

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.06.2017

Pronounced on : 17-07-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Appeal Suit No. 336 of 2011

M.R. Rathindran ... Appellant/Plaintiff

Versus

1. Smt. Saraswathi Narayanan
2. Smt. Nachammal
3. Mr. K.S. Sadasivam
4. S. Vellingiri (died)
5. R. Murugan
6. Smt. M. Thilagavathi (died)
7. M/s. Sree Balaji Sakthi Financiers
rep. By its Managing Partner
Smt. M. Thilagavathi
Plot No.8, P.M. Swamy Colony
Rathinapuri, Coimbatore - 641 027
8. Smt. V. Saraswathi
9. V. Tamilselvi
10. V. Geetha ... Respondents 1 to 10/Defendants
11. S. Anupama
12. Tharun
13. Akshitha
(RR 12&13 rep. by Mother and natural Guardian Viz.
the 11th respondent)

(RR11 to 13 were brought on record as Legal heirs of deceased 6th respondent as per order of this Court dated 07.04.2017 passed in CMP Nos. 6133 to 6135 of 2017 in AS No. 336 of 2011)

14. Baranidaran
15. A. Meenakshi Sundaram .. Respondents 11 to 15

(RR14 and 15 were brought on record as legal heirs of deceased 6th respondent as per order of this Court dated 12.04.2017 passed in CMP Nos. 6452 to 6454 of 2017 in AS No. 336 of 2011)

Appeal filed under Section 96 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 15.02.2011 passed in O.S. No. 550 of 2007 on the file of the Additional District and Sessions Judge (Fast Track Court No.I) Coimbatore.

For Appellant : Mr. V. Ramesh

For Respondents 1to3

5 and 7 to 15 : Mr. N. Sridhar
for Mr. R. Bharath Kumar

JUDGMENT

R. SUBBIAH, J

This appeal is filed as against the Judgment and Decree dated 15.02.2011 passed in O.S. No. 550 of 2007 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I) Coimbatore by which the suit filed by the plaintiff/appellant herein for specific performance of the agreement dated 02.10.2003, Ex.A-5, was dismissed.

2. The plaintiff in the suit is the appellant in this appeal. The defendants are the respondents herein. For easy reference, the parties shall be referred to as per their ranking in the suit.

3. Brief facts of the case of the plaintiff is as follows:-

According to the plaintiff, the defendants 2 to 4 have purchased land measuring 4.17 acres in S.F. Nos. 498/1 and 499/1-A by means of a registered sale deed dated 02.04.1985 registered as document No. 2413 of 1985 from one Palani Gounder. Similarly, the defendants 1 to 3 and the 6th defendant have purchased land measuring 5 acres comprised in S.F. Nos. 497/1, 498/1 and 499/1A through a registered sale deed dated 25.06.1985. Similarly, the 7th defendant, a partnership firm, in which the 6th defendant is the Managing Partner, has purchased land measuring an extent of 1.25 acres in S.F. Nos. 497/1, 498/1 and 499/1A through a registered sale deed dated 23.12.1985. Thus, the defendants 1 to 4, 6 and 7 are the owners of land measuring a total extent of 10.42 cents in the lands mentioned above situate in Sarkar Samakulam Village, Coimbatore District. The defendants 1 to 4 have executed a registered power of attorney deed dated 01.10.2001 in favour of the fifth defendant empowering him to deal with the lands purchased by them by forming a layout, entering into sale agreements and execution of sale deeds in favour of prospective purchasers. Thereafter, the fourth and sixth defendants have formed layout in the above said lands in the name and style of 'Jayanthi Gardens' and the same has been approved by the Senior Deputy Director, Town and Country Planning Department, Coimbatore vide LP/(CPN)54/ 1986. Thereafter, the defendants have sold some of the plots in favour of third parties. The fifth defendant, defendants 1

to 4 as well as the 6th defendant, on her behalf and as Managing Partner of the 7th defendant, entered into an agreement of sale dated 02.10.2003 with the plaintiff agreeing to convey the suit properties for a sale price of Rs.13,000/- per cent. The plaintiff also paid a sum of Rs.5,00,000/- towards part of sale consideration. The defendants have also delivered possession of the suit property to the plaintiff in pursuance to the agreement dated 02.10.2003. Hence, according to the plaintiff, the agreement has been partly performed and therefore, he is entitled to the benefits conferred under Section 53-A of the Transfer of Property Act. It is also contended that the plaintiff has constructed buildings in Site Nos. 46-A, 70, 74-A, 75 and 78-A. Thereafter, at the request of the plaintiff, the fifth and sixth defendants have executed sale deeds in respect of site Nos. 22, 23, 28, 46, 46-A, 63, 65-A, 66, 68-A, 71, 71-A, 72, 72-A, 73 and 74 to the prospective purchasers identified by the plaintiff. The last such sale deed was executed by the fifth and sixth defendants on 15.07.2004 in respect of the site No.74. It was pleaded by the plaintiff that he is always ready and willing to perform his part of the agreement. When the Plaintiff brought some purchasers and requested the defendants 5 and 6 to execute the sale deed in favour of the intending purchasers, it was represented by the fifth and sixth defendants that there is some problem in registering the documents in the Sub-Registrar's Office and assured to execute the sale deed after resolving the same. The Plaintiff bonafide believed such representation made by the defendants 5 and 6 and waited to hear from them. However, the defendants 5 and 6 did not inform anything about the clearance with the Sub-Registrar Office. The Plaintiff therefore approached the defendants to execute necessary sale deed in favour of the intending buyers, but the defendants 5 and 6 postponed the execution of the sale deed under some pretext or the other. In such circumstances, the plaintiff sent a legal notice dated 04.10.2006 calling upon the defendants to execute the sale deed with regard to the remaining sites agreed to be conveyed by them. After receipt of the notice, the defendants issued a reply notice dated 19.10.2006 containing false and frivolous allegations. In the reply notice, it is stated that the six months time stipulated under the agreement was the essence of the agreement. According to the plaintiff, time was not the essence of the contract especially when the defendants have executed sale deeds in favour of the prospective purchasers identified by the plaintiff even after expiry of the six months period stipulated in the agreement. Hence, the plaintiff has filed the suit for specific performance of the agreement of sale dated 02.10.2003 and for a consequential permanent injunction restraining the defendants and his men from alienating or encumbering the suit property.

4. The case of the plaintiff was resisted by the sixth defendant by filing a written statement. According to the sixth defendant, the layout was formed under the name and style of "Jayanthi Garden" with the joint efforts of all the

defendants in the year 1986. After formation of the layout, some of the sites were sold by the defendants themselves. Subsequently, the agreement dated 02.10.2003 was entered into with the plaintiff for conveying the suit properties for a sale price of Rs.13,000/- per cent. The sixth defendant also admitted that the plaintiff has paid a sum of Rs.5 lakhs as advance. According to the sixth defendant, even though there is a recital in the agreement that possession was taken by the plaintiff, the fact remains that the suit property vest with the defendants and possession of the suit property was not delivered to him. Further, the agreement dated 02.10.2003 was not registered with the competent registering authority and therefore, the benefits of the provisions of Section 53-A of Transfer of Property Act would not be available to the plaintiff. The sixth defendant also denied that the plaintiff has constructed buildings in the site Nos. 46-A, 70, 74-A, 75 and 78-A. It is the contention of the sixth defendant that time was the essence of the contract between the parties and this has been specifically indicated in the agreement dated 02.10.2003. The plaintiff has exhibited supine indifference in performing his part of the contract and he was never ready and willing to pay the balance sale consideration for getting the sale deeds executed in favour of the persons identified by him. The period fixed under the agreement was six months. The plaintiff ought to have obtained the sale deed either in his favour or in favour of his nominee within the time stipulated under the agreement dated 02.10.2003. As per the recitals contained in the agreement, if the plaintiff fails to make good and sufficient progress at the end of every month, he has to pay a further advance of Rs.7.5 lakhs at the end of every month, which would go to show that time was the essence of the agreement. The plaintiff never cared to obtain sale deeds either in his name or in favour of his nominee by paying the monthly advance of Rs.7.5 lakhs. The sale deeds in respect of the site Nos. 28, 63, 72, 46, 73, 72-A and 71-A were executed in favour of the nominees of the plaintiff on 01.12.2003 and the sale deed in respect of site No.28 was executed on 09.12.2003. After the execution of the sale deed dated 09.12.2003, the plaintiff remained silent and failed to perform his obligations under the agreement. As per the agreement dated 01.12.2003, the sale price was fixed as Rs.13,000/- per cent. The plaintiff agrees to get the sale deed executed by paying a sum of Rs.12,000/- per cent and the balance Rs.1,000/- shall be adjusted from and out of the advance amount of Rs.5 lakhs paid by him. It is the contention of the sixth defendant in the written statement that the plaintiff has paid Rs.5 lakhs as advance and obtained seven sale deeds registered in favour of his nominees between 01.12.2003 and 09.12.2003. However, belatedly, the plaintiff paid another sum of Rs.5,62,500/- by way of cheque dated 21.01.2004 out of which Rs.2,73,000/- represents the sale consideration covered under the seven sale deeds. The balance sum of Rs.2,82,500/- was credited towards part of the amount payable by the plaintiff for the month of November 2003 since as per the agreement, if there

is no sale in a particular month, the plaintiff has to pay a sum of Rs.7,50,000/- at the end of that particular month. In all, the plaintiff has paid a total sum of Rs.10,62,500/- as against the total sale consideration of several lakhs of rupees calculated at Rs.13,000/- per cent. Subsequently, on and from 09.12.2003, there was total abandonment and breach of the contract by the plaintiff, excepting making a payment of Rs.5,62,500/- on 21.01.2004. On account of such breach committed by the plaintiff, the defendants have exercised their right over the sites bearing Nos. 66, 71, 65-A and 23. The plaintiff has got nothing to do with the above sites in respect of the sales that took place on 15.07.2004. The plaintiff is guilty of breach of contract. The suit is barred by limitation. As per the agreement, time for performance of the contract was fixed as six months from 02.10.2003 and it expired on 02.04.2004. Therefore, the period of limitation for instituting the suit expires on 01.04.2007 but the plaint was verified on 02.04.2007 which is beyond the period of Limitation. Even as per the principles enunciated under the Specific Relief Act, the plaintiff ought to have been ready and willing during the entire period of the agreement, but it was not so in this case. It is totally false to state that the defendants have represented to the plaintiff that there was some problem in getting the document from the Sub-Registrar Office and therefore the defendants have postponed the performance of the contract. The statement of the plaintiff in this regard is false and motivated. According to the defendants, the site scheme has been duly approved by the competent authority and there could not be any difficulty in getting the sale deeds registered. The Plaintiff, realising that the prices of the sites have gone up, is clinging on to the agreement over which he has no legal right. Therefore, the plaintiff is not entitled to the equitable relief of specific performance and prayed for dismissal of the suit.

5. During the pendency of the suit, the fourth defendant died and therefore, his legal heirs were brought on record as defendants 8 to 10.

6. The trial Court, on the basis of the above pleadings, has framed the following issues for consideration namely

1. Whether time is essence of the contract
2. Whether the plaintiff was ready and willing to perform his part of the contract
3. Whether the suit is barred by limitation
4. Whether the plaintiff is entitled to the relief of specific performance and
5. To what other relief (s) the plaintiff is entitled to.

7. In order to prove his case, the plaintiff examined himself as PW1 along with three other witnesses as Pws 2 to 4 and marked Exs. A1 to A40. On behalf of the defendants, the fifth defendant, power of attorney of the fourth defendant,

was examined as DW1 and Exs. D1 to D4 were marked. That apart, Exs. X-1 to X-6 were marked through PW4 by the trial court.

8. After considering the oral and documentary evidence, the trial Court dismissed the suit on a finding that the time was the essence of the contract between the plaintiff and the defendants and the plaintiff was never ready and willing to perform his part of the contract.

9. The learned counsel appearing for the plaintiff/appellant submitted that the defendants are the owners of land measuring about 10 acres and 42 cents in Sarkar Samakulam Village, Coimbatore District. The defendants 1 to 4 and 6, as owners, formed a layout titled "Balaji Sakthi Gardens" approved as No.54/86 with 114 plots plus 2 sites reserved for shops. Later, the lands were converted into an approved layout bearing No.LP/(CPN)54/1986 in the name of "Jayanthi Gardens" consisting of 114 sites and 4 reserved sites. According to the counsel for plaintiff, the defendants were able to sell only a few plots between 1986 and 2003 and they confronted difficulty in marketing and selling the plots. The defendants therefore entered into an agreement of sale on 02.10.2003 (Ex.A5) with the plaintiff agreeing to sell the plots for a sale consideration of Rs.13,000/- per cent. Pursuant to the agreement, the plaintiff paid a sum of Rs.5 lakhs as advance. The Plaintiff was also put in possession of the suit property. As per the agreement, six months time was fixed for performance of the obligation by the plaintiff and the defendants and the sale deeds have to be executed either in favour of the plaintiff or his nominee within the said period. The plaintiff, after execution of the agreement, could sell 12 plots for which sale deeds have been executed by the defendants. Initially, seven sale deeds were executed by the defendants in the month of December 2003 and another five sale deeds were executed on 15.07.2004 marked as Exs. A8 to A12. Subsequently, the defendants did not come forward to execute the sale deeds on the ground that there was some problem in registering documents in the Sub-Registrar Office and they assured to execute the sale deeds after resolving the problem. As the defendants did not come forward to execute the sale deeds in favour of the prospective purchasers identified by the plaintiff, he has issued a legal notice dated 04.10.2006, Ex.A6 calling upon the defendants to execute the sale deed with regard to the site within a period of one month from the date of receipt of the notice. In the said notice, it has been clearly pointed out that whenever the appellant/plaintiff approached the respondents to execute the sale deed, it was answered by the defendants that there is some problem in registering the document with the Sub-Registrar Office. On receipt of the legal notice dated 04.10.2006, the defendants, instead of complying with the demands made by the plaintiff, have sent a reply dated 19.10.2006, Ex.A7 stating that the defendants never informed the plaintiff that there was some problem in registering documents in the Sub-

Registrar Office. It is further stated in the reply notice sent by the defendants that after registration of the seven sale deeds during December 2003, there was total abandonment and breach of the terms and conditions by the plaintiff and there was total silence on the part of the plaintiff in approaching the defendants to execute the sale deeds by paying the balance sale consideration. In the reply notice it has also been falsely stated that only after realising that the price of the land has gone up, the plaintiff has issued the legal notice dated 04.10.2006 under Ex.A6 calling upon the defendants to execute the sale deed. Thus, the defendants, in their reply notice dated 19.10.2006 refused to comply with the demands made by the plaintiff by making false allegations. Since the defendants refused to execute the sale deeds in their reply notice dated 19.10.2006, as per the agreement dated 02.10.2003, Ex.A5, the plaintiff has filed the suit on 04.06.2007, within three years from the date of refusal by the defendants to perform their part of the contract. In this regard, the learned counsel for the plaintiff/appellant relied on the decision of the Supreme Court in (Ahmmadsahab Abdul Milla (dead) by proposed Lrs vs. Bibijan and others) reported in (2009) 5 SCC 462 to contend that the suit filed by the plaintiff/appellant is maintainable as it was filed within the period stipulated under the Limitation Act. For the very same proposition, the learned counsel for the plaintiff/appellant also relied on the decision of the Honourable Supreme Court in the case of (Madina Begum and another vs. Shiv Murti Prasad Pandey and others) reported in 2016 SAR Civil 920 wherein it was held that in the absence of any specific date for performance of the agreement, non-compliance of the agreement on the date would give a cause of action to file a suit for specific performance within three years from the date so fixed. In this case, in the reply notice dated 19.10.2006, the defendants have refused to perform their part of the agreement. Further, in this case, no specific date was fixed for performance of the contract, hence, the suit filed by the plaintiff/appellant within three years from the date of refusal is maintainable under law.

10. The learned counsel for the plaintiff/appellant submitted that though it is the case of the defendants that time was the essence of the contract for performance of the obligations under the agreement, subsequent to the completion of six months period, at the instance of the plaintiff, five sale deeds were executed by the defendants under Exs. A8 to A12, all dated 15.07.2004. In fact, the defendants have also referred to the execution of these sale deeds dated 15.07.2004 in the reply notice dated 19.10.2006, Ex.A7. There is no specific denial in Ex.A7, reply notice dated 19.10.2006 with regard to the execution of the sale deeds dated 15.07.2004. In order to prove that Exs. A8 to A12 were executed by the defendants only at the instance of the plaintiff, an employee of the plaintiff was examined as PW2, who has categorically deposed that he stood as a witness to Exs. A8 to A12 sale deeds along with one Tr. Suresh. Thus,

the counsel for the plaintiff submits that unless the sale deeds under Exs. A8 to A12 were not executed at the instance of the plaintiff, there is no need for the employee of the plaintiff to sign the documents as witnesses. Further, under Ex.A-10, Plot No.74 was sold to one Baskaran on 15.07.2014. The father of the said Baskaran was examined as PW3, who has categorically stated that his son has purchased the property only at the instance of the plaintiff. Hence, it is submitted that the evidence of Pws 2 and 3 would show that Exs. A8 to A12 were executed by the defendants after expiry of the time fixed under the sale agreement only at the instance of the plaintiff. That apart, at the time of executing the sale agreement, copy of the layout was given to plaintiff and plaintiff was made to believe that the layout is the correct one. The same copy of the layout given to the plaintiff at the time of executing the agreement of sale was annexed along with the sale deeds under Exs. A8 to A12. The layout plan carries the name of Srivari Builder, for which the plaintiff is the proprietor. Further, the defendants have filed a sketch as annexure to Exs. A8 to A12 by representing they are builders. Thus, the counsel for the plaintiff/appellant would submit that the evidence of Pws 2 and 3 as well as the layout plan annexed with Exs. A8 to A12 would go to show that it was at the instance of the plaintiff Exs. A8 to A12 have been executed even after expiry of the time stipulated under the agreement of sale.

11. In this regard, the counsel for the plaintiff/appellant has also invited the attention of this Court to the proof affidavit filed on behalf of the plaintiff and submitted that plaintiff has categorically stated in the proof affidavit that fifth and sixth defendants have executed the sale deed dated 15.07.2004 in favour of the purchaser brought by him. It is also stated that after the execution of the sale deed dated 15.07.2004, the defendants 5 and 6 avoided to execute the sale deed and therefore, the legal notice dated 04.10.2006 was issued. Even in the cross-examination of PW1, he has asserted that he only used to bring the purchasers to Sub-Registrars Office or in his absence, his representative will take them to the office of the Sub-Registrar. According to the counsel for the plaintiff, if the plots were sold directly by the defendants, they need not have asked the questions relating to price of land, going to Sub-Registrar Office and also about witnesses who attested the sale deeds etc., in the cross examination of PW1. Further, in the cross-examination of DW1, there was a clear admission as to the execution of the five sale deeds in favour of the nominee of the plaintiff. Thus, according to the counsel for the plaintiff, a cumulative reading of the evidence on record would show that even after expiry of the period of six months indicated in the agreement of sale, sale deeds have been executed by the defendants at the instance of the plaintiff. Therefore, six months time fixed under the agreement was given a go-bye and the same was never acted upon. The defendants, by their conduct, have extended the time suggesting that time was not the essence of the

contract. The six months time indicated in the agreement is only tentative in nature and the same does not specify the calendar date for specific performance as prescribed under Article 54 of the Limitation Act. Therefore, Ex.A5 does not stipulate six months time for completion of the contract. The agreement does not say that Ex.A5, agreement of sale will cease to exist after six months. On the contrary, the agreement contains clause to the effect that it cannot be cancelled and even if there is any such clause for cancellation, it will not bind the plaintiff. Therefore, in the absence of any specific clause relating to cancellation of the agreement, it is incorrect to say that time was the essence of the contract. In this regard, counsel for plaintiff/appellant invited the attention of this Court to the decision rendered in (Smt. Swarnam Ramachandran and another vs. Aravacode Chakungal Jayapalan) reported in 2004 (8) SCC 689 and (Balasaheb Dayandeo Naik vs. Appasaheb Dattatraya Pawar) reported in 2008 (1) CTC 530 (SC) to contend that in case of immovable property, there is no presumption as to time being the essence of the contract. Even where the parties have expressly provided that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract. In this case, the plaintiff has totally paid a total sum of Rs.10,62,500/-. In addition to Rs.10,62,500/-, the sale consideration referred to in the respective sale deeds numbering 12, including Exs. A8 to A12, have been directly paid to the defendants at the time of execution of the sale deeds. These payments shall be construed as a charge on the property and the defendants cannot forfeit the advance amount and other payments made under Ex.A5. Therefore, the contention that the contract was abandoned after 09.12.2003 is only to avoid performing the act of registration of Sale deeds is untenable. On the other hand, the evidence on record would show that even after six months period indicated in the sale agreement, sale deeds were executed by the defendants in favour of the persons brought by the plaintiff, which would show that time is not the essence of the contract.

12. The learned counsel for the appellant further submits that apart from the evidence of Pws 2 and 3, in order establish that Exs. A8 to A12 were executed only at the instance of the plaintiff, a Supeona was issued to the Bank Manager of HDFC Bank through whom Exs. X1 to X6 were marked. Ex.X1 is the loan agreement between HDFC Bank and one Srinivasan, who is the purchaser of Plot No.65. Exs. X3 and X4 are loan agreements and sale agreements between the plaintiff and one Kalairani. Under Ex.X3, the Bank has released payments on 14.07.2004 for site No.66 to Srivari Builders, namely the plaintiff. Ex.X5 is a loan agreement for construction of house in site No.71 with the purchaser Mr. Syed Ameer. In Exs. X2, X4 and X6, the plaintiff was described as seller cum builder, which would indicate that there was an agreement between the seller/builder with the purchasers. Exs. X1 to X6 can be equated with Exs. A8 to A12, which were executed and registered by the defendants

only at the instance of the plaintiff. Therefore, it is clear that time is not the essence of the contract and the six months period indicated in the agreement of sale, Ex.A5 has no relevance to the transaction between the plaintiff and the defendants.

13. The learned counsel for the appellant would further submit that as per the clauses under the agreement, if there is no sale in a particular month, the plaintiff has to pay a sum of Rs.7.5 lakhs as further advance at the end of that month. In this context, the defendants were cross-examined and a suggestion was made to the effect that the said clause was not given effect to. This shows that the clause contained under the agreement to pay Rs.7,50,000/- every month in case of no sale has not been given effect to and consequently time was not the essence of the contract. In this context, the learned counsel for the appellant relied on the decision in (A.K. Lakshmipathy (dead) and others) vs. Raj Saheb Pannalal H. Lahoti Charitable Trust and others) reported in (2010) 1 Supreme Court Cases 287 wherein it has been held that to decide as to whether time was the essence of the contract or not, intention of the parties must be looked into. Further, the learned counsel for the appellant submits that in order to show the readiness and willingness on the part of the plaintiff, Ex.A-24, Fixed Deposit receipt has been filed to show that the plaintiff has made available a sum of Rs.2 crores as on 31.03.2004 in his bank account. Thus, the appellant was having sufficient money in his bank account to perform his part of the contract. Further, the total extent of the land covered in the agreement of sale was 4 acres 76 cents and the total sale price at the rate of Rs.13,000/- per cent would come to Rs.61,00,000. The appellant has already paid Rs.10,65,500/-. That apart, the appellant is having sufficient amount to the tune of Rs.2 crores in his bank account by way of fixed deposit. The trial court, without considering all these factors, has erroneously dismissed the suit and therefore, he prayed for allowing this appeal.

14. Apart from the above submissions made on the basis of pleadings and evidence, the learned counsel for the plaintiff/appellant made a detailed argument on the grounds of fraud said to have been committed by the defendants/respondents. According to the counsel for the plaintiff/appellant, whenever the plaintiff/appellant approached the defendants/respondents herein to execute the sale deed in favour of the purchaser identified by him, it was represented that there is some problem in registering the document in the office of the Sub-Registrar and by saying so, they have evaded to execute the sale deed in favour of the purchaser identified by the plaintiff. Hence, the plaintiff applied for layout plan approved by the Deputy Director of Town and Country Planning vide approval No.54 of 1986 when the suit was pending trial under Right to Information Act. As per the plan, it consists of 114 sites and 4 reserved sites. But the plan which was given to the plaintiff at the

time of execution of agreement of sale, Ex.A5 consists of 124 sites and two shops alone. Therefore, it is clear that the defendants/respondents herein have furnished a wrong sketch along with Ex.A5. On comparison of Ex.A23, the actual approved layout sketch along with plan annexed with Ex.A5, agreement of sale, the suppression of correct approved layout by the defendants would be apparent and glaring. This discrepancy, according to the counsel for the plaintiff, was the reason for the defendants postponing registration of the sale deeds after 15.07.2004, which the plaintiff was not aware. The plaintiff, without knowing the exact problem was approaching the defendants continuously for registration of the sale deeds. Whenever the plaintiff approached the defendants, it was represented that there was a problem in registering the document with the Sub-registrar without revealing the exact problem. In fact, when the plaintiff was cross-examined on 19.07.2010, there was a pointed question put to him by the defendants as to whether the plaintiff had written to the defendants to correct the problem in the layout plan. The Plaintiff answered that he did not write anything to the defendants to correct the problem in the layout plan. The discrepancy in the two plans, one supplied by the plaintiff along with Ex.A-5, agreement of sale and the other being Ex.A23 have been clearly brought out by the plaintiff at the time of cross-examination of DW1. DW1 also admitted in his evidence that the layout was sanctioned in 1986 and it contained 114 plots plus 2 shops sites, but in the plan annexed with Ex.A5, 124 plots and 2 shop sites have been shown. Therefore, it is clear that the defendants have deliberately supplied a different plan along with Ex.A5 which is different from Ex.A23. This conduct of the defendants in supplying a different plan is a conduct of blemish and on that ground, the plaintiff is entitled for the relief of specific performance. In support of this contention, the learned counsel for the plaintiff/ appellant relied on the decision of the Apex Court in (Zarina Siddiqui vs. A. Ramalingam alias R. Amarnathan) reported in (2015) 1 Supreme Court Cases 705 wherein it has been held that if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the Court, then such discretion should not be exercised by refusing to grant specific performance. If a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and misleads the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of process of law. Thus, by placing reliance on the above decision, the learned counsel for the plaintiff/appellant prayed for setting aside the decree and judgment passed by the court below.

15. Countering the submissions made by the counsel for the plaintiff/ appellant, the learned counsel for the respondents/defendants submitted that the defendants are not real estate promoters. The defendants have purchased immovable properties adjacent to each other under Exs. A1 to A3. They have decided to join together and apply for DTCP

approval and to sell the property as house sites. Out of their own effort, they have levelled the property, parcelled them into house sites and obtained layout approval bearing DTCP No. 54 of 1986. As per the approved plan, the total number of approved sites is 114 covering a total extent of 6 acres and 52 cents including three shop sites. The approved plan has been marked as Ex.A23. Thereafter, defendants have sold few sites in the layout formed by them by executing sale deeds in favour of the buyer. Subsequently, certain sites, which were odd shaped, were cut into smaller plots and thus the plan has been slightly altered and the plaintiff was fully aware of the alteration made in the sanctioned plan. As per the altered plan, there are 124 plots and 2 shop sites. On the basis of the altered plan, the defendants thereafter have executed the sale deed dated 17.09.2001, marked as Ex.A38. In fact, when the plaintiff entered into the agreement of sale with the defendant, the number of sites offered for sale was 124. Thereafter, after revising the plan, the defendants have put the plaintiff on notice and a copy of the altered plan along with the title deeds were handed over to the plaintiff. The Plaintiff, who is a real estate promoter, was fully aware of the same at the time of entering into the agreement of sale that the sanctioned plan was slightly altered. The Plaintiff entered into the agreement with full knowledge about the changes made to the sanctioned plan. In fact, the plaintiff and the defendants have entered into the agreement of sale, Ex.A5 on the basis of the revised plan. On reading of Ex.A5, agreement of sale dated 02.10.2003, it would be very clear that it is not an agreement of sale to sell site by site, but agreement for sale of the sites together, within a period of six months. As per the agreement, within the period of six months, the agreement holder had the flexibility to either buy the sites in his name or in favour of the nominee through single Sale deed or sale deeds. The flexibility is applicable only for a period of six months and at the end of six months, the agreement holder has to pay the entire money and complete the transaction. According to the counsel for the defendants/respondents herein, this position is amply clear from the clause contained in the agreement of sale to the effect that every month when there is no sale, the buyer has to pay Rs.7,50,000/- to the owner. In this regard, the learned counsel for the defendants/ respondents invited the attention of this Court to the evidence of PW1, who has stated that he has not paid Rs.7,50,000/- as agreed in the agreement when there was no sale. Therefore, it is submitted that the plaintiff has not acted upon the terms and conditions of the agreement. As per Ex.A5, agreement of sale dated 02.10.2003, the period of six months was over on 01.04.2004, but the suit was filed on 04.06.2007, after expiry of three years from the date of expiry of six months period fixed under the agreement. Therefore, there is no scope for extending the period of agreement and hence, Article 54 of the Limitation Act will apply.

16. With regard to the submissions made by the counsel for the plaintiff that after expiry of six months period, at the instance of the plaintiff, Ex.A8 to A12 were executed by the defendants, it is submitted by the counsel for the defendants/ respondents that the lands covered under Ex.A8 to A12 were sold by the defendants on their own accord and not at the instance of the plaintiffs. In this regard, the counsel for the defendants/respondents submitted that under Ex.A8 to A-12, land measuring a total extent of 16 ½ cents was sold at the rate of Rs.10,000/- and not at the rate of Rs.13,000/- per cent as agreed under the agreement of sale, which would show that the sale was obviously made at the instance of the defendants only. Further, there is nothing to indicate that these sale deeds have been executed at the behest of the plaintiff. The evidence of PW2, an employee of the plaintiff, only support the case of the plaintiff that Exs. A8 to A12 were sold at the instance of the plaintiffs. It is further stated that the plaintiff has executed totally 7 sale deeds between 01.12.2003 and 09.12.2003. Thereafter, the plaintiff has abandoned the contract except making the payment of Rs.5,62,500/- on 21.01.2014. Therefore, on account of the breach committed by the plaintiff, the defendants took it upon themselves to exercise their right over the lands as owners and started selling the sites on their own. In fact, the defendants have sold all the sites on their own. The plaintiff is projecting a false claim in respect of his contention that time is not the essence of the contract and the suit was filed within the period of limitation as if 5 plots were sold by the defendants at the instance of the plaintiff after expiry of the six months period and the last such sale was made on 15.07.2004. In this regard, the learned counsel for the defendants/respondents brought to the notice of this Court Ex.A8 to A12 to contend that there is absolutely nothing to indicate that the sale deeds were executed by the defendants at the instance of the plaintiff. Therefore, the plea of the plaintiff that the suit was filed within the period of limitation is without any merit. In this regard, the learned counsel for the defendants/respondents placed reliance on the decision of the Honourable Supreme Court in (Fatehji and Company and another vs. L.M. Nagpal and others) reported in AIR 2015 Supreme Court 2301 wherein in Para No.9 it was held that limitation for filing a suit for specific performance commences from the date fixed for performance of the contract.

17. The learned counsel for the defendants/respondents would further submit that for the first time before this Court, the plaintiff has come forward with a plea as if the defendants have committed fraud. According to the counsel for the defendants/respondents, absolutely, there was no pleading or evidence to substantiate the same. When the plea of fraud was not raised anywhere in the plaint, the same cannot be permitted to be raised at the appellate stage. In this regard, the counsel for the defendants/respondents relied on the decision in the case of (Deoki Nandan vs. Muralidhar and others) reported in AIR 1957 SC 133 to contend

that in the absence of pleading or evidence recorded before the trial court, the appellate Court cannot render a finding outside the scope of such pleading and evidence. For the same proposition, reliance was also placed on the decision rendered in (M/s. Trojan and Co., vs. RM.N.N. Nagappa Chettiar) reported in AIR 1953 Supreme Court 235 wherein it was held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be proved. Further, the learned counsel for the defendants/respondents invited the attention of this Court to Order VI Rule 4 of CPC to contend that the allegations of fraud cannot be made or raised at the appellate Stage. When allegations relating to fraud are not specifically pleaded in the plaint it cannot be considered by this Court in exercise of its Civil Appellate Jurisdiction. In this regard, learned counsel for the defendants/respondents relied on the decisions reported in (Mohanlal vs. Anantibai and others) reported in AIR 1971 SC 2177 and (Ram Sarup Gupta (dead) by Lrs vs. Bishun Narain Inter College and others) reported in AIR 1987 SC 1242 to contend that in the absence of pleading in the plaint, any evidence, if any, produced by the parties, cannot be accepted. No party is permitted to travel beyond the pleading and all material and relevant facts should be pleaded by the party in support of the case set up by him. The object and purpose of pleading is to enable the other party to know the case it has to meet. The learned counsel for the defendants/ respondents also relied on the decision in the case of (Union of India vs. Pandurang Kashinath More) reported in AIR 1962 Supreme Court 630 wherein it was held that when an improper conduct is alleged, it must be set out with all particulars. A plaintiff cannot complain if general allegations made by him in the plaint are answered by equally general allegations in the written statement. Reliance was also placed on the decision rendered in (Shanthi Kavar Bai and others vs. Sushila) reported in 2009 (4) CTC 842 wherein it was held that law is well settled that merely because the plaintiff, who seeks the relief, has got a right to seek such relief, the relief should not be granted, but the Court should look into all the facts and circumstances attendant thereto. Further, it is well settled proposition of law that in a given case where there are laches and inaction on the part of the plaintiff in seeking the specific relief, the Court cannot but deny the relief sought for. By relying upon the above decisions, the learned counsel for the defendants/respondents would contend that in the case on hand, evidence on record would show that the plaintiff has not approached this Court with clean hands and therefore, he is not entitled to raise the plea of fraud as against the defendants and consequently he is not entitled to the equitable relief of specific performance.

18. With regard to the submissions made by the learned counsel for the plaintiff that he had made available a sum of Rs.2 crores as on 31.03.2004 by way of fixed deposit in the bank to show that he is having ready money to perform his

part of the contract and he was always ready and willing to perform his part of the contract, it is replied by the learned counsel for the defendants/respondents that the plaintiff has not produced any document to show his readiness and willingness except Ex.A24 to show that he has deposited Rs.2 crores in a fixed deposit. It is not known as to whether the amount was made available till the disposal of the suit. Further, Ex.A24 is a statement of account in the name of Srivari Builders, to which the plaintiff was the Proprietor and such statement shows a term deposit dated 18.07.2003. But it is not known whether it is a free fund available for disposal or advance received from the customers for sale of lands. Therefore, Ex.A24 will not lend any support to the case of the plaintiff to show that he was always ready and willing to perform his part of the contract. Thus, the learned counsel for the defendants/respondents sought for dismissal of the appeal.

19. By way of reply to the submissions of the counsel for the defendants/ respondents, the learned counsel for the plaintiff/appellant would contend that it is incorrect to say that in the absence of any pleading, the plaintiff is not entitled to raise the plea of fraud. According to the learned counsel for the plaintiff/appellant, when it is brought to the notice of this Court regarding the fraud played by a party to the lis, even in the absence of any pleadings the Court can go into such plea as fraud vitiates and terminates all the proceedings. In support of this contention, the learned counsel for the plaintiff/appellant relied on the decision in (Meghmala and others vs. G. Narasimha Reddy and others) reported in (2010) 8 Supreme Court Cases 383 wherein it was held that fraud is an act of deliberate deception with a design to secure something, which is otherwise not due and it vitiates the most solemn proceedings of courts of justice. Reliance was also placed on the decision rendered in (S.P. Chengal Varaya Naidu (dead) by Lrs vs. Jagannath (dead) by Lrs and others) reported in (1994) 1 Supreme Court Cases Page No.1 wherein it was held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come out with clean hands. A person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. Reliance was also placed on the decision rendered by the Apex Court in the case of (Joseph John Peter Sandy vs. Veronica Thomas Rajkumar and another) reported in (2013) 3 Supreme Court Cases 801 wherein it was held that the omission to make an allegation or undue influence specifically is not fatal to the case of the plaintiff and the plaintiff is entitled to relief prayed for. By placing reliance on the above decisions, the learned counsel for the plaintiff/appellant would submit that even in the absence of any pleading relating to fraud, if it is shown that fraud was in fact played by a party to the litigation,

the Court shall refuse to grant any relief against such litigant. Thus, the learned counsel for the plaintiff/appellant prayed for setting aside the decree and judgment of the court below.

20. Keeping the above submissions made by the counsel for both sides, we have gone through the materials placed on record. The following points arose for consideration in this appeal.

(i) Whether time was the essence of the contract?

(ii) Whether the plaintiff was ready and willing to perform his part of the contract?

(iii) Whether the suit was filed within the period prescribed under law?

(iv) Whether the submissions made on behalf of the plaintiff relating to fraud said to have been committed by the defendants, without any pleadings, can be considered for granting the relief of specific performance in this appeal?

(iv) Whether the conduct of the plaintiff would disentitle him to seek for the relief of specific performance?

21. Point No.1:- The plaintiff and the defendants have entered into an agreement of sale on 02.10.2003, which was marked as Ex.A5. As per Ex.A5, the defendants agreed to convey the suit schedule mentioned property to the plaintiff or a nominee of his choice for a sale price of Rs.13,000/- per cent. On the date of agreement of sale, the plaintiff has paid a sum of Rs.5,00,000/- towards advance sale consideration. Further, under the agreement of sale, the period for completion of the sale transaction was fixed as six months. The period of six months commences from 02.10.2003 and ends on 01.04.2004. According to the plaintiff, at his request, the 5th and 6th defendants executed sale deeds either in his favour or in favour of his nominee in respect of the sites bearing Nos. 22, 23, 28, 46, 46-A, 63, 65-A, 66, 68-A, 71, 71-A, 72, 72-A, 73 and 74. Further, according to the plaintiff/ appellant, the last such sale deed was executed on 15.07.2004 i.e., after the expiry of six months period fixed under the agreement of sale. It is contended on behalf of plaintiff that thereafter, in spite of repeated demands made by the plaintiff for execution of sale deed in his favour or a nominee of his choice, the defendants avoided and evaded to execute the sale deed on the ground that there was a problem in registering the document with the Sub-Registrar Office and assured to clear the said problem. The Plaintiff, without knowing the nature of problem, has waited for a considerable length of time. As the defendants did not come forward to perform their part of the contract, the plaintiff issued a notice dated 04.10.2006 and thereafter filed the suit.

22. According to the defendants, the defendants never represented to the plaintiff that there was a problem in registering the document. On the other hand, the plaintiff abandoned the contract and committed breach of the terms and conditions of the agreement after December 2003. On a perusal of evidence, we find that only in the legal notice dated 04.10.2006, Ex.A6, the plaintiff has stated as if the defendants represented to him that there was a problem in registering the sale deed before the office of the Sub-Registrar. Further, one of the conditions incorporated in the agreement of sale is that if there is no sale in a particular month, the plaintiff has to pay to the defendants an advance amount of Rs.7,50,000/- at the end of the said month. Admittedly, for five months out of six months stipulated in the agreement, there was no sale made by the plaintiff and the plaintiff also did not pay Rs.7,50,000/- to the defendants as per the terms of the agreement. According to the defendants, the six months period stipulated in the agreement of sale dated 02.10.2003, marked as Ex.A5, expired on 01.04.2004 and the plaintiff, if at all has any right to seek the relief of specific performance, ought to have instituted the suit within a period of three years i.e., on or before 01.04.2007, but the suit was filed only on 04.06.2007.

23. In order to substantiate the case of the plaintiffs that time was not the essence of the contract, the learned counsel for the plaintiff/appellant made two submissions. The first submission is that even after expiry of six months period, on 15.07.2004, at the instance of the plaintiff, sale deeds have been executed by the defendants. Therefore, time fixed under the agreement of sale, Ex.A5, has been given a go-bye and hence, it cannot be said that time was the essence of the contract. The next submission is to the effect that as per the terms and conditions incorporated in the agreement of sale, Ex.A5, the agreement cannot be terminated. Therefore, according to the counsel for the plaintiff/appellant, time was not the essence of the contract between the parties. Further, Exs. X-1 to X-6 also would prove that even after expiry of time limit fixed under the agreement of sale, the plaintiff has taken action to get loan agreements executed with the bank in favour of the prospective purchasers and therefore also, time was not the essence of the contract.

24. In reply, the learned counsel for the respondents/defendants submit that specific time limit has been fixed under the agreement of sale, Ex.A5, which was not adhered to by the plaintiff. In fact, the plaintiff abandoned the contract and thereafter, the respondents/defendants, on their own efforts, executed various sale deeds and sold the entire plots. In such circumstances, it could be safely inferred that the plaintiff has failed to perform his part of the contract within the six months period indicated in the agreement of sale, which prompted the defendants/ respondents to sell the entire plots

on their own. The Plaintiff, after waiting for three years, without taking any steps, has instituted the suit after expiry of the period of limitation and therefore, the suit itself is not maintainable.

25. It is the vehement contention of the counsel for the plaintiff/appellant that after expiry of the time fixed under the agreement, sale deeds were executed at the instance of the plaintiff under Exs. A8 to A12. In order to fortify this submission, reliance was placed on the evidence of PW2 and PW3. PW2 is the employee employed by the plaintiff and PW3 was the father of one of the purchaser of Plot No.74 through the plaintiff. On perusal of the evidence of PW2, in his cross-examination, we find that he has deposed to the effect that he has no direct knowledge about the suit property or the contents contained in Exs. A8 to A12. He has further deposed that he does not know as to who is the executant of Ex.A8 to 12, who is the purchaser thereof or what was the sale consideration for which the plot was sold. He has further deposed that he merely attested the sale deed as a witness. Therefore, merely because PW2, an employee of the plaintiff happened to attest Exs. A8 to A12, it cannot be concluded that those sale deeds have been executed by the defendants only at the instance of the plaintiff. As far as PW3 is concerned, he was the father of one of the purchasers of Plot No.74. PW3 has not purchased any plot through the plaintiff. Therefore, no significance could be attached to the evidence of PW3 to conclude that Exs. A8 to A12 have been executed only at the instance of the plaintiff. Further, merely because the name of 'Srivari builders', to which the plaintiff was the Proprietor, is mentioned in the layout plan annexed to Exs. A8 to A12, that itself is not sufficient to come to the conclusion that at the instance of the plaintiff, Exs. A8 to A12 were executed.

26. Yet another factor for consideration is that as per the agreement between the plaintiff and defendants, the sale price was fixed as Rs.13,000/- per cent of land. However, the sale price mentioned in Exs. A8 to A12 was Rs.10,800/- per cent or thereabouts and not the agreed sale price of Rs.13,000/- as per the agreement of sale. Therefore also, it cannot be concluded that Exs. A8 to A12 were executed by the defendants at the behest of the plaintiff. On the other hand, a perusal of Exs. A8 to A12 that after expiry of the six months time stipulated in the contract, they were executed by the defendants for a sale price of Rs.10,800/-. Therefore, the submission of the counsel for the plaintiff/appellant that time fixed under the agreement has not been acted upon cannot be accepted. In this context, the evidence of PW1 also has to be looked into. When a specific question was put to him as regards the period within which he has to complete the sale transaction, there was a categorical admission made by him to the effect that the agreement of sale, Ex.A5 was entered into on 02.10.2003 and the period of six months stipulated thereunder comes to an end on 01.04.2004. He has also further admitted that the time

stipulated under Ex.A5 has not been extended by the defendants. The relevant portion of the deposition of PW1 in his cross-examination reads as under:-

“நான் பிரதிவாதியிடம் ஒப்பந்தம் போடுவதற்கு முன்பு, பிரதிவாதிகள் மனையிடங்களாக பிரித்து டி.டி.பி அப்டீ வர் பெற்றிருந்தார்கள். அந்த மனையிடத்திற்கு பெயர் தான் ஜெயந்தி கார்டன். நான் ஒப்பந்தம் போட்ட தேதி 02.10.2003 ஆகும். ஒப்பந்த காலம் 6 மாதம். ஒப்பந்தத்தில் நான் 6 மாத காலத்திற்குள் தாவாச் சொத்தை நேரிடையாகவோ பிறர் மூலமாகவோ நான் கிரையம் செய்து முடித்துக் கொள்ள வேண்டும் என்று கண்டுள்ளது. 6 மாத காலம் 01.04.2004 அன்று முடிவடைகிறது. ஒப்பந்தம் 6 மாத காலத்திற்கு பின்பு, எழுத்து மூலமாக நீட்டிக்கப்படவில்லை.

நான் ஒப்பந்தம் போட்டது 127 சயிட்டுகளுக்கு ஒப்பந்தம் செய்துள்ளேன். நான் 127 சயிட்டுகளில் 111 சயிட்டுகளுக்கு இந்த தாவாவை தாக்கல் செய்துள்ளேன். நான் சயிட் நம்பர் 68-ஏவை தாவாச்சொத்தில் சேர்க்கவில்லை. சயிட் நெம்பர் 68-ஏவை கிரையம் வாங்கினேனா என்றால் ரூபகம் இல்லை. 15.07.2004 தேதியில் நான் சில 3ம் நபர்கள் மூலம் 5 வீட்டு மனைகளை கிரையம் செய்ததாக சொல்லி உள்ளேன். அந்த 3-ம் நபர்களிடம் நான் எந்த ஒப்பந்தமும் செய்து கொள்ளவில்லை. வா.சா.ஆ.8ல் கண்டுள்ள கிரையபத்திரத்தின் மதிப்பு, ரூ.31,500/- ஆகும். அதன் மூலமாக கிரையம் பெற்ற சொத்தின் அளவு, 2.89 சென்ட் ஆகும். அவ்வாறு கணக்கிடும் பொழுது ஒரு சென்ட்டின் மதிப்பு, ரூ.10,800/- ஆகும். ஒப்பந்தப்படி நான் பிரதிவாதிகளுக்கு செலுத்த வேண்டிய தொகை ஒரு சென்ட்டிற்கு ரூ.13,000/- ஆகும்.”

27. Thus, the plaintiff himself, as PW1, has categorically admitted that a specific time limit has been stipulated under Ex.A5, sale agreement within which the sale transactions has to be completed. It is also admitted that the value fixed under Exs. A-8 to A-12 sale deeds were Rs.10,800/- per cent of land, whereas, what was agreed under Ex.A-5 sale agreement was Rs.13,000/- per cent. Had Exs. A8 to A-12 been registered at the instance of the plaintiff, the sale consideration would not be less than Rs.13,000/- per cent as agreed under Ex.A-5, sale agreement. Further, in the agreement, Ex.A5, specific period has been fixed for performance of the contract from 02.10.2003 to 01.04.2004 and within this period, the plaintiff is bound to complete the sale transaction either in full or in part. Furthermore, as per the clauses contained in the agreement of sale, within the period of six months, the agreement holder had the flexibility to either buy the sites in his name or in favour of the nominee through single Sale deed or sale deeds. As rightly pointed out by the learned counsel for the defendants/respondents, taking into consideration the intention of the parties and the object sought to be achieved

by entering into the agreement of sale, we are of the view that the flexibility clause can be made applicable only during the six months period and not any more. Further, Exs. X-1 to X-6 were relied on by the counsel for the plaintiff/appellant to contend that time was not the essence of the contract. On perusal of Exs. X1 to X6, we find that they are loan agreement executed between the bank and the prospective purchasers and Exs. X1 to X6 will not lend support to the case of the plaintiff in any manner. The said documents will in no way help the plaintiff to contend that Exs. A8 to A12 were executed only at his instance.

28. The other submission raised by the counsel for the plaintiff/appellant is that the nature of the agreement entered between the plaintiff and defendant is such that the agreement cannot be terminated at any time. We are of the opinion that the clauses contained in the agreement of sale has to be read as a whole and not in isolation. On reading of the entire clauses contained in the agreement of sale, it can be concluded that the intention of the parties is not to terminate the agreement of sale within the period of six months stipulated thereof and after completion of six months period, the agreement will automatically come to an end. Therefore, the contention of the counsel for the plaintiff/appellant that the defendants cannot terminate the agreement of sale at any point of time cannot be accepted. In such circumstances, we are of the view that time was the essence of the contract and we answer Point No.1 accordingly.

29. Point No.2:- It is the contention of the learned counsel for the plaintiff/appellant that the plaintiff/appellant was always ready and willing to perform his part of the contract but it was the defendants who have evaded and avoided to fulfil their obligations to complete the sale transaction. According to the learned counsel for the plaintiff/appellant, whenever the plaintiff approached the defendants with an intention to get the sale deed executed, it was represented on behalf of the defendants that there was some difficulty in getting the sale registered with the office of the Sub-Registrar with an assurance to execute the sale deed after clearing the same. It is further submitted that the plaintiff was having ready money available and to prove the same, the plaintiff has filed fixed deposit receipt, Ex.A-24 which would prove that as on 31.03.2004, he was having Rs.2 crores in his bank account. This submission of the counsel for the plaintiff/appellant was repudiated by the counsel for the defendants/respondents stating that they have never represented to the plaintiff that there was some problem in getting the sale deed registered with the office of the Sub-Registrar. Such a plea was raised by the plaintiff only to make it as if he was ready and willing to perform his part of the contract but it was evaded by the defendants. Merely because the plaintiff has filed Ex.A-24, fixed deposit receipt, it would not be sufficient to prove that he was ready and willing to perform his part of the contract. When the plaintiff did not take any steps to get

the sale deed executed by the defendants within the period of six months, the mere production of Ex.A-24 will not lend support to the case of the plaintiff.

30. In this context, we have noticed that the plaintiff got seven sale deeds executed by the defendants and the last such sale deed was executed during December 2003. Therefore, till such time when the sale deed was executed during December 2003, there was no difficulty for the defendants to execute the sale deed in favour of the plaintiff or his nominee. If really the defendants have represented to the plaintiff regarding the problem confronted by them with the office of the Sub-Registrar, the plaintiff could have raised it with the defendants then and there by sending any letter or notice. However, in this case, there is no evidence made available to show that after December 2003, the plaintiff has approached the defendants seeking to execute the sale deed in his favour or in favour of the nominee of his choice. On the contrary, it is the contention of the defendants/ respondents that in December 2003, the plaintiff has abandoned the contract and did not approach them for execution of sale deeds either in his name or in the name of his nominee. After lapse of more than two years, the plaintiff sent a legal notice dated 04.10.2006 calling upon the defendants to execute the sale deed with regard to the remaining sites agreed to be conveyed by them. On receipt of such notice, the defendants issued a reply notice dated 19.10.2006 specifically stating that the plaintiff has abandoned the contract and that the defendants are not bound to execute the sale deed in his favour after expiry of six months period stipulated in the agreement. Thus, it is evident that there is no evidence available on record to show that between December 2003, the execution of the last sale deed by the defendants in favour of the plaintiff or his nominee and 04.10.2006, the date on which the plaintiff has sent legal notice, the plaintiff has ever demanded the defendants/respondents to execute the sale deed in their favour by expressing his readiness and willingness. The plaintiff has not properly explained the reasons for remaining silent between December 2003 and 04.10.2006 to assert his right based on the agreement sale. In such circumstance, the possession of ready money with the plaintiff in the form of fixed deposit receipt, Ex.A-24 could not be of much significance to prove that the plaintiff was ready and willing to perform his part of the contract. Therefore, we conclude that the plaintiff was not ready and willing to perform his part of the contract and the legal notice dated 04.10.2006 was issued by the plaintiff only to create a cause of action for filing the suit.

31. The learned counsel for the defendants/respondents also submit that the plaintiff has kept quite for more than two-years and filed the suit only belatedly on 04.06.2007 after expiry of the period of limitation, which commenced on the expiry of the six months period stipulated under the agreement of sale namely 01.04.2004. We find force in such

submission of the counsel for the defendants/ respondents. Therefore, on the ground of delay on the part of the plaintiff/appellant, we hold that the plaintiff is not entitled to the relief of specific performance. In this regard, we are fortified by the decision of the Hon'ble Supreme Court reported in (1997) 3 SCC 1 [K.S.Vidyanadam and others Vs. Vairavan] wherein it was held that the delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff. We therefore answer point No.2 against the plaintiff/appellant and in favour of the defendants/respondents.

32. Point No.3:- The Plaintiff has instituted the suit on 04.06.2007 seeking the equitable relief of specific performance. According to the plaintiff, the defendants have refused to perform their part of the contract through the reply notice dated 19.10.2006 and therefore, the suit was filed within three years from the date of refusal by the defendants to perform their part of the contract, hence, the suit was filed within the time limit fixed under the Limitation Act. According to the defendants/respondents, the agreement of sale, Ex.A5 stipulates six months time for performance of the contract, which period expired on 01.04.2004. Therefore, the plaintiff ought to have filed the suit on or before 01.04.2007 and the suit filed on 04.06.2007 is hopelessly barred by the period of limitation.

33. We have already held that the agreement of sale, Ex.A5 stipulates six months time limit for performance of the contract by the parties. Admittedly, the plaintiff did not perform his part of the contract within the period of six months. Therefore, the cause of action for the plaintiff to file the suit arose on 01.04.2004, the date on which the six months period lapses. In such circumstances, the plaintiff ought to have instituted the suit on or before 01.04.2007. On the other hand, the suit was filed only on 04.06.2007. To lend support to this conclusion, we are fortified by the decision of the Honourable Supreme Court in the case of (Fatehji and Company and another vs. L.M. Nagpal and others) reported in AIR 2015 Supreme Court 2301 relied on by the learned counsel for the defendants/ respondents herein wherein it was held that limitation for filing a suit for specific performance commences from the date fixed for performance of the contract. Even otherwise, the date of refusal on the part of the defendants/respondents cannot be construed to be the date on which the reply notice dated 19.10.2006 was sent by them. Even according to the plaintiff, whenever the plaintiff approached the defendants for execution of the sale deed in his favour or a nominee of his choice, the defendants have avoided and evaded to perform their contract by stating that there is some problem in registering the document with the Sub-Registrar Office. While so, the cause of action arose for the plaintiff to file the suit arise when the defendants are said to have refused to perform their contract by citing the problem relating to

registration of document with the office of the Sub-Registrar. In the present case, there was no clarity as to when exactly the plaintiff approached the defendants to execute the sale deed and when it was refused by the defendants. In such circumstance also, we hold that the cause of action for the plaintiff arose on 01.04.2004, when the six months period stipulated under the agreement of sale, Ex.A5 came to an end and therefore, we hold that the suit, as filed by the plaintiff, is beyond the period of limitation and consequently, the suit itself is not maintainable. We accordingly answer point No.3 against the plaintiff/appellant and in favour of the defendants/respondents.

34. Point No.4:- It is the vehement contention of the learned counsel for the plaintiff/appellant that the defendants have played fraud on the court. According to the counsel for the plaintiff/appellant, the defendants/respondents have altered the sanctioned plan annexed along with agreement of sale, Ex.A-5 based on which the plaintiffs proceeded to sell the sites to the prospective purchasers by effecting advertisement in newspapers relating to the project. However, after the parties entered into the arena, without the knowledge of the plaintiff, the defendants/respondents have altered the plan and thereby deceived the plaintiff. The plaintiff came to know about the altered plan during the course of trial and to prove the alteration made, the plaintiff has also filed the altered plan under Ex.A23. To prove that there was alteration of the sanctioned Plan, DW1 was cross-examined and he admitted that the layout was sanctioned in 1986 and it contained 114 plots plus 2 shops sites, but in Ex.A5, 124 plots and 2 shop sites have been shown. Therefore, it is clear that the defendants have deliberately supplied a different plan along with Ex.A5 than the one contained in Ex.A23. This conduct of the defendants in supplying a different plan would amount fraud on the part of the defendants/respondents and it vitiates the Judgment and Decree passed by the trial court. It is further submitted that even in the absence of any pleading relating to fraud, if it is shown that fraud was infact played by a party to the litigation, the Court shall refuse to grant any relief against such litigant. In the present case, the conduct of the defendants/respondents in altering the sanctioned plan without the knowledge of the plaintiff/appellant is nothing but a fraud and it would fall within the scope of Section 22 of the Indian Contract Act.

35. On the other hand, the learned counsel for the defendants/ respondents would submit that it is the plaintiff/appellant who has approached the court below with unclean hands. In fact, in the original plan, there were 114 sites and in the revised plan, there were 124 sites. In the revised plan, certain odd shaped sites were cut into smaller parts and the three shops shown in the original plan was reduced to two shop and the remaining one shop was converted into site Nos. 15, 15-A and 15-B. According to the counsel for the defendants/respondents the plaintiff was fully aware

of the alteration made to the sanctioned plan. The plaintiff/appellant was a real estate broker and he could have easily verified the authenticity of the revised sanctioned plan. In any event, the plaintiff/appellant was fully aware of the altered plan during the subsistence of the contract. Till such time the plaintiff filed the suit, there was absolutely no objection whatsoever raised with respect to the alteration in the plan. While so, it is futile on the part of the plaintiff/ appellant to contend that fraud was committed by the defendants/respondents by making alteration to the original plan and such fraud came to be known only during the course of trial in the suit. Further, in the absence of any pleadings before the trial Court relating to fraud, the plaintiff/ respondent is not entitled to raise such a plea before this Court at the appellate stage. Therefore, according to the counsel for the defendants/respondents, the plea raised by the plaintiff/appellant as if fraud was committed by the defendants/ respondents is without any basis and it has to be rejected.

36. It is the submission of the counsel for the plaintiff/appellant that the plan which was annexed along with Ex.A5, Agreement of sale, was different than the altered plan marked as Ex.A23. Admittedly, there was no pleading raised by the plaintiff before the trial Court to the effect that the defendants have played a fraud on the Court. Even according to the plaintiff/appellant, the factum of fraud came to their knowledge only during the course of trial. Thus, there was no pleading raised relating to fraud or there was no evidence recorded during the course of trial. In the absence of such pleading, the plaintiff is not entitled to raise the plea of fraud at the appellate stage. Further, it is submitted that the suit agreement, Ex.A5 itself was based on the revised plan and the plaintiff was fully aware of the fact that he entered into the agreement on the basis of alteration of plan. Thus, according to the defendants/respondents, no fraud was committed by them by reason of alteration of the plan and the plaintiff was fully aware of the revised plan and that is the reason why the plea of fraud has not been raised by the plaintiff in the plaint.

37. We find from the records that either in the plaint or during the course of chief examination of PW1 the plaintiff has not raised any plea with regard to fraud having been committed by the defendants. We find force in the submission of the counsel for the defendants/respondents that in the absence of any pleading relating to fraud, this Court, at the appellate stage, cannot go into those pleadings. In such circumstances, even on the basis of factual events unfolded, we could see that the plea relating to fraud raised by the plaintiff/defendant is wholly untenable. Furthermore, this Court, while exercising appellate jurisdiction, cannot go into the plea of fraud which was not raised by the plaintiff before the trial Court. Even though the counsel for the plaintiff/appellant relied on various decisions to

contend that if fraud is committed by a party to a lis, he is not entitled for any relief, such decisions cannot be made applicable to this case where there is no pleading of fraud raised by the plaintiff/appellant before the court below besides that it was not proved by any tangible evidence. In fact, the evidence on record shows that the plan was altered even before the agreement of sale dated 02.10.2003 that was entered into between the plaintiff and defendant and in fact based only on the altered plan, Exs. A-38 and A-39, sale deeds were executed by the defendant prior to the date of agreement of sale, Ex.A-5.. Thus, the plaintiff has entered in to the suit agreement with full knowledge about the alteration made in the original plan. Further, the agreement of sale contains properties which were only available on ground as on the date of agreement. Therefore, we hold that in the absence of any pleading or evidence relating to the plea of fraud, this Court cannot go into the same in this appeal. In this context, we are fortified by the decision relied on by the counsel for the respondent in the case of (Ram Sarup Gupta (dead) by Lrs vs. Bishun Narain Inter College and others) reported in AIR 1987 Supreme Court 1242 wherein it was held that in the absence of any pleading which is not supported by any evidence, the Court is not bound to render a finding thereof. Further, it is clearly indicated under Order VI Rule 4 of CPC that a party who makes a pleading relating to misrepresentation or fraud, breach of trust, wilful default or undue influence, he is bound to furnish those particulars with dates and other relevant material particulars in the pleadings. Admittedly, in the present case, the pleadings in the plaint filed by the plaintiff are not in conformity with the provisions contained under Order VI Rule 4 of CPC. In this context, we are fortified by the decisions rendered by the Honourable Apex Court in (i) (Mohanlal vs. Anantibai and others) reported in AIR 1971 SC 2177 and (ii) (Ram Sarup Gupta (dead) by Lrs vs. Bishun Narain Inter College and others) reported in AIR 1987 SC 1242 which were relied on by the learned counsel for the defendants/respondents wherein it was held that in the absence of pleading, evidence tendered to any extent by a litigant will be of no use and such evidence cannot be accepted. A party to a litigation cannot be permitted to tender evidence beyond the scope of the pleading. Thus, a party to the litigation must clearly plead his case supported by relevant material facts without which, the other party will not be in a position to know the case which he or she wants to meet. The relevant portion of the observation made in Ram Sarup Gupta case mentioned supra, reads as under:-

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated under Section 60 (b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled

that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise....

38. Having regard to the above settled principles of law, we conclude that in the absence of pleadings relating to fraud in the plaint, the defendants/ respondents will be deprived of an opportunity even to deny those pleadings in the written statement filed before the trial court. While so, at the appellate stage, without pleading or evidence, the allegations relating to fraud cannot be gone into by this Court. The judgments relied on by the counsel for the plaintiff/appellant in support of his contentions that even in the absence of pleading of fraud, if the materials on record show that fraud was committed on the court, the same can be looked into by the Court cannot be made applicable, as they relate to cases where fraud was played on the Court by abusing the process of the Court and by suppressing relevant material facts, which is not so in this case. As far as the judgment relied on by the counsel for the plaintiff/appellant in Joseph John Peter Sandy case reported in (2013) 3 Supreme Court Cases 801 mentioned supra it deals with undue influence by a party to the suit and not on the question of fraud. Therefore, the said Judgment also cannot be made applicable to this case. In the present case, at the appellate stage, the plaintiff is making allegation of fraud against the defendants in respect of the suit transaction that took place between them, without pleading or evidence, hence, the same cannot be considered at this stage by this Court. Accordingly, we answer point No.4 also against the plaintiff/appellant and in favour of the defendants/respondents.

39. Point No.5:- The evidence on record show that there was an agreement between the plaintiff and defendant, which was marked as Ex.A5. The agreement contains certain clauses to be adhered to by both the parties to the agreement. On the basis of the agreement, the plaintiff has initially paid Rs.5,00,000/-. The Plaintiff is also under an obligation to pay Rs.7,50,000/- per month in case there was no sale of any sites in a particular month. Admittedly, out of the six months period of contract, for five months, there was no sale of sites at the instance of the plaintiff. Therefore, as per the clauses contained in the agreement, the plaintiff has to pay Rs.7,50,000/- to the defendants, which the plaintiff did not pay. Therefore, it is evident that the plaintiff has contravened the terms of the agreement. Further, as we have noted above, the plaintiff has abandoned the contract and did not take any steps to get the sale deed within the time stipulated under Ex.A5. Only for the first time, the plaintiff came with a plea in the notice dated 04.10.2006

that even though he was ready and willing to perform his part of the contract, the defendants evaded and avoided to get the sale deed executed in his favour. This conduct on the part of the plaintiff in asserting his right belatedly after more than two years, will disentitle him to seek the equitable relief of specific performance. In this context, it would be worthwhile to refer to the decision in the case of (Shanthi Kavar Bai and others vs. Sushila) reported in 2009 (4) CTC 842 relied on by the counsel for the defendants/respondents wherein it was held that it is well settled proposition of law that in a given case where there are laches and inaction on the part of the plaintiff in seeking the specific relief, the Court cannot but deny the relief sought for. In the present case, there are laches and inaction on the part of the plaintiff in either performing the obligation under Ex.A5, agreement of sale or in seeking the equitable relief of specific performance within the period specified under the Limitation Act. Therefore, we are of the opinion that the conduct of the plaintiff would disentitle him to seek the relief of specific performance and accordingly, we answer point No.5 also against him.

40. In the result, we confirm the decree and judgment passed by the trial Court. The Appeal suit is dismissed. No costs. Consequently, connected MP No. 2 of 2011 and CMP Nos. 8726 and 8793 of 2017 are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge
(Fast Track Court No.I)
Coimbatore.

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. V. Ramesh, Advocate Sr.50460

+ 1 cc to Mr.R. Bharathkumar, Advocate SR.50195

AS No. 336 of 2011

GR(CO)
EU 23.08.17