

(2013) 08 MAD CK 0289

In the Madras High Court

Case No : A.S. No. 256 of 1992 and Tr.A.S. No. 478 of 1996

G. Anbazhagan and Another

APPELLANT

Vs

G. Manoharan (Deceased) and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 6 CTC 624 : (2014) 1 MLJ 138

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Parthasarathy, for D. Saravanan, for the Appellant; D. Shivakumar, Advocate for Respondent Nos. 3 to 6 in A.S. No. 256 of 1992 and Respondent Nos. 2 to 5 in A.S. No. 478 of 1996, for the Respondent

Judgement

R.S. Ramanathan, J.—A.S. No. 256 of 1992 is filed against the Judgment and Decree passed in O.S. No. 141 of 1989 and A.S. No. 478 of 1996 is filed against the Judgment and Decree passed in O.S. No. 302 of 1989. O.S. No. 141 of 1989 was filed by the First Respondent herein for Specific Performance of Agreement of Sale and the Suit was decreed and aggrieved by the same, Defendants 2 & 3 filed the Appeal. O.S. No. 302 of 1989 was filed by the Appellants in A.S. Nos. 256 of 1992 for declaration and for injunction against the Plaintiff/First Respondent in A.S. No. 256 of 1992 and the Suit for declaration and injunction was dismissed and Specific Performance was granted. Both the Suits were tried together and common Judgment was rendered and aggrieved by the Judgment and Decree, Defendants 2 & 3 in O.S. No. 141 of 1989 and the Plaintiffs in O.S. No. 302 of 1989 filed the above Appeals.

2. The case of the First Respondent/Plaintiff in O.S. No. 141 of 1989 is as follows:

The Suit property originally belonged to the Second Respondent herein who was the First Defendant in O.S. No. 141 of 1989 and he entered into an Agreement of Sale with the First Respondent/Plaintiff on 22.9.1987 agreeing to sell the property for a sum of Rs. 95,000/- and an advance of Rs. 10,000/- was paid and the balance amount of Rs. 85,000/- was to be paid within six months viz., on or

before 21.3.1988 and one week after the execution of the Agreement of Sale, possession was handed over to the First Respondent/Plaintiff and the Second Respondent was dodging the execution of the Sale Deed and the First Respondent/Plaintiff came to know that the Second Respondent is taking steps to execute the Sale Deed in favour of the Appellants herein and the Appellants were aware of the Agreement of Sale of the First Respondent/Plaintiff and therefore, the First Respondent/Plaintiff issued Notice dated 10.11.1987 to the Second Respondent to execute the Sale Deed as per the Agreement of Sale and he also waited in the Sub-Registrar's Office on 18.11.1987 and as the Second Respondent did not come forward to execute the Sale Deed, the Suit was filed for Specific Performance of Agreement of Sale and the First Respondent/Plaintiff was always ready and willing to perform his part of the contract and was having money with him to pay the balance sale consideration. He also prayed for injunction restraining the Second Respondent herein from selling the Suit property to the Appellants or some other persons.

3. The Second Respondent/First Defendant in O.S. No. 141 of 1989 contested the Suit stating that he never executed an Agreement of Sale as alleged by the Plaintiff nor received 710,000/- and possession of the property was not given to him and he entered into an Agreement of Sale dated 5.8.1987 with the Appellants agreeing for a sum of 71,05,000/- and also received 710,000/- as advance from them and thereafter, on 17.11.1987 and 18.11.1987 he sold the Suit properties to the Appellants herein by executing registered Sale Deeds and possession was also given to them and the First Respondent/Plaintiff never met him as alleged in the Plaint for execution of the Sale Deed and he also sent a reply to the notice sent by the First Respondent/Plaintiff and the First Respondent/Plaintiff, was also aware of the fact that the Suit property was cultivated by the First Appellant by taking water from his land to the Suit property and the First Respondent was also aware of the Agreement of Sale in favour of the Appellants and on coming to know of the Sale Deed in favour of the Appellants, the Agreement of Sale dated 22.9.1987 was forged and therefore, the First Respondent was not entitled to the relief of Specific Performance.

4. The Appellants, who are Defendants 2 & 3 in O.S. No. 141 of 1989 filed separate Statement stating that the First Appellant was watering the Suit property from the well in his property and purchased the Suit property for a sum of 71,05,000/- after entering into an Agreement of Sale dated 5.8.1987 and from the date of purchase, they were put in possession of the property and they were not aware of the Agreement dated 22.9.1987 alleged to have been executed between the First and Second Respondent herein and the alleged Agreement of Sale dated 22.9.1987 was a forged one and that was created for the purpose of defeating the rights of the Appellants and possession of the property was not given to the First Respondent after the Agreement of Sale in favour of the First Respondent and therefore, the Suit is liable to be dismissed.

5. On the basis of the above pleadings, the following issues were framed in O.S.

No. 141 of 1989:

1. Whether the Agreement of Sale dated 22.9.1987 is true, valid and binding on the Defendants?
2. Whether possession was given to the Plaintiff as alleged in the Plaint?
3. Whether the Plaintiff was ready and willing to perform his part of the contract?
4. Whether the Agreement of Sale between the First Defendant and Defendants 2 & 3 is true, valid and binding on the Plaintiffs?
5. Whether the Sale Deeds executed in favour of Defendants 2 & 3 by the First Defendant are binding on the Plaintiffs?
6. Whether the Plaintiff is entitled to the relief of Specific Performance?
7. Whether the Plaintiff is entitled to the relief of injunction?
8. Whether the relief of injunction has become redundant?
9. To what relief, the Plaintiff in O.S. No. 141 of 1989 is entitled?

6. The case of the Appellants viz., the Plaintiffs in O.S. No. 302 of 1989 is as follows:

Plaintiffs 1 & 2 are cousins and they have got properties in and around the Suit properties. The Second Respondent in A.S. No. 256 of 1992 is the maternal uncle of the First Appellant and for the past ten years, the First Appellant is assisting his uncle in cultivating the Suit property by taking water from his well to the Suit property and as the Second Respondent herein evinced his willingness to sell the Suit property, the Appellants agreed to purchase the Suit property and entered into Agreement of Sale dated 5.8.1987 and paid the advance of Rs. 10,000/- and the property was agreed to be sold for a sum of Rs. 1,05,000/- and the balance sale consideration was paid by the Appellants on 17.11.1987 & 18.11.1987 and the Sale Deeds were executed in their favour and at the instigation of the neighbouring land owners, the First Respondent has filed the Suit for Specific Performance and the First Respondent has no right over the property and as the Appellants obtained Sale Deed, they are the owners and they are in possession of the property and therefore, they are entitled to the relief of declaration and injunction.

7. The First Respondent filed Statement denying the factum of cultivation of the Suit land by the First Appellant by taking water from his well and also denied the Agreement of Sale entered into between the Appellants and the Second Respondent. He also denied the allegation that he attempted to trespass into the Suit property on 23.11.1987. He also reiterated the pleadings made by him in O.S. No. 141 of 1989 and therefore, the Suit filed by the Appellants is not maintainable.

8. On the above pleadings, the following issues were framed:

1. Whether the Plaintiffs are entitled to declaration?
2. Whether the Sale Agreement dated 22.9.1987 is true and binding on the Plaintiffs/Appellants?
3. Whether the Plaintiffs are entitled to the relief of declaration and injunction?
4. To what relief, the Plaintiffs are entitled?

9. Evidence was taken in O.S. No. 141 of 1989 and on the side of the Plaintiffs, the Plaintiff examined himself as PW1 and examined the scribe and attesting witnesses to the Agreement of Sale dated 22.9.1987 as PWs.2 to 5 and on the side of the Defendants the Second Respondent and Appellants were examined as DWs.1 & 3 and they also examined two more witnesses. On the side of the Plaintiff, six documents were marked and on the side of the Defendants, nine documents were marked and the Commissioner's Report and Plan were marked as Exs.C1 & C2.

10. The Trial Court tried issue No. 1 in O.S. No. 141 of 1989 and issue No. 2 in O.S. No. 302 of 1989 together and held that the Agreement of Sale dated 22.9.1987 was true and it was not fabricated or forged as contended by DWs.2 to 4 and answered issue No. 1 in O.S. No. 141 of 1989 and issue No. 2 in O.S. No. 302 of 1989 in favour of the First Respondent herein. Issue No. 2 in O.S. No. 141 of 1989 was answered against the First Respondent herein holding that possession was not given to the First Respondent herein after the Agreement of Sale executed in his favour. Issue No. 4 in O.S. No. 141 of 1989 was decided against the Appellants holding that the Agreement of Sale dated 5.8.1987 executed by the Second Respondent in favour of the Appellants was not a true and valid Agreement of Sale. Issue No. 5 in O.S. No. 141 of 1989 was answered in favour of the First Respondent herein and held that the Agreement of Sale between the Appellants and the Second Respondent herein was not true and not binding on the First Respondent/Plaintiff. Issue No. 3 was answered in favour of the First Respondent holding that the First Respondent was willing to perform his part of the contract and Issue No. 6 was answered in favour of the First Respondent holding that the First Respondent is entitled to Specific Performance and Issue No. 7 in O.S. No. 141 of 1989 was answered against the First Respondent herein holding that the First Respondent was not entitled to the relief of permanent injunction and Issue No. 1 in O.S. No. 302 of 1989 was answered against the Appellants holding that having regard to the finding that the Agreement of Sale dated 22.9.1987 between the First Respondent and the Second Respondent herein was a valid agreement and binding on the Appellants, the Appellants cannot claim any right over the Suit property. Issue No. 3 in O.S. No. 302 of 1989 was answered in favour of the Appellants holding that till the First Respondent obtains Sale Deed from the Second Respondent, he shall not disturb the possession of the Appellants. Issue No. 4 in O.S. No. 302 of 1989 was answered against the Appellants holding that the Appellants are not entitled to the relief of declaration and their possession should not be disturbed till the First

Respondent obtains Sale Deed from the Second Respondent. In the result, the Suit filed by the First Respondent for Specific Performance was decreed and the relief of injunction sought by the First Respondent was denied and the Suit for declaration filed by the Appellants was dismissed and aggrieved by the same, these two Appeals were filed.

11. Mr. S. Parthasarathy, learned Senior Counsel for the Appellants submitted that the relief of Specific Performance is a discretionary relief and when a person comes to court seeking the relief of Specific Performance, he must come to Court with clean hands and in this case, the First Respondent/Plaintiff has approached the Court with a false case stating that he was put in possession of the property one week after the Agreement of Sale in his favour and the Trial Court held that the First Respondent was not put in possession of the property as alleged by him and the property was in possession of the Second Respondent and he executed the Sale Deed in favour of the Appellants and handed over possession and therefore, having regard to the specific finding by the Trial Court that the First Respondent came out with false case regarding possession, the Trial Court ought not to have granted the relief of Specific Performance. The learned Senior Counsel further submitted that admittedly, the Appellants, in the Written Statement, have stated clearly that they had purchased the Suit property pursuant to the Agreement of Sale dated 5.8.1987 under two Sale Deeds dated 17.11.1987 and 18.11.1987 and the Suit was filed only after the Sale Deeds were executed in favour of the Appellants and therefore, the First Respondent ought to have included the relief of directing the Appellants to join in conveying the Suit property alongwith the Second Respondent herein and he failed to amend the relief prayed for in the Suit and as a result of that, the title of the Appellants remain unchallenged and even if the Decree for Specific Performance in favour of the First Respondent is executed, the First Respondent will not get any title to the Suit property as the title of the Suit property already vested with the Appellants as per the Sale Deeds executed in their favour and therefore, the Trial Court ought not to have decreed the suit for Specific Performance. In support of his contention, the learned Senior Counsel relied upon the following judgments:

- (1) Marina Appa Rao and Others Vs. Marina Veeranna, ;
- (2) Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, ;
- (3) R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others, ;
- (4) Vimala Ammal Vs. C. Suseela and others, ;
- (5) Arunachala Mudaliar v. Jayalakshmi Ammal, 2003 (1) CTC 355 (DB): 2003 (I) MLJ 626; and
- (6) Unreported Judgment of this Court rendered in Mumtaj v. K.P. Ramasamy Gounder, A.S. Nos. 387 & 388 of 2008 dated 10.3.2011.

The learned Senior Counsel further submitted that the Agreement of Sale dated

22.9.1987 cannot also be a true one having regard to the strained relationship between the parties and the witnesses PWs.2 to 4 cannot be believed regarding the execution of the Agreement of Sale and that was also not properly appreciated by the Court below. The learned Senior Counsel submitted that the Plaintiff proceeded on the basis that the First Respondent/Plaintiff was a stranger to the Second Respondent and it is admitted that the First Respondent is the son-in-law of the Second Respondent and admittedly, they are not on talking terms and there is a dispute between the First Respondent and the Second Respondent and his wife and the witnesses are related to the wife of the Second Respondent and the Second Respondent also disputed the signature in the Agreement of Sale dated 22.9.1987 and when the Second Respondent disputed the signature in the Agreement of Sale the, a duty is cast upon the First Respondent to send the disputed signatures to the Handwriting Expert and no document was sent to Handwriting Expert, and the Court itself compared the signature and also found the signature found in Ex.A1 in both the pages are not similar and having held that the signatures found in both the pages are not similar, the Trial Court ought to have held that the Agreement of Sale was not executed by the Second Respondent. The learned Senior Counsel further submitted that it is the specific case of the Appellants that on 5.8.1987, they entered into an Agreement of Sale for the purchase of the Suit property and they also purchased the Suit property under two Sale Deeds dated 17.11.1987 and 18.11.1987 and admittedly, the Suit was filed on 20.11.1987 and the Appellants are bona fide purchasers for value and they are also possessing lands near the Suit property and even though the First Respondent had stated in the Plaintiff that the Appellants were taking steps to purchase the Suit property from the Second Respondent, the First Respondent did not send any notice to the Appellants informing them about the Agreement of Sale in his favour and he sent the notice only to the Second Respondent and having stated specifically that the Appellants were taking steps to purchase the Suit property and also made them as parties to the Suit, he ought to have sent notice to the Appellants and therefore, the Appellants are bona fide purchasers for value and hence, the First Respondent is not entitled to the relief of Specific Performance and therefore, the Court below ought to have dismissed the Suit filed by the First Respondent and decreed the Suit filed by the Appellants.

12. The learned Counsel for the First Respondent/Plaintiff in O.S. No. 141 of 1989 submitted that the Trial Court, after considering the evidence of PW1 to PW4, rightly held that the Plaintiff/First Respondent has proved the Agreement of Sale and rightly exercised the discretion and decreed the Suit for Specific Performance. He further contended that though the First Respondent is the son-in-law of the Second Respondent, there is no question of suppression of that fact and it is not necessary to plead the relationship and by suppression of the relationship, it cannot be stated that the Plaintiff/First Respondent has come to Court with unclean hands and once the Court accepted the case of the First Respondent that there was an Agreement in respect of the Suit property entered

by the Second Respondent and the First Respondent was also ready and willing to perform his part of the contract and he was having money with him, the Court below rightly granted the Decree of Specific Performance. He further submitted that the Appellants were aware of the Agreement of Sale between the First Respondent and the Second Respondent and admittedly, the First Appellant is a nephew of the Second Respondent and the Appellants are co-owners and the First Appellant is having land adjacent to the Suit property and even according to him, he was watering his land from his well and therefore, it cannot be contended by the Appellants that they were not aware of the Agreement of Sale in favour of the First Respondent and they were fully aware of the Agreement of Sale and despite the same, they purchased the Suit property in collusion with the Second Respondent to defeat the rights of the First Respondent and considering the above aspects, the Court below has rightly decreed the Suit for Specific Performance. He further submitted that the Appellants did not come to Court with clean hands and by mere collusion between the Appellants and the Second Respondent, a false case is projected by the Appellants. According to the Appellants, they entered into an Agreement of Sale on 5.8.1987 with the Second Respondent in respect of the Suit property and that Agreement of Sale dated 5.8.1987 was created only to defeat the rights of the Plaintiff as the Appellants and the Second Respondent realised that there was an Agreement of Sale in favour of the First Respondent dated 22.9.1987. If really, there was an Agreement of Sale dated 5.8.1987, the same would have been mentioned by the Second Respondent in his Reply Notice, Ex.A6 and the Sale Deeds in favour of the Appellants also. There is no reference in Ex.A6 about the Agreement of Sale dated 5.8.1987 and considering these aspects, the Court below has rightly held that the Appellants were not bona fide purchasers and therefore, they were not entitled to the relief of declaration. He also submitted that even though the First Respondent omitted to pray for execution of the Sale Deed by the Appellants, the Court has got power to direct the Appellants to execute the Sale Deed alongwith the Second Respondent and that aspect was also considered by the Honourable Supreme Court in the Judgment reported in Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, , and it has been held that on that ground, the Suit cannot be dismissed. The learned Counsel further submitted that though the Trial Court held that possession was not given to the First Respondent as alleged by him, that cannot be a ground to deny the relief of Specific Performance having regard to the fact that the Second Respondent entered into an Agreement of Sale and the Second Respondent, in collusion with the Appellants, attempted to defeat the rights of the First Respondent by creating an agreement by ante dating the same and therefore, the Trial Court, considering all these aspects, rightly decreed the Suit for Specific Performance and therefore, there is nothing to interfere with the findings of the Trial Court.

13. On the basis of the above submissions, the following points for consideration arise in these Appeals:

1. Whether the First Respondent is entitled to the relief of Specific Performance

having regard to the findings of the Trial Court that possession was not given to him as alleged by him one week after the Agreement of Sale dated 22.9.1987?

2. Whether the Suit for Specific Performance can be decreed as against the Second Respondent alone when there was no prayer for including the Appellants to join in the execution of Sale Deed by the Second Respondent?

3. Whether the Appellants are entitled to the relief of declaration?

14. The First Respondent filed the Suit for Specific Performance on the basis of the Agreement of Sale dated 22.9.1987 and the same was denied by the Second Respondent and therefore, the burden was on the First Respondent to prove the execution of the Agreement of Sale in his favour. To prove the same, the First Respondent examined himself and also four witnesses, who were witnesses to Ex.A1. The Trial Court, considering the evidence of PW2 to PW4, held that the Agreement of Sale dated 22.9.1987 was executed by the Second Respondent herein in favour of the First Respondent. PW2 is the brother-in-law of the Second Defendant and he, alongwith PWs.3 & 4 gave cogent evidence regarding the execution of the Agreement of Sale dated 22.9.1987.

15. I have also gone through the evidence of PWs.2 to 4 and according to me, their evidence were not shattered in cross-examination and there was no reason to disbelieve the evidence and the Trial Court rightly believed their evidence that Agreement of Sale dated 22.9.1987 was executed by the second Defendant in favour of the First Defendant. The submission of the learned Senior Counsel that the relationship between the Second Respondent and his wife was not cordial and they were living separately and therefore, PW2 would not have been asked to sign the document as a witness and therefore, the document ought not to have been believed cannot be accepted as there is no evidence that on the date of execution of Ex.A1, there was misunderstanding between the Second Respondent and his wife. As a matter of fact, PW2 also denied that for the past six years, there was misunderstanding between the Second Respondent herein and his wife and there was no suggestion to PW2 that by reason of the misunderstanding between the Second Respondent and his wife, he was not on talking terms with the Second Respondent. Further, though the Second Respondent denied his signature in the Agreement of Sale, he also admitted that the signature in second page appears to be his signature and the signature in the first page does not appear to be his signature. When the signature is denied by one party, it is not always necessary to send the document for comparison by an Expert and the Court is also entitled to compare the signature to arrive at a conclusion as to whether the signature was a forged one. Only in case of complicated signatures, the Court has to refer the signature to the Expert and even after getting he report, final decision has to be taken by the Court and therefore, merely because the Court compared the signature and arrived at a conclusion, that the signatures are genuine signatures, that cannot be found fault with.

16. In this case, having regard to the evidence of DW1, the Second Respondent and after comparing the signature of the Second Respondent in Ex.A1 & B1 and other signatures in the pleadings, the Trial Court rightly held that the Agreement of Sale was executed by him in favour of the First Respondent and I do not find any infirmity with the findings of the Trial Court.

17. The learned Senior Counsel appearing for the Appellants submitted that even assuming that the Agreement of Sale was entered into between the Second and First Respondent, having regard to the false case projected by the First Respondent regarding possession, the Trial Court ought not to have granted Decree of Specific Performance.

18. I find some force in the submission of the learned Senior Counsel in that regard. It is seen from the judgment of the Honourable Supreme Court in *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, , that the party, who makes false allegations is not entitled to the equitable relief of Specific Performance. In the Judgment reported in *A.C. Arulappan Vs. Smt. Ahalya Naik*, , the Honourable Supreme Court held that merely because it is lawful to grant Specific Performance, the Court cannot grant the relief. In the judgment reported in *Nallaya Gounder and another Vs. P. Ramaswami Gounder and another*, , a Division Bench of this Court held that the relief of Specific Performance cannot be granted when a false case with regard to delivery of possession was concocted for the purpose of the case. The same view was expressed in the judgment reported in *Ramaswamy Gounder Vs. K.M. Venkatachalam and Others*, . In *Viswanathan and Others Vs. R. Lakshmi Ammal (deed.) and Others*, , a Division Bench of this Court held that when the Plaintiff projected a false case not only in pleading but also in evidence, he is not entitled to the relief of Specific Performance. In the Judgment reported in *Arunachala Mudaliar Vs. Jayalakshmi Ammal and V.R. Rajasekharan*, and in the unreported Judgment in A.S. Nos. 387 & 388 of 1986, this aspect was thoroughly discussed and the Division Bench of this Court, in *Arunachala Mudaliar Vs. Jayalakshmi Ammal and V.R. Rajasekharan*, , relying upon the decision of the Supreme Court and the earlier Division Bench, held that when the Plaintiff came forward with a false case, he is not entitled to the relief of Specific Performance.

19. As stated supra, the Plaintiff has stated in the Plaint that one week after the Agreement of Sale, he was given possession of the property and filed the Suit for Specific Performance and for injunction. The Trial Court disbelieved the case of the Plaintiff relating to possession alleged by him and declined to grant the relief of injunction. The Second Respondent herein also denied the factum of possession given to the Plaintiff and according to me, the Trial Court has rightly held that one week after the Agreement of Sale, the Plaintiff was not given possession. Ex.A4 is the Notice sent by the Plaintiff to the Second Respondent herein and in that Notice, he has not referred to the factum of possession given to him one week after the execution of the Agreement of Sale. The Plaintiff also did not examine any witness to prove that possession was given to him one week

after the Agreement of Sale. Further, having regard to the fact that against the sale consideration of Rs. 95,000/-, Rs. 10,000/- was paid as advance, one cannot be expected to deliver possession to the agreement holder. Therefore, the Trial Court has rightly held that the Plaintiff was not given possession as alleged by him. It leads to the conclusion that the Plaintiff came to this Court with false case regarding delivery of possession and therefore, the question that arises for consideration is whether such Plaintiff is entitled to the discretionary relief of Specific Performance. As stated supra, in the judgments referred to above, the Honourable Supreme Court and the Division Bench of our High Court have clearly held that the relief of Specific Performance is a discretionary relief and there is no need to grant the relief even though the Plaintiff is entitled to the relief and when the Plaintiff comes to Court with unclean hands or with false case, even though the Plaintiff is entitled to Specific Performance, the same can be denied to him. Therefore, having regard to the false case projected by the First Respondent that possession was given to him under the Agreement of Sale, even though the Plaintiff/First Respondent proved the Agreement of Sale in his favour, he is not entitled to the discretionary relief of Specific Performance and this aspect was not properly appreciated by the Court below and the Court below, having held that the Plaintiff/First Respondent has come forward with the false case, erred in granting the discretionary relief of Specific Performance and therefore, the finding of the Court below that the Plaintiff is entitled to the relief of Specific Performance is set aside.

20. Having regard to the finding rendered by me that the Plaintiff/First Respondent is not entitled to the relief of Specific Performance, there is no need to go into the other arguments submitted by the learned Senior Counsel that without a prayer against the Appellants in executing the Sale Deed, the relief of Specific Performance cannot be granted. According to me, as per the judgments reported in *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*, ; and *R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others*, , the Honourable Supreme Court held that when the property was sold to other persons, the proper form of Decree is to include the subsequent purchasers and to direct them to join the execution of the Sale Deed by the owner and therefore, even though there is no prayer against the Appellants, the Court has got power to direct them to join the execution of the Sale Deed by the Second Respondent and in my opinion, on that ground, the Suit filed by the First Respondent cannot be dismissed and Point No. 2 is answered against the Appellants.

21. As I held that the First Respondent is not entitled to the relief of Specific Performance as he has projected a false case and come to Court with unclean hands, the suit filed by him is liable to be dismissed and the finding of the Trial Court that the First Respondent is entitled to the relief of Specific Performance is set aside and the Judgment and Decree of the Trial Court in O.S. No. 141 of 1989 are set aside and the Appeal in A.S. No. 256 of 1992 is allowed. As the Suit in O.S. No. 141 of 1989 is dismissed, the Appellants are also entitled to the relief of declaration and injunction as they admittedly purchased the Suit property from

the Second Respondent and having regard to the finding that the First Respondent is not entitled to the relief of Specific Performance, there is no need to go into the question of bona fide purchaser for value as projected by the Appellants and therefore, the Appellants are entitled to the relief of declaration and injunction. The Judgment and Decree in O.S. No. 302 of 1989 are set aside and the points for consideration 1 & 3 are answered in favour of the Appellants.

In the result, both the Appeals are allowed and the Judgment and Decree of the Trial Court in both the Suits are set aside. The Suit in O.S. No. 302 of 1989 is decreed as prayed for. No costs.