



WEB COPY

CS No. 57 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23-02-2026

Judgment Delivered on : 17. 04.2026

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

CS No. 57 of 2022

1.M.Dhanaraj
No.43/1A, Jandavar Street,
Kaladipet,
Thiruvoottiyur,
Chennai – 600 019.

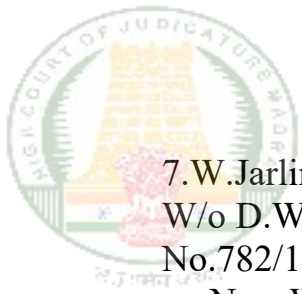
2.Kotteeswara Rao,
No.29, Cemetery Road,
Old Washermenpet,
Chennai - 600 021

3.E.Subba Reddy,
No.22/28, Basin Road,
Thiruvottiyur,
Chennai – 600 019

4.P.Pushpam
W/o A.Peter Paul (Late)
No.781/21 E, T.H.Road,
Tondiarpet,
Chennai - 600 081.

5.S.Jenita Ruby
W/o Sagayarajan.A
No.782/1, T.H.Road, Tollgate,
New Washermanpet,
Chennai – 600 081.

6.P.Suthakar Michael (A) Samuel
S/o A.Peter Paul,
No.782/1, T.H.Road, Tollgate,
New Washermanpet,
Chennai – 600 081.



7.W.Jarlin Femila
W/o D.Wilson Rabin Raja,
No.782/1, T.H.Road, Tollgate,
New Washermanpet,
Chennai - 600 081.

8.A.Flora Jancy,
W/o Alwin Prakash
No.782/1, T.H.Road, Tollgate,
New Washrmanpet,
Chennai - 600 081.

..Plaintiff(s)

Vs.

1.K.S.Damodaran
S/o Late K.S Shanmugasundaram Nadar,
No.57/2, Pulla Reddy Avenue,
Shenoy Nagar,
Chennai – 600 30.

2.Mrs. P.Sathiya Priya
W/o Prema Singh

3.P.Harini Lakshmi
D/o Prema Singh

4.P.Mahelakshmi
D/o Prema Singh
Minor Age 17 Years

5.P.Manikandan
S/o Prema Singh
Minor Aged 15 Years
(Defendants 4 and 5 are represented by their
Mother And Guardian, Mrs..P.Sathiya Priya.

6.Mr.Deepan Sundaram
S/o K.S.Mothilal

7.Mrs.M.Nandhini Devi
W/o Mr.Maran,



8.Rusitha
D/o Maran

The defendants 6 to 8 all are
residing at No.57/1, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.

9.S.D.Shanmuga Sundaram
S/o K.S.S.Damodaran

10.Kumari S.D.Janga Lakshmi
D/o K.S.S.Damodaran

(Defendants 9 and 10 are residing at
No.57/2, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030).

11.K.S Ananthan Raman
S/o Late K.Shanmuga Sundara Nadar,

12.K.S.A.Raja Ram Kumar
S/o K.S.Anantha Raman

13.Kumari K.S.A.Mohanya
D/o K.S.Ananthan Raman

(Defendants 11 to 13 all are
residing at No.57/3, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030).

14. Mrs.S.Mangala Vijayalakshmi
W/o Mr.Chandra Sekar,

15.Mrs.S.Nithyavathy
W/o Mr.Selva Ganesh

(The defendants 14 and 15 are residing
at No.57/2, Pulla Avenue,



Shenoy Nagar,
Chennai - 600 030).

16.Mr.Suraj Kumar
Residing At No.36,
New Thandavarayan Street,
Chennai - 600 021.

17.Mr.G.Rajesh
Advocate - Arbitrator
of M/s Ram Referees,
No.155, 2nd Floor, Linghi Chetty Street,
George Town, Chennai - 600 001.

..Defendant(s)

Plaint filed under Order IV Rule 1 of the Original Side Rules of this Court, read with Order 7 Rule 1 CPC, praying for judgment and decree:

(a) to declare that the impugned Award passed by the 17th defendant in favour of the 16th defendant, namely the Award dated 15/4/2021 in Case No.ARB 01 of 2014 is illegal, ab-initio-void, un-enforceable and liable.

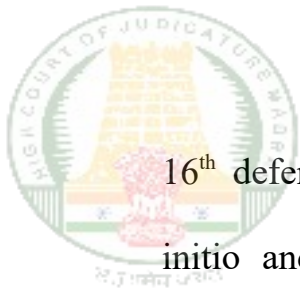
(b) for a permanent injunction restraining the 16th defendant, from in any manner taking steps to enforce the impugned Award dated 15/04/2021 passed by the 17th defendant in favour of the 16th defendant.

For Plaintiff(s): M/s.Bajai Sundar

For Defendant(s): M/s.M.Guberamoorthy for D-1
Mr.K.M.Kodaiarasu for D-11 to D-13
Mr.G.Ilangovan for D-16
D2 to D10, D14, D15 & D17 – notice served, no appearance

JUDGMENT

This Civil Suit has been filed by the plaintiff for the relief of declaration to declare that the impugned Award passed by the 17th defendant in favour of

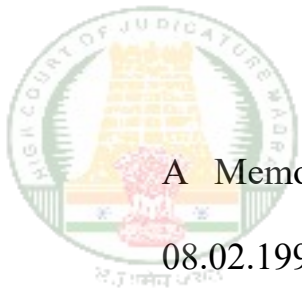


16th defendant in A.R.B.No.1 of 2014, dated 15.04.2001, is illegal, void-ab-initio and un-enforceable, and also for the relief of permanent injunction restraining the 16th defendant from in any manner taking steps to enforce the impugned Award, dated 15.04.2021 passed by the 17th defendant in favour of the 16th defendant and for costs of the suit.

2.The gist of the plaint averments, are as follows:

2.1. The suit property originally belonged to one Kasimari Shanmugha Sundara Nadar and he purchased the property through two different sale deeds, dated 11.03.1957 and 13.01.1959 respectively. The first defendant is the son of the said Late K.S.Shanmugasundara Nadar and the father of the first defendant executed a Will, dated 23.04.1994 bequeathing the A-schedule property to the first defendant by directing him to discharge all the liabilities created by him which is referred in Schedule F. The said Shanmuga Sundara Nadar died on 24.07.1995, leaving behind him the First Class legal heirs, namely his widow and three sons and one daughter. The first defendant had taken steps to probate the Will, dated 23.02.1994 and filed Original Petition in O.P.No.147 of 1997 before this Court, and thereafter, it was re-numbered as T.O.S.No.23 of 1998.

2.2. The first defendant offered to sell the property of an extent of 35 grounds and 1100 Sq.Ft. with the building and the shed to an extent of 20,684 Sq.Ft. as set out in A-schedule of the plaint, to the plaintiffs 1 to 3 and Late A.Peter Paul, who agreed to purchase the same in the month of February 1997.



A Memorandum of Understanding (for short, 'MoU') was executed on 08.02.1997 between the plaintiffs 1 to 3 along with A.Peter Paul and the first defendant. As per the said MoU, the first defendant agreed to sell the property in A-schedule @ Rs.12 lakhs per ground.

2.3. The first defendant received a sum of Rs.3 lakhs from the plaintiffs 1 to 3, and A.Peter Paul on 08.02.1997 as advance of sale price. As per the terms and conditions of the MoU, a sum of Rs.7 lakhs was paid to the first defendant in December 1997 as further advance. The plaintiffs 1 to 3, along with A.Peter Paul made payments towards sale price, which was from time to time, amounting to Rs.1,13,00,000/- and to that effect, an endorsement was made by the first defendant from 08.02.1997 to 04.08.1997 and the amount of Rs.35 lakhs is supported by receipts issued by the first defendant for having received the payments. As per the MoU, the plaintiffs 1 to 3 and along with A.Peter Paul, took steps to vacate the tenant of the first defendant. The plaintiffs 1 to 3 and A.Peter Paul, met the tenant and discussed the matter and negotiated successfully to make them vacate. The plaintiffs 1 to 3 and A.Peter Paul had to pay Rs.10 lakhs to the tenant and the tenant vacated the demised portion on 25.02.1999 and surrendered the vacant possession to the first defendant. On the same day, the first defendant had put the plaintiffs 1 to 3 and A.Peter Paul in possession of the property. Since 25.02.1999, the plaintiffs 1 to 3 and A.Peter Paul are in absolute and exclusive possession and enjoyment of the property.



As on date, the plaintiffs 1 to 3 and A.Peter Paul have jointly made payment Rs.1,23,00,000/- to the first defendant towards the sale consideration of the suit property.

2.4. As agreed by the first defendant in the MoU, he had not got the Will of the father probated in O.P.No.147 of 1997. The plaintiffs 1 to 3 and A.Peter Paul, have been waiting for the first defendant to settle the matter, which is pending before this Court in T.O.S.No.23 of 1998 (O.P.No.147 of 1997 was converted to T.O.S.No.23 of 1998) and they have requested the first defendant either to settle the matter in T.O.S.No.23 of 1998 or enter into compromise. The first defendant also promised to resolve the dispute and he assured that the other legal heirs of his father- Late Kasimari Shanmuga Sundara Nadar would definitely join in execution of the sale deed in their favour. Thereafter, the plaintiffs came to know through the public notice that the clients of M/s.King & Patridge, Advocates, intended to purchase the suit property from the defendants and if any person has any right or interest over the suit property, such person is required to contact the said Advocates and submit their objections. Immediately, objections, dated 12.03.2008 was given to the Advocate of the defendants by the plaintiffs' Advocate.

2.5. The first defendant entered into an agreement with the plaintiffs 1 to 3 and the said A.Peter Paul and they are in possession and enjoyment of the



property and the first defendant has no right to sell the property to any other person other than the plaintiffs 1 to 3 and A.Peter Paul. The MoU, dated 08.02.1997 to sell the suit property by the first defendant in favour of the plaintiffs, is still in force. Already, the plaintiffs, along with A.Peter Paul filed a suit in O.S.No.2634 of 2008 on the file of the II Assistant Judge, City Civil Court, Chennai, seeking the relief of permanent injunction restraining the defendants 1 to 5 therein from alienating the suit property and they have also obtained leave from the said Court under Order 2 Rule 3 of the Civil Procedure Code (for short, CPC), reserving their right to file the suit for specific performance and the said suit was decreed in favour of the plaintiffs.

2.6. Since the said T.O.S. is still pending before this Court, the plaintiffs have not filed a suit for specific performance a per Clause 12 of the MoU. While so, one of the sons of the Shanmuga Sundaram Nadar, namely Mothilal, filed a suit in C.S.No.448 of 1999 before this Court against the first defendant and his mother Paulthai Shanmuga Sundaram and others claiming partition of 1/5th share in the suit property. The said suit is still pending. That being so, the first defendant herein filed a suit in C.S.No.657 of 2013 on the file of this Court against the plaintiffs 1 to 3, and Late A.Peter Paul claiming declaration that the MoU, dated 08.02.1997 is frustrated and is incapable of performance, for mandatory injunction directing the defendants in the said suit to receive the sums paid as advance under the said MoU, dated 08.02.1997. The said suit was



transferred to the file of II Additional District Judge, City Civil Court, Chennai, due to increase in pecuniary jurisdiction of the City Civil Court and the said suit was dismissed for default. The said A.Peter Paul died intestate on 19.09.2021, leaving behind him the plaintiffs 4 to 8 as his legal heirs.

2.7. Thereafter, the plaintiffs came to know that an Arbitration Award in Case No.ARB.01 of 2014, dated 15.04.2021 had been registered by the Sub-Registrar Office as Document No.1589 of 2021. Subsequently, the plaintiffs obtained a certified copy of the Award there-of and came to know that the 16th defendant, as a claimant, had initiated Arbitral proceedings in respect of the alleged agreement of sale, dated 19.08.2010 entered into with the first defendant. The said arbitral proceedings are sham and commenced with mala-fide motives and in collusion with all the parties including the sole Arbitrator appointed by the said parties.

2.8. In the said Arbitral proceedings, the first defendant has deliberately remained ex-parte and the learned Arbitrator had passed an ex-parte Award, dated 15.04.2021. The said Arbitral Award was passed by playing fraud, deceit and conspiracy of all parties including the Arbitrator. The 16th defendant is not the bona-fide purchaser and with the sole intention to nullify the MoU, dated 18.02.1997, which all parties were aware, was live and binding. Therefore, the said Arbitral Award is totally null and void. The Arbitrator, without issuing



notice to the parties, directed the sixteenth defendant to deposit a sum of Rs.3,50,00,000/- to the previous agreement holder, i.e. plaintiffs 1 to 3, along with A.Peter Paul, on the account of the first defendant. Further, the 17th defendant also directed the first defendant to execute and register the sale deed in favour of the 16th defendant in respect of the undivided 1/4th share of the first defendant in the suit property and injunction was also granted in favour of the 16th defendant.

2.9. Therefore, the said Award was obtained by playing fraud and cheating committed by the first defendant in collusion with the defendants 16 and 17. The 17th defendant has no right or jurisdiction to hold and conduct any Arbitral proceedings, that too, without the plaintiffs being made parties to the said proceedings. Without impleading the plaintiffs as parties to the proceedings, the 17th defendant has directed the 16th defendant to pay plaintiffs a sum of Rs.3.5 crores as previous agreement holder and the said Award is of no consequence and the same is not binding on the plaintiffs, as the 17th defendant has no right to pass any such Award, which directly affects the rights of the third parties, namely the plaintiffs. The Award is contrary to Section 12 of the Specific Relief Act and is not enforceable.

2.10. The plaintiffs, who are not parties to the arbitral proceedings, are not in a position to challenge the arbitral Award in the manner known to law by



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filing a petition under Section 34 of the Arbitration and Conciliation Act. In the absence of the Will, dated 23.02.1994 not being probated in favour of the first defendant, the other defendants 2 to 15 may be entitled to the moiety of the share, thereby, they have been made as parties to the suit, though they are not parties to the MoU, dated 08.02.1997. Therefore, for the reasons stated supra, the plaintiffs have filed the present suit for the reliefs stated above.

3.Despite service of notice on the defendants, they have not filed any written statement, but they had entered appearance through counsel, and the defendants were set ex-parte on 21.11.2024 and thereby, ex-parte order has been passed as against the defendants and the matter has been posted under the caption “for undefended board” by order dated 21.11.2024.

4.Thereafter, the present suit has been posted for examination of witnesses and on the side of plaintiffs, P.W.1 was examined and Exs.P-1 to P-9 were marked.

5. The point for determination in this Civil Suit is, “whether the plaintiffs are entitled to relief as prayed for in this suit ?”

6. Learned counsel for the plaintiffs submitted that the plaintiffs have filed the present suit for declaration to declare the arbitral proceedings in ARB.1



of 2014 as null and void and the plaintiffs 1 to 3 and A.Peter Paul had entered into sale agreement with the first defendant, and the first defendant agreed to sell the property for a sum of Rs.12 lakhs per ground and also executed MoU, dated 08.02.1997. The plaintiffs 4 to 8 are the legal heirs of the deceased A.Peter Paul. The plaintiffs have paid a sum of Rs.1,23,00,000/- on various dates. In fact, the property originally belonged to Kasimari Shanmuga Sundara Nadar and the first defendant is his one of the sons and the father of the first defendant executed a Will in favour of the first defendant on 23.04.1994 bequeathing the A-schedule property to the first defendant and thereafter, the first defendant has filed a petition for probating the Will in O.P.No.147 of 1997 and the same was converted into T.O.S.No.23 of 1998, which is stated be still pending. Since the T.O.S. is pending, the plaintiffs are waiting for execution of sale in their favour.

7. While so, by suppressing the above-said MoU, the arbitral proceedings were initiated in Arb.No.1 of 2014, and the Arbitrator had passed the Award as against the provisions of the Arbitration and Conciliation Act, without impleading the plaintiffs as parties in the Arbitral proceedings the Arbitrator directed the purchaser - 16th defendant to deposit Rs.3.5 crores in the account of the first defendant and therefore, the said Award, dated 15.04.2001 has been passed by playing fraud to defeat the rights of the plaintiff over the suit property, and thereby the said Award is liable to be set aside.



8. It is contended by the learned counsel for the 16th defendant that though this suit has been posted under the caption “for undefended board” he has right to argue the matter and submitted his arguments as follows, it is stated that the 16th defendant is the bona-fide purchaser who has purchased the property for valuable consideration and he has no knowledge about the transaction between the plaintiffs and the first defendant, however, in the Award, he had deposited Rs.3.5 crores as per the arbitration Award passed by the Arbitrator. Since the 16th defendant is the bona-fide purchaser, the plaintiffs are not entitled to any relief and the plaintiffs have not filed any suit for specific performance and even after this much long time, they have not taken any steps for specific performance without filing the suit for specific performance they have filed only the suit for permanent injunction and had not obtained the leave of the Court and the plaintiffs have not approached the Court with clean hands and they have only challenged the Arbitral proceedings and they have not filed any suit for specific performance and thereby, the plaintiffs have not approached the Court with clean hands, and that the present suit may be dismissed. In support of his submissions, learned counsel for the 16th defendant, had relied on a judgment of the Honourable Supreme Court reported in AIR Online 2012 SC 542 (M/s.Virgo Industrie (Eng) P.Ltd Vs. Venturetech)



9. Heard the learned counsel for the plaintiffs and the learned counsel for the 16th defendant and the defendants have not filed any written statement and they were set ex-parte on 21.11.2024 by this Court.

10. In order to prove the case, the plaintiffs have examined P.W.1 and marked Exs.P-1 to P-9. The plaintiffs side witness in his evidence, reiterated the plaint averments and the prayer in the suit is to declare the Arbitral Award as null and void on the ground that the Award has been obtained by playing fraud. Though the defendants have been set ex-parte, it is the duty of the plaintiffs to establish their case through sufficient evidence. As per order VIII rule 10 of CPC, the defendants failed to appear the court has to pass judgments or order if it thinks fit. Therefore even in the exparte suit the decree is not automatic it should be supported by evidence According to the plaintiffs, MoU, dated 08.02.1997 was entered with the first defendant and they have also produced a xerox copy of the MoU. The plaintiffs have failed to produce the original MoU and there is no reason stated by the plaintiffs for non-production of the original MoU and thereby, Ex.P-1 MoU did not fulfill the conditions under Section 65 of the Indian Evidence Act. The plaintiffs are mainly relying upon MoU, dated 08.02.1997 and without producing the original MoU, they had filed the present suit.



11. Moreover, the plaintiffs have not taken any steps to get the sale deed in their favour and also not filed suit for specific performance based on the above-said MoU. Though the said MoU was executed on 08.02.1997, thereafter, the plaintiffs have filed the suit for permanent injunction in O.S.No.2634 of 2008 and even according to the plaintiff, the first defendant is entitled to the property, in view of the Will, dated 23.04.1994 executed by the father of the first defendant, but the said Will had not been probated and the probate proceedings are pending in O.P.No.147 of 1997, which was converted into T.O.S.No.23 of 1998 and thereafter, after knowing very well about the pending proceedings, the plaintiffs entered into MoU and without producing the original MoU, filed this suit. Even on seeing Ex.P-1 photocopy of the MoU, it is to be noted that there were handwritings for various payment of the amounts, which shows that the signatures were obtained in blank papers and thereafter, it was filled-up with handwriting.

12. Further, on a perusal of Ex.P-3 (judgment in O.S.No.2634 of 2008 on the file of the IIInd Assistant Judge, City Civil Court, Chennai), it reveals that the plaintiffs 1 to 3, along with A.Peter Paul, have filed the said suit in O.S.No.2634 of 2008 on the file of the City Civil Court, Chennai for permanent injunction and the same was decreed on 19.02.2015. On a perusal of Ex.P-5, it reveals that the first defendant had filed a petition for probate of the Will in O.P.No.147 of 1997 and the said petition was converted into Testamentary



Original Suit in T.O.S.No.23 of 1998, but the plaintiffs have not filed any subsequent result of the said T.O.S. proceedings. Further, as the plaintiffs have failed to produce the result of the T.O.S. and the plaintiffs, after knowing about the pendency of the probate proceedings, entered into MoU and while that being so, it is the duty of the plaintiffs to produce the result of the said T.O.S., but the plaintiffs failed to produce the status of the said T.O.S.No.23 of 1998 and the plaintiffs have not even produced the original MoU, thereby. The said conduct of the plaintiffs creates serious doubt over the genuineness of the claim of the plaintiffs and the plaintiffs have not come to Court with clean hands. It is well settled law that the party who approached the court has to come to the court with clean hands, but in this case the plaintiff without taking any steps for specific performance filed other suits. Thereby, they are not come with clean hands and the plaintiffs are not entitled to any relief in this suit.

13. In the present suit, the plaintiffs failed to prove the vital document and the plaintiffs have not taken any steps to file the suit for specific performance. The plaintiffs, without filing the suit for specific performance, earlier had filed the suit for permanent injunction and now filed this suit for declaration of the arbitral proceedings as null and void, but still, he has not filed any suit for specific performance even after completion of 29 years. The said conduct of the plaintiffs show that he has not come to Court with clean hands.



14. On a careful perusal of the said judgment of the Honourable Supreme Court in *M/s. Virgo Industries (Eng) Private Ltd vs. Venturetech Solutions P. Ltd* relied on by the learned counsel for the 16th defendant, it is clear that the said case law will not be applicable to the present facts of the case as this case is to declare the of Arbitral Award as null and void.

15. Even though the defendants were set ex-parte, it is the duty of the plaintiffs to prove their case by adducing sufficient evidence and under Order 8 Rule 10 CPC, if the defendant failed to appear the court has to pass decree or to pass any order it deem fit regarding the suit. In this suit the plaintiffs have not proved their case with sufficient evidence and hence, the suit is accordingly dismissed. There shall be no decree as to costs.

17-04-2026
(1/2)

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
cs

List of witnesses examined on the side of plaintiff:

P.W.1 Mr.R.V.Dhanraj



List of documents marked on the side of plaintiff:

Sl. No.	Exhibit Number	Date	Description of the exhibits
1	Ex.P-1	08.02.1997	Photocopy of the Memorandum of Understanding between the plaintiffs 1 to 3 and A.Peter Paul with the first defendant
2	Ex.P-2	15.04.2021	Certified copy of the Award passed in Arb.01/2024 by 17 th defendant
3	Ex.P-3	19.02.2015	Certified copy of the judgment in O.S.No.2634 of 2008
4	Ex.P-4	19.02.2015	Certified copy of the Decree in O.S.No.2634 of 2008
5	Ex.P-5	1996	Certified copy of the petition in T.O.S.No.23 of 1998
6	Ex.P-6	-	Certified copy of the plaint in C.S.No.448 of 1999
7	Ex.P-7	11.09.2013	Certified copy of the plaint in C.S.No.657 of 2013
8	Ex.P-8	19.12.2019	Certified copy of the judgment in O.S.No.5691 of 2019
9	Ex.P-9	19.12.2019	Certified copy of the Decree in O.S.No.5691 of 2019

List of witnesses examined on the side of the defendant: Nil

List of documents marked on the side of the defendant: Nil

17. 04.2026
(2/2)



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CS No. 57 of 2



P. DHANABAL, J

CS

**Pre-delivery Judgment
in CS No. 57 of 2022**

Judgment delivered on

17-04-2026