

# Mr.J.Vincent vs Mr.S.Srinivasan on 1 October, 2015

**Author: G.Chockalingam**

**Bench: G.Chockalingam**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-10-2015

(Judgment Reserved on 06-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.413 of 2011

Mr.J.Vincent

.. Plaintiff

Vs.

Mr.S.Srinivasan

.. Defendant

Plaint filed and numbered as Civil Suit under Order 4 Rule 1 of the Madras High Court. The plaintiff seeks:  
(a) to direct the defendant to perform the contract on his part on receipt of the balance consideration;  
(b) to grant permanent injunction restraining the defendant and his men, agent, from alienating the suit property;  
(c) to grant permanent injunction restraining the defendant and his men, agent, from dealing with the suit property;  
(d) to pay the costs of the suit.

For plaintiff : Mr.M.Kempraj

For defendant : Mr.S.Sethuraman for

M/s.G.Senthilkumar and R.Baskar

JUDGMENT

The case of the plaintiff in a nut-shell is as follows:

(a) The defendant is the absolute owner of the suit schedule mentioned property purchased by him in 2009 from CMDA. The defendant entered into sale agreement with the plaintiff on 17.05.2009 for sale consideration of Rs.50 lakhs and received advance of Rs.10 lakhs, out of which, Rs.7,50,000/- was paid through Cheque, dated 08.05.2009 and the balance Rs.2,50,000/- was paid through cash on the date of sale agreement, and in view of the huge amount received as advance, the defendant voluntarily handed over the physical possession of the superstructure of the suit schedule property. As the defendant was not in a position to pay the sale consideration to the property, even after the allotment was made by the CMDA, the

plaintiff rendered financial help to the defendant to pay the balance sale consideration to the CMDA and to register the suit property.

(b) The plaintiff paid a sum of Rs.5,00,000/- in favour of the Chennai Metropolitan Development Authority and also a sum of Rs.1,00,000/- by Cheque, which was encashed by the defendant.

(c) The defendant received a sum of Rs.30 lakhs towards the sale agreement, dated 17.05.2009 as a part sale consideration. The plaintiff has to pay the balance sale consideration of Rs.20 lakhs to the defendant, who has to execute the sale deed in favour of the plaintiff. The plaintiff requested the defendant to receive the balance sale consideration and execute the sale deed in his favour.

(d) The defendant intentionally dragged to register the sale deed in favour of the plaintiff, inspite of repeated request made by him. The plaintiff has always been ready and willing to perform his part of the contract to pay the balance sale consideration to the defendant.

(e) The defendant filed a false complaint, dated 17.06.2010 before the Commissioner of Police, Greater Chennai, alleging that the plaintiff is trying to grab the suit property by creating false documents and the defendant filed Crl.O.P.No.18698 of 2010 before this Court to register First Information Report (FIR) on the basis of the said complaint and investigate the same. This Court, by order dated 26.08.2010, directed the Deputy Commissioner of Police, Central Crime Branch, Egmore, Chennai to register the said complaint and act further in accordance with law.

(f) Accordingly, the said complaint was registered as FIR, vide Crime No.565 of 2010 by the Inspector of Police, XV Team of Central Crime Branch. After enquiry, the investigating officer warned the defendant not to play with the official machinery for his own gain and filed a final report.

(g) Subsequently, the plaintiff filed a Police complaint before the Inspector of Police on 27.05.2011, copy of which was addressed to the Chief Minister's Cell and jurisdictional Assistant Commissioner of Police and the said complaint had been assigned CSR Number and subsequently, the plaintiff also filed a complaint before the Commissioner of Police, Egmore, Greater Chennai on 30.05.2011.

(h) Hence, the plaintiff has filed this Civil Suit praying for the relief of specific performance to perform the contract on his part on receipt of the balance sale consideration in a sum of Rs.20,00,000/- from the plaintiff and to execute the sale deed in favour of the plaintiff, and to grant permanent injunction restraining the defendant and his men, agent, any one claiming through them from disturbing the peaceful possession and enjoyment of the day-to-day business activities of the suit schedule mentioned property and to grant permanent injunction restraining the

defendant and his men, agent, or any one claiming through them from making any encumbrance over the suit schedule mentioned property.

2. The defendant has filed written statement under Order 8 Rule 1 CPC, stating as follows:

(a) The defendant has been doing the flower vending business for the past 50 years. Initially, he was doing business at Flower Bazaar, near Parrys Corner and subsequently at Koyambedu, as the market got shifted to Koyambedu. Initially, CMDA allotted the suit schedule property by proceedings dated 25.10.1993 in favour of the defendant; thereafter, in 2007, the defendant entered into a lease-cum-sale agreement with the CMDA, which handed over the possession of the suit-shop to the defendant, from when onwards, the defendant is in possession and enjoyment of the suit property (shop) by doing flower-vending business. Pursuant to the payment of sale consideration, the CMDA executed a sale deed dated 13.10.2009 in favour of the defendant, thereby, conveying the suit property to him.

(b) Since childhood, the plaintiff was assisting the defendant in the shop. As the defendant was unable to mobilize funds, the plaintiff gave hand-loan of Rs.2,50,000/- and the defendant requested the plaintiff to execute document for receipt of the said hand-loan.

(c) The plaintiff and Mr.Murugan (son-in-law of the defendant), with some blank stamp papers, informed the defendant that they were not able to type the contents as Typist was not available and requested the defendant to sign in the blank papers. The blank stamp papers signed by him, were duly filled up with typed contents, purporting to be sale agreement. Thereafter, the defendant lodged a complaint with the Commissioner of Police on 17.06.2010 against the plaintiff. The said complaint was forwarded to the Inspector of Police, Koyambedu Police Station, Chennai and on 23.06.2010, the Sub-Inspector of Police enquired the matter and advised the defendant to hand over the shop to the plaintiff.

(d) All the belongings of the defendant in the suit shop, name board, etc., were thrown out and one Mr.V.K.Veeramani and the plaintiff prevented the defendant from entering into the suit shop. This incident happened in the presence of the Police of Koyambedu Police Station.

(e) The defendant filed Crl.O.P.No.18698 of 2010 before this Court to direct the Deputy Commissioner of Police (DCP), Central Crime Branch (CCB), Chennai to register First Information Report (FIR) on the basis of the above said Police complaint, dated 17.06.2010 filed by the defendant. The S.I. of Police concerned closed the complaint hurriedly, as the contents of the complaint seem to be of civil nature.

(f) Subsequently, the defendant met the DCP, CCB, Chennai, and apprised him of the above act of the S.I. of Police and the DCP, after hearing the defendant, assured him that he would take appropriate action by investigating the allegation regarding the fraud committed by the plaintiff. The said complaint was registered against the plaintiff in F.I.R.No.565 of 2010 by the said S.I. of Police, and the complaint was closed hastily by the Police.

(g) Subsequently, the defendant and his wife, filed Crl.O.P.No.882 of 2011 before this Court to direct the Inspector General of Police to investigate and file a final report relating to F.I.R.No.565 of 2010, dated 09.11.2010, and the complaint was closed as 'mistake of fact', that the final report was filed before the jurisdictional Magistrate's Court and that the RCS notice had also been served on the complainant.

(h) The sale agreement, dated 17.05.2009 is bogus, illegal and unilateral, as it has been written the plaintiff to suit his convenience and it has not even been signed by the plaintiff and only signed by the defendant. Hence, on the basis of the said bogus sale agreement, there may not be any enforcement of specific performance right in favour of the plaintiff. No case is made out by the plaintiff for specific performance of the contract and the documents filed by the plaintiff did not prove his case.

(i) It is not correct to state that the plaintiff paid Rs.5 lakhs to the CEO of the CMDA and it is also not correct to state that the plaintiff paid a sum of Rs.1 lakh on 12.08.2009 by way of cheque.

(j) The plaintiff hatched a conspiracy to sell the suit property from the hands of the defendant, by taking advantage of his old age and illiteracy. The defendant did not receive Rs.30 lakhs as part sale consideration. The plaintiff, in the said agreement, dated 17.05.2009, stated that the defendant received a sum of Rs.10,00,000/- as advance, whereas in the letter (note) dated 14.08.2009, written by the defendant, the defendant stated that he received the advance amount of Rs.10,00,000/- on the date of the sale agreement, dated 17.05.2009, that Rs.5,00,000/- was received by him for payment to be made to CMDA and Rs.1,00,000/- was also received by him by way of cheque, dated 18.02.2009. It is stated by the defendant that the balance amount of Rs.14,00,000/- has not been accounted for by the plaintiff to prove his case. In view of all the above averments, the defendant prays for dismissal of the suit.

3. On the basis of the above pleadings, this Court, by order dated 14.02.2013, framed the following issues for consideration in this suit:

(a) Whether the alleged agreement of sale, dated 17.05.2009 is true and valid document as pleaded by the plaintiff or it is fabricated document as contended by the defendant ?

(b) Whether the plaintiff has been ready and willing to perform the contract from the date of agreement till the date of plaint ?

(c) Whether it is true that the defendant has received a sum of Rs.30,00,000/- towards the sale consideration ?

(d) Whether the plaintiff is in possession of the suit property in pursuance of the agreement ?

(e) Whether the plaintiff is entitled to specific performance relief ? and

(f) To what other relief the plaintiff is entitled to ?

4. At the time of trial, on the side of the plaintiff, P.W.1-plaintiff-J.Vincent was examined, apart from two other witnesses--P.W.2 M.V.Govindan, P.W.3-S.Subramanian and P.W.4-V.K.Veeramani and Exs.P-1 to P-14 were marked; on the side of the defendant, S.Srinivasan (defendant) was examined as D.W.1, apart from D.W.2-S.Jayalakshmi (wife of D.W.1-defendant) and Exs.D-1 to D-21 were marked. Exs.C-1 to C-3 were marked as Court documents.

5. It is admitted by both sides that the suit schedule property (superstructure-building-shop) belongs to the CMDA, Chennai and based on the lease-cum-sale agreement executed between the CMDA and the defendant, the defendant has been in possession of the suit property, which is evident from the allotment order issued by the CMDA in Ex.D-11 dated 28.11.2006 issued in favour of the defendant and the defendant paid necessary dues to the CMDA.

6. Submissions of the counsel for the parties on the above issues:

Learned counsel for the plaintiff contended that the defendant agreed to sell the suit property to the plaintiff for Rs.50,00,000/- and in the presence of the defendant's son-in-law-Murugan and P.W.4 - V.K.Veeramanai, Ex.P-1 sale agreement-cum-advance deed, was executed by the defendant, who received Rs.2,50,000/- in cash and Rs.7,50,000/- by way of cheque dated 18.02.2009, that subsequent to Ex.P-1 agreement, with the consent of the defendant, the plaintiff paid Rs.1,00,000/- on 01.07.2009, Rs.83,164/- on 03.07.2009 and Rs.3,00,000/- on 27.06.2009 to the CMDA on behalf of the defendant herein. Subsequently, the plaintiff also paid Rs.14,00,000/- by way of transferring the amount from his Savings Bank Account to the defendant's Account towards part payment of the sale consideration. Since time as agreed to between the plaintiff and the defendant for the execution of the sale agreement, was going to expire, the defendant wrote Ex.P-5 letter / note dated 14.08.2009 to the plaintiff acknowledging receipt of (i) Rs.10,00,000/- at the time of sale agreement, (ii) Rs.5,00,000/- paid towards the CEO of the CMDA, Chennai and Rs.1,00,000/- by cheque, dated 18.02.2009. It is further contended by the learned counsel for the plaintiff that the plaintiff has always been ready and willing to perform his part of the contract by paying the remaining

amount of Rs.20,00,000/-, but the defendant has been evading execution of the contract (Ex.P-1 sale agreement) and the defendant ultimately gave a false complaint to the Police, which upon investigation, was closed by the Police as civil in nature.

7. Learned counsel for the plaintiff further stated that the plaintiff issued legal notice Ex.P-12 pertaining to W.P.No.1839 of 2012 filed by the defendant before this Court and in the said legal notice, the facts regarding the execution of Ex.P-1 sale agreement, were also stated. Even though the defendant received the said legal notice Ex.P-12, the defendant was not ready to execute the agreement. Hence, the plaintiff filed this suit for specific performance.

8. Learned counsel for the plaintiff submitted that the plaintiff has been in enjoyment and possession of the suit property after execution of the sale agreement, that since the defendant and his henchmen attempted to interfere with the peaceful possession of the plaintiff and tried to create encumbrance over the suit property, the plaintiff filed the present suit for specific performance and permanent injunction.

9. It is further contended by the learned counsel for the plaintiff that Rs.10,00,000/- was paid even at the time of execution of Ex.P-1 (sale agreement) itself and the plaintiff also paid some amounts to the CMDA, which is evident from Exs.P-2 to P-4 series (counter-foils and photocopies of the Demand Draft drawn/issued in favour of the CMDA). The further payment of Rs.1,00,000/- by way of cheque has been proved by Ex.P-5 letter/note written/signed by the defendant and the remaining Rs.14,00,000/- was paid by transfer of the amount from the S.B. Account of the plaintiff to the Account of the defendant, which is corroborated by the evidence of P.Ws.2 and 3 (Bank Managers), through whom Exs.C-1 to C-3 Bank Account statements of both parties, were marked. Thus, it is contended by the learned counsel for the plaintiff that the plaintiff proved payment of Rs.30,00,000/- and in respect of the payment of balance amount of Rs.20,00,000/-, the plaintiff has been always ready and willing to pay the same and get the sale agreement executed.

10. Learned counsel for the plaintiff further contended that though the plaintiff filed A.No.2683 of 2011 before this Court seeking permission to deposit the balance sale consideration of Rs.20,00,000/- in Court for execution of the sale deed in favour of the plaintiff in respect of the suit property, but the said application was dismissed as withdrawn on 12.10.2011. He further contended that pending this suit, this Court, by order dated 12.10.2011 in Original Application No.524 of 2011, granted interim injunction restraining the defendant from interfering with the peaceful possession of the plaintiff, except by due process of law, in respect of the suit property.

11. According to the learned counsel for the plaintiff, Ex.P-1 sale agreement was executed by the defendant in the presence of P.W.4 V.K.Veeramani and one Murugan, who is the son-in-law of the defendant and the said Murugan was not examined before this Court to speak about the execution of Ex.P-1. It is admitted by the defendant that the said Murugan, who is one of the attesting witnesses to Ex.P-1 sale agreement, is his close relation.

12. Learned counsel for the plaintiff also contended that after execution of Ex.P-1 sale agreement, the plaintiff got executed the lease-cum-sale agreement through CMDA and paid the amount to

CMDA at the request of the defendant on his behalf, which is evident from the Demand Drafts in Ex.P-2 series, dated 01.07.2009 for Rs.1,00,000/-, Ex.P-3 series, dated 03.07.2009 for Rs.83,564/- and Ex.P-4 series dated 27.06.2009 for Rs.3,00,000/-, and totally Rs.4,83,564/- was paid by the plaintiff, as part of sale consideration.

13. Thus, it is the crux of the contentions of the learned counsel for the plaintiff that the plaintiff has clearly established his case based upon the above oral and documentary evidence adduced during trial before this Court and thereby, he requested this Court to decree the suit as prayed for.

14. Per contra, it is contended by the learned counsel for the defendant that the alleged Ex.P-1 sale agreement is not a true and genuine document, as the same is not admissible in evidence, as the same is a concocted document and the defendant has been made to sign on Ex.P-1 sale agreement, as the defendant was under the bona-fide impression that the plaintiff will actually type out the necessary contents for the hand loan of Rs.2,50,000/- earlier obtained by the defendant from the plaintiff and on the dilly-dallying tactics adopted by the plaintiff and his henchmen, the blank stamp papers had virtually been given the colour of a sale agreement (Ex.P-1), which on the face of it, is illegal and non-est in the eye of law, as the plaintiff obtained signatures of the defendant in the blank non-judicial stamp papers purporting to be the sale agreement as if the defendant agreed to sell the suit property in favour of the plaintiff.

15. It is further contended by the learned counsel for the defendant that the defendant received Rs.2,50,000/- only as hand-loan and that it is alleged by the plaintiff that he paid Rs.7,50,000/- and further amounts of Rs.1,00,000/-, Rs.83,564/- and Rs.3,00,000/-, were alleged to have been paid to the CMDA, which is evident from Exs.P-2 to P-4 (photocopies of the Demand Drafts) and that actually no money was paid by the plaintiff to the CEO, CMDA, and thus, it is evident that the plaintiff has not paid any amount in pursuant to Ex.P-1 sale agreement and in effect, no sale agreement was executed between the plaintiff and the defendant and as alleged by the plaintiff, no amount was paid by him either to the defendant or to the CMDA towards the part payment of sale consideration and the same is evident from Exs.P-2 to P-4 series, which are not admissible in evidence, as the amounts specified in those Demand Drafts (Exs.P-2 to P-4) have not been properly accounted for by the plaintiff.

16. Though it is contended by the learned counsel for the plaintiff that the plaintiff has always been ready and willing to perform his part of contract, the same is denied by the learned counsel for the defendant stating that the plaintiff attempted to interfere with the defendant's peaceful possession and enjoyment of the suit property by all means.

17. It is further contended by the learned counsel for the defendant that the plaintiff has preferred false Police complaint against the defendant. Equally, the defendant also preferred complaint before the Police, which was initially hastily closed and upon the defendant and his wife preferring Criminal Original Petitions (CrI.O.Ps.) before this Court under Section 482 Cr.P.C. (which is evident from Exs.D-14, 17 and 18), it was informed before this Court by the learned Public Prosecutor that the complaint had been closed as 'mistake of fact'.

18. It is further contended by the learned counsel for the defendant that actually, only the defendant paid the amount to the CMDA in respect of the allotment of the suit property by the CMDA and the same is proved by Ex.D-11 allotment order issued by the CMDA and to prove the same, Exs.D-1 to D-10 are also filed by the defendant.

19. It is the further contention of the learned counsel for the defendant that Ex.D-12 dated 13.10.2009 which is the original sale deed executed by the CMDA in favour of the defendant, amply proves that the defendant had been in possession and enjoyment of the suit property all along and that the plaintiff is not the owner of the suit property and this fact disproves the execution of Ex.P-1 sale agreement and hence, it could be deduced that Ex.P-1 is bogus.

20. Learned counsel for the defendant further contended that as the plaintiff attempted to interfere with the peaceful possession of the defendant, the defendant and his wife preferred Police complaint (Ex.D-13) and in Ex.D-13 Police complaint, they have also sought for recovery of possession of the suit property and the defendant and his wife also preferred Crl.O.P.No.18698 of 2010 (Ex.D-14) and this Court, by order dated 26.08.2010 (Ex.D-15) in the said Crl.O.P.No.18698 of 2010 directed the DCP, CCB, Chennai to register a case on the complaint (Ex.D-13) filed by the defendant and his wife on 17.06.2010 and to act in accordance with law, which resulted in registering the complaint in F.I.R. No.565 of 2010 (Ex.D-16 - dated 09.11.2010).

21. Learned counsel for the defendant also contended that this Court in Crl.O.P.No.882 of 2011 filed by the defendant and his wife for directing the Inspector General of Police, Guindy, Chennai to take the investigation and submit final report relating to FIR.No.565 of 2010, dated 09.11.2010 registered by the DCP, CCB, Egmore, Chennai, by order dated 12.01.2011 (in Ex.D-19), directed the defendant and his wife to approach the learned Magistrate concerned and file a protest application within three weeks from the date of receipt of a copy of the said order in Crl.O.P.No.882 of 2011 and the learned Magistrate was directed to entertain such application and issue suitable direction taking into consideration the grievance of the defendant and his wife that the higher officials have entrusted the matter to the same Police Officers, who have closed the matter without proper investigation. Learned counsel for the defendant further contended that in Crl.O.P.No.883 of 2011 filed by the defendant and his wife for directing the Commissioner of Police, Egmore, Chennai to entrust the investigation relating to the complaint filed by the defendant and his wife, dated 18.11.2010 to any one of the Senior Police Officer in the rank of the Assistant Commissioner of Police, this Court, by order dated 10.02.2011 (Ex.D-20), directed the defendant and his wife to furnish a copy of the complaint dated 18.11.2010 to the Assistant Commissioner of Police, who shall conduct appropriate enquiry in the matter and shall register a case, if cognizable offence is made out on the outcome of the enquiry.

22. Learned counsel for the defendant further contended that in fact, no sale agreement was executed by the defendant in favour of the plaintiff and no amount was paid to him by the plaintiff, as alleged by the plaintiff towards part payment of sale consideration in a sum of Rs.30,00,000/-.

23. It is further contended by the learned counsel for the defendant that though the suit has been filed within the period of limitation, the balance of convenience and equity, are in favour of the



defendant and hence, the suit is liable to be dismissed.

24. Heard both sides, perused the oral and documentary evidence adduced by both sides and gone through the decisions relied on by the learned counsel appearing for the parties, that are relevant for disposal of the suit.

25. According to the learned counsel for the defendant, Ex.P-1 sale agreement is deemed to have not been executed, as the same was signed only by the defendant, and it was given the colour of the sale agreement, on obtaining the defendant's signatures in blank non-judicial stamp papers and blank sheets, as the defendant under the notion that Ex.P-1 might have been created for discharge of the hand-loan obtained by him from the plaintiff.

26. Learned counsel for the plaintiff further stated that the evidence of P.W.1 is corroborated by the evidence of P.W.4 Veeramani. P.W.4 in his evidence stated that he was on the side of the defendant at the time of execution of Ex.P-1 sale agreement and in his cross-examination. The plaintiff (P.W.1), in his cross-examination, deposed that Ex.P-1 sale agreement was executed in the presence of the said Murugan and P.W.4 Veeramani and the defendant received Rs.2,50,000/- by cash as advance and Rs.7,50,000/- by cheque on 18.05.2009. P.W.4 stated that Ex.P-1 was signed in the house of the son-in-law of the defendant, i.e. Murugan and both the plaintiff and the defendant took P.W.4 from the market to sign Ex.P-1. He further stated in his evidence that he was aware of the details of the transaction and the money agreed to between the parties in respect of Ex.P-1. He further deposed that he signed Ex.P-1 as an attesting witness to Ex.P-1 sale agreement and when P.W.4 signed as witness in Ex.P-1 sale agreement, it was readily prepared. He further deposed that Rs.2,50,000/- was given to the defendant in cash by the plaintiff and the remaining amount of Rs.7,50,000/- was given by way of cheque in the name of the said Murugan (son-in-law of the defendant) and the said cheque was handed over to the defendant. Hence, there is nothing elicited from the evidence of P.W.4 to show that there is motive against the interest of the defendant.

27. Learned counsel for the plaintiff further stated that the evidence of P.W.1 is corroborated by the evidence of P.W.4 and the execution of Ex.P-1 sale agreement by the defendant in favour of the plaintiff and payment of Rs.2,50,000/- and Rs.7,50,000/- as stated above, have all been clearly established on the side of the plaintiff. Hence, it is the contention of the learned counsel for the plaintiff is that the defendant executed Ex.P-1 sale agreement in favour of the plaintiff and the plaintiff has clearly proved Ex.P-1 sale agreement and the amount of consideration passed through Ex.P-1.

28. It is contended on the side of the defendant that since the defendant has no Bank Account, the Demand Drafts were purchased by the plaintiff out of the funds of the defendant. Court documents produced in this case are Ex.C-1 Bank Current Account Statement of the Syndicate Bank, Koyambedu pertaining to the suit property (J.V.Traders), Ex.C-2 - plaintiff's Savings Bank Account of the Bank of India, Koyambedu and Ex.C-3 - defendant's Savings Bank Account of the Bank of India, Koyambedu.

29. Ex.C-3 disproves the fact that the defendant has no Bank Account at the relevant point of time, i.e. Exs.P-2 to P-4 series. Furthermore, P.W.2 Bank Manager of Syndicate Bank, Koyambedu deposed in his chief examination that in Ex.C-1 Bank Current Account, there is an entry regarding the purchase of Demand Draft on 27.06.2009 showing that a sum of Rs.3,00,000/- was purchased by J.V.Traders and in Ex.C-1, on 11.07.2009, there is also an entry for a sum of Rs.1,00,000/- and there is further entry regarding the purchase of the Demand Draft on 13.07.2009 for Rs.83,564/-, which is corresponding to the amounts specified in Exs.P-2 to P-4. Thus, it is proved on the side of the plaintiff that Exs.P-2 to P-4 Demand Drafts were purchased by the plaintiff out of his funds from Ex.C-1 Current Account. Hence, the contention of the defendant that he is not having Bank Account, cannot be countenanced.

30. The plaintiff issued Demand Drafts in Exs.P-2 to P-4 towards the part payment of the sale consideration to the defendant and to prove his case, he has also paid some amount to CMDA, and the plaintiff ultimately paid Rs.4,83,564/- towards part of the sale consideration, which is proved by Exs.P-2 to P-4.

31. The plaintiff has also paid Rs.1,00,000/- by way of transfer of the amount to the Bank Account of the defendant and further, Rs.14,00,000/- was transferred from the plaintiff's Bank Account to the defendant's Bank Account. These bank transactions are proved by the evidence of P.Ws.2 and 3 who are the Bank Managers, who produced the Bank Accounts of the plaintiff and the defendant in Exs.C-1 to C-3.

32. Further, P.W.2, in his chief-examination, deposed that in M/s.J.V. Traders, the plaintiff is the Proprietor and the Statement of Account of the said J.V.Traders is produced in Ex.C-1. From his chief-examination, it is clear that the plaintiff purchased Demand Drafts (Exs.P-2 to P-4) from that Account.

33. In this case, on the side of the plaintiff, Mr.S.Subramanian, the Senior Manager of the Bank of India was examined as P.W.3 and through him, Exs.C-2 and C-3 - Bank Account Statements of the respective parties, were marked. He further deposed that in Ex.C-3, there is an entry dated 12.08.2009 to prove that the plaintiff issued a cheque in favour of the defendant for Rs.1,00,000/-; in Ex.C-2, there is an entry, dated 17.08.2009 showing that the plaintiff issued cheque in favour of the defendant for Rs.14,00,000/- and in Ex.C-3, there is an entry, dated 17.08.2009, showing that Rs.14,00,000/- was credited to the defendant's Bank Account from the plaintiff's Bank Account. It is stated by P.W.3 Bank Manager in his chief examination that on 17.09.2009 itself, a sum of Rs.5,00,000/- each was deposited in the name of Mr.Karthikai Raja and Purushothaman Raja by the defendant. There is no motive or reason to suggest on the side of the defendant against P.W.2 or P.W.3 to depose against the interest of the defendant. Hence, the evidence of P.Ws.2 and 3 clearly establishes only the case of the plaintiff and the respective amounts were credited to the account of the defendant. There is nothing suggested on the side of the defendant that the amounts were paid for any other transaction. Hence, it could be inferred that the Bank Account entries in Exs.C-1 to C-3 are the transactions between the plaintiff and the defendant, only in respect of Ex.P-1 sale agreement and the payment towards the sale consideration.

34. Further, even according to the plaintiff, it is proved that at the time of execution of sale agreement, Rs.2,50,000/- was paid by cash and Rs.7,50,000/- was paid by way of cash in favour of the said Murugan, the son-in-law of the defendant and further payment was made through Demand Drafts which is evident from Exs.P-2 to P-4. As per the transfer of amount(s) through Bank Account(s) - Exs.C-1 to C-3, the credit / debit of the transactions in respect of the Bank Accounts of the respective parties, was given effect to by P.W.3 Bank Manager. In the plaint, in paragraph 4, it is stated by the plaintiff as follows:

"4. .... the defendant herein requested the plaintiff that in view of the sale agreement to pay the part of sale consideration sum of Rs.5,00,000/- to CMDA directly and Rs.1,00,000/- to him the same was accepted by the plaintiff and the plaintiff paid a sum of Rs.5,00,000/- to in favour of CEO, CMDA and further a sum of Rs.1,00,000/- through Cheque drawn on Bank of India, vide Cheque No.000059 dated 12.08.2009, the same was encashed by the defendant. The plaintiff submits that subsequently the request made by the defendant herein to the plaintiff to pay part sale consideration amount to CEO, CMDA. Accordingly, the plaintiff herein paid the part sale consideration amount on various dates by demand draft and cheques to CEO, CMDA and to the defendant directly through cheque the same was acknowledged by the defendant".

35. From the above averments in the plaint, it is clear that the plaintiff has paid Rs.5,00,000/- directly in favour of the CEO, CMDA, in proof of which, Exs.P-2 to P-4 Demand Draft copies are produced by the plaintiff, the total amount of Exs.P-2 to P-4 is Rs.4,83,564/- alone. It is clearly proved that the plaintiff has not paid Rs.5,00,000/- towards CEO, CMDA and he paid only Rs.4,83,564/-. There is no explanation on the side of the plaintiff to indicate that he actually paid Rs.5,00,000/- to the CEO, CMDA. It is clearly proved by Exs.P-2 to P-4 Demand Drafts, that totally, only Rs.4,83,564/- was paid and not Rs.5,00,000/- as alleged by the plaintiff.

36. The plaintiff has not proved that he paid cash to the defendant subsequent to the execution of the alleged sale agreement (Ex.P-1). The plaintiff has not stated that any amount had been paid by him to the defendant by way of cash after execution of Ex.P-1 sale agreement, though in his cross-examination, he admits having paid Rs.16,500/- by way of cash, but he has not stated the date of such payment of Rs.16,500/- and even in the plaint, he did not mention the payment by cash and even the date of such cash payment.

37. Further, for the alleged balance payment, the plaintiff in his proof-affidavit, in paragraph 4 stated that, "..... the defendant received cash and when he required sum of Rs.16,000/- altogether the defendant herein received through sale agreement dated 17.05.2009 sum of Rs.30,00,000/- out of the total sale consideration of sum of Rs.50,00,000/-." But, contrary to that, the plaintiff paid a sum of Rs.16,500/- by cash, as stated in the written arguments of the learned counsel for the plaintiff and also in the cross-examination of P.W.1. There is nothing on record to show that the same had actually been accounted for and no receipt for receiving the same had been produced. Even in the legal notice sent by the plaintiff's Advocate, there is no mention about the payment of the said Rs.16,500/- by cash. Hence, the said cash payment of Rs.16,500/- by the plaintiff to the

defendant, in unbelievable, as the same has not been accounted for.

38. The copy of the Police complaint given by the plaintiff to the Inspector of Police, K-10 Koyambedu Police Station, Chennai-10, on 27.05.2011, which was also addressed to the Chief Minister's Special Cell and jurisdictional Assistant Commissioner of Police, has been marked as Ex.P-10, in which it is stated as follows:

@ehd; fle;j ,uz;L tUlkhf nkw;go Kfthp cs;s filapy; kyh; bkhj;j tpahghuk; bra;J tUfnpwd;/ nkw;fhDk; filapid 2009?k; Mz;L nk khjk; 17?k; ehs; v!;/rPdpthrd; vd;gthplk; ehd; fpiua xg;ge;jk; bra;J U:gha;/50.00.000-? (vGj;jhy; U:gha; Ik;gJ ,yl;rk;) tpiy ngrp md;nw U:gha; 10.00.000-? (U:gha; gj;J ,yl;rk;) bfhLj;J fpiua xg;ge;jk; bra;Jf; bfhz;nlhk;/ md;nw filia vd; Rthjpdj;jpy; xg;gil;J tpl;lhh;/ nkYk; rpy jtldfshf U:/20.00.000-? (U:gha; ,UgJ ,yl;rk;)ij;ij fhnrhiahft[k; tiunthiahft[k; bgw;Wf; bfhz;lhh;/ ,Jtiu mthplk; bkhj;jk; 30.00.000-? (U:gha; Kg;gJ ,yl;rk;)ij;ij bfhLj;Js;nsd;/ ,e;epiyapy; rPdpthrd; vd;gth; vd; kPJ fhty; JiW Mizahplk; g[fhh; kD bfhLj;J. mJ cah; ePjpkd;w cj;jutpd; go tprhhpf;fg;gl;L. bgha;ahd g[fhh; vd Mtz';fs; K:yk; Ch;\$pjk; bra;J Kof;fg;gl;lJ/ ,e;j NH;epiyapy; kPjp 20.00.000-? (U:gha; ,UgJ ,yl;rk;)ij;ij bgw;Wf; bfhz;L fpiua gj;jpuk; bra;J jUkhW ntz;oanghJ nkw;go egh; ut[ofis itj;Jk; MY';fl;rpapd; bry;thf;fhd egh;fspd; bgah;fis Twp. caph; kPJ Mir ,Ue;jhy; brd;idia tpl;L Xo tpL vd;W kpul;Lfpuhh;/ ,d;W (27/05/2011) 9/35 kzpf;F 08124776765 vd;w vz;zpy; ,Ue;J vdJ ifg;ngrp vz; 9382155007 bjhlh;g[ bfhz;L caph; kPJk; klik kPJk; Mir ,Ue;jhy; filia fhyp bra;J tpl;L Xo tpL ,y;iy vd;why; ,d;Dk; xU thu fhyj;jpy; cd; fijia Koj;J tpLntd; vd;W kpul;Lfpwhh;/ jw;nghJ ehd; kpFe;j kd cisr;rYf;Fk; capUf;F Mgj;jhd epiyapYk; ,Ue;J tUfnpwd;/ vdJ capUf;nfh clif;nfh ve;jtpjkhd ghjpg;g[ Vw;gl;lhyk; mju;F v!;/rPdpthrd; vd;gth; jhd; KG bghWg;g[ vdnt lah mth;fs; ,e;j kDtpid nfhg;gpw;F vLj;J vdf;F jFe;j ghJfhg;g[ tH';f ntz;Lk; vdt[k; nkw;go egh; kPJ jf;f eltof;if vLf;Fk; go jhH;ika[ld; ntz;Lfpnwd;/ ,g;gof;F // /// @

39. Therefore, even according to the above complaint-Ex.P-10 given by the plaintiff against the defendant to the Inspector of Police, it is clearly stated that Rs.10,00,000/- was paid on the date of execution of Ex.P-1 sale agreement and Rs.20,00,000/- was paid by way of Demand Draft/Cheque. Thus, it is clearly established that the plaintiff has not paid any amount by way of cash after the execution of Ex.P-1 sale agreement.

40. Further, according to the plaintiff, defendant wrote a letter/note (Ex.P-5), by which, the defendant allegedly wrote certain averments regarding payment of certain amounts by way of cash/DD, which was alleged to have been received by the plaintiff, but the defendant disputes the said averments in Ex.P-5 letter/note, because, as per his evidence, he was not able to read and write. No other witness was examined on his side, except the interested testimony of D.W.2, who is the wife of the defendant-D.W.1, for corroborating the aspect of the literacy of D.W.1. For better appreciation, it is worthwhile to extract Ex.P-5 letter/note, as follows:

@nkw;go jpU/S.rPdpthrd; vd;Dk; ehd; (SSV) jpU/J.tpd;brd;l; vd;gthplk; (JV) bra;J bfhz;l FC 28k; vz; fil tpw;gid bjhlh;ghf bra;J bfhz;l xg;ge;j njjp 17/08/2009 cld;

KotiltjhYk; vdJ jug;gpy; ,dpa[k; rpy fhy mtfhrk; njit vd;gjhYk; nkw;fhDk; xg;ge;j  
njppahd 18/08/2009 KJy; 17/11/2009 Koa K:d;W khj fhyk; fhyePog;g[ bra;a  
xg;g[f;bfhs;fpnwd;/ nkw;go xg;ge;j gj;jpuj;jpy; bgw;Wf; bfhz;l 10.00.000-? (gj;J  
yl;rk;) nghf nkYk; Rkhh; 5.00.000 (Ie;J yl;rk;) CEO CMDA brd;id?8 vd;w Kfthpapy;  
DDahft[k; 18/02/2009 md;W fhnrhiahf (Bank of India) 000059 1.00.000-? Kk; (xU  
yl;rk;) bgw;Wf; bfhz;nld; vd;W cWjpaspf;fpnwd;/ ,g;gof;F cz;ika[s;s S.rPdpthrd;

14/08/2009 14/08/2009 Agreement extended 17.05.2009 - 17.08.2009 /  
14.08.2009 Expired 17.08.2009 upto"

41. From the above extract of Ex.P-5 letter/note, alleged to have been written by the defendant on 14.08.2009, he admitted having received Rs.10,00,000/- at the time of entering into Ex.P-1 sale agreement and also Rs.5,00,000/- towards CEO, CMDA by way of Demand Draft and also for receipt of Rs.1,00,000/- by way of cheque. Hence, the defendant has not admitted at any point of time that he received cash from the plaintiff towards part of sale consideration.

42. In this case, there is no whisper about the payment of Rs.16,500/- by way of cash to the defendant anywhere in the plaint. In the written arguments filed by the learned counsel for the plaintiff, it is stated on behalf of the plaintiff that the said Rs.16,500/- was paid by way of cash. There is no pleadings in the plaint for the said payment of Rs.16,500/- by way of cash. As stated earlier, only in the written arguments filed by the learned counsel for the plaintiff, it is stated that Rs.16,500/- was paid by cash, though the said written arguments forms part of records, and a copy of the said written arguments had also been served on the learned counsel for the defendant. In the said written arguments, dated 10.06.2015, produced before this Court on 11.06.2015, it is stated in paragraph 22 as follows:

Sl. No. Date of payment Paid To whom Exhibit Proved through 17.05.2009 cash  
Rs.2,50,000/-

to defendant directly P-1 P.W.1 and P.W.4 18.05.2009 (at the time of execution of agreement by D1 on 17.05.2009 itself, vide Ex.P-1) Cheque No.56 Rs.7,50,000/-

in favour of Murugan, son-in-law of defendant Ex.C-2 P.W.1, P.W.4, P.W.3 27.06.2009 DD.  
Rs.3,00,000/-

DD in favour of CMDA Exhibit P6 & C1 P.W.1 and P.W.2 01.07.2009 DD Rs.1,00,000/-

DD in favour of CMDA Exhibit P6 and C1 P.W.1 and P.W.2 13.07.2009 DD Rs.83,564/-

DD in favour of CMDA Exhibit P6 & C1 P.W.1 and P.W.2 12.08.2009 Cheque No.59 Cheque in  
favour Exs.C-2 and C-3 P.W.1 and P.W.3 17.08.2009 Cheque No.63 Rs.14,00,000 Cheque (Transfer)  
in favour of defendant by plaintiff Ex.C-2 and C-3 P.W.1 and P.W.3 Cash Rs.16,500/-

P.W.1

43. Only in order to bridge the gap for non-payment of Rs.16,500/-, on behalf of the plaintiff, it has been stated so in the written arguments. Hence, the argument of the learned counsel for the plaintiff that Rs.16,500/- was paid by way of cash to the defendant by the plaintiff, cannot be countenanced, as the same is not legally sustainable, in the absence of any pleading, and oral/documentary evidence to substantiate the same.

44. On a reading of the entire plaint, it is seen that the plaintiff has clearly and specifically alleged that he has paid Rs.30,00,000/- towards part of sale consideration and the remaining amount of Rs.20,00,000/- was due to be paid and it is not clearly proved that he has been always ready and willing to perform his part of contract for execution of the sale agreement by paying remaining part of sale consideration of Rs.20,00,000/-. It is clearly proved that the plaintiff has not paid as alleged by him Rs.30,00,000/- in the plaint. Hence, the allegation of the plaintiff is not at all correct on that score, as he has not come to Court with clean hands to prove his case for payment of part of sale consideration to the defendant.

45. Since the plaintiff has not come forward before this Court with clean hands, he is not entitled for getting the relief of equity from this Court, and hence, resultantly, he is also not entitled to get the relief of specific performance, as it is not clearly established and proved by oral and documentary evidence that the plaintiff has been ready and willing to pay the entire balance sale consideration, and there is no bona-fide on the part of the plaintiff in fulfilling his obligations in performing his part of the contract of execution of sale agreement (Ex.P-1).

46. Though it is well settled that time is not the essence of contract, in this case, the plaintiff has failed to fulfil his obligations legally by paying the entire balance of sale consideration in time as stipulated in Ex.P-1 sale agreement and hence, he is not entitled to the relief as prayed for in the plaint.

47. Though the plaintiff has filed Application No.2683 of 2011 seeking permission for payment of balance consideration, this Court, by order dated 12.10.2011 passed in the said application in A.No.2683 of 2011, dismissed it as withdrawn at the instance of the plaintiff. Thus it is crystal clear that the plaintiff has not been ready and willing to perform his part of the contract, even after the conduct of trial, by paying the remaining sale consideration. Hence, the contention of the learned counsel for the plaintiff that the plaintiff has always been ready and willing to perform his part of the contract, is not sustainable and the same is rejected.

48. The provisions of Section 16(c) of the Specific Relief Act shatters the case of the plaintiff, which reads as follows:

"Section 16. Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person -

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant."

(emphasis supplied)

49. Since, in this case, as per Section 16(c) of the Specific Relief Act, the plaintiff failed to prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant, the plaintiff is not entitled to any relief as sought for in the plaint, much less the relief of specific performance, more so, when he even failed to prove that he was ready to pay the balance sale consideration, as the said A.No.2683 of 2011 filed seeking permission for paying the balance consideration, was dismissed as withdrawn on 12.10.2011. There is no evidence to establish that the plaintiff has always been ready and willing to perform his part of the contract, when the fact remains that he is not even entitled to the equitable relief, as he has not come to Court with clean hands.

50. In this case, the plaintiff has not proved his case based on oral and documentary evidence for entire payment of Rs.5,00,000/- and from Exs.P-2 to P-4, the payment of Rs.4,83,564/- is established and for the balance payment of Rs.16,436/-, there is no pleading or acceptable oral/documentary evidence to substantiate the case of the plaintiff, though in his chief-examination (proof affidavit), the plaintiff says that he paid Rs.16,000/-, which is contrary to his evidence in cross-examination where he stated as Rs.16,500/-, whereas in the written arguments, it is simply stated that Rs.16,500/- was paid by cash without even mentioning the date of such payment. In paragraph 4 of the proof affidavit, dated 25.03.2013 filed by the plaintiff, it is stated that Rs.16,000/- was paid, but in the written arguments, it is stated that Rs.16,500/- was paid by cash, and in both the proof affidavit and the written arguments, no date is mentioned. Furthermore, it is clearly proved based on oral and documentary evidence, more particularly through Exs.C-1 to C-3 and Exs.P-2 to P-4 that the plaintiff has been in the habit of paying money only through Bank accounts. There is uncertainty in the case of the plaintiff, and hence, this Court is of the view that the plaintiff has foisted this suit.

51. Moreover, as per Section 17(1)(a) of the Specific Relief Act, any contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor--(a) who, knowing not to have any title to the property, has contracted to sell or let the property. In this case, having known that he does not possess any right, title or interest over the suit property, as Ex.D-11 allotment order is in favour of the defendant and hence, the plaintiff is not entitled to the relief of specific performance. Therefore, the suit is liable to be dismissed even on that score.

52. Further, as per Section 20 of the Specific Relief Act, the grant of relief of specific performance, is discretionary relief conferred on the Courts, which based on oral and documentary evidence, weighs the case of the plaintiff. Jurisdiction of the Courts, to decree a suit for specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so and the discretion is not arbitrary but sound and judicial, to be guided by judicial principles and when the terms of the contract or the conduct of the parties at the time of entering into contract or other circumstances under which the contract was entered into, are such that the contract gives the plaintiff an unfair advantage over the defendant, the Court can exercise its discretion not to grant specific performance, even if it is lawful. This is clear from the decision of the Supreme Court reported in 1987 Supp. S.C.C. 340 = AIR 1987 SC 2328 (Parakunnam Veetil Joseph's son Mathew Vs. Nedumbara Kuruvila's son).

53. From the decision of the Supreme Court reported in 2000 (7) SCC 548 = AIR 2000 SC 3106 (Gobind Ram Vs. Gian Chand), it is clear that the grant of a decree for specific performance of contract is not automatic, but it is the discretion of the Courts and the Courts have to consider as to whether it will be fair, just and equitable and the Courts are guided by the principles of justice, equity and good conscience.

54. In the present suit, the plaintiff has not strictly adhered to the time schedule as stipulated in Ex.P-1 suit sale agreement, which itself shows that he is not intending to purchase the suit property from the defendant, though time is not the essence of the contract.

55. Though the present suit is filed within the period of limitation as enshrined under Article 54 of the Limitation Act, whereby, the period of limitation stipulated is three years, yet, as the plaintiff has not strictly adhered to the time schedule as stated in Ex.P-1 sale agreement, and though the time is not the essence of the contract, he is not entitled to the relief sought for in the plaint, as he has not come to Court with clean hands in not properly accounting for payment of Rs.16,500/- by way of cash and there is no bona-fides in the case of the plaintiff.

56. Learned counsel for the plaintiff, by relying upon a decision of a Division Bench of this Court reported in AIR 1952 Madras 389 (S.V.Sankaralinga Nadar Vs. P.T.S.Ratnaswami Nadar and others), submitted that as the relief of specific performance is one by way of discretion to be exercised by Court, this Court may grant the decree of specific performance by exercising judicial principles and when once it is found that the contract sought to be enforced is a valid one, it is for the defendant to establish the legal grounds for refusing the relief by way of specific performance. The plaintiff has proved the execution of Ex.P-1 sale agreement. The discretionary relief of specific performance has to be exercised sparingly, that too if and only if the oral and documentary evidence adduced by the parties clearly establish their respective cases without any doubt. In this case, as discussed above, the plaintiff has not produced any documentary evidence for payment of Rs.16,500/- by way of cash, and hence, it has to be held that he has not come to Court with clean hands, and hence, this Court, while exercising discretion in granting the relief of specific performance, comes to the irresistible conclusion that the plaintiff is not entitled to get the relief of specific performance, even though it is equitable relief.



57. It is further contended by the learned counsel for the plaintiff that as observed by a Division Bench of this Court in the decision reported in 2011 (5) L.W. 736 (T.R.K.Saraswathy Vs. R.Kandasamy and others), it is not necessary for a vendor to keep the balance sale consideration either in cash or in bank account, but it is sufficient if it is proved that the vendor is capable of raising the balance sale consideration when the time for performance of the agreement of sale arrives. In the case on hand, though the plaintiff filed A.No.2683 of 2011, pending suit, seeking permission to deposit the balance sale consideration of Rs.20,00,000/- in Court for execution of the sale in favour of the plaintiff, this Court, on 12.10.2011, dismissed the said application in A.No.2683 of 2011 as withdrawn, in view of the endorsement made by the learned counsel for the plaintiff. This shows that the plaintiff has not been ready and willing to perform his remaining part of the contract and it is implied that the plaintiff is not in a position to pay the balance sale consideration.

58. Learned counsel for the plaintiff relied on a decision of this Court reported in AIR 1991 Madras 137 (P.Lakshmi Ammal Vs. S.Lakshmi Ammal and others), wherein this Court, relying upon the judgment of a Division Bench of this Court reported in (Vol.100 L.W. 582 = AIR 1988 Madras 84), observed that escalation in price cannot be a defence in a suit for specific performance. For the same proposition, learned counsel for the plaintiff also relied on a decision of this Court reported in AIR 2004 Madras 18 (Smt.Sushila Vs. Nihalchand Nahata), wherein, this Court, relied upon the decision of the Supreme Court reported in 2002 (4) CTC 624 = AIR 2002 SC 3396 (Nirmala Anand Vs. Advent Corporation (P) Limited), in which, the Apex Court observed that normally, the relief of specific performance cannot be denied, merely because of phenomenal increase in the price during the pendency of litigation. These decisions are not applicable to the facts and circumstances of the case, as there is no contention raised with regard to the escalation of costs/prices during the pendency of the suit.

59. Learned counsel for the plaintiff relied on a decision of this Court reported in 2014 (1) CTC 467 (Madurai Bench) (Siluvai Rajan @ M.S.Rajan Vs. Glory Stella Bai) to contend that initial burden of proving any document in a given case, lies on the plaintiff and the readiness and willingness on the part of the plaintiff in performing his part of the contract, has to be proved by the plaintiff. Learned counsel for the plaintiff also contended that in the case on hand, the contention of the defendant that he signed the document believing it to be the loan-discharge-document, is liable to be rejected. There is no quarrel over the proposition laid down by this Court in the said decision reported in 2014 (1) CTC 467 (cited supra). Though, in the case on hand, the plaintiff has proved the initial burden relating to validity of Ex.P-1 sale agreement, and though he has partly shown his readiness and willingness to perform his part of the contract, yet, he has not shown the proof for payment of Rs.16,500/- by cash and did not even mention the date for such payment of Rs.16,500/-, and hence, this clearly disproves the claim of the plaintiff and shows that there is a clout not only with regard to the veracity of Ex.P-1 sale agreement, but also with regard to the readiness and willingness on the part of the plaintiff in performing his part of the contract.

60. Learned counsel for the plaintiff also relied on a decision of this Court reported in 2014 (2) MLJ 18 (Muthukrishna Gounder Vs. Gowri), in which, this Court held that there is no necessity for both parties to sign the agreement and the signature of the vendor is sufficient and this Court further held that there must be an averment regarding readiness and willingness and that there must be proof of

means for the plaintiff to pay the due amount. It is further held by this Court in the said decision that under Section 16(c) of the Specific Relief Act, the plaintiff should aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, which are to be performed by him. In this case, even though the plaintiff has not clearly proved that he has always been ready and willing to perform his part of the contract and he has sufficient means to pay the balance sale consideration, yet, this Court finds that he did not properly account for the balance payment of Rs.16,500/- alleged to have been paid by cash and no date for such payment has been mentioned by him, and hence, the suit is liable to be dismissed on that score.

61. Learned counsel for the plaintiff also relied on the decision of the Supreme Court reported in 2006 (5) SCC 558 = 2006 (4) CTC 524 (Anil Rishi Vs. Gurbaksh Singh) to substantiate his contention that the initial burden of proof is on the plaintiff and if the same is discharged, the burden then shifts on the defendant. In the said case, the Apex Court dealt with Section 101 of the Indian Evidence Act, which contemplates that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist, and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In the case on hand, while the fact remains that the plaintiff had been in a dominating position based on fiduciary relationship with the defendant, has not asserted in affirmative the issues pertaining the relief sought for in the suit and hence, from the facts and circumstances narrated above, it is clearly established that the plaintiff has not discharged his initial burden of proving, i.e. the payment of the sale consideration, as laid down by the Apex Court in the said decision reported in 2006 (5) SCC 558 = 2006 (4) CTC 524 (SC) (cited supra).

62. In order to drive home the case of the defendant, learned counsel for the plaintiff also relied on a decision of the Supreme Court reported in AIR 2008 SC 1568 = 2008 (11) SCC 45 (Silvey and others Vs. Arun Vargheese and another) and contended that the defendant has taken contradictory stand when compared to the averments in his written statement and while the Court exercises the discretionary relief of granting the specific performance right to a party, the Court should decree the suit only based on the averments pleaded and proved by the plaintiff through oral and documentary evidence, which are in consonance with the provisions of the Specific Relief Act. In this case, the same has not been proved crystal-clear by the plaintiff.

63. Learned counsel for the plaintiff lastly relied on a decision of the Apex Court reported in 2000 (6) SCC 420 = AIR 2000 SC 2408 (Motilal Jain Vs. Ramdasi Devi) and contended that the readiness and willingness need not be expressed in certain specific words and the conduct of the plaintiff in paying 2/3 sale consideration itself clearly indicates his readiness and willingness. In the said decision reported in 2000 (6) SCC 420 = AIR 2000 SC 2408 (cited supra), the Supreme Court held that the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form and that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words, and if the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale. In the case on hand, the plaintiff has not fully shown his readiness and willingness

in performing his part of the contract.

64. Now, coming to the decisions relied on by the learned counsel for the defendant, in the decision of the Supreme Court reported in 2015 (2) CTC 178 (SC) = CDJ 2015 SC 173 = 2015 SCC Online SC 184 = 2015 (2) LW 801 (SC) = 2015 (3) SCJ 395 (Nanjappan Vs. Ramasamy), the Apex Court, while dealing with the aspect of the readiness and willingness, held that the jurisdiction of decreeing specific performance is a discretion of the Court and it depends upon the facts and circumstances of each case and the Court would take into consideration the circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract, have to be seen. In the case on hand, the plaintiff has not clearly proved his readiness and willingness, and hence, the suit has to be dismissed on that ground.

65. Learned counsel for the defendant further relied on the decision of the Supreme Court reported in 2011 (4) SCC 741 (Pramod Buildings and Developers (P) Ltd. Vs. Shanta Chopra), wherein, the Supreme Court held that it is for the plaintiff who approached the Court to prove that he was ready and willing to perform the contract; the plaintiff in a suit for specific performance, cannot obviously succeed, unless he proved that he was ready and willing to perform the contract, and the exhaustive correspondence between the parties clearly discloses the respective stands of the parties. In the case on hand, the plaintiff has not clearly proved his readiness and willingness in performing his part of the contract.

66. Learned counsel for the defendant also relied on the decision reported in 2011 (1) SCC 429 (J.P. Builders and another Vs. A.Ramadas Rao and another), wherein the Apex Court held in paragraph 9 that, "the words 'ready' and 'willing' imply that the person was prepared to carry out the terms of the contract; the distinction between 'readiness' and 'willingness' is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance; generally, readiness is backed by willingness". In the said decision reported in 2011 (1) SCC 429 (cited supra), the earlier decisions of the Supreme Court reported in 1995 (5) SCC 115 (N.P.Thirugnanam Vs. Dr.R.Jagan Mohan Rao and others) and 2004 (6) SCC 649 (P.D.Souza Vs. Shondrilo Naidu) were referred to, and from those three decisions, it is clear that the factum of the plaintiff's readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances and the Court may infer from the facts and circumstances as to whether the plaintiff was always ready and willing to perform his part of the contract; when there is non-compliance of the provisions of Section 16(c) of the Specific Relief Act, the Court is not bound to grant the specific performance and the readiness and willingness to perform his part of the contract has to be determined and ascertained from the conduct of the respective parties. While applying the above decisions of the Supreme Court to the case on hand, it is seen that the plaintiff has not complied with the provisions of Section 16(c) of the Specific Relief Act, which dis-entitles him to get the relief of specific performance.

67. Learned counsel for the defendant further relied on the decision of the Supreme Court reported in 2009 (3) SCALE 159 = 2009 (3) LW 911 (SC) (Azhar Sultana Vs. B.Rajamani and others), which relates to readiness and willingness to perform the part of the contract by a party and after dealing with Section 16(c) of the Specific Relief Act, it was concluded by the Supreme Court in that decision

that the question of the defendant's discharging the burden would arise provided the plaintiff is found to be entitled to a decree for specific performance of the contract. In the case on hand, this Court held that the plaintiff is not entitled to the relief of specific performance and hence, the question of the defendant's discharging the burden would not arise.

68. Learned counsel for the defendant also relied on the decision of the Supreme Court reported in 2007 (6) SCC 650 = 2007 (4) MLJ 367 = CDJ 2007 SC 446 (V.R.Sudhakara Rao and others Vs. T.V.Kameswari), in which, the Supreme Court held that the relief of specific performance is discretionary relief.

69. Learned counsel for the defendant further relied on the decision of the Supreme Court reported in 2001 (6) SCC 600 = CDJ 2001 SC 446 (A.C.Arulappan Vs. Smt.Ahalya Naik), in which, relying upon the earlier decision of the Supreme Court reported in AIR 1996 SC 2814 = 1996 (5) SCC 589 (Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others), the Apex Court observed that it is settled law that the party who seeks to avail of the jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands and in other words, the party who makes false allegations does not come with clean hands, is not entitled to the equitable relief. In that decision, the Supreme Court further observed that the grant of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, and these equitable principles are incorporated in Section 20 of the Specific Relief Act, which reads as follows:

"Section 20: Discretion as to decreeing specific performance:

(1) The Jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance--

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1-Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2-The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

70. Hence, the Supreme Court in the above decision, observed that while granting a decree for specific performance, the above salutary guidelines enshrined in Section 20 of the Specific Relief Act, shall be in the forefront of the mind of the Court. While applying the said guidelines to the case on hand, it is clear that the plaintiff has failed to comply with the provisions of Section 20 of the Specific Relief Act. In the case on hand, the plaintiff before this Court has not come to Court with clean hands and hence, for all these reasons, the suit has to be dismissed.

71. In the decision of the Apex Court reported in 1997 (3) SCC 1 (K.S.Vidyanadam Vs. Vairavan), relied on by the learned counsel for the defendant, in which, while dealing with the aspect that in the case of agreement of sale relating to immovable property, time is not the essence of the contract, unless specifically provided to that effect and also dealing with the aspect of the period of limitation for filing a suit under the provisions of the Limitation Act, the Supreme Court relied upon its earlier decision reported in 1993 (1) SCC 519 (Chand Rani Vs. Kamal Rani), in which it was observed that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract and 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 evident from the express terms of the contract, the nature of the property and the surrounding circumstances and the Supreme Court, relying upon the said decision, further observed that the Court should look at all the relevant circumstances including the time limits specified in the agreement and determine as to whether its discretion to grant specific performance should be exercised. Hence, this Court, taking into consideration the above principles laid down by the Apex Court in the above two decisions, holds that the plaintiff is not entitled to the decree of specific performance, as in this case, though the time is not strictly adhered to between the parties, the plaintiff has not come to Court with clean hands and has not proved fairly his readiness and willingness in performing his part of the contract.

72. In the next decision of the Supreme Court, relied on by the learned counsel for the defendant, reported in AIR 1996 SC 2814 = 1996 (5) SCC 589 (Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others), the Supreme Court observed that a person who has come to

Court with a false plea, is not entitled to the equitable relief of specific performance.

73. This Court finds that as alleged in the plaint, the defendant has not paid Rs.30,00,000/- and hence, it has to be concluded that the plaintiff has made false allegations against the defendant and therefore, this Court comes to the conclusion that the plaintiff is not entitled to the equitable relief of specific performance.

74. Learned counsel for the defendant next relied on a decision of the Supreme Court reported in 1987 Supp SCC 340 = AIR 1987 SC 2328 (Parakunnan Veetill Joseph's son Vs. Nedumbara Kuruvila's son), wherein the Supreme Court observed that Section 20 of the Specific Relief Act preserves judicial discretion to Courts as to decreeing specific performance; the Court should meticulously consider all facts and circumstances of the case, and that the Court is not bound to grant specific performance merely because it is lawful to do so.

75. To substantiate the contention of the learned counsel for the defendant that the plaintiff has not been ready and willing to perform his part of the contract and the plaintiff has not come to Court with clean hands, learned counsel for the defendant relied on two decisions of this Court, one, reported in 2010 (2) MLJ 253 = CDJ 2010 MHC 3358 (R.Rajaram Vs. T.R.Maheswaran) and the other, reported in 2011 (3) CTC 205 (S.Narayanappa Vs. Sampangi Ramayya). The facts and circumstances of the case on hand, clearly depicts that the plaintiff has not proved in entirety his readiness and willingness in performing his part of the contract, and he has not come before this Court with clean hands, which are evident from the oral and documentary evidence adduced on his side, because, even the application in A.No.2683 of 2011 filed pending suit before this Court, seeking permission to pay the balance sale consideration, was dismissed as withdrawn on 12.10.2011, which shows that he has not been ready and willing to perform his part of the contract and further, he did not even mention the date on which payment of Rs.16,500/- was made by cash, thereby proving that he has not come to Court with clean hands.

76. In order to show that the plaintiff can at the best be termed as trespasser or even encroacher upon the suit property, learned counsel for the defendant relied on a decision of this Court reported in 2006 (4) MLJ 1348 (V.Kanniammal Vs. Anjalakshmiammal (died) and others), wherein this Court observed that as held by the Supreme Court in the decision reported in 1996 (1) LW 368 (SC) = 1996 (7) SCC 690 (Patel Natwarlal Rupji Vs. Shri Kondh Group Kheti Vishyak and another), Section 53-A of the Transfer of Property Act does not confer any title on the transferee, but imposes a statutory bar on the transferor to seek possession from the transferee. It was further observed by this Court that the basic ingredients required to claim protection under Section 53-A of the Transfer of Property Act is that the transferee (plaintiff in the case on hand) has taken possession of the property in part performance of the contract or she has been in possession of the property previously and continued to be in possession of the property in part-performance of the contract, has not been made out, in addition to proving written contract as well as the readiness and willingness to perform her part of the contract, and therefore, the right to retain possession of the property, though the plaintiff was found to be in possession, should go and she should be treated as trespasser, not entitled to injunction. As laid down by this Court in the said decision, the plaintiff has not made out his case that he has been in continuous possession of the suit property, as the

original allotment order (Ex.D-11) was issued in favour of the defendant and hence, at best, he is termed as a trespasser into the suit property, dis-entitling him even to get the relief of permanent injunction prayed for in the suit.

77. Learned counsel for the defendant relied on a decision of this Court reported in AIR 1998 Madras 160 (S.M.Gopal Chetty Vs. Raman), wherein this Court held that from the two documents therein, this Court was not able to find anything signifying the assent of the plaintiff therein, and therefore, there is no contract between the plaintiff and the defendant therein; at the most, they may be termed as undertakings by the defendants 1 and 2 therein.

78. In order to show that a person who affirms, must prove his case, learned counsel for the defendant relied on a decision of this Court reported in 2012 (3) MWN (Civil) 603 = CDJ 2012 MHC 4541 (G.Sundarraaj Vs. Meenakshi) , wherein this Court held that he who affirms, must prove and the burden of proof lies upon him who affirms, not upon one who denies and the duty of the person who affirms a particular fact, is to prove it and he cannot call upon the other side to prove the negative aspect. In the case on hand, the plaintiff has not discharged the burden of proof of his readiness and willingness in paying the sale consideration as alleged in the plaint, in order to perform his part of the contract, thereby, he is not entitled to get the relief of specific performance.

79. Coming to issues framed by this Court, with regard to issue No.(i), namely, whether the alleged agreement of sale, dated 17.05.2009, is true and valid document as pleaded by the plaintiff, or it is fabricated document as contended by the defendant, it is seen that Ex.P-1 sale agreement entered into between the plaintiff and the defendant on 17.05.2009, is a true and valid document, and the same is not fabricated one as contended by the defendant. This view of mine is supported by a decision of the Supreme Court reported in 2009 (2) SCC 582 = 2008 (6) CTC 509 (SC) (Aloka Bose Vs. Parmatma Devi and others), relied on by the learned counsel for the plaintiff, wherein the Apex Court held that if vendor alone has signed, then the agreement of sale cannot be held to be invalid. Thus, the inference is that even if one of the party does not sign the document, the validity of the document cannot be suspected and hence, in the case on hand, merely because Ex.P-1 sale agreement has only been signed by the defendant, it cannot be said that it is invalid and it has to be held that Ex.P-1 sale agreement is a legally valid document. Hence, issue No.(i) is answered in favour of the plaintiff.

80. With regard to issue Nos.(ii) and (iii), namely, whether the plaintiff has been ready and willing to perform the contract from the date of agreement till the date of plaint, and whether it is true that the defendant has received a sum of Rs.30,00,000/- towards the sale consideration, it is to be noted that the plaintiff has not actually paid Rs.30,00,000/-, as this Court finds that the plaintiff has paid only Rs.29,83,564/-, which is evident from the documentary evidence available on record, produced by the plaintiff and for the balance Rs.16,436/- (Rs.30,00,000/- minus Rs.29,83,564/- ), the plaintiff has not properly accounted for, through oral or documentary evidence, in satisfying a part of the sale consideration, though it is stated in paragraph 5 of the plaint that the defendant received Rs.30,00,000/- towards Ex.P-1 sale agreement, dated 17.05.2009 as a part of the sale consideration. From the evidence available on record, it is clear that the plaintiff has not actually paid the part of the sale consideration as alleged in the plaint at Rs.30,00,000/-. Furthermore, payment of

Rs.16,000/- as alleged by the plaintiff in his proof-affidavit, is not acceptable. Even assuming without admitting the fact that it is true that as per the said proof-affidavit, literally, Rs.16,000/- alone was paid to the defendant, the said amount of Rs.16,000/- was shown to be paid only for calculation purpose. Still, there is a balance amount to be paid. The chief examination of the plaintiff reveals that the plaintiff has neither paid the entire amount of Rs.5,00,000/- to the CMDA, nor paid the balance sale consideration. Thus, it has to be held that the plaintiff has always not been ready and willing to perform his part of the contract. Hence, issue Nos.(ii) and (iii) are answered against the plaintiff.

81. With regard to issue No.(iv), namely, whether the plaintiff is in possession of the suit property in pursuance of the agreement, it is seen that on a perusal of Ex.P-1 sale agreement, there is no clause mentioned in the said Ex.P-1 for handing over of the possession of the suit property to the plaintiff by the defendant. There is no oral or documentary evidence in this regard, except the averment in the plaint that the defendant had handed over the possession of the suit property to the plaintiff. In fact, from the averments made by the defendant in the written statement, it is seen that the plaintiff has ultimately usurped his possession by throwing the defendant out from the suit property by all means and at all costs. Except the interested evidence of P.W.1, no other witness has been examined to prove the factum of handing over of the possession to the plaintiff. Hence, this Court is of the considered view that the contention of the plaintiff that he has not been in possession and enjoyment of the suit property in pursuant to the execution of Ex.P-1 sale agreement, is not at all true.

82. It is alleged that the plaintiff is in possession of the suit property and the agreement was entered into between the parties in writing. But, as per the provisions of the above extracted Section 53-A of the Transfer of Property Act, there is no documentary evidence for handing over the possession to the plaintiff by the defendant. Hence, issue No.(iv) is answered against the plaintiff.

83. With regard to issue No.(v), namely whether the plaintiff is entitled to specific performance relief and with regard to issue No.(vi), namely as to what other relief the plaintiff is entitled to, it is seen that since issue Nos.(ii) and (iii) are answered against the plaintiff, the plaintiff is not entitled to the discretionary relief of specific performance, and the suit is liable to be dismissed. The plaintiff is also not entitled to any other relief. Issue Nos.(v) and (vi) are answered accordingly.

84. In view of the above answers to the issues framed in the suit and for the foregoing reasonings, the Civil Suit is dismissed. In view of the facts and circumstances of the case, both parties are directed to bear their costs.

01-10-2015 (1/3) Index: Yes Internet: Yes cs Witnesses examined on the side of plaintiff:--

P.W.1 J.Vincent (plaintiff) P.W.2 M.V.Govindan P.W.3 S.Subramanian P.W.4 V.K.Veeramani List of documents marked on the side of plaintiff:--

Exhibit No. Dated Description P-1 17.05.2009 Original Sale agreement - cum - advance deed, between plaintiff and defendant P-2 series 01.07.2009 Photocopy of



the counter-foil of Syndicate Bank and Demand Draft Photocopy for Rs.1,00,000/- in the name of CMDA P-3 series 03.07.2009 Photocopy of the counter-foil of Syndicate Bank and Demand Draft Photocopy for Rs.83,564/- in the name of CMDA P-4 series 27.06.2009 Photocopy of the counter-foil of Syndicate Bank and Demand Draft Photocopy for Rs.3,00,000/- in the name of CMDA P-5 14.08.2009 Note, dated 14.08.2009 written by the defendant P-6 series

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Current Account statement pertaining to Acc.No.6031101003922 of M/s.J.V.Traders with Syndicate Bank, Koyambedu Branch, Chennai, and Pass Book bearing Core Banking Scheme No.100984028 of the Bank of India, P-7 18.06.2010 Certified copy of the complaint dated 18.06.2010 given by the defendant and his wife to the Commissioner of Police, Egmore, Chennai P-8 = D-16 09.11.2010 Certified copy of the FIR in FIR.No.565/2010 of Central Crime Branch, Egmore, Chennai pertaining to the offences under Sections 406, 420, 465, 468, 471 read with 34 IPC P-9 18/28.7.2011 Certified copy of the Order dated 18.07.2011 in A.F.I.R.No.248 of 2010 in X.Cr.No.565 of 2010 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai pertaining to the offences under Sections 406, 420, 465, 468, 471 read with 34 IPC P-10 27.05.2011 The Police Complaint to Inspector of Police, K-10 Koyambedu Police Station, Chennai, with acknowledgement in CSR in No.85/CSR/K10/2011, complainant - plaintiff P-11 30.11.2012 Photocopy of the letter addressed by Public Information Officer/Joint Commr. of Police, West Zone, SIDCO Administrative Complex, Ambattur, Chennai to the plaintiff, enclosing the copy of the requested information sought for by the plaintiff relating to the complaint filed by the defendant P-12 28.01.2012 Photocopy of the letter/notice sent by Mr.S.Sethuraman, Advocate to M/s.RRK Associates, Advocate and to the plaintiff pertaining to W.P.No.1839 of 2012 filed by the defendant before this Court P-13 27.02.2012 True/Certified copy of the order of this Court in W.P.No.1839 of 2012 P-14 12.10.2011 Certified / True Copy of the order of this Court in Original Application No.524 of 2011 in Civil Suit No.413 of 2011 Witnesses examined on the side of defendants:--

D.W.1 S.Srinivasan (defendant) D.W.2 S.Jayalakshmi (w/o - defendant) List of documents marked on the side of defendants:--

Exhibit No. Dated Description D-1 24.08.1993 Original Receipt No.05094, issued by MMDA (CMDA), Chennai for Rs.11,257/- in the name of the defendant D-2 19.08.1994 Original Receipt No.24915, issued by MMDA (CMDA), Chennai for Rs.500/- in the name of the defendant D-3 26.12.2006 Original Receipt No.152784, issued by CMDA, Chennai for Rs.1,66,000/- in the name of the defendant D-4 26.12.2006 Original Receipt No.152785, issued by CMDA, Chennai for Rs.5,230/- in the name of the defendant D-5 21.10.2008 Original Receipt No.1809, issued by CMDA, Chennai for Rs.1,46,655/- in the name of the defendant D-6 21.01.2009 Original Receipt No.2431, issued by CMDA, Chennai for Rs.1,46,665/- in the name of the defendant D-7 17.02.2009 Original Receipt No.2640, issued by CMDA, Chennai for Rs.44,750/- in the name of the defendant D-8 03.06.2009 Original Receipt No.1215 issued by CMDA, Chennai for Rs.1,47,000/- in the name of the defendant

D-9 08.06.2009 Original Receipt No.1230, issued by CMDA, Chennai for Rs.25/- in the name of the defendant D-10 29.06.2009 Original Receipt No.1421, issued by CMDA, Chennai for Rs.3,00,000/- in the name of the defendant D-11 28.11.2006 Letter/allotment order issued by CEO, CMDA, Chennai to the defendant D-12

13.10.2009 Original sale deed executed by the CMDA in favour of the defendant D-13 17.06.2010 Complaint by the defendant and his wife to the Commissioner of Police, Egmore, Chennai seeking Police protection to their life, request for recovering the suit property from the plaintiff etc. D-14 August 2010 Direction petition filed by the defendant and his wife, before this Court under Section 482 Cr.P.C. in Crl.O.P.No.18698 of 2010 D-15 26.08.2010 Order of this Court in Crl.O.P.No.18698 of 2010 D-16 = P-8 09.11.2010 Photocopy of the FIR in FIR.No.565/2010 of Central Crime Branch, Egmore, Chennai pertaining to the offences under Sections 406, 420, 465, 468, 471 read with 34 IPC D-17 04.01.2011 Direction petition filed by the defendant and his wife, before this Court under Section 482 Cr.P.C. in Crl.O.P.No.882 of 2011 D-18 04.01.2011 Direction petition filed by the defendant and his wife, before this Court under Section 482 Cr.P.C. in Crl.O.P.No.883 of 2011 D-19 12.01.2011 Order of this Court in Crl.O.P.No.882 of 2011 D-20 10.02.2011 Order of this Court in Crl.O.P.No.883 of 2011 D-21 July 2013 Affidavit of the defendant in O.A.No.2589 of 2011 in C.S.No.413 of 2011 List of Court documents marked:--

Exhibit No. Dated Description Ex.C-1 29.08.2013 The Statement of Current Account in No.60311010003922 issued by the Syndicate Bank, Koyambedu, Chennai, for the period from 17.05.2009 to 31.12.2009 in respect of the suit property (M/s.J.V.Traders) and also indicating the balance as on 29.08.2013 Ex.C-2 30.08.2013 The Statement of Savings Bank Account in No.802810110000526 issued by the Bank of India, Koyambedu, Chennai, for the period from 17.05.2009 to 31.12.2009 in respect of the plaintiff Ex.C-3 30.08.2013 The Statement of Savings Bank Account in No.8028101100004532 issued by the Bank of India, Koyambedu, Chennai, for the period from 03.06.2009 to 31.12.2009 in respect of the defendant 01-10-2015 (2/3) Index: Yes Internet: Yes cs Registry to note: Registry is directed to issue the order copy along with the above typed list of witnesses and documents.

Copy to

1. Sub-Assistant Registrar, Original Side, High Court, Madras.
2. Record Keeper, Original Side Records Section, High Court, Madras.

G.CHOCKALINGAM, J cs Judgment in 01-10-2015