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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 519 OF 2015

Madhusudan s/o Bhalchandra Naik APPELLANT
Age - 76 years, Occ - Business & Agriculture
R/o Khiste Galli, Ahmednagar

VERSUS

Pramod s/o Shriram Naik RESPONDENT
Age - 45 years, Occ - Service & Agriculture
R/o Ganpati Galli, Naikwada,
Taluka - Parner, District - Ahmednagar

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Mr. S. D. Kulkarni, Advocate for the appellant
Mr. Amol Joshi h/f Mr. R. S. Deshmukh, Advocate for respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 16th FEBRUARY, 2017

ORAL JUDGMENT :

1. Learned counsel Mr. S D. Kulkarni appearing on behalf of the appellant-original defendant, with quite some vehemence, submits that though ostensibly the two courts hitherto have rendered concurrent findings on the issues as have been framed, yet the decisions are unsustainable primarily as the respondent-plaintiff cannot be said to have made out a case for grant of specific performance as it would emerge, the very foundation of purported agreement of sale, since been executed under

coercion and undue influence, is fragile. [Parties hereinafter are referred to by their status in Regular Civil Suit No.135 of 2005 i.e. appellant as 'defendant' and respondent as 'plaintiff']. Additionally, he submits that the requirements for grant of specific performance can seldom be said to have been satisfied by the respondent-plaintiff. It is not shown that the plaintiff has been ready and willing to perform his part of the contract. Consideration under the agreement for sale is far too low and insufficient as it would emerge. No issue as required in respect of exercise of discretion has been framed by the courts.

2. On the other hand learned counsel Mr. Amol Joshi, appearing on behalf of the plaintiff submits that the second appeal does not carry any substance and in the least gives rise to any question which can be said to be substantial in law. The two courts hitherto have recorded concurrent findings of fact on relevant issues on appreciation of the evidence which are proper and cannot be said to be in any way defective and apart from evidence.

3. Record and proceedings in the matter had been called for. With the assistance of learned counsel on either side, the relevant portions of the same have been gone through.

4. The defendant in regular civil suit No. 135 of 2005 is real uncle of the plaintiff. Shriram – father of plaintiff and Madhusudan – the defendant constituted joint family and were possessed of several properties, *inter alia*, suit property situated at Ahmednagar bearing CTS No. 2567 admeasuring 334.4 square meter.

5. Chronology of events, as those occurred, appear to be, Milind son of Madhusudan issued a notice seeking partition of joint family properties to the plaintiff and other members of the joint family on 10th September, 2001 which is at Exhibit – 64. The notice was responded to by the plaintiff by reply dated 1st October, 2001 at Exhibit – 33, communicating that the issue can be sorted out by sitting together. On 30th May, 2002, a registered partition deed was executed before the Sub Registrar, Ahmednagar among the joint family members under which it is shown that half share in property bearing CTS No. 2567 admeasuring 334.4 had been given to Madhusudan. Certified copy of the partition deed has been placed on record. On the next day, i.e. 31st May, 2002, a registered agreement of sale in respect of half share of defendant in CTS No.2567 in favour of plaintiff was executed by defendant with consent of members of

defendant's branch. The agreement referred to that the value of suit property was around ₹6,68,000/- however, it had been agreed to be sold to the plaintiff at ₹ 4,00,000/- and ₹ 2,00,000/- are stated to have been paid to defendant. The agreement refers to that within a period of two months, deed of conveyance would be executed and the balance consideration would be paid. On 21st July, 2002, a notice was issued by plaintiff to the defendant to remain present before the Sub Registrar's office on 30th July, 2002 for execution of sale deed. Said notice by plaintiff has been received at the end of the defendant on 25th July, 2002. On 30th July, 2002, the plaintiff had been in the Sub Registrar's office and had filed an affidavit to that effect, however, the defendant had not turned up. The plaintiff had sent a communication on 1st August, 2002 as well as subsequently on 9th April, 2005 and 19th May, 2005 to the defendant. All the communications are stated to have been duly received and acknowledged at the end of the defendant. Since no further progress in respect of execution of conveyance had been taking place, regular civil suit as referred to above came to be instituted on 28th July, 2005 for specific performance of the agreement dated 31st May, 2002 in respect of suit property.

6. The plaintiff averred that half of the portion of suit

property, allotted in partition to the defendant, was agreed to be sold on 31st May, 2002 by defendant to the plaintiff under a registered instrument, upon accepting ₹ 2,00,000/- from the agreed consideration of ₹ 4,00,000/-. The plaintiff had been ready and willing to get sale deed executed from the defendant and accordingly had sent a letter on 21st July, 2002 requesting defendant No.1 to execute sale deed on 30th July, 2002 before Sub Registrar, however defendant remained absent. Thereafter, on 1st August, 2002, 9th April, 2005 and 19th May, 2005 he had sent letters to the defendant and asked him to execute sale deed and had on several occasions, requested the defendant to execute sale deed. As the defendant had been avoiding the execution of sale deed, the suit came to be instituted seeking specific performance of agreement of sale and alternatively claiming compensation of ₹ 4,00,000/- along with interest @ 18% p.a.

7. The defendant, though admitted relationship, he disputed claim under the suit. He denied that agreement had been executed accepting ₹ 2,00,000/-. He also denied the contentions of plaintiff about being ready and willing to have sale deed executed. He denied letters and their receipts at his end dated 1st August, 2004, 9th April, 2015 and 19th May, 2005 contended to

be sent by the plaintiff. It was additionally contended that his son, daughter and wife have share in suit property and as such, suit suffers from non joinder of necessary parties. It was contended that the defendant was not financially weak and was not interested in sale of suit property. Though his son had sent a notice for partition on 10th September, 2001, the plaintiff had been unwilling to partition ancestral property. Under threat from plaintiff of detaining partition of joint family properties, the defendant had been forced to execute agreement of sale. It is under pressure, the defendant had executed agreement of sale on 31st May, 2002 and his wife and children have given consent. It was alleged that the plaintiff wants to grab suit property by hook or crook. It is contended by defendant that the suit is outside the prescribed period of limitation as agreement of sale having been executed on 31st May, 2002 and notice had been issued on 21st July, 2002, which was received by the defendant on 25th July, 2002 and on the very day, he had refused to execute sale deed and as the suit is filed on 28th July, 2005. The defendant contended that time had been the essence of contract. The plaintiff had not acted within time and as such, agreement of sale had been rendered voidable. Valuation of suit property was more than ₹ 4,00,000/-. The price depicted under

the agreement is not proper. The plaintiff is guilty of breach of agreement and has not performed his part of contract within stipulated period. The defendant, as such, prayed for dismissal of the suit.

8. Trial court framed as many as nine issues, relevant to be referred to would be – as to whether the plaintiff proves that the defendant has executed agreement of sale dated 31st May, 2002; whether plaintiff proves that he has paid earnest amount of ₹ 2,00,000/-; whether he proves readiness and willingness to perform his part of contract; whether the defendant has committed breach of contract; whether the suit is bad for non joinder of necessary parties; whether the suit is barred by law of limitation and whether the plaintiff is entitled to receive damages with interest.

9. The trial court, on appreciation of evidence, considered that the plaintiff had proved execution of agreement of sale by defendant in his favour, payment of ₹ 2,00,000/- by plaintiff and him being ready and willing to perform his part of contract and the suit being not bad for non joinder of necessary parties and the same to be in limitation. The trial court, as such, has granted decree of specific performance, and had not granted damages

with interest.

10. In proceedings therefrom, bearing Regular Civil Appeal, No.300 of 2012 (erstwhile First Appeal No.374 of 2008), appellate court framed points for consideration with reference to execution of agreement of sale, receipt of earnest amount of ₹2,00,000/-, readiesses and willingness of plaintiff and the limitation as well as whether time can be said to be essence of contract.

11. The appellate court as well found that agreement of sale had been executed and earnest amount had been received at the end of the defendant and plaintiff having proved his readiesses and willingness. The suit was also considered to be within limitation and time was not considered to be essence of contract.

12. Mr. S. D. Kulkarni, learned advocate appearing for the appellant – defendant, submits that the relationship between the plaintiff and the defendant is not disputed. It cannot be ignored that the defendant had been an age old person. His son wanted partition of ancestral property and the same would not have been made possible, as the plaintiff had put his foot firmly down and compelled the defendant to execute agreement of sale of suit property in his favour. He submits that it is under the undue

influence of the circumstances and under coercion, agreement of sale came to be executed. It would be evident from the consideration amount agreed upon in respect of the suit property the same was executed under pressure. He contends that while the agreement of sale itself shows valuation of the suit property to be ₹ 6,68,000/- on the date of agreement of sale, yet the consideration agreed upon under the agreement of sale is only ₹ 4,00,000/-. He submits that there was no reason for the defendant to execute such an agreement of sale for less amount than the valuation of suit property. It is under the compelling circumstances, agreement of sale came to be executed and as such, it ought to have been given consideration by the courts hitherto. Although, ostensibly, agreement of sale appears to have been executed, yet it cannot be said to be an agreement enforceable at law, to be a contract, of which specific performance could be possible in fact and in law.

13. He further goes on to submit that the suit cannot be said to be filed within prescribed period of limitation as the denial was made known to the plaintiff on 25th July, 2002, when defendant had declined to accede to the request and as such, the period of limitation started running on 25th July, 2002 and the suit having been filed on 28th July, 2005, is plainly outside the limitation, and

it does not require any further corroboration. He submits that subsequent communications, although being relied on, those have not been produced on record and do not form part of evidence and have not been exhibited. Mere acknowledgment of receipt would not substitute proof of contents of said documents. He, therefore, submits that these letters are of little consequence and would not extend the period of limitation and both the courts have failed to appreciate this important aspect involved in the matter and have as such, erred in holding the suit to be within the period of limitation.

14. He further contends that the plaintiff has grossly failed to plead and prove readinesses and willingness to perform his part of contract. He submits that although, pursuant to stipulation under agreement, sale deed was to be executed within two months from 31st May, 2002. Neither the alleged balance agreement amount had been deposited during the pendency of the suit nor during the pendency of the regular civil appeal and has now been deposited long after the dismissal of the regular civil appeal. This, according to him, gives indication of that it cannot be said that the plaintiff had always been ready and willing to perform his part of contract. According to him, the plaintiff ought to have deposited the amount at the initiation of

the suit itself without waiting for decree of specific performance. The plaintiff had not been ready with nor was willing to deposit the balance consideration. He had used the passage period for strengthening his position to pay the balance consideration. Sale deed having not been executed during agreed period, while the terms depict the time stipulation being of essence, failure to adhere to the stipulation shall clinch the issue. Stipulation being unequivocal, it would emerge that the plaintiff had not been ready and willing to perform his part of the contract.

15. He further contends that on the date of agreement of sale itself, valuation of the property had been more than ₹ 4,00,000/- shown to have been agreed upon. Under the circumstances, discretionary relief of specific performance would hardly be available for the plaintiff. He further submits that not only on the date of agreement of sale, but subsequent thereto as well and as can be gathered from the documents which are being referred to and relied on annexed to the civil application, purported to be pursuant to Order LXI, Rule 27 of the Civil Procedure Code would indicate that valuation of the suit property is about ₹ 87,00,000/-. In the circumstances, the agreement itself is rendered far more inequitable giving undue benefit to the plaintiff. As such, it is requested that if at all the second appeal

is considered liable to be dismissed, equities be done to the defendant and the plaintiff be directed to pay more amount than is shown in the agreement. He submits that specific performance would not be granted merely because it is lawful to do so.

16. Mr. Amol Joshi, learned advocate appearing for the plaintiff submits that none of the contentions on behalf of the defendant carry any weight. He submits that coercion and undue influence, alleged by the defendant, under which agreement of sale is said to be executed, is a fallacious and run away contention. He submits that it is not the case that the defendant though an elderly man was alone or immobile due to age. He had support of his children and wife. As a matter of fact, he submits, the partition had its genesis in the notice issued by defendant's son and the defendant had been acting from behind him for the same. It was the defendant and his family members, who were insisting on for partition of joint family property and accordingly partition had been registered on 30th May, 2002. As a matter of fact, the defendant was badly wanting the amount being paid to him by way of earnest money and as such, executed agreement of sale. The uncle of plaintiff and his family members had agreed to the consideration as shown in the agreement of sale. He further submits, it ought to be considered that the consideration

amount had been duly agreed upon and had the defendant been really not intending to agree upon agreement of sale and the consideration, he, in all probability would have avoided execution of sale deed on 31st May, 2002, which is a day after 30th May, 2002 when joint family property was partitioned and the suit property had fallen to the share of the defendant. He submits, after receipt of amount, however, as days went by and as the period agreed for execution of sale deed was to expire, the plaintiff had issued him a communication on 21st July, 2002 for execution of sale deed on 30th July, 2002. However, the defendant, had avoided to remain present before the Sub Registrar while the plaintiff had been ready along with consideration and present there before the Sub Registrar, pursuant to the communication. Immediately, on the next day, the plaintiff had issued another communication to the defendant requesting him to execute sale deed, which had been duly received by him but had not been responded to. Thereafter, quite some time got whiled away in requesting the defendant to abide by terms of the agreement of sale, however, the matter was dillydallied and ultimately, as it was getting on the nerves of plaintiff, he had issued frantic communications in April and May, 2005. However, as the defendant appeared to be disinclined, the

plaintiff had been left with no alternative but to institute proceedings seeking specific performance. The plaintiff had all along been ready and willing to perform his part of contract and was possessed of the balance consideration according to the agreement and had been acting pursuant to its terms.

17. Learned advocate further submits that escalation of prices of the land as on the date is hardly of any consequence, so far as specific performance of agreement sale is concerned. It would not form measure or a scale of alleged undue influence or for that matter coercion. Looking at the relationship between the parties and the agreement amount, it would not be a case wherein it would be said that the plaintiff had used undue influence in getting execution of agreement of sale from the defendant. He submits that the plaintiff had all along been ready and had the defendant acceded to his request in 2005 itself, valuation would not have as may be subsisting today. Escalation of prices would not be said to be a measure for scaling equities in favour of the defendant. It is his own undoing that he did not accept balance consideration being tendered as per agreement and now cannot make use of escalation of prices as consideration to do equities.

18. He submits that there is no substance in the allegation that the suit is barred by limitation, for, pursuant to the terms of agreement of sale, sale deed was to be executed within two months from 31st May, 2002 and a request for execution of sale deed had been sent on 21st July, 2002, which had been received by the defendant on 25th July, 2002 and the time stipulated thereunder had been 30th July, 2002, and as pursuant to the request, the defendant had not been present before the Sub Registrar on 30th July, 2002 at that point, at the most, it can be said that the refusal to perform his part of contract could have been noted by the plaintiff. There is no evidence coming forth that at any point the defendant had ever communicated his refusal to perform his part of the contract to the plaintiff. He submits that the courts, for the reasons as have been given by them, have rightly considered that the suit has been filed within prescribed period of limitation. Limitation, according to him, being a mixed question of law and fact and having been decided upon appreciation of evidence, it can seldom be open for this court for re-appreciation in second appeal. He, therefore, submits that the second appeal deserves to be thrown out at the threshold.

19. In the circumstances, the question that emerges for

consideration in this appeal appears to be -

“ Whether the courts hitherto have been in error in exercise of discretion in favour of the plaintiff while it is being contended that suit for specific performance should not be granted merely for the reason that it was lawful to do so ? ”

20. During the course of submissions, learned advocate Mr. S. D. Kulkarni, puts heavy emphasis on a decision of the Supreme Court in the case of *“A. C. Arulappan V/s Smt. Ahalya Naik”* reported in (2001) 6 SCC 600 and gives lot of stress on paragraphs No.8, 9, 10, 11, 14, 15 and 16 therein, reading thus -

“ 8. In D.Anjaneyulu & Anr. vs. Damacherla Venkata Sesaiah & Anr.: AIR 1987 SC 1641, the High Court declined to grant a decree for specific performance in favour of the plaintiff, even though the defendant was guilty of breach of agreement. That was a case where the defendant had constructed costly structures and if a decree for specific performance was granted, the defendant would have been put to special hardship. This Court directed the defendant to pay compensation to the plaintiff.

9. In Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's: AIR 1987 SC 2328, this Court cautioned and observed as under:

"Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter in the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the

plaintiff".

10. In Lourdu Mari David & Ors. vs. Louis Chinnaya Arogiaswamy & Ors. : AIR 1996 SC 2814, the plaintiff, who sought for specific performance of an agreement to purchase immovable property, filed a suit with incorrect and false facts. In the plaint, it was alleged that the plaintiff was already given possession of Door No.2/53 as a lessee and he was given possession of Door No. 1/53 on the date of the agreement itself. But he did not give any evidence that he had got possession of Door No.1/53 on the date of agreement. It was found that his case as regards Door No.1/53 was false. He also alleged that he had paid Rs.400/- in addition to the sum of Rs.4,000/- paid as advance, but this was proved to be an incorrect statement. He alleged that the third defendant had inspected the house during the course of negotiations, but this also was found to be false. This Court held that it is settled law that the party who seeks to avail of the jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words, the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

11. In Gobind Ram vs. Gian Chand : AIR 2000 SC 3106, it was observed in paragraph 7 of the judgment that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the court and the court has consider whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience.

14. There are other circumstances also to hold that the defendant respondent had not approached the court with clean hands. Admittedly, the plaint schedule house was in occupation of a tenant. The appellant had agreed to evict the tenant. During the course of litigation between the appellant and the respondent, the appellant came to know that the tenant had been trying to give possession of the house to the respondent. He immediately field a suit and obtained an injunction and recovered

possession of the house from the tenant. The respondent alleged that she got possession of the house from the tenant. She also filed a suit alleging that she had been in possession of the property and she obtained possession of the house from the tenant. It is clear that she had been trying to get possession of the house even before execution of the sale deed, for which she had apparently colluded with the tenant. Moreover, the appellant in this case was clearly in impecunious circumstances and so many loans were outstanding against him. He had executed the first agreement to pay off these debts and in order to raise some funds. From the tenor of the first agreement, it is clear that parties were not very serious about the sale of the house. The fact that after few months the respondent resiled from the agreement and sought for repayment of the money also proves this fact. The appellant had voluntarily retired from service. admittedly, he had no other house to stay after retirement. The respondent-plaintiff had tried to take unfair advantage over the defendant and throughout the course of the transaction she had not been fair.

15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court which had the added advantage of recording the evidence and seeing the demeanour of the witnesses considered the relevant facts and reached a conclusion. The appellate court should not have reversed that decision disregarding these facts and, in our view, the appellate court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract.

16. The respondent-plaintiff had advanced a sum of Rs.42,000/- as early as on 1.5.1977. She had also parted with Rs.4,000/- subsequently. We hold that she is entitled to refund of these amounts with reasonable

interest. We direct that the respondent-plaintiff will be entitled to get the total amount of Rs.46,000/- (Rs.42,000/-+Rs.4,000/-) with 14 per cent interest from the date of payment of the amount till the date of realisation. There shall be a charge for this amount on the plaint schedule property. The respondent would be at liberty to enforce the decree against the appellant and his property, in case the appellant fails to re-pay the said sum of Rs.46,000/- with 14 per cent interest.”

21. However, looking at the facts and circumstances of the case, as have been referred to in the decision, it appears to be a case on altogether different set of facts. Learned advocate submits that generally, cited cases differ on facts, however, principles and reasons which went into making of decision, which are relevant would have to be taken into account, for, it will have to be considered that a court is not bound to grant specific performance merely because it is lawful to do so, motive behind the litigation should also enter the judicial verdict and the court should take care to see that it is not used as an instrument of pressure and it will have to be considered that grant of specific performance is not automatic and is one of the discretion of the court and the court has to consider whether it would be fair, just and equitable. The court is to be guided by principles of justice, equity and good conscience. Further, granting of specific performance is an equitable relief and its principles are incorporated in section 20 of the Specific Relief Act and the

guidelines thereunder shall play a vital role. He submits that the decision has been relied on, for, the appellate court's decision had been flawed by the superior court for the reasons which would apply and hold the present case. He, therefore, urges to consider the decision.

22. Similarly, he places reliance on a decision of the Supreme Court in the case of “*Parakunnam Veetil Joseph's son Mathew V/s Nedumbara Kuruvila's son and Others*” reported in 1987 (supp) SCC 340. Said case on the facts is quite apart from the one involved in the present matter, however, in paragraph No.14 of the same, the court has observed that the court should meticulously consider all facts and circumstances of the case, the court is not bound to grant specific performance merely because it is lawful to do so, motive behind the litigation should also enter into the judicial verdict. Also it appears that this very case has been referred to in the judgment in case of “*A. C. Arulappan*” (*supra*).

23. Mr. Kulkarni, learned advocate, during the submissions has referred to and relied on a decision of the Supreme Court in the case of “*Pratap Lakshman Muchandi and Others V/s Shamlal Uddavdas Wadhwa and Others*” reported in 2008 (2) ALL MR 332 and points out paragraph No. 8 therein to contend that if it comes to refusal to

entertain the second appeal, at least since litigation has been prolonged for over ten years, equities be settled between the parties and the plaintiff – respondent be directed to pay a sum in addition to the agreed consideration, as has been considered in the background by the Supreme Court in said case.

24. Learned advocate for the respondent Mr. Amol Joshi, submits that a case recently decided by Hon'ble Single Judge of this court in the matter of “*Krishnarao Hampanna Lokray (Since deceased) LRs and Others V/s Patvekar Hotels Pvt. Ltd., Pune*” reported in 2016 (5) *Mh.L.J.* 648 would be relevant to be considered for decision in present case. He refers to that almost all the contentions which have been raised on behalf of the defendant, were the contentions in said case, those have been dwelt upon, discussed and decided by the Hon'ble Single Judge. He particularly refers to paragraphs No. 21 to 30 of said judgment and submits that present matter is squarely covered by the observations as are appearing under those paragraphs. It would be worthwhile to refer to those paragraphs as under -

“ 21. Insofar as the first issue raised by the appellants that the sons of the original defendant were necessary or proper parties to the suit and the suit was bar for non-joinder of necessary parties or proper parties is concerned, it is not in dispute that when the original defendant had acquired the tenancy in respect of one of the suit property, the appellant

no.1 was 14 years old. At the time of acquiring the tenancy rights the sons of the original defendant were minor and there was no question of the sons contributing any amount in respect of acquisition of the tenancy. Insofar as the other two flats purchased by the original defendant is concerned, it is not in dispute that the said two flats were also acquired by the original defendant in his own name after surrendering the tenancy in respect of the said property. Even if there was any finance provided by the sons to the original defendant, a perusal of the record clearly indicates the same was simplicitor a loan transaction between the original defendant and his sons which was repayable by the original defendant to his sons with interest. The documents which Mr. Sakhare, learned senior counsel for the appellants placed reliance before this Court would also indicate the same position. In my view, there was thus no prejudice caused to the appellants.

22. It is not in dispute that though the sons of the original defendant were fully aware of the filing of the suit they being in possession of the suit premises did not apply for their impleadment as parties defendants to the suit. On one hand it is the case of the appellants that the relation between the original defendant and his sons were strained and on the other hand it was pleaded before the learned trial Judge that the amount was contributed by the sons and they were necessary parties to the suit. If there was any hardship, the sons of the original defendant could have applied for their impleadment to place their alleged interest in the suit. In my view the defence of the original defendant that his sons were necessary parties to the suit was thoroughly frivolous and has been rightly rejected by the learned trial Judge as well as by the lower appellate Court.

23. Insofar as the submission of learned senior counsel for the appellants that there was undue influence on the original defendant at the time of execution of the agreement for sale is concerned, with the assistance of the learned counsel for the original plaintiff, I have

perused the findings of the learned trial Judge as well as of the lower appellate Court. The original defendant had admitted in his evidence that he was given an advise by the tax consultant to enter into an agreement for sale with the original plaintiff. There was sufficient time between the said consultation and in execution of the agreement for sale with the original plaintiff. The original defendant was a graduate in English and was carrying on business till he had attained the age of 50 years. The original defendant never made any complaint of any undue influence against the plaintiff at any stage did not even apply for cancellation of the agreement for sale by filing any appropriate proceedings. In my view, there is thus no substance in this submission of the learned senior counsel for the appellants.

24. Insofar as the submission of learned senior counsel for the appellant that the learned trial Judge could not have considered the oral evidence of the tax consultant on the ground that the advise given by the tax consultant to the original defendant could not have been disclosed it being in breach of the professional ethics is concerned, my attention is invited to the oral evidence of the said tax consultant by the learned senior counsel for the appellants which clearly indicates that the said consultant had not disclosed the contents of the advise given by him to the original defendant. The said tax consultant was examined by the original plaintiff only to prove that the defendant had consulted the tax consultant and to prove that there was no question of any undue influence upon the original defendant at the time of execution of the agreement for sale.

The learned trial Judge as well as the lower appellate Court have dealt with this issue at great length in the impugned orders and have rightly rendered the finding of fact in favour of the plaintiff and against the defendant. In my view, there is thus no substance in the submission made by learned senior counsel appearing for the appellants.

25. Insofar as the submission of the learned senior counsel for the

appellants that the learned trial Judge though had decided to consider the objection about the examination of the said tax consultant at later stage and did not consider in the said impugned order and decree is concerned, I have perused the contents of the oral evidence led by the said tax consultant. In my view, the said evidence was led only for the purpose of proving the issue whether there was any undue influence or not. The objection raised by the defendant before the learned trial Judge itself was of no substance and thus the judgment of the trial Judge, in my view, is not vitiated due to this objection.

26. Insofar as the last submission of learned senior counsel for the appellants that under Section 20 of the Specific Relief Act, 1963, the learned trial Judge could not have exercised the discretion in favour of the plaintiff and against the defendant on the ground of hardship or on the ground that the appellants herein had no other accommodation or on the ground that the price of the property had escalated is concerned, in my view, there is no merit in this submission of learned senior counsel for the appellants. The plaintiff had proved beyond reasonable doubt before the learned trial Judge that he was always ready and willing to comply with its part of obligation. The original defendant had committed breaches on his part under the said agreement for sale. The learned trial Judge has rendered a finding that the defendant had committed breach of his obligation under the agreement for sale and thus has rightly exercised the discretion in favour of the original plaintiff. Since the original plaintiff had proved breaches on the part of the original defendant, the original defendant having been found a defaulter of his obligation under the terms and conditions of the agreement for sale by the learned trial Judge, in my view the learned trial Judge could not have exercised his discretion under section 20 of the Specific Relief Act, 1963 in favour of the original defendant.

27. Insofar as the judgment of the Supreme Court in the case of K. Narendra vs. Riviera Apartments (P) Ltd., Vs. Advent Corporation (P)

Ltd and Ors. (supra) relied upon by Mr. Sakhare, learned senior counsel appearing for the appellants is concerned, there is no dispute about the proposition of law laid down by the Supreme Court. Under section 20 of the Specific Relief Act, 1963, the Court has to exercise the discretion while considering an application for grant of specific performance or not. The discretion has to be exercised in the facts and circumstances of each case. The Delhi High Court in case of AIR 1990, Delhi, 42 (supra) has held that grant of decree of specific performance is a rule whereas refusal is exception. In my view the principles laid down by the Delhi High Court in the said judgments would squarely apply to the facts of this case. I am in respectful agreement with the views expressed in the said judgment. The appellants did not make out any case for escalation of price nor had raised any such plea before the Courts below. A party who has committed breaches of the agreement could not seek any discretionary reliefs from the Court.

28. In my view, the findings recorded by the two Courts below are concurrent findings and are not perverse and thus cannot be interfered with by this Court under section 100 of the Code of Civil Procedure. In my view, there is no substantial question of law having arisen in this appeal. The appeal is devoid of merits and is accordingly dismissed.

29. In view of the dismissal the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

30. At this stage, Mr. Sakhare, learned senior counsel appearing for the appellants seeks stay of the order passed by the learned trial Judge and this Court to consider this judgment, I am inclined to grant such request for a period of six weeks from today. ”

25. He also refers to and relies on a judgment in the case of “Sukhbir Singh V/s Brij Pal Singh” reported in 1996 AIR (SC) 2510 : 1997 (2) SCC 200 to stress on that attendance in Sub Registrar's office to

have sale deed executed is a positive fact to prove that the plaintiff had been possessed of necessary funds to pass on the consideration amount and had with him the needed money for payment on the registration and to further consider that it is sufficient that person has capacity to pay and it is not necessary that he should always carry the money with him.

26. He refers to a Supreme Court judgment in the case of “*Motilal Jain V/s Ramdasi Devi and Others*” reported in (2000) 6 SCC 420 in order to meet with the submissions on behalf of the defendant that the plaint averments do not disclose readinesses and willingness being pleaded by the plaintiff. He particularly refers to the following excerpts as extracted from a decision in the case of “*Syed Dastagir V/s T. R. Gopalkrishna Setty*” reported in (1999) 6 SCC 337 : 1999 AIR SCW 2959

“ That decision was relied upon by a three Judges Bench of this Court in Syed Dastagirs case (supra), wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of ones case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed, Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or

language is required to take such a plea. The language in Section 16 (c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form. It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is subject- matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale. ”

27. Mr. Joshi further submits that in the present matter, readinesses and willingness has not only been pleaded, but the same would be found running all through in fact and in spirit when plaint will be read as a whole and it is not necessary that the expression of readinesses and willingness shall be in the terms as are expected by the defendant.

28. He then relies on a decision of Hon'ble Single Judge of this court in the case of “*Peeraji Limbaji Agawane V/s Hariba Nana Bhindge*” reported in 2015 (1) *Mh.L.J.* 53 to meet with the submissions on behalf of the defendant that higher amount of consideration be directed to be paid to the defendant by the plaintiff. He particularly lays stress on paragraph No.18 of said judgment

reading, thus -

“ 18. On the third point, it was submitted by the learned counsel for the appellants that for last so many years, plaintiff has been in possession of the suit property and he had given consideration of only Rs. 1,000/-. It was submitted that in view of these circumstances and the fact that the matter is being decided after many years, equity needs to be done to the defendant and direction needs to be given to the plaintiff to pay market price. In this regard, it can be said that as per the judgment and decree of the First Appellate Court, the remaining amount of consideration was deposited by the plaintiff in the Court. The suit was filed also immediately within period prescribed in the agreement. It is due to the aforesaid conduct of the defendant, the sale deed could not be executed. It cannot be said that the suit remained pending due to conduct of the plaintiff. On this point, reliance was placed on case reported as 2011 ALL SCR 1597 (Vimalleshwar Nagappa Shet Vs. Noor Ahmed Sheriff & Ors.). In this case, the Apex Court has discussed the provision of section 20 of Specific Relief Act. In the reported case due to the circumstance like filing of suit after lapse of long period, the relief was not given to the plaintiff and it was held that the prices of property in that urban area had increased very fast. In the case reported as Satya Jain cited supra while discussing the provision of section 20, the Apex Court considered the escalation in prices. The Apex Court has laid down that escalation of prices of property cannot be valid ground for refusing the relief of specific performance. The Apex Court however made order to give market price to the defendant. Similar directions were made in the case reported as 2011 (6) Mh.L.J. 84 [Preetam Kaur Vs. Prakash Ramdeo Jaiswal] by this court. ”

29. He submits that as considered under paragraph No.18, above, it is due to the defendant the amount could not be paid

as the defendant had refused to accept the same and has refused to execute sale deed. For such a lapse aforesaid observations would aptly apply and deflate arguments of the other side.

30. Mr. Joshi further refers and relies on a judgment of Delhi High Court in the case of *“Ajit Prashad Jain V/s N. K. Widhani and Others”* reported in *AIR 1999 Delhi 42* to give stress on that it is well settled that in the cases of contracts for sale of immovable properties grant of relief of specific performance is a rule and refusal is an exception. He refers to paragraph No.22 reading, thus -

(22) It was next contended that it is not equitable to grant the relief of specific performance to the plaintiff. Reliance has been placed by learned counsel for the defendants on Section of the Specific Relief Act, 1963 for the proposition that the court is not bound to decree relief of specific performance merely because it is lawful to do so. I have no quarrel with the proposition that the relief of specific performance is in the discretion of the court which is to be exercised not arbitrarily but on sound and well settled principles of law. It is equally well settled that in cases of contracts for sale of immovable properties the grant of relief of specific performance is a rule and refusal an exception on valid and cogent grounds shown. Two grounds have been put forth by defendants in support of their contention that it is not equitable to grant relief of specific performance to the plaintiff. The first ground is that the document Ex.PW2/1 is not a final agreement but final agreement had to be executed later on after grant of permission from Land and

Development Office. I do not agree. There is no such condition stipulated in Ex.PW2/1. All material terms have been incorporated in Ex.PW2/1. The total sale consideration and the manner of payments have been all agreed in Ex PW2/1. It is not stated therein that any other agreement was required to be executed. The other ground put forth by the defendants is that defendants would have been put to undue advantage had they delivered the possession to the plaintiff in as much as the plaintiff would have continued in possession but defendants would have been liable for payment of lease money. I cannot ignore that in terms of Ex.PW2/1 the plaintiff would have been out of pocket to the extent of Rs.1,75,000.00 before getting possession. It is evident that plaintiff did his best to make the payment and take possession but defendants have been avoiding it. Defendants could have taken permission from the Land & Development Office and on communication of it the plaintiff was required to make a further payment of Rs.35,000.00 . The defendants cannot take advantage of their own wrong and then plead it to be an unfair advantage to the plaintiff. Thus, I find no merit in this ground as well, for exercising discretion to refuse the relief of specific performance to the plaintiff.

31. He refers to a judgment of the Madras High Court in the case of “K. M. Madhavakrishnan Vs. S. R. Swami and Another” reported in AIR 1995 MADRAS 318, pointing out paragraphs No. 25 and 39 from the same to combat contention on behalf of the defendant that the agreement of sale had been got executed using undue influence and coercion and price escalation. It has been considered, thus in paragraphs No. 25 and 39;

25. We are unable to accept the argument of Mr. G. Subramaniam,

learned senior counsel for the appellant, that the suit agreement is vitiated by undue influence and fraud for this reason. The trial court after elaborate consideration of the evidence let in by the parties in this suit, found that the suit agreement is valid and enforceable. The lower court held that Paramayammal voluntarily executed the agreement, that the consideration for the transaction was reasonable and that the agreement is not vitiated by undue influence or fraud. The respondents, in order to substantiate their case that the consideration fixed under the suit agreement Ex.A-4 was reasonable and not inadequate as contended by the appellant, filed the sale deeds Exs.A-33 and A-57 to A-60. In addition, they have also filed the wealth tax and agricultural income-tax assessment orders of the appellant viz., Exs.A-45 to A-51. In order to show that Paramayammal was attending to her matters on her own, the respondents filed Exs.A-23, and A-26 to A-32, which are affidavits and counter statements filed by Paramayammal in Civil Courts and land revenue proceedings with the help of her advocate Mr. R. Arjunan. We have perused the same. The above documents disclose that she had independent legal advise in all the matters. In fact, the Division Bench, on the earlier occasion, had drawn an adverse inference against the defendants for not examining Mr. R. Arjunan, Advocate of Paramayammal, who was instrumental for preparing the suit agreement. The trial court also dealt with this point in paragraphs 13 and 14 of its judgment. The trial court has pointed out the various circumstances in regard to the inability of Paramayammal to evict the tenants and the necessity to sell the property was also proved by various circumstances as pointed out by the trial court and also by the Division Bench in the earlier proceedings. The case of the appellant that the 2nd respondent was in a position to dominate the mind of Paramayammal is not at all established as per the finding of the lower court at paragraph 16 of its judgment. In the above circumstances, we are unable to countenance the contention of Mr. G. Subramaniam that the suit agreement is vitiated by undue influence and fraud and therefore, we reject the said contention.

*39. Even though the fairness of the price was concluded by the earlier Division Bench judgment, Mr. G. Subramaniam contended that the question of grant of equitable relief of specific performance has got to be seriously considered by us. According to him, a paltry sum of Rs. 10,011/- was paid by way of advance and that all through the respondents have never moved the trial court for trial of the suit and they have been only delaying and subsequently, the old lady herself has been fighting the litigation. However, since the decree for specific performance is against deceased Paramaammal and at present her heirs, if it is granted, it will be grossly inequitable. The respondents have taken possession of the property as early as 19-3-1968 and that they have been enjoying the property. This contention of Mr. G. Subramaniam is also liable to be rejected. Increase in price of properties cannot be a ground for refusing the decree for specific performance. **The parties are not responsible for the law's delays.** The respondents have denied that they have enjoyed the property. Once the fairness of price is concluded by the earlier Division Bench judgment of this Court, which was later on confirmed by the Apex Court, it is not at all open to the learned Senior Counsel for the appellant to raise this contention once over again. Hence, we reject this contention as well.*

32. Perusal of the judgments of the courts hitherto would show that trial court had considered the agreement of sale having been entered into by defendant with consent of his family members and the document has been registered one and there had been no complaint thereafter, suit would not be said to be bad for non joinder of consenting parties.

33. So far as contention with regard to limitation is concerned,

it does not appear to carry any water in the same, having regard to the terms of agreement of sale admittedly executed between the parties. The sale deed was to be executed within two months from 31st May, 2002. Two months were to expire on 31st July, 2002. The suit has been filed before expiry of three years therefrom. Further, it would also have to be considered that pursuant to communication dated 21st July, 2002, defendant was expected to be in Sub Registrar's office on 30th July, 2002 while there is no evidence coming forth that in the interregnum refusal to perform defendant's part of contract had ever been communicated to the plaintiff. Thirtieth day of July 2002 at the most can be said to be an indication of communication of refusal to perform his part of contract by the defendant. In such a case, suit having been filed on 28th July, 2005 is well within prescribed period of limitation under Article 54 of the Indian Limitation Act.

34. Aforesaid apart, the courts, trial as well as appellate, have considered pleadings and submissions on behalf of the parties and the case law as had been cited by either side and have found the suit to be within limitation. Said finding is seldom liable to be found fault with.

35. It appears, there is no dispute over that communications

dated 21st July, 2002, 1st August, 2002, 9th April, 2005 and 19th May, 2005 have been acknowledged by the defendant. Additionally, the plaintiff has produced evidence with regard to his attendance in the Sub Registrar's office on 30th July, 2002. Upon appreciation of all the events and the evidence, the trial as well as appellate courts have found that the same amply bears out plaintiff's readiesses and willingness to perform his part of contract and that the defendant having received ₹ 2,00,000/- on the date of agreement of sale. Apart from the evidence of the plaintiff, there has been evidence by one Advocate Umesh Nagarkar supporting plaintiff's case. Trial court as well has considered that apart from the evidence, had the defendant been not really willing to execute agreement of sale, he had an opportunity to complain to the Registrar that he is being forced to execute agreement of sale, which he did not wish. The trial court has considered that at no point of time thereafter, the defendant has ever complained of exercise of undue influence and/or coercion for execution of agreement of sale. It is only while it came to defending the case, contention about coercion and undue influence is being sought to be raised. In the circumstances while overwhelmingly it emerges that there has been agreement of sale upon an agreed consideration, there has

been stark failure by the defendant to lend credence to his contention about exercise of coercion and undue influence bringing about agreement of sale. There is no evidence adduced by the defendant in support of the claims being made.

36. One more thing that will have to be adverted to is that it appears that letters sent from 21st July, 2002 onwards to 19th May, 2005 have been acknowledged to have been received at the end of the defendant, however, to none of this letters there had been any reaction from the defendant's side. Further contention about its non production appears to be a friable ground, in the circumstances as originals of the letters are supposed to be with the defendant. Had the contents of the letters been not as contended on behalf of the plaintiff, the defendant would have been easily able to establish the same, in the circumstances.

37. Pleadings, as they are appearing, particularly contents of paragraphs No.21, 22 and 24 in no uncertain term depict communications have been made by the plaintiff showing his readiesses and willingness to perform his part of contract requesting the defendant to discharge his obligation of executing sale deed in favour of the plaintiff. Execution of agreement has not been denied by the defendant. There is document with

regard to payment of earnest amount. There is evidence by the plaintiff. Payment of earnest amount could not be said to have been rebutted. Further it will have to be taken into account that agreed consideration does not appear to be unreasonable, having regard to close relationship between the parties and that there is no earlier complaint about non receipt of the earnest amount elsewhere save in the written statement. The courts have also considered that escalation of prices would not be a ground to refuse specific performance of the contract. Price escalation can hardly be made use of by the defendant in this case having regard to that the lapse would be attributable to defendant for non performance of his part of contract which is amply borne out from evidence. Equities, as such, would not favour him in the facts and circumstances.

38. While two courts have appreciated evidence as is appearing on record, the appreciation does not seem to be away from evidence, as has been adduced. In the matters of specific performance in respect of sale of immovable properties, grant of specific performance is considered to be rule and refusal is an exception.

39. In the circumstances, discretion exercised by the courts

hitherto would seldom be liable to be faulted with, as argued on behalf of the defendant by learned advocate Mr. Kulkarni. Substantial question of law as referred to above, in the circumstances stands answered accordingly. Second appeal is dismissed.

40. Civil Application for production of documents, pursuant to Order LXI, Rule 27 of the Civil Procedure Code, having regard to facts and circumstances of the case has little relevance so far as decision making in the matter is concerned and as such, stands rejected. Rest of the civil applications stand disposed of.

[SUNIL P. DESHMUKH, J.]

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