

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
23.03.2026PRONOUNCED ON
.06.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 1114 of 2015

M/s. General Foundation
Rep By Its Partner S. Boopathi, No.53 T.Nagar,
Ramanathapuram, Coimbatore.

..Appellant(s)

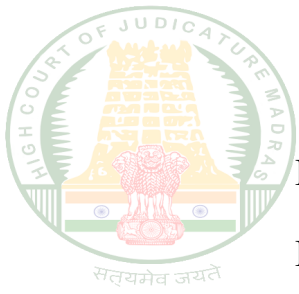
Vs

1. Subulakshmi Ammal
2. Malliga Devi
3. K.K. Shanmugam
4. T.V. Duraisamy

..Respondent(s)

PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed by the learned Additional District and Sessions Judge-IV, Coimbatore made in O.S.No.155 of 2011, dated 23.01.2012, and seeks to allow the present appeal and

1. To issue permanent injunction against the respondents and their men not to interfere the peaceful possession and enjoyment of the suit property.
2. To declare the Sale Deed in Doc.No.1688/2008 dated 02/04/2008 executed by the 2nd respondent in favour of 4th respondent is null and void.
3. To direct the respondent to specifically perform as per their agreement as prayed in the plaint in O.S.No.155 of 2011 by the appellant and thus render justice.



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AS No. 1114 of 2



For Appellant(s): Ms. Haritha
For Respondent(s): R1 – Died
RR2 to 4 - no appearance

JUDGMENT

The present Appeal has been filed challenging the order made in O.S.No.155 of 2011, dated 23.01.2012 on the file of Additional District Court-IV, Coimbatore.

2. The plaintiff's case, is that the plaintiff firm, namely M/s. General Foundations, represented by its partner Mr. S. Boopathy, is engaged in the business of real estate development and construction activities at Coimbatore from the year 1999 onwards along with one Mr. C. Chandrasekar. The plaintiff firm was carrying on construction and property development activities under the name and style of "General Foundations" having its office at Door No.53-E, T. Nagar, Ramanathapuram, Coimbatore.

3. According to the plaintiff, the suit property originally belonged to one Late Krishnasamy Gounder. During his lifetime, the said Krishnasamy Gounder had executed a registered settlement deed dated 25.04.1950 in favour of his minor son Rangasamy Gounder. Since Rangasamy Gounder was then a minor, the 1st defendant acted as guardian and next friend. Subsequently, after attaining majority, Rangasamy Gounder married one Shanthi and through the said



wedlock they had two children. Thereafter, Rangasamy Gounder died intestate on 17.02.1997.

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4. After the demise of Rangasamy Gounder, disputes arose among the legal heirs regarding succession to the properties. The wife and children of Rangasamy Gounder instituted O.S.No.753 of 1997 before the District Munsif Court, Coimbatore alleging that Rangasamy Gounder had executed a Will in their favour. Simultaneously, the 1st defendant instituted O.S.No.1065 of 1998 before the Subordinate Court, Coimbatore disputing the alleged Will said to have been executed by Rangasamy Gounder in favour of his wife and children. During pendency of the said proceedings, an amicable settlement was arrived at between the family members and a compromise petition was filed in I.A.No.1174 of 1999 in O.S.No.1065 of 1998. Pursuant thereto, a compromise decree dated 23.12.1999 came to be passed, under which the suit property was allotted to the 1st defendant.

5. The plaintiff further stated that during the year 2001, the 1st defendant intended to dispose of the suit property for discharging family debts and liabilities and approached the plaintiff firm for development and sale of the property measuring about 79 cents and 228 sq.ft. in S.F.No.106, Vadavalli Village, Coimbatore Registration District. According to the plaintiff, an oral agreement was entered into fixing the sale consideration at Rs.27,000/- per cent

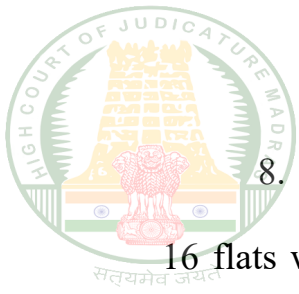


and possession of the property was handed over to the plaintiff for development purposes.

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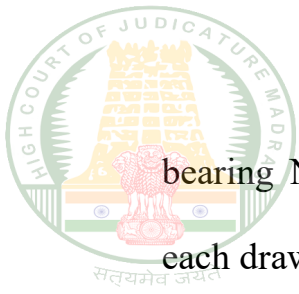
6. According to the plaintiff, though no written agreement was executed between the parties, the oral agreement was acted upon by both sides. Pursuant thereto, the plaintiff paid a sum of Rs.1,59,028/- towards common allotment charges, development charges and charges for installation of five electricity street lights through cheque bearing No.097114 dated 03.07.2001 drawn on Bank of India, Ramanathapuram Branch, Coimbatore, in favour of the Executive Officer, Vadavalli Town Panchayat. The plaintiff claimed that the said payment was made in furtherance of the oral agreement and with the consent and knowledge of all the defendants.

7. The further case of the plaintiff is that under the oral arrangement, the plaintiff was authorised to develop the property by forming residential apartment blocks identified as Block-I, Block-II and Block-III and to identify purchasers for the flats and undivided shares. It was agreed that the defendants would execute sale deeds in favour of purchasers introduced by the plaintiff, while the plaintiff would undertake construction activities. Pursuant thereto, the plaintiff developed the property and constructed flats in the said blocks.



8. According to the plaintiff, acting upon the oral arrangement, a total of 16 flats were constructed in Block-I and Block-III and all the flats in Block-I were sold to third-party purchasers through the plaintiff. During the course of the project, the 1st defendant executed settlement deeds in favour of her daughter, namely the 2nd defendant, conveying portions of the property. The plaintiff accepted the said arrangement and according to the plaintiff, the 2nd defendant also agreed to continue the earlier oral arrangement entered into between the 1st defendant and the plaintiff.

9. The plaintiff further stated that out of four flats in Block-III, the 2nd defendant executed sale deeds in respect of three flats in favour of purchasers introduced by the plaintiff, but failed to execute the sale deed in respect of the remaining unsold flat in favour of the plaintiff, though the same had allegedly been agreed to be allotted towards adjustment of development expenses and sale consideration already paid. According to the plaintiff, the defendants had received substantial amounts from the plaintiff towards land cost and development charges. The 2nd defendant received sums of Rs.1,00,000/-, Rs.1,12,000/-, Rs.1,00,000/- and Rs.1,00,000/- through cheques dated 20.03.2004, 15.04.2004 and 11.08.2004 drawn on Indian Overseas Bank, Red Fields Branch, Coimbatore. In addition thereto, the 3rd defendant received a sum of Rs.6,00,000/- on behalf of defendants 1 and 2 through demand drafts



bearing Nos.879407, 879408 and 879409 dated 02.04.2008 for Rs.2,00,000/- each drawn on Bank of Baroda, R.S.Puram Branch, Coimbatore.

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10. According to the plaintiff, purchasers were introduced by the plaintiff and consequently 12 sale deeds were executed by the 1st defendant and 3 sale deeds by the 2nd defendant in favour of third parties. The plaintiff further claimed that apart from receiving construction charges from purchasers, the plaintiff had paid a total sum of Rs.20,80,500/- towards land cost and development expenses, which exceeded the agreed value of the land measuring about 52 cents calculated at the rate of Rs.27,000/- per cent.

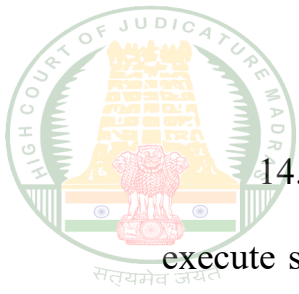
11. The further case of the plaintiff is that Flat No.G4 in Block-III had been agreed to be allotted to the plaintiff since the plaintiff had already paid the entire land cost and incurred construction expenditure in respect of the said flat. However, contrary to the oral understanding, the 2nd defendant executed a registered sale deed dated 02.04.2008 in favour of the 4th defendant in respect of the said unsold flat without the consent or knowledge of the plaintiff. The plaintiff also contended that substantial amounts had been invested in Block-II wherein foundation work had already been completed with the consent and approval of the defendants. According to the plaintiff, after completion of the foundation work, the plaintiff informed the defendants regarding the proposal to construct eight additional flats in Block-II similar to Block-I and Block-III and



the defendants consented for the same. Believing the assurances given by the defendants, the plaintiff made arrangements for continuation of construction activities.

12. According to the plaintiff, the defendants subsequently interfered with the plaintiff's possession and obstructed further construction in Block-II. It was alleged that the defendants, along with their men and agents, entered upon the property and threatened the plaintiff that construction activities would not be permitted to continue despite the plaintiff being in possession of the property. According to the plaintiff, the defendants attempted to deprive the plaintiff of the benefits arising out of the oral agreement after having received substantial monetary benefits from the plaintiff.

13. The plaintiff further challenged the sale deed dated 02.04.2008 executed by the 2nd defendant in favour of the 4th defendant in respect of the remaining unsold flat in Block-III as illegal, invalid and not binding upon the plaintiff on the ground that the same was contrary to the oral agreement between the parties. According to the plaintiff, the defendants had no right to alienate the said flat in favour of the 4th defendant since the plaintiff had acquired equitable and contractual rights over the same by virtue of the investments and payments made.



14. Stating that despite repeated demands the defendants failed to execute sale deeds in favour of the plaintiff in respect of the remaining unsold flat in Block-III and the vacant extent in Block-II and, on the contrary, attempted to interfere with the plaintiff's possession and enjoyment of the property, the plaintiff instituted the suit seeking permanent injunction restraining interference with possession, declaration that the sale deed dated 02.04.2008 executed in favour of the 4th defendant is null and void, specific performance directing execution of sale deed in respect of Block-II, and in the alternative recovery of damages quantified at Rs.10,00,000/- each towards the unsold flat in Block-III and Block-II together with costs.

15. The defence of the 1st defendant, is that the suit as framed is wholly not maintainable either in law or on facts. The 1st defendant denied the entire plaint averments and specifically contended that the alleged oral agreement pleaded by the plaintiff is vague, uncertain, unenforceable and devoid of essential particulars required to constitute a valid and concluded contract. According to the 1st defendant, the plaintiff has failed to disclose the material particulars of the alleged agreement.

16. The 1st defendant specifically denied the allegation that she intended to sell 79 cents and 228 sq.ft. of land at the rate of Rs.27,000/- per cent or that negotiations had been concluded between the parties. The allegation that



possession of the property had been handed over to the plaintiff pursuant to the alleged oral agreement was also specifically denied. According to the 1st defendant, the plaintiff's allegation that despite repeated demands no written agreement was executed is imaginary and invented solely for the purpose of creating a of contractual relationship.

17. The 1st defendant further contended that the alleged payment of Rs.1,59,028/- towards development charges, common allotment charges and street light charges through cheque dated 03.07.2001 cannot be construed as evidence of any agreement of sale. According to the 1st defendant, the plaintiff is attempting to falsely project the said payment as part-performance of a non-existent oral contract. It was further contended that no document evidencing the terms of the alleged arrangement had been produced and that the averments regarding such payment are vague.

18. The 1st defendant also denied the allegation that the plaintiff was authorised under the alleged oral agreement to construct flats in Block-I, Block-II and Block-III after entering into arrangements with purchasers. According to the 1st defendant, the averments relating to formation of blocks and construction of apartments are vague, uncertain and unsupported by documentary evidence. It was further contended that no approved plan or copy of the alleged plan had been furnished along with the plaint and therefore



the very nature of the plaintiff's claim remains ambiguous as to whether the relief relates to vacant land or constructed buildings.

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19. The 1st defendant further denied the allegation that the plaintiff had constructed 16 flats in Block-I and Block-III and sold the same to third parties. According to the 1st defendant, she herself had independently undertaken formation of the layout through a consulting Civil Engineer and licensed building surveyor by dividing the property into portions marked as A, B, C and D and making provision for constructions therein. Hence, the plaintiff's claim portraying himself as the developer of the entire project was denied as false and misleading.

20. The 1st defendant further contended that the settlement deeds executed in favour of the 2nd defendant were not part of any arrangement with the plaintiff, but were executed purely out of natural love and affection in favour of her daughter. According to the 1st defendant, the plaintiff has no right either to question the said settlement deeds or to derive any right thereunder.

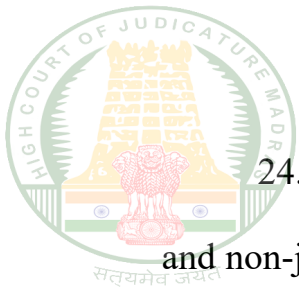
21. The allegation that the 2nd defendant had agreed to convey the fourth unsold flat in Block-III to the plaintiff and had intentionally delayed execution of the sale deed was categorically denied. According to the 1st defendant, no such agreement was ever entered into and there existed no



contractual relationship between the plaintiff and the 2nd defendant. It was further contended that the cheque transactions relied upon by the plaintiff under Exs.A4 to A7 are wholly unrelated to the alleged oral agreement and do not establish any liability on the part of the defendants.

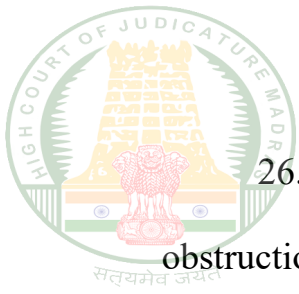
22. The 1st defendant also raised an objection regarding valuation of the suit and payment of court fee. According to the defendants, the market value of the suit property exceeded Rs.20,00,000/- and therefore the suit ought to have been valued under Section 42(a) of the Tamil Nadu Court Fees and Suits Valuation Act. It was contended that the plaintiff had deliberately undervalued the suit and improperly paid court fee only on the alternative relief claimed at Rs.10,00,000/-, contrary to Section 6(2) of the said Act.

23. The 1st defendant further contended that the suit is barred by limitation. According to the written statement, the transactions relied upon by the plaintiff pertain to the years 2001 to 2004, whereas the suit for specific performance and damages came to be instituted only in the year 2011. It was specifically contended that the plaint does not disclose either the date of the alleged oral agreement or the stipulated period for performance and therefore the suit is clearly barred under the provisions of the Limitation Act.



24. The 1st defendant further contended that the suit is bad for misjoinder and non-joinder of necessary parties. According to the written statement, the 3rd defendant had no right, title or interest in the suit property and therefore no relief could be claimed against him. It was further contended that the plaintiff failed to implead necessary parties connected with the alleged transactions and consequently the suit is liable to be dismissed for non-joinder of proper and necessary parties.

25. The 1st defendant further contended that the plaint does not contain the mandatory averments required under Section 16 of the Specific Relief Act with regard to the plaintiff's readiness and willingness to perform his part of the contract. According to the defendants, even on the plaintiff's own showing, the balance sale consideration remained unpaid and the plaintiff has neither pleaded nor established continuous readiness and willingness to pay the same and therefore the relief of specific performance is not maintainable. The 2nd defendant also denied receipt of the alleged demand drafts through defendants 1 and 2 bearing 879407, 879408 and 879409 dated 02.04.2008 for Rs. 2,00,000. The allegation that the defendants acted with mala fide intention and hurriedly sold the remaining flat in Block-III to the 4th defendant was specifically denied. According to the 1st defendant, false allegations have been introduced in the plaint with an ulterior motive to unlawfully grab the valuable property.



26. The 1st defendant further denied the allegations regarding obstruction, interference and unlawful prevention of construction activities in Block-II. According to the written statement, neither the defendants nor their men or agents committed any such acts and the allegations relating to intimidation and interference are false and baseless. The amount said to be paid by plaintiff a sum of Rs.20,80,500/- which comes to more than total land cost of 52 cents are Rs.27,000 /- per cent is contradict to the earlier version of sale agreement 79 cents and 228 sq.ft. It was therefore contended that there is absolutely no cause of action for the suit and that the plaintiff has suppressed material particulars while introducing false and inconsistent averments in the plaint.

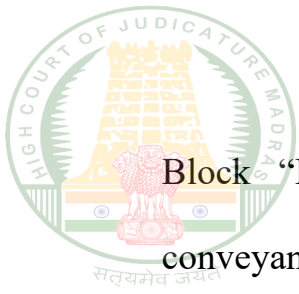
27. The 2nd defendant filed a separate written statement, which was adopted by the 3rd defendant, contending that the suit as framed is not maintainable either in law or on facts. The defendants adopted the written statement filed by the 1st defendant and reiterated that there was absolutely no agreement, understanding or concluded contract between the plaintiff and the 1st defendant in respect of the suit property. Consequently, according to the defendants, the settlement deed executed by the 1st defendant in favour of the 2nd defendant is perfectly valid, legal and binding and the property settled in favour of the 2nd defendant is free from all encumbrances and adverse claims allegedly set up by the plaintiff. The 2nd defendant specifically denied the



allegation that she had agreed to sell four flats to the plaintiff or that execution of the sale deed relating to the fourth flat had been intentionally delayed. The allegation that defendants 1 and 2 had received the entire sale consideration from the plaintiff pursuant to the alleged agreement was also denied.

28. According to the defendants, no amount had been received by them towards any alleged agreement of sale as claimed by the plaintiff. With regard to the cheque payments referred to under Exs.A4 to A7, the defendants contended that the said transactions related exclusively to independent loan transactions between the 2nd defendant and the plaintiff's partners, namely Bhoopathi and Chandrasekar, in connection with separate sale transactions and therefore the same cannot be construed as payments pursuant to any agreement between the plaintiff and defendants 1 and 2. Similarly, with regard to the payment covered under Ex.A8 in favour of the 3rd defendant, it was contended that the same represented an independent loan transaction between the 3rd defendant and the plaintiff's partners and had absolutely no connection with the alleged agreement of sale pleaded by the plaintiff. According to the defendants, the plaintiff has deliberately attempted to create a false linkage between unrelated transactions in order to support a non-existent agreement.

29. The defendants further denied the allegation that the plaintiff had paid either the land cost or the construction cost in respect of Flat No.BG4 in



Block “B” and consequently denied the plaintiff’s entitlement to seek conveyance of the said flat. However, the defendants admitted that the said flat had subsequently been sold to the 4th defendant under a registered sale deed dated 02.04.2008. According to the defendants, the sale in favour of the 4th defendant is bona fide, valid in law and supported by valuable consideration and therefore the plaintiff has no locus standi to question the said transaction.

30. The defendants further contended that even the description of the suit property contained in the plaint does not include the flat allegedly claimed by the plaintiff and therefore the relief sought for by the plaintiff is legally unsustainable. It was also contended that the suit had not been properly valued for the purpose of court fee and jurisdiction and that the plaint suffers from serious defects in valuation.

31. The defendants additionally contended that the plaint does not disclose any valid cause of action against them and that the alleged cause of action projected by the plaintiff is false and legally untenable. A further plea was raised that the suit is hopelessly barred by limitation and therefore liable to be dismissed.

32. On the basis of the rival pleadings and contentions advanced by both parties, the learned Trial Court framed the following issues for determination:



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1. Whether the plaintiff is entitled to permanent injunction as prayed for in the suit?
2. Whether the plaintiff is entitled for a declaration as prayed for?
3. Whether the plaintiff is entitled for specific performance as prayed for in the suit ?
4. Whether the suit is barred by limitation?
5. To what other reliefs are the parties entitled?

33. During the course of trial, on the side of the plaintiff, three witnesses were examined as P.Ws.1 to 3 and documentary evidence comprising Exs.A1 to A33 were marked. On the side of the defendants, three witnesses were examined as D.Ws.1 to 3. However, no documentary evidence was produced or marked on behalf of the defendants.

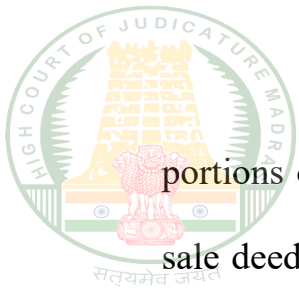
34. The learned Trial Court, while adjudicating Issue No.3 concerning the relief of specific performance, on appreciation of both the oral and documentary evidence adduced by the parties, the Court noted that the plaintiff is a partnership firm engaged in construction activities and that the partnership deed had been marked as Ex.A1. The Court further recorded that the 2nd and 3rd defendants are respectively the daughter and son-in-law of the 1st defendant



and that the 4th defendant had purchased the disputed flat from the 2nd defendant under Ex.A17. The plaintiff's specific case before the Trial Court was

that during the year 2001, the 1st defendant intended to alienate the suit property measuring 79 cents and 228 sq.ft., and approached the plaintiff for development of the property by constructing residential apartments and marketing the same. According to the plaintiff, an oral agreement was entered into whereby the plaintiff agreed to undertake development and construction activities and to arrange purchasers for the undivided shares of land, while the 1st defendant agreed to execute sale deeds in favour of such purchasers at the rate of Rs.27,000/- per cent. Pursuant to the said oral understanding, the plaintiff paid a sum of Rs.1,50,028/- towards common allotment charges, development charges and charges relating to electricity street lights to the Vadavalli Panchayat under Exs.A2 and A3. The Trial Court found that the evidence of D.W.1 and D.W.2 substantially corroborated the plaintiff's version regarding such payment. Though D.W.1 attempted to contend that the amount had later been repaid to the plaintiff, the Court observed that absolutely no documentary evidence had been produced to substantiate such plea of repayment.

35. The Trial Court further observed that, except the transaction covered under Ex.A2, the remaining transactions had admittedly been carried out by P.W.1 Boopathy in his individual capacity. The Court recorded the plaintiff's contention that under the oral agreement, the plaintiff was obliged to pay



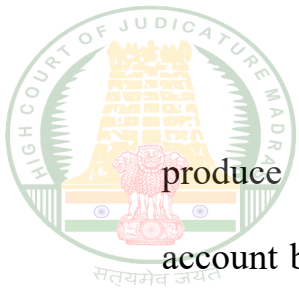
portions of the sale consideration to the defendants at the time of execution of sale deeds conveying undivided shares in favour of purchasers procured by the plaintiff. Thereafter, the plaintiff would construct flats in various blocks identified as Block I, Block II and Block III, as shown in the rough sketch marked under Ex.A4. The Trial Court placed considerable reliance upon the admitted fact that the 1st defendant had executed twelve sale deeds in favour of customers introduced by the plaintiff and that the plaintiff as well as D.W.3 had signed as witnesses in such transactions. Copies of the said sale deeds were marked as Exs.A18 to A29. The Court further found that the evidence of D.W.3 corroborated the plaintiff's version regarding execution of the said sale deeds and the existence of the development arrangement between the parties. The Trial Court further recorded that due to her advanced age, the 1st defendant subsequently executed five settlement deeds in favour of her daughter, namely the 2nd defendant, conveying portions of the suit property under Exs.A5 to A9. However, according to the Trial Court, even after the execution of the settlement deeds, the 2nd defendant accepted and continued the pre-existing arrangement entered into between the plaintiff and the 1st defendant. In continuation of the said arrangement, the 2nd defendant executed three sale deeds in favour of the plaintiff under Exs.A31 to A33 after receiving the full sale consideration.

36. The Trial Court also accepted the plaintiff's case that pursuant to the oral agreement, the plaintiff had constructed a total of sixteen flats in Block I,



Block II and Block III. Out of the said sixteen flats, fifteen flats were sold to purchasers introduced by the plaintiff on the basis of separate construction agreements executed between the plaintiff and such purchasers, one of which was marked as Ex.A30. The corresponding sale deeds relating to the said flats were marked as Exs.A18 to A29 and Exs.A31 to A33. The Court further observed that D.W.3, during the course of evidence, substantially corroborated the plaintiff's version regarding construction and sale of the flats. According to the plaintiff, the dispute arose only in respect of the remaining unsold flat situated in Block III together with vacant land measuring 17.55 cents in Block II. The plaintiff alleged that despite repeated requests, the 2nd defendant intentionally delayed execution of the sale deed in respect of the said property. The Trial Court took note of the plaintiff's further contention that the 2nd defendant demanded an additional amount of Rs.4,12,000/-, which was paid through four cheques marked as Exs.A10 to A13. It was further alleged that the 2nd defendant subsequently demanded another sum of Rs.6,00,000/- in favour of her husband, namely the 3rd defendant, which amount was paid by the plaintiff through three demand drafts marked as Exs.A14 to A16.

37. The Trial Court observed that D.W.3 denied that the said payments related to the sale transaction and contended instead that the amounts represented independent loan transactions arising from his finance business dealings with the plaintiff. However, the Court found that D.W.3 had failed to



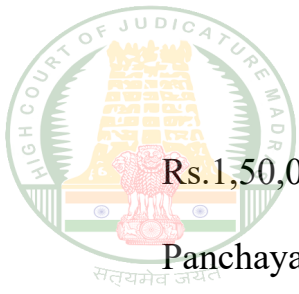
produce any supporting documentary evidence such as promissory notes, account books, income tax returns or other financial records to substantiate the alleged loan transactions. In the absence of such evidence, the Trial Court disbelieved the defence put forth by D.W.3 and rejected the plea that the payments represented independent financial transactions. The Trial Court further found that even though D.W.1 attempted during chief examination to deny the plaintiff's case, during cross-examination she admitted that Boopathy had approached her regarding purchase and development of the property and that she had agreed to the same. She further admitted that her son-in-law, namely the 3rd defendant, had been receiving amounts in connection with the transaction on her behalf, though she expressed ignorance regarding the aggregate amount received. D.W.2 admitted in her evidence that the plaintiff had paid consideration amounts in respect of each site sold and further acknowledged the existence of the oral agreement between the plaintiff and the 1st defendant. The Trial Court specifically relied upon the admissions made by D.W.2 during her deposition, wherein she admitted that after construction of the apartments, her mother had executed separate sale deeds and that she was aware of the oral arrangement entered into with the plaintiff.

38. The Trial Court also observed that D.W.2 had attempted to explain that the amounts covered under Exs.A10 to A16 represented delayed payments relating to the sale consideration under Exs.A31 to A33. However, the Court



found that no documentary evidence had been produced to support such explanation. On the contrary, the Trial Court concluded that the said amounts had in fact been paid towards execution of the sale deed relating to the vacant land measuring 17.55 cents in Block II and the undivided share in Block III. D.W.3 in his chief examination that the amount of Rs.6,00,000 received by 3rd defendant, were loan transaction and there is no relation between the property and transaction carried out. However, the Court found that no documentary evidence had been produced to support such explanation. It is clearly found by the Trial court that by the admission of 2nd defendant clearly shows that there is a oral agreement between 1st defendant and plaintiff based on that the slae deeds were executed.

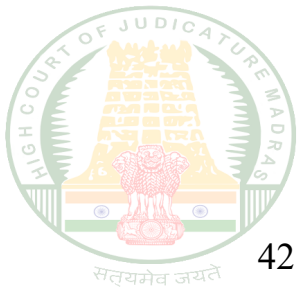
39. The Trial Court thereafter considered the legal objection raised by the defendants under Section 69(2) of the Indian Partnership Act, namely that the plaintiff being an unregistered partnership firm was barred from instituting the suit to enforce contractual rights against third parties. In support of the said contention, reliance was placed upon the decision reported in AIR 1977 SC 336. The Trial Court also referred to the judgment reported in 2009 (5) CTC 332 regarding consideration of legal pleas by the Court even in the absence of specific pleadings. However, The Trial Court held that the said legal objection was not fatal to the plaintiff's case. The Court observed that Ex.A1 had been marked without objection from the defendants and that the payment of



Rs.1,50,028/- under Exs.A2 and A3 had been made directly to the Vadavalli Panchayat in the name of the 1st defendant. The Trial Court further held that the remaining transactions had admittedly been undertaken by P.W.1 Boopathy in his individual capacity and therefore the statutory bar under Section 69(2) of the Indian Partnership Act would not apply to the facts of the present case.

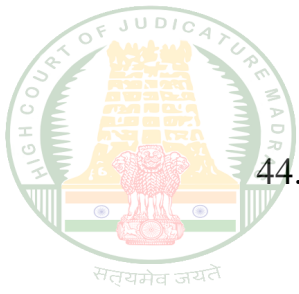
40. Upon cumulative appreciation of the oral and documentary evidence, the Trial Court ultimately concluded that the oral agreement pleaded by the plaintiff stood substantially established. The Court held that the plaintiff had proved payment of Rs.1,50,028/- towards development charges under Exs.A2 and A3; that the 1st defendant had admitted the oral arrangement and receipt of payments; and that after execution of the settlement deeds in favour of the 2nd defendant, the latter had accepted and acted upon the said arrangement by executing sale deeds in favour of the plaintiff and receiving further amounts towards sale consideration.

41. The Trial Court further held that defendants 2 and 3 had admittedly received amounts covered under Exs.A10 to A16 of Rs.10,12,000/- through cheques and demand drafts and that both defendants had admitted receipt of such amounts. Consequently, the Trial Court answered Issue No.3 in favour of the plaintiff by holding that the plaintiff had established entitlement in respect of the amounts paid and the transactions pleaded by him.



42. Trial court on considering Issue 4, D.W.2 deposed that one flat in Block 3 the entire cost of construction is not received by them , but received only for the site as per contract, However court finds that there is no materials to substantiate their claim. The Ex.A.17 clearly shows that property was sold along with the building which was constructed by the plaintiff. The court finds the defendants does not have any right to receive the cost of construction of the flat and Issue 2 is answered in favour of plaintiff, in repaying the cost of flat to plaintiff.

43. Trial court on considering Issue 1 and 4, Trial court observed that the defendants would not have attempt to obstructed the plaintiff from entering the site and evict even after receving the the entire amount for the vacant site in Block II. The plaintiff was in possession and enjoyment till the interruption of defendants, Hence the plaintiff entitled for injunction and specific relief as claimed by them. Fourth defendant has purchased the property from second defendant. Trial court concluded that suit is not barred by limitation. Issue 1 and 4 are answered in favour of Plaintiff , Hence no other relief granted in Issue 5. The Trial court concluded the suit is decreed for the relief of alternative sum of Rs.10,00,000 /- from the defendants with cost .



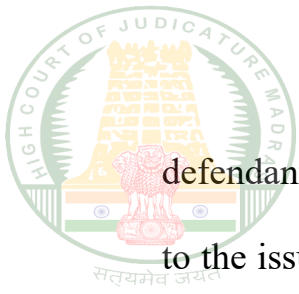
44. Heard Ms. Haritha, learned counsel for the appellant.

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45. As against the first respondent, the Appeal had been dismissed by orders of this Court on 12.07.2018 and the respondents 2 to 4 in spite of notice having been validly served upon them, had failed to either appear in person nor were being represented by a counsel on their behalf. They were called absent and are set *ex-parte*.

46. The learned counsel appearing for the appellant would submit that the appellant had instituted a suit seeking for a relief of permanent injunction as against the respondents from entering into the suit property namely one flat sold to the fourth respondent in Block-3 and the vacant site in Block-2, a declaration to declare that the sale deed executed by the second respondent in favour of the fourth respondent as null and void, specific performance for execution of a sale deed in respect of the Block-2 area or in the alternative to pay a sum of Rs.10,00,000/- towards the cost of the unsold flat (now sold to the fourth respondent) in lieu of the specific performance sought for.

47. She would submit that the Court below had framed issues including the issues whether the appellant was entitled for a permanent injunction, declaration in respect of the sale deed and specific performance apart from the issue of limitation and had concluded that with reference to Issue No.2 that the



defendants would have to pay the cost of the flat to the plaintiff and with regard to the issue of injunction, it had been concluded that the plaintiff is also entitled for an injunction. But, however in the issue of specific performance, the Court even though finding that the appellant was entitled to specific performance, entertained the claim for alternative relief and grant a decree of entitlement of Rs.10,00,000/- in lieu of specific performance. She would contend that even though an issue with regard to the declaration was decided by holding that the appellant would be entitled to the cost of construction of the flat which the appellant had quantified in an alternative prayer of sum of Rs.10,00,000/- had not granted the said relief. In such view of the matter, she would submit that the appellant would also be entitled for an injunction as found in issue no.1, but the Court also failed to grant the said relief. Hence, he seeks indulgence of this Court.

48. I have considered the submissions made by the learned counsel for the appellant and perused the materials available on record before this Court.

49. The following issues have arisen for consideration:-

1) Whether the Court was right only in granting a decree for Rs.10,00,000/- which was an alternative relief sought for?



2)Whether the appellant would be entitled for a further relief of Rs.10,00,000/- towards the cost of construction of the flat that had been sold to the fourth respondent?

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ISSUE (1)

49. The Court below while dealing with the relief to the entitlement of specific performance had come to a conclusion that the appellant is entitled for the said relief but had refused to exercise its discretionary relief but, had granted a relief for payment of Rs.10,00,000/- to be paid by the defendants as an alternative relief. The appellant had instituted a suit for the following reliefs:-

“(a) granting permanent injunction restraining the defendants and their mens and agents from in any way entering into the suit properties i.e., in one sold flat to the 4th defendnat Mr.T.V.Duraisamy flait in Block-III and vacant sit in Block-II where foundation work was done.

(b) to declare the sale deed No.1688/2008 dated 02.04.2008 executed by the 2nd defendant in favour of 4th defendant is null and void

(c) directing the defendants 1 to 3 to execute the sale deed of the entire area of block-II (17.55 cents) in favour of the plaintiff by a specific performance or alternatively to pay a sum of Rs.10,00,000/- towards the cost of unsold flat in Block-III and Rs.10,00,000/- in Block-II

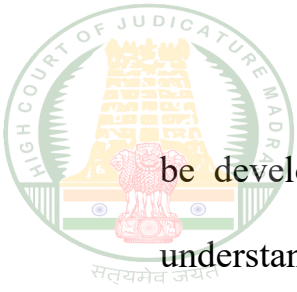


(d) pass such other and further suitable orders as it would be deemed fit and proper in the circumstances of the case and thus render justice.”

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50. The cause of action for the aforesaid reliefs is an oral agreement that had been entered between the parties for development of the suit scheduled property and the manner in which the sale had been taken place and the consideration to be distributed. Even though, the respondents have attempted to deny such agreement, the Court had given a categorical findings based upon the various pleadings and evidences both oral and documentary that there had been an agreement as claimed for by the appellant. The consensus ad idem between the appellants and the respondents 1 & 2 had been arrived at by the Court in respect of such oral agreement. In that context, the Court had held that the appellant was entitled for relief of specific performance. But, however, it is to be noted that an alternative relief of payment of Rs.10,00,000/- alone had been granted. An issue of limitation was framed and the Court below had concluded that the law of limitation is in favour of the appellant only based upon the sale deed that had been executed by the second respondent in favour of the fourth respondent.

51. As regards to the claim for specific performance of Block-2 land, it is to be noted that there has been no written agreement as to how the lands were to



be developed and it was only based upon an oral understanding. The oral understanding as recorded by the Court below only deals with regard to the construction of the property and the sale by the plaintiffs and sale by the land owners themselves. In that regard, this Court is of the view that the appellants claim for specific performance does not have any cause of action as there has been no agreement between themselves for the sale of the land particularly by defendants 1 & 2 to the appellants. In that regard, I do not find any infirmity or irregularity in the Trial Court granting the alternative relief of payment of Rs.10,00,000/-.

ISSUE (2):-

52. The appellant had sought for two reliefs with regard to the flat that was constructed in Block-3 and sold to the fourth respondent. He had sought for permanent injunction restraining them from entering the same property and for a declaration that the sale deed was null and void.

53. Here again, with regard to the issue of specific performance, this Court had found that there is no agreement between the parties for the sale of the land to the appellant, what has been agreed to was only a development agreement and sale of the property by the land owners themselves. This would only mean that the appellant would be entitled for the cost of the construction



alone and could not claim any share in the land that has been sold as the land was always vested with the vendors.

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54. In the context, the appellant lien would only mean to the cost of construction and in dealing with the issue no.2 with regard to the declaration, the Court had held that the second defendant who had sold the flat to the fourth defendant has only a right to receive the cost for the land and not for the cost of the construction of the flat and had specifically held that they would have to pay the cost of the flat to the plaintiff. The alternative relief that had been sought for by the appellant was also with regard to the cost towards the unsold flat in Block-3 which was actually sold to the fourth respondent. However, the Court had failed to grant a decree towards the cost of the said construction. In this regard, it will be useful to look at the details of valuation of the suit as made by the appellant. For better appreciation, the relevant portion is extracted hereunder:-

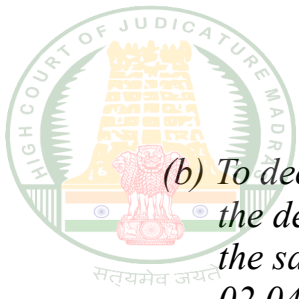
DETAILS OF VALUATION

(a) For permanent injunction restraining the defendants and their men and their men and their agents from in any way entering into the suit properties i.e. in one unsold flat in Block No.III and vacant site in Block-II where foundation work was done.

Rs.2,000/-

Court fees paid under section 27(c) of the Tamilnadu Court Fees Act is

Rs.151.00



(b) To declare the sale deed executed by the defendants is null and void, as per the sale deed doc.No.1688/2008 dated 02.04.2008

Rs.1,000/-

Court fees paid under Section 25(d) of the Tamilnadu Court Fees Act is

Rs.75.50

(c) For a specific performance of unsold flat in block-III and vacant site in block-II

Rs.10,00,000/-

Court fees paid under Section 42(a) of the Tamilnadu Court Fees Act

Rs.75,000.50

Rs.10,03,000/-

Rs.75,227.00

55. A perusal of the same would show that the appellant had valued the suit at Rs.10,03,000/-and had paid a Court fee of Rs.75,227/-. In the details of the valuation, the appellant had valued the relief of specific performance at Rs.10,00,000/- and had paid a sum of Rs.75,000.50/- as per Section 42(a) of the Tamil Nadu Court Fees Act.

56. Thereafter, for the alternative relief, the appellant had claimed the alternative relief was lower than the actual valuation of the suit and already a sum of Rs.75,000.50/- had been paid had indicated that the total Court fee would be only Rs.75,227/- payable on the total value of the suit. What unfortunately the appellant had failed to note was an alternative relief of



Rs.10,00,000/- towards the cost of the unsold flat had also been prayed which would relate to prayers (a) & (b) since the appellant had sought for a further sum of Rs.10,00,000/- in lieu of the specific performance under prayer (c).

Having failed to pay the Court fee, the appellant cannot expect the Court to adjudicate the same as this Court is also of the view that the appellant was not entitled for a declaration as prayed for since as found by the Court below, the agreement between the appellant and the respondents 1 & 2 was only for the development of the property by the appellant and the sale of the property is to be only made by the respondents 1 & 2.

57. For the aforesaid reasons, I do not find any merits in this Appeal and accordingly, the Appeal suit stands dismissed. However, there shall be no order as to costs.

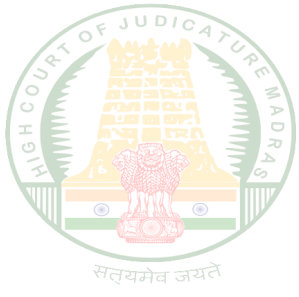
.06.2026

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

To

1.The Additional District and Session Court-IV,
Coimbatore.

2.The Section Officer,
VR Section,
Madras High Court, Madras.



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AS No. 1114 of 2



K.KUMARESH BABU, J.

GBA

A Pre-delivery order made in
AS No. 1114 of 2015

.06.2026