

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2016
DATE OF DECISION : 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.254 & 255 of 1994
and
Tr.A.S.No.249 and 250 of 2006

A.S.No.254 of 1994

N.K.Abubacker

... Appellant/Defendant

Vs

1.Dr.A.K.Zainuddin (Deceased)

2.Dr.A.K.Faziluddin

3.S.Hafsa Zaimuddin

4.Ayub

5.Shameena

6.Raffica Zainu

... Respondents/Plaintiffs 2 & 3

(RR 3 to 6 brought on record
as Lrs of deceased R1 vide
order of this Court dated
25.06.2010 made in CMP.473/2009)

A.S.No.255 of 1994

N.K.Abubacker

... Appellant/Plaintiff

Vs

1.Dr.A.K.Zainuddin (Deceased)

2.Dr.A.K.Faziluddin

3.M/s.South Malabar Timber

4.Smt.Shameem Salam

5.Mr.Ayub

6.Miss.Raffica Zainu

7.S.Hajsa Zainuddin

... Respondents/Respondents 2 to 7

(RR 4 to 6 recorded as LR of
deceased R1 and R4 brought
on record as LR of deceased
R1 vide orders of the Court
dt. 25.06.2010 made in
CMP.No.478 of 2009.

Tr.A.S.No.249 of 2006

N.K.Abubacker

... Appellant/2nd Respondent

Vs

1.Creative Self Employed
Educated Women's Bureau,
represented by its
Chairperson Miss.K.Asha

2.N.K.Ahamed

3.R.Arumuga Naicker

4.Dr.A.K.Faziluddin

... Respondents/Plaintiff
/1st, 3rd & 4th Defendants

Tr.A.S.No.250 of 2006

N.K.Abubacker

... Appellant/Plaintiff

Vs

1.Dr.A.K.Zainuddin (Deceased)

2.Dr.A.K.Fasilludin

3.Tmt.Shameem Salam

4.Mr.Ayub

5.Miss Raffica Zamim

6.S.Hafsa Zainuddin

... Respondents/Defendants

RR 3 to 6 recorded as Lrs of the
deceased R1 vide order of this
Court dated 20.10.2016 made
in CMP.No.509 of 2009 in
A.S.No.250 of 2006

Prayer in A.S.No.254 of 1994

This appeal is filed under Section 96 of C.P.C. Against the
judgement and decree dated 05.01.1994 passed in O.S.No.9345 of
1988.

Prayer in A.S.No.255 of 1994

This appeal is filed under Section 96 of C.P.C. against the
judgement and decree dated 5.1.1994 passed in O.S.No.2722 of
1988 on the file of IV Asst. City Civil Court, Madras.

Prayer in Tr.A.S.No.249 of 2006

This appeal is filed under Order 41 Rule 1 C.P.C. Against
the decree and judgment of IV Assistant Judge, City Civil Court,
Madras dated 5.1.1994 in O.S.No.8094 of 1998.

Prayer in Tr.A.S.No.250 of 2006

This appeal is filed under Order 41 Rule 1 C.P.C. Against the decree and judgment of IV Asst. Judge, City Civil Court, Madras dated 5.1.1994 in O.S.No.2563 of 1988.

For Appellant : Mrs.Hema Sampath
Senior Counsel

For Respondents : Mr.D.S.Ramesh for RR 3 to 6
in A.S.No.254 of 1994
Mr.D.S.Ramesh for RR 4,5,6 & 7
in A.S.No.255 of 1994
Mr.D.S.Ramesh for R4
in Tr.A.S.No.249 of 2006
Mr.D.S.Ramesh for RR 2 to 6
in Tr.A.S.No.250 of 2006

C O M M O N J U D G E M E N T

All the above appeals arise out of the O.S.Nos.9345 of 1988; O.S.No.2722 of 1988; O.S.No.8094 of 1998 and O.S.No.2563 of 1988 on the file of the IV Assistant, City Civil Court, Chennai as all the suits were disposed of by a common judgment dated 5.1.1994. Since all the suits are related to the same properties and the disputes are between the same parties, the above appeals have also been heard together.

2. The suit in O.S.No.2722 of 1988 is filed by the appellant seeking specific performance of an agreement of sale entered into during December 1976. The plaintiff had contended that the defendants 1 to 3, who are owners of the property had agreed to sell the property measuring about 4630 sq.ft. situated at Municipal Door No.3/129, New No.135, Dr. Natesan Road, Triplicane for consideration of Rs.30,000/- per ground along with the tiled superstructure. The plaintiff had paid an advance amount of Rs.11,000/- at the time of execution of the agreement. It had been also agreed that the balance sale price would be paid at the time of execution of sale deed.

3. The plaintiff further had claimed that he was also put in possession of the said property and the 4th defendant who was a lessee, had also undertaken to join in the execution of the sale deed. Since, according to the plaintiff, the superstructure belongs to the 4th defendant. The plaintiff further contended that the defendants 1 to 3 agreed to obtain the sanction from the competent authority under the Urban Land Ceiling and Regulation Act 1976 and the sale deed is to be executed within two months

from the date of the said sanction. The sale agreement also contained a clause to the effect that if sanction is refused by the competent authority, the agreement of sale will stand terminated and the plaintiff will deliver the possession of the suit schedule property to defendants 1 to 3 on repayment of advance amount.

4. According to the plaintiff, though he was ready and willing to perform his part of the contract and had paid a sum of Rs.5,000/- to the 3rd defendant, in addition to the advance amount of Rs.11,000/-, the defendants have been postponing the execution of sale deed. However on 12.8.1985, the defendants had issued notice through their counsel stating that the agreement stands terminated, in view of the refusal of the authority to grant permission for sale. The plaintiff had also averred that no such permission was required inasmuch as the land is built upon. The plaintiff sent an interim reply on 13.08.1985 and also final reply denying the allegation in the notice dated 12.8.1985 and requiring the defendants to execute the sale deed. There was a rejoinder on 06.09.1986 and another reply by the plaintiff on 29.9.1986.

5. The plaintiff expressed readiness and willingness to pay the balance sale consideration at the rate of Rs.30,000/ per ground and filed the suit for specific performance in March, 1988.

6. The defendants resisted the suit contending that the suit is barred by limitation. While admitting the agreement the defendants, would contend that it is not an intended agreement of sale. The defendants also claimed that they are owners of the superstructure and the 4th defendant was only a tenant in respect of the same.

7. The defendant further contended that there were various proceedings between the parties and since the authority had refused the permission for sale on 8.07.1985, the suit for specific performance itself is not maintainable. The defendants would also further contend that the plaintiff was never ready and willing to perform his part of contract.

8. On the above pleadings, the learned IV Assistant City Civil Judge, Chennai framed the following issues:

1. Whether the plaintiff is entitled to decree for specific performance?
2. Whether the suit is maintainable?
3. To what relief the plaintiff is entitled to?

Additional issue was also framed as to whether the suit is barred by limitation?

9. The defendants 1 to 3 in O.S.No.2722 of 1988 had as plaintiffs, filed the suit in O.S.No.9345 of 1988 against the plaintiff in O.S.No.2722 of 1988 seeking recovery of possession inter alia contending that the plaintiff was put in possession pursuant to the agreement of sale entered into in December, 1976 and inasmuch as the agreement has been cancelled by notice dated 12.08.1985, the defendants are liable to hand over possession to the plaintiff.

10. The said suit was resisted by the defendants/appellants contending that the 4th defendant is a tenant and he is entitled to protection under Section 53-A of the Transfer of Property Act and as such he averred that he continues in possession in part performance of the agreement, cannot be directed to delivery possession, when he has been ready and willing to perform his part of the contract. On the above pleadings, the learned IV Assistant City Civil Judge, Chennai framed the following issues:

- 1) Whether the plaintiff is entitled to recovery of possession?
- 2) Whether the defendant is entitled to continue in possession of the suit property?
- 3) To what other reliefs, the plaintiff is entitled to?

11. Apart from the above suits which are substantial in nature, two other suits namely, O.S.No.8094 of 1988 and O.S.No.2563 of 1988 were filed for permanent and mandatory injunction. The suit O.S.No.8094 of 1988 was filed by one Creative Self Employed Educated Women Bureau represented by its Chair Person, K.Asha for a permanent injunction against the plaintiff in O.S.No.2722 of 1988, 3rd defendant in O.S.No.2722 of 1988 and two other persons namely N.K.Ahamed, Arumugam Naicker, seeking a decree for injunction restraining those defendants from interfering with its possession of the property namely, as described in the schedule to the plaint, contending that it became a tenant of the said property under 4th defendant namely, Mr.Fazuludin, who is also the 3rd defendant in O.S.No.2722 of 1988 and the 1st defendant namely, the appellant, who is having a timber trading shop, is attempting to interfere with their possession. The said suit was resisted by the defendants 1 to 3 therein claiming the subject matter of suit in O.S.No.8094 of 1988, is also a part of the property subject matter of the suit in O.S.No.2722 of 1988 and that the same is in possession of the 2nd defendant therein namely, Mr.N.K.Ahamed. The 4th defendants in the said suit filled a written statement admitting the tenancy and accepted the possession of the schedule property by the plaintiff in O.S.No.8904 of 1988.

12. On the above pleadings, the learned IV Assistant City Civil Judge, Chennai framed the following issues:

- 1) Whether the plaintiff is entitled to decree for injunction?

- 2) Whether the defendants 1 to 3 have any rights over the suit property?
- 3) Whether what other reliefs the plaintiff is entitled to ?

13. The plaintiff in O.S.No.2722 of 1988 has also filed another suit in O.S.No.2563 of 1988 seeking a decree for permanent and mandatory injunction contending that the defendants therein namely, the owners of the property are attempting to interfere with his possession and they have also put up construction over the path way that leads to the suit property. Upon the said pleadings, he has sought for the relief of permanent injunction restraining the defendants from interfering with his possession and mandatory injunction directing the defendants to remove the construction put up by them over the alleged path way. The said suit was resisted by the defendants therein contending that the plaintiff is not entitled to any right over the alleged path way and the plaintiff's possession is restricted to 4630 sq.ft. in Door No.136, regarding which they had also initiated the suit for recovery of possession. It is also claimed that the plaintiff is a trespasser and as such he is not entitled to any injunction either permanent or mandatory.

14. On a consideration of the above pleadings, the learned IV Assistant City Civil Judge, Chennai had framed the following issues:

- 1) Whether the plaintiff is entitled to mandatory injunction for removal of the superstructure?.
- 2) Whether the plaintiff is entitled to removal of the bore on the eastern corner of the suit property?
- 3) Whether the plaintiff is entitled to permanent injunction as prayed for by him.
- 4) To what other reliefs is plaintiff entitled to.

15. As already stated, all these four suits along with another suit in O.S.No.4372 of 1985 filed by the second defendant in O.S.2722 of 1988 against the plaintiff were tried together and evidence was recorded in O.S.No.2722 of 1988 which is a substantial suit namely, the suit for specific performance. The plaintiff in the said suit examined himself as PW1 and he produced as many as 30 documents. Dr.S.K.Zainuddin, the second defendant in O.S.No.2722 of 1988 was examined as DW1 and Asha who is Chair Person of the plaintiff in O.S.No.8094 of 1988 was examined as DW2. Exhibits B1 to B30 were filed on the side of the defendants.

16. The learned Trial Judge on a consideration of the entire evidence on record and the pleadings came to the conclusion that the plaintiff in O.S.No.2722 of 1988 is not entitled to specific performance, since he has not been ready and willing to perform his part of the contract. The Trial Court had

however, come to the conclusion that the suit is not barred by limitation. Having held that the plaintiff was not ready and willing to perform his part of the contract it concluded that he is not entitled to the relief of specific performance. The learned Trial Judge dismissed the suit in O.S.No.2722 of 1988 and decreed the suit in O.S.No.9345 of 1988, which is the suit for recovery of possession filed by the owners of the property namely, the defendants in O.S.No.2722 of 1988. The suit for injunction filed by the Self Employed Educated Women Bureau in O.S.No.8094 of 1988 was decreed granting injunction inasmuch as owner of the property namely, Dr.Fassuludin had admitted the tenancy.

17. In so far as the suit in O.S.No.2563 of 1988 is concerned, the learned Trial Judge came to the conclusion that the plaintiff therein is not entitled to either permanent injunction or mandatory injunction as sought for by him, in view of the finding recorded by him in O.S.No.2722 of 1988. In so far as the suit in O.S.No.4372 of 1985 filed by the second defendant in O.S.No.2722 of 1988 seeking mandatory injunction for removal of the construction put up by the plaintiff and for permanent injunction restraining him from putting up any further construction, the said suit was dismissed in view of the decree for recovery of possession granted in O.S.No.9345 of 1988. Aggrieved by the said judgement and decree, the plaintiff in O.S.No.2722 of 1988 has filed the above appeals. The respective appeals are as follows:

Suit Number	Appeal Number	The parties rank in lower Court & this Court
O.S.No.2722/1988	A.S.No.255 of 1994	Plaintiff/Appellant
O.S.No.9345/1988	A.S.No.255 of 1994	Sole Defendant/Appellant
O.S.No.8094/1988	A.S.No.249 of 2006	2 nd Defendant/1 st Appellant
O.S.No.2563/1988	Tr.A.S.No.250 of 2006	Plaintiff/Appellant

18. As could be seen from the facts narrated above, the following issues arise for determination in the above appeals.

1. Whether the appellant is entitled to decree for specific performance based on the agreement of sale entered into in December, 1976?

2. Whether the appellant had established that he had been ready and willing to perform his part of the contract through out?

3. Whether the plaintiffs in O.S.No.9345 of 1988 are entitled to a decree for possession?

4. Whether the defendant in O.S.No.9345 of 1988, the appellant in A.S.No.254 of 1994 is entitled to protect his possession invoking the

doctrine of part performance under Section 53-A of the Transfer of Property Act?

5. Whether the plaintiff in O.S.No.8094 of 1988 is entitled to injunction as prayed for?

6. Whether the plaintiff in O.S.No.2563 of 1988 is entitled to a decree for permanent and mandatory injunction as prayed for therein?

19. At the out set, it should be pointed out that there is a consensus at the Bar that the first and second issues framed above would sufficient to decide the entire controversy. If the plaintiff in O.S.No.2722 of 1988 and appellant in A.S.No.255 of 1994 is to fail in the suit for specific performance filed by him. he will have no defence, in the other suits.

20. Points-1 & 2

The fact that the agreement was entered into in December, 1976 is not disputed. The payment of advance amount of Rs.11,000/- on the date of agreement and the further payment of Rs.5,000/- on 06.01.1977 are also not disputed. There is no controversy between the parties with reference to the contents of the agreement. It is also not disputed that the Urban Land Ceiling Regulation Act 1976 contained a provision requiring consent of the competent authority for sale of the land, situate within a urban Agglomeration.

21. It is also admitted that the requirement of permission with reference to the land that has been built upon, the provision that required, such permission was struck down by the Hon'ble Supreme Court. It is also to be pointed out that the Tamil Nadu Urban Land (Ceiling and Regulation Act) 1978 did not contain the similar provision.

22. It could be seen from Section 1 of the Urban Land Ceiling and Regulation Act 1976 that it was not made applicable to Tamil Nadu at the first instance and it would apply to such other States which adopt the Act by way of a resolution passed under Clause (c) of Article 252 of the Constitution of India. It is a common knowledge that the Government of Tamil Nadu enacted its own Act namely, Tamil Nadu Urban Land Ceiling Act 1978 which is deemed to come into effect force from 03.08.1976.

23. Admittedly, The Tamil Nadu Act does not contain any provision prohibiting the sale of land situate within Urban Agglomeration. Therefore, the requirement of permission of the competent authority does not arise at all. However, the agreement entered into between the parties in December, 1976 marked as Ex.A1 contains clause to the effect that a permission should be obtained from the competent authority. The plaintiff who had entered into the agreement of sale in the year 1976 had chosen to

keep quite till 12.08.1985. when defendants issued notice terminating the agreement.

24. In the plaint and in the oral evidence, the plaintiff had alleged and deposed that he had been demanding the execution of the sale deed from the defendant and that it was the second defendant who had informed him that the sale can be concluded after his brother namely, 3rd defendant who had gone abroad returns. It should be pointed out that evidence of the plaintiff as PW1 in this regard is totally unsatisfactory apart from being unreliable. During his cross-examination he has deposed as follows:

" அந்த ஒப்பந்தம் வேது பாராவில்- (ருசயே டுயனே கூயலு ருரவாடிசவைநை) இடம் சொத்து சம்மந்தமான இரண்டு மாதத்திற்குள் விலைக்கு (அனுமதி) வாங்கனும் என கண்டிருக்கு. ஆனால் அவ்வாறு இரண்டு மாதத்தில் விலைக்கு (அனுமதி) வாங்கியாச்சா என நான் என கிரயதாரர்களிடம் எழுத்துமூலமாக கேட்கவில்லை "

He would further depose in cross-examination as follows:

".....1988 வரை சொத்தை கிரயம் செய்ய வேண்டி நடவடிக்கை எதுவும் நான் எடுக்கவில்லை "

25. Learned Senior counsel appearing for the appellant would vehemently argue that the conduct of the defendants should also be looked into and once the suit is filed within three years from the date of refusal, the same being in time under Article 54 of the Limitation Act, the plaintiff is entitled to the decree for specific performance. In support of her submission, the learned senior counsel appearing for the appellant would rely upon the following judgments:

1. In Nathulal vs. Phoolchand reported in 1969 3 SCC 120
2. In S.V.Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar and others reported in AIR (39) 1952 Madras SC 389 (C.N.105 (33)(1))
3. In Mrs. Chandnee Widya Vati Madden vs. Dr.C.L.Katial and others reported in AIR 1964 SC 978
4. In Ajit Prashad Jain vs. N.K.Widhani and others reported in AIR 1990 Delhi 42
5. In Kruttiventi Mallikharjuna Rao & others reported in 56 LW 679
6. In A.Ramadas Rao Vs. M/s.J.P.Builders reported in 2010 (2) LW 368
7. In Gunwantbhai Mulchand Shah & others vs. Anton Elis Farel and others reported in (2006) 3 SCC 634

26. In so far as judgment in (2006) 3 SCC 634 is concerned, the same arises out of order rejecting the plaint on the ground of limitation. Their Lordships of the Hon'ble Supreme Court while

holding that the issue relating to limitation cannot be decided as a preliminary issue had set aside the order rejecting the suit and directed the Trial Court to decide the issue on evidence. Their Lordship have not expressed any opinion as to what would be reasonable time within which the contract of sale could be enforced. I do not see any observation which would support the claim of the appellant herein in the said judgement.

27. In the judgment of the Supreme Court reported in AIR 1964 SC 978 the agreement sought to be enforced was dated 4th September, 1956 and the date of filing of the suit is not available in the said judgment. But, however, taking note of the fact the Regular First Appeals were themselves decided on 21st March 1961. It could be safely presumed that the suit in the said case had been filed within a very reasonable time. The learned Senior counsel appearing for the appellant would draw my attention in para-4 of the judgment and contend that since agreement vendors had not sought for permission under the Urban Land Ceiling Act, as per the agreement dated 1976, the plaintiff should be presumed to have been ready and willing to perform his part the contract. I am unable to agree with the said contention in the light of the statement made by the plaintiff himself in his reply notice dated 4.9.1985. He had specifically stated that no such permission is necessary. Therefore, the plaintiff has chosen to remain silent for nearly 12 years knowing that such permission was not required.

28. Even assuming that cause of action for the suit had arisen only after the defendants had sent the first notice terminating the agreement on 12.8.1985 which has been received by the appellant/plaintiff on 13.8.1985, the plaintiff had waited till 11.03.1988 to file the above suit. Even after issuance of the notice dated 12.8.1985, the plaintiff has waited for nearly 19 months to file the suit for specific performance on 11.3.1988. It should be pointed out that the defendants had in fact filed the suit for recovery of possession in O.S.No.9345 of 1988 on 30.11.1987 itself. In view of the above conduct of the plaintiff, I am unable to agree with the contention of the learned senior counsel for the plaintiff/appellant.

29. The learned Senior Counsel has also sought to draw my attention of to the certain observations of the Division Bench of this Court reported in 2010 (2) LW 368. I am afraid the portion of the said judgement, which reads as follows:

"20. It is well settled that pleading and proof of "readiness and willingness" is a mandatory requirement to obtain decree for specific performance. The words "readiness and willingness" to perform the part of the contract has to be determined from the conduct of the parties. The acts of performance of

which or the readiness to perform must be shown by the plaintiff."

would run counter to the claim of the plaintiff in the present suit. The Hon'ble Court Supreme Court in K.S.Vidyanandam vs. Vairavan reported in (1997) 3 SCC 1 held as follows:

" (i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The Courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser" (Emphasis supplied)

30. This judgment of the Hon'ble Supreme Court was subsequently followed by a two judge bench of the Hon'ble Supreme Court in Saradamani Kandappan vs. S.Rajalakshmi and others reported in (2011) 2 SCC 18. Thus I see a march of law relating to grant of decrees for specific performance in case of urban properties. Therefore, I am unable to countenance the contention of the learned Senior Counsel appearing for the appellant based on the earlier decision of this Court and also the decision of the Hon'ble Supreme Court.

31. The learned counsel appearing for the respondents would invite my attention to various decisions of this Court as well as the Hon'ble Supreme Court. The Hon'ble Supreme Court in a recent decision in Panchabiyan vs. Ramasami and others reported in 2015 2 CTC page 178 had held that hardship that would be caused to the defendant by granting decree for specific performance should also be considered, while deciding on the issue in a decree for

specific performance referring to the judgment in Nareindeerjid Singh vs. North Star Estate Promoters Limited, this Hon'ble Court held it would not be equitable to grant decree for specific performance after a lapse of several years.

32. In the case on hand, the agreement is of the year 1976 and the suit was filed in 1988 seeking specific performance and the properties in question situate in commercial locality and the property price between 1976 and 1988 should have gone up several times. It will be useful to extract the following words of the Supreme Court in the decision reported in 2011 12 SCC 18 wherein, the Hon'ble Supreme Court has observed in Paragraphs 37 and 43 which reads as follows:

" 37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S.Vidyanandam.

(i) The Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The Courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The Courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser"

33. I find that the above observation of the Hon'ble Supreme Court will apply to the present case on hand. Even taking from the first refusal dated 12.08.1985, the plaintiff had chosen to file the suit only on 11.03.1988 i.e. after the lapse of 19 months. Therefore, I am unable to persuade myself to exercise my discretion to grant the relief of specific performance to the plaintiff, who has been careless and indifferent for over a decade and today we are almost four decades from the date of the agreement.

34. I am in respectful agreement with the observation to the effect that it would be cruel joke on the defendants that if they are directed to execute the sale deed pursuant to the agreement entered into in the year 1976 at this distant time. It will not be out of place to refer the judgment of this Court in V.K.Raman and another vs. T.K.Venu dated 7.1.2013 in A.S.No.634 of 2001, wherein, the principle laid down by the Hon'ble Supreme Court had been taken note of and the suit for specific performance has been dismissed. In the light of the above, I

answer the points 1 and 2 in A.S.255 of 1994 against the appellant/plaintiff. The suit for specific performance of the agreement entered into in December, 1976 will have to be dismissed confirming the judgement and decree in O.S.No.2722 of 1988.

Point Nos.3 & 4

The defendants in O.S.No.2722 of 1988 are the plaintiffs in the suit O.S.No.9345 of 1988. The said suit has been filed by them seeking recovery of possession of the suit property. It is the admitted case of the parties that the plaintiff in A.S.No.2722 of 1988 was put in possession of the property, the subject matter of the sale agreement and he continues to be in possession of the same. The only defence to the suit for recovery of possession is that the defendant/appellant is entitled to protect his possession, since he has been in possession of the property pursuant to the contract of sale and he is entitled to protection under Section 53-A of the Transfer of Property Act.

35. The essential requirements to qualify a person for the benefits or protection under Section 53-A of the Transfer of Property Act is that he should have been ready and willing to perform his part of the contract. Since I have already held that the appellant/defendant has not been ready and willing to perform his part of the contract and he is not entitled to protection of discretionary relief of specific performance as a natural corollary, he would also be dis-entitled to seek protection under Section 53A of the Transfer of Property Act. Therefore, in view of the dismissal of the suit in O.S.No.2722 of 1988, the plaintiffs in O.S.No.9345 of 1988 are entitled to decree for possession and the points Nos.3 and 4 are answered in favour of the plaintiff in O.S.No.9345 of 1988, respondents in A.S.No.254 of 1994. In fine, the judgement and decree of the Trial Court granting a decree for recovery of possession is confirmed and the appeal stands dismissed.

Point No.5

36. In so far as point No.5 is concerned, the suit O.S.No.8094 of 1988 was filed by the Self Employed Educated Women Bureau for permanent injunction restraining the defendants therein namely, the plaintiff/3rd defendant in O.S.No.2722 of 1988 and two others contending that the plaintiff in the said suit is in possession pursuant to the agreement of tenancy between itself and the 4th defendant in the said suit and they are in possession of the property pursuant to the said agreement.

37. The 4th defendant had filed written statement in the said suit, admitting the tenancy and possession of the plaintiff in the said suit. The Trial Court had based on the oral and documentary evidence come to the conclusion that the suit property, the subject matter of the O.S.No.8094 of 1988, has been

in possession and enjoyment of the plaintiff in the said suit. Upon the said findings the said suit has been decreed against defendants 1 to 3 in the said suit. The learned Senior Counsel appearing for the appellant, namely the first defendant in O.S.No.8094 of 1988, is unable to point out any legal or factual infirmity in the findings of the Trial Court and she would fairly state that unless she succeeds in the appeal against the suit in O.S.No.2722 of 1988 namely, the suit for specific performance filed by the appellant, she would not be in position to attack the decree for permanent injunction granted in O.S.No.8094 of 1988. Since I had already concluded that the plaintiff in O.S.No.2722 of 1988 namely, the first defendant in O.S.No.8094 of 1988 is not entitled to specific performance, I am convinced that no ground has been made out to interfere with the decree in O.S.No.8094 of 1988 also. As such, the appeal in Tr.A.S.No.249 of 1994 is also dismissed confirming the judgement and decree of the Trial Court in O.S.No.8094 of 1988.

Point No.6

38. The plaintiff in O.S.No.2722 of 1988 has also filed the suit in O.S.No.2563 of 1988 claiming mandatory injunction and permanent injunction. The pleadings in the said suit would go to show that the case of the plaintiff is that the defendants in the said suit, the owners of the property are attempting to put up construction over the path way that leads to suit property. As already pointed out, the issue in this suit also depends on the result of O.S.No.2722 of 1988 and O.S.No.9345 of 1988, which are substantial suits for specific performance and recovery of possession respectively.

39. In view of my findings in both the suits, the plaintiff in O.S.No.2722 of 1988 is not entitled to the relief of specific performance and the plaintiffs in O.S.No.9345 of 1988 are entitled to a decree for recovery of possession, no useful purpose will be served by disturbing the decree of the Trial Court dismissing the suit in O.S.No.2563 of 1988 wherein the plaintiff, who is an agreement holder put in possession pursuant to the said agreement has sought for the relief of permanent and mandatory injunction inasmuch as his suit for specific performance has been dismissed and the suit for recovery of possession filed by the defendants in O.S.No.2563 of 1988 has been decreed. The plaintiff cannot maintain the suit for permanent and mandatory injunction against the actual owners of the suit property. In fine, the appeal against O.S.No.2563 of 1988 namely, Tr.A.S.No.250 of 2006, will also stand dismissed.

40. The appeal in A.S.No.254 of 1994 is dismissed confirming the judgement and decree of the Trial Court in O.S.No.9345 of 1988 on the file of the IV Assistant City Civil Court, Chennai,

41. In the result appeal in A.S.No.255 of 1994 is dismissed confirming the judgement and decree of the Trial Court in O.S.No.2722 of 1988 on the file of the IV Assistant Civil Civil Court, Chennai.

42. The Tr.A.S.No.249 of 2006 is dismissed confirming the judgment and decree of the Trial Court in O.S.No.8094 of 1988 on the file of the IV Assistant City Civil Court, Chennai and

43. Tr.A.S.No.250 of 2006 is dismissed confirming the judgement and decree in O.S.No.2563 of 1988 on the file of the IV Assistant City Civil Court, Chennai. There will no order as to costs in all the appeals.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vk

To

The Judge,
IV Assistant City Civil Court,
Chennai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+4cc's to Mr.D.S.Ramesh, Advocate, S.R.Nos.64248 to 64251
+4cc's to M/s.R.Meenal, Advocate, S.R.Nos.64450 to 64453

A.S.Nos.254 and 255 of 1994
and
Tr.A.S.Nos.249 and 250 of 2006

UG(CO)
CA(19/01/2017)