



S.A. No.867 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2025
CORAM:

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

S.A. No.867 of 2013
and
M.P.No.1 of 2013

N.Thiyagarajan

... Appellant

Vs.

1. K.Sengodan

S.N.Subramanian (died)

3. Amudavalli

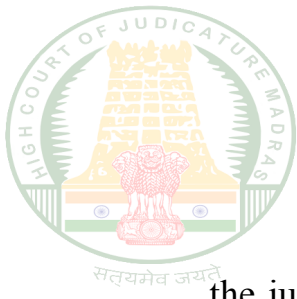
4. Jayalakshmy

5. S.Mahesh

Respondents 3 to 5 brought on record
as LR's of deceased 2nd respondent
vide court order dated 01.12.2021
made in C.M.P.No.7952 to 7954 of 2016

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.5 of 2012 dated 07.02.2013 on the file of II Addl. District Judge, Erode confirming



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the judgment and decree passed in O.S.No. 321 of 2010 dated 15.06.2011

on the file of II Addl. Subordinate Judge, Erode.

For Appellant : Mr.K.Ramanraj

For Respondents : Mr.S.Senthilnathan for R3 to R5

JUDGMENT

The appellant herein is the 2nd defendant in the suit in O.S.No.321 of 2010 on the file of II Addl. Subordinate Judge, Erode filed by the 1st respondent/plaintiff seeking for the relief of specific performance directing the defendants to execute a sale deed by receiving balance sale consideration and other consequential reliefs. The 1st defendant remained exparte. The 2nd defendant alone contested the case. On hearing both sides, the trial judge granted the relief of specific performance in favour of plaintiff. Aggrieved over the said findings, the 2nd defendant preferred an appeal suit in A.S.No.5 of 2012 on the file of II Addl. District Judge, Erode, wherein also the findings of the trial judge was confirmed and the Appeal Suit was dismissed. Challenging the said findings, the 2nd defendant preferred this Second Appeal.

2. For the sake of convenience, the parties are addressed as per the



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3. Brief facts of the case is as follows :-

The 1st defendant is the absolute owner of the suit property with whom, the plaintiff entered into sale agreement to purchase the same for a valid consideration of Rs.6,50,000/- and the plaintiff paid a sum of Rs.4,50,000/- as advance and within one year, the 1st defendant is bound to execute the sale deed free of all encumbrances and a notarised sale agreement was executed on 30.01.2005. On the same day itself, the 1st defendant handed over the xerox copies of parent document and also delivered the possession of suit property as part performance of contract. Again on 24.02.2006 the 1st defendant received another sum of Rs.1,50,000/- and made endorsement on the back side of the sale agreement. The remaining balance sum of Rs.50,000/- alone was payable by the plaintiff. When the same was informed to the 1st defendant, he evaded and also attempted to transfer the property in favour of 2nd defendant, who is his brother. Hence, the plaintiff issued lawyer's notice on 15.11.2006 along with demand drafts for the balance sum of Rs.50,000/-,

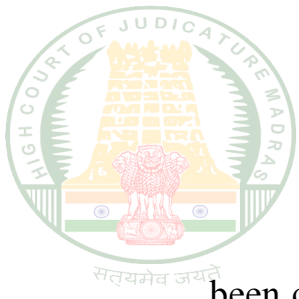


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for which, the 1st defendant has not given any reply and the 2nd defendant gave a reply stating that he purchased the property for the valid consideration from his brother through his father viz., power agent on 27.04.2006. But, the said sale claimed by the 2nd defendant is fraudulent one and collusive in order to defraud the plaintiff and to defeat the terms of sale agreement as agreed by the defendants. Hence, the plaintiff came forward with the suit seeking for the relief of specific performance with alternative relief.

4. In the written statement filed by the 1st defendant, he admits the sale agreement with the plaintiff and also admits that he had received part of sale consideration on 24.02.2005, but he denied that he is trying to transfer the property in favour of 2nd defendant and submitted that he was also not aware of the alleged sale deed dated 27.04.2006 said to be executed by his power agent/father Nachimuthu. In fact, his father was bedridden and he had no sound state of mind for the past few years. He also submitted that long back in the year 1973, he executed a power of attorney in favour of his father to maintain the property and the power deed was also



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been cancelled long back. Therefore, the alleged sale deed relied on by the 2nd defendant would not bind him nor it is valid one. However, he is ready to execute the sale deed in favour of plaintiff as per the terms of sale agreement. Hence, he prayed to dismiss the suit.

5. The 2nd defendant filed a separate written statement stating that his father viz., Nachimuthu gounder was working in Railway Mail Service, as he is a Central Government employee, he was not able to acquire the property in his name as per the Conduct Rules. So, he purchased a vacant site of the suit property and the adjacent property through three sale deeds dated 23.04.1969, 17.04.1972 and 19.04.1972 in the name of his eldest son/1st defendant herein, who was aged only 10 years at that time. The purchase made by the father for the benefit of joint family and not to the benefit of 1st defendant. The 1st defendant also not having any source of income in the year 1969 or 1972 and the entire sale consideration for the said three sale deeds were paid by his father from out of his salary and the 1st defendant not having any independent source of income at that time. After the purchase, his father Nachimuthu constructed six houses in the

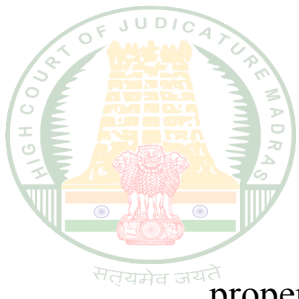
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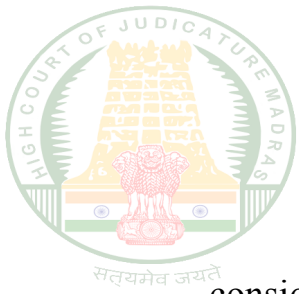
vacant site from out his own salary. The 1st defendant joined in telephone department in Bangalore and working therefor nearly about 29 years. On 24.03.1973 the 1st defendant executed a power of attorney in favour of his father in respect of suit property and the suit houses were rented to tenants and when Nachimuthu gounder, who is absolute owner of property received the rent. In order to perform marriage to his son and daughter, the 1st defendant demanded his father to sell the southern 3 houses and to give sale proceeds to him meet out marriage as well as educational expenses, at that time, this defendant was running a furniture mart under the name and style of Sri Om Muruga Agency and having consideration to purchase southern three houses. Accordingly, he offered to buy the suit property for a sum of Rs.4,95,000/-, for that, his father and the 1st defendant also agreed for the said prise and he directed his father, who was his power of attorney to execute the sale deeds, thereby in the year of 2006, Nachimuthu, power holder of 1st defendant sold the property to this defendant and sale deed was also registered and possession was also delivered to him. Eversince from that sale, he is the absolute owner of the suit property and his father Nachimuthu handed over all the original documents pertaining to the suit



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property including the original power of attorney and the sale proceeds were received by 1st defendant/Subramaniam in order to discharge the loan borrowed by him. On 28.07.2006 his father Nachimuthu was died and last ceremony was conducted on 31.07.2006, at that time, the 1st defendant insisted him to hand over the original document of the suit property and other properties. When the originals were shown to him, the 1st defendant has taken the xerox copy of all those documents. Further, he asked this defendant to cancel the sale deeds said to be executed by his father as a power of attorney, for which this defendant refused. The 1st defendant and his henchmen entered into his house and threatened his wife. Hence, he gave a complaint before the police, wherein the 1st defendant appeared and assured that he would not cause interference. Thereafter, the 1st defendant colluded with the plaintiff and created a fake sale agreement and filed the present vexatious suit. After he came to know that the plaintiff is the close relative of 1st defendant and he is only a tool in the hands of 1st defendant. Only to drag on the property from him, he came forward with this false suit. In fact, the properties were purchased by his father in the name of 1st defendant. Based on that, this defendant purchased the property for a valid



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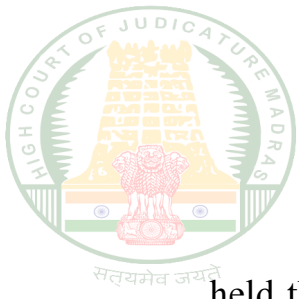
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consideration. At that time, the power of attorney was in force and not cancelled and the possession was also with him. But, his father, till his life time collected the rent, thereby denied the plaintiff's alleged possession over the suit property. After came to know about the purchase made by the 2nd defendant, on colluding with the plaintiff, the 1st defendant fraudulently created the alleged sale agreement. Therefore, the plaintiff is not entitled for any relief as he prayed for. Accordingly, he prayed to dismiss the suit.

6. Before the trial court, both parties adduced oral and documentary evidence. The trial judge framed four issues and the foremost issues are as follows :-

- (i) Whether the sale agreement is true and valid one?
- (ii) Whether the sale deed stands in the name of 2nd defendant is true and valid and it would binds the plaintiff?
- (iii) Whether the plaintiff is entitled for the relief as prayed for?

7. On considering both oral and evidence on record, the trial judge



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held that in order to avail the relief of specific performance, the burden is casted upon the plaintiff to prove that there is a valid sale agreement and he was bound to perform his part of contract and also to prove the execution of contract. Accordingly, the plaintiff in order to prove the execution of sale agreement, examined P.W.2 and P.W.3, who are the scribe and attesor of the document of sale deeds. As per the evidence of P.W.2, he drafted the document at the instance of both plaintiff and 1st defendant. P.W.3 is the attesor of document deposed that he witnessed the signature affixed by both parties. Based on those witnesses, the trial court held that the plaintiff had sufficiently proved the execution of sale agreement, besides, the 1st defendant also admits the sale agreement with the plaintiff, which itself sufficient to hold that there is a valid sale agreement between the plaintiff and the 1st defendant. Further, to prove the readiness, the plaintiff at the time of issuance of notice, annexed the demand drafts for the balance consideration and the statutory notice was also issued expressed his readiness within a stipulated period. As per the sale agreement, the suit property is belong to 1st defendant and already the power of attorney was also been cancelled. Therefore, the 1st defendant is bound to execute the



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sale deed as per the terms of agreement. Accordingly, the relief of specific performance is granted in favour of plaintiff. Further, the trial judge held that already the power of attorney was cancelled, thereby, the 2nd defendant, who claimed right with the said power of attorney has no valid right and title over the suit property nor the 2nd defendant proved that he paid the consideration to the 1st defendant through the said power of attorney, through which the sale deeds were executed, thereby held that the 2nd defendant is not a bonafide purchaser. Therefore, the sale deeds are not true and valid one. In respect of possession of property, his father, during his life time, had collected the rent. Indeed, based on the sale agreement, the plaintiff is deemed to be constructive possession. In view of the same, the suit was decreed by granting the relief of specific performance in favour of plaintiff. Challenging the said findings, the 2nd defendant preferred an Appeal Suit in A.S.No.5 of 2012, wherein the first appellate judge analysed the evidence on record, finally held that based on the evidence of P.W.2 and P.W.3, the plaintiff had proved the execution of sale agreement with the 1st defendant, who also admits that he entered into sale agreement with the plaintiff, thereby the plaintiff is having valid sale agreement and the 2nd



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defendant, who claimed right based upon the sale deeds said to be executed by his father, who is power agent of 1st defendant is not true and valid for the reason that already the power deed was cancelled, thereby the 1st defendant is the absolute owner of the suit property. But already he entered into a sale agreement with the plaintiff and mere possession of original title deeds relating to the suit property in the hands of 2nd defendant is not sufficient to hold that he is a bonafide purchaser because prior to the alleged purchase, sale agreement was entered by the plaintiff with the 1st defendant. Therefore, the sale deeds relied on by the 2nd defendant is not true and valid one nor it binds the plaintiff. Accordingly, the appeal suit was dismissed by confirming the findings of trial judge.

8. Challenging the said findings, the 2nd defendant preferred this Second Appeal by raising the following grounds for consideration :-

- (a) The courts below have failed to follow that the plaintiff and the 1st defendant, the respondents herein, have filed a collusive suit particularly when P.W.1 has deposed that the sale agreement dated 30.11.2005 under Ex.A1 was known to none other than the plaintiff and the 1st defendant, which



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completely belies and shatters the evidence of P.W.2 and P.W.3, who claimed to be the scribe and attesting witnesses.

- (b) The courts below have not seen that the 2nd defendant, the appellant herein produced the original parent documents under Ex.B10 to B14 which amply proves the case of the appellant that he is a bonafide purchaser of the suit properties for valuable consideration under Ex.B3 disproving the case of the respondents herein.
- (c) The courts below have gravely erred in not following that P.W.1 had falsely pleaded part performance of the agreement under Ex.A1 when D.W.2 and D.W.3, the tenants in the suit properties have deposed that they were paying rents to the father of appellant and after execution of Ex.B3, the tenancy was attorned and rents were paid to the appellant.
- (d) The trial court erred in holding that the plaintiff, the 1st respondent herein took constructive possession of the suit properties, when no such plea has been advanced by the



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plaintiff himself, and the lower appellate court has failed to appreciate and correct the error.

- (e) The courts below have failed to consider and appreciate the legal effect of the plaintiff failing to prove part performance of the agreement dated 30.05.2006 under Ex.A1 which disentitles the plaintiff, the 1st respondent herein from seeking the discretionary relief of specific performance.
- (f) The courts below have not followed that the 2nd defendant, the appellant herein has purchased the suit properties from the 1st defendant, the 2nd respondent herein, represented by his power of attorney agent, the father of appellant and 2nd respondent under Ex.B3 dated 27.04.2006.
- (g) The courts below have utterly gone wrong in not seeing that the registered power of attorney dated 24.03.1973 under Ex.B4 was still in force and the sale deed dated 27.04.2006 under Ex.B3 had been validly executed particularly, when the respondents have failed to prove that Ex.B4 had been cancelled or revoked.



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- (h) The courts below have not seen that the agreement under Ex.A1 is false and fabricated when P.W.2 and P.W.3 are all proved to be closely associated with the plaintiff and the 1st defendant, the respondent herein, who have all concocted a false case by colluding together to defeat the rights of the appellant herein.
- (i) The courts below have gone wrong in not seeing that the plaintiff, the 1st respondent herein, has come to court with unclean hands, and is not entitled for any relief by abusing the process of court.
- (j) The courts below have erred in accepting the case of plaintiff, the 1st respondent, in toto, without any acceptable reasons overlooking the serious defects in pleading and further failing to prove and establish any semblance of a right in the suit properties.
- (k) The lower appellate court has failed to take into consideration the evidence adduced in the case and ought to have refused relief to the respondents herein.



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9. On considering his submissions, this Second Appeal was admitted on the following question of law :-

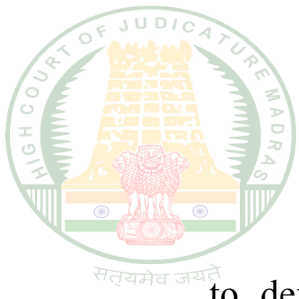
(i) Whether the plaintiff/1st respondent herein, who approached the court with unclean hands by falsely pleading part performance of the sale agreement dated 30.11.2005 under Ex.A1, is entitled to the specific relief of execution of the sale agreement?

(ii) Whether the plaintiff/the 1st respondent herein, without proving and establishing that the registered power of attorney under Ex.B4 has been cancelled or revoked could question the sale deed dated 27.04.2006 in favour of the appellant under Ex.B3?

(iii) Whether the courts below have exercised discretion under the Specific Relief Act, 1963 in accordance with law?

(iv) Whether the findings of the courts below are perverse not based on material evidence adduced in the case under Ex.B1 to B14 and the deposition of D.W.1, D.W.2 and D.W.3?

10. The learned counsel for appellant/2nd defendant argues that both the courts below failed to take note of the fact that the plaintiff and the 1st defendant colluded together and created the alleged sale agreement in order



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to defeat the 2nd defendant's right over the suit property, besides the plaintiff, who approached the court with unclean hands not entitled for the relief, but without appreciating the conduct of plaintiff, the courts below erroneously granted the relief of specific performance as such is liable to be set aside. Further, he would submit that the 2nd defendant, who is a bonafide purchaser of the suit property through the power deed stands in the name of power agent/father of defendant was in force at the time of his purchase. Therefore, the alleged unregistered sale agreement was created after the execution of sale deeds. Based on that, the plaintiff is not entitled for any relief nor he failed to establish that as per the terms of sale agreement, he was in possession of property. In spite of all these lacuna, the courts below granted the relief of specific performance, which is discretionary one and the same is to be exercised according to settled principles of law and not arbitrarily. Therefore, he prayed to set aside the findings of the courts below. In support of his contentions, he relied the ratio laid down in the authority held by this Court in ***A.S.No.1157 of 1995 dated 13.11.2009*** in the case of ***R.Rajaram and another vs. T.R.Maheswaran***, wherein this Court held as follows :-



“44. In *N.P.Thirugnanam vs. R.Jagan Mohan Rao (Dr)*, (1995) 5 SCC 115, the legal position with respect to the discretionary relief of specific performance was indicated by the Supreme Court thus :-

"5.It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under *Section 20* of the Specific Relief Act, 1963 (for short the Act). Under *Section 20*, the court is not bound to grant the relief just because there was a valid agreement of sale. *Section 16(c)* of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the



contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.

46. In *Gobind Ram v. Gian Chand*, (2000) 7 SCC 548, the discretionary jurisdiction of specific performance was indicated by the Supreme Court thus :-

"7.It is the settled position of law that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has to consider whether it will be fair, just and equitable. The court is guided by principle of justice, equity and good conscience. As stated in P.V. Josephs Son Mathew the court should meticulously



consider all facts and circumstances of the case and motive behind the litigation should also be considered."

47. In *K.S. Vidyadnam v. Vairavan*, (1997) 3 SCC 1, petitioners before the Supreme Court entered into an agreement with the respondent to sell their property. However, the sale was not concluded and in the meantime, the property value in Madurai has increased tremendously. Trial Court had granted the relief of specific performance and it was reversed by the High Court with an observation that the plaintiff has been requesting for execution of the sale deed by the defendants. Before the Supreme Court, the plaintiffs contended that time was not the essence of contract in the case of an immovable property and as such, rise in price in the meantime cannot be a reason to reject the prayer for specific performance. Supreme Court examined the entire issue in the light of the earlier decisions and observed thus :-

"11. ... May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the



contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).

48. In *Sita Ram v. Radhey Shyam*, (2007) 14 SCC 415 :: 2007 (11) Scale 626, the Supreme Court indicated the necessity of examining the conduct of the person seeking the relief of specific performance thus :-

10. The basic principle behind [Section 16\(c\)](#) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief. (See *Aniglase Yohannan v. Ramlatha* and ors. [2005(7) SCC 534].

52. The necessity to approach the Court with clean hands



in a suit for specific performance was indicated by the Supreme Court again in [Mohammadia Coop. Building Society Ltd. v. Lakshmi Srinivasa Coop. Building Society Ltd.](#), (2008) 7 SCC 310 thus :-

"71. Grant of a decree for specific performance of contract is a discretionary relief. There cannot be any doubt whatsoever that the discretion has to be exercised judiciously and not arbitrarily. But for the said purpose, the conduct of the plaintiff plays an important role. The courts ordinarily would not grant any relief in favour of the person who approaches the court with a pair of dirty hands."

54. The Supreme Court in [G.Jayashree v. Bhagwandas S. Patel](#), (2009) 3 SCC 141, indicated the concept of discretionary jurisdiction thus :-

"32. The civil courts, in the matter of enforcement of an agreement to sell, exercise a discretionary jurisdiction. Discretionary jurisdiction albeit must be exercised judiciously and not arbitrarily or capriciously. A plaintiff is expected to approach the court with clean hands. His conduct plays an important role in the matter of exercise of discretionary jurisdiction by a court of law."

11. The 1st defendant/2nd respondent remained exparte. By way of



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reply, the learned counsel for 1st respondent/plaintiff argues that the suit property admittedly belongs to 1st defendant, who offered to sell the property for a valid consideration. Accordingly, the plaintiff entered into sale agreement and the terms were reduced in writing in the presence of notary and witnesses within a stipulated period. The plaintiff is ready to pay balance amount and the same was informed to the 1st defendant through notice. Though he received, not given any reply, but attempted to transfer the property in favour of his brother/2nd defendant. Therefore, the plaintiff approached the court in time and also proved his readiness and willingness as prescribed under Sec.16(3) of the Specific Relief Act, besides the 1st defendant, who filed the written statement admits the agreement with the plaintiff, but not entered into witness box. Therefore, the trial court rightly granted the relief of specific performance in favour of plaintiff and also observed that there is a collusion between the 1st defendant and the 2nd defendant by creating the sale deeds in order to defeat the plaintiff's claim. Therefore, the trial judge has rightly held that the 2nd defendant is not a bonafide purchaser of the court below, which needs no interference. Accordingly, he prayed to dismiss this Second Appeal as no merit.



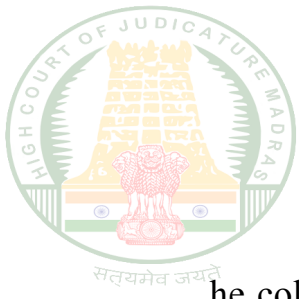
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12. Heard and considered rival submissions made by learned counsel for appellant as well as learned counsel for respondents 3 to 5 and perused the materials available on record.

13. On perusal of records and as per the case of plaintiff, he entered into sale agreement with the 1st defendant, who is the absolute owner of the suit property and paid advance amount and entered into sale agreement under Ex.A1. Within a stipulated period, he was ready to pay the balance amount, but the 1st defendant evaded and attempted to transfer the property in favour of 2nd defendant, hence, he filed the suit. Admittedly, the 1st defendant remained exparte. The 2nd defendant alone contested the case. According to him, the 1st defendant is not a owner of property and his father Nachimuthu, a Central Government employee, due to the conduct rules, he purchased the property as a vacant site from out of his own salary in the name of 1st defendant in the year 1969 or 1972 through three sale deeds and those documents were marked as Ex.B5, Ex.B7 and Ex.B11. After that, he constructed six houses and rented out the same to tenants and

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he collected the rent till his demise. Subsequently, in the year of 1973, his father got a power of attorney from the 1st defendant in order to deal with the property. While so, the 1st defendant wanted to meet out the family expenses, more particularly, the marriage expenses of his daughter, demanded the amount from his father Nachimuthu. At that time, this defendant had considerable amount in his hand, who runs a furniture business. Hence, he agreed to purchase three houses i.e. suit properties for a valid consideration. Accordingly, his father executed a sale deeds as a power of attorney of 1st defendant and received a valid consideration and the original documents were also handed over to 1st defendant and possession was also delivered to him. To that effect, he relied the sale deed dated 27.04.2006 and all the original documents were also handed over to him including the power of attorney and all those documents are produced on his side as exhibits, thereby the 2nd defendant contended that as absolute owner of property, he is in possession of the suit property.

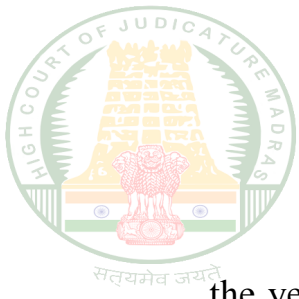
14. Considering entire facts of the case, it would clearly indicates that the plaintiff, who approached the court for the relief of specific



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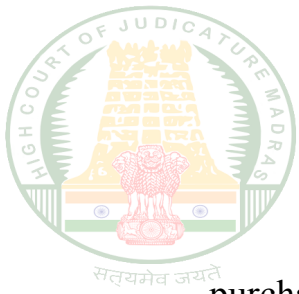
performance bound to establish that he entered into sale agreement with the 1st defendant for a valid consideration and also approached the court with clean hands, besides he was always ready to perform his part of contract. As per the contention of plaintiff, the 1st defendant is the absolute owner of the suit property, but the same was denied by the 2nd defendant stating that his father purchased the property in the name of his brother/1st defendant in the year 1969 or 1972 through three sale deeds. To prove the same, the 2nd defendant produced those three original sale deeds and the sale deeds including Exchange deed were marked on his side as Ex.B5, B6, B7 and Ex.B11. All those documents stand in the name of 1st defendant. On perusal of those documents, it stands in the name of 1st defendant, but on perusal of written statement filed by the 1st defendant, though he has not entered into witness box and remained exparte at the time of trial and also he has not stated anything about the purchase made by him in the year of 1969 or 1970. He simply stated that he gave power of attorney in favour of his father on 24.03.1973 immediately after the purchase against those property. Furthermore, on perusal of cause title of plaint, the age of 1st defendant was mentioned as aged about 56 years. If that being so, he might have born in



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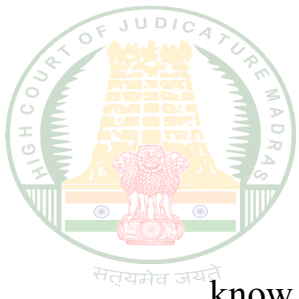
the year of 1951 and at the time of purchase of the year 1969 or 1972, he would have aged about approximately 18 years. Therefore, the 1st defendant bound to prove that he had source of income at that age to purchase the property. But, he failed to enter into witness box nor he stated that he had source of income to purchase the property in the year 1969 or 1972. When the 2nd defendant specifically denied in his written statement that the 1st defendant was aged below 18 years and not having independent source of income in the year 1969 or 1972, the burden is heavily casted upon the 1st defendant to establish that he had a separate source of income at his age of 18 years, but the 1st defendant remained exparte. In such circumstances, the court is entitled to draw adverse inference against him as it is a settled proposition of law. But, both the courts below failed to appreciate this aspect. Though the 2nd defendant specifically denied the 1st defendant's source of income in the year 1969 or 1972, the defence taken by the 2nd defendant legally probablise that his father would have purchased the property in the name of his eldest son/1st defendant as he was not able to secure in his name as per Conduct Rules, since he was a Central Government employee. It also probablise that since the properties are



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purchased by the father Nachimuthu immediately he would have obtained power of attorney from the 1st defendant in the year 1973 itself. The case of plaintiff is that he was informed by the 1st defendant that already power of attorney was cancelled long back and he became the absolute owner, thereby he entered into sale agreement. As per the contention of 2nd defendant, the power of attorney was in force in the name of his father at the time of his purchase on 27.04.2006. After the purchase, the original power of attorney also been handed over to him and the same was also been marked on his side as Ex.B4. If at all, the power of attorney was cancelled by the 1st defendant, he ought to have specifically mentioned the date on which it was cancelled. In his written statement, he simply stated that the power of attorney was cancelled long back, which is not sufficient to conclude that the power deed was cancelled. He must specifically state the date on which it was cancelled, but he failed nor the plaintiff was also established that the power of attorney was cancelled at the time of alleged sale agreement entered with the 1st defendant. If the plaintiff is the bonafide purchaser, he ought to have verified with all encumbrance, but he deposed that based on the oral information given by the 1st defendant, he came to

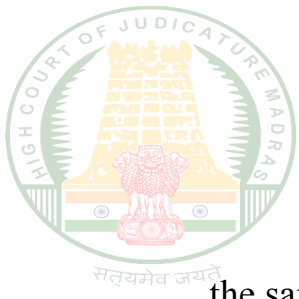


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know that power of attorney was cancelled. But, no document was produced about the cancellation of power of attorney on the side of plaintiff nor by the 1st defendant. Therefore, when there is no material evidence to establish that the said power deed was cancelled, it is presumed that power deed was in force on the date of execution of sale deeds in favour of 2nd defendant by the power of attorney holder/his father. Furthermore, the 2nd defendant proved that as a bonafide purchaser, he purchased the property from the power of attorney holder through the sale deed dated 27.04.2006. But without any material evidence on record, the trial court as well as appellate court erroneously presumed that the power of attorney was already been cancelled as such is total misconception of fact and the findings to that effect is liable to be set aside. Accordingly, the question of law (c) is answered.

15. As per the contention of plaintiff, on the date of sale agreement itself, possession was handed over and the xerox copies of original document was also handed over to him. When the 2nd defendant contended that after the death of his father, his brother/1st defendant demanded the original documents of the suit property, he got xerox copy of the same and

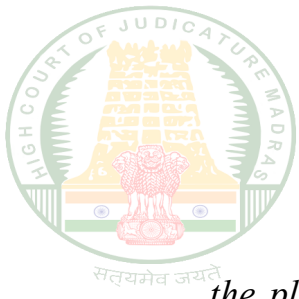


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the same was in the hands of plaintiff, who is close relative of 1st defendant.

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Admittedly, the plaintiff and the 1st defendant are close relative and the same was not denied by the plaintiff. On the side of plaintiff, xerox copy of sale deeds were marked, but the original documents were produced by the 2nd defendant. In respect of possession of property, as per the evidence of 2nd defendant, till his life time, his father was collecting rent from the tenants, who are residing in the suit property. After the purchase, he effected mutation of records. For that, he produced E.B. receipt and property tax receipts marked as Ex.B1 and Ex.B2. When the plaintiff specifically claimed that possession was given to him as part performance of terms of sale agreement, he bound to prove the same on his own evidence, but on perusal of records, it reveals that he was not in possession of property. For that, the trial judge held that the properties were under occupation of tenants. Therefore, the plaintiff's possession is deemed to be constructive one. But, without any such pleadings on the side of plaintiff, the findings rendered by the trial judge while deciding the issue No.4 as such is totally erroneous one. Moreover, in the prayer column of plaint, one of the prayer is “*delivering and confirming possession of suit property to*



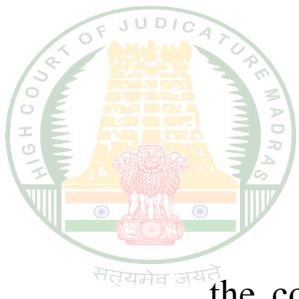
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the plaintiff” which itself shows that the plaintiff is not certain about the possession of property. But the courts below failed to appreciate the said aspect and erroneously granted the relief in favour of plaintiff.

16. Furthermore, the conduct of parties also to be taken into consideration, which is one of the mandatory requirement to avail the discretionary relief of specific performance. Admittedly, the plaintiff and the 1st defendant are close relatives and witnesses also clearly associated with them and in the written statement, the 1st defendant submits that he entered into sale agreement with the plaintiff, but not entered into witness box and remained exparte. The plaintiff had also issued notice to the 1st defendant expressing that he is always ready to perform his part of contract within a stipulated period along with demand draft for the balance amount. In order to manifest on the side of plaintiff as if he is always ready to perform his part of agreement and approached the court with clean hands, even the courts below also held that the plaintiff proved his readiness and willingness and so, as a bonafide purchaser, he entered into a sale agreement, accordingly, the specific performance relief was granted. But

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the courts below failed to take note of the fact that the plaintiff and 1st defendant colluded together and created a sale agreement. Admittedly, Ex.A1 sale agreement said to be an unregistered document, but stated that signed before the notary, which would not sufficient to prove the truth and sanctity to the agreement. Apart from that, the plaintiff is expected to establish that he approached the court with clean hands, but in the evidence of P.W.2 and 3, though they have stated that the agreement was drafted in their presence, parties have signed, but the collusion between the plaintiff and the 1st defendant was clearly established by the 2nd defendant as discussed above. However, the 2nd defendant raised allegation that there is a collusion between the plaintiff and the 1st defendant and the same was not disproved by the 1st defendant by entering into a witness box, who is a right person to prove that he offered the property to sell to the plaintiff, but he failed to deny the allegation levelled against him, which itself shows that he impliedly admits that he colluded with the plaintiff and created this agreement.

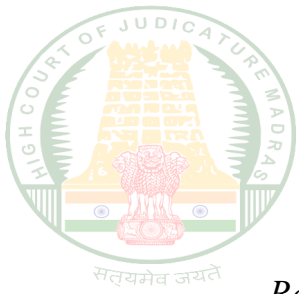


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17. Furthermore, the plaintiff also not proved that as a bonafide purchaser, he entered into sale agreement with the 1st defendant for the reason that on the date of alleged agreement, the registered power of attorney was in force and there is no proof that the plaintiff verified the encumbrance before entering into the sale agreement. Therefore, the conduct of both plaintiff and 1st defendant clearly established that both were close relatives and colluded together and created unregistered sale agreement after coming to know about the sale deed in order to defraud the 2nd defendant's claim, thereby the conduct of parties proves that they have not approached the court with clean hands more particularly, the plaintiff. Therefore, the legal principles on specific performance held by the Apex Court reported in **1995 (5) SCC 115** in the case of **N.P.Thirugnanam vs. R.Jagan Mohan Rao** reads as follows :-

“It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Sec. 20 of Specific



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Relief Act, 1963.....”

Hence, the person, who approached the court with unclean hands is not entitled to the relief. Accordingly, issue Nos.(a) and (b) are answered.

18. Normally, this court should not interfere with the fact findings rendered by the courts below, but if it is not properly appreciated and the findings are perverse in nature, this court is entitled to cause interference as discussed above. Moreover, the trial court has not appreciated the evidence as well as conduct of parties properly, more particularly, the trial judge erroneously presumes and concludes that the power of attorney was already cancelled without any material evidence, which itself shows that the trial judge not applied his mind. So also, the first appellate judge, when there is material evidence adduced on the side of 2nd defendant to establish that he is a bonafide purchaser of the property, without appreciating the evidence on his side, erroneously granted the relief in favour of plaintiff as such is totally perverse and liable to be set aside. Accordingly, issue no.(d) is answered. Moreover, the authority relied on by the 2nd defendant is squarely applicable to the facts of the case.



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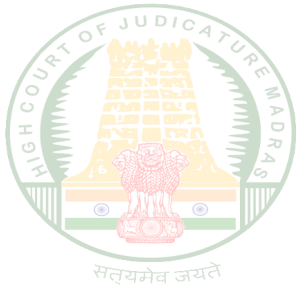
19. In view of the above, this Second Appeal is allowed and the findings rendered by the courts below in A.S.No. 5 of 2012 by the learned II Addl. District Judge, Erode confirming the findings rendered in O.S.No.321 of 2010 by the II Addl. Subordinate Judge, Erode is set aside. Suit is dismissed with exemplary cost of Rs.25,000/-. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.03.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

II Addl. District Judge, Erode.



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T.V.THAMILSELVI, J.

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05.03.2025