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C.S.No.87 of 2019 and Tr.C.S.27 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2025

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

**C.S.No.87 of 2019 and
Tr.C.S.No.27 of 2022**

M/s N.Subhash Chand Jain HUF

represented by its Karta

Mr.N.Subhash Chand Jain

10/6, Angadi Street,

V.P.Colony,

Ayanavaram,

Chennai – 600 023

... Plaintiff in C.S.No.87 of 2019

1. Visalakshi Suresh

2. R.Muthukrishnan

3. G.Ramakrishna

4. A.K.S.Narayana Rao

5. A.V.S.Bhaskar

6. P.Sesha Reddy

... Plaintiffs in C.S.No.27 of 2022

Vs.

1. Visalakshi Suresh

2. A.V.S.Bhaskar

3. R.Muthukrishnan

4. G.Ramakrishna

5. P.Sesha Reddy

6. A.K.S.Narayana Rao

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7. Green Avenue Homes (P) Ltd.,
rep. By its Managing Director D.Dhinakaran
'Twin Towers', 305-E/170, T.T.K.Road,
Alwarpet, Chennai – 600 018

... Defendants in C.S.No.87 of 2019

1. M/s Green Avenue Homes (P) Ltd.,
rep. By its Managing Director D.Dhinakaran
'Twin Towers', 305-E/170, T.T.K.Road,
Alwarpet, Chennai – 600 018

2. M/s N.Subhash Chand Jain HUF
represented by its Karta N.Subhash Chand Jain
No.20, North street,
Jinalaya Apartments,
VP.Colony,
Ayanavaram,
Chennai – 600 023

3. D.Dhinakaran
Managing Director of M/s green Avenue Homes (P) Ltd.,
D13, Jain Sagarika Apartments, Sathyadev Avenue
MRC Nagar, Chennai – 600 028

(2nd defendant amended as per order dated 15.07.2024 in
App.No.2558 of 2024)

Prayer in C.S.No.87 of 2019:

The Civil Suit filed under Order IV Rule 1 of Original Side Rules
read with Order VII Rule 1 of Civil Procedure Code, 1908 to pass a
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Judgment and Preliminary decree in favour of the plaintiff as against the

defendants:-

(a) for the specific performance of the two registered sale agreements bearing registration nos.3730 & 3731/2013 dated 19.09.2013 SRO, Anna Nagar, Chennai directing the defendants to execute two registered sale deeds in favour of the plaintiff in respect of undivided 2/8th share in the suit A Schedule property (Suit C Schedule property) on receipt of the balance sale consideration of Rs.83,31,000/- on each sale agreement and on their failure to do so this Court to execute the two registered sale deeds in favour of the plaintiff in respect of the undivided 2/8th share in the suit A Schedule property (Alternatively)

b) directing the defendants jointly and severally to pay a sum of Rs.51,57,173/- [Rupees Fifty One lakhs fifty seven thousand one hundred and seventy three only) to the plaintiff together with interest @ 24% per annum on the principal sum of Rs.24,00,000/- (Rupees Twenty four lakhs only) from the date of suit till the date of realisation.

c) award cost of the proceedings and

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d) pass such other reliefs.

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Prayer in Tr.C.S.No.27 of 2022:

The Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code, 1908 to pass a Judgment and Preliminary decree in favour of the plaintiff as against the defendants:-

(a) To declare that any act done by the 1st defendant pursuant to the Power of Attorney dated 29.10.2012 registered as Document No.1102 before SRO, Anna Nagar which was subsequently cancelled vide Deed of Cancellation dated 08.10.2015 and 31.12.2015 registered as Document No.4571/2015 before SRO Anna Nagar as Null and Void in view of the 1st defendant's letter dated 26.01.2016, wherein he has expressed his inability to continue with the project

(b) To consequentially declare that the sale agreement dated 19.09.2013 registered as Document No.3730/2013 before SRO Anna Nagar executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant as null and void.

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(c) To consequentially declare that the sale agreement dated 19.09.2013 registered as Document no.3731/2013 before SRO Anna Nagar executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant as Null and void.

(d) for a permanent injunction restraining the defendants, their men, agents, servants or any other person making claim under the defendants from in any way interfering with the plaintiff's peaceful possession

(e) For a permanent injunction restraining the defendants, their men, agents, servants or any other person making claim under the defendants from in any way creating encumbrance over the suit schedule property.

(f) For a permanent injunction restraining the defendants, their men, agents, servants or any other person making claim under the defendants from in any way interfering with the plaintiff's rights to deal in



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any manner including that of putting up construction as owners of the
suit schedule property

g) to pay the cost of the suit

h) to pass any such further orders

C.S.No.87 of 2019:

For Plaintiff : Mr.Shanger Murali for
Ms.S.Kushi

For Defendants : Mr.PL.Narayanan for
Mr.V.Praveen Kumar for D1 to D6
D7 – Notice served – No appearance

Tr.C.S.No.27 of 2022:

For Plaintiffs : Mr.PL.Narayanan for
Mr.V.Praveen Kumar

For Defendants : Mr.V.R.Kamalanathan for D1 and D3
Mr.Shanger Murali for
Ms.S.Kushi for D2

COMMON JUDGMENT

The suit in C.S.No.87 of 2019 has been filed by the plaintiff for the
relief of specific performance of the two registered sale agreements
dated 19.09.2013 directing the defendants to execute two registered
sale deeds in favour of the plaintiff in respect of undivided 2/8th share in
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the suit A Schedule property (Suit C Schedule property) on receipt of

the balance sale consideration of Rs.83,31,000/- on each sale

agreement and on their failure, to execute the two registered sale deeds

in favour of the plaintiff by this Court, Alternatively directing the

defendants jointly and severally to pay a sum of Rs.51,57,173/- [Rupees

Fifty One lakhs fifty seven thousand one hundred and seventy three

only) to the plaintiff together with interest @ 24% per annum on the

principal sum of Rs.24,00,000/- (Rupees Twenty four lakhs only) from

the date of suit till the date of realisation.

2.The suit in Tr.C.S.No.27 of 2022 has been filed by the plaintiffs,
who are defendants in C.S.No.87 of 2019 as against the defendants,
who are plaintiffs in C.S.No.87 of 2019 for the following reliefs:-

(a) To declare that any act done by the 1st defendant pursuant to
the Power of Attorney dated 29.10.2012 registered as Document
No.1102 before SRO, Anna Nagar which was subsequently cancelled
vide Deed of Cancellation dated 08.10.2015 and 31.12.2015 registered
as Document No.4571/2015 before SRO Anna Nagar as Null and Void
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in view of the 1st defendant' letter dated 26.01.2016, wherein he has expressed his inability to continue with the project

(b) To consequentially declare that the sale agreement dated 19.09.2013 registered as Document No.3730/2013 before SRO Anna Nagar executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant as null and void.

(c) To consequentially declare that the sale agreement dated 19.09.2013 registered as Document no.3731/2013 before SRO Anna Nagar executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant as Null and void.

(d) for a permanent injunction restraining the defendants, their men, agents, servants or any other person making claim under the defendants from in any way interfering with the plaintiff's peaceful possession



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(e) For a permanent injunction restraining the defendants, their

men, agents, servants or any other person making claim under the defendants from in any way creating encumbrance over the suit schedule property.

(f) For a permanent injunction restraining the defendants, their

men, agents, servants or any other person making claim under the defendants from in any way interfering with the plaintiff's rights to deal in any manner including that of putting up construction as owners of the suit schedule property

g) to pay the cost of the suit

h) to pass any such further orders

In fact, the C.S.No.87 of 2019 has been straight away filed by the plaintiff before this Court and as far as C.S.No.27 of 2022 is concerned, initially, C.S.No.404 of 2017 was filed before this Court and thereafter, it was transferred to the City Civil Court, Chennai and renumbered as O.S.No.4767 of 2019 and again, the case was re-transferred to this Court and numbered as Tr.C.S.No.27 of 2022. Further, as per the order 9/99



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of this Court, dated 08.08.2023, joint trial was conducted and common

evidence was recorded in both the suits. C.S.No.87 of 2019 has been

taken as main suit and common evidence was recorded in that suit.

Therefore, common judgment is being passed.

3. The brief averments of the plaint in C.S.No.87 of 2019 are as follows:-

(i) The defendants 1 and 2 are joint owners of Suit 'A' schedule property. The 1st defendant is the absolute owner of the Item No.1 of suit 'B' schedule properties through registered settlement deed dated 14.12.2011 and the 2nd defendant is the absolute owner of the Item No.2 of 'B' schedule property through settlement deed dated 09.09.2009. The 3rd defendant is the absolute owner of the Item No.3 of 'B' schedule property through registered sale deed dated 15.11.1988. The 4th defendant is the absolute owner of the Item No.4 of the suit 'B' schedule property through settlement deed dated 17.06.2010. The 5th defendant is the absolute owner of the Item No.5 of the suit 'B' schedule property through Settlement Deed dated 11.02.2008. The 6th defendant is the

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absolute owner of the Item No. 6 of the 'B' schedule property through

sale deed dated 10.08.1988. As such, the Item Nos.1 to 6 of suit 'B'

schedule properties are residential flats constructed in the suit 'A'

Schedule property.

(ii) The defendants 1 to 6 entered into joint development agreement dated 29.10.2012 with 7th defendant in respect of suit 'A' schedule property. As per the said joint development agreement dated 29.10.2012, the defendants 1 to 6 are entitled to retain 1/8th undivided share each and they are jointly entitled to 6/8th undivided share in the suit 'A' schedule property and the 7th defendant is entitled to 2/8th undivided share in the remaining suit 'A' schedule property. In pursuance to the said joint development agreement, the defendants 1, 3, 4 and 6 have executed a registered Power Deed dated 29.10.2012 in favour of the 7th defendant in respect of the Item Nos.1,3,4 and 6 of the 'B' schedule properties. The 2nd defendant had executed a registered Power Deed dated 14.11.2012 at New York, USA and the same was adjudicated on 05.12.2012 at SRO, Anna Nagar in favour of 7th defendant in respect of Item No.2 of 'B' Schedule Properties.

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(iii) The 5th defendant had executed registered Power of Attorney

dated 09.11.2012 at State of New Jersey, USA and the same was adjudicated on 05.12.2012 at SRO, Annanagar in favour of the 7th defendant in respect of Item no.5 of suit 'A' Schedule Property, therefore, all the defendants 1 to 6 specifically authorised 7th defendant to sell 2/8th undivided share in the suit 'A' schedule property. The 7th defendant approached the plaintiff for sale of undivided 2/8th share in the 'A' schedule property and entered into two registered sale agreements dated 19.09.2013 and the sale price was fixed at Rs.1,90,62,000/- [Rupees one crore ninety lakhs sixty two thousand only].

(iv) At the time of sale agreement, the plaintiff paid a sum of Rs.10,00,000/- [Rupees Ten lakhs only] for each agreement and totally paid a sum of Rs.20,00,000/- [Rupees Twenty Lakhs only]. Subsequently, the plaintiff paid a sum of Rs.2,00,000/- each for the agreement and totally he paid a sum of Rs.24,00,000/- out of sale consideration of Rs.1,90,62,000/-, the plaintiff is liable to pay a sum of

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Rs.1,66,62,000/-. The 7th defendant had demolished the then old

structures in the suit 'A' schedule property, after obtaining demolition

order from the Corporation of Chennai and the 'A' schedule property is

now lying vacant. The plaintiff is always ready and willing to perform his

part of contract, as per the registered sale agreements, but the 7th

defendant insisted the plaintiff to pay the balance consideration at the

time of commencement of the construction of the suit 'A' schedule

property. The 7th defendant required the balance sale consideration

only at the time of construction and the same will be utilised for

construction of building. Hence the plaintiff was waiting for

commencement of construction in the suit 'A' schedule property and to

pay the balance sale consideration at that time. The 7th defendant

informed the plaintiff, that only on obtaining the planning permission for

putting up construction in the suit 'A' schedule property, the 7th

defendant will be in a position to execute necessary construction

agreement in the proposed flats to be conveyed to the plaintiff and the

plaintiff was also waiting for the 7th defendant in obtaining building plan

approval and license from the concerned authorities. The defendants 1

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to 6 are all well aware of the above said registered sale agreement in favour of the plaintiff executed by the 7th defendant.

(v) The 7th defendant informed the plaintiff that the defendants 1 to 6 had already received certain amounts, thereby they have executed the Power of attorney Deeds in favour of the 7th defendant and authorised to sell their 2/8th undivided share. In the meantime, the plaintiff learnt that the defendants 1,3,4 and 6 have cancelled the registered Power of Attorney through cancellation deed dated 08.10.2015. The 2nd defendant also cancelled Power of Attorney deed through cancellation deed dated 27.01.2016. The said cancellation of Power of Attorneys came to knowledge of the plaintiff on receipt of the lawyers notice dated 22.10.2016 issued by the defendants 1 to 6. the subsequent cancellation of the aforesaid power of attorney deeds will not absolve the defendants' liability to execute two registered sale deeds. After issuance of legal notice, the defendants, promised to execute two registered sale deeds in favour of the plaintiff after settling the issue with the 7th defendant and after finding the developer to develop the suit 'A' schedule property when they were contacted by the

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plaintiff. Therefore, the plaintiff was kept silent and not intended to take any action.

(vi) Thereafter, the defendants 1 to 6 filed a suit in C.S.No.404 of 2017 against the 7th defendant and one N.Subhash Chand Jain HUF in his individual capacity and after receipt of summons, the plaintiff approached the defendants 1 to 6 and expressed his readiness and willingness to get sale deeds registered in their favour in respect of the undivided 2/8th share in the 'A' schedule property. But the defendants represented that the filing of the suit is to cancel the joint development agreement already entered into with the 7th defendant and therefore, the plaintiff is not to be worried about the prayers sought in that suit, viz., C.S.No.404 of 2017. Believing the said representations, the plaintiff has not filed any written statement in that suit. Thereafter, the plaintiff filed the written statement disputing the claim of the defendants.

(vii) The plaintiff has been always ready and willing to pay the remaining sale consideration and to get the sale deeds registered in

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their favour. Therefore, the plaintiff has caused notice dated 08.11.2017

calling upon the defendants 1 to 6 to execute the sale deed after receipt of balance consideration. The sale agreements were entered into on 19.09.2013 and the period for completion of sale was fixed at 18 months, but the 7th defendant insisted the plaintiff to pay the balance sale consideration at the time of commencement of construction in the suit 'A' schedule property, therefore, the plaintiff is entitled to relief of specific performance in respect of the undivided 2/8th share in the suit 'A' schedule property (Suit 'C') schedule property).

4. The brief averments of the written statements filed by the defendants in C.S.No.87 of 2019 are as follows:-

(i) The defendants denied each and every averment contained in the plaint, save those that are specifically admitted hereinafter and those which are not admitted, the plaintiff is put to strict proof thereof.

The suit is abuse of process of court. The plaintiff is a financier, who advances money to the builder and obtains an agreement of sale as a

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security documents and once the builder repays the money financed by

him, he cancels the agreement. The plaintiff was already involved in several suits before this Court. Moreover, the power granted to the 7th defendant does not empower the 7th defendant to enter into the agreement of sale. The plaintiff and the 7th defendant colluded jointly and filed this suit. The power of attorney dated 29.10.2012 does not empower the 7th defendant to borrow any money against the property to be developed and as per the terms of contract, it is implied that 'D' schedule property in the Joint Development Agreement dated 29.10.2012 can be sold to the prospective purchaser of flat only when the construction is effectively taken off.

(ii) Per contra, in this case, not even brick has been laid by the 7th defendant and in fact, he has rescinded from the contract in and by its letter dated 29.08.2016. It is true that the defendants entered into the Joint Development Agreement dated 29.10.2012 on the false promises made by the 7th defendant regarding delivery of project and aesthetic design and appearance, quality of execution of work, cost effectiveness, 17/99



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timely execution and transparency in transactions. The 7th defendant

failed to carryout even a single promises made by them, since the date of Joint Development Agreement.

(iii) When the 7th defendant did not oblige to the joint development agreement, the 7th defendant's right under the Power of Attorney to sell 2/8 th undivided share in the suit 'A' schedule property cannot be enforced. The defendants held a meeting on 08.11.2013, where the 7th defendant accepted to handover the constructed building on or before 10.04.2015. However, the 7th defendant had miserably failed to fulfill the promise. The defendants came to know about the existence of sale agreements only at a later point of time, the intention of the plaintiff and the 7th defendant is to defeat the legitimate rights of the defendants and create encumbrance over the property. The plaintiff and the 7th defendant have conspired and illustrated a drama with malafide intention to cheat the defendants and to rob their property.



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(iv) Already all the defendants have filed a suit in C.S.No.404 of

2017 and the same was transferred to the City Civil Court, Chennai and re-numbered as O.S.No.4767 of 2019, once again the said suit was transferred to this Court and numbered as C.S.No.27 of 2022, which is filed to declare the Power of Attorney, which was cancelled and sale agreements as null and void. The defendants have not received any single penny from the plaintiff or the 7th defendant till date, therefore, the sale agreements are void and the suit is liable to be dismissed.

5. The brief averments of the plaint in Tr. C.S.No.27 of 2022 are as follows:-

(i) The plaintiffs are the absolute owner of the suit properties. The 1st defendant through the 3rd defendant approached the plaintiffs for joint development of suit property by demolishing the existing building and construction of multi storied building in the suit property. The plaintiffs and the defendants had entered into the joint development agreement dated 29.10.2012.



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(ii) The plaintiffs 1 to 6 are joint owners of Suit 'A' schedule

property. The 1st plaintiff is the absolute owner of the Item No.1 of suit 'B' schedule properties through registered settlement deed dated 14.12.2011 and the 5th plaintiff is the absolute owner of the Item No.2 of 'B' schedule property through settlement deed dated 09.09.2009. The 2nd plaintiff is the absolute owner of the Item No.3 of 'B' schedule property through registered sale deed dated 15.11.1988. The 3rd plaintiff is the absolute owner of the Item No.4 of the suit 'B' schedule property through settlement deed dated 17.06.2010. The 6th plaintiff is the absolute owner of the Item No.5 of the suit 'B' schedule property through Settlement Deed dated 11.02.2008. The 4th plaintiff is the absolute owner of the Item No. 6 of the 'B' schedule property through sale deed dated 10.08.1988. As such, the Item Nos.1 to 6 of suit properties are residential flats constructed in the suit 'A' Schedule property.

(iii) As per the joint venture agreement, the project shall be completed within 18 months from the date of demolition. The 1st defendant had made false promise regarding aesthetic design and 20/99



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appearance and quality of execution of work, cost effectiveness, timely

execution and transparency in transactions. Based on the above said

promises, the plaintiffs were induced by the defendants to enter into

Joint Development Agreement dated 29.10.2012 with the 1st defendant

to develop the suit property into a residential apartment complex. The

defendants failed to comply with the various terms of agreement. The

plaintiffs have executed power of attorney dated 29.10.2012 appointing

the 1st defendant as power agent on the bonafide belief that the

defendants would adhere to their obligations and promises made by

them, both in the proposal and joint development agreement had

reposed confidence on the 1st defendant herein and authorised the 1st

defendant herein to demolish the existing building and develop it into a

residential apartment.

(iv) The 1st defendant had inordinately delayed in obtaining the

demolition and reconstruction approvals and the 1st defendant had

brought down the existing building after obtaining approvals only on

05.11.2013 and after demolition, no efforts had been taken to

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defendant mis-used the power of attorney granted to him and entered into sale agreement with the 2nd defendant. The power of attorney executed by the plaintiffs was only in line of joint development agreement dated 29.10.2012 and the said power upon the 1st defendant is only a reciprocal promise and only if the 1st defendant performed the terms under the Joint Development Agreement dated 29.10.2012 and the power of attorney cannot be independently exercised.

(vi) The 1st and 2nd defendants in collusion and connivance with each other and with an intent to defeat the legitimate right of the plaintiffs had fraudulently brought the agreement of sale into existence. Thereafter the 1st defendant by letter dated 26.01.2016 expressed their inability to proceed with the construction activity and rescinded the contract. The above said conduct of the 1st defendant would show the malafide intention of the defendants in cheating the plaintiffs. The 1st defendant cannot have the benefit of agreement of sale dated 19.09.2013. It is the responsibility of the 1st defendant to cancel the



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registered agreement of sale, which is otherwise elapsed by efflux of time.

(vii) Already, the plaintiffs sent a legal notice dated 22.10.2016 to the defendants to cancel the Agreement of Sale dated 19.09.2013, but the defendants have not sent any reply, therefore, the plaintiffs have filed this Suit.

6. The brief averments of the Written Statement filed by the defendants 1 and 3 in Tr.C.S.No.27 of 2022 are as follows:-

(i) The suit is not maintainable either in law or on facts and liable to be dismissed with costs. These defendants deny the execution of letter dated 26.01.2016.

(ii) It is true that the plaintiffs are the absolute owners of the properties, the 1st defendant has approached the plaintiffs through the 3rd defendant for construction of multi-storyed building. The plaintiffs after negotiating various grounds had entered into joint development 24/99



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agreement on 29.10.2012 and not on any inducement as stated in the

plaint. The averment in the plaint with respect to the clause of the

agreement are admitted and the completion of contract have been

extended between the parties orally and also by the act of parties. The

plaintiffs had executed the power of attorney dated 29.10.2012

appointing the 1st defendant as their power agent and in fact, there was

a delay in handing over the vacant possession of the said building,

because of the said delay in handing over vacant possession,

particularly the father of the 1st plaintiff refused to vacate and there was

dispute between the father and daughter, Visalakshi Suresh, 1st plaintiff

herein. The inordinate delay on the part of the plaintiffs and particularly

in violation of terms and conditions. As agreed in the joint venture

agreement, the defendants had obtained an order of demolition from the

concerned authorities on 28.10.2013.

(iii) It is admitted that the meeting was held on 08.11.2013 and in

the said meeting, the 1st defendant had accepted to complete the

construction on or before 10.04.2015, but it is false to state that the 1st

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defendant did not take any steps as per the promise. The 1st defendant

applied for granting patta for the 'A' schedule property and after inspection and measurements taken by the Revenue authorities, the patta was granted on 19.12.2013 by the revenue authorities and the patta is one of the basic documents for obtaining building plan approval, therefore, there is no delay on the part of the 1st defendant. The plaintiffs had sent a letter dated 12.05.2015 and the same was suitably replied through the legal notice dated 16.07.2015. Therefore, the cancellation of power of attorney deed executed by the plaintiffs is not valid in the eye of law and there is no collusion between the defendants, as alleged in the plaint. The 1st defendant entered into sale agreement with the 2nd defendant on 19.09.2013 and there is no misuse of power of attorney as alleged in the plaint. The execution of above said sale agreement in favour of the 2nd defendant is very well known to all the plaintiffs and in no point of time they have raised any objections. Therefore, the suit as against these defendants is liable to be dismissed.



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7. The brief averments of the Written Statement filed by the 2nd

defendant in Tr.C.S.No.27 of 2022 are as follows:-

(i) The 2nd defendant was not aware of the transaction that transpired between the plaintiffs and the builder at the time of execution of Joint Development Agreement dated 29.10.2012 and also at the time of registered General Power of Attorney deeds executed by the plaintiffs in favour of the Builder. The builder has been authorised to sell 2/8th undivided share in 'A' Schedule property and the remaining 6/8th share has been retained by the plaintiffs towards their share. Pursuant to the registered Power of attorney deeds executed by the plaintiffs in favour of the builder, the 2nd defendant entered into two registered sale agreements with the builder on 19.09.2013. The sale price was fixed at Rs.1,90,62,000/-, on the date of agreements, the 2nd defendant paid a sum of Rs.10,00,000/- for each agreement, totally Rs.20 Lakhs was paid to the builder and subsequently the 2nd defendant paid Rs.2 Lakhs for each of the agreement and totally Rs.4,00,000/- was paid to the builder. Thus, the 2nd defendant had paid totally a sum of Rs.24,00,000/- towards advance of sale consideration, therefore, the

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2nd defendant is liable to pay the remaining sale price of
Rs.1,66,62,000/-

(ii) At the time of execution of sale, the builder demolished the then old structure in the 'A' schedule properties and now the 'A' schedule properties are lying vacant. The 2nd defendant is always ready and willing to perform his part of contract, as per the sale agreements, but the builder has failed to perform his part of contract and failed to obtain building plan approval and license from the competent authorities. The plaintiffs are well aware of the above registered sale agreements executed by the builder in the name of the 2nd defendant. The said registered sale agreements have been executed in favour of the 2nd defendant from the currency of the power of attorney deeds executed by the plaintiffs in favour of the builder.

(iii) The 2nd defendant is a bonafide intending purchaser and the said sale agreements are genuine, valid and enforceable and binding on the plaintiffs. The subsequent cancellation of power of attorney
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deeds will not absolve the plaintiffs' liability to execute two registered

sale deeds upon receipt of balance sale agreement in favour of the 2nd

defendant as per sale agreement deeds. The 2nd defendant has got

every reason to suspect that the plaintiffs in collusion with the builder

issued notice and filed the above suit in order to deprive 2nd defendant's

legitimate rights to get the sale deeds registered in his favour.

Therefore, the plaintiffs being owner of 'A' schedule properties are

bound to execute registered sale deeds in favour of the 2nd defendant

upon receipt of balance sale price from him. The plaintiffs are not

entitled to the reliefs as prayed for. The court fee paid by the plaintiffs is

not in consonance with the Tamilnadu Court Fees and Suit Valuation Act

and there is no cause of action to file the suit and hence suit is liable to

be dismissed.

(iv) The 2nd defendant had entered into two sale agreements with

the 1st defendant and not in his individual capacity, therefore, the suit is

liable to be dismissed for non-joinder of necessary party.



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8. Based on the above said pleadings and after hearing both

sides and after perusing the entire records, this Court on 08.08.2023,

framed the following common issues in both the suits for trial:-

i) Whether the sale agreement dated 19.09.2013 entered between the plaintiff and defendants in C.S.No.87 of 2019 is true, valid and genuine?

ii) Whether the 7th defendant in C.S.No.87 of 2019 is authorised to enter into Sale Agreement in respect of the suit property by virtue of the Power of Attorney executed in his favour?

iii) Whether the Power of Attorneys alleged to have been executed in favour of the 7th defendant in C.S.No.87 of 2019 dated 29.10.2012, 14.11.2012 and 09.11.2012 are true and valid?

iv) Whether D1 to D6 in C.S.No.87 of 2019 had extended the time for performance of the sale agreement dated 19.09.2013?

v) Whether the plaintiff in C.S.No.87 of 2019 was ready and willing to perform his part of the contract?

vi) Whether the plaintiffs in C.S.No.87 of 2019 is entitled to get relief for specific performance?

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C.S.No.87 of 2019 and Tr.C.S.27 of 2022

vii) *Whether the case in Tr.C.S.No.27 of 2022 is bad for non-joinder of necessary parties?*

viii) *Whether the suit in Tr.C.S.No.27 of 2022 is barred by limitation?*

ix) *Whether the plaintiffs in Tr.C.S.No.27 of 2022 are entitled to get the reliefs of declaration and permanent injunction as prayed?*

x) *Whether the Court fee paid by the plaintiff in Tr.C.S.No.27 of 2022 is correct?*

xi) *To what reliefs if any the plaintiff in C.S.No.87 of 2019 and the plaintiffs in Tr.C.S.No.27 of 2022 are entitled to?*

9. As far as the issues are concerned, it is not proper to frame common issues in both the suits, in each suit, the issues have to be framed separately, however, during the joint trial, evidence can be adduced commonly. Therefore, for better appreciation and effective disposal of both the Suits, this Court re-casted the issues in both the suits separately.

(a) The re-casted Issues in C.S.No.87 of 2019 are as follows:-

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1. Whether the sale agreement dated 19.09.2013 entered into

between the plaintiff and 7th defendant, as Power of Attorney

Agent of 1 to 6 defendants, is true, valid and genuine?

2. Whether the 7th defendant was authorised to enter into a Sale

Agreement in respect of the suit property by virtue of the power of

attorney executed in his favour?

3. Whether the suit is barred by limitation?

4. Whether the defendants 1 to 6 had extended time for performance

of Sale Agreement dated 19.09.2013?

5. Whether the plaintiff was always ready and willing to perform his

part of the contract?

6. Whether the plaintiff is entitled to get the relief of specific

performance of contract.

7. To what other relieves the plaintiff is entitled to?



C.S.No.87 of 2019 and Tr.C.S.27 of 2022

(b) The re-casted Issues in Tr.C.S.No.27 of 2022 are as

follows:-

1. Whether the sale agreement dated 19.09.2013 entered into between the 2nd defendant and 1st defendant, as power of attorney agent of plaintiffs, is true, valid and genuine.?
2. Whether the 1st defendant is authorised to enter into the sale agreement in respect of the suit property by virtue of the power of attorney executed in his favour?
3. Whether the suit is barred by limitation?
4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiffs are entitled for decree of declaration that any act done by the 1st defendant pursuant to the Power of Attorney dated 29.10.2012 registered as Document No.1102 before SRO Anna Nagar, which was subsequently cancelled vide Deed of Cancellation dated 08.10.2015 and 31.12.2015 registered as Document No.4571/2015 before SRO Anna Nagar as Null and Void in view of 1st defendant's letter dated



C.S.No.87 of 2019 and Tr.C.S.27 of 2022

26.01.2016, wherein he has expressed his inability to continue with the project?

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6. Whether the plaintiffs are entitled for decree of declaration that the Sale Agreement dated 19.09.2013 registered as Document No.3730/2013 before SRO Anna Nagar Executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant as null and void.?

7. Whether the plaintiffs are entitled for decree for declaration that the Sale Agreement dated 19.09.2013 registered as Document No.3731/2013 before sRO Anna Nagar executed by the 1st defendant as General Power of Attorney of the plaintiffs in favour of the 2nd defendant, as null and void?

8. Whether the plaintiffs are entitled for permanent injunction from interfering with the plaintiffs' peaceful possession and enjoyment of property?

9. Whether the plaintiffs are entitled for permanent injunction as against the defendants from securing any encumbrance over the schedule properties?.



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10. Whether the plaintiffs are entitled to any relief of permanent injunction restraining the defendants from interfering the plaintiffs' right to deal with any manner including that of putting up construction as owners of the suit schedule properties?.

11. Whether the court fee paid by the plaintiff is correct?

12. To what other relieves, the plaintiffs are entitled to?

For the sake of convenience and brevity, the plaintiff in C.S.No.87 of 2019 is referred as 'plaintiff' and the plaintiffs in Tr.C.S.No.27 of 2022 are referred as 'defendants'

10. As far as the re-casted issues are concerned, already, the plaintiffs in both the suits have filed the pleadings and also adduced evidences in respect of the issues, now, this Court has not framed any additional issues and only re-casted the issues in each of the case separately, therefore, the parties are aware about the issues and already, they adduced evidences on their side respectively. Therefore, adducing of further evidence based on the re-casted issues does not



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arise, hence, this Court is inclined to pass Common Judgement with the available evidences and records.

11. Pursuant to the joint trial ordered by this Court on 11.10.2023, on the side of the plaintiffs, P.W.1 was examined and marked Exhibits Ex.P.1 to P.15. On the side of the defendants, D.W.1 and D.W.2 were examined and marked Exhibits Ex.D.1 to D.30.

12. The learned counsel appearing for the plaintiff in C.S.No.87 of 2019 and 2nd defendant in Tr.C.S.No.27 of 2022 would submit as follows:-

(i) The defendants 1 and 2 are the owners of the suit properties through registered documents Ex.P.1 to Ex.P.6 and the defendants 1 to 6 entered into joint development agreement with the 7th defendant through Ex.D.8 and based on the said Ex.D.8, the defendants 1 to 6 executed three registered Power of Attorney deeds, Exs.P.7 to P.9 in favour of the 7th defendant. As per the development Agreement, Ex.D.8, the defendants 1 to 6 are entitled to 6/8th share and the 7th defendant is 36/99



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entitled to remaining 2/8th share in the undivided suit 'A' schedule property, which is shown as suit 'B' schedule property. The 7th defendant, based on Exs.P.7 to P.9, [three registered power of attorney deeds], entered into two registered sale agreements with the plaintiff vide Exs.P.10 and P.11.

(ii) The plaintiff paid a sum of Rs.20,00,000/- by way of cheques and Rs.4,00,000/- by cash totally paid a sum of Rs.24,00,000/- to the 7th defendant as advance for the total sale price of Rs.1,90,62,000/- and agreed to pay the balance sale price after the commencement of the construction in the suit 'B' schedule property and on execution of the registered sale deed in its favour in respect of the suit 'B' schedule property. The 7th defendant, after obtaining demolition order, viz., Ex.D.13, has not commenced the construction work in the suit 'B' schedule property. In the meantime, the defendants 1 to 6 cancelled the registered power of attorneys given to the 7th defendant by two registered cancellation of power of attorneys, Exs.P.12 and 13.

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(iii) The defendants 1 to 6 issued notice to the plaintiff through Ex.P.14 and thereafter, the plaintiff had several negotiations with the defendants 1 to 6 to resolve the dispute amicably. The Ex.P.15, reply notice issued by the plaintiff specifically mentioned the ingredients that the 1 to 6 defendants filed a suit in Tr.C.S.No.27 of 2022 to declare any act done by the 7th defendant pursuant to the power of attorney, which was subsequently cancelled as null and void and consequently to declare two registered sale agreements Ex.P.10 and P.11 as null and void and for permanent injunction restraining the defendants there in from interfering with the peaceful possession and enjoyment of property and permanent injunction restraining the defendants from alienating or encumbering the suit property therein and for permanent injunction restraining the defendants therein from interfering with their right to deal with the suit property.

(iv) The plaintiff has filed a suit in C.S.no.87 of 2019 for specific performance of the two registered sale agreements / Exs.P.10 and P.11

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upon receipt of balance sale price or alternatively prayed for the

advance amount with interest at the rate of 24% per annum. The plaintiff

has specifically pleaded and evidenced that he has been always ready

and willing to perform his part of contract and the 7th defendant also not

denied the execution of agreements after receipt of advance amount.

Further, the cancellation of power deeds were subsequent to the

execution of sale agreement deeds in favour of the plaintiff. The

defendants are liable to execute sale agreement deeds in favour of the

plaintiff. The defendants have not pleaded about the granting decree of

specific performance would cause hardship to them, as per Section 20

of the Specific Relief Act, 1963, mere inadequacy of consideration is not

a ground to deny the relief of specific performance and the court has got

discretionary power to grant relief of specific performance or not. Even

the escalation of the sale price is not a ground to deny the relief of

specific performance.

(v) It is not the case of the defendants that the registered sale

agreements are not supported by any consideration and the plaintiff is

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not willing to perform his part of contract. The defendants 1 to 6 have

raised a plea of fraud, thereby the burden of proof is on them to prove

the alleged fraud, but they miserably failed to prove the alleged fraud.

The two sale agreements are registered and as per Section 60 of the

Registration Act and there is a presumption in respect of execution of

those documents and the defendants are not entitled to adduce

evidence in respect of the registered documents as per Sections 90 and

91 of the Indian Evidence Act.

(vi) As per Article 54 of the Limitation Act, a suit for specific performance shall be filed within a period of three years when the time limit is fixed for the performance or if no such date is fixed when the plaintiff has notice that the performance is refused. As per Joint Development Agreement, the 7th defendant is empowered to execute sale agreement in respect of Schedule D therein /the suit B schedule property in the suit. As per Clause 18(h), the 7th defendant is entitled to execute sale deed after obtaining building plan in respect of Schedule D therein/ the suit B Schedule property therein. As per the power of 40/99



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attorney/ Ex.D7, the 7th defendant is specifically authorised to enter into

sale agreement and to receive advance amount in his name in respect of the Schedule D therein / the suit B Schedule property therein.

(vii) The 7th defendant has not cancelled the two registered sale agreements, during the currency period of power of attorney deed. As per Section 204 of the Indian Contract Act, the principal is empowered to cancel the power of attorney when it was not exercised by the power agent. If the power agent partly exercised his power, the same cannot be cancelled and it binds the principal. The agreements were executed during the currency of the power of attorney deeds, therefore, the defendants 1 to 6 being principals are liable to execute sale deeds to perform their part of contract.

(ix) The suit in Tr.C.S.No.27 of 2022 is bad for non-joinder of necessary parties, as they had impleaded the 2nd defendant in his individual capacity. When the agreement was executed in favour of

M/s. N.Subhash Chand Jain HUF, the defendants' side witnesses
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D.Ws.1 and 2 are mere agents and accordingly, they cannot depose

evidence in respect of the events that happened prior to the execution of the power deed in their favour. Further, they cannot depose any evidence in respect of the events prior to the execution of power deed in their favour. The defendants 1 to 6 have not entered into witness box, therefore, adverse inference can be drawn against them. Therefore, the suit in C.S.No.87 of 2019 is liable to be decreed by granting decree for specific performance of contract and suit in Tr.C.S.No.27 of 2022 is liable to be dismissed.

13. The learned counsel appearing for the plaintiff in C.S.No.87 of 2019 and 2nd defendant in Tr.C.S.No.27 of 2022 relied on the following Judgments :-

1. The Judgment of the Hon'ble Supreme Court reported in (2005) 2 SCC 217 [Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd., & Others]
2. The Judgment of the Hon'ble Supreme Court reported in (2003) 6 SCC 595 [Roop Kumar Vs. Mohan Thedani]



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3. The Judgment of the Hon'ble Supreme Court reported in AIR

2007 SC 2191 [M/s Kamakshi Builders Vs. M/s Ambedkar Educational Society & Ors]

4.The Judgment of the Hon'ble Supreme Court reported in 1982(1) SCC 4 [Smt.Gangabai Vs. Chhabubai]

5. The Judgment of the Hon'ble Supreme Court reported in (2007) 10 SCC 231 [P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi and Another]

6.The Judgment of the Hon'ble Supreme Court reported in 2023 (19) SCC 175 [Damodhar Narayan Sawale Vs. Shri Tejrao Bajirao Mhaske and Ors]

7.The Judgment of the Hon'ble Supreme Court reported in (2000) 8 SCC 420 [Motilal Jain Vs. Smt.Ramdasi Devi and Ors.,]

8.The Judgment of the Hon'ble Supreme Court reported in (2014) 5 SCC 312 [Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari & Anr.]



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9. The Judgment of the Hon'ble Supreme Court reported in (2007) 6 SCC 401 [M.Venkataramana Hebbar Vs. Rajagopal

Hebbar & others]

10. The Judgment of the Hon'ble Supreme Court reported in (2012) (5) SCC 403 [Prakash Chandra Vs. Narayan]

11. The Judgment of this Court reported in (2013) 3 SCC 746 [Nanjappa Gounder & Another Vs. Ashok Kumar]

12. The Judgment of this Court reported in (2014) 1 CTC 165 [M.Sekar Vs. P.Madeswaran]

13. The Judgment of this Court reported in (2009) 4 LW 674 [Mannarsamy Naaicker and another Vs. Nagammal and Ors.]

14. The Judgment of this Court reported in 2017 (1) MEN Civil 489 [R.Jothi Vs. N.Neelavathi] .

14. The learned counsel appearing for the defendants 1 to 6 in C.S.No.87 of 2019 and plaintiffs in Tr.C.S.No.27 of 2022 would submit as follows:-

(i) The plaintiff in C.S.No.87 of 2019 has filed a suit for specific performance based on two documents with respect of undivided 2/8th 44/99



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share in the suit schedule property or alternatively direct the defendants

to jointly and severally pay a sum of Rs.24,00,000/- together with 24%

interest per annum. The plaintiff in C.S.No.87 of 2019 is a financier, who

advance money to the builder and obtains an agreement of sale as a

security documents and once the builder repays the money financed by

him, he cancels the agreement, which is his modus operandi. The

plaintiff is involved in several suits pending before this Court. Moreover,

the power granted to the 7th defendant does not empower him to enter

into any agreement of sale and the plaintiff and the 7th defendant

colluded each other jointly put in efforts to drag the suit property into

litigation, while the 7th defendant is unfairly making money out of it.

(ii) The power of attorney dated 29.10.2012 does not empower

the 7th defendant to borrow any money against the property to be

developed. The 7th defendant based on the joint development

agreement dated 29.10.2012 not even laid a single brick and has

rescinded from the contract in and by its letter dated 26.01.2016. The

defendants are the absolute owner of the property and they entered into

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joint venture agreement with the 7th defendant to develop the property

on 29.10.2012. As per the joint development agreement, the project shall be completed within 18 months from the date of handing over the suit property for demolition. As per Clause 12 of the Joint Development Agreement, the building complex has to be completed within 18 months, but not even brick has been laid. As per Clause 19, the developer assured and confirmed that he shall not enter into any agreement anyone or in any way convey / transfer / assign the property or any part thereof in violation of any of the terms of this Agreement. As per Clause 36, the developer shall not assign, transfer and / or encumber any of his rights and obligation under this agreement without prior written consent of the owners and any such attempted assignment shall be null and void, therefore, as per Clause 36 of the Joint Development Agreement, without written consent of the other flat owners, the developer cannot execute any deeds. The sale agreement dated 19.09.2013 is not genuine and valid

(iii) The 7th defendant had no legal right to enter into agreement of sale and there is no consideration for the above said sale agreement,
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as per Section 25 of the Indian Contract Act, agreement without consideration is void. The plaintiff has not produced any documents to show that the consideration was passed through the said agreements, Ex.P.10 and Ex.P.11. The agreements of sale are not bonafide transaction and the agreements of sale are vague, as it does not speak about construction of sale. The said agreements can be treated only as a security document for loans advanced to the builder. The plaintiff has not approached this Court with clean hands seeking relief of specific performance of contract. The said payment of Rs.24 Lakhs has not been supported by any documents.

(iv) The agreement of sale is dated 19.09.2013 and the time stipulated for completion of contract is 18 months and the due date is 18.03.2015, but the suit was filed in the month of October, 2018, therefore, the suit is hopelessly barred by limitation. The plaintiff has not filed the suit immediately, after the notice issued to the defendants dated 22.10.2016, the plaintiff has waited for five years from the date of agreement of sale and not proved the readiness and willingness.

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(v) The power of Attorney dated 29.10.2012 is only an agency document, which cannot be acted upon beyond the rights conferred in the Joint Development Agreement dated 29.10.2012. Therefore, the developer has no right to develop any part or whole of his share, which is only a deemed clause, which will blossom only after construction. The defendants 1 to 6 were not aware about the transaction between the plaintiff and the 7th defendant and only after admission by the 7th defendant that he had borrowed money from the plaintiff and created encumbrance over the subject property and they put to knowledge of the same. They were not aware about the encumbrance and immediately after the knowledge, they filed the suit in Tr.C.S.27 of 2022 challenging the said documents.

(vi) As per the agreement dated 19.09.2013, 18 months time was granted and after completion of 18 months, plaintiff has not issued any notice to the defendants by expressing his willingness to purchase his

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property after paying balance of sale consideration. Therefore, the plaintiff is not ready and willing to perform his part of contract and there was money dealing between the plaintiff and the 7th defendant and if any amount borrowed by the 7th defendant, it is for him to repay the said amount, therefore, the plaintiff is not entitled to any relief through this suit and as far as the suit filed by the defendants 1 to 6 is concerned, the plaintiffs have filed an application to amend the name of the 2nd defendant in the plaint and the same was allowed and the name was corrected as M.Subash Jain, HUF from Subash Jain, therefore, the suit is not bad for non-joinder of necessary parties.

(vii) Already the defendants cancelled the power of attorney deeds executed by them in favour of the 7th defendant through separate cancellation deeds dated 03.12.2015 and 08.10.2015 respectively. Further, the 7th defendant had issued letter dated 22.10.2016 expressing to withdraw from the project and surrender the property to the owners, therefore, the suit in Tr.C.S.No.27 of 2022 is well within the limitation period, therefore, the defendants 2 to 6, being original owner of the 49/99



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properties are entitled to decree as prayed for in Tr.C.S.No.27 of 2022

and the suit in C.S.No.87 of 2019 is liable to be dismissed.

(ix) The learned counsel appearing for the Defendants 1 to 6 in C.S.No.87 of 2019 and Plaintiffs in Tr.C.S.No.27 of 2022 relied upon the following Judgments in support of his contentions:

a) Judgment of the Hon'ble Supreme Court reported in (1997) 3 SCC 1 [K.S.Vidyandam and Ors. Vs. Vairavan]

b) Judgment of the Hon'ble Supreme Court reported in (2011) 12 Supreme Court Cases 18 [Saradamani Kandappan Vs. S.Rajalakshmi and Others]

c) Judgment of the Hon'ble Division Bench of this Court reported in 2004 (4) CTC 375 [Ranganatha Gounder Vs. Sahadeva Gounder]

c) Judgment of this Court reported in Manu/TN/7549/2021 [C.Rathnam and Ors., Vs. Green Avenue Homes and Gardens and Ors.,]



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15. Answers to the Re-casted Issue Nos.1 and 2 in both the Suits and Issue Nos. 6 and 7 in Tr.C.S.No.27 of 2022:

(i) In these cases, there is no dispute that the suit properties belong to defendants 1 to 6 and they are the absolute owners of their respective shares. There is no dispute that the defendants 1 to 6 and 7th defendant entered into Joint Development Agreement dated 29.10.2012 for construction of apartments in the 'A' Schedule properties. The entire properties has been shown as 'A' schedule properties, in which the defendants 1 to 6 have shares through settlement deeds as well as sale deeds. The defendants 1 to 6 entered into Joint Development Agreement with the 7th defendant for construction of apartment and as per Joint Development Agreement, the properties, have to be divided into eight parts and each of the defendant are entitled to 1/8th share and in total, the defendants 1 to 6 are entitled to 6/8th share and the remaining 2/8th share belongs to the 7th defendant.



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(ii) Pursuant to the above said Joint Development Agreement

entered into between the defendants 1 to 6 and 7th defendant, the defendants 1 to 6 executed a Power of Attorney deed in favour of the 7th defendant in respect of the share of 2/8th share of the 7th defendant. The said Joint Development Agreement, was executed for the purpose of developing the property by way of construction and the Power Deed dated 28.09.2012 was executed by the defendants 1 to 6 in favour of the 7th defendant for re-construction and to deal with the properties including the sale of properties. In the meantime, on 19.09.2013, the 7th defendant, who is the power of attorney holder in respect of his 2/8th share over the properties had entered into sale agreement with the plaintiff in respect of his share. The Joint Development Agreement dated 29.10.2012 has been marked as Ex.D.8. The Power of Attorney in favour of the 7th defendant by the defendants 1 to 6 has been marked as Ex.D.7. The agreements in the name of the plaintiff executed by the 7th defendant have been marked as Exs.P.10 and P.11. The said execution of agreement have not been denied by the 7th defendant. The 7th defendant, who executed the agreements in favour of the plaintiff

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admitted execution of the agreements, whereas the defendants 1 to 6 denied the right of the 7th defendant to execute the said agreements.

(iii) On a careful perusal of the Exs.P.10 and P.11, they revealed that the 7th defendant, Power Agent on behalf of the principals/ Defendants 1 to 6, had executed agreements of sale in respect of the 'B' Schedule property covered under the Joint Development Agreement dated 29.10.2012 and the power deed dated 28.09.2012. The recitals of the agreement shows that the 7th defendant, on behalf of the defendants 1 to 6 sold the 1/8th share amounting to 706 Sq.Ft., out of 5648 sq.ft., which is mentioned as 'E' Schedule property. The sale price was fixed as Rs.95,31,000/- and paid advance amount of Rs.10 Lakhs and the remaining amount of Rs.85,31,000/- shall be paid on or before expiry of 18 months. The vendors have handed over the vacant possession of the 'E' Schedule Property on the date of execution of sale deed in favour of the purchaser. The purchaser also agreed for completion of sale within a period of 18 months. The 'E' schedule property has been mentioned as 50% of Undivided share of land of 53/99



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1412 Sq.Ft., [706 sq.ft., of the 'B' schedule property] and both the

documents were executed on the same day. Each of the document contain same recitals in respect of all premises.

(iv) The 7th defendant, power agent has been mentioned as M/s Green Avenue Homes (P) Ltd., represented by its Managing Director, D.Dhinakaran, therefore, the plaintiff know very well about the purpose of power given to the 7th defendant. It is the duty of the plaintiff to verify about the particulars of the property prior to purchase. The principle of Caveat Emptor is applicable to the plaintiff. Though the defendants have not denied the execution of exhibits Exs.P.10 and P.11 and sale agreements in favour of the plaintiff by the power agents of defendants 1 to 6, namely, 7th defendant, the 1 to 6 defendants have denied the right of execution of deeds by the 7th defendant. According to the defendants 1 to 6, they entered into joint development agreement with the 7th defendant dated 29.10.2012 for the purpose of construction of buildings and for construction of buildings, they have given 2/8th



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shares to the 7th defendant and he is entitled to the share of 2/8th

shares over the properties, only after completion of construction.

(v) At this juncture, it is relevant to refer Ex.D.8, Joint Development Agreement dated 29.10.2012 between the Defendants 1 to 6 and 7th defendant. As per the Joint Development Agreement dated 29.10.2012, Clause 10 refers about 'Developer's Entitlement'. The Clause 10 'Developers Entitlement' reads as follows:-

“10. The Developer shall be entitled to enter into agreement/s for sale of the property and flats described in Schedule 'D' and Schedule 'F' hereunder, with prospective purchasers at such price and on such terms and conditions as the Developer may deem fit. The Developer shall be exclusively entitled to receive in his name and account the moneys that are paid or payable under such agreements for the property and flats described in Schedule 'D' and Schedule 'F' respectively. The Owners shall execute and register a General Power of Attorney pertaining to the aforesaid schedule 'D' property in favour of the Developer.



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Notwithstanding anything contained herein, in the event of a conflict in the terms contained in the said General Power of Attorney and this Agreement, the parties hereby agree and declare that the terms of this Agreement shall prevail and have an over-riding effect over the General Power of Attorney. The Developer hereby agrees that the developer shall enter into any agreement for transfer of Schedule 'D' property only after receipt of the written approval for the Building Plan from CMDA / DTCP / Competent Planning authority. The General Power of Attorney executed by the Parties shall be duly stamped and registered at the sole cost and expense of the Developer.

As per the said clause, the developers shall be entitled to enter into agreements for sale of the property and flats described in schedule 'D' and 'F' with prospective purchasers at such price and on such terms and conditions, as the Developer may deem fit.

(vi) The owners shall execute and register the General Power of Attorney pertaining to the above said 'D' schedule property in favour of the developer. The developer hereby agrees that the Developer shall enter into any agreement for the transfer of the Schedule 'D' property only after receipt of Written Approval for the building plan from CMDA /

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DTCP competent planning authority. Therefore, the origin of execution of power of attorney deed in favour of the 7th defendant by the defendants 1 to 6 is based on Joint Development Agreement.

(vii) As per Clause 10 of Joint Development Agreement, the owners shall execute registered general power of attorney pertaining to the 'D' schedule property. In the same clause 10, there is a condition clause that the developer shall enter into any agreement for transfer of schedule 'D' property only after receipt of any written approval from the competent authorities, but in this case, there is no any evidence that the 7th defendant obtained any building plan from CMDA /DTCP competent authority prior to entering into agreement with the plaintiff. The plaintiff ought to have verified as to whether building plan from competent authority was obtained to full fill the condition of Joint Development Agreement.

(viii) Further more, there is a separate clause in the said Joint Development, viz., Clause 16 in respect of the 'Power of Attorney'. As per Clause 16(a), the owners agree to execute Power of Attorney in the

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name of the developer to proceed with the process of obtaining

approvals including building approvals from CMDA / DTCP/Competent

Planning Authority dealing with the government department and other

bodies to enter into agreements for sale with prospective purchaser/s

for sale of the undivided share in the property described in the schedule

'D' suit property. In the same Clause 16(a) there is a condition to

handover the possession of the undivided share in the property 'D'

schedule to the prospective purchaser to deal with the government

department and other bodies connection with the development of the

property and not for any other purpose, i.e., mortgaging, pledging, re-

alienating, transferring, transacting, lien, etc., The developer shall have

only a restricted right developing the property of the developer shall not

undertake any activity detrimental to the interest of the owners.

(ix) Further, in Clause 16 (c) of the Joint Development Agreement

it is indicated that the owners shall not cancel the said power of attorney

till all the objectives under the Development Agreement are achieved by

the parties and without written statement / consent from the Developer,

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subject to the Developer acting in a bonafide owner and not committing breach of any of the terms of the agreement. Therefore, from the above said Clause 10 and 16, it is very clear that the power was given to the 7th defendant based on the Joint Development Agreement.

(x) That apart, in the Joint Development Agreement in Clause 18, some obligations for the Developer has been mentioned, as per Clause 18(h), the Developer shall enter into any sale deed for transfer of Schedule 'D' and 'F' property only after receipt of written statement approved and duly sanctioned building plan from competent authorities. Further, in the said Joint Development Agreement dated 29.10.2012, there is a Clause 36 'Assignment' and as per the said clause, the developer shall not assign, transfer and or encumber any of his rights and obligations under this Agreement without prior written statement / consent of the owners and any such attempted assignment shall be null and void.



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(xi) The plaintiff who entered into agreement with the 7th

defendant, who is the power agent of the defendants 1 to 6 very well aware about the existence of Joint Development Agreement between the 1 to 6 defendants and 7th defendant, therefore, power deed executed in favour of the 7th defendant in pursuant to the Joint Development Agreement, is for the purpose of developing the properties and after development, the 7th defendant is entitled to sell the properties. As per the power deed dated 29.10.2012, there is a clause in inner page no.4 that whereas to enable the power agent to develop the property in accordance with the requirements of the principals and upon the terms and conditions to be agreed separately. We the Principals are executing the present Power of Attorney in favour of Power Agent to act for and on our behalf and in our name to do all acts and things relating to the said property.

(xii) Also, in Clause 1 of the Power of Attorney Deed dated 29.10.2012 it is categorically mentioned that 'To reconstitute the Item Nos. 1 to 4 along with adjacent flats of same block of the schedule 'B' 60/99



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property, to get it reclassified, as the case may be for developing the same by reconstructing thereon residential apartments for the Principals

and the power agent. Further, Clause 7 reads as follows:-

“To advertise for sale, negotiate, fix and finalise the sale consideration for the sale of 'D' schedule property in the reconstituted property in divided / undivided shares and to receive advance payment and issue valid receipt thereof.”

(xiii) Besides the above, as per Clauses 8 and 9, in which Clause '8' permits to enter into agreement for sale with prospective purchaser/s and Clause '9' permits the Power of Attorney agent to sell the 'D' schedule property. On conjoint reading of the conditions in the power deed shows that the right was given for the re-constituted property. The power agent was authorised to finalise consideration and negotiate in respect of 'D' schedule property and re-construct the property, therefore, the recitals of the power deed shows that 7th defendant is authorised to convey the property only after re-construction of the property, ie., after construction of the building, but in this case, there is no any building constructed by the 7th defendant. As the plaintiff admitted that they

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entered into agreement based on the power deed and in the power deed, the Joint Development Agreement also referred and therefore, the plaintiff, ought to have knowledge about the joint development agreement and power of attorney deed. As per recitals of the power of attorney deed the purpose of giving power was to construct residential apartment for the principal and power agent, therefore, the recitals of the power deed shows that the power agent had power only after construction of the buildings. Therefore, the agreements in favour of the plaintiff are not valid and binding upon the 1 to 6 defendants.

(xiv) It is true that the agreement was signed by the power agent of the defendants 1 to 6, however, the said power deed was executed as per the Joint Development Agreement and it was entered between the parties for construction of buildings in the properties. Therefore, the Court has to see the intention of the parties from the Joint Development Agreement as well as the power deed. The conjoint reading of the joint development and power deed, they clearly establish that the Joint development Agreement was entered for development of property i.e., for construction of building and the power deed was executed to sell the

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property after reconstruction, but no properties were developed, therefore, the plaintiff after seeing the Joint development agreements cannot enter into an agreement, without any approval of plan and construction.

(xv) Furthermore, on a careful perusal of the above said agreements, they revealed that two sale agreements were entered on 19.09.2013 for each of the agreement Rs.10 lakhs was paid, but according to the plaintiff, thereafter, for each of the agreement, two lakhs was paid to the 7th defendant and there is no specific date mentioned as to which date, the said amount of Rs.4 Lakhs was paid and there is no any receipt for the above said amount. Further, the plaintiff has not taken any steps within 18 months time fixed through the agreement and the said 18 months time lapsed on 19.03.2015, but the plaintiff has not even taken any steps to get the sale deed or for return of advance. In this context, the plaintiff's contention is that the developer agreed to receive the balance amount at the time of



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construction, but he has not taken any steps for construction, therefore, he waited.

(xvi) The plaintiff and the 7th defendant, being unknown persons, how the 7th defendant agreed to receive amount at the time of construction, there is no recitals in the agreement in respect of the above conditions to repay the amount, whereas the recitals of the agreement shows that the remaining sum of Rs.85,31,000/- in each agreements have to be paid within 18 months. The above said conduct of the plaintiff shows that after knowing the recitals of the Joint Development agreement and power deed executed in favour of the 7th defendant entered into agreements. Since the plaintiff agreed to purchase the properties of vacant site, he need not wait for the other formalities and there are no conditions in the agreement in respect of the plan and other formalities, therefore, the plaintiff failed to prove his case and after knowing the contents of the Joint Development Agreement and the power deed, he entered agreement with the 7th defendant and the said agreement are not genuine, so far as 1 to 6

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defendants are concerned. However, the 7th defendant has not raised objection and he himself admitted the execution of agreements in favour of the plaintiff and therefore, the agreement is binding upon the 7th defendant.

xviii) At this juncture, the learned counsel appearing for the plaintiff relied upon Section 204 of Indian Contract Act:

Section 204: Revocation where authority has been partly exercised.

“The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency”

(xix) The power deed itself has not authorised the 7th defendant to execute any deeds and there is a condition that after obtaining the building plan from the concerned authorities, the 7th defendant was permitted to execute any deeds. Under the said circumstances, the said provision is not applicable to rescue the plaintiffs' case.



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(xx) The learned counsel appearing for the plaintiff argued that the defendants have not entered into witness box to subject them for cross examination and the power agents alone were examined as DW1 and DW2, therefore, the power agents cannot depose about the personal knowledge of the defendants. Therefore, the defendants failed to prove their case and adverse inference can be drawn against the defendants. To substantiate his contention he relied on the Judgment of Hon'ble Supreme Court in **(2005) 2 SCC 217 [Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd., & Others]**. On a careful perusal of the said Judgment it is clear that if the power of attorney holder has rendered some acts in pursuance of the power of attorney, he may depose for the principal in respect of such acts but he cannot depose for the principal for the acts done by the principal and not by him. Similarly he cannot depose for the principal in respect of matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross examined. Further, where a party to the suit does not appear in the witness box and states

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his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.

(xxi) In the case on hand also the defendants have not examined as witnesses and not subjected them for cross examination and the power agents of the defendants were examined as D.W.1 and D.W.2. However, the case is based on the documents and the plaintiff, who filed the suit for specific performance based on the agreement has to discharge his initial burden to prove the genuinity of the agreement but in this case, plaintiff failed to prove the agreement and the power agent 7th defendant has no authority to enter into agreement, therefore, the said Judgment is no way helpful to decide the case in favour of the plaintiff.

(xxii) The learned counsel for the plaintiff also relied the following Judgments:-

1. M.Sekar Vs. P.Madeswaran (2014) 1 CTC 165. On a careful perusal of the said Judgment, it is clear that had the amount received by

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the party towards loan he could have executed only a promissory note

or a mortgage deed and there could be no need to execute the

registered agreement for sale and to entrust his original sale deed

relating to the property to the other party. But in the case on hand the

original document was not handed over to the plaintiff by the 7th

defendant and the defendants have failed to prove the money

transaction between the plaintiff and the 7th defendant.

2. Mannarsamy Naaicker and another Vs. Nagammal and Ors.]

[Mannarsamy Naaicker and another Vs. Nagammal and Ors.] (2009) 4

LW 674. In the said Judgment it is held that when a party to a

document admits its due execution, then he cannot turn around and

challenge the terms contained therein:

3. Nanjappa Gounder & Another Vs. Ashok Kumar reported in

(2013) 3 SCC 746

4. Roop Kumar Vs. Mohan Thedani reported in (2003) 6 SCC

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5. M/s Kamakshi Builders Vs. M/s Ambedkar Educational Society

& Ors] reported in AIR 2007 SC 2191

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6. Smt.Gangabai Vs. Chhabubai reported in 1982(1) SCC 4

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7.P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi and Another
reported in (2007) 10 SCC 231

8. R.Jothi Vs. N.Neelavathi reported in 2017 (1) MEN Civil 489

9. Damodhar Narayan Sawale Vs. Shri Tejrao Bajirao Mhaske
and Ors reported in 2023 (19) SCC 175

10. Motilal Jain Vs. Smt.Ramdasi Devi and Ors., reported in
(2000) 8 SCC 420

11. Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari &
Anr. reported in (2014) 5 SCC 312

12. M.Venkataramana Hebbar Vs. Rajagopal Hebbar & others
reported in (2007) 6 SCC 401

13. Prakash Chandra Vs. Narayan reported in (2012) (5) SCC
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On a careful perusal of those Judgments, it is clear that the Agreement
is in writing that too in the form of a registered document under Section
92 of Evidence Act, a party to the agreement shall not be permitted to
lead oral evidence to vary the terms of the contract incorporated in the
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written and registered document, there is a presumption under Section

60(2) of the Registration Act that a certificate under Section 60(1)

signed by the Registration officer shall be admissible for proof that the

document has been duly registered in the manner provided under the

Act and the facts mentioned in the endorsement referred to in Section

59 have occurred as therein mentioned. Further, when the intention of

the parties are reflected in a registered document and in the absence of

contra intention, oral evidence would not override the registered

document, merely the plaintiff claimed alternative relief of recovery of

return of advance would not dis-entitle him to claim specific

performance of the contract, it is neither desirable nor permissible for a

Court to frame an issue not arising on the pleadings and if the

averments made in the plaint not denied in written statement would be

deemed to be admitted and in a case of specific performance hardship

is a good defence provided such defence is taken by the defendant and

evidence in support of such defence is brought on record. In the case

on hand, the available documents and evidences show that the 7th

defendant was not authorised to sell the property without obtaining plan

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and permission from the authority concerned and also the 7th defendant

has to obtain prior consent from the principal. Therefore, the agreement itself is not binding on the 1 to 6 defendants and is not enforceable against them.

(xxiii) The learned counsel appearing for the defendants also relied on the Judgment reported in Manu/TN/7549/2021 [C.Rathnam and Ors., Vs. Green Avenue Homes and Gardens and Ors.,]. On a careful perusal of the said Judgment, it is clear if the parties to the Joint Development Agreement breached the terms and conditions, the Joint Development Agreement became unenforceable and the same can be decreed as null and void. After breach of terms and conditions of any sale deed agreed by the builder without consent of the owner in violation of the Joint Development Agreement the said documents also become null and void. In the case on hand, the 7th defendant was not authorised to sell the property without consent of the 1 to 6 defendants and not even obtained plan and approval for construction of building. The plaintiff after knowing the joint development agreement entered into sale agreement.

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In view of the said discussions, this Court is of the opinion that the

sale agreements dated 19.09.2013 entered between the plaintiff and the 7th defendant are not genuine and not binding upon the defendants 1 to 6 at the same time, they are binding upon 7th defendant.

16. Answers to the re-casted Issue Nos. 4 and 5 in C.S.No.87 of 2019 :' 4. Whether the defendants 1 to 6 had extended time for performance of sale agreement dated 19.09.2013' '5. Whether the plaintiff was always ready and willing to perform his part of contract'

(i) According to the plaintiff, the 7th defendant on behalf of 1 to 6 defendants, as a power agent executed a sale agreement dated 19.09.2013 and thereafter the 1 to 6 defendants cancelled the power given to the 7th defendant. Thereafter the plaintiff contacted 1 to 6 defendants and stated about his sale agreement. The 1 to 6 defendants assured to execute sale deed and represented that they are searching another builder to construct the building and after finalising the new builder they will execute the sale deed as per agreement and

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believing the said representation he waited for some time but the 1 to 6 defendants failed to perform their part of contract. The 1 to 6 defendants denied the said contention of the plaintiff. While so the plaintiff has to prove his said contention but no sufficient evidence adduced by him. In the absence of concrete evidence to prove, the alleged extension of time by the plaintiff, it is not proper to accept the plaintiff's case with regard to the extension of time by the 1 to 6 defendants. In view of the same, the plaintiff failed to prove that the defendants 1 to 6 extended the time for performance of sale agreement dated 19.09.2013.

(ii) The plaintiff has filed the suit for Specific Performance of Contract based on two agreements. The main requirement for ordering specific performance is readiness and willingness. According to the plaintiff, he has been always ready and willing to perform his part of contract, but the defendants are evading from execution of sale deed.



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(iii) Further, the learned counsel appearing for the plaintiff would

submit that the plaintiff has categorically pleaded in the plaint in respect of readiness and willingness, but the defendants have not specifically denied any readiness and willingness of the plaintiff, therefore, the plaintiff has proved his readiness and willingness. This Court already in the previous issues decided that the agreements are not genuine and they are not binding upon the defendants 1 to 6, therefore, the readiness and willingness would not arise at all.

(iv) It is well settled law that as far as relief of Specific Performance is concerned, it is discretionary relief and the plaintiff has to prove his readiness and willingness from the date of agreement. The agreement was entered on 19.09.2013 and the stipulated time for completion of contract is 18 months, which lapsed on 19.03.2015. In the meantime, the defendants 1 to 6 also issued notice to the plaintiff through Ex.P.14 on 22.10.2016, even after knowing about the notice and the entitlement of the power agent, the plaintiff has not taken any steps to get the sale deed in his favour and he filed a suit in the year 74/99



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2018, i.e., 09.10.2018, therefore, the plaintiff's contention that he has been always ready and willing to perform contract is not acceptable.

The plaintiff ought to have taken steps immediately after lapse of 18 months, but he has not taken any steps and even after receiving notice from the defendants 1 to 6, the plaintiff has not immediately filed the suit and only after two years, he has filed the suit. Therefore, the plaintiff has failed to prove that he has been always ready and willing to perform his part of contract after repayment of sale price.

(v) The learned counsel appearing for the defendant also relied the Judgment in [Ranganatha Gounder Vs. Sahadeva Gounder] reported in 2004(4) CTC 375, wherein the Hon'ble Division Bench of this Court held as follows:-

39. As held by the Constitution Bench of the Supreme Court in Chand Rani Vs. Kamal Rani, 1993 (1) S.C.C.519, “It is clear that in the case of sale of immovable property, there is no presumption as to time being the essence of contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable



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time if the conditions are :(1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances.” In other words, the Court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised in favour of the party who approached the Court of Law within a reasonable time.

40. What is the definition of the word ‘reasonable’? It may be unreasonable to give an exact definition of the word ‘reasonable’. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The ‘reasonable time’ is to be so much time as is necessary under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.”

In the case on hand also the date of agreement is 19.09.2013, time for completion is 18 months and the time lapsed on 19.03.2015. Thereafter the defendants issued notice on 22.10.2016 and then filed suit in the Month of February, 2017, the plaintiff also appeared and defended the said suit, but this suit was filed on 09.10.2018, after three years and six

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months. Therefore, the said case Law is squarely applicable to the present facts of the case. In view of the above distinguished Judgment, the plaintiff failed to prove his readiness and willingness. Thus the issues are answered.

17. Answers to the re-casted Issue No.3 in C.S.No.87 of 2019

'Whether the suit is barred by limitation?'

(i) The plaintiff has filed the suit for specific performance based on the agreement dated 19.09.2013 and the time stipulated for completion of contract is 18 months and the said 18 months period lapsed on 19.03.2015. As per Article 54 of the Limitation Act, the limitation period for specific performance contract is three years. The suit has been filed on 21st October, 2018, after three years and six months, therefore, the suit has been filed after three years of limitation period. However, the plaintiff sought for return of advance and for return of advance the limitation is 12 years, therefore, the suit is within the limitation period.

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(ii) At this juncture, it is relevant to point out the Judgment of the Hon'ble Supreme Court in **SLP(C) No.21000 of 1993 dated 17.12.1999 [Delhi Development Authority Vs. Skipper Construction Co., (P) Ltd., and Ors]** On a careful perusal of the said Judgment it is clear that the period of limitation for enforcement of statutory charge created under Section 55(6)(b) is 12 years from the date when becomes due and not 3 years. The period remains the same even for enforcement of the charge on the substituted security.

(iii) Therefore, the suit is not barred by limitation, in respect of return of advance amount, however, the suit is barred by limitation in respect of specific performance of contract. It is well settled law that the suit cannot be dismissed in entirety and if any one of the relief is maintainable, the suit is maintainable, in respect of that relief.



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18. Answers to the re-casted Issue No. 6 in C.S.No.87 of 2019

'Whether the plaintiff is entitled to get the relief of specific performance of contract :

(i) The plaintiff has filed the suit for specific performance of contract, based on agreement dated 19.09.2013 and this Court in the previous issue decided that as far as relief of specific performance of contract is concerned, suit has not been filed within a limitation period of three years and the suit has been filed beyond the period of limitation period and also this Court decided in the previous issue that the agreement was not valid and it is not binding upon the D1 to D6. Furthermore, this Court in the previous issue decided that the plaintiff was not always ready and willing to perform his part of contract, therefore, the plaintiff is not entitled to the relief of specific performance of contract.

(ii) Learned counsel appearing for the defendant would submit that the plaintiff agreed to purchase the property and time fixed to get

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sale deed is 18 months but even after completion of 18 months from the

date of agreement failed to get sale deed in his favour. Then the the

time is not essence of contract the plaintiff ought to have performed his

part of contract within reasonable time. But he approached the Court

after 42 months, therefore, he is not entitled to the discretionary relief of

Specific Performance of contract. Further, he relied the following

Judgments:-

i) Judgment of the Hon'ble Supreme Court reported in (1997) 3

SCC 1 [K.S.Vidyandam and Ors. Vs. Vairavan]

ii) Judgment of the Hon'ble Supreme Court reported in (2011) 12

Supreme Court Cases 18 [Saradamani Kandappan Vs. S.Rajalakshmi

and Others]

On a careful perusal of these Judgments it is clear that even though

time is not the essence of contract of sale of immovable properties and

suit can be filed within 3 years, but it should be performed within a

reasonable time having regard to terms of contract prescribing a time

limit. A purchaser can no longer take a shelter under the principle that



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time is not essence in performance of contract relating to the immovable property to cover his delay, laches, breaches and non-readiness.

(iii) In the case on hand also the plaintiff has not approached the Court within the period of limitation and he failed to perform his part of contract within reasonable time. Therefore, the said case laws are squarely applicable to this case. In view of the said discussion and the said Judgments, this Court is of the opinion that the plaintiff failed to prove his case and he is not entitled to the discretionary relief of specific performance. Thus the issue is answered.

19. Answers to the re-casted Issue No.7 in C.S.No.87 of 2019

: To what other reliefs the parties are entitled to?

(i) The plaintiff has sought for the relief of specific performance of contract and alternative relief of return of advance amount and this Court in the previous issue decided that the relief in respect of specific performance is barred by limitation and plaintiff was not always ready and willing to perform his part of contract and agreement itself is not genuine and will not bind upon defendants 1 to 6, therefore, the plaintiff

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is not entitled to any relief as against the defendants 1 to 6, however,

the plaintiff pleaded in the plaint that the 7th defendant only received

the money based on the agreement and the 7th defendant also not

contested the case. This Court also in the previous issue decided that

the agreement is not binding upon defendants 1 to 6 at the same time it

will bind upon 7th defendant, therefore, the plaintiff is entitled to

alternative relief of recovery of money as against the 7th defendant.

According to the plaintiff, he paid money to the 7th defendant though

agreements to the tune of Rs.10Lakhs on each agreement. The 7th

defendant has not contested the suit and he was set exparte. Though

the 7th defendant executed sale agreement on behalf of 1 to 6

defendants, as power agent, the 7th defendant was not authorised to sell

the property without consent of the 1 to 6 defendants. The defendants

1 to 6 also denied the agreement, therefore, the plaintiff is entitled to

money decree for the amount paid to the 7th defendant. Therefore, the

suit is liable to be dismissed as against the defendants 1 to 6 in respect

of specific performance and the plaintiff is only entitled to alternative

relief of money decree as against the 7th defendant.

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20. Answers to the re-casted Issue No.3 in Tr.C.S.No.27 of

2022 : 'Whether the suit is barred by limitation'?

(I) The plaintiffs have filed the suit as against the defendants for the relives of declaration in respect of power of attorney dated 29.10.2012 and consequently to declare sale agreements dated 19.09.2013 executed by the power agent of the defendants 1 to 6 in favour of the plaintiff as null and void and for permanent injunction restraining the defendants in that suit from interfering with the plaintiffs' possession and enjoyment of the properties and also from creating any encumbrance and to deal with in any manner putting up construction over the suit schedule property.

(ii) The alleged Sale agreements have been executed on 19.09.2013 and the defendants 1 to 6, being the plaintiffs in Tr.C.S.No.27 of 2022 came to know about the deeds only in the year 2016. Though the plaintiffs have pleaded that they only came to know about the deeds after the year 2016. Here, according to the plaintiff, they came to the knowledge about the deeds after the year 2016,
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however, they cancelled the power deed through the cancellation deeds

dated 08.10.2015 and 31.10.2015, therefore, this Court can infer that

they came to the knowledge about the agreements and then only they

have cancelled the power of attorney given to the 7th defendant and the

suit has been filed on 03.02.2017, therefore, the suit is within the period

of limitation, thus the issue is answered.

21. Answers to the re-casted Issue No.4 in Tr.C.S.No.27 of 2022 : 'Whether the suit is bad for non-joinder of necessary parties'?

The defendants have taken a plea that the suit is bad for non-joinder of necessary parties. The plaintiff has filed the suit in the personal capacity of Subash Jain, whereas the agreement entered in the name of M/s Subhash Jain HUF represented by its Kartha subsequently, during the pendency of the suit, the said name of the 2nd defendant in the suit has been amended and Kartha of joint family M/s N.Subhash Jain HUF has been included and represented by its



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Kartha N.Subhash Jain, therefore, after amendment, suit is not bad for non-joinder of necessary parties, thus the issue is answered.

22. Answers to the re-casted Issue No.5 in Tr.C.S.No.27 of 2022 : '.Whether the plaintiffs are entitled for decree of declaration that any act done by the 1st defendant pursuant to the Power of Attorney dated 29.10.2012 registered as Document No.1102 before SRO Anna Nagar, which was subsequently cancelled vide Deed of Cancellation dated 08.10.2015 and 31.12.2015 registered as Document No.4571/2015 before SRO Anna Nagar as Null and Void in view of 1st defendant's letter dated 26.01.2016, wherein he has expressed his inability to continue with the project?

The plaintiffs in Tr.C.S.No.27 of 2022 sought for declaration declaring that any act done by the 1st defendant pursuant to the power of attorney dated 29.11.2012, which would subsequently cancelled through cancellation deeds dated 08.10.2015 and 31.10.2015 as null and void in view of the 1st defendant's letter dated 21.07.2016.

According to the plaintiffs in Tr.C.S.No.27 of 2022, after the execution of
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the Joint Development agreement, the builder was unable to construct the building and thereby they cancelled the power deed, through cancellation deeds dated 08.10.2015 and 31.12.2015 and thereafter, the builder also executed letter dated 21.06.2016 by expressing his inability to continue the project, if any act done by the builder pursuant to the power of attorney deed dated 29.10.2012, after his letter dated 26.01.2016 is null and void. There is no specific incident mentioned in the plaint and without any specific incident, the prayer of declaration cannot be granted and the prayer should be specific in respect of specific act, but here, the plaintiff has sought for declaration any act done by the 1st defendant pursuant to the power of attorney dated 29.10.2012 and the blanket order cannot be granted, therefore, the plaintiff is not entitled to any relief, thus the issues are answered.

23. Answers to the re-casted Issue Nos.8 to 10 in Tr.C.S.No.27 of 2022 : '8. Whether the plaintiffs are entitled for permanent injunction from interfering with the plaintiffs peaceful possession and enjoyment of property?' '9. Whether the plaintiffs

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**are entitled for permanent injunction as against the defendants
from securing any encumbrance over the schedule properties'**

**'10.Whether the plaintiffs are entitled to any relief of permanent
injunction restraining the defendants from interfering the plaintiffs
right to deal with any manner including putting up construction as
owner of the properties?**

(I) The plaintiffs in Tr.C.S.No.27 of 2022 has sought for permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the property and also from creating any encumbrance over the property and also from interfering with the plaintiffs' right dealing with any manner including the plaintiffs' right including that of putting up construction as owner of the 'C' schedule property.

(ii) As far as the above said prayers are concerned, there are no pleadings that the defendants in the suit in Tr.C.S.No.27 of 2022 had attempted to interfere with the plaintiffs' possession and enjoyment of the property and they also attempted to create encumbrances and

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interfering with the plaintiffs' right in putting up construction as owners of

the property, without any pleadings and evidence in respect of the

interference as alleged by the plaintiffs, the plaintiffs are not entitled to

such reliefs and there is no cause of action for grant of those injunctions

and the defendants have never stated that they are in possession of the

property and there is no evidence that the plaintiff attempted to put up

construction and the same was restrained by the defendants in the suit.

There is no evidence that they created encumbrance over the property

and they also attempted to interfere with the plaintiffs' possession of the

property, therefore without any cause of action and without any

pleadings or evidence for the alleged interference made by the

defendants, it is not appropriate to grant permanent injunction and if any

interference is made and if any cause of action arose in future, it is for

the plaintiffs to take appropriate steps in accordance with law. As on

date of presentation of the plaint, there is no cause of action for the

prayers sought for in respect of permanent injunction.



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24. Answers to the re-casted Issue No.11 in Tr.C.S.No.27 of

2022 '11. Whether the Court Fee paid by the plaintiffs is correct'?

The plaintiff has filed a suit for relief of declaration and permanent injunction and as far as the 1 st relief, viz., declaration in respect of the subsequent acts done pursuant to the power of attorney dated 29.10.2012 is concerned, the plaintiff has valued the suit under Section 25(d) of Tamilnadu Court Fees Evaluation Act and paid the court fee. The plaintiff valued the suit for Rs.45,30,101/- and paid under Section 25(d) of Tamilnadu Court Fees Evaluation Act. Therefore, the valuation for payment of court fee in respect of the 1st relief is correct. With regard to the 2nd and 3rd reliefs, the plaintiff sought for declaration of documents as null and void and the plaintiff valued the claim for Rs.10 Lakhs, since the amount of Rs.10 Lakhs was paid through the document under Section 25(d) and paid the correct fee for Rs.10 Lakhs. The court fee ought to have been paid under Section 40 of Tamilnadu Court Fees Evaluation Act, as per the document, the value was fixed at Rs.10 Lakhs, therefore, the court fee has to be paid under Section 40, 89/99



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however, there is no change in quantum of court fee and mere wrong

quoting of provisions for payment of court fee itself is not a bar to grant

relief to the parties, therefore, the payment of court fee paid by the

plaintiff is correct. As far as other relieves are concerned, the Court fee

has been paid under Section 27(C) of Tamilnadu Court Fees and Suit

Valuation Act and that same is in accordance with the Tamilnadu Court

Fees and Suit Valuation Act and therefore, the court fee paid by the

plaintiff is correct. Thus the issue is answered.

25. Answers to the re-casted Issue No.12 in Tr.C.S.No.27 of 2022 '12. To what reliefs, the plaintiffs are entitled to'?

This Court in the previous Issue Nos.1 to 11 decided that the plaintiffs are not entitled to any relieves through this Suit.

In view of the said discussions, this Court is of the opinion that the sale agreements dated 19.09.2013 entered between the plaintiff and the 7th defendant are not genuine and not binding upon the defendants 1 to 6 at the same time, it is binding upon 7th defendant'



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In the result, the suit in C.S.No.87 of 2019 is dismissed as against

the defendants 1 to 6 in respect of specific performance and as far as the alternative relief of recovery of money is concerned, the plaintiff is entitled to money decree as against 7th defendant for a sum of Rs.51,57,173/- at the rate of 12% interest per annum from the date of plaint till the date of decree and thereafter, 6% rate of interest from the date of decree till the date of realization of amount.

In the result, Tr.C.S.No.27 of 2022 is dismissed. There shall be no order as to costs.

20.11.2025

Index:Yes/No

Internet:Yes/No

Speaking / Nonspeaking order

ssd



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1)List of Witness Examined on the side of the Plaintiffs:-

1. P.W.1 – N.Subhash Chand Jain

2)List of Exhibits Marked on the side of the Plaintiffs:-

<i>Exhibits</i>	<i>Date</i>	<i>Description</i>
Ex.P.1	'14.12.2011	Deed of settlement executed by Mrs.M.Unnamalai in favour of mrs.Visalakshi Suresh (Document No.4422/2011 before SRO, Anna Nagar)
Ex.P.2	09.09.2009	Deed of settlement executed by Mrs.A.Varalakshmi in favour of Mr.A.V.S.Bhaskar (Document No.3018/2009 before SRO Anna Nagar)
Ex.P.3	'15.11.1988	Sale deed executed by TNHB in favour of Mr.R.Muthukrishnan (Document No.5095/1988 before SRO Annanagar)
Ex.P.4	'17.06.2010	Deed of settlement executed by Mr.G.Hanumaiah in favour of G.Ramakrishna (Document No.2118/2010 before SRO anna Nagar)
Ex.P.5	11.02.2008	Deed of settlement executed by Mrs.P.Dhanalakshmi in favour of P.Sesha Reddy (Document No.481/2008 before SRO, Anna Nagar)
Ex.P.6	10.08.1988	Sale deed executed by TNHB in favour of the A.K.S.Narayanan Rao (Document NO.3382/1988 before SRO Anna Nagar)



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Ex.P.7	29.10.2012	Deed of Power of Attorney (Document No.1102/2012 before SRO Anna Nagar) executed Ms.Visalakshi Suresh, R.Muthukrishnan, G.Ramakrishna and A.K.S.Narayanan Rao in favour of Green Avenue Homes (P) Ltd.,
Ex.P.8	'14.11.2012	Deed of Power of Attorney (Document No.1102/2012 before SRO Anna Nagar) executed by A.V.S.Bhaskar in favour of Green Avenue Homes (P) Ltd.,
Ex.P.9	'09.11.2012	Deed of Power of Attorney executed by P.Sesha Reddy in favour of Green Avenue Homes (P) Ltd.,
Ex.P.10	19.09.2013	Sale agreement executed by power agent Green Avenue Homes (P) Ltd., in favour of M/s N.Subash Chand Jain HUF – Document No.3730/2013
Ex.P.11	19.09.2013	Sale agreement executed by power agent Green Avenue Homes (P) Ltd., in favour of M/s N.Subash Chand Jain HUF – Document No.3731/2013
Ex.P.12	08.10.2015	Registered cancellation of general power of attorney (Document No.4571/2015 before SRO Annanagar) given to Green Avenue Homes (P) Ltd., executed by Ms.Visalakshi Suresh, R.Muthukrishnan, G.Ramakrishna and A.K.S.Narayanan Rao
Ex.P.13	31.12.2015	Cancellation of General Power of Attorney given to Green Avenue Homes (P) Ltd., executed by A.V.S.Bhaskar by adjudication no.9 of 2016
Ex.P.14	22.10.2016	Lawyers Notice issued by the defendants 1 to



		6 to the plaintiff.
Ex.P.15	08.11.2017	Legal notice issued by the plaintiff counsel to the defendants 1 to 7 along with returned postal covers (2 nos.) and tracking receipts

3)List of Witnesses Examined on the side of the defendants:-

D.W.1 – R.Perumalswamy

D.W.2 – M.J.Raman

4)List of Exhibits Marked on the side of the defendants:-

<i>Exhibits</i>	<i>Date</i>	<i>Description</i>
Ex.D.1	10.08.1988	Registered sale deed executed by TNHB in favour of the 4th (Document no.3382/1988 before SRO Anna nagar)
Ex.D.2	15.11.1988	Registered sale deed executed by TNHB in favour of the 2nd plaintiff (Document no.5095/1988 before the SRO, Anna nagar)
Ex.D.3	11.02.2008	Registered deed of settlement executed by P.Dhanalakshmi in favour of the 6th plaintiff (Document no.481 of 2008) before SRO, Anna Nagar)
Ex.D.4	17.06.2010	Registered deed of settlement executed by Mr.G.Hanumaiah in favour of the 3rd plaintiff (Document No.2118/2010 before SRO Anna Nagar)
Ex.D.5	14.12.2011	Registered deed of settlement executed by Mrs.N.Unnamalai to the 1 st plaintiff (Document



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		No.4422/2011 before SRO Anna Nagar)
Ex.D.6	22.12.2011	Proposal letter for joint venture project by the defendant to the plaintiffs
Ex.D.7	29.10.2012	Registered Deed of Power of Attorney (Document No.1102/2012 before SRO Anna Nagar) executed plaintiff 1 -4 in favour of the 1st defendant
Ex.D.8	29.10.2012	Development agreement entered into between the plaintiffs and the 1st defendant
Ex.D.9	31.10.2013	Baseline Schedule given by the 1st defendant
Ex.D.10	19.09.2013	Agreement for sale entered into between the plaintiff (through their power agent first defendant) and the second defendant
Ex.D.11	19.09.2013	Agreement for sale entered into between the plaintiff (through their power agent first defendant) and the second defendant
Ex.D.12	07.10.2013	Minutes of the meeting between the plaintiffs and the first and third defendant
Ex.D.13	05.11.2013	Planning permission (demolition) issued by the Corporation of Chennai to the 1st defendant
Ex.D.14	19.12.2013	Certificate issued by the Tahsildar, Purasaiwakkam – Perambur Taluk to Plaintiffs
Ex.D.15	19.03.2014	Email sent by the plaintiffs to the 1st defendant
Ex.D.16	12.05.2015	Letter sent by the plaintiff to the 1st defendant
Ex.D.17	16.07.2015	Legal notice sent by the 1st defendant to the plaintiffs seeking extension of time
Ex.D.18	08.10.2015	Registered cancellation of general power of attorney (Document No.4571/2015 before SRO Anna Nagar) given to the 1st defendant executed by the plaintiffs 1-4



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Ex.D.19	31.12.2015	Cancellation of general power of attorney given to the 1st defendant executed by the 5th plaintiff and general power of attorney executed by the 5th plaintiff to and in favour of the 3rd plaintiff by adjudication no.9 of 2016
Ex.D.20	26.01.2016	Letter sent by the 1st defendant to the plaintiffs
Ex.D.21	13.09.2013	Encumbrance certificate
Ex.D.22	22.10.2016	Legal Notice sent by the plaintiffs to the defendants along with acknowledgement cards
Ex.D.23	29.10.2011	General power of attorney executed by the 6th plaintiff to and in favour of R.Perumalsamy
Ex.D.24	15.01.2017	General power of attorney executed by the 5th plaintiff to and in favour of G.Ramakrishna
Ex.D.25	28.03.2024	Encumbrance Certificate from the period 01.01.2012 to 27.03.2024
Ex.D.26	07.12.2024	Authorization letter issued by R.Muthukrishnan
Ex.D.27	07.12.2024	Authorization letter issued by A.V.S.Bhaskar represented by his power agent, G.Ramakrishna
Ex.D.28	07.12.2024	Authorization letter issued by G.Ramakrishana
Ex.D.29	07.12.2024	Authorization letter issued by A.K.S.Narayanan Rao
Ex.D.30	09.12.2024	Authorization letter issued by Visalakshi Suresh



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20.11.2025

To

The Sub Assistant Registrar,
O.S.Section,
High Court, Madras



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P.DHANABAL, J.

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