
(1991) 04 MAD CK 0007

In the Madras High Court

Case No : Appeal Suit No"s. 427 to 430 of 1981

T. Periasamy Nadar, etc and others

APPELLANT

Vs

T.D. Ramasubramaniam

RESPONDENT

Date of Decision : 19-04-1991

Acts Referred:

Contract Act, 1872 — Section 32

Citation : (1991) 04 MAD CK 0007

Hon'ble Judges : Bellie, J

Bench : Single Bench

Advocate : K.T. Palpandian, for the Appellant; V.S. Subramaniam, for the Respondent

Judgement

Bellie, J.—In these four appeals the defendant is the same person. All the four appeals arise out of a common Judgment rendered by the trial

court. The point that arises for consideration in the four appeals are similar. All the four appeals can be dealt with by a common Judgment. These

appeals A.S. Nos. 427 of 1981 to 430 of 1981 are respectively against the decree and Judgments in the suits O.S. Nos. 3811 of 3814 of 1978

on the file of the City Civil Court, Madras. O.S. No. 3311 of 1978 was filed by three brothers viz., T. Periasamy Nadar, T. Murugesan, and T.

Thangaraj against T.D. Ramasubramaniam. The other three suits, namely O.S. Nos. 3812 to 3814 of 1978 were filed individually by the said three

brothers against the same defendant, i.e., T.D. Ramasubramaniam respectively by T. Murugesan, T. Thangaraj and T. Periasamy. All the four suits

were dismissed and therefore, these appeals are filed by the plaintiffs.

2. The questions involved in all the four suits are almost similar. The defendant is the owner of the property bearing Door No. 15/8, Sir Thiagaraya

Road, Pondy Bazaar, Madras. In respect of this property, on 10.8.1977 he entered into four agreements of sale, one with the three brothers T.

Periasamy, T. Murugesan, and T. Thangaraj, another with T. Murugesan, third with T. Thangaraj and four with T. Periasamy. In all these

agreements he agreed to sell certain extent of land in the above mentioned property to the respective persons. The extent and sale consideration of

the land to be sold vary in the four agreements. Already on 31.1.1977 an advance of Rs. 2,500/- had been paid and on the date of agreement

another sum of Rs. 13,500 was paid. Thus in all an advance of Rs. 16,000/- has been paid. In each of the agreement, it was provided that the

defendant shall furnish a draft sale deed for approval within a stipulated time, which differ from agreement to agreement and upon such receipt of

the sale deed, the defendant within one month therefrom shall apply to the competent authority under the Tamil Nadu Urban Land (Ceiling and

Regulation) Act, 1978, for permission to sell and then within one month from the grant of such permission, the sales shall be completed. The

balance of sale consideration shall be paid at the time of registration of the sale deed. The defendant received the draft sale deeds, and on

3.10.1977 he applied to the competent authority for permission. On 4.10.1977 the plaintiffs sent a notice to the defendant stating that his

applications for permission did not contain the necessary particulars and called upon him to do the needful. The defendant made some corrections

in the application, but the competent authority rejected the application on 18.10.1977. On 19.10.1977 the defendant sent a notice to the plaintiff

stating that since the application for permission to sell had been rejected by the competent authority, he was not in a position to execute the sale

deed and therefore he repudiates the agreement. He has sent a cheque for Rs. 16,000/- in respect of each of the agreements to the plaintiffs in

repayment of the advance amount paid to him. The plaintiffs have kept the cheque uncashed. In these circumstances, the plaintiffs have filed these

suits.

The case of the plaintiffs is that there is an implied term in the contract that the defendant shall do all things necessary for obtaining sanction from

the competent authority, but he failed to do so. Whereas he should have stated in the relevant column in the application the date of construction of

the building, he has only stated "vacant land" inspite of request by the plaintiffs. Further he failed to give a statement required under S.(1) of the

Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978. For these reasons the permission was rejected. The defendant failed to comply with

the requirements as regards the particulars deliberately. The plaintiffs therefore called upon the defendant to appeal against the order of rejection,

but he would not do. Therefore, the plaintiffs themselves filed the appeals and the defendant even opposed that appeal.

The appellate authority by its order dated 29.3.1978 dismissed the appeal. Since the permission was rejected because of the fault of the defendant

he is bound to apply for permission afresh with all necessary correct particulars. The defendant unilaterally repudiated the contract and that is not

valid and the contract is still subsisting. On these grounds the plaintiffs have filed this suit for specific performance of the agreement and for

direction to the defendant to apply afresh to the competent authority for permission with all correct particulars and to direct him to deliver vacant

possession of the lands concerned in each of the suit.

3. As against this, the defendant would contend that he had stated in the application for permission all the necessary particulars and there was no

fault on his part and he was not in any way responsible for the rejection of the application. Since even at the time of agreements the difficulties in

getting the permission were anticipated, clause (6) was introduced in the agreements according to which if the defendant was not in a position to

sell the property by reason of refusal of permission by the competent authority, the defendant should refund the advance sum of Rs. 16,000/-

together with another sum of Rs. 8,000/- being the estimated damages for his inability to fulfil the agreement. Since the permission to sell was

rejected, as there was no other option the defendant sent the advance amount of Rs. 16,000/- repudiating the contract. He further contended that

he is not bound to file an appeal against the order of rejection passed by the competent authority. Though the entire land was to be purchased as

one unit, the plaintiffs for the purpose of circumventing the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978, splitting

the land into four parts, got four agreements executed. Therefore, the agreements are against law and hence they are illegal, void and

unenforceable. So contending, the defendant has prayed for dismissal of the suits.

4. The learned trial Judge has framed similar issues in all the suits and holding a joint trial, in a common judgment he has held that the plaintiffs got

four agreements instead of one and this was with a view to escape from the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act

1978, and therefore the agreements are illegal. He further held that there was no fault on the part of the defendant for the rejection of the

application for permission to sell. He also held that for the reason that the permission was not granted by the competent authority, the plaintiffs

cannot enforce specific performance of the contract and the plaintiffs would be entitled to have their remedy under clause (6) of the agreements

which provides for refund of the advance amount and Rs. 8,000/- as the estimated damages. On these findings, the trial court dismissed all the four

suits.

5. Mr. K.T. Palpandian Learned Counsel appearing for the appellants plaintiff contends that (i) though it is written in Exs.A1 to A4 agreements that

the defendant shall obtain permission to sell from the competent authority, such a permission, as a matter of fact, is not required in law and

therefore even though the permission sought for is rejected the defendant can execute the sale deeds and hence the plaintiffs are entitled to specific

performance; (ii) even if the permission is required in law, the defendant by his own want on misrepresentation and suppression of necessary facts

maneuvered to get the rejection order and therefore the defendant taking advantage of his own fault cannot refuse to execute the sale deeds (iii) on

the mere rejection of the application for permission to sell the agreements do not come to an end, and the liability of the defendant is not absolved

and he should have taken further steps such as filing an appeal to get the permission and that he did not do; (iv) Whatever might be the position

under the old (Act 34 of 1976), under the new Act (At 24 of 1978) no permission is necessary to sell and the old Act having been repealed and

the new Act substituted in its place with effect retrospectively from 3.8.1976 on which date the old Act came into force, and the suit having been

filed on 17.4.1978 the defendant even without permission to sell is liable to execute the sale deeds; and (v) the finding of the trial court that the

agreements are illegal and therefore they are not enforceable is wrong and is not sustainable.

6. It is argued by the Learned Counsel as regards first point that the only provision of law that requires permission to sell is S. 26 of the Tamil

Nadu Urban Land (Ceiling and Regulation) Act, 34 of 1976 hereinafter referred to as the Act, but a reading of the Section would show that it

does not apply to the lands in question. The material portion of the section reads thus:

....no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a

building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such

commencement from the date on which the building is constructed whichever is later, except with the previous permission in writing of the

competent authority.

It is clear from this that permission to sell is necessary only for sale of an urban and urbanisable land with a building or a part of building. It is

argued that under the agreements Exs.A1 to A4 only the lands are agreed to be sold and no building whatsoever and therefore S. 26 is not

attracted to the suit agreements. The Learned Counsel appears to be correct. It is possible that the parties did not understand the section clearly

and therefore they thought that permission is necessary or that it would be better by way of abundant caution permission is obtained. It must be

noted that the lands agreed to be sold are contiguous and form part of one land and there is a building in it which has been raised by the tenant of

the land.

However it may be, it appears that definitely both the parties had the view that permission must be obtained and therefore they inserted a clause

therefor in the agreement. Even subsequently throughout until the time it is now argued so in the appeal, it was never said by the plaintiffs that no

permission was necessary. Therefore if the agreements have become void or even terminated by the defendant for the reason that permission could

not be obtained the argument that permission is not necessary in law cannot be countenanced. In my Judgment, for the reasoning I would give infra

while dealing with the point No. (iv) raised by the Learned Counsel, the

agreements have become void and unenforceable.

7. As regards the second point raised by the Learned Counsel that the defendant himself contriving want only got a rejection order with a view to

avoid execution of the sale deeds, it is contended that he purposely omitted to give necessary particulars in the application forms and that was the

reason that permission was refused. In support of this contention the Learned Counsel relied on a decision in *New Zealand Shipping Co. Ltd. v.*

Societe Des Ateliers Et Chantiers De France 1919 Appeal Cases 1 : 1918-1919 All. Eng. Rep. 552 wherein it has been held to the effect that the

person who seeks to treat the contract as void or unenforceable should not have himself brought about the event giving rise to the avoidance.

In this connection it would be convenient to refer to what is exactly stated in the agreements with regard to obtaining permission. A reading of the

agreement would show that there is no doubt that as per clause (3) thereof the defendant shall apply for permission for sale. It is not in dispute that

he did apply. But the charge is that he did not properly apply and he did so purposely. It appears there is a form prescribed for application for

permission and the defendant has applied in such forms. According to the plaintiffs column (2) in the annexure to the application form requires Date

of construction of building (whether constructed before or after the commencement of the Act) but the defendant wrongly and merely stated

vacant land"" and when the plaintiffs protested to this he just added Building owned by lessee which they are entitled to remove vide copy of sale

deed enclosed herewith.

To this the defendant would state that since the subject-matter of the sale in the agreement is only vacant lands, he first stated ""vacant land"" and

when the plaintiffs wanted him to mention about the building he mentioned that too. The defendant would further say that the building has been put

up by the lessee and when the lease period expires they will have to demolish the same. It must be noted that in column (5) of the application he

has mentioned part of Door No. 15/10. From these it appears to me that the charge that the defendant purposely omitted to mention necessary

particulars is baseless. May be the defendant was in confusion as to what he had to do since column (2) in the form does not relate to sale of

vacant land but it relates to sale of a building with land or part of a building but

no building or part of a building is agreed to be sold.

It is then contended that he omitted to mention anything in column (2) as regards the requirement whether the building was constructed before or

after the commencement of the Act. As to this, his explanation is that it was because the building had been put up by the lessee and not by him.

Whatever it may be, the particulars regarding the date of the building does not appear to be material at all for the permission. A reading of S. 26

would show that while stating what is prohibited from conveying it is mentioned.

...any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building....

It is clear from this that what the legislature intended to state is that no building constructed before or after the commencement of the Act shall be

conveyed without permission. Therefore the non mentioning of the fact whether the building was constructed before or after the commencement of

the Act does not at all in any way affect the chance of getting the permission.

As pointed out by the trial court, in the form for permission to sell some particulars are required to be given by the seller and a statement is

required from the purchaser also. Both of them have to state the necessary facts and sign thereunder. All the applications Exs.A21 to A24 have

been signed by both the seller and the purchasers. The plaintiffs would know the particulars stated by the defendant, and in fact some of the

particulars wanted to be given by the plaintiffs even after the submission of the applications, were subsequently mentioned. Therefore the

contention of the plaintiffs that purposely necessary particulars have not been given by the defendant and therefore the application were defective

and that led to the rejection of the applications does not appeal to me.

It is argued that the defendant should have deleted the words ""vacant land."" But since as a matter of fact what is agreed to be sold is only ""vacant

land"" and further as wanted by the plaintiffs the defendant has also mentioned the words building owned by lessee which they are entitled to

remove vide copy of sale deed enclosed herewith ""it cannot be said by any stretch of imagination that by stating "vacant land" defective particulars

have been given with a view to mislead the authority"". It is then said that form No. VIII particulars have not been annexed to the application. But S.

26 does not require any such annexure. It is also argued that when the applications were filed the site plan and the draft sale deeds were not signed

by the defendant and this he did purposely. But when demanded by the plaintiff this also has been complied with, and moreover there is no rule

that requires that the vendor shall submit a site plan and draft sale deeds signed by him.

It is again said that the defendant has not filed a statement along with the application as one namely Ex. A30 which was filed by him in support of

Ex. A29 application in respect of some other land to some other person. Here again by not filing any such a statement the defendant has not

contravened any rules since no rule requiring furnishing of such a statement has been brought to my notice. Further in the case of Ex. A29 what

was sought to be sold was a building and appurtenant land unlike land only in our case.

It is then argued that as seen from Ex. A33 report of the enquiring Deputy Tahsildar the defendant has refused to give a statement to the Enquiry

Deputy Tahsildar and this shows the mala fide intention of the defendant. But as pointed out by the trial court the defendant has refuted this

statement in Ex. A33 and this particular statement in Ex. A33 is the last one and is in different ink. In this position the principle that the official act

must be presumed to have been regularly performed and they are true, cannot be resorted to. The Officer who has given the report has not been

examined. Therefore it cannot be believed that the defendant really refused to give a statement as required by the Enquiry Deputy Tahsildar.

The trial Court has also pointed out that in Ex. A34 proceedings of the Assistant Commissioner which was subsequent to Ex. A33 it has been

written that the applicant has declined to give a statement before the Enquiry Officer, but this has been stricken off with a red ink pen. The

permission has been refused as seen from Ex. A34 on the ground that the applicant is in possession of vacant land in excess of the ceiling limit.

May be because it is true that applicant refused to give a statement as to true facts.

Lastly it is argued that if it had been mentioned that the entire land has been leased out and there is a building in it the land agreed to be sold would

not have been treated as vacant land and permission would have been given. But as unforeseen, on objection raised by the plaintiffs, the defendant

has mentioned in the application that vacant land. Building owned by lessee which they are entitled to remove vide copy of sale deed enclosed herewith.

It is also contended that the defendant did not file a statement under S. 6 of the Act. But as per this Section persons holding vacant land in excess of the ceiling limit have to file a statement. This provision is generally applicable to all persons who are having excess land. If such a statement has not been filed by the defendant, consequences that would arise therefrom would follow but this has no relation to the agreements between the parties. It is not required in the agreements that the defendant should file such a statement. Therefore I do not think there is any substance in this contention.

For all these reasons the contention of the Learned Counsel for the appellants plaintiffs that the defendant purposely giving defective application got an order of rejection and he cannot be allowed to take advantage of his own wrong has no force.

8. Next coming to the third contention that there is implied condition in the agreements that the defendant must do all that is necessary to get permission and therefore he cannot, just filing an application without doing anything further such as filing an appeal against the rejection order, avoid the agreements by saying that permission has been refused, a reading of clause (3) of the agreements would show that the defendant has been enjoined to file an application for permission to sell, but beyond this nothing else is stated. In the following clause i.e., clause (4) it is provided that the sale shall be completed within one month from the date of grant of permission. In Clause (6) it is provided as to what should be done in the event of refusal of permission i.e., the defendant shall refund the advance amount of Rs. 16,000/- and pay a further a sum of Rs. 8,000/- as damages for nonperformance of the agreements. Therefore clear provisions have been made as to what should follow when permission is granted or when permission is refused.

What follows from this is that when an application for permission is refused no question of sale of the property arises and the parties should respect what is stated in clause (6). The parties never contemplated any appeal being filed in the event of refusal of permission. There is absolutely no room

for thinking that filing of an appeal is implied in the terms of the agreement. In support of his contention the Learned Counsel relied on a decision in

AIR 1930 287 (Privy Council) In this case cultivating rights in certain lands were to be transferred. To effectuate such transfer sanction of the

Revenue Officer was necessary. For that the defendant shall make an application. On these facts the Court held that application by the defendant

to the Revenue authorities to transfer the land is an implied covenant in the agreement to sell. In this view the Court directed the defendant to make

an application to the Revenue authorities. But in our case there is an express covenant that the defendant shall apply for sanction, and the defendant

did so apply. I do not think that by any stretch of imagination it can be stated that there is an implied covenant that he must file an appeal against

the order of rejection. If for example the defendant is satisfied with the order of rejection as correct how can he be expected to file an appeal

against that order?

It is then contended that because the defendant did not file an appeal the plaintiffs themselves appealed and the defendant himself opposed that

appeal and on account of that only the appeal was dismissed. It appears the contention raised by the defendant in that appeal is that it is he who is

the party aggrieved by the rejection order and not the plaintiffs. The appellate authority, who had been satisfied that the appeal cannot be allowed

for some other reasons, has stated that there is some force in the contention raised by the defendant also. Therefore there is no point in saying that

only because the defendant opposed, the appeal was dismissed. Even otherwise if the defendant is satisfied that the rejection was justified (sic) he

cannot be found fault with for stating that the appeal at the instance of the plaintiff will not lie.

It is even contended that the defendant should have obtained an exemption under S.19 of the Act. Here again what was contemplated was to

obtain sanction to sell (Under S.26 of the Act) and not exemption (under S.19). Hence this contention is irrelevant. S. 19 is attracted only to cases

where the Government is satisfied that it would be in the Public interest, or when the application of the provisions of the Act would cause undue

hardship to the person concerned if the provisions of the Act are applicable to any vacant land, the Government may exempt the provisions of the

Act to such vacant land. Therefore there is no substance in the contention that the defendant should have asked for exemption under S. 19.

Therefore there is no merit in the contention that the defendant failed to perform any part of his which is implied in the agreement.

9. Taking up the contention of the appellants plaintiffs that under the new Act which has been substituted for the old Act, excepting a few

provisions in the new Act taking effect right from the date of the old Act, no permission to sell is required and what is required is only to give a

statement under S. 27 of the new Act of the total extent held by the transferor and the transferee and therefore on filing such a statement the sale

deeds can be executed and therefore the Court can direct the defendant to do so. The agreements were executed on 10.8.77 and the new Act

was enacted on 17.5.1978. This argument of Learned Counsel may hold good if the agreements are not rescinded and they are still subsisting.

Under the agreements, as seen above the defendant shall apply for permission to sell and if permission could not be obtained then the defendant

shall refund the advance consideration of Rs. 16,000/- paid with damages of Rs. 8,000/- The defendant applied for permission but the permission

was refused and that was under Ex. A34 on 18.10.1977 i.e., much before the new Act was enacted.

The question is: What was the effect of refusal of permission? The effect is that because of the refusal the defendant was not in a position to sell

and therefore the question of selling has become impossible. Then what would become to the contract? S. 32 of the Indian Contracts Act reads as

follows:

32. Enforcement of contracts contingent on an event happening.- contingent contracts to do or not to do anything if an uncertain future event

happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible such contracts become void.

In view of this law laid down under S. 32, since the permission was refused, obtaining permission has become impossible and therefore the

contract to sell has become void.

On the receipt of refusal order the defendant has written Ex. A14 letter to the plaintiffs stating that his application for permission to sell has been

rejected and therefore he is not in a position to execute the sale deeds. He has

then called upon the plaintiffs to return the original agreements duly cancelled. The Learned Counsel for the appellants-plaintiffs rather wants to make capital out of the words ""duly cancelled"" by arguing that the defendant wanted the plaintiffs to cancel the agreements and this implies that so long as the plaintiffs have not cancelled the agreements the agreements still subsist. But the defendant has clearly stated that performance of the agreements has become impossible and therefore he cannot sell. This is the fact. In law therefore the agreements have become void. The defendant has also asked the plaintiffs to send back the original agreements. Only because he has asked to send back the agreements duly cancelled"" it does not mean that the agreements still subsist and only the plaintiffs can cancel the agreements. Therefore this submission of the Learned Counsel is devoid of merits.

It is then contended that the defendant himself has refused to abide by clause (6) of the agreements i.e., he refused to pay the damages contemplated in the agreements. As regards that it is open to the plaintiffs to take steps for recovery of that amount. But the liability of the defendant to execute sale deeds has become void and does not subsist.

The Learned Counsel cites a decision in Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, and contends that the Court can direct the defendant to apply again for permission. But in that case the defendant who applied for permission withdrew it and therefore he was directed to once again to apply. The facts in that case are nowhere near to the facts in our case. In our case the defendant has in fact applied for permission but that has been refused and therefore there was an end of the matter. It would be very worthwhile to know what the Supreme Court has stated further in that case as to the remedy of the plaintiffs in case of refusal of permission. The Supreme Court stated:

In the event of the sanction being refused, the plaintiffs shall be entitled to the damages as decreed by the High Court.

These words of the Supreme Court very aptly apply to our case. Hence the only course open to the plaintiffs are to claim damages.

The Learned Counsel also brought to my notice another decision of the Supreme Court in Rojasara Ramjibhai Dahyabhat v. Jani Harrothan Das

Lallubhai and Another AIR 1986 S.C. 1912. Here too there is vast difference

between the facts in that case and in our case. In that case the appellant "R" entered into an agreement to purchase plots of agricultural land of which he was a tenant, from "RS". The agreement stipulated that RS shall apply for permission from the Collector to convert the agricultural land into village site i.e., for non-agricultural use. The sale deed was to be executed by "RS" after he had obtained the requisite permission from the Collector. Within about a month from the agreements with "RS" the appellant "R" by a contract covenanted to sell the same property to "J" and others. The agreement permission for conversion of the agricultural land into village site at his own expense. In 1951 "R" applied to the Collector for grant of permission for conversion of agricultural land into village site but his application was rejected. The Saurashtra Land Reforms Act, 1951 came into force with effect from September 1, 1951. Under the provisions of the Act there was an extinguishment of the right and title of "RS" as the ex Girasdar of the land and the appellant "R" was recognised to be an occupant thereof under the provisions of the Bombay Land Revenue Code, 1898. On August 26, 1958 the Revenue authorities granted permission to the appellant "R" for conversion of thousand sq. yards out of the two plots which prior to 1958 were agricultural lands into village sites. Thereafter on September 10, 1959 the revenue authorities granted permission for converting the remaining area of land into village site. Thus by September 10, 1959 the appellant "R" obtained permission for converting both the plots for non-agricultural use. On October 5, 1959 the respondents called upon the appellant to execute a conveyance of the property in accordance with the agreement of sale between the parties and on his failing to comply commenced the suit for specific performance on September 6, 1960. One of the grounds on which the suit was contested was that the contract with the respondents was a contingent contract dependent on the appellant's vendor "RS" obtaining the permission for conversion of the land. It was held that with the extinction of the title of "RS" and the conferral of the title by an occupant on the appellant under the Saurashtra Land Reforms Act, 1951, the property became transferable by him, and it cannot therefore be said that the contract between the parties i.e., the appellant and the respondents was a contingent contract, and performance of which was dependant upon the fulfilment of the

condition under the earlier agreement by which the appellant's vendor ""RS"" had undertaken upon himself the obligation of procuring the necessary sanction from the Collector. In our case there is no question of anybody other than the parties getting necessary permission. The agreement to get permission is between the plaintiffs and the defendant. In that case the appellant ""R"" did get a permission after he became the owner. Therefore specific performance was ordered. Considering these I do not think that this Judgment of the Supreme Court relied on by the Learned Counsel would help in any way the appellants-Plaintiffs.

On the other hand Mr. V.S . Subramaniam, Learned Counsel for the respondent-defendant while contending that due to the rejection of the application for permission to sell, the agreements have become void, read out a decision of the Privy Council in Dalsulkh M. Pancholi v. The Guarantee Life and Employment Insurance Co. Ltd. and others AIR 1947 P.C. 182. In that case it was agreed to sell the property after obtaining approval of the Court which had attached the property. The approval was refused. The Privy Council held that, The Court having refused the approval the contract fell to the ground and had worked itself out. The contract being a contingent contract and (sic) no contract which could be made the basis for a decree for specific performance. For all these reasons I hold that the contract to sell was a contingent one depending upon the event of getting permission to sell and that event having failed the contract has become impossible and consequently void and unenforceable. This being the position it cannot be argued that under the new Act which was enacted, as aforementioned on 17.5.1978, the Court can order the defendant to execute the sale deeds.

10. Then coming to the last point raised by the Learned Counsel for the appellants, I am inclined to agree with the Learned Counsel that the finding of the trial court that the agreements are illegal is not correct. The reason given for holding that the agreements are illegal is that the three plaintiffs brothers indeed wanted to jointly purchase the entire land as one block but realising that if they do so the transaction would be hit by the Tamil Nadu Urban Land (Ceiling and Regulation) Act they wanted to purchase the land in four different plots under four agreements and therefore these agreements are against law and public policy and hence they are illegal. In my

view this reasoning is untenable. One should not forget that the purpose of the agreement is to purchase or sell lands. It is nobody's case that the agreements are transactions entered into for the purpose of defeating or infringing any law. They are not sham and nominal transactions or for that matter benami transactions.

The fact is, the plaintiffs wanted to purchase lands and the defendant agreed to sell them. It is open to the plaintiffs to purchase lands as one block under one document or different plots under different documents. There is absolutely no merit in the argument that the plaintiffs really wanted to purchase the entire land in one block under one document but it is only with a view to escape the reach of the Act they have entered into four different agreements and therefore the agreements are illegal.

In this connection Mr. V.S. Subramanian, Learned Counsel for respondent referred to the following decisions, (i) Scott v. Brown AIR 1947 P.C.

182, Doering McNab & Co. Slaughter and May v. Brown Doering McNab & Co 1891-1892 All Eng.Rep. 654 (ii) Allexander v. Rayson 1935

All. ER. 134 and (iii) Napier v. National Business Agency Ltd. 1951 II All E.R. 265. In the first decision the very purpose of agreement between

the plaintiff and the defendant was to deceive the public. Therefore it was held illegal. In the second case the purpose of the agreement was to

defraud the rating authority by deceiving them as to the true rateable value of flat. In the third case the purpose of the agreement was found to be to

avoid taxation and therefore it was against public policy. Hence I find none of these decisions is relevant to the facts of our case. I therefore, hold

that the finding of the trial Court that the agreements in question are illegal is not correct. Consequently I set aside at that finding.

In the result, therefore, in view of my findings on points (i) to (iv) I confirm the decree of dismissal of the suits by the trial court in all the four suits

and dismiss the appeals. The appellants shall pay costs to the respondent in each of the appeals.