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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 18.09.2009
Decided on: 28.10.2009

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CS (OS) 2051/2003
&
I.A. Nos. 11209-10/2003, 4817/2005; 1400, 9155/2007 & 12186/2009

HOME DEVELOPERS

..... Plaintiff

Through: Mr. Manish Kohli, Mr. Sanjeev Kumar Baliyan and Mr.
Manjeet Pathak, Advocates.

versus

BHANU SANGWAN

& ORS.

..... Defendants

Through: Mr. Vijay Kishan with Mr. Vikram Jaitley, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

Hon'ble Mr. Justice S.Ravindra Bhat

1. The parties were heard on the pending applications, I.A. Nos. 11209-10/2003; 4817/2005; 1400/ 2007; 9155/2007; 12186/2009 as well as maintainability of the suit.
2. The suit claims specific performance of an agreement allegedly entered into by the plaintiff (hereafter called "Home Developers") with the first defendant (hereafter called "Ms. Bhanu Sangwan") on 24.08.2001. The subject matter of the agreement was the sale of the

constructed first floor of property, built on C-545, Defence Colony, New Delhi, a 325 sq. yards plot (hereafter "suit property"). The suit alleges that the total consideration agreed upon was Rs. One crore out of which a sum of Rs.5 lakhs was paid on the date of the agreement; of the balance of Rs.95 lakhs, Rs.76 lakhs was agreed to be paid by the plaintiff within 15 days of signing of the agreement and at the time of taking clear, vacant and lawful possession of the terrace of the suit property; the remaining Rs.19 lakhs was to be paid at the time of completion of construction. The plaintiffs contend that Ms. Bhanu Sangwan assured them that the property was freehold and that the terrace was free from all encumbrances. It is alleged that she, however, avoided handing-over of peaceful possession within the time or any time thereafter and around the end of August 2001, the said Ms. Bhanu Sangwan expressed her difficulty stating that she required some time to shift from the premises, as her former husband, Brigadier A.S. Sangwan was in occupation of the ground-floor portion of the property.

3. It is alleged that the third defendant was acting as the Attorney for Ms. Bhanu Sangwan and used to frequently negotiate with the plaintiff; sometime in October 2001, the said Ms. Bhanu Sangwan shifted into the ground floor premises of the suit property. The plaintiff mentions about an agreement entered into with Ms. Bhanu Sangwan, dated 11.11.2001, whereby the first floor property consisting of 2 bedrooms, 2 bathrooms, kitchen and front terrace were let-out for Rs.11,000/- per month for 11 months to it, and its (Home Developer's) project manager, Shri Jitender Gupta occupied the said premises. It is contended that Ms. Bhanu Sangwan commenced renovation of the ground-floor of the suit property. It is further alleged that the plaintiff's said Project Manager, Mr. Jitender Gupta was, *mala fide*, asked to vacate the premises by Ms. Bhanu Sangwan in February, 2002.

4. The plaintiff mentions that Ms. Bhanu Sangwan, disregarding the previous agreement to sell dated 24.08.2001, entered into sale agreement with one M/s. Raison Engineers & Builders Pvt. Ltd. and executed Sale Deeds on 19.07.2002 in respect of terrace rights and the ground-floor of the property, for a total consideration of Rs.44,55,000/- to the second defendant. The sale deeds were registered. It is urged that the plaintiff, on becoming aware of the transaction contacted Ms. Bhanu Sangwan, who showed ignorance of this sale, and alleged that fraud had been played upon her by the purchasers. The plaintiff mentions that Ms. Bhanu Sangwan filed Suit. No. 1267/2002, against the purchasers, (including the third defendant), claiming cancellation of the sale deeds. It is urged that since the sale deeds were entered into between Ms. Bhanu Sangwan and the second defendant during pendency of a suit filed by Mr. Jitender Gupta, the plaintiff's Manager, being CS (OS) 344/2002, the same were illegal.

5. The plaintiff urges that it has always been ready and willing to perform its part of the contract and continues to be so and that since the owner, Ms. Bhanu Sangwan has refused to execute the sale deed and on the contrary, created third-party rights, it is entitled to the reliefs of specific performance and a decree for permanent injunction. The plaintiff had filed an application under Order 2 Rule 2, seeking leave to file a separate suit, if necessary, on a later date. The said application was not pressed all this while, though at an earlier stage of the proceeding, the court had issued notice upon it.

6. The defendants have entered their appearance and contested the proceedings. The second defendant, the subsequent purchaser denied the existence of an agreement to sell and besides states that the possession of the entire ground-floor of the suit property was received

back by Ms. Bhanu Sangwan after 10.05.2002. The said second defendant strongly relies upon the registered sale deeds executed on 19.07.2002. It is pointed out that Ms. Bhanu Sangwan filed a suit, being no. 1267/2002 merely to harass the second defendant purchaser as there was no dispute about the consideration amount received by her and that the sale deeds were registered. It is contended that the said suit was inspected by third parties, including the plaintiff.

7. The second defendant states that on 29.07.2002, Ms. Bhanu Sangwan had, in fact, informed the occupant on the first floor of the premises, Mr. Jatinder Gupta that the premises were sold by a registered sale deed dated 19.07.2002 and that constructive possession of the first-floor, (which was in occupation of the said Mr. Jatinder Gupta) had been handed-over to the purchaser. The second defendant also mentions having filed a Civil Suit before the Additional District Judge for a decree of possession in respect of the said first floor of the property, which was stayed under Section 10 of the CPC.

8. During pendency of the present proceeding [as also the Civil Suit filed by the second defendant CS(OS) 959/2008, transferred to the file of this Court], Ms. Bhanu Sangwan moved the Court for withdrawal of the Civil Suit 1267/2002 (in which she had sought for cancellation of the sale deed executed in favor of the second defendant). The said suit was accordingly disposed of as withdrawn on 18.05.2009 by the Court. Ms. Bhanu Sangwan had also, in the meanwhile, filed a written statement in this suit, on 11.02.2005 whereby she had *inter-alia* alleged that the sale deeds were executed by her, on practice of fraud and misrepresentation by the third defendant and that she had authorized that defendant only to help her find a

buyer. She mentions about the ground-floor of the premises having been occupied by *Helpage, India* and having secured the premises later. According to Ms. Bhanu Sangwan, Mr. Jitender Gupta had nothing to do with tenancy as the lease-cum-sale agreement was with the plaintiff.

9. This Court had framed issues in the suit. After Ms. Bhanu Sangwan withdrew her suit, CS(OS) No.1267/2002, the plaintiff moved the Court for amendment of the suit, and also pressed the earlier application for leave under Order 2 Rule 2. The parties were heard on these applications and the other pending interlocutory applications as well as the maintainability of the claim for specific performance. The Court heard the parties on certain pending applications in suit no.959/2008 (which had been originally filed before the ADJ but which had been transferred to this Court by separate orders).

10. The above discussion would show that the plaintiff, in the suit, alleged that it had entered into a Receipt-cum-Agreement with Ms. Bhanu Sangwan on 24.08.2001 for purchasing the first floor/terrace rights of the suit property. The pleadings do mention about the ground-floor premises being under occupation of some other parties. However, that aspect does not form the subject-matter of the present case. The said premises were apparently leased on 11.11.2001, for 11 months, to Mr. Jitender Gupta, whom the plaintiff acknowledges to be its Project Manager. Apparently, the said Mr. Jitender Gupta filed a suit, Civil Suit 344/2001, claiming injunction from dispossession – the records of Suit No. 959/2008 indicate that the suit was disposed of on a statement that he would not be dispossessed without the authority of law. When matters stood thus, the owner, Ms. Bhanu Sangwan executed two registered sale deeds on 19.07.2002; their effect of this were to convey the suit property to the second

defendant. Ms. Bhanu Sangwan, no doubt, had questioned the said sale deeds, dated 19.07.2002, claiming that she was misled and that a fraud had been played upon her. That position is maintained by her in the written statement filed in this case. However, she applied for withdrawal of the suit (Suit No. 1267/2002) which was permitted by this Court on 18.05.2009. The present plaintiff's attempt for recall of that order was also unsuccessful and that application was dismissed.

11. The plaintiff's case for decree of specific performance is premised upon an agreement, what is termed as "Advance Receipt-cum-Agreement to Sell" dated 24.08.2001. Clause 1 of the said agreement states that Ms. Bhanu Sangwan received Rs.5 lakhs – Rs. 1 lakh through cheque and the balance Rs.4 lakhs, in cash. According to the agreement, the vendor agreed to transfer and convey the rights in respect of the entire terrace over the ground-floor of the suit property. Clause 2, 3 and 4 of the said agreement reads as follows:

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2. *That out of balance payment of Rs.95,00,000/- (Rupees Ninety Five Lakh only) Rs.76,00,000/- (Rupees Seventy Six Lakh only) will be paid within 15 days from the date of signing of this Agreement and at the time of taking clear, vacant and lawful possession of the said Terrace from the First Party/Seller.*

3. *That the Balance payment of Rs.19,00,000/- (Rupees Nineteen Lakh only) will be paid to the First Party/Seller at the time of completion of the building or in 8 months whichever is earlier.*

4. *THAT the expenses for execution of the agreement to Sell/Sale Deed & Relevant Documents shall be paid by the Second Party only and the First Party shall execute the said documents in favour of the Second Party or his nominee(s).*

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12. The plaintiff has, in the suit, relied upon a previous injunction suit, being no. 344/2002, claiming permanent injunction from dispossession filed by Mr. Jitender Gupta, its CEO, who was given possession of the property pursuant to an agreement dated 18.11.2001, for 11 months. Initially, the Court had granted an *ex-parte* order, stating as follows:

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I.A. No.1533/2009

Plaintiff is a tenant with respect to the first floor of property no. C-545, Defence Colony, New Delhi under Defendant No.1 by virtue of a lease agreement dated 18th November, 2001. The lease is for 11 months. Plaintiff is in possession of the entire first floor. The apprehension of the Plaintiff is that defendant No.1 is trying to sell out the property and in the process has threatened the plaintiff to vacate the premises. Plaintiff also apprehends that Defendant No.1 will forcibly dispossess the Plaintiff.

Let notice of the application be issued to defendant No.1, returnable on 3rd July, 2002.

In the meanwhile, defendant No.1 is restrained from interfering with the possession of the plaintiff with respect to the suit premises or from dispossessing him without due process of law. Defendant No.1 is also restrained from creating any obstruction in the ingress and egress of the plaintiff and his visitors/guests to the premises under his tenancy.

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14. The Civil Suit was ultimately disposed of on 30.10.2002, in the following terms:

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I.A. No.9399/02 & S. No.344/02.

With the consent of the parties, the application is allowed subject to the applicant Sh. Deepak Kumar Arya filing an affidavit in the Court clearly stating the details regarding his status as a purchaser of the first floor of the suit property. He will also file Amended Memo of Parties.

Learned counsel for the defendants submit, on instruction of their respective clients, that they would not dispossess the plaintiff except by due process of law.

In this view of the matter the learned counsel for the plaintiff submits that no further orders need be claimed by him at this stage, and the suit be disposed of on the said terms, namely that the plaintiff shall not be dispossessed from the first floor of premises No.C-545, Defence Colony, New Delhi except by due process of law. It is also agreed between the parties that so long as the plaintiff continues to occupy the premises, he will also have right to ingress and egress from the stair case through the drive way on the ground floor. Plaintiff also submits that he will not create any third party rights in relation to the premises. Both parties to remain bound by their respective undertakings.

Suit and application (I.A. No.9399/02) stand disposed of.

With the disposal of the suit, all other applications stand disposed of accordingly.

30th October, 2002

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15. The plaintiff has placed on the record a copy of the Civil Suit 1267/2002 filed by Ms. Bhanu Sangwan, which was ultimately withdrawn on 13.05.2009. The suit alleged that one Mr. Raghunath Rai, the third defendant in the present case had taken advantage upon her old age and prevailed upon her to sign certain documents of sale conveying the suit property, to Defendant Nos. 1 to 3 (i.e. the present Defendant No.2). It was alleged that Ms. Bhanu Sangwan labored under mistaken belief that those documents were in respect of an agreement to sell entered into with the present plaintiff on 24.08.2001. The record would establish that on 13.05.2009, this Court passed an order permitting withdrawal of Civil Suit No. 1267/2002; the said order reads as follows:

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I.A. No.6395/2009 in CS (OS) 1267/2002

This is an application by the plaintiff seeking withdrawal of the suit. The application is signed by the plaintiff who is also present in the Court and is supported by the affidavit of the plaintiff.

Issue notice to the defendants, Mr. Vijay Krishnan accepts notice on behalf of defendant No.1 and Mr. A.D.N. Rao accepts notice on behalf of defendant Nos. 2 to 4 and state that they do not oppose the application and have no objection to the suit being withdrawn by the plaintiff. Consequently, the application is allowed. Plaintiff is permitted to withdraw the suit.

CS (OS) No.1267/2002

The application of the plaintiff for withdrawal of the suit being I.A. No. 6395/2009 has since been allowed. The suit is, therefore, dismissed as withdrawn. Parties are left to bear their own cost. All the pending applications are also disposed of.

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The present plaintiff sought for recall of that order by filing I.A. No. 8288/2009; this Court rejected that application on 07.07.2009.

16. In the overall conspectus of the circumstances, the question which the Court has to consider is whether the suit in the present form of *Home Developers Pvt. Ltd.* is maintainable and if not whether it is an appropriate case for grant of leave under Order 2 Rule 2 to pursue fresh remedies and if so, to what extent.

17. The plaintiff no doubt mentions that the total consideration for sale of the suit property was Rs. 1 crore, and that it is ready and willing to perform its part of the bargain. Here, what it seeks to satisfy is the technical requirement in the Specific Relief Act, that a plaintiff has to plead that it was and continued to be ready and willing to perform the contract. The agreement in this case, concededly mentioned the time limit for payment of Rs. 76 lakhs as 15 days from

the date of the agreement. There is no objective material, apart from the pleading, to suggest that such an amount was ever available with the plaintiff, at the relevant time. There is also no material, or document on the record, so far to suggest that the plaintiff had called upon Bhanu Sangwan to perform her part of the bargain, and offered to pay the amount. No copies of bank statements, or any other evidence, contemporaneous, or as on date, has been adduced in this respect.

18. In *M. Meenakshi v. Metadin Agarwal*, (2006) 7 SCC 470, it was held, in the context of exercise of discretion by the court to decree specific performance of an agreement to sell immovable property, that:

“39. Furthermore, Section 20 of the Specific Relief Act confers a discretionary jurisdiction upon the courts. Undoubtedly such a jurisdiction cannot be refused to be exercised on whims and caprice; but when with passage of time, the contract becomes frustrated or in some cases increase in the price of land takes place, the same being relevant factors can be taken into consideration for the said purpose. While refusing to exercise their jurisdiction, the courts are not precluded from taking into consideration the subsequent events. Only because the plaintiff-respondents are ready and willing to perform their part of contract and even assuming that the defendant was not entirely vigilant in protecting his rights in the proceedings before the competent authority under the 1976 Act, the same by itself would not mean that a decree for specific performance of contract would automatically be granted. While considering the question as to whether the discretionary jurisdiction should be exercised or not, the orders of a competent authority must also be taken into consideration.”

19. As to what are properly matters of discretion, was spelt out in *K.S. Vidyadnam v. Varavan*, (1997) 3 SCC 1, at page 7 :

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation

notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani¹: (SCC p. 528, para 25)

“... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract.”

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades...”

It has been held in *Azhar Sultana v. B.Rajamani* AIR 2009 SC 2157 that Section 16(c) of the Specific Relief Act, 1963 requires continuous readiness and willingness, by the plaintiff to perform his part of the contract. This was emphasized earlier, in *Ram Awadh v. Achhaibar Dubey*, [2000]1SCR566, as follows:

“6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a), (b) and (c) thereof. A Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit.”

It is also established that since a court a discretionary jurisdiction, it is entitled to take into consideration whether the suit had been filed within reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. There

can, however, be no thumb rule in this regard; the conduct of the parties assumes significance. In *Veerayee Ammal v. Seenii Ammal* AIR2001SC2920 it was held that:

"11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in Chand Rani v. Kamal Rani held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of contract, the court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case."

It was also held that:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.'

The Supreme Court, in *Ram Awadh* as well as *Azhar Sultana* held that not only the original vendor but even the subsequent purchaser is entitled to contend that the plaintiff was not ready and willing to perform his part of contract.

20. The receipt cum agreement, in this case, is dated 24-8-2001. The plaintiff's Project Engineer occupied the premises, effective from November, 2001. The suit does not mention any document, when the plaintiff demanded the execution of the sale deed, or offered to pay

the balance consideration. Even the suit does not mention when the plaintiff asked Bhanu Sangwan to convey the property, or offer to pay the balance Rs. 95 lakhs. On the other hand, the plaintiff was clearly aware that the Sale Deeds were executed on 19-7-2002; there is no whisper about any protest, or legal notice issued to Bhanu Sangwan. All these, in the opinion of the court, clearly disentitle Home Developers to a decree for specific relief.

21. As far as the question of amendment to the suit, incorporating a challenge to the sale deeds in favour of the second defendant is concerned, what is noteworthy is that the plaintiff was aware of the sale, when it approached the court. It does not say that the sale deeds are vitiated, because the second defendant purchaser is not a *bona fide* vendee, or did not pay due consideration. The allegations are premised on the averments that Bhanu Sangwan claimed to have been misled, by defendant No. 3. The cause for a decree of cancellation as regards the legality of the Sale Deed has not been pleaded; it is contingent upon relief being given to Bhanu Sangwan, in her suit. The plaintiff, clearly, was aware of the Sale Deed. That being the position, the mere filing of a suit, with an allegation that leave would be sought on a later date, to challenge the sale deed, is insufficient. The period of limitation for filing a cancellation suit, is three years. Here, the plaintiff did not take steps to challenge the sale deed, or seek amendment of the present suit, for that purpose, within the period.

22. The power of the court to permit amendment of pleadings, under Order VI Rule 17 are concededly, wide in scope. Yet, the Supreme Court has held that courts can refuse to permit time barred claims to be pressed. Thus, in *L.J. Leach and Co. Ltd. and Anr. v. Jardine Skinner and Co.* [1957]1SCR438, it was held that:-

"It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

This view has been endorsed in *T.N.Alloy Foundry Co. Ltd –vs- T.N. Electricity Board* 2004 (3) SCC 392, and, more recently, in *Puran Ram v. Bhaguram and Anr.* AIR 2008 SC 1960.

23. Even as regards the question of maintainability of relief of cancellation of document, by virtue of Section 31 of the Specific Relief Act, this court, in *Ajay Goel –vs- K.K. Bhandary* 1999 (49) DRJ 292 held that:

“Section 31 of the Specific Relief Act for cancellation of the sale deed by which the title of defendant No. 1 was made perfect on the ground that the same is void against the plaintiff. Admittedly the defendant, apart from paying Rs. 3,96,000/- to the plaintiff has paid a sum of Rs. 35,96,787/- to the DDA. With the sale of the property in question by the plaintiff to the defendant No. 1 and cancellation of the lease by DDA and sale permission in favor of the defendant No. 1, there could not be allegation made by the defendant No. 1 that the sale deed dated 10.1.1997 and the power of attorney are void and thus there is no cause of action for the plaintiff under Section 31 of the Specific Relief Act. In view of the aforesaid facts and circumstances, the suit as framed by the plaintiff is held to be not maintainable.

Issue No. 2:

*12. The present suit has been instituted by the plaintiff under Section 31 of the Specific Relief Act praying for cancellation of certain documents as void. No relief is sought for by the plaintiff for possession although in a suit under section 31 of the Specific Relief Act such a relief can be prayed for. The plaintiff admittedly is not in possession of the suit property and has not been so since 27.10.1972 i.e. for the last more than 26 years. In Suit No. 2946/1996 the plaintiff has sought for possession. The defendant has already filed its written statement in that suit and I find from the records that in the said suit also various preliminary objections have been raised by the defendant. The remedy under Section 31 of the Specific Relief Act is to remove a cloud upon tile. In this connection reference may be made to a Full Bench decision of Madras High Court in *Muppudathi Pillai Vs. Krishnaswami*, reported in AIR 1960 Mad 1. In the said decision it was held that the provisions of Section 39 make it clear that three conditions are requisite for the exercise of jurisdiction to cancel an instrument which are as follows, (i) the instrument is void or voidable against the plaintiff; (ii) the plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (iii) in the circumstances of the case the Court considers it proper to grant this relief of preventive injustice. The Madras High Court while analysing the second aspect of the matter emphasized that the remedy under Section 39 (now Section 31) is to remove a cloud upon the title by removing a potential danger but it does not envisage an adjudication between competing titles. It was held that such an action could relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances or that it was only in such circumstances that it can be said that there is a cloud on his title and the apprehension that if the instrument is left outstanding it may be a source of danger.”*

24. In the opinion of this court, none of the three pre-requisites for applicability of Section 31 exist in this case. There is no question of the plaintiff having any title to the suit property, after the registered sale deeds were executed in favour of the second defendant. Likewise, if, *arguendo*, there was some threat to the plaintiff's interest, its inaction has led to the claim becoming time barred, as far as the relief of cancellation is concerned. The plaintiff's awareness of the sale deed, and its neglect all these years, to move the court, display a speculative approach. It cannot be said that the withdrawal of Bhanu Sangwan's suit has led to a cause of action; the primary "cause" for the cancellation claim, arose, when the plaintiff became aware of the registered sale deeds, in July, 2002. Its omission to include the relief has now led to lapse of more than four years, after the claim became time barred. In these circumstances, the court is of opinion that the amendment, enlarging the scope of the suit, should not be allowed, in the interests of justice.

25. The next question is whether, in view of the above observations, the suit for other reliefs is maintainable. The plaintiff seeks permanent injunction restraining the defendants from alienating or transferring the suit property. Concededly, this was some kind of consequential or adjunct relief, to the main claim for specific performance. The suit, for this claim, is clearly not maintainable, because the second defendant had acquired title, through a registered sale deed. In the circumstances, this relief is unavailable.

26. The court is mindful of the fact that issues were framed in this suit long ago. Yet trial has not commenced. The plaintiff took no steps to amend the suit, within the time; nor does the suit disclose that the relief of specific performance was filed within reasonable time. Most importantly, the court is of the opinion that the pleadings and materials on record nowhere disclose that by any reasonable standards, the plaintiff was ever ready and willing to perform the contract, and ensure that the claim for specific performance could succeed. There is no

shred of documentary evidence in this regard, despite lapse of over six years, and even after issues were framed.

27. The court is therefore, of the opinion that in the circumstances of this case, it would be inequitable to permit the plaintiff to amend the suit, incorporating a claim for cancellation of document, or granting leave to it, in this regard, particularly, after expiry of the period of limitation provided by law, for such relief. The court, however, is also of the opinion that the withdrawal of the suit, by Bhanu Sangwan, possibly can constitute a fresh cause, to the plaintiff, in respect of monetary claims.

28. In view of the above discussion, and since the court is not permitting the amendments proposed, or the leave sought, the suit is liable to be rejected. This will not preclude the plaintiff from claiming any monetary relief, if so advised, against Bhanu Sangwan, in the light of the withdrawal of her suit No. 1267/2002. However, nothing said in this judgment shall be reflective of the relative merits of such claim, if made.

29. For the above reasons, the suit is rejected, as no longer disclosing any cause of action, triable by the court.

30. All the pending applications are also dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

October 28,2009