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A.S.Nos.491 & 492 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2026

Pronounced on : 31.07.2026

CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.Nos.491 & 492 of 2022

A.S.No.491 of 2022

M.P.Shanthi @ Sangeetha

... Appellant

-Versus-

- 1.P.Pukraj
- 2.R.Kowsik
- 3.R.Venu
- 4.H.Veena
- 5.V.Sumathi
- 6.H.A.Jayanthi
- 7.C.Ramesh
- 8.S.Chandraiah
- M.K.Pampapathi (Died)
- 9.R.Sankar
- 10.M.Bharathi
- Habibunnisa (Died)
- 11.Syed Javeed Ahamed
- 12.Syed Naveed Ahamed
- Syed Waheed Ahamad (Died)
- 13.Syed Fareed Ahamed
- 14.Syed Sayeed Ahamed
- 15.Syed Zunaith Ahamed
- 16.Meher Fathima
- 17.Syed Zohed Ahmed
- 18.Syed Zain Ahmed
- 19.Indirani
- 20.Jayamma

.. Respondent(s)



A.S.Nos.491 & 492 of 2022

A.S.No.491 of 2022

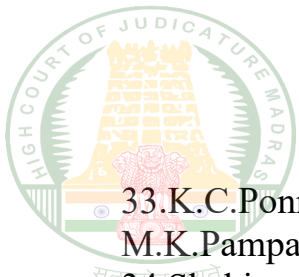
M.P.Shanthi @ Sangeetha

... Appellant

-Versus-

WEEDON Habibunnisa (Died)

- 1.Syed Javeed Ahamed
- 2.Syed Naveed Ahamed
- Syed Waheed Ahamad (Died)
- 3.Syed Fareed Ahamed
- 4.Syed Sayeed Ahamed
- 5.Syed Zunaith Ahamed
- 6.Meher Fathima
- 7.P.Puchraj
- 8.R.Kowsik
- 9.R.Venu
- 10.H.Veena
- 1.V.Sumathi
- 12.H.A.Jayanthi
- 13.C.Ramesh
- 14.H.Geetha
- 15.R.Jalaja
- 16.M.Bharathi
- 17.K.Rukmani
- 18.K.Selvaraj
- 19.G.Krishnan
- 20.S.Kalaiselvi
- 21.S.Vijayalakshmi
- 22.D.Geetha
- 23.Ayesha Siththiga
- Shabijan Sheik (Died)
- 24.Roohi Ashmath
- 25.R.Porkkodi
- 26.N.Ramalingam
- 27.M.Mumtaj Begum
- 28.Ushman Sheriff
- 29.Chinnapillai
- 30.Jesy Thangam
- 31.L.Sebastian Babu
- 32.M.Thimmappan



A.S.Nos.491 & 492 of 2022

33.K.C.Ponnusamy
M.K.Pampapathi (Died)

34.Shakira

35.Sheik Mujahid

36.Ayesha Siddique

37.Syed Zohed Ahmed

38.Syed Zain Ahmed

... Respondent(s)

Prayer in A.S.No.491 of 2022: Appeal filed under Section 96 of Code of Civil Procedure, against the judgment and decree dated 22.04.2022 made in O.S.No.45 of 2015 on the file of the learned Additional District Judge, Krishnagiri.

Prayer in A.S.No.492 of 2022: Appeal filed under Section 96 of Code of Civil Procedure, against the judgment and decree dated 22.04.2022 made in O.S.No.32 of 2008 on the file of the learned Additional District Judge, Krishnagiri.

Both Appeals

Appellant : Ms.M.Sneha

Respondents : Mr.D.Shivakumaran for R1 to R7 in A.S.No.491 of 2022
for R7 to R15 in A.S.No.492 of 2022

COMMON JUDGEMENT

Challenge has been made in these two appeals as against the common judgment made in O.S.Nos.32 of 2008, 44 of 2013, 44 of 2015 and 45 of 2015 dated 22.04.2022. One in A.S.No.492 of 2022 against the dismissal of the suit in O.S.No.32 of 2008 filed for specific performance to enforce the agreement dated 24.01.2004. O.S.No.45 of 2008 has been filed by the plaintiffs in that suit for the relief of declaration of plaintiffs title to the suit properties and permanent injunction and also relief of declaration to declare the two sale deeds dated 09.08.2005 and sale agreement dated 09.08.2005 as null and void. The said was decreed in part granting relief of declaration of title to the suit properties and for permanent injunction, however, dismissed the suit in



respect of declaration of two sale deeds and sale agreement dated 09.08.2005 as null and void. As against the relief of declaration of title and permanent injunction, the fourth

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defendant in the suit has come up with this appeal.

2. As against the dismissal of the suit in O.S.No.45 of 2015, no appeal whatsoever is filed by the plaintiffs. Though other two suits in O.S.Nos.44 of 2013 & 44 of 2015 were also dismissed by the Trial Court, those suits are not challenged by any of the parties. The plaintiff in O.S.No.32 of 2008 and the fourth defendant in O.S.No.45 of 2015 has come up with these appeals.

3. With the above background, the following are the brief facts for disposal of both appeals:-

O.S.No.32 of 2008

3.a. The Suit property belonged to the defendants 1 to 8. The plaintiff and the defendants 1 to 8 entered in to a sale agreement on 24.01.2004 whereby the sale consideration for the suit property was fixed at Rs.1,35,00,000/- and the defendants received advance from the plaintiff a sum of Rs.30,00,000/- and agreed to receive the balance of sale consideration a sum of Rs.1,05,00,000/- within a period of 6 months and perform their part of the said agreement. Subsequently on 15.07.2004, the 3rd defendant received a sum of Rs.10,00,000/- from the plaintiff for himself and on behalf of defendants 1,2 and 4 to 8 and made an endorsement on the said agreement to sell. Again



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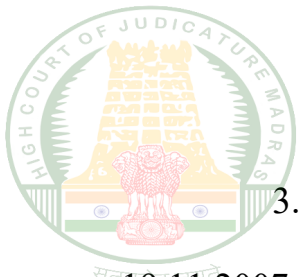
on 06.12.2004, the 3rd defendant received another sum of Rs.24,00,000/- from plaintiff for himself and on behalf of defendants 1,2 and 4 to 8 and made endorsement on the said sale agreement. Again on 23.12.2004, the 3rd defendant received another sum of Rs.22,00,000/- from plaintiff for himself and on behalf of defendants 1,2 and 4 to 8. Thus the defendants received a total sum of Rs.86,00,000/- and that balance of sale consideration payable is Rs.49,00,000/-. After entering into the said sale agreement, the defendants 1 to 8 through their power agent by name Pampapathi Naidu disposed the land in S.Nos.117/1, 117/2 and 117/6. There remained only the property in S.No.118/1 measuring Acre 11.15 in Baiyanapalli Village. Therefore to avoid unnecessary litigations, the plaintiff restricted her claim and that she is proceeding against the property in S.No.118/1 alone. The proportionate cost of the said property is Rs.98,06,189

3.b. As detailed above, the defendants have already received in total a sum of Rs.86,00,000/-. Hence balance of sale consideration amount payable by plaintiff is Rs.12,06,189.00. Inspite of repeated offers made by plaintiff to defendants 1 to 8 to receive balance of sale consideration, the defendants 1 to 8 were simply postponing to perform their part of agreement. But the defendants 1 to 8 handed over the possession of suit property to plaintiff to form layout, and that the plaintiff has been in possession and enjoyment of suit property. Though the plaintiff has been and still is ready and willing to



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specifically perform her part of agreement, the defendants 1 to 8 were postponing to perform their part of agreement. The defendants 1 to 8 stealthily executed sale deed in favour of defendants 9 to 15 in respect of suit property and other property though the defendants 1 to 8 had no right to do so. The defendants 9 to 15, well aware of the fact of the suit agreement entered into between plaintiff on one hand and the defendants 1 to 8 on the other hand, willfully obtained sale deed dated 07.05.2005. The defendants 1 to 8 had no such right to execute sale deed in favour of defendants 9 to 15. Also, the defendants 9 to 15 had no right to obtain sale deed dated 07.05.2005. As several approaches and efforts made by plaintiff to perform the suit agreement were in vain due to the failure on the part of the defendants 1 to 8 to perform their part of agreement, the plaintiff issued notice dated 26.10.2007 to defendants 1 to 16 calling upon them to receive the balance of sale consideration amount of Rs.12,06,186/- execute sale deed in favour of plaintiff within a fortnight from the date of receipt of notice. The defendants 1 to 8 and 10 to 12 evaded to receive the said notice. The defendants 9,13,14 and 16 received the said notice. The 16th defendant alone issued reply notice dated 12.11.2007 seeking two weeks time to issue detailed reply notice. The object of 16th defendant is to drag on the proceeding further. As the defendants 1 to 15 did not come forward to perform the suit agreement on their part, it has become necessary for the plaintiff to file the suit.



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3.c. Before filing the suit, the plaintiff obtained Encumbrance Certificate on 19.11.2007 to know the present stage of the encumbrances of suit property. In the encumbrance certificate, the plaintiff found that the defendants 17, 19 to 36 obtained sale deeds from defendants 9 to 15. The 18th defendant entered into a sale agreement on 09.08.2005 with 37th defendant. The 37th defendant entered into the said Agreement as Power of Attorney agent of defendants 1 to 8. Further the 36th defendant obtained sale deed through the Court of District Munsif on the basis of agreement entered into by the 37th defendant. Hence the defendants 9 to 37 are also liable to execute sale deed along with defendants 1 to 8 in favour of plaintiff. It is further submitted that the plaintiff is still ready and willing specifically to perform the suit agreement on her part. She is prepared to deposit balance of sale consideration into Court as and when this Court directs her to do so. It is further submitted that the defendants 1 to 15 did not come forward to perform the suit agreement on their part. Hence, the suit.

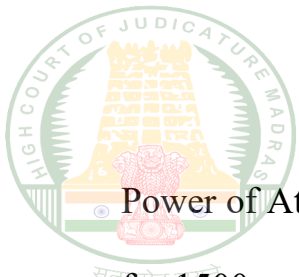
3.d. Written Statement is filed by the defendants 3 and 16 and the same is adopted by D1, D2, D4 to D15. Admitting the sale agreement dated 24.01.2004 for sale of entire property for a total consideration of Rs.1,35,00,000/- and receipt of Rs.30,00,000/- and Rs.10,00,000/- by the third defendant, it is denied that on 06.12.2004, the third defendant received a sum of Rs.22,00,000/- on behalf of the defendants 1,2 and 4 to 8. However, it is admitted that a sum of Rs.24,00,000/- was



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received by the third defendant on 06.12.2004. It is the contention of the third defendant as far as the further amount of Rs.24 lakhs was received on 06.12.2004 as advance amount only from defendants 9 to 16 in respect of the oral agreement entered between the defendants 1 to 8 and 9 to 16 and in pursuance of which the written agreement of sale was entered into by the defendants 9 to 16 on 23.12.2004 with the plaintiff where in a specific reference has been made with regard to the agreement of sale dated 24.01.2004 executed in favour of plaintiff by defendants 1 to 8 and in the above agreement of sale dated 23.12.2004 executed by Plaintiff in favour of 9th to 16th defendants, there is a clear and categorical admission made by the Plaintiff that she has received a total sum of Rs.90,00,000/- from defendants 9 to 16, the details are clearly mentioned in the above agreement of sale deed dated 23.12.2004.

3.e. The plaintiff's husband S.R.Sankar is also one of the attestor of the above agreement of sale dated 23.12.2004 executed in favour of defendants 9 to 16 by the plaintiff and further defendants 1 to 8 who are the original owners of the property have also signed in the above agreement of sale giving their consent and recognizing the right of defendants 9 to 16. The plaintiff also promised to return back the original agreement of sale dated 24.01.2004 but failed to return the same and taking advantage of that, the plaintiff has now filed the present suit which has become infructuous and unenforceable under law with a view to make unlawful gain. The defendants 1 to 8 have executed



Power of Attorney to Pambathi Naidu, who is none other than the father of plaintiff only

for 1500 sq.feet for the purpose of ascertaining the guide line value of the property to be

sold in future and the Plaintiff's father committed forgery and material alteration with

regard to 1500 Sq.Feet and altered the same as 15.35 acres as if under the above Power

of Attorney Deed, he was empowered by defendants 1 to 8 to sell 15.35 acres and under

the above forged, fabricated, materially altered Power of Attorney Deed, the plaintiff's

father has executed a sham and nominal sale deed in favour of plaintiff and also an

agreement of sale with one Bharathi which are void and legally unenforceable against

these defendants. The plaintiff has purposely not disclosed the relationship of the power

agent of defendants 1 to 8 with her and purchasers of the S.No.117/1, 117/2 and 117/6.

The so called Power Agent of defendants 1 to 8 on the strength of materially altered

forged and fabricated power of attorney has created a sham and nominal sale deeds and

agreements in favour of plaintiff and his benamidars which are void and legally

unenforceable against these defendants. In pursuance of the sale agreement dated

23.12.2004 defendants 1 to 8 have executed a sale deed in favour of defendants 9 to 15

on 07.05.2005 and as per the above sale deed only, defendants 9 to 16 were in

possession and enjoyment of the suit properties and other properties covered under the

sale deed and they converted the land into house site and sold it to defendants 17, 19 to

25, 28 to 31 to a sum of Rs.33,835/-. In pursuance of the purchase made by defendants 9



to 15, the revenue records also stands in their names, thereby confirming their title to the above property. As the plaintiff herself had re-conveyed the sale agreement under agreement dated 23.12.2004 in favour of defendants 9 to 16 she is estopped by her conduct from seeking enforcement of the suit agreement of sale dated 24.01.2004. It is also denied that the plaintiff came to know about the alienations done by the contesting defendants only after obtaining the Encumbrance Certificate on 19.11.2007. Hence, disputed the claim.

3.f. Written Statement is filed by the defendants 17,19 to 25, 28 to 31 and 33 to 35. It is their contention that the plaintiff has not come to the Court with clean hands. The 37th defendant M.K.Pambapathi is the father of the plaintiff who had forged the Notary Affidavit for Power of Attorney given by the defendants 1 to 8 for 1500 Sq.feet of the suit land and he had forged the 1500 Sq.feet into Ac.15.35 and created sale deeds of the land for various persons. The plaintiff has no means to pay the huge amount of Rs.1,35,00,000/-. The plaintiff was able to pay Rs.30,00,000/- on 24.01.2004 and Rs.10,00,000/- on 15.07.2004 and as she could not pay the balance of consideration she has transferred the right of sale agreement to Harigopal, the husband of 16th defendant and others under a sale agreement dated 23.12.2004 and received advance amount of Rs.50,00,000/- and from that amount has paid the advance amount of Rs.25,00,000/- on 06.12.2004 and Rs.22,00,000/- on 23.12.2004 to the suit sale agreement. Hence, the



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allegation that the plaintiff has paid Rs.86,00,000/- as advance on various dates as per the endorsement on the sale agreement is not correct. The defendants 1 to 8 and Sankar, the husband of the plaintiff are privy to the sale agreement dated 23.12.2004. As the plaintiff has no means to pay the balance of sale consideration and in order to cover up and hush up the fact now come up with the false suit. Plaintiff has no means to pay the balance sale consideration and want to adjust Rs.86,00,000/- itself which is the amount paid by Harigopal and others to show as if she has paid it. Hence, disputed the claim.

3.g. In the written statement filed by the 36th defendant, it is the contention that the Power of Attorney Deed was executed by 1st to 8th defendant in favour of 37th defendant, the 36th defendant had entered in to a Sale Agreement with the 37th defendant regarding the suit property on 09.08.2005. After entering the sale agreement, misunderstanding arose between the defendants 1 to 8 and the 37th defendant. Hence, the 36th defendant has filed the suit in O.S.No.334/2005 on the file of District Munsif of Krishnagiri and he obtained exparte decree in the said suit and filed the execution petition and obtained the sale deed from the 37th defendant. Hence, the plaintiff is not entitled to seek the relief of Specific Performance in respect of the Ac.2.00 in S.No.118/1.

3.h. Written statement is filed by the 40 th defendant and the same is adopted by the defendants 38 and 39. It is the contention that this defendant independently



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purchased Plot No.78 and 79 of suit property (3000 Sq.feet) from H.Geetha under a registered sale deed dated 21.07.2005 for valuable consideration of Rs.90,000/- from H.Geetha, the Power of Attorney Agent of Pukraj and others and has been in possession and enjoyment of the same. These defendants are LR's of the 26th defendant and are bonafide purchaser for value. Therefore these defendants are entitled to Plot Nos.77, 78 and 79 and on equity these plots may be allotted to these defendants as the predecessor in title of these defendants are the original owners of the suit property.

Issues recasted before judgments are as follows:-

- 1.Whether the Suit Sale Agreement dated 24.01.2004 is valid and enforceable one?
- 2.Whether the Suit is barred by Limitation?
- 3.Whether the time is essence of contract?
- 4.Whether D17, D19-25, D28-31 and D33-35 are bonafide purchasers of the suit property and whether the suit sale agreement will bind others?
- 5.Whether the Power of Attorney was a forged document?
- 6.Whether the Plaintiff was ready and willing to perform her part of contract?
- 7.Whether the Plaintiff is entitled to get decree of Specific Performance?
- 8.To what other relief the plaintiff is entitle to?

O.S.No.45 of 2015



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3.i. According to the plaintiffs, the suit property and some other properties are originally belonged to the 7th to 13th defendants. The plaintiffs have purchased the suit property from the 7th to 13th defendants for proper and valuable consideration through registered sale deed on 07.05.2005 and delivered the actual physical possession of the suit land. Since the date of purchase, the plaintiffs have been in actual physical possession and enjoyment of the same. The Revenue authorities also granted transfer of patta in favour of the 1 to 7 plaintiffs and issued patta in their favour. Thus, the suit property is the absolute property of the plaintiffs and they have been and are in actual physical possession and enjoyment of the same without any interruption from anybody else. Prior to the sale transaction between the plaintiffs and 7 to 13 defendants, the 7 to 13 defendants have approached the 3rd defendant, who is employed as Cooperative Society's secretary and sought his help and guidance to dispose of the suit property and other properties. But, the 7 to 13 defendants have sold the suit property to 1 to 7 plaintiffs directly, without consulting the 3rd defendant by which he was enraged on the 7 to 13 defendants and has fabricated an unregistered power deed in favour of the 2nd defendant, as if 6 to 13 defendants created a Power Deed in favour of the 2nd defendant, who is the father-in-law of the 3rd defendant. After that using the same on 09.08.2005, he created 2 sale deeds in favour of the 4th defendant, who is the wife, and also cooked up a registered sale agreement in favour of the 5th defendant, who is the friend of the



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3rd defendant. And also the 3rd defendant has passed a receipt in favour of the first defendant, who is the real estate business partner of the 3rd defendant, in that receipt the 3rd defendant stated that he agreed to sell some properties belonging to 7th to 13th defendants to him and received advance amount also. All these documents dated 09.08.2005 are invalid under law, as they were falsely created by them, will not be binding on the plaintiffs and the documents in favour of 4 and 5 defendants are null and void as the plaintiffs or the 7 to 13 defendants are not the parties to them. While so, the 1 to 5 defendants taking advantage of the sale and void documents on 08.10.2005 came in a person and attempted to trespass upon the suit land, but the plaintiffs prevented them from doing so. At that time, the 1 to 5 defendants have supplied the Xerox copies of unregistered Power Deed of 2nd defendant and the sale deeds dated 09.08.2005 in favour of 4 and 5 defendants and denied the title of the plaintiffs. Further, the 1st defendant taking advantage of the bit receipt passed by 3rd defendant has lodged false criminal complaint against the 6 to 13 defendants. By all these unlawful acts of the 1 to 5 defendants, a cloud is cast upon the title of the plaintiffs in the suit land. Hence, the suit.

3.j. Written statement is filed by the first defendant contending that Harigopal, who has purchased the suit properties in the names of the 1 to 7 plaintiffs. The 1 to 7 plaintiffs are only name lenders and not the actual parties to the suit. The 3rd defendant



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was employing as their sole selling agent of the suit properties, by the 7 to 13 defendants. On the basis of the Power of Attorney given by the 7 to 13 defendants, the 3rd defendant has entered into an agreement of sale with the first defendant, agreed to sell the suit properties to the defendant for Rs.11,62,000/- per acre and for that on 19.09.2004, the 3rd defendant has received a sum of Rs.3,52,000/- as an advance payment towards the sale consideration, and passed a receipt on the same day in favour of this defendant and also furnished all the documents viz., patta, encumbrance certificate in respect of the suit lands. On 01.11.2004, the 3rd defendant herein had taken this defendant to Bangalore and there the 7 to 13 defendants also agreed for the sale transaction, agreed to sell the entire 14.75 acres of suit land for the above said price, on the directions of the 7 to 13 defendants, the 3rd defendant has handed over the possession of the suit land to this defendant. This defendant also obtained the actual physical possession of the suit land, which is Acre 14.75 of vast land. This defendant by spending Rs.50,000/- removed the bushes, levelled the land with Bocklain, and put up a fence, and divided the suit land into layout, house plots, make it marketable property. Further this defendant has drawn a plan for the layouts, by which the suit property became a valued one. Seeing the suit land after dividing the same as house plots, the 3rd and 7 to 13 defendants changed their mind in violation of the sale agreement, and also unlawfully entered in to an agreement of sale with Harigopal and two others. The said



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Harigopal is the husband of Power Agent of the plaintiffs of this suit and refused to sell the properties to this defendant, and also they all joined together and attempted to dispossess the plaintiffs from the suit land. Aggrieved by that, this defendant has lodged a complaint under Section 420 of IPC against the 3 and 7 to 13 defendants and 3 other proposed purchasers including Harigopal and the criminal case is pending before the Judicial Magistrate Court, Krishnagiri and this defendant also filed a Civil Suit in O.S.163/2005 for bare injunction and the same is also pending. The other facts and allegations, subsequent to the suit in O.S.No.163/2005, as alleged in the plaint, supposed to be happened between the plaintiff and 2 to 13 defendants. The defendant was not aware of the allegation that the 7 to 13 defendants sold the suit property to the plaintiffs, even if it is so, it will not binding on this defendant and his specific performance right over the suit property. The receipt which was passed by the 3rd defendant in favour of this defendant is very much genuine and valid. The actual possession of the suit land is with this defendant, hence he has no necessity to trespass the suit land as alleged by the plaintiffs on 08.10.2005. Only to defraud this defendant's purchasing right of the suit land, the plaintiffs and 2 to 13 defendants filed this suit as a counter suit in O.S.No.163/2005 and to escape from the criminal case. This defendant has agreed to purchase the suit property for Rs.11,62,000/- per acre, that means the total value of the suit property is $14.75 \times 11,62,000 = \text{Rs.}1,71,39,500/-$. But the plaintiffs have registered



the alleged sale deed for a under valuation, to cheat this defendant and the Registration Authority. Hence, seeks for dismissal

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3.k. The second defendant filed written statement contending that 3rd defendant is in no way connected with the General Power of Attorney Deed dated 01.03.2005 in favour of 2nd defendant executed by defendants 6 to 13. The defendants 6 to 13 are the absolute owners of the suit properties and some other properties to an extent of Acre 15.35. They executed a General Power of Attorney Deed dated 01.03.2005 appointing the second defendant as their Agent, and authorised to manage, maintain and look after their affairs, and also to alienate the same. As per the said Power of Attorney deed dated 01.03.2005, the 2nd defendant was in possession and enjoyment of the said Acre 15.35. Among the said properties, the 2nd defendant entered into an Agreement to sell with 5th defendant on 02.03.2005 for an extent of Acre 11.00. Due to the causing of unnecessary litigation, the 5th defendant did not perform her part of Agreement. Therefore the 2nd defendant executed two sale deeds one in the name of 4th defendant and Prabu and another in the name of 4th defendant, and delivered possession of the same. When the second defendant is in possession and enjoyment of the suit property, the question of attempting to trespass is not valid. Hence the suit is liable to be dismissed with cost.

3.l.The third defendant filed a written statement contending that the



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defendants 6 to 13 who were the owners of the suit properties appointed the 2nd defendant as their Power Agent as per the Power of Attorney deed dated 01.03.2005 authorising him to manage, maintain and look after the affairs of the suit properties and some other properties, and also to sell the same etc. In pursuance of the said Power of Attorney deed, the 2nd defendant as Power of Attorney Agent of defendants 6 to 13 entered into agreement to sell on 02.03.2005 with the 5th defendant whereby the sale consideration for the suit properties was fixed at Rs.7,70,000/- and the 2nd defendant received token advance amount a sum of Rs.25,000/- and then they entered into a registered agreement to sell dated 09.08.2005, by receiving another sum of Rs.75,000/- by 2nd defendant from the 5th defendant. Subsequent to the said Agreement, the 5th defendant came to know that the plaintiffs obtained nominal sale deed dated 07.05.2005, and that the 5th defendant is awaiting for the execution of sale deed after solving the dispute. The defendants 6 to 13 had requested the 3rd defendant to sell their properties including suit properties measuring Acre 14.75. Accordingly on 19.09.2004 there was sale talk between the 3rd defendant and one K.M.Krishnan S/o Munusamy, resident of Door No.48-A, Gopala Krishna Colony, Krishnagiri, whereon they arrived the sale consideration for a sum of Rs.11,62,000/- per acre and the said Krishnan had paid earnest money to 3rd defendant a sum of Rs.3,52,000/-. For which the said Krishnan had received acknowledgement of chit from 3rd defendant with mentioning the description



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of the said Krishnan. Apart from that the said Krishnan received a cheque bearing No.332976 of Dharmapuri District Co-operative Bank Ltd., at Krishnagiri for Rs.3,00,000/- without mentioning the name of the payee and date. Immediately the 3rd defendant introduced the said Krishnan to defendants 6 to 13 and told them the fixation of sale consideration for Rs.11,62,000/- per acre. The defendants 6 to 13 agreed for the fixation of the said price and asked the said Krishnan to pay advance a sum of Rs.40,00,000/- and get an agreement of sale on condition to pay the balance amount within the period of 3 months. But the said Krishnan failed to perform his part of agreement. But with some ulterior motive he has handed over the said chit to 1st defendant who was in no way connected to any dealing with the 3rd defendant and caused unnecessary suit in O.S.No.163/2005 on the file of this Court and the same is pending. Hence, the suit is liable to be dismissed.

3.m.The fourth defendant filed written statement contending that she entered into sale agreement with the defendants 6 to 13 for a total sum of Rs.86,00,000/- was paid to the defendants 6 to 13. Because of various litigations in respect of the suit properties, the sale deed could not be obtained. The plaintiffs were well aware of the said Agreement. Therefore the impugned sale deed dated 07.05.2005 in favour of plaintiff is neither true, nor valid nor binding on the 4th defendant. Therefore the plaintiffs and the defendants 6 to 13 are bound to execute sale by receiving balance of



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sale consideration a sum of Rs.49,00,000/- . Hence sought for dismissal of the suit.

Issues recasted before judgments are as follows:-

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1. Whether the Suit is not valued properly?
2. Whether the suit is bad for non-joinder of necessary party?
3. Whether the plaintiffs are entitled to claim declaration of their title to the suit properties?
4. Whether the Plaintiffs are entitled to get permanent injunction?
5. Whether the plaintiffs are entitled to claim declaration that the two sale deeds dated 09.08.2005 as null and void?
6. Whether the Plaintiffs are entitled to claim declaration that the sale agreement dated 09.08.2005 as null and void?
7. To what other relief?

3.n. Along with the above two suits, other two suits in O.S.Nos.44 of 2013 and 44 of 2015 were tried jointly and the evidence was recorded in O.S.No.32 of 2008. On the side of the plaintiff, the plaintiff was examined as PW1 and Exs.A1 to 102 were marked. On the side of defendants, DW1 to DW7 were examined and Exs.B1 to B12 were marked. Through DW2/VAO Bynapalli Ex.X1 was marked.

3.o. On consideration of oral and documentary evidences, the Trial Court dismissed the suit in O.S.No.32 of 2008 and partly decreed the suit in OS.No.45 of 2015



in respect declaration of plaintiffs title to the suit properties and for permanent injunction, however, dismissed the suit regarding the relief of declaration to declare the

two sale deeds dated 09.08.2025 and sale agreement dated 09.08.2005 as null and void.

The other two suits in O.S.Nos.44 of 2013 & 44 of 2015 were dismissed as infructuous.

4. Challenging the common judgment made in O.S.Nos.32 of 2008 and 45 of 2013, the plaintiff in O.S.No.32 of 2008 and the fourth defendant in O.S.No.45 of 2015 has come up with these appeals.

5. The learned counsel for the appellant in both the appeals submitted that the appellant who is the agreement holder in agreement of sale dated 24.01.2004 is the prior agreement holder. As per the agreement dated 24.01.2004, the defendants 1 to 8 in O.S.No.32 of 2008 are the original owners and a sum of Rs.1,35,00,000/- was fixed as sale consideration and received a sum of Rs.30,00,000/- as advance. Though six months time was stipulated in the agreement to complete the sale transaction, by payment of remaining sale consideration, time is not an essence of the contract. According to the counsel, additional amounts of Rs.10,00,000/-, 24,00,000/- and 22,00,000/- were paid on 15.07.2004, 06.12.2004 and 23.12.2004 respectively and endorsements are also made in the sale agreement by the 3rd defendant. According to her, substantial consideration of more than Rs.86 lakhs have been paid and the plaintiff is also ready and willing to perform the contract. After the agreement, original owners also executed Power of



Attorney in favour of one Pampathi Naidu for the entire extent of 15.35 acres, based on the said PoA, an extent of 3.75 acres were sold in favour of the plaintiff and her husband in S.No.117/1 and similarly, an extent of 60 cents were also sold in S.No.118/1 on the same day, viz., 09.08.2005. Therefore, according to the plaintiff, after direct sale in respect of the above survey numbers, the suit has been filed for remaining extent.

6. The plaintiff was always ready and willing to perform the part of contract. Though the defendants 9 to 15 claims to have purchased 11.15 acres on 07.05.2005, they are subsequent purchaser with notice of the earlier contract, therefore, those sales are not binding on the plaintiff. The plaintiff has already parted a sum of Rs.86 lakhs towards the sale consideration, after deduction of the sale consideration of the property sold in the name of the plaintiff on 09.08.2005, the plaintiff is ready and willing to perform the contract. Any sale deed executed during the existence of the earlier agreement is not valid and the plaintiff being the earlier agreement holder is entitled to specific performance since substantial sale consideration was already paid. Ready and willingness has to be inferred from the conduct of the parties. The subsequent agreement said to have been entered into between the plaintiff and other defendants on 23.12.2004 has not been established and it was a created one by the defendants. Even the defendants 14 to 16 have entered a compromise on 15.12.2005 with the plaintiff, this aspect clearly show that they also acknowledged the right of the plaintiff being the



agreement holder. The Trial Court dismissing the suit merely on the ground that the suit is barred by limitation. According to her, last payment was made towards sale consideration on 23.12.2004 and the suit has been filed on 22.11.2007 well within the period of limitation, viz., three years, therefore, the Trial Court non-suiting the plaintiff on the ground of limitation is not proper. Hence, submitted that the plaintiff is certainly entitled to enforce the agreement dated 24.01.2004.

7. Whereas, the learned counsel for the subsequent purchasers submitted that though the agreement dated 24.01.2004 was admitted, the fact that the plaintiff and her husband were engaged in real estate business, further, they had no capacity to pay the balance sale consideration and therefore, they entered into a subsequent agreement dated 23.12.2004 and received the advance paid by them and they also consented for sale of property to subsequent purchasers. Based on the agreement dated 23.12.2004, sale deed was executed by the original owners to the subsequent purchasers on 07.05.2005 for an extent of 11.15 acres. It is the further contention that the Power of Attorney executed by the original owners in favour of one Pampathi Naidu is nothing but a forged document, Power of Attorney was given only in respect of 1500 sq.ft., to ascertain the guideline value, whereas, the same has been altered as 15.35 acres; and an extent of 4.35 cents in S.Nos.117 & 118/1 were already registered in favour of the plaintiff by the Power Agent. According to the learned counsel, Power Agent is none other than the father of

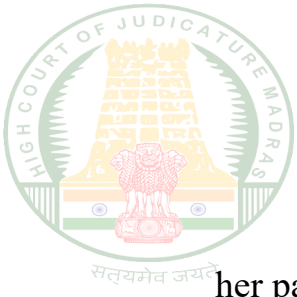


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the plaintiff, this fact is not disclosed in the plaint. The agreement entered into between the plaintiff and the subsequent purchaser makes it clear that the plaintiff has in fact given up the earlier contract and received the entire advance amount paid by them. Therefore, there was a novation of earlier contract. Therefore, the plaintiff now cannot seek enforcement of the agreement dated 24.01.2004 and the very Power of Attorney itself is in the name of the plaintiff's father is a result of forgery. Further, it is the contention that time fixed in the agreement is only 6 months, though certain payments were made later, that will not relieve the plaintiff from proving her readiness and willingness from the very inception of the contract. Having known that the property is already dealt with by the subsequent purchaser on 07.05.2005, the plaintiff was silent for more than 2 years and the suit has been filed only on 22.11.2007, hence, the agreement dated 24.01.2004 cannot be enforced. The subsequent purchasers are bonafide purchasers and the plaintiff is also aware of such purchase, they are entitled for declaration and the Trial Court has rightly granted such declaration in favour of the subsequent purchasers. Hence, seeks for dismissal of the appeal suits.

8. In light of the above submissions, now, the points arise for consideration in both the appeals are as follows:-

(i) Whether agreement dated 24.01.2004 is novated by subsequent agreements between the plaintiff and other defendants?



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(ii) Whether the plaintiff is always ready and willing to perform

her part of contract in agreement dated 24.01.2004?

(iii) Whether the PoA given by the original owners in favour the

plaintiff's father is only in respect of 1500 sq.ft., or in respect of 15.35 acres?

(iv) Whether the Trial Court is right in granting declaration in

favour of the plaintiffs in O.S.No.45 of 2015 respect of the respondents on the basis of their purchase?

(v) To what other reliefs, the parties are entitled to?

Point (i) & (ii)

9. O.S.No.32 of 2008 is the main suit filed for specific performance. It is the case of the plaintiff that the defendants 1 to 8 are the original owners have entered agreement for sale under Ex.A1 dated 24.01.2004 for sale of an extent of 15.35 acres for a total sale consideration of Rs.1,35,00,000/- and received a sum of Rs.30,00,000/- as advance on the same day. Though it is agreed between the parties that the remaining sale consideration shall be paid within a period of six months, further, Rs.10,00,000/- was received by the third defendant on 15.07.2004 on behalf of the other defendants. Later Another Rs.24 lakhs was received on 06.12.2004 and Rs.22 lakhs on 23.12.2004, therefore, according to the plaintiff, a total sum of Rs.86 lakhs were paid towards the



sale consideration. Thereafter, power agent of the defendants sold an extent of 4.35 acres in S.Nos.117/1, 117/2 & 117/6. Further, the suit has been laid only in respect of 11 acres 15 cents in respect of S.No.118/1. After adjusting the sale consideration proportionately, balance sale consideration comes to Rs.12,06,189/- and she was always ready and willing to perform the part of the contract. Whereas, it is the contention of the defendants that since plaintiff had no means for payment of balance sale consideration, there was a subsequent compromise agreement entered into between the plaintiff and the defendants 9 to 16 on 23.12.2004 and the advance sale consideration paid by the plaintiff was repaid to the plaintiff and later, another compromise agreement dated 15.12.2005 was executed between the plaintiff and the defendants 14 to 16, hence, the plaintiff's earlier agreement dated 24.01.2004 cannot be enforced.

10. Ex.A1 dated 24.01.2004, when carefully seen, the original owners, who are permanent residents of Karnataka have not disputed the Ex.A1 and receipt of advance of Rs.30 lakhs and further sums as endorsed by the third defendant. The parties have specifically agreed to complete the entire sale transaction within a period of six months from the date of agreement. Though time is not an essence of contract as far as the immovable properties are concerned, specific time agreed between the parties cannot be ignored altogether. Though specific endorsements made on 15.07.2004, 06.12.2004 and 23.12.2004 indicate that additional amounts were received by the third defendant,



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the fact remains that while receiving further sale consideration of Rs.10 lakhs on 15.07.2004, parties have specifically agreed to extend the time for another four months, viz., 15.11.2004 to pay the entire sale consideration. Except the payment said to have been made on 06.12.2004 for Rs.24 lakhs, remaining amount has not been paid as agreed between the parties before 05.11.2004. Though Rs.22 lakhs said to have been paid later on 23.12.2004, the fact remains that the entire sale consideration has not been paid by the plaintiff. It is relevant to note that the plaintiff has filed the suit only for the first time on 22.11.2007 much after the period of three years of the time agreed as far as the first endorsement made in Ex.A1/sale agreement. Even assuming that the last payment was received on 23.12.2004 extending the period of limitation, it is relevant to note that even in that case, though the plaintiff has filed the suit on 22.11.2007 just one month prior to the period of three years, the delay in filing the suit cannot be ignored altogether in this case. In between, much water has been flown in respect of the suit property.

11. It is the admitted case of the plaintiff that the defendants 1 to 8 executed PoA in favour of one Pampapathi Naidu on 01.03.2005. Though it is never disclosed in the plaint as to the relationship of the power agent, the fact remains that Pampapathi Naidu is none other than the father of the plaintiff. PoA is marked as Ex.A102. It is also the admitted case of the plaintiff that based on the said PoA, an extent of 4.35 acres in



S.No.117/1, 117/2 and 117/6 were already conveyed by the power agent to the plaintiff, whereas, it the contention of the defendants that the PoA has been given only for an extent of 1500 sq.ft., in order to ascertain the market value of the plot in order to deal with the other properties, however, the extent has been altered as 15.35 acres by the power agent and the properties have been sold to the plaintiff. Further, it is the case of the defendants that defendants 1 to 8 already sold the properties in favour of the defendants 9 to 15 on 07.05.2005 itself. Prior to the sale, there was an agreement entered into between the plaintiff and defendants 9 to 16 on 23.12.2004 and after the sale, another agreement was also entered into between the plaintiff and the defendants 14 to 16 on 15.12.2005. The same are marked as Ex.B4 & B1 respectively. Though the plaintiff has denied the execution of Ex.B4, wherein, the execution of the Ex.B1 has not been disputed by the plaintiff.

12. It is relevant to note that after these developments, owners who are residing in Bengaluru, left the place and the plaintiff and the defendants, who purchased the properties are fighting against each other. The evidence of parties clearly show that the plaintiff is engaged in real estate business. The property is sought to be purchased only for the purpose of real estate business. It is also relevant to note that the plaintiff has not come to the Box, whereas, only her husband, who is a practising lawyer has deposed as PW1. Though there is no bar under Law, either husband or wife can given



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evidence, the fact remains that the plaintiff said to be a party to Ex.B4, very conveniently has not chosen to enter Box to deny the signature in the said document. It is the specific case of the defendants that Exs.B1 & B4 were prepared by one Mr.Prabhakaran, Document Writer brought by the plaintiff. In this regard, when the evidence of PW1, when carefully perused with regard to the execution of Ex.B4, though he has denied the signature of his wife, he has feigned ignorance to the suggestion that the Prabhakaran has prepared the document. Further, he admitted that Prabhakaran has signed the document. His evidence would further clearly show that he entered Ex.A1 agreement only for the purpose of real estate business, he also admitted that the power agent appointed under Ex.A102 is none other than his father in law and his evidence, when entirely scanned would show that the power agent was actively participating in all the transactions. The fact that the plaintiff's wife has not come before the Court to deny her signature in Ex.B4, further PW1 admitted that Prabhakaran has signed the document. It is relevant to note that the documents are prepared by Prabhakaran Scribe who has been brought by the plaintiff, this fact has been provided in evidence. Therefore, the contentions of the defendants are more probable that there was an agreement entered into between the plaintiff and the other defendants on 23.12.2004 much after the sale agreement under Ex.A1. Dehors the Ex.B4, PW1 has categorically admitted that there was Panchayat in respect of the suit property, as a result, Ex.B1 agreement dated



15.12.2005 came into existence. His evidence in this regard is as follows:-

15.12.2005 இல் பஞ்சாயத்தார் முன்னிலையிலும், ஏனது மனைவி, ஏனது மாமனர் ஆகியோர்கள் முன்னிலையிலும், இறந்துபோன வழக்கிறஞர் ராஜேந்திர ராவ் முன்னிலையிலும் இந்த தாளில் கையெழுத்து இடப்பட்டது. அதில் எதுவும் எழுதப்படவில்லை. என்னிடம் காட்டப்படும் முத்திரை தாளில் உள்ள ஏனது கையெழுத்துக்கள் போட்ட காரணத்தால் அன்றைய தினம் நாங்களும் கையெழுத்து போட்டோம். நாங்கள் எங்களுக்குள் பேசி முடித்து முன்பக்கம் 9 ஏக்கர் எங்களும், பின்பக்கம் 6 ஏக்கர் எதிர்தரப்பினருக்கும் என்று பேசி எங்களிடம் கையொப்பம் பெற்றனர்.

Further, he has admitted as follows:-

15.12.2005 ம் தேதிய சமாதான உடன்படிக்கை பத்திரத்தில் நான் கையெழுத்து மட்டும் தான் போட்டுள்ளேன். அதில் என்ன வாசகங்கள் எழுதப்பட்டுள்ளது என்று எனக்கு தெரியாது. நான் இந்த ஆவணத்தினை படித்து பார்த்து இதில் எழுதப்பட்டுள்ள வாசகங்களின் தன்மை பற்றி என்னால் சொல்ல முடியாது.

13. The above evidence itself clearly indicates that the plaintiff has not come to the Court with clean hands. PW1 is not a rustic villager, he is a practising lawyer. Though he has admitted his signature in Ex.B1, he has feigned ignorance to the contents, that itself highly against the normal human conduct, particularly, when a practising lawyer signing the document without knowing its content is highly improbable. The defendants side evidence clearly show that Exs.B1 and B4 were executed by the parties. When the signature of a person is not denied in the document and the person signed the document is not an ordinary rustic villager and a practising lawyer, it is necessary to hold that Ex.B4 is a document executed consciously by the parties.



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14. On perusal of Ex.B1, it would indicate that after Ex.A1 agreement, parties entered into a new contract, wherein, they agreed to withdraw all the case and further, it is agreed between the parties that the purchasers of the properties shall leave 30 feet road enabling the plaintiff to enjoy the property purchased by her in S.No.118/1B and also give another 25 cents lands to the plaintiff. It is also agreed that an amount of Rs. 57 lakhs as per the agreement along with interest at Rs.11,50,000 was to be paid and Rs.11,50,000/- was received on the same day itself. The remaining sum of Rs.57 lakhs was to be paid within a period of one month. It is relevant to note that not only the signature, but all persons thumb impressions were affixed in Ex.B1. PW1 has not disputed the signature also. Apart from that, PW1, his wife & father in law were party to the document. The entire Ex.B1 clearly proves the fact that the plaintiff in fact has rescinded Ex.A1 contract and agreed to receive a sum of Rs.57,00,000/- along with interest. It is relevant to note that Ex.B1 agreement came into existence on 15.12.2005, wherein, the plaintiff themselves admitted that they paid only Rs.57 lakhs to the original owners as per the Ex.B1. Therefore, the very contention in the plaint that Rs.86 lakhs is paid towards the sale consideration also militates against Ex.B1. There are series of contradictions with regard to the payment of Rs.86 lakhs and Ex.B1. Ex.B1 clearly shows that earlier contract has been rescinded by the parties and they entered into a different arrangement as indicated above.



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15. DW1 has also clearly spoken about the execution of Ex.B1 by the plaintiff and other parties. He also stated that Ex.B4 is also written by Prabhakaran and he was brought by the plaintiff. Pursuant to execution of Ex.B4, under Exs.B6 & B7, an amount of Rs.15 lakhs have been paid to the plaintiff and he has also spoken that the plaintiff has agreed to receive Rs.1 lakh per acre for sale of the property. The evidence of DW1 show several sales were executed later and the revenue records also mutated in the name of purchasers.

16. It is relevant to note that admittedly, the plaintiff registered the sale in respect to S.Nos.117/1, 117/2 and 117/6 for an extent of 4.35 acres executed by Power Agent who is none other than her father. Those sales were effected as per Exs.A20 & 21. When a question was posed to PW1 as to his father in law is the Power Agent and when the plaintiff was ready and willing to purchase the property, why she has not registered the entire property, the answer was, since the defendant has already sold the property for an extent of 11.15 acres in favour of the defendants 9 to 15, therefore, the plaintiff could not register the entire property. These facts clearly show that plaintiff was aware of the sale of the property in favour of the defendants 9 to 15 on 07.05.2005 and thereafter, the plaintiff has registered sale deed for an extent of 4.35 acres on 09.08.2005. Though the plaintiff was aware of the sale dated 07.05.2005, the plaintiff has not taken any action to challenge that sale or questioned the action of the defendants, above conduct clearly



proves the case of the defendants that Ex.B4 dated 23.12.2004 entered between the parties and later another agreement dated 15.12.2005 under Ex.B1 also came into existence between the parties. The silence on the part of the plaintiff even after being aware of the sale and keeping silent without even sending any legal notice clearly proves the case of the defendants that there was some new contract entered into between the plaintiff and the defendants under Exs.B4 & B1.

17. Ex.B4 when carefully seen, as already stated, a scribe one Mr.Prabakaran's signature is also found in this document and the same is admitted by PW1. Ex.B4 shows that though the plaintiff entered earlier contract under Ex.A1 agreed to transfer the property in favour of the defendants after receipt of the advance paid to the original owners, same is also endorsed in the Ex.A1 agreement and it is also agreed that remaining sale consideration shall be paid only through the plaintiff. This agreement is also prepared by the same Scribe. Though PW1 denied the signature of the plaintiff, she has not chosen to rebut the document. At any event, subsequent document namely Ex.B1 dated 15.12.2005 clinchingly establish the fact that the plaintiff has in fact rescinded her earlier contract, thereby, the subsequent contract will amount to novation. When the party to the contract has agreed to different transaction later, agreed and consented to receive the advance said to have been paid in earlier contract with some other arrangements, such contract will definitely amount to novation. It is also relevant to note



that according to the plaintiff, he has entered a contract only for the purpose of real estate, the manner in which, Exs.B1 and B4 came into existence clinchingly establishes the fact that the plaintiff's aim is to get some benefits out of sale in favour of the third parties. Therefore, once the plaintiff is aware of the contracts and having known that the properties is already dealt by way of sale deed in favour of the defendants 9 to 15, thereafter, several sale deeds are also executed in respect of the plots to the other defendants which is also proved in evidence, it cannot be said that the plaintiff came to know about the sale transaction only for the first time when she applied for encumbrance certificate in the year 2007. Such contention of the plaintiff in view of this Court is against the normal human conduct and highly improbable.

18. It is further to be noted that the plaintiff has now filed a suit to enforce the part of the contract namely 11 acre 15 cents and it is also stated that after adjusting the sale price for the land purchased by the plaintiff, the plaintiff is liable to pay only Rs.12,06,189/-. Section 12(3) of the Specific Relief Act, 1963 reads as follows:-

*“(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—
(a) forms a considerable part of the whole, though admitting of compensation in money; or
(b) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—
(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration*



for the part which must be left unperformed and in a case falling under clause (b) 2 [pays or has paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

19. The above provision makes it clear that if the contract left unperformed forms a considerable part of the whole, though party admitting the compensation or does not admit of compensation in money is not entitled for obtaining a decree for specific performance, however, the Party in default may be directed to specifically perform so much of the his part of the contract or he can perform, provided the plaintiff has paid or pays the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) the consideration for the whole of the contract without any abatement and also relinquishes all claims to the performance of the remaining part of the contract and all right to compensation either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

20. Therefore, when a person seeking to enforce the part of the contract, he must be ready to pay the entire sale consideration agreed in the agreement, though the extent is reduced later. Similarly, he should relinquish all the claims to the performance



of the remaining part of the contract and all right to compensation. These facts ought to have been pleaded in the plaint, whereas, no such plea is available in the entire pleadings. In the absence of pleadings in that regard, the plaintiff is certainly not entitled to seek for specific performance of part of contract. The very conduct of the plaintiff even after knowing the transactions and signing the Ex.B1 and entering new contract, wherein, she has rescinded the earlier contract, she cannot enforce Ex.A1, since new contract amounts to novation of the earlier contract.

21. The conduct of the parties particularly in a suit for specific performance assumes significance. The evidence of PW1 clearly show that Ex.A1 itself is entered for the real estate purpose. PW1 in his evidence has clearly admitted that the wife has no job and only PW1 has purchased the property for his own purpose and also real estate purposes. When his evidence clearly proves that the plaintiff has no income whatsoever or job, the plaintiff mobilising the entire sale consideration to complete the sale transaction as agreed in Ex.A1 is quite impossible. It is further to be noted that to show that the plaintiff was always ready and willing to perform the part of the contract from the very inception of the contract, except mere initial payments said to have been paid to the original owners as per the agreement, to show that remaining sale consideration was ready with the plaintiff or they had any capacity to mobilise the funds, absolutely, there is no evidence whatsoever filed. PW1 has also admitted that he has no bank book to



prove the means. Further, he has not filed any documents to show that he had some or other property, therefore, he had a capacity to raise the funds. In the absence of proof with regard to the capacity, the readiness cannot be inferred.

22. It is also relevant to note that even though the plaintiffs has purchased 4.35 acres in S.Nos.117/1 on the basis of PoA under Ex.A102. The PoA does not relate to 117/1, despite the said fact, the plaintiff has somehow or other registered the property in S.No.117/1 based on the PoA under Ex.A102 in her name. As already stated, Power Agent is none other than the father of the plaintiff, this fact has never been disclosed in the plaint. Though in Ex.A1 dated 24.01.2004, sale agreement, six months time has been specifically agreed between the parties, later time has been extended upto 15.11.2004 and subsequently, though some payments have been made, the fact remains that in between substantial portion of the properties have been sold in favour of the defendants 9 to 15. Even then, the plaintiff has not taken any steps, whereas, legal notice has been issued for the first time only on 26.10.2007 and the suit has been filed at the fag end of the limitation, i.e., 22.11.2007. These facts clearly show that the plaintiff was waiting for three years period and filed the suit only to get unjust enrichment. When the plaintiff herself is a party to the agreement dated 23.12.2004 and 15.12.2005, wherein, she has rescinded the contract namely Ex.A1 and agreed to receive certain amount, now, she cannot enforce the Ex.A1 for specific performance. Keeping silent for more than 3 years



after the agreement and even more than 2 years after sale in favour of the third parties and already lands are converted into plot as house sites by purchasers and sold to various other third parties and the plaintiff filing the suit as if she came to know about such developments only in the year 2007, when she applied for encumbrance certificate is nothing but false plea set up by the plaintiff in order to maintain the suit.

23. Though the suit has been within the period of limitation as per the last endorsement made in Ex.A1, that itself cannot be a ground to hold that the plaintiff is entitled to specific performance, since, there are various circumstances against the plaintiff as discussed above and those circumstances clearly establish the fact that the plaintiff has abandoned the earlier contract and entered into a new contract. Further, readiness and willingness has not been established, that apart, necessary pleadings relinquishing all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained; and undertaking to pay the entire sale consideration as agreed is not available, hence, the suit has to necessarily fail for enforcement of the part of the contract. Accordingly, points (i) & (ii) are answered.

Point (iii)

24. With regard to the PoA under Ex.A102 is concerned, it is the specific case of the defendants that the Power Deed was given only in respect of 1500 sq.ft., to



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register some plots to ascertain the market value so that other properties could be dealt, however, the same has been altered as 15.35 acres. Though such alterations is denied by the plaintiff, we are of the view that such alterations from 1500 sq.ft., to 15.35 acres is very much visible. In the second page of the PoA dated 01.03.2005, **Acre 15.35 cents** has been added after erasing the original extent by using the whiteners. Similarly, in the Schedule of Property also, original extent has been erased by using whitener and altered as **Acre 15.35 cents**. Though, it is stated by the PW1, that it is done by the concurrence and one of the Party to the document has also signed, on careful perusal of the signature found in the altered place and the below the contents, on bare eyes, Court could easily see a lot of difference. Original owner Habibunissa's signature signed below the contents is totally different comparing to signature found in the corrected place. If the person signs the document, on the same day, there may not be such vast difference, therefore, the very contention of the plaintiff that one of the defendant signed at the corrected place cannot be countenanced. In the PoA, the following boundaries are given:-

East by : Private Property;
West by : 20 feet wide Road;
North by : 20 feet wide Road;
South by : Portion of the same Survey Land;

25. If really, PoA was given for the entire 15.35 acres and the original boundaries for such large extent as mentioned in Ex.A1 should have been found place in the PoA showing two boundaries as 20 feet wide road probabalises the fact that the land



has been converted as house site later and showing the portion of the same survey plot

in the southern boundary indicates that the remaining properties are held by the owners

of the properties. If the entire 15.35 acres is covered in the PoA, the boundaries for

extent 15.35 acres should have been reflected in the PoA. Under Ex.A1, sale agreement,

when carefully seen for the entire 15.35 acres, the following boundaries are given:-

East by : Saibudheeen Thottam

West by : Pousiya Blue Metal and other lands

North by : National Highway Road

South by : Baiyanapalli Road

26. If PoA was granted for the entire 15.35 acres, only these boundaries could have been reflected, whereas, boundary shown in the Ex.A102 only confined to specific plot. These facts, in fact, fortify the contentions of the defendants that extent of 1500 sq.ft., has been corrected as 15.35 acres at later point of time.

27. It is further to be noted that if really PoA was granted for the entire land on 01.03.2005, there was no reason as to why the sale deed was not registered for the entire area, whereas, sale deed has been registered only on 09.08.2005. If really, the PoA was given for the entire extent, Power Agent being the father of the plaintiff could have immediately registered the sale deed in favour of her daughter for the entire extent, he need not have waited till 09.08.2005. These facts also clearly proves that sale deeds under Exs.A20 & A21 were registered only in respect of the unsold properties of the



defendants, that too, after creation of the power of attorney. These sales have been registered after the plaintiff coming to know that the substantial extent of the property to an extent of 11.15 acres was registered in favour of the defendants 9 to 15, only after the sale of the large area to the defendants, the power agent has hurriedly acted upon and sale has been registered in favour of the plaintiff for the remaining extent of 4.35 acres including one of the Survey Number which is not covered in the PoA. All these facts clearly show that entire transactions is not genuine transactions and in the real estate business, the plaintiff is trying to take advantage of the fact that the defendants are absentees landlords residing somewhere in Bengaluru, their properties situated in Krishnagiri just next to the District Collectorate.

28. Though the original owners have not challenged the sale in favour of the plaintiff, we are of the view that non-challenge may be due to the fact that the defendants have also received some consideration under Ex.A1. The entire agreement and subsequent conduct of the parties clearly show that Ex.A1 is already rescinded and not been acted upon. The suit has been laid belatedly though within a period of three years after the last endorsement, the conduct of the plaintiff in not taking any steps to prove the readiness and willingness from the very inception, the plaintiff is certainly not entitled to specific performance. Though we hold that PoA was altered, as the original owners have not challenged the sale executed in pursuant of the said PoA, we are not



going into the validity of the sale deeds standing in the name of the plaintiff.

Accordingly, this point is answered.

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Points (iv) & (v)

29. Since defendants 9 to 15 have become the owner of the property by virtue of Ex.B9 dated 07.05.2005 and later properties have been converted to house sites and the possession is also taken by the respective buyers, the Trial Court decreeing the suit for declaration of title does not require any interference. Accordingly, these points are answered.

30. Though it is contended by the plaintiff that as a part performance of contract, possession was handed over to the plaintiff. On perusal of Ex.A1, though the defendants given permission for the possession to form layout and roads, the agreement never stipulated that the entire possession has been handed over. Even assuming that the possession has been given, a person cannot claim a plea of part performance unless the agreement was registered. By virtue of The Registration and other Related Laws (Amendment) Act, 2001 (Act No. 38 of 2001), the words “the contract, though required to be registered, has not been registered, or” has been omitted in Section 53A of the Transfer of Property Act, 1882. Therefore, as long as the agreement has not been registered, now the plea of part performance cannot be sought based on the unregistered



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document. At any event, it is now established that various third parties are in possession of the properties and the properties have been sold. In all, the plaintiff in OS.No.32 of 2008 is certainly not entitled to seek specific performance since, already she has rescinded earlier contract in Ex.A1 by consequent agreements under Exs.B1 and B4.

31. Accordingly, we do not find any merits in these appeals and these appeal suits stand dismissed with costs. The decree and judgment of the Trial Court in O.S.No.32 of 2008 and O.S.No.45 of 2015 is confirmed.

[N.S.K.J] [M.J.R.J]
31.07.2026

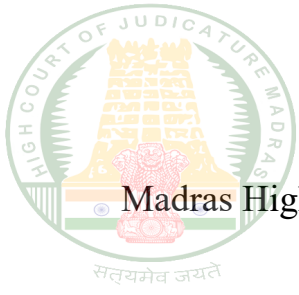
Index : yes / no
Neutral Citation : yes / no
dhk

To,

1. The Additional District Judge
Additional District Court, Krishnagiri

2.The Section Officer
VR Section

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Madras High Court

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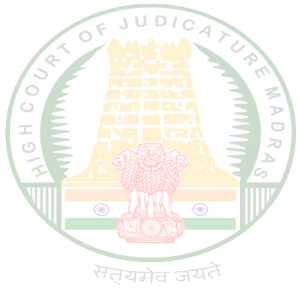


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and
M.JOTHIRAMAN, J.,

dhk

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