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S.A.No.660 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2025

Coram:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.660 of 2015

and

M.P.No.1 of 2015

G.Ezhumalai

.. Appellant

Vs.

R.Angalan

.. Respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 17.03.2015 made in A.S.No.26 of 2014 on the file of the Principal District Court, Puducherry, modifying the judgment and decree dated 22.08.2014 made in O.S.No.165 of 2009 on the file of the Principal Subordinate Court, Puducherry.

For appellant : M/s.T.M.Naveen

For respondent: Mr.R.Thiagarajan

JUDGMENT

This Second Appeal is preferred against the judgment and decree passed by the first appellate Court in A.S.No.26 of 2014 on the file of the Principal District Court, Puducherry, dated 17.03.2015, wherein the appellant herein has preferred



S.A.No.660 of 2015

the said First Appeal in A.S.No.26 of 2014 as against the judgment and decree passed by the trial Court in O.S.No.165 of 2009, dated 22.08.2014 on the file of the Principal Subordinate Court, Puducherry.

2. The respondent herein being the plaintiff, has filed the said suit in O.S.No.165 of 2009 for specific performance of the contract and the same was decreed, as against which, First Appeal in A.S.No.26 of 2014 was filed by the defendant and the said A.S. was partly allowed by the first appellate Court and aggrieved by the judgment and decree of the first appellate Court, this Second Appeal is filed by the defendant.

3. The case of the plaintiff before the trial Court is as follows:

Originally, the suit properties belonged to the defendant's father and he is entitled to the suit properties through sale deed, dated 14.11.1977. The defendant offered to sell the properties to the plaintiff and they have also entered into an agreement of sale for Rs.2 lakhs. The said sale agreement was registered on 02.11.2007. Further, on 31.10.2007, the defendant received a sum of Rs.1.09 lakhs from the plaintiff towards part of sale consideration. The time fixed was 25 months and the remaining amount has to be paid within 25 months. The plaintiff was always ready and willing to perform his part of contract, but the defendant was evading to perform his part of the contract by executing the sale

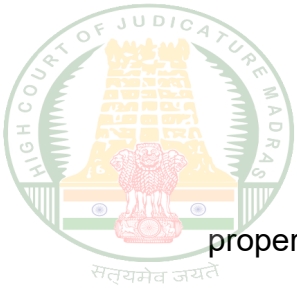


S.A.No.660 of 2015

deed after receipt of the balance sale consideration. Therefore, the plaintiff has filed the suit for specific performance by directing the defendant to execute the sale deed as agreed, after receipt of the remaining balance amount.

4. The defendant has filed written statement, denying the plaintiff's averments. According to the defendant, he has admitted the ownership of the properties and the properties were purchased by the defendant's father, namely Gangadharan, who died on 10.03.1992 and the said Gangadharan had one daughter and son, and the defendant and the daughter of Gangadharan are also having share over the properties. The suit properties are joint family properties of the defendant and his sister. The defendant is employed in Canara Bank and so, he leased out the lands in question to one Anjalai, wife of Balasubramanian, who is working as Conductor in a bus. The said Anjalai is none other than the sister of Angalan (plaintiff).

4.1. While so, the sister of the defendant, namely Poorani (elder sister of Ezhumalai) issued notice dated 23.10.2007, claiming half share over the properties. The defendant also issued reply dated 26.10.2007. While that being so, the plaintiff / Angalan persuaded and influenced the defendant to create an agreement of sale in his favour with regard to the joint family properties, so as to prevent the sister of the defendant from claiming any share over the family



S.A.No.660 of 2015

properties. Believing the said words of the said Angalan and his sister Anjalai and Balasubramanian, the defendant had executed an agreement of sale on 31.10.2007 without receiving any amount and subsequently, it was registered on 02.11.2007. Therefore, the said sale agreement is not true and valid and not intended to sell the property. According to the plaintiff, the sale price fixed is Rs.2 lakhs and the defendant had paid the amount on the same day at Rs.1,90,000/- and the balance is only Rs.10,000/-, but the plaintiff is said to have taken 25 months for payment of remaining amount of Rs.10,000/- for executing the sale deed. The above said conduct falsifies the agreement and the fraud played by the plaintiff in the alleged execution of sale agreement.

4.2. Further, the plaintiff was not ready and willing to perform his part of the contract and even according to the plaintiff, he was not ready to get the sale deed executed and he was not ready and willing to perform his part of the contract. Hence, the plaintiff sent notice on 23.10.2007 to the defendant, but the suit was filed only in the year 2009, and therefore, the plaintiff was not ready and willing to perform his part of the contract, and therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial Court framed the following issues:

Page No.4/27



S.A.No.660 of 2015

(i) Whether the plaintiff is entitled for a judgment and decree directing the defendant to execute the sale deed in favour of the plaintiff, conveying the title of the suit properties after receiving the balance of sale consideration ?

(ii) Whether the sale agreement dated 31.10.2007 alleged by the plaintiff, is true and valid ?

(iii) Whether the plaintiff is entitled for a permanent injunction ? and

(iv) To what relief the plaintiff is entitled to ?

6. In order to prove their case, before the trial Court, on the side of the plaintiff, P.W.1 (plaintiff) was examined and Exs.A-1 to A-3 were marked and no documents were marked on the side of the defendant. On the side of the defendant, the defendant was examined as D.W.1, apart from one Poorani as D.W.2.

7. The trial Court, after considering the evidence adduced on both sides and on perusing the records, decreed the suit by granting the decree of specific performance. Aggrieved by the said judgment and decree of the trial Court, the defendant preferred First Appeal before the Principal District Court, Puducherry in A.S.No.26 of 2014. The first appellate Court framed the following point for determination: "Whether the judgment and decree of the trial Court in



S.A.No.660 of 2015

O.S.No.165 of 2009, dated 22.08.2014 is erroneous and is liable to be set aside ?"

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8. Thereafter, the first appellate Court, after considering the evidence and the documents, partly allowed the First Appeal and ordered for specific performance in respect of 1/2 share of the plaintiff, after receipt of balance sale consideration. Aggrieved by the judgment and decree of the first appellate Court, the defendant has preferred this Second Appeal.

9. This Court admitted this Second Appeal on 05.08.2015 on the following substantial questions of law:

(i) Whether in view of the provisions contained under Section 17 of the Specific Relief Act, 1963 and the decisions of the Honourable Supreme Court and this Court, Ex.A-1, the sale agreement, dated 31.10.2007, executed by the appellant alone, viz., a co-sharer, who is entitled to only undivided half share, agreeing to sell the entire suit property in favour of the respondent, is legal, effective, valid and enforceable and consequently, the present suit filed by the respondent to specifically enforce the said sale agreement is maintainable in law ?

(ii) Whether the Court below, after having held that the appellant's sister Poorani is a co-sharer, and entitled to equal share in the suit property, and she

Page No.6/27



S.A.No.660 of 2015

has not executed Ex.A-1 sale agreement along with the appellant, is bound to dismiss the suit as unmaintainable, and consequently, the decree granted by it in the Appeal Suit, directing the appellant to execute the sale deed in respect of his undivided half share in the suit property in favour of the respondent, is sustainable in law ? and

(iii) Whether the respondent, who has come before the Court with a *mala fide* intention based on an void, ineffective, invalid and unenforceable sale agreement and with untrue and incorrect facts and unclean hands, is entitled for a discretionary relief of specific performance in the suit, including in respect of the undivided half share of the appellant in the suit property ?

10. Learned counsel for the appellant/defendant submitted that the plaintiff filed the suit for specific performance of contract based on the agreement and that agreement was not intended to sell the property. In fact, the suit property was purchased by the father of the defendant through sale deed, dated 14.11.1977. The father of the plaintiff had one daughter, namely Poorani and she issued notice claiming partition over the properties on 23.10.2007 and the defendant also issued reply on 26.10.2007 and thereafter, the plaintiff persuaded and influenced the defendant to create an agreement of sale in his favour so as to prevent Poorani, the sister of the defendant from claiming any share in the family properties. Believing his words, he executed the sale agreement and no



S.A.No.660 of 2015

consideration was passed through agreement. Moreover, the recitals in the agreement in respect of the advance and remaining amount of Rs.10,000/- and fixing 25 months, clearly shows the intention of the parties and the agreement was not entered to sell the properties. The plaintiff was not ready and willing to perform his part of the contract. The plaintiff issued notice on 20.10.2009 and he immediately, after notice, has not filed the suit, and therefore, he was not ready and willing to perform his part of the contract. Hence, the plaintiff is not entitled to the relief in the suit. However, the trial Court, without considering the evidence adduced on the defendant's side, erroneously decreed the suit and the defendant preferred First Appeal and the first appellate Court partly allowed the First Appeal, against which, the defendant has filed this Second Appeal.

10.1. Though the defendant had taken a plea that the properties belonged to the defendant and his sister and the trial Court, without considering the evidence in proper perspective, partly allowed the First Appeal and directed the defendant to execute the sale deed in respect of his half share. Since the properties are joint family undivided properties of the defendant and his sister, the trial Court cannot order for specific performance without the consent of the sister of the first defendant. The first appellate Court also failed to consider the same. The agreement itself is void, without the signature of the co-sharer. The above said aspect has not been considered by the Courts below and therefore,

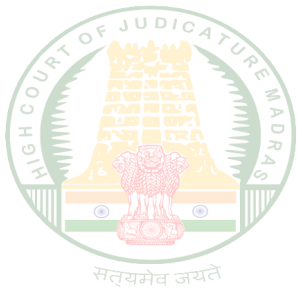
Page No.8/27



S.A.No.660 of 2015

as per Section 17 of the Specific Relief Act, the sale agreement, dated 31.10.2007 executed by the appellant by excluding the co-sharer, is invalid and un-enforceable. The plaintiff filed the suit only with mala-fide intention and the plaintiff is a Government servant and he has not obtained any permission to purchase the properties and therefore, the defendant has established that the said agreement was executed only for name-sake and no consideration was passed and there was also no intention to sell the properties, but however, the Courts below failed to consider the same and decreed the suit and therefore, the learned counsel for the appellant prayed that this Second Appeal may be allowed.

11. Learned counsel for the respondent/plaintiff submitted that the agreement for sale dated 31.10.2007 is a registered agreement and the defendant is well educated and working in a Bank and he knows the consequences of the agreement and only to sell the property, he entered into agreement with the plaintiff and on the date of agreement itself, he received Rs.1.09 lakhs towards the sale agreement and the time of 25 months was fixed only at the request of the defendant and thus, the plaintiff is always ready and willing to perform his part of the contract.



S.A.No.660 of 2015

12.1. The defendant is only evading from executing the sale deed after receipt of remaining sale price. Therefore, the plaintiff issued notice to the defendant for execution of sale deed on 20.10.2009 and the same was acknowledged by the defendant on 23.10.2007, but no reply was received by him. Had the defendant executed the agreement so as to save the property from his sister, he ought to have issued suitable reply by denying the said agreement, but he failed to do so, and therefore, he has accepted the contents of notice issued by the plaintiff and now he cannot deny the agreement.

12.2. Moreover, the plaintiff was examined as P.W.1 and also produced documents Exs.A-1 to A-3 and the defendant has not produced any document. When once the defendant admitted the execution of the agreement, the burden lies on him to prove that no consideration has been passed and the said sale agreement was executed to avoid claiming share by his sister. But there is no sufficient evidence adduced by the defendant. The trial Court, after considering the evidence adduced on both sides, correctly decreed the suit by granting specific performance relief, but however, the first appellate Court partly allowed the First Appeal and directed to execute the sale deed in respect of his share.

12.3. Further, at the time of entering into agreement, the defendant suppressed the facts in respect of the share and after executing the agreement

Page No.10/27



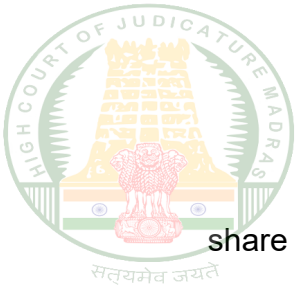
S.A.No.660 of 2015

for the entire property, he cannot deny to execute the sale deed on the ground that he has no right over the entire property. It is for the plaintiff to decide as to whether he has to get the sale deed executed for the entire property or with respect to the share of the defendant. Therefore, for the fault committed by the defendant, the plaintiff cannot suffer. Both the Courts below rendered concurrent findings, and therefore, this Court in this Second Appeal, may not interfere, unless there is any substantial question of law or there is any perversity found in the judgment of the Courts below and there is no perversity or even any illegality in the judgment of the Courts below, and therefore, the Second Appeal has no merits and deserves to be dismissed.

13. This Court heard both sides and perused the records.

14. The plaintiff has filed the suit for specific performance of contract based on the agreement, dated 31.10.2007 and the defendant has also admitted the execution of the agreement, but he denied the intention to sell the property and according to the defendant, it was not executed for sale of property and no consideration was passed. When once the defendant admitted the execution of the agreement, it is his duty to prove as to under what circumstances the document was executed. In order to prove the same, he was examined as D.W.1 and he also examined D.W.2. According to the defendant, his sister claimed

Page No.11/27



S.A.No.660 of 2015

share over the property and thereby, in order to prevent the sister of the defendant from claiming property, the said deed was executed.

15. D.W.1 and D.W.2 have deposed about the claim made by the sister of the defendants in respect of the suit property and according to the plaintiff, the said deed was executed on 31.10.2007 and on the same day itself, a sum of Rs.1.09 lakhs was paid and the remaining Rs.10,000/- has to be paid within 25 months. When the plaintiff paid the substantial portion of the amount of Rs.1.09 lakhs out of Rs.2 lakhs, for payment of Rs.10,000/-, fixing 25 months, creates reasonable doubt over the genuineness of the agreement itself. Normally, if the intention of the parties is to sell the properties, when the specified major portion of the amount is paid, no such a long time is fixed by the parties. The above said conduct of the parties probablises the defence of the defendant. Moreover, according to the defendant, the property belongs to his father and his father had one daughter, namely Poorani and therefore, the defendant is only entitled to half share over the property, however, the plaintiff executed the sale agreement for the entire property. The plaintiff who wanted to purchase the property by paying substantial portion of Rs.1.09 lakhs, ought to have verified the title deeds of the property and when the property stands in the name of the father of the defendant, the defendant's sister is also having share over the property, but without verifying the same, the plaintiff has fixed the sale price of Rs.2 lakhs and



S.A.No.660 of 2015

paid substantial portion of Rs1.05 lakhs on the date of agreement itself. This conduct also creates serious doubt over the genuineness of the agreement and this probablises the defence of the defendant.

16. Even according to the plaintiff, the alleged sale agreement is dated 31.10.2007 and the notice was issued only on 20.10.2009 and he has not taken any steps to get the sale deed executed in his favour within a reasonable time. There is no explanation by the plaintiff as to why 25 months was fixed for completion of contract of payment of meagre amount of Rs.10,000/-. Therefore, the above said aspects have not been considered by both the Courts below.

17. Moreover, it is well settled law that when the plaintiff filed the suit for specific performance, the plaintiff ought to have pleaded and proved his readiness and willingness from the date of agreement till the date of execution of the sale deed.

18. The trial Court failed to frame the issue in respect of the readiness and willingness of the plaintiff in executing the contract and the first appellate Court has also not framed any point in respect of the readiness and willingness on the part of the plaintiff in executing the agreement. Even according to the first appellate Court, the properties belonged to the father of the defendant and the



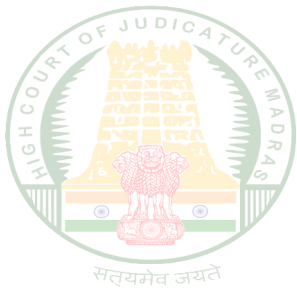
S.A.No.660 of 2015

sister of the defendant is having one half share over the properties and thereby, the Court was inclined to grant the relief in respect of the half share of the defendant. When the sale price was fixed at Rs.2 lakhs, the substantial portion of the amount of Rs.1.09 lakhs was paid towards the sale consideration for the entire properties, then how the sale price of Rs.2,00,000/- was fixed for half share of the defendant. But the first appellate Court failed to give reasons for payment of the remaining share amount. The plaintiff also has not challenged that finding and when the plaintiff paid the substantial portion of the sale consideration for the entire property and the first appellate Court only granted the relief in respect of the half share of the defendant for the remaining half share, the plaintiff has not challenged that order and therefore, that conduct also creates a doubt over the genuineness of the agreement. Hence, the Courts below have not correctly appreciated the facts and not applied the law.

19. At this juncture, learned counsel for the appellant has relied on the following decisions:

- (a) 2000 (3) SCC 312 (Subhra Mukherjee Vs. Bharat Cooing Coal Ltd.);
- (b) 2011 (12) SCC 658 (Vimaleshwar Nagappa Shet Vs. Noor Ahmed Shariff);
- (c) 2015 (5) SCC 355 (Pemmada Prabhakar Vs. Young Men's Vysya Association);

Page No.14/27



S.A.No.660 of 2015

(d) 2008 (3) LW 252 (Munusamy Vs. Nava Pillai) and

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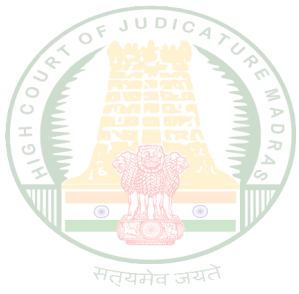
(e) 2018 SCC OnLine Madras 6817 (T.A.Srinivasan Vs. M.Sankarasubraanian).

20. On a careful perusal of the above judgments, it is clear that if the parties enter into sale agreement without the other co-sharers for the entire property, the agreement of sale conveying the entire property, is void and ineffective. As per Section 17(1) of the Specific Relief Act, in categorical terms, it is expressed that a contract to sell or let any immovable property, cannot be specifically enforced in favour of a vendor or lessor who does not have any absolute title and right upon the property. The agreement of sale entered into between the plaintiff and some of the co-sharers who do not have absolute title to the suit schedule property, the same is not enforceable in law.

21. Learned counsel for the respondent has relied on the following judgments:

- (i) 1952 (2) SCC 124 (Kannappa Chettiar Vs. Abbas Ali and others);
- (ii) 2019 (6) CTC 230 (SC) (Gurnam Singh(D) by LR. and others Vs. Lehna Singh (D) by LR.);
- (iii) 2005 (8) SCC 486 (P.C.Varghese Vs.Devaki Amma Balambika Devi and others);

Page No.15/27



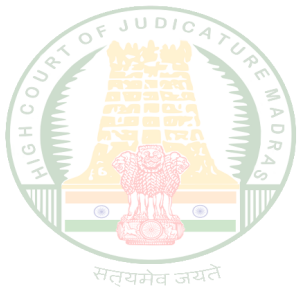
S.A.No.660 of 2015

(iv) 2011 (11) SCC 153 (Kammana Sambamurthy Vs. Kalipatnapu Atchutamma);

(v) 1990 (3) SCC 517 (Kartar Singh Vs. Harjinder Singh) and

(vi) 1994 (4) SCC 18 (Sardar Singh Vs. Krishna Devi).

22. On a careful perusal of the above said judgments, it is clear that the agreement was entered into only to sell the property by a joint-holder, both on his own behalf as well as on behalf of his sister holding equal share, but the vendor's brother was agreeing to sell the whole of his share and also that of his sister and in case of sister's refusal to sell, it was agreed to refund the earnest money, and the sister was refusing to sell and, it was held by the Apex Court that the decree of specific performance in respect of the half share of the vendor's brother to be granted and hence, Section 12 of the Specific Relief Act is not applicable to the facts of the present case on hand. It is also clear that where the agreement of sale was in respect of the entire property, but it later appeared that the vendor / executant of the agreement has only half share, the remaining half share in the property has not given any authority and the vendee would be entitled to a decree of specific performance of contract only to the extent of half share of the vendor.



S.A.No.660 of 2015

23. In the case on hand, the defendant entered into agreement with the plaintiff in respect of the entire property and the defendant's sister is also having half share over the properties.

24. As far as the judgments relied upon by the learned counsel for the appellant, are concerned, those judgments are of the year 2015, but prior to that, the same Supreme Court Coordinate Benches in two cases, held that even one of the co-sharers entered into agreement for the entire property and in respect of his share, the agreement holder can get the specific performance decree executed, and therefore, this Court is of the opinion that the contention of the defendant that the agreement is not enforceable, since the sister of the defendant had not signed in the agreement, is not acceptable. The judgments relied on by the learned counsel for the appellant, are applicable to the facts of the present case on hand and the judgments relied on by the learned counsel for the defendant, are distinguishable on facts and the same are not applicable to the facts of the present case on hand. However, this Court, in the earlier paragraphs, discussed that the conduct of the plaintiff in fixing the sale price and not taking immediate steps by the plaintiff, which shows that the suit agreement was not intended to sell the properties. Therefore, the Courts below failed to appreciate the evidence in proper perspective and the finding of the Courts below are erroneous and against the provisions of law. As per Section 100 of the Code



S.A.No.660 of 2015

of Civil Procedure, the scope is limited while dealing with the Second Appeals.

However, under Section 103 of the CPC, the High Court has power during Second Appeal to determine any issue of fact, if the evidence on record is sufficient to determine any issue necessary for the disposal of the appeal, which has been wrongly determined. In the case on hand, the available evidence already on record is sufficient to determine the issue, thereby the Court can very well interfere with the concurrent findings of the Courts below.

25. As far as the first substantial question of law is concerned, namely, whether, in view of the provisions contained under Section 17 of the Specific Relief Act, 1963 and the decisions of the Honourable Supreme Court and this Court, Ex.A-1, the sale agreement, dated 31.10.2007, executed by the appellant alone, viz., a co-sharer, who is entitled to only undivided half share, agreeing to sell the entire suit property in favour of the respondent, is legal, effective, valid and enforceable and consequently, the present suit filed by the respondent to specifically enforce the said sale agreement is maintainable in law, is concerned, the plaintiff has filed the suit for specific performance of the agreement as against the defendant, who is the vendor. According to the plaintiff, his sister is also having share over the properties, and therefore, the plaintiff is not entitled to the relief of specific performance. As per Section 17 of the Specific Relief Act, a person who knowing himself not to have any title to the property, has contracted



S.A.No.660 of 2015

to sell or let the property, cannot be specifically enforced in favour of the vendor or lessor. Here, the defendant is the vendor and he has not filed any suit for specific performance and he has not urged the plaintiff to purchase the property, and therefore, Section 17 of the Specific Relief Act is not applicable to this case. It is for the plaintiff to choose either to purchase the properties, or not to purchase the properties, if there is any defect in the title. The plaintiff has to choose and he can elect on his choice. He can opt on his choice to purchase the properties. The defendant who is the vendor, has not urged the plaintiff to perform his part of contract.

26. At this juncture, learned counsel for the respondent has relied upon a judgment of the Honourable Supreme Court, reported in 1952 (2) SCC 124 (cited supra), wherein it was held that the defendant-vendor cannot be allowed to urge his own defective title as an answer to a suit for specific performance by plaintiff/vendee and he was bound in law to execute a conveyance in accordance with the terms of the agreement and his right, title or interest, whatever it might be, would pass under the same. Further, it was held by the Honourable Apex Court that with regard to the specific performance in cases of imperfect title, the defendant/vendor cannot be allowed to urge his own defective title as an answer to a suit for specific performance by plaintiff-vendee and the vendor is bound in law to execute a conveyance in accordance with the terms of the agreement, and



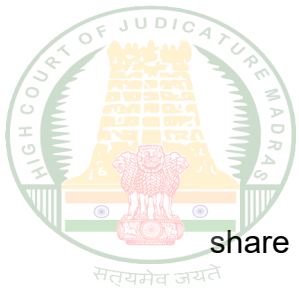
S.A.No.660 of 2015

his right, title or interest, whatever it might be, would pass under the same.

Furthermore, even if the title of the vendor was defective, decree of specific performance would bind any title acquired by vendor to suit properties upon inheritance or other questions like estoppel under Section 41 of the Transfer of Property Act may arise.

27. In the case on hand, the plaintiff has not pleaded about the defective title and the defendant only pleaded that he has no right over the entire properties and his sister is also having half share over the properties. Therefore, in view of the above decision of the Honourable Supreme Court, the defendant cannot urge on his own defective title. However, this Court, in the previous paragraphs, discussed that the agreement was not intended to sell the property. Therefore, the defendant is not bound to execute the sale deed. The first substantial question of law is answered accordingly.

28. As far as the second substantial question of law, namely, whether the Court below, after having held that the appellant's sister Poorani is a co-sharer, and entitled to equal share in the suit property, and she has not executed Ex.A-1 sale agreement along with the appellant, is bound to dismiss the suit as unmaintainable, and consequently, the decree granted by it in the Appeal Suit, directing the appellant to execute the sale deed in respect of his undivided half



S.A.No.660 of 2015

share in the suit property in favour of the respondent, is sustainable in law, is concerned, according to the defendant, the property belonged to his father and his sister is also having share over the properties, and therefore, he has only half share over the properties and his sister has not executed any sale agreement and she is not a signatory to Ex.A-1 sale agreement and therefore, according to the defendant, the suit is not maintainable.

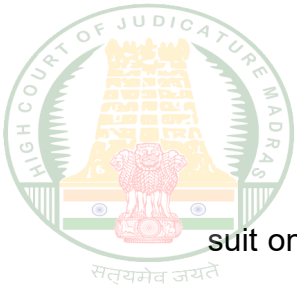
29. As far as the dictum laid down by the Honourable Supreme Court in the decision reported in 2005 (8) SCC 486 (P.C.Vargheese Vs. Devaki Amma Balambika Devi and others) and 2011 (11) SCC 153 (Kammana Sambamurthy Vs. Kalipatnapu Atchutamma), are concerned, even where the agreement of sale was in respect of the entire property, but it later appeared that the vendor / executant of the agreement had only half-share and his wife, who was not executant, held remaining half-share in property and she had not given any authority to her husband to sell it, the vendee would be entitled to decree for specific performance of agreement only to the extent of half-share of the vendor, though the performance of agreement is only to the extent of half-share of vendor, even though it was not a case which falls under Section 12 of the Specific Relief Act. Therefore, on the ground that the co-sharer has not signed in the agreement, the suit cannot be dismissed, and the specific performance can be granted for the share of the defendant. However, this Court, in the previous



S.A.No.660 of 2015

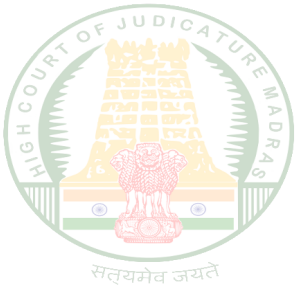
paragraphs and in the first substantial question of law, decided that the agreement was not intended to sell the property, and hence, the plaintiff is not entitled to get a decree for specific performance of contract. The second substantial question of law is answered accordingly.

30. As far as the third substantial question of law, namely, whether the respondent, who has come before the Court with a *mala fide* intention based on void, ineffective, invalid and unenforceable sale agreement and with untrue and incorrect facts and unclean hands, is entitled for a discretionary relief of specific performance in the suit, including in respect of the undivided half share of the appellant in the suit property, is concerned, according to the defendant, the plaintiff has come to the Court with mala-fide intention based on void, ineffective, invalid and unenforceable sale agreement with untrue and unclean hands, and therefore, he is not entitled to the relief of specific performance. The defendant is not an ordinary lay-man and he is also well educated and working in a Government Department and only after knowing the consequences, he entered into the sale agreement. Moreover, there is no sufficient evidence to prove that the plaintiff approached the Court with mala-fide intention and already, this Court had decided that the agreement is genuine and valid, however, the intention of the agreement is not for sale of the property and therefore, the plaintiff is not entitled to the relief of specific performance. However, the plaintiff has filed the



S.A.No.660 of 2015

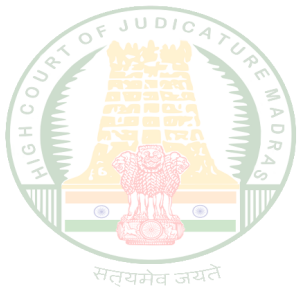
suit only for specific performance and not prayed for alternative relief of return of advance money, and this Court in the previous question of law, decided that the defendant executed the agreement, however, he is entitled only to half share over the properties and fixation of time for completion of contract as 25 months and other surrounding circumstances also show that it was not intended to sell the property. It is well settled law that the party who approaches the Court, should come with clean hands and the specific performance relief is discretionary and equitable relief. In this case, though the defendant stated that the agreement was not intended to sell the property, as far as the payment of money is concerned, since it is registered document and there are recitals in the agreement in respect of receipt of money, the defendant is bound to answer the same, but there is no proper explanation. While so, it is the duty of the defendant to repay the amount mentioned in the said agreement. As per the recitals of the agreement, Rs.1.09 lakhs was received and the same was registered and therefore, the defendant had admitted execution of agreement and hence, it is for him to prove that the consideration was passed, but he failed to prove the same, and hence, he has to pay the money received under the agreement. Therefore, the plaintiff is not entitled to the relief of specific performance, however, he is entitled to money decree for the advance sale price.



S.A.No.660 of 2015

31. It is true that as per Section 22(3) of the Specific Relief Act, the plaintiff ought to have sought for the relief of return of the advance amount and at any time, he can amend the prayer for return of the advance amount. In this case, there is no alternative prayer sought for in respect of return of advance money, and no steps have been taken to amend the prayer in the suit. However, as per the dictum laid down by the Honourable Supreme Court in Srinivas Ramkumar Firm Vs. Mahabir Prasad and others (1951 SCC OnLine SC 11 = 1951 SCC 136), wherein it was held in paragraph 12 as follows:

"12. A plaintiff may rely upon different rights upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the court to give him relief on that basis. The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit."



S.A.No.660 of 2015

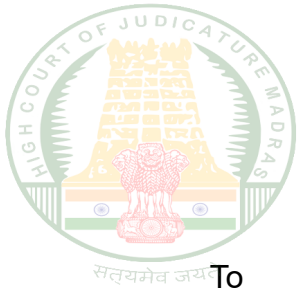
32. Hence, instead of compelling the parties to go in for another litigation, under equity, this Court can direct the defendant to repay the advance amount by way of granting money decree. Therefore, this Court directs the defendant to pay the advance amount already received, with nominal interest of 9% per annum from the date of agreement till the date of realisation.

33. In view of the above discussion and the answers to the substantial questions of law, this Second Appeal is allowed and the judgment and decree passed by the first appellate Court and the judgment and decree of the trial Court are set aside and the suit shall stand dismissed in respect of the relief of specific performance of contract. However, money decree is hereby granted to the plaintiff by directing the defendant to pay a sum of Rs.1.09 lakhs from the date of agreement with interest @ 9% per annum, till the date of realisation. If any amount is deposited by the plaintiff, pursuant to the order of the Court, that amount also shall be refunded to the plaintiff on appropriate application before the trial Court. There shall be no order as to costs. The miscellaneous petition is closed.

26.11.2025

Index: Yes/no
Speaking Order: Yes/no
Neutral case citation: Yes/no
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Page No.25/27

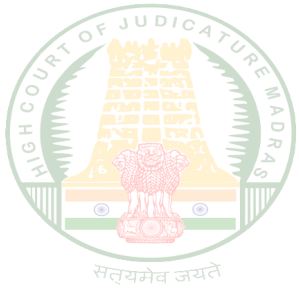


S.A.No.660 of 2015

To

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1. The Principal District Judge, Puducherry.
2. The Principal Subordinate Judge, Puducherry.
3. The Record Keeper, V.R. Section, High Court, Madras.



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S.A.No.660 of 2015

P.DHANABAL, J

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S.A.No.660 of 2015

26.11.2025

Page No.27/27