

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 25.07.2017
JUDGMENT PRONOUNCED ON: 08.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.825 of 2006 and MP Nos.1 & 2 of 2006 and 1 of 2010
and CMP Nos.16380 and 16381 of 2016
and AS No.826 of 2006

AS 825/06

1. Babulal Tater
2. Leeladevi Tater
3. Bhagavathi Devi Tater
4. Ishwarchand Tater
1 to 4 carrying on business at
No.44/44, Ekambareshwrar Agraharam,
Park Town, Chennai 600 003. ..Appellants/Defendants 3to6

Vs

1. Harakh Chand J.Golecha
Carrying on business at No.98,
Choolai High Road,
Choolai, Chennai 600 112.
2. T.S.Rani @ Sengarani
3. T.Balaji
4. Venkatalakshmi
5. T.Rajaji .. Respondents/Plaintiff/
Defendant 7to10

2 to 5 given up the Respondents

AS 826/06

1. Babulal Tater
2. Leeladevi Tater
3. Bhagavathi Devi Tater
4. Ishwarchand Tater
1 to 4 carrying on business at
No.44/44, Ekambareshwrar Agraharam,
Park Town, Chennai 600 003. ..Appellants/Defendants 3to6

Vs

Harakh Chand J.Golecha
Carrying on business at No.98,
Choolai High Road,
Choolai, Chennai 600 112. ..Respondent/Plaintiff

These appeals are filed under Section 96 of Civil Procedure Code, against the judgment and decree in O.S.No.12883 of 1996 and O.S.No.1356 of 1997 on the file of the Additional District Judge, IVth Fast Track Court, City Civil Court at Chennai, dated 28.04.2006 respectively.

For Appellants : Mr.P.K.Siva Subramanian
in both the appeals

For 1st Respondent: Mr.P.B.Balaji
in both the appeals

R2 to R5 : Given up in AS.825/2006

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

Defendants 3, 4, 5 and 6 in OS No.12883 of 1996 and OS No.1356 of 1997 are the appellants in the present appeals.

The case of the Plaintiff in OS.No.12883 of 1996:

2. The suit in OS.No.12883 of 1996 was filed seeking specific performance of an agreement dated 27.08.1990 entered into between defendants 1 and 2 and the plaintiff. There is also a prayer to declare the sale deeds dated 17.11.1995 executed by defendants 1 and 2 in favour of defendants 3 to 6 as null and void. O.S. No.1356 of 1997 is also a suit which was filed by the plaintiff in O.S. No.12883 of 1996, seeking a permanent injunction restraining the defendants from alienating the property.

3. According to the plaintiff, defendants 1 and 2 agreed to sell an extent of One ground and 1250sq.ft. out of 2 grounds and 553sq.ft. for a consideration of Rs.6,25,000/- and Rs.2,00,000/- was paid as advance and the balance of Rs.4,25,000/- was agreed to be paid to the State Bank of India, in discharge of the loan borrowed by the defendants 1 and 2. As per the agreement a period of 3 months was fixed for the performance of the contract. The agreement also provides that the period could be extended. In the meantime a suit was filed by the grand children of the 2nd defendant in OS.No.10045 of 1992 on 11.01.1991 as C.S.No.104 of 1991. In the said suit injunction was granted restraining the defendants 1 and 2 from selling the suit property to the plaintiff. It is contended by the plaintiff that C.S.No.104 of 1991 was filed at the instance 1st and 2nd defendants, who have set up their grand children to file the suit claiming partition. It is also the claim of the plaintiff that the period fixed under the agreement was extended at on two occasions on 24.11.1990 and 26.01.1991. The extension on 26.01.1991 was upto 15.02.1991. The suit in OS No.12883 of 1996 came to be filed on 13.08.1996 seeking

specific performance. The plaintiff would contend that though he was ready and willing to perform his part of the contract the defendants were not ready and willing to perform their part of the contract and they had always been attempting to wriggle out of the contract. The suit in C.S.No.104 of 1991 which was renumbered as O.S.No.7396 of 1996 is one of the attempts made by the defendants to wriggle out of the contract. It is also contended that the defendants filed a suit in OS No.7111 of 1994, claiming damages for use and occupation from the plaintiff. Therefore, the plaintiff sought for specific performance of the agreement of sale dated 27.08.1990 in respect of the suit property.

4. The suit was resisted by defendants 3 to 6, who claim to have purchased the property from defendants 1 and 2 under a sale deed dated 17.11.1995. The defendants 3 to 6 while admitting the agreement dated 27.08.1990 would contend that the plaintiff was never ready and willing to perform his part of the contract under the agreement. After paying an advance of Rs.2,00,000/- and a small amount of Rs.25,000/- to State Bank of India the amounts due under the mortgage were not discharged by the plaintiff. According to them, the plaintiff has no funds to discharge the mortgage. It is also contended that the plaintiff filed a suit in O.S.No.10045 of 1992 as early as on 10.11.1992 for a bare injunction restraining defendants 1 and 2 from interfering with his possession in which he claimed that he was ready and willing to deposit the balance amount, and also on the basis false allegations that defendants 1 and 2 are attempting to interfere with the possession of the plaintiff. The said suit in OS No.10045 of 1992 was eventually dismissed for default on 17.07.2003. According to defendants 3 to 6 this would show that the plaintiff was never ready and willing to perform his part of the contract. Even though he had a cause of action for seeking the relief of specific performance on 10.11.1992, he chose to institute a suit for bare injunction alone therefore, the present suit according to defendants 3 to 6 is barred by Order 2 Rule 2 of the Code of Civil Procedure. It is also contended that the defendants 3 to 6 are bona fide purchasers for value without notice of the subsisting agreement. Therefore, he is not entitled to seek specific performance.

5. Defendants 1 and 2 filed separate written statement admitting the agreement but they would contend that since the plaintiff was not ready and willing to perform his part of the contract within the period fixed under the agreement, the agreement had lapsed. On the said contention they sought for dismissal of the suit. It was also pleaded that the suit is barred by limitation.

The case of the plaintiff in OS.No.1356 of 1997:

6. The suit in OS. No.1356 of 1997 was filed by the plaintiff who has also filed the suit in OS.No.12883 of 1996, seeking a permanent injunction restraining the defendants therein, who are also the defendants in OS.No.12883 of 1996, from alienating or encumbering the suit property. The plaintiff would contend that the pendency of the suit in OS No.12883 of 1996 seeking specific performance itself is a ground for grant of an injunction in his favour.

7. The said suit was resisted by defendant 3 to 6 contending that such a decree for injunction cannot be sought for by the plaintiff who was never ready and willing to perform his part of the contract, if at all, it should have been sought as consequential relief in the suit for specific performance and not by way of an independent suit.

8. Since both the suits were between the same parties, the suits were taken up together.

9. The learned Trial Judge framed the following issues in OS No.12883 of 1996.

In OS No.12883 of 1996:

1. Whether the agreement of sale dated 27.8.1990 Ex.A1 is enforceable in law?
2. Whether the plaintiff has always been ready and willing to perform his part of the contract?
3. Whether the plaintiff was ready and willing to discharge the equitable mortgage in the State Bank of India created by the defendants 1 and 2 as per the term of Ex.A.1 sale Agreement?
4. Whether the defendants 3 to 6 are bona fide purchasers for value without notice?
5. Whether the plaintiff is entitled to invoke the benefit of part performance under Section 53 A of the Transfer of property Act?
6. Whether time is the essence of the suit agreement?
7. Whether the suit is barred by limitation?
8. Whether the plaintiff is entitled to get decree for specific perform of contract as prayed for?
9. Whether the plaintiff is entitled to consequential relief that Ex.A.7 and A.8 sale deeds are null and void?
10. To what relief the plaintiff is entitled to?

In OS No.1356 of 1997:

1. Whether the plaintiff is entitled to permanent injunction restraining the defendants or their representatives from alienating the suit property to their any body?

2. To what relief plaintiff is entitled to?

10. The plaintiff in both the suits examined himself as P.W.1, an officer from Canara Bank was examined as P.W.2. and 5th defendant was examined as D.W.1. Exhibits A1 to A50 were marked on the side of the plaintiff and Exs. B1 to B19 were marked on the side of the defendants.

11. The learned Trial Judge on consideration of oral and documentary evidence found that the agreement is true and valid and further found that the plaintiff is entitled to a decree for specific performance in OS. No.12883 of 1996. Having concluded that the plaintiff is entitled to a decree for specific performance, the learned Trial Judge also found that the plaintiff is also entitled to an injunction as prayed for in OS. No.1356 of 1997. On the aforesaid findings the learned Trial Judge decreed both the suits.

12. Aggrieved defendants 3 to 6 who are the subsequent purchasers are on appeal.

13. Heard Mr.P.K.Siva Subramanian, the learned counsel for the appellants and Mr.P.V.Balaji, learned counsel for the 1st respondent. The respondents 2 to 5 have been given up since they remained ex-parte before the trial Court.

14. Mr.P.K. Siva Subramanian, learned counsel appearing for the appellants would raise the following contentions:

1. The fact that the agreement is dated 27.08.1990 is admitted. A reading of the agreement would go to show that the original period fixed under it for performance was 3 months under Clause 15 of the said agreement. It is not in dispute that Clause 15 states that this time of 3 months may be extended by mutual consent of the parties. Pursuant to the said Clause 15 the period under the agreement was extended twice i.e. on 24.11.1990 and 26.01.1991. On 26.01.1991 the period was further extended by another endorsement upto 15.02.1991. Therefore, according to the learned counsel, the last date fixed for performance is 15.02.1991. According to the learned counsel, under Article 54 of the Limitation Act, the limitation for the suit for specific performance is 3 years from the date fixed for performance. The last date fixed for performance under the agreement was 15.02.1991. Therefore, according to him, the suit filed on 19.08.1996 is hopelessly barred by limitation.
2. Even assuming that the suit is maintainable, according to the learned counsel, the plaintiff is guilty of laches. He was not ready and willing to

perform his part of the contract throughout as required under Section 16 (c) of the Specific Relief Act. He would contend that the time was extended up to a particular date by way of subsequent endorsements would show that the parties intended time to be the essence of the contract. The plaintiff who had, admittedly, not made any demand from 15.02.1991 till date of filing of the suit on 19.08.1996, is not entitled to specific Performance.

3. Thirdly the learned counsel would contend that the plaintiff had filed the suit for bare injunction in OS. No.10045 of 1992 on which date he had a right to sue for specific performance. The non filing of the suit for specific performance earlier would show that the present suit is barred by Order 2 Rule 2 of Code of Civil Procedure Code

15. Per contra, Mr.P.B.Balaji, learned counsel appearing for the 1st respondent would contend there is evidence to show that the defendants had acknowledged the agreement even after 15.02.1994, namely the last date for filing of the suit, if the limitation is calculated from 15.02.1991. The learned counsel would go one step further and contend that unless a specific date had been fixed for performance under the agreement the first part of Article 54 would not apply and the second part alone would apply, thus the suit instituted within 3 years from the date of refusal is within time. The refusal according to Mr.P.B.Balaji, learned counsel would be the date of filing of suit in OS No.7111 of 1994 by the defendants 1 and 2 claiming damages for use and occupation of the suit property, wherein a specific allegation has been made that the defendant in the said suit, namely the plaintiff herein, was not in possession of money to complete the sale as per the terms of the agreement. Therefore, the learned counsel would contend that the limitation for the present suit would commence only from the date of institution of the suit in OS.No.7111 of 1994, namely 19.08.1994 and hence the suit filed on 19.08.1996 is within time. On the question of readiness and willingness, the learned counsel Mr.P.B.Balaji, would contend that the legal representatives of the defendants 1 and 2 had filed a suit in CS,No.104 of 1991 for an injunction restraining the defendants 1 and 2 from executing or registering the sale deed in relation to any portion of the suit property in favour of the 3rd defendant and obtained an order of injunction in Original Application No. 81 of 1991 on 28.01.1991 and the said injunction having been in force the plaintiff cannot be expected to sue for specific performance during the currency of the said injunction. Hence according to the learned counsel, his readiness and willingness cannot at all be questioned by the defendants 3 to 6. He would also further contend that the fact that the agreement dated

27.08.1990 was in force has been admitted by the defendants 1 and 2 in several subsequent transactions and therefore, according to him, the plaintiff cannot said to be not ready and willing to perform his part of the contract.

16. Thirdly, on the bar under Order 2 Rule 2 of Civil Procedure Code pleaded by Mr.P.K.Siva Subramanian, the learned counsel for the appellants, Mr.P.B.Balaji, learned counsel for the 1st respondent would contend that the filing of the suit for injunction cannot always be said to be a bar for a subsequent suit for specific performance. He would also contend that unless it is shown that the right to seek the relief of specific performance was available to the plaintiff on the date when the suit for injunction was filed, the second suit for specific performance cannot be said to be barred under Order 2 of Rule 2 of the Code of Civil Procedure. It is also contended that such a plea was never raised in the written statement. Therefore, the same cannot be allowed to be raised in these appeals for the first time.

17. On the above rival submission, the following questions arise for determination in these appeal.

1. Whether the plaintiff in OS.No.12883 of 1996 has always been ready and willing to perform his part of the contract in terms of Section 16 (c) of the Specific Relief Act?
2. Whether the suit in OS No.12883 of 1996 is barred by limitation?
3. Whether the suit in OS.No.12883 of 1996 is barred by Order 2 Rule 2 of the Code of Civil Procedure?
4. Whether the suit in OS No.1356 of 1997 was maintainable?

Point No.1:

18. The first and foremost submission of Mr.P.K.Siva Subramanian, learned counsel appearing for the appellants is that the plaintiff has not proved that he was always ready and willing to perform his part of the contract. Admittedly, the agreement is dated 27.08.1990. Clause 15 of the agreement provides for extension of the period fixed under the agreement. Pursuant to the said Clause, the period fixed under the agreement was extended twice. And as per the second endorsement dated 20.01.1991, the last date fixed for performance was extended upto 15.02.1991. No doubt true that the grand children of defendants 1 and 2 in the suit had filed a suit in C.S.No.104 of 1991 before this Court and obtained an order of injunction restraining defendants 1 and 2 from alienating the property to the 3rd defendant therein, who is the present plaintiff. But the said injunction would not prevent the plaintiff from instituting a suit for specific performance

as per the agreement. The plaintiff admittedly, did not move his little finger even after the initiation of the suit in OS.No.7111 of 1994 where the defendants 1 and 2, who were the plaintiffs have categorically pleaded that the present plaintiff, who was the defendant in the said suit was not able to complete the sale transaction as per the agreement dated 27.08.1990. Thereafter, after the purchase of the property by the present appellants, the present appellants had issued a notice to the plaintiff/1st respondent on 08.03.1996 disclosing their purchase of suit property and demanding vacant possession as well as damages for use and occupation. To this notice the plaintiff chose to sent a reply on 15.05.1996, wherein he had claimed that he entered to an agreement with D1 and D2, he has also claimed that he obtained an order of injunction in OS.No.10045 of 1992, but even in the said notice he has neither sought for specific performance nor has he disclosed his readiness and willingness to pay the balance of consideration. Though plaintiff would claim that he was ready and willing to pay the balance due to the State Bank of India, he could not do so because of the order of injunction. It must be stated here that the order of injunction was only restraining alienation by defendants 1 and 2 to the 3rd defendant, namely the plaintiff. There was no injunction restraining the plaintiff from discharging this obligations under the agreement dated 27.08.1990. The plaintiff himself had filed a suit in OS No.10045 of 1992 seeking a decree for permanent injunction restraining the defendants 1 and 2 from alienating or encumbering the property. In the said plaint he has claimed that he was ready and willing to perform his part of the contract. He would also claim that in view of an injunction granted in CS. No.104 of 1991 he could not proceed with the payment of balance of sale consideration.

19. Mr.P.B.Balaji, learned counsel appearing for the 1st respondent/plaintiff would contend that the defendants 1 and 2 had leased out another portion of the property in favour of the plaintiff on 15.09.1993, and the said lease was renewed by another agreement dated 30.04.1996. An Agreement dated 30.04.1996 has been produced as Ex.A30. The plaintiff has also produced two letters dated 10.6.1995 and 06.05.1996 as Exs. A39 and A40 to show that he has been in possession of the property which is the subject matter of the agreement and the defendants 1 and 2 have always acknowledged the subsistence of the agreement. Therefore, the question on his being not ready and willing to perform his part of the contract cannot be inferred from the facts and circumstances of the present case.

20. At the outset, it should be pointed out that none of the above three documents are reliable. As far as the lease deed is concerned it is a lease deed for the period of 11 months, it is

an unregistered document, the document is dated 30.04.1996. It is written on two stamp papers value of Rs.10/- each. The parties are admittedly belonging to Chennai, but the stamp papers have been purchased from a stamp vendor at Vellore, which is nearly 150 kilometers away. The name of the purchaser of the stamp papers is not found in the stamp papers. Though the documents is said to be witnessed by one Uttarchand, he has not been examined as a witness. A perusal of the document, particularly the manner in which the document have been typed and the signatures are placed would show that the document had been created on pre-signed blank papers. In the second page of the document, in the last line, there is a huge gap between the words "second" and "part". It is clear that the said gap has been left intentionally to accommodate the signature of the 1st defendant, namely Rukmani, which is in between the two words "second" and "part". This by itself clearly demonstrate that the document has been typed in pre-signed blank paper. In the third page, the signature of Rukmani is above her name, which has been typed but however the signature of Thirugnanam and Harakh Chand J.Golecha, are below the names. These features clearly establish that this document has been typed in pre-signed blank papers. Hence the document cannot be looked into for the purpose of establishing that the defendants 1 and 2 had acknowledged the subsistence of the suit agreement in the year 1996. It will be pertinent to point out at this juncture that the defendants 1 and 2 had sold the property to defendants 3 to 6/Appellants on 17.11.1995 itself.

21. The other document that is relied upon by Mr.P.B.Balaji, would show that there has been an acknowledgment of agreement by the defendants is Ex.A39. It is claimed that Ex.A39 is a letter given to the Assistant Divisional Engineer, Choolai Division, Madras Electricity System, wherein it is stated that defendant 1 and 2 have no objection for the plaintiff obtaining a new electricity connection. Ex.A40 dated 06.05.1996 is also a similar letter, wherein the defendants 1 and 2, permitted the plaintiff to do some repairs in the suit property. Both these letter are filed to show that the defendants had acknowledged the subsistence of the sale agreement. This is wholly unbelievable. Inasmuch as the defendants 1 and 2 had sold the property to the defendants 3 to 6 on 17.11.1995. Having parted with the property on 17.11.1995, as such they had no right to grant permission to the plaintiff to effect repairs over the property on 06.05.1996. Therefore, it is clear that the letter Ex.A40, has been created by the plaintiff with the help of pre-signed blank papers. Insofar as Ex.39 is concerned the same is dated 10.06.1995. It could be seen from the pleadings as well as from the evidence that the defendants 1 and 2 had filed a suit in OS.No.7111 of 1994 seeking damages for use and occupation on 28.07.1994. Therefore, there is no possibility of

the defendants 1 and 2 acknowledging the agreement on 10.06.1995. A perusal of the said letter would show that the said letter has also been created with the help of pre-signed blank papers. The date in the letter has been filled up with a different ink, the body of the letter in different ink, the signatures of the defendants 1 and 2 are also in different ink. Therefore, I do not think, it is safe to rely upon this document to conclude that the defendants 1 and 2 had admitted the agreement some time in 1996 also.

22. Finally, Mr.P.B.Balaji, learned counsel appearing for the 1st respondent would contend that time cannot be held to be the essence of the contract. He would also rely upon the judgment of the Supreme Court in P.D'Souza v. Shondriilo Naidu reported in AIR 2004 SCC 4472(1), to contend that unless the defendants 1 and 2 had shown that they were ready perform their obligations under the contract the plaintiff cannot be blamed for not being ready and willing to perform his part of the contract. The learned counsel would rely upon the circumstances that there was a suit filed by the grand children of the defendants 1 and 2 seeking an injunction restraining alienation. Therefore, according to the plaintiff, in view of the said order of injunction he cannot be blamed for not being ready and willing to perform his part of the contract.

23. The Law relating to readiness and willingness in suits for specific performance has been the subject matter of several decisions. But in the recent past the Hon'ble Supreme Court, has held that the plaintiff in a suit for specific performance should show that he was always ready and willing to perform his part of the contract and even if absence of readiness is established for a very short period, the plaintiff will have to suffer the consequences of not being ready and willing to perform his part of the contract. In Saradamani Kandappan v. Rajalakshmi and others, [2011 (4) LW 97], the Hon'ble Supreme Court, while dealing with the question of readiness and willingness, observed as follows:

24. Relying upon the observation of this court in N.Srinivasa v. Kuttukaran Machine Tools Ltd. [2009 (5) SCC 182] that "in the contract relating to immovable property, time cannot be the essence of the contract", the appellant put forth the contention that in all contracts relating to sale of immovable property, time stipulated for performance, even if expressed to be the essence, has to be read as not being the essence of the contract and consequently the contract does not become voidable by the failure to perform before the specified time. A careful reading of the said decision would show that the sentence relied on (occurring in para 31) apparently was not the statement of legal position, but

a conclusion on facts regarding the contract that was being considered by the court in that case, with reference to its terms. In fact the legal position is differently stated in para 27 of the said decision, thus:

"27. In a contract for sale of immoveable property, normally it is presumed that time is not the essence of the contract. Even if there is an express stipulation to that effect, the said presumption can be rebutted. It is well settled that to find out whether time was the essence of the contract. It is better to refer to the terms and conditions of the contract itself."

25. The legal position is clear from the decision of a Constitution Bench of this court in Chand Rani v. Kamal Rani [1993 (1) SCC 519], wherein this court outlined the principle thus:

"19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language."

28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time bound need (say medical or educational expenses of a family member) time stipulated for

payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

24. The same principles were reiterated by the Supreme Court in Padmakumari and ors. v. Dasayyan and others in [2015 (6) CTC 545]. In the case on hand, no doubt true that an injunction was obtained by the grand children of the defendants 1 and 2 against defendants 1 and 2 from alienating the suit property to the plaintiff in CS. No.104 of 1991, but the defendants 1 and 2 had expressly alleged that the plaintiff has not been ready and willing to perform his part of the contract and had filed OS.No.7111 of 1994 on 28.07.1994 claiming damages for use and occupation. The plaintiff himself has filed OS No.10045 of 1992 on 10.11.1992 seeking an order of injunction restraining the defendants 1 and 2 from alienating the property to third parties and obtained an order of injunction. Therefore, it is not as if the parties were not aware of their mutual obligations under the agreement. The plaintiff was were very much aware of the obligations but now he wants to take advantage of the conduct of the grand children of the defendants in obtaining an order of injunction. The order of injunction did not prevent the plaintiff from seeking specific performance of the agreement of sale through Court. Therefore, the claim of the plaintiff that he was always be ready and willing to perform his part of the contract is wholly unbelievable. I also find that the plaintiff who had approached the Court seeking specific performance, which is a discretionary relief has indulged in fraudulent acts by producing fake documents before the Court. Exs.A30, A.39 and A.40, on perusal would show that they have been created by the plaintiff for the purposes of substantiating his case for specific performance. This, in my considered opinion, would disentitle the plaintiff from obtaining the discretionary relief of specific performance. Though the learned Trial Judge has written a very lengthy judgment, he has not focused his attention to the crucial issues involved in the case. He has, in my considered opinion, concentrated on several unimportant issues and evidence to come to the conclusion that the plaintiff has been ready and willing to perform his part of the contract.

25. In any event, after disposal of the suit by the Trial Judge, the law relating to readiness and willingness on the part of the plaintiff has under gone a vast change. Therefore, I am constrained to hold that the plaintiff has not established that he has been ready and willing to perform his part of the contract as envisaged under Section 16C of the Specific Relief

Act. I also conclude that the conduct of the plaintiff in attempt to mislead the court by producing documents which have been created by him would show that his conduct is not one befitting the conduct of a plaintiff, who seeks the discretionary reliefs of specific performance in the hands of the Court. The lease agreement dated 30.04.1996 refers to the suit agreement dated 27.08.1990. The lease agreement is dated 30.04.1996, it is said to have been executed by defendants 1 and 2. But the sale deeds executed by defendants 1 and 2 in favour of the appellants is dated 17.11.1995. Therefore, the defendants 1 and 2 had no right over the property on 30.04.1996 to have executed a document acknowledging the agreement or leasing out the property in favour of the plaintiff.

26. As already pointed out, the name of the person who purchased the stamp papers of 10 rupees each in two stamp papers on which Ex.A30 written is not found in the stamp papers. Moreover, the stamp papers are shown to have been purchased from a stamp vendor from Vellore, whereas the parties are residents of Chennai. Therefore, the plaintiff, apart from being not ready and willing is also guilty of coming to Court with unclean hands and as such I find he is not entitled to specific performance.

Point No.2:

27. On the question of limitation, the learned counsel Mr.P.K.Siva Subramanian, would contend that it is the admitted case of the parties that Ex.A1 agreement fixes a period of 3 months for performance under Clause 15. The said period is extended by an endorsement dated 24.11.1990 upto 31.01.1991 and again, by an endorsement dated 26.01.1991, the period has been extended upto 15.02.1991. Relying upon the said endorsements, Mr.P.K.Siva Subramanian, learned counsel would contend that the suit should have been filed on or before 15.02.1994 and therefore, according to him the suit filed on 19.08.1996 is barred by limitation.

28. Per Contra, Mr.P.B.Balaji, learned counsel would contend that the first part of Article 54 of Limitation Act, would apply only in cases where a definite calendar date had been fixed for performance. According to the learned counsel since the Ex.A1 only says a period of 3 months had been fixed, it would not be a definite calendar date fixed for performance. Hence, according to him, it is the date on which the plaintiff had notice of refusal to perform that would be the starting point of limitation for instituting the suit. In support of his submission the learned counsel would rely in Ahmadsahab Abdul Mulla v. Bibijan and others reported in 2009 (5) SCC 462 and Panchanan Dhara and Others v. Monmatha Nath Maity (dead) through Lrs. And another reported in 2006 (5) SCC 340.

29. In 2009 (5) SCC 462, cited supra, the Hon'ble Supreme Court has dealt with a case where the date fixed for performance was not a definite date. While deciding the question whether the use of the expression 'date fixed' in Article 54 of the Schedule to the Limitation Act is suggestive of a specific date in the calendar, the Hon'ble Supreme Court concluded that the suggestive date fixed for performance is a crystallized notion. And finally it was held that the expression 'date fixed' in Article 54 of the Schedule to the Limitation Act will definitely be the date specifically fixed. In 2006 (5) SCC 340, cited supra, the Hon'ble Supreme Court dealt with the case where no time for performance was fixed and the Hon'ble Supreme Court rejected the plea of limitation on concluding that there was an extension of the period fixed under the contract for performance. On the factual scenario the Hon'ble Supreme Court came to the conclusion that the date of refusal was on 21.08.1985, the suit filed within 3 years from the said date would be within time.

30. The learned counsel would also invite my attention to the judgment of the Hon'ble Supreme Court in Madina Begum and another v. Shiv Murti Prasad Pandey and others reported in 2016 (15) SCC 322. The Hon'ble Supreme Court had held that if the agreement of sale did not specify the calendar date as a date fixed for performance of agreement, the first part of Article 54 was not applicable. Therefore, the Supreme Court concluded that in the absence of the specific date having been fixed under the agreement, the first part of Article 54 would not apply and the suit filed within 3 years from the date of refusal would be in time.

31. It has to be seen whether there was a specific date or a specific calendar date was fixed for performance under the suit agreement. Clause 15 of Ex.A1 provides that the sale transaction shall be completed within a period of 3 months from the date of agreement. Thereafter, as per the endorsement dated 24.11.1990 which is marked as Ex.A46, it is seen that the period is extended upto 31.01.1991. Again another endorsement marked as Ex.A47 dated 26.01.1991 shows that the period is extended upto on 15.02.1991. Though the original agreement did not fix a specific calendar date as the last date for performance of the contract by subsequent endorsement, the last date has been fixed as 15.02.1991. Therefore, the Principles of law evolved by the Supreme Court in Madina Begum and another v. Shiv Murti Prasad Pandey and others reported in 2016 (15) SCC 322, cited supra, may not be applicable to the case on hand. It has been categorically found that the parties contemplated the last date for the performance of the obligations under the Contract as 15.02.1991. Therefore, it is the first part of Article 54 of the Limitation Act, which is applicable to the case on hand and

the suit should have been filed within 3 years from 15.02.1991 i.e. on or before 15.02.1994. The present suit has been filed only on 19.08.1996. Therefore, the irresistible conclusion is that the suit is barred by limitation.

32. It is lastly contended by Mr.P.B.Balaji, learned counsel appearing for the 1st respondent that the fact that the order of injunction granted in CS.No.104 of 1991, would enure to his benefit by relying upon the provisions of Section 15 (1) of the Limitation Act. I am unable to agree with the said contention. Section 15(1) of Limitation Act reads as follows:

15. Exclusion of time in certain other cases.

(1) In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

33. The plaint as well as the order of injunction in CS No.104 of 1991 has been produced. It would go to show that the prayer in CS No.104 of 1991 is for a declaration that certain mortgages created by the defendants 1 and 2 are not binding on the plaintiff and for partition. In the said suit an application for an order of injunction restraining defendants 1 and 2 from executing and registering sale deed, in favour of the 3rd defendant was filed and an order of an interim injunction was granted by the Court. This cannot be construed as an order staying institution of the suit. Therefore, the claim of the plaintiff that the pendency of the suit in CS No.104 of 1991 and the currency of the order of injunction would save the suit from being barred by limitation cannot be accepted. It should also be pointed out that the suit in CS. No.104 of 1991 was transferred to the City Civil Court and renumbered as OS No.7096 of 1996 and the same was dismissed as withdrawn on 09.11.2001. The very fact that the plaintiff had instituted the present suit on 19.08.1996, would go to show that he was not under the impression that he was enjoined from filing the present suit by virtue of the order of injunction granted in CS No.104 of 1991, which was renumbered as OS No.7096 of 1996. For the foregoing reason, I am of the considered opinion that the present suit filed 19.08.1996, is clearly barred by limitation.

34. In view of the above findings on the issues relating to readiness and willingness as well as the question of limitation, I do not think I should go into the third point regarding the bar under Order 2 Rule 2 of the Code of Civil Procedure in filing the present suit in any event, I find the said question had not been raised before the trial Court and therefore, I do

not think the appellants should be allowed to raise the said issue in the before the Appellate Court for the first time. In fine, the appeal in AS No. 825 of 2006 is allowed. The suit in OS No.12883 of 1996 is dismissed.

35. Insofar as AS No.826 of 2006 is concerned the suit in OS. No.1356 of 1997 filed by the plaintiff in OS No.12883 of 1996 was decreed by granting an order of permanent injunction only on the sole ground that the suit for specific performance has been decreed. Now that the suit for specific performance has been dismissed by me, by allowing OS. No.825 of 2006, the decree of injunction cannot also be sustained. Hence As.No.826 of 2006 also allowed and OS. No.1356 of 1997 is dismissed.

36. CMP No.16380 of 2016 has been filed by the appellants seeking stay of all further proceedings in OS No.4959 of 2015, which is a suit for recovery of possession filed by the appellants herein against the 1st respondent. Now that the decree for specific performance in favour of the 1st respondent has been set aside, it open to the appellants to proceed with the suit in OS.No.4959 of 2015 on the file of the I Additional Judge, City Civil Court, Chennai. The stay granted in CMP No.16380 of 2016 is vacated.

37. In fine the Appeals in AS No.825 of 2006 and 826 of 2006 are allowed. The suits in OS Nos.12883 of 1996 and 1356 of 1997 will stand dismissed. However, in the circumstances of the case, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

jv
To

- 1 The Additional District Court, IVth Fast Tack Court, City Civil Court at Chennai.
2. The Section Officer, V.R.Section. High Court, Madras.
- + 4 ccs to Mr. P.K. Sivasubramaniam, Advocate SR.65705, 65704
- + 2 ccs to Mr. P.B. Ramanujam, Advocate SR.65242, 65243

A.S.No.825 of 2006 and MP Nos.1 & 2 of 2006 and 1 of 2010
and CMP Nos.16380 and 16381 of 2016
and AS No.826 of 2006

AK(CO)
EU(28/10/2017)