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S.A. No. 736 of 2024
and C.M.P. No.23977 of 2024

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T.V.THAMILSELVI, J.

Heard and considered submissions of learned counsel for appellants and perused the materials available on record.

2. The appellants, who are the defendants in the suit in O.S.No.123 of 2007 and challenging the reversal findings of the courts below, they have preferred this Second Appeal. Before the trial court, the respondent/plaintiff filed a suit for specific performance directing the defendants to execute the sale deed, but the same was not granted. In respect of alternative relief, the refund of advance was granted holding that the plaintiff has not proved his claim. Against which, the plaintiff preferred an appeal in A.S.No. 35 of 2017 before the II Addl. District Court at Vellore @ Ranipet and the same was reversed. Accordingly, the relief of specific performance was granted in his favour. Now challenging the said findings, the defendants preferred this Second Appeal.



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3. The learned counsel for appellants would submit that after the disposal of the suit, as per the direction, they deposited the advance amount before the court, but the first appellate court erroneously granted the relief ignoring the fact that the plaintiff has not proved his claim nor established his readiness and willingness. Considering that, this Second Appeal is admitted on the following substantial question of law:-

“(1) Is the respondent/plaintiff, who has not approached the court with clean hands, entitled to the Equitable and Discretionary relief of Specific Performance?

(2) Has not the plaintiff suppressed the existence of earlier registered agreement for sale dated 07.09.2004 and also his possession of the property for more than five or six years on lease, prior to the filing of the suit, for running a welding shop by his son Ganesan and whether the plaintiff, who is guilty of such suppression of facts is entitled to get the decree for specific performance, which is an equitable remedy?

4. Issue notice to the respondent through court returnable by



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05.12.2024. Private notice is also permitted.

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5. On considering the fact that the case is of the year of 2014 and the appellants/defendants are having valid defence to prove their case and if the decree is executed, their valuable right to defend their case will be defeated, this Court is inclined to stay the operation of judgment and decree passed in A.S.No.35 of 2017 on the file of II Addl. District Court, Vellore till 05.12.2024.

6. Post the matter on 05.12.2024.

23.10.2024

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N.B. : Issue order copy today

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