THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1001 of 2007

JUDGMENT:-

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful defendants is directed against the decree and judgment dated 20.06.2007 of the learned II Additional Chief Judge, City Civil Court, Hyderabad, passed in A.S.No.584 of 2006. The learned II Additional Chief Judge while allowing the said appeal filed by the plaintiffs had set aside the decree and judgment dated 27.10.2006 of the learned V Senior Civil Judge, City Civil Court, Hyderabad and had decreed the suit O.S.No.2367 of 1997 filed by the plaintiffs against the defendants for specific performance of agreements for sale dated 27.10.1978 and 17.12.1981 in respect of 2000 square yards of land which forms part of survey Nos.88 and 89 and corresponding to new survey Nos.10 and 11, with temporary construction bearing Municipal No.8-3-322/1 situated at Sanathnagar-Bombay Trunk Road, Yellareddyguda, Hyderabad, more fully described in the schedule annexed to the plaint.

2. At the time of admission of this Second Appeal, this Court had taken note of the substantial questions of law mentioned in ground No.11 (i) to (iii) as substantial questions of law involved in the Second Appeal. The said questions are as follows:

> **1. Whether a suit without complying Section 69 (2) of the Partnership Act which mandates registration of firm and filing of extract under Rule 5 from the Registrar of Firms for a suit arising out of a contract is mandatory and can Court ignores mandatory requirement even though specific plea was taken and arguments were also advanced?**
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> **2. Whether Article 54 of the Limitation Act, which contemplates refusal as the criteria for running the limitation is said to commence from legal notice or denial of the execution of agreements at any earlier stage of point of time. If so whether the legal notice extend period of limitation under Article 54 of Limitation Act?**
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> **3. Whether the court can grant relief of specific performance in respect of an agreement, which is enforced after 19 years contrary to the provisions of**

Section 20 of the Specific Relief Act?

[Reproduced verbatim]

3. I have heard the submissions of the learned senior counsel appearing for the appellants/defendants ('the defendants' for brevity) and the learned senior counsel for the respondents 1, 2/plaintiffs ('the plaintiffs' for brevity). I have perused the material record. I have gone through the synopsis of submissions filed by both the sides.

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to first refer to the pleadings of the parties and the facts that lead to the filing of this appeal.

4.1 The plaint averments, in brief, are as follows:

The 1st plaintiff is a partnership firm, represented by the 2nd plaintiff, who is its Managing Partner. The 1st plaintiff firm is carrying on business in Timber Depot since 1974. The plaintiffs had obtained the plaint schedule vacant site on lease initially from late Aktharunnisa Begum in the year 1974 on a monthly rent of Rs.350/-. The said rent was subsequently enhanced from time to time and the said landlady, by the date of her death, was receiving Rs.600/- as monthly rent. Even after her death, the lease is continuing. During her lifetime, the landlady had offered to sell the plaint schedule vacant site to the plaintiffs for a total consideration of Rs.1,20,000/- and the plaintiffs had agreed for the same and had paid the said consideration to her. The plaintiffs and the landlady had together entered into an agreement for sale dated 27.10.1978. However, the landlady could not execute the sale deed due to various formalities that are to be completed, such as obtaining of Urban Land Ceiling permission, Income Tax Clearance Certificate etcetera. Therefore, the plaintiffs had obtained from the landlady another agreement for sale dated 17.12.1981 extending the time for execution of sale deed and mentioning therein the further terms and conditions. During her lifetime, the landlady made an application to Urban Land Ceiling authorities for obtaining permission for executing a sale deed in favour of the plaintiffs. While so, the landlady-Aktharunnisa Begum had died in the month of October, 1984 leaving behind her the defendants as her legal heirs. After the death of the landlady, the plaintiffs had consistently demanded the defendants to execute a sale deed in their favour in respect of the plaint schedule vacant site. The defendants having postponed the said issue on one pretext or the other had further promised that they will obtain the Urban Land Ceiling permission and complete the other formalities shortly and execute a sale deed in favour of the plaintiffs. Therefore, the plaintiffs had patiently waited for getting the sale deed registered in their favour. While so, the defendants had filed R.C.No.1007 of 1987 on the file of the Court of the learned Principal Rent Controller for eviction of the plaintiffs from the property alleging *inter alia* that the plaintiffs had committed default in payment of rents and that the property is required *bona fide* for occupation of the defendants. The said Rent Control case was dismissed on 12.10.1993. The defendants had filed an appeal in R.A.No.29 of 1994 on the file of the Court of the learned Additional Chief Judge, City Small Causes Court, Hyderabad and the same was allowed on 13.11.1996. The plaintiffs had filed a revision in C.R.P.No.111 of 1996 on the file of this Court, which is pending. Simultaneously, the defendants and their family members had filed O.S.No.8 of 1994 and O.S.No.9 of 1994 and other batch of suits on the file of the Court of the learned III Additional Judge, City Civil Court, Hyderabad, and the said suits are pending. The plaintiffs, who are parties to the suit O.S.No.9 of 1994, are resisting the said suit by filing a written statement. The plaintiffs are not liable to pay rent to the defendants, as the terms of the agreement provide for non-payment of rent, as the entire sale consideration was paid to the landlady-Aktharunnisa Begum. As such, the tenancy rights had merged with the rights of purchase under the agreements for sale. The plaintiffs had continuously demanded the defendants to execute the sale deed in their favour, but, the defendants had deliberately postponed the execution of the registered sale deed on one pretext or the other inspite of the fact that the plaintiffs are always ready and willing to perform their part of contract to obtain the sale deed. On enquiries, the plaintiffs came to know that the Urban Land Ceiling authorities had granted permission in the year 1993 in favour of the landlady and the said fact was not informed by the defendants to the plaintiffs with an ulterior motive. The plaintiffs having obtained the certified copy of the order passed by the Urban Land Ceiling authorities in the month of April, 1997 informed the defendants about the same; but, the defendants did not come forward to execute the sale deed in respect of the plaint schedule vacant site in favour of the plaintiffs. Therefore, the plaintiffs had issued a notice on 24.09.1997 to the defendants calling upon them to execute a registered sale deed within a period of one month. The defendants having received the notice had sent a reply with false averments with a view to defeat the claim of the plaintiffs. The 1st defendant had contacted the plaintiffs in the last week of October, 1997 and had informed the plaintiffs that he intends to settle the matter. However, that promise of the 1st defendant did not see the light of the day. The defendants had started negotiations with various other parties for selling away the plaint schedule vacant site to deprive the plaintiffs' lawful right. The intending purchasers had contacted and made enquiries with the plaintiffs with regard to the intended sale of the property. Apprehending that the defendants may finalize the sale transactions with the third parties and having left with no other option, the plaintiffs are constrained to bring the suit against the defendants for specific performance.

4.2. The defendants 1, 2, 6, 8 and 9 had filed their written statements separately. But their defence seems to be the same. The common defence of the said defendants in their written statements, in brief, is as follows:

The material allegations in the plaint are false. The plaintiffs had obtained the vacant land on lease on a monthly rent of Rs.350/- from Aktharunnisa Begum, is denied. As a matter of fact, the 2nd plaintiff had obtained the plaint schedule vacant site i.e., land with structure on a monthly rent of Rs.600/- from Aktharunnisa Begum. The lease had continued during the lifetime of Aktharunnisa Begum, is false. The 2nd plaintiff is still a tenant in the property and the lease is subsisting. During the lifetime of the said Aktharunnisa Begum, she had offered to sell the plaint schedule vacant site for a total consideration of Rs.1,20,000/- and that the plaintiffs had agreed for the same and that on payment of said consideration, the agreement for sale dated 27.10.1978 was executed and that Aktharunnisa Begum could not execute a registered sale deed for non-completion of formalities in regard to Urban Land Ceiling Permission and clearance from Income Tax authorities and that subsequently another agreement for sale was obtained extending the time, are all false. The plaint averments are invented to usurp the suit schedule property. The plaintiffs had never made any attempts much less consistent demands to execute a sale deed and the defendants had never postponed the execution of the registered sale deed as alleged in the plaint. Since no agreement for sale is in existence, the plaintiffs had never approached the Urban Land Ceiling authorities even though they had knowledge about the proceedings. The 2nd plaintiff is only a tenant in respect of the plaint schedule vacant site. The Rent Control case was filed as the plaintiffs had created false sale agreements to usurp the suit schedule property and had committed default in paying the rent. On the dismissal of the same, the Rent Appeal in R.A.No.29 of 1994 was filed. In the said appeal, it was held that the 2nd plaintiff is a tenant of the defendants in respect of the subject property and that he had committed default in payment of rents and as such he is liable to be evicted. Therefore, the 2nd plaintiff filed C.R.P.No.111 of 1996 and it is pending on the file of this Court. When the matter stood thus, the plaintiffs have come up with the alleged theory of agreements for sale. The suit is hopelessly barred by limitation. The possession of the 2nd plaintiff over the suit schedule property is pursuant to the tenancy agreement and not based on the alleged false, fictitious and forged agreements for sale. It is not explained by the plaintiffs as to why they had kept quiet for more than twenty years if really there are agreements for sale as stated by them. In the eviction suit, the plea in regard to agreements for sale was set up as defence. The agreements for sale are forged and fabricated. The 2nd plaintiff need not pay any rent as the tenancy merged with the status as purchasers under the agreements for sale is false. The 2nd plaintiff is always ready and willing to perform his part of contract and that the defendants are not ready is false. The defendants sent a reply to the notice of the plaintiffs with correct averments. The plaintiffs have no *locus standi* to file the suit and the suit may be dismissed.

4.3 Having regard to the pleadings, the trial Court had framed the following issues for trial:

> **1. Whether the suit agreements of sale dt.27.10.78 and 17.12.81 are true, valid and enforceable?**
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> **2. Whether the suit claim is within the period of limitation?**
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> **3. Whether the plaintiffs are entitled for specific performance as prayed for?**
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> **4. Whether the suit is bad for non-joinder of necessary parties?**
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> **5. Whether the valuation and the court fee paid is correct?**
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> **6. To what relief?**

4.4 At trial, the 2nd plaintiff and his supporting witness were examined as PWs.1 and 2 and exhibits A1 to A14 were marked on the side of the plaintiffs. The defendants 1, 8 and 9 were examined as DWs.1 to 3 and exhibits B1 to B6 were marked on their side.

4.5 After full-fledged trial and on merits, the trial Court had dismissed the suit without costs. As already noted, the Court below had allowed the appeal and decreed the suit of the plaintiffs for specific performance of agreements for sale. Hence, the unsuccessful defendants are before this Court.

4.6 During pendency of this second appeal, the 7th appellant had died and therefore, his legal heirs were brought on record as appellants 17 to 21. Some of the defendants, who did not join the defendants in filing the second appeal, are impleaded as respondents 3 and 4 as formal parties and on the death of 2nd plaintiff, respondents 5 to 9 were brought on record.

5. Now the substantial questions are taken up.

6.1 Dealing with the first substantial question first, it is to be noted that the 1st plaintiff, according to the plaint averments, is a partnership firm and the 2nd plaintiff is its managing partner; the plaintiffs had originally entered into the plaint schedule vacant site as tenants; they had taken the property on lease from Aktharunnisa Begum (since died); during the lifetime of the said Aktharunnisa Begum, she had agreed to sell the plaint schedule vacant site, in which the plaintiffs 1 and 2 were tenants, for a consideration of Rs.1,20,000/-; having paid the said consideration, the plaintiffs had obtained the agreement for sale dated 27.10.1978 under the original of exhibit A1 and that later they had also obtained from the said landlady another agreement for sale dated 17.12.1981 under the original of exhibit A2 extending time for execution of registered sale deed with further terms and conditions; the plaintiffs could not obtain a regular registered sale deed from the said deceased landlady as the formalities in regard to obtaining ULC permission and IT clearance could not be completed; in-fact, the said landlady had applied to the competent authority for ULC permission; while matter stood thus she had died in the month of October 1984 leaving behind the defendants 1 to 4; the fact that the ULC permission was granted in the year 1993 was suppressed; the plaintiffs having come to know of that had applied for a copy in the year 1997; after making oral demands and a written demand by a notice under the original of exhibit A3, the plaintiffs had brought the suit for specific performance as the defendants had issued a litigious reply notices under exhibits A11 and A12.

6.2 The defendants had denied the execution of any such agreements for sale by the original landlady Aktharunnisa Begum. Their specific defence is that the 2nd plaintiff is only a tenant having obtained the land with structures and that he is continuing as a tenant in the property and that the question of merger of tenancy with the purchase does not arise for consideration as there were no agreements for sale and that when eviction proceedings were initiated, the plaintiffs had set up the false, forged and fabricated agreements for sale, even though there were no such agreements and no consideration has been paid as alleged in the plaint.

6.3 In this backdrop of the main pleadings, the defendants also would contend that the 1st plaintiff as per the plaint averments is a partnership firm and that the suit for specific performance, which was filed by the plaintiffs 1 and 2, without complying with the requirements of the provision of Section 69 of the Indian Partnership Act, 1932 (‘the Act’, for brevity) is not maintainable and that the suit is liable to be dismissed for non-compliance of the mandatory requirements of the said provision of law by the plaintiffs. The learned senior counsel for the defendants would further submit that the plaintiffs had failed to file any document to show that the 1st plaintiff firm is a registered partnership firm and that the 2nd plaintiff is a partner of the 1st plaintiff firm; and in fact, that the 1st plaintiff firm is not a registered partnership firm as on the date of institution of the suit; and hence, the suit filed by the 1st plaintiff and the 2nd plaintiff, who claimed to be its managing partner, is liable for dismissal even in the absence of a pleading in the written statement in that regard in view of the facts and the settled legal position. He would further contend that registration of the 1st plaintiff firm during the pendency of the second appeal will not cure the defect, which is fatal to the maintainability of the suit.

6.4 In reply, the learned senior counsel for the plaintiffs while re-iterating the contentions, which lead to the filing of the suit, would contend as follows: ‘The 1st plaintiff firm is registered *vide* Registration no.2888 in July, 1974 and that the partnership deed was executed by mentioning the name of Ratansi Patel as the Managing Partner. Permission was obtained from the Industries/ Small Scale

Industries Department. After the death of the Managing Partner, the firm was registered again on 14.06.2012 by adding the names of the new partners; and, the partnership deed was also executed by surrendering the original firm registration certificate of the year 1974. The names of new partners are also mentioned in the memorandum of grounds of Appeal as respondents 5 to 9. The original partnership registration certificate was filed in Rent Control proceedings. The same was taken back for surrendering the same at the time of obtaining the registration of the new partnership firm and for entering into new partnership in the year 2012. New firm was registered in the year 2012. Thus, there is compliance of the provision of Section 69 (2) of the Act. As such, there is no merit in the contention raised by the defendants.

6.5. Before proceeding further, it is necessary to refer to the provision of Section 69 (2) of the Indian Partnership Act, 1932, which reads as under:

> "**No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.**"

A bare reading of the above provision of law would make it clear that the said provision of law provides that no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm suing is a registered firm and the person suing on behalf of the firm has been shown as a partner in the Register of Firms. The fact is that the section of law begins with the words: 'No suit to enforce a right arising from a contract shall be instituted in any court…', which *prima facie* would show that there is a bar for institution of the suit by a firm which is unregistered. It is also clear from the provision of law that a suit by a registered firm to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party when the person suing is or has been shown as a partner in the firm in the Register of Firms. Therefore, the bar is in regard to institution of a suit in any court by a firm which is not registered. The bar is also in regard to the status of the person suing on behalf of the registered firm. As such, a suit by a registered firm shall be instituted only by a person whose name appears as a partner in the Register of firms. Therefore, on a plain reading of said Sub-section (2) of Section 69 of the Act, it is manifest that the suit instituted in any Court by or on behalf of the firm against any third party shall not be valid unless the firm is registered and the person suing has been shown in the Register of firms as a partner of the firm.

6.6 Coming to the aspect that there is no plea in the written statement on the aspects that the 1st plaintiff firm is not registered and that the 2nd plaintiff is not shown as its partner in the Register of firms, what is to be first noted is that in the plaint it is not stated that the 1st plaintiff firm is a 'registered partnership firm'. It is also not pleaded in the plaint that the name of the 2nd plaintiff, who is styled as a managing partner, has been shown in the Register of firms as such. In view of the lack of required material pleadings in the plaint and in view of the provision of law which is adverted to supra, in the well considered view of this Court, it is not necessary for the defendants to take such a defence in the written statement. The view of this Court gets reinforced from the ratio in the decision in **Andhra Pradesh Co-operative Wool Spinning Mills Limited and another Vs. G.Mahanandi and Company Wool Merchants and others**, wherein a Division Bench of this Court while considering - whether the appellants/defendants therein were under an obligation to take a defence in their written statement that the plaintiff firm is not registered and therefore, the suit is not maintainable - had held at paragraph nos.12 and 13 of the decision as under:

> **"12. In the context of a suit by a partnership firm the fact that the partnership firm is a registered firm and therefore entitled to maintain a suit against a third party becomes a jurisdictional fact and becomes part of the cause of action in the absence of any pleading or proof in that regard that cause of action is incomplete. In our view the suit must fail on that count. The Supreme Court in Jaswant Singh V. Custodian of Evacuee Property, New Delhi, AIR 1985 SC 1096 at Paragraph 14 held as follows:**
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> **"……….. A cause of action for a proceeding has no relation whatever to the defence which may be set up nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application as the case may be to the cause of action or in other words to the media upon which the plaintiff or the applicant asks the Courts to arrive at a conclusion in his favour…………"**
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> **13. Partnership is an aspect of right of association guaranteed under Article 19 (1) (c) of the Constitution of India, which right is always subject to reasonable restrictions imposed by the law from time to time. The rights and obligations of a partnership firm which has no distinct legal existence but only a compendious name for the partners are regulated by the provisions of the Indian Partnership Act. The law refuses to recognize the right or a partnership firm to sue third parties unless it is registered partnership firm. Those who desirous to avail the facility provided under the law to sue in the name of or on behalf of a partnership firm must establish the basic facts that such a suit is maintainable. The legislative mandate always indicates the public policy of the state; the Courts are bound to give effect to the public policy but not to defeat the public policy on the ground that the defence of such public policy was not specifically pleaded taken. We therefore respectfully agree with the view taken by Justice Sabhyasachi Mukherjee and hold that the present suit is not maintainable for the reasons discussed above."**

Therefore, in the instant case, the present fact in issue being a jurisdictional fact, it is not for the defendants to plead and on the other hand, it is for the plaintiffs to plead and prove that the 1st plaintiff firm is a registered firm and that the 2nd plaintiff is a partner, whose name has been shown in the Register of Firms and that, therefore, the plaintiffs are entitled to maintain the suit against the defendants.

6.7 Dealing with the further contentions of the plaintiffs that the 1st plaintiff is a registered partnership firm and that it was registered in the year 1974 and that a partnership deed was also entered into at that time showing the 2nd plaintiff as its managing partner and that on the death of the 2nd plaintiff a new firm was registered and that at that time the old registration certificate of the firm was surrendered and a new firm was registered in the year 2012 and that a new deed of partnership was entered into and that a fresh registration certificate was obtained and that as on the date of institution of the suit the 1st plaintiff firm is a registered partnership firm and that the 2nd plaintiff is its partner and that his name appeared in the list of partners in the Register of Firms till the new firm was registered in the year 2012, what is to be reiterated is that there is no pleading in the plaint that the 1st plaintiff firm is a registered partnership firm and that the 2nd plaintiff's name has been shown as its partner in the Register of firms. Even the said aspect was not borne out by the evidence brought on record. The registration of the Firm anew in the year 2012 after the death of the 2nd plaintiff by surrendering the old partnership firm registration certificate is also an event subsequent to the disposal of the suit as well as the first appeal suit. Neither the original firm registration certificate-Form-C of the 1st plaintiff firm nor the Form-A showing the list of the partners of the 1st plaintiff firm obtained from the Register of Firms are filed and exhibited to establish that the 1st plaintiff firm is a registered firm as on the date of the institution of the suit in the year 1997 and that the 2nd plaintiff is its partner by then and that his name appeared in the Register of Firms as one of the partners of the 1st plaintiff firm. Even the copies of the said documents are not exhibited as is evident from the material record. In the absence of proof that the original partnership firm was registered in the year 1974 and that the 2nd plaintiff was its partner and that his name was shown in the Register of Firms, the mere registration of a new firm in the year 2012 afresh will not inure to the benefit of the plaintiffs and is of no avail to the plaintiffs as the law is well settled that registration of a partnership firm during the pendency of the suit will not cure the defect, which is a defect in regard to jurisdictional fact. The view of this court gets reinforced from the ratio in the decision of the Supreme Court in **Delhi Development Authority v. Kochhar Construction Work**, which is as follows:

> **'It would thus seem on a plain reading of Section 69(2) that a suit instituted in any Court by or on behalf of a firm against any third party shall not be valid unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners of the Firm. Plainly, the institution of suit itself is barred both by sub-section (1) and sub-section (2) of Section 69 of the Partnership Act.'**
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> **'Counsel for the respondents, however, invited our attention to two decisions which take a view that subsequent registration of the firm can cure the initial defect provided the registration is before the period of limitation has run out. Our attention was drawn to M.S.A. Subramania Mudaliar v. East Asiatic Co. Ltd., AIR 1936 Mad 991 : 1936 MWN 1144 and Atmuri Mahalakshmi v. Jagadeesh Traders, AIR1990AP288. However, the High Court of Patna in Laduram Sagarmal v. Jamuna Prasad Chaudhuri, AIR1939Pat239 and the High Court of Madras in T. Savariraj Pillai v. R.S.S. Vastrad & Co., : AIR1990Mad198 take a contrary view and hold that the suit is incompetent ab initio. We have considered these decisions, but in the light of the plain language of Section 69 of the Partnership Act read with Section 20 of the Arbitration Act and in view of the decision of this Court reported in Shreeram Finance Corporation, [1989]3SCR484 we are clearly of the opinion that proceedings under Section 20 of the Arbitration Act were ab initio defective since the firm was not registered and the subsequent registration of the firm cannot cure that defect.**

Therefore, the submission that the 1st plaintiff firm was registered in the year 2012 subsequent to the death of the 2nd plaintiff, in the absence of proof that the 1st plaintiff firm was earlier registered and that the 2nd plaintiff, who sued on its behalf as its managing partner, has been shown in the Register of Firms as partner of the Firm, does not advance the case of the plaintiffs any further. It is apt to note that no attempt was made to file any documents as additional evidence by having resort to the relevant provision of law in Rule 27 of Order 41 of the Code. Hence, having regard to the reasons and the legal position obtaining, this Court is of the well considered view that the suit of the plaintiffs for specific performance of the agreements for sale is not maintainable as the plaintiffs had failed to plead and establish as required under law that the 1st plaintiff firm is a registered partnership firm and that the 2nd plaintiff is a partner of the said firm and that his name is or has been shown in the Register of Firms as on the date the suit was instituted. Therefore, it follows the suit instituted is invalid and that the institution of suit itself is barred and that the suit proceedings are *ab initio* defective having been instituted in the name of the 1st plaintiff firm, which was not shown to have been registered as on the date of the institution of the suit. On this ground alone, the plaintiffs are liable to be non-suited and the suit is liable to be dismissed.

7.1 Dealing next with the substantial question of law on the point of limitation, there is no dispute that the period of limitation for suit for specific performance is governed by Article 54 of the Indian Limitation Act, 1963, which reads thus:

Description of suit	**Period of limitation**	**Time from which period begins to run**
For specific performance of a contract	**Three years**	**The date fixed for the performance or, if no such date is fixed, when the plaintiff has notice that performance is refused.**

The said Article, which has two limbs, provides that limitation is three years from the date fixed, in case the date is fixed for the performance and that if no such date is fixed, the time from which the period begins to run is when the plaintiff had notice that the performance is refused.

7.2 The learned senior counsel for the defendants would contend as follows: 'The agreements for sale, being relied upon by the plaintiffs are dated 27.10.1978 and 17.10.1981. The suit for specific performance based on the said agreements for sale was brought in the year 1997. Even assuming for a moment that the second limb of the said Article applies to the facts of the instant case, nevertheless, it is for the plaintiffs to plead and establish that their suit is instituted within the prescribed period and not barred by law of limitation in view of the provision of Section 3 of the Indian Limitation Act, which reads thus:

> **Section 3. Bar of limitation:-**
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> **(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence**
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> **(2) xx**

It is not in dispute that the defendants had initiated the eviction proceedings in the year 1987 in R.C.No.1007 of 1987 against the plaintiffs for eviction from the suit schedule property on the ground that the plaintiffs had committed default in payment of rents. In the said proceedings, during the course of enquiry, the defendants herein had denied the present suit agreements for sale and it was suggested to RW1 during his cross-examination that the said agreements for sale were forged and fabricated and that no agreements for sale were ever entered into between the parties and that no consideration was paid. Therefore, it is evident from the material record that there was a refusal clearly on the part of the defendants herein in the year 1993 when RW1 was cross-examined in the above said eviction proceedings and that the plaintiffs herein had notice about such refusal of performance in the year 1993 itself. Therefore, the plaintiffs ought to have filed the suit for specific performance within three years from the date of the cross examination of RW1. Assuming for a moment that before seeking specific performance, the plaintiffs are entitled to wait till the Urban Land Ceiling permission is obtained, the fact of the matter is that such clearance certificate was also granted in the year 1993 itself. Though the certificate was granted in the year 1993 and the plaintiffs had knowledge of the same, the plaintiffs have conveniently stated in the plaint that the plaintiffs have come to know about the granting of such certificate without stating as to when they have come to know about the grant of the clearance certificate that was granted in the year 1993. Thus, the date of knowledge of the plaintiffs as to the grant of the certificate in the year 1993 is suppressed though it is a material fact and a vague averment was made in the plaint. The plaintiffs had further alleged that they had obtained a copy of that certificate in April, 1997. When it is the case of the plaintiffs that the defendants had allegedly suppressed a material fact in regard to the grant of the said certificate, and when according to the plaintiffs their oral demands as well as a written demand by a notice for execution and registration of regular sale deed were refused, the plaintiffs ought to have filed a suit immediately thereafter but had kept quiet for about six months i.e., till September, 1997 and had issued the notice on 24.09.1997 and had later filed the suit in November, 1997. Therefore, the suit is hopelessly barred by the law of limitation.'

7.3 In reply, the learned senior counsel for the plaintiffs would contend as follows: 'The present case falls under the second limb of Article 54 of Limitation Act as a specific date for performance was not fixed. Hence, the limitation commences when the plaintiffs had knowledge or notice that performance is refused. In this case, the vendee-late Aktharunnisa Begum was under an obligation to produce Urban Land Ceiling clearance certificate from the concerned authorities and also Income tax clearance certificate for the execution of the registered sale deed. As such, the delay had occasioned. Under Section 15 (2) of the Limitation Act, while computing the period of limitation for any suit, the time required for obtaining sanction of the Government or any authority shall be excluded. Till the clearances from the Urban Land Ceiling authority and the Income Tax authority are obtained, the plaintiffs cannot be forced to obtain a regular registered sale deed. Therefore, the suit, which was filed soon after having knowledge of the grant of the Urban Land Ceiling clearance certificate, is maintainable and is not barred by the law of limitation.

7.4 I have bestowed my attention to the facts necessary and relevant for determination of the question of bar of limitation and I have noted the submissions.

7.5 Before proceeding further, it is necessary to refer to Section 15 (2) of the Limitation Act, on which reliance was placed by the learned senior counsel for the plaintiffs. The said provision of law reads as follows:

> **"In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.**
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> ***Explanation:-*** **In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted."**

7.6 In the decision in **Satya Jain (D) Thr.Lrs. and others Vs. Anis Ahmed Rushdie (D) Thr. Lrs. and others,** the facts discloses that in the absence of the defendant in the Country, the plaintiffs could not bring the suit promptly for specific performance though the plaintiffs are ready and willing to perform his part of contract. The evidence on record in the cited case established that the defendant therein was out of India for certain periods in five spells. Therefore, the Hon'ble Supreme Court held, on due application of provision of Section 15 (5) of the Limitation Act, that the suit filed by the plaintiffs therein was well within the time as the period of absence of the defendant from India has to be excluded while computing the limitation for filing the suit. In the well considered view of this Court, the ratio in the above decision is not applicable to the present facts of the case as it is not the case of the plaintiffs herein that any of the defendants are out of the Country. In the decision in **M.A.Jabbar and another Vs. Life Insurance Corporation House Building Employees Society, Hyderabad and others,** the facts and ratio are as follows: In the suit for specific performance, as per the conditions of the contract, the defendant's vendor has to obtain the necessary permission from the Government of Andhra Pradesh under Act 12 of 1972 Urban Area (Prohibition of Alienation) Act, which was then in force; but, by the time the said permission was obtained, the Urban Land Ceiling Act, 1976 has come into force and therefore, it necessitated obtaining of permission under the said Act. In this factual backdrop, it was held that Article 113 governs the limitation for filing the suit, but, not by Article 54 and that the limitation started only after obtaining the permission under the said Central Act.

7.7 Reverting to the facts of the instant case, as Urban Land Ceiling clearance was obtained in the year 1993 and a copy of the same was obtained by the plaintiffs in the year 1997, the learned senior counsel for the plaintiffs would contend that the suit instituted in the year 1997 is not barred by law of limitation. Indubitably, the application for permission under the ULC Act has to be submitted jointly by both the vendor and the vendee, as per the requirement of law. Therefore, it cannot be said that the plaintiffs are not aware of the application for permission submitted to the ULC authorities for ULC permission. Admittedly, ULC permission was granted in the year 1993. As rightly contended by the learned senior counsel for the defendants, the plaint is conspicuously silent as to the date on which the plaintiffs came to know about granting of such permission. It is necessary to reiterate that in the plaint it is conveniently averred as under: 'On enquiries, the plaintiffs came to know that the Urban Land Ceiling authorities had granted permission in the year 1993 in favour of the landlady and the said fact was not informed by the defendants to the plaintiffs with ulterior motive. The plaintiffs having obtained the certified copy of the order passed by the Urban Land Ceiling authorities in the month of April, 1997 informed the defendants about the same; but, the defendants did not come forward to execute the sale deed in respect of the plaint schedule vacant site in favour of the plaintiffs.' Thus, the plaintiffs had only stated that they had obtained a copy of the said permission from the competent authority in the year 1997 but did not plead as to when they had come to know about the permission that was granted by the competent authority under the ULC Act in the year 1993. As already noted, it is for the plaintiffs to plead in the plaint the necessary material fact, which would show that the suit was instituted within the prescribed time. However, the plaintiffs did not plead the necessary material fact in the plaint on this aspect. Even by the year 1987, disputes had arisen between the parties and a Rent Control case for eviction on the ground of default of payment of rents was filed and in the year 1993 during the cross-examination of RW1 in the said proceeding, it was suggested to him that the present suit agreements for sale are forged and fabricated. Therefore, the plaintiffs ought to have verified the material facts about the grant or otherwise of ULC permission within a reasonable time thereafter. Had the plaintiffs made such verification, they would have come to know about the grant of permission in the year 1993 itself. In fact, the 2nd plaintiff had participated in the ULC proceedings and an affidavit was filed before the ULC authority in regard to the permission to be obtained from the said authority and this fact is evident from exhibit A13, the certified copy of proceeding of Urban Land Ceiling Authority, Hyderabad. The orders were passed by the ULC authority on 08.09.1993. Why a copy application for obtaining a copy of the same could not be made earlier to March 1997 and the failure to obtain a copy till the month of April, 1997 could not be explained by the plaintiffs. The plaintiffs' failure to sue within the period of three years from the date of knowledge or notice of refusal and their conduct in instituting the suit in the year 1997 by making vague averments on the material aspect of limitation would suggest that the suit instituted in the year 1997 is barred by law of limitation. Therefore, neither the provision of Section 15 of the Limitation Act nor the ratios in the decisions are helpful to the plaintiffs and do not advance their case any further.

8. This takes us to the next question in regard to the plaintiffs' entitlement to the equitable and discretionary relief of specific performance. Be it noted that the two suit agreements for sale are dated 27.10.1978 and 17.10.1981. However, the suit for specific performance based on the said agreements for sale was brought in the year 1997, i.e., nearly twenty years after the 1st agreement and about sixteen years after the 2nd agreement under which the time was extended. The vendor under the agreements, i.e., the landlady died in November, 1984. During her life time, no attempt was made to obtain the registered sale deed. Till September, 1997 no notice seeking specific performance was issued. As a result, it requires to be examined as to whether the equitable and discretionary relief can be granted about sixteen years after the date of the second agreement for sale. The law is well settled that continuous readiness and willingness on the part of the plaintiffs is a condition precedent for granting the relief of specific performance. This circumstance is material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with the other attending circumstances. In **Jugrat Singh v. Raj Singh** [AIR 1995 SC 945], the Supreme Court held that continuous readiness and willingness on the part of the plaintiff must be pleaded and proved at all stages from the date of the agreement to the date of the decree. In **Narinderjit Singh v. North Star Estate Promoters Limited** it was held as follows:

> **Further Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or that he is always ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the Court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with the other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of 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. The Court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.**

The law is well settled that Section 20 of the Specific Relief Act which deals with 'discretion as to decreeing specific performance' lays down that the jurisdiction to decree specific performance is discretionary and that 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. It is already noted that the plaint contains vague averments in regard to the knowledge of the plaintiffs about the grant of ULC permission in the year 1993 and therefore, does not contain the requisite pleadings necessary to obtain the equitable relief of specific performance. In **Abdul Khader Rowher v. P.K.Sara Bai**, the Supreme Court followed the decision in Ouseph Varghese v. Joseph Aley [(1969) 2 SCC 539] wherein it was held as follows:

> **'His plaint does not contain the requisite pleadings necessary to obtain a decree for specific performance. This equitable remedy recognized by the Specific Relief Act cannot be had on the basis of such pleadings and evidence.'**

It is undisputed that in the case on hand that out of 2000 square yards of land, an extent of 846.53 sq. yards was taken away by GHMC for Metro Rail project and award was passed for compensation in a sum of Rs.11,04,49,724/-. In the facts and circumstances of the case, it is not just and fair to grant the equitable relief of specific performance about 16 years after the execution of the second agreement for sale and 20 years after the first agreement for sale. Having analysed the evidence and the relevant aspects, this court finds that the court of first appeal is not justified in decreeing the suit of the plaintiffs by allowing the first appeal and setting aside the decree and judgment of the trial court. Having weighed the facts and circumstances relating to the transaction and keeping in view the discretionary jurisdiction, which is to be exercised on sound and reasonable judicial principles, this Court finds that this is not a fit case to grant a decree for specific performance.

9. Thus, the substantial questions are answered in favour of the appellants/defendants and against the plaintiffs/ respondents. Having regard to the reasons and the findings on the substantial questions, this Court holds that the second appeal is having acceptable merit and deserves to be and is accordingly allowed. In the plaint, the alternative relief for refund of the consideration paid, if any, is not sought. Further, having claimed that the tenancy has merged with the purchase transaction under the suit agreements for sale, the plaintiffs had not paid rent in respect of the schedule property for about 20 years. Section 22 (1) (b) of the Specific Relief Act, which starts with a non abstante clause, mandates that notwithstanding anything to the contrary contained in the Code, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case ask for any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused. Sub-section (2) of Section 22 expressly states that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. This Court accordingly holds that the plaintiffs are not entitled to the alternative relief of refund of the consideration paid, if any.

10. In the result, the Second Appeal is allowed and the decree and judgment of the Court below, which are impugned, are set aside and the decree and judgment of the trial Court are restored. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this second appeal shall stand closed.

M. Seetharama Murti, J

23rd November, 2015

YVL