit has been filed under Order IV Rule 1 of O.S Rules read with Order VII Rule 1 CPC, praying to pass the following judgment and decree against the defendants:

a) directing the defendants to execute and register the sale deed in favour of the plaintiff or his nominee/nominees as per the sale agreement dated 29.03.2010 by receiving the balance sale consideration of Rs.1,10,44,040/- after deducting the corporation tax and water tax of Rs.1,82,268/- for the property No.9, Vaidyanatha Mudali Street in respect



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of the properties more particularly described in the schedule hereunder, failure to do so directing the officer of this Court to execute and register the sale deed in respect of the properties more particularly described in the schedule hereunder in favour of the plaintiff, the schedule mentioned property in plaintiff's favour against the consideration of Rs.2,55,00,000/- as per agreement between the plaintiff and the defendants and further providing for deduction of advance amount of Rs.1,42,73,692/-, corporation and water tax paid of Rs.1,82,268/- for the property No.9, Vaidyanatha Mudali Street, adjustment of agreement to be paid on behalf of the defendant from the sale consideration.

b) To deliver the vacant possession of the suit property as per the sale agreement dated 29.03.2010 to the plaintiff or in the event if the decree for specific performance of the sale agreement dated 29.03.2010 cannot be granted by this court then this Hon'ble Court may be pleased to pass judgement and decree against the defendants, directing the defendants to refund the advance amount of Rs.1,44,55,960/-, Rs.30,42,980/- towards the interest calculated at the rate of 18% per annum from 29.03.2010 to till the date of this plaint in all Rs.1,74,98,940/- together with interest at the rate of 18% per annum on Rs.1,44,55,960/- from the date of plaint to till the date of realisation

c) till the date of such payment grant a charge over the suit properties as per Section 56 of the Transfer of Property Act

d) directing the defendants to pay the cost of the suit.

For Plaintiff : Mr.S.Rameshkumar



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For Defendants : Mr.S.L.Sudarsanam
For Mr.A.S.Narasimman

JUDGMENT

This Civil Suit has been filed for specific performance, delivery of vacant possession and for costs.

2. The case of the Plaintiff, as set out, in the plaint is as follows:-

(i) The plaintiff states that the first defendant represented to the plaintiff that the first defendant is the absolute owner of the properties (i) house and ground in the premises bearing Old No.69, Kumbalamman Koil Street, Chennai-600 081, (ii) house and ground in the premises bearing New No.9, Old No.1/9, Very Old No.15, Vaidyanatha Mudali Street, Tondiarpet, Chennai-600 021 and (iii) first and second defendants are the absolute owners of the house and ground in the premises bearing New No.62, Old No.5 Part, Pilliar Koil Street, Tondiarpet, Chennai-600 081. The first defendant further represented to the plaintiff that the property situated at Old No.69, Kumbalamman Koil Street, Chennai-600 081 is the self acquired property of the first defendant and he purchased the same under a sale deed dated 24.05.1995 and the property situated at New No.9, Old No.1/9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-600 021, is



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also self acquired property of the first defendant and the defendants have purchased the same under sale certificate issued by the High Court of Judicature of Madras on 01.12.1982 in C.S No.32 of 1981. The first defendant further represented to the plaintiff that the property situated at New No.62, Old No.5 Part, Pilliar Koil Street, Tondiarpet, Chennai-600 081, was purchased by the 1st defendant's father Mr.M.S.Mariappa Nadar, by sale deed dated 29.03.1993, vide document No.636/1993, with the S.R.O, Royapuram and the southern part of the said property was purchased by Mrs.T.Susila, the second defendant herein, i.e wife of 1st defendant herein by a sale deed dated 29.03.1993, vide Document No.637/1993, with the S.R.O, Royapuram. Both the northern and southern part of the property was combined together and enjoyed as a single property. Subsequently, the said M.S.Mariappa Nadar died intestate leaving behind the 1st defendant, M.S.M.Thavamani as his only legal heir. Thus the 1st and 2nd defendants have become joint owners of the property.

(ii) The first defendant further represented to the plaintiff that they have borrowed loan from Tamilnad Mercantile Bank by giving collateral security of the property situated at New No.9, Old No.1/9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-600 021 and the bank brought the



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properties into auction. Hence to discharge the loan, the defendants offered to sell the schedule mentioned properties for a total sale consideration of Rs.3,50,00,000/- and the plaintiff entered into a sale agreement for two schedule properties with the defendants on 29.03.2010. At the time of entering into the sale agreement, the plaintiff has paid a sum of Rs.75,00,000/- as advance in favour of the Tamilnad Mercantile Bank in the account of 1st defendant's name, subsequently further advance of Rs.1,52,73,692/- paid to the Tamilnad Mercantile Bank Limited, on behalf of the defendants to discharge the loan amount and a sum of Rs.10,00,000/- by cash to the defendants, totalling a sum of Rs.2,37,73,692/-. After the payment of Rs.1,52,73,692/- to Tamilnadu Mercantile Bank Limited, all the original title deeds in respect of the property situated at New No.9, Old No.1/9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-600021 have been released and the balance sale consideration of Rs.1,12,26,308/- will be paid to the defendants after fulfilling the obligation cast upon them.

(iii)The plaintiff states that as part performance of sale agreement dated 29.03.2010, the defendants have executed sale deed in favour of the plaintiff for the property at New Door No.9, Old No.1/9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-600 021, for a total value of



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Rs.95,00,000/- For that receipt was issued by the 1st defendant. The plaintiff states that the said property was occupied by the tenants, and the tenants are demanding huge money for vacating and handing over the vacant possession of the schedule mentioned property. As per clause 9 of the sale agreement, the defendants shall handover the vacant possession of the properties, but the defendants have not handed over the vacant possession and the plaintiff has to pay the compensation on behalf of the defendants to the tenants to get vacant possession and the same has to be reimbursed by the defendants herein. As per clause 8 of the sale agreement, the defendants have to pay all the tax dues and public dues payable in respect of the schedule mentioned properties upto the date of sale, whereas for the property bearing New No.9, Old No.1/9, Vaidayaatha Mudali Street, Tondiarpet, Chennai-600 021, the defendant have an arrear of property tax and water tax of Rs.1,82,268/- which was paid by the plaintiff on behalf of the defendants and the same has to be reimbursed by the defendants herein.

(iv)The plaintiff further states that for the balance of two properties (i) house and ground in the premises bearing Old No.69, Kumbalamman Koil Street, Chennai-600 081 and (ii) house and ground in the premises bearing



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New No.62, Old No.5 Part, Pilliar Koil Street, Tondiarpet, Chennai-600 081, the plaintiff approached the defendants to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration, but the first defendant gave evasive reply and avoided to execute the sale deed in favour of the plaintiff. In spite of repeated demands, the defendants failed to fulfil their obligation. Hence the plaintiff sent a notice dated 06.09.2010 which was received by the defendants on 09.09.2010 and the defendants sent a reply notice on 29.09.2010. Even after receipt of notice, the defendants failed to comply. As per clause 12 of the sale agreement, there is a specific provision for performance of the agreement that if one of the party fail to comply with the condition, the affected party shall have right to compel the registration of sale under the Specific Relief Act subject to the jurisdiction at Chennai. Hence the suit.

3. The case of the 1st Defendant, in a nutshell, as set out in his written statement, is as follows:-

(i)The suit transaction is a loan transaction, the suit for specific performance is not maintainable in respect of two properties alone covered



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by the agreement. The loan transaction is dated 25.03.2010. The suit agreement is for three properties and not for two properties. Each property is not agreed to be purchased for a separate fixed value. The alleged agreement is for Rs.3,50,00,000/- and not for Rs.2,55,00,000/-. The suit agreement is indivisible and therefore, the suit to enforce the part of the contract is not maintainable and the same is liable to be dismissed in limine. The court fee paid on the plaint is not proper and the suit is liable to be rejected on that ground. The suit is not maintainable since the plaintiff has not sought for recovery of possession of the immovable property at No.9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-21.

(ii)The plaintiff has admitted in paragraph 8 that the possession of the property at No.9, Vaidyanatha Mudali Street, Tondiarpet, Chennai was not handed over as per clause 9 of the agreement. The plaintiff was not requested by the defendants to pay the arrears of tax in as much as the said agreement dated 29.03.2010 was not intended to be acted upon. Therefore, the payment as per clause 8 of the agreement is not binding on this defendant. Even as per clause 8, this defendant alone has to pay all taxes and public charges. The 1st defendant approached Mr.Dinesh S. Jain for a loan of Rs.3,50,00,000/- to discharge the loan obtained on 4 properties



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worth more than 11 crores and ten lakhs from M/s.Tamil Nad Mercantile Bank on seeing the advertisement for sale under the securitization Act. The 1st defendant borrowed a sum of Rs.3,00,000/- during 1980 and after repayment of several amount on 05.11.2003, the arrears stood at Rs.1,03,85,537.14 and the amount borrowed by the 2nd respondent as proprietor of N.A.Valli & Co., Rs.2 lakhs during 1990. After various repayments on 05.11.2003, the balance stood at Rs.47,02,224.50, totalling in all Rs.1,55,87,761.64. After the accumulated interest from 5.11.2003, the total demand was around Rs.6,00,00,000/-. The defendants bargained under one time settlement and agreed to pay Rs.3,01,02,206/- out of which the defendants paid a sum of Rs.65,00,00,000/-. The balance payable at that time was Rs.2,36,02,226/-. The said Dinesh Kumar S.Jain informed the defendants that a sum of Rs.3,50,00,000/- will be arranged if the defendants are willing to secure the repayment by entering into a sale agreement in respect of three properties, that is, the suit properties and another property bearing Door No.1/9, Vaidyanatha Mudali Street, Tondiarpet, Chennai-21. Since the defendants believed the said Dinesh Kumar S.Jain that it is only to ensure the return of the loan, this agreement is sought for. At that time, only this defendant came to know that the amount will be advanced by the



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plaintiff and the agreement has to be executed between the parties without any witnesses.

(iii).Pursuant to the arrangement for the loan of Rs.3,50,00,000/-, a sum of Rs.75,00,000/- was paid on 29.03.2010, Rs.1,60,00,000/- was agreed to be paid on or before 30.04.2010. The plaintiff paid Rs.2,37,73,692.50 in all on or before 23.04.2010. These amounts were paid by Mr.Rajeet Jain, M/s.S.K.Allies Traders, M/s.Actual Traders, M/s.Bright Light House, M/s.Jaishree Distributors, M/s.Awomi Industries, M/s.Radian Traders, M/s.Manav Implex, M/s.Sandeep Industries, M/s.Kamakshi, M/s.Orient and Mrs.Kaveri. For the payments made by the above companies, separate receipts were obtained from the defendants though a sum of Rs.2,32,73,692 was paid on or before 23.4.2010, on 23.4.2010 an intimation to the Tamil Nadu Mercantile Bank Ltd., was obtained from the 1st defendant to get back the documents of title relating to No.1/9, Vaidyanatha Mudali Street, Tonidarpet and 3 other properties viz., 1) No.13, Flat Staff Street, Royapuram, 2) No.100, Kappal Polu Chetty Street, Old Washermenpet and 3) No.48, South Mada Street, Thiruvottiur. The title deeds of three other properties were returned to the 1st defendant. As against the receipt of Rs.1,10,00,000/- the payment upto



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22.4.2010 a receipt for a sum of Rs.95,00,000/- was obtained. The defendants never entered into an agreement of sale on 25.03.2010. The agreement dated 29.03.2010 is also only to ensure the repayment of Rs.3,50,00,000/- and not for sale of the properties covered by the agreement. Till this date no possession was handed over and this defendant is in possession of D.No.1/9, Vaidyanatha Mudali Street, Tondiarpet. This property consist of an Hulling Mill in which persons are permitted to hull their grains as dhall on bag rate basis. The dhall mill has got a 75 HP motor with electricity connection with other accessories totalling worth in all Rs.30,00,000/- for making dhall. The plaint averments that the dhall mill premises bearing No.1/9, Vaidyanatha Mudali Street, Tondiarpet was handed over possession on 25.03.2010 when there was no sale agreement at all. If really handed over it would have find a place in the agreement dated 29.03.2010. If so the agreement is not enforceable for want of stamp duty and registration. There was no part performance of the agreement to sell without payment of full amount agreed to be advanced as loan.

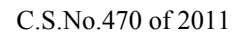
(iv). After payment of Rs.2,37,73,692/- the said Dinesh Kumar S.Jain started returned the amount with interest or to sell away any one of the properties. On 03.05.2010, a power of attorney in favour of Jithendra



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Kumar Roopchand was made ready. The 1st defendant was asked to attend the Registrar office to register the power deed or threatened to seek for the return of the amount with compound interest at 36%. So, the 1st defendant without any other alternative opted for the registration of power deed in favour of a person who is not known to him. The 1st defendant received a notice dated 06.09.2010 without the payment of balance of Rs.1,15,00,000/-. The plaintiff informed the 1st defendant that the sale deed has been executed in favour of the plaintiff in respect of Door No.1/9, Vaidyanatha Mudali Street, Tondiarpet, and symbolic possession of the tenant was taken over and to vacate the tenant, a sum of Rs.35,00,000/- representing a loan and compensation and a sum of Rs.1,82,268/- was paid towards property tax and the 1st defendant has promised to execute sale deed for the suit properties within one month. The defendant evaded to execute the sale deed in spite of offer of balance. Further the plaintiff informed the 1st defendant that two other properties which are the subject matter of this suit are mortgaged with the bank and that fact was suppressed by the 1st defendant. Only on receipt of this notice, the 1st defendant understood that this defendant has been cheated by the plaintiff and his agent and Mr.Dinesh Kumar S.Jain. On searching the records of the Sub



v).Further, the property was not under the occupation of tenants. The property consists of a dhall mill in which persons are permitted to hull the grains as dhall on bag rate basis. By virtue of authorisation given to the Director of the plaintiff, the title deed as already collected on 23.4.2010 in the name of Director Mr.C.Chiranjeevi. The title deed dated 29.1.83 was not handed over on 04.06.2010. In the sale deed, the dhall mill situated in the premises is not the subject of sale. Therefore, the 1st defendant is taking steps to set aside the sale deed dated 04.06.2010. Therefore, the plaintiff is not entitled for the relief of specific performance.

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suit property bearing No.1/9, Vaidyanatha Mudali Street, Tondiarpet. The plaintiff is not entitled to charge over the property without specifying the same. The plaintiff is not entitled to the relief of getting a sale deed on payment of Rs.1,10,44,040/- after deducting a sum of Rs.1,82,628/- paid towards the alleged property tax due in respect of Door No.1/9, Vaidyanatha Mudali Street, Tondiarpet and the plaintiff is also not entitled for the relief of recovery of possession. Hence the suit is liable to be dismissed with costs.

4. The additional written statement filed by the 1st and 2nd defendants, is as follows:-

(i) All the allegations contained in the plaint those that are specifically admitted herein are denied as false. The defendants filed an application No.628 of 2016 to implead the parties to the suit who were financiers which is just and necessary to the suit. However, this Court dismissed the said application with an observation that *"it is open to the applicants/defendants to issue summons to them to be examined as their defence witnesses or court witnesses and in the light of the effective remedy available to the applicants/defendants"*. The relief claimed by the plaintiff



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is very vague and based on assumption and surmises. There is no cause of action for the suit.

ii).The plaintiff has filed document No.2 dated 22.04.2010. A plain reading of the said document would reveal that the entire transaction is a loan transaction and it is not sale agreement as averred by the plaintiff. In the said document, there are several discrepancies and even the date mentioned in the said document No.2 will clearly reveal that the sale agreement dated 29.03.2010 is not in existence and there is no sale agreement entered on 29.03.2010 between the plaintiff and the defendants. The document Nos.1 and 2 are concocted documents and the same has been created for the purpose of initiating the suit against the defendants and also to bring out a cause of action against the defendants. The claim of the plaintiff is totally false, frivolous and not a genuine/bonafide claim.

iii) Several persons viz., (i) M/s.Radiant Traders, having address at No.20/2, Agraharam, Park Town, Chennai-600 003, (ii) M/s.Nanav Implex, having address at No.43, General Muthiah Mudali Street, Sowcarpet, Chennai-600 079 (iii) M/s.Sandeep Enterprises, having address at No.7, Nalana Street, Sowcarpet, Chennai-600 003 (iv) M/s.Kamakshi, having address at No.36, Vinayaka Mudali Street, Sowcarpet, Chennai-600 003



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and (v) M/s.Orient Enterprises having address at No.16, Ekambareswaran Agraharam, Park Town, Chennai-600 003 along with few other persons have remitted the small quantum of amounts into the defendants account as loan transactions and the plaintiff is claiming that the said amounts have been paid as sale consideration in respect of the property which is totally false and incorrect. There are several blanks in document No.1 and nobody has attested the execution of document. The signatures were obtained in the blank stamp papers by the plaintiff while granting loan and the said documents have been misused by the plaintiff in order to file the above suit as if it is a sale agreement which is totally false and incorrect.

iv)Concerning the fraudulent transaction of the plaintiff, the 1st defendant has filed C.S No.530 of 2012 to set aside the sale deed dated 04.06.2010 bearing document No.1557 of 2010 on the file of Sub Registrar, Royapuram. In document No.1, there is no separate valuation set out concerning the value of the properties. The plaintiff has suppressed very vital facts concerning the transaction between the plaintiff and the defendants. The plaintiff has approached this court with unclean hands and abused the process of law by filing this suit as if it is a sale agreement and as if the defendants agree to sell the property set out in the plaint schedule.



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The transaction of the plaintiff is illegal and therefore, the plaintiff does not deserve any merit. Hence the suit is liable to be dismissed with exemplary costs.

5. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

(1) Whether the plaintiff is entitled to a decree of specific performance pursuant to the sale agreement dated 29.03.2010?

(2) Whether the plaintiff is entitled to refund of the amount said to have been paid pursuant to the sale agreement dated 29.03.2010 in the event it is made out that they are entitled to a decree of specific performance?

(3) Relief and cost?

6. On the side of the Plaintiff, the director of the plaintiff was



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examined as PW1 and Ex.P1 to Ex.P7 were marked. On the side of the Defendants, no witness was examined, however, Ex.D1 to D5 were marked.

7. Heard both sides and perused the materials available on record.

Issue Nos.1 to 3:

8.The learned counsel for the Plaintiff has submitted that as per Ex.P1-the Sale Agreement dated 29.03.2010, even though the plaintiff is always ready and willing to comply the sale and approached the defendants to execute the sale deed for the two schedule properties mentioned in the plaint in favour of the plaintiff by receiving the balance sale consideration of Rs.1,10,44,040/- and issued Ex.P4-Legal Notice accordingly, they have not ready to fulfil their obligation and refused to execute the Sale Deed in favour of the plaintiff. Per contra, they have taken the plea that Sale Agreement is unregistered one and the said transaction is relating to financial in nature. As per the Judgment passed by the Hon'ble Supreme Court of India, in the case of “*R.Hemalatha Vs.Kasthuri*”, an unregistered



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sale agreement is admissible in an evidence for suit for specific performance.

9. It has been further submitted that as per Clause 8 and 9 of the Ex.P1-Sale Agreement, the defendant have failed to handover the Item No.2 mentioned in Ex.P1- after paying all statutory dues. However, the amount paid to the tenants to vacate the premises and for the statutory dues pending in the suit property may be directed to reimburse the same to the plaintiff.

10.It has been further submitted that no where the defendants denies about the receipt of Rs.2,37,73,692/- either in the reply notice or in the written statement. Hence, it is admitted fact that the defendants has received the aforesaid said amount. The only allegations made by the defendants that they have borrowed the amount as a loan and not for the sale of the suit schedule properties. Further, the defendants have not adduced any oral evidence to rebut the claim made by the plaintiff to examine himself in the open court. Hence, the Defendants may be directed



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to execute the sale deed as per the Ex.P1-Sale Agreement dated 29.03.2010 or alternatively, direct them to refund the advance amount as prayed in the suit.

11.The learned counsel for the defendants submits that the 1st defendant had approached the plaintiff and had sought for financial Assistance to the tune of Rs 3,50,00,000/- After due negotiations it was agreed that the plaintiff will offer a sum of Rs 2,37,73,692/-. During the negotiation, the plaintiff informed that the defendant should execute PAO in favour of one Mr.Jithender Kumar Roop Chand regarding Item No.2 of Ex.P1. Further, in view of the good will and the exigency to solve the financial issue, the defendants have signed in Blank Papers to release the above fund. The entire transaction is purely a financial transaction and not for a sale of properties covered by the said Sale agreement dated 29.03.2010 which is also unregistered one. The Ex.P1 and Ex.P2 are fabricated one filling the required contents in the blank papers on the strength of the signatures obtained therein.

12.It has been further submitted that it is not dispute in receiving



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the amount of Rs.2,37,73,692.50/-. However, except a sum of Rs.95,00,000/-, the remaining amount was paid by various 3rd parties not by the plaintiff. In this regard, the defendants filed OA No.628 of 2016 seeking to implead the 3rd parties who have provided financial assistance other than the plaintiff. The same was dismissed holding that they need not be arrayed as defendants in the suit and their presence is not necessary as they are neither necessary parties nor proper parties for adjudication of the issues involved in the suit. Hence, the plaintiff cannot claim either for specific performance or recovery of the remaining amount from the defendants as alternative remedy as sought in the suit. Hence, the suit is liable to be dismissed.

13. On perusal of the records, it is seen that the plaintiff seeks the relief for specific performance or to refund the amount paid by them to the defendants relying upon the Ex.P1-Sale Agreement and Ex.P2-Receipts. Per contra, the defendants contends that the said transaction is a loan which borrowed by the defendants when they were in financial crunch to settle their loan over their suit properties and not for selling their properties as executed in Ex.P1.

14. On perusal of Ex.P1-the Sale Agreement, it is seen that it



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was executed for 3 schedule properties for Rs.3,50,00,000/-, without mentioning separate value for each property. In the absence of separate value of each suit property situated in various areas, the plaintiff has failed to explain how Rs.3,50,00,000/- was fixed as total sale consideration for 3 schedule properties in Ex.P1. Further, it is alleged that the plaintiff has released the mortgage deed from the concerned bank after paying the amount to the Bank account of the 1st defendant and entered into Ex.P1-sale agreement for 3 schedule properties. But, the plaintiff is said to have purchased only item No.2 in Ex.P1 from the defendants excluding other two suit schedule properties. However, the plaintiff and the defendants have not produced any document relating to Mortgage Deed which is said to have hypothicated in the concerned Bank by the defendants and the Sale Deed relating to Item No.2 in Ex.P1 executed in favour of the plaintiff. It is also admitted fact that the defendants have filed a separate suit in C.S. No.530 of 2012 relating to Item No.2 purchased by the plaintiff seeking the relief to declare the sale deed as null and void.

15. On perusal of the plaint, the present suit has been filed seeking the relief for specific performance in respect of two schedule properties i.e., Item No.1 and 3 in Ex.P1. While being so, the plaintiff has sought most of



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the relief relating to the item no.2 in Ex.P1 which is not subject matter in the present suit since it has already been sold out by the defendants through Power of Attorney Holder and in this regard, the defendants have also filed a separate suit in C.S. No.530 of 2012 seeking the relief to declare the sale deed as null and void. On consideration of the relief of Specific performance for two schedule properties for the balance sale consideration, the plaintiff sought for unrelated relief paying pending statutory dues relating to the Item No.2 in Ex.P1 from the balance sale consideration stating that the defendants failed to comply the clause 8 and 9 in Ex.P1 which is not at all related to in the present suit. In such circumstances, the plaintiff cannot seek such a relief regarding the item No.2 in the present suit while the defendants have filed a separate suit in this regard. However, it is always open to him to seek such relief before the appropriate forum.

16. On perusal of the Ex.P1, it is seen that the document is not registered one even though there is huge amount involved for the sale consideration. Further, while entering into the Sale Agreement between the parties, the attesting witnesses should sign in the document to prove the document as valid. However, in Ex.P1, in the column of the attesting witnesses, it is blank without any signature. Thus, the Ex.P1 encircles with



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such suspicious circumstances. Further, the plaintiff failed to prove the Ex.P1 in the manner known to law by producing oral and documentary evidence. Hence, the plaintiff is not entitled to a decree of specific performance pursuant to the Sale Agreement dated 29.03.2010. Accordingly, issue no.1 is answered against the plaintiff.

17. It is admitted fact that the defendants were under financial crunch in settling the mortgage loan amount over their properties and approached the plaintiff to settle their mortgage loan amount to release their property from the concerned Bank. It is also admitted that they have borrowed the loan amount of Rs.2,37,73,692/- for settling mortgage loan amount over their suit schedule properties and signed the various blank papers on 25.03.2010. Further, in the Written statement also, the defendants themselves accepted the same and ready to return the entire advance amount of Rs.2,37,73,962/- subject to cancelling the sale deed executed for one of the three properties mentioned in the sale agreement. However, on the side of the defendants, nowhere they have denied either in their Written statement or their arguments against borrowing the said amount from the plaintiff. It is admitted by the defendants that out of Rs.2,37,73,692/-, a



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sum of Rs.95,00,000/- was paid by the plaintiff directly and the remaining amount was paid by 3rd parties. In this regard, even though the defendants have filed O.A. No.628 of 2016 seeking to implead the 3rd parties, it was dismissed holding that the 3rd parties may be summoned for examination as their defence witnesses or court witnesses for their effective remedy. However, the defendants have not taken any steps in this regard.

18.It is seen from the Written statement that the defendants themselves admitted that they have borrowed the loan for a sum of Rs.2,37,73,692/- from the plaintiff on 25.03.2010 and ready to return the entire amount of Rs.2,37,73,962/- subject to cancelling the sale deed executed for item no.2 mentioned in the sale agreement. While the defendants filed a separate suit to cancel the Sale Deed executed for item no.2 mentioned in the sale agreement, the defendants cannot say in this suit they would ready to pay the borrowed amount subject to cancelling the Sale deed. However, since the Item No.2 was said to have purchased by the plaintiff for Rs.95,00,000/-, the defendants are bound to pay the loan amount of Rs.1,42,73,692/- out of Rs.2,37,73,692/- after deducting the amount of Rs.95,00,000/- to the plaintiff as accepted by them in the Written statement. Accordingly, the Plaintiff is entitled to the refund the



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amount of Rs.1,42,73,692/- along with interest @9% p.a. from the date of
plaint to till the date of decree and thereafter 6% p.a. from the date of
Judgment till the date of realization. Thus, Issue No.2 and 3 are answered
accordingly.

19.In the result, the suit is partly decreed in the aforesaid terms.

No costs.

24.01.2025

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Lbm

1. List of Witnesses examined on the side of the Plaintiff:-

PW1 C.Chiranjeev

2. List of Exhibits marked on the side of the Plaintiff:-

Ex.P1 29.03.2010Original Agreement of sale

Ex.P2 22.04.2010Original Receipt issued by the 1st defendant

Ex.P3 27.08.2010Computer generated copy of the property tax receipt

Ex.P4 06.09.2010Copy of legal notice issued by the plaintiff's counsel to
the defendants.

Ex.P5 ... Acknowledgement for the receipt of the Notice in

Ex.P4

Ex.P6 29.09.2020Reply notice from the defendants

Ex.P7 series Water Tax receipts (3 nos.)

3. List of Witnesses examined on the side of the Defendants:-

NIL



C.S.No.470 of 2011

4. List of Exhibits marked on the side of the Defendants:-

WEB COPY

- | | | |
|-------|------------|--|
| Ex.D1 | 31.03.2012 | Online copy of audited balance sheet of plaintiff's company filed before ROC |
| Ex.D2 | 31.03.2013 | Online copy of audited balance sheet of plaintiff's company filed before ROC |
| Ex.D3 | 31.03.2010 | Online copy of audited balance sheet of plaintiff's company filed before ROC |
| Ex.D4 | 31.03.2011 | Online copy of audited balance sheet of plaintiff's company filed before ROC |
| Ex.D5 | ... | Copy of Memorandum of Association |

24..01..2025

lbm

A.A.NAKKIRAN, J.

lbm

Pre-Delivery Judgement in
C.S.No.470 of 2011



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C.S.No.470 of 2011

24.01.2025