IN THE COURT OF I ADDITIONAL DISTRICT & SESSIONS JUDGE, (P.C.R),THANJAVUR.

Present : **Thiru.S.Karthikeyan, M.A., M.L.,P.G.D.C.F.S.**
I Additional District & Sessions Judge,(P.C.R.) Thanjavur.

Monday, the 01st day of December 2015.

O.S.38/2011 & O.S.37/2014

O.S.NO.38/2011

Mangandan	...	Plaintiff
	VS	
Boominathan	...	Defendant

O.S.NO.37/2014

S.Parthipan	...	Plaintiff
	VS	
1) Boominathan 2) The Sub Registrar, Papanasam 3) The District Registrar, Kumbakonam 4) The Government of Tamilnadu, rep. by its District Collector, Thanjavur	...	Defendants

The above suits came up before this court for final hearing on 19.11.2015 in the presence of Thiru.S.Krishnamoorthy Advocate for the Plaintiff, and Thiru S.Yuvaraj Singh Advocate for the defendant in O.S.No.38/2011 and Thiru C.Nedunchezhian, Advocate for the plaintiff and Thiru P.Lenin Advocate for 1st defendant and Thiru R.Jayakkumar Advocate for the 2nd defendant and adopted by the 3rd and 4th Defendants and upon hearing the arguments of both sides and upon perusing the both side documents and having stood over for consideration till this day, this court delivers the following

COMMON JUDGEMENT

O.S.No.38/2011

Case of the Plaintiff in brief :-

1) The defendant is the owner of the suit schedule item No.1 to 4 Nanja Lands situate at Irumbuthalai Village, Melattur 5th Sethi, Papanasam Taluk within the registration district of Thanjavur. The defendant entered into a registered Sale Agreement on 24.06.2009 with the plaintiff and agreed to sell the suit schedule item No.1 to 4 properties for total sale consideration of Rs.12,26,250/- and out of the said sale consideration, the defendant had received Rs.5,50,000/-. The time for performance of the said contract of Sale Agreement was fixed as 23.12.2009. In and by the said registered sale agreement, it was recited that the defendant has handed over the possession of the suit property on 24.06.2009. The said sale agreement was registered at the Office of the Sub-Register, Papanasam as Document No.1918/2009 on 24.06.2009. The defendant agreed inter alia of the agreement that he will execute sale deed within 23.12.2009 by receiving the balance of sale consideration of Rs. 6,76,250/-. It is also agreed by the said agreement that the defendant will receive the balance of sale consideration of Rs.6,76,250/- in part amount and recited that the time is the essence of the contract. The defendant also agreed that he will repay the advance amount without interest in case the plaintiff is not willing to perform his part of contract. The defendant also agreed that the plaintiff should not transfer the agreement to any 3rd party and also agreed that there is no encumbrance in the suit properties and also agreed to compensate the plaintiff for any encumbrance if it is revealed subsequent to the agreement. The defendant also agreed to give the title deeds original at the time of registration of the sale deed by mentioning that the registration numbers of the documents namely document Nos.17/2002, 25/2002 & 2129/2004. The plaintiff had obtained the encumbrance certificate of the period from 01.01.2002 to 31.05.2003, from 01.06.2003 to 17.05.2010. Though it was mentioned as matter of fact that the vacant possession was handed over to the plaintiff, the suit property

was all along lying vacant and now only it seems that the defendant has transplanted and making arrangements for cultivation and therefore to avoid multiplicity of litigation the plaintiff had prayed for possession to him without any encumbrance.

2) One Ramu of Irumbuthalai had illegally occupied the suit properties claiming that he has given a sum of Rs.1,50,000/- to the defendant and the defendant alleged to have directed him to be in possession of the suit properties. The plaintiff thereafter had took encumbrance certificate and found no registered document in favour of the said Ramu. When the plaintiff questioned the defendant about the illegal occupation by the said Ramu in the suit properties, the defendant convinced the plaintiff that he will settle his amount and to produce the Nil encumbrance certificate to the plaintiff to make him proceed with the registration with the balance of sale consideration. The plaintiff was all along waiting for the proper production of encumbrance certificate from the defendant and the defendant was evading all along. Finding the game of the defendant is up against the plaintiff, the plaintiff on 19.12.2009 had issued a lawyer notice to the defendant directing him to receive the balance of sale consideration of Rs.6,76,250/- from the plaintiff and to execute sale deed and also demanded that the defendant has to issue reply notice on or before 23.12.2009 and to get himself ready for registration of the sale deed. The defendant had received the said lawyer notice on 21.12.2009 and on 22.12.2009 had issued a Telegram stating that the amount of Rs.5,50,000/- as a contract of sale referred in the lawyer notice is the principal amount plus the exorbitant interest of loan transaction between him and plaintiff and alleged that the entire sale agreement is void as per Section 12 of the Tamilnadu Prohibition of charging Exorbitant Interest Act and to refused to perform his part of contract by making himself ready for registration. The defendant having entered into a lawful agreement in writing and having appeared voluntarily before the Sub-Register's office, Papanasam and having accepted that he has received an advance amount Rs.5,50,000/- in cash from the plaintiff and after several months is not legally entitled to go against the agreement amount mentioned is for the principal amount with exorbitant interest. The defendant was not in position to say what is the

principal amount and also what is the agreed interest and the subsequent inaction by the defendant without taking any legal action against the plaintiff will itself show that the averments made in the telegram dated 12.12.2009 is false and the defendant is put to strict proof of the same. The defendant with a view to avoid registration of sale deed by demanding more amount than the agreed amount had with malafide intention issued the telegram. In that lawyer notice, the plaintiff had mistakenly stated that he is in possession of the suit properties on the hope and belief made by the defendant that he has not given any document for the said Ramu to show his legal possession in the suit properties. The defendant will issue a proper reply notice for the lawyer notice dated 19.12.2009 sent by the plaintiff to the defendant, but on the other hand no reply notice was sent and the plaintiff had arranged mediators who are witness to the sale agreement came for registration and the defendant had told the plaintiff that he is arranging funds from 3rd parties to clear off the amount of Ramu and also promised to hand over possession of the suit property and requested the plaintiff to wait for 6 months and the plaintiff having shelled out already Rs.5,50,000/- by way of sale agreement, had decided to wait for 6 months and for the past 3 months, the plaintiff had made several oral demands to the defendant with balance of sale consideration and the defendant had further demanded Rs.800/- per kuzhi. The plaintiff beg to submit that the total extent of item No.1 to 4 which is the suit properties comes to 16 Ma 35 Kuzhi and Rs.600/- per Kuzhi was the agreed amount which comes to Rs.12,26,250/- alone and now the defendant is demanding Rs.200/- per Kuzhi more than the agreed amount and the plaintiff refused to pay the excess amount more than the amount agreed and mentioned in the registered sale agreement. The plaintiff made a final oral demand on 10.12.2010 along with mediators namely Selvam and Pari to the defendant to execute the sale deed by receiving the balance of sale consideration of Rs.6,76,250/- and to hand over possession of the suit properties and also the title deeds for the same and the defendant refused to perform his part of contract and therefore, the plaintiff without any other alternative is filing the suit for granting a decree and judgment for specific performance directing the defendant to receive the balance of sale consideration of Rs.6,76,250/- and to execute the sale deed in favour of the plaintiff within a time to be fixed by the court and in case of refusal, through court with costs. By way of alternative remedy, if per chance, the court comes to the conclusion that the plaintiff is not entitled to the relief of specific performance has to direct the defendant to repay the sum of Rs.5,50,000/- with 18% interest and costs of the suit and hence, the suit is filed. .

<u>Case of the Defendant in brief:-</u>

3) The defendant denies all the averments, allegations and pleadings in the plaint save those that are expresso verbis admitted by him hereunder and puts the plaintiff to strict proof of each of such of those that are not admitted infra. The alleged suit transaction and that is portrayed in the alleged sale agreement dated 24.06.2009 is a bogus, false, sham and nominal one. That the defendant agreed to sell his properties to the plaintiff for Rs.12,26,250/- is not true but an absolute falsehood in fact. The plaintiff did not pay even a single pie to the defendant by way of sale consideration or sale price of the alleged suit sale agreement and muchless Rs.5,50,000/- in cash either on 24.06.2009 or at any time earlier or later thereto. So there was no question of the defendant ever agreeing to sell or convey the suit schedule properties to the plaintiff for Rs.12,26,250/- as alleged in the alleged suit sale agreement dated 24.06.2009. So there is no tinge of truth in the allegation in the said alleged suit sale agreement that the defendant further agreed on 24.06.2009 that the defendant would sell or convey the suit schedule properties after receiving the alleged balance of Rs.6,76,250/- within 23.12.2009. No amount of cash was either in full or in part was ever paid in the presence of the Sub Registrar to the defendant either on 24.06.2009 or as to be paid at the time of registration of sale deed, in front of the Sub Registrar. There is no other circumstantial documentary evidence to prove that such a huge sum of Rs.5,50,000/- in cash was ever paid on 24.06.2009 to the defendant as part payment of the sale consideration that was alleged in the said suit sale agreement. The plea contained in page 1 and 2 of the para III and the relief prayed in para Vii(1) of the plaint craving direction to the defendant to hand over possession of the suit properties and in refusal through the process of the Hon'ble Court both in direct

opposition to the recital in the alleged suit sale agreement and that in the last sentence in para 1 of the lawyer notice dated 19.12.2009 relied on by the plaintiff as Document No.1 and 5 in the list of Documents filed by the plaintiff to the effect that the possession and enjoyment of the suit property was handed over to the plaintiff by the defendant when the part payment of Rs.5,50,000/- was made on 24.06.2009 itself and that the plaintiff was inducted into possession and enjoyment of the suit properties on the date of the said alleged sale agreement, themselves speaks volumes and serves as proof enough about the untrue, sham, bogus, false, fabricated and nominal nature of the alleged suit sale agreement and the falsity about all the recitals contained therein including the payment of Rs.5,50,000/- to the defendant on 24.06.2009. Now admitted fact by the plaintiff that the possession and enjoyment of the suit property is not with him but only with a third person by name Ramu and further admission in the last sentence of sub para 6 of para III in page 5 of the plaint that in the lawyer notice dated 19.12.2009 to the effect that the plaintiff had mistakenly stated that he is in possession of the suit properties which juxtaposed with the stand in the last sentence in para 1 of the plaintiff's lawyer notice dated 19.12.2009 to the effect that " on the date of the sale agreement itself you (meaning defendant) have inducted my client (meaning the plaintiff) into possession and enjoyment of the properties which is similar to the recital in the alleged suit sale agreement dt.24.06.2009 also when the amount of Rs.5,50,000/- was also said to have paid proves how the plaintiff blows hot and cold, approbates and reprobates and that the plaintiff has not come to this Hon'ble Court with clean hands or with truth on his side and therefore not qualified to seek the discretionary remedy of either the specific performance of a contract of sale agreement or for a decree for recovery of any money from the defendant since that if the recitals regarding delivery of possession on 24.06.2006 was factually false then payment of Rs.5,50,000/- in concomitant with delivery of possession on 24.06.2009 must also be in all preponderance of probabilities and natural corollary and by implication be treated as unalloyed false statement devoid of evidence of truth. If the plaintiff had really paid to the defendant Rs.5,50,000/- on 24.06.2009 as has been alleged in the alleged suit sale agreement or if the sale transaction portrayed in the alleged suit sale agreement were genuine and true, the plaintiff would not have at all resorted to the tactics of just issuing a lawyer notice dated 19.12.2009 but would have instead came and met the defendant in person directly or in the presence of witnesses if need be an would have handed over the sum of the alleged balance sale consideration of Rs.6,76,250/- in cash on or before 23.12.2009 and obtained due signature endorsements of such payment by the plaintiff and receipt of the same by the defendant on the original or in the certified registration copy of the alleged suit sale agreement and would have thereafter invited the defendant to execute the sale deed and cooperate for the consummation and conclusion of its registration process either on 23.12.2009 or on any other convenient date of the plaintiff and the defendant. If the defendant in such a case refused to accept and acknowledge such receipt of the so called balance sale consideration of Rs.6,76,250/- either on 19.12.2009 or on any other date prior to 23.12.2009, then also the plaintiff ought to have sent an account payee crossed Demand Draft in favour of the defendant's name and ought to have sent the same by registered post with acknowledgment due to the defendant's address delineating in writing such circumstances of his prior refusal to receive the payment made in person to the defendant by the plaintiff directly or in the presence of witnesses. Even from a cursory reading of the plaint pleadings in paras III, IV and VII of the plaint itself it is evident and a conceded fact by the plaintiff himself that the plaintiff had failed miserably and fatally to perform his part of the contract which was declared under the alleged suit sale agreement itself as the essence of the contract by the plaintiff's defaulting in paying the entire alleged sale consideration of Rs.12,26,250/- fully to the defendant within the stipulated, unalterable and unextended deadline period of 23.12.2009. Consequently the alleged suit sale agreement itself had become unenforceable and incapable of performing any more resulting in its automatic cancellation as per its own terms and conditions after the commission of default in payment by the plaintiff of the sale consideration of Rs12,26,250/- on or before 24.12.2009 to the defendant. The payment of Rs.12,26,250/- by the plaintiff to the defendant within 25.12.2009 was a sine quo non to his right to seek or compel specific performance by the defendant of his part of the alleged sale agreement. Under such above said situation of the plaintiff's failure in performing his part of the essence of the contract and its consequent automatic cancellation, the plaintiff is not at all entitled to sue for the specific performance of contract in respect of the suit properties and for their possession. Therefore the present suit filed primarily for specific performance is not maintainable and unsustainable.

4) When it is specifically and specially provided in the alleged suit sale agreement itself that for all part payments of purchase price for sale, it is essential to make endorsements acknowledging all such receipts of payments on the said sale agreement itself (கிரயத் தொகை செலுத்துதல் அனைத்திற்கும் இந்த ஆவணத்தில் வரவு மேல் ஒப்பம் செய்து கொள்ள வேண்டியது அவசியம்) such separate endorsements by the defendant made on the suit sale agreement itself acknowledging such receipts of part payments of purchase price for sale alone would serve as the only acceptable evidence to prove any such payments by the plaintiff and receipt of the same by the defendant. No such significance and evidentiary value can be attached to the general, otiose, nugatory and defeasance recitals in the articles of agreement about such payment of Rs.5,50,000/- on 24.06.2009 by the plaintiff linked with the simultaneous delivery of possession of the suit properties by the defendant to the plaintiff on the same 24.06.2009 coupled with a further covenant that from 24.06.2009 the possession and income of the suit properties would be the onus encumbered with the plaintiff and not recoverable or liable to be returnable till all the part payments that bear endorsements on the said suit agreement itself are refunded fully but without any liability to pay interest to the plaintiff by the defendant in case if the plaintiff defaults in paying the entire Rs.12,26,250/-to the defendant within the period of time of 24.12.2009. But the unassailable facts are that there is no such particular endorsements on the suit sale agreement evidencing payment of Rs.5,50,000/-by the plaintiff on 24.06.2009 and the plaintiff has now himself in his plaint admitted and conceded in the last sentence in sub para 6 of para III in page 5 of the plaint to the effect that it was mistakenly stated in the plaintiff's lawyer notice dated 19.12.2009 that the plaintiff was in possession of the suit properties and in para VII(1) of the plaint praying direction by this court to the defendant to hand over possession of the suit

properties even while in plaintiff's plaint para III it is amply made clear that the possession of the suit properties are with one third party to the suit S.Ramu of Irumbuthalai village who is now residing Saliamangalam village. The quid pro quo of delivery of possession of suit properties in exchange to the alleged payment of Rs.5,50,000/- both on 24.06.2009 and the creation of an equitable lien to retain possession and income therefrom the suit properties till any money that was already paid till 23.12.2009 are refunded without interest are sought to be visualized by the general recitals of the suit sale agreement pales into a mirage, unalloyed falsehoods and utter untruths in view of the facts such as that there is no particular endorsements of receipt by the defendant of any money alleged to have been paid prior to 24.12.2009 on the suit sale agreement and in view of the admitted fact by the plaintiff himself that at no time possession of the suit properties was ever handed over by the defendant to the plaintiff that goes to the root of the alleged payment of Rs.5,50,000/- on 24.06.2009 itself and render them as a total blatant obvious lie and falsehood and which renders the whole suit transactions as a sham, nominal, nugatory, otiose and a bogus false document vitiated by frauds of misrepresentation and suppression of the above said vital and materials facts. The above facts dis-entitle the plaintiff to a decree for even his alternative remedy prayed in his plaint para VI for recovery of Rs.5,50,000/-with interest at 18% p.a interest since the fact remains that he has no acceptable evidence to prove that he had paid Rs.5,50,000/- on 24.06.2009 as falsely alleged in his plaint in view of what is delineated above.

5) The continued silence without a murmur and mute spectating even without a replication to the telegraphic reply on 22.12.2009 sent by the defendant to the lawyer notice sent by the plaintiff on 19.12.2009 sent by the defendant to the lawyer notice sent by the plaintiff on 19.12.2009 till the institution of this frivolous and vexatious suit on 29.08.2011 accompanied with the failure and default of payment of the alleged sale consideration of Rs.12,26,250/- in its entirety by the plaintiff within 23.12.2009 in law had deprived any eligibility of the plaintiff to the discretionary relief by way of a suit for specific performance of contract for sale moreso when it was not even the case of the plaintiff that time was not the essence

of the alleged suit sale agreement contract that expired with 23.12.2009 itself and got automatically canceled and had become invalid and unenforceable any longer after the time for completion of payment of the entire alleged sale consideration of Rs.12,26,250 had long expired on 23.12.2009 for want of such payment of total sale consideration within 23.12.2009 and since such time was the essence of contract even as according to the agreement to sell dt.24.06.2009 relied on by the plaintiff.

6) The telegraphic reply sent by the defendant on 22.12.2009 the plaintiff had not sent a replication or any reply lawyer notice other than his presenting plaint the contents of which were invented and filed by the plaintiff merely as a clandestine ruse to make an undue illegal enrichment under a truthless suit sale agreement. The defendant in his telegraphic reply calls the amount of Rs.5,50,000/- as the rounded figure of principal plus the exorbitant interest of a loan transaction between him and the plaintiff and hence the entire sale agreement is void and charging of such exorbitant interest is prohibited as per Secs 3 and 12 of the Tamilnadu Prohibition of Charging Exorbitant Interests Act, read with Sec. 10-A of the Tamilnadu Money Lenders Act and asked the then counsel to instruct the plaintiff accordingly to desist from harping on such void sale agreement.

7) After receiving the truth revealing telegraphic reply of the defendant dated 22.12.2009 to the lawyer notice dt.19.12.2009 of the plaintiff's then counsel, the plaintiff for nearly 1 year 8 months and 7 days did not raise his little finger against the factual contents and legal consequences of that telegraphic reply of the defendant which in effect rescinded the alleged suit agreement and whose performance is refused by the defendant by calling the suit sale agreement as an unenforceable void contract in view of the legal effect of sections 3 and 12 of the Tamilnadu Prohibition & Charging Exorbitant Interests Act and Sec.10-A of Tamilnadu Money Lenders Act, and which remains uncontroverted even by the plaint pleadings and in view of the obvious fact that no amount and muchless Rs.5,50,000/- was ever actually paid by the plaintiff to the defendant on 24.06.2009 by way of earnest money, and therefore now the plaintiff by the principles of estoppel and principles of right and good conscience and by the provisions of law in

Tamilnadu as above stated is precluded from claiming or recovering the unpaid Rs.5,50,000/- and that too with 18% interest from the date of agreement of 24.06.2009 and with subsequent interest on that Rs.5,50,000/- in a clandestine and illegal manner under the garb of alternative remedy or otherwise since the amount of Rs.5,50,000/- could not by any stretch of imagination or under law any more be called as earnest money or other money paid on 24.06.2009 by the plaintiff to the defendant without any evidence or legal foundation to prove any such payment.

8) Since the defendant states that Rs.5,50,000/- mentioned in the suit sale agreement as the rounded figure of principal plus the exorbitant interest of a loan transaction between the plaintiff and the defendant whose such interest recovery is prohibited by Sec.3 and 12 of the Tamilnadu Prohibition of charging Exorbitant Interests Act read with Sec.10-A of the Tamilnadu Money Lenders Act , the same could not be construed by any stretch of imagination that the defendant had agreed or consented or ratified to its adjustment as the earnest money paid or made for the suit sale agreement. Therefore the plaintiff is not entitled for its recovery or refund as an earnest money paid or made by the plaintiff to the defendant as in the case of any true, enforceable and valid contract.

9) Thus for the fraudulent undue illegal enrichment of the plaintiff only and to serve as a Damocles' sword hanging over the head of the defendant only, the legally void suit sale agreement hit by sections 3 and 12 of the Tamilnadu Prohibition of Charging Exorbitant Interests Act, 2003 read conjointly and in consonance with Section 10-A of the Tamilnadu Money Lenders Act, 1957, the suit sale agreement was made to be executed by the defendant and the same was forced to be registered and all these were got done by the defendant by exerting on him undue influence, pressure, coercion and threat at the behest of the plaintiff with the help of anti social elements at his command with a view to extort huge, unbearable exorbitant daily interest from the defendant for a paltry principal amount of Rupees one lakh only on 11.10.2008 and for whose security the India Bank cheque of the account belonging to one M.Gunasekarean, son of Muniandi cum sister's son of the defendant was also secured that bare the cheque No.760003 and the whole trouble started when it was dated 11.12.2008 and later placed for

encashment by the plaintiff on 21.03.2009 issued by the Branch Manager, Indian Bank Yagappa Nagar. The said returned cheque and the cheque return memo were after cancellation of the signature of the drawer M.Gunasekaran were returned by the plaintiff to the defendant on 26.06.2009 after the registration of the suit sale agreement dated 24.06.2009. These vital and material facts were suppressed by the plaintiff while he claimed refund of Rs.5,50,000/- with interest @ Rs.18% p.a. in the above suit. For the fraudulent suppressing of these vital material facts lying obscure behind the suit sale agreement, the suit of the plaintiff has to be dismissed to prevent undue illegal enrichment of plaintiff and for his fraud of creating the false document of suit sale agreement dt.24.06.2009 for the sake of the above said loan transaction involving only Rupees one lakh merely.

10) Thus the unalloyed truth is that the defendant never agreed voluntarily with consensus ad-idem with the plaintiff for the creation of the fraudulent suit sale agreement deed and that not a single pie was received by him as true earnest money advance for any such alleged suit sale agreement.

11) The Sub-Register who had registered the said suit sale agreement did not enquire the defendant whether he is acting voluntarily without the influence on any external vitiating factors or as regards the veracity or truth of the suit sale agreement or as to whether the defendant had infact received the alleged first initial payment of Rs.5,50,000/- on that day of 24.06.2009 from the plaintiff in cash by virtue of his putting his signature on it or as to whether he had delivered possession of the suit properties as quid pro quo to the payment of the alleged earnest money of Rs.5,50,000/-. The affixing of the photos and signatures were merely mechanically sought to be done without any sort of enquiry at the time of or after the suit sale document was presented for its registration. So such a registration would not clothe any genuineness or sanctity to the said sale agreement now sought to be enforced for its specific performance.

12) The plaintiff seeking relief of this court and not the burden of this defendant to reveal the minute details of true goings on lying obscure behind the suit sale agreement by a separate lawyer notice in addition to the telegraphic reply by the defendant to the plaintiff's lawyer notice dated 19.12.2009.

13) The other allegations in the plaint sub paras 1 to 8 in para III and those in paras IV to VI were invented, frivolous alibis that needs no elaboration and are against weight of evidence and facts and are denied as false, incorrect, wrong and misleading misrepresentations made for the sake of convenience of the plaintiff in his futile effort to some how get the untenable remedies from this Court.

14) The plaint does not disclose any cause of action for the suit when the suit sale agreement even as per its own recitals got automatically canceled in view of expiry of time of 23.12.2009 which was the essence of the alleged suit contract since it is obvious transparent fact from the plaintiff itself that the plaintiff had failed to pay the full entire sale consideration of Rs.12,26,250/- within that time of 23.12.2009. The plaint does not disclose as to how he is now entitled to pay after 23.12.2009 Rs.6,76,250/- and as to how the defendant is liable to receive the same such amount even now.

15) As per the recitals of the suit sale agreement time was the essence of the contract as regards only the payment of full sale consideration in its entirety and in its completeness and even if the plaintiff had fulfilled or satisfied this condition within 23.12.2009 the execution and registration could be had even after 23.12.2009 within three years from 23.12.2009.

16) Even at the time of execution of the alleged suit sale agreement on 24.06.2009 itself the said S.Ramu had already usurped the possession of the suit lands and never kept it fallow thereafter in the last three faslis and had been raising crops and thus squatting in the suit lands as an illegal trespasser and squatteror. This fact itself was known to the plaintiff even on 24.06.2009 and therefore had not paid even a single pie of Rs.5,50,000/- either on 24.06.2009 or at any time prior or later thereto.

17) The plaintiff if he were truly interested in specific performance of contract along with possession he ought to have included the same illegal trespasser and squatterer Mr.S.Ramu also who is admittedly in possession of the suit lands as a necessary party without whose presence before this Hon'ble Court possession could not be truly and bindingly physically recovered and handed over to the plaintiff. For the non impleadment of such a necessary party ie S.Ramu the

suit has to be dismissed in law. As the suit was not filed for recovery of possession from the said S.Ramu, the present suit is not maintainable in law. The suit in fact is a collusive suit of the plaintiff and the trespasser squatterer S.Ramu to some how prevent and frustrate the defendant from recovering possession from the said S.Ramu.

18) As there was no true sale agreement between the parties to the suit only, the plaint divulges a wrong price of Rs.600/- per kulee which would not for 16 mahs and 35 kulis amount to Rs.12,26,250/- but only to Rs.9,81,000/-. That the defendant demanded Rs.200/- extra per kulee is total falsehood.

19) Since the defendant has not received a single pie under suit sale agreement so far he need not repay the same to the plaintiff. Since the suit sale agreement itself is false, sham and nominal one, the defendant did not gave the originals of his title deeds to the plaintiff and out of pressure threat and coercion he were made to part with at least a xerox of it.

20) Amounts refundable to under the suit sale agreement to the plaintiff does not carry interest, possession also was not given in fact and original title deeds were also not given which all point to only one fact. That the suit sale agreement transaction itself was only a false, sham, nominal and devoid of any payment of any earnest money but only a Damocles' sword that can be used to instill fear in the mind of the defendant and to make him pay exorbitant interest to a paltry one lakh principal. There are several coconut trees in the suit lands. The description of suit property is also incorrect and wrong because the plaintiff had never visited or were in its possession at any time.

21) There is no merits or bonafides in the suit and is a frivolous and vexatious suit. The various terms and conditions in the suit sale agreement are wrongly interpreted to suit the convenience of the plaintiff to which this defendant does not subscribe. The suit is thus a frivolous and vexatious one. Since the suit is not valued for recovery of possession and court fee paid accordingly the suit is under valued and therefore the plaint is liable to be rejected under Order 7 Rule 11(b) CPC. Hence, the defendant prays for dismissal of the suit and without any grant of a alternative remedy in limini with exemplary costs.

O.S.No.37/2014

Case of the Plaintiff's Case in brief :-

22) The Suit properties are Nanja lands which are situated in Irumbuthalai Village in Papanasam Taluk. The Nanja lands are covered by R.S.No.404/1 and 405. The defendant is the absolute owner of the suit properties.

23) The 1st defendant has entered into an agreement of sale in respect of the Suit properties in favour of the plaintiff under a written agreement of sale dated 16.01.2009 for a sale consideration of Rs.1,80,000/-. The sale agreement has been executed both by the plaintiff and by the 1st defendant.

24) The Main terms and conditions of the sale agreement are as follows;-

A) The total sale consideration has been fixed under the above sale agreement is Rs.1,80,000/-

B) A sum of Rs.1,60,000/- has been paid by the plaintiff to the 1st defendant as an advance on 16.01.2009.

c) The time fixed for the due completion of the above sale transaction is three months from the date of sale agreement

D) The plaintiff has to pay the balance of sale consideration of Rs.20,000/- to the 1st defendant and to purchase the stamp papers and get the Sale Deed registered from the 1st defendant within the stipulated time.

E) The 1st defendant has to receive the balance of sale consideration of Rs.20,000/- from the plaintiff and to execute a Sale Deed in favour of the plaintiff or his men directed by him within the stipulated time.

25) The above sale agreement was duly executed between the plaintiff and the 1st defendant on 16.01.2009. The 1st defendant has also handed over the original sale deed dated 24.01.2002 to the plaintiff.

26) The plaintiff is always ready and willing to perform his part of the sale agreement and he approached the 1st defendant for several times with balance of sale consideration and conveyed his willingness. But the 1st defendant has been evading to receive the amount and to execute a sale deed in favour of the plaintiff. Then the plaintiff called the 1st defendant on 15.04.2009 through phone with the balance of sale consideration and requested the 1st defendant to receive the

balance of sale consideration and the execute a Sale Deed in his favour as he is waiting before the Sub registrar Office, Papanasam. But the 1st defendant refused to receive the balance of sale consideration and did not come to execute a Sale Deed in favour of the plaintiff without any reasons whatsoever. The plaintiff is always ready and willing to perform his part of the sale agreement. The 1st defendant has miserably failed to perform his part of the sale agreement. Even though the plaintiff is always ready and willing to perform his part of the sale agreement the 1st defendant has miserably failed to do so.

27) The Plaintiff issued notice through his counsel to the 1st defendant on 16.04.2009 requesting the 1st defendant to receive the balance of sale consideration and to execute a Sale Deed in favour of the plaintiff within two weeks. The 1st defendant received the notice on 17.04.2009. The 1st defendant sent a telegram with false contents on 18.04.2009.

28) The plaintiff is entitled to get a Sale Deed as per the sale agreement dated 16.01.2009 through process of law. The plaintiff is always ready and willing to perform his part of the sale agreement and even now he is ready and willing to perform his part of the sale agreement. But the 1st defendant refused to receive the balance of sale consideration and to execute a Sale Deed in favour of the plaintiff. Hence, the plaintiff has come forward with this suit for the relief of specific performance.

29) Meanwhile, the 1st defendant is making arrangements to sell the Suit properties to third party. He is negotiating to sell the Suit properties to third party on 16.01.2012. The plaintiff has come to know that the 1st defendant is making arrangements to sell the Suit properties to third party ignoring the sale agreement entered into with the plaintiff. Hence, the plaintiff has filed an injunction application against the 1st defendant restraining him from in anyway alienating, selling, encumbering or otherwise dealing with the Suit properties except to the plaintiff till the disposal of the suit.

30) The plaintiff has come forward with this suit for the relief of specific performance as the main relief. If this court finds fault with the plaintiff, the plaintiff is entitled to the relief of refund of advance amount with interest at 12% from the

date of payment, till the date of realization of the amount in full as an alternative relief. The plaintiff is entitled to claim interest as 12% to the amount paid to the 1st defendant. Hence, the plaintiff has come forward with this suit for the relief of specific performances as the main relief and refund of amount paid under the suit sale agreement with interest as an alternative relief.

31) The defendants 2 to 4 are added as formal parties to this proceeding. No relief is sought for as against them. The 1st defendant is making arrangements to interfere with the plaintiff peaceful possession and enjoyment of the suit properties. Hence, there is no time to issue notice under Sec 80 of C.P.C. to the defendants 2 to 4. Because of urgency, the suit is presented before this Court without issuance of the notice under Sec. 80 of C.P.C. Hence, the plaintiff has filed a separate petition before this Court to dispense with the issuance of notice under Sec.80(2) of C.P.C.

Case of the 1st Defendant's case in brief :-

32) This defendant denies all the allegations of the plaint as false, frivolous and vexatious. This defendant does not admit any of the averments of the plaint except those that are specifically admitted herein. The suit is not maintainable either in law or on facts and is liable to be dismissed in leminie.

33) The averments of para III of the plaint regarding the title of this defendant are correct. The averments of para IV of the plaint are not correct and this defendant strongly denies the same as false. This defendant has no intention to alienate the suit properties at any point of time to anybody in particular to the plaintiff herein. The plaintiff is a unknown person to the defendant. This defendant has no previous knowledge or acquaintance with the plaintiff. There is no sale agreement between the plaintiff and this defendant dated 16.01.2009 with reference to the suit properties. The question of fixing the sale consideration as Rs.1,80,000/- and payment of Rs.1,60,000/- as advance amount did not arise as there was no sale agreement. This defendant has not received any money from the plaintiff in particular Rs.1,60,000/- This defendant has not agreed to receive the sum of Rs.20,000/- to purchase the stamp papers and get the sale deed from this defendant within the stipulated time. This defendant has not handed over the

original sale deed dated 24.01.2002 to the plaintiff at any point of time.

34) The actual value of the suit properties are more than Rs.25,00,000/-. It is very pertinent to mention here that the value of the bore well erected in the suit properties is itself more than Rs.4,00,000/-. Hence the question of selling the suit properties for Rs.1,80,000/- did not arise and moreover it is unbelievable. All those contra allegations are not correct and created for case purpose.

35) The defendant submits the following real facts. The defendant is a known person of one Jai Sathish of Thanjavur. He is doing the money lending and real-estate business in Thanjavur. This defendant has money dealing with the above said Jai sathish. In that connection this defendant has borrowed money of Rs.1,00,000/- from the above said Jai Sathish around in the year of 2006 and repaid it with exorbitant interest. At that time the above said Jai Sathish has obtained Signatures of this defendant in various papers, unfilled blank cheques drawn on Canara Bank, Arulanandha Nagar Branch, stamp papers and forms in blank and the original title deed of the defendant relating to the suit properties as security.

36) The defendant has repaid the entire above said loan amount to the above said Jai Sathish. After repaying money the defendant has demanded the above said Jai Sathish to return back the above said documents. The above said Jai Sathish had been giving lame excuses that he has misplaced the same and he will return back the above said documents after he find out the same. Not satisfying with his irresponsible behavior, this defendant has been demanding the above said Jai Sathish to return the original title deed and other documents. Again the above said Jai Sathish has been promising to return the documents after he get the same from the bank authorities. But he failed to comply the same. At one point of time the above said Jai Sathish has demanded more money as interest. For which the defendant denied the same. Anticipating the legal action by the defendant, the above said Jai Sathish has created the suit sale agreement with the help of the plaintiff and filed the present suit with false averments with ulterior motive. The subsequent enquiry after the suit reveals that the plaintiff is a close associate of the above said Jai Sathish.

37) In the same manner the above said Jai Sathish has filed a complaint under section 138 Negotiable Instrument Act as against this defendant by misusing the above said cheque as if this defendant has borrowed money from one Banumathi. The above said case is pending before the Judicial Magistrate Court No.2, Thanjavur in S.T.C.1169/2009. The filing of the present suit is one more illegal attempt of the above said Jai Sathis to threaten this defendant.

38) The averments of para V of the plaint are not correct imaginary and created for case purpose. The plaintiff was not ready and willing to complete the alleged sale agreement. The plaintiff has to prove the existence of legally enforceable sale agreement and availability of sufficient funds to pay the sale consideration by documentary evidence beyond reasonable doubt. This defendant not even had seen the plaintiff at any point of time. Hence, the question of approaching this defendant through phone by the plaintiff does not arise. This defendant has not intended to sell the suit properties. All the contra allegations are not correct and created for case purpose.

39) The averments of para VI of the plaint are not correct. The plaintiff has issued the lawyer notice to this defendant with false averments. This defendant has sent the telegram on 18.04.2009 to the plaintiff. In that telegram this defendant requested the plaintiff to sent the copy of the alleged sale agreement dated 16.01.2009 to this defendant enabling this defendant to know the details and sent suitable reply to the above said lawyer notice. The plaintiff wantonly failed to comply this defendant's request.

40) The averments of para VII of the plaint are not correct. Since there was no sale agreement between the plaintiff and the defendant, the question of responsibility of the defendant for not completing the sale transaction does not arise. Mere perusal of the sale agreement will reveal the creation of the sale agreement.

41) The averments of para VII of the plaint are not correct. This defendant has no intention to sell the suit properties to the third parties. All the contra allegations are not correct and created for case purpose. The relief''s prayed in the injunction application is also not grantable. More over the suit properties are

subject matter in O.S.38/2011 First Additional District Judge cum P.C.R. Judge, Thanjavur filed by one P.Markandan, Son of Ponnaiya Chettiar, No.421, RMCAV, sundaram Complex, Kavaskara Street, East Gate, Thanjavur. This defendant has good defense in the above said O.S.38/2011 and he is contesting the same suitably.

42) The averments of para IX of the plaint are not correct. The plaintiff is not entitled for alternative relief of refund also as the defendant has not received any money from the plaintiff. In the same manner the plaintiff is also not entitled for any interest. The defendants 2 to 4 are unnecessary parties to the suit.

43) The plaintiff has not approached the court with clean hands. The case of the plaintiff is tainted with fraud, misrepresentation, forgery and illegality. The plaintiff has abused the process of law. Hence the 1st defendant prays for dismissal of the suit and with exemplary costs.

Case of the 2nd Defendant adopted by the 3rd and 4th defendant in brief :-

44) The defendant denies each and every one of the averments made in the plaint except those that are specifically admitted herein and put the plaintiffs to strict proof of the same.

45) The suit filed by the plaintiff is highly vexatious, frivolous and it is not maintainable under law and on facts and it is liable to be dismissed in limine.

46) The averments made in Para IV of the plaint are false besides untenable. The defendant is not aware of the transaction between the plaintiff and the 1st defendant. The plaintiff has unnecessarily impleaded the defendant as a party in the above suit and no relief could be sought for against the defendant. The defendant 2 to 4 are added as a formal parties and no relief is sought for against the defendants. Therefore the suit may be dismissed against the defendants 2 to 4. The plaintiff has filed the above suit without issuing the notice under Sec.80 CPC is not maintainable and the same is liable to be dismissed.

ISSUES:-

47) After considering both side pleadings this court has framed the following issues in O.S.No.38 of 2011

- 1) Whether the suit sale agreement is true and valid ?

- 2) Whether the plaintiff has been ready and willing to perform his part of contract ?
- 3) Whether the suit sale agreement was obtained by undue influence and coercion etc from the defendant by the plaintiff ?
- 4) Whether the agreement was obtained for the principal amount of Rs.1,00,000/- loan transaction dt.11.10.2008 ?
- 5) Whether the plaintiff is entitled to the relief of Specific performance of contract for sale ?
- 6) Whether the plaintiff is entitled to the alternative relief of refund of amount as claimed ?
- 7) To what relief the plaintiff is entitled to ?

Issues in O.S.37/2014

- 1) Whether the suit is not maintainable without issuing notice of the section 80 C.P.C.
- 2) Whether D1 executed Suit Sale agreement in favour of plaintiff on 16.01.2009?
- 3) Whether D1 is liable to execute sale deed in favour of the plaintiff?
- 4) Whether the plaintiff is entitled to Specific Performance relief as prayed for ?
- 5) Whether D1 is liable to handover possession of the suit property to the plaintiff ?
- 6) Whether plaintiff is entitled to the relief of Permanent Injunction ?
- 7) Whether the plaintiff is entitled to alternative relief ?
- 8) To what relief the plaintiff is entitled to?

48) The suit in O.S.No.37/2014 was originally filed by one S.Parthiban as against the defendant in O.S.No.38/2014 and others before Principal Subordinate Judge, Kumbkonam for the relief of specific performance of sale agreement dt.16.01.2009 in alternate seeking for refund of advance money, possession of suit

property, permanent injunction restraining the 1st defendant thereon from in any manner alienating or encumbering or otherwise dealing with suit property except with plaintiff, directing the 1st defendant to pay plaintiff a sum of Rs.2,18,705/- with subsequent interest at 12% per annum from the date of the suit till the date of realization and create charge over the suit properties as an alternative relief and for costs. The above suit was taken on file in O.S.No.159/2012 by the Principal Subordinate Judge, Kumbakonam and subsequently the above suit was transferred to this court to be tried along with this suit in O.S.No.38/2011 by the order of the Principal District Judge in Transfer O.P.No.78/2013 dt.19.12.2013. Later the above suit was re-numbered as O.S.No.37/2014 on the file of this court. After the receipt of the above suit, joint trial was ordered afresh on 23.07.2014 in view of joint memo filed by both parties. The plaintiff in O.S.No.38/2011 was examined as P.W.1 and Ex.P1 to Ex.P9, Ex.B1 and Ex.B2 were marked through him. The defendant in O.S.No.38/2011 was examined as D.W.1 and Ex.B3 to B5 were marked through him. The plaintiff in O.S.No.37/14 did not participate in any of the proceedings after the transfer of the suit.

49) It is curious to note that the issues involved in O.S.No.38/2011 and O.S.No.37/2014 are not interlinked with each other and does not have any bearing in the other suit except to avoid conflicting judgements. Hence, the above suits should have been tried simultaneously and not by way of joint trial. However, on perusal of records it is found that after the transfer of O.S.No.37/2014 to this court the plaintiff in O.S.No.37/2014 did not participate in any of the proceedings. Further, he did not let in any evidence on his side to substantiate his claim. Further, he did not choose to cross examine defendant in O.S.No.38/2011/1st defendant in O.S.No.37/2014 though he was given sufficient opportunities. Further, this court found that this suit is the handiwork of the 1st defendant and the reasons for arriving such conclusion is discussed in the later point of this judgement and hence the present suit is only abuse of process of law. In the result no evidence is available to adjudicate the claim of the plaintiff in O.S.No.37/2014 and hence the suit in O.S.No.37/2014 is hereby dismissed as the case of the plaintiff in O.S.No.37/14

stands not proved. However, this court directed the parties to bear their own costs.

50) Now this court proceeds to answer the issues involved in O.S.No.38/2011.

<u>Issue No. 1) Whether the suit sale agreement is true and valid ? 3) Whether suit sale agreement was obtained by undue influence and coercion etc from the defendant by the plaintiff ? 4) Whether the agreement was obtained for the principal amount of Rs.1,00,000/- loan transaction dt.11.10.2008 ?</u>

51) The issues 1,3 and 4 are interlinked with each other and hence they were taken together.

52) It is the case of the plaintiff that the suit schedule properties are owned by the defendant and the defendant entered into a registered sale agreement dt.24.06.2009 with the plaintiff and agreed to sell the suit properties for total sale consideration of Rs.12,26,250/- and the defendant had received Rs.5,50,000/- as advance. The time for performance of the above contract of sale agreement was fixed as 23.12.2009 and the possession was handed over to the plaintiff on the date of agreement. It is agreed by both parties that the time is the essence of the contract. After the sale agreement though the plaintiff was all along ready and willing to perform his part of contract. The defendant herein was evasive. Hence, the plaintiff caused a legal notice dt.19.12.2009 seeking for performance within the time fixed for performance of the contract. However the defendant did not come forward to execute the sale deed as agreed.

53) The defendant contended that the above sale agreement is a bogus, false, sham and nominal. The defendant never agreed to sell his properties and the plaintiff did not pay even a single pie to the defendant by way of sale consideration much less Rs.5,50,000/- in cash either on 24.06.2009 or at any time earlier or later on to. The defendant further contended that he never part with the possession of properties as claimed by the plaintiff and the case of the plaintiff is falsified by his own admission that the possession and enjoyment of the suit property is not with him but with one person by name Ramu. The lawyer notice issued by the plaintiff was suitably replied by the defendant by way of a telegraphic reply on 22.12.2009

and the defendant still stand by each and every word of his telegraphic reply. According to the defendant the amount of Rs.5 and a half lakhs mentioned as advance in the sale agreement is only the rounded figure of principal plus the exorbitant interest of a loan transaction between him and the plaintiff. The entire sale agreement is void as per Sections 3 and 12 of Tamil Nadu Prohibition of Charging exorbitant interest Act r/w Sec.10(a) of Tamil Nadu Money Lenders Act. The plaintiff did not make any reply to his reply notice but come up with the present suit after a period of 1 year and 8 months. From that it is clear that the suit sale agreement is an unenforceable void contract. Further it is the case of the defendant that the sale agreement was made to be executed by the defendant and was forced to be registered by exerting on him undue influence, pressure, coercion and threat at the behest of the plaintiff with the help of anti social elements at his command with a view to extort huge unbearable exorbitant daily interest from the defendant for the paltry principal sum of Rs.1,00,000/- borrowed on 11.10.2008. The defendant had issued a cheque bearing No.760003 from the account belonging to one Gunasekaran who is none other his own sister's son. The whole trouble started when it was dated 11.12.2008 and later placed for encashment by the plaintiff on 21.03.2009 and the same was returned unpaid. The said returned cheque and the cheque return memo were returned to the defendant by the plaintiff on 26.06.2009 after the registration of suit sale agreement dt.24.06.2009. Hence according to him the above sale agreement was obtained by coercion in order to secure the loan transaction he had on 11.10.2008 which is per se void in view of Sec. 3 and 12 of Tamil Nadu Prohibition of Charging exorbitant interest Act r/w Sec.10(a) of Tamil Nadu Money Lenders Act.

54) The above suit is for specific performance of contract for sale. In a suit for specific performance, when the execution of sale agreement is in dispute, the burden to prove that there exists a valid sale agreement between the plaintiff and the defendant is on the plaintiff. The plaintiff examined himself as PW1 and marked the sale agreement entered into between the plaintiff and the defendant on 24.06.2009 as Ex.A1. It is trite law that the intention of the parties to the contract is

to be gathered from the terms of the agreement itself and not beyond that. In Ex.A1, it is recited that the defendant herein was agreed to sell the properties mentioned in the schedule thereon to the plaintiff for the total Sale consideration of Rs.12,26,250/- and a sum of Rs.5,50,000/- was received towards advance. In view of Sec.92 of Indian Evidence Act, when the terms of any contract, grant or other deposition of property, or any matter required by law to be reduced to the form of the document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from, its terms. However, Sec.92 permits to prove any proof which would invalidate any document, or which would entitle any person to any decree or order relating there to; such as fraud intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law. It is pertinent to mention herein that the defendant did not deny the execution of Ex.A1 sale agreement. According to him, the above sale agreement was executed by him due to the pressure, undue influence, and coercion exerted on him by the plaintiff.

In A. Raja Versus J.K. Madhu, the Hon'ble High Court, Madras as reported in 2013 (1) MWN(Civil) 825 held as follows:

> '11. The learned counsel for the appellant herein has contended that the initial burden of proving the agreement was with the respondent / plaintiff and the Courts below have committed an error in shifting the burden on the appellant herein/defendant to prove his defence plea and that the same could be taken as the substantial question of law involved in the second appeal. This Court is not in a position to accept the above said contention of the learned counsel for the appellant as a plausible or tenable one. When the execution of the document is admitted by the appellant and he pleads a vitiating factor, namely coercion, to challenge the validity of the agreement, the burden to prove it solely rests on the appellant/defendant. As pointed out supra, excepting the ipse dixit of the appellant himself, there is no other evidence to prove the said

> vitiating factor. Not even a favourable answer was elicited from the witnesses examined on the side of the respondent herein/ plaintiff to support his case of coercion having been applied for getting the sale agreement executed. The procedure adopted by the courts below in casting the burden of proving the vitiating factor on the appellant/defendant cannot be found fault with and the contention raised by the learned counsel for the appellant projecting the same as a substantial question of law has got to be rejected.

From the above decision it is clear that when the vitiating factors like undue influence and coercion are pleaded, the person who pleads undue influence and coercion has to prove that the sale agreement was obtained in undue influence, coercion and by exerting pressure. The defendant in his proof affidavit deposed that the sale agreement was executed only due to undue influence coercion and pressure by the plaintiff. The counsel for the defendant argued that the plaintiff herein is the creditor and the defendant is the debtor and the creditor has active dominance over the debtor and hence the existence of undue influence can be inferred. Further, the counsel for the defendant contended that the plaintiff herein did not produce any document to show that he acted like a prudent buyer to buy the above property. The plaintiff not even applied for encumbrance certificate before entering into sale agreement and not satisfied himself with the title of the defendant which clearly proves that the sale agreement is nothing but an agreement in sham and was created in order to secure the loan. The defendant has produced Ex.B1 cheque dt.11.12.2008 and Ex.B2 return memo dt.21.03.2009 to show that there exists a loan transaction between the defendant and the plaintiff. Though the above cheque was issued by the sister's son of the Defendant it probablises the case of the defendant. The learned counsel for the defendant contended that, Ex.B1 and E.B2 are on the hands of the defendant which clearly shows that the case of the defendant that the sale agreement entered into only to cover the loan transaction. Further, the learned counsel for the defendant contended that immediately after the receipt of notice from the plaintiff, the defendant made a telegraphic reply in which he clearly mentioned that the amount mentioned in the sale agreement represents only the principal and exorbitant interests and the same is void in view of Ss.3 and 12 of the Tamil Nadu Prohibition of charging exorbitant Interest Act. Though, the plaintiff received the said telegraphic notice he did not choose to reply the same and waited nearly 1 year and 8 months to file this case which also clearly probablises the case of the defendant that the sale agreement is not intended to sell the properties mentioned in the sale agreement but to secure the loan transaction.

55) In the written statement the defendant contented that he borrowed a sum of Rs.1,00,000/- on 11.10.2008 and according to him he borrowed the said sum for daily kandu vatti. However, the defendant in his cross examination deposed that

> 'கிரய ஒப்பந்தம் போடுவதற்கு முன்பே பிரச்சனை இருந்தது. பிரச்சனை என்னவென்றால் எனக்கும் வாதிக்கும் கொடுக்கல் வாங்கலில் பிரச்சனை இருந்தது. நான் எதுவும் அவருக்கு பணம் கொடுக்கவில்லை. அவரிடமிருந்து நான் எவ்வளவு பணம் வாங்கினேன் என்பதற்கு என்னிடம் கணக்கு வழக்குகள் கிடையாது. வாய் மொழியாக கொடுத்து வாங்கிக்கொள்வோம். 2008-ல் ரூ.50,000/- கடன் வாங்கியிருந்தேன், அதற்கு கடன் உறுதி சீட்டோ காசோலையோ எழுதி கொடுக்கவில்லை. அதன் பிறகு நான் பணம் எதுவும் வாங்கவில்லை. ரூ.50,000/- கடன் வாங்கும்போது ஆறு மாதத்தில் திருப்பி தருவதாக பேசிக்கொண்டோம். வட்டி விகிதம் என்ன என்று எனக்கு தெரியாது. அது 10% மேல் . 2008 கடைசியில் வாதியின் கடையில் வைத்து வரவு செலவு கணக்கு பார்த்தோம். மொத்தம் ரூ.1,50,000/- நான் தரவேண்டியிருந்தது. நான் எனது அக்கா மகனை உடன் அழைத்து சென்று பேசினேன். கணக்கு பார்த்த அன்று காசோலை கொடுக்கப்பட்டுவிட்டதா? என்றால் கொடுக்கப்பட்டுவிட்டது. '

From the above extracts, it is found that in the evidence the defendant herein put together a new case which is not supported by his pleadings. In written statement he did not say that he borrowed only a sum of Rs.50.000/-. In the written statement he mentioned that on 11.10.2008 he borrowed a sum of Rs.1,00,000/-

which is contradicting his own evidence. Further, in the evidence the defendant stated that on the date of verifying the account a sum of Rs.1,50,000/- was due. While so, it was not made clear, as to why he has given a cheque for Rs.1,00,000/-. Further, it is the case of the defendant that he, in order to secure the above loan, gave his sister's son cheque bearing No.760003 drawn on Indian Bank. However, it was not made clear as to why the defendant has given the cheque of his sister's son towards security. It is not the case of the defendant that he has no bank account at all. However, the defendant did not choose to examine his sister's son before this court to show that his cheque was given for the security of the loan obtained by the defendant from the plaintiff.

56) Further, though the defendant in his evidence, claimed that he obtained the loan for daily Kandhu Vatti, in his cross examination admitted that he did not know the rate of interest and further stated that it is above 10%. If it is daily Kandhu Vatti he has to pay the interest on daily basis. However, the defendant did not say that he has paid interest on daily basis and not even a single document was filed to show that he has paid interests even for a day. Further, though the defendant claimed that he borrowed a sum of Rs.1,00,000/- on 11.01.2008, he did not give any explanation as to how it get accumulates into a sum of Rs.5,50,000/- within a span of 5 months. Further, the defendant did not file any worksheet to show that the sum of Rs.5,50,000/- mentioned in the sale agreement represents only the principal and the interests. Mere bald allegation that the said amount of Rs.5,50,000/- represents only the principal sum and exorbitant interests does not cloth the defendant from his liability.

57) Further, though the defendant in his written statement contended that the problem was started only after the return of the Cheque issued by the defendant in the name of his sister's son and the plaintiff returned the cheque after the execution of the Sale agreement, the fact is not even suggested to the plaintiff that the amount mentioned in the sale agreement represents only the principal of Rs.1,00,000/- plus the exorbitant interest.

58) Further, on perusal of Ex.A1 Sale agreement, it is found that it was agreed between the parties that the plaintiff has to pay the remaining sale

consideration of Rs.6,76,250/- on or before 23.12.2009 and has to get the sale deed executed in his favour in default the above sale agreement would lapse on 23.12.2009 and the plaintiff is entitled to get back the money advanced towards sale consideration till such date without interest. If the above sale agreement was entered into for the purpose of covering loan transaction, the money lender who is normally interested in getting interests for the sum advanced by him would not have agreed for the return of advance money without interest. From that it is clear that the above sale agreement was not entered into in order to secure the loan transaction.

59) From the above, it is clear that the defendant has failed to prove that there was a loan transaction between the plaintiff and the defendant and it is only an after thought the defendant raised such defence. Hence, invoking of Sections 3 and 12 of Tamil Nadu Prohibition of Charging exorbitant interest Act r/w Sec.10(a) of Tamil Nadu Money Lenders Act does not arise in this case. Since this court found that the defendant failed to prove the loan transaction between him and plaintiff, the relationship of creditor and debtor is not at all exists between the plaintiff and the defendant. Hence, the contention of the learned counsel for the defendant that the creditor has dominance over the debtor and the undue influence could be inferred in the above transactions has no legs to stand.

60) Further, though the agreement was said to have entered into on 24.06.2009 by threat and exerting pressure and coercion upon him, the defendant did not make any complaint and did not take any steps to set aside or cancel the said document till the notice was issued by the plaintiff. Even in Ex.A6 telegraphic notice, it was not mentioned that the sale agreement was entered into only as a result of threat, pressure and coercion. Only in the written statement for this 1st time the defendant took such a plea. The plaintiff has elicited that the defendant was working as Advocate Clerk and from that it is clear that he knows the intricacies of law than ordinary naive citizen. If he entered into Ex.A1 sale agreement by force, threat, pressure or undue influence, he could have very well rescinded the contract immediately after he came out from the influence of the plaintiff or he could have approached the police or court to set the law in motion. The defendant in the

witness box admitted that he did not take any such steps. From that it is clear that the above stand of the defendant is only an after thought and hence it cannot be said that the sale agreement was entered into only by exerting pressure, threat and coercion upon him.

61) Hence, this court is of the considered view that the defendant has failed to prove that the sale agreement dt.24.06.2009 was obtained by force, threat, pressure, coercion and by undue influence. In the above circumstances,this court is of the considered view that the sale agreement dt.24.06.2009 is a true and valid sale agreement. Thus this court answers the first issue in favour of the plaintiff and 3rd and 4th issues as against the defendant.

Issue No.2 :- Whether the plaintiff has been ready and willing to perform his part of contract ?

62) In issue No.1 this court comes to the conclusion that the sale agreement dt.24.06.2009 is true and valid. The above suit has been filed by the plaintiff seeking for specific performance of the sale agreement dt.24.06.2009.

63) According to the plaintiff, the vacant possession of the properties were handed over to the plaintiff on the date of the agreement and the suit property was all along lying vacant and now only it seems that the defendant has transplanted and making arrangements for cultivation and therefore the plaintiff had prayed for possession to him without any encumbrance. The plaintiff further submits that one Ramu of Irumbuthalai illegally occupied the suit properties by claiming that he has given a sum of Rs.1,50,000/- to the defendant and the defendant alleged to have directed him to be in possession on the suit properties. The plaintiffs thereafter took encumbrance certificate and found no registered document in favour of the said Ramu. When the plaintiff questioned the defendant about the illegal occupation by the said Ramu in the suit properties the defendant convinced the plaintiff that he will settle his amount and produce the nil encumbrance certificate to the plaintiff to make him proceed with the registration with the balance of sale consideration. The plaintiff was all along waiting for the

proper production of nil encumbrance certificate from the defendant and the defendant was evading all along. Finding the game of the defendant is up against the plaintiff the plaintiff on 19.12.2009 issued a lawyer notice to the defendant directing him to receive the balance sale consideration of Rs.6,76,250/- from the plaintiff and to execute sale deed and also demanded that the defendant has to issue reply notice on or before 23.12.2009 and to get himself ready for registration of the sale deed. The defendant had received the said lawyer notice on 21.12.2009 and on 22.12.2009 had issued a telegram stating that the amount of Rs.5,50,000/- is the principle amount plus the exorbitant interest of loan transaction and alleged that the entire sale agreement is void and to refuse to perform his part of contract by making himself ready for registration. The defendant with a view to avoid registration of sale deed by demanding more amount than the agreed amount had with malafide intention issued the telegram. In that lawyer notice the plaintiff had mistakenly stated that he is in possession of the suit properties on the hope and belief made by the defendant he has not given any document for the said Ramu to show his legal possession in the suit properties. Further, after the issue of notice the plaintiff had arranged mediators who are witness to the sale agreement came for registration and the defendant had told the plaintiff that he is arranging funds from 3rd parties to clear off the amount of Ramu and also promised to hand over possession of the suit property and requested the plaintiff to wait for 6 months and the plaintiff having shelled out already Rs.5,50,000/- by way of sale agreement, had decided to wait for 6 months and for the past 3 months, the plaintiff had made several oral demands to the defendant with balance of sale consideration and the defendant had further demanded Rs.800/- per kuzhi. The total extent of item No.1 to 4 of the suit properties comes to 16 Ma 35 Kuzhi and Rs.600/- per Kuzhi was the agreed amount which comes to Rs.12,26,250/- alone and now , the defendant is demanding Rs.200/- per Kuzhi more than the agreed amount and the plaintiff refused to pay the excess amount more than the amount agreed and mentioned in the registered sale agreement. The plaintiff made a final oral demand on 10.12.2010 along with mediators namely Selvam and Pari to the defendant to execute the sale deed by receiving the balance of sale consideration of

Rs.6,76,250/- and to hand over possession of the suit properties and also the title deeds for the same and the defendant refused to perform his part of contract and therefore, the plaintiff has filed the present suit for specific performance

64) The counsel for the plaintiff submitted that the time stipulated under the agreement for the performance of the contract is 6 months and within the said 6 months the plaintiff had issued lawyer notice expressing his ready and willingness to perform his part of obligation under the contract and directed the defendant to come forward for the registration of sale deed. However, the defendant evaded the execution of sale deed and hence within 3 years from the date of 1st refusal the present suit was filed and the suit is will within the time of limitation. The plaintiff is all along ready and willing to perform his part of contract and the defendant alone expecting more money refused to perform his part of obligation under the contract. The possession of the suit property were originally handed over to the plaintiff herein and later it was trespassed by one person by name Ramu and defendant is duty bound to hand over possession without any encumbrance as agreed in the sale agreement . Hence, he prays for decree for specific performance and possession.

65) The learned counsel for the defendant contended that the above suit is for specific performance. The specific performance is a statutory and discretionary right which cannot be claimed as matter of right and it is the duty of the plaintiff to prove his ready and willingness throughout the proceedings from the date of entering into contract to till this date. The learned counsel for the defendant relied on the decisions in Vasantha and others Vs. M. Senguttuvan (1997 MLJ 576), Indravanthi Vs. Kamala ((2003) 3 MLJ 106), Pushpa Bai Vs. Dr. Williams and others ((2001) 3 MLJ 52), Binny Limited, Madras Vs. M/s. V. Jagannathan & Co rep by it Managing Partner ((2003) 1 MLJ 501), Ranganatha Gounder Vs. Sahadeva Gounder and others ((2004)4 MLJ 112), Yesudass and others Vs. Mary Victor ((2006)2 MLJ651), G. Ramalingam Vs. T. Vijayarangam ((2007)1 MLJ 591) According to the counsel for the defendant the time for performance is fixed in the agreement is 6 months. Admittedly the plaintiff had issued notice only on 19.12.2009, 4 days earlier to the date fixed for performance. Further, even in the

lawyer notice it was mentioned that the plaintiff has been calling upon the defendant to receive the balance sale consideration and to get the sale deed executed by the defendant only for the past one month. From that it is clear that the plaintiff was not ready and willing to perform his part of obligation under the contract for at least 5 months from the date of entering in to the agreement. Further, though the plaintiff claimed in the notice that he was ready and willing to perform his part of obligation, the plaintiff did not make ready the stamp papers, the draft sale deed and balance sale consideration. From Ex.A1 sale agreement it is clear that nothing is due on the part of the defendant as he already handed over the possession. The plaintiff alone has obligation under the contract to get the sale deed executed by purchasing stamp papers, draft sale deed and to pay balance sale consideration. Nothing of this sort was done by the plaintiff which shows that the plaintiff is not ready and willing to perform his part of obligation under the contract during the period fixed for the performance. Immediately after the lawyer notice a telegraphic reply was given by the defendant refusing the performance. However, the plaintiff did not approach the court immediately and waited nearly one year and 8 months which shows that he was not ready and willing to perform his part of obligation under the contract. Further, even after filing of the suit he could have made deposit before the court to show his bonafide that he was all along ready and willing to perform his part of obligation under the contract. Hence the plaintiff failed to prove that he was all along ready and willing to perform his part of obligation under the contract. Hence the plaintiff is not entitled to seek specific performance of the sale agreement. Further, the learned counsel for the defendant contended that in the sale agreement it is mentioned that the possession is handed over to the plaintiff and the plaintiff was restrained to transfer his possession over the suit properties to any third party. The plaintiff in his lawyer notice admitted that he is in possession of the properties. However, in the plaint the plaintiff has come up with a new case that the possession of the suit property was taken by one person by name Ramu illegally and he was waited to get the encumbrance to be cleared by the defendant. Once possession is handed over to the plaintiff it is his duty to protect his possession and if he lost possession the defendant cannot be put to restore his possession as it is not the duty of the defendant. The counsel for the defendant relied on the decision in Garuda Chit and Trading Co. Private Limited, Madras and others Vs. Cormandel Indag Products P. Limited, Madras ((2003) 1 MLJ 707) to say the purchaser asking for particulars not provided in the terms of the agreement indicates the intention to delay the proceedings. Further, the plaintiff has not added the said Ramu as a party in the above proceedings. Further, the defendant has no reason to sell the suit properties less than the market value. The learned counsel for the defendant relied on the decision in Vallithai and others Vs. Arulraj ((2007) 5 MLJ 222) From that, it is clear that the plaintiff did not come up before the court with clean hands. The specific performance is being a discretionary relief this court need not exercise its discretion in a person who has not come up before the court with clean hands. Further, as the plaintiff has claimed exorbitant interests on the loan amount and has not advanced any money to the defendant much less Rs.5,50,000/-, the plaintiff is not entitled to alternative relief also. Hence, he prays for dismissal of the above suit.

66) The above suit is for specific performance of Ex.A1 Sale Agreement. As per Sec.16(c) of the Specific Relief Act, the person who seeks specific performance of a contract should plead and prove that he has always been ready and willing to perform the essential terms of the contract which are to be performed by him. The citations cited by the learned counsel for the defendant in Vasantha and others Vs. M. Senguttuvan (1997 MLJ 576), Indravanthi Vs. Kamala ((2003) 3 MLJ 106), Pushpa Bai Vs. Dr. Williams and others ((2001) 3 MLJ 52), Binny Limited, Madras Vs. M/s. V. Jagannathan & Co rep by it Managing Partner ((2003) 1 MLJ 501), Ranganatha Gounder Vs. Sahadeva Gounder and others ((2004)4 MLJ 112), Yesudass and others Vs. Mary Victor ((2006)2 MLJ651), G. Ramalingam Vs. T. Vijayarangam ((2007)1 MLJ 591) also indicate the same position.

67) In this case, the plaintiff in his plaint averred that he has been all along ready and willing to perform his part of obligation under the sale agreement. As stated supra, it is the duty of the plaintiff to prove that he has been all along ready and willing to perform his part of obligation under the contract.

68) On perusal of Ex.A1 Sale Agreement it is found that the time for performance is fixed as 6 months and it is agreed between the parties that the balance sale consideration of Rs.6,76,250/- to be paid to the defendant in one or several installments on or before 23.12.2009 and the said time is essence of the contract. It is an admitted case of either side that the time is essence of the contract.

69) The defendant in his written statement at para No.19 and 20 claimed that since the plaintiff has not paid the remaining sale consideration within the said period the contract lapsed on the date fixed for performance i.e on 23.12.2009. The plaintiff claimed that he was ready and willing to pay the balance sale consideration and asking the defendant to come and execute the sale deed on 23.12.2009 after receiving the balance sale consideration. The plaintiff caused legal notice dt.19.12.2009 which was marked as Ex.A5. On perusal of Ex.A5 Lawyer notice it is found that the plaintiff herein expressed his readiness and willingness to perform his part of obligation under Ex.A1 Sale Agreement and called upon the defendant to receive the balance sale consideration of Rs. 6,76,250/- from the plaintiff and to execute the sale deed in favour of the plaintiff. The receipt of Ex.A5 Lawyer Notice was not denied by the defendant. In fact the defendant had issued Ex.A6 Telegraphic Reply Notice refusing the performance on the ground that the sale agreement is a void one.

70) However, the defendant did not question the plaintiff's readiness and willingness in his Ex.A6 telegraphic reply notice. The defendant not even denied the averment made in the Lawyer's notice that the plaintiff was calling upon him to receive the balance sale consideration and to execute sale deed in his favour for the past one month. It is curious to note that though the defendant in his written statement was all along contending that the sale agreement is not a genuine one it was obtained by force, threaten and by exerting pressure and undue influence, he did not contend that he was all along ready and willing to perform his part of obligation under the contract and the plaintiff alone was not willing to perform his part of obligation. The defendant could have issued a detailed reply notice denying averments made in plaintiff's lawyers notice but he did not do so. Further, even in

his written statement the defendant did not specifically deny the fact that the plaintiff was calling upon him to receive the sale consideration and to execute sale deed in his favour. If the plaint averment is not specifically denied by the defendant it tantamount to admission in view of order 8 rule 5 CPC. From Ex.A6 telegraphic reply notice it is found that the defendant alone refused performance by contending that the sale agreement is a void one. From that it is clear that the defendant alone is in breach and the plaintiff has been all along ready and willing to perform his part of obligation under the contract within the time agreed between them in Ex.A1 Sale agreement. Hence, the defendant cannot be allowed to take advantages of his own wrong. From that it is clear that the plaintiff was all along ready and willing to perform his part of obligation under the contract within the period fixed for performance. Further , the present suit was filed within the period of limitation and it is settled law that the plaintiff need not jingle coins before this court to show that he is ready and willing to perform this part of obligation under the contract. Further, the plaintiff has applied for obtaining certified copies of the document of title relating to the suit property which were marked before this court as Ex.A2 to A4 and further the plaintiff herein has applied for encumbrance certificate in respect of suit properties to show no registered encumbrance was made in the suit properties after the registration of sale agreement which was marked as Ex.A7to A9. From that it is clear that the plaintiff has proved that he was all along ready and willing to perform his part of obligation under the contract.

71) Thus this court answers the above issue in favour of the plaintiff.

Issue No.5 :- Whether the plaintiff is entitled to the relief of Specific performance of contract for sale ? 6) Whether the plaintiff is entitled to the alternative relief of refund of amount as claimed ? and 7) To what relief the plaintiff is entitled to ?

72) In issue No.1, this court comes to the conclusion that the sale agreement dt.24.06.2009 is a true and valid one and in Issue No. 2 this court comes to the conclusion that the plaintiff has proved that he has been all along ready and willing to perform his part of obligation under the Ex.A1 Sale Agreement. As rightly contended by the learned counsel for the defendant, the decree of specific

performance is only a discretionary and cannot be claimed as a matter of right. Now let us examine whether the plaintiff is entitled to the decree of specific performance or not:

The Hon'ble Division Bench of the Hon'ble High Court Madras in R. Aravindhan Versus K.R.S. Janakiraman (A.K.A.) Johnny Shanmugam & Another as reported in CDJ 2015 MHC 5949 elucidated the principles to be followed while deciding the question of entitlement of decree of specific performance as follows:

> '72. Section 20(1) of the Specific Relief Act, stipulates that the jurisdiction of the Court to grant a decree for specific performance is discretionary. But the Section also prescribes the parameters for the exercise of the discretion. Section 20 of the Specific Relief Act, reads as follows:"
> 20. Discretion as to decreeing specific performance. (1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.
> (2) The following are cases in which the Court may properly exercise discretion not to decree specific performance (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage, over the defendant; or (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship on the plaintiff; or
> (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
> Explanation 1 Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of Clause (a) or

hardship within the meaning of Clause (b).
Explanation 2 The question whether the performance of a contract would involve hardship on the defendant within the meaning of Clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.
(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.
(4) The Court shall not refuse to any party specific performance of a contract, merely on the ground that the contract is not enforceable at the instance of the other party."

73. It is seen from subsection (1) of Section 20 that it makes three things very clear viz.,
(i) that the discretion given to the court is not arbitrary, but sound and reasonable;
(ii) that it is guided by judicial principles; and
(iii) that it is capable of correction by a Court of Appeal.

74. Without elaborating on (i) what is sound and reasonable exercise of discretion and (ii) what are judicial principles that should guide the exercise of discretion and which are capable of correction by a Court of Appeal, subsections (2), (3) and (4) of Section 20, lay down three indications. They are as follows:(i) Under subsection (2), the cases in which a Court may exercise the discretion not to decree specific performance are indicated.
(ii) Under subsection (3), the case in which the Court may exercise the discretion to grant specific performance, is indicated.
(iii) In subsection (4), a stray case where the Court shall not refuse specific performance, is indicated.
75. The cases in which the Court is entitled to exercise the discretion not to grant specific performance, as listed in subsection (2) of Section 20 are as follows:(I) Cases where (a) either the terms of the contract (b) or the conduct of the parties at the time of entering into the contract (c) or the other circumstances under which the contract was entered into, are such that the contract gives the plaintiff, an unfair advantage over the defendant.
(II) Cases where the performance of the contract would involve some hardship on the defendant that he did not

> foresee, while the non performance would involve no such hardship on the plaintiff.
>
> (III) Cases where the defendant entered into the contract under circumstances, which though not rendering the contract voidable, makes it inequitable to enforce the specific performance.
> 76. The test of "unfair advantage" prescribed under Clause (a) of subsection (2) and the test of "hardship" prescribed under Clause (b) of subsection (2), are qualified by the two Explanations under subsection (2). By virtue of Explanations 1 and 2 (i) The mere inadequacy of consideration would not constitute an unfair advantage or hardship. (ii) The mere fact that the contract is onerous to the defendant would not constitute an unfair advantage or hardship. (iii) The mere fact that the contract is improvident in its nature would not constitute an unfair advantage or hardship. (iv) The question whether the performance of the contract would involve hardship on the defendant, is to be determined only with reference to the circumstances existing at the time of the contract, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract.

Having the above principles in its mind, this court proceeds to answer Issue No.5. In issue No.2 this court comes to the conclusion that the plaintiff was all along ready and willing to perform his part of obligation under the contract and the defendant alone was evading the contract by claiming that the sale agreement is void and hence the defendant cannot be allowed to take advantages of his own wrong. Further, in issue No.1 this court found that the sale agreement is a true and valid one and the defendant has wantonly refused the validity by citing the certain vitiating factors mentioned in the law texts such as threat, coercion, undue influence and pressure which he is not able to prove at all.

73) Apart from that it is to be noted that in Ex.A1 Sale Agreement it was mentioned that the possession was handed over to the plaintiff in view of the receipt of part sale consideration of amount of Rs.5,50,000/- . However, in the written statement at para 21 the defendant stated that even at the time of execution of the suit sale agreement on 24.06.2009 itself the said Ramu has already usurped the possession of the suit schedule property. The said factum is in the exclusive

knowledge of the defendant. The defendant in his cross examination has admitted that

> ' எனக்கு இரும்பு தலை ராமன் என்பவரை தெரியும். அவர்தான் தாவா கிரய ஒப்பந்தத்திற்கு உட்பட்ட நிலத்தை 2007லிருந்து சாகுபடி செய்து வருகிறார். அவருக்கு நான் குத்தகை சீட்டு எதுவும் எழுதி கொடுக்கவில்லை. அவருக்கும் எனக்கும் கொடுக்கல் வாங்கல் முறையில்தான் பழக்கம். ..... 2007லிருந்து 2015வரை மேற்படி நிலம் மேற்சொன்ன ராமு சுவாதீனத்தில் உள்ளது என்பதை காண்பிப்பதற்கு நான் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்று சொன்னால் சரிதான். ஆனால் என்னிடம் அதற்கான ஆவணங்கள் உள்ளன.

From the above extracts, it is found that the defendant is well aware the possession of Ramu in the suit properties. Though the defendant claimed that he did not execute any lease in favour of the said Ramu, he admitted that he is in possession of the above land since 2007 to 2015. The defendant did not take any steps to recover the said possession from the said Ramu which clearly indicates that the said Ramu is in permissive possession of the above land. Admittedly the suit properties are vacant lands and in the vacant lands the possession cannot be seen physically. Under Sec.55(1) of the Transfer of Property Act , the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. The possession is one of the components of the title and the possession is not in the hands of the defendant he should have made the buyer aware of the same. However, the defendant herein without disclosing the same clandestinely entered into a sale agreement with the plaintiff and recited as if he delivered the possession to the plaintiff on the date of entering into the sale agreement. The above conduct of the defendant is to be taken note of.

74) Further, though in the sale agreement it is mentioned that the possession was given in favour of the plaintiff, from the above evidence it is clear that the plaintiff was given only a paper possession and not actual possession. It is contended by the defendant that the possession was never handed over to the plaintiff and the said Ramu is in illegal possession of the suit land. As observed

earlier, the defendant failed to take any steps until now to get the possession from the said Ramu indicates that the above contention is only a moonshine. Further, it is contended by the defendant that the said Ramu was not made as a party to the above suit and hence the above suit is made for nonjoinder of necessary party because without whom the decree for possession cannot be effectively executed. The above contention of the defendant is also rejected in view of Sec.55 of Transfer of Property Act. A duty is cast upon the seller to give, on being so required, the buyer, or such person as he directs such possession of the property has its nature admits u/s 55 (1) (f) of Transfer of Properties Act. Hence, the defendant being seller cannot abdicate his duty of delivering possession to the plaintiff on the execution of sale deed. Hence, the decision relied on by the learned counsel for the defendant in Garuda Chit and Trading Co. Private Limited, Madras and others Vs. Cormandel Indag Products P. Limited, Madras ((2003) 1 MLJ 707) to say the purchaser asking for particulars not provided in the terms of the agreement indicates the intention to delay the proceedings has no application to the fact of this case.

75) Further, when the plaintiff issued a lawyer notice calling upon him to receive balance sale consideration and to execute sale deed, the defendant has come up with a new plea in order to avoid the contract as if the sale agreement was void, as it was executed for the principle plus exorbitant interest of loan transaction. Further, on the file of written statement the defendant has come up with another set of plea that the sale agreement was obtained by coercion, pressure, undue influence and threat. Further, the defendant has set up one sale agreement and lodged a suit in O.S.No.37/2014 for specific performance through one person by name Parthiban and get the said suit to be transferred to this court by filing transfer O.P. before the Principle District Judge, Thanjavur to be tried along with this suit. However, the defendant did not take any steps to contest the above transfer suit. The defendant in his cross examination admitted as follows:-

> ' அ.வ.எண்.37/2014 வழக்கை பார்த்தீபன் என்பவர் ஏற்றதை ஆற்றுக பரிகாரம் கோரி என் மீது தொடுத்துள்ளார் என்றால் சரிதான். அந்த வழக்கில் இவ்வழக்கின் வாதி ஒரு தரப்பினர் இல்லை என்று சொன்னால் அது பற்றி எனக்கு தெரியாது. இந்த வாதிக்கு கிரய ஒப்பந்தம் எழுதி பதிந்து

கொடுத்த பிறகு ஏற்பட்ட கிரய ஒப்பந்தத்தை பொறுத்துதான் அந்த வழக்கு என்றால் அதுபற்றி எனக்கு தெரியாது. அந்த வழக்கின் வாதி பார்த்தீபனுடன் கூட்டு சேர்ந்து அந்த வழக்கின் வாதிக்கு ஏற்றதை ஆற்றுக பரிகாரம் கிடைக்கக்கூடாது என்பதற்காக ஒரு கிரய ஒப்பந்தத்தை ஏற்படுத்தி அந்த வழக்கை தாக்கல் செய்துள்ளேன் என்று சொன்னால் சரியல்ல. பார்த்தீபனுக்கு வழக்கறிஞர் ஏற்பாடு செய்ததும் நான்தான் என்றால் சரியல்ல. '

From the above extract it is clear that the plaintiff has suggested to the defendant that the defendant alone engineered the suit in O.S.No.37/2014 and though the defendant denied the said suggestion, it is obvious that the suit in O.S.No.37/2014 was not prosecuted before this court with full vigour by the plaintiff in the said case which an ordinary prudent man would not do especially when the other suit seeking for specific performance of the sale agreement including the property to which he claimed specific performance which clearly indicate that the above suit is engineered only by the defendant in order to defeat the present suit. Further, though the sale agreement in O.S.No. 37/14 was not marked before this court, this court has taken the judicial note of the fact that the above suit is pending before this court to be tried along with this suit and is being disposed of in this common judgement. Further, the sale agreement was filed in the above suit is dated 16.01.2009 which is 5 months earlier to the sale agreement in the suit. However, the defendant in the box feigned ignorance of the said fact. Further, on perusal of record it is found that the suit in O.S.No.37/2014 was filed before the Principle Sub Judge, Kumbakonam only on 17.09.2012 subsequent to the filing of the present suit. Further, on bare perusal of sale agreement filed in the above suit clearly probablises the case of the plaintiff in this case that the above sale agreement was created only to avoid performance in this suit. Considering the totality of circumstance it is found that the defendant herein by hook or crook wants to avoid the present contract without any justification. The person who seeks sequity must do equity. The conduct of the defendant would clearly suggest an inference that is not entitled to any equity from this court.

76) The Hon'ble Division Bench of the Hon'ble High Court Madras in R. Aravindhan Versus K.R.S. Janakiraman (A.K.A.) Johnny Shanmugam & Another as reported in CDJ 2015 MHC 5949 cited supra held as follows:

> 79. A careful look at the judgment of the Court below shows that the exercise of discretion by the trial Court in this case was not arbitrary, but was sound and reasonable. From paragraphs 77 to 80 of its judgment, the trial Court has gone into the question of exercise of discretionary jurisdiction. After finding that the plaintiffs were ready and willing to perform their part of the obligations within the period stipulated in the contract and after finding that the defendant terminated the contract even before the expiry of the period stipulated in the contract, without any valid reasons, the trial Court found that the defendant had had a change of mind only in the hope that there was an increase in the price of properties. Therefore, the trial Court found that to deny the discretionary relief of specific performance, would only put a seal of approval upon the conduct of the defendant. Hence, the Court below exercised the discretion to grant the relief of specific performance.

In view of the authoritative pronouncement cited supra for the foregoing reasons this court does not want to put a seal of approval to the conduct of the defendant who is changing his colours for the sake of this case and to avoid the performance of his part of obligation without any just and reasonable cause. Though the counsel for the defendant contended that the sale consideration is far below the market value, the same was not proved by the defendant and even assuming the sale consideration is lesser than the market value, in view of Explanation 1 to Section 20 of the Specific Relief Act, mere inadequacy in consideration does not constitute unfair advantage to the plaintiff. Hence, the decision relied on by the learned counsel for the defendant in Vallithai and others Vs. Arulraj ((2007) 5 MLJ 222) has no application to the facts of this case. Hence, this court is inclined to exercise its discretion vested on it and order the specific performance of Ex.A1 sale agreement in favour of the plaintiff.

77) Further the counsel for the defendant contended that in normally in all sale agreement there would be a clause that in case of breach of vendor the buyer can approach the court seeking for specific performance. However, in Ex.A1 Sale agreement there is no such clause. From that the counsel for the defendant contended that the plaintiff is not entitled to specific performance of the above suit sale agreement. The relief of specific performance is statutory relief. Even in the absence of any express terms in the agreement the party that he can approach the court, one who aggrieved by the breach can very well approach the court seeking for relief of specific performance and hence the above contention of the counsel for the defendant is rejected as it has no water to hold.

78) Hence this court is of the considered view that the plaintiff herein is entitled to seek for performance of the sale agreement specifically in his favour. Since the relief of specific performance was given to the plaintiff the alternative relief need not to be granted. Further, since this court has given the relief of specific performance , no other relief need to be given to the plaintiff. From the evidences available on record it is found that the defendant alone has driven the plaintiff to the court by refusing specif performance of sale agreement without any just or reasonable cause and hence this court is of the considered view that the defendant has to pay costs to the plaintiff. This court answers the above issues accordingly.

79) In the result, this Suit in O.S.No.37/14 is dismissed without costs and the suit in O.S.No.38/11 is allowed as prayed for with cost. 2 Months Time is given for the performance of Ex.A1 Sale Agreement in O.S.No.38/11. The plaintiff in O.S.No.38/11 is directed to pay the remaining sale consideration of Rs.6,76,250/- to the defendant within two months and on receipt of balance sale consideration the defendant in O.S.No.38/11 is directed to execute the sale deed in favour of the plaintiff within the said two months and if the defendant is refused or failed to receive the balance sale consideration and to execute the sale deed the plaintiff is entitled to get the sale deed executed through court after depositing the balance sale consideration before this court immediately after the two months time.

Directly typed out by Steno-typist on dictation, corrected and pronounced by me in the open court on this the 01st day of December 2015.

I Additional District Judge(PCR),
Thanjavur.

O.S.No.38/2011

PLAINTIFF SIDE WITNESS:

PW1 Thiru Markandan

PLAINTIFF SIDE DOCUMENTS

Ex.A1	24.06.2009	Original Sale Agreement
Ex.A2	02.12.2004	Certified copy of Sale deed
Ex.A3	11.02.2002	Certified copy of Sale deed
Ex.A4	24.01.2002	Certified copy of Sale Deed
Ex.A5	19.12.2009	Copy of Lawyer Notice to Defendant
Ex.A6	22.12.2009	Reply Notice through Telegram
Ex.A7	18.05.2010	Encumbrance Certificate
Ex.A8	18.05.2010	Encumbrance Certificate
Ex.A9	16.12.2010	Encumbrance Certificate

DEFENDANT SIDE WITNESS:

DW1 Thiru Boominathan

DEFENDANT SIDE DOCUMENT :

Ex.B1	11.12.2008	Cheque to plaintiff
Ex.B2	21.03.2009	Reason for cheque returned by the Indian Bank, Yagappa Nagar, Thanjavur
Ex.B3	22.12.2009	Telegram Receipt
Ex.B4	22.12.2009	Xerox Copy of Telegram
Ex.B5	19.12.2009	Lawyer Notice to Defendant

O.S.No.37/2014 :

Plaintiff side witness and document : Nil

Defendant side Witness and Document: Nil

I Additional District Judge(PCR),
Thanjavur.

Draft / Fair Judgment
O.S.No.38/2011&
O.S.No.37/22014
Dt.01.12.2015

O.S.N0.38/2011&
O.S.No.37/2014

Dt.01.12.2015

In the result, this Suit in O.S.No.37/14 is dismissed without costs and the suit in O.S.No.38/11 is allowed as prayed for with cost. 2 Months Time is given for the performance of Ex.A1 Sale Agreement in O.S.No.38/11. The plaintiff in O.S.No.38/11 is directed to pay the remaining sale consideration of Rs.6,76,250/- to the defendant within two months and on receipt of balance sale consideration the defendant in O.S.No.38/11 is directed to execute the sale deed in favour of the plaintiff within the said two months and if the defendant is refused or failed to receive the balance sale consideration and to execute the sale deed the plaintiff is entitled to get the sale deed executed through court after depositing the balance sale consideration before this court immediately after the two months time.

I Additional District Judge(PCR),
Thanjavur.