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A.S. Nos.188 & 189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2026

DELIVERED ON : 30.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.Nos.188 & 189 of 2023

and

C.M.P.Nos.7624 & 7641 of 2023

1.B.Kannan

2.K.Tamijarassy

... Appellants in both Appeals

Vs.

J.Margaret Alice

... Respondent in both Appeals

PRAYER in A.S.[MD]No.188 of 2023: First Appeal filed under Section 96 of the Civil Procedure Code, praying to set aside the judgment and decree insofar as the counter claim raised by the defendant in O.S.No.45 of 2010 dated 30.09.2022, on the file of the Court of III Additional District Judge at Puducherry and dismiss the said counter claim by allowing this appeal.

PRAYER in A.S.[MD]No.189 of 2023: First Appeal filed under Section 96 of the Civil Procedure Code, praying to set aside the



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judgment and decree passed in O.S.No.45 of 2010 on the file of the
III Additional District Judge, Puducherry dated 30.09.2022 and
grant the relief of specific performance by allowing this appeal.

For Appellants : Mr.S.Silambanan
Senior Counsel
for Ms.K.Annamma
For Respondent : Mr.M.Mohamed Riyaz
[In both Second Appeals]

COMMON JUDGMENT

The unsuccessful plaintiffs in a suit for specific performance, aggrieved by the dismissal of the suit and counter claim filed by the defendant being allowed, have come up by way of these first appeals.

Pleadings:

2.Plaint in brief:

2.1.The defendant is the owner of the suit property, she having become entitled to the same under last Will and testament dated 27.06.1993, executed by her brother. The defendant offered the said property for sale to the plaintiffs. An agreement of sale was drafted on 12.07.2006, fixing the total sale consideration as Rs.16 Lakhs. The plaintiffs paid an advance of Rs.3 Lakhs on the



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date of the execution of the agreement. Though parties did not intend to make time essence of the contract, formally, it had been mentioned in the agreement of sale that the time for completion would be three months, after validation of the Will executed by the brother of the defendant. The defendant was required to hand over all original documents of title, including revenue records and tax receipts to the plaintiff prior to payment of balance sale consideration and execution of sale deed.

2.2.The plaintiffs have always been ready and willing to perform their part of the contract, by paying the balance sale consideration to the defendant. The defendant received further advance of Rs.50,000/- on 12.08.2007, Rs.1 Lakh on 31.10.2007, Rs.25,000/- on 03.03.2008, Rs.68,000/- on 21.08.2008 and Rs.50,000/- on 14.09.2008, all payments being duly acknowledged by the defendant in the original sale agreement. The defendant remained evasive, despite giving assurances to the plaintiffs to complete the sale transaction. While so, plaintiffs were shocked to receive a letter of cancellation of the agreement dated 12.07.2006 vide communication dated 03.05.2010. Plaintiffs replied to the same on 16.05.2010, stating that they were ready and willing with sufficient funds and reiterated the demand for production of all



original documents and to fix the date for execution of the sale deed.

2.3.By way of rejoinder, the defendant sent another letter on 14.06.2010, which was received by the plaintiffs on 17.06.2010, enclosing a demand draft for Rs.6 Lakhs in the name of the plaintiffs. Plaintiffs replied to the said rejoinder on 18.06.2010, by returning the original demand draft and denying all the averments in the rejoinder notice. The claim of the defendant is that she had received Rs.1 Lakh from the second plaintiff and handed over possession of the suit property to the second plaintiff by execution of a bokiam on 07.09.2005 and that the said bokiam was an independent transaction and did not get merged with the agreement of sale dated 12.07.2006. In the light of the attitude of defendant violating the agreement of sale, plaintiffs sent a telegram on 20.06.2010, to the Registration department, to prevent the defendant from alienating or encumbering the suit property. Hence, the suit for specific performance.

Written Statement in brief:

3.1.It is true that the defendant became entitled to the suit property under a Will dated 27.06.1993 executed by her brother



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late A.Solomon who died on 28.06.1993. The plaintiffs were residing in the first floor of the suit property from 1983 onwards as a tenant under her brother Solomon. The plaintiffs vacated on 19.10.1993 and the property was leased to one Kuppusamy, Advocate, who was in possession of the same until 1999. From 1999 till August 2005 one Pughazhendi, was occupying the property as a tenant. After said Pughazhendi vacated, under a bokiam agreement between the defendant and the second plaintiff, the second plaintiff was given possession on 07.09.2005, after receipt of Rs.1 lakh by the defendant. The bokiam agreement was for a period of three years, across which the plaintiff would return possession across the defendant, repaying the sum of Rs.1 lakh to the second plaintiff.

3.2.The defendant has been permanently residing at Chennai, her matrimonial home and taking into consideration the long standing relationship with the plaintiffs and the confidence and trust, the defendant demised the suit property to the plaintiffs under the bokiam agreement. The defendant had problems with mutating revenue records based on the Will dated 27.06.1993, on the ground that Will was not registered and that signature of the testator was not available in the second page of the Will. At that



At juncture, the first plaintiff introduced the defendant to an Advocate at Pondicherry, who advised a suit for declaration to be filed and accordingly, O.S.No.645 of 2005 was filed by the defendant against the first plaintiff. The first plaintiff, in fact contested the Will of the brother as well. Ultimately, O.S.No.645 of 2005 came to be dismissed. At that point of time, the plaintiffs offered to purchase the property undertaking to handle all legal issues and convincing the defendant to sell the property to them at a throw away price. In good faith and trust, the defendant also agreed to sell the property by entering into an agreement on 12.07.2006. The plaintiffs paid an advance of Rs.3 Lakhs.

3.3.As against the judgment in O.S.No.645 of 2005, an appeal was preferred in A.S.No.34 of 2006. The first plaintiff remained ex-parte in the appeal and the appeal was allowed on 10.06.2008. The defendant was adhering to the instructions of the first plaintiff, who alone was contacting the Advocate appointed by the defendant at the behest of the first plaintiff. The judgment and decree was also registered before the District Registrar, Pondicherry, with the aid and assistance of the first plaintiff alone. Thereafter, the plaintiffs did not come forward to pay the balance sale consideration, which constrained the defendant to write to the plaintiffs on 03.05.2010,



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terminating the agreement of sale. Plaintiffs sent a reply on 16.05.2010, denying the contents of the letter dated 03.05.2010. The defendant offered to refund the entire balance of Rs.6 Lakhs paid by the plaintiffs and also has sent a demand draft for the said amount, requesting plaintiffs to vacate and hand over possession vide letter dated 14.06.2010. The plaintiffs did not encash the demand draft and returned the same on 18.06.2010, with false and untenable contentions raised thereunder.

3.4.The defendant has encashed the demand draft and deposited a sum of Rs.6 Lakhs in an interest bearing fixed deposit in Indian Bank and is willing to pay the said amount to the plaintiffs or alternatively deposit the same before the Court. The defendant was contemplating steps for redemption of the bokiam entered into with the first plaintiff, at which point of time, the suit has been filed for specific performance. The conditions set out in the agreement of sale for completion of the transaction were only empty formalities and inconsequential, since the first plaintiff was the sole defendant in O.S.No.645 of 2005, and he was already having all documents with him. Further, the first plaintiff himself has contested the last Will of A.Solomon. The plaintiffs have taken undue advantage of the trust and confidence the defendant had on



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the plaintiffs. The defendant also informed the plaintiffs about the disposal of A.S.No.34 of 2006 and called upon the plaintiffs to pay the balance sale consideration. However, the plaintiffs failed to comply with the defendant's request for 22 months and above and only after giving a long rope, the defendant wrote to the plaintiffs on 03.05.2010, terminating the agreement of sale dated 12.07.2006.

3.5.The period of three years stipulated under the bokiam dated 07.09.2005, in and by which, the second plaintiff was put in possession of the suit property also expired on 06.09.2005. By letter dated 14.06.2010, the defendant called upon the second plaintiff to vacate and hand over vacant possession, offering to refund the mortgage amount of Rs.1 lakh. However, plaintiffs refused to receive the same and also hand over vacant possession. The defendant is therefore, constrained to deposit the mortgage amount in the Court and seeking an order directing the second plaintiff to hand over vacant possession of the suit property. Thus, the counter claim was made along with the written statement.



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Reply statement filed by the plaintiffs in brief:

4. Self-serving claims made by the defendant in the written statement / counter claim are totally denied. The claim for redemption based on a bokiam agreement dated 07.09.2005 itself, admittedly an unregistered document is unenforceable and inadmissible in law. Secondly, the counter claim itself is not maintainable and further, it has also not been valued properly. The scope of the suit is pertaining to an agreement of sale and therefore, the defendant cannot have any counter claim based on a purported mortgage in the same suit, which is based on a distinct and different cause altogether. Counter claim is also not maintainable before the Court and a separate suit ought to have been filed for redemption. By filing a counter claim, the defendant is taking away a right of appeal to the parties from Munsif Court to Sub Court and a separate suit has to be filed instead of a counter claim.

The issues framed by the trial Court:

5. Based on the pleadings, the trial Court has framed the following issues:



“1. Whether it is true that the sale agreement dated 12.07.2006 executed between the parties?

2. Whether the defendant is directed to execute a sale deed in favour of the plaintiff?

3. Whether the plaintiffs are entitled for a judgment and decree as prayed for?

4. Whether the defendant is entitled to a Judgment and Decree as prayed by her in the counter claim?

5. To what relief the parties are entitled to?”

6. Additional issues were framed on 06.03.2014, namely;

“1. Whether it is possible to permit D1 to deposit the mortgage amount of Rs.1,00,000/- in the Court?

2. Whether it is possible to direct the 2nd plaintiff to vacate and hand over possession of the suit property?”

7. However, subsequently, the issues were recast and recasted issues are as follows:



“1. Whether the plaintiffs are always ready and willing to perform their part of contract?

2. Whether the plaintiffs are entitled to the relief of specific performance?

3. To what other reliefs the plaintiffs are entitled?”

Trial:

8.At trial, first plaintiff was examined as P.W.1 and one Elavarasu was examined as P.W.2 and Exs.A1 to A11 were marked, on the side of the plaintiffs. On the side of the defendants, defendant herself was examined as D.W.1 and marked Exs.B.1 to B5.

Decision of the trial Court:

9.The trial Court finding that the plaintiffs are not ready and willing to perform their part of the contract, declined to grant the relief of specific performance and ordered refund of advance of Rs.5,93,000/- together with interest at 12% p.a. The counter claim filed by defendant was allowed and defendant was permitted to deposit the mortgage amount of Rs.1 Lakh, within one month and



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the second plaintiff was directed to vacate and hand over vacant possession within two months from the date of the decree.

Present Appeal:

10.Challenging the dismissal of the suit and decreeing of the counter claim, the present Appeal Suits have been filed.

11.I have heard Mr.S.Silambanan, learned Senior Counsel for Ms.K.Annamma, learned Counsel for the appellants in both the appeals and Mr.M.Mohamed Riyaz, learned Counsel for the sole respondent in both the Appeal Suits.

12.Mr.S.Silambanan, learned Senior Counsel would state that when the defendant had admitted execution of the agreement of sale and also the factum of the suit in O.S.No.645 of 2005 and receipt of advance of Rs.3 Lakhs, he would contend that the terms of the agreement also not being disputed by the defendant, the plaintiffs were entitled to a favourable decision in favour of the defendant in O.S.No.645 of 2005. However, the suit filed by the defendant was dismissed and only before the first appellate court, in A.S.No.34 of 2006, the defendant was able to get a decree on



10.06.2008. Learned Senior Counsel would therefore, state that the plaintiffs cannot be alleged to have not being ready and willing to perform their part of the contract, especially when the defendant has been in the habit of receiving further advances from the plaintiffs in piece meal.

13.He would further state that on receipt of notice on 03.05.2010 from the defendant and after engaging in exchange of correspondences, the suit itself came to be filed on 21.06.2010. Further pointing out to the fact that both plaintiffs witnesses P.W.1 and P.W.2 have not been cross-examined on the side of the defendant, their evidence in chief remained unchallenged, he would state that the trial Court ought to have held that the plaintiff under the said circumstances, was ready and willing to perform his obligations under the agreement of sale. Pointing out to the terms and conditions of the agreement of sale dated 12.07.2006, Mr.S.Silambanan, learned Senior Counsel would state that the plaintiffs have complied with all the terms and conditions and had clearly established to be continuously ready and willing at all relevant points of time. He would further state that the plaintiffs and the defendant travelled together and after the plaintiffs helped the defendant to obtain patta in her name, the defendant's attitude



changed and the defendant went back on fulfilling the terms of agreement of sale.

14.Further elaborating, according to the learned Senior Counsel there has been absolutely no delay on the part of the plaintiffs in approaching the Court, seeking equitable relief of specific performance and even the balance sale consideration was deposited by the plaintiffs in the Court. He would also state that the counter claim was not maintainable as framed in the suit for specific performance and the trial Court has erroneously failed to exercise discretion in favour of the plaintiffs and dismissed the suit for specific performance, while decreeing the counter claim, without even noticing that the Court lacked jurisdiction and also the fact that the counter claim itself was not maintainable, as it was in respect of a totally different cause of action altogether.

15.Per contra, Mr.M.Mohammed Riyaz, learned Counsel for the respondent would submit firstly that admittedly the defendant had terminated the agreement of sale. The suit simpliciter for relief of specific performance was not maintainable without a challenge to the cancellation of the sale agreement. In this regard, learned Counsel for the respondent has relied on a decision of the Hon'ble



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Supreme Court in the case of ***Sangita Sinha Vs. Bhawana Bhardwaj*** reported in ***2025 SCC Online SC 723***.

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16.As regards the relief of specific performance Mr.M.Mohamed Riyaz, learned Counsel for the respondent would state that even though plaintiffs witnesses were not cross-examined, the plaintiffs were still required to prove readiness and willingness throughout, entitling them to the relief of specific performance. In this regard, learned Counsel would state that the plaintiffs have conveniently slept over the matter and only after the defendant issued a notice, terminating the agreement of sale, the plaintiffs have chosen to wake up from slumber and set the ball in motion, by sending a reply notice, contending that they were ready to pay the balance sale consideration, following it up with the suit. He would also state that plaintiffs have not satisfied the Court that they had sufficient funds available to pay the balance sale consideration, which was a relevant circumstance, to decide the suit for specific performance. He would also state that mere oral statement of P.W.2, that he was ready to finance the plaintiffs was not supported by pleadings and rightly, the trial Court has not believed the evidence of P.W.2.



17.Mr.M.Mohamed Riyaz, learned Counsel would further state that after entering to the agreement on 10.06.2008, the plaintiffs have not taken any steps, whatsoever, for two years and such conduct would clearly amount to the plaintiffs not being ready and willing. In this regard, learned Counsel has relied on the decision of the Hon'ble Supreme Court in the case of ***P.Ravindranath & Another Vs. Sasikala & Others***, reported in ***2024 INSC 533***.

18.Referring to a decision of the Hon'ble Supreme Court in the case of ***U.N.Krishnamurthy Vs. A.M.Krishnamurthy***, reported in ***(2023) 1 SCC 75***, Mr.M.Mohamed Riyaz, learned Counsel would state that mere statement or averments in the plaint that the plaintiffs have always been ready and willing, would not suffice and the burden is on the plaintiffs to establish financial readiness and also willingness to perform the obligations / outstanding to be performed by the plaintiff.

19.Relying on the ratio laid down by the Hon'ble Supreme Court in the case of ***Azhar Sultana Vs. B.Rajamani & Others*** reported in ***(2009) 17 SCC 27***, learned Counsel for the respondent



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would contend that the relief of specific performance being an equitable remedy, it is purely discretionary and cannot be claimed as a matter of right and when the plaintiffs have been lethargic and diligent, they cannot expect equity to be exercised in their favour. He has also relied on the decision of the Hon'ble Supreme Court in the case of ***R.Shama Naik Vs. G.Srinivasiah*** reported in **2024 INSC 927**, whether the Hon'ble Supreme Court highlighted the necessity of a plaintiff to not only aver in the plaint, but also adduce necessary oral and documentary evidence for payment of the contract amount in time. The Hon'ble Supreme Court also highlighted fine distinction between readiness and willingness, which are both necessary for relief of specific performance being granted, with 'readiness' meaning capacity of the plaintiff to perform including financial position and 'willingness' relating to his conduct.

20.As regards the bokiam agreement, which is subject matter of the counter claim, it is submitted by Mr.M.Mohamed Riyaz, learned Counsel that the plaintiffs having admitted to execution of the bokiam agreement and admittedly they being in possession of the said property under the said agreement dated 07.09.2005, there was no error committed by the trial Court in decreeing the



counter claim and directing the second plaintiff to vacate and hand over possession.

21.I have carefully considered the submissions advanced by Mr.S.Silambanan, learned Senior Counsel for Ms.K.Annamma, learned Counsel for the appellants and Mr.M.Mohamed Riyaz, learned Counsel for the respondent.

22.The following points for consideration are framed for decision in the appeal suit:

1) Whether the plaintiff has established readiness and willingness to be entitled to the exercise of discretion by the trial Court?

2) Whether the defendant was entitled to maintain a counter claim in the suit for specific performance and if so, whether defendant established his entitlement to the counter claim?

23.The factum of execution of the agreement of sale dated 12.07.2006 as well as the bokiam agreement on 07.09.2005 are not seriously disputed. According to the plaintiffs, the property was



originally belonging to one A.Solomon, who bequeathed the same to his sister, the respondent / defendant herein. The defendant was not in a position to get the property mutated in her favour in view of certain shortcomings in the Will executed by her brother. The defendant, therefore, filed a suit in O.S.No.645 of 2005, for declaration and recognition of her right as a sole *legatee* of Solomon. Pending the said suit, the second plaintiff entered into a bokiam agreement with the defendant, pursuant to which the defendant was put in possession of the suit property, for a period of three years.

24.The trial Court dismissed O.S.No.645 of 2005, refusing to recognise the defendant as legatee of Solomon. An appeal in A.S.No.34 of 2006, was filed by the defendant. In the meantime, the suit sale agreement was entered into between the plaintiffs and defendant on 12.07.2006. Admittedly, an advance of Rs.3 Lakhs was paid under the sale agreement under Ex.A.1 and further advances to the tune of Rs.2,93,000/- were also made on various dates. The said payments are also not disputed.

25.While matters stood there, the defendant sent a letter to the plaintiff stating that for the default committed by the plaintiffs,



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she is cancelling Ex.A.1 sale agreement. The said letter dated 03.05.2010 has been marked as Ex.A.2. Reply was sent under Ex.A.3 dated 16.05.2010, in response to which defendant enclosed Rs.6 Lakhs by way of Demand Draft and sent a rejoinder on 14.06.2010, marked as Ex.A.5. In Ex.A.6, plaintiffs returned the Demand Draft and reiterated the claim for enforcement of the agreement of sale. The plaintiffs also sent a telegram to the registration department under Ex.A.7 on 20.06.2010, for not entertaining any alienation or encumbrance being made by the defendant on 21.06.2010 and that a suit for specific performance has been filed.

26.It is now fairly a well settled legal position that in a suit for specific performance, the plaintiff is obligated to not only aver but also prove readiness and willingness. As held by the Hon'ble Supreme Court, the 'readiness' would include financial readiness and capacity of the petitioner to perform the contractual obligation in time and 'willingness' would refer to his mental state of mind, which also is required to be proved by expression or conduct to evidence that the plaintiff has been ready right from the date of agreement of sale till such time the contract is concluded in terms of the said agreement of sale.



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27.No doubt, the defendant ran into rough weather, while attempting change of name with the revenue department. At that juncture, according to the defendant, plaintiffs advised the defendant to file a suit for declaration. However, despite there being no contest, the suit was dismissed on 26.06.2006, as evident in Ex.B.2. An appeal was filed in A.S.No.34 of 2006, which came to be allowed vide Ex.B.4 on 10.06.2008. It is not known why the plaintiffs have been inactive right from the date of the sale agreement on 12.07.2006, which in fact contemplated completion of the transaction within a period of three months. However, as seen from the various payments made by the plaintiffs to the defendant as late as Rs.50,000/- on 14.09.2008, certainly by conduct of parties, time cannot be made essence of the contract.

28.As against total sale consideration of Rs.16 Lakhs, admittedly, Rs.5,93,000/- alone have been paid by the plaintiffs. For nearly four years from the date of agreement of sale in Ex.A.1, the plaintiffs, until filing of the suit, have shown no proactiveness in having the sale agreement concluded. It was only the defendant who issued the notice for the first time in 2005 and only thereafter, the plaintiff appears to have even woken up and initiated the



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process and approached the Court seeking the relief of specific performance. In a suit for specific performance, the burden is only on the plaintiffs' shoulders to establish both readiness and willingness. In the present case, there is absolutely no evidence on the side of the plaintiffs that the plaintiffs were possessed of sufficient funds to make the balance sale consideration of Rs.11,07,000/-. Excepting for the oral evidence of P.W.2, that he was ready to finance the plaintiffs, there is no shred of evidence on the side of the plaintiffs to establish readiness. P.W.2 has not been able to demonstrate before the Court that he was a man of means and he had sufficient funds to lend about Rs.11 Lakhs to the plaintiffs. No doubt, both P.W.1 and P.W.2 have not been cross-examined by the defendants.

29.However, it is now settled law that, even if the defendant remains ex-parte, in a suit for specific performance, still the plaintiff has to cross the important tests of readiness and willingness before becoming entitled to the relief of specific performance, without expecting to be handed the decree on the mere asking. The trial Court has rightly considered the oral and documentary evidence on the side of the plaintiffs and found that the plaintiffs have not been ready and willing to perform their part



of the obligation. I do not see that the findings arrived at by the trial Court to be perverse or illegal and in fact said findings have been arrived at by the trial Court based on available evidence, oral and documentary alone. In such circumstances, I am afraid the findings of the trial Court are not liable to be interfered with.

30. There is one another spoke in the wheel for the plaintiffs / appellants for being granted the relief of specific performance. Divergent views taken by the Hon'ble Supreme Court in various decisions commencing from ***I.S.Sikandar (Dead) by LRs Vs. K.Subramani***, reported in (2013) 15 SCC 27, has been settled in the recent decision of ***Sangita Sinha's*** case, where the view that if a suit for specific performance is filed after the cancellation of the agreement, then necessarily the plaintiff would have to seek for a relief of declaration that the cancellation was not valid or improper, has been upheld. In the light of the above, applying the ratio in the present case, the plaintiff did not take even a single step until 03.05.2010, when the defendant took the first initiative by sending a notice. In such circumstances, the plaintiff was certain obligated to seek the relief of declaration that the cancellation of Ex.A.1, sale agreement was either as invalid or improper and not binding on the plaintiffs. In the absence of such declaratory relief as laid down in



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Hon'ble Supreme Court in *Sangita Sinha's*, the suit for specific performance itself is not maintainable. Therefore, even from this angle, the plaintiffs have to necessarily be non-suited to the discretionary relief of specific performance.

31.In fact, it is also relevant to point out that first plaintiff himself was admittedly an attesting witness to the Will dated 27.06.1993, under which the brother of the defendant Solomon bequeathed the property to the defendant and therefore, the plaintiffs cannot feign ignorance of the fact that the defendant's right under the Will executed by Solomon was the foundation for the title vesting with the defendant and consequently, the suit itself having been filed by the defendant for establishing her right against the first plaintiff, cannot turn around and contend that the plaintiffs were not aware of the result of the litigation for them to take necessary steps towards enforcement of the agreement of sale. Thus Point No.1 is answered against the appellants and in favour of the respondent.

Point No.2:

32.Coming to the counter claim, execution of the bokiam agreement is not in dispute. The fact that a sum of Rs.1 Lakh was



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received by the defendant and the second plaintiff was put in possession of the suit property is also an admitted position. The case of the plaintiffs is that they are in possession of the suit property only pursuant to the bokiam agreement entered into between the defendant and the second plaintiff for a consideration of Rs.1 Lakh. In such circumstances, merely because the bokiam agreement was an unregistered document and inadmissible in evidence, when the plaintiffs having not disputed the character of their possession, I do not see why the defendant should be disentitled from the relief, as there is no dispute with regard to the contractual terms of the bokiam agreement as well.

33.Even under Ex.A.5, the defendant has clearly indicated that she is prepared to return the sum of Rs.1 Lakh received under the bokiam and the second plaintiff was called upon to vacate and hand over vacant possession of the suit property. In response, vide Ex.A.6, the plaintiffs have categorically admitted the factum of the second plaintiff having entered into possession by bokiam agreement by paying Rs.1 Lakh and in fact the plaintiffs have taken a categorical stand that they will take out separate proceedings for claiming Rs.1 Lakh paid under the bokiam agreement dated 07.09.2005. In such circumstances, even prior to the filing of the



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suit, the plaintiffs have expressly agreed that they are willing to receive the sum of Rs.1 Lakh, which necessarily obligated the second plaintiff to vacate and hand over vacant possession. In such circumstances, I do not see any error committed by the trial Court in taking note of the admission of the plaintiffs, for decreeing the counter claim.

34. Under Order VIII Rule 6-A of CPC, a defendant in a suit, in addition to his right to plead set-off under Rule 6, is also entitled to set up a counter claim against the claim of the plaintiffs, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff, be it after the filing of the suit, but before the defendant has placed his defence. Therefore, it is not necessary that the counter claim should also relate to the very same cause of action. That is in the requirement of Order VIII Rule 6-A and as long as the defendant has filed a counter claim along with the written statement claiming a right that has accrued to the defendant, then it is very well permissible for the defendant to set up a counter claim against the plaintiffs. Therefore, even from this angle, I am unable to accept the arguments on the side of the appellants that the claim under the bokiam agreement was an independent cause of action and could not have been maintained as



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a counter claim. In view of the above, I do not see any merit in the appeals warranting interference under Section 96 of the Code of Civil Procedure.

35.Accordingly, these Appeals are dismissed with costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
NCC : Yes / No
MR



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To

1.The III Additional District Judge,
Puducherry.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY COMMON JUDGMENT MADE IN
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