(1991) 03 MAD CK 0016

Madras High Court

Case No: None

Janab N.H.M. Yakoob (died) and Others		APPELLANT
	Vs	
M. Krishnan (died) and Others		RESPONDENT

Date of Decision: March 15, 1991

Acts Referred:

- Transfer of Property Act, 1882 - Section 53A, 55(1)(f)

Citation: (1991) 2 MLJ 249

Hon'ble Judges: K.M. Natarajan, J

Bench: Division Bench

Judgement

K.M. Natarajan, J.

The unsuccessful plaintiff in O.S. No. 739 of 1980 on the file of the subordinate Judge, Coimbatore has preferred this

appeal. The plaintiff died and his legal representatives are added. The first defendant died and his legal representatives are added.

2. The case of the plaintiff as disclosed from the plaint is briefly as follows : The defendants are the owners of the suit properties described in the

plaint schedule. They entered into an agreement of sale on 22.2.1979 in respect of the suit properties with the plaintiff and one C.Y. Mohammed

Ali. As per the terms of the said agreement, they agreed to sell the land measuring 2 acres 41 cents for Rs. 1,05,000 to the plaintiff and the said

C.Y. Mohammed Ali and received an advance of Rs. 5,000 on the date of the agreement and further agreed to receive another sum of Rs. 5, 000

within 30 days from the date of agreement. The plaintiff paid a further sum of Rs. 5,000 within 30 days and obtained an endorsement in the

agreement itself. In all the plaintiff paid Rs. 10,000. It is further stated that the plaintiff after taking delivery of possession of the properties, divided

the same into house-sites and planted stones and formed layout roads. The plaintiff with the help and assistance of the defendants, submitted the

plan for approval to the Deputy Director of Town Planning. It is stated that the defendants wholeheartedly gave their consent and concurrence and

subscribed their signatures in the said application and the plan.

3. Subsequently, the plaintiff entered into agree-mentrwith various parties and received advances as agreed and undertaking by him in the

agreement. The plaintiff has spent more than Rs. 1,00,000 out of the advances so received from various parties, for formation of layout and for

putting up culvert road and water and other facilities. Even though the period for execution of the sale deed was fixed as nine months from the date

of the agreement, it was mutually agreed that the defendants have to execute the sale deed within a period of nine months from the date of the

agreement and to apply for approval of the layout and plan. They further agreed to deliver possession of the lands on the same date of the

agreement so as to enable the plaintiff to form a layout. They also agreed to receive the sale consideration either in part or in full to the extent sold

under each and every sale and to execute the necessary sale deeds as directed by the plaintiff either to him or to his nominees. The defendants

authorised the plaintiff to enter into agreements with third parties and receive advance amounts from them. It is only in pursuance of the same, the

plaintiff took possession of the properties on the date of the agreement and paid the advance. Both parties agreed to extend the time and also

decided that time is not the essence of the contract. The defendants agreed to execute the sale deed after approval of the layout.

4. Subsequently, the defendants took out a different attitude and began to give trouble to the plaintiff. The plaintiff obtained approval of the layout

with great difficulty and also entered into agreements with third parties. The defendants are evading to produce the title deeds on one false pretext

or other. The plaintiff has been demanding the defendants to execute the sale deed. But the defendants were promising and delaying and finally they

went to the extent of denying the very existence of the sale agreement, since they felt that they can sell the properties for higher price. The plaintiff is

always ready and willing to pay the sale price and have the sale deed in his favour by paying the balance amount. But, the defendants after

receiving the advance and delivering possession of the properties so as to enable the plaintiff to obtain an approval of the layout, refused to execute

the sale deed and thereby violated the terms and conditions of the agreement and committed the breach of the agreement.

5. The plaintiff has incurred heavy loss and untold misery and hardship on account of the attitude of the defendants, as he is made answerable to

various persons with whom he had entered into agreements of sale. Hence the plaintiff issued a notice through lawyer dated 18.2.1980 calling upon

the defendants to execute the sale deed as agreed. But the defendants sent a reply with false and untenable contentions denying the very existence

of the suit agreement. According to the plaintiff, the allegations stated in the reply notice are false and baseless and highly mischievous. On

21.2.1980 C.Y. Mohammed Ali relinquished all his rights, interest and title under the agreement and made an endorsement to that effect in the suit

agreement itself. Hence the plaintiff alone is entitled to enforce the suit agreement and hence he has filed the suit. The plaintiff further submits that he

is prepared to put into court the balance of Rs. 95,000 at any time to be fixed by the Court. Hence the suit for specific performance of the contract

dated 22.2.1979 and for costs.

6. The defendants have filed separate written statements. The sum and substance of the written statement filed by the first defendant is as follows :

Defendants 2 and 4 are the sons and the 3rd defendant is the married daughter of the first defendant. The first defendant, though admitted the

execution of the suit agreement, would contend that a copy of the agreement was not prepared or given to him and he never agreed to deliver

possession of the lands on the date of the agreement and further possession was not delivered to the plaintiff or to the said Mohammed Ali. Taking

advantage of the fact that a copy of the document was not delivered to the first defendant, the plaintiff materially altered the agreement by

incorporating the words, at the end of the description of property, to the effect that possession was also delivered to the plaintiff. It is further stated

that the plaintiff was given permission to form the layout in the name of the first defendant under the agreement, and possession of the lands was

neither contemplated under the terms of the agreement nor was delivered to the plaintiff. Even the amount of Rs. 10, 000 was paid only by

Mohammed Ali and not the plaintiff. The period fixed under the agreement expired on 22.11.1979 and that the plaintiff or Mohammed Ali was

never ready and willing to perform their part of the agreement and they never made any demand for execution of even one sale deed during the

term of the agreement. Further, they have no funds to pay the balance of Rs. 1,00,000. The said Mohammed Ali and the plaintiff by their conduct

and inaction abandoned the suit agreement and they have no right to enforce specifically the lapsed agreement. It is only the first defendant who,

after the expiry of the period under the agreement, that is, after 2.11.1979, issued a public notice on 7.2.1980 in ""Daily Thanthi"" referring to the

expiry of the term fixed under the agreement and warning the public not to have any dealings with the plaintiff or Mohammed Ali. The plaintiff

issued a notice about 11/2 months later with false and untenable allegations. The first defendant did not agree to extend the time beyond the period

fixed under the agreement. He has not violated or committed breach of the agreement. On the other hand, it is only the plaintiff by his default

allowed the agreement to be lapsed. Mohammed Ali is a necessary and proper party to the suit and as such, the suit is bad for nonjoinder of party.

The plaintiff is not entitled to any relief. Hence, the first defendant prayed for dismissal of the suit.

7. The sum and substance of the written statement filed by the second defendant can be briefly stated as follows : He is the victim of fraud,

coercion, misrepresentation and undue influence at the hands of the plaintiff and the first defendant. The suit properties being ancestral properties,

the third defendant cannot have any share in the joint family properties. The first defendant, who is more affectionate towards his daughter, the third

defendant, was instigated by his son-in-law (husband of the third defendant) to enter into the agreement with the plaintiff without any family

necessity. Defendants 1, 2 and 4 are entitled to equal shares in the joint family properties. The fourth defendant filed a separate suit for partition of

his share. The second defendant was forced to sign the agreement. There were no antecedent debts due to be discharged and there was no legal

necessity or benefit to sell the entire properties. He would also contend that the plaintiff never took possession of the properties. The plaintiff never

laid road. On the other hand, the second defendant alone is in possession still. Hence he prayed for dismissal of the suit.

8. The third defendant remained exparte.

9. The fourth defendant in his written statement contended that he being a minor cannot represent himself and cannot sign any document. The first

defendant took a hostile attitude towards his wife and sons, and the plaintiff and the son-in-law of the first defendant hatched out the agreement in

order to achieve their object of swallowing the entire properties. He would contend that the properties are ancestral properties and that there was

no legal necessity or benefit to sell the properties. According to him, the value of the properties is about Rs. 7,00,000. Hence he prayed for

dismissal of the suit.

10. On the pleadings, the trial court framed as many as 8 issues. The suit filed by the fourth defendant herein for the relief of partition and separate

possession in O.S. No. 896 of 1980 was also tried along with this suit. On the side of the plaintiff, he examined himself as P.W. 1 and Exs. A-1 to

A-19 were marked, and on the side of the defendants, the first defendant examined himself as D.W. 1 and Defendants 2 and 4 were examined as

D.Ws.3 and 4 and the attestor to the suit agreement was examined as D.W. 2 and Exs. B-1 to B-21 were marked. Exs. C-1 and C-2, the

Commissioner''s report the plan were marked. The trial Judge for the reasons stated in the judgment held under issues 2 to 4 that the suit

agreement is true; but it has become void as there is material alteration subsequent to the execution of the agreement and on account of the material

alteration, the plaintiff cannot enforce the contract. It was held that the suit agreement dated 22.2.1979 is true and binding on defendants 2 and 4,

but it becomes invalid by reason of the material alteration. It was also held that the alleged possession of the property by the plaintiff is not true,

valid and binding on the first defendant. Under issue No. 5 it was held that the relinquishment by Mohammed Ali is true, valid and binding on the

defendants and under issue No. 6, it was held that Mohammed Ali is not a necessary party to the suit. Consequently the suit was dismissed with

costs and however, the plaintiff is held to be entitled to refund of the advance amount of Rs. 10,000. The suit filed by the fourth defendant was

decreed. Aggrieved by the dismissal of the plaintiffs suit, this appeal is filed.

11. The learned Counsel appearing for the appellant Mr. S.V. Jayaraman, mainly submitted that the trial Judge having found that the suit agreement

is true and binding on the defendants erred in dismissing the suit holding that there is material alteration in the suit agreement and as such it is void

and unenforceble. He would submit that the two points that arise for consideration in this appeal is, whether the finding of the trial judge that there

is material alteration in Ex. A-1 is wrong, and even assuming that it is correct, whether it is a material alteration which would be sufficient to non-

suit the plaintiff. According to him, the case of the defendants is that a copy of the suit agreement was not given to the defendants and as such they

did not know the contents. Such being the case, their contention that there was material alteration in respect of the clause regarding delivery of

possession at the end of the description of property cannot be accepted. He would submit that it is only the defendants who, at the first instance

rushed to the press and effected the paper publication to the effect that the contract stands cancelled for non-performance wherein also emphasis

was made about the clause regarding the non-delivery of possession. He would submit that the particular clause which is said to be an interlineation

is in consonance with the existing recitals in Ex. A-1. Further, since the defendants have gone to the extent of denying the very execution of the suit

agreement in the reply notice, no reliance could be placed on their version as they are not truthful persons. According to the learned Counsel, in

view of the report of the Commissioner that road has been laid, the Court below ought to have presumed that delivery has been effected in

pursuance of the suit agreement to the plaintiff. He would submit that there may be interlineation; but the question is whether it was made after the

document was executed and whether it is sufficient to invalidate the agreement as it would go to the root of the transaction. According to him, since

the vendor is bound to deliver possession u/s 55(1)(f) of the Transfer of Property Act, the addition of the clause by way of interlineation regarding

delivery of possession cannot be said to be a material one so as to invalidate the document. According to him, the court below ought not to have

accepted the evidence of D.W. 2, attestor. The sum and substance of the arguments of the learned Counsel is that the alleged material alteration

regarding delivery of possession is not against the tenor of the agreement and that it does not create a valuable right in favour of the plaintiff and as

such the judgment of the trial court is not sustainable and is liable to be set aside and a decree as prayed for has to be granted in favour of the

appellant.

12. Per contra, the learned Senior Counsel for the respondents, Mr. R. Krishnamurthi, mainly submitted that even the very recitals in the plaint as

well as Ex. A-1 show that no actual delivery was effected; but the defendants only agreed to grant permission to the plaintiff to form layout and get

sanction and to survey the land for the purpose of forming layout. He submitted that the word used in more than 8 places in the document and the

word in the description of the property, which was alleged to have been newly added, clearly show that it was not the same person who wrote the

words in both the places and that the difference is visible even to a naked eye. According to him, it is in different hand writing and in different ink

and it was later introduced. He would submit that the interlineation certainly creates a valuable right, in view of Section 53-A of the Transfer of

Property Act, in favour of the plaintiff so as to claim possession over the property and on the basis of the same, the plaintiff can ask for injunction

against the real owner, namely, the defendants, and the court below is justified in holding that there is a material alteration subsequent to the

execution of Ex. A-1 and it goes to the root of the transaction as it materially affected the rights of the parties. He would also submit that even

though the learned trial Judge held that time is not the essence of the contract, yet, specific performance of an agreement being a discretionary

relief, there is absolutely nothing to show that the plaintiff was ready and willing to perform his part of the contract throughout the period specified

in the agreement and subsequently also. The learned Counsel submitted that though it is stated that 5 persons came to purchase the plots and

entered into agreements and subsequently they had gone back, there is absolutely nothing to prove those transactions. there is no evidence to show

that there were persons who were willing to purchase the plots and that the plaintiff has necessary funds to purchase the property. It is in evidence

that the plaintiff is a real estate agent. But, there is no evidence to prove that he is possessed of sufficient funds to obtain the sale deed in pursuance

of the agreement and as such even on the ground that he was not ready and willing to perform his part of the contract, he is not entitled to the

discretionary relief.

13. The question that arises for consideration in this appeal is, whether the alleged material alteration in Ex. A-1 regarding the clause of delivery of

possession at the end of the description of property is true and if so, whether it is a material alteration which would be sufficient to non-suit the

plaintiff holding that the agreement is void and unenforceable as found by the trial court.

14. Certain facts involved in the suit, which are not in dispute, are necessary for deciding the point in the appeal. It is the case of the appellants that

the first appellant plaintiff (since died) and one C.Y. Mohammed Ali entered into an agreement of sale with the defendants 1 to 4 in respect of 2

acres 41 cents of punja land in S. Nos. 5/3, 6/1, 6/3 and 6/7 of Vadavalli village. Among the defendants, defendants 2 to 4 are the children of the

first defendant. The fourth defendant was a minor at the time of the agreement and he was represented by his father. The suit agreement Ex. A-1

was executed on 22.2.1979 in favour of the plaintiff and C.Y. Mohammed Ali who did not sign the agreement. Only defendants 1 to 3 and the first

defendant for himself and on behalf of the fourth defendant signed the document. As per the terms of the agreement they agreed to sell the

properties for Rs. 1,05,000 and the period of performance of the agreement is nine months. A sum of Rs. 10,000 was received by way of

advance in two instalments, namely Rs. 5,000 on the date of execution of the agreement and another sum of Rs. 5,000 within 30 days of the

execution of the agreement Ex. A-1. There is no recital in the body of the agreement that possession was delivered to the plaintiff and C.Y.

Mohammed Ali. But, there is a recital to the effect that the executants of the agreement had no objection to the property being divided into sites by

forming a layout from the date of the agreement. The material alteration in the document is the last line in the schedule of property at the end of the

document reads as follows:

which means that the possession of the above lands was delivered to the plaintiff and Mohammed Ali in whose names the agreement was written.

As rightly contended by the learned Counsel for the respondents, the manner in which this one line was inserted at the end of the document in the

description of property indicates that this must have been written after the completion of the agreement. Further, the narrow space between this line

and the signature and the space between the other lines written in the schedule of properties make one to suspect whether this line was written by

the scribe who wrote the body of the document. The contention of the learned Counsel for the respondents is that the plaintiff has not been given

possession of the property. Nor has the plaintiff done anything in the properties exercising the right of possession. On the other hand, it is the case

of the appellants that possession of the properties was given to the first plaintiff in pursuance of the suit agreement and he laid stones and formed

layouts. It is not in dispute that there is no specific recital regarding delivery of possession in the body of the agreement. There is only a reference

permitting the plaintiff to form the layout and divide the land into house sites. As rightly contended by the learned Counsel for the respondents, the

plaintiff was only permitted to enter the properties for the limited purpose of forming layout and dividing the properties into house sites and that this

permission cannot be construed as delivery of possession. If really the defendants have agreed to deliver actual possession on the date of the suit

agreement, certainly it would have been incorporated in the agreement itself and that there was no necessity to make a reference about permitting

the plaintiff only to form layout and divide the land into house sites. Even the evidence of P.W. 1 is to the effect that possession was taken only for

the purpose of forming roads and dividing into house1 sites. That cannot be construed as delivery of actual possession. A blue print can be

prepared, and forming of roads and dividing into house sites can be done in the plan, even without entering into the land. Even though the plaintiff

has stated in his evidence that he constructed a tank and put up rivetment, there is nothing to substantiate the same. The evidence of P.W. 1

relating to taking of possession in pursuance of Ex. A-1 is not corroborated by any other witness, except his ipso dixit and self-serving statement.

Even the Commissioner''s report which is relied on by the plaintiff shows that there is a well defined road formation of about 40 feet in width

through the middle of the suit property in south North direction and a heap of white washed stones were available in the property. He only noticed

a heap of mud dug out from the nearby well on the eastern side of the land. He did not notice the construction of tank or rivetment or actual

possession by the plaintiff. This report Ex. O-1 was filed even on 7.8.1980. As rightly contended by the learned Counsel appearing for the

respondents the formation of road and the planting of stones are the necessary works connected with the formation of layout and the permission

granted by the defendant to do the above work cannot be construed as actual possession.

15. In this connection, besides the evidence of D.W. 1, 3 and 4, who are defendants 1, 2 and 4 reliance was placed on the evidence of D.W.2

who is an attestor to the agreement. It may be noted that the plaintiff has not examined the scribe or attestors of the document to prove that actual

possession was delivered. On the other hand, D.W.2, the attestor to Ex. A-1, who is a competent witness to speak about the alleged delivery of

possession, has categorically stated he was responsible for negotiating the transaction between the plaintiff and the defendant. He has unequivocally

stated that nothing was mentioned about delivery of possession at the time of execution and attestation of the agreement. Delivery of possession

was not at all discussed at the time of execution of the agreement. Even though P. W. 1 in his evidence has stated that the scribe was not willing to

give evidence yet there is absolutely nothing to show that the plaintiff has taken any step to summon the scribe at least to speak about the recital in

the main document We have carefully examined the agreement Ex. A-1. We find no difficulty in concurring with the finding of the learned

Subordinate Judge. On a careful scrutiny of the recitals, we find that the handwriting in the last line differs from the other writings and that the word

could not have been written by the scribe, on in the body of the agreement has never been used and instead has been employed for about 8 times.

Further, the test as originally written will not fit in with the interpolation regarding delivery of possession at the time of the execution of the

agreement, which itself is clearly suggestive of the I subsequent writing after the agreement had come to be executed. We also find that the place

where this inter lineation is added creates a serious doubt, as such a recital should normally have been made in the body of the agreement and not

in the schedule property, as it is not the proper place to make such an insertion. Further, the manner in which this line is written also makes

everybody to suspect that this line was inserted after the execution of the document. On a careful examination of the document, we also concur

with the finding of the trial Judge and also the contention of the learned Counsel for the respondents that the last line in the schedule of property

regarding delivery of possession has been inserted subsequent to the execution of the agreement The contention of the learned Counsel for the

respondents appears to be tenable and the evidence adduced on the side of the defendants through D.W. 2 also supports the contention of the

respondents. There is also absolutely nothing to show that a copy of Ex. A-1 was delivered to the defendants at the time of execution of Ex. A-1.

D.W. 2 has emphatically stated that no copy was prepared at the time of execution and furnished to the defendants. As rightly contended by the

learned Counsel for the respondent that in Ex. A-1 there is no recital to show that a copy of the same was prepared and delivered to the

defendants even though normally in an agreement of this kind, both parties will have to sign. But, in the instant case, the agreement is signed only by

the defendants and not by the plaintiff and by the co-vendee, namely, Mohammed Ali and as such, the non-production of the copy by the

defendants would not in any way affect the case of the defendants. On the other hand, since the agreement executed was in favour of the plaintiff

and Mohammed Ali and they did not sign it and only the Original was written, they were able to insert the clause regarding delivery of possession

in order to create a new right regarding possession of the suit property and on the basis of the same they could resist the defendants by invoking

Section 53-A of the Transfer of Property Act and they could apply for injunction against the defendant to protect the alleged possession delivered

under Ex. A-1. We have not the slightest hesitation in rejecting the contention of the plaintiff that the said clause was introduced even at the time of

execution of Ex. A-1 as false, since it is contrary to the tenor of the agreement and it is visible even from a casual look. Hence, we have no

hesitation in agreeing with the finding of the trial judge that the last line in the schedule of property regarding delivery of possession was not inserted

on the date of execution of the agreement Ex. A-1 to the plaintiff and Mohammed Ali but must have been inserted subsequent to the execution of

the agreement. 16. The next question is whether the said alteration would amount to material alteration. It is submitted by the learned Counsel for

the appellants, Mr. S.V. Jayaraman, that it is a material alteration only if it is against the tenor of the agreement and if it creates any new right in

favour of the plaintiff. Since the vendor is under obligation to deliver possession in view of Section 55(1)(f) of the Transfer of Property Act, the

alteration referring to delivery of possession would not amount to material alteration and as such, it cannot be said that it goes to the root of the

case and the entire transaction is vitiated. On the other hand, the learned Counsel appearing for the respondents-defendants would submit that

delivery of properties is contemplated only at the time of the execution of the sale deed and not at the time of the agreement and delivery of

property at the time of the agreement can be created only by consent of parties as by effecting delivery of possession in pursuance of the

agreement, the agreement holder gets a valuable right in view of Section 53-A of the Transfer of Property Act. The defendants cannot ask for

recovery of possession and they can only ask for the balance of the sale price. Further, the plaintiff can claim part performance of the agreement

and even ask for injunction restraining the real owner, namely, the defendants from interfering with their alleged possession. By introducing this

clause, the rights of the defendants are affected and it creates a valuable right in favour of the plaintiffs and as such it is a material alteration. In this

connection, the learned Counsel for the appellants, Mr. S.V. Jayaraman, drew the attention of this Court to the following decisions, namely, AIR

1940 160 (Privy Council) , Kalianna Gounder Vs. Palani Gounder and Another, , Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and

Others, and S.K. Panchaksharam Mudaliar (Died) and Others Vs. T.V. Kanniah Naidu and Others, . In AIR 1940 160 (Privy Council) , after

referring to the material alterations made in the document, the matter was concluded thus:

As the above mentioned alterations substantially vary the rights and liabilities as also the legal position of the parties, they cannot be held to be

anything but material alterations and since they have been made without the consent of the defendants first set, they have the effect of cancelling the

deed.

It was further held as follows:

The rule of English law relating to the effect of material alterations in a deed made after the execution by or with the consent of any party to it but

without the consent of those liable under it is applicable also in India. Such an alteration avoids the deed, not ab initio so as to nullify its

conveyancing effect, but so as to prevent the person making the alteration or those claiming under him form putting the deed in suit for the purpose

of enforcing an obligation undertaken by it. A material alteration is one which varies the rights, liabilities or legal position of the parties.

Ultimately it was held on the facts of that case that the alterations were not material and that the deed of release could be relied on for the purpose

of the redemption action. In Kalianna Gounder Vs. Palani Gounder and Another, , the interpolation was ""Clear the debts and execute the sale

deed free from encumbrance. That undoubtedly is a statutory duty cast upon every vendor under Sec55 of the Transfer of Property Act. The

before their Lordships of the Supreme Court held that it cannot be regarded as a material alteration. But, there is a great difference between the

above quoted case and this case, where even before executing the sale deed, by introducing the said clause, the possessory title was conveyed to

the plaintiffs a so as to enable him to acquire part performance u/s 55(1)(f) of the T.P. Act and prevent the defendants from claiming any right to

possession over the suit property. In the above quoted case, it was observed as follows:

As observed in Halsbury''s Laws of England, Vol. 11, 3rd Edn., Article 599 at 368;

A material alteration is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or

otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained

and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration, without the consent of the party bound, is exactly the same as that of cancelling the deed.

In the above quoted case, while referring to The decision of the Privy Council in Nathu Lal case, has observed as follows:

This rule has been applied by the Privy Council in Nathu Lal and Ors. v. Mussamat Gomti Kuar and Ors. L.R. 67 IndAp 318. The Judicial

Committee observed in that case at page 331 : A deed is nothing more than an instrument or agreement under seal and the principle of those cases

is that any alteration in a material part of any instrument or agreement avoids it, because it the reby ceases to be the same instrument.

The Judicial Committee observed at Page 333. ""A material alteration has been defined in the rule as one which varies the rights, liabilities or legal

position of the parties ascertained by the deed, etc."" and after applying that test they held that the alteration in that case was not material in thesense

of altering the rights, liabilities or legal position of the parties or the legal position of the parties or the legal effect of the document.

In Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others, , it was held at page 869:

Question No. 5 : Before Proceeding to determine this question, it would be well to advert to the legal position bearing on the matter. As aptly

stated in paragraph 1378 of Volume 12 of Halsbury''s Law of England (Fourth Edition) "" If an alteration (by erasure, interlineation, or otherwise) is

made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of

the party or parties liable under it, the deed is rendered void from the time of the alteration, and those claiming under him, from putting the deed in

suit to enforce against any party bound by it, who did not consent to the alteration any obligation, covenant, or promise thereby undertaken or

made.

A material alteration, according to this authoritative work, is one which varies the rights, liabilities, or legal position of the parties as ascertained by

the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision

which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the some as that of cancelling the deed.

In S.K. Panchaksharam Mudaliar (Died) and Others Vs. T.V. Kanniah Naidu and Others, , a Division Bench of this court, after considering the

earlier three decisions held:

Held that the plaintiff had made interpolations in the agreement which amounted to material alterations. By reason of the fact that he had come

forward with a false case and unclean hands, he had denied himself the quotable relief of specific performance.

The interpolation in the agreement in the above quoted case is about evicting owner Perumal and thereafter executing the sale deed. As per the

original agreement, the understanding between the parties was that after the completion of the sale, the first defendant was willing to deliver

possession to the plaintiff and by virtue of the interpolation the first defendant had to evict the fourth defendant Perumal, after which event alone the

sale can be concluded. The Division Bench in the circumstances held that ""They have not the slightest hesitation in holding that the interpolation is a

material alteration acting to the prejudice of the first defendant and the before the plaintiff cannot enforce his right on the suit agreement Ex. A-1.

The said decision is in all fours applicable to the facts of this case, as the interpolation in this case is a material alteration acting to the prejudice of

the defendants, in the sense, by introducing that clause the plaintiff claimed part performance u/s 53-A of the Transfer of Property Act. Since we

have held that the interpolation is a material alteration and that the plaintiff cannot enforce his right under the suit agreement, we have no hesitation

in upholding the finding of the Subordinate Judge in this regard. For all these reasons, we conclude that there is no merit in the appeal and it is liable

to be dismissed.

17. In the result, the judgment and decree passed by the trial court are confirmed and this appeal fails and stands dismissed. However, in the

circumstances of the case, we direct each party to bear their costs in this appeal.