

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT Nos. 1434 & 1435 OF 1998

AND

CROSS-OBJECTIONS (SR) Nos.65157 & 65144 of 1998

IN

APPEAL SUIT Nos.1434 & 1435 OF 1998

-

COMMON JUDGMENT:

1. These two Appeals are separately preferred against the decrees and common judgment dated 11.05.1998 passed in O.S. Nos.145 and 147 of 1992 by the Principal Senior Civil Judge, Ongole, Prakasam District (for short, 'the trial Court').
2. The appellants in both these Appeals are the plaintiffs and the respondent in both these Appeals is the common defendant before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this common judgment.
3. The plaintiff in O.S. No.145 of 1992, by name Dr. Ravipati Sailaja, is the daughter-in-law of the plaintiff in O.S. No.147 of 1992, by name Ravipati Venkayamma. Dr. Sailaja is the wife and Ravipati Venkayamma is the mother of one Dr. Ravipati Venkata Krishna Rao.
4. Both the plaintiffs filed separate suits for the relief of specific performance of two different agreements of sale dated 25.03.1991, marked as Exs.A-1 and A-2 respectively.

5. The defendant in both the suits by name Gaddam Vijayalakshmi is the wife of Dr. G. Prakasa Rao and she is the original owner of the plaint schedule property, who offered to sell and the plaintiffs agreed to purchase the same at the rate of Rs.2,800/- per *gadi* (local measurement); on 25.03.1991, the defendant received Rs.20,000/- as advance from Dr. Sailaja and Rs.10,000/- from Venkayamma, executed two different agreements to sell in their favour, undertaking to execute registered sale deeds either in their favour or in favour of their nominees and deliver vacant possession on or before 31.08.1991, after complying the terms and conditions of the agreements therein.

6. The terms and conditions of Ex.A-2, agreement entered between Dr. Sailaja and defendant are as follows:

1) The plaintiff, at the time of executing agreement on 25.03.1991, believing that the schedule property is free from any encumbrances, paid advance sale consideration of Rs.20,000/- and agreed to pay the balance sale consideration on or before 31.08.1991 and get the registered sale deed executed in her favour or in favour of her nominee at her expenses; it was also agreed that the time is the essence of the contract and the agreement stands cancelled in case of default and the advance amount be forfeited;

2) After the stipulated period *i.e.*, 31.08.1991, the defendant is at liberty to sell the schedule property to others, without issuing any notice to the plaintiff;

3) The defendant shall get the lay-out approved by the Ongole Municipality on or before 31.08.1991;

4) For getting the lay-out approved, the defendant has to surrender a part of vacant land in schedule property or its equivalent value to the Municipality;

5) If the defendant fails to get the lay-out approved, the plaintiff is authorized to pay equivalent value of part of schedule property to be surrendered to the Municipality or get the same extent surrendered

from out of the schedule extent covered by the agreement of sale dated 25.03.1991, executed by the defendant in favour of the plaintiff's mother-in-law, Ravipati Venkayamma, which is adjacent on the west of plaintiff schedule property and, in case, the plaintiff pays its equivalent value, she is authorized to deduct the same from balance of sale consideration payable at the time of execution of registered sale deed;

6) The defendant agreed to pay betterment charges to the Municipality till the date of executing registered sale deed; and

7) If the defendant fails to comply any of the above conditions, she is personally liable to compensate the plaintiff from her other properties for the resultant loss.

7. Similarly, the terms and conditions of Ex.A-1, agreement entered between Venkayamma and the defendant are as follows:

1) The plaintiff, at the time of executing agreement on 25.03.1991, believing that the schedule property is free from any encumbrances, paid advance sale consideration of Rs.10,000/- and agreed to pay the balance sale consideration on or before 31.08.1991 and get the registered sale deed executed either in her favour or in favour of her nominee at her expenses; it was also agreed that time is the essence of the contract, the agreement stands cancelled in case of default and the advance amount be forfeited;

2) After the stipulated period *i.e.*, 31.08.1991, the defendant is at liberty to sell the schedule property to others, without issuing any notice to the plaintiff;

3) The defendant shall get the lay-out approved by the Ongole Municipality on or before 31.08.1991;

4) For getting the lay-out approved, the defendant has to surrender a part of the schedule property or its equivalent value to the Municipality;

5) If the defendant fails to get the lay-out approved within the stipulated

time, or after getting the lay-out approved intimates in writing to the plaintiff about such approval, within 15 days thereafter, the plaintiff has to pay balance of sale consideration and obtain the registered sale deed;

6) After such written intimation, if the plaintiff is ready and willing to perform her part of obligation and the defendant fails to perform her part of obligation *i.e.*, execute registered sale deed in favour of the plaintiff, the defendant is personally liable to compensate the plaintiff from her other properties for the resultant loss and this condition will come into effect only after intimation;

7) The defendant agreed to pay betterment charges to the Municipality till the date of executing registered sale deed.

8. Dr. Krishna Rao, who is the husband of Dr. Sailaja and son of Venkayamma, examined as PW.1, and the plaintiffs in both the suits requested the defendant to co-operate for execution of the registered sale deeds in terms of the agreements of sale but she did not co-operate for the same, however, Srimannarayana, Koteswara Rao and Meerakhan mediated and requested the defendant to comply the terms and conditions of agreements of sale and execute registered sale deeds but the defendant did not heed to their requests and failed execute registered sale deeds by delivering possession to the plaintiffs.

9. Both the plaintiffs are ready and willing to perform their part of obligation and obtain registered sale deeds but the defendant did not come forward to perform her part of obligation. Dr. Krishna Rao and Dr. Sailaja are practicing doctors; the schedule property was purchased to construct a nursing home jointly but on account of failure of the defendant to perform her part of obligation, they could not construct nursing home and suffered irreparable loss, hence, both the suits.

10. Common defendant in both the suits filed separate written statements denying material allegations of the plaints *inter-alia* contending that execution of agreements of sale in favour of Dr. Sailaja and Venkayamma and receipt of Rs.20,000/- and Rs.10,000/- from them, admitting that Dr. Krishna Rao settled the bargain with her

husband to purchase the schedule property, for which a lay-out in L.P. No.89 of 1977 was already sanctioned, and by the date of alleged bargain sanctioning of the said lay-out is within his knowledge; what all remained was only to surrender 3½ cents of land for public purpose and that the defendant and her husband expressed their readiness to surrender 3½ cents of open space for public purpose. Even by that time, an amount of Rs.20,275-60 p.s. was paid towards security for due fulfillment of the obligations imposed under Section 184 of the Andhra Pradesh Municipalities Act, 1965 in the Prakasam District Co-operative Central Bank Limited, Ongole. Dr. Krishna Rao, with full knowledge about the approval of lay out and deposit of Rs.20,275-60 p.s., obtained two registered sale deeds, each for an extent of 50 gadies, from the defendant one in favour of himself on 25.03.1991 and the other in favour of Dr. Sailaja on 30.03.1991, which is adjacent to the plaint schedule in both the suits. At the time of obtaining those sale deeds, Dr. Krishna Rao expressed his financial difficulties to pay consideration for the balance extent and requested the defendant's husband to give some time; husband of the defendant accordingly considered his request; later, Dr. Krishna Rao brought two written stamp agreements to the defendant containing signatures of himself on one set and the signatures of Venkayamma on another set and also offered to pay Rs.30,000/-. When questioned why a separate agreement was brought in the name of Venkayamma, he informed that only to avoid tax problems. In the absence of her husband, the defendant was wielded and was made to sign on the agreements. The agreements, by Dr. Krishna Rao, were obtained by playing unalloyed fraud on the defendant and that she never executed any agreements of sale in favour of the plaintiffs and they never bargained with them and never agreed to sell the property to the plaintiffs. Thus, there is no concluded contract between the plaintiffs and defendant and that there is no privity of contract; therefore, the agreements between the plaintiffs and defendant are not enforceable.

11. Both the parties to the agreements had no *consensus ad idem* at the time of entering into contracts in view of the unconscionable terms contained in the agreements which gives an unfair advantage to the plaintiffs thereby the plaintiffs are disentitled to claim an equitable and discretionary relief of specific performance. It is specifically contended that on the date of alleged execution of agreements of sale, the plaintiffs were at Kurnool and they were not available either at Ongole or at

Chirala. The defendant and her husband were made to believe that as and when PW.1 could raise funds, registered sale deeds would be taken without any difficulty. The defendant was placed in invidious position where she could not surrender land to the Municipality as per the lay-out conditions. Further, Dr. Krishna Rao did not make his mother or anybody else to surrender as directed by the Director of Town Planning. Thus, an impasse was created by Dr. Krishna Rao to promote his personal ends. His representation appears to surrender only when he makes construction in the site. The agreement handed over to the defendant was not signed by Dr. Sailaja and this defendant could not take any action against her for the simple reason that there was no concluded or privity of contract between them. Dr. Krishna Rao intelligently immobilized this defendant and her option to act and wanted to use her as a pawn in his nefarious design. Even if the suit contracts are true and enforceable, time is the essence of contracts, as it was specifically understood and stipulated so by the parties. Even if it is admitted for the sake of suits that the suit contracts are true, the plaintiffs grossly violated the terms of agreements so the suit agreements automatically stand cancelled or rescinded, the suit agreements are not enforceable. The defendant never postponed to perform her part of obligation on the ground that there is delay in getting the lay-outs approved and that there was no mediation through Srimannarayana, Koteswara Rao and Meerakhan and the allegations in the complaints to the contrary are false.

12. The plaintiffs were never ready and willing to perform their part of obligation under the agreements and that there was no demand at any time by the plaintiffs or their representatives for performance of the obligation of the defendant under the agreements to sell and that the plaintiffs did not approach the Court with clean hands, hence, the plaintiffs are not entitled to claim equitable and discretionary relief of specific performance of agreements of sale and finally prayed to dismiss the suits with costs.

13. On the basis of above pleadings, the trial Court separately framed the similar issues, including an additional issue, and to avoid repetition only one set of issues are extracted hereunder:

- 1) Whether the suit agreement is true?
- 2) Whether the plaintiff is entitled for the relief of specific performance as prayed for?
- 3) To what relief?
- 4) Whether time is essence of contract as pleaded by the defendant?

14. After framing separate issues in both the suits, learned counsel filed a joint memo requesting to conduct joint trial in both the suits, record evidence in O.S. No.147 of 1992 and treat the same as evidence in O.S. No.145 of 1992. Accordingly, the trial Court clubbed both the suits and recorded evidence in O.S. No.147 of 1992.

15. During course of trial, on behalf of both the plaintiffs, PWs.1 to 3 were examined and marked Exs.A-1 to A-35. On behalf of the common defendant, DWs.1 to 3 were examined and marked Exs.B-1 to B-8.

16. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court recorded a finding that the agreements between the plaintiffs and the defendant are true but denied the relief of specific performance of agreements of sale on the ground that the plaintiffs failed to perform their part of obligation under the agreements of sale but granted the relief of refund of advance sale consideration of Rs.20,000/- and Rs.10,000/- received under Ex.A-2 and Ex.A-1 together with interest at 12% *p.a.* from 25.03.1991 till the date of deposit into Court and further directed the defendant to deposit the amount into Court on or before 30.06.1998, giving liberty to realize the amount by executing the decrees in the event of defendant's failure to deposit the same.

17. Aggrieved by the decrees and common judgment of the trial Court, the plaintiffs in both the suits preferred these Appeals raising similar grounds in both the Appeals. Hence, to avoid repetition, the contentions urged in both the Appeals are mentioned hereunder:

a) The trial Court erroneously concluded that time is the essence of the agreements misinterpreting the terms of agreements to sell; In view of the specific terms of Ex.A-2, the trial Court would have concluded that time is not the essence of the contract; similarly, in Ex.A-1 also there was no term making the time as essence of the contract but the trial Court on wrong interpretation of Exs.A-1 and A-2 concluded that time is the essence of contracts. Even as per the terms of Ex.A-1, in the event of defendant's failure to get the lay-out approved within time *i.e.*, by 31.08.1991 she has to inform about completion of approval of lay-out in writing and within 15 days thereafter the plaintiff is required to pay balance of sale consideration. In view of this specific term, time cannot be considered as essence of the contract;

b) The condition to surrender 10% of the vacant site to the Municipality from the schedule property, which is subject matter in O.S. No.147 of 1992, is an invalid condition and the same cannot be implemented as said Venkayamma is not a party to Ex.A-2;

c) The trial Court also failed to consider the clause in Ex.A-1 empowering the plaintiff in O.S. No.147 of 1992 to surrender 10% of the vacant site purchased by her towards public purpose or to pay its equivalent value to the Municipality, the plaintiff should have waited until the respondent executed a gift deed in favour of the Municipality but this condition was not considered in proper perspective and committed an error;

d) The appellants mostly challenged the judgment on the ground that the trial Court did not consider the order of performance of obligations of each party to the agreements, and also failed to consider the source of income the plaintiffs possessed to pay the balance of sale consideration, to prove their readiness and willingness; and

e) The trial Court did not interpret the terms and conditions of Exs.A-1 and A-2 in proper perspective and in fact time was not agreed as essence of the contract in view of the latter clauses in the agreements but without considering the effect of latter clauses in Exs.A-1 and A-2,

the trial Court on misinterpretation of terms and conditions concluded that time is the essence of contracts and it is an erroneous finding;

And finally prayed to allow the Appeals setting aside the decrees and common judgment and grant the relief of specific performance of agreements of sale with ancillary reliefs claimed in the complaints.

18. The common defendant in O.S. Nos.145 and 147 of 1992 filed Cross-objections (SR) No.65157 of 1998 in Appeal Suit No.1434 of 1998 and Cross-objections (SR) No.65144 of 1998 in Appeal Suit No.1435 of 1998, separately, challenging the finding regarding refund of advance sale consideration together with interest on the ground that in the absence of any claim for such refund, granting the relief of refund of advance sale consideration is erroneous and apart from that, there is a forfeiture clause in the agreements itself to forfeit the advance received, in the event of their failure to comply the terms and conditions within the specified date. The trial Court totally ignoring the terms and conditions passed the decrees erroneously granting the relief of refund of advance sale consideration received under Exs.A-1 and A-2 along with interest and prayed to allow the Cross-objections setting-aside the decrees and common judgment.

19. During course of argument, Sri V.L.N.G.K. Murthy, learned counsel for the plaintiffs-appellants, mainly contended that the finding of the trial Court that time is the essence of contracts is erroneous for the simple reason that the terms and conditions contained in Ex.A-2 will come into operation only after compliance of the conditions contained in the 2nd part and this was not considered by the trial Court in proper perspective and if Exs.A-1 and A-2 are interpreted in proper perspective, the finding of the trial Court would be otherwise.

20. It is also contended that the clause contained in Ex.A-2 for surrender of the land sold to the plaintiff in O.S. No.147 of 1992 by the plaintiff in O.S. No.145 of 1992 is unconscionable and when Venkayamma, plaintiff in O.S. No.147 of 1992, is not a party to Ex.A-2, the plaintiff in O.S. No.145 of 1992 is not competent to surrender the land sold to the plaintiff in O.S. No.147 of 1992. Therefore, the said clause, for surrender of the land sold to Venkayamma, is invalid as she is not a party to the contract.

21. As the obligations under Exs.A-1 and A-2 are mutual or reciprocal unless the defendant performed her obligation, the question of payment of balance of sale consideration by the plaintiffs does not arise since the defendant failed to surrender 10% of site as per the terms of approved lay-out, the question of payment of balance of sale consideration does not arise. Added to that, the defendant herself agreed to pay betterment charges but failed to pay the same. In those circumstances, the plaintiffs in both the suits were not under obligation to pay balance of sale consideration on or before 31.08.1991. However, in compliance of the terms and conditions of Exs.A-1 and A-2, the plaintiff in O.S. No.147 of 1992 paid equivalent value of 10% of the site under Ex.A-1 and obtained proceedings but it was during pendency of the suit, which is not a ground to decline the main relief of specific performance since the plaintiffs proved their readiness and willingness and also established the means to pay balance of sale consideration in both the suits but the trial Court on erroneous appreciation of facts, with reference to law, concluded that time is the essence of contracts and therefore granted the relief of refund of advance sale consideration received under Exs.A-1 and A-2.

22. If the trial Court appreciated the evidence and interpreted the terms and conditions of Exs.A-1 and A-2 in proper perspective, it would have granted decrees for the main relief of specific performance but committed an error in appreciation of evidence and declined to grant the relief of specific performance, erroneously.

23. Learned counsel for the plaintiffs-appellants in both the suits while contending that terms and conditions of Exs.A-1 and A-2 were misconstrued, placed reliance on a decision of this Court in ***M. Harichandra Prasad Vs. Chitturi Krishnamurthy and others***. He further contended that when the plaintiffs are able to establish their readiness and willingness by producing satisfactory evidence and the trial Court exercised its discretion to decline the relief, the appellate Court can interfere with such finding and placed reliance on the decisions of the Apex Court in ***Zarina Siddiqui Vs. A. Ramalingam @ R. Amarnathan*** and ***K. Prakash Vs. B.R. Sampath Kumar***.

24. Learned counsel further contended that time is not the essence of the contract normally in case of agreement of sale of immovable property and the entire terms and conditions have to be looked into to decide whether time is the essence of the contract or not since the time limit, if any, fixed is subordinate to the main intention of the parties and intention has to be gathered from the terms and conditions contained in the agreement placed reliance on the decisions of the Apex Court in **Smt. Swarnam Ramachandran and another Vs. Aravacode Chakungal Jayapalan, A. Abdul Rashid Khan and others Vs. P.A.K.A. Shahul Hamid and others** and **M/s. Hind Construction Contractors and others Vs. State of Maharashtra** and finally contended that issue of prior notice in Form Nos.47 and 48 of C.P.C. is not a condition precedent and placed reliance on a decision of this Court in **Baddam Prathap Reddy Vs. Chennadi Jalapathi Reddy and another** contending that when no specific plea was raised about absence of prior notice as required in Form Nos.47 and 48 of C.P.C., which amounts to waiver of plea of want of notice, and placed reliance on a decision of this Court in **Paleti Sivaramakrishnaiah Vs. Executive Engineer, N.C. Canals Sathenapalli and another**.

25. Based on the above legal position, learned counsel for the plaintiffs-appellants requested this Court to reappraise the entire evidence on record afresh to come to an independent conclusion, un-influenced by the findings recorded by the trial Court as this Court is the Court of 1st appeal and prayed to pass a decree for the relief of specific performance in both the suits setting-aside the decrees and common judgment passed by the trial Court to the extent of declining to pass a decree for specific performance.

26. *Per contra*, Sri M.V.S. Suresh Kumar, learned counsel for the common defendant-respondent in both the Appeals, specifically contended that when time is fixed for performance of obligation under the contracts, the parties must adhere to the terms and conditions contained therein and in the instant cases, as per Exs.A-1 and A-2, the transactions shall be completed on or before 31.08.1991 which includes payment of balance of sale consideration and obtaining registered sale

deeds but for obvious reasons the plaintiffs did not perform their part of obligation under Exs.A-1 and A-2; in such case, the plaintiffs are disentitled to claim discretionary and equitable relief of specific performance and, in support of his contention, placed reliance on a decision of the Apex Court in ***Saradamani Kandappan Vs. S. Rajalakshmi and others*** and ***Nanjappan Vs. Ramaswamy and another***.

27. It is further contended that when the plaintiffs failed to pay balance of sale consideration, the Court can conclude that they are not ready and willing to perform their part of obligation under the agreements of sale; in such case, the plaintiffs are disentitled to claim equitable relief of specific performance and apart from that, the conduct of the parties is relevant to grant the relief of specific performance under Section 20 of the Specific Relief Act, 1963 and placed reliance on the decisions of the Apex Court in ***Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*** and ***J.P. Builders and another Vs. A. Ramdas Rao and another*** and a decision of this Court in ***M. Rangaiah Vs. T.V. Satyanarayana Rao and another*** and finally it is contended that when the order of performance of obligations of each party to the agreements is fixed, the parties must adhere to the order of performance in view of Sections 51 to 54 of Indian Contract Act, 1872 and in the event of failure to perform the obligations in the order of performance fixed, the plaintiffs are disentitled to claim the discretionary relief of specific performance and again drawn the attention of this Court to ***Saradamani Kandappan***⁹.

28. Finally, learned counsel for the common defendant-respondent in both the Appeals contended that readiness and willingness depends upon the mental condition of an individual and unless the party who pleaded readiness and willingness is examined before the Court, the Court cannot readily accept their readiness and willingness pleaded by them in the plaint and based on the evidence of a person, who is not a party to the agreements, placed reliance on a decision of the Apex Court in ***Man Kaur Vs. Hartar Singh Sangha***.

29. The other contention of learned counsel for the common defendant-respondent in the Appeals that notice in Form Nos.47 and 48 of C.P.C. is mandatory to seek

relief of specific performance and in the absence of any notice, the plaintiffs are disentitled to claim the relief of specific performance and placed reliance on a decision of this Court in ***Baddam Prathap Reddy***⁷.

30. Considering rival contentions and perusing oral and documentary evidence including the decrees and common judgment under challenge, the points that arise for consideration in these Appeals are:

- 1) Whether time is the essence of contract in both the suits?
- 2) Whether the plaintiffs performed their part of obligation in the order of performance as fixed in Exs.A-1 and A-2?
- 3) Whether the plaintiffs are ready and willing to perform their part of obligation?
- 4) Whether an adverse inference be drawn for non-examination of the plaintiffs?
- 5) Whether a prior notice, as contemplated in Form Nos.47 and 48 of C.P.C. is mandatory? If not, in the absence of any pleading about non-compliance of requirements in Form Nos.47 and 48 of C.P.C. entitles the defendant to raise such contention?
- 6) Whether the plaintiffs are entitled for specific performance of agreements of sale?
- 7) Whether the decrees passed against the defendant for refund of advance sale consideration of Rs.10,000/- under Ex.A-1 and Rs.20,000/- under Ex.A-2 together with interest from the date of agreements till the date of payment are based on any claim? If not, the decrees passed by the trial be sustained?

31. **POINT No.1**: Admittedly, both the suits were filed seeking the relief of specific performance of agreements of sale dated 25.03.1991 incorporating certain conditions regarding payment of balance of sale consideration on mutual obligations

of the parties to the agreements and time for completion of transactions *etc.*, the common defendant virtually denied about execution of agreements of sale while contending that she had no acquaintance with any of the plaintiffs but admitted about her signing on the agreements. The trial Court framed a specific issue, after considering entire evidence on record, and held that the agreements of sale marked as Exs.A-1 and A-2 were executed by the defendant. Surprisingly, the said finding was not challenged by the common defendant-respondent in both the Cross-objections; however, she questioned only grant of the relief of refund of advance of sale consideration; in the absence of any challenge to the finding about the genuineness and enforceability of Exs.A-1 and A-2, this Court need not disturb the finding recorded by the trial Court, therefore I myself refrain to interfere with the finding regarding genuineness of agreements as finding regarding genuineness of both the agreements attained finality as they were not challenged.

32. The trial Court on interpretation of terms and conditions of Exs.A-1 and A-2 concluded that time is the essence of contracts as there is a clause for termination of contractual relationship between the parties to Exs.A-1 and A-2 in the event of failure to comply certain terms and conditions incorporated therein on or before 31.08.1991, dismissed the suits for the relief of specific performance on the ground of non compliance of terms and conditions of Exs.A-1 and A-2 by the plaintiffs *i.e.*, more particularly, failure to pay balance of sale consideration on or before 31.08.1991. In the instant Appeals, the said finding is challenged raising various contentions in the memorandum of Appeals. Learned counsel for the plaintiffs-appellants in both the Appeals contended that Ex.A-2 consists of two parts and the 1st part speaks about the mutual obligation of both the parties; whereas the 2nd part speaks about the termination of contractual obligations and the terms and conditions of agreements of sale would come into operation only on fulfillment of certain conditions; the 2nd part of the agreement if read along with 1st part, time cannot be termed that time is the essence of the contract. In the written submissions filed by learned counsel for the plaintiffs-appellants in both the Appeals, he specifically referred to the terms and conditions contained in two parts of the agreements in Exs.A-1 and A-2. According to the learned counsel for the plaintiffs-appellants, in the 1st part, the balance sale consideration was agreed to be paid on or before 31.08.1991 by the vendee and the vendor has to deliver possession after executing

registered sale deeds at the expenses of the vendee and the time is the essence of contracts. In case the vendee fails to pay balance of sale consideration within the stipulated time, the agreements shall stand cancelled and the advance consideration paid gets forfeited and thereafter the vendor is entitled to sell the property to others without issuing any notice to the vendee but the 2nd part speaks about getting the lay-out approved by the defendant within the stipulated period *i.e.*, 31.08.1991; payment of balance of sale consideration and registration shall be within 15 days from the date of written intimation by the vendor, after obtaining approval. The terms and conditions of agreements *i.e.*, cancellation of the agreements, forfeiture of advance and thereafter sale of the property to others would come into operation only after 15 days of such written intimation. Therefore, performance of 1st part is always subject to the 2nd part of the agreement. He also contended that within the stipulated time, the defendant did not obtain approval of lay-out by surrendering vacant land or paying equivalent value of 10% of the site to the Municipality. Thus, the defendant herself failed to fulfill the terms and conditions of agreements of sale before 31.08.1991, therefore, time cannot be said to be essence of the contracts.

33. Similarly, learned counsel for the plaintiffs-appellants, while analyzing the terms and conditions of Ex.A-2 drawn the attention to an important clause therein. According to the plaintiffs, in the event of vendor failing to get approval from the Municipality, there is no time limit stipulated for the vendee to exercise the option of surrender of the land or payment of the amount to the Municipality. Even though the agreements speak of the vendor obtaining approval from the Municipality, obviously the parties intended to mean that vendor has to fulfill the conditions of approval of lay-out already granted. The condition of approval is subject to surrendering of open site shown in the lay-out to the Municipality. The vendee could have delivered such possession to the Municipality since the vendor could not fulfill the conditions under Section 184 of the A.P. Municipalities Act, 1965 to get the approval of lay-out. Though the plaintiff in O.S. No.145 of 1992 is authorized to deliver possession of 10% of the site in the site sold to the plaintiff in O.S. No.147 of 1992, the plaintiff in O.S. No.145 of 1992 is in-competent to surrender 10% of the site sold to Venkayamma, plaintiff in O.S. No.147 of 1992. Since there is a condition for payment of value of the site by the plaintiff in O.S. No.145 of 1992 and to deduct the

same out of balance of sale consideration, time cannot be said to be essence of the contract, consequently, the finding of the trial Court that time is the essence of contracts under Exs.A-1 and A-2 is without any basis and it is erroneous.

34. There is a thin difference in the terms and conditions of Exs.A-1 and A-2 but in neither of them, time was made as essence of the contracts in clear terms but performance of certain obligations is varying. As seen from the contents of Ex.A-1, it is clear that the balance of sale consideration shall be paid by the vendee to the vendor on or before 31.08.1991 irrespective of the measurements and obtain registered sale deed, vendor has to deliver vacant possession after execution of registered sale deed to the vendee and that time is the essence of contract reserving right to cancel the agreement in the event of failure to pay balance of sale consideration within the stipulated time *i.e.*, 31.08.1991 and the vendor is entitled to sell the property to others without any notice. It was further agreed that the vendor has to surrender vacant site for completion of approval of lay-out and in lieu of site, defendant has to pay equivalent value of 10% of the site for public purpose and get the approval completed. It is further agreed that in case the defendant failed to get the lay-out approved, she has to get the approval and intimate the same in writing to the plaintiff and within 15 days therefrom the plaintiff has to pay balance of sale consideration, obtain registered sale deed and that the conditions mentioned in the agreement will come into effect only 15 days after giving such written intimation about completion of approval of lay-out and that the defendant has to pay betterment charges to the Municipality.

35. Undoubtedly, in the 1st part of agreement of Ex.A-1, a specific time is fixed for payment of balance of sale consideration *i.e.*, 31.08.1991, after completion of approval of lay-out surrendering 10% of the vacant site for public purpose or pay equivalent value of 10% of the site in lieu of surrendering the site. The plaintiff in O.S. No.147 of 1992, the vendee under Ex.A-1 did not agree to pay 10% of the value of the site instead of surrendering 10% of the site for completion of the approval of lay-out. Thus, no obligation was imposed on the plaintiff for payment of value of 10% of site to the Municipality but the defendant alone has to surrender 10% of the site for

public purpose or to pay equivalent value of 10% site to the Municipality and apart from that, there is a clear term that the conditions contained in 1st part will come into effect only within 15 days after written intimation about approval of lay-out by the defendant to the plaintiff. In view of this specific condition about coming into force the conditions in the 1st part of agreement, time cannot be said to be essence of the contract since the defendant did not surrender 10% of the site as per the conditions of lay-out and even did not pay equivalent value of 10% of the site as agreed under Ex.A-1. Till the date of filing suit no intimation about approval of the lay-out in writing was sent to the plaintiff. When the conditions in the 1st part for payment of balance of sale consideration on or before 31.08.1991 and cancellation of the agreement in the event of failure to pay balance of sale consideration and to sell the property without any notice to the plaintiff would come into operation only after 15 days from the date of written intimation given by the defendant about approval of the lay-out. Thus, in view of the latter clause in the 2nd part of the agreement under Ex.A-1, it is difficult to hold that the agreement stands cancelled, forfeiting the advance of sale consideration paid by the plaintiff to the defendant for the reason that the defendant did not perform her part of obligation under Ex.A-1. Hence, the time though was made as essence of the contract the defendant failed to perform her part of obligation *i.e.*, compliance of conditions imposed by the Municipality for approval of lay-out *i.e.*, surrender of 10% of the vacant site or payment of its equivalent value of the site for public purpose and intimate the same to the plaintiff; consequently, the agreement Ex.A-1 cannot be cancelled or terminated for non-performance of obligation of the defendant strictly adhering to the terms and conditions contained in Ex.A-1. Therefore, the finding of the trial Court that the agreement to sell marked as Ex.A-1 stands cancelled is without any legal support and the trial Court arrived at such finding due to wrong interpretation of the terms and conditions of Ex.A-1.

36. Ex.A-2 is the agreement between the plaintiff in O.S. No.145 of 1992 and the defendant for sale of the property but the terms and conditions contained in Ex.A-2 are varying with the terms and conditions of Ex.A-1 in material aspects. To find out whether time is the essence of the contract or not, the terms and conditions of Ex.A-2 have to be adverted to. The parties to Ex.A-2 agreed on certain terms for surrendering of 10% of the site; it is made clear in Ex.A-2 that in the 1st part of

agreement, the plaintiff has to pay balance of sale consideration on or before 31.08.1991 and vendor has to deliver possession and execute registered sale deed at the expenses of the vendee. Time is the essence of the contract. In case, the vendee fails to pay balance of sale consideration within the stipulated time the agreement shall stand cancelled and the advance amount stands forfeited; the vendor is entitled to sell the property to others without any notice to the vendee; whereas the 2nd part indicates that in case the vendor fails to get the approval of lay-out from the Municipality before the stipulated date *i.e.*, 31.08.1991, the vendee is authorized to arrange for surrender of the land situated in the west of the schedule mentioned land which is the subject matter of agreement of sale between Venkayamma and the defendant under Ex.A-1 or to pay equivalent value of 10% of the land and deduct the 10% of the value of site, if paid, from the balance of sale consideration payable.

37. From the 2nd part of Ex.A-2, it is clear that order of performance is fixed and as per the order of performance, the vendor has to surrender 10% of the vacant site for public purpose in view of the conditions of lay-out by executing gift or to pay equivalent value of the site to be gifted. It is further agreed under Ex.A-2 that in case the defendant failed to comply the conditions of lay-out, the plaintiff has to surrender 10% of the site required to be surrendered by executing gift for public purpose and deduct the same from the balance of sale consideration agreed to be paid. So far as the option given to the vendee to deliver west part of the property sold to Venkayamma is impossible for the reason that Venkayamma is not a party to Ex.A-2. Therefore, the plaintiff is incompetent to surrender the site sold by defendant to Venkayamma but the next alternative is to pay value of 10% of site required to be surrendered in terms of lay-out to be approved by the Municipality. It is clear from the 2nd part of Ex.A-2, the defendant has to comply the conditions annexed to the lay-out and in case she failed to comply the lay-out conditions within the stipulated time, the plaintiff has to pay equivalent value of 10% of site to the Municipality. Therefore, the obligation to pay value of 10% of site by the plaintiff would arise only incase the defendant failed to comply the terms of lay-out on or before 31.08.1991. At the same time, no specific date is fixed for payment of 10% of value of the site to the Municipality by the defendant. In the instant cases, the defendant failed to comply the above requirements under Ex.A-2, however, there is no time fixed in Ex.A-2. In

any view of the matter, on overall consideration of the entire terms and conditions of Ex.A-1, the obligation of plaintiff therein would arise only after the failure of the defendant to comply the lay-out conditions within the stipulated time *i.e.*, 31.08.1991 but no time is fixed for performing obligation of the plaintiff in the event of failure to comply the obligation of the defendant within the stipulated time.

38. On overall consideration of terms conditions contained in Exs.A-1 and A-2, it is clear that the obligation of the plaintiff in O.S. No.147 of 1992 would arise only after due intimation in writing by the defendant after getting the lay-out approved for payment of balance of sale consideration and similarly, in Ex.A-2 the defendant has to comply her obligation under the agreement of sale but for failure of the defendant the agreement shall not be cancelled or terminated though there is a specific clause.

39. Learned counsel for the plaintiffs-appellants contended that while interpreting any document, the entire document has to be considered more particularly to find out whether time is the essence of the contract or not. In the instant cases, if all the terms and conditions in both the agreements are considered cumulatively, the intention of the parties to the documents is clear that time is the essence of the contracts only subject to performance of obligation of the defendant to obtain lay-out from the Municipality, after compliance of the conditions annexed to the lay-out, and has drawn the attention of this Court to a decision reported in ***Harichandra Prasad*¹**, wherein in Para 7, this Court held as follows:

“For failure of the draftsman the litigants cannot be punished. Therefore, as guided by the settled legal position, it is for the Court to consider whether on the basis of such facts pleaded or proved law if any can be operated upon them to render full justice. However, the prejudice to one or other parties for failure to plead will be considered always.”

40. The principle laid down in the above decision is only to the effect that for failure of the draftsman the litigants shall not be suffered. Here, it is not the case of parties that due to negligence of the person who ill-drafted Exs.A-1 and A-2, such conditions were imposed; on the other hand, scribe of Exs.A-1 and A-2 appears to

be responsible for this entire litigation creating confusion in the minds of parties.

41. Learned counsel for the common defendant-respondent in both the appeals while contending that time is the essence of contracts drawn the attention to 1st part of Exs.A-1 and A-2 and taking advantage of the clause incorporated in Exs.A-1 and A-2 in the 1st part contended that time is the essence of contracts. No doubt, if 1st part alone in both the agreements is considered, time is the essence of the contracts but the general principle of interpretation is that the Court has to consider entire document while interpreting terms and conditions contained therein. If the language used in the documents is unambiguous, then the Court has to make an endeavour to know the intention of the parties but in the present cases due to unambiguous language used in Exs.A-1 and A-2 the intention of the parties is irrelevant.

42. On overall consideration of the terms and conditions of Exs.A-1 and A-2 time though was made as essence of the contracts in the 1st part of agreements, 2nd part is totally contrary to the 1st part in both Exs.A-1 and A-2. Therefore, making time as essence of the contracts in the 1st part is always subject to the 2nd part of the agreements of sale. Hence, the conclusions arrived by the trial Court that time is the essence of the contracts is erroneous for the reason that trial Court did not interpret the 2nd part of the documents in conjunction with the 1st part and committed an error.

43. Learned counsel for the plaintiffs-appellants contended that to decide whether time is the essence of the contract or not, the intention of the parties has to be gathered from the recitals of agreements of sale. The burden of proof is always on the plaintiffs to establish the same in support of his contention, placed reliance on a decision of the Apex Court in **Swarnam Ramachandran**⁴, the Apex Court in paragraphs 11 and 12 held as follows:

“Time is presumed not to be of the essence of the contract relating to immovable property, but it is of the essence in contracts of re-conveyance or

renewal of lease.

A vendor has no right to make time as essence, unless he is ready and willing to proceed to completion and secondly, when the vendor purports to make time as essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract.

Whether time is of the essence is a question of fact and the real test is the intention of the parties. It depends upon the facts and circumstances of each case. In cases where notice is given making time as the essence, it is the duty of the Court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case. The intention can be ascertained from:

- (i) the express words used in the contract;
- (ii) the nature of the property which forms the subject-matter of the contract;
- (iii) the nature of the contract itself; and
- (iv) the surrounding circumstances.

The onus to plead and prove that time was of the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of the essence. When the plaintiff pleads that time was not of the essence and the defendant does not deny it by evidence, the court is bound to accept the plea of the plaintiff.”

44. In view of the principle laid down in the above decision, the intention can be ascertained from the 4 circumstances pointed out in the paragraphs extracted hereinabove. At the same, the Apex Court is of the specific view that vendor has no right to make time as essence of the contract unless he is ready and willing to proceed to completion and that when the vendor purports to make time as the essence of the contract, the purchaser must be guilty of such gross default as to allow the vendor to rescind the contract.

45. Therefore, by applying the principle laid down in the decision referred *supra* to the present facts of the case, the obligation of performance of part of contract by the

plaintiff under Ex.A-1 would arise only after 15 days of written intimation by the defendant about approval of lay-out and it is the duty of the defendant to get the lay-out approved to pay balance of sale consideration and obtain registered sale deed by the plaintiff. So far as Ex.A-2 is concerned, the conditions regarding approval of lay-out etc., are almost identical to the conditions contained in Ex.A-1 except variation in payment of value of 10% of site by the defendant in the event, she failed to obtain lay-out within the stipulated time *i.e.*, 31.08.1991, the plaintiff's obligation to perform her part of contract in O.S. No.145 of 1992 would commence after 31.08.1991. In addition to the above conditions, there is a specific term in Ex.A-1 as to when the terms contained in 1st part of the agreement would come into operation. Conveniently, the defendant avoided to perform her part of obligation under Exs.A-1 and A-2 somehow to rescind the contracts taking advantage of the term incorporating in Exs.A-1 and A-2. Therefore, taking into consideration the conduct of both the parties and the conditions contained therein, it can safely be concluded without any hesitation that time is not the essence of contracts. Therefore, the finding of the trial Court that time is the essence of the contracts marked as Exs.A-1 and A-2 is hereby set-aside holding this point in favour of the plaintiffs-appellants and against the common defendant-respondent.

46. **POINT Nos.2 AND 3:** one of the questions raised by the learned counsel for the common defendant-respondent is that the order of performance is fixed under Exs.A-1 and A-2 but the plaintiffs did not comply their part of obligation *i.e.*, payment of balance of sale consideration within the stipulated time *i.e.*, by 31.08.1991 and thereby it amounts to breach of terms and conditions of Ex.A-2 and A-2 under Section 16(b) of the Specific Relief Act, which disentitled the plaintiffs to claim the discretionary relief of specific performance; apart from that, the plaintiff in O.S. No.145 of 1992 did not perform her obligation of payment of equivalent value of 10% of the site to the Municipality as agreed under Exs.A-2; consequently, on this ground alone, she is disentitled to claim the relief of specific performance.

47. Whereas, the learned counsel for the plaintiffs-appellants would contend that no time is fixed for payment of equivalent value of 10% of the site; failure to perform such obligation does not amount to breach of the terms and conditions of agreement of sale; even otherwise, subsequent to filing of suit the plaintiff in O.S. No.147 of 1992 equivalent value of 10% of the site required to be surrendered for executing gift

deed. Therefore, the plaintiff did commit any breach of agreement to attract Section 16(b) of the Specific Relief Act. Hence, on this ground the plaintiff cannot be non-suited.

48. In view of the conditions contained, it is the duty of the Court to find out what is the order of performance and obligations imposed on each party under Exs.A-1 and A-2. At the cost of repetition, I would like to advert to the terms and conditions of Exs.A-1 and A-2 once again to decide the order of performance of each party to Exs.A-1 and A-2 since the agreements of sale are reciprocal agreements and the parties must adhere to the terms and conditions contained therein to perform their obligation in the order of performance fixed under the agreements in view of Sections 51 to 54 of Indian Contract Act. The 1st part in Exs.A-1 and A-2 is almost identical and the plaintiffs agreed to pay balance of sale consideration on or before 31.08.1991 irrespective of measurements of the site and that time is the essence of the contracts but the 2nd part of the agreements in Exs.A-1 and A-2 is varying; in Ex.A-1, subject matter of suit in O.S. No.147 of 1992, the defendant agreed to get the lay-out approved from the Municipality within the stipulated period; in the event of her failure to obtain approval of lay-out from the Municipality within the stipulated, if the defendant subsequently gets the lay-out approved, she has to intimate in writing to the plaintiff and, within 15 days after such written intimation, the plaintiff has to pay balance of sale consideration; as per 2nd part of Ex.A-2, the obligation imposed on the plaintiff and defendant is more; the defendant has to get the lay-out approved surrendering 10% of the vacant site towards public purpose or to pay equivalent value of 10% of the site as per the lay-out conditions. The parties further agreed that in the event of defendant's failure to perform the above obligation, the plaintiff has to surrender western part of the land sold to Venkayamma *i.e.*, 10% of the land for public purpose or pay the value of 10% of the site to the Municipality. So far as surrendering 10% of the site which is the subject matter of suit in O.S. No.147 of 1992 is concerned, the plaintiff in O.S. No.145 of 1992 is incompetent since Venkayamma is not a party to Ex.A-2 and that the plaintiff in O.S. No.145 of 1992 has no right to surrender the land sold to Venkayamma, though she is daughter-in-law of Venkayamma. So far as payment of value of 10% of the site is concerned, no time is fixed for such payment.

49. A bare look at the 1st part of Exs.A-1 and A-2, plaintiffs in both the suits have to pay balance of sale consideration on or before 31.08.1991 at the time of executing registered sale deeds. Therefore, payment of balance of sale consideration is linked with execution; sale deeds cannot be registered unless the relevant lay-outs are approved.

50. Undoubtedly, by the date of obtaining Exs.A-1 and A-2 the proceedings in Lr.Roc. No.8850/77-D5, issued by the Director of Town Planning, Hyderabad, to The Commissioner, Ongole Municipality, the lay-out was approved subject to compliance of certain conditions by the defendant, the owner of the property. The admissions on record more particularly the evidence of PW.1 goes to show that in both the suits the plaintiffs have to obtain registered sale deeds on or before 31.08.1991 on payment of balance of sale consideration, provided the said Prakasa Rao, husband of the defendant, had to pay the amount due to the Municipality or the land to which they are entitled to within the stipulated period and had to obtain clearance certificate. It is also agreed that the defendant has to pay betterment charges to the Municipality and that the defendant has to deliver possession by 31.08.1991, after executing registered sale deeds receiving balance of sale consideration. If, for any reason, the defendant and her husband failed to surrender 10% of the site to the Municipality or its equivalent value, the plaintiff has to negotiate with the Municipality and fix up either extent of the land or its value payable to the Municipality and pay balance amount, if any, to the defendant on or before 31.08.1991. In the cross-examination, PW.1 admitted that in Exs.B-1 and B-2 sale deeds obtained by PW.1 and his wife there was a reference about the lay-out plan No.89/77 and Director of Town Planning sent the approved plan No.89/77 to the Municipality subject to fulfillment of certain conditions. Exs.A-9 to A-12 permits the owner of the lay-out to surrender 10% of the land or its equivalent value to the Municipality for public purpose. Thus, it is clear from the material on record that the lay-out was approved with certain conditions to be fulfilled by the lay-out owner. In any view of the matter, under Ex.A-1 the plaintiff has to pay balance of sale consideration within 15 days from the date of receipt of written intimation from the defendant about obtaining approved lay-out fulfilling the conditions annexed to it. Till the date of filing the suit, the defendant did not comply the terms and conditions of approved lay-out *i.e.*, surrendering 10% of the vacant site for public purpose or paid

equivalent value of 10% of site in lieu of surrendering vacant site for public purpose. Therefore, failure to perform the obligation of the defendant strictly adhering to the terms of Ex.A-1 is suffice to conclude that the plaintiff in O.S. No.147 of 1992 is not guilty of breach of terms and conditions of the contract under Ex.A-1.

51. As per the evidence available on record, the plaintiff in O.S. No.147 of 1992 is living with her husband, father of PW.1 but they are not maintaining any individual accounts. In the cross-examination, PW.1 admitted that there is no evidence with the plaintiffs that balance sale consideration amount of Rs.5,30,000/- was deposited in any Bank in the accounts of his mother and wife and no such amount was available in the bank account of PW.1 prior to 31.08.1991 and that his mother had no independent source of income to acquire the suit schedule property but his wife is having independent source of income being a practicing doctor (gynecologist). It is not the case of the defendant, at any stage, that Venkayamma, plaintiff in O.S. No.147 of 1992, purchased the property for herself; on the other hand, it is the specific contention of the defendant that PW.1 purchased the property in the names of his mother Venkayamma and his wife Dr. Sailaja, plaintiffs in the suits, due to taxation problems. Thus, the real purchaser is PW.1 and not Venkayamma, therefore, proof of source of income by PW.1 to pay balance of sale consideration is sufficient and failure to prove the independent source of income of Venkayamma is not a ground to disbelieve readiness and willingness pleaded by the plaintiff in O.S. No.147 of 1992. Apart from that, Venkayamma and her husband are living together, they possessed land, raising tobacco crop and PW.1 produced Exs.A-13 to A-28 to prove that his father own land at Annangi village. Exs.A-13 and A-14 are the pattedar passbooks; Exs.A-15 to A-28 are the sale notices issued to Venkateswarlu, father of PW.1, husband of Venkayamma, plaintiff in O.S. No.147 of 1992. All these documents would go to establish that the husband of the plaintiff in O.S. No.147 of 1992 has independent source of income and when Venkayamma and Venkateswarlu are living together, from the source of income of her husband she can meet the requirements to pay balance of sale consideration under Ex.A-1.

52. Learned counsel for the common defendant-respondent contended that the sale

notices marked as EXs.A-23 to A-28 relate to the period subsequent to Ex.A-1 and they are not helpful to prove readiness and willingness of plaintiff in O.S. No.147 of 1992. Exs.A-23 and A-24 are prior to Exs.A-1 and Exs.A-25 to A-28 are subsequent to Ex.A-1 but prior to filing of the suits. Therefore, when the defendant is contending that the property was purchased by PW.1 in the name of his mother Venkayamma; proof of source of income by PW.1 to meet the requirements for payment of balance of sale consideration under Ex.A-1 is sufficient; even otherwise, husband of Venkayamma possessed sufficient means and when they are living together without any differences, the source of her husband can be said to be sufficient to believe that Venkayamma possessed sufficient means.

53. As per Ex.A-2, the defendant has to fulfill her obligations *i.e.*, getting the lay-out approved within the stipulated time *i.e.*, 31.08.1991 and it is an admitted fact that there is a term in Ex.A-2 that in case the defendant failed to get the lay-out approved by surrendering 10% of the vacant site, the plaintiff has to surrender western part of 10% of the land sold to Venkayamma, who is not a party to the agreement or to pay equivalent value of 10% of site to the Municipality to comply the conditions annexed to the lay-out for public purpose. For performance of obligation of the defendant, a specific time is fixed *i.e.*, 31.08.1991 but whereas to surrender 10% of the site or payment of its equivalent value in lieu of surrender by the plaintiff, no time was fixed but, curiously the plaintiff did not take any steps to comply the terms and conditions agreed under Ex.A-1 and, though no time was fixed, it is for the plaintiff to comply her obligation within reasonable time and deduct the 10% value of the site, if paid, at the time of payment of balance of sale consideration. Obviously for different reasons the plaintiff in O.S. No.145 of 1992 did not take steps till filing of suit in the year 1992, though she is under obligation to pay equivalent value of 10% of the site or to surrender 10% of the site sold Venkayamma, which is adjacent west to schedule property. Curiously, in the evidence of PW.1, he testified that he paid Rs.21,222/- on 07.03.1994 under Ex.A-11 to the Municipality towards cost of 10% of the land required to be surrendered. Ex.A-12 is the proceedings issued by the Municipality for construction of the building. When a suggestion was put to PW.1 in the cross-examination that the said payment covered by Ex.A-11 is pertaining to EXs.B-1 and B-2, he admitted as follows in his cross-examination dated 21.01.1998:

“It is true that Exs.A-9 to A-11 I filed into Court are relating to the land covered under the originals of Exs.B-1 and B-2 only but not relating to the suit site. It is clearly mentioned in Exs.A-1 the amount which we paid under it was towards 10% of the cost of the land that has to be surrendered to the Municipality. Defendant and her husband did not pay the amount due to the Municipality for approval of the lay-out. Due to it only these problems arise.”

54. From the clear admission extracted hereinabove, PW.1 instead of surrendering 10% of the land covered by Exs.B-1 and B-2 sale deeds, paid Rs.21,222/- obtained approved plan for construction of a building to run a nursing home. Therefore, it is evident that the plaintiff in O.S. No.145 of 1992 did not perform her part of obligation to pay balance of sale consideration and obtain registered sale deed though it is incumbent upon her to pay equivalent value of 10% of the site in lieu of surrender in the event of defendant's failure to get the lay-out approved after complying the conditions. This conduct itself indicates that she is ready and willing to perform her part of obligation. If really, the plaintiff in O.S. No.145 of 1992 is ready and willing to perform her part of obligation under Ex.A-2, she would have paid equivalent value of 10% of the land required to be surrendered for the public purpose but till the date of filing suit, she did not comply and no material is brought on record to prove performance of her obligation under Ex.A-2.

55. The plaintiff in O.S. No.145 of 1992 being a practicing doctor having an independent source of income failed to comply her part of obligation under Ex.A-2 which itself is suffice to conclude that she is not ready and willing to perform her part of obligation under Ex.A-2.

56. Coming to the evidence of DW.1, the common defendant herself was examined as DW.1. Though she denied execution of Exs.A-1 and A-2, the trial Court recorded a finding about the genuineness and enforceability of Exs.A-1 and A-2, which is not challenged in these Appeals. Therefore, her evidence with regard to denial of the execution of Exs.A-1 and A-2 is not required to be gone into in the instant Appeals.

57. In her evidence, she denied readiness and willingness pleaded by the plaintiffs

in both the suits but admitted that she did not give any written intimation about compliance of her part of obligation as agreed under Ex.A-1, and she further admitted that she did not surrender 10% of the site or paid its equivalent value in compliance of lay-out conditions. Thus, it is an undisputed fact that the defendant in both the suits did not perform her part of obligation.

58. Brother of DW.1 is examined as DW.2. In his cross-examination, he admitted that he sold 120 *gadies* of site out of his 150 *gadies* in the year 1991 and his father himself got approved the lay-out and he does not know whether the lay-out was approved in the year 1977 subject to fulfilment of certain conditions or not. The problem of payment of betterment charges to the Municipality did not arise in his case and he did not deny readiness and willingness pleaded by the plaintiffs in the entire evidence except pleading ignorance about the plaintiffs.

59. The crucial evidence on record is the evidence of Dr. G. Prakasa Rao, husband of the defendant, who is examined as DW.3. DW.3 is the person who dealt with the property transaction on behalf of DW.1 in view of clear admission made by DW.1 in the cross-examination that her husband has been looking after all the affairs and she does not know what was the defence taken by her in the suit in O.S. No.145 of 1992 *etc.*, and that she came to know PW.1 sent a word to her husband requesting her to go over to Ongole to receive balance of sale consideration, execute registered sale deeds and that they went to Ongole, met PW.1, as per his request. Thus, it is clear that DW.3 alone is the person who dealt with the property covered by Exs.A-1, A-2, B-1 and B-2 but in the cross-examination he admitted that whenever an agricultural property or open site is converted into house-site, one must surrender 10% of the total extent of the land to the Municipality towards public purpose or its equivalent value has to be paid in lieu of surrendering 10% of the site for getting the lay-out approved but there is no documentary evidence with him to prove surrender 10% of the site to the Municipality.

60. In the latter part of the evidence, DW.1 testified that 10% of the site which they surrendered to the Municipality was not under their occupation at present. Sundaraiah Bhavan and other buildings were constructed in the said 10% site which they surrendered but he does not know who permitted construction of Sundaraiah

Bhavan *etc.*, therefore, there is nothing to establish surrender of 10% of the site at the time of approval of the lay-out in the year 1977. If the contention of DW.3 regarding surrendering of 10% site is accepted, the question of incorporating the condition to surrender 10% of the site or payment of its equivalent value both in Exs.A-1 and A-2 does not arise. Therefore, the undisputed documents executed by defendant marked as Exs.A-1 and A-2, Exs.B-1 and B-2 itself are suffice to disbelieve the alleged surrender of 10% of the site to the Municipality in compliance of conditions of lay-out.

61. Viewed from any angle, the plaintiff in O.S. No.145 of 1992 failed to establish her readiness and willingness to perform her part of obligation under Ex.A-2. Under Ex.A-1, the defendant herself failed to perform her part of obligation and the question of payment of balance of sale consideration would arise only within 15 days of written intimation by the defendant about the approval of lay-out; till the date of filing suit, no such written intimation was given by the defendant to the plaintiff in O.S. No.147 of 1992; apart from that, the property was purchased by PW.1 in the name of his wife, who is a medical practitioner, raised a construction for running nursing home or dispensary in the sites covered by Exs.B-1 and B-2 and that apart, father of PW.1 own and possessed land raising commercial crops like tobacco which is sufficient to meet the requirements for payment of balance of sale consideration under Ex.A-1. Thus, the plaintiff in O.S. No.147 of 1992 established her readiness and willingness, whereas the plaintiff in O.S. No.145 of 1992 failed to establish the same.

62. Learned counsel for the common defendant-respondent contended that pleading and proof of readiness and willingness is mandatory under Section 16(c) of the Specific Relief Act to obtain an equitable and discretionary relief of specific performance. The plaintiffs contended in both the suits that they pleaded their readiness and willingness thereby they are entitled to claim the relief of specific performance. On the other hand, learned counsel for the common defendant-respondent contended non compliance of any of the material terms of the contracts is sufficient to conclude that the plaintiffs are not ready and willing to perform their

part of obligation and mere raising a plea and adducing oral evidence in support of the plea in compliance of Section 16(1)(c) of the Specific Relief Act is not sufficient and there must be some evidence to substantiate such contention, placed reliance on a Constitutional Bench decision of the Apex Court in **Smt. Chand Rani and others Vs. Smt. Kamal Rani and others**, wherein it was held as follows:

“In case 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 [1] from the express terms of the contract [2] from the nature of property and [3] from the surrounding circumstances.

Where in an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of registration of deed and it was agreed that the vendor would redeem the property which was mortgaged and also obtain the Income tax clearance certificate and the word 'only' was used twice *i.e.*, to qualify the amount and to qualify the period of payment of such amount *i.e.*, ten days it was held that the intention of the parties was to make time as essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract”

63. In the decision referred *supra*, the plaintiff agreed to pay part of sale consideration within 10 days after the execution of agreement and the balance was agreed to be paid at the time of registration of the deed. It was further agreed that the vendor would redeem the property which was mortgaged and also obtain income-tax clearance certificate and the word ‘only’ was used twice *i.e.*, to qualify the amount and to qualify the period of payment of such amount *i.e.*, 10 days it was held that the intention of the parties was to make time as essence of the contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income-tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of the contract.

64. The same principle was reiterated by the Apex Court in **K.S. Vidyadnam and**

others Vs. Vairavan, wherein it was held as follows:

“Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.”

It was further held therein as follows:

“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.”

65. In **Saradamani Kandappan**⁹, in similar circumstances, the Apex Court held as follows:

“The order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided, that is, the agreement should say only after performance of obligations of vendors, the purchaser will have to perform her obligations. In the present case the agreement of sale expressly provided that the purchaser shall pay the balance sale consideration within time schedule as specified. The payment of sale price was delinked from execution of sale deed. The purchaser had to fulfil her obligation in regard to payment of price and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser. The agreement provided specifically that having paid the balance price, if the purchaser is not satisfied about the title and on being intimated about the same if the vendors fail to satisfy the purchaser about their title, all amounts paid towards the price should be refunded to purchaser. This clearly demonstrates that the payment of balance of sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title, but

that payment of the balance price should be made to the vendors as agreed unconditionally. In such circumstances the plea of purchaser that since clause providing that execution of the sale deed shall depend upon the purchaser getting satisfied regarding title to the lands and that properly is not subject of any encumbrance; precedes clause requiring payment of balance consideration in three instalments, the satisfaction of the purchaser in regard to the vendor's title to the land and encumbrance, was a condition precedent for payment of the balance consideration cannot be accepted. Since section 52 cannot come in aid of purchaser to save his non-payment of balance consideration within time fixed when time was essence of contract. Therefore, the failure of the appellant purchaser to pay the balance sale consideration within time fixed, clearly amounted to breach of contract. As the time for payment was, the essence of the contract, the respondents were justified in determining the agreement of sale. The rejection of the prayer for specific performance was, therefore, proper. “

66. He further brought to the notice of this Court a decision reported in ***J.P. Builders***¹², where a test was laid down to determine readiness and willingness and held as follows:

“12. Section [16\(c\)](#) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff. It has been rightly considered by this Court in *R.C. Chandiok and Another. Vs. Chuni Lal Sabharwal and others* {(1970) 3 SCC 140} that "readiness and willingness" cannot be treated as a straight jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section [16\(c\)](#) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness", the part of the contract has to be ascertained from the conduct of the parties.”

67. He further drawn the attention of this Court to ***Telikicherla Sesibhushan Vs. Kalli Raja Rao and others***, wherein the Apex Court while dealing with Section 16(6) of the Specific Relief Act held as follows:

“12. The basic principle behind Section 16(c) read with Explanation (ii) is that

any person seeking benefit of the specific performance of contract must manifest that his conduct has been belmishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.”

68. In view of the law declared by the Apex Court in the above decisions, the conduct of the parties is relevant to decide readiness and willingness of parties to the agreements. If that is taken into consideration in the present facts of the cases, the plaintiff in O.S. No.147 of 1992 established her readiness and willingness to obtain registered sale deed by paying balance of sale consideration, subject to performance of obligation by the defendant; whereas, the plaintiff in O.S. No.145 of 1992 failed to establish her readiness and willingness to perform her part of obligation under Ex.A-2, as she failed to pay 10% of the value of the site to be surrendered to the Municipality till the date of filing the suit or at least within a reasonable time after filing the suit. This itself is suffice to hold that the plaintiff in O.S. No.145 of 1992 miserably failed to establish the requirements under Section 16(c) of the Specific Relief Act. Accordingly, the points are answered.

69. **POINT No.4:** One of the contentions raised by the learned counsel for the common defendant-respondent is that an adverse inference shall be drawn for non-examination of the plaintiffs in both the suits and placed reliance on decision of the Apex Court in ***Man Kaur and others Vs. Hartar Singh Sangha***, wherein the Apex Court while dealing with the requirements to examine the plaintiff as a witness to prove readiness and willingness laid down certain guidelines in paragraphs (a) to (g) therein; however, in guideline (d), the Apex Court specifically held that where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

70. In this regard the evidence of DW.3, Dr. Prakasa Rao, husband of the defendant is relevant; in the evidence of DW.3, he admitted that the entire transaction was looked after by PW.1 and himself; he settled the bargain for execution of the

agreements. The evidence of DW.2 also goes to establish that PW.1, his father, Meera Khan and Dr. Prakasa Rao, his wife Vijaya Lakshmi were present at the time of settlement of sale transaction between PW.1 and DW.3. Thus, this piece of evidence in the examination-in-chief of DW.2, brother of the defendant, is suffice that PW.1 alone looked after the entire transaction. Similarly, examination-in-chief of DW.3 is also on the same lines and the specific evidence is extracted hereunder:

“I know PW.1 in this suit. PW.1 came to Chirala in the month of February, 1991 to purchase the house site belonged to my wife. Along with him, his father and Meera Khan also came. The sale transaction was struck down at Rs.2,800/- per gadi to the entire 270 gadies of site. At the time when the said sale transaction was settled DWs.1 and 2 were also present there. A document written by name Lakshminarayana of Chirala wrote an agreement of sale in evidence of the said sale transaction. My wife executed an agreement of sale in favour of PW.1 at Chirala.”

71. These admissions of DWs.2 and 3 would clinchingly establish that PW.1 alone looked after the transaction, obtained documents in the names of plaintiffs in both the suits. Therefore by applying the guideline (d) laid down in the above decision, PW.1 can safely held to be a competent witness as he is the person who entered into transaction on behalf of the plaintiffs in both the suits. Even otherwise, no such plea was raised before the trial Court or no such ground was urged in the Cross-Objections by the counsel for the common defendant-respondent.

72. By applying guideline (d) in the above case, it is difficult to accept the contention of the common defendant to draw an adverse inference against the plaintiffs in both the suits for their non-examination. Hence, I hold no substance in the contention of learned counsel for the common defendant-respondent. Accordingly, the point is held in favour of the plaintiffs-appellants and against the common defendant-respondent.

73. **POINT No.5:** One of the contentions raised by the learned counsel for the common defendant-respondent before this Court is that a prior notice contemplated in Form Nos.47 and 48 of C.P.C. was not issued before institution of the suits. No doubt, in **Rangaiah¹³** and **Baddam Prathap Reddy⁷**, this Court took a consistent view that a prior notice in Form Nos.47 and 48 of C.P.C. read with Section 16 is mandatory but before the trial Court no such specific plea was raised except making a bald allegation that no demand was made by the plaintiffs for execution of the registered sale deeds and to receive balance of sale consideration. In the absence of any such plea and issue framed by the trial Court, such contention is not open to

the defendant in the Appeals for the first time; however, Sri V.L.N.G.K. Murthy, would contend that when no such contention was raised as to the requirement of compliance of Form Nos.47 and 48 of C.P.C. read with Section 16 of the Specific Relief Act her conduct amounts to waiver and placed reliance on a decision of this Court in ***Paleti Sivaramakrishnaiah***⁸ and ***Baddam Prathap Reddy***⁷; the decision of this Court relating in ***Paleti Sivaramakrishnaiah***⁸ is with reference to notice under Section 80 of C.P.C. which is mandatory for filing the suit against the Government but this decision is relied on by both the counsel. Undisputedly, no plea was raised before the trial Court in the written statement about non-compliance of notice under Form Nos.47 and 48 read with Section 16 of C.P.C. In the absence of any issue and finding thereon, such plea cannot be entertained in view of the decision of the Apex Court in ***Prakash Chandra Vs. Narayan***. Of course the above decision pertains to exercise of discretion under Section 20 of the Specific Relief Act but the same principle can be applied even to the present facts of cases. Therefore, in the absence of plea, issue framed and answered by the trial Court such contention cannot be permitted at the stage of first appeal as the Courts cannot travel beyond the pleadings and record its findings. Hence, the point is answered in favour of the plaintiffs-appellants and against the common defendant-respondent.

74. **POINT No.6:** The relief of specific performance is purely discretionary in nature. Under Section 20 of the Specific Relief Act, the Court has to exercise discretionary judiciously and when the plaintiffs approached the Court with clean hands subject to proof of readiness and willingness as mandated under Section 16(c) of the specific Relief Act a decree is to be passed in their favour.

75. In view of my finding on Point Nos.2 and 3, the plaintiff in O.S. No.147 of 1992 proved her readiness and willingness to perform her part of obligation; whereas, the plaintiff in O.S. No.145 of 1992 failed to prove her readiness and willingness as she failed to perform her part of obligation *i.e.*, payment of 10% of the value of site required to be surrendered for getting the lay-out approved within reasonable time or at least before filing the suit. Therefore, when the plaintiff in O.S. No.145 of 1992 failed to perform her part of obligation, she is disentitled to claim the discretionary relief of specific performance under Section 20 of the Specific Relief Act.

76. Learned counsel for the plaintiffs-appellants while contending that the relief of specific performance is discretionary and when the plaintiffs approached the Court with clean hands, they are entitled to claim the specific performance of agreements

of sale, placed reliance on a decision of this Court in ***Zarina Siddiqui***², wherein it was held as follows:

“The remedy for specific performance is an equitable remedy. The court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the court’s discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.

The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance. If a party to a *lis* does not disclose all material facts truly and fairly but states them in distorted manner and misleads the court, the court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of process of law.”

77. In ***Sampath Kumar***³, the Apex Court held that subsequent rise in price of the property would not be treated as a hardship entitling refusal of decree for specific performance.

78. In the light of the principles laid down in the above decisions, the plaintiffs contended that the relevant considerations to decline discretionary relief of specific performance are contemplated under Section 20(2) of the Specific Relief Act but, no such plea was raised before the trial Court and no issue was framed. In such case, the Court cannot decline to grant of discretionary relief of specific performance. Whereas, learned counsel for the common defendant-respondent contented that the relief of specific performance can be granted only when the plaintiffs approached the Court with clean hands and placed reliance on a decision of the Apex Court in ***Sampath Kumar***³.

79. He also placed reliance on another decision of the Apex Court in ***Laxman Tatyaba Kankate and another Vs. Taramati Harishchandra Dhatrak***, wherein it was held as follows:

“21. We may also notice that in *Parakunnam Veetil Joseph’s son Mathew Vs. Nedumbara Kuruvila’s son* {1987 (supp) SCC 340}, this Court further cautioned that while exercising discretionary jurisdiction in terms of Section 20 of the Act, the court should meticulously consider all facts and

circumstances of the case. The court is expected to take care to see that the process of the court is not used as an instrument of oppression giving an unfair advantage to the plaintiff as opposed to the defendant in the suit.”

80. In another decision of the Apex Court in **Nanjappan**¹⁰, the Apex Court held as follows:

“14. First sale agreement was executed on 30.09.1987 about twenty seven years ago. The property is situated in Coimbatore City and over these years, value of property in Coimbatore City would have considerably increased. In *Saradamani Kandaplan v. Rajalakshmi and others* (2011) 12 SCC 18, this Court has held that the value of the property escalate in the urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time. In the instant case, first agreement was executed on 30.09.1987 i.e., twenty seven years ago. In view of passage of time and escalation of value of the property, grant of specific relief of performance would give an unfair advantage to the respondents-plaintiffs whereas the performance of the contract would involve great hardship to the appellant-defendant and his family members.”

81. In **Rangaiah**¹³, this Court held as follows:

“9. The Act provides for the remedy of specific performance under Chapter II thereof. Section [20](#) of the Act makes it amply clear that the relief of specific performance of obligation under an agreement of sale, is discretionary in nature. Having said that, it proceeds to stipulate the guidelines to be kept in view, while exercising the discretion, so vested in the Court. Apart from that, the law requires certain conditions to be complied with by a plaintiff in a suit of this nature, before he claims the relief of specific performance. For instance, he must express his readiness and willingness to perform his part of contract. Section [16\(c\)](#) of the Act, makes this aspect very clear.”

82. In view of the principles laid down in the decisions referred *supra*, the Court has to scrutinise each and every fact to exercise its discretion to grant the relief of specific performance and the conduct of both the parties must also to be considered.

83. In the instant Appeals, the defendant though obligated under Exs.A-1 and A-2 to get the lay-out approved on or before 31.08.1991, did not perform her part of obligation to get the lay-out approved and she is required to give written intimation to the plaintiff in O.S. No.147 of 1992 about the approval of lay-out, within 15 days thereafter, the plaintiff has to pay balance of sale consideration but the same is not complied. Therefore, in such case, taking into consideration the conduct of both the parties, discretion can be exercised to grant the discretionary and equitable relief of specific performance in favour of the plaintiff in O.S. No.147 of 1992. Accordingly, I hold that the plaintiff in O.S. No.147 of 1992 is entitled to the relief of specific performance; whereas, in O.S. No.145 of 1992, though the defendant is required to

perform her part of obligation *i.e.*, get the lay-out approved on or before 31.08.1991, in view of the conditions incorporated in Ex.A-2, the plaintiff has to pay value of 10% of the site required to be surrendered in lieu of surrender, in the event the defendant failed to get the lay-out approved on or before 31.08.1991 but no time was fixed for such payment in Ex.A-2, however, she maintained silence throughout the proceedings not even complied her obligation before filing the suit by paying equivalent value of 10% of the site required to be surrendered to the Municipality; thus her conduct is blameworthy, consequently she is disentitled to the discretionary and equitable relief of specific performance of agreement of sale, Ex.A-2. Hence, I hold that the plaintiff in O.S. No.145 of 1992 is not entitled to the specific performance of agreement of sale. Accordingly, these points are decided.

84. **POINT No.7:** The trial Court granted a decree in favour of the plaintiffs in both the suits and against the defendant to the extent of directing the defendant to refund the advance sale consideration received under Exs.A-1 and A-2. Undisputedly under Exs.A-1 and A-2, the defendant received Rs.10,000/- and Rs.20,000/- as advance sale consideration.

85. Section 20(2) of the Specific Relief Act enables the Court to grant alternative relief in case the Court finds that the main relief cannot be granted. The proviso to Section 22(2) of Specific Relief Act says that no relief of refund of advance of sale consideration or earnest money or deposit paid shall be granted by the court unless it has been specifically claimed. Thus, the plaintiffs are required to make a claim under Section 22(1)(b) of the Act but no such claim was made in both the suits, however, the trial Court granted the relief of refund of advance sale consideration exercising power under Section 22(1) of the Specific Relief Act. The trial Court ignored Section 22(2) of the Act not even adverted to, therefore, in the absence of any claim for refund of advance sale consideration paid under Exs.A-1 and A-2, granting such relief by the Court is contrary to Section 22(2) of the Act and on this ground alone the plaintiffs are disentitled to claim refund of advance sale consideration.

86. In the instant Appeals, as per my finding in the earlier points, the plaintiff in O.S. No.147 of 1992 is entitled to the main relief of specific performance, therefore, the decree for refund of advance sale consideration passed in O.S. No.147 of 1992 is hereby set-aside; similarly, grant of such relief in the absence of specific term as required under Section 22(2) of the Act, the decree passed by the trial Court in O.S.

No.145 of 1992 cannot be sustained on this ground alone the decree in O.S. No.145 of 1992 passed against the defendant for refund of advance sale consideration in favour of the plaintiff is hereby set-aside. Accordingly, the point is decided.

In the result, the Appeal Suit No.1434 of 1998 is dismissed and, consequently, Cross-objections (SR) No.65157 of 1998 is allowed, setting-aside the decree and judgment in O.S.145 of 1992. Appeal Suit No.1435 of 1998 is allowed granting the specific performance of agreement of sale, as prayed for while dismissing the Cross-objections (SR) No.65144 of 1998. The plaintiff in O.S. No.147 of 1992 is directed to pay balance of sale consideration to the defendant within three (3) months from today and, in case, the defendant refused to receive the balance of sale consideration, the plaintiff is permitted to deposit the same before the trial Court to the credit of the suit in O.S. No.147 of 1992 and obtain registered sale deed through process of Court.

In consequence, miscellaneous petitions, if any, pending in these Appeals shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 07-11-2015.

Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

16.11.2015

APPEAL SUIT Nos. 1434 AND 1435 OF 1998

AND

CROSS-OBJECTIONS (SR) Nos.65157 & 65144 of 1998

IN

APPEAL SUIT Nos.1434 & 1435 OF 1998

Date. 07-11-2015

DSH