D. Dakshinamoorthy and Another Vs. Ranjitham and Others

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SooperKanoon Citation : sooperkanoon.com/1178664

Court : Chennai

Decided On : Jan-11-2016

Judge : G. Chockalingam

Appeal No. : Civil Suit No. 902 of 2007

Appellant : D. Dakshinamoorthy and Another

Respondent : Ranjitham and Others

Judgement :

(Prayer: Plaint filed and numbered as Civil Suit under Order 7 Rule 1 of the Code of Civil Procedure, read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying to pass a judgment and decree:

(a) directing the defendants to receive the balance sale consideration of Rs.13,42,875/- and execute a sale deed in respect of the B Schedule property in favour of the plaintiffs or their nominees pursuant to the agreement of sale deed dated 21.10.2005, failing which, this Court may execute the sale deed in favour of the plaintiffs or their nominees upon their depositing the balance sale consideration to the credit of the above suit, and

(b) to pay costs to the plaintiffs.

Schedule of properties

A - Schedule property:

All that piece and parcel of land measuring an extent of 2.02 acres, comprised in S.Nos.38, 45 part, 39/2 and 39/3, Jambuli Village, Block No.7, Tondiarpet Taluk, within the Sub-Registration District of Sembium and Registration District of Chennai North.

B - Schedule property:

A 1/7th undivided share each in 43 cents in S.No.39/3 and a 57/2744th undivided share each and 1/49th undivided share each in 1.59 acres in S.Nos.38, 45 part and 39/2, Jambuli Village, Tondiarpet Taluk, within the Sub-Registration District of Chembium and Registration District of Chennai North.)

1. The Civil Suit is filed by the plaintiffs to direct the defendants to receive the balance sale consideration of Rs.13,42,875/- and execute a sale deed in respect of the B Schedule property in favour of the plaintiffs or their nominees pursuant to the agreement of sale deed dated 21.10.2005, failing which, this Court may execute the sale deed in favour of the plaintiffs or their nominees upon their depositing the balance sale consideration to the credit of the above suit, and to pay costs to the plaintiffs.

2. It is the case of the plaintiffs that the land measuring 1.29 acres comprised in S.Nos.38, 39/2 and 45, Jambuli Village, Fort Tondiarpet Taluk, Chennai, originally belonged to Ponnusamy Naicker, who purchased the same under various sale deeds. The said Ponnusamy Naicker's wife Unnamalai Ammal also purchased an extent of land measuring 1.07 acres under two sale deeds. One of the sons of the said Ponnusamy Naicker, namely Ayyadurai Naicker purchased from out of his earnings an extent of 8 cents in S.No.45, Jambuli Village under sale deed dated 05.09.1974 and he also purchased an extent of 47 cents in S.Nos.31/2 and 43 cents in S.No.39/3, Jambuli Village under sale deed. It is further stated that the aforesaid persons were in possession and enjoyment of their respective properties eversince. The said C.Ponnusamy Naicker died on 11.08.1977, leaving behind him surviving as his legal heirs, his wife Unnamalai Ammal, his sons Ayyadurai, Vembuli, Varadan, Mahalingam, Ranganathan and daughters Kamakshi and

Sivakami. On his death, eight legal heirs each became entitled to 1/8th undivided share in his property, i.e. 1.29 cents. It is further stated that one of the sons of Ponnusamy Naicker, namely Vembuli died on 29.11.2001, leaving behind him surviving as his legal heirs his wife Gangammal, his daughters Kasturi, Devika, Dhanalakshmi and Sakunthala, a son Sankar and his mother Unnamalai Ammal. The said Unnamalai Ammal thereafter became entitled to 1/7th undivided share in her husband's property. The said Unnamalai Ammal died on 16.08.2003, leaving behind her sons and daughters and the legal heirs of the deceased son Vembuli as her legal heirs. Therefore, on her death, her legal heirs (six children and the branch of Vembuli) became entitled to 1/7th undivided share in her property measuring 1.07 acres. Her 1/7th undivided share in her husband's property also devolved on her sons, daughters and grand-children through Vembuli with each branch becoming entitled to 1/49 undivided share. Thus, the said Ayyadurai became the owner of 57/392 undivided share in his father's property (i.e. his already existing 1/8th as also 1/49th share inherited from his mother).

3. It is the further case of the plaintiffs that on 18.09.2004, the said Ayyadurai Naicker died leaving behind him surviving his wife Ranjitham (first defendant), his daughter Meera (second defendant), sons - Gopu (third defendant), Sekar (fourth defendant), Shanmuga Sundaram (fifth defendant), Paneerselvam and Rukmangathan as his legal heirs. On his death, the legal heirs of Ayyadurai Naicker became entitled to 1/7th undivided share in the property measuring 98 cents purchased in his name from out of his self-acquired earnings and they also became entitled to 57/2744th undivided share each in Ayyadurai Naicker's father's property and 1/49th undivided share each in Unnamalai Ammal's property. All the legal heirs of late Ponnusamy Naicker and Unnamalai Ammal got together, i.e. Varadan, Mahalingam, Ranganathan, Kamakshi, Sivakami (all sons and daughters of Ponnusamy Naicker), Gangammal, Kasturi, Devika, Dhanalakshmi, Sakunthala, Sankar (wife, daughters and son of late Vembuli), Ranjitham, Meera, Gopu, Sekar, Shanmugasundaram, Paneerselvam and Rukmangathan (wife, daughter and sons of late Ayyadurai Naicker) and decided to sell the properties. Hence, they entered into an agreement of sale on 21.10.2005 with the plaintiffs herein with respect to an extent of 2.02 acres in S.Nos.38, 45 part, 39/2 and 39/3, Jambuli Village, Tondiarpet Village (described in A-Schedule property). Out of these survey

numbers, the defendants herein and the aforesaid Paneerselvam and Rukmangathan are the owners of 43 cents comprised in S.No.39/3 and 57/2744th undivided share each and 1/49th undivided share each in the remaining extent of land measuring 1.59 acres in S.Nos.38, 45 part and 39/2.

4. It is further stated by the plaintiffs that under the agreement of sale, it is agreed upon between the parties that the total sale consideration that would be payable was Rs.1,21,20,000/- and advance amount of Rs.70,00,000/- was paid by the plaintiffs to the vendors, which included the defendants. Under the agreement of sale, it was agreed upon that the balance sale consideration of Rs.51,20,000/- would be paid within 11 months from the date of agreement and on receipt of the said sum, the vendors would execute sale deed or Power of Attorney in favour of the plaintiffs or their nominees, failing which the plaintiffs could proceed against the vendors including the defendants for specific performance of the agreement of sale. It was also agreed that if the plaintiffs failed to pay the balance sale consideration within a period of 11 months as agreed upon, they would be liable to pay interest @ 12% per annum on the balance sale consideration for a period of three months. Thereafter, the vendors also agreed to hand over the original documents of title pertaining to the above extent, to the plaintiffs, within one month.

5. It is further stated by the plaintiffs that the defendants have put them in possession of the property and have also handed over the original documents of title to them. On the belief that the sale deeds would be executed in their names/names of nominees, the plaintiffs expended huge sums of money on improving it including the formalities for clearing the title of the property like obtaining patta, legal heirship certificate, death certificate, urban land tax clearance, electricity connection, etc., and they have also expended on levelling the ground and clearing the debris. The plaintiffs stated that the said expenditure incurred by them estimated at few Lakhs of Rupees. The plaintiffs communicated to their vendors including the branch of late Ayyadurai Naicker that they were ready and willing to perform their part of the contract and called upon them to execute the sale deed with respect to 2.02 acres and the plaintiffs were also ready with the balance sale consideration. However, only the aforesaid Ranganathan,

Varadan, Mahalingam, Kamakshi, Sivakami and the legal heirs of Vembuli Naicker came forward to execute sale deed with respect to their respective shares in 1.59 acres to the plaintiffs' nominees under deed of sale, dated 07.12.2006.

6. It is further stated by the plaintiffs that the branch of late Ayyadurai Naicker, namely Ranjitham, Meera, Paneerselvam, Gopu, Sekar, Shanmuga Sundaram and Rukmangathan failed to honour their commitment with regard to execution of sale deed in respect of their shares in S.Nos.38, 39/2 and 45 part and 1/7th undivided share each in 43 cents in S.No.39/3. Hence, the plaintiffs issued legal notice to the defendants as well as the said Rukmangathan and Paneerselvam on 10.12.2006. All the aforesaid persons received the legal notice and the defendants 1, 2 and 5 replied on 05.01.2007 to the plaintiffs containing false and baseless allegations. While on the one hand, defendants 1, 2 and 5 have admitted the agreement of sale, they alleged that the plaintiffs had not kept up the terms and conditions of the sale agreement and delayed the payment of the balance sale consideration. The plaintiffs further stated that the Power of Attorney, dated 21.10.2005 was cancelled on 11.08.2006 and the defendants have taken this step even before the expiry of the time stipulated in the agreement of sale, dated 21.10.2005.

7. The plaintiffs further stated that there has been no delay on their part, which is evident from the earlier execution of sale deed on 07.12.2006. The plaintiffs have always been ready and willing to perform their part of the contract and the defendants, with ulterior motive, are evading the execution of the sale deed. The plaintiffs had the wherewithal to pay the balance sale consideration, which is evident from the fact that the aforesaid Rukmangathan and Paneerselvam came forward to execute the sale deed on 23.03.2007 after the exchange of legal notice and the same have been duly executed. The plaintiffs further stated that the defendants received Rs.14,00,000/- as advance under the agreement of sale, dated 21.10.2005 out of the total sale consideration of Rs.27,42,875/- payable by the plaintiffs to the defendants. Having received more than 50% of the sale consideration, the defendants failed to perform their part of the sale agreement. The defendants are liable to execute sale deed with respect to their 1/7th undivided share each in 43 cents in S.No.39/3 and 57/2744th undivided share

each and 1/49th undivided share each in 1.59 acres in S.Nos.38, 45 part and 39/2, Jambuli Village, Tondiarpet Taluk (described in B-Schedule property).

8. It is the further case of the plaintiffs that by handing over the possession of the property to the plaintiffs as well as the documents of title, the defendants are required to complete the formality of the registration of the sale deed with respect to B-Schedule property and the doctrine of part performance comes into play. The defendants are estopped from resiling the contract. The plaintiffs are ready to deposit the balance sale consideration to the credit of the suit. Inspite of repeated requests, the defendants failed to perform their part of the agreement and hence, the plaintiffs have filed the suit for the relief stated supra.

9. The second defendant filed written statement stating that without making her understand the contents of the alleged sale agreement, dated 21.10.2005, her signatures were obtained. The plaintiffs obtained General Power of Attorney from the second defendant and others. It is further stated by the second defendant that the other parties to the agreement are also colluding with the plaintiffs. The other parties to the sale agreement have been given other benefits so as to deceive the second defendant. On coming to know of the same, the second defendant cancelled her Power of Attorney. The alleged sale agreement is non-est and invalid and not binding on the second defendant. Taking advantage of the illiteracy of the second defendant, the plaintiffs, in collusion with other parties, played fraud upon her. The sale deeds stated in paragraphs 3 and 4 of the plaint are all matters borne out by record. As far as the allegations contained in paragraphs 5 and 6 of the plaint are concerned, it is the case of the plaintiffs concerning the legal heirs and the devolution of undivided share upon the legal heirs. The second defendant did not agree for the meagre amount as found in the alleged agreement. The plaintiff defrauded the second defendant and obtained signature in the sale agreement taking advantage of her illiteracy and therefore, the allegations contained paragraphs 11 to 14 of the plaint are unsustainable in law. The plaintiffs have not approached this Court with clean hands and the suit is not maintainable in law, bad for non-joinder of necessary parties and there are no merits in the suit. The plaintiffs have not performed their part of the contract and were never ready and willing, as they attempted to play fraud upon the second defendant and the

plaintiffs, in collusion with the other parties, are attempting to cheat the second defendant. Specific performance being a discretionary relief, the plaintiffs are not entitled for the same. The suit is barred by limitation and there is no cause of action for the above suit and the suit is not properly valued and the second defendant prayed for dismissal of the suit.

10. By order dated 10.03.2010, this Court framed the following issues for consideration in this suit:-

(i) Whether the suit agreement of sale was brought forth by collusion between the plaintiffs and other defendants and by playing fraud, undue influence and coercion upon the second defendant ?

(ii) Whether the suit sale agreement is valid and binding on the second defendant ?

(iii) Whether the plaintiffs were ready and willing to perform their part of contract ?

(iv) Whether the plaintiffs are entitled to the benefit of part performance ?

(v) Whether the plaintiffs are entitled to equitable relief of specific performance and

(vi) To what other relief, the plaintiffs are entitled to ?

11. During the course of trial, the first plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-18. The second defendant examined herself as D.W.1 and no document is marked on the side of the defendants.

12. Learned counsel for the plaintiffs contended that in pursuance of the agreement of sale, the plaintiffs have always been ready and willing to perform their part of contract. The defendants, even though have executed Power of Attorney and notice was issued to them, failed to perform their part of contract. He further submitted that the defendants have no right to cancel the Power of Attorney and they are liable to execute the sale deed in pursuance of the agreement of sale. He further contended that the plaintiffs have been in possession of the suit properties and the developed the same by converting the lands into plots and spent huge sums of money and the copies of cash bills are marked as Ex.P-11

and they have also paid tax and the C.S.M.B. tax receipts are marked as Ex.P-10 series. He further submitted that the defendants received Rs.14,00,000/- as advance and balance sale consideration is Rs.13,42,875/-, for which, the plaintiffs have always been ready and willing to perform their part of contract, but the defendants are evading to execute the sale deed and therefore, the plaintiffs have filed the suit for specific performance and the learned counsel prayed that the suit may be decreed.

13. The defendants 1 and 3 were set ex-parte on 21.01.2010, the fourth defendant was set ex-parte on 06.08.2015 and the fifth defendant was set ex-parte on 06.01.2010.

14. Learned counsel for the second defendant contended that the argument of the learned counsel for the plaintiffs that the plaintiffs have always been ready and willing to perform their part of contract, is totally false. He further contended that the second defendant is illiterate and simply signed the agreement of sale and he does not know the contents of the agreement and the second defendant was cheated by the plaintiffs. Though the General Power of Attorney was already executed by the defendants in favour of the plaintiffs on the date of agreement itself, to execute the sale deed on behalf of the defendants also, the plaintiffs have not taken any steps and hence, they are not entitled for specific performance. He further contended that the plaintiffs have acted contrary to the conditions stipulated in the agreement of sale and are not ready and willing to perform their part of contract and hence, the plaintiffs are not entitled for decree of specific performance and he prayed that the suit may be dismissed with costs.

15. Heard the learned counsel appearing for the plaintiffs and the learned counsel appearing for the second defendant and perused the materials available on record.

16. It is admitted that sale agreement was entered into between the plaintiffs, defendants and others on 21.10.2005 agreeing to sell suit 'A' schedule property of an extent of 2.02 acres at the rate of Rs.60,000/- per cent, and the total sale consideration is fixed at Rs.1,21,20,000/- and advance amount of Rs.70,00,000/- (Rs.50,00,000/- by cash and Rs.20,00,000/- by way of Demand Draft) was paid by

the plaintiffs. One of the conditions agreed in the said sale agreement was that the defendants and others would execute the sale deed within 11 months on receipt of the balance sale consideration, failing which, the plaintiffs are entitled to enforce the contract by way of specific performance.

17. It is further admitted by both sides that a portion of the above property originally belonged to Ponnusamy Naicker and his wife Unnamalai Ammal. Some portion of the above property belonged to Ayyadurai Naicker, who is the son of the said Ponnusamy Naicker. It is further admitted that Ponnusamy Naicker had others sons and daughters. One of the sons, namely Vempuli died and his Death Certificate is marked as Ex.P-3 and the Legal Heirship Certificate in respect of the deceased Vempuli, is marked as Ex.P-4. It is further admitted that the said Unnamamali Ammal died and her Death Certificate is marked as Ex.P-5. It is also admitted that the said Ponnusamay Naicker died on 11.08.1977 and his Death Certificate (xerox copy) is marked as Ex.P-1 and Ex.P-2 is the Legal Heirship Certificate in respect of the deceased Ponnusamy Naicker. It is further admitted that Ayyadurai Naicker, who is the husband of the first defendant and the father of defendants 2 to 5, died and his Death Certificate is marked as Ex.P-6 and the Legal Heirship Certificate in respect of the deceased Ayyadurai Naicker is marked as Ex.P-7.

18. It is also admitted that in pursuance of the agreement of sale, the defendants and others handed over the possession to the plaintiffs and on the date of agreement of sale itself, i.e. on 21.10.2005, the defendants and others have executed a General Power of Attorney in favour of the plaintiffs and it is marked as Ex.P-9. It is further admitted that except the defendants, others have executed sale deeds in favour of the plaintiffs. It is also admitted that during the pendency of the suit, the third defendant executed sale deed in favour of the plaintiffs with regard to his share.

19. It is the case of the plaintiffs that as per the agreement of sale, dated 21.10.2005 (Ex.P-8), the defendants and others and the legal heirs of the deceased Ponnusamy Naicker, agreed to sell 2.02 acres at the rate of Rs.60,000/- per cent. In Ex.P-8 sale agreement, in the details of the property, it is stated as

follows:

(Tamil ?)

20. It is further stated by the plaintiffs that the sons of Ayyadurai Naicker, namely Ruckmangathan and Panneerselvam sold their respective shares to the plaintiffs and the remaining extent of property alone has to be sold to the plaintiffs. It is seen that the defendants and others, even on the date of agreement of sale, dated 21.10.2005, executed a General Power of Attorney in favour of the plaintiffs, which is marked as Ex.P-9, and the relevant portion of the same reads as follows:

(Tamil ?)

21. On a careful reading of the above conditions in Ex.P-9 Power of Attorney, dated 21.10.2005, executed by the defendants and others in favour of the plaintiffs, it clearly reveals that on the date of execution of Power of Attorney itself, the defendants have authorised the plaintiffs to execute the sale deed on behalf of the defendants. Hence, it has to be held that the defendants have already performed their obligation to execute the sale deed in pursuant to the sale agreement, by executing the above Power of Attorney (Ex.P-9). Therefore, there is no delay or evasiveness on the part of the defendants. The plaintiffs alone have every right and duty to execute the sale deed by performing their part of contract in pursuance of the sale agreement entered into by them with the defendants. Even though Ex.P-9 Power of Attorney was executed by the defendants on 21.10.2005 itself in favour of the plaintiffs, there is no explanation or reason given by the plaintiffs for not performing their part of contract. Since the plaintiffs have not taken any steps to execute the sale deed, the defendants sent letter (Ex.P-12) dated 24.08.2006 to the plaintiffs intimating the cancellation of the General Power of Attorney earlier executed by the defendants. Relevant portion of Ex.P-12 intimating the cancellation of Power of Attorney, reads as follows:

(Tamil ?)

22. Thus, it is clear from the above letter dated 24.08.2006 that the General Power of Attorney executed in favour of the plaintiffs by the defendants, was cancelled on

11.08.2006, as per Document No.3425/2006, registered in Sub-Registrar Office, Sembium. The defendants have waited till 11.08.2006 from 21.10.2005 for the plaintiffs to execute the sale deed on their behalf. Therefore, the argument of the learned counsel for the plaintiffs that the plaintiffs are ready and willing to perform their part of contract, is not at all acceptable. In paragraph 12 of the plaint, it is stated that, "The plaintiffs have always been ready and willing to perform their part of the contract and therefore the defendants herein obviously have some other ulterior motive in evading the execution of the sale deed .....". As discussed above, the defendants have already executed the Power of Attorney in favour of the plaintiffs to execute the sale deed on their behalf, but the plaintiffs alone have failed to execute the sale deed. Hence, the above averments made in paragraph 12 of the plaint, are totally false.

23. After receipt of Ex.P-12 letter, dated 24.08.2006 issued by the defendants intimating the cancellation of General Power of Attorney, the plaintiffs issued legal notice dated 10.12.2006 (Ex.P-14) to the defendants to execute the contract, and in Ex.P-14, it is stated as follows:

".... As per agreement the sale proceeds has to be completed within 11 months from the date of execution of sale agreement i.e. 20.9.2006. After 11 months, if the sale proceeds is not materialised the another 3 months is given to complete the sale proceeds and the interest levied at the rate of 12% per annum on the balance amount of sale consideration. Now my clients are ready to pay Rs.18,40,000/- with interest at the rate of 12% per annum from 21.9.2006 till date. .... "

24. The plaintiffs have not taken any steps after expiry of the period mentioned in the sale agreement and they issued the above legal notice only on 10.12.2006 expressing readiness to pay Rs.18,40,000/- with interest @ 12% per annum. Though the plaintiffs have stated in the above notice about the interest @ 12%, but contrary to that, the plaintiffs have stated in the plaint that they have always been ready and willing to perform their part of contract by paying the balance sale consideration alone. Hence, the argument of the learned counsel for the plaintiffs that the plaintiffs are ready and willing to perform their part of contract, is totally false.

25. Further, in Ex.P-8 agreement of sale, dated 21.10.2005, it is stated as follows:

(Tamil ?)

26. Thus, even according to the above recitals in Ex.P-8 sale agreement, after expiry of three months from 20.09.2006, i.e. from 20.12.2006, the plaintiffs are liable to pay the market value of the property. This condition has not been mentioned in the plaint and there is no explanation for the same. The contention of the learned counsel for the plaintiffs that the plaintiffs are ready to pay the remaining sale consideration of Rs.13,42,875/-, itself shows that the plaintiffs are not ready to perform their part of the contract as stated in the sale agreement. Hence, the argument of the learned counsel for the second defendant that the plaintiffs are not entitled to the relief of specific performance, is sustainable.

27. It is seen that as per Ex.P-13 sale deed, dated 07.12.2006, 1.38 cents were sold. Remaining 23 cents (1.61 less 1.38) belong to the heirs of the deceased Ayyadurai Naicker and 41 cents exclusively belong to the heirs of the deceased Ayyadurai Naicker. Admittedly, 64 cents (23 + 41) are available for the legal heirs of the deceased Ayyadurai Naicker. The other legal heirs of the deceased Ayyadurai Naicker, namely Ruckmangathan and Panneerselvm, executed Ex.P-16 sale deed, dated 23.03.2007 for 18.28 cents. The suit is filed only against the remaining five persons who are defendants 1 to 5. Regarding the above said 64 cents, each of the seven heirs of the deceased Ayyadurai Naicker are entitled to undivided 1/7 share and approximately, the area comes to around 9.14 cents (64/7). Each one of the five defendants are entitled to 9.14 cents, totalling to 45.70 cents approximately. But the plaintiffs have filed the suit mentioning the share of the defendants 1 to 5 in 'B' schedule property as 43 cents. During the pendency of the suit, the third defendant-Gopu executed Ex.P-17 sale deed on 04.12.2009 for 11 cents, which is over and above his share of 9.14 cents. Hence, it is clear that the plaintiffs are making contra-statements regarding the shares belonging to the defendants 1 to 5. Therefore, it has to be held that the plaintiffs have not put-forth their case as stated in Ex.P-8 agreement of sale. The plaintiffs have to file the suit only as per the conditions stipulated in Ex.P-8 agreement of sale. But the plaintiffs have not mentioned the facts correctly as discussed above.

28. Moreover, after the cancellation of Power of Attorney by the defendants, till the issuance of legal notice by the plaintiffs in Ex.P-14 dated 10.12.2006 or even after the issuance of the said legal notice, there is no evidence adduced on the side of the plaintiffs to show that the plaintiffs have taken steps to perform their part of the contract. The present suit was filed only on 11.09.2007 after lapse of nine months from the date of issuance of legal notice, dated 10.12.2006. Even though in Ex.P-8 agreement of sale, it is specifically mentioned that the plaintiffs are liable to pay the market value after the expiry of 11 months and interest for three months, the plaintiffs have not averred anything in the plaint on that aspect. Therefore, it is clear that the plaintiffs have not come forward with clean hands in filing the suit for specific performance as per the agreement of sale.

29. Further, Ex.P-16 sale deed was executed by Ruckmangathan and Panneerselvam in favour of Varalakshmi and nine others in respect of their undivided share of 1/7 each, totalling to 18.28 cents. Moreover, during the pendency of the suit, the third defendant-Gopu executed the sale deed in favour of the plaintiffs in Ex.P-17, as if the third defendant is entitled to 11 cents. Even though the defendants 1 to 5 are totally entitled to 45.70 cents, the plaintiffs specifically mentioned only 43 cents in the suit 'B' schedule property and the same is contrary to Ex.P-16 and Ex.P-17. Hence, from the above facts, it is clear that the plaintiffs have not come forward with clean hands regarding the shares of the defendants.

30. Further, the evidence adduced on the side of the plaintiffs, is not reliable and their claim is contrary to the agreement of sale. Therefore, it has to be held that the plaintiffs have not filed the suit as per the agreement of sale entered into between the parties and hence, they are not entitled to get the relief of specific performance as prayed for in the suit.

31. In view of the above discussion, it has to be held that the plaintiffs are not ready and willing to perform their part of contract and they are not entitled to the benefit of part performance. They are also not entitled to the equitable relief of specific performance. The plaintiffs and defendants and others have entered into the sale agreement Ex.P-8, which is true and valid and not affected by fraud,

undue influence and coercion upon the second defendant. Since the second defendant is also signatory to Ex.P-8 sale agreement, the sale agreement is valid and binding on the second defendant. All the issues are answered accordingly.

32. In the result, this Court holds that the plaintiffs are not entitled to any relief prayed for in the suit and the suit is liable to be dismissed. Accordingly, the Civil Suit is dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.