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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.07.2025

PRONOUNCED ON : 20.08.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 545 of 2016

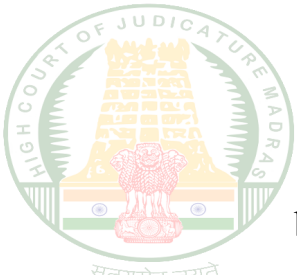
1. S.M.Mariyam Aysha Umma
2. S.M.D.Mohamed Abdul Khader
3. Mohamed Noori ... Plaintiffs

Vs.

1. Mr. Ashok Kumar
2. Mrs.R.Rohini Mala ...Defendants

Prayer : Civil Suit filed under Order VII Rule 1 CPC read with Order IV Rules 1 & 2 of OS Rules, to pass a Judgment and Decree by

a) declaring that the sale deed dated 22.07.2015 registered as document No. 865 of 2015 on the file of the joint Sub Registrar – II, Thousand Lights, Chennai in respect of the suit schedule A property is fraudulent, null and void and consequently cancelling it;



b) of Mandatory injunction, directing the defendants to return to the plaintiffs the 'schedule-B' mentioned documents forthwith;

c) of permanent injunction, restraining the defendants, their men, agents and anyone claiming through them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule 'A' property; and

d) costs of the suit.

For plaintiffs : Mr. A.Sirajudeen
Senior Counsel
for Mr.A.Mohamed Ismail

For 2nd Defendant : Mr. J.Barathan
for Mr.J.Antony Jesus

JUDGMENT

The suit had been filed seeking a Judgment and Decree to declare that the sale deed dated 22.07.2015 registered as Document No. 865 of 2015 on the file of the Sub Registrar -II, Thousand Lights, Chennai with respect to the suit schedule 'A' property as fraudulent null and void and for mandatory injunction directing the defendants to return to the plaintiffs the documents mentioned in Schedule -B and for permanent injunction restraining the



defendants from interfering with the peaceful possession of the plaintiffs of the suit schedule property.

2. The property mentioned in Schedule-A to the plaint, is land and building bearing new Door No. 41, Old Door No.21, previous Door No.18-B, Josier Street, Nungambakkam, Chennai, measuring one ground and 2185 sq.ft., with ground floor and first floor. In Schedule -B list of four documents have been given including sale deeds dated 23.11.1966, 10.10.1968, 23.04.1987, 31.07.2006 and 22.07.2015.

3. The first plaintiff is the mother of the second plaintiff. The third plaintiff is the wife of the second plaintiff. It had been contended in the plaint that the second plaintiff S.M.D. Mohamed Abdul Khader is a trustee of a public Trust called Mohammed Sathak Trust which runs 18 educational institutions including an Engineering College. It had been claimed that the plaintiffs belonged to a traditionally rich family and the first and second plaintiffs get a rental income for about Rs.3,00,000/- per month from their properties, apart from other income. They had therefore no necessity to sell any of their properties.



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4. It has been further contended that the first and second plaintiffs had purchased the property described in schedule-A to the plaint namely land and building measuring one ground and 2185 sq.ft., by registered sale deed dated 31.07.2006, registered as Document No. 764 of 2006 in the Office of the Joint Sub Registrar – II, Thousand Lights, Chennai. They claimed to be the absolute owners of the said proeprty. In the plaint, the said property had been valued at Rs.15/- crores.

5. It had been further contended that the second plaintiff was born after several years of the marriage of the first plaintiff. He was born as a premature baby and this had affected his mental caliber and knowledge. It had been further stated that he was not doing any business or profession and only lived on the rental income. He married the third plaintiff on 22.12.2014.

6. It had been further contended that the second plaintiff got the acquittance of one Javvad, who hails from Keelakarai in Ramanathapuram District and who convinced the second plaintiff that if he has to get respect from his family members, then he must venture into some business and earn



money. He suggested importing air conditioners and television sets and selling them in the local market. It had been further stated that Javvad took the second plaintiff to Kancheepuram and showed him a Mall and that they could take a shop in the mall to do the business. Later, he took the second plaintiff to a shop in Purasawalkam, Chennai and stated that if they do business in imported chappels and rolex watches, they would easily get profit.

7. Thereafter, the second plaintiff under pressure from Javvad pledged the jewels of his mother the first plaintiff with private financiers including Muthoot Finance and raised a sum of Rs.27/- lakhs and handedover the said amount to Javvad. He had also sought diamond jewels to be pledged but that was not accepted by the financier. After receiving the money, Javvad started to avoid further communication and finally stopped communication.

8. The second plaintiff then took this issue to the notice of one Halwath, son of Anash Alimsha also from Keelakarai. The said Halwath told the second plaintiff that if he does business in T-shirts, then he could redeem the jewels and start a good business. He wanted a sum of Rs.14/- lakhs for



this purpose. He then introduced the second plaintiff to two other individuals

Hathi Ahmed and Syed Ibrahim.

9. The second plaintiff pledged further jewels of his mother in Indus Ind Bank for a sum of Rs.5/- lakhs and withdrew from his account a further sum of Rs.9/- lakhs and paid a total sum of Rs.14/- lakhs to Syed Ibrahim on the promise that the business would be commenced shortly in Ramanathapuram. Thereafter, the second plaintiff was informed that the business had run into losses. The second plaintiff then went to Ramanathapuram in search of them. He then came to know that they were staying in a Hotel near Ramanathapuram Bus Stand and found that Javvad is in another room.

10. When the second plaintiff demanded return of his money, the individuals took the second plaintiff to the first defendant and informed that they could get loan from the first defendant and with that money could start another business.



11. Thereafter, in August 2015, Hathi Ahmed called the plaintiff and requested him to come to meet the first defendant, who was staying in a hotel at Kenneth Lane, Egmore, Chennai. The plaintiff took along with him the original documents relating to the property at Door no. 212, New No. 218, Linghi Chetty Street, Chennai and met the first defendant. The second plaintiff requested a loan of Rs.40/- lakhs but the first defendant stated he would give a sum of Rs.30/- lakhs alone as loan. He then collected the original documents from the plaintiff and handed over Rs.30/- lakhs to the second plaintiff.

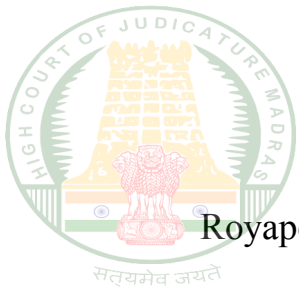
12. Even while the second plaintiff was counting the money, it was snatched away from him by Hathi Ahmed and Syed Ibrahim and they informed him that they would do business in importing cellphones and laptops from Hongkong and they could double the profit. After about more than a month, the second plaintiff enquired about the business. They informed that they had paid advance amount at Hongkong and Malaysia from the amount given by the second plaintiff.



13. In the meanwhile, the first defendant pressurised the second plaintiff for return of the loan amount given by him. He was informed by Hathi Ahmed that the business had failed. When the second plaintiff sought details, they stated that they would speak only to the first defendant. The first defendant then began to intimidate the plaintiff by stating that he would abduct the first plaintiff / his mother. He demanded the second plaintiff to repay the amount. He then called the second plaintiff to a hotel by threatening him that he would abduct his mother.

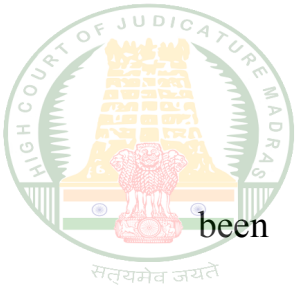
14. The second plaintiff then took the original title deeds of the suit schedule proeprty and met the first defendant. At that time, Hathi Ahmed and Syed Ibrahim informed the first defendant that they would arrange loan from a bank to settle the amount borrowed from the first defendant. The first defendant then collected the original title deeds of the suit schedule property from the second plaintiff. The list of these documents had been given in Schedule – B to the plaint.

15. It had been further contended in the plaint that on 22.07.2015, the first defendant threatened the second plaintiff and asked him to come to



Royapettah along with his mother/first plaintiff. The plaintiff took his mother, a pardanasin lady, on 22.07.2015 to Royapettah. The first defendant along with his men threatened and coerced the plaintiffs to come to the office of the Joint Sub Registrar-II, Thousand Lights, Chennai and obtained the signatures of the first and second plaintiffs in a document which had already been prepared. The plaintiffs were not shown the nature of the document or even the contents of the document. The first defendant had brought a knife to the Sub Registrar Office and kept it in his pant pocket.

16. It had been contended that even the Sub Registrar failed to ascertain the consensus of the first and second plaintiffs and the purpose of registration of the document. After registration, the first defendant left the plaintiffs with a warning that they should not disclose the facts to anybody else. It had been further contended that the plaintiffs later disclosed the events to the father of the third plaintiff, who through his friends enquired into the office of the Sub Registrar and with much effort found that the document which had been executed was actually a sale deed in respect of the suit property and with respect to the property at Linghi Chetty Street. It was only when a copy was obtained did the plaintiffs come to know that it had



been stated in the sale deed that for a total consideration of Rs.2,20,00,00,000/- out of which Rs.2,10,00,00,000/- had been earlier paid by cash on various dates, the property mentioned in Schedule-A had been sold to the second defendant. It had been noted that the balance of Rs.10/- lakhs had been paid by cheque.

17. The first plaintiff was advised by family elders to execute a settlement deed dated 10.07.2015 in favour of the second plaintiff, who inturn executed another settlement deed in favour of the third plaintiff on 13.07.2015. It had been stated that the settlement deeds were not actually intended to be acted upon but only to screen the first defendant away.

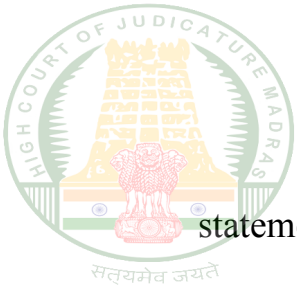
18. The plaintiffs stated that the sale deed dated 22.07.2015 which had been signed by the first and third plaintiffs were not at all intended to be acted upon. It had been contended that the consideration is inadequate and the sale deed had been obtained under threat and coercion. It is under those circumstances that the suit had been filed seeking a declaration that the sale deed is fraudulent and null and void and also seeking consequential reliefs and the costs of the suit.



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19. A written statement had been filed by the second defendant. It had been contended that the suit schedule property originally belonged to Natesa Gramani, who sold it to one Rajagopalan and Baskaradass, who inturn sold it to Syed Faseehuddin in whose name the records were also mutated. Thereafter, Syed Faseehuddin sold the suit schedule property through a registered sale dated 23.11.1996 to E.N.A. Naina Mohammed, who sold the property by sale deed dated 10.10.1968 to Hathija Beevi. She then sold the suit schedule property by a registered sale deed dated 23.04.1983 in favour of H.A.Cader and others. The purchasers came to be in possession of the suit schedule property. Thereafter, there were internal transactions over the property. The property then devolved to Jumailath, daughter of H.A.Cader, who executed a declaration deed. A general power of attorney was then created in favour of H.A.Cader by the other co-owners. In the said manner, the property further devolved and the property was finally sold on 31.07.2006 in favour of the first and second plaintiffs.

20. It had been contended that the second defendant has nothing to do with the averments in the plaint. It had been further contended that the



statements made by the plaintiffs in his plaint about getting acquaintance with various individuals and pledging jewels were all false and imaginary. It had been further stated that the first and second plaintiffs had sold the property by sale deed dated 22.07.2015 to the second defendant which document was registered as Document No. 865 of 2015 before the Sub Registrar -II, Thousand Lights. It had been contended that the second defendant had become the absolute owner of the suit schedule property. It had been stated that the first and second plaintiffs had received consideration of a sum of Rs.2,10,00,000/- in instalments on several dates and the balance of Rs.10/- lakhs was paid by cheque. It had been stated that the first and second plaintiffs had produced their PANcard at the time of registration and had voluntarily participated in the registration process. They had also undertaken to handover vacant possession of the suit schedule property and had also executed an affidavit in that regard. The first and second plaintiff however continued to reside in that property.

21. The second defendant claimed that the plaintiffs have not handed over vacant possession of the suit schedule property and have no intention of moving away from the property. Notices had been exchanged between the



learned counsels. It is under those circumstances that a counter claim had been raised that the settlement deeds dated 10.07.2015 and 13.07.2015 respectively executed by the first and second plaintiff are sham and nominal and null and void and for a mandatory injunction directing the plaintiffs to hand over vacant possession and for consequential reliefs of past and future damages for use and occupation.

22. The plaintiffs had filed a reply and additional reply statement to the counter claim. In the reply statement, the plaintiffs have once again reiterated the statements made by them in the plaint and have denied the averments made in the counter claim filed by the second defendant.

23. In the additional reply statement, a new fact had been stated by the plaintiffs that the second plaintiff had been honey trapped and photographs taken and was threatened. It was also contended that the plaintiffs were under constant threat and pressure and therefore were not able to narrate to anybody about the fact of execution of document in the Sub Registrar Office. They very specifically stated that the second defendant did not have sufficient source to pay the sale consideration. It had been further stated that the



settlement deeds executed were only owing to advise given by the elders in the family and were not meant to be acted upon.

24. On the basis of the pleadings, the followign issues were framed:-

“1) Whether the sale deed dated 22.07.2015 executed by the first plaintiff in favour of the second defendant is void on the grounds of fraud?

2) Whether the settlement deed dated 10.07.2015 executed by the first plaintiff in favour of the second plaintiff, registered as Doc.No. 2849 of 2015 on the file of the Sub Registrar, Keelakarai is sham and nominal, null and void, and not binding on the second defendant?

3) Whether the settlement deed dated 13.07.2015 executed by the second plaintiff in favour of the third plaintiff registered as Doc.No. 2851 of 2015 on the file of the Sub Registrar, Keelakarai is sham and nominal, null and void and not binding on the second defendant?

4) Whether the second defendant is entitled to a decree for mandatory injunction directing the plaintiffs to hand over vacant possession of the schedule mentioned property to the second defendant?



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5) *Whether the second defendant is entitled to mense profits of Rs.11,00,000/-?*

6) *Whether the second defendant is entitled to future mense profit for one month?*

7) *What relief are the plaintiffs entitled to?*

8) *Whether the second defendant is entitled to a decree in terms of his counter claim? and*

9) *What is the order as to costs?"*

25. The first defendant remained set exparte. During trial, the second plaintiff examined himself as PW-1 and further examined two other witnesses as PW-2 and PW-3. The second defendant examined herself as DW-1. The plaintiffs marked Exs. P-1 to P-9. The defendants marked Ex.D-1 to D-32.

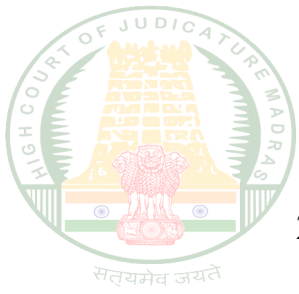
26. Heard arguments advanced by Mr.A.Sirajudeen, learned Senior Counsel for the plaintiffs and Mr.J.Barathan, learned counsel for the second defendant.



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27. Mr.A.Sirajudeen, learned Senior Counsel for the plaintiffs took the Court through the facts of the case. He made specific emphasis on the fact that the second plaintiff was born after several years of marriage of the first plaintiff and was born as a premature baby. The learned Senior Counsel stated that the mental caliber of the second plaintiff was not high and the second plaintiff could be easily deceived. In this connection, the learned Senior Counsel stated that the second plaintiff always ran the risk of being exploited by unscrupulous persons. The learned Senior Counsel then took the Court through the various instances wherein the second plaintiff had been misled into pledging the jewels of his mother to raise funds at the behest of stranger individuals to run businesses in importing air conditioners and computer and thereafter in cellphones and thereafter in selling T.Shirts.

28. In this manner, he had given huge sums of money to strangers, whom he called friends. They then introduced him to the first defendant to obtain further loan but to redeem the jewels. The first defendant had given a loan of Rs.30/-lakhs on the strength of the original documents of a property at Linghi Chetty Street but this amount of Rs.30/- lakhs was immediately snatched away by the two friends of the second plaintiff.



29. Thereafter, the second plaintiff again approached the first defendant seeking further loan and the first defendant threatened him that he would abduct the first plaintiff and called upon the first and second plaintiffs to come over to Purasawalkam. Thereafter a document had been executed and registered purporting to be the sale deed of the suit schedule property. The learned Senior Counsel contended that the first and second plaintiffs signed the documents out of fear and compulsion.

30. The suit had been filed claiming that they had been coerced and forced into signing that documents, to set aside that particular document / sale deed. The learned Senior Counsel pointed out all these facts and argued that the second plaintiff had been the victim of the fraudulent intentions of the first defendant. He further argued that in the sale deed it had been contended that consideration of Rs.2.10 crores had been paid earlier without any proof. He further contended that the second defendant had no source to pay that amount. Even the amount of Rs.10/- lakhs shown in the document was taken away by the henchmen of the defendants. The learned Senior Counsel further argued that the second defendant was very evasive in her answers to the questions during cross examination.



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31. The learned Senior Counsel pointed out that the first defendant was a very influential man in politics and had threatened the second plaintiff. The second defendant was only a name lender. Her husband was running a cable TV business. She had no source to purchase the property. He therefore urged that the Court should declare the said sale deed as fraudulent and null and void.

32. Mr.J.Barathan, learned counsel for the second defendant however disputed the said contentions. According to him, a sale deed could be stated to have been executed without any intention to be acted upon or could be termed as a fraudulent document. The learned counsel pointed out that the second plaintiff had been categorised as trustee of a large Trust and therefore disputed the contentions that his mental caliber was not up to the mark. The learned counsel contended that the plaint contained full of falsities. The learned counsel stated that the second plaintiff had willingly executed the sale deed with knowledge about the nature of the document. He further pointed out that the mother of the second plaintiff/ the first plaintiff had not protested at the execution of the document. The learned counsel argued that



thereafter the first plaintiff had executed a settlement deed in favour of the second plaintiff, who in turn executed a settlement deed in favour of the third plaintiff and stated that the second defendant had filed a counter claim to set aside all those settlement deeds as null and void and not binding on the second defendant. He contended that the suit should be dismissed and the counter claim should be allowed.

Issue No.1:

33. This issue surrounds the validity or otherwise of the sale deed dated 22.07.2015 executed by the first and second plaintiffs in favour of the second defendant.

34. It is the case of the plaintiffs that the sale deed is void on the ground of fraud.

35. Section 17 of the Indian Contract Act 1872 defines fraud, which is as follows:-



“17. 'Fraud' defined.—

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent', with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent. ”

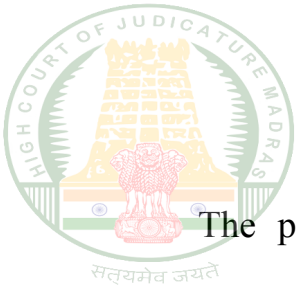
36. This would include any act committed by a party to a contract with intent to deceive another party and to induce him to enter into a contract with a false statement, with active concealment and promise without intention to perform and any other act to deceive.

37. In the instant case, the plaintiffs allege that the sale deed executed by them on 22.07.2015 with respect to the suit schedule property in favour of



the second defendant is tainted with fraud, practised, not by the second defendant but by the first defendant, who is a stranger to the deed of sale.

38. In the plaint, long and winding facts had been stated, finally culminating in the second plaintiff coming into the grasp of the first defendant. It had been very specifically pleaded that the second plaintiff, who had been categorised as an individual who could be easily misled, first coming into the contact with one Javvad, who was known to him for about three years. They both belonged to Keelakarai in Ramanathapuram District. It is stated that Javvad suggested that to get respect within his family, the plaintiff will have to earn money by doing some business and in this connection suggested importing air conditioners and television sets and selling them in the local market. The second plaintiff was also taken to Kancheepuram and a mall was also pointed out and it was informed that if a shop is taken on rent, then business could be done profitably. Later, the second plaintiff was taken to another shop in Purasawalkam and was shown a foot wear shop and was informed that if they do business in imported chappels and rolex watches, they could earn a lot of money. In this connection, Javvad asked the plaintiffs to part with a sum of Rs.50/- lakhs.



The plaintiffs pledged the jewels of his mother with private financiers including Muthoot Finance and raised a sum of Rs.27/- lakhs. Thereafter, Javvad disappeared.

39. The above is one set of facts pleaded by the second plaintiff. Further facts had been averred linking to this set of facts. The documents filed by the second plaintiff when examined as PW-1 were a certified copy of the sale deed dated 31.07.2006, certified copy of a settlement deed dated 10.07.2015, certified copies of settlement deeds dated 13.07.2015 and 22.07.2015, a copy of a complaint given by the second plaintiff to the Nungambakkam Police Station on 02.07.2016, a certified copy of FIR in Cr.No. 638 of 2016 and a legal notice issued by the second defendant to the plaintiffs dated 14.07.2016. Unfortunately, no document has been produced to establish the contact with Javvad and the parting of Rs.27/- lakhs to Javvad. It had been specifically stated that the second plaintiff had pledged the jewels of the first plaintiff/his mother with Muthoot Finance. Documents relating to that transaction atleast could have been produced, but had not been produced. Any statement made by the plaintiff in the plaint must be proved in manner known to law. It need not be proved beyond reasonable doubt but the



probabilities must point to atleast a belief that the staements are true. If there are no other document available except for the pledging of jewels with Muthoot Finance, the plaintiff could atleast have taken out a subpoena to the said Javvad to speak about the chain of events relating to him pleaded by the second plaintiff in the plaint.

40. In the plaint, it had thereafter been stated that the second plaintiff brought the issues relating to Javvad to the notice of one Halwath, son of Anash Alimsha also from Keelakarai. Halwath then stated that the second plaintiff can do business in T.Shirts and could redeem the jewels and introduced the second plaintiff to two other people, Hathi Ahmed and Syed Ibrahim. The second plaintiff pledged some other jewels of his mother in Indus Ind Bank for a sum of Rs.5,00,000/- and withdrew a further sum of Rs.9,00,000/- from his bank account and paid a total sum of Rs.14/- lakhs to Syed Ibrahim, who promised that the business would be commenced shortly in Ramanathapuram.

41. Among these statements in the plaint, documents could have and should have been produced atleast relating to the pledging of jewels in Indus



Ind Bank and withdrawal of Rs.9,00,000/- from the bank account. Even if the plaintiff was not in possession of those documents, summons could have been issued to the Bank officials from Indus Ind Bank and from his Bank to produce those documents. These are the events which finally culminated in the plaintiff knocking at the door of the first defendant.

42. It is not the case of the second plaintiff that he met the first defendant for the first time independently and thereafter commenced transactions which finally led to the execution of the sale deed.

43. It had been further stated in the plaint that the second plaintiff tried to contact several times and after two months, Hathi Ahmed called him and informed that the business had run into loss. The plaintiff then went to Ramanathapuram, searching for them and found them staying in a hotel near Ramanathapuram Bus stand. Atleast the name of the hotel could be given, if some semblance of credibility is to be shown to the averments in the plaint.

44. In the hotel the second plaintiff found not only Hathi Ahmed and Syed Ibrahim in one room but also Javvad in another room. Javvad however



avoided the second plaintiff and went out of the hostel. When the second plaintiff demanded Hathi Ahmed and Syed Ibrahim to return his money, they took him to the first defendant and stated that they could obtain some loan from the first defendant and with that money start another business. Thus, the second plaintiff was led to the first defendant only owing to his misfortunes with Javvad with Halwath and later with Hathi Ahmed and Syed Ibrahim. None of them were examined as witnesses. It had been specifically stated that Javvad and Halwath were from Keelakarai in Ramanathapuram District, the very same place from which the second plaintiff also hailed from. Hathi Ahmed and Syed Ibrahim were also from Ramanathapuram District which is the District of the second plaintiff. The plaintiff cannot claim ignorance about their whereabouts. Even if they did not voluntarily come forward to tender evidence, subpoena could have been issued to them.

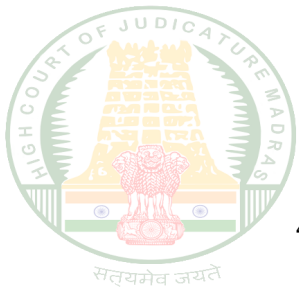
45. Order XVI Rule 10 CPC makes it very clear that when summons are issued to a witness and the witness does not appear to tender evidence then the Court can take stringent action against the said witness. The second plaintiff had not taken any such steps. It could only be inferred that either the



pleadings are false and the individuals are figments of imaginary or the second plaintiff deliberately did not examine them. Even if he had not examined them, atleast three documents could have been produced, namely, the documents relating to the pledge of jewels with Muthoot Finance, with Indus Ind Bank and the document relating to the withdrawal of Rs.9,00,000/- from his bank account. The plaintiffs should have established the string of these averments made in the plaint. They are important and crucial because it is only owing to the misfortunes suffered did the second plaintiff meet the first defendant.

46. Section 17 of the Indian Contract Act which defines fraud relates to a contract and fraud being committed to coerce entering into a contract by one of the parties to the contract.

47. In the instant case, the sale deed had been executed by the first and second plaintiffs in favour of hte second defendant. No pleadings had been advanced that the second defendant had induced the first and second plaintiffs to enter into the deed of sale.



48. In the plaint, it had been stated that Hathi Ahmed called the second plaintiff over phone and asked him to meet the first defendant, who was staying in a hotel at Kenneth Lane, Egmore, Chennai. It is contended that the second plaintiff took the original documents relating to his property at Old Door No. 212, new No. 218, Linghi Chetty Street, Chennai and met the first defendant. Hathi Ahmed and Syed Ibrahim were also present. They introduced the second plaintiff to the first defendant.

49. This one sentence stated in the plaint make it imperative that the plaintiffs should have taken some steps to examine if not Javvad and Halwath, atleast one of either Hathi Ahmed or Syed Ibrahim. The second plaintiff never and could never in his life had known the first defendant but for being introduced to him by Hathi Ahmed and Syed Ibrahim. He would never and ever have met Hathi Ahmed or Syed Ibrahim, if they had not been introduced to him by Halwath of Keelakarai in Ramanathapuram District. He would never and ever had any necessity to meet Halwath, if he had not been misled by Javvad also of Keelakarai in Ramanathapuram District. Therefore, it is a whole series of transactions. The second plaintiff had not even thought it necessary to atleast issue summons or subpoena to anyone of the four individuals.



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50. In the plaint, it had been further stated that on presentation of the documents relating to Linghi Chetty Street to the first defendant, the second plaintiff sought loan of Rs.40/- lakhs but was given cash of Rs.30/- lakhs and that when he was counting the amount, the cash was snatched away by Hathi Ahmed and Syed Ibrahim.

51. It is not the case of the plaintiff that they had stolen it from him. They contended that they would do business by sourcing cellphones and laptops from Hongkong and get double the profit. If they had got double the profit, the second plaintiff would have benefitted. Therefore, it should be taken that he had parted with that money willingly. After about 1 ½ months, the second plaintiff enquired with Hathi Ahmed and Syed Ibrahim about the business and they replied that they had made advance payment at Hongkong and Malaysia out of the amount received by them.

52. It had been further contended by the second plaintiff that the first defendant, who had parted with Rs.30/- lakhs as loan on the strength of the title deeds of the property at Linghi Chetty Street, started to presurprise the



second plaintiff for return of the loan. The first defendant then informed the second plaintiff that he was informed by Hathi Ahmed that the business had run into loss. When the second plaintiff contacted them, they said they would speak only to the first defendant.

53. In the plaint thereafter the plaintiff had narrated about the acts of the first defendant. He stated that the first defendant had threatened that he would abducted the first plaintiff / mother of the second plaintiff. They then went to meet him in a hotel and the second plaintiff took the original title deeds of the schedule mentioned property and met the first defendant. It was stated that at that time, Hathi Ahmed and Syed Ibrahim were also present and they suggested that they would arrange a bank loan to settle the amount received from the first defendant. The first defendant also promised to lend amount and collected the original title deeds of the property.

54. To speak about this particular instance when there was physical handing over of the title deeds of the suit schedule property by the second plaintiff and the first plaintiff to the first defendant, the required witnesses would be the first plaintiff, Hathi Ahmed and Syed Ibrahim. None of them has grazed the witness box or even been summoned to graze the witness box.



Even if it is to be taken that the first plaintiff is a pardanasin lady, the second plaintiff should have taken steps to summon Hathi Ahmed and Syed Ibrahim.

They may not have still appeared before the Court.

55. Order XVI Rule 10 CPC provides authority to the Court to deal with witnesses, who do not answer to the summons issued by the Court.

Order XVI Rule 10 CPC is as follows:-

“10. Procedure whose witness fails to comply with summons.

(1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court-

(a) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified, examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or



cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.”

56. The plaintiffs who had the initial burden to prove their case, have



miserably failed.

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57. The plaintiffs then alleged that the first defendant and Hathi Ahmed and Syed Ibrahim acted in collusion with each other. If that be the case and the role of Hathi Ahmed and Syed Ibrahim were similar to that of the first defendant, then they should have been impleaded as defendants along with the first defendant.

58. The narration of the facts are about alleged acts of fraud or collusion or deception or misrepresentation against the second plaintiff but the dates have not been given. The only date given is 22.07.2015. The date of execution of the sale deed. Order VI Rule 4 of CPC is as follows:-

“4. Particulars to be given where necessary.

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with



dates and items if necessary) shall be stated in the pleading.”

59. When an allegation of fraud is made in a plaint, specific details will have to be necessarily given.

60. In **2022 2 SCC 573 [Electrosteel Castings Ltd., Vs. UV Asset Reconstruction Company Ltd., and others]**, it had been held as follows:-

“7.2. However, it is required to be noted that except the words used “fraud”/“fraudulent” there are no specific particulars pleaded with respect to the “fraud”. It appears that by a clever drafting and using the words “fraud”/“fraudulent” without any specific particulars with respect to the “fraud”, the plaintiff-appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the word “fraud”/“fraudulent” is not sufficient to satisfy the test of “fraud”. As per the settled proposition of law such a pleading/using the word “fraud”/“fraudulent” without any material particulars would not tantamount to pleading of “fraud”.



8. In ***Bishundeo Narain [Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : 1951 SCR 548]*** in para 22, it is observed and held as under : (SCC p. 454)

“22. ... Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code.”

8.1. Similar view has been expressed in ***Ladli Parshad Jaiswal [Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd., (1964) 1 SCR 270 : AIR 1963 SC 1279]*** and after considering the decision of the Privy Council in ***Bharat Dharma Syndicate Ltd. v. Harish Chandra [Bharat Dharma Syndicate Ltd. v. Harish Chandra, 1937 SCC OnLine PC 24 : (1936-37) 64 IA 143]***, it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach



*of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in **K.C. Sharma & Co. [Union of India v. K.C. Sharma & Co., (2020) 15 SCC 209]** it is held that “fraud” has to be pleaded with necessary particulars. In **Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364]**, it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation. ”*

61. It is contended that the first defendant called the second plaintiff on 22.07.2015 to come and asked him along with this mother and not to bring any other person. In this connection, the plaintiffs rely on the evidence of PW-2 Sabik Rahman. He was a driver by profession and had been with the family of the plaintiffs from the year 1992. He hails from Erawadi Village in Ramanathapuram District and his village is situated near Keelakarai. In his proof affidavit, PW-2 had stated about the family members of the plaintiffs and about the second plaintiff's conduct. He did not directly know about the execution of the sale deed but only learnt about it. He had enquired with the first plaintiff who told him that the signatures had been obtained as if it was



for giving loan on the proeprty and she did not sell the property. He also spoke about pleading of jewels of the first plaintiff with the private bank, Indus Ind Bank and other places. He also spoke about a Kasumalai made gold pledged with a private pawnor in Nungambakkam. Atleast since the addresses were known to establish these facts, the second plaintiff could have either examined the individuals from the said place as witnesses or produced documents of pledge. PW-2 further stated that he had made arrangements for redeeming the jewels. Documents in that regard had also not been produced.

62. In the plaint, it had been stated that the registration of the sale deed took place in the office of the Joint Sub Registrar -II, Thousand Lights, Chennai. The plaintiffs had filed Application No. 2566, 2569, 2573, 2575, 2577, 2581, 2585, 2588 and 2592 of 2024 seeking to issue summons to a string of individuals to examine them as witnesses. They were sought to be examined as witnesses not to prove his case in the plaint.

63. The second defendant had, according to him concealed facts during cross examination by stating that only her husband knew the details and that she had no relationship with the first defendant. It was for that



reason the individuals mentioned in the said applications were sought to be summoned.

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64. It is trite in law to point out that the plaintiffs should first establish their case, even if it is by preponderance of probabilities. They cannot rely on the weakness of the case of the defendant. Those applications were dismissed by a learned Single Judge of this Court by order dated 14.06.2024. I am informed that further appeals have also been dismissed.

65. In the order of the learned Single Judge, he had very categorically stated that it is for the plaintiffs to lead evidence and prove that the sale deed was brought about by coercion and is liable to be set aside. The plaintiffs have miserably failed to produce requisite evidence to substantiate the averments in the plaint.

66. It must also be pointed out that under Section 114(e) of the Indian Evidence Act 1872, a presumption arises that any every official act has been done in manner known to law and lawfully. The sale deed had been registered and a presumption naturally arises that the registration had been done in manner known to law.



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67. It must be further pointed out that under Section 114(g) of the Indian Evidence Act, 1872, a presumption arises if evidence is not adduced though required. Adverse inference will have to be drawn against the plaintiffs since they had not taken steps to examine or even issue summons to Javvad, Halwath, Hathi Ahmed and Syed Ibrahim.

68. Only when the plaintiffs had discharged their burden will the onus shift to the defendants to establish their case.

69. In the instant case, non examination of the above named individuals is fatal to the case of the plaintiffs.

70. The registration copy of the sale deed dated 22.07.2015 had been marked as Ex.P4. There were two witnesses to the said document S.Sekar and J.Surya. It had been prepared by an Advocate V.Sivagnam. It is pertinent to point out that the issue as framed is whether this sale deed dated 22.07.2015 is void on the ground of fraud.

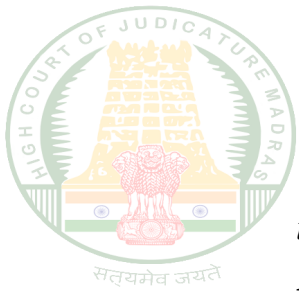


71. The only ground of fraud as alleged in the plaint is that the plaintiffs did not know the nature of the document which they were executing and they had not received the consideration. The right of an unpaid seller is also provided under Section 55(4)(b) of the Transfer of Property Act and it provides that when the ownership of the property had passed to the buyer before payment of the purchase amount, then the seller is entitled to a charge upon the property in the hands of the buyer for the amount of the purchase money or any part thereof remaining unpaid and for interest of such amount. In the instant case, possession had not been handed over to the second defendant. The possession is still retained by the plaintiffs. They seek to impinge the document on the ground of fraud.

72. The learned counsel for the plaintiffs had placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***AIR 2022 SC 564 : 2022 18 SCC 489 / Kewal Krishan Vs. Rajesh Kumar and Others*** wherein at paragraph Nos. 14, 15 and 16 it had been held which are as follows:-

“Consideration of submissions and reasons

14. We have given our careful consideration to the submissions. The case made out by the respondents in



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their written statement was that Sudarshan Kumar, who was employed abroad, remitted large amounts to the appellant, his younger brother, who was unemployed at that time. The case of the respondents was that Sudarshan Kumar paid the entire consideration for acquiring the suit properties under the sale deeds of 1976. The contention of the respondents is that instead of purchasing suit properties only in the name of Sudarshan Kumar, the appellant incorporated his name in the sale deeds along with Sudarshan Kumar. It is an admitted position that the said Sudarshan Kumar did not step into the witness box. Moreover, there is a finding recorded by the District Court that no evidence was adduced by Sudarshan Kumar to prove that certain amounts were transmitted by him from a foreign country to the appellant. This finding has not been disturbed by the High Court. The modified decree passed by the High Court by the impugned judgment and order proceeds on the basis of the finding that the appellant and Sudarshan Kumar were the joint owners of the suit properties as Sudarshan Kumar failed to establish his claim that he was the sole owner of the suit properties. The respondents have not chosen to challenge the impugned judgment and order and therefore, the finding that the appellant and Sudarshan Kumar were the joint owners of the suit properties has become final. Hence, reliance



placed by the respondents on the letter at Ext. D-3 will not help them.

15. A copy of the unamended plaint in one of the two suits is placed on record along with the counter-affidavit. In Para 3 of the unamended plaint, there is a specific pleading that both the sale deeds of 10-4-1981 were null and void as the same were without consideration. In the plaint, it is specifically pleaded that suit properties which were worth more than Rs 30,000 were shown to have been sold at a throwaway price. The prayer for injunction was made in the unamended plaint on the basis of the title claimed by the appellant as a joint owner of the suit properties along with Sudarshan Kumar.

16. Admittedly, there is no evidence adduced on record by Sudarshan Kumar that his minor sons had any source of income at the relevant time and that they paid him consideration as mentioned in the sale deed. Similarly, no evidence was adduced to show that Sudarshan Kumar's wife had any source of income and that she paid consideration mentioned in the sale deed. An issue was specifically framed by the trial court on the validity of the sale deeds. There is a specific finding recorded by the District Court that there was no evidence adduced to show that Sudarshan Kumar's wife and minor children paid consideration as shown in the



sale deeds. In fact, before the District Court, it was pleaded that Sudarshan Kumar's wife had brought some money from her parents. The District Court in para 11 of the judgment held that no evidence was adduced to prove the said contention. Therefore, there is a categorical finding recorded in the same paragraph by the District Court that Sudarshan Kumar, by taking advantage of the power of attorney, transferred the suit lands to his own minor sons and his wife without any consideration. ”

73. The learned Senior Counsel for the plaintiffs stated that even in this case, no evidence had been adduced to record that the second defendant had sources to pay the consideration amount and that the consideration had actually been paid as stated in the sale deed. In the sale deed, it had been stated that the total consideration was Rs.2,20,00,000/- and that Rs.2,10,00,000/- had been paid earlier in cash on various dates and on the date of registration of the sale deed, a sum of Rs.10/-lakhs had been paid by cheque.

74. The learned Senior Counsel stated that the second defendant, in her evidence did not come forward to give any positive evidence about either source of amount or payment of advance amounts to the plaintiffs.



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75. In the proof affidavit of PW-1, it had been contended that the sale deed dated 22.07.2015 should be declared as void since the plaintiffs had no intention to act on the deed and it was purely a result of coercion exercised by the first defendant. It had been stated that the consideration had also not been paid. PW-1 was questioned whether he had informed anyone immediately after the execution of the sale deed. The questions and answers were as follows:-

“Q77: After returning from the Sub registrar Office, Royapettah, had you told the occurrence to your wife?

A: No.

Q78: When did you tell the same to your wife?

A: I did not tell her but through my father-in-law, she came to know.

Q79: When did your father-in-law come to know?

A: I do not know.

Q80: When did your father-in-law ask you about it?

A: I do not remember.



Q81: How did your father-in-law come to know about the sale of the suit property?

A: My father-in-law is a real estate business man. During the course of his business he has come to know.

Q82: Whether have you informed either to your wife or to your family members or to the members of the trust board?

A: I did not inform anyone of them.

Q83: Whether your mother has informed?

A: No, she has also not informed to anyone.

Q84: (Ex.P5 is shown to the witness) Is it correct to state that for the first time you have given complaint to poliec only on 02.07.2016?

A: Yes. Witness adds: Till then I was in pressure of threatening.

Q85: Is it correct to state that in between 22.07.2015 to 02.07.2016 you attended several times the trust board meeting?

A: I do not remember.

Q86: Is it correct to state that in between 22.07.2015 to 02.07.2016 you had visited your educational institutions number of times?

A: Yes.”



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76. The conduct of PW-1 is extremely strange. Neither the first nor second plaintiff had thought it appropriate to inform anybody about the registration of the sale deed.

77. With respect to the amount of Rs.10/- lakhs paid by cheque on the date of registration, it is seen that the said cheque had been presented for payment in Standard Chartered Bank, Mount Road Branch.

78. Question Nos. 95, 96 and 97 are as follows:-

“Q95: I put it to you that on 25.07.2015 your mother had presented the cheque for collection in Standard Chartered Bank, mound Road.

A: No. They themselves presented the cheque in our account without our knowledge. Further Ashok Kumar and my friends had brought me to the bank and made me to sign to withdraw the amount and collected the amount and they had gone with the amount.

Q96: Whether you had gone to bank in your car?

A: Yes. I drove my car to the bank, in the bank they were waiting for me.

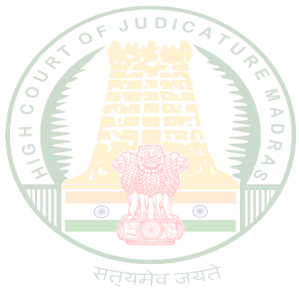


Q97: In your plaint you have stated “Even the cheque for Rs.10,00,000/- as mentioned in the sale deed was not at all handed over to hte first and second plaintiffs” you have not stated in plaint that the cheque was presented for collection and the amount of Rs.10,00,000/- was credited in your account and later the 1st defendant withdrew the same.

A: Yes, I did not state in plaint.”

79. In the plaint, it had not been stated that the cheque was presented for collection and the amount was credited to the account and later the first defendant withdrew the same. However in evidence, in answer Question No. 95 supra, PW-1 stated that the cheque was presented in the account by the defendants without his knowledge and later the amount had been collected. The evidence which is not supported by pleadings or is contrary to the pleadings can be looked into by hte Court.

80. With respect to the four individuals PW-1 had admitted that they are his friends. Question No. 42 was as follows:-



“Q42: I put it to you that all the 4 above said

WEB COPY *persons are your friends?*

A: Yes.”

81. The learned counsel for the defendants placed reliance on the Judgment of the Hon'ble Supreme Court reported in

(i) **1999 (3) SCC 573 [Vidhyadhar Vs. Manikrao and another];**

(ii) **2009 (4) SCC 193 [Kaliaperumal Vs. Rajagopal and another];**

(iii) **2020 (7) SCC 366 [Dahiben Vs. Arvindbhai Kalyanji Bhanusali**

(Gajra) Dead and others];

82. In **1999 (3) SCC 573 [Vidhyadhar Vs. Manikrao and another]**, the Hon'ble Supreme Court had held as follows:-

“35. Even if the findings recorded by the High Court that the plaintiff had paid only Rs 500 to Defendant 2 as sale consideration and the remaining amount of Rs 4500 which was shown to have been paid before the execution of the deed was, in fact, not paid, the sale deed would not, for that reason, become invalid on account of the provisions contained in Section 54 of the Transfer of Property Act, 1882 which provide as under:



“54. ‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or



right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a “price paid or promised or part-paid and part-promised”. Price thus constitutes an essential ingredient of the transaction of sale. The words “price paid or promised or part-paid and part-promised” indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs 100, the sale would be complete.

37. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in **Gayatri Prasad v. Board of Revenue [1973 All LJ 412]** it was held that non-payment of a portion of the sale price would not affect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. To the same effect is the decision of the Madhya Pradesh High Court in **Sukaloo v. Punau [AIR 1961 MP 176 : ILR 1960 MP 614]**. ”



83. In **2009 (4) SCC 193 [Kaliaperumal Vs. Rajagopal and another]**,

again relating to payment or non payment of the sale consideration, the

Hon'ble Supreme Court had held as follows in paragraph Nos. 15 to 17:-

“15. The question posed for our consideration is whether title to the disputed properties passed to the appellant when the sale deed dated 26-6-1983 was registered on 26-10-1983, though admittedly no amount was paid towards consideration to the respondents.

16. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs 100 or more and that is by a registered instrument.

17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 (“the Act”, for short) defines “sale” as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”. If the intention of parties was that title should pass on



execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. ”

84. In **2020 (7) SCC 366 [Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead and others]**, the Hon'ble Supreme Court with respect to the same issue had held as follows in paragraph Nos. 29.4 to 29.9:-

“29.4. The sale deed records that the 36 cheques covering the entire sale consideration of Rs 1,74,02,000 were “paid” to the plaintiffs, during the period between 7-7-2008 to 2-7-2009.

29.5. If the case made out in the plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs 1,73,62,000 allegedly remained unpaid throughout. It is, however, inconceivable that if the payments had remained unpaid, the plaintiffs would



have remained completely silent for a period of over five-and-half years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

29.6. The plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the sale deed on this ground.

29.7. Section 54 of the Transfer of Property Act, 1882 provides as under:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”

The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a “price paid or promised or part-paid and part-promised”. Price thus constitutes an essential ingredient of the transaction of sale.



29.8. *In Vidhyadhar v. Manikrao [Vidhyadhar v. Manikrao, (1999) 3 SCC 573] this Court held that the words “price paid or promised or part-paid and part-promised” indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.*

29.9. *In view of the law laid down by this Court, even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered*



sale deed. We find that the suit filed by the plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11(a). ”

85. In **(2017) 16 SCC 680, [National Insurance Company Ltd., Vs. Pranay Sethi]**, it had been held that when there are conflicting Judgments, the earlier Judgment should be taken as precedent in para Nos. 16 to 20 are as follows:-

“16. In State of Bihar v. Kalika Kuer [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448] , it has been held :

“10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...”



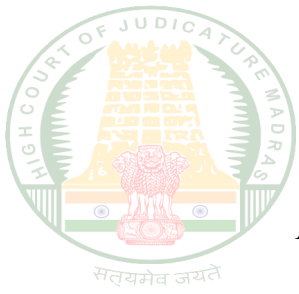
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The Court has further ruled :

“10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

17. In *G.L. Batra v. State of Haryana* [*G.L. Batra v. State of Haryana*, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575] , the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.* [*Union of India v. Godfrey Philips India Ltd.*, (1985) 4 SCC 369 : 1986 SCC (Tax) 11], *Sundarjas Kanyalal Bhatija v. Collector, Thane* [*Sundarjas Kanyalal Bhatija v. Collector, Thane*, (1989) 3 SCC 396] and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* [*Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*, AIR 1968 SC 372] . It may be noted here that the Constitution Bench in *Madras Bar Assn. v. Union of India* [*Madras Bar Assn. v. Union of India*, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in *Union of India v.*



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Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by the later Constitution Bench.

18. In this regard, we may refer to a passage from **Jaisri Sahu v. Rajdewan Dubey [Jaisri Sahu v. Rajdewan Dubey, AIR 1962 SC 83]** : (AIR p. 88, para 10)

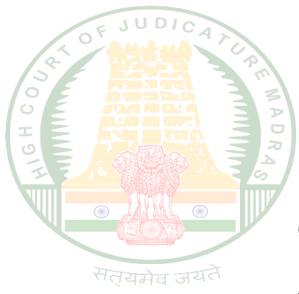
“10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [**Dasrath Singh v. Damri Singh, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219**] given by a Bench is not brought to the notice of a Bench [**Ram Asre Singh v. Ambica Lal, AIR 1929 Pat 216**] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in **Gundavarupu**



Seshamma v. Kornepati Venkata Narasimharao
[Gundavarupu Seshamma v. Kornepati Venkata
Narasimharao, 1939 SCC OnLine Mad 367 : ILR 1940
Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, Para 1687, pp. 799-800:

‘1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.’

In Katragadda Virayya v. Katragadda Venkata Subbayya [Katragadda Virayya v. Katragadda Venkata Subbayya, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in **D.D. Bilimoria v.**



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Central Bank of India [D.D. Bilimoria v. Central Bank of India, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340] . The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court.”

19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.

20. In the context, we may fruitfully note what has been stated in ***Pradip Chandra Parija v. Pramod Chandra Patnaik [Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1]*** . In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench [***Pradip Chandra Parija v. Pramod Chandra Patnaik, Civil Appeal No. 791 of 1993, order dated 24-10-1996 (SC)***] disagreeing with the three-Judge Bench [***Nityananda Kar v. State of***

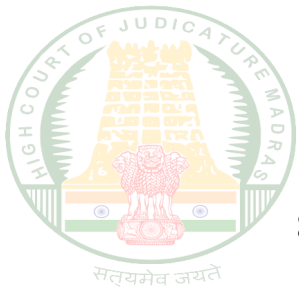


Orissa, 1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177]

decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated : (SCC p. 4, para 6)

“6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ...””

86. Thus as held by the Hon'ble Supreme Court in ***1999 (3) SCC 573 [Vidhyadhar Vs. Manikrao and another]***; (ii) ***2009 (4) SCC 193 [Kaliaperumal Vs. Rajagopal and another]***; and (iii) ***2020 (7) SCC 366 [Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead and others]***, the non payment of a portion of the sale price would not affect the validity of the sale.



87. The position had been clearly reiterated. In the Judgment relied on by the learned Senior Counsel for the plaintiffs in ***Kewal Krishan*** reported in AIR 2022 SC 564 :: 2022 (18) SCC 489, the earlier three Judgments of the Hon'ble Supreme Court had not been brought to the notice of the Hon'ble Supreme Court.

88. In view of the above discussion, I hold that the plaintiffs have miserably failed to hold that the sale deed is vitiated by any circumstances much less fraud.

89. As observed by the Hon'ble Supreme Court in ***2020 (7) SCC 366 [Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead and others]*** in ***paragraph No. 29.9***, there is no ground for cancellation of the sale deed. The plaintiffs may have other remedies under law for recovery of the balance sale consideration if they establish that there is actually balance sale consideration payable, but could not be granted the relief of cancellation of the registered sale deed.



90. The plaintiffs had also examined two further witnesses apart from the second plaintiff. They were examined as PW-2 and PW-3. They spoke about the mental caliber of the second plaintiff. They claimed that they knew the second plaintiff right from his childhood and stated that he was a person, who could be easily misled. However, the crucial aspect is the meeting with the first defendant and the circumstances under which the second plaintiff had met the first defendant and the receipt of Rs.30/- lakhs from the first defendant as loan and the execution of the document in the Sub Registrar Office. These are facts which are known exclusively to the second plaintiff and to a little extent of the first plaintiff.

91. PW-2 and PW-3 are strangers to these surrounding circumstances. Their evidence does not help and had not advanced the case of the plaintiffs so far as the surrounding circumstances which led to the second plaintiff to come in contact with the first defendant. There is no evidence about all those facts stated in the plaint.

92. It is the second plaintiff, who had this exclusive knowledge about his acquaintance with Javvad, Halwath, Syed Ibrahim and Hathi Ahmed. No



steps had been taken to examine those individuals. That is fatal to the case of the plaintiffs.

93. The issue is answered against the plaintiffs.

Issue Nos. 2 and 3:

94. These two issues surround seeking declaration in the counter claim filed by the second defendant, as null and void, the settlement deed dated 10.07.2015 executed by the first plaintiff in favour of the second plaintiff registered as document No. 2849 of 2015 on the file of the Sub Registrar Office, Keelakarai and the settlement deed dated 13.07.2015 executed by the second plaintiff in favour of the third plaintiff. It had been registered as Document No. 2851 of 2015 again on the file of the Sub Registrar Office, Keelakarai.

95. Even in the plaint, the plaintiffs have very specifically stated that these two settlement deeds had been executed only to screen the suit property from the hands of the defendants and were not intended to be fully acted upon.

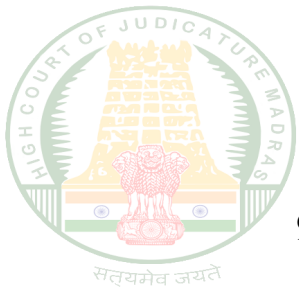


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96. The second defendant had filed a counter claim very specifically seeking the relief that both the settlement deeds are sham and nominal and not binding on the second defendant. It had been stated that the sale deed dated 22.07.2015 had been executed by free will consent by the first and second plaintiffs and that the two settlement deeds which are sought to be declared as null and void were never meant to be acted upon by the plaintiffs.

97. A careful perusal of the two documents reveal that they had been registered subsequently by antedating the date of execution. The settlement deed dated 10.07.2015 had been marked as Ex.P2 and the settlement deed dated 13.07.2015 had been marked as Ex.P-3.

98. A perusal of Ex.P-2 would show that even though it is dated 10.07.2015, it had been presented for registration on 02.11.2015. It is very obvious that it had been created only to ensure that the second defendant does not obtain the benefits of the sale deed dated 22.07.2015 executed in her favour by the first and second plaintiffs.



99. A perusal of Ex.P-3 which is the settlement deed dated 13.07.2015

shows that it had been presented for registration on 04.11.2015.

100. Both these documents have been subsequently prepared and antedated. On that one ground itself, they have to be declared as sham and null and void. No reasons had been given as to why they had not been presented for registration on the dates when they had been allegedly executed.

101. Even in the plaint as stated above, it had been very clearly stated that they were not meant to be acted upon. This shows that the three plaintiffs had joined together in mala fide collusion among themselves to deny the second defendant of her lawful rights as purchaser of the property. The two documents are sham and nominal. They were never meant to be acted upon. No right had flowed owing to the registration of the two documents.

102. PW-1 was cross examined on this issue:-

“Q105: Is it correct to state that Ex.P2 and Ex.P3 were prepared, executed and registered on the same day?”



A: Yes. Witness adds: I did not do that since I was on pressure, my family members had prepared the documents.

Q107: Is it correct to state that the stamp papers for Ex.P2 and P3 were purchased at Chennai?

A: Yes.

Q108: In both Ex.P2 and P3, there are only one stamp paper is available other remaining stamp duty were paid directly in the Sub-Registrar Office, Ramanathapuram.

A: Yes.

Q111: Is it correct to state that Ex.P2 and P3 have been prepared on the advice of the Advocate who drafted them?

A: Yes.

Q114: You have stated in your plaint that on the advice of family elders in order to stop the sale of the suit property these two documents prepared and registered who are those family elders?

A: My brothers and my father's brother Yusuf."



103. PW-1 had very categorically stated that two documents had been created only subsequently after the execution of the sale deed. They had been prepared only after the execution of the sale deed. On the date when the two documents were actually prepared and presented for registration on 02.11.2015, the first and second plaintiffs did not have any right, title or interest over the property.

104. I hold that the said two documents will necessarily have to be declared as sham and nominal and not binding on the second defendant. Both the issues are answered in favour of the second defendant.

Issue No.4:

105. In view of the answer given to Issue Nos. 1 to 3, since it had been held that the sale deed executed by the first and second plaintiffs in favour of the second defendant is valid, it only follows that the possession of the plaintiffs in the suit schedule property is unlawful. They will necessarily have to handover possession to the second defendant.



106. It is held that the second defendant is entitled for a decree of mandatory injunction directing the plaintiffs to handover vacant possession of the suit schedule property within a period of two months from the date of this Judgment.

107. A direction is therefore given that the plaintiffs should vacate and handover possession of the suit property within a period of two months from the date of this Judgment.

108. The issue is answered in favour of the second defendant.

Issue Nos. 5 and 6:

109. Both these issues surround the mense profits to be paid to the second defendant. It is claimed that it should be paid at the rate of Rs.1,00,000/- per month.

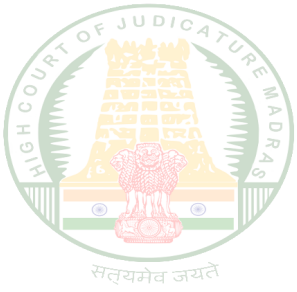
110. Issue No. 5 relates to past mense profits at the rate of Rs.1,00,000/- per month for a period of 11 months from November 2015 to



September 2016 and Issue No. 6 relates to the mense profits payable to the second defendant by the plaintiffs at the rate of Rs.1,00,000/- per month till they vacate the premise.

111. Even in the plaint, the plaintiffs had stated that the market value of the property is Rs.15/- crores on the date of filing of the suit. It is therefore seen that the mense profit sought by the second defendant is very reasonable compared to the value of the property as disclosed in the plaint. Since the sale deed in favour of the second defendant had been upheld, it is only appropriate that the second defendant is also declared to be entitled for mense profits till possession is handed over by the plaintiffs of the suit property.

112. A direction is given that the plaintiffs are liable to pay to the second defendant past mense profits totalling to Rs.11,00,000/- for a period of 11 months from November 2015 till September 2016 and also at the rate of Rs.1,00,000/- per month from October 2016 till they actually vacate and handover vacant possession.



113. The second defendant is permitted to recover the said amount in manner known to law. Both the issues are answered in favour of the second defendant.

Issue No.7:

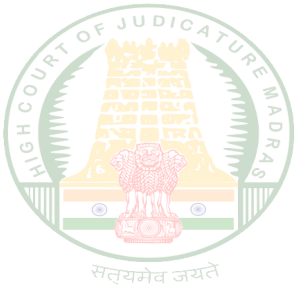
114. In view of the discussions, I hold that the plaintiffs are not entitled for any relief and the suit will have necessarily to be dismissed with costs.

Issue No.8:

115. In view of the discussions, I hold that the second defendant is entitled to a decree in terms of the counter claim with costs.

Issue No.9:

116. With respect to the costs, it is declared that the second defendant is entitled for costs of the litigation in accordance with rules.



WEB COPY 117. In the result:-

(i) C.S.No. 545 of 2016 is dismissed with costs payable to the second defendant;

(ii) The counter claim filed by the second defendant is decreed with costs;

(iii) The plaintiffs are directed to vacate and handover vacant possession of the suit property, to the second defendant within a period of two months from the date of this Judgment; and

(iv) The second defendant is entitled for mense profit at the rate of Rs.1,00,000/- per month from November 2015 till the date the plaintiffs vacate and handover vacant possession of the suit property.

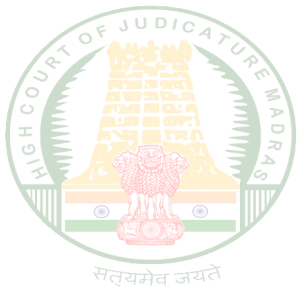
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20.08.2025

Index:Yes/No

Web:Yes/No

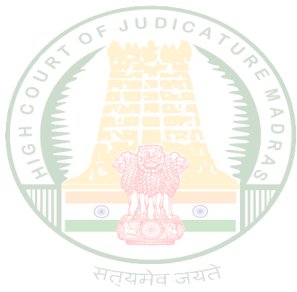
Speaking/Non Speaking Order

WEB COPY¹.**List of Witnesses Examined on the side of the Plaintiff:-**

1. P.W.1 – S.M.D.Mohamed Abdul Khader
2. P.W.2- Sabik Rahman
3. P.W.3- M.Murugeswari

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

1. Ex.P1 is certified copy of the sale deed dated 31.07.2006
2. Ex.P2 is certified copy of the settlement deed dated 10.07.2015;
3. Ex.P3 is certified copy of the sale deed dated 13.07.2015;
4. Ex.P4 is certified copy of the sale deed dated 22.07.2015;
5. Ex.P5 is Office copy of the complaint given by the second plaintiff to the Nungambakkam Police Station dated 02.07.2016.
6. Ex.P6 is certified copy of FIR in Cr.No. 638 of 2016 dated 02.07.2016;
7. Ex.P7 is legal notice issued by second defendant to the plaintiffs 1 to 2 dated 14.07.2016;
8. Ex.P8 is the photocopy of the Aadhaar card of Murugeswari;
9. Ex.P9 is notice to produce document dated 23.11.2023.



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2. List of Witnesses Examined on the side of the Defendants:-

1. D.W.1 – Mrs. R.Rohini Mala

3. List of Exhibits Marked on the side of the Defendants:-

1. Ex.D1 is the signatures series (6 counts) only found in all pages of the agreement (Ex.D32) dated 22.07.2015.

2. Ex.D2 is original sale deed executed by Rajagopalan and Baskaradass in favour of Syed Faehudeen dated 11.10.1961;

3. Ex.D3 is original sale deed executed by Syed Faehudeen in favour of E.N.A.Naina Mohammed dated 23.11.1966;

4. Ex.D4 is original sale deed executed by E.N.A.Naina Mohammed in favour of Hathija Beevi dated 10.10.1968;

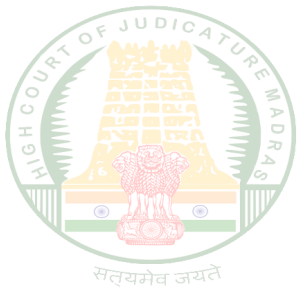
5. Ex.D5 is original sale deed executed by Hathija Beevi in favour of H.A.Cader and others dated 23.04.1987.

6. Ex.D6 is original Declaration of Hiba executed by S.N.M. Ahame Samsudeen dated 27.07.1999;

7. Ex.D7 is original declaration of Hiba executed by K.S.M. Noorul Ameen dated 27.07.1999;

8. Ex.D8 is original declaration of Hiba executed by Hathijathu Sanjeetha dated 27.07.1999;

9. Ex.D9 is Original power of attorney executed by K.S.M.Sithi Subaida and others in favour of H.A.Cader dated 04.07.2006;



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10. Ex.D10 is Original power of attorney executed by S.N.M.Ahamed Samsudeen and others in favour of H.A.Cader dated 20.07.2006;

11. Ex.D11 is Original power of attorney executed by Hadhijathu Sanjeetha in favour of H.A. Cader dated 20.07.2006;

12. Ex.D12 is Original power of attorney executed by K.S.M. Noorul Ameen in favour of H.A. Cader dated 23.07.2006;

13. Ex.D13 is original sale deed and duplicate sale deed executed by H.A.Cader and others in favour of the first and second plaintiffs dated 31.07.2006;

14. Ex.D14 is original approved building plan issued by Commissioner of Madras Corporation to Hathija Beevi;

15. Ex.D15 is original legal heirship certificate of Mr.Sera Mudali Dasthagir dated 03.08.2004;

16. Ex.D16 is original encumbrance certificate for period from 01.01.1968 to 30.06.1982;

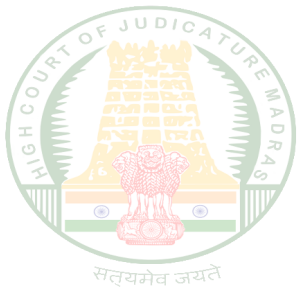
17. Ex.D17 is original encumbrance certificate for period from 01.07.1982 to 04.07.2006;

18. Ex.D18 is original receipt for payment of stamp duty dated 31.07.2006;

19. Ex.D19 is original receipt for registration charges;

20. Ex.D20 is original receipt for subdivision charges dated 31.07.2006;

21. Ex.D21 is original receipt for payment of deficit stamp duty and penalty dated 24.08.2006;



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22. Ex.D22 is original receipt for deficit registration charges dated 24.08.2006;

23. Ex.D23 is series (8 nos) is the photocopies of honored 8 cheques handed over by the first and second plaintiff to the second defendant;

24. Ex.D24 is original sale deed executed by the first and second plaintiff in favour of the second defendant dated 22.07.2015;

25. Ex.D25 is original receipt for payment of stamp dated 22.07.2015;

26. Ex.D26 is original receipt for registration charges dated 22.07.2015;

27. Ex.D27 is original receipt for subdivision charges dated 22.07.2015;

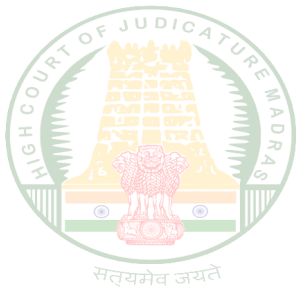
28. Ex.D28 is original receipt for deficit registration charges dated 15.03.2016;

29. Ex.D29 is extract from the permanent land register issued by Tahsildar, Egmore Taluk, dated 23.06.2016;

30. Ex.D30 is original property tax assessment transfer order issued ARO, Corporation of Chennai dated 31.03.2016;

31. Ex.D31 is Original Electricity service connection transfer order dated 14.06.2016;

32. Ex.D32 is original agreement between the first and second plaintiff and second defendant dated 22.07.2015 (signatures already marked as Ex.D1 through PW1 Cross);



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33. Ex.D33 is served copy of the Caveat petition dated 04.07.2016 filed by the first and second plaintiffs against the second defendant and others before the High Court, Madras along with cover;

34. Ex.D34 is served copy of the Caveat petition dated 04.07.2016 filed by the first and second plaintiffs against the second defendant and others before the City Civil Court, Chennai along with cover;

35. Ex.D35 is office copy of the lawyer notice dated 14.07.2016 sent by the second defendant to the first and second plaintiffs with postal receipt;

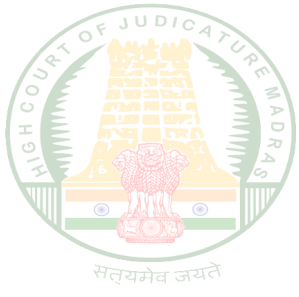
36. Ex.D36 is original reply notice sent by the first and second plaintiffs' counsel to the second defendant's counsel dated 16.08.2016;

37. Ex.D37 is printout of the death certificate of Mr.Ramesh, husband of the second defendant issued by the Corporation of Chennai dated 22.12.2015; and

38. Ex.D38 is series (5 nos) is the printout of the property tax receipts.

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgment made in

C.S.No. 545 of 2016

20.08.2025