

(2009) 08 MAD CK 0300

In the Madras High Court

Case No : Original Side Appeal No"s. 297 and 298 of 2008 and M.P. No"s. 1 and 2 of 2009

Kalash Properties Pvt. Ltd.

APPELLANT

Vs

Lilly Pushpam, Sheela, K.K. Ravi and S. Sasikala

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Contract Act, 1872 — Section 51, 52, 54
Criminal Procedure Code, 1973 (CrPC) — Section 145
Income Tax Act, 1961 — Section 269UC, 269UD
Specific Relief Act, 1963 — Section 10, 16, 20
Transfer of Property Act, 1882 — Section 53A

Citation : (2009) 5 LW 528 : (2010) 1 MLJ 363

Hon'ble Judges : R. Subbiah, J;M. Chockalingam, J

Bench : Division Bench

Advocate : T.V. Ramanujam for T.V. Krishnamachari, for the Appellant; R. Krishnamoorthy and K.V. Venkatapathy, Sr. Counsels for K.V. Sundararajan, for R1 to R3 and A.L. Somayaji for C. Ravichandran, for R4, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—These two appeals have arisen from a common judgment dated 08.04.2008 rendered by a learned single Judge of this Court in C.S. Nos. 13 of 1997 and 559 of 1996 respectively.

2. The plaintiff in C.S. No. 559 of 1996 sought for delivery of vacant possession of the plaint schedule property and for other reliefs with the following averments;

(a) The plaintiff is the owner of the house, ground and premises bearing door No. F 188, IX Street, Anna Nagar East, Madras-102. The Director of the defendant's company approached the plaintiff to purchase the property and pursuant to negotiation, it was agreed that the defendant would obtain permission from this Court by paying the sum of Rs. 12,85,013.08 towards security for the release of title deeds which were given as security. Apart from that, the defendant shall pay

a sum of Rs. 59 lakhs as consideration to purchase the said property. Thus, the total consideration was fixed at Rs. 71,85,013.08. The defendant also agreed to evict the tenant, who was occupying the house. The plaintiff received a total advance of Rs. 2 lakhs on 30th January, 1995 and on 17th February, 1995. In the receipts issued by the plaintiff, all the above conditions have not been incorporated since they were receipts. The plaintiff had signed in the agreement even without going through the recitals because the signatures were obtained by the Director of the defendant's company while the plaintiff was boarding the train for Coimbatore. In the agreement, a clause has been included to the effect that the tenant shall vacate and hand over possession to the defendant's Director. In the said agreement, there was nothing to authorise the defendant to pay any amount to the tenant for evicting him. Pursuant to the agreement, the defendant got the tenant vacated and later on, the defendant brought some documents to show as if a sum of Rs. 75,000/- was paid to the tenant in consideration of vacating the premises. The defendant also brought a draft sale deed to the plaintiff showing the sale consideration as Rs. 59 lakhs, which was not acceptable to the plaintiff and hence, the transaction was not proceeded. No mention was made in the said draft sale deed with regard to the deposit of Rs. 12 lakhs and odd to the Court for getting the permission and release of the documents.

(b) The defendant filed a suit in C.S. No. 1063 of 1995 on the file of this Court, claiming to be in possession of the said property and praying for the relief of a permanent injunction restraining the plaintiff from interfering with his possession and enjoyment till vacated under due process of law. He also filed an application in O.A. No. 767 of 1995 and obtained ex parte interim injunction. In the said application, the defendant made it clear that the defendant did not seek any protection u/s 53-A of the Transfer of Property Act, but claimed that the possession should be protected and the same should not be invaded by unlawful means. In the said application, interim injunction was granted on a finding that the defendant was not a trespasser and was entitled for the interim injunction. Even though it was originally agreed for sale of the property to the defendant, under law, the defendant was not entitled to enforce any right to purchase the property as there was no concluded contract. As there was no written agreement, the appropriate authority cannot issue no objection certificate and thereby, the same is hit by Section 269UC of the Income Tax Act. Further, the actual total sale consideration has not been clearly mentioned. Further more, the defendant adopted illegal tactics to obtain possession, by colluding the then tenant and by obtaining interim injunction by suppressing the facts. Apart from the above, in view of the encumbrance of attachment ordered by this Court, the property cannot be alienated. In AAO No. 1039 of 1992, this Court, by judgment dated 22.12.1995, has confirmed the attachment made by the trial court in I.A. No. 174 of 1992 in O.P. No. 87 of 1990 on the file of District Judge, Coimbatore, and hence, there is no scope for sale of the said property at all. For the above reasons, any agreement for sale transaction for the said property is not

subsisting, or has become invalid. In view of the plaintiff's receipts for a sum of Rs. 2 lakhs, the defendant's possession can be permissive one in view of the findings rendered by this Court in O.S.A. No. 206 of 1995. In fact, the plaintiff returned the said advance of Rs. 2 lakhs but the defendant chose to send back the same to the plaintiff's advocate. The plaintiff was also prepared to return the sum of Rs. 75,000/- alleged to have been paid by the defendant to the tenant to obtain vacant possession. Thus, in all, the plaintiff was ready to pay the sum of Rs. 2.75 lakhs. The defendant is not protected under any provisions of law. Any expenditure alleged to have been incurred by the defendant for getting vacant possession from the tenant is unauthorised and the plaintiff was bound to pay the same. As stated above, the plaintiff was prepared to pay the arrears of rent for 3 months at Rs. 7,150/- per month. Thus, as agreed by the plaintiff, the amount payable by the plaintiff was Rs. 2,00,000/- + Rs. 75,000/- minus Rs. 25,000 = Rs. 2,50,000/-. The defendant is in occupation of the property from 02.06.1995. If the property is let out, it would have fetched Rs. 20,000/- per month and hence he is liable to compensate the same and hence, the plaintiff was entitled for damages for use and occupation from the defendant from 02.06.1995 till the property's vacant possession is handed over to the plaintiff at the rate of Rs. 20,000/- per month. The past damages from 02.06.1995 to 31.07.1996 at Rs. 20,000/- per month (for 14 months) works out to Rs. 2,80,000/- and after adjusting the sum of Rs. 2.50 lakhs payable by the plaintiff, the balance of past damages payable by the defendant works out to Rs. 30,000/- and also liable to pay future damages with effect from 01.08.1996 till the date of handing over vacant possession.

3. The defendant filed a written statement on the following averments:

(a) The suit is not maintainable either in law or on facts. Though the suit property belonged to the plaintiff, he has not disclosed to the defendant that the same was given as security. The said fact was disclosed only for the first time in this suit. In fact, the transaction was hampered only due to non-production of original documents. There is an agreement to purchase the suit property. It is emphatically denied that there is no such arrangement or agreement to the effect that this defendant should get permission from this Court or to pay the amount as stated in the plaint. The earlier suit filed by the plaintiff and the findings of this Court in the interlocutory application will speak much about the misrepresentation by the plaintiff. The fact that there was collateral security in the property was not disclosed before the agreement. If at all such agreement was ever agreed, the said clause would be vital to the transaction and the same would have been found place in the documents made available in respect of the transaction. The total consideration agreed to the transaction is only Rs. 59 lakhs and not Rs. 71 lakhs and odd as stated in the plaint.

(b) It is true that the defendant agreed to purchase the suit property, which was in the occupation of the tenant, by name, Shanthi Devadoss, who was running a school in the said premises. The plaintiff wanted the defendant to initiate and

persuade the said tenant to vacate the said premises at his own expenses and to pay back the advance of Rs. 75,000/-. The defendant agreed to the said course and did his best to persuade the tenant to agree to vacate at considerable expenses and manoeuvred to bring about an agreement between the plaintiff and the tenant on 10.02.1995 whereby the tenant has agreed to vacate on receipt of certain money. In fact, the defendant, at his expenses, has brought the plaintiff to Madras from Coimbatore, to sign in the said agreement. Immediately on entering into the said agreement, the plaintiff passed on a letter on 17.02.1995 authorising the defendant to settle the terms of the tenant and take possession. Accordingly, the defendant settled her terms apart from returning the said advance of Rs. 75,000/- received by the plaintiff from the tenant and the said tenant delivered possession of the suit property on 02.06.1995 to the defendant and executed a document for delivery of possession. In fact, the defendant has spent Rs. 5 lakhs inclusive of the advance to meet other contingencies and to stabilise his possession. The defendant, after taking possession of the suit property, has been persuading the plaintiff to show the original sale deed granted in his favour by the Housing Board to proceed further. Strangely enough the attitude of the plaintiff had changed and thereafter, it is learnt that the Vigilance and Anti Corruption police cell proceeded against the plaintiff for having properties disproportionate to his known source of income and impounded his properties in Coimbatore and in order to get the same released, the plaintiff has given the original sale deed of the suit property in this Court as a security. When the plaintiff was confronted with the xerox copy of the order of this Court, he could not give any satisfactory explanation but wanted him to deposit a sum of Rs. 12.85 lakhs in Court. The plaintiff has deliberately suppressed the fact that he was not having the original title deed with him at the time of entering into the agreement and receiving Rs. 2 lakhs; on the other hand, the plaintiff represented that he would show the original sale deed at the time of finalising the terms and handed over xerox copies of the property tax receipts, electricity receipts and water charges receipts. In order to give a colour of reality as if the defendant has been creating trouble, a complaint was lodged by the plaintiff with police on 17.07.1995 and the defendant was called upon by the police. The Inspector of Police, after personally inspecting the suit property and the records, found that the complaint of the plaintiff to be false and warned the plaintiff not to interfere with the defendant's possession. He filed C.S. No. 1063 of 1995 before this Court for an injunction. The plaintiff caused the police authorities to initiate proceedings u/s 145 Cr.P.C. with the ulterior object of dispossessing the defendant. The defendant had to spend heavily to counter the illegal acts of the police by getting the said order quashed in this Court. The said act of the plaintiff clearly disclosed the intention not to honour his commitments. This is yet another instance to show that the plaintiff has been putting up obstacles at every stage to defeat the rights of the defendant under the suit contract. The defendant filed Application No. 767 of 1993 for a temporary injunction and the same was allowed on 18.08.1995. Aggrieved over the same, the plaintiff filed O.S.A. No. 206 of 1995 and the same was dismissed on

19.09.1995. Thereafter, the defendant has been sending words through his counsel to the then counsel of the plaintiff to amicably settle by executing the sale deed in accordance with the agreement entered into on 30.01.1995. The defendant expressed his readiness to deposit Rs. 12.85 lakhs in cash before this Court to get back the original title deeds deposited by the plaintiff in this Court. The defendant was informed by the plaintiff's then counsel that on his advice the plaintiff filed a petition to permit him to substitute cash security instead of deposit of title deeds. Such a suggestion was made by the defendant in the interest of both. The defendant had to spend heavy sum by way of court fees for filing a suit for specific performance and the matter is likely to drag on for several years. Later on, it was learnt that the advice given by the then counsel for amicable settlement was not heeded to and the plaintiff changed his counsel and caused a notice to the defendant through his present counsel on 10.07.1996 suppressing the facts. The defendant and the plaintiff entered into an agreement on 30.01.1995, by which the plaintiff agreed to sell the suit property for Rs. 59 lakhs and received an advance of Rs. 50,000/- on that day. Subsequently, pursuant to the said agreement, a sum of Rs. 1.50 lakhs was received by him on 17.02.1995. The said agreement was referred to in the order passed by a single Judge of this Court in O.A.767 of 1995 and in the order passed by the Division Bench also.

(c) The plaintiff has admitted the execution of the suit agreement in his proceedings initiated recently in this Court but stated that the sale, in pursuance of the suit agreement, could not be processed as he failed to get permission from this Court. There is absolutely no necessity to get the permission from any quarter when once the owner entered into an agreement to sell the property to some one. The suit contract cannot be said to be incapable of performance as the sale deed can be effected by directing the defendant to assist him to get the original title deed released by discharge of the security. The plaintiff is bound under law to perform his part of the contract and he cannot be allowed to wriggle out of the same on false pretext, which is not sustainable in law. As the consideration for the sale exceeds Rs. 10 lakhs, permission has to be obtained from the appropriate authorities at that period and so, a draft sale deed was prepared and given to the plaintiff in the first week of March, 1995 for his approval, so that the same could be sent to the appropriate authorities; but the plaintiff did not approve the sale deed. The plaintiff has stated in the counter affidavit in I.A.767 of 1995 in C.S. No. 1063 of 1995 that the sale deed did not contain a clause for release of the title deeds given as security in furtherance of the proceedings of the Anti-Corruption and Vigilance Squad against the plaintiff. In fact, this aspect was completely suppressed at the time of the suit contract and the defendant came to know about the same after the execution of the suit contract. The defendant has never agreed to deposit Rs. 12.85 lakhs into court apart from the sale consideration of Rs. 59 lakhs and the false plea of agreeing to deposit Rs. 12.85 apart from Rs. 59 lakhs has been trotted out only for the purpose of protracting the execution of the sale deed and thereby wriggling out

of the suit contract. The plaintiff cannot be allowed to commit breach of the terms of the said contract and escape from his liability to execute the sale deed. The plaintiff is bound to execute the sale deed in accordance with the terms of the contract dated 30th January, 1995. Since the plaintiff has refused to do so, no alternative but to file the suit for specific performance of the contract. The defendant has always been ready and willing to perform his part of the contract. In view of the conduct of the plaintiff, the defendant has filed a comprehensive suit C.S. No. 13 of 1997 for specific performance of contract complied with the right created u/s 53-A of the Transfer of Property Act. Hence, the suit filed by the plaintiff has got to be dismissed with costs.

4. In C.S. No. 13 of 1997, the plaintiff has made the following averments;

The plaintiff is a dealer in real estates and promoter of flats. In the second week of January, 1995, the plaintiff and the defendant entered into an oral agreement, whereby the plaintiff agreed to purchase and the defendant agreed to sell the suit property for a sum of Rs. 59 lakhs and paid a sum of Rs. 2 lakhs as advance, for which he was issued receipts. He has reiterated the contentions made in the written statement filed in C.S. No. 559 of 1996. Hence, the plaintiff filed the suit for specific performance of the contract under the agreement of sale dated 30.01.1995 entered into between the parties.

5. Pending suit, the defendant, namely, Kandasamy, died and his legal representatives were brought on record as defendants 2 to 4. The defendants reiterated the contentions raised by the plaintiff in C.S. No. 559 of 1996 and prayed that the suit has got to be dismissed on the grounds that there was no concluded contract; that the suit was hit and barred under Order II Rule 2 C.P.C.; that the plaintiff did not adhere to the statutory provisions of the Income Tax Act, 1961, and the plaintiff, being a real estate promoter, has no means and he has not been ready and willing to perform his part of the contract.

6. On the above pleadings, the learned trial Judge heard both the suits together and framed six issues in each of the suits. One G.Kaliasundaram, the Director of M/s. Kalash Properties Private Limited was examined as P.W.1 and one K.K. Ravi, the 4th defendant was examined as D.W.1 and they relied on Exs.P-1 to P-3 and Ex.D-1. The learned trial Judge, on a scrutiny of the materials available and also on a consideration of the submissions made, held that the plaintiff in C.S.13 of 1997, who is the appellant herein, was not entitled to any relief in that suit and dismissed the same. In so far as C.S. No. 559 of 1996 is concerned, the learned Judge granted a decree to the defendants, who are the respondents herein, for recovery of possession and also for future mesne profits. Aggrieved over the same, the present appeals have been brought forth before this Court. The parties are hereinafter referred to as they are arrayed in C.S. No. 13 of 1997, to avoid confusion.

7. Advancing the arguments on behalf of the plaintiff, who is the appellant herein in both the appeals, Mr.T.V.Ramanujam, the learned senior counsel would submit

that from Exs.P-1 and P-2, it would be quite clear that there is a concluded contract of sale; that the trial Judge has not appreciated the receipt dated 30th January, 1995 marked as Ex.P-1, wherein it would clearly mention that the deceased defendant has received Rs. 50,000/- as token advance from the plaintiff/appellant on 30th January, 1995 for the sale of the suit property for a total consideration of Rs. 59 lakhs; that equally, the trial Judge should have appreciated Ex.P-2 dated 17.02.1995, wherein also it was stated that Rs. 1.50 lakhs by way of demand drafts was given by the plaintiff on 17.02.1995 as further token advance for the sale of the suit property and thus, he has received Rs. 2 lakhs totally as token advance; that a perusal of Exs.P-1 and P-2 would show that there was a concluded contract for sale and it satisfied the necessary ingredients for agreement of sale, namely, vendor, purchaser, subject matter of sale and sale consideration. The vendor was the defendant and the plaintiff/appellant was the purchaser, the subject matter of the sale was the suit property, namely, the house at F-188, Anna Nagar, Madras and the agreed sale consideration was considered as Rs. 59 lakhs and hence, the finding of the trial Judge that there was no concluded contract was contrary to the documentary evidence.

8. Added further the learned senior counsel that it was clear from the evidence of P.W.1 that he got the tenant Shanthi Devadoss evicted by paying money to her and admittedly, P.W.1 was in possession of the suit property and that was why C.S.559 of 1996 was filed for recovery of possession; that there was a criminal case of corruption filed by the Director of Vigilance and Anti-Corruption against the defendant for having properties disproportionate to known source of income and the defendant has deposited the original title deeds of the suit property as security to the value of 12.85 lakhs in the said criminal case; that the defendant attempted to forcibly dispossess the plaintiff from the suit property, which necessitated the plaintiff to file the suit for permanent injunction in C.S.1063 of 1995 before this Court, in which possession was protected by granting an order of interim injunction; that the provisions of Sections 269UC and 269UD of Income Tax Act were not attracted to the facts and circumstances of the case and they were directory and not mandatory and that the provisions of Section 269UC and 269UD of the Income Tax Act were not a bar for granting a decree for specific performance and hence, the findings of the trial court were erroneous.

9. The learned senior counsel would further add that the finding rendered by the trial court in C.S.13 of 1997 that it was hit and barred under Order II Rule 2 C.P.C. was not correct; that he filed the first suit i.e. C.S. No. 1063 of 1995, at the time when the lawful possession of the plaintiff was attempted to be interfered with and there was a threat, which gave him a cause of action and subsequently, the comprehensive suit was filed, in which cause of action was distinct and different and the earlier suit was also pending before this Court and hence, it is not a fit case where Order II Rule 2 could be applied to bar the suit; that in so far as the readiness and willingness was concerned, the trial Judge has not properly appreciated the issue and it is the case, where the plaintiff has

already paid Rs. 2 lakhs, as seen from Exs.P-1 and P-2 Ex.P-2 all along the period; that it is also quite clear from the evidence of P.W.1; but this was not appreciated by the trial court; that it is pertinent to point out that there was a reciprocal promise and if to be so, the defendant owner was under obligation to perform his part; that having failed his part of the contract, the defendant/owner could not be allowed to complain that the plaintiff/appellant was not ready and willing to perform his part of the contract; that it is pertinent to point out that as per the original agreement entered into and as could be evidenced from Exs.P-1 and P-2, the total sale consideration was only Rs. 59 lakhs and the balance payable was Rs. 57 lakhs, which alone the plaintiff should be ready and willing to pay; that on the contrary, it was the 4th defendant, who, made it clear that the consideration was not only Rs. 59 lakhs but also Rs. 12,85,013/-, which was to be deposited in the High Court to release the document; that at the earliest, the owner of the property (deceased defendant) did not reveal that the documents pertaining to the property were in the custody of the High Court on security; that after receiving the advance, it was came to the knowledge of the plaintiff when the defendant began to demand Rs. 12,85,013/- more, apart from Rs. 59 lakhs and thus, it was the defendant, who was responsible for the delay caused and as such, Exs. P-1 and P-2 fixed the sale consideration Rs. 59 lakhs and if that be so, the plaintiff should make the balance of sale consideration of Rs. 57 lakhs only, but the defendant was demanding more to make unjust enrichment; that it was actually intended to wriggle out of the contract; that the 4th defendant, who has filed proof affidavit, has admitted the execution of Exs.P-1 and P-2 and the 4th defendant has pleaded that the defendant should pay Rs. 12,85,013.08 over and above the sale consideration of Rs. 59 lakhs; that it was clear from the pleadings and evidence on the side of the defendant that the defendant was not ready and willing to receive the balance sale consideration of Rs. 57 lakhs, but wanted Rs. 12 lakhs and odd more; that it was evident that the defendants were never ready and willing to execute the sale deed as per the terms of Exs.P-1 and P-2; that D.W.1 has candidly admitted in his cross examination that even if P.W.1 was ready with the sale consideration, they were not prepared to receive the said amount to complete the transaction; that this part of the evidence clearly indicates that the defendants were never ready and willing to perform the contract; that the trial Judge should have appreciated the provisions of Sections 51 and 52 of the Indian Contract Act, which spoke about the performance of reciprocal promises simultaneously; that the legal principle laid down u/s 54 of the Contract Act was not appreciated by the learned Judge and he has also not appreciated the scope and effect of Section 16(c) of the Specific Relief Act, namely, the readiness and willingness should be as per the terms of the contract, but in this case the defendants had made it very clear that they were not ready and willing to perform their obligation of contract of sale by receiving the balance sale consideration of Rs. 57 lakhs, but demanded Rs. 12 lakhs and odd apart from Rs. 57 lakhs and hence, the issue regarding readiness and willingness should have been decided in favour of the plaintiff/appellant and against the defendants/respondents; that it is pertinent to point out that the plaintiff was in

lawful possession of the suit property; that there was no obligation on the part of the plaintiff to furnish security for Rs. 12 lakhs and odd and the findings and reasonings of the trial Judge were erroneous and that there was no occasion for granting decree for past and future damages at the rate of Rs. 10,250/- per month since the plaintiff was in lawful possession of the property.

10. Learned senior counsel would further add that after passing of the decree by the trial court on 08.04.2008, the owners have taken possession of the property forcibly from the tenants, who were put in possession by the defendant, even before two weeks granted for delivery of possession and apart from that, they have also executed a sale deed in favour of a third party transferee, who has purchased the property with notice and the property tax assessment has also been immediately transferred to the name of the third party purchaser and hence, he is not a bona fide purchaser. Under such circumstances, the transaction entered into between the defendants/owners and the third party purchaser transferee has got to be declared as void and illegal and it is liable to be set aside and hence, the order of the learned single Judge has got to be set aside and the decree of specific performance has got to be granted and the order of status quo has got to be restored by putting the plaintiff in possession of the property.

11. In support of his contentions, the learned senior counsel has relied on the following decisions;

- (1) R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others,
- (2) Prakash Chandra Vs. Angadlal and Others,
- (3) Indira Kaur and Ors Vs. Sheo Lal Kapoor,
- (4) P. D'Souza Vs. Shondrilo Naidu,
- (5) AIR 2000 SC 1985 (DLF Universal Ltd. v. Appropriate Authority)
- (6) M.M.S. Investments, Madurai and Others Vs. V. Veerappan and Others,

12. Mr. R. Krishnamoorthy, learned senior counsel and Mr. K.V. Venkatapathy, learned senior counsel appearing for respondents 1 to 3 herein, reiterated the very same contentions, which were raised before the trial Court, for sustaining the judgment of the trial court. In support of their contentions, they have relied on the following decisions;

- (1) N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others,
- (2) 1993-3-L.W.249 (P. Gopirathnam and Ors. v. Feerodous Estate (P) Ltd.,)
- (3) United Bank of India Vs. Ramdas Mahadeo Prashad and Others,
- (4) N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others,

(5) 2006-2 L.W. 234 (Raptakos Brett & Co. P. Ltd. v. Modi Business Centre (P) Ltd.)

13. Mr. A.L. Somayajee, learned senior counsel appearing for the 4th respondent herein would submit that the 4th respondent has purchased the property in question bona fide without notice. He has also purchased the property when delivery of possession was ordered. At the time when the purchase was made, there was actually a decree in favour of the legal heirs of the deceased 1st defendant and they have also executed a sale deed and huge amount has also been paid by way of sale transaction and hence, it would clearly indicate the genuineness of the transaction and even though he is a transferee of the subject matter in the suit for specific performance, he is also entitled to put forth contentions regarding the defence plea, which were all put forth by the defendants before the trial court and he has also made submissions in that regard. In support of his contentions, the learned senior counsel relied on the following decisions;

(1) 2007 (4) MLJ 1145 (Kumarayee Ammal v. M. Ramanathan)

(2) 2005 (10) SCC 218 (Union of India v. H.K. Dhruv)

(3) P. Panneerselvan Vs. A. Baylis,

(4) V.R. Sudhakara Rao and Others Vs. T.V. Kameswari,

(5) Punjab Urban Planning and Dev. Authority Vs. M/s. Shiv Saraswati Iron and Steel Re-Rolling Mills,

(6) 2001 (1) CTC 200 (Pankajam Parthasarathy v. Kasturi Guna Singh)

(7) Pushparani S. Sundaram and Others Vs. Pauline Manomani James (Deceased) and Others,

(8) 2008 (4) CTC 494 (Fathima Majeed v. Subhapratha Ravikumar)

14. The following points are formulated for determination in O.S.A. No. 297 of 2008:

(1) Whether the appellant (plaintiff) was entitled to a decree for specific performance ?

(2) To what relief the parties are entitled to ?

15. The following points are formulated for determination in O.S.A. No. 298 of 2008:

(1) Whether the respondents are entitled for recovery of possession of the suit property?

(2) Whether the respondents are entitled to past damages and future damages, as claimed in the plaint ?

16. The Court has paid its anxious consideration on the submissions made by the learned Counsel on either side and made a scrutiny of all the materials available including evidence both oral and documentary.

17. As could be seen from the above, the appellant (defendant) filed C.S. No. 13 of 1997 seeking a relief of specific performance, directing the deceased plaintiff to execute the sale deed in respect of the suit property in accordance with the terms of the contract dated 10.01.1995. The defendant (deceased) inter alia resisted the suit on the ground that there was no contract, much less concluded contract; that the plaintiff was never ready and willing to perform his part of the contract; that the relief of specific performance could not be granted since the alleged contract was in violation of the provisions under Sections 269UC and 269UD of Income Tax Act; that apart from that, the suit was hit and barred under Order II Rule 2 C.P.C.; that the plaintiff has also suppressed the material facts and thus, the plaintiff was not entitled to the said relief.

18. Admittedly, there was no written agreement entered into between the parties. The plaintiff has made specific averment in para 3 of the plaint, which reads as follows:

3. ...In the second week of January 1995 the plaintiff and the defendant entered into an oral agreement....

In para 14 of the plaint, the following relief was sought for by the plaintiff:

(a) ...directing the defendant to execute the sale deed in favour of the plaintiff in respect of the property described in the Schedule hereunder in accordance with the terms of the Contract dated 10.01.1995;

19. Placing reliance on the two receipts marked as Exs.P-1 and P-2, it is contended by the appellant's (plaintiff) side that in the said documents, the property, which was the subject matter of the agreement, the total consideration of Rs. 59 lakhs and also the payment of advance of Rs. 2 lakhs were mentioned and the same was also signed by the deceased defendant, the owner of the property and thus, it would clearly speak all the entire terms of the contract and thus, those documents would clearly evident that there was a concluded contract at all. Ex.P-1, dated 30.01.1995, reads as follows:

Received with thanks a sum of Rs. 50,000/- (Fifty thousand only) as token advance from Kalash Properties Private Limited today 30.01.1995 for the sale of my house F-188, Anna Nagar, Madras-102, for a total consideration of Rs. 58 lakhs (Fifty nine lakhs).

Ex.P-2, dated 17.02.1995, reads as follows:

Received with thanks a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand) by D.Ds. from Kalash Properties P. Ltd., Madras on 17.02.1995 as further token advance for the sale of my house property F-188, Anna Nagar, Madras-102. Thus I have received so far Rs. 2 lakhs totally as token advance.

20. From the very reading of these two receipts, it could be clear that Ex.P-1 contains the door number of the subject matter, Rs. 59 lakhs as a sale price and also Rs. 2 lakhs as advance towards the sale price. But, evidently, it did not contain, when the balance of sale consideration was payable and when the contract was to be concluded. It did not even mention anything about the delivery of possession. When these receipts did not contain the material and essential terms as an agreement for sale, it is highly doubtful, whether the contention putforth by the learned senior counsel for the appellant could be accepted. The contents in Exs.P-1 and P-2 would clearly indicate that there was no concluded contract. Prior to the filing of the instant suit, the defendant filed C.S. No. 1063 of 1995 seeking the relief of permanent injunction restraining the 1st defendant owner from interfering with his peaceful possession and enjoyment of the suit property. The said suit was filed in the month of July 1995. It was specifically averred in that plaint that the defendant entered into an oral agreement, whereby the plaintiff agreed to purchase the property for a consideration of Rs. 59 lakhs and paid Rs. 2 lakhs in advance. It was further averred in the plaint that "the plaintiff apprehends that the defendant, on account of his hostile attitude, is likely to delay finalising the terms of the contract to purchase and so does not seek protection u/s 53A of the Transfer of Property Act".

21. Paragraph 6 of the present plaint (C.S. No. 13 of 1997) reads as follows:

6. The plaintiff submits that the defendant has deliberately suppressed the fact that he was not having the original title deed with him at the time of entering into an agreement and receiving Rs. 2 lacs on the other hand the defendant represented that he would show the original sale deed at the time of finalising the terms and handed over Xerox copies of the property tax receipts, electricity receipts and water charges receipts....

P.W.1 examined on the side of the plaintiff has also deposed that the plaint averments found therein were correct. If that be so, even the averments made in the earlier suit for permanent injunction i.e.C.S. No. 1063 of 1995, which was filed in July 1995, and also the present suit, would clearly indicate that the terms and conditions of the contract were to be finalised. This coupled with the fact that the salient features, which are expected to be in an agreement for sale, are absent in Exs.P-1 and P-2 and the averments made in the plaint, would clearly indicate that there was no concluded contract at all. The contention putforth by the learned senior counsel for the plaintiff (appellant) that Limitation Act provides for a period of three years when time was shown as essence of contract and three years from the date of the refusal when the demand was made in a case where time was not stipulated in the agreement and in the instant case, the parties have agreed for the sale of the property and consideration was also fixed and merely because of the omissions of other particulars in Exs.P-1 and P-2, should not be taken into consideration to hold that there was no concluded contract. But this contention cannot be accepted for two reasons, namely, (i)

Exs.P-1 and P-2 did not contain the salient features requisite to term them as an agreement for sale, and apart from that (ii) it was specifically pleaded by the plaintiff/appellant that there was an oral agreement and the terms of the agreement were not even finalised.

22. The Apex Court had an occasion to consider such a situation in a case reported in V.R. Sudhakara Rao and Others Vs. T.V. Kameswari, , wherein it has been held as follows:

16. The High Court has rightly concluded that there is no clear proof relating to the other terms of condition. The relief of specific performance is discretionary relief and except the oral evidence, there is no clear evidence to prove several or the essential terms which have been taken note of by the High Court. The High Court, on analysing the evidence, has come to hold that except Ex.B-1 and the oral evidence of D.W.1 and D.W.2, there is no other clear proof relating to the other terms and conditions of the contract which can be termed as essential conditions like delivery of possession and also the obtaining of permission from the Urban Land Ceiling Authorities and therefore, it cannot be said that all the essential terms and conditions of a well-concluded contract had been established in the case at hand.

From the very reading of the decision cited supra, this Court is of the considered opinion that the said decision would squarely apply to the present facts of the case and it has to be held that there was no concluded agreement of sale between the parties.

23. In so far as the question as to whether the plaintiff/appellant was ready and willing to perform his part of the contract is concerned, on a scrutiny of evidence both orally and documentary, the Court cannot agree with the contentions putforth by the appellant's side. The specific case of the appellant was that in the second week of January, 1995, there was an oral agreement for sale of the plaint immovable property for a sum of Rs. 59 lakhs. As could be seen from Exs.P-1 and P-2, Rs. 50,000/- and Rs. 1.50 lakhs were paid on the respective dates. These two receipts cannot be substituted for an agreement for sale and thus, the plaintiff/appellant has paid only Rs. 2 lakhs towards consideration of Rs. 59 lakhs, as alleged by him. It was contended by the defendants before the trial court that the consideration was not Rs. 59 lakhs, as putforth by the plaintiff/appellant. It was agreed that those receipts were for payment of advance. But, it was also agreed by the plaintiff/appellant to make payment of Rs. 12,85,013.08 in order to satisfy the condition imposed by this Court and to get back the documents, which are originally given as security. The Court need not go into the controversy as to whether the consideration was only Rs. 59 lakhs, as contended by the appellant/plaintiff or Rs. 71 lakhs and odd, as putforth by the defendants. The appellant/plaintiff has not proved that he was ready and willing to perform his part of the contract. It has been repeatedly held that the plaintiff must plead and prove that he was ready and willing to perform the contract from the very commencement i.e.from the time of entering into agreement till the end. In the

instant case, according to the plaintiff, there was an oral agreement in the second week of January, 1995. What all noticed by the Court is only the filing of the suit with an averment that the plaintiff was all along ready and willing to perform his part of the contract. Mere filing of the suit with the averments would not be sufficient.

24. Admittedly, from the time of the alleged oral agreement in the month of January, 1995 till the instant suit was filed in the month of October 1996, the plaintiff has not sent any communication, expressing his readiness and willingness. Even before filing the suit, not even a notice was given by the plaintiff to the defendants making a demand for the completion of the sale transaction. The contention put forth by the appellant's side that the Law does not require any communication or notice before filing the suit for specific performance, cannot be an answer. P.W.1 has deposed that the 1st defendant refused to come and register the sale deed in his favour and therefore, he filed the suit against the deceased defendant in C.S.1063 of 1995 before this Court. This part of the evidence by P.W.1 cannot but be false since no such averment was made in the plaint in C.S. No. 1063 of 1995; on the contrary, it was stated that the terms of the contract were not finalised. From the evidence of P.W.1, it could be seen that the 1st defendant gave a police complaint against him and the company and thereafter, P.W.1 also lodged a complaint against the 1st defendant. When such a situation has arisen, one would naturally expect to issue notice, making a demand and calling upon the owner of the property to execute the sale deed and complete the transaction. But, he has not done so. During cross examination, P.W.1 has candidly admitted that,

The plaintiff company is assessed to income tax. The income tax returns of the company are not filed up to date. The plaintiff company has filed returns up to the year 2000. I do not remember what is the quantum of income tax paid lastly during the year 2000 by the plaintiff company till 2000. I do not remember whether any orders were passed by the Income Tax authority on my returns during 2000. I am in possession of all the records in respect of the income of the plaintiff company. I can produce all the records available with Karnataka Bank Limited, Anna Nagar Branch, Chennai-40. The bank balance of the plaintiff company as of today is around Rs. 5,000/-. The paid up capital of the plaintiff company is Rs. 50,000/-. Now, the paid up capital of the plaintiff company has been increased to several lakhs. Only my Auditor will know whether the increased paid up capital would be reflected in the plaintiff balance sheet.

The very reading of the above evidence would clearly indicate that the plaintiff, who came forward with a case on an oral agreement for sale, which was entered into in the second week of July 1995, till he filed a suit in the year 1997, could not have been in a financial position to make payment of the balance of sale consideration of Rs. 57 lakhs, as alleged by him. Pending suit, the plaintiff made an application in A. No. 928 of 2006 in C.S. No. 13 of 1997, in which, an order was passed by the Court on 02.03.1996 permitting him to deposit the alleged

balance sale consideration of Rs. 57 lakhs. But, the plaintiff failed to deposit the amount within the stipulated time. When this fact was confronted to P.W.1 at the time of cross examination, he has given an evasive answer that due to extraneous reasons, he did not deposit the amount. The plaintiff before the trial court, has not produced any document to show that he had means to pay the balance of sale consideration. At the time of advancing the arguments, he filed another application for making deposit of the amount. But the said application was dismissed, observing that the case reached final stage and under such circumstances, the application cannot be entertained. Mere statement in the plaint expressing readiness and willingness would not be sufficient. Materials should be placed to prove the same. In the instant case, the evidence would clearly indicate that the readiness and willingness contended by the plaintiff was only an empty averment in the plaint. Surrounding circumstances also would clearly indicate that the plaintiff was never ready and willing to make the payment of balance of sale consideration and complete the transaction.

25. In *Azhar Sultana Vs. B. Rajamani and Others*, , it has been held as follows:

Section 16(c) of the Specific Relief Act, 1963 postulates continuous readiness and willingness on the part of the plaintiff. It is a condition precedent for obtaining a relief of grant of specific performance of contract. The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard and fast law can be laid down therefor.

26. In *K.S. Vidyanadam and Others Vs. Vairavan*, , Their Lordships have held as follows:

10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the country by both Sections 10 and 20. As held by a Constitution Bench of this Court in *Chand Rani v. Kalama Rani* (SCC p.528, para 25)

...it is clear that in the case of sale of immovable property there is no

presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are...

(1) from the express terms of the contract;

(2) from the nature of the property; and

(3) from the surrounding circumstances, for example, the object of making the contract.

The said decisions are applicable to the present facts of the case.

27. In the instant case, according to the plaintiff, the contract was entered into in the second week of January, 1995. But the present suit was filed after the period of nearly about 30 months. During the long interregnum period of 30 months, the plaintiff has not issued any communication or any notice, speaking of his readiness and willingness to perform his part of the contract. It is not the case of the plaintiff/appellant that he ever came forward to part with any part of the balance of sale consideration. This would speak volume of the laches and inaction on the part of the plaintiff/appellant. The crowning circumstance was, despite the direction of the Court to make deposit of the balance of consideration of Rs. 57 lakhs within the stipulated time, that too, on the application made by the plaintiff, he has failed to do so. All would be clearly indicative that the plaintiff was never ready and willing to perform his part of the contract.

28. Pending appeal, he has filed M.P.2 of 2009 to receive additional evidence along with the supporting affidavit. The learned senior counsel for the appellant would urge that even at the time of the trial, he filed an application to deposit the amount, but the same was dismissed. Had an opportunity been given to him at that time, he would have placed the documents before the trial court, but the opportunity was denied. Under the circumstances, he must be given an opportunity to let in additional evidence. On the contrary, the learned senior counsel for the respondents pointing to the additional documents, would indicate that the immovable property actually belongs to his wife and that the same was also mortgaged. Under such circumstances, since the property did not belong to the appellant, it could not indicate in any way the readiness and willingness on the part of the appellant.

29. As pointed out earlier, when the first application was made, pending trial, there was an order to make the deposit of Rs. 57 lakhs and the plaintiff has miserably failed to make the deposit. At the time when the matter was ripe for arguments, the second application was filed and the same was dismissed by the learned single Judge and rightly so. Even the appeal filed by the plaintiff against the interim order was dismissed. Under such circumstances, it is too late for the plaintiff to come forward with an application to receive additional evidence in order to prove his readiness and willingness, which, in the considered opinion of the Court, cannot be countenanced in law and hence, that application has to be

dismissed and thus, it has to be held that the plaintiff was never ready and willing to perform the contract.

30. Apart from the above, the Court is able to see other circumstances to deny the relief of specific performance. When even as per averments in the plaint, during the period when the agreement was entered into, the property is in the occupation of the tenant by name Smt. Shanthi Devadoss, who was running a school and the defendant wanted the plaintiff to negotiate and persuade the said tenant to vacate the said premises at his own expenses and to pay back the advance of Rs. 75,000/- received by him from the tenant and agreed that the sum of Rs. 75,000/- should be deducted from the remaining sale consideration. Accordingly, the plaintiff took steps and vacated her and got possession of the property. At this juncture, it is pertinent to point out that the plaintiff took possession of the property by vacating the tenant. Having obtained possession in that way, he has inducted two tenants, from whom he was recovering rental. Even P.W.1 has candidly admitted that he got rental for 10 months and thereafter, they did not pay. Then he filed proceedings before the Court of Small Causes for eviction against them. All would clearly indicate that these facts, namely, he inducted tenants and got rents from them and he filed proceedings before the Court, were not averred in the plaint and thus, it would be quite clear that he has acted as the owner of the property and it is not his case that the 1st defendant, the owner, ever permitted him to induct any tenant or recover the rent from them. This is not one of the stipulations even according to the terms of the original agreement and all would go to show that those induction of the tenants and recovery of rental from them were all nothing but illegal acts committed by the plaintiff. Under such circumstances, in the considered opinion of the Court, the plaintiff, who sought for discretionary relief of specific performance while he has not conducted himself to get such a relief, cannot but be disentitled to get the relief.

31. In so far as the question whether the suit filed by the plaintiff/appellant was hit and barred under Order 2 Rule 2 C.P.C. is concerned, the contention put forth by the appellant's side cannot stand in the scrutiny of law. What is all contended by the appellant's side is that the cause of action which was available for the plaintiff to file C.S. 1063 of 1995 for permanent injunction was a threat made by the 1st defendant to dispossess him of the property. But the cause of action for the second suit was the evasion on the part of the defendants from completing the transaction for sale and thus, both the causes of action were distinct and different. Under such circumstances, Order II Rule 2 C.P.C. cannot be invoked to bar the present suit for specific performance.

32. It is necessary to extract Order II Rule 2 C.P.C., which reads as follows:

Suit to include the whole claim:- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim:- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs:- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

33. The contention of the learned senior counsel for the plaintiff/appellant cannot be countenanced. When the first suit, viz., C.S. No. 1063 of 1995 was filed for permanent injunction, it was specifically averred that the cause of action arose during the last week of January 1995 when the deceased plaintiff agreed to sell the property to the defendant; when two payments of Rs. 50,000/- and Rs. 1.50 lakhs were made on 30.01.1995 and 17.02.1995 respectively; and when the plaintiff got possession from the tenant and so on. In the present suit, namely, C.S. No. 13 of 1997 for specific performance, the very same facts were shown as cause of action. It will be quite clear from the pleadings in both the suits that the causes of action in both the suits were based on the very same and identical facts. It is not a case where the reliefs sought for permanent injunction and specific performance were based either on different facts or on different causes of action. The question, whether the cause of action is identical or different, has to be decided, taking into consideration the averments and the substance made in both the complaints. Even the character of the reliefs claimed by the plaintiff may be different. In order to attract the applicability of the bar contemplated under Order II Rule 2 C.P.C., it is necessary that the cause of action on which the subsequent claim is founded was available to the claimant when he sought for the relief in the first suit before any court and hence, the test should be whether the causes of action on which the present claim is rested, were available to the plaintiff at that time to claim the relief in the present suit now sought for. In the instant case, the alleged agreement for sale was entered into in the second week of January, 1995 and on the strength of which, the first suit for injunction was made in 1995 and thus, all these causes of action for seeking the relief of specific performance were very much available at that time. But he has not reserved his right to seek the said relief later. Under these circumstances, it is a case, where it is barred under Order 2 Rule 2 of C.P.C.

34. The defendants before the trial court took a plea that an agreement in writing signed by both vendor and purchaser was mandatory and it was statutorily required as per the provisions of 269 UC and 269 UD. Pointing at the above provisions of Sections 269UC and 269UD of the Income Tax Act, it was urged by the learned senior counsel for the appellant that the provisions were not mandatory and it was only directory and even if there was no written

agreement, it would not in any way affect the transaction because the Legislature has employed the word "agreement for transfer" under the provisions and hence, this permission could be obtained after the decree is passed for specific performance within a stipulated time.

35. On the contrary, it was submitted by the learned senior counsel for the defendants that a written agreement was mandatory since even as per the plaintiff's case, the consideration was fixed at Rs. 59 lakhs i.e. it was exceeding Rs. 10 lakhs and, hence, in the absence of any written agreement, the agreement for sale becomes void ab initio and cannot be enforced. The provisions mandate that no transfer of any immovable property of such value exceeding Rs. 10 lakhs as might be prescribed should be effected except after an agreement for transfer was entered into between the person, who intended to transfer the immovable property in accordance with the provisions of Sub-section(2) and further, the said agreement should be reduced to writing in the form of a statement. Hence, it will be quite evident that whenever consideration exceeded Rs. 10 lakhs in an agreement for transfer of immovable property the terms should be reduced to writing in the form of a statement. The words employed in the provision are "agreement for transfer" and as per Sub-section (2), the said agreement must also be reduced to writing and it has also to be approved. All these would go to show that the provision is mandatory and not directory as put forth by the learned senior counsel for the appellant and hence the said contention cannot be countenanced.

36. As the last contention, the learned senior counsel for the appellant would submit that the suit filed by the plaintiff in C.S. No. 13 of 1997 was dismissed while the suit filed by the otherside for recovery of possession was decreed. While disposing of the suit, the learned single Judge has granted time for handing over the vacant possession by the plaintiff in C.S.13 of 1997 to the defendants therein two weeks from the date of judgment, namely 08.04.2008. Even before handing over possession of the subject matter of the suit property, which was admittedly with the plaintiff/appellant, the defendants have sold the property to a third party purchaser, who is added as a party to the appeal, within the stipulated time and the superstructure has been demolished with the police aid and has also been handed over to the third party purchaser and the tax assessment has also been transferred to the name of the third party transferee. Thus, all these acts have taken as disobedience of the orders of the decree. The third party purchaser cannot come forward to say that he has purchased the property without notice. She cannot be the bona fide purchaser. In a given case like this, the Court has to take into consideration the conduct of the defendants owners, which was arbitrary and illegal, apart from the disobedience of the orders of court. Under such circumstances, now the sale transaction entered into between the owners defendants and the third party purchaser, who is now added as party respondent, has got to be set aside.

37. In answer, it is contended by the respondents that the decree was passed by

the learned single Judge on 08.04.2008 granting two weeks" time for handing over possession. At that time, even as per the evidence of P.W.1, it was not under his direct possession but under the possession of the tenants. The tenants have actually handed over possession to the owners and on delivery of possession, the property has been sold to the purchaser/4th respondent herein and the sale deed executed would clearly indicate that vacant possession was delivered. Under such circumstances, it cannot be said that it is the disobedience of the decree or anything done illegal and hence, such contentions have got to be rejected.

38. The trial court rejected the case of the plaintiff/appellant, seeking specific performance of the agreement and also directed the delivery of possession within two weeks from the date of the decree. From the available evidence, it could be seen that the property was under the occupation of one Shanthi Devadoss, a tenant running a school. The 1st defendant/owner of the property, who could not vacate the tenant, has asked the plaintiff to take steps to vacate her. Admittedly, it was the plaintiff, who vacated the tenant and got possession of the property. It is also admitted by both sides that the plaintiff was actually in possession of the property. At the same time, the plaintiff has not pleaded part performance of the alleged agreement of sale u/s 53-A of the Transfer of Property Act and hence, it could be taken only as a permissive possession. From the evidence of P.W.1, it is quite evident that he has let out the property to two tenants and also received rents from them, which according to him for a period of ten months. The plaintiff has also initiated proceedings before the Court of Small Causes. It is not the case of the plaintiff that he got permission from the 1st defendant or other defendants to induct any tenant therein or make recovery of rental from them. Admittedly he was recovering Rs. 10,500/- per month from the tenants. The act of the plaintiff in inducting the tenants and recovering rental is illegal. It cannot be but termed as unauthorised act. The persons, who were actually occupying the premises, could be termed as unauthorised persons. It is true, according to the defendants, they took delivery of possession from the persons occupying the premises. It is pertinent to point out that the persons, who occupied the premises and delivered possession of the property, have not come forward with any complaint either before the police or before the legal forum and hence, it will be quite clear that the owners/defendants have taken delivery of possession from the persons, who were in occupation of the premises under the plaintiff. From the sale deed executed in favour of a third party purchaser, it could be seen that he took vacant possession of the property. There is nothing to indicate that he has purchased the property having notice of the litigation.

39. Under such circumstances, this Court is of the considered opinion that the sale transaction entered into between the defendants owners and the third party purchaser, cannot be set aside on that ground and hence, the judgment of the trial Judge, denying the relief of specific performance in C.S. No. 13 of 1997 and decreeing the suit for delivery of possession in C.S. No. 559 of 1996 are to be confirmed and accordingly, they are confirmed. The trial Judge has also held that

the defendants are entitled for past and future mesne profits at the rate of Rs. 10,250/- per month for the period mentioned in the plaint. The defendants have claimed Rs. 30,000/- towards past damages (Rs. 2,80,000/- minus Rs. 2,50,000/-) along with future damages from 01.08.1996 till the date of delivery of vacant possession of the schedule mentioned property at Rs. 20,000/- or fixed by the Court. But the trial court has decreed past and future mesne profits at the rate of Rs. 10,250/- per month for the period mentioned in the plaint. It is pertinent to point out that originally Mrs. Shanthi Devadoss was the tenant under the 1st defendant. When he could not vacate her, he sought the request of the plaintiff, who has vacated by incurring expenditure and got possession of the property. It is also available in evidence that he was getting rental for the period of ten months from the new tenants at the rate of Rs. 10,250/- per month. No material is available that the plaintiff had rented out the property all along the period. Under such circumstances, the mesne profits could be fixed from the date of filing of the suit in C.S. No. 559 of 1996 seeking recovery of possession at the rate of Rs. 10,250/- per month. It is also pertinent to point out that due to the non-payment of the rental after 10 months period, the plaintiff has also initiated proceedings against the tenants. Under such circumstances, it would be unreasonable to direct the plaintiff to pay at the rate of Rs. 10,250/- for the entire period.

40. Taking into consideration the facts and circumstances, the Court is of the opinion that the past and future mesne profits could be fixed at Rs. 7,50,000/-; out of which, after adjusting Rs. 2,50,000/-, the balance of Rs. 5 lakhs which the plaintiff is liable to pay within a period of two months herefrom. It remains to be stated that after passing of the decree by the trial court on 08.04.2008 and shortly thereafter, the defendants owners got the possession of the property from the persons occupying the premises. Under such circumstances, shortly after the passing of the decree, the third party purchaser got the possession of the property. Under such circumstances, during the interregnum period, no future mesne profits could be calculated and hence, the finding of the trial court, directing the plaintiff to pay past as well as future mesne profits at the rate of Rs. 10,250/- per month for the period mentioned in the plaint is modified.

Accordingly,

O.S.A. No. 297 of 2008 is dismissed, leaving the parties to bear their costs.

O.S.A. No. 298 of 2008 is dismissed, leaving the parties to bear their costs, with the following modification as to mesne profits:

The finding of the learned trial Judge regarding past and future profits is modified to the effect that the plaintiff/appellant should pay respondents 1 to 3/ the defendants the total sum of Rs. 5 lakhs (Rupees five lakhs only) within two months from today, in default, it carries interest at the rate of 12% per annum. Parties shall bear their costs.

Consequently, connected M.Ps. are closed.

In view of the orders passed supra, Mr. G. Justin, who was appointed as Advocate Receiver, vide order of Court dated 08.09.2008 in M.P. No. 1 of 2008, is discharged.