



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2026

Pronounced on : 27.02.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

OSA.No. 187 of 2023
And
C.M.P.No. 22006 of 2023
And
C.M.P.Nos. 22184 and 22187 of 2024
And
Application (IP) Nos. 345 to 348 of 2015
IN
I.P.No. 25 of 2014

The Official Assignee
High Court,
Chennai – 600 104
Representing the Estate of
Arjunlal Sunderdas (Insolvent)

... Appellant/5th Defendant

Vs.

1. B.V.Reddy Enterprises Pvt. Ltd.,
Rep. by its Director Mr.V.Dinesh Reddy
Having registered office at
No.232, Kilpauk Garden Road
Kilpauk, Chennai -10

now at
Old No.31, New No.7, Swarna Home



1st Floor, Vadivelu Street,
Perambur, Chennai – 600 011.

... 1st Respondent/Plaintiff

2. Mr.s.Murali Mani
S/o. Late Mr.C.S.Mani

3. Mr.S.Balan Mani
S/o. Late Mr.C.S.Mani

4. Mr.Arjunlal Sunderdas

5. S.M.Lal
S/o. K.Sunderdas ... Respondents 2 to 5/Defendants 1 to 4

PRAYER: Appeal filed under Order XXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the Judgment and Decree passed by the Hon'ble Mr.Justice n.Seshasayee dated 01.09.2023 made in C.S.No. 285 of 2014.

For Appellant : Mr. K.V.Ananthakrushnan
assisted by
Ms.A.Janani

For 1st Respondent : Ms. Chitra Sampath
Senior Counsel
for Mr.Mukundan

Application (IP) Nos. 345, 346 of 2015

The Official Assignee



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High Court, Madras

...Applicant in all applications

Vs.

1. S.Arjunlal Sunderdas ... Insolvent/1st Respondent in all applications
2. B.V.Reddy Enterprises Private Limited,
at 'Swetha Homes'
Old No.3, New No.7,
1st Floor, Vadivelu Street,
Perambur, Chennai – 600 011 ... 2nd Respondent in all applications
3. Nirmal Cariappa ... 3rd Respondent in all applications
4. K.Jacob George ... 4th Respondent in all applications
5. S.Murali Mani ... 5th Respondent in all applications
6. S.Balan Mani ... 6th Respondent in all applications

Prayer in Application (IP) No. 345 of 2015: Application filed under Order II Rule 1 Order XIV Rule 2 and 3 of Insolvency Rules 1958 read with Sections 7, 18(1), 58, 68(1)(a) of the Presidency Town Insolvency Act, 1909 seeking direction to the third and fourth respondents Nirmal Cariappa and K.Jacob George, Advocates to hand over the entire original title deeds relating to the property at Door No.33, College Road, Nungambakkam, Chennai – 34 more fully described in the schedule to the application to the official assignee be not passed.



Prayer in Application (IP) No. 346 of 2015: Application filed under Order II Rule 1 Order XIV Rule 2 and 3 of Insolvency Rules 1958 read with Sections 7, 18(1), 58, 68(1)(a) of the Presidency Town Insolvency Act, 1909 permitting the Official Assignee to bring the property at Door No.33, College Road, Nungambakkam, Chennai -34, more fully described in the schedule for public auction and the sale proceeds to be applied to the claims of the general body of creditors be not passed.

Prayer in Application (IP) No. 347 of 2015: Application filed under Order II Rule 1 Order XIV Rule 2 and 3 of Insolvency Rules 1958 read with Sections 7, 18(1), 58, 68(1)(a) of the Presidency Town Insolvency Act, 1909 to declare that the cancellation of agreement dated 15.04.2013 is null and void and that the original payment of Rs.20,00,00,000/- to B.V.Reddy Enterprises (P) Ltd., alone remains and ranks pari passu with other creditors subject to the admission of claim by the Official Assignee be not passed.

Prayer in Application (IP) No. 348 of 2015: Application filed under Order II Rule 1 Order XIV Rule 1 and 2 of Insolvency Rules 1958 read with Sections 7, 18(1), 55, 58, 68(1)(a) of the Presidency Town Insolvency Act, 1909 to stay the proceedings in C.S.No. 285 of 2014 on the file of High Court, Chennai, pending disposal of the above application be not passed.

For Appellant : Mr. K.V.Ananthakrushnan
assisted by
Ms.A.Janani

For 1st Respondent : M/s. R.Bamini

For 2nd Respondent : M/s. Chitra Sampath
Senior Counsel



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for Mr.Mukundan

For RR 5 & 6 : Y.Jyothish Chander

JUDGMENT

The 5th defendant, the Official Assignee, High Court, Madras, who had been impleaded subsequent to the institution of the suit in C.S.No. 285 of 2014, aggrieved by the Judgment dated 01.09.2023, is the appellant herein.

2. The suit in C.S.No. 285 of 2014 had been filed by the first respondent B.V.Reddy Enterprises Pvt. Ltd., seeking specific performance of an agreement of sale dated 13.12.2006 against the first and second defendants through their power agents the third and fourth defendants within the time stipulated by this Court, failing which to direct an Officer of the Court to perform the same and also to direct to deliver vacant possession of the suit schedule property and for permanent injunction restraining the defendants from in any way alienating or encumbering the suit schedule property and for permanent injunction restraining the defendants from altering the physical features of the suit schedule property and for costs of the suit.



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3. The suit schedule property was land and building measuring 5 grounds and 1077 sq.ft., in Old Door No.31, New Door No.33, College Road, Nungambakkam, Chennai – 600 034. The first and second defendants in the suit, S.Murali Mani and S.Balan Mani were the absolute owners of the suit property. They had entered into an agreement of sale dated 18/19.08.2006 and registered as Document No.857 of 2006 in the office of the Sub Registrar, Thousand Lights, Chennai with the third defendant, Arjunlal Sunderdas to convey the property. Subsequently, they had also entered into a supplemental agreement with him on 28.08.2006 acknowledging receipt of the entire sale consideration.

4. The plaintiff B.V.Reddy Enterprises Private Limited had then entered into an agreement of sale on 13.12.2006 to purchase the suit property for a total consideration of Rs.5/- crores. Alleging that there had been failure to perform the agreement by the defendants, the suit had been filed seeking specific performance and other allied reliefs.

5. In the plaint, it had been contended that the suit property originally



belonged to T.R.Subbulakshmi, who had purchased the same by sale deed dated 02.05.1954. She had executed a Will on 21.01.1997 bequeathing the suit schedule property to the first and second defendants, S.Murali Mani and S.Balan Mani. She died on 09.06.1997. Letters of Administration was granted in O.P.No. 496 of 2005 by the Madras High Court, by order dated 17.01.2006 in favour of the first and second defendants. Subsequently, on 18/19.08.2005, the first and second defendants entered into an agreement of sale registered as Document No. 857 of 2006 in the office of the Sub Registrar, Thousand Lights, Chennai, with Arjunlal Sunderdas, the third defendant, agreeing to convey the suit property for total sale consideration of Rs.4,08,65,624/-. An advance of Rs.2,50,000/- had been paid to each one of the two defendants. The third defendant had committed to pay the balance of Rs.2,01,82,812/- to each one of the two defendants on or before 15.10.2006. Thereafter, a supplemental agreement was entered into on 28.08.2006 by which the first and second defendants acknowledged receipt of the total balance sale consideration of Rs.4,03,65,624/- from the third defendant by way of two demand drafts. Thus, the total sale consideration had been paid by the third defendant to the first and second defendants. They also placed the third defendant in possession. They also handed over all the original title deeds to him. They further agreed to execute a power of



attorney empowering the third and the fourth defendants, S.M.Lal to do all necessary acts and deeds with respect to the suit property. In view of the fact that the total sale consideration had been received, the time fixed in the agreement of sale was no longer relevant and the third and fourth defendants were given the liberty to convey the suit property as power agents of the first and second defendants to any purchaser. The power of Attorney was also executed on 28.08.2006. It was also registered in the office of the Sub Registrar, Periamet by the first and second defendants in favour of the third and fourth defendants.

6. Subsequently, an agreement dated 13.12.2006 had entered into by the third and fourth defendants in their capacity as power agents of the first and second defendants with the plaintiff. The total sale consideration was determined at Rs.5/- crores and the entire sale consideration had been paid on that date. It had been contended in the plaint that though it had been stated that possession had been granted to the plaintiff, it was actually not done so. However, the original title deeds had been handed over to the plaintiff.



7. It had been further stated that on the same day / 13.12.2006, the plaintiff and the third defendant entered into a memorandum of understanding by which it was proposed that the plaint suit schedule property and the adjacent property at Door No.34, College Road, may be clubbed together and developed and the constructed area shared between the parties in the proportion referred in the memorandum of understanding. The third defendant received a further sum of Rs.15/- crores as financial assistance through a cheque issued by the plaintiff.

8. No further transaction took place between the plaintiff and the third respondent immediately after entering into the agreement of sale and the memorandum of understanding. Much later, on 23.02.2012 after more than 5 years, the plaintiff and the third defendant entered into a cancellation agreement by which both the memorandum of understanding and the agreement of sale dated 13.12.2006 were sought to be cancelled on certain conditions. The third defendant agreed to pay a sum of Rs.52,60,30,000/- towards refund of the sale consideration of Rs.5/- crores received under the agreement of sale and Rs.15/- crores received under the memorandum of understanding and a further sum of Rs.32,60,30,000/- as compensation for



non performance of the agreement of sale dated 13.12.2006 and the memorandum of understanding dated 13.12.2006. The third defendant issued a cheque for the said sum but when it was presented for payment, it was returned dishonoured.

9. The plaintiff contended that this cancellation agreement dated 23.02.2012 has to be considered as a contingent agreement and owing to the dishonour of the cheque, the earlier agreement of sale stood revived. The plaintiff then called upon the third and fourth defendants in their capacity as power agents of the first and second defendants to execute the sale deed with respect to the suit schedule properties in pursuance of agreement dated 13.12.2006.

10. The plaintiff also lodged a complaint before the XIV Additional Chief Metropolitan Magistrate Court at Bangalore against the third defendant, for offence punished under Section 138 of the Negotiable Instrument Act read with Section 200 of Cr.P.C. The plaintiff also lodged a complaint against the third defendant before the Chief Metropolitan Magistrate, Egmore. An FIR was registered against the third defendant in Crime No. 15 of 2013 on 22.01.2013.



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11. It had been further contended that the third defendant executed a further agreement on 05.04.2013 wherein he agreed to pay a sum of Rs.62,50,00,000/- in 14 installments and on realisation of six cheques, the plaintiff should return back the original title deeds pertaining to the suit schedule property. It had also been agreed that if the third defendant fails to pay the said sum of Rs.62,50,00,000/-, the plaintiff shall have the right to terminate the agreement dated 05.04.2013 and make any claim even though some of the cheques would have been encashed. It was under those circumstances that the plaintiff filed the suit seeking specific performance of the agreement of sale dated 13.12.2006 and seeking consequential reliefs.

12. The Official Assignee, High Court, Madras was impleaded as a further party to the suit by order dated 17.08.2015 in Application No. 4741 of 2015 since the third defendant Arjunlal Sunderdas had been adjudicated as insolvent on 21.04.2014. The estate of Arjunlal Sunderdas stood vested with the Official Assignee.

13. Subsequently, the third defendant also died. The first and second defendants and the fourth defendants did not file their written statements and



they remained exparte. The Official Assignee filed a written statement contending that the third defendant had entered into an agreement with the first and second defendants on 19.08.2006 to purchase the suit property. The entire sale consideration had been paid and thereafter, a supplemental agreement was entered into on 28.08.2006. It had been contended that the plaintiff had entered into an agreement of sale on 13.12.2006 with the third defendant for a sale consideration of Rs.5/- crores. In the said agreement, the first and second defendants were also shown as parties. A further memorandum of understanding had been entered into on the same day by the plaintiff with the third defendant and under that agreement, a sum of Rs.15/- crores had been paid. That agreement was for development of two properties at Nos. 33 and 34, College Road, Nungambakkam, Chennai.

14. The third defendant however sold the property at No.34, College Road, Nungambakkam, to one Amarnath Reddy under registered sale dated 27.07.2012. Since the agreement of sale between the plaintiff and the third defendant did not progress, they entered into a cancellation agreement whereby the third defendant agreed to refund the entire amount received. This cancellation agreement was entered into on 23.02.2012 and a cheque for Rs.52,30,000/- was issued by the third defendant towards refund of Rs.5/- crores received as advance under the agreement of sale for the



property at No.33, College Road and Rs.15/- crores received under the memorandum of understanding for development of the two adjoining properties and a further sum of Rs.32.60 crores as compensation for non performance. The title deeds of the property at Door No.33, College Road, were handed over to two Advocates, Nirmal Carrippa and K.Jacob George.

15. However, the cheque issued for Rs.52,60,30,000/- was dishonoured as 'account closed'. The plaintiff then issued a notice to the third defendant, who replied disputing the agreements and contending they were obtained under coercion and duress. The plaintiff then filed a complaint under Section 138 of the Negotiable Instrument Act before the XIV Additional Chief Metropolitan Magistrate Court at Bangalore. A private complaint was also filed against the third defendant before the Chief Metropolitan Magistrate, Egmore.

16. Subsequently, on 05.04.2013, a further agreement was entered into between the plaintiff and the third defendant wherein the third defendant agreed to pay a sum of Rs.62.50/- crores in installments. He however did not comply with the said agreement.



17. In the meanwhile, the third defendant was declared as insolvent in I.P.No. 25 of 2014 on 21.04.2014. The Official Assignee contended that on adjudication as insolvent, the estate of the third defendant stood vested in the office of the Official Assignee. So far as the property was concerned, it was contended that since the third defendant had paid the entire sale consideration to the first and second defendant and had obtained a power of attorney which was coupled with interest, the third defendant became the ostensible owner of the property. He was also in possession. On his adjudication as insolvent, all agreements entered into by him stood abated.

18. It had been further contended that the suit had been filed without obtaining leave as required under Section 17 of the Presidency Towns and Insolvency Act. It was further contended that specific performance of the agreement cannot be granted. It had also been stated that the plaintiff had independently filed a claim petition before the Official Assignee seeking a sum of Rs.21,64,000/-. It has been thus contended that the plaintiff had knowledge that the third defendant had been adjudicated as insolvent. It was complained that the Official Assignee was not made a party to the suit. It had been contended that the suit should be dismissed.



19. On the basis of the above pleadings, the following issues were framed for trial:-

“1. What is the nature of right that the third defendant obtained under his agreements with defendants 1 and 2 dated 18.08.2006 and 28.08.2006?;

2. What is the nature of right which the plaintiff had obtained under the sale agreement dated 13.12.2006, and what remained in the third defendant after executing this agreement?

3. Whether the sale agreement and the MOU, both dated 13.12.2006, should be read as indivisible document?

4. In the context of the sale agreement dated 13.12.2006 entered into between the plaintiff and the third defendant along with the fourth defendant, what is the nature of the right which vested in the Official Assignee upon the adjudication of the third defendant as an insolvent?

5. What is the effect of the deed of cancellation dated 23.02.2012, and the subsequent agreement dated 05.04.2013 which the plaintiff and the third defendant had entered into on the suit sale agreement dated 13.12.2006?

6. Is the suit barred by limitation?

7. Whether the plaintiff is entitled to a relief of



specific performance of the sale agreement dated 13.12.2006?

8. What is the order as to costs.”

20. During trial, the Director of the first respondent/plaintiff was examined as PW-1. He marked Exs. P-1 to P-23. Ex.P-1 dated 18.08.2006 was the agreement of sale entered into between the first and second defendants with the third defendant and Ex.P-2 dated 28.08.2006 was the supplemental agreement. The registered power of attorney was marked as Ex.P-3. The agreement of sale between the first and second defendants with the plaintiff dated 13.12.2006 was marked as Ex.P-4. The memorandum of understanding between the plaintiff and the third defendant also dated 13.12.2006 was marked as Ex.P-5. The cancellation agreement entered into between the third defendant and the plaintiff dated 23.02.2012 was marked as Ex.P-6. The complaint by the plaintiff against the third defendant before the Chief Metropolitan Magistrate, Egmore was marked as Ex.P-10. The agreement between the plaintiff and the third defendant dated 05.04.2013 was marked as Exs.P-13.

21. The third defendant Arjunlal Sunderdas was examined as DW-1 and a Section Officer of the fifth defendant was examined as DW-2. Two



documents Exs. D-1 and D-2 were marked. Ex.D-1 was the copy of the petition in I.P.No.25 of 2014. Ex.D-2 dated 02.11.2012 was the copy of a letter addressed to the Advocate of the plaintiff by the third defendant.

22. In his Judgment, the learned Single Judge observed that the plaintiff and the defendants did not dispute execution of the agreement of sale dated 18.08.2006 marked as Ex.P-1 and the supplemental agreement dated 28.08.2006 marked as Ex.P-2. They also did not dispute the power of attorney executed by the first and second defendants in favour of the third and fourth defendants dated 28.08.2006, and marked as Ex.P-3. The further agreement called a composite agreement of sale and confirmation agreement dated 13.12.2006 executed by the third and fourth defendants in favour of the plaintiff and the memorandum of understanding for the development of properties entered again between the plaintiff and the third and fourth defendant, both documents dated 13.12.2006 have not been disputed. Further, the conditional agreement of cancellation of the composite agreement, Exs. P-4 and P-5 referred *supra* entered between the plaintiff and the defendants on 23.02.2012 and marked as Ex.P-6 had also not been disputed. A further agreement of sale dated 15.04.2013 under Ex.P-13 between the plaintiff and the third defendant had again not been disputed.

23. In view of the parties admitting to the said documents, the learned



Judge examined the interpretation of the documents as projected on behalf of the plaintiff and by the Official Assignee. It was held that under Exs. P-1 and P-2 notwithstanding the payment of the entire sale consideration by the third defendant to the first and second defendants, the third defendant did not acquire any right or interest over the suit property except the right to hold possession. It was further held that the fourth defendant was only an agent of the first and second defendants. With respect to the power of attorney Ex.P-3, it was held that it should be considered as an irrevocable power of attorney in view of the fact that the third defendant had contended that he had paid the entire sale consideration to the first and second defendants.

24. Thereafter, the agreement of sale dated 13.12.2006 under Ex.P-4 was taken up for consideration and it was held that consequent to the same, Ex.P-3, the power of attorney has to be considered as irrevocable. It was further observed that on the same date / 13.12.2006, the plaintiff and the third defendant had also entered into a memorandum of understanding under Ex.P-5 wherein the third defendant had affirmed his intention to develop the suit property along with the adjacent property. It was held that the third defendant had assigned the contractual right, he had obtained under Exs. P-1



and P-2 to the plaintiff. It was thus held by the execution of these documents, the third defendant stood eliminated from any contractual obligation and could be considered only as an agent of the first and second defendants. It was thus held that the third defendant only had a personal right to enforce the contracts without any right over the property. It was further held that the third defendant was holding possession of the property as a trustee of the plaintiff and not under any independent capacity.

25. The learned Judge then took up for consideration Exs.P-4 and P-5, the agreement of sale and the memorandum of understanding. It was held that both the documents cannot be read as one composite document and that the third defendant came to be entirely eliminated from the scheme of performance of Ex.P-4. It was held that the two documents are distinct and one does not rely on the other. It was further held that if the memorandum of understanding / Ex.P-5 became impossible of performance, the obligation under Ex.P-4, agreement of sale fell on the shoulders of the first and second defendants and the third defendants stood eliminated.

26. The learned Judge then examined the implication of Ex.P-6 the cancellation deed. It was observed that the plaintiff had performed his part of the contract fully and it was held that cancellation of Exs. P-4 and P-5 can



happen only when the amount in the cheque issued had been realised. This cheque was issued by the third defendant at the time of cancellation of the agreement. The cheque subsequently came to be dishonoured. It was held that therefore, the plaintiff had a right to fall back on Ex.P-1, the agreement of sale and having paid the entire balance sale consideration was entitled for specific performance.

27. With respect to the issue of limitation, it was observed that the third defendant had conveyed his denial only under Ex.D-2 dated 02.11.2012 and it was noted that the suit was preferred on 22.04.2014 was well within the period of years limitation period. It was therefore held that the suit was not barred by law of limitation. It was finally held that the plaintiff was entitled for specific performance. The suit was decreed with costs.

28. Challenging that particular Judgement, the present Appeal has been filed.

29. It should also be mentioned that the appellant had also filed three



other applications, namely, Application Nos. 345, 346 and 347 of 2015.

There was an earlier observation by the Court that the said applications should be taken up along with Appeal. As a matter of fact, evidence had been adduced both in the suit and in the said three applications. However, the learned Single Judge had delinked the three applications and had not passed any orders in the same. We would now examine each one of the three applications.

30. Application No.345 of 2015 had been filed by the Official Assignee seeking a direction against the third and fourth respondents therein, Nirmal Cariappa and K.Jacob George, Advocates, to handover the original title deeds of the property at Door No.33, College Road, Nungambakkam, Chennai.

31. Application No.346 of 2015 had been again filed by the Official Assignee to bring the said property for sale and to apply the sale proceeds towards the claim of the general body of the creditors to the estate of the third defendant.



32. Application No.347 of 2015 had been filed seeking an order to declare the cancellation agreement dated 05.04.2013 is null and void.

33. It must be noted that orders to be passed in these three applications are dependent on the Judgement rendered in the appeal.

34. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the appellant and Ms. Chitra Sampath, learned Senior Counsel for the first respondent.

35. Mr.K.V.Ananthakrushnan, learned counsel for the appellant took the Court through the facts of the case. The learned counsel pointed out that the property at Door No.33, College Road, Nungambakkam, Chennai, belonged to the first and second defendants. The adjacent property at Door No.34 belonged to the third defendant/insolvent. The third defendant had entered into an agreement of sale with the first and second defendants with respect to the property at Door No.33, College Road, and had paid the entire sale consideration. The first and second defendants had also appointed the third and fourth defendants as their power agents. It was thus contended by the learned counsel that the third defendant was not merely an agent of the



plaintiff but for all practical purposes, since he had paid the entire sale consideration and had been put in possession, he should be considered as the ostensible owner of the property.

36. The learned counsel further contended that the third defendant then entered into an agreement with the plaintiff to convey his rights over the property to the plaintiff. It was contended that the third defendant had lawfully executed such agreement. It was further contended that the third defendant had every right to execute such agreement of sale with the plaintiff. The learned counsel was emphatic in his submissions that this agreement of sale was not a stand alone document. It should be considered along with the memorandum of understanding which had been entered into again by the plaintiff and the third defendant on the very same day. That agreement was with respect to development of the property at No.33, College Road and the adjoining property at Door No.34, College Road. It was contended that in the said joint venture agreement, the parties had agreed to stipulate a time limit of 18 months and it was contended that time line had been stipulated in the agreement itself, any relief seeking performance of either of the two agreements should be sought within three years from that particular date.



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37. In this connection, the learned counsel relied on Article 54 of the Limitation Act, 1963. He argued that the plaintiff had not taken any steps within the stipulated period of three years to seek performance of the agreement of sale, and that therefore, the agreement had lapsed by efflux of time. The learned counsel contended that both the parties had just abandoned the agreement of sale and did not take any steps to take it forward.

38. The plaintiff and the first and second defendants then entered into a fresh agreement to revive the agreement of sale, but since the agreement had lapsed by efflux of time, it was contended by the learned counsel that such revival of a lapsed agreement would not give rise to any right to either party to seek performance. It was thus contended that since the agreement of sale had lapsed by efflux of time and since the plaintiff had not taken any steps to seek performance within the period of three years from the time stipulated in the memorandum of understanding, the suit should have been declared to have been barred by the law of limitation. The learned counsel therefore contended that the Appeal should be allowed and the Judgement of the learned Single Judge be set aside.



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39. Ms.Chitra Sampath, learned Senior Counsel for the first respondent/plaintiff however disputed the said contentions. The learned Senior Counsel pointed out that the property at No.33, College Road, Nungambakkam was owned by the first and second defendants in the suit. There is no dispute over the title. They had entered into an agreement of sale with the third defendant, and admittedly the third defendant had paid the entire consideration. They had also executed a power of attorney in favour of both the third and fourth defendants. The learned Senior Counsel stated that once that document had been executed the status of the third defendant metamorphosised from an agreement holder to an agent of the first and second defendants with right to convey the property to any other third party. Under that right, as an agent, the third defendant entered into an agreement of sale with the plaintiff. In this agreement, the first and second defendants had also appended their signatures. The third defendant had signed as a confirming party.

40. The learned Senior Counsel pointed out that the sale consideration determined of Rs.5/- crores had been paid in entirety by the plaintiff. With respect to the memorandum of understanding, to develop the



two properties at No.33, College Road and at No.34, College Road jointly, the learned Senior Counsel stated that the said document was a stand alone document and could not be and should not be related to the agreement of sale which could be independently enforced, if performance is denied or protracted. The learned Senior Counsel then pointed out that Article 54 of the Limitation Act provides that the time for performance of agreement would be three years from the time stipulated in the agreement or three years from the date of refusal to perform the agreement. In this connection, in the agreement of sale, a time period was not fixed.

41. The learned Senior Counsel disputed the contentions of Mr.K.V.Ananthakrushnan that the time limit to seek performance would start running after a period of 24 months since that period was fixed in the memorandum of understanding entered into simultaneously by the parties. The learned Senior Counsel contended that the two agreements should be viewed separately and performance of one was not dependent on the performance or denial to perform the other.

42. It was pointed out that thereafter the third defendant had sold the property at No.34, College Road. It was contended that the sale was



independent of the agreement of sale of the property at No.33, College Road. Once sale had been effected of the property at No.34, College Road, the memorandum of understanding stood impossible of being performed and that sale also indicated refusal to perform the agreement of sale by the third defendant. The learned Senior Counsel contended that even if the period of limitation is contended to commence from the date of sale of the property at No.34, College Road, the suit had been filed well within the period of three years from that date.

43. However, the parties had also decided to cancel the agreement of sale which agreement was conditional on the third defendant repaying the entire sale consideration and an additional sum of Rs.15/- crores and a further sum towards damages for failure to perform. The parties agreed that the third defendant could retain the property on payment of Rs.52/- crores. He had issued a cheque for that amount. The cheque got dishonoured and therefore, a further agreement was entered into. The third defendant now agreed to repay a sum of Rs.62/- crores. He again defaulted. The time period to seek performance started to run only then and calculated from any angle it was contended by the learned Senior Counsel that the suit had been filed within the period of limitation. It was contended that the learned



Single Judge had correctly appreciated the facts and had come to a just decision to direct specific performance of the agreement particularly because the agreement was neither denied nor disputed. The payment of sale consideration of Rs.5/- crores was neither denied nor disputed. The agreement had been entered into not only by the first and second defendants but also by the third defendant as confirming party. It was thus contended that the appeal should be dismissed and the Judgment of the learned Single Judge should be confirmed.

44. We have carefully considered the arguments advanced and perused the material available on records.

45. The following points arise for consideration:-

(1) whether the agreement of sale dated 13.12.2006 under Ex.P-4 and the memorandum of understanding also dated 13.12.2006 under Ex.P-5 should be considered as a composite interlinked inter dependent agreements or as standalone agreement; and

(2) whether the agreement dated 13.12.2006 under Ex.P-4 could be considered to have been revived



owing to the frustration of the condition stipulated in Ex.P-6 dated 23.12.2012?;

(3) whether the suit in C.S.No. 285 of 2014 had been presented within the period of limitation as stipulated under Article 54 of the Limitation Act, 1963?

The points answered:

46. The parties would be referred in the same nomenclature as in the civil suit. The appellant was the fifth defendant in the suit. The first respondent was the plaintiffs.

47. Since the pleadings and evidence relating to the issues raised in the suit and to the points framed for consideration are intertwined, all the three points are taken up together for determination.

48. The first respondent B.V.Reddy Enterprises Pvt. Ltd., had filed C.S.No. 285 of 2014 on the file of the Original Side of the Madras High Court against four defendants. Later, the appellant/the Official Assignee,



Madras High Court was impleaded as a further defendant by order dated 17.08.2015 in application No. 4741 of 2015. The suit had been filed seeking a Judgment and Decree for specific performance of an agreement dated 13.12.2006 and to direct the first and second defendants, S.Murali Mani and S.Balan Mani to execute a registered sale deed through their power of attorney agents / third and fourth defendants Arjunlal Sunderdas and S.M.Lal either jointly or severally and convey the schedule property in favour of the plaintiff. The agreement of sale dated 13.12.2006 had been entered into between the plaintiff on the one hand and the first and second defendants on the other hand. In the suit, consequential reliefs of delivery of vacant possession and injunction from alienating or dealing with the property and injunction from altering the physical features of the property and costs of the suit were also sought.

49. The plaint was dated 21.04.2014. This date 21.04.2014 is very significant as on that date, an order was passed in I.P.No. 25 of 2014, which had been filed by a petitioning creditor, Chitra Desai much earlier on 10.03.2014, by which order, the third defendant Arjunlal Sunderdas was adjudicated as insolvent. This indicated that the person and properties of Arjunlal Sunderdas stood vested with the Official Assignee of the High



Court.

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50. Arjunlal Sunderdas, as insolvent had filed a schedule of affairs giving details of his assets and liabilities. In those assests and liabilities, he also declared the suit schedule property as having been acquired by him consequent to an agreement of sale entered into by him with the first and second defendants, S.Murali Mani and S.Balan Mani. It was claimed that he had paid the entire sale consideration and in recognition thereof, S.Murali Mai and S.Balan Mani had granted an irrevocable power of attorney coupled with interest in his favour. He was also put in possession of the property. The title deeds were also handed over to him.

51. It must also be mentioned that the suit schedule property was land and building measuring 5 grounds and 1077 sq.ft., at Old Door No. 33, New Door No.33, College Road, Nungambakkam, Chennai. The very next property at No. 34, College Road belonged to Arjunlal Sunderdas and his brothers.

52. In the plaint, B.V.Reddy Enterprises Private Limited stated that they had entered into an agreement of sale on 13.12.2006 with the first and



second defendants, who were represented by the third and fourth defendants Arjunlal Sunderdas and S.M.Lal, agreeing to purchase the property for a total sale consideration of Rs.5/- crores. The entire sale consideration had been paid. That fact was also reflected in the agreement of sale. In the agreement, though there was mention that vacant possession had been handed over to the plaintiff as a fact it was not done. However, the title deeds of the property had been handed over to the plaintiff.

53. The plaintiff further contended that on the very same date, 13.12.2006, the plaintiff entered into a memorandum of understanding with the third defendant, Arjunlal Sunderdas agreeing that the suit schedule property at No.33, College Road, Chennai and the immediate adjacent property at No.34, College Road, Nungambakkam, Chennai shall both be clubbed together and developed and the constructed area shall be shared between the plaintiff and the third defendant. In consideration of this memorandum of understanding, the plaintiff paid a further sum of Rs.15/- crores to the third defendant. The receipt of a sum of Rs.5/- crores as sale consideration of the property at No.33, College Road, Chennai, was also mentioned in the memorandum of understanding.



54. There were no further step initiated by either party, after the agreement of sale dated 13.12.2006 or the memorandum of understanding again dated 13.12.2006. It must however be mentioned that in the memorandum of understanding very specifically, the parties had agreed that the development of the two properties shall be commenced and concluded within a period of 24 months. This fact is again very significant. It must again be reiterated that the plaintiff, technically was not the owner of the property at No. 33, College Road. He was also not the owner of the property at No.34, College Road. The third defendant claimed to be the ostensible owner of the property at No.33, College Road and the absolute owner along with his brothers of the property at No.34, College Road. Both the agreements had been entered on the same date and there is reference about the agreement of sale in the memorandum of understanding. In the agreement of sale entered into by the first and second defendants, S.Murali Mani and S.Balan Mani on 13.12.2006 the first and second defendants represented by their power of attorney agents and S.M.Lal, the third defendant and the fourth defendant with the plaintiff, the third defendant Arjunlal Sunderdas was also a signatory as a confirming the party. In the agreement of sale, it had been covenanted as follows:-

“WHEREAS the Vendors herein entered into an



Agreement to Sell dated 19.08.2006 with the Confirming Party herein agreeing to sell the schedule mentioned property to the confirming party or his nominee or nominees. AND WHEREAS by a Supplemental Agreement dated 28.8.2006, the Vendors herein have received the entire sale consideration of Rs.4,08,65,624/- and have also executed an irrevocable power of Attorney in favour of the Confirming Party authorising him to sell the schedule mentioned property to prospective purchasers.

WHEREAS the Confirming Party has nominated the purchaser herein and the purchaser is desirous of purchasing the schedule mentioned property for a sale consideration of Rs.5,00,00,000/- (Rupees Five Crores Only) on the following terms and covenants. In order to assure and give a better title to the Purchaser, the Confirming Party has also joined as a Party to this Agreement.'

55. It had been further covenanted that the plaintiff had paid the total sale consideration of Rs.5/- crores through cheque. It was also provided that the original documents of title had been handed over to the plaintiff. It was further stated that vacant possession of the property had also been handed over to the plaintiff but however as a fact vacant possession was not handed



over. The agreement of sale had been marked as Ex.P-4 during trial.

Neither party has raised any dispute either over the execution of the said document or over the contents of the said document.

56. On the same day / 13.12.2006, the third defendant Arjunlal Sunderdas and the plaintiff entered into a separate memorandum of understanding. By this document, they stated that the third defendant, consequent to payment of sale consideration to the first and second defendants had obtained possession of the property at No.33, College Road and the first and second defendants had also executed a power of attorney on 28.08.2006 in favour of the third defendant and the fourth defendants granting them power to sell the suit property. It was further stated in the memorandum of understanding that the adjacent property at No.34, College Road belonged to the third defendant and to his brothers. It was stated that for a consideration of Rs.15/- crores, the third defendant would develop both the properties by putting up construction and on development sell the property and realise the monies in favour of both the plaintiff and the third defendant. As financial assistance, the plaintiff had also agreed to pay a sum of Rs.15/- crores to the third defendant towards development and construction charges. It was very specifically stated as follows:-



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“The said amount would be returned by the PARTY OF THE FIRST PART TO PARTY OF THE SECOND PART within a period of 24 months. Within 24 months, the PARTY of the FIRST PART shall develop and sell and realise the sale proceeds and pay the PARTY OF THE SECOND PART 40% of the sale consideration or market value of the schedule A property inclusive of the financial assistance given by the PARTY OF THE SECOND PART and the sale consideration invested by the PARTY of the SECOND PART subject to a minimum Rs.40 Crores.”

57. It was further covenanted as follows:-

“The PARTY OF THE FIRST PART agrees to develop and make ready the schedule A and B property for sale within a period of 24 months from this date.

The PARTY OF THE FIRST PART hereby agrees that on or before 24 months from this date, the development and sale of the Schedule A Property shall be completed and the PARTY OF THE SECOND PART shall be paid 40% of the



value realised on sale on the development of the Schedule A property and 40% of the market value of the Schedule A property remaining unsold inclusive of the Rs.15 crores lend by the PARTY OF THE SECOND PART as financial assistance towards development expenses subject to a minimum amount of Rs.40,00,00,000/-.”

58. It was finally also agreed as follows:-

“The parties agree that any or all claims, disputes or differences arising under this MOU, which cannot be resolved between parties, shall be finally referred to in Arbitration as per the provisions of the Arbitration and Conciliation Act 1996 and the venue of such Arbitration shall be at Chennai and a panel of three Arbitrators, each party shall appoint one Arbitrator and the appointed Arbitrators shall appoint the Third Arbitrator who shall act as the presiding Arbitrator. This agreement shall be construed in accordance with Indian Laws.”

59. This document was marked as Ex.P-5 during trial.



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60. A careful perusal of the terms of the understanding which the plaintiff had entered into with the third defendant, who subsequently was adjudicated as insolvent and also unfortunately died during the pendency of the suit would reveal the following:-

(i) The property at No.33, College Road was owned by the first and second defendants S.Murali Mani and S.Balan Mani;

(ii) They had entered into a registered sale agreement on 19.08.2006 with the third defendant, Arjunlal Sunderdas to convey the said property for a total consideration of Rs.4,08,65,624/-. The said document had been registered as Document No.857 of 2006 in the office of the Sub Registrar, Thousand lights;

(iii) On 28.08.2006, a supplemental agreement was entered into by the first and second defendants S.Murali Mani and S.Balan Mani with the third defendant Arjunlal Sunderdas confirming that the third defendant had paid the entire sale consideration for a sum of Rs.4,03,65,624/- and in consideration thereof, they had also placed the third defendant in vacant possession and control of the property and had also handed over all original



title deeds and records relating to the said property. They also undertook to execute a registered power of attorney in favour of the third defendant.

They also executed a power of attorney in favour of the third and fourth defendants on the same day of the Supplemental agreement dated 28.08.2006 which document was marked as Ex.P-3.

61. The learned counsel for the appellant pointing out the said documents, argued that in view of the fact that the third defendant had paid the entire sale consideration and had also been put in possession and was also handed over the title deeds and more particularly in view of the following specific covenant in the Supplemental Agreement that the third defendant had acquired the rights as provided under Section 53-A of the Transfer of Property Act, 1882.

“In consideration of the above mentioned payment by the Purchaser, the Vendors have, in part performance of the Principal Agreement read with this Agreement, on this day:

- a. Placed the Purchaser in vacant possession and control of the lands described in the Schedule hereunder;*
- b. Handed over all original title and*



records pertaining to the lands described in the schedule hereunder to the purchaser.”

62. Section 53-A of the Transfer of Property Act, 1882 is as follows:-

“53A. Part performance.—

Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the



transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof. '

63. The learned counsel for the appellant argued that the conditions necessary to constitute transfer of property could be ascertained with absolute certainty. The first and second defendants have, in part performance of the contract granted possession and the third defendant / transferee in part performance, had taken possession of the property. The first and second defendants were therefore barred from enforcing any right in respect of the said property against the third defendant. It is thus argued that the third defendant, for all practical purpose and under law has to be recognised as the ostensible owner of the property. He had mentioned this particular property in his schedule of affairs on being adjudicated as



insolvent. The learned counsel therefore argued that the said property stood vested with the office of the Official Assignee subsequent to adjudication of the third defendant as insolvent.

64. The third defendant had thus acquired substantial right over the suit schedule property and in view of the power of attorney in his name and in the name of the fourth defendant, had also acquired right to convey the property. He therefore entered into an agreement of sale on 13.12.2006 to convey the property to the plaintiff. This document had been marked as Ex.P-4. The total consideration determined was Rs.5/- crores. This amount had been paid in entirety by the plaintiff.

65. The reason why the plaintiff entered into an agreement of sale and had not insisted on a sale deed being executed though they had paid the entire sale consideration would be evident from a reading of this agreement of sale / Ex.P-4 along with the memorandum of understanding / Ex.P-5 again entered into by the third defendant with the plaintiff. In the memorandum of understanding, the parties stated about the agreement of sale entered into between them with relation to the suit property and further stated that the third defendant and his brothers were the absolute owners of



the adjoining property at No.34, College Road, Nungambakkam and the purpose why the plaintiff intended to purchase the suit schedule property was *“to develop and sell the same along with”* the adjoining property at No.34, College Road. Thus, the two documents will have to be read in conjunction with each other. There was no intention on the part of the plaintiff to treat the agreement of sale / Ex.P-4 as a distinct, standalone document. That transaction was entered into only because the third defendant along with his brothers were the absolute owner of the adjoining property and the plaintiff and the third defendant had jointly agreed to develop both the adjoining properties and sell the same and share the proceeds.

66. In the memorandum of understanding, it had been further covenanted that the third defendant, who was termed as the party of the first part *“will develop the Schedule A and B property by putting up constructions and that on development of the Schedule A and B property shall with the consent of the Party of the second part sell the schedule A and B property and realise the monies in favour of both the parties.*

67. It is thus seen that the transactions between the plaintiff and the third defendant were not two separate transactions relating to the suit



schedule property and the adjoining property but a composite agreement written in two separate documents, Exs. P-4 and P-5 which will have to be read together as they intended to develop both the properties and sell the two properties and realise the monies in favour of both of them. It must be mentioned that in the extract above, the schedule A property is the suit schedule property and the schedule B property is the adjoining property. The party of the second part was the plaintiff herein.

68. In the agreement of sale since the total sale consideration had been paid and there was no intention to execute a sale deed conveying the property in favour of the plaintiff, the parties to the document had consciously not stipulated any time limit since the intention was to jointly develop and construct both that property and the adjoining property and sell the same for the benefit of both the plaintiff and the third defendant. There was never any intention to convey the property in favour of the plaintiff at all. The third defendant and the plaintiff had taken a conscious decision in the memorandum of understanding which they entered into on the same day to maximise the profit by developing both the properties.

69. In the memorandum of understanding Ex.P-5, a time limit of 24 months had been fixed for such development of the two properties by the



third defendant. Both the plaintiff and the third defendant had very specifically stated this time limit of 24 months not just once, but atleast four times in the document which would indicate that time was the essence of the agreement with respect to development of the two properties and sale of both the properties to third parties.

70. After executing into these two documents, the plaintiff and the third defendant did not take any further step for the next five years and two months. It must be reiterated that the time fixed for performance of the undertaking in Ex.P-5 was two years from the date of the document. This period expired on 13.12.2008. The period of limitation to enforce the terms of the agreement by the plaintiff would fall under Article 54 of the Limitation Act 1963.

71. Article 54 of the Limitation Act, 1963 is as follows:-

“

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
For specific performance of a contract	Three years	The date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.



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72. The relief to seek performance of the agreement stood barred on expiry of three years from 13.12.2008 which would mean the time to seek the relief for directing performance of the covenants in the agreement expired on 13.12.2011.

73. The agreement stood lapsed by efflux of time owing to inaction by both the plaintiff and the third defendant. Since the memorandum of understanding stood lapsed, naturally, the relief to seek performance of the agreement of sale under Ex.P-4 also stood lapsed. The two agreements have to be necessarily read together jointly and conjointly and could never be treated as distinct and stand alone agreements. There was never any intention to convey the suit schedule property to the plaintiff. The only object for which the agreement of sale was entered was to jointly construct and develop both the suit schedule property and the adjoining property together and sell the same and enjoy the profits jointly by both the plaintiff and the third defendant.

74. On 23.02.2012, realising that the agreement of sale had lapsed by efflux of time and to remove any doubt that the agreement was in force or could be enforced or could be directed to be acted upon by either party, the



plaintiff and the third defendant entered into a cancellation agreement/Ex.P-6. Under this agreement, after reducing in writing the fact of entering into the agreement of sale and the memorandum of understanding, the plaintiff and the third defendant covenanted as follows:-

“AND WHEREAS after various discussions, the parties hereto mutually agreed to cancel the aforesaid Agreement for sale deed 13.12.2006 and the memorandum of understanding dated 13.12.2006, on various terms and conditions.”

75. They thereafter agreed to fresh terms completely in variance of the terms entered into under the agreement of sale or under the memorandum of understanding.

76. We hold that this agreement Ex.P-6 had given rise to a fresh cause of action unconnected and unrelated to the earlier agreement of sale or the memorandum of understanding.

77. Section 62 of the Contract Act 1872 is as follows:-

“62. Effect of novation, rescission, and alteration



of contract.—

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.”

78. We further hold that the obligations created under Exs. P-4 and P-5 stood extinguished and additionally barred by the law of limitation.

79. Ms. Chitra Sampath, learned Senior Counsel for the plaintiff however widened the scope of discussion by pointing out that even though it had been stipulated that the agreement of sale was cancelled in Ex.P-6, the said agreement could only be termed as a contingent contract placing a further obligation on the third defendant and on failure of which, the earlier agreement of sale would stand revived. In this connection, the learned Senior Counsel pointed out that the plaintiff had parted with a sum of Rs.5/- crores towards the sale consideration of the suit schedule property and another sum of Rs.15/- crores as financial assistance for the development and construction of both the suit schedule property and the adjoining property and therefore had acquired a vested interest over the suit schedule property for which the total sale consideration had been paid. The cancellation agreement envisaged return of the said amounts by the third



defendant and on failure to do so, the agreement of sale would stand revived as the terms under which it was agreed to be cancelled were breached and violated.

80. In this connection, the learned Senior Counsel pointed out that the parties had agreed as follows in Ex.P-6/ cancellation agreement:-

*“NOW THIS CANCELLATION AGREEMENT
WITNESSES AS FOLLOWS:*

1. That in pursuance of the said agreement the FIRST PARTY has delivered a Cheque bearing No.686750, dated 13.06.2012 drawn on Indian Bank, Ethiraj Salai, Chennai to the SECOND PARTY, at the time of signing this Agreement. The said sum of Rs.52,60,30,000/- is the aggregate of:

a. Rs.5,00,00,000/- representing the refund of the sale consideration paid under the aforesaid agreement for sale dated 13.12.2006;

b. Rs.15,00,00,000/- being the repayment of the financial assistance that was provided by the SECOND PARTY to the FIRST PARTY as recorded in the Memorandum of Understanding dated 13.12.2006; and



c. *Rs.32,60,30,000/- representing the compensation due to the SECOND PARTY from the FIRST PARTY for non-performance of the aforementioned agreement and Memorandum of Understanding.*

2. *Subject to realisation of the aforesaid cheque and in consideration of such payment:*

a. *the Agreement for sale dated 13.12.2006 and the Understanding recorded in the Memorandum of Understanding dated 13.12.2006 shall stand cancelled in all respects so that the parties hereto stand discharged from all of their respective obligations under the said Agreement and the said Understanding.”*

81. It was argued that since the third defendant had defaulted in the payment as committed, the agreement of sale stood revived.

82. Mr.K.V.Ananthakrushnan, learned counsel for the appellant/Official Assignee/fifth defendant however disputed the said contention. The learned counsel pointed out that fresh terms had been entered into between the parties leading to a fresh cause of action for



payment of the aforementioned amounts and not for specific performance of the earlier agreement of sale. He further pointed out that the parties had further covenanted as follows:-

“d. Neither party shall have any right or claim against the other by virtue of the aforecited agreement for sale dated 13.12.2006 and the memorandum of understanding dated 13.12.2006; and

e. The FIRST PARTY shall be entitled to own, enjoy and/or alienate the schedule mentioned property in any manner whatsoever without any reference to the SECOND PARTY.”

83. Pointing out the above clause, the learned counsel stated that the parties had consciously moved away from any intention to convey the suit schedule property by way of any instrument. The suit schedule property stood discharged from all charge or interest which the plaintiff would have had under the agreement of sale Ex.P-4. It was pointed out that relief under the agreement of sale stood barred owing to the lapse of time as stipulated under Article 54 of the Limitation Act, 1963.



84. We hold that this cancellation of agreement Ex.P-6 was only an affirmation of the fact that the agreement of sale had become barred by limitation by both the plaintiff and the third defendant and by entering into a fresh agreement/Ex.P-6, they had both given up any right which they could have acquired under the agreement of sale Ex.P-4. Every other subsequent transaction between the two of them could be related only to the terms of the fresh agreement entered into between them and could never be related back to the agreement of sale. We therefore with much respect, do not agree with the arguments advanced by Ms.Chitra Sampath, learned Senior Counsel for the plaintiff that if there was a breach of the terms of the cancellation agreement/Ex.P-6, there would be automatic revival of the agreement of sale which can never be termed as having lapsed since no time was fixed for its performance.

85. We hold that the agreement of sale stood lapsed by efflux of time and any relief seeking performance of the same stood barred on and from 13.12.2011, the three year period from the 24 months determined and agreed for performance in the conjoint memorandum of understanding. We hold that every other subsequent agreement will have a separate cause of action for performance on the basis of the terms of that agreement.

86. The third defendant, who had issued a cheque in favour of the



plaintiff for a sum of Rs.52,60,30,000/- under the cancellation agreement entered into a further agreement with the plaintiff on 05.04.2013 which was marked as Ex.P-13. In this agreement, after drawing reference to Exs. P-4 and P-5, it had been agreed that the third defendant would pay a sum of Rs.62,50,00,000/- in installments to the plaintiff. The clause relating to consequences of breach was as follows:-

“7. That in the event the SECOND PARTY pays the entire amount of Rs.62,50,00,000/- (Rupees Sixty Two Crores and Fifty Lakhs only), the FIRST PARTY shall return the document pertaining to schedule 'A' property in his possession to the possession of SECOND PARTY. Similarly, if the SECOND PARTY fails to pay the amounts as above, within the stipulated period of 13 months, the First Party shall have the right to terminate this agreement and make any claims notwithstanding the fact that some of the cheques have been encashed.”

87. It is thus seen that if the third defendant had failed to honour his commitment to pay the aforementioned amount within the stipulated period



of 13 months, the plaintiff shall have the right terminate this particular agreement and “*make any claims not withstanding the fact that some of the cheques have been encashed.*” This would only indicate that the plaintiff could raise a claim for entire amount even though some of the cheques issued could have been encashed by them. This would indicate that the plaintiff can lay a claim for the entire amount though they would have received part of the amount in view of the fact that some of the cheques had been encashed.

88. It is significant to point out that there was no clause that specific performance of the agreement of sale could be sought by the plaintiff.

89. The plaintiff had filed the suit seeking enforcement of the agreement of sale when the agreement had lapsed and there was no such clause provided either in the cancellation agreement Ex.P-5 or in the subsequent agreement Ex.P-13.

90. The suit had been filed on the ground that the third and fourth defendants had sold the adjoining property at No.34, College Road, Nungambakkam on 27.07.2012 under Ex.P-8 and on the fact that the



cheques issued by the third defendant were dishonoured, which acts were considered to be a refusal to perform the terms under the agreement of sale and that therefore, the suit is within the period of limitation having been filed in the year 2014.

91. The learned Senior Counsel for the plaintiff also placed reliance under Article 54 of the Limitation Act and stated that the suit had been filed within three years from the date of refusal. With due respects, we do not agree with the said contention.

92. The agreement of sale stood lapsed three years from the time limit fixed by the parties as stipulated in the memorandum of understanding. The agreement of sale could never be considered as a standalone agreement. There was never any intention to execute a sale deed in favour of the plaintiff. The plaintiff could only be termed as a speculative profit seeker to profit not only from the suit schedule property alone but also by the joint development and construction of that property along with the adjoining property. The development and construction of both the properties was to be done within a period of 24 months from the date of the agreement. That period expired on 13.12.2008. The three years period from that date expired



on 13.12.2011 and on and from which that date, the agreement stood lapsed.

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agreement of sale.

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93. In view of the above reasons, we answer the points framed for consideration as follows:-

(1) The agreement of sale dated 13.12.2006 under Ex.P-4 and the the memorandum of understanding also dated 13.12.2006 under Ex.P-5 are composite and interlinked agreements and were never considered by the parties to be standalone documents.

(2) The agreement dated 13.12.2006 under Ex.P-4 can never be held to have been revived owing to the breach of the conditions in Ex.P-6 dated 23.02.2012 since the agreement of sale, Ex.P-4 stood lapsed by efflux of time.

(3) The relief claimed in the suit in C.S.No. 285 of 2014 is barred by limitation on and from 13.12.2011 as stipulated under Article 54 of the Limitation Act, 1963.



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94. In view of the above findings, the Appeal stands allowed with costs. The Judgment and Decree in C.S.No. 285 of 2014 dated 01.09.2023 is set aside. Consequently, C.M.P.No. 22006 of 2023 and Application (IP) No. 348 of 2015 in I.P.No. 25 of 2014 stand closed.

C.M.P.No. 22184 of 2024; Application No.346 of 2015 in I.P.No. 25 of 2014 and C.M.P.No. 22187 of 2024:

95. In view of the findings and conclusion reached in the appeal (O.S.A.No. 187 of 2023), these Applications stand allowed. The Official Assignee is at liberty to bring the entire property or the portion not acquired by the Chennai Metro Rail Limited at No.33, College Road, Nungambakkam, Chennai, for sale by public auction and apply the sale proceeds towards the claim of the general body of creditors.

96. We are conscious of the fact that the property / part of the property had been acquired by the Chennai Metro Rail Limited. The Official Assignee is entitled to seek payment of the compensation deposited by



Chennai Metro Rail Limited and also at liberty to seek enhancement of the compensation and apply the compensation amount so received towards the claim of the general body of creditors. The Application stands allowed. No costs.

Application No. 345 of 2015 in I.P.No. 25 of 2014:

97. In view of the findings and the conclusion reached in the appeal (OSA No. 187 of 2023), since the suit schedule property at No.33, College Road, Nungambakkam, Chennai, stood vested with the office of the Official Assignee consequent to the adjudication as insolvent of the third defendant Arjunlal Sunderdas, a direction is issued to the third and fourth respondents herein, Nirmal Cariappa and K.Jacob George, Advocates to hand over the entire original title deeds of the said property to the Official Assignee within a period of two weeks from this date, failing which, the Official Assignee is at liberty to proceed in manner known to law to recover the said documents from the said Advocates. This Application stands allowed. No order as to costs.

Application No.347 of 2015 in I.P.No. 25 of 2014:



98. This application is closed in view of the findings and conclusion reached in the appeal (O.S.A.No. 187 of 2023), wherein it had been held that the agreement of sale dated 13.12.2006 stood lapsed by efflux of time and any relief under the same is barred by the law of limitation. No costs. Any claim petition filed by the plaintiff may be dealt with accordingly by the Official Assignee.

[C.V.K., J.] [K.B., J.]

27.02.2026

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

vsg



Pre-Delivery Judgment made in

OSA.No. 187 of 2023

And

C.M.P.No. 22006 of 2023

And

C.M.P.Nos. 22184 and 22187 of 2024

And

Application (IP) Nos. 345 to 348 of 2015

IN

I.P.No. 25 of 2014

27.02.2026