



A.S. NO.603 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2025

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JUDGMENT PRONOUNCED ON : 10 / 04 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.603 OF 2019

M.Sathish Kumar
S/o. S.Mani
Chinnagoundanpuram Village,
Ramalingapuram Village,
Valappady Taluk, Salem District. ... Appellant / Plaintiff

-versus-

R.Veeran (Died) ... 1st Defendant

1.V.Ramasundaram
S/o. R.Veeran

2.V.Vijaya
D/o. R.Veeran

3.V.Ravi alias Sriram
S/o. R.Veeran

4.V.Sampath alias V.Palanisamy
S/o. R.Veeran

All are residing at
Selliamman Nagar,
Mettupatty Perumalpalayam Post,
Valappady Taluk,
Salem District – 636 111.

... Respondents 1 to 4 /
Defendants 2 to 5



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PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated August 16, 2018 passed in O.S. No.163 of 2004 by the III Additional District Court, Salem.

For Appellant : Mr.T.Murugamanickam
Senior Counsel
Assisted by Ms.Zeenath Begum

For Respondents : Served – No appearance
* * *

JUDGMENT

Feeling aggrieved by the Judgment and Decree dated August 16, 2018 passed in O.S. No.163 of 2004 by 'the III Additional District Court, Salem' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. Originally, the aforesaid Suit was filed by M.Sathish Kumar as plaintiff, against R.Veeran as original defendant. The original defendant passed away on December 26, 2010 during the pendency of the Suit.



Therefore, his legal heirs were brought on record as defendants 2 to 5 in the Suit vide Order dated January 5, 2012 made in I.A. No.283 of 2011 and vide Order dated June 18, 2013 made in I.A. No.406 of 2013 in O.S. No.163 of 2004 by the Trial Court.

PLAINTIFF'S CASE

4. The Suit Properties, totally measuring about 8 Acres, are the self-acquired and absolute properties of the original defendant - R.Veeran. One Sivaraman and the original defendant entered into a registered Sale Agreement dated January 6, 2003 whereby the original defendant agreed to sell the suit properties to the said Sivaraman for a sale consideration of Rs.4,00,000/- (Rupees Four Lakhs Only). Rs.50,000/- (Rupees Fifty Thousand Only) per acre was fixed as the sale price. On the date of Sale Agreement, Sivaraman paid Rs.2,00,000/- (Rupees Two Lakhs Only) to the original defendant as advance and the remaining sale consideration was agreed to be paid before May 14, 2003. Upon receipt of the remaining sale consideration, the original defendant had to execute the Sale Deed in favour of Sivaraman or his nominees in respect of the Suit Properties free from all encumbrances after having measured out the same with the help of a qualified surveyor and deliver possession of the same.



4.1. On the same day as the registered Sale Agreement *i.e.*, January 6, 2003, the original defendant and the Sivaraman simultaneously entered into another Sale Agreement, which is an un-registered one, in respect of the same properties *viz.*, Suit Properties. As per the unregistered Sale Agreement, the original defendant agreed to sell the Suit Property to Sivaraman at the rate of Rs.2,82,000/- per Acre. The other terms and conditions embodied in unregistered Sale Agreement are almost same as stated in the registered Sale Agreement.

4.2. Though in both the Sale Agreements, it is recited that Rs.2,00,000/- was paid as advance on the same day of execution, the said amount was paid only once and not twice. The above said two Sale Agreements are not in conflict with each other. They are supplementary and complementary to each other.

4.3. Subsequently, on February 5, 2003, the original defendant received Rs.6,00,000/- (Rupees Six Lakhs Only) from Sivaraman for his urgent family and Court expenses in the presence of witnesses and gave receipt for the same in favour of Sivaraman, and the same was paid as a part of the sale consideration. Again on April 3, 2003, the original defendant received Rs.9,00,000/- (Rupees Nine Lakhs Only) as part sale



consideration in the presence of witnesses. Thus, the original defendant totally received Rs.17,00,000/- towards part payment of the sale consideration and in turn, delivered possession of the Suit Properties to Sivaraman.

4.4. In the meantime, on April 21, 2003, the plaintiff paid Rs.17,00,000/- to Sivaraman and both the Sale Agreements were assigned / made over to the plaintiff. Possession was also delivered to the plaintiff on the same day by Sivaraman. Soon after the assignment / made over, the plaintiff issued a legal notice dated April 30, 2003 to the original defendant calling upon the original defendant to come forward to execute Sale Deed in respect of the Suit Properties in favour of the plaintiff as per the terms of the un-registered Sale Agreement at the rate of Rs.2,82,000/- per Acre. However, the original defendant did not come forward to perform his part of contract. Instead, he issued reply notice dated May 9, 2003 to the plaintiff's Advocate as well as to Sivaraman, containing false allegations. The original defendant in his reply notice conceded to almost all averments contained in the plaintiff's notice except the execution of payment receipts by him for Rs.6,00,000/- and Rs.9,00,000/-. Hence the Suit for specific performance with the alternate relief of return of advance amount of Rs.17,00,000/-.



ORIGINAL DEFENDANTS' CASE

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5. The original sole defendant - R.Veeran filed written statement denying the allegations made by the plaintiff. The original defendant admitted both, the registered and the un-registered Sale Agreements. He also admitted the sale price at the rate of Rs.2,82,000/- per Acre as stipulated in the un-registered Sale Agreement, as well as the single payment of Rs.2,00,000/- as advance under both the Sale Agreements. Further, the original defendant also admitted that he had agreed to execute Sale Deed in favour of Sivaraman or his nominees. However, he denied the alleged subsequent payments of Rs.6,00,000/- and Rs.9,00,000/- and the alleged receipts therefor. According to the original defendant, the plaintiff's father - Mani was a money lender. The original defendant borrowed money from the plaintiff's father in or around 1996, executed blank pro-notes and signed in blank white sheets, blank green sheets and a blank Rs.20/- stamp paper. Subsequently, the original defendant discharged the entire loan borrowed from the plaintiff's father, but the said papers have not been returned till date. The plaintiff colluded with Sivaraman who is his close friend and fabricated the alleged receipts for Rs.9,00,000/- and Rs.6,00,000/- by misusing the said blank signed paper given to plaintiff's father without plaintiff's father's knowledge taking advantage of the fact that he is unconscious for about 3 years.



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5.1. Further, the original defendant averred that possession and enjoyment of the entire Suit Properties remained with him. In any event, the original defendant is ready to execute Sale Deed in favour of the plaintiff provided the plaintiff is ready to pay the balance sale consideration of Rs.20,56,000/-, as otherwise, the plaintiff has to forfeit the advance amount of Rs.2 lakhs. Even presuming that the made over of the sale agreement dated January 6, 2003 is true, the said Sivaraman can assign his right only to an extent of Rs.2 lakhs which is the amount paid by him as sale advance and for the remaining amount it will not bind the original defendant.

5.2. The original defendant filed additional written statement contending that the plaintiff himself has admitted that two Sale Agreements were entered into only to avoid / minimize income tax and stamp duty and hence, the contracts being against public policy and against the law, are not valid. Further averred that whenever a registered document is executed, any further variation or alteration can be done only through a registered document. Since the plaintiff is not in possession, he is not entitled to claim any relief based on the assignment deed. Stating so, the original defendant sought to dismiss the Suit.



CASE OF DEFENDANTS 2 TO 5

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6. The fourth defendant filed written statement and the same was adopted by the defendant 2, 3 and 5. These defendants are the legal heirs of the original sole defendant upon whose demise they were impleaded in the Suit. The Suit Properties are not the self-acquired properties of the original defendant; they are the joint family properties of the defendants. Both the Sale Agreements are fabricated and there is no reason to sell the suit properties for such a meagre amount. Both the Sale Agreements were executed only to stand as a security to loan transactions. The original defendant had borrowed money for conducting a murder case falsely foisted against the original defendant's sons, and for that purpose the original defendant had signed on various blank papers and pro-notes. Those blank papers and pro-notes have been fabricated. No amount was paid subsequently, much less Rs.6,00,000/- and Rs.9,00,000/- either on February 5, 2003 or on April 3, 2003 or on any other date as alleged. The suit properties were in possession and enjoyment of the defendants 2 to 5 even during the lifetime of the original defendant. The plaintiff is not entitled to the alternate relief as no amount was paid. The Suit as framed is not maintainable. The Suit is barred by limitation. Accordingly, the defendants 2 to 5 sought to dismiss the Suit.



TRIAL COURT

7. Based on the above pleadings, the Trial Court framed the following issues:

- '1) *Whether the defendant received Rs.17,00,000/- as advance?*
- 2) *Whether the plaintiff is entitled to the relief of Specific Performance?*
- 3) *To what relief, the plaintiff is entitled to?'*

7.1. The Trial Court, on August 7, 2018 framed the following issues as additional issues:

- '1) *Whether the plaintiff has proved his readiness and willingness?*
- 2) *Whether the sale agreement executed for the purpose of loan transaction as stated by the defendant is true?*
- 3) *Whether the sale agreement is hit by public policy?*
- 4) *Whether the receipts dated February 5, 2003 and April 3, 2003 are true and genuine?'*

8. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1; one S.Dhanapal and the original agreement holder - Sivaraman were examined as P.W.2 and P.W.3 respectively, and Ex-A.1 to Ex-A.23 were marked. On the side of the defendants, fifth defendant was examined as D.W.1 and Ex-B.1 and Ex-B.2 were marked on the side of the defendants.



9. After full-fledged trial, the Trial Court held that Ex-A.1 and Ex-A.2 - Sale Agreements were executed not for any loan transaction but for sale of suit properties. At the same time, Ex-A.2 - Sale Agreement (un-registered) was executed with a view to evade stamp duty and other revenues to the Government. Hence, Ex-A.2 is against public policy. Further held that Ex-A.3 and Ex-A.4 - Payment Receipts are false and fabricated. Further held that the plaintiff was ready and willing perform his part of the contract as per Ex-A.1 and Ex-A.2. However, Ex-A.2 being against public policy and Ex-A.3 and Ex-A.4 being false and fabricated, the plaintiff is not entitled to the relief of specific performance. The Trial Court further held that as the defendant himself agreed that he received Rs.2,00,000/- under Ex-A.1 and Ex-A.2, the plaintiff is entitled to refund of the same. Accordingly, the Trial Court partly decreed the Suit by dismissing the relief of specific performance and granting the alternative relief of refund of advance amount of Rs.2,00,000/- with 9% *pendente lite* interest and 6% post-decree interest till realisation.

10. Feeling aggrieved by the Judgment and Decree passed by the Trial Court, the plaintiff therein has preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC.



ARGUMENTS

11. Heard Mr.T.Murugamanickam, learned Senior Counsel assisted by Ms.Zeenath Begum, Counsel on record for the appellant. Learned Senior Counsel would submit that the Trial Court did not appreciate the evidence in proper perspective. The defendants admitted the execution of Ex-A.1 and Ex-A.2 which are registered and un-registered Sale Agreements. The defendants denied Ex-A.3 and Ex-A.4 - Payment Receipts. Ex-A.3 and Ex-A.4 are duly attested by two witnesses. One of the witnesses signed in Ex-A.3 and in Ex-A.4 is S.Dhanapal. Further, the plaintiff himself is one of the witnesses in Ex-A.4. The plaintiff has examined the said S.Dhanapal as P.W.2 and proved the execution and passing of part sale consideration under Ex-A.3 and Ex-A.4. The contention of the defendants is that the defendants had money transaction with the plaintiff's father - S.Mani and at the time of borrowal, the plaintiff's father obtained signature of the original defendant in unfilled pro-notes, unfilled stamp paper and blank white and green papers. Misusing the same, the plaintiff and the original agreement holder - Sivaraman colluded together, falsely fabricated Ex-A.3 & Ex-A.4, and filed the Suit. The burden is upon the defendants to prove that there was a money transaction between the original defendant and plaintiff's father. The defendants miserably failed to discharge their burden. Though on



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January 6, 2003, two agreements were executed, one being un-registered with higher sale price and another being registered with lesser sale price, the plaintiff bonafidely stated the higher sale price agreed between the parties in the un-registered Sale Agreement is the true one. Hence, Ex-A.2 - Sale Agreement is not against public policy. The Trial Court without considering the facts and circumstances of the case, disbelieved Ex-A.3 and Ex-A.4 and refused the relief of specific performance, which is erroneous. Accordingly, he prayed to allow the Appeal Suit and set aside the Judgment and Decree passed by the Trial Court and grant the relief of specific performance. In support of his submissions, the learned Senior Counsel appearing for the appellant relied on the following Judgments: (i) Judgment of this Court in Ramaswamy Gounder -vs- Ananthapadmanabha Iyer, reported in 1971-84-L.W.176 ; (ii) Judgment of this Court in Pitchiah Pillai -vs- Govindaswamy Chettiar, reported in (1977) 1 MLJ 107; and (iii) Judgment of this Court in S.K.Samiyappan -vs- The Idol of Sri Sellandi Amman, reported in 1993-2-L.W.-377.

12. Despite service of notice, respondents / defendants did not choose to appear before this Court and contest the Appeal.



POINTS FOR CONSIDERATION

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13. Heard the learned Senior Counsel for the appellant. Perused the evidence available on record. The points that arise for consideration in this Appeal Suit are as follows:

- (i) Whether the plaintiff has privity of contract with the original defendant and consequently has the right to enforce Ex-A.1 and Ex-A.2 - Sale Agreements against the original defendant ?
- (ii) Whether Ex-A.3 and Ex-A.4 - Payment Receipts for Rs.6,00,000/- and Rs.9,00,000/- respectively towards alleged part payment of sale consideration, are genuine, true and valid ?
- (iii) Whether Ex-A.2 - Un-registered Sale Agreement, being one executed allegedly with an intention to evade revenue payments and statutory duties to the Government, is against public policy ?
- (iv) Whether the plaintiff is entitled to the relief of specific performance of Ex-A.2 - Un-registered Sale Agreement as prayed for ?
- (v) Whether the plaintiff is entitled to claim the relief of injunction as prayed for ?



(vi) Whether the Judgment and Decree of the Trial Court is to be interfered with ?

DISCUSSION

14. Execution of Ex-A.1 - Registered Sale Agreement and Ex-A.2 - Un-registered Sale Agreement, even dated January 6, 2003, by the original defendant in favour of the original agreement holder - Sivaraman is admitted. Though the legal heirs of the original defendant *viz.*, defendants 2 to 5 in their written statement averred that the Sale Agreements were executed for the purpose of security to loan transactions, the original defendant in his written statement admitted that the Sale Agreements were executed for the purpose of sale of suit properties, which is a clear judicial admission. Defendants 2 to 5 being the legal heirs of the original defendant were impleaded after the original defendant's demise. They stepped into the shoes of the original defendant after his demise. While they are entitled to take an independent stand, like the stand taken by them that the suit properties are joint family properties, they cannot take a contradictory stand that Ex-A.1 and Ex-A.2 - Sale Agreements are executed for altogether for a different purpose *i.e.*, for the purpose of standing as a



security to loan transaction. Hence, there is no dispute with the fact that Ex-A.1 and Ex-A.2 were executed for sale of suit properties.

15. The terms of Ex-A.1 and Ex-A.2 are essentially the same and they both are in respect of one and the same set of properties viz., suit properties. The only major difference is that the sale consideration for the suit properties is much higher in Ex-A.2 - Un-registered Sale Agreement compared to that fixed in Ex-A.1 - Registered Sale Agreement. In Ex-A.1, the sale consideration was fixed at Rs.50,000/- (Rupees Fifty Thousand Only) per Acre, whereas in Ex-A.2, it was fixed at Rs.2,82,000/- per Acre. It is not in dispute that the actual agreed and intended sale price between the parties is the one stated in Ex-A.2 viz., Rs.2,82,000/- per Acre and that Rs.2,00,000/- was paid by Sivaraman to the original defendant as advance under Ex-A.1 and Ex-A.2.

Point No.(i)

16. Coming to Point No.(i), the doctrine of privity of contract provides that a person who is not a party to a contract cannot sue or be sued under it. This doctrine as applicable in India is not very rigid; it is subject to certain exceptions and one such exception is assignment. The concept of assignment enables a party to the contract to assign his rights or



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liabilities to a third party. Perusal of Ex-A.1 and Ex-A.2 would show that there is no clause in them against assignment. In fact, terms of both the Sale Agreements stipulate that upon completion of payment of the entire sale consideration, the original defendant shall measure out the suit properties, clear encumbrances and execute Sale Deed in favour of the original agreement holder - Sivaraman or his nominees. The original defendant had agreed under the contracts to execute Sale Deed in favour of Sivaraman or any person he names. Needless to mention that neither Ex-A.1 nor Ex-A.2 is in the nature of a personal contract. Specific performance of contract may be granted to the assignee in the absence of express or implied contrary intention against such an assignment in the contract; subject to exceptions as mentioned under the proviso to Section 15 of the Specific Relief Act, 1963. The proviso to the said Section provides that assignment is not permissible in cases where the personal qualifications of the assignor constitute a material ingredient of the contract or where the contract itself stipulates that it shall not be assigned or where the contract is, by its nature or by statute, non-assignable, or where the assignor possesses only a personal interest in the subject matter of the contract. For ease of reference, Section 15 is extracted hereunder:

"PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED

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15. *Who may obtain specific performance.—Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-*

(a) *any party thereto;*

(b) *the representative in interest or the principal, of any party thereto:*

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) ... (h)"

17. In this regard, reference may be made to the Judgment of Hon'ble Supreme Court in ***Habiba Khatoon -vs- Ubaidul Huq***, reported in (1997) 7 SCC 452, wherein after referring to a Division Bench decision of this Court in ***Sinnakaruppa Gounder -vs- M.Karuppuswami Gounder***, reported in ***AIR 1965 Mad 506***, it was held as follows:

"12. In the case of Sakalaguna Nayudu v. Chinna Munnuswami Nayakar [AIR 1928 PC 174 : 55 IA 243 : 32 CWN 850] the question posed before the Privy Council was whether the counterpart document agreeing to reconvey a village earlier conveyed to the vendee, in favour of one "A" who was mentioned in the counterpart document



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would enable A's heir "B" to enforce the terms of the said counterpart document by selling the said right to the plaintiff of that case. It was held by the Privy Council on the terms of the counterpart document that it was a completed contract and it must be deemed to have been executed in favour of both of them, "A" and his son "B" and the benefit of the contract could be assigned by "B" in favour of the plaintiff. Dr.Ghosh tried to distinguish the aforesaid decision by submitting that in that case originally the village was conveyed by "A" on his behalf as well as on behalf of his family members to one "C" for a consideration of Rs 10,000 and on the same day "C" had executed a counterpart document by which it was agreed by "C" that he would reconvey the said village to "A" after a period of thirty years from that date. Thus the original vendors being "A" and his family the beneficiaries of the agreement of reconveyance of the even date would naturally be "A" and his family members including his son 'B'. Dr.Ghosh was right when he submitted that on the question whether the benefit of the contract could be assigned to the plaintiff or not was not gone into by the Privy Council as the beneficiaries themselves had not contested the right of the plaintiff to get the assignment of the said right. The contest was between the receiver appointed on the insolvency of the original beneficiary "B" and the plaintiff. Even leaving aside this question, however, it must be held that the Privy Council did uphold the assignment of the right of reconveyance which enured in "B" in favour of the plaintiff who was an outsider. It has to be kept in view that in the document which fell for consideration of the Privy Council also there was no express prohibition against "A" or "B" restraining them from assigning their right of reconveyance to a third party like the plaintiff. On the terms of the document no implied prohibition was also discerned by the Privy Council. In this connection we have also to keep in view Section 23(b) of the Specific Relief Act, 1877 which is analogous to Section 15(b) of the Specific Relief Act, 1963. It lays down that except as otherwise provided the specific



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performance of a contract may be obtained by the representative-in-interest or the principal, of any party thereto. Thus normally any interest in a contract could be assigned to any representative-in-interest who also can enforce the specific performance of the contract against the contracting party. However if the terms of the contract, expressly or by necessary implication, prohibited the beneficiary from transferring his contractual interest to third parties, then only such an assignee cannot sue for specific performance. We may in this connection also usefully refer to a decision of this Court in the case of *T.M. Balakrishna Mudaliar v. M. Satyanarayana Rao* [(1993) 2 SCC 740] . Considering the provisions of Section 15(b) of the Specific Relief Act, 1963 a Bench of two learned Judges of this Court speaking through Kasliwal, J., endorsed (in para 10 of the SCC) the statement of law flowing from the decision of *Sakalaguna Nayudu* [AIR 1928 PC 174 : 55 IA 243 : 32 CWN 850] as well as the decision of *Beaumont, C.J.*, speaking for the Bombay High Court in the case of *Vishweshwar Narsabhatta Gaddada v. Durgappa Irappa Bhatkar* [AIR 1940 Bom 339 : 42 Bom LR 653] . The statement of law which got imprimatur of this Court in para 9 of the Report runs as follows: (SCC p. 745)

“The Privy Council in *Sakalaguna Nayudu v. Chinna Munnuswami Nayakar* [AIR 1928 PC 174 : 55 IA 243 : 32 CWN 850] has held that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned and such contract is enforceable. *Beaumont, C.J.* in *Vishweshwar Narsabhatta Gaddada v. Durgappa Irappa Bhatkar* [AIR 1940 Bom 339 : 42 Bom LR 653] held that both under the common law as well as under Section 23(b) of the Specific Relief Act, 1877, an option given to repurchase the property sold would prima facie be assignable, though it might also be so worded as to show that it was to be personal to the grantee and not assignable. On the particular facts of that case, it



was held that the contract was assignable. In Sinnakaruppa Gounder v. M. Karuppuswami Gounder [AIR 1965 Mad 506 : ILR (1965) 2 Mad 20] it was held: (AIR p. 508, para 5)

'In our view, generally speaking, the benefits of a contract of repurchase must be assignable, unless the terms of the contract are such as to show that the right of repurchase is personal to the vendor. In the latter case it will be for the person who pleads that the contract is not enforceable, to show that the intention of the parties thereto was that it was to be enforced only by the persons named therein and not by the assignee.' "

As noted earlier on a conjoint reading of the relevant terms of the agreement of repurchase we cannot persuade ourselves to hold that the persons mentioned in the said document as beneficiaries of the right of repurchase flowing from the said document were, either expressly or by necessary implication, prohibited from assigning their right of repurchase once it accrued, to anyone of their choice even though he might be outside the earmarked, listed category of persons specified in the document. In other words it must be held that Irfan Hasan Khan could validly assign his right to repurchase the suit house to the plaintiff as rightly held by the courts below."

18. In light of the above, this Court is of the view that the assignment by the original agreement holder - Sivaraman of his rights and liabilities under Ex-A.1 and Ex-A.2 in favour of the plaintiff is valid and that there exist privity of contract between the original defendant and the



plaintiff. ***Point No.(i) is answered in favour of the plaintiff and against the defendants.***

Point No.(ii) - *Whether Ex-A.3 and Ex-A.4 - Payment Receipts for Rs.6,00,000/- and Rs.9,00,000/- respectively towards alleged part payment of sale consideration, are genuine, true and valid ?*

19. Another serious dispute is with respect to the alleged payment of Rs.6,00,000/- and Rs.9,00,000/- as part payment of the sale consideration and the alleged acknowledgement / receipts in Ex-A.3 and Ex-A.4 for the same. Case of the plaintiff is that the aforesaid amounts were paid on February 5, 2003 and on April 3, 2003 under Ex-A.3 and Ex-A.4 - Receipts respectively by the original agreement holder - Sivaraman, towards part payment of the sale consideration. Whether Sivaraman tendered a sum of Rs.6,00,000/- under Ex-A.3 and further sum of Rs.9,00,000/- under Ex-A.4 is the question. The plaintiff's side examined one S.Dhanapal who is one of the attestors to Ex-A.3 and Ex-A.4. He deposed that Sivaraman gave a sum of Rs.6,00,000/- and Rs.9,00,000/- under Ex-A.3 and Ex-A.4 and thus supported the case of the plaintiff. Further, the plaintiff himself is an attesor to Ex-A.4. The plaintiff has examined himself as P.W.1 and the original agreement holder - Sivaraman as P.W.3. Their evidence



corroborate the plaintiff's case. Despite cross-examination of P.W.1 to P.W.3 by the defendants' side, nothing could be obtained in their favour.

20. Case of the first defendant is that the original defendant's sons namely defendants 2, 4 and 5 were arrayed as accused in a criminal case for charges of murder and for that purpose, the original defendant borrowed money from the plaintiff's father - Mani. At that time, the original defendant executed unfilled & signed stamp papers and some blank signed papers in favour of plaintiff's father. Those unfilled and signed papers were later used by the plaintiff in collusion with the original agreement holder - Sivaraman to falsely fabricate Ex-A.3 and Ex-A.4. As stated *supra*, there is no dispute with the execution of Ex-A.1 and Ex-A.2 for purpose of sale of suit properties. The dispute remains the execution of Exs-A.3 and A4 and the alleged payments made thereunder. Further contention of the first defendant is that if really the agreement holder Sivaraman tendered further sum of Rs.6,00,000/- and Rs.9,00,000/-, naturally an endorsement would be made in the agreement itself.

21. The burden to prove the defence lies on the defendants. The very foundation of their defence is the borrowal of money by the original defendant from plaintiff's father in or around 1996. The very factum of



borrowal has not been established by the defendants. There is no evidence to show that the original defendant borrowed money from the plaintiff's father and in turn signed in blank papers and stamp papers. Ex-A.3 and Ex-A.4 contains the original defendant's thumb impression as well as his signature. They both are duly stamped with one rupee revenue stamp. In the absence of any material evidence supporting the version of the defendants, this Court believes the evidence of P.W.1 to P.W.3, and holds that Ex-A.3 and Ex-A.4 are true and genuine and that the original agreement holder - Sivaraman paid Rs.6,00,000/- and Rs.9,00,000/- respectively thereunder, totally Rs.15,00,000/- to the original defendant. In the absence of any evidence to show that there was a money transaction between the original defendant and the plaintiff's father - Mani as alleged, the Trial Court is not justifiable in holding that Ex-A.3 and Ex-A.4 were fabricated out of the blank papers signed by the original defendant at the time of alleged money transaction. To that extent, the finding of the Trial Court is liable to be set aside. ***Point No.(ii) is answered in favour of the plaintiff and against the defendants.***

Point No.(iii) - *Whether Ex-A.2 - Un-registered Sale Agreement, being one executed allegedly with an intention to evade revenue payments and statutory duties to the Government, is against public policy ?*



And

Point No.(iv) - *Whether the plaintiff is entitled to the relief of specific performance of Ex-A.2 - Un-registered Sale Agreement as prayed for ?*

22. Two Sale Agreements in respect of the same properties, with essentially the same terms except for sale price, were entered into by the same set of persons on the very same day. One was registered (Ex-A.1) and the other remained un-registered (Ex-A.2). The one that was registered had a sale price less in value and the one that remained un-registered had a sale price much higher in value. The sale price difference between the two Sale Agreements is about 5 to 6 times. The sale price mentioned in Ex-A.1 - Registered Sale Agreement is Rs.50,000/- per Acre and that mentioned in Ex-A.2 - Un-registered Sale Agreement is Rs.2,82,000/- per Acre. As stated *supra*, it is admitted by either side that the actual and intended sale price was the higher price of Rs.2,82,000/- per Acre mentioned in Ex-A.2. The said admission is there in the pleadings of the plaintiff's plaint and the original defendant's written statement. It is apparent from these facts that the intention of the parties behind executing two such Sale Agreements was to evade stamp duty charges and registration payable for the higher sale price. It is relevant to extract a portion of Ex-A.2, which reads thus:



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‘இதனடியில் குறிப்பிட்டிருக்கின்ற சொத்துக்களைப் பொருத்து - 1 லக்கமிட்டவரை, 2 லக்கமிட்டவர் கேட்டுக்கொண்டதின் பேரில், ரிஜிஸ்தர் செய்வதற்காக வேண்டி ஏக்கர் ஒன்றுக்கு ரூ.50,000/- ஐம்பதாயிரம் ரூபாயை குறிப்பிட்டு ஒரு கிரய ஒப்பந்தப் பத்திரத்தை எழுதி, மேற்படி பத்திரத்தை அயாத்தியாப்பட்டணம் சப்ரிஜிஸ்தரார் ஆபீசில் 6-1-2003ம் தேதியில் 1 புத்தகம், பத்திரம் எண்.9/2003 நெம்பராகப் பதிவும் செய்யப்பட்டுள்ளது. ஆனால் ஷை கிரய ஒப்பந்தம் பதிவு செய்யப்பட்டிருந்தாலும் ஷை பதிவுசெய்யப்பட்ட கிரய ஒப்பந்தப்பத்திரத்தில் கண்டுள்ள விலையானது உண்மையான ரேட் இல்லை. ஏக்கர் ஒன்றுக்கு ரேட் ரூ.2,82,000-00. இரண்டு லட்சத்தி என்பத்தி இரண்டாயிரம் ரூபாய் என்பதுதான் உண்மையான விலையாகும்.’

In short, the parties had attempted to evade revenue duly payable to the Government. Section 23 of the Indian Contract, 1872 reads as follows:

"Section 23. What considerations and objects are lawful, and what not.-

*The consideration or object of an agreement is lawful, unless—
it is forbidden by law ;*

*or is of such a nature that, if permitted, it would defeat the provisions
of any law;*

or is fraudulent ;

or involves or implies, injury to the person or property of another;



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or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

22.1. In this case, the contracts (Ex-A.1 and Ex-A.2) being agreement for sale of properties are ideally lawful. However, the object / intention behind entering into these two contracts is unlawful. The object / intention being to evade stamp duty, registration charges and other revenues to the Government, if permitted they would defeat the provisions of law and cause loss to the exchequer. Hence, both the Sale Agreements are against public policy and therefore, they are void. The plaintiff cannot enforce a void contract in the Court of law and the plaintiff is not entitled to the relief of specific performance. ***Point Nos.(iii) and (iv) are answered accordingly.***

Point No.(v) - *Whether the plaintiff is entitled to claim the relief of injunction as prayed for ?*

23. As stated *supra*, the case of the plaintiff is that the possession was handed over to the original agreement holder - Sivaraman under Ex-A.4 - Payment Receipt and pursuant to the assignment in his favour, he



took possession of the suit properties. The plaintiff pleads possession and seeks permanent injunction based on Ex-A.4 - Payment Receipt. Among Ex-A.1 to Ex-A.4, Ex-A.1 is the only registered document. Firstly, even according to the plaintiff, possession was not handed over under any registered document. Even while assuming the averment regarding plaintiff's possession to be true, the plaintiff is not entitled to protect his possession in view of Section 53A of the Transfer of Property Act, 1882, as amended by the Registration and Other Related Laws (Amendment) Act, 2001. Secondly, though the plaintiff pleaded his possession of suit properties, in his evidence, he has admitted that it is the defendants who are in possession and enjoyment of the suit properties. In any event, the plaintiff is not in lawful possession of the suit properties and hence, he is not entitled to the relief of permanent injunction. The Trial Court rightly denied the relief of permanent injunction. There is no need to interfere with the said finding. ***Point No.(v) is answered accordingly.***

Point No.(vi) - *Whether the Judgment and Decree of the Trial Court is to be interfered with ?*

24. Though the unlawful object / intention behind Ex-A.1 and Ex-A.2 - Sale Agreements render them void, the money transactions of



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Rs.2,00,000/-, Rs.6,00,000/- and Rs.9,00,000/-, totally Rs.17,00,000/-

towards part payment of the sale consideration are not tainted by illegality.

The payment of Rs.2,00,000/- is admitted and the other two payments are backed by Ex-A.3 and Ex-A.4 - Payment Receipts which independently prove the transaction of Rs.6,00,000/- and Rs.9,00,000/- respectively. The plaintiff being the assignee of the contracts along with Ex-A.3 and Ex-A.4 - Payment Receipts, if not allowed to recover the part consideration of Rs.17,00,000/- paid, it would amount to unjust enrichment in the hands of defendants. Therefore, in the interest of justice and equity, this Court is inclined to grant a money decree entitling the plaintiff to recover Rs.17,00,000/- with simple interest at the rate of 6% from the date of Suit till realisation from the properties left behind by the original defendant. The Trial Court failed to appreciate the genuineness of Ex-A.3 and Ex-A.4 - Payment Receipts and erred in granting return of advance amount of Rs.2,00,000/-. To this extent, the Judgment and Decree of the Trial Court is liable to be interfered with. ***Point No.(vi) is answered accordingly.***

25. There is no quarrel with regard to the Judgments relied on by the learned Senior Counsel for the appellant.



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CONCLUSION

26. In view of the foregoing discussions, the Appeal Suit is allowed-in-part. The plaintiff is not entitled to the reliefs of specific performance and permanent injunction. However, for reasons alluded to *supra*, money decree is passed in favour of the plaintiff and thereby he is entitled to recover Rs.17,00,000/- with simple interest at the rate of 6% from the date of Suit till realisation from the properties left behind by the original defendant. Considering the facts and circumstances, there shall be no order as to costs in the Original Suit as well as in this Appeal Suit.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To
The III Additional District Court
Salem.



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