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IN THE JUDICATE OF MADRAS HIGH COURT

Orders Reserved on : 27.06.2018

Delivered on : 13.08.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE C.SARAVANAN

A.S.No.36 of 2015

and

C.M.P.No.15605 of 2017

1.V.Indirani

2.V.Sreedhar

... Appellants/Defendants 1 & 2

Vs.

1.P.R.Balakrishnan

2.The State Bank of India,

rep. By its Manager,

Collectorate Branch,

Perundurai Road,

Erode.

... Respondents/Plaintiff/3rd Defendant

(2nd respondent given up as un-necessary
party vide memo filed)

Appeal Suit has been filed under Section 96 of the Code of Civil Procedure, 1908, against the judgment and decree dated 31.10.2012 in O.S.No.273 of 2007 passed by the I Additional District Court at Erode.

For Appellant

:Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum

For Respondents

: Mr.N.Manoharan (For R1)
R2 - given up

JUDGMENT

(R.SUBBIAH, J.,)

The appeal has been filed against the judgment and decree dated 31.10.2012 in O.S.No.273 of 2007 passed by the 1st Additional District Court at Erode.



2.The appellants herein are the defendants 1 & 2 in O.S.No.273 of 2007 before the Trial Court. The said suit was filed by the 1st respondent herein/plaintiff for specific performance directing the appellants/defendants 1 & 2 to execute a registered sale deed in respect of the suit schedule property, after measuring and fixing the exact extent of the land as per the terms of the sale agreement dated 22.09.2005, free from all encumbrances, and to deliver possession thereof to him.

3.For the sake of convenience, hereinafter the appellants herein will be referred to as the defendants, the 1st respondent herein will be referred to as the plaintiff and the 2nd respondent herein/3rd defendant viz., the State Bank of India will be referred to as 'SBI'.

4.The facts of the case of the plaintiff inter alia are as follows_

4-1.The 1st defendant is the owner of the suit property by virtue of a registered partition deed dated 20.02.1989 and the 2nd defendant is the son of the 1st defendant. The defendants agreed to sell the suit property to the plaintiff for a sum of Rs.11,84,000/- at the rate of Rs.64,000/- per cent and they executed a sale agreement in favour of the plaintiff on 22.09.2005. On the date of entering into the said agreement, the defendants received a sum of Rs.4 lakhs as advance, as a part of the sale consideration, from the plaintiff. It was further agreed under the sale agreement that the plaintiff should pay further amount of Rs.4 lakhs before the end of Karthigai of Parthiba year and the remaining balance amount of Rs.3,84,000/- before the end of Thai i.e., 15.02.2006 and on receipt of the said amounts, the defendants should execute the sale deed in favour of the plaintiff. Further, it was specifically agreed between the parties under the sale agreement that before the execution of the sale deed, the suit land should be measured and on such measurement, for the available extent of land, sale price has to be calculated at the rate of Rs.64,000/- per cent. It was also agreed between the plaintiff and the defendants that the defendants should obtain NOC from the competent authorities and handover the same to the plaintiff at the time of execution of the sale deed. So, the execution of the sale deed would be completed only after compliance of the above said conditions. According to the plaintiff, time was not intended to be an essential term of the contract.

4-2.The plaintiff was always ready and willing to pay Rs.4 lakhs before 15.12.2005 and the balance amount of Rs.3,84,000/- before the end of Thai ie., 15.02.2006 and take out the sale deed at his costs from the defendants. He was having sufficient funds with him. When the plaintiff tendered



the amount, the defendants represented to the plaintiff that they will inform the plaintiff as soon as a surveyor is arranged to measure the subject land and that they were also taking steps to get NOC from the concerned authorities and that as soon as they get it, they would inform the plaintiff and receive the balance sale consideration and execute the sale deed. Thus, the defendants asked the plaintiff to wait for execution of the sale deed. Therefore, whenever the plaintiff met the defendants, the same representation was repeated by the defendants that they would take steps to measure the land and to get NOC from the concerned authorities.

4-3. While so, the plaintiff came to know from some of the neighbouring landowners that though the area covered under the sale agreement is mentioned as 18 1/2 cents, it would measure only about 12 cents. Hence, the plaintiff insisted the defendants for early measurement of the land. But, the defendants postponed the issue on one pretext or other. Hence, on 10.05.2006, the plaintiff himself measured the land with the assistance of a Firka Surveyor in the presence of the 1st defendant and her husband. On such measurement, it was found that the area available for sale was only 5525 sq.ft, that is to say, only 12.68 cents. The Firka Surveyor, who measured the land, has given a certificate and plan to the plaintiff. The price for 12.68 cents at the agreed rate of Rs.64,000/- per cent comes only to Rs.8,11,520/-. The defendants have already received a sum of Rs.4 lakhs and the balance payable is only Rs.4,11,520/-. The plaintiff offered to pay the said sum of Rs.4,11,520/- to the defendants and requested them to execute the sale deed. Though the defendants initially agreed to do so and promised to get NOC from the concerned authorities, later they began to dispute the correctness of the measurement of the land that had been taken on 10.05.2006. Hence, the plaintiff asked the defendants to re-measure the land, if they want to do so, but, the defendants did not take any step to re-measure the land. The defendants are relatives of the plaintiff. Considering the good relationship between them and to avoid unpleasantness, the plaintiff did not send any letter/notice earlier and was waiting patiently. Since the defendants agreed to execute the sale deed either to the plaintiff or his nominee, on 12.03.2007 the plaintiff entered into a registered sale agreement with one K.P.Arumugam, over an extent of 2933 sq.ft, when the sale agreement dated 22.09.2005 entered into between the plaintiff and the defendants was in subsistence.

4-4. It is further stated by the plaintiff that the defendants did not take any step to measure the land. They did not obtain and furnish NOC as assured. The defendants did not fulfill their obligations under the sale agreement. Since the defendants failed to take any step to measure the land, the plaintiff issued a lawyer's notice to the defendants calling



upon them to re-measure the lands, produce NOC, receive the balance of sale consideration and to execute the sale deed as per the terms of the sale agreement dated 22.09.2005. But, the defendants refused the service of notice. Hence, again another notice was issued by the plaintiff through his counsel to the defendants on 03.04.2007. The said notice was received by the defendants and they issued a belated reply on 16.07.2007 making false and frivolous allegations. According to the plaintiff, he was always ready and willing to deposit the balance sale consideration at the rate of Rs.64,000/- per cent for the available extent of 12.68 cents of land, which comes to Rs.8,11,520/- and take out the sale deed as per the terms of the sale agreement dated 22.09.2005. Hence, the plaintiff filed the suit seeking to direct the defendants to execute the registered sale deed over the suit property after measuring and fixing the exact extent as per the terms of the sale agreement dated 22.09.2005.

4-5. Subsequently, during the pendency of the suit, the plaintiff had taken out an application in I.A.No.578 of 2011 to amend the plaint for the purpose of making additional prayers and the said application was allowed on 07.12.2011 and thereafter, the plaint was amended by adding the following two prayers also as paragraphs 17(a-1) & 17(a-2), as follows:-

i) directing the defendants 1 and 2 to pay a sum of Rs.8,62,261/- with subsequent interest at 12% p.a on Rs.7,27,790/- from the date of suit till the date of payment.

ii) directing the 3rd defendant to return all the original documents relating to the suit properties deposited by the defendants 1 and 2 with the 3rd defendant for raising loan with endorsement of discharge and full satisfaction by means of a mandatory injunction.

In the amended plaint, it has been stated by the plaintiff that the defendants had assured that the suit property was free from any prior encumbrance or charge. But, they had mortgaged the suit property with the SBI and they did not inform the plaintiff about the said mortgage of the suit property with the SBI. Only in the additional written statement, for the first time the defendants stated that the suit property was mortgaged by them with the SBI, prior to the sale agreement entered into between the plaintiff and the defendants. Since it is a mortgage by deposit of title deeds, it is not reflected in the encumbrance certificate also. With a view to defraud the plaintiff, the defendants committed default in payment of the loan amount to the bank. SBI took steps to realize the loan amount by bringing the suit property to auction. Hence, the plaintiff impleaded the SBI as 3rd defendant in the suit by filing an



application in I.A.No.194 of 2011, which was allowed on 20.07.2011 by the trial Court. Further, to avoid public auction of the suit property by the 3rd defendant/SBI and to save the suit property, the plaintiff remitted a sum of Rs.7,27,790/- to the SBI on 05.01.2010. Since the plaintiff has paid the said amount on behalf of the defendants, they are bound to repay the said amount to the plaintiff with interest at the rate of 12% per annum from 05.01.2010 till the date of payment. Since the plaintiff has discharged the loan amount payable by the defendants, the SBI (3rd defendant) is bound to return all the original documents of title relating to the suit property deposited by the defendants 1 & 2, to the plaintiff with a certificate of loan clearance or full satisfaction. Thus, the plaintiff made two additional prayers as stated supra.

5.Resisting the case of the plaintiff, the 1st defendant filed a written statement, which was adopted by the 2nd defendant. The sum and substance of the contentions made in the written statement are as follows_

5-1.It was admitted by the defendants that the suit property belonged to the defendants by virtue of the registered partition deed dated 20.02.1989 and they agreed to sell the property to the plaintiff for a sum of Rs.11,84,000/- and they entered into a sale agreement with the plaintiff on 22.09.2005 and they received a sum of Rs.4 lakhs as advance from the plaintiff. But, the defendants denied that it was agreed by the parties that before the execution of the sale deed, the land should be measured and on such measurement, for available extent of land sale price has to be calculated at rate of Rs.64,000/- per cent. It was also denied by the defendants that it was agreed between the parties that the defendants should obtain NOC from the competent authorities and handover the same to the plaintiff at the time of execution of the sale deed. Hence, it is incorrect to state that the time was not intended to be essence of the contract. The defendants have also denied the case of the plaintiff that the plaintiff was always ready and willing to pay Rs.4 lakhs before 15.12.2005 and the remaining balance amount before the end of Thai i.e, 15.02.2006 and take out a sale deed at his cost from the defendants.

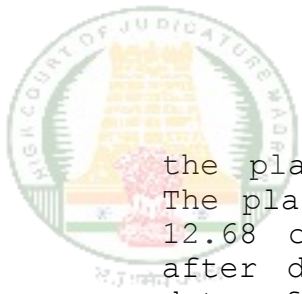
5-2.Further, the defendants denied that the plaintiff met the defendants on several occasions and having the balance sale consideration, the plaintiff requested the defendants to execute the sale deed. The defendants further stated that it is false to say that some of the neighbouring landowners have informed the plaintiff that though the area covered under the sale agreement is mentioned as 18 ½ cents, it would come only around 12 cents. The defendants also denied the case of the plaintiff that he had measured the suit property with the help of a Firka Surveyor in the presence of the 1st defendant and her husband on 10.05.2006. Further, the defendants stated that the



agreement was entered into between the plaintiff and the defendants on 22.09.2005 and only a sum of Rs.4 lakhs was paid as advance to the defendants. The plaintiff has not fulfilled his obligations stipulated under the sale agreement. The time was the essence of the contract and the time was fixed as 15.02.2006 ie., before the end of Tamil month Thai. The plaintiff has not arranged the funds to pay the balance sale price. The plaint schedule property is situated in Kalingarayanpalayam village and the said village has now developed as a township. The value of the plaint schedule property has been increasing day-by-day. It would be evident from the fact that the time was fixed in the agreement itself ie., 15.02.2006 to complete the sale. The defendants were always ready and willing to receive the balance sale price as contained in the sale agreement and execute the sale deed on or before 15.02.2006 as fixed under the sale agreement. But, the plaintiff was not ready with the funds to get the sale deed executed by the defendants. The plaintiff has strictly to prove with the documentary evidence, as to when he was ready with the necessary funds to get the sale deed executed in his favour. It is the real fact that the plaintiff has not arranged the funds in time and the averment in the plaint that the plaintiff is ready and willing to perform his part of the contract, is not true and correct. The plaintiff has to prove that he was ready and willing with the funds to pay the balance sale price to the defendants.

5-3.It is further stated by the defendants that in the sale agreement, there is no clause to measure the suit schedule property and to obtain NOC from the concerned authorities by the defendants. Those averments were made by the plaintiff only to file the frivolous suit. The defendants had also taken steps to measure the property and filed an application before the revenue department and the revenue authorities also measured the property for the defendants.

6.The defendants have also filed additional written statements on 05.08.2008 & 26.06.2012, contending that the plaintiff has unilaterally fixed the extent of land covered under the sale agreement as 12.68 cents, even though in the sale agreement the plaintiff agreed to purchase 18 1/2 cents. Hence, in order to clear the doubt the defendants 1 & 2 filed a petition in I.A.No.1170/2007 in the suit seeking to appoint an Advocate Commissioner to measure the suit property with the assistance of the Taluk Surveyor and to find out the actual extent of land available on ground. The said petition was allowed by the Trial Court and subsequently, the Advocate Commissioner with the help of surveyor measured the land and filed his report and plan, stating that total extent of the suit subject land is 18.105 cents (equivalent to 7887 sq.ft.). Instead of depositing the sale consideration for 18.105 cents,



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the plaintiff has deposited the amount only for 12.68 cents. The plaintiff had deposited only a sum of Rs.4,11,520 (only for 12.68 cents calculating at the rate of Rs.64,000/- per cent) after deducting the advance amount of Rs.4 lakhs paid on the date of sale agreement. Therefore, according to the defendants, it is false to state that the plaintiff was always ready and willing to perform his part of the contract. On the other hand, the conduct of the plaintiff would show that he is not ready and willing to pay the total sale consideration for the property covered under the sale agreement, within the specified time. The defendants borrowed a sum of Rs.6 lakhs on 19.10.2004 by mortgaging the subject land with the State Bank of India, Erode Town Branch. The defendants could not discharge the loan to the SBI and therefore, they thought of selling the property and discharging the loan amount, from the sale proceeds. Hence, the defendants entered into the sale agreement with the plaintiff, but the plaintiff did not pay the sale consideration within the time stipulated under the sale agreement, as a result of which the loan amount and the interest accrued thereon became a huge amount and the defendants had to bear the interest from 30.11.2005. Hence, the plaintiff is now not entitled for the specific performance of the agreement.

7.It is further contended by the defendants that the alleged loan amount of Rs.7,27,790/- mentioned in the amended plaint is purely a dispute between the defendants and the SBI. The plaintiff, without informing and getting the consent of the defendants, has remitted the sum of Rs.7,27,790/- to the SBI. The defendants are entitled to get the waiver scheme of the bank, but due to the payment made by the plaintiff to the bank, the defendants have been deprived of their right to the waiver scheme. Further, the alleged loan amount of Rs.7,27,790/- is not admitted amount of loan by the defendants. The amount alleged to have been paid by the plaintiff is unilateral in law. The plaintiff is not entitled to recover the said amount from the defendants. Thus, the defendants sought for dismissal of the suit.

8.The plaintiff has filed a reply statement and the defendants 1 & 2 have also filed rejoinder.

9.On the above pleadings, the Trial Court has framed the following issues and the additional issues:-

1.Whether the plaintiff is entitled to the relief of specific performance as prayed for?

2.To what relief the parties are entitled to?

The additional issues:-

1.Whether the time is the essential of



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the agreement?

2. Whether the suit is barred by limitation?

3. Whether the plaintiff was ready and willing to perform his part of the contract?

4. Whether the extent of suit property is 18 cents or 12.68 cents?

5. Whether deposit made by the plaintiff into the Court is correct amount?

6. Whether in a suit for specific performance on a contract totally different relief of recovery of money other than the advance amount is maintainable?

7. Whether the relief sought in the amended plaint can be granted? In the suit or in the separate suit?

8. Whether the alleged payment made on the State Bank of India without the consent of the defendants 1 and 2 or the Court, when the suit is pending in the Court, can be binding on the defendants 1 and 2?

10. Before the Trial Court, in order to prove their case, on the side of the plaintiff, he examined himself as P.W.1 besides examining four other witnesses as P.W.2 to P.W.5 and marked thirteen documents as Ex.A.1 to Ex.A.13. On the side of the defendants, the 2nd defendant examined himself as D.W.1 and marked two documents as Ex.B.1 & Ex.B.2. That apart, the report and plan filed by the Commissioner were marked as Ex.C.1 & Ex.C.2 and application submitted by the 1st defendant to the President, Mattunasuvampalayam Panchayat was marked as Ex.X.1 as Court documents.

11. The Trial Court, after analysing the entire evidence both oral and documentary, had decreed the suit as prayed for. Hence, the present appeal has been filed by the defendants 1 & 2 as stated supra.

12. The learned senior counsel appearing for the appellants/defendants submitted that it is the case of the plaintiff that under Ex.A.1-Sale Agreement, dated 22.09.2005, the defendants agreed to sell the suit property admeasuring 18 1/2 cents at the rate of Rs.64,000/- per cent, (totally for a sum of Rs.11,84,000/-) and an advance amount of Rs.4 lakhs was paid by the plaintiff on the same day. Under the sale agreement, the plaintiff agreed to pay the further advance amount of Rs.4 lakhs before the end of Karthigai of Parthiba year and the remaining balance amount of Rs.3,84,000/- before the end of month Thai i.e., on 15.02.2006. But, except the payment of advance amount of Rs.4 lakhs made on the date of sale agreement, the plaintiff



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has not made any further payment to the defendants as agreed under the Sale Agreement. The plaintiff has also not issued any notice to the defendants expressing his readiness and willingness within the specified period i.e., on or before 15.02.2006 stipulated in the sale agreement for making subsequent payments. Therefore, the time for performance of the contract lapsed on 15.02.2006. One year later, on 19.03.2007 under Ex.A.6, a notice was issued by the plaintiff calling upon the defendants 1 & 2 as if he was ready and willing to perform his part of the contract. But, the plaintiff has not filed any proof for having sufficient funds to fulfil his part of the contract. There is no proof to show that the plaintiff was ready and willing to perform his part of the contract from the date of agreement till the date of filing the suit. Further, in the plaint, the plaintiff had come up with a strange case stating as if in the sale agreement it was agreed between the parties that the suit land has to be measured and on such measurement, for the available extent of land, sale price has to be calculated at the rate of Rs.64,000/- per cent. But, actually there is no clause to that effect in the sale agreement. In the sale agreement it has been clearly stated that the sale price is fixed at Rs.11,84,000/-. Therefore, the correct extent of the land had already been determined. This is not an agreement, where the market value of the land per cent has not been agreed upon and the final determination of the sale price has to be arrived after the vendor measures the extent of land.

13.The learned senior counsel appearing for the appellants/defendants would further submit that before the Trial Court, it was the case of the plaintiff that on 10.05.2006, the suit property was measured in the presence of the 1st defendant and her husband and the extent of the land was found to be 12.68 cents only. However, there is no oral and documentary evidence to prove that such measurement was taken by the plaintiff on 10.05.2006. If really measurement was taken on 10.05.2006, the plaintiff would have definitely indicated the same in the legal notice-Ex.A.6 sent by him on 19.03.2007 to the defendants, but, nothing has been mentioned in the notice-Ex.A.6 with regard to the alleged measurement of the suit land taken by the plaintiff on 10.05.2006. He further submitted that the plaintiff in order to establish his case that the measurement of the land was taken on 10.05.2006 with the assistance of a Firka Surveyor, has marked certificate and field map issued by the Firka Surveyor as Ex.A.3 and Ex.A.4 respectively. But, a perusal of the said documents would show that the said documents contain the date 02.08.2007, i.e., the said documents were prepared on 02.08.2007, which is just two days prior to the date of filing the suit on 04.08.2007. This fact would clearly show that that the plaintiff



has obtained the said documents (Ex.A.3 & Ex.A.4) from the Firka Surveyor, just two days prior to the filing of the suit., only for the purpose of filing the present suit.

14.It is further submitted by the learned senior counsel for the appellants/defendants that one week before sending the notice-Ex.A.6, dated 19.03.2007, that is on 12.03.2007 the plaintiff had entered into a sale agreement with one K.P.Arumugam under Ex.A.5 to a specific extent of 2937 sq.ft., while the sale agreement dated 22.09.2005 entered into between the plaintiff and the defendants is in subsistence. In this regard, the learned senior counsel for the appellants/defendants submitted that without being aware of the correct extent/measurement of the suit subject land, the specific extent of land could not have been agreed to be sold by the plaintiff to said K.P.Arumugam. Therefore, it is deemed that by entering into an agreement under Ex.A.5 with the said K.P.Arumugam, the plaintiff has abandoned the suit agreement dated 22.09.2005.

15.Further, the learned senior counsel for the appellants/defendants submitted that the Advocate Commissioner's report and plan marked as Ex.C.1 & Ex.C.2 would clearly reveal that the suit property measures an extent of 18 ½ cents and not 12.68 cents as alleged by the plaintiff. According to the learned Senior counsel for the appellants/defendants, when the sale price is fixed at Rs.11,84,000/- at the rate of Rs.64,000/- per cent for 18 ½ cents in the sale agreement, now a decree for specific performance cannot be granted as per the terms sought to be modified by the plaintiff for 12.68 cents. To fortify his contention, the learned senior counsel for the appellants/defendants relied upon the decision reported in 1994 (2) LW 642 (Sankaran, S and others Vs. N.G.Radhakrishnan), wherein it has been held by a Division Bench of this Court that the agreement for which readiness and willingness is pleaded must be the agreement that is sought to be implemented and in the terms thereof. That apart, the learned senior counsel for the appellants/defendants has also relied upon the judgment reported in (2015) 8 SCC 695 [Padmakumari Vs. Dasayyan] wherein it has been held that the plaintiff's contention that question of payment of balance sale consideration would have arisen only after the defendants had discharged their part of the contract ie., after they had measured the suit scheduled property, could not be accepted.

16.Further, the learned counsel for the appellants/defendants submitted that the rise in price of land had clearly been stated by the defendants in their reply notice-Ex.A.8, as early as on 16.07.2007, which has been reiterated in the written statement also. Moreover, there is a forfeiture



clause in the sale agreement that in the event of the plaintiff not paying the balance consideration either on 15.12.2005 or 15.02.2006, the advance amount of Rs.4 lakhs paid by the plaintiff would be forfeited. In this regard, the learned senior counsel for the appellants/defendants relied upon the decision reported in (1997) 3 SCC 1 (K.S.Vidyanadam Vs. Vairavan), wherein it has been held by the Hon'ble Supreme Court that even though time is not of the essence of contract of sale of immovable property and suit can be filed within the period of three years provided under Article 54 of Limitation Act, but it should be performed within a reasonable time having regard to the terms of the contract prescribing a time limit and nature of the property. If the property is a house located in an urban area, continuing steep rise in price thereof would be a relevant factor for the Court to decide whether the delay or laches on the part of the plaintiff to perform his part of the contract would disentitle him to the relief of specific performance.

17. With regard to the additional prayer made by the plaintiff directing the appellants/defendants to pay a sum of Rs.8,62,261/- with subsequent interest at the rate of 12% per annum on Rs.7,27,790/-, which is the amount paid to the Bank by the plaintiff to discharge the loan amount, the learned counsel for the appellants/defendants submitted that the issue relating to the mortgage of the property is only between the defendants 1 & 2 and the bank; that the plaintiff has nothing to do with it. Before depositing the said amount, the plaintiff did not get the consent of the defendants. Further, only on the date of filing of the suit, the said amount was deposited by the plaintiff, but, consent of the Court was not obtained for depositing the amount. Therefore, the plaintiff is not entitled for the said amount. Thus, the learned counsel for the appellants/defendants prayed for setting aside the judgment and decree passed by the Trial Court.

18. Countering the submission made by the learned counsel for the appellants/defendants, it is contended by the learned counsel for the 1st respondent/plaintiff that it is incorrect to state that under the sale agreement-Ex.A.1 no obligation was stipulated on the part of the parties to measure the land and to fix the total price of the subject land at the rate of Rs.64,000/- per cent, after measuring the land. In this regard, the learned counsel for the 1st respondent/plaintiff has also invited the attention of this Court to the schedule of the sale agreement-Ex.A.1 and submitted that the parties to the sale agreement have categorically admitted that the suit property has to be measured and sale price has to be fixed at the rate of Rs.64,000/- per cent and thereafter, the defendants have to obtain NOC from the concerned authorities and handover the same to the plaintiff. Though the plaintiff has paid an advance



amount of Rs.4 lakhs, the defendants have not come forward to measure the land to find out the exact extent of the land. Mere reading of the averments made in the plaint and the documents produced by the plaintiff would prove that the plaintiff has taken all efforts to persuade the defendants to measure the property. In fact, the plaintiff along with Firka Surveyor had measured the property on 10.05.2006 and found that only 12.68 cents of land is available on ground. The defendants did not agree the said measurement and they dragged the issue under the guise of remeasuring the property. Hence, the plaintiff had issued the pre-suit notice dated 19.03.2007 (Ex.A.6) calling upon the defendants to measure the property. In fact, the defendants in their reply dated 16.07.2007 (Ex.A.8) have stated that they have taken steps two times to measure the suit land. The said statement made in the reply notice would clearly show that taking measurement of the land before execution of the sale deed is mandatory on their part as per the recitals in the sale agreement. The 1st defendant, who is the owner of the property by virtue of the partition deed dated 20.02.1989, has not come to the witness box. Only the 2nd defendant, being the son of the 1st defendant, was examined as D.W.1 and he has categorically admitted the case of the plaintiff in his cross-examination that there is an obligation on the part of the defendants to measure the land. In order to prove that the land was measured on 10.05.2006 at the instance of the plaintiff by the Firka Surveyor in the presence of the 1st defendant and her husband and found that only an extent of 12.68 cents was available, on the side of the plaintiff, the Firka Surveyor was examined as P.W.5, through whom Ex.A.3 (certificate issued by him) and Ex.A.4 (filed Map) were marked, which would indicate that the land actually available on ground is only 12.68 cents (equivalent to 5525 sq.ft.).

19.Further, the learned counsel for the respondent/plaintiff submitted that though the report of the Commissioner, which was marked as Ex.C.1, would show that there was total extent of land 18.105 cents (equivalent to 7887 sq.ft), a careful perusal of the sketch would show that out of the entire 18.105 cents of land comprised in S.No.310/22 & 310/23, 310/27, a portion of the land measuring 1080 sq.ft has already been released in favour the 1st defendant's brother under Ex.A.12 on 29.01.1998. Similarly, two portions of the land measuring to an extent of 1130 sq.ft in S.No.301/23 and 167 sq.ft in S.F.No.310/22 are panchayat road. If these portions of the land are excluded, the actual land available is only 5509 sq.ft. In fact, the plaintiff has filed another petition in I.A.No.1035 of 2018 to reissue the warrant to the Commissioner to remeasure the subject land and it was allowed on 26.03.2009. The Commissioner had inspected and filed his second report stating that the extent of the suit property is only 12.68 cents. However, the order dated



26.03.2009 was set aside by this Court in C.R.P.(PD)No.2621 of 2009 vide order dated 19.01.2011, observing that an objection was already filed to the earlier Commissioner's report and since already a Commissioner has visited and surveyed the property with the help of the surveyor and a report was also filed by him, there is no need to re-issue warrant to the Commissioner once again to re-visit and measure the property. The learned counsel for the respondent/plaintiff submitted that the cumulative effect of the terms in the sale agreement and the admissions made by 2nd defendant/D.W.1 would clearly show that though in the sale agreement the total extent of the land was mentioned as 18 1/2 cents, there is an obligation on the part of the defendants to measure the land to find out the exact extent available for sale, to fix the total sale price at the rate of Rs.64,000/- per cent.

20.In respect of the submission made by the learned counsel for the defendants that in the pre-suit notice (Ex.A.6), dated 19.03.2007, no reference was made with regard to the measurement taken by the Firka Surveyor at the instance of the plaintiff on 10.05.2006, it is submitted by the learned counsel for the 1st respondent/plaintiff that there is no compulsion or obligation on the part of the plaintiff to give minute and all the details in the pre-suit notice. However, the defendants had issued a reply notice-Ex.A.8 inter alia admitting the steps allegedly taken by them to measure the property with the help of the revenue officials, which would show that at the time of entering into the sale agreement, the parties were not aware of the exact extent of the subject property.

21.The learned counsel for the 1st respondent/plaintiff submitted that though the sale price was mentioned as Rs.11,84,000/- in the sale agreement, since the parties were not aware of the actual extent of the land available at the time of entering into the sale agreement, an obligation was fixed on the defendants to measure the land and to get NOC. In fact, some portions of the land are already converted into panchayat road and another portion of the land was already released by the defendants in favour of the brother of the 1st defendant. Those facts were not denied by the defendants, which would show that even on the date of entering into sale agreement, 18 1/2 cents was not available on ground. Further, the certificate and field map issued by the Firka Surveyor marked as Ex.A.3 & Ex.A.4 would show that 12.68 cents of land alone was available on the ground and not 18 1/2 cents as alleged by the defendants, which would also strengthen the case of the plaintiff that the measurement of the land was taken and it was found only 12.68 cents is available on ground for sale.

22.It is further contended by the learned counsel for the



1st respondent/plaintiff that the plaintiff was always ready and willing to perform his part of the contract. The plaintiff on several occasions met the defendants and made request to take steps to measure the subject land. Since they did not take any steps, the plaintiff himself with the help of a Firka Surveyor had measured the subject land on 10.05.2006. Further, the plaintiff has also deposited the balance sale consideration. That apart, the plaintiff has paid the mortgage loan amount with the bank/SBI which was borrowed by the defendants by mortgaging the suit property. All these facts would show that the plaintiff was always ready and willing to perform his part of the contract. In this regard, the learned counsel for the respondent/plaintiff has also relied upon the judgment reported in 2017 (4) CTC 734 (S.Deivanai Vs. V.M.Kothandaraman) in support of this contention that the plaintiff was always ready and willing to perform his part of the contract.

23.With regard to the submission made by the learned counsel for the appellants/defendants that time is the essence of the contract, it is submitted by the learned counsel for the respondent/plaintiff that time is not the essence of the contract in respect of the immovable properties. Moreover, the defendants have not performed their part of the obligation to measure the land and to get NOC from the concerned authorities. Further, the defendants have also suppressed the mortgage of the land with the bank by the 1st defendant and also the fact that a portion of the land was already released in favour of the brother of the 1st defendant viz., one Murthy. Therefore, the defendants are not entitled to claim that time is an essence of the contract. In this regard, the learned counsel for the plaintiff has also relied upon the judgment of the Constitutional Bench of the Hon'ble Supreme Court reported in (1993) 1 SCC 519 [Chand Rani Vs. Kamal Rani] and submitted that time is not the essence of the contract in respect of the immovable properties.

24.The learned counsel for the respondent/plaintiff has also submitted that the suit was filed on 02.08.2007 within a period of three years from the date, when the defendants denied their obligation by way of reply notice dated 16.07.2007. The plaintiff has paid a sum of Rs.4 lakhs as advance to the sale consideration on 22.09.2005 ie., on the date of entering into the sale agreement as an advance and thereafter, the plaintiff had asked the defendants on several occasions to take steps to measure the property in order to find out the actual extent of the land available on ground and when the defendants have not come forward to fulfil their obligation under the sale agreement, the plaintiff has also issued pre-suit notice. Thereafter, after filing the suit, the plaintiff deposited the loan amount borrowed by the defendants 1 & 2 with the SBI. Thus,



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the conduct of the plaintiff would show that the right from the date of sale agreement, he is ready and willing to perform his part of the contract. In support of his contention, the learned counsel for the plaintiff has also relied upon the judgment reported in (2015) 1 SCC 597 [K.Prakash Vs. Sampath Kumar], (2015) 1 SCC 705 [Zarina Siddiqui Vs. A.Ramalingam] and (2004) 6 SCC 649 [P.D'Souza Vs. Shondriilo Naidu].

25.Further, the learned counsel for the 1st respondent/plaintiff submitted that the conduct of the defendants would make the plaintiff entitled for decreeing the suit for specific performance in favour of the plaintiff. In the case of suit for specific performance, the conduct of the defendants is also very relevant for decreeing the suit. The defendants have not acted fairly, and not ready to perform their obligations in terms of the contract and had taken a false plea in the written statement. In support of his contention, the learned counsel for the respondent/plaintiff has also relied upon the decision reported in 2015(1) SCC 705 [Zarina Siddiqui Vs. A.Ramalingam @ R.Amarnathan] and 2008(11) SCC 45 [Silvey Vs. Arun Varghese].

26.The learned counsel for the respondent/plaintiff has also relied upon the decision reported in (2015) 1 SCC 597 [K.Prakash Vs. B.R.Sampath Kumar] and submitted that normally, when the trial Court exercise its discretion in one way or the other after appreciation of entire evidence and materials on record, the appellant court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The learned counsel for the 1s respondent/plaintiff submitted that the plaintiff has established his case by producing proper evidence. Thus, he sought for dismissal of the appeal.

27.We have given our anxious consideration to the submissions made on either side and perused the materials available on record.

28.In view of the above submission made on either side, the following points fall for consideration in this appeal:-

1)Whether an obligation was fixed under the sale agreement on the defendants to measure the land, obtain NOC and to collect the sale consideration at the rate of Rs.64,000/- per cent after measurement of the land?

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

3)Whether the time is essence of the



contract in this case?

4) Whether there is lapse on the part of the plaintiff in filing the suit?

29. As we have dealt with the factual matrix of the case in detail, We refrain from dealing with the same any further. However, certain facts which are absolutely germane and necessary are dealt with by us for disposal of this appeal.

Point No.1:-

30. It is the submission of the learned counsel for the respondent/plaintiff that an obligation was fixed on the part of the defendants under the sale agreement to measure the suit property to find out the actual extent of the land and to obtain NOC from the concerned authorities, but the defendant have not come forward to perform their part of the contract. On the contrary, it is the reply of the learned counsel for the appellants/defendants that under the sale agreement, no obligation was fixed on the part of the defendants to measure the suit property to arrive at the correct sale consideration; that only a mere reference was made in the schedule to the sale agreement with regard to taking of measurement of the land, therefore, it cannot be taken as an obligation fixed on the part of the defendants.

31. In view of these submissions made by the learned counsel on either side, it would be appropriate to extract the relevant portion from the schedule to the sale agreement:-

“ஹை இடமானது 20 அடி அகல தென்வடல் ரோட்டுக்கு கிழபுரமும், மேபுரம் உள்ளது. ஹை பூமிக்குண்டான மாழில் வழிநடை தடம் சகிதம் ஹை சொத்தை கிரய காலத்தில் அளந்து ஒரு செண்டு ஒன்றுக்கு ரூ.64,000/- வீதம் கணக்கிட்டு துகை பெற்றுக் கொள்ள நம்மில் 1, 2 லக்கமிடவர்கள் கட்டுப்பட்டவர்கள்”

From a reading of the above said portion in the schedule to the sale agreement (Ex.A.1), it could be seen that an obligation was fixed on the part of the defendants to measure the land and thereafter, to receive the sale consideration while executing the sale deed. Therefore, We are not inclined to accept the submission made by the learned counsel for the defendants that no obligation was fixed on the part of the defendants under the sale agreement to measure the subject land. It is well settled legal principle that a document has to be read as it is and no interpretation is permissible. In other words, on the well laid down principles in the matter of construction of deeds and documents, the documents are to be read as it is, including the full-stop and comma mentioned in the said document. In this regard, a reference could be placed in the judgment reported in (2007)10 SCC 231 [P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi], wherein it has been held as follows_



“கிரயம் செய்யும் நேரத்தில் சொத்தை அளந்து கிரயப்பத்திரம் எழுத நாளும் என் அம்மாவும் கடமைப்பட்டவர்கள் என்று அதில் எழுதப்பட்டுள்ளது.”

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Therefore, the cogent reading of Ex.A.3 & Ex.A.4 and the deposition of D.W.1 and the Firka Surveyor (P.W.5) would prove that the measurement of the land was taken on 10.05.2006.

34.It is the submission of the learned senior counsel for the appellants/defendants that the commissioner's report and the plan, which were marked as Ex.C.1 & Ex.C.2, would show that total extent of the land is 18.105 cents (7887 sq.ft) and in the sale agreement also only 18 ½ cents was mentioned.

35.However, on a perusal of the Commissioner's report and plan (Ex.C.1 & Ex.C.2), it is seen that though the total extent of the land is 7887 sq.ft, an extent of 1,080 sq.ft of land was already released by the 1st defendant in favour of her brother under Ex.A.12-Settlement Deed. Further, the extent of 1,130 sq.ft in S.F.No.310/23 and further extent of 167 sq.ft in S.F.No.310/22 are panchayat road. These facts were not denied by the defendants. If these portions were excluded, what was available at the time of execution of the sale agreement was only 5509 sq.ft that is to say 12.68 cents. Further more, the Assistant of Metunasuvan Palayam Panchayat Office, was examined as P.W.3, through whom Ex.X.1 was marked. Ex.X.1 would show that the 1st defendant has submitted an application on 31.01.2007 to the Panchayat Office requesting to grant No Objection to sell the suit property. Even in the said application-Ex.X.1, the measurement of the property was mentioned only as 5525 st ft (12 1/2 cents). But, the learned counsel for the appellants/defendants disputed the said application (Ex.X.1) stating that it does not contain the seal of the Panchayat Office. Therefore, the measurement mentioned in the said application cannot be taken into consideration. However, we find that the said document was marked through the official of the concerned panchayat office viz., P.W.4-Assistant in Metunasuvan Palayam Panchayat Office. Not even a suggestion was made to P.W.4 with regard to the non-availability of seal in the said application. Further, no challenge was made to the said document. Under such circumstances, we are not inclined to accept the submission made by the learned counsel for the appellants/defendants that since no seal was found in the said application, the said document can not be accepted.

36.Therefore, it is clear that though it was stated in the sale agreement the land admeasures to an extent of 18 ½ cents, what was available is only 12.68 cents. The cumulative effect



of all these facts would show that an obligation was fixed on the part of the defendants to measure the suit property and also to obtain NOC before receiving the sale consideration, which the defendants have failed to do so. Point No.1 is answered accordingly against the defendants.

Point No.2:-

37.It is the submission of the learned counsel for the appellants/defendants that the plaintiff was not ready and willing to perform his part of the contract though a specific time limit was fixed under the sale agreement to complete the sale. Further, though the plaintiff agreed to purchase the property at the rate of Rs.64,000/- per cent for the total sum of Rs.11,84,000/-, he has paid only an advance amount of Rs.4 lakhs; that under the sale agreement, it was stipulated that further sum of Rs.4 lakhs was to be paid by the plaintiff on or before 15.12.2005 and the remaining amount of Rs.3,84,000/- shall be paid on or before 15.02.2006, but, the plaintiff did not pay the balance sale consideration within the time fixed under the sale agreement. Thus, it is submitted by the learned senior counsel for the appellants/defendants that since the plaintiff had not paid the balance sale consideration within the specified time limit, it is clear that he was not ready and willing to perform his part of the contract.

38.As observed in the earlier paragraphs, we are of the opinion that there was an obligation fixed on the part of the defendants to measure the land. Unless the land is measured and the exact extent of the land is found out, the plaintiff may not be in a position to pay the balance amount. In fact, the factual aspects of this case would show that even if the entire amount is paid, the plaintiff could not get the sale deed for entire 18 ½ cents, since a portion of the property was already released in favour of the brother of the 1st defendant and a portion of the land has been described as panchayat road.

39.In fact, as observed above, the plaintiff himself had taken steps to measure the land with the help of a Firka Surveyor (P.W.5) and measured the property as early as on 10.05.2006. Further, the plaintiff also issued pre-suit notice Ex.A.6, dated 19.03.2007, through his counsel, to the defendants calling upon them to measure the suit property and the relevant portions in the Notice-Ex.A.6 read as follows_

"3.It was agreed that the land should be measured and the price has to be worked out at Rs.64,000/- per cent. It was agreed that you should obtain No Objection Certificate from the appropriate authorities for registration of the documents.

4.My client was always ready and willing to



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pay Rs.4 lakhs before 15.12.2005 and the balance within the end of Thai and take out a sale deed from you. My client tendered the above sum. You represented that you will inform my client as soon as a surveyor is arranged to measure the lands and that you were taking steps to get NOC and as soon as you get it you will inform my client and would receive the balance and execute the sale deed and you asked my client to wait for some time and not to take any action.

5. My client met you on several occasion and you repeated the same thing. My client bonafide believed our representation.

....
8. You are hereby, called upon to agree to measure the land, produce NOC, receive the balance of sale consideration and execute the sale deed as per the terms of the sale agreement dated 22.09.2005 within two weeks from the receipt of this notice. You may kindly intimate the date and time when the lands can be measured and when NOC will be handed over and when payment of balance amount has to be made and when execution of sale deed takes place. On such intimation my client will act accordingly. My client requests you to cooperate and complete the transaction and avoid unnecessary and time consuming and expensive litigation."

Further, the plaintiff has also deposited the balance sale consideration of Rs.4,11,520/, calculating the same for 12.68 cents, before the Court on 17.08.2007. Above all, on 05.01.2010, the plaintiff has repaid the mortgaged loan amount of Rs.7,27,790/- to the SBI, which was borrowed by the defendants by mortgaging the suit land. These facts would clearly show that the plaintiff was continuously ready and willing to perform his part of the contract. It is only the defendants who did not come forward to fulfill their obligations under the Sale agreement.

40. In this regard, it would be useful to place a reference in the some of the decisions. In the judgment delivered by the Hon'ble Supreme Court reported in (1995) 5 SCC 115 [N.P.Thirugnanam Vs. Dr.R.Jagan Mohan Rao], it has been held as follows_

"To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other



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attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform of his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the fact and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

In the judgment delivered by the Hon'ble Supreme Court reported in (2015) 1 SCC 597 [K.Prakash Vs. B.R.Sampath Kumar], it has been observed as follows_

"16.The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance."

.....

18.Subsequent rise in price will not be



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treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. "

In the instant case, the cumulative effect of the facts that the plaintiff himself has taken steps and measured the land with the help of the Firka Surveyor and he has deposited the balance sale consideration for the available land and repaid the mortgage loan amount with the bank, would clearly show that he was always ready and willing to perform his part of the contract.

Point No.3:-

41.It is yet another submission of the learned senior counsel for the appellants/defendants that the time is the essence of the contract; but, the plaintiff did not perform his part of the contract within the time limit stipulated under the Sale Agreement.

42.Normally time is not essence of the contract relating to the sale of an immovable property. In the instant case, though time limit was fixed for the performance of the contract, the defendants had not come forward to perform their part of the contract. As stated supra, under the Sale Agreement, there is an obligation fixed on the part of the defendants to measure the property to know the exact extent of the land available on ground. But, the defendants had not come forward to take steps to measure the land within the time limit stipulated under the Sale Agreement. Only after measuring the land and the exact extent of the land is found out, the plaintiff could pay the balance sale consideration for the available land. Since the defendant did not perform their part of the obligation fixed under the Sale Agreement, the plaintiff cannot be expected to pay the balance sale consideration within the time limit. In this regard, a reference could be placed in the decision of the Hon'ble Supreme Court reported in (1977) 2 SCC 539 [Govind Prasad Chaturvedi Vs. Hari Dutt Shastri], wherein it has been held as follows_

".... It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as



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to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time not the essence of the contract. [Vide Gomathinayagam Pillai Vs. Pallanishwami Nadar (1967) 1 SCR 227 : AIR 1967 SC 868]. It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the Contract."

In the decision reported in (1993) 1 SCC 519 [Chand Rani Vs. Kamal Rani], it has been held by the Hon'ble Supreme Court as follows_

"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 the 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. "

In the light of the above said dictum, it could be concluded in the instant case that the time is not essence of the contract.

43.Further, the conduct of the parties is very relevant for grant the relief of specific performance. In the instant case, the defendants have also suppressed the mortgage of the land with the SBI and also the fact that a portion of the land was already released in favour of the brother of the 1st defendant vide Doc.No.1643, dated 28.01.1998 (Ex.A.12). Even the 2nd defendant, who examined himself as D.W.1, has admitted in his cross-examination that a portion of the land was already released in favour of the brother of the 1st defendant. But,



these facts were suppressed by the defendants even at the time of entering into the sale agreement with the plaintiff. The defendants have not taken any step to pay the mortgage amount to the Bank. Further, in Ex.X.1, application submitted by the 1st defendant to the Panchayat Office, the 1st defendant herself has mentioned the total extent of the land as 5525 sq.ft (12 1/2 cents), which is totally contrary to their case. From these facts, it is clear that the conduct of the defendants is not fair, which could be taken as one of the contingent circumstances to decree the suit for specific performance and to grant equitable relief. In this regard, a useful reference could be placed in the judgment delivered by the Hon'ble Supreme Court reported in (2015) 1 SCC 705 [Zarina Siddiqui Vs. A.Ramalingam], wherein it has been held as follows_

"33.The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

34. In the instant case, as noticed above, although defendant No.2 held a registered power of attorney on behalf of defendant No.1 to sell and dispose of the property, but the defendants not only made a false statement on affidavit that the power of attorney had authorized the second defendant only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants in our opinion, disentitle them to ask the Court for exercising discretion in their favour by refusing to grant a decree for specific performance. Further, if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in



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order to prevent abuse of the process of law."

The above said dictum is squarely applicable to the present facts of the case. The conduct of the defendants in suppressing the materials facts would make the Court to exercise its discretionary power to grant the relief of specific performance in favour of the plaintiff.

Point No.4:-

44.It is another submission of the learned senior counsel for the appellants/defendants that the suit was not filed within the limitation period prescribed under law. But, from the perusal of the materials available on record, it is seen that the sale agreement was entered into between the parties on 22.09.2005. In spite of the repeated request made by the plaintiff, since the defendants had not come forward to measure the land to find out the exact extent of the land available on ground, the plaintiff himself measured the land with the help of the Firka Surveyor on 10.05.2006. Further, as has been stated supra, the defendants had not come forward to perform their part of the contract, the plaintiff issued the pre-suit notice on 19.03.2007 under Ex.A.6 calling upon the defendants to take step to measure the suit property, to get the NOC from concerned authorities and to execute the sale deed after receiving the balance sale consideration. The defendants issued the reply dated 16.07.2007 under Ex.A.8, denying their obligation. Since the defendants failed to perform their part of the contract, the plaintiff filed the suit on 04.08.2007, within a period of three years from the date of reply of the defendants. Hence, there are no laches on the part of the plaintiff in filing the suit.

45.Above all, We are of the opinion that while granting the relief exercising the scope of the appellant Court is very limited. In this regard, it would be appropriate to place a reference in the decision reported in (2015) 1 scc 597 (K.PRAKASH Vs. B.R.Sampath Kumar), wherein it has been held by the Hon'ble Supreme Court as follows.

"Normally, when the trial court exercises its discretion in one way or the other after appreciation of entire evidence and materials on record, the appellant Court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellant Court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely



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because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established then the Court has to exercise its discretion in favour of granting relief of specific performance."

In the light of the above dictum, it is seen that in the instant case, the plaintiff has proved his case by adducing sufficient evidence both oral and documentary that he is always ready and willing to perform his part of the contract as per the sale agreement.

46. In view of the above discussion, all the points arose in this appeal have been answered in favour of the plaintiff.

In the result, the First Appeal fails and the same is hereby dismissed, confirming the judgment and decree dated 31.10.2012 in O.S.No.273 of 2007 passed by the I Additional District Court at Erode. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssv

To,

The I Additional District Judge,
Erode.

+1cc to Ms.Zeenath Begum, Advocate Sr.55599
+1cc to Mr.N.Manokaran, Advocate Sr.55859

A.S.No.36 of 2015
and
C.M.P.No.15605 of 2017

gj[co]
srg 20/09/2018