



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 15.09.2017

Delivered on :: 22.12.2017

CORAM

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.Nos.81 of 1991 and 248 of 1997
and

Cross Objection No.109 of 1993

O.S.A.No.81 of 1991

1.N.Swaminathan(Deceases)
2.Rajakumari David
3.Asa John divyanathan
4.Susanna Rani Sekhar ...Appellants in O.S.A.No.81/1991
5.E.V.Swaminathan
6.Alfred Swaminathan
7.Sukumar Swaminathan
(Appellants 5 to 7 brought on
record as Lrs of the deceased first
appellant vide order of court dated 29.06.2011
made in Memo dated 27.06.2011 in
USSR No.3278/2011)

vs.

1.N.Sathyanathan & Sons (P) Ltd.,
by its Managing Director,
K.Manickyaraj Ballal

2.K.Manickyaraj Ballal (deceased)
3.K.R.Ballal (deceased)
4.K.Jayavarmaraja Ballal
5.N.Raghava Hebbar
6.Saroja Hebbar
7.Indira Devi
8.Rajendra Ballal
9.Suprabha Patil
10.Shyamala Devi
11.Ajay Ballal
12.Vysali Ballal
13.Veerendra Ballal
14.Kunniammal
15.Sumathy R.Ballal
16.Priya Ballal
17.Divya Ballal
18.Vanamala Ballal(wife)
19.Shermila Kalsoor (Daughter)
20.Goutham Ballal (Son)



(RR 15 to 17 have been brought on record as Lrs of the deceased 3rd respondent as per order of Court dated 14.09.2001 in C.M.P.Nos.11777 and 11778 of 2001)

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(RR 18 to 20 brought on record as Lrs of deceased R2 vide order of court dt.24.6.2011 made in Memo dt.24.6.2011 in USSR.No.3280/11)

...Respondents in O.S.A.No.81/1991

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent praying to set aside the judgment and decree dated 11.06.1990 passed in C.S.No.588 of 1982.

For Appellants : Mr.T.V.Ramanujam,
Senior Counsel
for Mr.A.Sathyaseelan

For 1st Respondent : Mr.A.L.Somayajee,
Senior Counsel
for Mr.T.S.Gopalan & Co.,

For Respondents 2-6: Mr.M.S.Krishnan Sr.Counsel for
for M/s.T.S.Gopalan & Co.,

For Respondents : Mr.P.Ragunathan
18 to 20 and for M/s.T.S.Gopalan & Co.,
7 to 14

For Respondents 15-17: No appearance

O.S.A.No.248 of 1997

- 1.Asa John Divyanathan
- 2.Susanna Rani Sekhar
- 3.Rajakumari David
- 4.N.Swaminathan (Deceased)
- 5.E.V.Swaminathan
- 6.Alfred Swaminathan
- 7.Sukumar Swaminathan

(Appellants 5 to 7 brought on
record as Lrs of the deceased fourth
appellant vide order dated
23.06.2011 made in Memo dated
16.06.2011 in USSR No.3070/2011

...Appellants

vs.

- 1.N.Sathyathan & Sons (P) Ltd.,
- 2.Indira Devi
- 3.Rajendra Ballal
- 4.Sripabha Patil
- 5.Syamala Ballal



6.Ajay Ballal
7.Vaishali Ballal
8.Veerendra Ballal

...Respondents

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent praying to set aside the judgment and decree dated 11.06.1990 in C.S.No.600 of 1979.

For Appellants : Mr.T.V.Ramanujam,
(1-3 & 5-7) Senior Counsel for
Mr.K.Kuppusamy

For 1st Respondent : Mr.S.Parthasarathy
for M/s.T.S.Gopalan & Co.,
For Respondents 2-3 : No appearance

Cross Objection No.109 of 1993

N.Sathyathan & Sons (P) Ltd.,
by its Managing Director,
K.Manickyaraj Ballal ... 1st Respondent/Cross-objector

vs.

1.N.Swaminathan (Deceased)
2.Rajakumari David
3.Asa John Divyanathan
4.Susanna Rani Sekhar
5.E.V.Swaminathan
6.Alfred Swaminathan
7.Sukumar Swaminathan
(Appellants 5 to 7 brought on
record as Lrs of the deceased fourth
appellant vide order dated
23.06.2011 made in Memo dated
16.06.2011 in USSR No.3068/2011 ... Appellants

Cross Objection filed under Order 41 Rule 22 CPC, against the judgment and decree, dated 11.06.1990 in C.S.No.588 of 1982 insofar as the findings are against the Cross Objectors.

For Petitioner : Mr.M.S.Krishnan,
Senior Counsel
For Respondents: Mr.T.V.Ramanujam,
Senior Counsel,
M/s.K.Kuppusamy

COMMON JUDGMENT

ABDUL QUDDHOSE, J.

O.S.A.Nos.81 of 1991 and 248 of 1997 are filed against the common judgment and decree dated 11.06.1990 made in C.S.Nos.600 of 1979 and 588 of 1982 by the learned single Judge of this Court.



2.The appellants in the above two appeals are legal representatives of the deceased R.P.David and N.Swaminathan. R.P.David died during the pendency of the suit and his legal representatives were brought on record as plaintiffs 2 to 4 in C.S.No.600 of 1979. R.P.David and N.Saminathan were the defendants 1 and 2 and the legal representatives of the said R.P.David are the defendants 11 to 13 in C.S.No.588 of 1982.

I.Reliefs sought for in both the Suits:-

3.C.S.No.600 of 1979 was filed by the deceased R.P.David on 14.11.1979 for a judgment and decree,

(a)directing the defendants 1 to 9 to deliver possession of the suit property to the plaintiffs;

(b)for a sum of Rs.3,44,890/- against the defendants 4 to 9 being the arrears of rent.

(c)for interest at 12% p.a. on Rs.2,87,000/- from the date of plaint till date of payment.

(d)directing the defendants 4 to 9 to pay rent at the rate of Rs.7,000/- per month from the date of plaint till date of delivery of possession of the suit property to the plaintiffs 2 to 5 and for costs.

4.C.S.No.588 of 1982 was filed by the defendants in C.S.No.600 of 1979 for a decree and judgment:

(a)directing the defendants 1 and 2 to execute a sale deed in favour of the first plaintiff company in respect of the land bearing Door No.111/112, Kodambakkam High Road, Madras-34 present Door No.5, Kodambakkam High Road, Madras-34, for stated consideration of Rs.9 lakhs already paid to defendants 1 and 2 and cause it to be registered after producing necessary Income Tax Clearance Certificate under Section 230-A of the Income Tax Act and in default of their so doing, the Court be pleased to execute or cause it to be executed through an officer appointed by the Court and to have the same registered.

(b)directing the defendants 1 and 2 to pay to the first plaintiff a sum of Rs.1,31,229.52 being the amount paid in excess of the sale consideration payable to the defendants 1 and 2 under the agreement dated 10.10.1974 together with interest at 10% per annum from the date of plaint till the date of realisation or in the alternative, to direct the defendants 1 and 2 to execute a sale deed in favour of the plaintiff No.1 for a sum of Rs.15,00,000/- and after taking an account in respect of the money paid to the defendants 1 and 2 and ascertaining the amount due and payable, if any and on such payment of the sum that may be so ascertained after getting the necessary certificate under Section 230-A of the Indian Income-tax Act and in default of their so doing, the Court may be pleased to execute or cause to be executed the sale deed and to have the same registered.

(c)granting a permanent injunction restraining all the defendants from interfering in any manner with the ownership, possession and enjoyment of the first plaintiff company of the suit property and for costs.



II FACTUAL MATRIX:-

5.The brief facts of the case are as follows:-

The property in an extent of 47 grounds with a bungalow bearing Door Nos.111 and 112, Kodambakkam High Road, Madras 34 was owned by one R.P.David and N.Saminathan who purchased it under sale deed dated 16.08.1961. The said David and Saminathan put up a hotel in the said premises. They promoted and registered a Company in the name of M/s.N.Sathianathan and Sons Private Limited. The landed property was leased out to the Company for a period of 40 years and the company was permitted to demolish the old building and put up a new building to suit the convenience of the hotel business under lease deed dated 17.09.1970. Thus under the management of said R.P.David and Saminathan a hotel in the name of "Hotel Palmgrove" was established and was running. The first defendant in C.S.No.600 of 1979 K.Jayaraja Ballal entered into an agreement dated 27.09.1973 with the deceased R.P.David and Saminathan and M/s.N.Sathyanathan and sons (P) Ltd. Under the said agreement, it was agreed to transfer the shares and assets of the company and the land on which the hotel is situated to K.Jayaraja Ballal and or his nominees. The total consideration agreed was Rs.74 lakhs for the entirety of the agreement. On the date of agreement, a sum of Rs.5 lakhs was paid and a further sum of Rs.15 lakhs was agreed to be paid on 06.10.1973. It was further agreed that on receipt of the sum of Rs.15 lakhs on 06.10.1973, the possession of the entire property to be handed over to K.Jayaraja Ballal for carrying out repairs and additions etc. K.Jayaraja Ballal had to pay the balance sale consideration on 06.11.1973. After the receipt of the balance sale consideration, the Company, namely, M/s.Sathyanathan and sons, R.P.David and N.Saminathan had to arrange for the transfer of the shares of the Company to K.Jayaraja Ballal or his nominees and also convey the landed property. It was also agreed that if necessary, the Company also shall also execute a surrender deed in favour of K.Jayaraja Ballal in respect of the unexpired period of lease under the deed dated 17.09.1970.

6.In accordance with the agreement, possession was taken over on 06.10.1973 on payment of Rs.15 lakhs and after making necessary repairs, the Hotel started functioning from 01.11.1973 under the purchaser. Subsequently, the shares owned by some of the family members of R.P.David and N.Saminathan were also transferred to K.Jayaraja Ballal and his nominees. It is an admitted case that the agreement dated 27.09.1973 was subsequently amended and the supplemental agreement dated 14.02.1974 was entered into by which the total consideration of the land and the shares were apportioned as Rs.15 lakhs and 59 lakhs respectively. 10% interest was agreed to be paid on Rs.39 lakhs (59-20) from 06.12.1973 and a sum of Rs.7,000/- per month was agreed to be paid as rent from 06.12.1973 till the date of sale of the land. The accrued interest on Rs.39 lakhs to be paid on or before 28.02.1974. The amount of Rs.39 lakhs to be paid on or before 30.06.1974, if not, possession



of the Hotel has to be delivered back. The time granted as above was subsequently extended upto 30.09.1974 by endorsement dated 20.06.1974 in the agreement dated 14.02.1974 and the interest rate was enhanced to 11%.

7.The case of the plaintiffs in C.S.No.600 of 1979 was that though the defendants paid the entire consideration relating to shares and got the shares transferred did not make any payment and complete the purchase in respect of the land and did not also make payment towards the rent as agreed. When reminded, the first defendant expressed its difficulties and inability to complete the transaction. Thereupon notice was issued by the plaintiffs calling upon the first defendant K.Jayaraja Ballal to make payment of Rs.15 lakhs agreed to be paid for the land and also arrears of rent. But there was no response. Hence, the suit.

8.The defendants admitted the agreement dated 27.09.1973 and also admitted the supplemental agreement dated 14.02.1974 and the endorsement made thereon dated 20.06.1974, however, projected the case of yet another subsequent agreement dated 10.10.1974 and contended that by the said agreement, the earlier agreements were superseded and the total consideration had been reduced to Rs.59 lakhs and the entire consideration has been paid and as such the plaintiffs are not entitled to the relief for recovery of possession and are bound to execute the sale deed in favour of the defendants. They also put forward a case for refund of the excess amount. The case of parties in C.S.No.588 of 1982 is one and the same as stated above but in the reverse order.

9.On the above said pleadings, as many as 2 main issues and 5 additional issues were framed in C.S.No.600 of 1979. In C.S.No.588 of 1982 as many as 11 issues were framed for consideration.

10.The learned single Judge, after taking into consideration the arguments advanced, materials placed both oral and documentary by a common judgment dated 11.06.1990 passed a decree in C.S.No.600 of 1979 directing the defendants 4 to 9 to pay a sum of Rs.3,44,890/- with interest at the rate of 12% per annum on Rs.2,87,000/- from the date of plaint till the date of payment and also directing the defendants 4 to 9 to pay the plaintiffs a sum of Rs.7,000/- per month towards rent from the date of plaint till the date of deposit of Rs.15,00,000/- with interest at 6% per annum from 27.09.1973. However, the learned single Judge dismissed the suit in respect of the relief of recovery of possession of the suit property.

11.In the suit in C.S.No.588 of 1982, it was declared that the agreement dated 10.10.1974 is unenforceable, however, a decree for specific performance of the agreement of sale was granted in favour of the plaintiffs on deposit of a sum of Rs.15,00,000/- with interest at 6% per annum from 27.09.1973 by the 1st plaintiff within four months from the



date of decree and on such deposit the defendants were directed to execute the sale deed in favour of the first plaintiff company in respect of the suit property. The above said judgment is now under challenge in the two appeals.

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12. Aggrieved by the direction of the learned single Judge directing the plaintiffs in C.S.No.588 of 1982 to deposit a sum of Rs.15,00,000/- with interest thereon from 27.09.1973 till the date of deposit for ordering specific performance, the plaintiffs in the suit filed Cross Objection in Cross Objection No.109 of 1993. This Court by judgment dated 24.07.2002, disposed of the appeals in O.S.A.Nos.81 of 1991 and 248 of 1997 and dismissed Cross Objection No.109 of 1993 with the following direction:-

"For the said reasons, we are of the view that the ends of justice would be met if a direction is issued to the defendants to pay a sum of Rs.98,00,000/- at the rate of Rs.2 lakhs per ground for the 47 grounds, which is reasonable in our considered opinion, taking into consideration of the passage of time particularly from the date of agreement in the year 1973 and the date of filing of the suit in the year 1979 for recovery of possession. As plaintiffs received the rent for the period as well as for future, we are not inclined to award any interest. Time is granted for 10 weeks from today for making the above said payment and the defendants have to intimate the plaintiffs the date for execution and registration of the sale deed and on such date, the plaintiffs have to execute the sale deed. Apart from the above, we are not inclined to interfere with the decree granted by the learned single Judge."

13. Challenging the above said judgment of this Court, the appellants have filed appeals in Civil Appeal Nos.6026 and 6027 of 2003 before the Hon'ble Supreme Court. By order dated 21.10.2010, the Hon'ble Supreme Court remanded the matter back to this Court for fresh disposal in accordance with law. Accordingly, the matter is stood before us for our consideration.

III SUBMISSIONS OF THE COUNSELS:-

14. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the appellants made the following submissions:-

(a) The learned single Judge in his judgment dated 11.06.1990 has given a finding that the lease got merged with the agreement dated 27.09.1973 (Ex.P1) and supplemental agreement dated 14.02.1974 (Ex.P2) and the lease is not subsisting and it has worked itself out and hence the defendants stand that the lease was subsisting has not been accepted.

(b) that the plaintiffs in C.S.No.588/1982 has sought for a decree of specific performance based on agreement dated



10.10.1974 (Ex.P3=Ex.D5). According to the appellants, the agreement dated 10.10.1974 is not enforceable. It arose out of a mistake of fact. It was never intended to be acted upon and it was never acted upon. It was abandoned. It was not a binding contract between the parties and it has been brought into existence for some other purpose. In the agreement dated 10.10.1974 (Ex.P3=D5), it is stated that the company will have the option to buy the land measuring about 47 grounds. It speaks of payment of lease rent of Rs.3000/- per month. It is alleged that for sale of shares, the consideration is Rs.48 Lakhs and for the sale of the land, it is alleged as Rs.9 lakhs. It is alleged that Rs.11 Lakhs to be deposited towards the lease rent payable and towards future sale of land. It is stated that the amount due to Corporation Bank, Coimbatore by the Company is Rs.8,36,070/- and it is stated that the credit balance or amounts advanced by R.P.David and N.Sathyanathan to the company as on 31.10.1973 is Rs.22,53,732/-. Rs.11,00,000/- is mentioned as amount towards purchase of 47 grounds. The words "lease amounts" have been struck off in Serial No.3. In Clause No.7, Rs.23 Lakhs is mentioned as the amount which has been paid. The agreement dated 10.10.1974 does not represent the real state of affairs. It contains intrinsic evidence to show that the agreement dated 10.10.1974 has been prepared for some other purpose and it was not intended to be given effect to or acted upon. The transaction started in the year 1973. The first document is the agreement dated 27.09.1973 (Ex.P1=D3). This is an important document. The document reads as "agreement for sale". The first party is N.Sathyanathan & Sons Private Limited represented by its Managing Director, N.Swaminathan. The second party is N.Swaminathan and R.P.David, sons of N.Sathyanathan. The third party is K.Jayaraja Ballal, an individual who is stated to be residing at Rajagraha, Mangalore. This address will be important because it was alleged in the plaint as if K.Jayaraja Ballal was living in the family house at Vivekananda Road and it is also alleged that the copy of the agreement dated 10.10.1974 (Ex.P3=Ex.D5) has been discovered after the death of K.Jayaraja Ballal on 31.12.1981 at his family house at Vivekananda Road which is false.

(c) In the agreement dated 27.09.1973 (Ex.P1=Ex.D3), the Company has joined as a vendor along with R.P.David and N.Swaminathan who are admittedly the owners of the land and the purchasers are K.Jayaraja Ballal and his nominees. The consideration under the agreement is fixed at Rs.74 Lakhs. R.P.David and N.Swaminathan have been holding 160 shares along with their family members at a face value of Rs.10,000/- each. In the agreement dated 27.09.1973, there is a clause that the company will surrender the unexpired period of lease. The background is that the owners of the land measuring about 47 grounds (1 Cawny and 22 grounds) is admittedly owned by R.P.David and N.Swaminathan, now owned by their legal heirs. R.P.David and N.Swaminathan founded a company under the name and style of N.Sathyanathan & Sons Private Limited and their



family held the entire shares. The said two brothers executed a registered lease deed dated 17.09.1970 in favour of the company. The company put up superstructure and started a hotel business under the name and style of 'Hotel Palmgrove'. The hotel had to be closed due to some labour problem in 1972 and thereafter, R.P.David and N.Swaminathan were looking for purchasers to buy the company, that is, the shares in the company and also to sell the land owned by them. K.Jayaraja Ballal from Mangalore, Karnataka evinced keen interest and has been negotiating with them which resulted in agreement dated 27.09.1973 marked as Ex.P1=D3. A sum of Rs.5 Lakhs has been paid as advance on 27.09.1973. In the schedule, Schedule-A is the land and Schedule-B is the superstructure, fittings and movables etc. relating to Hotel Palmgrove. In clause No.8, it is stated that time shall be the essence of the contract. It is stated that K.Jayaraja Ballal shall make a further payment of Rs.15 Lakhs by way of cheque favouring the first party on 06.10.1973 and the balance of Rs.54 Lakhs not later than 06.12.1973. Admittedly, these amounts have not been paid even though time is the essence of the contract. The plaint is signed and verified by Manickaraj Ballal, as Managing Director. Manickaraj Ballal has not entered the witness box. An adverse inference has to be drawn. It is further submitted that Raghava Hebbar of the Hebbar family has examined himself as DW.1. The relevant portions of the evidence of DW.1 have been brought to the notice of the court. D.W.1 in his evidence, has answered that K.Jayaraja Ballal was the sole spokesman and representative of the three families. He has stated that they had left the entire matter with him for this negotiation. DW.1 further states that his relationship with K.Jayaraja Ballal was very cordial and that the share holding pattern of the three families is that, the Ballal's family held 90 shares, Acharya's family held 40 shares and Hebbar's family (that is the family of DW.1) held 30 shares, each share of Rs.10,000/- face value. DW.1 states that the hotel was re-commenced by the new management in the end of November 1973. D.W.1 speaks about a loan being taken from Karnataka Bank, Syndicate Bank and Corporation Bank to pay off R.P.David and N.Saminathan and that it was taken sometime in October 1974. He would further state that when a question was asked that as per the clause, the balance sale consideration of Rs.54 lakhs had to be paid not later than 06.12.1973, when the payment was made, D.W.1 states that it was not paid before that date and he further states that time was the essence of the contract.

(d) The learned single Judge has been pleased to hold that the agreement dated 10.10.1974 (Ex.P.3 =D5), is not enforceable and no relief can be granted. The learned single Judge has also given valid reasons as to how the agreement dated 10.10.1974 cannot be relied upon and no material fact has been placed before the Court. The fair market value claimed was Rs.9 lakhs. The value of the land agreed and fixed in the year 1973 was Rs.15 lakhs. After the period of



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one year, the land value has gone down to Rs.9 lakhs. So on the face of it, there is no basis to reduce the value from Rs.15 lakhs to Rs.9 lakhs. If the entire consideration has been paid as alleged in the agreement dated 10.10.1974, there is no necessity to pay monthly rent of Rs.3000/-. The learned single Judge has also given reasons that there is variation between what has been pleaded in the plaint and what is contained in the agreement dated 10.10.1974. The learned single Judge has commented upon the evidence of DW-1 and according to him, he came to know the agreement only after death of K.Jayaraja Ballal and not having personal knowledge and the evidence of DW-1 cannot be said to be satisfactory. The learned single Judge has given the finding that there is inconsistency between the pleadings and in the agreement dated 10.10.1974. The learned single Judge has also given a finding that the defendants had borrowed Rs.39 lakhs on the mortgage of the building, plant and machinery etc. The learned single Judge has referred to clause 7 of the agreement dated 10.10.1974 regarding Rs.23 lakhs and if really, the entire amount has been paid, the sale deed could have been taken. The learned single Judge has referred to the evidence of DW-1 wherein he has stated that though the agreement dated 10.10.1974, it was signed only on 18.10.1974 and Rs.23 lakhs was paid on that date.

But in Ex.D-5 dated 10.10.1974, there is nothing to show that the payment was made on 18.10.1974. But clause 7 of Ex.D.5, reads as if the sellers have acknowledged the receipt of Rs.23 lakhs. The learned single Judge has given a finding that the signatory of Ex-D-5 RP David and Jayaraj Ballal are not alive. DW-1 was a party to the document. DW.1 was not a party to the agreement dated 10.10.1974. So the evidence of P.W-1 has to be accepted. Inasmuch as the evidence of DW-1 is only said to be in the nature of hearsay. The learned single Judge has given a clear finding that a close scrutiny of various clauses in Ex.D-5 and the calculations thereunder only points out that it has been prepared for some ulterior purpose and not for one entered into to govern the parties concerned and that there is nothing to show the payment of Rs.23 lakhs on the agreement dated 10.10.1974 and if really, the entire amount has been paid, it is not known why the sale deed has not been obtained immediately. The learned single Judge has referred to the intended written statement of the 1st defendant K.Jayaraja Ballal, there is no whisper about the agreement dated 10.10.1974. The learned Single Judge has given a finding that possession was already handed over much earlier to the agreement dated 10.10.1974 and new management reopened the hotel and continued the hotel business from 30.11.1973. The learned single Judge has clearly held that there is inconsistency between the pleading and the contents of the agreement dated 10.10.1974 and the contentions are purely by way of afterthought. The learned single Judge has also given a finding that even if there was no much profit in the business and there was a loss, these facts cannot be a ground for reducing the price of the



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land already fixed at Rs.15 lakhs and the learned single Judge has taken a judicial notice of the fact that it is common knowledge that in the city of Madras, the land value is rising and has clearly held that the price of land value was reduced to Rs.9 lakhs cannot be accepted.

(e) The defendants have not established that the consideration under the agreement dated 27.09.1973 reiterated in the agreement dated 14.02.1974 are based on incorrect representations. The learned single Judge has commented that after the agreement dated 10.10.1974 sale deed has not been executed and there was no demand on the side of the plaintiffs to execute the sale deed and has given a clear finding that the consideration fixed under the agreement of sale dated 27.09.1973 and reiterated in the agreement dated 14.02.1974 are not based on any incorrect representation as alleged and that the plaintiffs are not entitled to contend that the price fixed under the agreement dated 10.10.1974 alone is the correct price and the learned single Judge has given a finding that the agreement dated 10.10.1974 was not acted upon and has been given up on the ground of mistake. The learned single Judge has given a finding that under the lease deed dated 17.09.1970, the monthly rent was Rs.2500/- and lease deed has been superseded by the agreement of sale and the lease is merged. It cannot be contended that the registered lease deed dated 17.09.1970 is still in operation and not terminated and that the contention with regard to the lease to be in operation is inconsistent with regard to the plea taken regarding benefit under section 53-A of the Transfer of Property Act and hence the finding has been given that registered lease deed is not in operation. The learned single Judge has given a finding that possession has been taken on 06.10.1973 and in such circumstances, it is clear that possession was taken long earlier to the agreement dated 10.10.1974 and that such possession was only in part performance of the agreement of sale. The learned single Judge has referred to clause 3 of the agreement dated 27.09.1973. But the learned single Judge observed that the defendants are entitled to the benefit under Section 53-A of the Transfer of Property Act. According to him, the said finding is erroneous. Under the agreement dated 27.09.1973 possession was handed over to K.Jayaraja Ballal and not to the company. Therefore, the finding that the defendants are entitled to the benefit of Section 53A of the Transfer of Property Act is incorrect and K.Jayaraja Ballal is not entitled to the benefit under Section 53-A of the Transfer of Property Act.

(f) He would further submit that admittedly he has committed breach and he was not ready and willing to pay the balance sale consideration. Admittedly, he has not paid the balance sale consideration. Even the three families said to have represented K.Jayaraja Ballal have not come forward to file any suit for specific performance based on the agreement dated 27.09.1973 and supplemental agreement dated 14.02.1974. They could not have filed the suit for specific performance.



(g) In the agreement dated 27.09.1973 followed by the supplemental agreement dated 14.02.1974 and in the endorsement dated 20.06.1974, the time for performance has been extended upto 30.09.1974. For the purpose of limitation, Article 54 of the Limitation Act 1963 is relevant. When in the agreement for sale time for performance has been fixed the suit for specific performance has to be filed within three years from the date fixed for performance. As stated above, the time fixed for performance was 30.09.1974 and the suit for specific performance if any, ought to have been filed within three years i.e., 30.09.1977. No suit has been filed. No suit can be filed thereafter. The instant suit C.S.No.588 of 1982 was filed only on 05.11.1982. They were not ready and willing. As the balance sale consideration has not been paid, they cannot claim protection under Section 53-A of Transfer of Property Act as the owners of the property are entitled to recover possession because admittedly the lease deed got merged with the sale agreement dated 27.09.1973 and supplemental agreement dated 14.02.1974 and hence, under the agreement, possession has been handed over on 06.10.1973 in part performance. Thus, the possession was with K.Jayaraja Ballal under the agreement dated 27.09.1973 followed by the supplemental agreement dated 14.02.1974.

(g) C.S.No.600 of 1979 filed seeking possession it does not refer to 10.10.1974 agreement since it is a mistake as per the agreement dated 12.06.1975. It cannot be taken as refusal of 10.10.1974 agreement and therefore, the argument that C.S.No.588 of 1982 was filed within three years was proper is flawed.

(h) In the plaint in C.S.No.588 of 1982, it is stated as if the agreement dated 10.10.1974 was not known to the company as if it was discovered after the death of K.Jayaraja Ballal on 31.12.1981 which is false. This is an invented story for the reasons that the agreement dated 10.10.1974 has been signed by Mr.Srinivasachar representing the company as Director. So the company has got knowledge of the agreement dated 10.10.1974 on that day itself. The story as if this agreement was discovered in the family house of K.Jayaraj Ballal after his demise on 31.12.1981 is false. K.Jayaraja Ballal was not residing in the family house at Vivekanandha Road. On the other hand, K.Jayaraja Ballal was residing in his house known as Rajagraha which is 1 km away from the family house of Ballal at Vivekananda Road. Thus the entire pleading in paragraph 38 of the plaint as if the agreement 10.10.1974 was discovered in the family house of Ballal at Vivekananda Road is false. In the agreement, dated 10.10.1974 there are 2 witnesses, Krishnamurthy, son of Srinivasachar and Sukeerjit Raj-DW-5. Therefore, the contention that as if agreement dated 10.10.1974 was kept as a guarded secret by K.Jayaraja Ballal is false. In fact it was only Manickaraj Ballal who has been in the day-to-day affairs of the hotel from 1974. In fact Manickaraj Ballal has written various letters under the instructions from K.Jayaraja Ballal which goes upto



September 1974. In fact Manickaraj Ballal has sent a demand draft to R.P.David stating that he is sending as per instructions from K.Jayaraja Ballal. Thus in the year 1974, there was cordial relationship between K.Jayaraja Ballal and Manickaraj Ballal. As per the evidence of DW-5 and DW-2, the relationship between K.Jayaraja Ballal and Manickraj Ballal was cordial and only thereafter disputes arose. In fact, the following exhibits may be relevant. Ex.D-9 sent by Manickaraj Ballal to Swaminathan shows a DD dated 09.07.1974 was sent as per the instructions of K.Jayaraja Ballal. Then comes a letter dated 09.08.1974-D-11 from Manickaraj Ballal to Swaminathan sending a DD as instructed by K.Jayaraja Ballal. Then comes a letter dated 16.8.1974-D-12 sent by R.P.D. by Manickaraj Ballal to Swaminathan. Then comes a letter dated 12.09.1974 - marked as Ex.D13 from Manickaraj Ballal to Swaminathan as instructed by K.Jayaraja Ballal. Letter dated 10.09.1974-D-35 from Manickaraj Ballal to the Commissioner, Corporation, Madras. Then it is stated that 10.10.1974 agreement has come into existence. Manickaraj Ballal was in management in Madras and managing Hotel Palmgrove. Hence, the story as if on 10.10.1974 agreement was taken by K.Jayaraja Ballal and kept in family house is false. K.Jayaraja Ballal is not residing in the family house. He was residing in Rajagraha 1 km away from the family house at Vivekanandha Road. Thus the agreement dated 10.10.1974 was to the knowledge of the company represented by Srinivasachar on 10.10.1974 itself. Manickaraj Ballal was very much in Madras managing Hotel Palmgrove. There was cordial relationship in October 1974. The dispute arose only during 1979. Thus the story that agreement dated 10.10.1974 was discovered only after 31.12.1981 after the death of K.Jayaraja Ballal is false.

(i) The agreement has been found to be not enforceable and was brought into existence for some other purpose. The learned single Judge has given valid and cogent reasons to support his finding that the agreement dated 10.10.1974 is not enforceable in law and having held so, the learned single Judge ought to have dismissed the suit for specific performance. Apart from that there is an agreement dated 12.06.1975-Ex.P4. That agreement, of course, has been produced belatedly by N.Swaminathan. But N.Swaminathan pleaded about this agreement dated 12.06.1975 in his written statement in C.S.No.588 of 1982. But the plaintiffs to the suit have not replied anything on that and no reply statement has been filed. Manickaraj Ballal has not entered the witness box. He has deliberately avoided the witness box knowing fully well that he may get exposed if he enters the witness box. It was alleged that he was in Australia. D.W.5-Sukeerthi Raj gave evidence in the year 1990. He has stated that Manickaraj Ballal has gone to Australia for some treatment. No medical records have been produced to show the health condition of Manickaraj Ballal. Manickaraj Ballal could have examined himself. It is only Manickaraj Ballal who should have



assisted the Court and given evidence as to how he got the agreement dated 10.10.1974 from the family house of Ballal after the death of K.Jayaraja Ballal on 31.12.1981. He knew very well that the said pleading is false and therefore, he did not enter into witness box. PW-1 is not competent to speak about this. DW-2, DW-3 to DW-5 are not competent to speak namely the alleged discovery of the agreement dated 10.10.1974 from the family house of Ballal after the death of Jayaraj Ballal on 31.12.1981. Now a comment was made that agreement dated 12.6.1975, Ex.P-4 produced belatedly at the time of evidence has not been proved and that it cannot be relied upon. The plaintiffs in CS.No.588 of 1982 themselves have taken responsibility of proving Ex.P-4 dated 12.06.1975 by examining DW.5 -who is admittedly a witness to Ex.P.4 dated 12.06.1975. A perusal of the evidence of DW-5 clearly shows that he proves the execution of Ex.P.4 dated 12.6.1974 by K.Jayaraja Ballal and RP David. Ex.P.4 itself states that R.P.David represented his brother N.Swaminathan. R.P.David is no more. K.Jayaraja Ballal is no more. But DW-5 proves that Ex.P-4, dated 12.06.1975 has been executed by K.Jayaraja Ballal. The execution of the document Ex.P.4 has been proved. The document itself is filed before the court. The witness of the document has spoken and has been proved by the plaintiffs in C.S.No.588 of 1982 themselves by examining DW-5. A perusal of the recital in the agreement dated 12.06.1975 states the facts clearly, traces what exactly happened. The recitals of the said document are all true. In Ex.P.4, dated 12.06.1975, it has been clearly admitted that agreement dated 10.10.1974 was brought into existence for the convenience of the 1st party, namely, the company but the real transaction namely, the sale transaction under Ex.P.4 dated 12.06.1975, the time for performance has been extended to one year which takes up to 12.06.1976. Even within three years from 12.06.1976, no suit for specific performance was filed. Such suit could have been filed by K.Jayaraja Ballal on or before 12.06.1979. In fact, in Ex.P.4 dated 12.06.1975, the agreement dated 27.09.1973 and supplemental agreement dated 14.02.1974 have been reaffirmed and the sale also reaffirmed. The agreement dated 10.10.1974 has been given a go-by by clearly stating that it was signed by mistake and it is stated that the second party namely N.Swaminathan and R.P.David can sell to the 1st party. The sale price for land was reiterated at Rs.15 lakhs, the time for completion of the transaction extended for one year from 12.06.1975, payment of monthly rent at Rs.7000/- was also fixed. But nothing has been performed.

(j) He would further contend that the learned single Judge having held that 10.10.1974 agreement cannot be relied upon and no specific performance can be granted, ought to have dismissed the suit. The Learned single Judge has considered the alternative relief and such an alternative relief is unknown to law. In the same agreement, alternative relief cannot be granted by relying upon some other agreement. The Court having rejected the



10.10.1974 agreement in the suit, however, granted the relief under agreement dated 27.09.1973 followed by the supplemental agreement dated 14.02.1974. But the purchaser in the said agreement dated 27.09.1973 with the supplemental agreement dated 14.02.1974 is an individual namely, K.Jayaraja Ballal and or his nominees. It is nobody's case that K.Jayaraja Ballal nominated anyone. So there is no question of granting an alternative relief to the plaintiffs based on agreement dated 27.09.1973 modified by supplemental agreement dated 14.2.1974. Thus, the entire finding of the learned single Judge granting a decree by way of an alternative relief based on agreement dated 27.09.1973 and supplemental agreement dated 14.02.1974 directing the plaintiffs to pay Rs.15 lakhs as sale consideration is not tenable in law. The judgment granting decree in favour of the plaintiffs on deposit of Rs.15 lakhs and directing payment of rent of Rs.7,000/- per month is contrary to the finding relating to the agreements. The learned single Judge ought to have dismissed the suit C.S.No.588 of 1982.

(k) He would further submit that as per Section 53-A of the Transfer of Property Act readiness and willingness is a very important factor. Part performance is granted based on the agreement dated 27.09.1973 under which K.Jayaraja Ballal is the purchaser and possession having been handed over on 06.10.1973. The story that in part performance of the agreement dated 10.10.1974 possession was handed over on 01.04.1975 cannot be true because possession was handed over on 06.10.1973 under the agreement dated 14.02.1974. Thus there is no question of any part performance under 10.10.1974 when the clear finding is that the agreement dated 10.10.1974 is not an enforceable one. The evidence of DW-2 who is from Ballal family is not helpful. In his evidence, he states that Ballal family house is at Vivekananda Road, Mangalore. He states that he, Rajavarma Ballal and sisters were staying in the family house and concerning K.Jayaraja Ballal, they were not in talking terms and that he was living separately in Rajagraha. One of the witnesses has been DW-3 from the office of the auditor of the company, namely, Mr.P.Gopalakrishna Rao. He is not speaking about agreement dated 10.10.1974. DW-4 is a valuer. Evidence of DW-5 has already been noted where he admits that during 1976, they were all close and together and only in 1979, the tussle started.

(l) DW-5 is trying to put a case that agreement dated 12.06.1975 is antedated and it is signed six months prior to death of K.Jayaraja Ballal on 31.12.1981. The burden of proof is on the side of the plaintiffs in C.S.No.588 of 1982 to prove this. They have not discharged the burden. On the other hand, they have helped the court by the agreement dated 12.06.1975 marked as Ex.P-4. They have not placed any document to show that the agreement dated 12.6.1975, Ex.P-4 is antedated. DW-5 stated in his evidence that Manickaraj Ballal prior to 1990 showed him a xerox copy of the agreement dated 12.06.1975. No such xerox copy has been produced before the court. No certified copy of



the agreement dated 12.06.1975 has been produced by the defendants. It is admitted by DW-5 that still he was an employee in the hotel, Manickaraj Ballal was called as boss in the hotel and K.Jayaraja Ballal was called as elder boss. Thus both K.Jayaraja Ballal and Manickaraj Ballal were in the hotel during 1975. So, Manickaraj Ballal is trying to plead ignorance of the agreement dated 12.06.1975 and trying to set up an employee of hotel i.e. D.W.5 to give false evidence. He would further submit that the decree in both the suits directing execution and registration of the sale deed on sale consideration of Rs.15 lakhs is liable to be set aside.

(m) The balance of convenience is in favour of the appellants for dismissal of the suit C.S.No.588 of 1982 and Cross Objection 109 of 1993 and decreeing the suit C.S.No.600 of 1979. The suit schedule property comprises of 47 grounds and its present market value will be approximately Rs.5 crores per ground and the total value approximately will be Rs.235 crores (5x47). The respondents should always be ready and willing to pay the sale consideration and should be continuous till the execution of decree. They have filed petitions that they have no money to pay stamp duty and the registrar should pay. DW.2 has also accepted that they have committed breach of the sale agreement. The Court should not exercise its discretion given in the aforesaid facts. Since 1973, the respondents are in possession of the suit schedule property. They have enjoyed benefits by running Hotel Palm grove and a marriage hall. They have enjoyed benefits for 45 years with an investment of only Rs.59 lakhs. They cannot now appropriate land worth more than Rs.200 crores for an investment of Rs.59 lakhs. It does not lie in the mouth of the company to dismiss the appeal on the ground that the legal representatives of K.Jayaraja Ballal were not impleaded in the appeal. The estate of K.Jayaraja Ballal is properly represented. Problem will arise only if those legal representatives not impleaded came before the Court and made a grievance. Legal representatives of K.Jayaraja Ballal were also dropped in the earlier round of appeal. No objection was taken at that stage. SLP filed in (Civil Appeal) in counter affidavit no objection obtained. Therefore, the estate of K.Jayaraja Ballal has been properly represented. Therefore, the appeal is maintainable without impleading the legal representatives of K.Jayaraja Ballal. There is a delay in filing the Cross Objection. No application filed by the company under Section 9 of the City Tenants Protection Act, 1922. Therefore, Section 11 of the said Act becomes irrelevant. The lease was merged with the agreement to sell and therefore, Section 9 of the City Tenants Protection Act is not applicable.

(n) The agreement dated 12.06.1975 is generated to prevent misuse of 10.10.1974 agreement. If 10.10.1974 agreement goes, there is no question of alternate relief. The appellants are not approbating and re-approbating. They accept 10.10.1974 agreement was generated to get loan from the bank. In a suit for specific performance, the Court will



have to take into account escalation of price. But the learned single Judge has not given due consideration for the same even after the long passage of time.

(p) Therefore, the learned Single Judge ought to have dismissed the suit for specific performance and decreed the suit for possession.

15. Learned Senior Counsel appearing for the appellants would rely upon the following decisions in support of his contentions:-

(i) Sri Chand and others Vs. M/s. Jagdish Pershad Kishan Chand and others reported in AIR 1966 SC 1427. In this judgment, he drew our attention to paragraphs 6 and 7 and the relevant portion reads as follows:

"6.In the appeal filed by the appellants 1 and 3 if this Court holds that the High Court was in error in deciding that the surety bond was not enforceable because it was not registered, or that the first respondent has done some act which has discharged the sureties from liability under the bond, there would unquestionably be two inconsistent orders - one passed by the High Court holding that the surety bond was enforceable, and the other, the view of this Court that it is not enforceable.

7. This Court has on more occasions than one considered whether in circumstances similar to these, an appeal should stand abated in its entirety. In State of Punjab Vs. Nathu Ram, (1962) 2 SCR 636: (AIR 1962 SC 89) this Court explained the tests applicable in considering whether an appeal abates in its entirety when it has abated qua one of the respondents. The head note of the case reads:

"If the Court can deal with the matter in controversy so far as regards the rights and interest of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it; otherwise it will have to refuse to proceed further with the appeal and therefore dismiss it. Ordinarily the consideration which will weigh with the Court in deciding upon the question whether the entire appeal had abated or not will be whether the appeal between the appellants and the respondents other than the deceased respondent can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court and the tests to determine this have been described thus: (a) when the success of the appeal may lead to the Court's coming to a decision which will be in conflict with the decision between the appellant and the deceased



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respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased' respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed.

The abatement of an appeal against the deceased respondent means not only that the decree between the appellant and the deceased respondent has become final, but also as a necessary corollary that the appellate Court cannot in any way modify that decree directly or indirectly."

(ii) Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naigue reported in 1989 Supp (2) SCC 275. In this judgment, he drew our attention to paragraph 5, which reads as follows:

"5. In Daya Ram Vs. Shyam Sundari, this Court recognised the principle of representation of the estate by some heirs, where the defendant died during the pendency of the suit to enforce claim against him and all the heirs are not brought on record within time. This Court held that if after bona fide inquiry, some, but not all the heirs, of a deceased defendant, are brought on record the heirs so brought on record represent the entire estate of the deceased and the decision of the Court in the absence of fraud or collusion binds even those who are not brought on record as well as those who are impleaded as legal representatives of the deceased defendant. In N.K. Mohd. Sulaiman Vs. N.C. Mohd. Ismail, this Court rejected the contention that in a suit to enforce a mortgage instituted after the death of a Muslim, if all the heirs of the deceased were not impleaded in the suit and a decree was obtained, and in execution the property was sold, the auction purchaser could have title only to the extent of the interest of the heirs who were impleaded, and he could have no title to the interest of those heirs who had not been impleaded to the suit. The court held, that those who were impleaded as party to the suit in place of the deceased defendant represented the entire estate as they had share in the property and since they had been brought on record the decree was binding on the entire estate."

(iii) Mohan Lal Vs. Mirza Abdul Gaffar and another reported in 1996(1) SCC 639. In this judgment, he drew our



attention to the relevant portion of paragraph 5, which reads as follows:

"5. The question then is whether he is entitled to retain possession under Section 53-A. It is an admitted fact that suit for specific performance had been dismissed and became final. Then the question is whether he is entitled to retain possession under the agreement. Once he lost his right under the agreement by dismissal of the suit, it would be inconsistent and incompatible with his right to remain in possession under the agreement. Even otherwise, a transferee can avail of Section 53-A only as a shield but not as a sword. It contemplates that where any person contracts to transfer for consideration any immovable property by writing, signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has performed or is willing to perform his part of the contract, he would be entitled to retain possession and to continue in possession which he has already received from the transferor so long as he is willing to perform his part of the contract. Agreement does not create title or interest in the property. Since the agreement had met with dismissal of the suit his willingness to perform his part of the contract does not arise."

(iv) Vasantha and others Vs. M. Senguttuvan reported in 1998 (1) CTC 186" (S.S. Subramani, J). In this judgment, he drew our attention to paragraph 15 and the relevant portion of paragraph 19, which reads as follows:

"15. In Gomathinayagam Pillai and others Vs. Palaniswami Nadar, AIR 1967 (II) SCWR 14, the Supreme Court held that in a suit for specific performance, plaintiff must prove readiness and willingness. The relevant portion of the said decision reads thus:

"The respondent has claimed a decree for specific performance and it is for him to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail. As observed by the Judicial Committee of the Privy Council in Ardeshir Mama Vs. Flora Season. In a suit for specific performance, on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was



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required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brought with it the inevitable dismissal of his suit. The respondent must in a suit for specific performance of an agreement plead and prove that he was ready and willing to perform his part of the contract continuously between the date of the contract and the date of hearing of the suit."

Even if for single day, plaintiff - agreement holder is not ready to take the sale deed, the equitable remedy should not be granted. Readiness and willingness must be there continuously from the date of agreement upto the date of hearing. In this case, the concurrent finding is that the appellant was not ready to take the sale deed and that is proved by Ex.A-3.

19. That apart, a recent judgment of the Supreme Court also has to be taken into consideration while exercising the discretion. It is well settled that even if the appellant proves all the ingredients of Section, he cannot claim specific performance as of right. It is only a discretion and that discretion will have to be exercised on well established judicial principles. In this case, the discretion has been rightly exercised by the lower appellate Court, declining the relief."

(v) Saradamani Kandappan Vs. S. Rajalakshmi and others reported in 2011(4) CTC 640. In this judgment, he drew our attention to paragraph 28, which reads thus:

"28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra):

(i) 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) 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. Courts will also 'frown' upon suits which are not filed



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immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 3 years to file a Suit and obtain specific performance. The three year period is intended to assist 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."

(vi)Chand Rani Vs.Kamal Rani reported in (1993) 1 SCC 519. In this judgment, he drew our attention to paragraph 25, which reads as follows:

"25.From an analysis of the above case-law, it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are evident:

- 1.From the express terms of the contract;
- 2.from the nature of the property; and
- 3.from the surrounding circumstances, for example, the object of making the contract."

(vii)M/s.Citadel Fine Pharmaceuticals Vs. M/s.Ramaniyam Real Estates P.Ltd., and another (Supreme Court), reported in 2011 5 L.W. 30. In this judgment, he drew our attention to paragraph 36 and 43, which reads as follows:

"36.From the terms of agreement in this case which have been set out in the earlier part of the judgment it is clear that the time is of the essence and this is clearly stipulated and understood by the parties having regard to the previous correspondence and also having regard to the laid down terms of the contract and especially when the consequence of non-completion of the terms by purchaser within the stipulated time was spelt out in clause 9.

43.The instant case obviously relates to a contract in commercial transaction and the Court can take judicial notice of the fact that in the city of Chennai the price of real estate is constantly escalating and the clear intention of the parties, as it appears from the stipulations of the agreement, was to treat time as the essence of the contract."

(viii)V.V.Rethinasabapathi Pillai and four others Vs. T.R.Sriramulu Chettiar reported in Vol 99 LW 239. In this judgment, he drew our attention to paragraph 40, which reads as follows:



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"40.The jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. This principle has found statutory countenance in S.20 of the Act. It is true, the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles. The right to specific performance is not absolute even in the case of a contract which is susceptible to enforcement. The accord of equitable remedy of specific performance is a matter of judicial discretion, of course, not an arbitrary and capricious discretion, synonymous with the mere pleasure of the judge. The sovereignty of technical law stands mellowed, subjugated and even superseded by the domain of judicial discretion and equity."

(ix) Kumari Anandan Vs. Dr. T. Balamukunda Rao reported in 2002 (3) CTC 462. In this judgment, he drew our attention to paragraph 27, which reads as follows:

"27. In a suit for specific performance of the contract, the onus is on the plaintiff to prove the contract, unless its existence is admitted by the opposite party. When the plaintiff fails to prove the contract, the mere fact, that the defendant admits receipt of money but on altogether different account, does not shift the burden of proof to the defendant."

(x) P. Thangavelu Vs. R. Dhanalakshmi Ammal and other reported in Vol 95 L.W.708 (Division Bench, Madras High Court). In this judgment, he drew our attention to the relevant portion of paragraph 32, which reads as follows:

"The plaintiff can succeed in the suit for declaration under the plaint as amended only on the basis of a valid title to the property. If he did not have any title to the property, then he cannot pick holds in the title of the defendants and try to succeed. That the plaintiff can succeed only on the basis of the proof of his own allegations in the plaint as regards his title and he cannot succeed by picking holds in the title of the defendants is too well established to need citations of any authority."

(xi) Seeni Ammal Vs. Veerayee Ammal reported in 1997 (1) CTC 360 (P. Sathasivam, J., Madras High Court). In this judgment, he drew our attention to the relevant portion of paragraphs 13, 14 and 15, which reads as follows:

13.-----"When the burden is on the plaintiff to prove clearly in order to get the equitable relief of specific performance, he



ought to have produced the best evidence available with him and his failure to do so would enjoin the court to draw an adverse inference against him.

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14. Another important feature in this case is that apart from the fact the plaintiff was not having any money for completion of the sale, she has not taken any steps at least to deposit the remaining sale consideration into Court at the time of filing of this suit. A perusal of the records show that only on 06.01.1982, ie., on the date of judgment of the trial court, she has deposited the balance sale consideration in the Court. With regard to the above aspect and in the light of Section 16(c) of Specific Relief Act, 1963, I am justified in holding that the plaintiff has not established her case that she was ready and willing to perform her part of the contract even on the date of the filing of the suit."

15.-----Moreover, the relief of specific performance being an equitable relief, the same cannot be enforced in favour of a person who fails to proceed that she has performed or has always been ready and willing to perform the essential terms of contract which are to be performed by her other than the terms the performance of which has been prevented or waived by the defendant."

(xii) Roop Kumar Vs. Mohan Thedani reported in (2003) 6 SCC 595. In this judgment, he drew our attention to the relevant portion of paragraph 5 and paragraphs 23, 24 and 27, which reads as follows:

"5.....Primary stand of the defendant in reply was that she was in lawful occupation and possession as tenant under the plaintiff. Some documents on false representation had been obtained from him giving a wrong impression that they were to be produced for fixing of standard rent in a case of eviction, and these documents were never intended to be acted upon. The purported agreement was not acted upon and was a sham document and there was no agreement relating to commission and therefore, the question of rendition of any account did not arise.

23. But the question is whether on the facts of the present case, the reasons given by the defendant-appellant in his evidence for claiming the agreement as sham document can be accepted.



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24.As noticed by the High Court, respondent-plaintiff-1 had proved on record that the appellant-defendant had acted upon the agreement by himself, submitting the statements, given the account of tailoring and sale of materials as well as payment of commission on the basis of statements as per terms of an agreement.

.....

27.It is to be noticed that though no label attached to the agreement, it does not specify any monthly amount to be paid by the appellant to the respondent. Therefore, the question of any fixed monthly rent does not arise. The High Court has also taken note of several other instances to conclude that the agreement was one of licence and not of lease. That being the position, the conclusion of the High Court are in order and do not warrant interference."

(xiii)P.V.Joseph's Son Mathew Vs. N.Kuruvila's Son reported in AIR 1987 SC 2328. In this judgment, he drew our attention to paragraph 14, which reads as follows:

"14.Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of 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 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. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit filed by Varghese is the agreement for sale, Ext.A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance".

(xiv)P.R.Gopal Vs.M.Rajeswari reported in (2008) 7 MLJ 164 (Division Bench, Madras High Court). In this judgment, he drew our attention to the relevant portion of paragraph 22, which reads as follows:

"22. Added circumstance is that nowhere in the plaint or at the relief clause, the plaintiff has stated what is the balance of consideration which she is liable to pay. On the contrary, a reading of the relief clause would indicate that a direction has got to be given to the defendants to execute the sale deed. But, what is the



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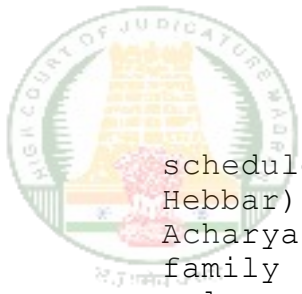
balance of consideration is nowhere found. At this juncture, it should not be forgotten that the specific performance is an equitable relief and the Court has to see all the circumstances attendant. This Court is of the considered opinion that the judgment of the Supreme Court in Sita Ram and others Vs. Radhey Shyam, 2008 (1) CTC 86 would be squarely applicable to the present facts of the case. The Supreme Court has held thus:

"The basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief".

In the instant case, this Court is of the considered opinion that the plaintiff has not shown any blemishness conduct throughout to entitle her to the specific relief asked for. Hence, the plaintiff is not entitled for the specific relief."

16.Per contra, Mr.A.L.Somayiji, learned Senior Counsel appearing for the respondents 1 to 6 in O.S.A.No.81 of 1991 and the second respondent in O.S.A.No.248 of 1997 and for the cross objector in Cross Objection No.109 of 1993 in O.S.A.No.81 of 1991, submitted that the finding given by the learned single Judge in the impugned judgment that the agreement dated 10.10.1974 was not acted upon is incorrect. He drew our attention to the said finding which is found in paragraph 146 of the impugned judgment and aggrieved by the same, the first respondent has filed a cross objection in Cross Objection No.109 of 1993 in O.S.A.No.81 of 1991. The learned Senior Counsel then drew our attention to Ex.D.6 which is the communication dated 01.04.1975 sent by R.P.David and N.Swaminathan to the company evidencing handing over possession of the suit schedule property to the company. He also drew our attention to the cross examination of N.Swaminathan (P.W.1) who has admitted his signature in his communication dated 01.04.1975 which is marked as Ex.D.6. Therefore, according to him, the contents of Ex.D.6 are proved and the agreement dated 10.10.1974 was acted upon and the possession of the suit schedule property was also delivered to the company pursuant to the said agreement.

17.The learned Senior Counsel further drew our attention to the chief examination of D.W.1 (Raghava Hebbar) for the purpose of establishing the share holdings of three families who had invested money for the purchase of the suit



schedule property. In the chief examination of D.W.1 (Raghava Hebbar), he deposed that Ballal's family held 90 shares, Acharya's family held 40 shares and Hebbar's family i.e., the family of D.W.1 held 30 shares with each share having a face value of Rs.10,000/-. D.W.1 has also deposed that Hotel Palmgrove opened under the new management in the end of November 1973. The learned Senior Counsel then drew our attention to the agreement dated 27.09.1973 (xerox copy was marked as Ex.P.1 and the original was marked through N.Swaminathan as Ex.D3). He submitted that N.Sathyanathan & Sons Private Limited took on lease from N.Swaminathan and R.P.David under a registered deed of lease dated 17.09.1970 registered as document No.1822 of 1970, S.R.O. T.Nagar and after taking the property on lease, the company put up construction and super structures thereon and were running a hotel therein under the name and style of Hotel Palmgrove.

18.Learned Senior Counsel submitted that after taking the suit schedule property on lease under the agreement dated 27.09.1973 (Ex.P.1), N.Swaminathan and R.P.David agreed to sell the property along with superstructures, movables and fittings and also the goodwill of the said hotel business to K.Jeyaraja Ballal for a total sale consideration of Rs.74 lakhs. Under the agreement dated 27.09.1973, the company N.Sathyanathan and Sons Private Limited, the lessee joined the execution of the sale agreement with N.Swaminathan and R.P.David in favour of K.Jeyaraja Ballal. On the date of the agreement dated 27.09.1973, K.Jeyaraja Ballal paid a sum of Rs.5 lakhs to N.Swaminathan and R.P.David. Under the agreement dated 27.09.1973, the buyer namely, K.Jeyaraja Ballal, agreed to make a further payment of Rs.15 lakhs to N.Swaminathan and R.P.David by way of cheque on 06.10.1973 and on receipt of the same, the sellers N.Swaminathan and R.P.David have agreed to hand over possession of the suit schedule property to K.Jeyaraja Ballal, the buyer. K.Jeyaraja Ballal shall further pay to the company as well as N.Swaminathan and R.P.David a sum of Rs.54 lakhs towards balance sale consideration not later than 06.12.1973. Under the agreement dated 27.09.1973, N.Sathyanathan and Sons Private Limited, the company, has agreed to transfer the entire shares to K.Jeyaraja Ballal or his nominees on receipt of the entire sale consideration as per the said agreement.

19.The learned Senior Counsel then drew our attention to the supplemental agreement dated 14.02.1974 which is marked as Ex.P.2 entered into between N.Sathyanathan and Sons Private Limited, the company and N.Swaminathan and R.P.David as the sellers and K.Jeyaraja Ballal, the buyer. Under the supplemental agreement dated 14.02.1974 (Ex.P.2), the sellers have acknowledged receipt of a sum of Rs.20 lakhs as per the agreement dated 27.09.1973. The agreement dated 14.02.1974 records the fact that the possession of the suit schedule property was delivered to K.Jeyaraja Ballal on



06.10.1973. Under the supplemental agreement dated 14.02.1974 (Ex.P.2), time for completion of transfer of assets shall be on or before 30.06.1974 and the time for completion of the sale of the land by N.Swaminathan and R.P.David shall be on or before 15.04.1975 and the consideration for the sale of the land shall be Rs.15 lakhs. K.Jeyaraja Ballal has also agreed to pay to the company interest at the rate of 10% per annum on Rs.39 lakhs from 06.12.1973. He has also agreed to pay the company as well as R.P.David and Swaminathan a total sum of Rs.7,000/- per month by way of rent from 06.12.1973 till date of sale. The time for performance was once again extended upto 01.07.1974 by making an endorsement in the supplemental agreement dated 14.02.1974 (Ex.P.2) on 20.06.1974.

20.The learned Senior Counsel then drew our attention to the agreement dated 10.10.1974 entered into between the same parties which records the fact that Rs.36 lakhs has been paid by the buyer pursuant to the agreements dated 27.09.1973 and 14.02.1974 and the balance amount of Rs.23 lakhs is still due and payable. The agreement dated 10.10.1974 for which the suit for specific performance in C.S.No.588 of 1982 was filed was entered into only in anticipation of transfer of shares in the company to the three families namely, Hebbar family, Ballal's family and Acharya's family. The learned Senior Counsel submitted that the learned single Judge ought to have acted upon the agreement dated 10.10.1974 and decreed the suit for specific performance in terms thereof.

21.The learned Senior Counsel then drew our attention to the cross examination of N.Swaminathan to highlight the fact that N.Swaminathan tendered his resignation vide his letter dated 10.10.1974. The resignation letters both dated 10.10.1974 given by R.P.David and N.Swaminathan separately from the company are marked as Exs.P.17 and P.18 respectively. He also drew our attention to income-tax returns submitted by R.P.David and N.Swaminathan, Exs.D.88 and D.89 for the purpose of proving that both of them received rent from the suit schedule property.

22.The learned Senior Counsel further submitted that there is evidence to show that the agreement dated 10.10.1974 was executed only on 18.10.1974. He drew our attention to the cross examination of D.W.1 Raghava Hebbar wherein he deposed that payment was made on 18.10.1974 whereas as per the books of accounts it was signed on 10.10.1974. In Paragraph No.43 of the plaint filed in C.S.No.588 of 1982, seeking specific performance, the plaintiffs have also pleaded that the agreement though dated 10.10.1974 appears to have actually been signed after 18.10.1974. According to the learned Senior Counsel, the agreement dated 10.10.1974 was executed only on 18.10.1974 which has been asserted by the respondents all through.



23.The learned Senior Counsel then drew our attention to Ex.D.73 dated 26.08.1980. Ex.D.73 is the letter written by the management of Hotel Palmgrove to the Special Tahsildar, Urban Land Tax Collection, Mylapore, Triplicane Taluk, Chennai 4, enclosing the cheque for Rs.30,000/- towards the payment of urban land tax. According to the learned Senior Counsel, even on 27.08.1980, the taxes were paid only by the first respondent company who is the buyer under the agreement dated 10.10.1974. He then referred to a telegram dated 08.11.1977 (Ex.D.69) sent by R.P.David to Mr.Manickaraj Ballal, C/o.Hotel Palmgrove requesting him to issue a cheque to Assistant Commissioner Urban Land Tax, Mylapore for Rs.35,000/-. He also drew our attention to the cross examination of N.Swaminathan (P.W.1) wherein according to the learned Senior Counsel, he has admitted that the negotiations for Ex.D5 (10.10.1974) were conducted in 1973 and the agreement was entered into on 10.10.1974.

24.The learned Senior Counsel submitted that under Ex.D5 agreement dated 10.10.1974, the sale consideration was reduced to Rs.59 lakhs and the same was paid and the agreement dated 10.10.1974 was acted upon. The learned Senior Counsel submitted that the sellers having marked the agreement dated 10.10.1974 (Ex.P.3) in their evidence (P.W.1) cannot now resile from the same. The learned Senior Counsel referred to various clauses in the agreement dated 10.10.1974 marked as Ex.P.3 through the sellers and marked as Ex.D5 through the buyers and submitted that the sale consideration was reduced to Rs.59 lakhs and the agreement dated 10.10.1974 was acted upon by the parties. In accordance with the agreement, dated 10.10.1974, the entire sale consideration was paid on 18.10.1974 as per the testimony of D.W.1 and therefore, the first respondent has performed its part of the terms and conditions of the agreement dated 10.10.1974 and since the sellers failed to execute the sale deed, the suit for specific performance will have to be decreed in terms of the agreement dated 10.10.1974 (Ex.D.5).

25.The learned Senior Counsel disputed the existence of the agreement dated 12.06.1975 (Ex.P.4). He drew our attention to the agreement dated 12.06.1975 and pointed out that the said document has not been signed by N.Swaminathan one of the co-owners though his name has been mentioned as a party in the agreement. He also referred to the written statement filed by N.Swaminathan in C.S.No.600 of 1979 and submitted that N.Swaminathan has received his share of the sale consideration said to have been received by R.P.David. In the written statement, N.Swaminathan has stated that he was signing all documents as and when required by R.P.David and he is not aware of the exact details of transactions referred to in the plaint believes the same to be substantially correct. According to the learned Senior Counsel, Mr.N.Swaminathan has acknowledged receipt of the



entire sale consideration payable as per the agreement dated 10.10.1974.

26. The learned Senior Counsel then drew our attention to the amended plaint filed in C.S.No.600 of 1979. He submitted that a) A.S. John Divyanathan, Mrs. Susanna Rani Sekhar and Rajkumari David were impleaded as legal representatives of the deceased, the first plaintiff R.P. David as per order dated 05.07.1985 in application No.2591 of 1985. N. Swaminathan was transposed as fifth plaintiff as per order in Application No.652 of 1989 dated 16.03.1989. Defendants 4 to 9 namely, a) Rajendra Ballal, b) Mrs. Shri. Prabha Patil c). Shyamala Ballal, d) Master Ajaya Ballal e) Ms. Visali Ballal and f) Virendra Ballal were impleaded as the legal representatives of the deceased first defendant, K. Jeyaraja Ballal, as per order dated 24.08.1982 in application No.596 of 1982 and the fourth defendant is appointed as the father and natural guardian for the minor defendants 7, 8 and 9 in application No.597/1982. The learned Senior Counsel also referred to the written statement filed by the company as well as by K. Jeyaraja Ballal and submitted that the plaintiffs in C.S.No.600 of 1979 are not entitled to seek possession of the suit schedule property since N. Sathyanathan and sons Private Limited have performed their part of the terms and conditions of the agreement dated 10.10.1974 by paying the entire sale consideration and therefore, the suit for specific performance alone should be decreed in favour of the company and the suit for possession filed in C.S.No.600 of 1979 has rightly been dismissed by the learned single Judge.

27. The learned Senior Counsel then referred to the written statement of the defendants 4 to 10 who are the legal representatives of K. Jeyaraja Ballal filed in C.S.No.600 of 1979 wherein they have stated that after having entered appearance in the suit K. Jeyaraja Ballal had signed the written statement and before it could be filed he died and the written statement could not be filed. The defendants 4 to 10, the legal representatives have extracted the written statement by Late. K. Jeyaraja Ballal and they have adopted the same which was filed on 07.06.1983. The learned Senior Counsel drew our attention to the additional written statement of the second respondent M/s. N. Sathyanathan and Sons Private Limited, the company, filed in the suit in C.S.No.600 of 1979. The learned Senior Counsel then drew our attention to the issues framed in C.S.No.600 of 1979 on 30.04.1983 which are extracted below:-

"Is the suit for recovery of plaintiff's share of the suit property and his half share of rent maintainable?

To what relief the parties are entitled to?"

Thereafter, additional issues were also framed in C.S.No.600 of 1979 on 08.07.1983.

"1. Whether the agreement dated 27.09.1973 and 14.02.1974 have been superseded by the agreement



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dated 10.10.1974?

2. Whether the second defendant had paid the entire consideration and whether the plaintiff and the third defendant have no subsisting right in the land in question?

3. Whether, in any event, the registered deed of lease dated 17.09.1970 is in operation as alleged by the second defendant?

4. Whether the second defendant is entitled to protection under the Madras City Tenants, Protection Act?

5. Whether defendants 4 to 10 are entitled to the benefit of Section 53-A of the Transfer of Property Act?"

28. After referring to the issues framed in C.S.No.600 of 1979, the learned Senior Counsel once again drew our attention to the agreement dated 12.06.1975 (Ex.P.4) wherein it is stated that the agreement dated 10.10.1974 (Ex.P.3=D5) was signed by mistake and does not serve the convenience of the company N.Sathyanathan and Sons Private Limited and that the company wants to reaffirm the terms of the original agreement. Even though Ex.P.4 dated 12.06.1975 states that the agreement dated 10.10.1974 is mistake, according to the learned Senior Counsel, it does not mention what is the mistake nor does it say whose mistake was it. He then referred to Section 20 of the Indian Contract Act which reads as follows:-

"20. Agreement void where both parties are under mistake as to matter of fact:-Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation:-An erroneous opinion as to the value of the thing which forms the subject matter of the agreement, is not to be deemed a mistake as to a matter of fact."

29. According to the said Section only when both the parties are under the mistake, the agreement is void. Since the first respondent does not consider the agreement dated 10.10.1974 Ex.P.1 as a mistake, the contention of the appellants based on the agreement dated 12.06.1975, Ex.P.4 which is disputed by the first respondent that the agreement dated 10.10.1974 is a mistake cannot be accepted. Therefore, Section 20 of the Contract Act, will not apply to prove that the agreement dated 10.10.1974 is a mistake and is a void agreement.

30. The learned Senior Counsel then referred to the cross examination of N.Swaminathan (P.W.1) on the issue of agreement dated 12.06.1975 (Ex.P.4) wherein N.Swaminathan has deposed that the agreement dated 12.06.1975 does not specify any mistake. The learned Senior Counsel also drew our



attention to the agreement dated 12.06.1975 and submitted that the stamp paper for the said agreement was purchased in the name of Ramachandran who is a stranger and not a party to the sale agreement. The learned Senior Counsel also submitted that the agreement dated 12.06.1975 Ex.P.4 was not referred to in the pleadings filed by Swaminathan. It is also not referred to in the lawyer's notice dated 19.10.1979 (Exs.P.13 and P.14) sent on behalf of R.P.David and N.Swaminathan to K.Jeyaraja Ballal. Further, according to the learned Senior Counsel, the two legal notices were addressed only to K.Jeyaraja Ballal and not to the company.

31.Learned Senior Counsel referring to Ex.P.4, dated 12.06.1975 also submitted that it refers to the earlier agreement dated 14.02.1974 (Ex.P.2) which stipulated payment of a sum of Rs.7000/- per month as rent from 06.12.1973 till the date of completion of sale by the company. The statement in clause 19 (d) of the agreement dated 12.06.1975 that K.Jeyaraja Ballal had become the owner of the entire share capital issued by the company M.Sathyanathan and sons Private Limited, the company agrees to have the lease 17.09.1970 cancelled is absolutely false. To disprove this statement, the learned Senior Counsel drew our attention to the annual return of N.Sathyanathan and Sons Private Limited (upto 30.06.1979) Ex.D.113 and submitted that K.Jeyaraja Ballal was not the only share holder but there were many other shareholders as well.

32.The learned Senior Counsel then drew our attention to the deposition of D.W.5, P.K.Sukeerthi Raj who was an employee of Hotel Palmgrove at that point of time. He has deposed that he has come across other members of Ballal's family as well as Hebbar and Srinivasa Acharya. According to the learned Senior Counsel, while R.P.David and N.Swaminathan were having good relationship in 1981, disputes arose amongst K.Jeyaraja Ballal, his brothers and other family members. He drew our attention to an agreement Ex.D.146 dated 03.02.1980 by which the family members of K.Jeyaraja Ballal have agreed to resolve the disputes through arbitration. The learned Senior Counsel also referred to the award dated 31.12.1982 (Ex.D.151) passed by the arbitrator and the plaint (Ex.D.148) filed in O.S.No.345 of 1991 before the Munsif Court of Mangalore, D.Kannada by Dr.Retnaraja Ballal against K.Jeyaraja Ballal and others seeking for permanent injunction restraining the defendants from holding any meeting of the Board of Directors of Ballal Tourist Hotel Private Limited at the residence of any of the Directors. Apart from this suit, N.Raghava Hebbar had also filed a suit C.S.No.196 of 1981 before the High Court, Madras against N.Sathyanathan and Sons Private Limited and others to declare that the sixth to twelfth defendants namely, K.Jeyaraja Ballal, K.Rajaverma Ballal, K.Rajendra Ballal, Indira Devi, K.Krishnamoorthy, K.Seetharam and Manimala are not Directors of N.Sathyanathan and Sons Private Limited. Besides these litigations, the



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learned Senior Counsel submitted that the Ballal's group who were sailing with K.Jeyaraja Ballal filed company petition 19 of 1980 under Sections 397 and 398 of the Companies Act and this fact is confirmed in the deposition of N.Raghava Hebbar which was also read to us.

33.The learned Senior Counsel then drew our attention to Ex.D.96 dated 24.08.1979 which is the letter written by N.RaghavaHebbar to K.Jeyaraja Billal. In that letter, Raghava Hebbar requested K.Jeyaraja Ballal to hold periodical board meetings to review the progress achieved in business to avoid any misunderstanding amongst the shareholders. The learned Senior Counsel also referred to Ex.D.97 dated 15.10.1979 which is the notice convening the meeting of the board of directors of M/s.N.Sathyanathan and Sons Private Limited on 07.11.1979 to consider the draft final accounts for the year ended 31st December 1978 and to authenticate the balance sheet and profit and loss account before they were sent to the auditors of the company for their audit and report thereon. The learned Senior Counsel also referred to the letter dated 30.11.1979 Ex.D.98 sent by K.Raghava Hebbar as director of the company to K.Jeyaraja Ballal impressing upon him not to violate the provisions of the Companies Act which advice according to him, was not heeded by him.

34.The learned Senior Counsel also referred to Ex.D.100 dated 15.02.1980 which is the notified meeting of the Board of Directors called for by R.Hebbar, Director on 25.02.1980. For this notice, Ex.D.100, Jeyaraj Ballal replied to N.Raghava Hebbar on 22.02.1980 (Ex.D.101) requesting postponement of the meeting sine die since the draft report was not circulated to him nor the copies of accounts was made available to him. According to the learned Senior Counsel acting on the reply dated 22.02.1980, Ex.D.101, the company meeting was adjourned sine die.

35.The learned Senior Counsel then referred to Ex.D.108 dated 21.04.1980 which is the minutes of the Board of Directors of the company represented by N.Raghava Hebbar, Manikyaraja Ballal and Dr.Ratnaraj Ballal and submitted that as per the minutes, it was brought to the notice of the Board that K.Jeyaraja Ballal is unauthorisedly representing the company in legal proceedings against the company. The same is contrary to the resolutions in the board dated 18.03.1978 wherein Sri.Manikyaraja Ballal is alone authorized in legal proceedings.

36.The learned Senior Counsel drew our attention to Ex.D.122 dated 30.07.1980 which is the minutes of the board meeting which was attended by N.Ragava Hebbar, K.Maniykaraja Ballal and K.Ratnaraj Ballal and it was recorded in the minutes that no leave of absence was received from K.Jeyaraja Ballal and K.Seetharam and it was resolved in the meeting that K.Manickaraja Ballal will make suitable arrangements for entering appearance on behalf of the



company, M/s.N.Sathyanathan and Sons Private Limited in C.S.No.600 of 1979 and to sign pleadings and also incur such expenses as may be considered necessary for the conduct of the case.

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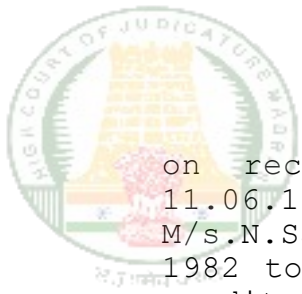
37.Learned Senior Counsel submitted that on 28.11.1980, Manikyaraja Ballal filed vakalat nama in C.S.No.600 of 1979 and the same was returned by the Court Registry on 01.12.1980, since Manickraja Ballal was already represented by another counsel who had entered appearance on his behalf. Application No.423 of 1981 was filed for revocation of vakalat and in the meanwhile, the suit itself was posted by this Court before the undefended board. This fact is recorded in the suit C.S.No.196 of 1981 filed before the Madras High Court by Raghava Hebbar against N.Sathyanathan and Sons Private Limited and others. According to the learned Senior Counsel, C.S.No.600 of 1979 was filed before this Court by R.P.David on instructions of K.Jeyaraja Ballal so that he could assert his authority on other members of his family. He then drew our attention to the averment made in paragraph 35 of the plaint in C.S.No.588 of 1982 which reads as follows:-

"Jeyaraj Ballal appears to have conceived the idea of making 1st defendant a tool or a weapon in his hands to secure certain benefits and tactical advantages to himself, unmindful of its repercussions on the family. The first defendant had also been willing to oblige Jayaraja Ballal as by so doing, he would also be the gainer."

38.The learned Senior Counsel then drew our attention to an order dated 10.12.1984 passed in a suit filed by R.P.David against K.Jeyaraj Ballal and others in O.S.No.10445 of 1984 before the Court of 10th Additional City Civil Judge, Bangalore to show that friendship continued to remain between R.P.David and K.Jeyaraj Ballal.

39.According to the learned Senior Counsel, from the above mentioned facts supported by documentary evidence, there was a clear case of collusion between R.P.David and K.Jeyaraja Ballal. The learned Senior Counsel submitted that the company M/s.N.Sathyanathan and Sons Private Limited was always ready and willing to perform their part of the contract under the agreements dated 27.09.1973, 14.02.1974 and 10.10.1974 (Exs.P.1, P2 and P3) respectively. He drew our attention to paragraph 57 of the plaint in C.S.No.588 of 1982 and submitted that the plaintiffs in C.S.No.588 of 1982 as pleaded in the plaint were always ready and willing to pay the balance sale consideration or such part of it as may remain to be paid on a true and proper account.

40.The learned Senior Counsel submitted that the learned single Judge after considering the evidence available



on record passed a common judgment and decree, dated 11.06.1990 directing the first plaintiff company, M/s.N.Sathyanathan and Sons Private Limited in C.S.No.588 of 1982 to deposit into this Court a sum of Rs.15 lakhs to the credit of C.S.No.588 of 1982 a sum of Rs.15 lakhs with interest at 6% per annum from 27.09.1973 till the date of payment being the balance sale consideration in respect of the suit schedule property within four months from the date of the judgment that is on or before 11.10.1990. On such deposit as aforesaid, the defendants 2 to 13 in the suit were directed to execute and register the sale deed in respect of the suit schedule property in favour of the company, M/s.N.Sathyanathan and Sons Private Limited free from all encumbrances in pursuance of the agreement dated 27.09.1973. In default, the learned single Judge of this Court also directed execution of the sale deed by the Assistant Registrar, Original Side in favour of the company, N.Sathyanathan and Sons Private Limited. The suit for possession in C.S.No.600 of 1979 was dismissed by this Court in the common judgment and decree dated 11.06.1990.

41.The learned Senior Counsel submitted that aggrieved by the judgment and decree dated 11.06.1990 of the learned single Judge, the appellants filed an appeal in O.S.A.No.81 of 1991 and 248 of 1997 before the Division Bench of this Court and in the said appeal, a judgment dated 05.07.2002 was passed under which the amount directed to be deposited by the company N.Sathyanathan and Sons Private Limited was enhanced to Rs.94 lakhs and in compliance of the same, the company deposited the said amount on 09.09.2002 to the credit of the suit. Aggrieved by the judgment of the Division Bench of this Court, dated 05.07.2002, an appeal was preferred before the Supreme Court and by final order dated 01.08.2003, in C.A.No.642 - 45/2003, the Hon'ble Supreme Court remanded the matter to this Court for fresh consideration and directed investment of the sum of Rs.94 lakhs to earn interest. According to the learned Senior Counsel, subsequent to the deposit, a sum of Rs.16,09,566/- was also withdrawn by the plaintiffs in C.S.No.600 of 1979 towards arrears of rent.

42.The learned Senior Counsel then drew our attention to clause (1) of the agreement dated 10.10.1974 (Ex.D.5) and as per the said clause, Rs.9 lakhs was the fair market value of the suit schedule property as on 10.10.1974. He also referred to the cross examination of P.W.1, the entire amount has been paid by the company N.Sathyanathan and Sons Private Limited. The learned Senior Counsel refers to Section 65 of the Indian Contract Act, to highlight the point that if a person has received any advantage under void agreement, he is bound to restore it or make compensation for it to the person from whom he received it. Section 65 of the Indian Contract Act, reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> 65.Obligation of person who has received



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advantage under void agreement, or contract that becomes void:-When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

43. According to the learned Senior Counsel, in the case on hand, the sellers have received the entire sale consideration for the purpose of sale but now they are disputing the existence of the sale agreement dated 10.10.1974 and assuming without admitting that the said agreement is declared to be void, the sellers have to either restore the contract dated 10.10.1974 or pay adequate compensation for it which they have failed to do so in the present case but instead have enriched themselves unlawfully with the sale consideration of Rs.59 lakhs. According to the learned Senior Counsel, the lease came to an end in 2010 and the suit for possession was filed in C.S.No.600 of 1979 without returning the sum received for the sale of the suit schedule property.

44. The learned Senior Counsel then drew our attention to Ex.D.174 being a sale deed dated 21.06.1971 in respect of a proximate property measuring 7 grounds and 2230 sq.,ft., to that of the suit schedule property and submitted that as on 21.06.1971, the value of that property was Rs.1,60,000/-. The learned Senior Counsel then referred to the lease deed dated 17.09.1970 (Ex.D2) between R.P.David and N.Swaminathan and the company, N.Sathyanathan and Sons Private Limited which reveals the market value of the suit schedule property as Rs.3,50,000/-. The learned Senior Counsel then drew our attention to Ex.D.90 which is the wealth tax return of N.Swaminathan for the years 1973-1974 and 1974-1975 which discloses the value of the suit schedule property as Rs.3,01,000/-. Similarly, the wealth tax return of N.Swaminathan for the year 1975-1976 discloses the value of the property as Rs.6 lakhs and for the year 1976-1977 discloses the value as Rs.5 lakhs and all the four wealth tax returns were marked as Exs.D.90, 91, 92 and 93 during the trial. According to the learned Senior Counsel, after considering Ex.D.174, D-2 and D.90 to 93, the value of the land in the suit schedule property at the time of entering into the agreement would never be Rs.15 lakhs even though the first respondent is willing to pay Rs.15 lakhs as stated in the plaint.

45. The learned Senior Counsel then drew our attention to a passage from the book - Snell on Equity found in page No.596 which reads as follows:-

"SNELL - on Equity - 27th Edition Page 596. When plaintiff has been put into possession under the contract and has obtained the equitable interest, so that all he requires is mere conveyance of a legal estate even many years delay in



enforcing his claim will not prejudice him."

46. He also relied upon a passage from the book FRY - SIXTH EDITION Para 418 which reads as follows:-

"The question of hardship in a contract is generally to be judged at the time when it was entered into; if it be then fair and just and not productive of hardship, it will be immaterial that it may, by the force of subsequent circumstances or change of events, have become less beneficial to one party, except where these subsequent events have been in some way due to the party who seeks the performance of the contract."

47. Applying these principles, the learned Senior Counsel submitted that the first respondent company is entitled to the relief of specific performance. He drew our attention to the cross examination of P.W.1 in which P.W.1 has deposed that he has not objected to any improvements made in the premises. He also drew our attention to cross examination of D.W.2 wherein according to him, D.W.2 has deposed that K. Jeyaraja Ballal used to stay in the family house at Vivekandada Road, Mangalore-5 during the night. He has also deposed that he became the shareholder of the first respondent company, when the hotel was acquired.

48. The learned Senior Counsel then submitted that the suit C.S.No.600 of 1979 for possession filed by the appellants was filed on 14.11.1979. The suit C.S.No.588 of 1982 for specific performance filed by the first respondent company was filed on 06.11.1982. Hence, according to the learned Senior Counsel, the refusal of the appellants to execute the sale deed for the suit schedule property in favour of the first respondent company was made known to the first respondent company only after the suit C.S.No.600 of 1979 was filed on 14.11.1979. Hence, the suit C.S.No.588 of 1982 for specific performance filed by the first respondent company is well within the period of limitation.

49. According to the learned Senior Counsel, Manikyaraja Ballal, the Managing Director of the first respondent company was not examined as a witness on the side of the first respondent since he was in Australia because of his heart ailment. This fact was deposed by D.W.2 in his chief examination. D.W.5 Sukeerthiraj an employee of hotel palmgrove in his cross examination has also deposed that Manikaraj Ballal was in Australia for a heart operation during that point of time. The learned Senior Counsel also submitted that no date is fixed in the agreement dated 10.10.1974 (Ex.P.4). The limitation according to him would be three years from the date of refusal. The first respondent came to know of the refusal only when the suit C.S.No.600 of 1979 was filed on 14.06.1979. Hence, the learned Senior Counsel submitted that the suit is well within the time and having satisfied with all the requirements needed for



specific performance as per the provisions of the Specific Relief Act, the learned single Judge rightly granted a specific performance decree in favour of the first respondent in C.S.No.588 of 1982 but gave a wrong finding that the plaintiffs in C.S.No.588 of 1982 have not acted upon the agreement dated 10.10.1974, but are entitled to the relief of specific performance of the agreement on payment of Rs.15 lakhs. The plaintiffs in C.S.No.588 of 1982 were directed by the learned single Judge to pay a sum of Rs.15,00,000/- to the plaintiffs in C.S.No.600 of 1979 with 6% interest per annum from 27.09.1973 within four months from the date of judgment. Further, the plaintiffs in C.S.No.588 of 1982 were directed to pay rent at the rate of Rs.7000/- per month from the date of plaint in C.S.No.600 of 1979 till the date of deposit of Rs.15 lakhs with interest at 6% per annum from 27.09.1973. Even though the first respondent was satisfied with the specific performance decree in his favour, aggrieved over the other findings, relating to payment of Rs.15 lakhs and the finding that the agreement dated 10.10.1974 was not acted upon; the said lease has merged with sale agreement and the direction to pay an enhanced rent Rs.7000/- per month from the date of plaint in C.S.No.600 of 1979 till the date of deposit of Rs.15 lakhs with 6% interest per annum from 27.06.1973, the first respondent has preferred a cross objection in Cross Objection No.109 of 1993 in O.S.A.No.81 of 1991. According to the learned Senior Counsel, the said findings are not in consonance with the pleadings, deposition and not in accordance with law, weight of evidence and probabilities of the case and therefore, he prayed for dismissal of the appeals and for allowing the Cross Objection.

50.Mr.Parthasarathy, learned Senior Counsel appearing for the first respondent in O.S.A.No.248 of 1997 drew our attention to the prayer sought for by the plaintiffs in C.S.No.600 of 1979 which reads as follows:-

(a)directing the defendants 1 to 9 to deliver possession of the suit property to the plaintiffs;

(b)for a sum of Rs.3,44,890/- against the defendants 4 to 9 being the arrears of rent.

(c)for interest at 12% p.a. on Rs.2,87,000/- from the date of plaint till date of payment.

(d)directing the defendants 4 to 9 to pay rent at the rate of Rs.7,000/- per month from the date of plaint till date of delivery of possession of the suit property to the plaintiffs 2 to 5 and for costs.

51.He would further submit that K.Jeyaraj Ballal, the first defendant in the suit died on 31.12.1981. The legal representatives of K.Jeyaraj Ballal are the 3rd to 9th defendants in the suit. They remained exparte. The learned Senior Counsel then drew our attention to the cause of action paragraph found at paragraph 21 of the plaint which does not disclose the actual date of the sale agreement between the plaintiffs 1 and 5 and the first defendant but instead it



merely mentions that on or about March 1974, the said agreement was entered into. According to the learned Senior Counsel, the plaintiffs in C.S.No.600 of 1979 have also admitted in their plaint that the tenancy with the first respondent is subsisting at the time of filing of the suit. The learned single Judge has accepted the defence taken by the defendants in C.S.No.600 of 1979 and has given a finding in favour of all the defendants and has held that the defendants are entitled to the benefits of Section 53-A of Transfer of Property Act. According to the learned Senior Counsel that in the instant appeal, the defendants 4 to 9, in C.S.No.600 of 1979 were given up by the appellants. This would result in an inconsistent decree as the finding in favour of the defendants 4 to 9 in C.S.No.600 of 1979 that Section 53-A of the Transfer of Property Act is attracted will continue to remain in their favour as no appeal has been filed making them as parties to the instant appeal. Therefore, learned Senior Counsel submitted that on the ground of non joinder of the defendants 4 to 9 in C.S.No.600 of 1979 as parties to the appeal, O.S.A.No.248 of 1997 is not maintainable and is liable to be dismissed.

52.The learned Senior Counsel then drew our attention to Order 36 Rule 9 of O.S. Rules read with clause 15 of Letters Patent. A referral to Order 36 Rules 1 to 16 would disclose the procedure that has to be followed in respect of Appeals from original decrees. As far as Letters Patent Appeals, namely, appeals under clause 15 Letters Patent, the procedure that has to be followed has been set out in Order 41 B. Order 41 B makes Order 41 A applicable to appeals under clause 15 of Letters Patent. Order 41 A pertains to appeals to the High Court from the Original decrees of subordinate courts. This Order clearly provides that the rules contained in Order 41, has application to appeals in the High Court with modifications contained in the said order. Therefore, a special provision has been made under Order 41 A to deal with appeals filed in the High Court arising from original appeals of the subordinate courts. To that extent, the provisions of Order 41 which relates to appeals from original appeals has to be read with the modifications contained in Order 41 A. Now provisions have been made under Order 41 Rule 14 of CPC, regarding the publication and service of notice. Therefore, according to the learned Senior Counsel one has to have the defendants arrayed as respondents in the appeal. Even if proceeded even though notice to them can be dispensed with if they have remained exparte. According to the learned Senior Counsel, under Order 41 Rule 20 of the Civil Procedure Code wherein an appeal a party to the suit is interested in the result of the appeal but was not made a party in the appeal, the Court may adjourn the hearing to a further date to be fixed by the Court and direct such person may be made as a respondent. In the case on hand, the Court has also not impleaded the defendants 4 to 9 in the suit as parties



to the appeal. He has also relied upon Order 41 Rule 4 C.P.C which reads as follows:-

"4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all:- Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decrees in favour of all the plaintiffs or defendants, as the case may be."

53. The learned Senior Counsel then submitted that the Hotel was constructed by the first respondent Company N. Sathyanathan and Sons Private Limited. The plaint filed in C.S.No.600 of 1979 is silent as to who built the hotel and is also silent about the lease. The plaintiffs have mentioned about the rent but there is no mention about the termination of lease in the plaint. The learned Senior Counsel submitted that if for any reason, this Court comes to the conclusion that the defendants are not entitled to the benefits of Section 53A of Transfer of Property Act, this Court may be pleased to consider the plea with reference to the non-termination of the lease, the entitlement of 2nd defendant to the benefits of Tamil Nadu City Tenants Protection Act.

54. He referred to paragraph 30 and paragraph 38 of the written statement wherein the company, N. Sathyanathan and Sons Private Limited has made a categorical averment that they came into possession in the suit schedule property first under lessee under the lease deed dated 17.09.1970. Thereafter, the company raised the building now standing on the suit land at its costs. Pursuant to the agreement dated 27.06.1973 new management of the company comprising Ballal, Hebbar and Acharya Families took over the management of Hotel Palmgrove with effect from 01.11.1973 on and after, 18.10.1974, the company is in possession of the suit property including the land, in its own right as owner in part performance of the agreement dated 10.10.1974 which was one in replacement and supersession of the earlier agreements dated 27.09.1973 and 14.02.1974. He also referred to paragraph 45 of the same written statement in which the company has made an averment in pursuance of the agreements dated 10.10.1974, as per their letter dated 01.04.1975, what was originally in possession pursuant to the lease dated 17.09.1970 thus became owner of the suit schedule property upon an agreement dated 10.10.1974. Therefore, according to the learned Senior Counsel, applying the doctrine of part performance under Section 53-A of the Transfer of Property Act, a decree for specific performance in terms of the



agreement dated 10.10.1974 will have to be passed. An issue was also framed with regard to Section 53-A of the Transfer of Property Act. The defendants 4 to 9 have not been impleaded as parties. The judgment against the defendants 4 to 9 has become final and cannot be disturbed as against them. According of the learned Senior Counsel, even if the Court disagrees with the case of the defendants 1 to 3, it would lead to passing of two inconsistent decrees.

55.The learned Senior Counsel drew our attention to the decree passed in C.S.No.600 of 1979 and submitted that the defendants in the suit as recorded in the decree are entitled to the benefit of Section 53-A of the Transfer of Property Act. Therefore, the decree passed as regards the entitlement of the defendants to the benefit of Section 53 A of the Transfer of Property Act, is a continuation decree in addition to the decree for specific performance passed in the suit in C.S.No.588 of 1992. He referred to the finding of the learned single Judge found in paragraph 149 of the impugned judgment and submitted that as per the finding, possession of the immovable property was taken on 06.10.1973, and repairs and improvements to the hotel building were carried on and the hotel started functioning from 01.11.1973 under the new management. The learned Senior Counsel also drew our attention to the clear finding of the learned single Judge found in the same paragraph that possession was taken long earlier to 10.10.1974, being the date of the agreement Ex.P.3. Therefore, the appellants cannot raise the ground that the learned Judge has erred in holding that the defendants in C.S.No.588 of 1982 are not entitled to rely on Section 53 A of the Transfer of Property Act.

56.The learned Senior Counsel relied upon the following authorities:

i)Ammukutty Amma and another Vs. Madhavi Amma reported in AIR 1971 Kerala 90 (Full Bench). In this judgement, he drew our attention to paragraphs 8, 9 and 10, which reads as follows:

"8.Under Order XLI, R.4 of the Code of Civil Procedure, "where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be." The dismissal of the suit, O.S.No.329 of 1121, operated as a decision in favour of all the defendants in the suit. The reversal thereof operated against all of them and when in the second appeal the decree



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of the trial court was restored there was a decree in favour of all the defendants in the suit. In this appeal, the third defendant alone has been made a party and the legal representatives of the first defendant, namely, defendants 4 to 8 and the second defendant have been left out. If the appeals were to be allowed, it would affect only the third defendant and it is patent that such a decision will give rise to conflicting views. In 1996 Ker LT 1154: (AIR 1966 Ker 317), a Division Bench of this Court has ruled that in such circumstances, the appeal is not maintainable as the necessary parties are not on the party array. It is therefore clear that the appeal is not properly constituted and has to fail on that ground.

9. The question that arises for consideration then is whether this Court in exercise of the powers under O.XLI, R.20 should allow the appellant to implead further parties. The decision of the Privy Council in Chockalingam Vs. Seethai Ache, AIR 1927 PC 252 has been brought to our notice. In that case, plaintiff sued the first defendant and purchasers through him for setting aside a sale in favour of the first defendant. The sale deed was held valid as between the first defendant and the plaintiff and the suit was dismissed. In appeal, the plaintiff joined the subsequent purchasers as respondents but not the first defendant. The plaintiff whose suit had been dismissed against all the defendants failed to appeal against the decree in so far as it affected some of them and allowed the appeal as against them to become barred. The Appellate Court in exercise of its discretion refused to take action under the Rule so as to deprive these defendants of the very valuable right which they had acquired in consequence of the plaintiff's failure to appeal against the decree in so far as it affected them.

It was held that even assuming that under this rule the Court in a proper case might add a defendant as respondent for the purpose of passing a decree against him, there is no sufficient reason for interfering with the refusal of the Appellate Court to do so in such a case. The following observations from the judgment of the Privy Council are relevant and they are therefore extracted.

"As regards the rest of the case, owing to the plaintiff's failure to make these defendants respondents within the time limited for filing an appeal, these appeals, so far as they are concerned, are prima facie barred by limitation,



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and they are entitled to hold the decree in their favour, which as pointed out by their Lordships in a very recent case, is a substantive right of a very valuable kind of which they should not lightly be deprived. When parties are added by the Court after the institution of a suit under O.I.R. 10(2). Section 22, Limitation Act, provides that the date when they are added is to be deemed to be the date of the institution of the suit so far as they are concerned for purposes of limitation and the rights which they may have acquired under the Limitation Act are, therefore, sufficiently safeguarded. The addition of a respondent whom the appellant has not made a party to the appeal is expressly dealt with in O.XLI, R.20, on which the plaintiff relied, both, in the appellate Court and before their Lordships. That rule empowers the Court to make such party a respondent when it appears to the Court that he is interested in the result of the appeal. Giving these words their natural meaning and they cannot be disregarded - it seems impossible to say that in this case the defendants against whom these suits have been dismissed, and as against whom the right of appeal has become barred, are interested in the result of the appeal filed by the plaintiff against the other defendants. It was for the plaintiff-appellant, who applied to the Court to exercise his powers under this rule, to show what was the nature of their interest and this he has failed to do.

Their Lordships are, therefore, of opinion that the appellate Court were right in rejecting his application under this rule."

10. Counsel for the appellant has not been able to show why we should exercise our discretion in favour of the appellant to deprive valuable rights which have accrued to defendants 2 and 4 to 8 in the suit. We do not think that this is a fit case, even assuming that we have power to implead the new parties, to allow the appellant to implead fresh parties at this stage.

ii) V.P.R.V. Chockalingam Chetty Vs. Seethai Ache and others reported in AIR 1927 PC 252. In this judgement, he drew our attention to paragraphs 12, 13 and 16, which reads as follows:

"12. As regard the rest of the case, owing to the plaintiff's failure to make these defendants respondents within the time limited for filing an appeal, these appeals, so far as



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they are concerned, are prima facie barred by limitation, and they are entitled to hold the decrees in their favour, which, as pointed out by their Lordships in a very recent case, is lightly be deprived. When parties are added by the Court after the institution of a suit under Order 1, Rule 10 (2), Section 22, Limitation Act, provides that the date when they are added is to be deemed to be the date of the institution of the suit so far as they are concerned for purposes of limitation and the rights which they may have acquired under the Limitation Act are, therefore, sufficiently safeguarded. The addition of a respondent whom the appellant has not made a party to the appeal is expressly dealt with in Order 41, Rule 20 on which the plaintiff relied, both in the appellate Court and before their Lordships. That rule empowers the Court to make such party a respondent when it appears to the Court that he is interested in the result of the appeal.

13. Giving these words their natural meaning - and they cannot be disregarded - it seems impossible to say that in this case the defendants against whom these suits have been dismissed, and as against whom the right of appeal has become barred, are interested in the result of the appeal filed by the plaintiff against the other defendants. It was for the plaintiff - appellant, who applied to the Court to exercise his power under this rule, to show what was the nature of their interest and this he has failed to do.

.....

16. Here the plaintiff, whose suits had been dismissed against all the defendants, failed to appeal against the decrees in so far as they affected some of them and allowed the appeal as against them to become barred. In these circumstances the appellate Court, in the exercise of, their discretion, refused to take action under the rule so as to deprive these defendants of the very valuable right which they had acquired in consequence of the plaintiff failure to appeal against the decrees in so far as they affected them. Assuming that under this rule the Court in a proper case might add a defendant as respondent for the purpose of passing a decree against him, their Lordships see no sufficient reason for interfering with the refusal of the appellate Court to do so in this instance. They are, therefore, of opinion that these appeals fail on both grounds, and



will humbly advise His Majesty that they should be dismissed with costs."

iii) Ch. Surat Singh (dead) and others Vs. Manohar Lal and others reported in AIR 1971 SC 240. In this judgement, he drew our attention to paragraphs 5 and 6, which reads as follows:

"5. We were told that after some evidence was led on that issue some of the appellants herein made an application to implead Lt. Col. Yadav at the same time reserving their right to dispute Lt. Col. Yadav's right to the suit premises. That application was accepted by the first appellate Court and Lt. Col. Yadav was impleaded as a party-respondent in that appeal. Ultimately the appeal failed and it was dismissed. As against that decision the appellants herein went up in second appeal to the High Court. In that appeal they did not implead Lt. Col. Yadav. No objection appeared to have been taken by the respondent in the High Court as regards his non-impleading. The High Court dismissed that appeal on merits. Civil Appeal No. 611 of 1966 has been brought against that decision of the High Court. In this Court also Lt. Col. Yadav has not been impleaded. The only reason given for not impleading him is the decree prepared by the High Court did not show Lt. Col. Yadav as on the parties to the appeal. This plea has no substance. The appellant knew that Lt. Col. Yadav had been impleaded as party in the first appeal. They cannot take advantage of their own omission in the High Court. It is clear that the appellants have been callous in conducting the afore-mentioned cases.

6. This day an application had been made seeking to implead Lt. Col. Yadav as a respondent in this appeal. It is a highly belated application. We see no reason to allow the same. The contention that Lt. Col. Yadav has no interest in the suit premises cannot be gone into in his absence or in these proceedings. - In the result Civil Appeal No. 611 of 1966 also fails and the same is dismissed. Parties to bear their own costs in both the appeals."

iv) Rameshwar Prasad and others Vs. Shambhari Lal Jagannath and another reported in AIR 1963 SC 1901. In this judgement, he drew our attention to paragraph 14 and the relevant portion of paragraph 15, which reads as follows:

"14. Further, the principle behind the provisions of R. 4 seems to be that anyone of the plaintiffs or defendants, in filing such an appeal, represents all the other non-appealing



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plaintiffs or defendants as he wants the reversal or modification of the decree in favour of them as well, in view of the fact that the original decree proceeded on a ground common to all of them. Kedar Nath was alive when the appeal was filed and was actually one of the appellants. The surviving appellants cannot be said to have filed the appeal as representing Kedar Nath.

15. Kedar Nath's appeal has abated and the decree in favour of the respondents has become final against his legal representatives. His legal representatives cannot eject the defendants from the premises in suit. It will be against the scheme of the Code to hold that R.4 of O. XLI empowered the Court to pass a decree in favour of the legal representatives of the deceased Kedar Nath on hearing an appeal by the surviving appellants even though the decree against him has become final. This Court said in *State of Punjab Vs. Nath Ram*, AIR 1962 SC 89 at p.91:

"The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate Court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondent, the appellate Court cannot determine anything between the appellant and the legal representatives which may affect the right of the legal representatives under the decree. It is immaterial that the modification which the Court will do is one to which exception can or cannot be taken."

v) *Sri Chand and others Vs. M/s. Jagdish Pershad Kishan Chand and others* reported in AIR 1966 SC 1427. In this judgement, he drew our attention to the relevant portion of paragraph 7, which reads as follows:

"7. This Court has on more occasions than one considered whether in circumstances similar to these, an appeal should stand abated in its entirety. In the *State of Punjab Vs. Nathu Ram*, (1962) 2 SCR 636: (AIR 1962 SC 89) this Court explained the tests applicable in considering whether an appeal abates in its entirety when it has abated qua one of the respondents. The head note of the case reads:

"If the Court can deal with the matter in controversy so far as regards the rights and interest of the appellant and the respondents



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other than the deceased respondent, it has to proceed with the appeal and decide it; otherwise it will have to refuse to proceed further with the appeal and therefore dismiss it. Ordinarily the consideration which will weigh with the Court in deciding upon the question whether the entire appeal had abated or not will be whether the appeal between the appellants and the respondents other than the deceased respondent can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court and the tests to determine this have been described thus: (a) when the success of the appeal may lead to the Court's coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent: (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed.

The abatement of an appeal against the deceased respondent means not only that the decree between the appellant and the deceased respondent has become final, but also as a necessary corollary that the appellate court cannot in any way modify that decree directly or indirectly.

When the decree in favour of the respondents is joint and indivisible, the appeal against the respondents other than the deceased respondent cannot be proceeded with if the appeal against the deceased respondent has abated."

vi) Ramagya Prasad Gupta and others (In C.A.No.1711 of 1967), Brahmadeo Prasad Gupta and another (In C.A.No.1985 of (1968)) Vs. Murli Prasad and others reported in AIR 1972 SC 1181. In this judgement, he drew our attention to paragraph 16, which reads as follows:

"16. Under Rule 4(3) r/w. Rule 11 of Order XXII C.P.C., the appeal abates as against the deceased respondent where within the time limited by law no application is made to bring his heirs or legal representatives on record.

As pointed out by this Court in the State of



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Punjab Vs. Nathu Ram, (1962) 2 SCR 636 (AIR 1963 SC 89) it is not correct to say that the appeal abates against the other respondents. Under certain circumstances the appeal may not be proceeded with and is liable to be dismissed. But that is so not because of the procedural defect but because as Mulla has pointed out, it is part of the substantive law (See Mulla C.P.C. Vol.I Thirteen Edition p.620 under note Non-joinder of Parties). No exhaustive statement can be made as to the circumstances under which an appeal in such cases cannot proceed. But the Courts, as pointed out in the above decision, have applied one or the other of three tests. The Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision between the appellant and the deceased respondent and therefore, it would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say it could not be successfully executed. These three tests, as pointed out by this Court in Sri Chand Vs. M/s. Jagdish Pershad Kishan Chand, (1966) 3 SCR 451 = (AIR 1966 SC 1427) are not cumulative tests. Even if one of them is satisfied, the Court may dismiss the appeal."

vii) State of Punjab Vs. Nathu Ram reported in AIR 1962 SC 89. In this judgement, he drew our attention to paragraph 9, which reads as follows:

"9. It is therefore, necessary to determine, on the facts of this case, whether the State appeal could proceed against Nathu Ram. The award of the arbitrator in each of these cases was a joint one, in favour of both the respondents, Labhu Ram and Nathu Ram. To illustrate the form of the award, we may quote the award for the year 1945-46 in the proceedings leading to Civil Appeal No.635 of 1957. It is:

"On the basis of the report of S.Lal Singh, Naib Tehsildar (Ex.P.W.9/1) and Sheikh Aziz Din, Tehsildar, Exhibit P.W.9/2, the applicants are entitled to a sum of Rs.4,410/- on account of rent, plus Rs.3,872/8/0 on account of Income-tax



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etc., due to the inclusion of Rs.6,193/8/0 in their total income, plus such sum as the petitioners have to pay to the Income-tax Department on account of the inclusion of Rs.4,140/- in their income as awarded by this award".

The result of the abatement of the appeal against Labhu Ram is therefore that his legal representatives are entitled to get compensation on the basis of this award, even if they are to be paid separately on calculating their rightful share in the land acquired, for which this compensation is decreed. Such calculation is foreign to the appeal between State of Punjab and Nathu Ram. The decree in the appeal will have to determine not what Nathu Ram's share in this compensation is, but what is the correct amount of compensation with respect to the land acquired for which this compensation has been awarded by the arbitrator. The subject matter for which the compensation is to be calculated is one and the same. There cannot be different assessments of the amounts of compensation for the same parcel of land. The appeal before the High Court was an appeal against a decree jointly in favour of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab, to implead both the joint decree-holders in the appeal. In the absence of one joint decree-holder, the appeal is not properly framed. It follows that the State appeal against Nathu Ram alone cannot proceed."

57.The learned Senior Counsel also submitted that no notice as contemplated under Section 106 of the Transfer of Property Act was issued for termination of the lease despite the lease was valid for forty years from 17.09.1970. Therefore, the appellants are not entitled to seek relief of possession during the existence of the lease without complying with the mandatory requirement under Section 106 of the Transfer of Property Act. He also referred to the provisions of the Tamil Nadu City Tenants Protection Act. He submitted that the first respondent is entitled to seek protection under the Tamil Nadu City Tenants Protection Act, if the Court comes to the conclusion that the first respondent company N.Sathyathan & Sons Pvt. Ltd., is not entitled to specific performance decree as new buildings and improvements and repairs to the existing building were made by the first respondent company at its cost after coming into possession. He also referred



to Section 12 of the Tamil Nadu City Tenants Protection Act to submit that nothing in the contract shall take away or limit the rights available under the Tamil Nadu City Tenants Protection Act. In view of his submissions, the learned Senior Counsel prayed for dismissal of the appeal in O.S.A.No.248 of 1997.

58.Mr.M.S.Krishnan, learned Senior counsel representing some of the respondents drew our attention to the chief examination of Swaminathan (P.W.1), wherein, he has admitted the agreement dated 10.10.1974, Ex.P.3. Therefore, he submitted that having admitted the execution of the agreement dated 10.10.1974, Ex.P.3, wherein the sale consideration was reduced from Rs.74 lakhs to Rs.59 lakhs, Swaminathan has also accepted to the reduction in the sale price. He also drew our attention to the cross examination of Swaminathan (P.W.1), wherein, he has deposed that the account statement mentioned in the agreement dated 10.10.1974, was given by K.Jeyaraja Ballal and the others also agreed to the same.

59.The learned Senior Counsel then referred to another answer given by N.Swaminathan in his cross examination. In that answer, N.Swaminathan has affirmed that the figures given in Page 4 of the agreement dated 10.10.1974, Ex.D.5, had been checked up and found to be correct and thereafter only all the parties have signed in that document.

60.The learned Senior Counsel relied upon the following authorities and submitted that party cannot take advantage of one part of the document and reject the rest. The learned Senior Counsel also referred to Section 58 of the Indian Evidence Act, which is re-produced hereunder:

"58.Facts admitted need not be proved:

No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

If the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

61.The learned Senior Counsel submitted that admission in the pleadings need not be proved. N.Swaminathan has admitted in his Income Tax and Wealth Tax returns that he is receiving rent and the agreement dated 10.10.1974 has been acted upon. According to learned Senior Counsel, the value of the property under the agreement dated 10.10.1974 is much higher than the declared value under the Income Tax and Wealth Tax returns submitted by N.Swaminathan.



62.The learned Senior Counsel then drew our attention to the agreement dated 12.06.1975, wherein its recitals mention that the agreement dated 10.10.1974 (Ex.D.5) was signed by mistake without assigning any reason for the same. According to the learned Senior Counsel, the agreement dated 10.10.1974, Ex.D.5, cannot be wished away just like that. According to him, the agreement dated 12.06.1975 is a fabricated document. The learned Senior Counsel then drew our attention to the suit filed by R.P.David against Dr.K.Rathnaraja Ballal and others in O.S.No.10445 of 1984 before the Additional District Judge, Bangalore and submitted that as per the plaint averments in Paragraph 3, which reads as follows "in Sri Jayaraj Ballal, approached the plaintiff to have a joint venture of having a hotel in new premises 4 (Old 1), Magaragh Road, Bangalore 560001 and in Paragraph 4 which reads as follows:-

"Suddenly on 31.12.1981 the above said Jayaraj Ballal, the intimate friend of the plaintiff dies."

63.The learned Senior Counsel also drew our attention to an order passed in I.A.No.1 in O.S.No.10445 of 1984, wherein the Court has given a finding that K.Jeyaraja Ballal was creating documents after documents involving the family properties and there were litigations in several Courts at Mangalore, Madras and finally in the Supreme Court. Therefore, according to the learned Senior Counsel, R.P.David and K.Jayaraja Ballal were very good friends till his death on 31.12.1981 and were also contemplating a joint venture just prior to his death and therefore, the appellants cannot now deny the execution of the sale deed in terms of the agreement dated 10.10.1974. Finally, he submitted that 10.10.1974 agreement has been acted upon and possession also delivered to the first respondent company N.Sathyanathan & Sons Pvt. Ltd., and the payment of Rs.59 lakhs being the total sale consideration has been paid. The agreement dated 12.06.1975, is a fabricated document and is not binding on other parties. Therefore, he prayed that a specific performance decree has to be passed in favour of the first respondent company in accordance with the agreement dated 10.10.1974.

IV POINTS FOR CONSIDERATION:

64.From the submissions made by the learned counsels on both sides, the following issues arise for consideration in these appeals:

1)Whether the sale agreement dated 10.10.1974 (Ex.P.3/ Ex.D.5) was acted upon by the parties?

2)Whether the sale agreement dated 10.10.1974 (Ex.P.3 / Ex.D.5) superseded the sale agreements dated 27.09.1973 (Ex.P.1 / Ex.D.3) and 14.02.1974 (Ex.P.2)?

3)Whether the first respondent Company, N.Sathyanathan and Sons Pvt. Ltd., is entitled for a decree of



specific performance based upon the sale agreement dated 10.10.1974 (Ex.P.3/Ex.D.5)?

4) Whether the appellants are entitled to a decree for possession of the suit schedule property as claimed in C.S.No.600 of 1979?

5) Whether the agreement dated 12.06.1975 (Ex.P.4) which declared the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) as a mistake, is a valid agreement?

6) Whether the sale consideration was reduced from Rs.74 Lakhs under the agreement dated 27.09.1973 (Ex.P.1) to Rs.59 Lakhs under the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5)?

7) Whether the first respondent Company N.Sathyanathan and Sons Pvt. Ltd., has paid the entire sale consideration, as agreed upon between the parties?

8) Whether the first respondent Company is entitled to seek protection under Section 53-A of the Transfer of Property Act?

9) Whether the suit in C.S.No.588 of 1982 is barred by the law of limitation?

10) Whether the plaintiffs in C.S.No.588 of 1982 have discharged their burden of proving that they were always ready and willing to perform their part of the sale contract?

11) Whether time is the essence of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5)?

12) Whether the first respondent Company N.Sathyanathan and Sons Pvt. Ltd., (Cross Objector) is entitled to seek specific performance of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5), despite a finding by the learned Single Judge in Paragraph 134 of the impugned judgment that the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) is not enforceable?

13) Whether despite the finding by the learned Single Judge, that possession was delivered on 06.10.1973 much earlier to the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5), the first respondent Company is entitled to get the relief of specific performance of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5)?

14) Under the agreement dated 27.09.1973 (Ex.P.1), possession was handed over to Jeyaraj Ballal and not to the first respondent Company. In that scenario, can the Company seek protection under Section 53-A of the Transfer of Property Act?

15) Whether the non-examination of Manickaraj Ballal, the Managing Director of the first respondent Company is fatal to the case of the first respondent Company in seeking specific performance for the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5)?

16) Whether the relief granted by the learned Single Judge in C.S.No.588 of 1982, passing a decree for specific performance by way of an alternative relief based on the agreement dated 27.09.1973, directing the first respondent Company to pay Rs.15 Lakhs as sale consideration is tenable?

17) Whether the appellants or the respondents are



having the balance of convenience for getting their respective reliefs and in whose favour the relative hardship is higher?

18) Whether without making the legal representatives of Jeyaraj Ballal, namely, the defendants 4 to 9 as parties to the appeal, the appeals are maintainable?

19) Whether the delay in filing the cross objection by the first respondent Company will disentitle the cross objector (first respondent Company) from seeking the reliefs sought for in the cross objection?

20) Whether the first respondent Company is entitled to get protection under Section 9 of the City Tenants Protection Act?

21) Whether the learned Single Judge was right in exercising his discretion by granting the relief of specific performance in favour of the first respondent Company and whether was the discretion properly exercised?

22) Whether the Court can enhance the sale consideration due to the long passage of time between the date of the sale agreement and the date of decree?

23) Whether the construction of new buildings and carrying out repairs at the cost of the first respondent Company after the execution of the sale agreement will bar the appellants to seek possession of the suit property from the first respondent?

24) Whether without making the legal representatives of Jeyaraj Ballal who were the defendants 4 to 10 in the suit C.S.No.588 of 1982, in whose favour a decree was passed giving them protection under Section 53-A of the Transfer of Property Act would result in inconsistent decrees, if the appeals are allowed?

25) Whether the value of Rs.9 Lakhs for the suit land fixed under the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) is the fair market value at that point of time?

26) Whether the cross objection is maintainable and can it be granted?

V FINDINGS OF THE LEARNED SINGLE JUDGE:-

65. The following findings were given by the learned single Judge:-

(1) The lease deed dated 17.09.1970 got merged with the agreement dated 27.09.1973 (Ex.P.1) and supplemental agreement dated 14.02.1974 (Ex.P.2).

(2) The agreement dated 10.10.1974 (Ex.P.3) is not enforceable.

(3) The possession was handed over on 06.10.1973 much earlier to the agreement dated 10.10.1974.

(4) The consideration fixed under the agreement of sale dated 27.09.1973 and reiterated in the agreement dated 14.02.1974 are not based on any incorrect representation as alleged and that the plaintiffs are not entitled to contend that the price fixed under the agreement dated 10.10.1974 alone is the correct price and the learned single Judge has given a finding that the agreement dated 10.10.1974 was not



acted upon and has been given up on the ground of mistake.

(5) The defendants are entitled to the benefit under Section 53-A of the Transfer of Property Act.

(6) The suit for specific performance is filed within the period of limitation.

(7) The specific performance decree was granted by relying upon some other agreement. The decree granted by way of an alternative relief based on agreement dated 27.09.1973 and supplemental agreement dated 14.02.1974 directing the plaintiffs to pay Rs.15 lakhs and directing payment of rent of Rs.7000/- till the date of deposit of Rs.15 lakhs.

(8) The specific performance decree was granted in favour of the plaintiffs in C.S.No.588 of 1982 on the ground that the plaintiffs were in possession of the suit property and they have constructed lot of buildings by investing huge amounts.

9) Judicial notice was taken of the fact that it is common knowledge that in the city of Madras, the land values are escalating and was held that the price of land value which was reduced to Rs.9 lakhs under the agreement dated 10.10.1974 (Ex.P.3), cannot be accepted.

Therefore, the majority of the findings of the learned Single Judge excepting the limitation issue and the protection under Section 53-A of the Transfer of Property Act are in favour of the appellants.

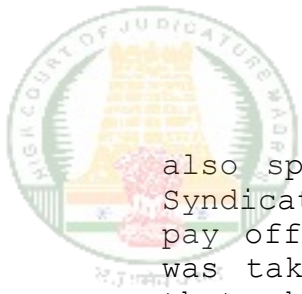
VI DISCUSSION:-

66. There are four agreements involved in the subject matter of the dispute. They are (a) Agreement dated 27.09.1973 (Ex.P.1), (b) Supplemental Agreement dated 14.02.1974 (Ex.P.2), (c) Agreement dated 10.10.1974 (Ex.P.3) and (d) Agreement dated 12.06.1975. Insofar as the agreements dated 27.09.1973 and 14.02.1974, the execution of both the agreements are not disputed by the parties. According to the first respondent, the agreement dated 10.10.1974 supersedes the agreements dated 27.09.1973 and 14.02.1974 and this contention was rejected by the learned single Judge. The learned single Judge has given a clear finding that the agreement dated 10.10.1974 was not acted upon by the parties and is a mistake. The learned single Judge has also taken judicial notice of the fact that it is a common knowledge that in the city of Madras, the land value is always rising and rejected the contention of the first respondent that the price of land was reduced to Rs.9 lakhs under the agreement dated 10.10.1974.

68. The communication dated 01.04.1975 (Ex.D.6) sent by R.P.David and Saminathan to the first respondent company evidencing handing over possession of the suit schedule property to the company which was relied upon by the learned Senior Counsel for the respondents does not specify the actual date on which the possession was handed over but merely mentions that it was done in accordance with the agreement dated 10.10.1974. The letter dated 01.04.1975 (Ex.D.6)



contradicts the undisputed supplemental agreement dated 14.02.1974 (Ex.P.2) which records the fact that the possession was delivered to the first respondent company on 06.10.1973 itself much prior to the agreement dated 10.10.1974. Further, the learned single Judge after going through the pleadings, oral and documentary evidence has given a clear finding that the agreement dated 10.10.1974 was not acted upon between the parties and it is a mistake. Having given a clear finding that the agreement dated 10.10.1974 is not enforceable, the learned single Judge ought not to have granted the specific performance decree in favour of the first respondent company since the first respondent was given the right to purchase only under the agreement dated 10.10.1974 not under the other agreements dated 27.09.1973 and 14.02.1974. In those agreements, the buyer was K.Jeyaraja Ballal and not the first respondent company who was only a lessee. It was only K.Jeyaraja Ballal who negotiated with R.P.David and N.Saminathan for the purchase of the property. The agreements dated 27.09.1973, 14.02.1974, 10.10.1974 and 12.06.1975 were all signed by K.Jeyaraja Ballal on behalf of the buyers. The agreements dated 27.09.1973, 14.02.1974 and 10.10.1974 were entered into by K.Jeyaraja Ballal as the buyer in his individual capacity. The agreement dated 12.06.1975 which is disputed by the first respondent was also signed by K.Jeyaraja Ballal representing the first respondent company after transfer of shares by R.P.David and N.Saminathan and their respective families in the first respondent company in favour of the family members of K.Jeyaraja Ballal, Hebbar and Acharya, they became the exclusive shareholders of the first respondent company. After they became the exclusive shareholders, the first respondent company represented by K.Jeyaraja Ballal is said to have entered into the last agreement dated 12.06.1975 with N.Saminathan and R.P.David. As seen from the four agreements, K.Jeyaraja Ballal is the only person who has signed the agreement on behalf of the buyers. K.Jeyaraja Ballal died on 31.12.1981 which is not disputed by the parties as seen from the materials available on record. Manickaraj Ballal, the brother of K.Jeyaraja Ballal was never in the picture under the agreements dated 27.09.1973, 14.02.1974, 10.10.1974 and 12.06.1975. But the suit C.S.No.588 of 1982 seeking specific performance was filed by the first respondent represented by Manickaraj Ballal as its Managing Director. Even though, Manickaraj Ballal was alive at the time of trial, he did not enter the witness box. Only, Raghava Hebbar of the Hebbar family was examined as D.W.1. D.W.1, in his evidence has answered that K.Jeyaraja Ballal was the sole spokesman and the representative of the three families. D.W.1 has also deposed that all the three families left the entire matter with K.Jeyaraja Ballal for negotiating the property. D.W.1 has also deposed that his relationship with K.Jeyaraja Ballal was very cordial and the share holding pattern of the three families is that Ballal's family 90 shares, Acharya's family held 40 shares and Hebbar (i.e.,) the family of D.W.1 held 30 shares, each share of Rs.10,000/- face value. D.W.1



also speaks about the loan being taken from Karnataka Bank, Syndicate Bank and Corporation Bank by the first respondent to pay off, R.P.David and N.Saminathan and he testified that it was taken some time in October 1974. He would further state that when a question was asked as to when the balance sale consideration of Rs.54 lakhs paid, he states that it was not paid before 06.12.1973 and he further states that time was the essence of contract. Inasmuch as the evidence of DW-1 is only said to be in the nature of hearsay. According to us, an adverse inference can be drawn against the respondents for not examining Manickaraj Ballal, the brother of K.Jeyaraja Ballal as a defendant witness. He was very much alive but the reason given was that he was in Australia on account of some illness and no medical records were also produced for his illness. Having not been able to examine K.Jeyaraja Ballal who was the signatory as a buyer under all the four agreements due to his death, the respondents should have at least examined Manickaraj Ballal, the then Managing Director of the first respondent company as a witness to prove their claim, instead, the respondents have examined Raghava Hebbar who does not know personally R.P.David and N.Saminathan who are the sellers and parties to all the four agreements. The reason given by the respondents for non examination of Manickaraj Ballal as a witness is not believable and cannot be accepted. A genuine investor and a buyer will not under normal circumstances act indifferently by not examining the person in charge of the day-to-day affairs of the company in proving its claim. But in the present case, excepting for Raghava Hebbar, the other witnesses examined on the side of the first respondent are not family members of K.Jeyaraja Ballal and further Raghava Hebbar also does not have any personal knowledge of all the agreements dated 27.09.1973, 14.02.1974, 10.10.1974 and 12.06.1975 as the family members of Raghava Hebbar and Acharya's family were only investors in the first respondent company without any involvement in the day-to-day affairs of the company. We are of the considered view that the first respondent ought to have examined at least Manickaraj Ballal in support of their claim which they have failed to do so, despite opportunity available to them. The loan availed by the first respondent company from Karnataka Bank, Syndicate Bank and Corporation Bank to pay off R.P.David and N.Saminathan is admitted by D.W.1 and the said loan was taken sometime in October 1974 according to D.W.1. The agreement dated 10.10.1974 was also entered into only during that time. Therefore, it can be inferred from the documents and the oral evidence that the agreement dated 10.10.1974 was entered into only to suit the requirements of the bank. The respondents have also not produced any clinching contra evidence to establish that the agreement dated 10.10.1974 was indeed entered into and is valid. The learned single Judge has referred to the intended written statement of the 1st defendant K.Jayaraja Ballal, there is no whisper about the agreement dated 10.10.1974. A mere statement without sufficient proof will not entitle the first respondent to seek



specific performance of the agreement dated 10.10.1974.

69. It is not in dispute that time for completion of sale was extended under the agreement dated 14.02.1974. Even as per the agreement dated 10.10.1974 for which the first respondent sought for specific performance under the suit C.S.No.588 of 1982, the balance of Rs.23 lakhs was paid only on 18.10.1974 as per the testimony of D.W.1. In the agreement dated 10.10.1974, M/s.Sathyanathan and Sons Private Limited Company, the first respondent was represented by its Director, K.Srinivasa Acharya, he was also not examined as a witness on the side of the plaintiffs in C.S.No.588 of 1982 during the trial. Instead only Raghava Hebbar a shareholder in the first respondent company was examined representing M/s.Sathyanathan and Sons Private Limited Company, the first respondent company. Having paid the entire sale consideration for the purchase of the property on 18.10.1974, as per the testimony of D.W.1, they have not requested the sellers to execute the sale deed in its favour till the date of the death of K.Jeyaraja Ballal on 31.12.1981. A prudent and bona fide buyer who was always ready and willing to perform the contract would have immediately requested the seller on payment of the entire sale consideration to execute the sale deed in its favour. But in the case on hand, there is no request made by K.Jeyaraja Ballal or by his nominees or by the first respondent company to the sellers R.P.David and N.Swaminathan to execute the sale deed as per the agreement dated 10.10.1974. The learned single Judge based on this fact has rightly given a finding that the agreement dated 10.10.1974 is not enforceable.

70. As seen from the documents which are marked as exhibits during the trial an amount of Rs.8,36,070/- was due to Corporation Bank, Coimbatore in respect of the loan availed by the first respondent company at the time of signing of the agreement dated 10.10.1974. All this would go to show that the agreement dated 10.10.1974 was entered into for a different purpose and the statement of P.W.1 that for the purpose of the bank, the agreement dated 10.10.1974 was entered into has to be believed. Further, under the supplemental agreement dated 14.02.1974, the buyer K.Jeyaraja Ballal had agreed to pay interest at 10% per annum on Rs.39 lakhs from 06.12.1973 in view of the extension for completion of the sale. As per the supplemental agreement dated 14.02.1974, the time for payment of the balance sale consideration shall be on or before 15.02.1975. As seen from the endorsement in the supplemental agreement dated 14.02.1974, K.Jeyaraja Ballal was not ready with the balance sale consideration and that is the reason for seeking further extension and the agreement to pay interest at 10% per annum on Rs.39 lakhs from 06.12.1973. Apart from the balance sale consideration together with interest, K.Jeyaraja Ballal had also agreed under the supplemental agreement dated 14.02.1974 that he will pay a sum of Rs.7000/- per month by way of rent from 06.10.1973 till the date of completion of



sale. All these facts which are undisputed will clearly reveal that K.Jeyaraja Ballal and the first respondent company did not have sufficient funds to pay the balance sale consideration right from the inception of the agreement dated 27.09.1973. Further, under the agreement dated 10.10.1974, which is sought to be specifically enforced by the first respondent, the payment of rent by the first respondent to R.P.David and N.Swaminathan has been removed whereas, under the previous agreement dated 14.02.1974, there was an agreement to pay lease rent till the completion of sale by K.Jeyaraja Ballal. It can be inferred that the lease has been terminated as the agreement dated 10.10.1974 does not speak about the lease. Therefore, the first respondent cannot retain possession as a lessee even if he fails to establish that the agreement dated 10.10.1974 is enforceable. The learned single Judge has rightly given a finding that the lease dated 17.09.1970 is not subsisting and it has merged with the sale agreements. Further, the lease was only for a period of 40 years from 1970 which has already expired in 2010 and therefore, as of now no rights as a lessee can be claimed by the first respondent.

71.Admittedly, N.Swaminathan and R.P.David resigned from the first respondent company by resignation letters dated 10.10.1974 which are marked Exs.P.17 and P.18 respectively. Therefore, it is evident that they have received the sale consideration for the transfer of shares held by them in the first respondent company in favour of K.Jeyaraja Ballal and his nominees. The sale consideration of Rs.15 lakhs to R.P.David and N.Swaminathan payable by the first respondent is only towards the sale of the suit property which is the land measuring 47 grounds and not towards the transfer of shares. Since the first respondent company did not complete the sale of the suit property, R.P.David and N.Swaminathan continued to receive the rent as per Exs.D.88 and D.89 as per the supplemental agreement dated 14.02.1974. Therefore, the contention of the learned Senior Counsel for the first respondent that even after their resignation from the company on 10.10.1974, R.P.David and N.Swaminathan were receiving the rent would amount to acceptance of the first respondent as their lessee will not confer any right of specific performance of the agreement dated 10.10.1974 in favour of the first respondent.

72.It is an admitted fact that the first respondent is in possession of the property and is running Hotel Palmgrove. Under lease deed dated 17.09.1970, the lease in favour of the first respondent was for a period of 40 years. The payment of Rs.30,000/- as per Ex.D.73 towards urban land tax will not confer any right of specific performance on the first respondent. The right of specific performance is available to a person only when he is always ready and willing to perform the contract. In the instant case, time has been extended under agreement dated 14.02.1974 and once again by an



endorsement dated 20.06.1974 made in the agreement dated 14.02.1974 will clearly establish that the first respondent was not ready and willing to perform its part of the contract and has been seeking time under one pretext or other. It has been the consistent stand of the appellants that though the agreement dated 10.10.1974 was signed by the parties, it was not the intention of the parties to give effect to that agreement. Even though there was no necessity for the appellants to mark the agreement dated 10.10.1974 as an exhibit, they have filed the same and marked it as Ex.P.3 during the chief examination of P.W.1. This would clearly show that the appellants have not suppressed any material fact or document while proving their case. Therefore, the contention of the learned Senior Counsels for the respondents that having marked the agreement dated 10.10.1974 (Ex.P.3) in their evidence (P.W.1), the appellants cannot now resile from the same cannot be accepted.

73.D.W.5, Sukeerthiraj, an employee of Hotel Palmgrove was examined as a witness on the side of the first respondent. In his cross examination, D.W.5 has admitted that he is aware of the agreement dated 12.06.1975 (Ex.P.4) and it was shown to him by Manickaraj Ballal. As seen from the evidence of D.W.5, it is clear that the agreement dated 12.06.1975 was indeed entered into between the parties. The dispute raised by the respondents that the agreement dated 12.06.1975 was never entered into cannot be accepted. Under the agreement dated 12.06.1975, it was made clear that the agreement dated 10.10.1974 was a mistake. Even though the agreement dated 12.06.1975 was not signed by N.Swaminthan but signed by R.P.David alone from the evidence of D.W.5 and from the assertion made by the appellants in their pleadings as well as in their oral evidence, it can be inferred that the agreement dated 12.06.1975 was in fact, entered into between the parties. Therefore, the contention of the respondents that there was no such agreement dated 12.06.1975 cannot be countenanced. The argument made by the learned Senior Counsel for the respondents that the agreement dated 12.06.1975 is hit by Section 20 of the Indian Contract Act is not correct. Even under the agreement dated 12.06.1975, the first respondent represented by its Director, K.Jeyaraja Ballal has sought for further time to pay the balance sale consideration of Rs.15 lakhs by another period of one year. From the date of agreement, till the sale is completed the agreement also provides for payment of rent at Rs.7,000/- per month by the first respondent to N.Swaminathan and R.P.David. Therefore, as seen from the agreement dated 12.06.1975, the first respondent was not ready and willing to perform his part of the contract and has been seeking extension after extension for making the balance payment. Under agreement dated 12.06.1975, D.W.5, the witness of the first respondent has also signed as a witness to the agreement dated 12.06.1975. All these factors will establish that the agreement dated 12.06.1975, is a valid agreement and as per the said agreement, the agreement dated



10.10.1974 was held to be a mistake and therefore, according to us, the learned single Judge has rightly rejected the claim of the first respondent to specifically enforce the agreement dated 10.10.1974. Even in Ex.D-5 the agreement dated 10.10.1974, there is nothing to show as testified by D.W.1, that the payment was made on 18.10.1974. But clause 7 of Ex.D.5, reads as if the sellers have acknowledged the receipt of Rs.23 lakhs.

74.The agreement dated 10.10.1974 has been signed by Srinivasachar representing the first respondent company as a Director. So the company has got knowledge of the agreement dated 10.10.1974 on that day itself. Under the agreement dated 10.10.1974, there are two witnesses Krishnamurthy, S/o.Srinivachar and Sukreethiraj who was examined as D.W.5. Both the witnesses to the agreement dated 10.10.1974 are supporting the contention of the first respondent company and in fact one of them was examined as D.W.5 on the side of the respondents. Therefore, the averment made in the plaint filed in C.S.No.588 of 1982 that the agreement dated 10.10.1974, was kept as a guarded secret by K.Jeyaraja Ballal and the same was discovered only after his death on 31.12.1981 cannot be believed and the contention of the appellants that it is a false statement has to be believed by this court. It can be inferred that the first respondent and its Directors are very much aware about the agreement dated 10.10.1974 even on the date of the said agreement. Even though the first respondent was aware of the agreement dated 10.10.1974, on the same day, the company did not seek specific performance within three years from that date, but instead they have filed the suit in the year 1982 after almost eight years as if the cause of action for filing the suit arose only on 19.10.1979 when the defendants in C.S.No. 588 of 1982 issued a lawyer's notice calling upon the first respondent company to redeliver possession, which according to the plaintiffs in C.S.No.588 of 1982 is the date of refusal of R.P.David and N.Swaminathan to execute a sale deed in favour of the first respondent. The first respondent has not requested the appellants to execute a sale deed in terms of the agreement dated 10.10.1974 at any point of time. No communications within three years from 10.10.1974 or satisfactory oral evidence is available on record to prove the claim of the first respondent that the agreement dated 10.10.1974 is enforceable and they were ready and willing to perform it. We disagree with the finding of the learned single Judge that the suit in C.S.No.588 of 1982 is filed within the period of limitation and we hold that the suit is hopelessly barred by the law of limitation. In the agreement dated 27.09.1973 followed by the supplemental agreement dated 14.02.1974 and in the endorsement dated 20.06.1974, the time for performance has been extended upto 30.09.1974. For the purpose of limitation, Article 54 of the Limitation Act 1963 is relevant. When in the agreement for sale time for performance has been fixed, the suit for specific performance has to be filed within three years from



the date fixed for performance. The suit for specific performance based on the agreement dated 10.10.1974 ought to have been filed within three years i.e, on or before 10.10.1974. No suit has been filed within that date. No suit can be filed thereafter. The instant suit C.S.No.588 of 1982 was filed only on 05.11.1982. In fact, as per the evidence of D.W.5 and D.W.2, the relationship between K.Jeyaraja Ballal and Manickaraj was cordial and only thereafter disputes arose. The following exhibits marked during trial would show that Manickraj Ballal and Jeyaraj Ballal were having cordial relationship during the time of the agreement dated 10.10.1974.

(a)Ex.D-9 sent by Manickaraj Ballal to Swaminathan shows a DD dated 09.07.1974 was sent as per the instructions of K.Jayaraja Ballal.

(b)Then comes a letter dated 09.08.1974-D-11 from Manickaraj Ballal to Swaminathan sending a DD as instructed by K.Jayaraja Ballal.

(c)Then comes a letter dated 16.8.1974-D-12 sent by RPAD by Manickaraj Ballal to Swaminathan.

(d)Then comes a letter dated 12.09.1974 - marked as Ex.D13 from Manickaraj Ballal to Swaminathan as instructed by K.Jayaraja Ballal.

(e)Letter dated 10.09.1974 - D-35 from Manickaraj Ballal to the Commissioner, Corporation of Madras.

(f)Manickaraj Ballal was in management of the Hotel Palmgrove in Madras and was managing its affairs. From all these events, it is evident that the statement of the respondents that the agreement dated 10.10.1974 was taken by K.Jeyaraja Ballal and was kept as a guarded secret by him is false.

75.An adverse inference can be drawn for the non examination of Manickaraj Ballal as a witness by the respondents. D.W.5, Sukreethiraj, an employee of Hotel Palmgrove in his oral evidence has stated Manickaraj Ballal has gone to Australia for some treatment. No medical records were produced to show the health condition of Manickaraj Ballal during the time of trial. It is only Manickaraj Ballal who should have assisted the Court and given evidence as to how he got the agreement dated 10.10.1974 from the family house of Ballal after the death of K.Jeyaraja Ballal on 31.12.1981. An adverse inference can be drawn that Manickaraj Ballal did not enter into the witness box since he knew very well about the agreement dated 10.10.1974 on the date of agreement itself which is contrary to the pleadings in the suit in C.S.No.588 of 1982 seeking specific performance. D.Ws.2 to 5 are not competent to speak about the alleged discovery of the agreement dated 10.10.1974 from the family house of Ballal after the death of K.Jeyaraja Ballal on 31.12.1981. The only competent witness was Manickaraj Ballal who was not examined as a witness on the side of the respondents. It is therefore evident that the agreement dated



10.10.1974 and its validity was well known to the parties on the date of the agreement itself. Hence, if at all the parties seek specific performance of the agreement, they would have filed a suit within three years from the date when the cause of action arose. In the case on hand, the agreement dated 10.10.1974 and the suit for specific performance was filed in the year 1982 in C.S.No.588 of 1982. We are therefore of the considered view that the suit in C.S.No.588 of 1982 is hopelessly barred by the law of limitation and the learned Single Judge erred in giving a finding that the suit C.S.No.588 of 1982 is filed within the period of limitation.

76.The first respondent also cannot seek protection under Section 53-A of the Transfer of Property Act. Section 53- A of the Transfer of Property Act reads as follows:-

"Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

77.Section 53-A of the Transfer of Property Act confers no right on a party who has committed breach of the contract. A transferee has to prove that he was honestly ready and willing to perform his part of the contract. In the case on hand, as seen from the evidence available on record, the first respondent has failed to discharge its obligations under the agreement for sale. Further, the respondents have claimed retention of possession based on both the lease agreement and the agreement for sale. They cannot approbate and reprobate and claim protection under Section 53-A of the Transfer of Property Act.



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78.The contention of the respondents that the appeal will have to be dismissed on the technical ground that the legal representatives of K.Jeyaraja Ballal were not impleaded in the appeal is rejected for the following reasons:-

(a)We agree with the contention of the appellants that the estate of K.Jeyaraja Ballal is properly represented. Further, the legal representatives who are not impleaded have not approached this Court and made a grievance. The legal representatives of K.Jeyaraja Ballal were also dropped in the earlier round of appeal. No objection was taken at this stage. When S.L.P. was filed before the Supreme Court, no objection was obtained. Therefore, the estate of K.Jeyaraja Ballal has been properly represented. Therefore, according to us, the appeal is maintainable without impleading the legal representatives of K.Jeyaraja Ballal who remained exparte in the suit despite filing the written statement.

79.Order 41 Rule 20 of the Civil Procedure Code which was relied upon by the respondents reads as follows:-

"20.Power to adjourn hearing and direct person appearing interested to be made respondents:-

(1)Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2)No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to cost as it thinks fit."

80.In the instant case, only with the knowledge of the Court, the legal representatives of K.Jeyaraja Ballal were not made as parties to the appeal and in the earlier round of litigation, in O.S.A.Nos.81 of 1991 and 248 of 1997 and in C.A.No.642 of 2003 before the Hon'ble Supreme Court, the respondents did not raise any objection as to the non impleadment of legal representatives of K.Jeyaraja Ballal in this appeal. According to us, even though decree was passed in favour of the defendants 4 to 9 in the suit giving them protection under Section 53-A of the Transfer of Property Act and they were not made as parties to the appeal will not lead to passing of inconsistent decrees if the appeals were allowed. Having given a clear finding that the plaintiffs in C.S.No.588 of 1982 are not entitled to seek protection under Section 53-A of the Transfer of Property Act and the estate being properly represented and the lease has also expired, the appellate Court under Order 41 Rule 33 has got the power to pass any decree notwithstanding that the appeal is as to part



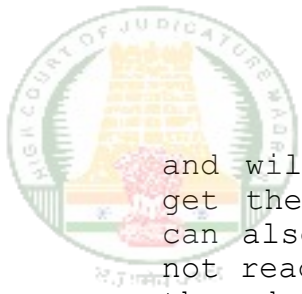
only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The object of this rule is to empower the appellate Court to do complete justice between the parties. Order 41 Rule 4 CPC and this Rule gives the Court ample power to make the order appropriate to the ends of justice. Under the former Rule upon an appeal by one of the parties on a ground common to all, the decree may be varied in favour of all and the latter Rule, the Court has the power to make the proper decree notwithstanding that the appeal is as to only part of the decree and such power may be exercised in favour of all or any of the parties even though they may not have filed appeal or objection. As held in Desu Vs. Vasanthi Devi (2000) 1 LRI 124, when circumstances exist which necessitate the exercise of discretion conferred under Order 41 Rule 33 CPC, the Court cannot be found wanting when it comes to exercise of such powers. The object of Order 41 Rule 33 has been explained by the Supreme Court in Choudhary Sahu Vs. State of Bihar reported in AIR 1982 SC 98 as follows:-

The object of this rule is to avoid contradictory and inconsistent decisions on the same question in the same suit. As the power under this rule is in derogation of the general principle that a party cannot avoid a decree against him without filing an appeal or cross objection, it must be exercised with care and caution. The rule does not confer an unrestricted right to re-open decrees which have become final merely because the Appellate Court does not agree with the opinion of the Court appealed from. Ordinarily, the power conferred by this rule will be confined to those cases where as a result of interference in favour of the appellant further interference with the decree of lower court is rendered necessary in order to adjust the rights of the parties according to justice, equity and good conscience".

Therefore, we are of the considered view that under Order 41 Rule 33 C.P.C, this Court got the ample powers to make the order appropriate in the ends of justice.

81. Taking all these factors into consideration, we are of the considered view that the objections raised by the respondents that the non impleadment of legal representatives of K. Jeyaraja Ballal in whose favour decree was passed is fatal to the appeal is not correct and is not in accordance with law.

82. The Cross Objection No. 109 of 1993 was not filed within time as per Order 41 Rule 22 C.P.C. Aggrieved by the findings given by the learned Single Judge that the agreement dated 10.10.1974 is not enforceable and also aggrieved by other findings, the first respondent has preferred the cross objection. As observed by us, a purchaser must always be ready



and willing to perform its part of the contract in order to get the relief of specific performance. An adverse inference can also be drawn against the first respondent that they were not ready and willing to perform their part of the contract as they have filed the cross objection belatedly. Further, no submission was made regarding the reasons for the delay in filing the cross objection. Therefore, the cross objection also does not deserve any merit and has to be rejected.

83.The submissions of the learned Senior Counsel for the respondents that Order 41 Rule 14 CPC, regarding filing of appeal has not been complied with by the appellants is unsustainable. Order 41 Rule 14 of CPC reads as follows:-

"14.Publication and service of notice of day for hearing appeal:- (1)Notice of the day fixed under Rule 12 shall be affixed in the Appellate court house and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer, and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2)Appellate Court may itself cause notice to be served:-Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3)The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4)Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5)Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it."

In so far as, the Madras High Court is concerned, an amendment by way of proviso sub-rule (1) of Order 41 Rule 14 CPC, was introduced on



17.11.1976, which reads as follows:

"Provided that the appellate Court may dispense with service of notice on respondents, who have remained absent, against whom the Suit has proceeded ex parte in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court".

The amendment makes it very clear that the instant appeal shall not fail just because the legal representatives of Jayaraj Ballal namely defendants D.4 to D.10 in the Suit were not made as parties to the appeal. The said defendants have also not challenged their non-impleadment in the appeal nor have they shown any interest to defend the appeal. The appeals were filed in the year 1991 and if the defendants D.4 to D.10 in the Suit had any interest in the subject matter of the appeals, they would have certainly impleaded themselves in the appeals, but in the instant case, as they do not have any interest in the appeals, there is no necessity to make them as parties to the instant appeals.

84. According to the learned Senior Counsel for the respondents, the appellants will have to array all the defendants as the respondents in the appeal as per Order 41 Rule 20 of CPC. According to him, if required, notice to them can be dispensed with if they have remained ex parte in the suit. According to the learned Senior Counsel, under Order 41 Rule 20 of the Civil Procedure Code where in an appeal a party to the suit is interested in the result of the appeal but was not made a party to the appeal, the Court may adjourn the hearing to a further date to be fixed by the Court and direct such person to be made as a respondent. No respondent shall be added under this Rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit. In the case on hand, the legal representatives of K. Jeyaraja Ballal filed their written statement and remained ex parte but a partial decree was passed in their favour giving protection under Section 53-A of the Transfer of Property Act but they were not impleaded as respondents in the appeal. The proviso to Order 41 Rule 14 clearly states that the appellate Court may dispense with the service of notice on the respondents who have remained absent in the suit. As seen from the Order 41 Rule 14, the appellate Court has got powers to dispense with the service of notice to the legal representative of K. Jeyaraja Ballal who were the defendants in the suit but were not made parties in this appeal. In the earlier round of litigation in O.S.A. and S.L.P before the Supreme Court, involving the same subject matter of the dispute, the respondents did not raise such issue but have given their



consent for filing of the appeal in the same fashion as was done in the instant appeal by the appellants. Therefore, according to us, the plea raised by the respondents that the appeal on account of non impleadment of the legal representatives of K.Jeyaraja Ballal will fail, is unsustainable.

85. There will be no any inconsistent decrees as claimed by the respondents, if the appeal is allowed without impleading the legal representatives of K.Jeyaraja Ballal who were the defendants in the suit. Further, the suit was filed in the year 1982 and the appeal was filed in the year 1991 and now we are in 2017 and therefore, if at all, the legal representatives of K.Jeyaraja Ballal had any grievance for their exclusion in the appeal they would have come and stated their claim in the appeal but in the case on hand, they have not done so. Therefore, on this score also, the technical plea raised by the respondents that non impleadment of legal representatives of K.Jeyaraja Ballal who were the defendants in the suit is fatal to the appeal is incorrect and will fail.

86. The learned single Judge has also taken judicial notice of the fact that the price of land will never get reduced in the city of Chennai and therefore, has come to the conclusion that Rs.59 lakhs fixed under the agreement dated 10.10.1974 towards total sale consideration is not correct and the consideration fixed under the agreement dated 27.09.1973 which is Rs.74 lakhs is the correct sale consideration.

87. C.S.No.600 of 1979 filed by the plaintiffs therein seeking possession of the suit property is well within the period of limitation. The suit was filed in 1979 within 12 years as per Article 65 of the limitation Act, 1963. According to us, the learned single Judge having given a clear finding that the agreement dated 10.10.1974 is not enforceable, having held so, the learned single Judge ought not to have decreed the suit in C.S.No.588 of 1982 for specific performance directing the defendants therein to execute the sale deed in favour of the plaintiffs on deposit of sum of Rs.15 lakhs together with interest at 6% per annum from 27.09.1973 till the date of payment. The learned Single Judge has given an alternative relief of specific performance beyond the scope of the agreement dated 10.10.1974, which as rightly pointed out by the learned Senior Counsel for the appellant, is unknown to the law of specific performance.

88. Since 1973, the respondents are in possession of the suit schedule property. They have paid a paltry rent that too not for the entire period. They have enjoyed benefits by running Hotel Palmgrove and the Marriage Hall. The entire income arising out of the same was enjoyed exclusively by the respondents. They have enjoyed the benefits for 45 years with an investment of only Rs.59 lakhs. The property is situated in the heart of Chennai and after the gap of more than 45



years, the present market value would have increased manifold to unimaginable proportions. We are in agreement with the learned Senior Counsel for the appellants that it is the appellants who are facing more hardship when compared to the hardship faced by the respondents. Therefore, we are of the considered view that the respondents cannot plead hardship in order to entitle them for the relief for specific performance.

89. The learned single Judge ought to have decreed the suit in C.S.No.600 of 1979 filed by the plaintiffs since the defendants who are the plaintiffs in C.S.No.588 of 1982 have not been able to discharge their burden of establishing the enforceability of the agreement dated 10.10.1974.

90. Let us now consider the various legal provisions under the Specific Relief Act which is relevant to the instant case on hand. Section 10 of the Specific Relief Act deals with cases in which specific performance of the contract can be granted which reads as follows:-

"10. Cases in which specific performance of contract enforceable.-

Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-

(a) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation.- Unless and until the contrary is proved, the court shall presume- (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and (ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff."

91. In the case on hand, the defendants in C.S.No.588 of 1982 have established that the total sale consideration payable under the agreement of sale dated 27.09.1973 is Rs.74 lakhs. Out of which only Rs.59 lakhs was paid by the plaintiffs in C.S.No.588 of 1982. The defendants in C.S.No.588 of 1982 have also established that the plaintiffs have been seeking time for paying the balance sale consideration and only at their instance, a supplemental agreement dated 14.02.1974 and agreements dated 10.10.1974 and 12.06.1975 were



entered into between the parties. In all those agreements, time was extended to the plaintiffs in C.S.No.588 of 1982 for paying the balance sale consideration. The actual amount paid by the plaintiffs in C.S.No.588 of 1982 to the defendants in the said suit is not a disputed amount.

92. Since we have confirmed the findings of the learned single Judge that the agreement dated 10.10.1974 is not enforceable and the suit is barred by the law of limitation, exercising the discretionary relief of specific performance of the contract cannot be granted by applying Section 10 of the Specific Relief Act. Since the amount paid by the plaintiffs in C.S.No.588 of 1982 is a liquidated sum of money, the plaintiffs if they have suffered any loss they are always at liberty to seek compensation from the appellants for the non performance of the contract. We are of the view, from the materials available on record that the respondents can be adequately compensated in terms of money if they have suffered any loss but they are not entitled for specific performance. Section 14 of the Specific Relief Act deals with contracts not specifically enforceable which reads as follows:-

"14. Contracts not specifically enforceable.-

(1) The following contracts cannot be specifically enforced, namely:--

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-

(a) where the suit is for the enforcement of a contract,-

(1) to execute a mortgage or furnish any other



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security for security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,-

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or (ii) the purchase of a share of a partner in a firm,

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:- (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."

93. Section 14(a) is relevant for the instant case. As observed above, the contract for which specific performance is sought for has been declared as unenforceable and therefore, compensation by way of money is only adequate relief available to the respondents for which they have to establish the same in a separate proceedings and cannot be granted in the instant case. Section 20 of the Specific Relief Act, makes it clear that the relief of specific performance is a discretionary relief which reads as follows:-

"20. Discretion as to decreeing specific performance.- (1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree



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specific performance-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.-Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.-The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party."

94. The specific performance is a discretionary relief. As per Section 20 of the Specific Relief Act, the discretion exercised by the Court for granting the relief of specific performance should be sound and reasonable and guarded by judicial principles and capable of correction by the Court of appeal. The finding of the learned single Judge that the agreement dated 10.10.1974 is not enforceable is correct. The plaintiffs in C.S.No.588 of 1982 sought for specific performance of the contract dated 10.10.1974 which is held by the learned single Judge as well as by us that it is unenforceable. Instead of dismissing the suit in C.S.No.588 of 1982, the learned single Judge has arbitrarily not guided by judicial principles has exercised his discretion by granting the relief of specific performance, though not of the agreement dated 10.10.1974, but as per the terms of the agreement dated 27.09.1973 which is not the prayer sought for



in the complaint in C.S.No.588 of 1982. According to us, the learned single Judge has exercised his discretion in favour of the plaintiffs in C.S.No.588 of 1982 which is not sound and reasonable and not guided by judicial principles and therefore, we conclude that the discretion ought not to have been applied in favour of the plaintiffs in C.S.No.588 of 1982 as it violates the provisions of Section 20 of the Specific Relief Act, 1963.

95.As regards the authorities relied upon by the learned counsel for both the parties, we make the following observations:-

Insofar as the contention raised by the respondents that the legal representatives of K.Jeyaraja Ballal who were defendants in the suit were not made as parties to the appeal and therefore, the appeal will have to fail as per the provisions of Order 41 Rule 14 C.P.C is not correct. The answer to this issue as raised by the respondents is given in the decision rendered by the Hon'ble Supreme Court in Custodian of Branches of Banco National Ultramarino Vs.Nalini Bai Naique reported in 1989 Supp (2) SCC 275. The Hon'ble Supreme Court has held that failure to implead all the heirs of the deceased defendant would not result in abatement. The definition of 'legal representative' is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased. Further, in the case on hand, as there was no objection raised by the respondents for non impleadment of the legal representatives of the deceased Jeyaraj Ballal in the earlier round of litigation in O.S.A before this Court and in S.L.P before the Hon'ble Supreme Court and there is no establishment of fraud or collusion, the respondents are estopped from raising such a plea in these appeals. Applying the said proposition of law laid down by the Hon'ble Supreme Court in the said decision cited supra, we are of the view that non impleadment of the legal representatives will not make the appeal not maintainable as per the provisions of the Civil Procedure Code.

96.Learned Senior Counsel for the respondents relied upon the following judgments:-

(i) In Chithuri Ramamohana Vs.Peteti Raghavamma and others reported in (1941) 1 MLJ 471;

(ii) In State of Punjab vs.Nathu Ram reported in AIR 1962 Supreme Court 89;

(iii) In Rameshwar Prasad and others Vs.Shambehari Lal Jagannath and another reported in AIR 1963 SC 1901;



(iv) In Ch. Surat Singh (dead) and others Vs. Manohar Lal and others reported in AIR 1971 SC 240;

(v) In Ramagya Prasad Gupta and others Vs. Murli Prasad and others reported in AIR 1972 SC 1181;

(vi) In Ammukutty Amma and another Vs. Madhavi Amma reported in AIR 1971 Kerala 90 (Full Bench)

The above judgments are not applicable to the facts of the present case as in the instant appeals, the estate of the deceased K. Jeyaraj Ballal has been properly represented and the legal representatives have also not questioned the right of the appellants to exclude them nor did the appellate Court feel the need to make the legal representatives as parties to the appeal. The same respondents in this appeal did not also raise any objection on this score in the earlier round of litigation in O.S.A. and the S.L.P. before the Hon'ble Supreme Court. Therefore, we are of the view that the appeal without making all the legal heirs of the deceased Jeyaraj Ballal as parties to the appeal is maintainable before this Court and we are satisfied that all the requirements of the Civil Procedure Code have been followed in the appeals filed by the appellants.

97. The judgments relied upon by Mr. M. S. Krishnan, learned Senior Counsel for the respondents 2 to 6 namely;-

(i) In Shreedhar Govind Kamerkar Vs. Yesahwant Govind Kamerkar and another reported in (2006) 13 SCC 481 and

(ii) In Ganmani Anasuya and others vs. Parvathi Amarendra Chowdhary and others reported in (2007) 10 SCC 296 do not apply to the facts of the instant case since from the materials available on record, it is clear that the agreement dated 10.10.1974 is unenforceable as it is a mistake and it is a consistent stand of the appellants in their pleadings as well as in their deposition that even though there was an agreement dated 10.10.1974, it was never given effect to between the parties. This fact was also not suppressed by them in the pleadings. Unless and until, there is a clear admission by the appellants that the agreement dated 10.10.1974 is enforceable, the judgments relied upon by the learned counsel for the respondents cited supra are not applicable to the facts of the instant case as those judgments relate to Section 58 of the Indian Evidence Act which states that facts admitted need not be proved is not relevant for these appeals. In a recent judgment of the Supreme Court Satish Kumar vs. Karan Singh and Another reported in (2016) 4 SCC 352 while dealing with the case of specific performance, the Supreme Court held as follows:-

"8. It is well settled that the jurisdiction to order specific performance of contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the court will not make a contract for them. Specific performance will not be ordered if the



contract itself suffers from some defect which makes the contract invalid or unenforceable. The discretion of the court will not be there even though the contract is otherwise valid and enforceable."

.....

....

10.Exercise of discretionary power under Section 20 of the Specific Relief Act for granting a decree, this Court in Parakunnan Veetill Joseph's Son Mathew Vs.Nedumbara Kuruville's son (1987 Supp SCC 340) observed:-

"14.Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of 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 into 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. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruville could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit filed by Varghese is the agreement for sale, Ext.A-1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is, therefore, not entitled to a decree for specific performance."

98.In another judgment, the Hon'ble Supreme Court in Jayakantham and others Vs. Abaykumar reported in (2017) 5 SCC 178 held that conduct of the parties at the time of entering into agreement and circumstances under which contract was entered into gave plaintiff unfair advantage over defendants, circumstances making it inequitable to enforce specific performance, merely because it is lawful to do so. Following the decisions in Parakunnan Veetill Joseph's Son Mathew Vs.Nedumbara Kuruville's son (1987 Supp SCC 340; Sardar Singh Vs.Krishna Devi (1994) 4 SCC 18, K.Narendra Vs.Riviera Apartments (P) Ltd., (1999) 5 SCC 77; Lourdu Mari David Vs.Louis Chinnaya Arogiaswamy (1996) 5 SCC 589; A.C.Arulappan Vs.Ahalya Naik (2001) 6 SCC 600 and Nirmala Anand Vs.Advent Corpn (P) Ltd., (2002) 8 SCC 146, the Hon'ble Supreme Court has held at paragraph 11 which reads as follows:-

"11.In our view the material which has been placed on record indicates that the terms of the contract, the conduct of the parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants.



These circumstances make it inequitable to enforce specific performance."

99. From the materials available on record and after considering all the judgments rendered by the Hon'ble Supreme Court and this Court, we are of the considered view that the learned single Judge ought not to have granted the relief of specific performance despite the clear finding that the agreement dated 10.10.1974 is not enforceable and further, the learned single Judge should have dismissed the suit C.S.No.588 of 1982 as it is hopelessly barred by the law of limitation and instead of dismissing the suit for possession, C.S.No.600 of 1979, according to us, the learned single Judge should have decreed the suit as far as possession is concerned in favour of the plaintiffs in C.S.No.600 of 1979. Insofar as the arrears of rent, payable by the first respondent which the learned Single Judge had decreed in favour of the plaintiffs in C.S.No.600 of 1979, we are of the considered view, there is no evidence on record to entitle the appellants to recover the same from the respondents.

100. In view of our findings that the agreement dated 10.10.1974 is not enforceable and the plaintiff in C.S.No.588 of 1982, are not entitled for specific performance of their contract and the suit is hopelessly barred by law of limitation, there is no merit in the Cross Objection No.109 of 1993 filed by the respondents and accordingly, it is liable to be dismissed.

VII FINDINGS OF THIS COURT:-

101. Our findings on the issues for consideration in these appeals and the Cross Objection are as follows:

a) The sale agreement dated 10.10.1974 (Ex.P.3/ Ex.D.5) was never acted upon by the parties and it is not enforceable.

b) The sale agreement dated 10.10.1974 (Ex.P.3/ Ex.D.5) did not supersede the sale agreements dated 27.09.1973 (Ex.P.1/ Ex.D.3) and 14.02.1974 (Ex.P.2).

c) The first respondent Company, N.Sathyanathan and Sons Pvt. Ltd., is not entitled for a decree of specific performance based upon the sale agreement dated 10.10.1974 (Ex.P.3/Ex.D.5).

d) The appellants are entitled to a decree for possession of the suit schedule property as claimed in C.S.No.600 of 1979.

e) The agreement dated 12.06.1975 (Ex.P.4) which declared the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) as a mistake, is a valid agreement.

f) The sale consideration was never reduced from Rs.74 lakhs from Rs.59 lakhs as the agreement dated 10.10.1974 is a mistake.

g) The first respondent Company N.Sathyanathan and Sons Pvt. Ltd., has not paid the entire sale consideration, as agreed upon between the parties.

h) The first respondent Company is not entitled to



seek protection under Section 53-A of the Transfer of Property Act.

i)The suit in C.S.No.588 of 1982 is hopelessly barred by the law of limitation.

j)The plaintiffs in C.S.No.588 of 1982 have not discharged their burden of proving that they were always ready and willing to perform their part of the sale contract.

k)Since the agreement dated 10.10.1974 is declared to be unenforceable, no finding is required from us as to whether the time was the essence of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5).

l)The first respondent Company N.Sathyathan and Sons Pvt. Ltd., (Cross Objector) is not entitled to seek specific performance of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5).

m)The possession was delivered on 06.10.1973 much earlier to the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) and therefore, the agreement dated 10.10.1974 is a mistake and the first respondent company is not entitled to get relief of specific performance of the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5).

n)Under the agreement dated 27.09.1973 (Ex.P.1), possession was handed over to Jeyaraj Ballal and not to the first respondent Company. The first respondent company cannot seek protection under Section 53-A of the Transfer of Property Act as the possession was delivered on 06.10.1973 much earlier to the agreement dated 10.10.1974 which was sought to be specifically enforced. The possession was delivered only in accordance with the agreement dated 27.09.1973 Ex.P.1.

o)The non-examination of Manickaraj Ballal, the Managing Director of the first respondent Company is fatal to the case of the first respondent Company in seeking specific performance for the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5).

p)The relief granted by the learned Single Judge in C.S.No.588 of 1982, passing a decree for specific performance by way of an alternative relief based on the agreement dated 27.09.1973, directing the first respondent Company to pay Rs.15 Lakhs as sale consideration is contrary to law, evidence and probabilities of the case.

q)The balance of convenience, irreparable loss and hardship is in favour of the appellants for the dismissal of the suit for specific performance and for the grant of the relief of possession in their favour in terms of the suit C.S.No.600 of 1979.

r)The appeals shall not fail for not making the legal representatives of Jeyaraj Ballal namely Defendants 4 to 10 as parties to the appeals.

s)The delay in filing the cross objection by the first respondent Company is also one of the factors for disallowing the discretionary relief of specific performance sought for by the respondents.



t) Since the lease has already expired as per the lease deed dated 17.09.1970, there is no necessity for us to give a finding as to whether the first respondent Company is entitled to get protection under Section 9 of the City Tenants Protection Act or not as that protection will apply only when the lease is subsisting.

u) The learned Single Judge erred in exercising his discretion by granting the relief of specific performance in favour of the first respondent Company. The discretion exercised by the learned Single Judge is contrary to law, weight of evidence and probabilities of the case.

v) In the case on hand, the agreement dated 10.10.1974 is declared to be unenforceable. Hence, there is no necessity for us to give a finding as to whether the Court can enhance the sale consideration due to the long passage of time between the date of the sale agreement and the date of decree.

w) The respondents have enjoyed the benefits of the property for more than 45 years with an investment of only Rs.59 lakhs. The property is situated in the heart of Chennai and after a gap of more than 45 years, the present market value would have increased manifold to unimaginable proportions. The respondents construction of new buildings and carrying out repairs at the cost of the first respondent Company after the execution of the sale agreement will not entitle them to retain possession of the suit property which is land and not the building. The respondents if they have suffered any loss on account of construction of buildings over the suit property at their cost, they are always at liberty to recover the same from the appellants by initiating separate legal proceedings by establishing their claim in accordance with law.

x) The non-impleadment of the legal representatives of Jeyaraj Ballal who were the defendants 4 to 10 in the suit C.S.No.588 of 1982, in whose favour a decree was passed giving them protection under Section 53-A of the Transfer of Property Act would not result in inconsistent decrees, if the appeals are allowed.

y) The value of the land always appreciates in the city of Chennai. Therefore, the value at Rs.9 Lakhs for the suit land fixed under the agreement dated 10.10.1974 (Ex.P.3/Ex.D.5) lower than the value fixed under the agreement dated 27.09.1973 Ex.P.1 is not the fair market value.

z) The respondents are not entitled for the relief sought for in their Cross Objection No.109 of 1993.



VIII RESULT:-

102. In the result, the common judgment and decree dated 11.06.1990 of the learned single Judge in C.S.Nos.600 of 1979 and 588 of 1982 are set aside and both the appeals in O.S.A.Nos.81 of 1991 and 248 of 1997 are allowed as prayed for and Cross Objection No.109 of 1993 is dismissed with costs in favour of the appellants. Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+8cc to M/s.T.S.Gopalan & Co., SR.no.92447,92446, 92199, 92198
dt.22.12.2017 & 26.12.2017

+2cc to M/s.K.Kuppusamy, Advocate Sr.no.92360, 92361
dt.22.12.17

AD(CO)
sm:5.3.2018

Judgment made in
O.S.A.Nos.81 of 1991 and 248 of 1997
and
Cross Objection No.109 of 1993