



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10-11-2025

PRONOUNCED ON: 21-04-2026

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THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

AS Nos. 637 and 638 of 2018
and CMP No.5647 of 2023

AS No. 637 of 2018

1. Chinnapappa
2. P.Mahendiran
3. P.Gopi

..Appellants

Vs

- 1.A.S.Palanivel
- 2.P.Kavitha
- 3.P.Premalatha
- 4.P.Jeevitha

..Respondent(s)

PRAYER: The appeal suit is filed under Section 96 r/w. Order 41 Rule 1 of C.P.C. to set aside the judgment and decree dated 14-03-2018 made in O.S.Nos.6674 of 2015, on the file of the XV Additional Judge, City Civil Court, Chennai.

CMP No. 5647 of 2023 in A.S.No.637 of 2018

A.S.Palanivel

.. Petitioner

Vs

- 1.Chinnapappa
- 2.P.Mahendiran
- 3.P.Gopi
- 4.P.Kavitha
- 5.P.Premalatha
- 6.P.Jeevitha

..Respondent(s)

PRAYER: The Civil Miscellaneous Petition filed under Order XLI, Rule 27 of



the Civil Procedure Code, to permit the petitioner/respondent to mark the Sale deed dated 28.09.2015 registered as Document No.2784/2015 at Sub Registrar Office Ashok Nagar, issued by the Tamil Nadu Slum Clearance Board for the property bearing Plot No.31A in respect of the Non-residential portion which is adjacent to the suit property as an Exhibit in this Appeal Suit.

AS No. 638 of 2018

Chinnapappa

..Appellant

Vs

A.S.Palanivel

..Respondent(s)

PRAYER: The appeal suit is filed under Section 96 r/w. Order 41 Rule 1 of C.P.C. to set aside the judgment and decree dated 14-03-2018 made in O.S.Nos.6673 of 2015, on the file of the XV Additional Judge, City Civil Court, Chennai.

In A.S.No.637 of 2018:

For Appellant(s):	Mr.M.Vijayakumar
For Respondent(s):	Mr.M.Aravindan for R1 R-2 to R-4 – Given up

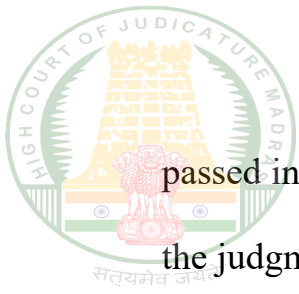
In A.S.No.638 of 2018:

For Appellant(s):	Mr.M.Vijayakumar
For Respondent(s):	Mr.M.Aravindan

COMMON JUDGMENT

The present appeals, A.S. Nos. 637 and 638 of 2018, arise out of the common judgment and decree dated 14.03.2018 passed by the XV Additional Judge, City Civil Court, Chennai, in O.S. Nos. 6774 and 6773 of 2015 respectively.

2. A.S. No. 638 of 2018 is directed against the judgment and decree



passed in O.S. No. 6773 of 2015, while A.S. No. 637 of 2018 is directed against the judgment and decree passed in O.S. No. 6774 of 2015.

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3. The suit in O.S. No. 6773 of 2015 was instituted by the vendor seeking a direction to the purchaser to return the title deeds relating to Item I of the suit schedule property, and for a permanent injunction restraining him from interfering with the vendor's possession of the suit property.

4. The suit in O.S. No. 6774 of 2015 was filed by the purchaser against the vendors seeking execution of a sale deed in respect of Item No. I of the property, and a mandatory injunction directing the vendors to obtain a sale deed from the Tamil Nadu Slum Clearance Board and thereafter execute a sale deed in favour of the purchaser in respect of Item No. II of the property, in terms of the sale agreement dated 15.12.2005.

5. The trial Court tried both suits jointly and, by a common judgment, declined to order return of the documents/title deeds and dismissed O.S. No. 6773 of 2015, while granting the relief of specific performance as prayed for in O.S. No. 6774 of 2015 and decreeing the said suit.

6. For the sake of convenience, the parties are referred to as they were arrayed before the trial Court in O.S. No. 6773 of 2015.

7. The plaintiff in O.S. No. 6774 of 2015, who is the respondent in both the appeals, filed C.M.P. No. 5647 of 2023 in A.S. No. 637 of 2018 under



Order XLI Rule 27 CPC seeking to receive an additional document, namely, a certified copy of the sale deed dated 28.09.2015.

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8. Since both the appeals arise out of a common judgment and relate to the same subject matter in both appeals, and as the averments in the plaint in one suit substantially correspond to the averments in the written statement in the other, both the appeals are being disposed of by this common judgment.

9. Brief contents of the plaint in O.S. No. 6773 of 2015 and the written statement in O.S. No. 6774 of 2015 are as follows: The suit property bears Door No. 5, Old No. 3, Kamarajar Salai, Kanniappa Nagar, Ashok Nagar, Chennai, measuring about 990 sq. ft. The residential portion of the property was conveyed by the Tamil Nadu Slum Clearance Board in favour of the plaintiff under a registered sale deed dated 24.05.2002, whereas the non-residential portion had not yet been conveyed by the Board. The defendant, who is in occupation of the non-residential portion as a tenant, was paying a monthly rent of Rs.1,730/-. The plaintiff and her legal heirs entered into a sale agreement dated 15.12.2005 with the defendant for sale of the entire property for a total sale consideration of Rs.24,50,000/-, under which a sum of Rs.7,00,000/- was paid as advance. According to the plaintiff, the agreement was subject to the condition that the vendors should first obtain conveyance of the non-residential portion from the Slum Clearance Board, and since such conveyance could not be secured, the sale could not be completed. It is her further case that the



defendant obtained the original title deed relating to the residential portion on the pretext of showing the same to an auditor for arranging finance, failed to return it, and thereafter attempted to compel the sale, necessitating the institution of O.S. No. 6773 of 2015 for return of the title deed and for permanent injunction.

10. Brief contents of the written statement in O.S. No. 6773 of 2015 and the plaint in O.S. No. 6774 of 2015 are as follows: The defendant, on the other hand, treated the agreement as a genuine and enforceable contract and instituted O.S. No. 6774 of 2015 seeking specific performance and a mandatory injunction directing the plaintiff and her legal heirs to obtain a sale deed from the Tamil Nadu Slum Clearance Board in respect of the non-residential portion. His case is that the vendors had represented that they would secure the remaining conveyance from the Slum Clearance Board and, relying on such representation, he entered into the agreement, paid an initial sum of Rs.7,00,000/-, and thereafter paid a further sum of Rs.50,000/- on 15.06.2006. He further claimed that, in part performance of the contract, the original sale deed and possession of the front-side shops were handed over to him, and that he had always been ready and willing to complete the purchase, but the plaintiffs kept postponing performance.

11. Both the suits were tried jointly, and oral as well as documentary evidence was adduced. On the side of the plaintiff, P.W.1 was examined and



Exs. A1 to A6 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs. B1 to B3 were marked.

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12. Upon an appreciation of the oral and documentary evidence, the trial Court held that the sale agreement dated 15.12.2005 was true, valid and enforceable, and that time was not the essence of the contract. It found that the parties had acted upon the agreement even beyond the original period stipulated thereunder, particularly in view of the further payment of Rs.50,000/-, and that the agreement had not lapsed. The trial Court further held that the absence of conveyance of the non-residential portion by the Tamil Nadu Slum Clearance Board did not render the agreement wholly incapable of performance, and that the defendant had proved his readiness and willingness to perform his part of the contract. On that reasoning, the trial Court dismissed O.S. No. 6773 of 2015 and decreed O.S. No. 6774 of 2015, directing deposit of the balance sale consideration, execution of the sale deed in respect of the residential portion, namely Item No. I of the suit schedule property, and further directing defendants 1 to 3 to obtain conveyance of the non-residential portion from the Board and thereafter execute a sale deed in favour of the plaintiff therein.

13. Aggrieved by the common judgment and decree, the present appeals have been preferred contending that the trial Court misappreciated both the facts and the law. According to the appellants/plaintiffs, the trial Court erred in accepting the contention of the defendant that he had entered into possession



of the second item of the property under the doctrine of part performance of contract. Under the sale agreement dated 15.12.2005, the time fixed for completion of the transaction was three months. However, the defendant did not take steps to complete the transaction and issued the legal notice, Ex. A2, only after nine months. In the meanwhile, the plaintiff had terminated the agreement on 14.09.2006. It is further contended that the trial Court failed to consider the specific recital in the agreement that the original title deeds and possession of the property would be handed over only upon registration of the conveyance. The trial Court is also said to have wrongly placed reliance on Section 13 of the Specific Relief Act and Section 43 of the Transfer of Property Act. The plaintiffs further emphasised that the first plaintiff was an elderly illiterate widow, while the defendant was a builder, and that the transaction failed only because the Tamil Nadu Slum Clearance Board did not execute the sale deed in respect of the non-residential portion, as evidenced by Exs. A5 and A6, and not on account of any default on their part.

14. **C.M.P. No. 5647 of 2023:** The defendant, who is the respondent in A.S. No. 637 of 2018, filed C.M.P. No. 5647 of 2023 seeking reception of an additional document, namely, the certified copy of the sale deed dated 28.09.2015 executed by the Tamil Nadu Slum Clearance Board in favour of a third party to the suit. In the affidavit filed in support of the petition, it is averred that the plaintiffs' contention that the Tamil Nadu Slum Clearance



Board had stopped issuing sale deeds in respect of the suit property and that the suit sale agreement had thereby become inoperative is false. According to the defendant, the plaintiffs relied upon Exs. A5 and A6, which are reply letters issued by the Tamil Nadu Slum Clearance Board. On verification, it was found that the stand taken by the plaintiffs is incorrect, since the Tamil Nadu Slum Clearance Board had executed a sale deed dated 28.09.2015, registered as Document No. 2785 of 2015 on the file of the Sub-Registrar, Ashok Nagar, in respect of Plot No. 31A relating to the non-residential portion adjacent to the suit property. It is further stated that the defendant was not aware of the said document during the pendency of the suits before the trial Court and came to know of it only recently, and that the present petition has therefore been filed.

15. Learned counsel for the appellants/plaintiffs submitted that only the residential portion had been conveyed by the Tamil Nadu Slum Clearance Board, while the non-residential portion remained unconveyed, and that the sale was to be completed only thereafter. Though the appellants had made bona fide efforts to obtain the sale deed, as seen from Exs.A5 and A6, the respondent neither paid the balance sale consideration within time nor proved readiness and willingness; hence, the agreement was unenforceable. It was further contended that the respondent wrongfully retained the original sale deed, took possession of the non-residential portion, and later sought to confine the transaction to the residential portion alone by reducing the sale consideration. Therefore, it was



argued that the decree for specific performance was unsustainable, the suit was bad for non-joinder of the Tamil Nadu Slum Clearance Board, and the appellants' suit for return of title deeds ought to have been decreed. It was further submitted that the agreement was contingent upon the Tamil Nadu Slum Clearance Board executing a sale deed in respect of the non-residential portion and, since that event did not occur within the stipulated time, the contract lapsed and could not be specifically enforced. In support of these submissions, reliance was placed on *K. Narendra v. Riviera Apartments (p) Ltd., (1999)5 SCC 77* , *Gana Kannappan v. G. Mohanlal Patel 2025 (3) CTC 306* , *Satish Kumar v. Karan Singh, and Alagammal v. Ganesan (2016) 2 MLJ 40*. It was also submitted that the execution proceedings in E.P. No.1171 of 2020 would abide by the result of these appeals, in view of the order of this Court dated 19.01.2023 in C.M.P. No.17124 of 2018 in A.S. Nos.637 and 638 of 2018.

16. The learned counsel for the respondent/defendant submitted that the admitted facts were that the property had two portions, that the residential portion had already been conveyed to the first appellant, that the non-residential portion was still to be conveyed by the Tamil Nadu Slum Clearance Board, and that both parties had entered into Ex.A1 sale agreement, under which the appellants received Rs.7,00,000 as advance and a further Rs. 50,000 on 15.06.2006. He further submitted that, though he was originally a tenant in the commercial portion, he was later put in possession of it in part performance of



the contract, that the first plaintiff's own evidence was inconsistent regarding the handing over of the original title deeds, and that the trial court therefore rightly held the agreement to be enforceable. He also submitted that the agreement continued to subsist, that the defect was only one of imperfect title as to a portion of the property, and that the vendors could still be compelled to perfect title and perform the contract, placing reliance on *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai, (1986) 3 SCC 300*. He also pointed out that, in compliance with the decree in O.S. No. 6774 of 2015, he deposited the balance sale consideration of Rs. 17,00,000, filed E.P. No. 1171 of 2020, faced contest from the plaintiffs in those execution proceedings, and, in the absence of any stay, obtained a court-executed sale deed dated 22.01.2024 in Doc. No. 514 of 2024 for the residential portion, followed by delivery of possession through the Court bailiff on 17.07.2025. On that basis, he contended that the appeals were without merit and that the common judgment and decree should be confirmed.

17. **Points for determination:** In the light of the grounds raised in the appeals and the rival submissions made on either side, the following points arise for determination in these first appeals:

In A.S. No. 638 of 2018:

1. Whether the plaintiffs/vendors are entitled to return of title deeds



pertaining to Item I of the suit property?

2. Whether the defendant obtained possession of Item I of the property as part performance of the contract?

3. Whether the judgment and decree dated 14.03.2018 passed in O.S. No. 6773 of 2015 are liable to be set aside?

In A.S. No. 637 of 2018:

4. Whether the petition to receive additional evidence CMP N0.5647 of 2023 to be allowed?

5. Whether the agreement to sell Ex A1 dated 15.12.2005 is contingent in nature?

6. Whether the mandatory injunction issued against the plaintiffs to obtain sale deed from the statutory authority TNSLB to the commercial plot item II of suit schedule property is sustainable?

7. Whether the defendant is in possession of second item of property under the part performance of contract to sell?

8. Whether the judgment and decree dated 14.03.2018 passed in O.S. No. 6774 of 2015 are liable to be set aside?

18. After disposal of the suits by the trial court, while the appeal was pending, the defendant/decree holder filed an execution petition in E.P.No. 1171 of 2020 and got the sale deed executed through court, and in consequence took delivery of Item I of the property. The execution petition was thereafter closed.

19. **Point No. 4:** This application has been filed by the respondent/defendant in answer to Exs. A5 and A6 marked on the side of the

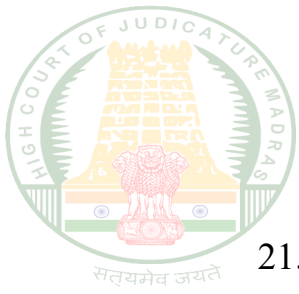


plaintiff. Ex. A5 is a proceeding addressed by the Tamil Nadu Slum Clearance Board to the plaintiff regarding stoppage of allotment of non-residential plots in

Kanniappa Nagar. The same position is reiterated in Ex. A6 dated 25.02.2016.

In the affidavit filed in support of the application, the defendant stated that the Tamil Nadu Slum Clearance Board had executed a sale deed in respect of a non-residential plot during the same year and, on that basis, sought to mark the certified copy of the said sale deed as an additional document. However, on a careful perusal of the document sought to be produced, it is seen that it relates only to a residential plot, as specifically stated at page 6 of the sale deed. Therefore, the document does not pertain to the non-residential portion, as alleged in paragraph 7 of the affidavit. In such circumstances, since the affidavit has been filed with an incorrect factual premise, the petition is liable to be dismissed *in limine*. Accordingly, the petition C.M.P. No. 5647 of 2023 is dismissed and the point is answered.

20. **Point No. 5:** The sale agreement dated 15.12.2005 relates to a property consisting two portions, namely, residential portion and non-residential portion. Insofar as the residential portion is concerned, the plaintiff had already obtained a sale deed. However, allotment in respect of the non-residential portion had yet to be obtained. Although the property is described as a single unit in the sale agreement, the defendant, in the suit filed by him, bifurcated the same into two parts and described them as Item Nos. 1 and 2.



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21. The character and status of the properties described as Item Nos. 1 and 2 are distinct. Item No. 1 is the residential plot, which had already been allotted in the name of the husband of the first plaintiff, and in respect of which the Tamil Nadu Slum Clearance Board subsequently executed a sale deed in favour of the first plaintiff. Therefore, Item No. 1 became the absolute property of the plaintiffs, with full right of alienation. In contrast, Item No. 2 is a non-residential plot which has not yet been allotted in favour of the plaintiffs. The communications addressed by the Tamil Nadu Slum Clearance Board to the plaintiff disclose that allotment of the non-residential plot has been deferred without any definite time frame being indicated. Hence, in respect of Item No. 2, the plaintiffs can be only prospective allottees, and their title has not yet materialized.

22. Insofar as Item No. 1 is concerned, the sale agreement is complete. However, in respect of Item No. 2, the plaintiffs agreed to sell the property only after obtaining a sale deed from the Tamil Nadu Slum Clearance Board. It is thus clear that, as on the date of the sale agreement, the plaintiffs were merely prospective owners of Item No. 2. The sale agreement also contains a specific clause that the plaintiffs assured to obtain a sale deed from the Tamil Nadu Slum Clearance Board within three months and thereafter convey the same to the defendant. Thus, completion of the sale agreement was dependent upon the



plaintiffs obtaining the sale deed from the Tamil Nadu Slum Clearance Board in respect of Item No. 2. In that context, the plaintiffs has termed the sale

agreement as a contingent contract within the meaning of Section 32 of the Indian Contract Act. Section 32 provides that a contingent contract cannot be enforced by law unless and until the event has happened and if the event becomes impossible, such contracts become void.

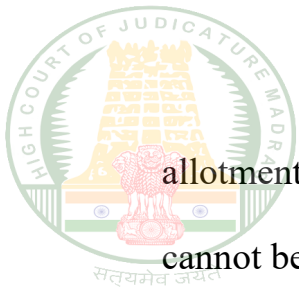
23. On the other hand, the defendant placed reliance on Section 13(1) (a) of the Specific Relief Act, 1963 and Section 43 of the Transfer of Property Act, 1882. Both provisions operate in distinct fields. Section 43 of the Transfer of Property Act applies where a person fraudulently or erroneously represents that he is authorised to transfer certain property and professes to transfer the same for consideration; if he subsequently acquires an interest in that property, the transfer, at the option of the transferee, operates on the interest so acquired. In the present case, the plaintiffs neither made any false representation nor claimed title to the property without having such title, and, in any event, no transfer had taken place. On the contrary, the sale agreement itself specifically records that the plaintiffs would first obtain a sale deed from the Tamil Nadu Slum Clearance Board within three months and only thereafter convey the property to the defendant. Likewise, Section 13(1)(a) of the Specific Relief Act, 1963 has no application to the facts of the present case. That provision applies where a person, falsely representing himself to be the owner of property,



fraudulently enters into a sale agreement, and subsequently acquires title thereto, in which event the other party may compel performance. Here, the plaintiffs did not misrepresent their title and, admittedly, they did not become owners of the second item of property. Hence, the plea advanced by the defendant in this regard is unsustainable.

24. Another contention raised relates to Section 13(1)(b) of the Specific Relief Act, 1963. The said provision contemplates that where a person enters into a sale agreement requires the concurrence of a third party to perfect his title, and such third party is bound to give that concurrence, the other contracting party may compel him to procure such concurrence or consent.

25. In the present case, conveyance from the Tamil Nadu Slum Clearance Board is necessary to perfect the plaintiffs' title in respect of Item No. 2. The question, however, is whether the Tamil Nadu Slum Clearance Board is under any obligation to convey the property. The Tamil Nadu Slum Clearance Board is a statutory authority constituted under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. It is not bound, as a matter of course, to convey the non-residential portion of the property to the plaintiffs. The object of the Act is to eradicate unhygienic and insanitary conditions prevailing in slum areas and to provide better accommodation and improved living conditions for slum dwellers. Neither the Act nor the Rules deals with



allotment of commercial or non-residential plots. In such circumstances, it cannot be held that the Tamil Nadu Slum Clearance Board is bound to accede to the plaintiffs' request. Consequently, the plaintiffs cannot be compelled to procure conveyance from the Tamil Nadu Slum Clearance Board, and this provision also has no application.

26. On the side of the defendant, reliance was placed on the decision of the Supreme Court in *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai(dead) by Lrs and another*, (1986) 3 SCC 300. In that case, the vendor had agreed to sell agricultural land as a village site after obtaining permission from the Collector. Though the Collector initially rejected the request, the vendor subsequently obtained permission owing to a change in law, and the Court held that the contract was not a contingent one. The facts of the present case stand on a different footing. Here, the conveyance by the Tamil Nadu Slum Clearance Board is itself uncertain. Further, the Slum Clearance Act is a piece of social welfare legislation. Apart from placing reliance on the above decision, the defendant has not offered any detailed explanation regarding the pre-existing right of the plaintiffs, if any, in respect of the non-residential portion of the property.

27. As already observed, the Tamil Nadu Slum Clearance Board is under no obligation to execute a conveyance, and even to this date the non-



residential portion has not been conveyed in favour of the plaintiffs. Having regard to the object of the Act and the absence of any provision for allotment of non-residential property, the possibility of securing such conveyance appears remote. The recital in the agreement that “after obtaining sale deed from TNSCB for the non-residential portion within three months we will execute the sale deed” is a contingent clause . Since the said event has not occurred, the contract is unenforceable. This point is answered accordingly.

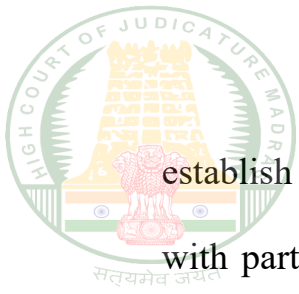
28. **Point No. 6:** The trial Court accepted the defendant’s claim and decreed the suit in respect of Item No. 1 of the property. It also granted a mandatory injunction directing the plaintiffs to obtain a sale deed from the Tamil Nadu Slum Clearance Board within a period of six months and thereafter execute a sale deed in favour of the defendant within one month. While the trial Court focused on the readiness and willingness of the defendant, it failed to consider the enforceability of such a decree. As already discussed, the Tamil Nadu Slum Clearance Board is a statutory body and is under no obligation to execute a conveyance in favour of the plaintiffs. Further, Section 14(d) of the Specific Relief Act, 1963 bars grant of specific performance where execution of it would require continuous supervision by the Court. As already noted, the defendant has already obtained a sale deed in respect of Item No. 1 and has also recovered physical possession through Court. The defendant himself bifurcated the suit property into two parts, namely, residential and non-residential, and the



contingent aspect of the contract relates exclusively to Item No. 2, namely, the commercial portion. Insofar as Item No. 1 is concerned, there is no dispute regarding the exclusive title of the plaintiffs. The trial Court also segregated the issues and dealt with them separately. In view of the bar contained in Section 14 of the Specific Relief Act, 1963, the mandatory injunction granted in respect of the non-residential property is unsustainable in law. This point is answered accordingly.

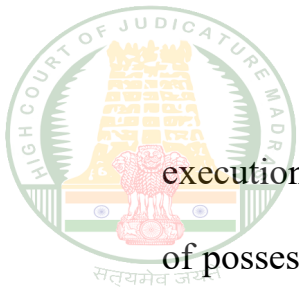
29. **Point No. 2 and Point No. 7:** It is admitted that the defendant was a tenant under the plaintiffs in respect of one shop portion forming part of Item No. II of the suit property, on a monthly rent of Rs.1,730/-. This fact is admitted by both sides. The further plea of the defendant is that, when the plaintiffs received an additional sum of Rs.50,000/- on 15.06.2006, they handed over possession of the front-side shop portion in part performance of the agreement, and that, therefore, the question of his continuing to pay rent is irrelevant and unsustainable in law.

30. On a perusal of Ex. A1, the sale agreement dated 15.12.2005, and the endorsement dated 15.06.2006, it is seen that there is no recital evidencing delivery of possession to the defendant. Since the defendant claims that he has been in possession of Item No. II of the suit property from 15.06.2006 not as a tenant but in part performance of the contract, the burden lies upon him to



establish the same. Section 53A of the Transfer of Property Act, 1882 deals with part performance of a contract. For its application, the agreement of sale must be in writing, its terms must be ascertainable with reasonable certainty, and possession must have been delivered or continued in part performance of the contract. In the absence of any clause in the agreement or in the subsequent endorsement regarding delivery of possession in part performance, the mere existence of a sale agreement is insufficient to establish that the defendant is in possession of the property under part performance of the contract. Therefore, the defendant's possession of the suit property can only be referable to his status as a tenant. A tenant cannot unilaterally alter his status into that of a purchaser in possession.

31. Ex. A1, the agreement of sale dated 15.12.2005, is an unregistered document. In order to claim the benefit of possession under the doctrine of part performance in terms of Section 53A of the Transfer of Property Act, 1882, the agreement must be a registered one, as required by the amendment introduced by Act 48 of 2001 with effect from 24.09.2001. In the present case, there is not only an absence of registration of the agreement, but there is also no written recital therein regarding delivery of possession. In such circumstances, the unilateral plea of the defendant that his possession stood transformed from that of a tenant into that of an agreement holder is clearly untenable. His continued occupation of the property without payment of rent is wholly unjustified. Mere



execution of a sale agreement, in the absence of any clause relating to delivery of possession, does not relieve a tenant of his liability to pay rent. Therefore, the defendant's claim that he is in possession of Item No. II of the property as an agreement holder under part performance of the contract cannot be sustained. Accordingly, this point is answered.

32. Point No. 3 and Point No. 8: The suit property described in Ex. A1 sale agreement is divisible, and the plaintiff in O.S. No. 6774 of 2015 has himself treated it as such by bifurcating it into Item Nos. 1 and 2 in the suit. Section 12 of the Specific Relief Act, 1963 empowers the Court to grant specific performance of part of a contract in appropriate cases. Accordingly, this Court is inclined to confirm the decree for specific performance granted by the trial Court in respect of Item No. 1 of the property, while setting aside the decree for specific performance insofar as it relates to Item No. 2 of the property.

33. The total sale consideration fixed by the parties for the entire suit property was Rs.24,50,000/-. Pursuant to the order of the trial Court, the defendant deposited the said sum and obtained execution of the sale deed in respect of the 1st item of property. It is stated that the executing Court executed the sale deed for the 1st item by treating the entire sale consideration of Rs.24,50,000/- as referable to that item. No separate or apportioned



consideration was fixed for the 2nd item of property.

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34. Upon the draft sale deed being presented, the Court executed the sale deed in favour of the defendant. The relevant recital in the sale deed shows that the property described in the schedule thereto was conveyed for the total sale consideration. Therefore, once the entire amount deposited has already been treated as the consideration for the 1st item of property and the sale deed has been executed on that basis, the same cannot now be disturbed.

35. Once the entire amount deposited has been appropriated towards the sale consideration for the 1st item of property, the defendant interest would necessarily be affected, since the agreed sale consideration was for both the 1st and 2nd items of property together. The defendant is therefore entitled to be compensated in that regard.

36. In the above circumstances, having regard to the subsequent developments, namely the change in title and possession, and in order to avoid a further round of litigation by way of restitution proceedings, this Court is inclined to invoke Order XLI Rule 33 CPC to do complete justice between the parties and to bring the entire controversy to a quietus. Accordingly, this Court is inclined to retain the decree of the trial Court in so far as it relates to the 1st item of property and to set aside the decree in so far as it relates to the 2nd item



of property.

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37. It is not in dispute that the defendant originally came into possession of the 2nd item of the suit property as a tenant. He thereafter set up a plea that his possession of the said non-residential property was referable to part performance of the contract and, on that footing, continued in possession without payment of rent from 15.06.2006 onwards, that is, for nearly twenty years.

38. In the above circumstances, the excess amount available out of the sale consideration deposited before the trial Court, after appropriation towards the 1st item of property, can be given due adjustment towards the arrears of rent payable by the defendant in respect of the 2nd item of property. Since the defendant has remained in occupation and enjoyment of the 2nd item of property for nearly two decades without payment of rent, the amount notionally attributable to the 2nd item of property and already absorbed towards the consideration for the 1st item shall stand adjusted towards the rent / occupation charges payable for the 2nd item of property.

39. It is made clear that, from the date of this judgment onwards, the defendant shall continue in respect of the 2nd item of property only as a tenant and shall remain liable to pay rent therefor. It is further made clear that the right



of the plaintiff, as landlady, to claim enhanced rent or occupation charges, and to work out her remedies in accordance with law, including by initiating eviction proceedings in respect of the 2nd item of property, is left open.

Accordingly, this point is answered.

40. **Point No.1:** In so far as A.S.No.638 of 2018 is concerned, the appeal arises out of the judgment and decree passed in O.S.No.6773 of 2015, wherein the trial Court declined to grant the relief of mandatory injunction directing the defendant to hand over the title deeds. In view of the subsequent developments, the defendant has now become the owner of the 1st item of the suit property and is therefore entitled to retain the original title deeds relating to the said property. Consequently, the relief sought in O.S.No.6773 of 2015 has become infructuous. No relief can therefore be granted in the suit, and the order of dismissal passed by the trial Court in O.S.No.6773 of 2015 is liable to be confirmed. Accordingly, this point is answered.

41. In the result, A.S.No.638 of 2018 is dismissed confirming the judgment and decree passed by the trial court in O.S.No.6773 of 2015. In so far as A.S.No.637 of 2018 is concerned, the judgment and decree passed by the trial Court in O.S.No.6774 of 2015 are modified as follows:

- i. The judgment and decree dated 14.03.2018 passed by the trial Court in O.S.No.6774 of 2016, in so far as they relate to the 1st



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item of the suit schedule property, are confirmed.

ii. The judgment and decree dated 14.03.2018 passed by the trial Court in O.S.No.6774 of 2016, in so far as they relate to the 2nd item of the suit schedule property, are set aside, and the suit, in respect of the said 2nd item of property, stands dismissed.

iii. Defendants 1 to 3 in O.S.No.6774 of 2015 shall be entitled to withdraw the entire amount deposited by the plaintiff and lying to the credit of the trial Court, together with accrued interest, if any, towards the sale consideration for the 1st item of property and towards the arrears of rent in respect of the 2nd item of property.

iv. In the result, A.S.No.637 of 2018 is partly allowed and C.M.P. No. 5647 of 2023 is dismissed. No order as to costs. Consequently, all the miscellaneous petition is closed, if any.

21-04-2026

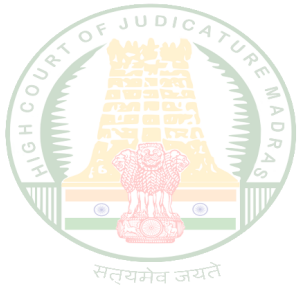
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No



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To

1. The XV Additional Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras.



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AS Nos. 637 and 638 of 2



DR.A.D.MARIA CLETE, J.

SRM

Judgment made in
AS Nos. 637 and 638 of 2018

21.04.2026