



A.S.Nos.555 of 2022, 445 & 446 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit Nos.555 of 2022, 445 and 446 of 2023
and
C.M.P.No.20928 of 2022 and 15843 of 2023

A.S.No.555 of 2022

R.Ramu

... Appellant

Versus

1. H.Basheeria Bivi
2. H.Farida Begam
3. N.Noorul Hyne
4. H.Habibur Rahman
5. T.Rabiathul Arabia
6. H.Sadiq Basha
7. Nazeer Ahamed

... Respondents

[Respondents 1, 4 & 6 are represented by their Power Agent, the fifth Respondent herein]

[The 7th Respondent set ex parte before the trial Court. Hence notice may be dispensed with]

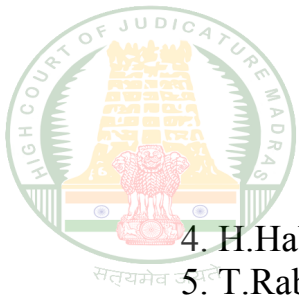
A.S.No.445 of 2023

R.Ramu

... Appellant

Versus

1. H.Basheeria Bivi
2. H.Farida Begam
3. N.Noorul Hyne



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4. H.Habibur Rahman
5. T.Rabiathul Arabia
6. H.Sadiq Basha
7. Nazeer Ahamed

... Respondents

A.S.No.446 of 2023

Ramu

... Appellant

Versus

Nazeer Ahamed

... Respondent

Prayer in A.S.No.555 of 2022:- Appeal Suit is filed under Section 96 of Civil Procedure Code against the fair and final order dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore.

Prayer in A.S.No.445 of 2023:- Appeal Suit is filed under Section 96 of Civil Procedure Code against Judgment and decree dated 29.04.2017 passed in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore.

Prayer in A.S.No.446 of 2023:- Appeal Suit is filed under Section 96 of Civil Procedure Code against Judgment and decree dated 29.04.2017 passed in O.S.No.19 of 2015 by the learned I Additional District and Sessions Judge, Cuddalore.

For Appellants

: Mr. R. Muralidharan



A.S.Nos.555 of 2022, 445 & 446 of 2023

in all the Appeals

For Respondents 1 to 6

: Mr. R. Rajavelavan

in A.S.No.555 of 2022 and

A.S.No.445 of 2023

For Respondents 7

: *Ex parte*

in A.S.No.555 of 2022 and

A.S.No.445 of 2023

For Respondent in

A.S.No.446 of 2023

: No appearance (Unclaimed)

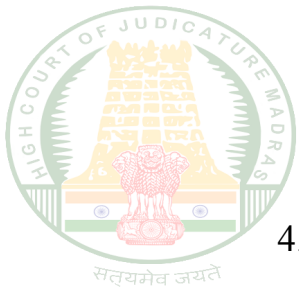
COMMON JUDGMENT

Appeal in A.S.No.555 of 2022 is filed to set aside the fair and final order dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore.

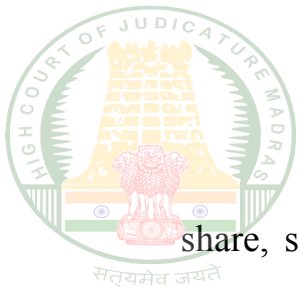
2. Appeal in A.S.No.445 of 2023 is filed to set aside the judgment and decree dated 29.04.2017 passed in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore.

3. Appeal in A.S.No.446 of 2023 is filed to set aside the judgment and decree dated 29.04.2017 passed in O.S.No.19 of 2015 by the learned I Additional District and Sessions Judge, Cuddalore.

4. The plaint averments in O.S.No.20 of 2010 are briefly as follows:-



4.1. The suit properties are situated in Mulligrampattu village near Nellikuppam in Cuddalore District. The Plaintiffs 1 to 6 and the Defendant-1 are the legal heirs of K.M.Hanifa. The suit properties were originally purchased by K.M.Hanifa through a registered sale deed dated 07.04.1969 for valuable consideration and he was in possession and enjoyment of the properties till his death. The revenue records – patta, chitta and adangal are in the name of K.M.Hanifa. K.M.Hanifa died intestate on 21.01.1997 leaving behind him, his wife/first Plaintiff, the sons and daughters/Plaintiff 2 to 6 and the first Defendant as legal heirs. While so, the Plaintiffs came to know that the second Defendant had instituted a suit in O.S.No.34 of 2009 against the first Defendant as though the first Defendant had entered into a sale agreement deed with the second Defendant to sell the suit properties to the second Defendant. The suit in O.S.No. 34 of 2009 was alleged to have filed seeking relief of specific performance of contract for sale against the first Defendant by the second Defendant. The Plaintiffs 1 to 6 are not parties to the said sale agreement deed. The alleged sale agreement deed will not bind the Plaintiffs 1 to 6. The second Defendant attempted to interfere with the possession of the Plaintiffs. Therefore, the Plaintiffs were forced to file the suit in O.S.No. 252 of 2009 seeking declaration that the suit properties belong to the Plaintiffs and the first Defendant and also the Plaintiffs had filed the suit in O.S.No.20 of 2010 seeking partition. The first Plaintiff/wife of K.M.Hanifa is entitled to 1/8



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share, sons of K.M.Hanifa are entitled to $\frac{2}{3}$ rd shares and the daughters are entitled to $\frac{1}{3}$ share. Therefore, the Plaintiffs are collectively entitled to $\frac{58}{72}$ shares. The first Defendant is entitled to $\frac{14}{72}$ share. Therefore, the Plaintiffs 1 to 6 seeking preliminary decree for partition of their $\frac{58}{72}$ shares. The first Defendant remains *ex parte* in the suit.

5. The brief averments in the written statement filed by the second Defendant are as follows:

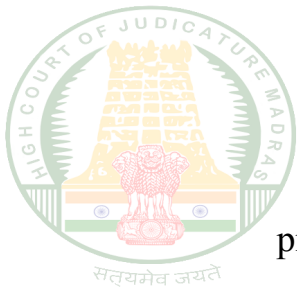
5.1. The suite preferred by the Plaintiffs is not maintainable and therefore, the suit is to be dismissed. The second Defendant denied the claim made by the Plaintiffs. The second Defendant had instituted the suit in O.S.No.34 of 2009 against the first Defendant seeking specific performance of contract for sale of the property. On coming to know of the pendency of the suit in O.S.No.34 of 2009, the Plaintiffs have filed the suit in O.S.No.20 of 2010 to create complications. The suit properties belong to K.M.Hanifa. After the death of K.M.Hanifa, the Plaintiffs 1 to 6 and the first Defendant, who are the legal heirs of K.M.Hanifa, are entitled to share in the property. The daughters of K.M.Hanifa were married off and they are living with their husbands. The fourth Plaintiff, son of K.M.Hanifa, is living abroad. The first Defendant is taking care of the properties on behalf of the family of the deceased K.M.Hanifa. The first Defendant had executed a sale agreement deed



dated 17.07.1997 with this second Defendant. The first Defendant also agreed to execute the sale deed on return of his brother from abroad and also undertake to execute the sale deed along with other legal heirs. Subsequently, he had entered into sale agreement deed on 15.03.1999 agreeing to execute the sale deed along with other legal heirs of K.M.Hanifa. The Defendant-1 did not execute the sale deed as per his undertaking in the sale agreement deed dated 15.03.1999. Therefore, he had executed a sale agreement deed dated 11.10.2004 and also a fresh sale agreement deed dated 06.12.2006. He had not executed the sale deed as per his undertaking. Therefore, the second Defendant had instituted the suit in O.S.No.34 of 2009 seeking specific performance of contract for sale of the property. To create multiplicity of proceedings, the Plaintiffs 1 to 6 had filed the suit in O.S.No.20 of 2010 seeking partition without exhausting the remedy in the suit in O.S.No.34 of 2009 filed by the second Defendant against the first Defendant. This Court cannot consider the granting relief of partition to the Plaintiff. There is no cause of action for instituting the suit. The suit is not maintainable and is to be dismissed.

6. Based on the pleadings in the plaint and in the written statement, the learned I Additional District and Sessions Judge, Cuddalore, had framed the following issues:

- (i) Whether the suit properties are the joint family



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properties of the Plaintiffs and the first Defendant?

(ii) Whether the suit as framed is maintainable?

(iii) Whether the Plaintiffs 1 to 6 are entitled to claim 58/72 share in the suit property?

(iv) Whether the Plaintiffs are entitled to the relief of partition?

(v) To what other reliefs the Plaintiffs are entitled to?

7. Originally the suit was filed as O.S.No. 34 of 2009 by the second Defendant in O.S.No.20 of 2010 against the first Defendant in O.S.No. 20 of 2010 on the file of the learned Sub Judge, Panruti which was re-numbered as O.S.No.19 of 2015 on transfer to the learned I Additional District and Sessions Judge, Cuddalore.

8. The plaint averments in O.S.No.19 of 2015 are briefly as follows:

8.1. On 06.12.2006 the Plaintiff entered into sale agreement with the Defendant for execution of the sale deed for the suit property agreeing to execute the sale deed for Rs.2,50,000/-. On the date of agreement, Rs.2,30,000/- was paid by the Plaintiff, for the balance of sale consideration of Rs.20,000/-, the Defendant agreed to execute sale deed within the stipulated time. Since the Plaintiff was ready and willing to perform his part of the contract for payment of Rs.20,000/- and the Defendant did not come forward to

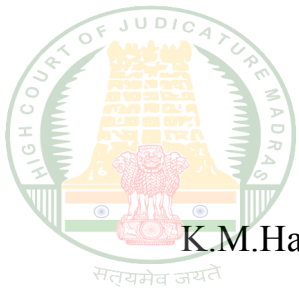


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execute the sale deed within the stipulated period, the Plaintiff was forced to file the suit for specific performance against the Defendant. If the Defendant failed to execute the sale deed, the Court shall execute the sale in favour of the Plaintiff. The Plaintiff had already paid Rs.2,30,000/- on the date of sale agreement deed. The Defendant agreed to execute sale deed along with other legal heirs of K.M.Hanifa. As the Defendant did not come forward to execute the sale deed, the Plaintiff had issued legal notice dated 25.06.2008 calling upon the Defendant to execute the sale deed. On receipt of the said notice, the Defendant had disputed the claim of the Plaintiff and sent reply with vexatious contents. Therefore, the suit had been filed by the Plaintiff seeking the relief of specific performance of contract for sale of the property. The suit is to be decreed as prayed for.

9. The contents of the written statement filed by the Defendant are briefly as follows:

9.1. The suit as framed is not maintainable. The Defendant disputed the claim of the Plaintiff. The Defendant has no intention to encumber the properties. The sale agreement is a fraudulent deed. The Defendant had not received any amount from the Plaintiff. The suit property was originally belonged to the father of the Defendant K.M.Hanifa. He purchased the property in the year 1997 and was in enjoyment of the same. After the death of



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K.M.Hanifa, the suit properties were enjoyed by the legal heirs of K.M.Hanifa.

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The claim of the Plaintiff that the Defendant claiming to be the head of the joint family is not true. In Mohammedan Law, there is no concept of joint family. Also the Plaintiff did not know the wherewithal to purchase the property. The suit property is worth about Rs.25,00,000/- as on the date of filing of the suit. The suit property is in enjoyment of the legal heirs of K.M.Hanifa. The alleged sale agreement deed is a self-serving document created by the Plaintiff. The Plaintiff had obtained the signature of the Defendant in a blank sheet of paper and had subsequently created alleged sale agreement deed. The suit is filed with an evil intention to grab the property of K.M.Hanifa. The Defendant has a share in the suit property along with the Plaintiffs 1 to 6 in O.S.No.20 of 2010. The Plaintiff is aware of the same. Still he had filed the suit seeking specific performance of contract for sale which is not maintainable.

10. Based on the pleadings in the plaint and the written statement of the Defendant, the following issues were framed by the learned I Additional District and Sessions Judge, Cuddalore:-

- (i) Whether the Plaintiff is entitled to the relief of specific performance of contract for sale?
- (ii) To what relief the Plaintiff is entitled to?



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WEB COPY 11. Since the properties in both the suits are one and the same, both the suits were taken up for joint trial. The Defendants 1 and 2 in O.S.No.20 of 2010 are the Plaintiff and Defendant in O.S.No.19 of 2015.

12. Based on the Tr.O.P.No.29 of 2014, the learned Principal District and Sessions Judge, had withdrawn the suit in O.S.No.34 of 2009 from the file of the learned Sub Judge, Panruti to the file of the learned I Additional District and Sessions Judge, Cuddalore and re-numbered as O.S.No. 19 of 2015. The suit filed by the legal heirs of K.M.Hanifa in O.S.No. 20 of 2010 and the suit filed in O.S.No.19 of 2015 are taken up together for joint trial.

13. During trial, the Plaintiff Ramu in O.S.No. 19 of 2015 was examined as P.W-1 and the attesting witness to the sale agreement deed S.Sherfuddin was examined as P.W-2. The Documents relied on by the Plaintiff was marked as Ex.A-1 to Ex.A-7. Ex.A-1 is the sale agreement deed dated 06.12.2006. Ex.A-2 is the legal notice issued on the Plaintiff dated 25.06.2008 calling upon the Defendant to execute the sale deed. Ex.A-3 is the reply notice sent by the Nazeer Ahamed/Defendant to Plaintiff. Ex.A-4 is the earlier sale agreement dated 17.07.1997. Ex.A-5 is the earlier sale agreement entered into between the Plaintiff and Defendant dated 15.03.1999. Ex.A-6 is



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the sale agreement dated 11.10.2004 between the Plaintiff and Defendant.

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Ex.A-7 is the copy of the plaint in O.S.No.252 of 2009 on the file of the learned Principal District Munsif, Panruti.

14. The 6th Plaintiff in O.S.No.20 of 2010 Sadiq Basha was examined as D.W-1 in O.S.No.19 of 2015 and the documents relied by the 6th Plaintiff in O.S.No.20 of 2010 were marked as Ex.B-1 to Ex.B-4. Ex.B-1 is the sale deed executed by V.Ganapathy in favour of K.M.Hanifa, dated 07.04.1969. Ex.B-2 is the kist receipt dated 07.01.2010 for the fasli 1419 in the name of K.M.Hanifa. Ex.B-3 is the legal heirship certificate of K.M.Hanifa. Ex.B-4 is the Power of Attorney Deed executed in favour of the 6th Plaintiff by the other legal heirs of K.M.Hanifa.

15. On appreciation of evidence, the learned I Additional District and Sessions Judge, Cuddalore, by common judgement dated 29.04.2017 had dismissed the suit of the Plaintiff in O.S.No.19 of 2015 thereby refusing to grant the relief of specific performance and instead, granted the alternate relief of refund of advance amount of Rs.2,30,000/- in favour of the Plaintiff in O.S.No.19 of 2015. The suit in O.S.No. 20 of 2010 filed by the legal heirs of K.M.Hanifa was decreed thereby granting preliminary decree for partition of 58/72 shares for the Plaintiffs.



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WEB COPY16. Aggrieved, the second Defendant in O.S.No. 20 of 2010 had preferred the Appeal in A.S.No.445 of 2023 against the grant of preliminary decree. Also the Plaintiff in O.S.No.19 of 2015 had preferred Appeal in A.S.No.446 of 2023 seeking to set aside the judgment and decree dated 29.04.2017 passed in O.S.No.19 of 2015. Also, the second Defendant in O.S.No.20 of 2010 had preferred Appeal in A.S.No.555 of 2022 seeking to set aside the final decree dated 28.04.2017 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore.

17. The suit in O.S.No.252 of 2009 filed by the Plaintiffs in O.S.No.20 of 2010 as Plaintiffs before the learned Principal District Munsif, Panruti was not withdrawn or transferred to the file of the leaned I Additional District and Sessions Judge, Cuddalore for trial along with the suit in O.S.No.20 of 2010 and O.S.No.19 of 2015. Therefore, this Court is constrained to dispose of the Appeal in A.S.No.445 and 446 of 2023 and 555 of 2022.

18. The learned Counsel for the Appellant submitted that the suit in O.S.No.20 of 2010 was filed by the Plaintiffs 1 to 6 against Defendant-1 and



Defendant-2. The Plaintiffs in O.S.No.20 of 2010 and the Defendant-1/Nazeer Ahamed are the legal heirs of K.M.Hanifa. The Plaintiffs 1 to 6 had filed the suit in O.S.No.20 of 2010 on the file of the learned I Additional District and Sessions Judge, Cuddalore, seeking the relief of partition of the property left intestate by their father K.M.Hanifa, seeking each one share for the daughters and wife of K.M.Hanifa and two shares for each of his sons. The Plaintiff-1 is the wife, Plaintiffs-2, 3 and 5 are the daughters of K.M.Hanifa and Plaintiffs 4 and 6 and Defendant-1 are the sons of K.M.Hanifa.

19. Earlier, the Defendant-2 in O.S.No.20 of 2010 had filed suit in O.S.No.19 of 2015 against the Defendant-1 in O.S.No.20 of 2010. The suit in O.S.No.19 of 2015 was filed by the Plaintiff Ramu against the Defendant Nazeer Ahamed S/o. K.M.Hanifa seeking the relief of specific performance of contract for sale of the property. As per the plaint averments in O.S.No.19 of 2015, the suit schedule properties were the self-acquired properties of K.M.Hanifa. He died intestate. The suit properties were maintained by the elder son of K.M.Hanifa, Nazeer Ahamed on behalf of the joint family of K.M.Hanifa. He had entered into sale agreement on behalf of the joint family of K.M.Hanifa with the Plaintiff, Ramu.

20. As per the sale agreement, the sale price was fixed at



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Rs.2,50,000/-. Nazeer Ahamed had received Rs.2,30,000/- on the date of the sale agreement deed and agreed to execute the sale deed after accepting the balance of sale consideration but had not executed the sale deed even though, the Plaintiff Ramu was ready and willing to perform his part of the contract. Since the suit properties in both the suits were the same, both the suits were tried together and common judgment was delivered. Only after the institution of O.S.No.19 of 2015 which was in fact instituted earlier as O.S.No.34 of 2009 on the file of the learned Sub Judge, Panruti, was withdrawn and transferred to the file of the learned I Additional District and Sessions Judge, Cuddalore and re-numbered as O.S.No.19 of 2015. On trial, connected with O.S.No.20 of 2010, had given cause of action for filing the suit for partition among the legal heirs of K.M.Hanifa stating that their brother Nazeer Ahamed had entered into sale agreement with Ramu, the Plaintiff in O.S.No.34 of 2009. The Plaintiff in O.S.No.19 of 2015 was examined as P.W-1. In his evidence, he had marked documents Ex.A-1 to Ex.A-7. Examination in chief of Plaintiff Ramu was filed as Affidavit.

21. The learned Counsel for the Defendant/Nazeer Ahamed in O.S.No.19 of 2015 did not cross examine the Plaintiff. One Sherfuddin who was the witness to the sale agreement deed was examined as P.W-2. In the evidence of Plaintiff Ramu, the documents were marked as Ex.A-1 to Ex.A-7.



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Ex.A-1 is the sale agreement deed dated 06.12.2006 executed between the Plaintiff Ramu and the Defendant Nazeer Ahamed. Ex.A-2 is the Advocate Notice on behalf of the Plaintiff Ramu dated 25.06.2008. Ex.A-3 is the reply notice on behalf of Nazeer Ahamed. Ex.A-4 is the earlier sale agreement deed dated 17.07.1997 between Plaintiff Ramu and Defendant/Nazeer Ahamed. Ex.A-5 is the earlier sale agreement deed dated 15.03.1999 between Plaintiff Ramu and Defendant Nazeer Ahamed. Ex.A-6 is the earlier Sale agreement deed dated 11.10.2004 between Plaintiff Ramu and the Defendant Nazeer Ahamed. Ex.A-7 is the certified copy of the plaint in O.S.No.252 of 2009.

22. The suit filed by the Plaintiff Ramu seeking specific performance of contract for sale of suit schedule properties against Nazir Ahamed, elder son of K.M.Hanifa as sole Defendant in O.S.No.19 of 2015 (O.S.No.34 of 2009 on the file of the learned Sub Judge, Panruti.) The Plaintiffs in O.S.No.20 of 2010 particularly the Plaintiff-6/Sadiq Basha had examined himself as D.W-1. In the evidence of the Plaintiff-6 as D.W-1, the sale deed dated 07.04.1969 in favour of K.M.Hanifa, was marked as Ex.B-1, Ex.B-2 is the kist receipt in the name of the K.M.Hanifa. Ex.B-3 is the legal heirs certificate of deceased K.M.Hanifa. Ex.B-4 is the Power of Attorney deed in favour of Rabiathul Arabia by H.Basheeria Bivi/Plaintiff-1, H.Habibur Rahman/Plaintiff-4 and Sathiq Basha/Plaintiff-6.

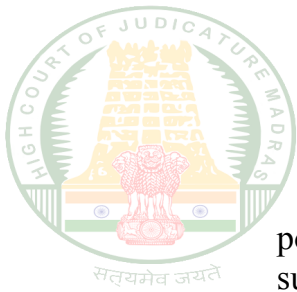


WEB COPY23. D.W-1 was cross examined extensively by the learned Counsel for the Plaintiff/Ramu. In the cross examination, the suggestion on behalf of the Plaintiff Ramu that the Defendant in O.S.No.19 of 2015 Nazeer Ahamed had instigated his mother and siblings as the Plaintiffs to file the suit in O.S.No.20 of 2010 was denied by him. He had admitted that even during the lifetime of K.M.Hanifa, the Plaintiff Ramu was cultivating the suit property as a tenant. Even after the death of K.M.Hanifa, he was still cultivating the property. Therefore, the finding of the trial Court is erroneous and the same is to be set aside.

24. In support of his submissions, the learned Counsel for the Appellant Mr.R.Muralidharan relied on the following decisions:

(i) In **2023-1-L.W. 777 [U.Venkatesan vs. Susila & Others]** it has been held as follows:

“(31)**Section 12** of Specific Relief Act enables the Court to grant specific performance in respect of a part of contract in respect of situations covered under sub-sections [2], [3] and [4]. In the present case, the execution of Agreement by defendants 1 to 5 and 7 to 9 is not in dispute. Therefore, the contract as such, is valid in respect of 8/9th share which is enforceable against defendants 1 to 5 and 7 to 9. When the contract is held to be valid and binding on defendants 1 to 5 and 7 to 9 except the 6th defendant who is entitled to only 1/9th share, there is no impediment for the Court to grant specific performance, if the plaintiff has otherwise proved his readiness and willingness and entitled to a decree for specific performance in respect of the undivided share of defendants 1 to 5 and 7 to 9 in respect of their 8/9th share. Hence,



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points [C] and [E] are decided in favour of plaintiff/appellant that the suit as such maintainable to enforce the contract as regards 8/9th share of Defendants 1 to 5 and 7 to 9.”

(ii) In *MANU/TN/1621/2022 [Thengapattanam Educational and*

Service Trust vs. Kose Mohamed and Others] it has been held as follows:

“Contract - Specific performance - Suit for - Present appeal filed to challenge judgment and decree of trial court which dismissed suit filed for seeking specific performance - Whether judgment and decree under challenge need interference Held, appellant/plaintiff proved genuineness of sale agreement - His readiness and willingness and severability of contract also proved -Appellant entitled to get relief of specific performance in respect of 36 cents as prayed by him - Impugned judgment set aside - Suit decreed for relief of specific performance in respect of 36 cents - Appeal allowed.”

(iii) In *(2020) 19 SCC 80 [B. Santhoshamma and another vs. D.*

Sarala and another] it has been held as follows:

A. Specific Relief Act, 1963 - S. 12 - Interpretation of - S. 12 is to be construed and interpreted in a purposive and meaningful manner to empower the court to direct specific performance by the defaulting party, of so much of the contract, as can be performed - To hold otherwise would permit, as in the present case, a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same - A contractee who frustrates a contract deliberately by his own wrongful acts cannot be permitted to escape scot free - Interpretation of Statutes - Basic Rules - Purposive construction/interpretation/Mischief rule/Heydon's rule.

Further held, instead of awarding damages in respect of the part of the contract which could not be enforced and/or damages for breach of agreement to sell the entire suit land, trial court, held, fairly reduced the total consideration by 1/3rd of the agreed amount, in lieu of damages, as one third of the area agreed to be sold to the vendee could not be sold to her”

(iv) In *2008-1-L.W. 696 [K.V. Narasimhan (died), etc and others vs.*

S.Salammal & another] it has been held as follows:



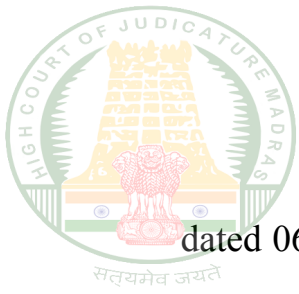
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“13. What remains to be considered is the other contention of the learned Counsel for the appellants that the plaintiff herself has claimed the alternative relief for refund of advance amount and damages and hence the grant of decree of specific performance by the Trial Court is unjust to the first defendant. In this connection, reliance was placed on the following decisions of the Supreme Court:

1. S. Rangaraju Naidu Vs. S. Thiruvarakkarasu, and
2. Kanshi Ram Vs. Om Prakash Jawal and others, .

In the first decision cited, since the borrower was not in a position to pay the amount due on promissory note, he entered into an agreement to sell his property and the agreement was sought for to be enforced and in those circumstances, the Apex Court held that predominant object would be for recovery of dues with interest and hence the Court is not bound to grant specific performance and in that view of the matter, granted the alternative relief. In the second decision cited, the plaintiff had claimed specific performance and in the alternative, a sum of Rs. 12,000/- as damages and the defendant offered a sum of Rs. 10 lakhs as an alternative relief and in those circumstances, the Apex Court held that the relief of specific performance was inequitable and awarded the alternative relief. The above decisions would not apply to the facts and circumstances of the present case. As rightly contended by the learned Senior Counsel for the first defendant, the alternative plea of refund of advance amount and damages cannot itself be a bar to claim a decree for specific performance of the contract, as held by the Apex Court in the decision in Motilal Jain v. Smt. Ramdasi Devi and Ors. (2000) 3 M.L.J. 202 (S.C.) and in the decision of the Supreme Court in P.C. Varghese, referred above.”

25. The learned Counsel for the Respondents 1 to 6 Mr. R. Rajavelan, submitted his argument on behalf of the Respondents. The Appellant herein as Plaintiff had filed the suit in O.S.No.34 of 2009 before the learned Sub Judge, Panruti against Nazeer Ahamed alone (Respondent in A.S.No.446 of 2023 and Respondent 7 in A.S.No.445 of 2023 also in A.S.No.555 of 2022). The suit in O.S. No. 34 of 2009 was filed by the Appellant herein as Plaintiff seeking specific performance of contract based on an unregistered agreement for sale



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dated 06.12.2006 in respect of 3 acres 44 cents of landed property with 7.5 HP motor pump sets and bore-well situated at Mulligrampattu village near Nellikuppam in Cuddalore District. As per the plaint averments in O.S.No. 34 of 2009, the suit property belongs to Nazeer Ahamed who had entered into unregistered sale agreement for sale on 06.12.2006 with Plaintiff Ramu for Rs.2,50,000/-. The Plaintiff had paid Rs.2,30,000/- as advance. Nazeer Ahamed agreed to execute the sale deed after receipt of Rs.20,000/- within a period of 2 years. Also he agreed that he being the elder son of K.M.Hanifa, and on behalf of other family members, to execute the sale deed and major portion of sale consideration having been accepted, possession of the property was handed over to the Plaintiff. Nazeer Ahamed filed written statement denying execution of agreement for sale but remained *ex parte* before the trial Court. Having come to know about the same, the mother and siblings of Nazeer Ahamed, the Respondents 1 to 6 in the Appeal Suit Nos.445 of 2023 and 555 of 2022 had filed the suit in O.S. No.20 of 2010 before the learned first Additional District and Sessions Judge, Cuddalore, for partition and separate possession of their 58/72 share of the property from an extent of 3 acres 44 cents against Nazeer Ahamed, 7th Respondent in Nos.445 of 2023 and 555 of 2022 and the sole Respondent in A.S.No.446 of 2023. The mother and siblings of Nazeer Ahamed claimed that they were not aware that Nazeer Ahamed had entered into sale agreement with the Plaintiff Ramu. Therefore,



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the claim that it is a fraudulent transaction and it will not bind them. Further,

the Respondents 1 to 6 in this Appeal content that the suit property an extent of 3 acres 44 cents comprised in S.No.25/1 and S.No.25/19 belong to their father K.M.Hanifa by virtue of a registered sale deed dated 07.04.1969 executed in his favour by Ganapathi Pillai. K.M.Hanifa was in possession and enjoyment of the said property till his death by effecting mutation of revenue records. K.M.Hanifa died intestate on 21.09.1997 leaving behind him his widow, three sons and 3 daughters as legal heirs, the Respondents 1 to 6 and Nazeer Ahamed as 7th Respondent in the appeals in A.S.Nos.445 of 2023 and 555 of 2022. According to the Mohammedan Law, the widow takes 1/8 share and the remaining 7/8 shares taken by 3 sons and 3 daughters. The sons taking 2 shares of the daughters share. Therefore, the Plaintiffs together entitled to 58/12 share. Nazeer Ahamed is entitled to 14/72 share. Nazeer Ahamed remained *ex parte* in the partition suit also. The only contesting Defendant was Ramu. Ramu had claimed that Nazeer Ahamed had been looking after and managing the property on behalf of other family members. Therefore, the Plaintiff Ramu claims that he had entered into sale agreement dated 17.07.1997 where he undertook to execute sale deed with all other co-sharers and it could not be completed. Therefore, subsequent sale agreements were executed on following dates 15.03.1999, 11.10.2004 and yet another agreement for sale dated 06.12.2006 between them. It is further contended that on the strength of



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agreement for sale dated 06.12.2006, the Plaintiff Ramu claims to have filed the suit for specific performance and the suit was filed by the mother and other siblings of Nazeer Ahamed at the instigation of Nazeer Ahamed.

26. The suit in O.S.No.34 of 2009 was withdrawn and transferred to the file of the I Additional District and Sessions Judge, Cuddalore, to be tried along with O.S.No.20 of 2010 jointly as per order dated 12.08.2014 made in Transfer O.P.No. 29 of 2014 by the learned Principal District Judge, Cuddalore. Both the suits in O.S.No.34 of 2009, re-numbered as O.S.No.19 of 2005 before the learned I Additional District Judge and O.S.No.20 of 2010 were tried jointly and common judgment was rendered on 29.04.2017 in which the claim of specific performance was refused by the learned Additional District and Sessions Judge, Cuddalore on the ground that the execution of agreement for sale dated 06.12.2006 by Nazeer Ahamed alone is invalid since the Plaintiffs in O.S.No.20 of 2010 who are the other legal heirs of deceased K.M.Hanifa have got shares over the suit property. However, refund of advance amount of Rs.2,30,000/- with interest at the rate of 6% per annum from the date of suit was ordered and Nazeer Ahamed was directed to pay the said amount.

27. Regarding suit for partition in O.S.No. 20 of 2010 preliminary



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decree was passed by the learned I Additional District and Sessions Judge, Cuddalore granting the Plaintiffs 58/72 share. Aggrieved by the common judgment dated 29.04.2017, the Plaintiff Ramu had preferred two appeals before this Court in A.S.No.445 of 2023 and A.S.No.446 of 2023 against the aforesaid two suits in O.S.No. 19 of 2015 (Previously O.S. No.34 of 2009) and O.S.No. 20 of 2010 on the file of the learned I Additional District and Sessions Judge, Cuddalore.

28. On the strength of the preliminary decree passed on 29.04.2017, the Plaintiffs in O.S.No. 20 of 2010 obtained final degree in I.A.No. 2 of 2018 in O.S. No. 20 of 2010 after contest on 28.04.2022. As per the final decree, the Plaintiffs were allotted 2 acres 61½ cents of land representing their share of 58/72 and 63 cents was allotted to Nazeer Ahamed towards his 14/72 share as Advocate Commissioner found that the extent of land available on field is 3 acres 26 cents. Aggrieved over the final decree passed in I.A. No. 2 of 2018 in O.S.No.20 of 2010, the Plaintiff in O.S.No. 34 of 2009, who is the Respondent in the EP, had filed A.S.No.555 of 2022 against the order passed by the learned I Additional District and Sessions Judge, Cuddalore. The Respondents 1 to 6 in this appeal had filed E.P.No. 177 of 2022 in O.S.No.20 of 2010 before the learned I Additional District and Sessions Judge, Cuddalore against Nazeer Ahamed and Ramu. The Appellant Ramu stalling the execution proceedings



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by referring to pendency of these three appeals. The impugned common judgement dated 29.04.2017 made in two suits and final decree dated 28.04.21022 are under challenge by way of these three Appeals before this Court in A.S.No.445 and 446 of 2023 and A.S.No.555 of 2022. The learned I Additional District and Sessions Judge, Cuddalore, in his judgment in paragraph 14 had observed as follows:

“மு.வ.எண்.19/2015 என்ற வழக்கில் உள்ள வாதி ராமு வா.சா.1 ஆக விசாரிக்கப்பட்டுள்ளார். அவர் தனது சாட்சியத்தில் குறுக்கு விசாரணையில் தாவா சொத்துக்களை உறனிபாவிற்கு ஆறு பிள்ளைகள் வாரிசுகளாக உள்ளார்கள் என்று தெரிந்துதான். தான் நஸீது அகமதுவுடன் ஒப்பந்தம் போட்டதாகவும் உறனிபா 1997ல் இறந்துவிட்டார் என்றும் ஒப்புக்கொண்டுள்ளார்.”

29. By observing above and relying upon Ex.A-1, the learned I Additional District and Sessions Judge, Cuddalore, had come to the conclusion that the agreement for sale dated 06.12.2006 will not bind the other legal heirs of K.M.Hanif, Respondents 1 to 6 thereby declined the main relief of specific performance of contract for sale of the property but granted the alternate relief of refund of advance amount of Rs.2,30,000/- with interest at the rate of 6% per annum from the date of plaint till the date of recovery.

30. Hence, the said unregistered agreement for sale is invalid, unenforceable since Nazeer Ahamed, who had executed the agreement



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regarding the entire property of 3 acres 44 cents did not have the absolute title of the property. On perusal of the sale agreement, it reads as if he does not have absolute right over the property and it reads as if he alone is the legal heir of K.M.Hanifa. The Respondents 1 to 6, who are widow, 3 sons and 3 daughters were not referred in the sale agreement at all. The signature of the Respondents were not obtained in the sale agreement deed. The agreement is not executable as the same is barred by Section 17 of Specific Relief Act. In fact, it is fraudulent on the face of it.

31. In this nexus, the Respondents 1 to 6 (Plaintiffs in O.S.No.20 of 2010) relied upon the decision made in **2015 3 CTC 229 [Pemmada Prabhakar and others vs. Youngmen's Vysya Association and others]** wherein it has been held as under:

“33. It is an undisputed fact that the plaintiffs have not approached the Trial Court with clean hands. It is evident from the pleadings of the Agreement of Sale which is produced for the decree for specific performance of Agreement of Sale as the plaintiffs did not obtain the signatures of all the co-sharers of the property namely, the mother of the defendants, the third brother and 3 sisters. Therefore, the agreement is not enforceable in law as the persons who have executed the sale deed, did not have the absolute title of the property.”

32. The learned trial Judge granted final decree dated 28.04.2022 made in I.A.No. 2 of 2018 in O.S.No.20 of 2010 and held that the green sketched portion in the Advocate Commissioner's report totalling 2 acres 61½



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cents had been allotted to the Plaintiffs 1 to 6 in O.S.No.20 of 2010 and the portion highlighted in yellow sketch in the plan to the extent of 0.63 cents was allotted to Nazeer Ahamed. Under the said final decree, the Plaintiffs as Petitioners in the final decree were permitted to draw water from the mortar pump set for 5 days in the week and Nazeer Ahamed was given permission to draw water for 2 days and 0.1½ cents have been earmarked for use as common pathway for both parties. The claim of the Appellant Ramu that 14/72 share of Nazeer Ahamed equivalent to 0.63 cents having been allotted in the final decree can be allotted in his favour cannot be countenanced as the agreement for sale under Ex.A-1 suffers from suppression of material facts of other legal heirs of deceased K.M.Hanifa. There is no transfer of interest in immovable property under Ex.A-1 agreement for sale and it does not by itself create any interest or charge on such property according to Section 54 of the Transfer of Property Act, 1882. For this proposition, the learned Counsel for the Respondent rely on the reported decision in **2021 (1) MWN (Civil) 316 (SC)** [*Venigalla Koteswaramma vs. Malampati Suryamba and others*] wherein it is held as under:

“39. Apart from the above, it is also fundamental, as per Section 54 of the Transfer of Property Act, 1882, that an agreement for sale of immoveable property does not, of itself, create any interest in or charge on such property vide **Bank of India v. Abhay D. Narottam and others, 2005 (11) SCC 520**. A person having an agreement for sale in his favour does not get any right in the property, except the right of obtaining sale deed on that basis. For ready reference, we may reproduce Section 54 of the



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Transfer of Property Act that reads 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.

Sale how made.- Such transfer, in the case of tangible immoveable 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 immoveable 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 immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immoveable 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.”

39.1. It goes without saying that the alleged agreement for sale did not invest the vendee with title to, or any interest in, the property in question; and the alleged agreement for sale did not invest the vendee with any such right that the plaintiff could not have maintained her claim for partition in respect of the properties left by Annapurnamma without seeking declaration against the agreement. Therefore, this plea about non-maintainability of suit for want for relief of declaration against the said agreement for sale remains totally baseless and could only be rejected.”

33. Further, the learned Counsel for the Respondents 1 to 6 submitted that such claim is not legally enforceable as the sale agreement dated 06.12.2006 under Ex.A-1 remains unregistered which is inadmissible for seeking protection under Section 53 (A) of the Transfer of Property Act, 1882 though it can be received in evidence. This is in view of Section 17(1-A) of the Registration Act, 1908 which came into force with effect from 24.09.2001. For this proposition, the learned Counsel for the Respondent relied on the



reported decision in **2018 (5) LW 363 [Ameer Minhaj vs. Dierdre Elizabeth**

(Wright) Issar and others] wherein it has been held as under:

“Registration Act (1908), Section 17(1A), Unregistered agreement.

Transfer of Property Act, (1882), Section 53A, Unregistered agreement, part performance claim of.

Specific performance – Suit agreement – Nor registered document – Effect of

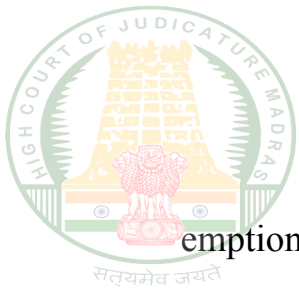
Document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 and shall not have any effect for the purposes of section 53A.

Trial Court right in overturning the objection regarding marking and exhibiting these documents.

In other words, the core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from 24th September, 2001 Whereas, the suit agreement was executed subsequently on 9th July, 2003

It is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property, If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act.”

34. Further, in order to receive the benefit of that section, it is mandatory for the Appellant to prove that possession is referred in agreement. Possession is not referred in Ex.A-1, but it is pleaded by him in the plaint, in the suit for specific performance in O.S. No. 34 of 2009 re-numbered as O.S.No.19 of 2015. It is not legally maintainable in the face of right of pre-

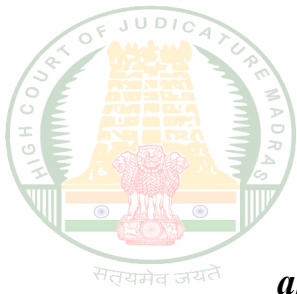


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emption which is termed as right of Shuffa under the Mohammedan Law. The object of the right of Shuffa is to avoid inconvenience arising from introduction of stranger as co-owner. Under the Sunni Law a co-owner (Shafi-Sharik) can claim right of pre-emption. If the Appellant being a stranger and third party to the family if allowed to take share of Nazeer Ahamed, it would cause hardships and inconvenience in proper enjoyment of the property by the Plaintiffs 1 to 6 in O.S.No.20 of 2010 as common pathway and drawing water from mortar pump set is provided under final decree.

35. Though the 7th Respondent Nazeer Ahamed in the Appeal in A.S.No.445 of 2023 and 555 of 2022 is liable to return the advance amount having been received by him, yet the Respondents 1 to 6 in order to give quietus to the instant litigations and as the Appellant Ramu is holding entire property unlawfully as is found from his pleadings, the Respondents 1 to 6 in the Appeals are prepared to pay the said amount as indicated in the decree. Accordingly, they have filed memo to that effect before this Court on 11.09.2023 without prejudice to their case by expressing their readiness and willingness. Hence, it is prayed that all Appeals filed by the Appellant Ramu may be dismissed with cost and thus render justice.

Point for determination in A.S.No.445 of 2023



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Whether the judgment of the learned I Additional District and Sessions Judge, Cuddalore, by common judgment in O.S.No.20 of 2010 and in O.S.No.19 of 2015 granting relief of partition of 58/72 shares for the Plaintiffs 1 to 6 in O.S.No.20 of 2010 is erroneous?

Point for determination in A.S.No. 446 of 2023

Whether the judgment of the learned I Additional District and Sessions Judge, Cuddalore by common judgment in O.S.No.20 of 2010 and in O.S.No.19 of 2015 refusing to grant the relief of specific performance of contract for sale of the property to the Plaintiff in O.S.No.19 of 2015 and granting the alternate relief of refund of the advance amount is erroneous?

Point for determination in A.S.No.555 of 2022

Whether the final decree dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 is to be set aside as erroneous?

36. Heard the learned Counsel for the Appellant Mr. R. Muralidharan and the learned Counsel for the Respondents 1 to 6 Mr. R. Rajavelan.

37. Perused the deposition of P.W-1, P.W-2 in O.S.No.19 of 2015 and documents under Ex.A-1 to Ex.A-7. Perused the deposition of Plaintiff-6 in O.S.No.20 of 2010 as D.W-1 in O.S.No.19 of 2015. Perused the documents Ex.B-1 to Ex.B-4 in O.S.No.19 of 2015. Perused the common judgment dated 29.04.2017 passed in O.S.No.19 of 2015 and O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore, and the order dated



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28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I

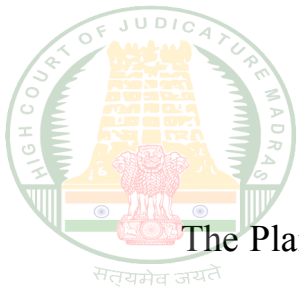
Additional District and Sessions Judge, Cuddalore.

38. On perusal of the common judgment dated 29.04.2017 passed in O.S.No.20 of 2010 and O.S.No.19 of 2015, the order dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 and from the cross examination of D.W-1, the Plaintiff-6 in O.S.No.20 of 2010 as D.W-1 in O.S.No.19 of 2015, Ramu was a tenant under K.M.Hanifa and continued to be tenant under the legal heirs of K.M.Hanifa. Therefore, he is aware of the details of the property regarding ownership. He is aware that K.M.Hanifa died and his legal heirs are the owners of the property. While so, the Plaintiff Ramu entering into sale agreement with the elder son of K.M.Hanifa by name Nazeer Ahamed who is the Defendant-1 in O.S.No.20 of 2010 (suit for partition) and the sole Defendant in O.S.No.19 of 2015 seeking the relief of specific performance of contract for sale of the property is found fraudulent. Also it is an unregistered sale agreement deed. From the marking of documents, Ex.A-2 to Ex.A-7, it is found that Ex.A-4 to Ex.A-6 are the earlier sale agreement deeds between Nazeer Ahamed and the Plaintiff Ramu. What was the reason for getting fresh sale agreement in Ex.A-4 on 17.07.1997. Again as per Ex.A-5, he had entered into sale agreement deed dated 15.03.1999. Again he had entered another agreement with Nazeer Ahamed as per Ex.A-6 dated 11.10.2004. So, there



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were four (4) sale agreement deeds. Ex.A-1 is the sale agreement deed dated 06.12.2006, based on which the suit was filed. Since the Plaintiff had not approached the Court with clean hands, the Civil Court had granted relief based on principles of fairness, equity and good conscience. The Plaintiff cannot be granted the relief of specific performance of contract. The suit property is an extent of 3 acres and 44 cents for which the sale agreement was obtained. From one of the legal heirs of K.M.Hanifa leaving behind him, the Plaintiffs and first Defendant in O.S.No.20 of 2010. Not only that, Mohammedan Law does not have the principles of joint family which is restricted only to Hindu Joint Family. Therefore, the claim in plaint in O.S.No.19 of 2015 that there are no recitals that Nazeer Ahamed is entering into sale agreement deed on behalf of all the legal heirs of K.M.Hanifa. Also as rightly pointed out by the learned I Additional District and Sessions Judge, the Plaintiff in O.S.No.19 of 2015, Ramu had not obtained any authorisation letter authorising Nazeer Ahamed to act on their behalf to enter into contract regarding the property. While so, knowing fully well that K.M.Hanifa died, his legal heirs have right over the property, the Plaintiff Ramu allegedly entering into sale agreement deed dated 06.12.2006 with only one heir as per Ex.A-1 is found unenforceable. After having paid Rs.2,30,000/- out of the total sale price of Rs.2,50,000/-, for the balance consideration of Rs.20,000/-, time stipulated for payment of the balance amount for a period of one year is found fraudulent.



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The Plaintiff Ramu is not entitled even for refund of the advance amount paid, Rs.2,30,000/-. Still the learned I Additional District and Sessions Judge, Cuddalore had granted alternate relief instead of dismissing the suit. Therefore, the judgment of the learned I Additional District and Sessions Judge decreeing the suit for specific performance, at the same time, granting alternate relief of refund of the advance amount is found just and proper. The grounds raised in the grounds of Appeals that the judgment is not proper and is to be set aside is found unacceptable. The grant of alternate relief in O.S.No.19 of 2015 is found justified.

39. The Plaintiff Ramu examined as P.W-1 and marked documents under Ex.A-1 to Ex.A-7. The Plaintiff Ramu was cross examined. In the cross examination, the Plaintiff Ramu admits that he was aware that K.M.Hanifa died leaving behind him, his wife, three daughters and three sons as legal heirs. He had admitted clearly that he had not sought specific performance against the other legal heirs. He had also not attempted to interfere the contract of specific performance based on the earlier agreements in 2004, 1999 and 1997. He had admitted in all the earlier sale agreements that he had not obtained any signature from the other legal heirs of K.M.Hanifa. He had stated that the one year period for execution of the sale deed was agreed. Considering the fact that the one of the legal heirs of K.M.Hanifa was not in India, on his return, Nazeer

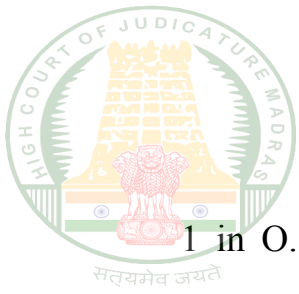


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Ahamed claimed to execut the sale deed. Therefore one year period was granted.

40. The suggestion of the learned Counsel for the Plaintiffs in O.S.No.20 of 2010 that the sale agreement deed is fraudulent deed as the Plaintiff Ramu had not obtained any signature from other legal heirs of K.M.Hanifa was denied by the Plaintiff. The learned Judge had considered those facts while assessing the evidence of Plaintiff in O.S.No.19 of 2015 thereby refused to grant the relief of specific performance of contract for sale of the property.

41. On perusal of Ex.A-1 unregistered sale agreement deed dated 06.12.2006 marked in O.S.No.19 of 2015, only the name of Nazeer Ahamed is found as one of the parties to sale agreement. As per the sale deed dated 07.04.1969, which is marked as Ex.B-1, K.M.Hanifa purchased the property. As per Ex.B-2 the kist paid in the name of the K.M.Hanifa dated 07.01.2010. Ex.B-3 is the legal heirship certificate issued to the legal heirs of K.M.Hanifa in the name of the Plaintiffs and Defendant-1 in O.S.No.20 of 2010 is found true. Under those circumstances, the Court has to necessarily grant preliminary decree for partition as per the plaint averments in O.S.No.20 of 2010. The claim of the Plaintiffs in O.S.No.20 of 2010 is proved by the evidence of D.W-



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1 in O.S.No.19 of 2015. Instead of Nazeer Ahamed, the sole Defendant in O.S.No.19 of 2015 who remained *ex parte*, the same Defendant as the Defendant-1 in O.S.No.20 of 2010, he did not enter the witness box. Instead, 6th Plaintiff in O.S.No.20 of 2010 had examined himself as D.W-1 in O.S.No.19 of 2015. The plaint averments in O.S.No.20 of 2010 and the written statement in O.S.No.19 of 2015 was stated in the affidavit filed as examination in chief. The plaint averments in O.S.No.20 of 2010 was put as suggestion to D.W-1.

42. On perusal of the Ex.A-1, the sale agreement deed dated 06.12.2006 there is no mention of sole Defendant in O.S.No.19 of 2015. The recitals under Ex.A-1 does not mention that Nazeer Ahamed has entered into sale agreement on behalf of other legal heirs of K.M.Hanifa. Also, the conduct of the sole Defendant in O.S.No.19 of 2015, Nazeer Ahamed not entering witness box and remained *ex parte* gives strong presumption against the Defendants. For 3 acres and 34 cents, a meagre amount of Rs.2,50,000/- was fixed. This is also a suspicious circumstance. Therefore, the learned I Additional District and Sessions Judge, Cuddalore, granted relief based on fairness, equity and good conscience and not exercising the discretion in favour of Plaintiff Ramu in O.S.No.19 of 2015. The discussion of evidence by the learned I Additional District and Sessions Judge is well reasoned, since one of



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the legal heirs of K.M.Hanifa entered into sale agreement with Plaintiff Ramu is found to be fraudulent deed. Still the learned I Additional District and Sessions Judge had granted relief of refund of advance amount of Rs.2,30,000/- against which the Plaintiff Ramu who had preferred Appeal in A.S.No.446 of 2023. When Plaintiff Ramu had not approached the Court with clean hands, the Court need not grant any relief in favour of the Defendant-2 in O.S.No.20 of 2010.

43. On analysing evidence, the learned trial Judge had arrived at a conclusion that the Plaintiffs in O.S.No.20 of 2010 are entitled to one share for each of the daughters and two shares for the sons. Accordingly, the Plaintiffs were granted 58/72 shares. Therefore, the shares entitled to Plaintiffs 1 to 6 was calculated as 58/72 shares.

44. On proper appreciation of evidence and on perusal of documents under Ex.A-1 to Ex.A-7 and Ex.B-1 to Ex.B-4, the learned Judge had granted the preliminary decree to the Plaintiffs in O.S.No.20 of 2010. The facts and circumstances of the case as gathered from records, invoking the Mohammedan Law and Mohammedan Law of Succession, the Plaintiff cannot seek invocation of Hindu Law invoking the principles of joint family and on basis of the joint family, the elder son of K.M.Hanifa/Defendant Nazeer



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Ahamed entered into sale agreement with Plaintiff Ramu cannot be accepted.

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Therefore, as rightly pointed out when the sale agreement entered into only with Nazeer Ahamed, the elder son of K.M.Hanifa, by the Plaintiff is found not fair. It was considered as fraudulent, then the Plaintiff is not entitled to any relief under the Specific Relief Act. The suit ought to have been dismissed. Instead the learned Judge had granted relief of refund of advance amount in O.S.No.19 of 2015 whereas the learned Judge had granted preliminary decree for partition of the Plaintiffs share as 58/72. The learned Judge granted preliminary decree to the Plaintiffs as 58 / 72 is not found erroneous. It is a well reasoned judgment that does not warrant any interference by this Court.

45. In A.S.No.555 of 2022 also, the Appellant/Defendant-2 in O.S.No. 20 of 2010 seeking to set aside the final decree date 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by by the learned I Additional District and Sessions Judge, Cuddalore is found unacceptable as the learned trial Judge had passed final decree in continuation of the preliminary decree. The Advocate Commissioner was appointed and surveyed the property with the help of a Surveyor and filed the report. Based on the report of the Advocate Commissioner, the learned I Additional District and Sessions Judge had granted final decree which is agitated by the Defendant-2 in O.S.No.20 of 2010



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in continuation of the preliminary decree for partition to the Plaintiffs.

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46. During argument, the learned Counsel for the Appellant in A.S.No.555 of 2022 submitted that if the Court arrives at a conclusion that Plaintiffs in O.S.No.20 of 2010 are entitled to 58 /72 shares, then this Court exercising discretion shall pass judgment granting the relief of specific performance for the share of the Defendant-1/Nazeer Ahamed in O.S.No.20 of 2010. This is also found unenforceable as the other legal heirs are not willing to encumber the properties. The granting of the discretionary relief of specific performance of sale of the property in O.S.No.19 of 2015 and restraining the share of the Defendant-1 in O.S.No.20 of 2010 cannot be granted, since the other legal heirs of K.M.Hanifa had objected to the sale agreement entered into with the Defendant-1 in O.S.No.20 of 2010.

47. The rulings cited by the learned Counsel for the Appellant in (i) **2023-1-L.W. 777 [U.Venkatesan vs. Susila & Others];** (ii) **MANU/TN/1621/2022 [Thengapattanam Educational and Service Trust vs. Kose Mohumed and Others];** (iii) **(2020) 19 SCC 80 [B. Santhoshamma and another vs. D. Sarala and another]** and (iv) **2008-1-L.W. 696 [K.V. Narasimhan (died), etc and others vs. S.Salammal & another]** will not be applicable to the facts of this case because there is evidence in the cross



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examination of the 6th Plaintiff H.Sadiq Basha as D.W-1 in O.S.No.20 of 2010

that the Plaintiff in O.S.No.19 of 2015 Ramu was a tenant cultivating the lands prior to the death of K.M.Hanifa and till the date of trial as a tenant. Therefore, he has personal knowledge of the details of the family of K.M.Hanifa. While so, if he has *bona fide* intention of purchasing the property, he ought to have entered into agreement of sale with all the legal heirs of K.M.Hanifa, the Plaintiffs in O.S.No. 20 of 2010. Earlier to that, he had obtained and *ex parte* decree for specific performance of contract against the sole Defendant Nazeer Ahamed, one of the legal heirs of the deceased K.M.Hanifa and the elder son of K.M.Kanifa. As per the evidence, Ex.A-4 dated 17.07.1997 is the earliest agreement entered into with Nazeer Ahamed. Ex.A-5 the same sale agreement renewed on 15.03.1999. Ex.A-6 again the same sale agreement renewed as on 11.10.2004. Ex.A-7 is the suit filed by the Plaintiff in O.S.No.20 of 2010 for injunction against the Plaintiff Ramu before the learned District Munsif in O.S.No. 252 of 2009. Therefore, Ex.A-4 to Ex.A-6 are the prior sale agreement deeds entered into with the sole Defendant in O.S.No.19 of 2015 by the Plaintiff Ramu who also happens to be the tenant of the of the family of the deceased K.M.Hanifa. Ex.A-1 is the latest sale agreement date 06.12.2006 which is pressed into service in O.S.No.19 of 2015. When the Plaintiffs in O.S.No.20 of 2010 came to know about the *ex parte* decree regarding specific performance, they made enquiries and found out that the Plaintiff in O.S.No.



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19 of 2015 had obtained *ex parte* decree in O.S.No.34 of 2009 before the learned Sub Judge, Panruti. Therefore, the Plaintiffs in O.S.No. 20 of 2010 were forced to file the suit seeking partition against the elder son of K.M.Hanifa, the first Defendant in O.S. No.20 of 2010. Only after filing the suit, they had sought transfer of the suit in O.S. No.34 of 2009 for joint trial in O.S.No. 20 of 2010 by filing transfer application before the learned Principal District and Sessions Judge, Cuddalore. After setting aside the *ex parte* decree in O.S.No. 34 of 2009 only the suit was ordered on transfer to the learned I Additional District and Sessions Judge to be tried along with O.S.No. 20 of 2010. Meanwhile, before filing the suit for partition, the Plaintiff in O.S.No. 20 of 2010 had filed O.S.No. 252 of 2009 before the learned Principal District Munsif, Panruti, seeking declaration that the suit schedule mentioned property is the undivided property of Plaintiffs as well as the second Defendant in O.S.No. 252 of 2009 and seeking permanent injunction restraining the first Defendant Ramu from interfering with the peaceful possession and the enjoyment of the suit property. Since suit in O.S.No.20 of 2010 and the suit in O.S. 19 of 2015 (O.S.No.34 of 2009) were tried together, the suit in O.S.No.252 of 2009 was not taken up along with this suit. From the evidence, in the joint trial in O.S. No. 19 of 2015 and O.S.No.20 of 2010, it is found that the Plaintiff Ramu in O.S.No. 19 of 2015 was a tenant under the Plaintiffs and prior to them under K.M.Hanifa and he had entered into agreement of sale in



the year 1997 immediately after the death of K.M.Hanifa for sale of the property. That shows that he was not fair. He had obtained sale agreement with only one of parties and not from all the legal heirs. A Civil Court grants relief under the Specific Relief Act only to those who approach the Court with clean hands. Here, he had played fraud on the other legal heirs of K.M.Hanifa by putting them in the dark.

48. The Plaintiffs in O.S.No.20 of 2010 were surprised to know that Nazeer Ahamed, the elder son of K.M.Hanifa, had entered into sale agreement, with the Plaintiff Ramu, based on that, the Plaintiff in O.S.No.19 of 2015 had obtained an *ex parte* decree which forced them to file the suit seeking injunction against the Ramu before the learned Principal District Munsif under Ex.A-7 (O.S.No.252 of 2009). Subsequently, they had filed a suit in O.S.No. 20 of 2010 seeking partition against Nazeer Ahamed, the elder son of K.M.Hanifa. Also they had filed a petition to set aside the *ex parte* decree and to implead themselves as Defendants in O.S.No. 19 of 2015 to set aside the *ex parte* decree in O.S.No.34 of 2009 before the learned Sub Judge, Panruti and also simultaneously filing the Transfer Original Petition seeking transfer O.S.No. 34 of 2009 to the file of the learned I Additional District and Sessions Judge wherein they had filed a suit for partition. Therefore, both the suits were taken up together. The conduct of the Plaintiff in O.S.No.19 of 2015 in getting

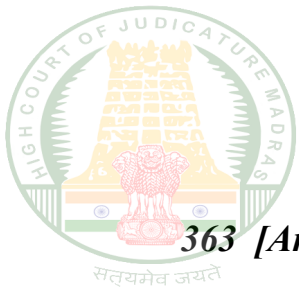


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a sale agreement deed leaving out many of the legal heirs, wife and other sons

and daughters of K.M.Hanifa and only from Naseer Ahamed is unfair. In the principles of equity, a person who had approached the Court with unclean hands is not entitled to any relief from the Civil Court. By his conduct, he had played fraud on the other legal heirs of K.M.Hanifa by entering into sale agreement in 1997 with Nazeer Ahamed and going on renewing the same over a period of time as per E.A-4 to Ex.A-6. All the sale agreements are unregistered sale agreements. Therefore, a person of such character cannot seek relief under equity. The rulings cited by the learned Counsel for the Appellants (Plaintiff in O.S.No.19 of 2015) are not applicable to a person who had approached the Court with unclean hands. Therefore, the rulings (i) **2023-1-L.W. 777 [U.Venkatesan vs. Susila & Others]**; (ii) **MANU/TN/1621/2022 [Thengapattanam Educational and Service Trust vs. Kose Mohumed and Others]**; (iii) **(2020) 19 SCC 80 [B. Santhoshamma and another vs. D. Sarala and another]** and (iv) **2008-1-L.W. 696 [K.V. Narasimhan (died), etc and others vs. S.Salammal & another]** are rejected.

49. The rulings relied by the learned Counsel for the Respondents in (i) **2015 3 CTC 229 [Pemmada Prabhakar and others vs. Youngmen's Vysya Association and others]**; (ii) **2021 (1) MWN (Civil) 316 (SC) [Venigalla Koteswaramma vs. Malampati Suryamba and others]** and (iii) **2018 (5) LW**



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363 [Ameer Minhaj vs. Dierdre Elizabeth (Wright) Issar and others] are

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found applicable to the facts of this case in the circumstances as discussed above. The claim of the Appellant regarding execution of the sale deed for 63 cents, the share of Nazeer Ahamed alone and to grant the relief of specific performance as per Ex.A-1 also is rejected. In the light of the arguments and rulings cited by the learned Counsel for the Respondents 1 to 6 (Plaintiffs in O.S.No.20 of 2010), the legal heirs of K.M.Hanifa by the principle that the right of a co-owner, the Plaintiffs in O.S.No.20 of 2010, right of pre-emption to purchase the property, the share of Nazeer Ahamed, instead of creating encumbrance in favour of third parties, who are strangers to the family in enjoying the property. The ruling relied on by the learned Counsel for the Respondents 1 to 6 reported in **2018-5-L.W. 363 [Ameer Minhaj vs. Dierdre Elizabeth (Wright) Issar and others]** that an unregistered document cannot be pressed into service seeking relief of specific performance of contract as per Section 17(1-A) of the Registration Act which came to force from 24th September 2001. Also the ruling cited by the learned Counsel for the Respondents in **2021 (1) MWN (Civil) 316 (SC) [Venigalla Koteswaramma vs. Malampati Suryamba and others]** is squarely applicable to the facts of this case. Therefore, the Appellant herein Ramu who is a Plaintiff in O.S. No.19 of 2015 and Defendant-2 in O.S.No.20 of 2010 is not entitled to the relief of specific performance. The Appeal against the final decree also is to be



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dismissed in the light of the fact that the Plaintiff Ramu had approached the Court with unclean hands since the learned I Additional District and Sessions Judge, Cuddalore had granted alternate relief of refund of the advance amount paid by the Plaintiff Ramu in O.S.No.19 of 2015 to the sole Defendant Nazeer Ahamed. Also the Respondents in all the these Appeals in A.S.No.555 of 2022, 445 and 446 of 2023 had filed memo agreeing to refund of the amount. In the light of the above, all the three Appeals are to be dismissed confirming the judgment of the learned I Additional District and Sessions Judge, granting the alternate relief of refund of advance amount paid by the Ramu the Plaintiff in O.S.No.19 of 2015.

50. In the light of the above discussion from paragraphs 37 to 49, the final decree order dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore, is a well reasoned order which does not warrant any interference by this Court in the light of the fact that the suit for specific performance was rejected and instead alternate relief only granted by the learned I Additional District and Sessions Judge, Cuddalore. Therefore, the grant of final decree based preliminary decree dated 29.04.2017 passed in O.S.No.20 of 2010 is justified. **Accordingly, the point for determination in A.S.No.555 of 2022 is answered in favour of the Plaintiffs in O.S.No.20 of 2010/Respondents**



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herein and against the Plaintiff in O.S.No.19 of 2015/Appellant herein.

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51. In the light of the above discussion from paragraphs 37 to 49, the judgment dated 29.04.2017 in O.S.No.20 of 2010 passed by the learned I Additional District and Sessions Judge, Cuddalore, granting the relief of partition of 58/72 shares in favour of the Plaintiffs 1 to 6 is found proper. It is a well reasoned judgment which does not warrant any interference by this Court under Section 96 and Order XLI of CPC. **Accordingly, the point for determination in A.S.No.445 of 2023 is answered in favour of the Plaintiffs in O.S.No.20 of 2010/Respondents herein and against the Plaintiff in O.S.No.19 of 2015/Appellant herein.**

52. In the light of the above discussion from paragraphs 37 to 49, the judgment of the learned I Additional District and Sessions Judge, Cuddalore, in refusing to grant the relief of specific performance of contract for sale in favour of the Plaintiff in O.S.No.19 of 2015 and instead granting the alternate relief of refund of advance amount is found proper. It is a well reasoned judgment which does not warrant any interference by this Court exercising discretion under Section 96 and Order XLI of C.P.C. **Accordingly, the point for determination in A.S.No.446 of 2023 is answered in favour of the Plaintiffs in O.S.No.20 of 2010/Respondents herein and against the Plaintiff in**



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O.S.No.19 of 2015/Appellant herein.

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In the result, **all the three Appeals are dismissed** with cost throughout.

The fair and final order dated 28.04.2022 passed in I.A.No.2 of 2018 in O.S.No.20 of 2010 by the learned I Additional District and Sessions Judge, Cuddalore is confirmed. Also, the common judgment and decree dated 29.04.2017 passed in O.S.No.20 of 2010 and O.S.No.19 of 2015 by the learned I Additional District and Sessions Judge, Cuddalore is confirmed. Consequently, the connected miscellaneous petitions are closed.

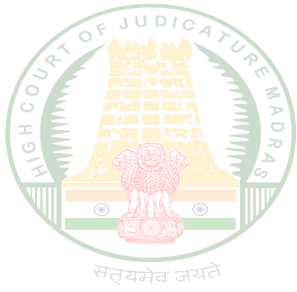
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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

shl/srm

To:

1. The I Additional District and Sessions Court,
Cuddalore.
2. The Section Officer,
V.R. Section,
High Court of Madras.

Judgment made in
A.S.Nos.555 of 2022, 445 and 446 of 2023

14.07.2025