

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.584 of 2017  
and C.M.P.Nos.14447 of 2017

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| Orders reserved on<br>21.06.2018 | Orders pronounced on<br>28.06.2018 |
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1. A.G.Venkatachalam  
2.E.Arumugam

.... Appellants/Appellants/  
Plaintiffs

Vs.

1.P.Ganesan  
2.P.Poongothai  
3.G.Saradha  
4.G.Bindumahendran  
5.G.Suganya  
6.N.Kumar  
Latha (died)  
7.K.Divakar  
8.Venkatesan  
9.Ammasai  
10.Mathusamy

.... Respondents/Respondents/  
Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 22.06.2017 made in A.S.No.20 of 2015 on the file of the Fourth Additional District Court, Erode District at Bhavani confirming the judgment and decree dated 21.09.2015 made in O.S.No.42 of 2008 on the file of the Sub Court, Bhavani.

For Appellant : Mr.N.Manokaran

For R1 to R7 : Mr.L.Mouli

For R8 to R10 : Mr.T.Murugamanickam  
Senior Counsel for  
M/s.Zeenath Begum

#### J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 22.06.2017 made in A.S.No.20 of 2015 on the file of the Fourth Additional District Court, Erode District

at Bhavani confirming the judgment and decree dated 21.09.2015 made in O.S.No.42 of 2008 on the file of the Sub Court, Bhavani.

2.The appellants are the plaintiffs and the respondents 1 to 10 are the defendants 1 to 6 and 8 to 11 in O.S.No.42 of 2008 on the file of the Sub Court, Bhavani. The appellants filed the said suit for specific performance of agreement of sale dated 29.06.2006 or in alternative for return of advance amount of Rs.2,25,000/- paid by them together with interest. Originally, the suit was filed against the respondents 1 to 7 and one Latha w/o N.Kumar. Subsequently, the respondents 8 to 10 were impleaded as defendants 10 & 11. Pending appeal, the 7<sup>th</sup> defendant Latha died. The present Second Appeal is against the defendants 1 to 6 and defendants 8 to 11.

2(a) According to the appellants, originally the second appellant was the owner of the suit property. He purchased the properties by deed of sale dated 16.05.1990. He sold the property to the respondents 1 & 6 on 22.04.1996. The sons of the second appellant filed O.S.No.50 of 2005 for partition of the suit property and other properties claiming that those properties are ancestral properties and they have share in the said properties, alleged sale deed dated 22.04.1996 executed by the second appellant in favour of the respondents 1 & 6 is sham and nominal and for consequential permanent injunction. Pending suit, a compromise was arrived at between the parties whereby the respondents 1 & 6 agreed to sell the property to the appellants and the suit was dismissed as settled out of court on 21.03.2006. Earlier, when O.S.No.50 of 2005 filed by the sons of the second appellant was pending and when the respondents 1 & 6 agreed to sell the suit property to the appellants, the appellants, on 27.02.2006 purchased the stamp paper and engrossed the sale deed and the stamp papers as well in the bond paper on 29.06.2006. The appellants and respondents 1 to 7 and 7<sup>th</sup> defendant could not register the sale deed on that date, due to paucity of time.

2(b) The respondents 1 to 7 and 7<sup>th</sup> defendant requested time for execution of sale deed. In view of such request, an agreement of sale was prepared on the same day and a sum of Rs.2,25,000/- was paid as advance by the appellants and terms were reduced into writing. The respondents 1 to 7 alongwith 7<sup>th</sup> defendant who is the wife of 6<sup>th</sup> respondent, executed the agreement of sale on 29.06.2006 to the appellants for a total sale consideration of Rs.5,00,000/- agreeing to sell the suit property to the appellants. The appellants paid a sum of Rs.2,25,000/- as advance. It was agreed that appellants must pay the balance sale consideration in one year time and get the sale deed executed in their favour. The appellants were always ready and willing to pay the balance sale consideration and get the sale deed executed in their favour. The

respondents 1 to 7 and 7<sup>th</sup> defendant Latha were seeking time to execute the sale deed. They orally extended the time for completion of terms of agreement till 30.06.2008. On 26.06.2006, when the appellants approached the respondents 1 to 7 and 7<sup>th</sup> defendant with balance sale consideration, they dodged execution of sale deed by saying one reason or the other. The appellants issued telegram dated 27.06.2008 calling upon the respondents 1 to 7 & 7<sup>th</sup> defendant to be present in the Sub Registrar's Office, Ammapet on 29.06.2008 to receive the balance sale consideration and execute the sale deed. The respondents 1 to 7 and 7<sup>th</sup> defendant received the telegram but did not come to Sub Registrar's Office to receive the balance sale consideration and execute the sale deed. They also did not send any reply. Hence, the appellants filed the suit for the reliefs stated above.

3. The first respondent filed written statement and the same was adopted by respondents 2 to 7 and 7<sup>th</sup> defendant denying all the averments made by the appellants. They denied that they agreed to sell the property to the appellants. They denied the alleged compromise in the earlier suit, O.S.No.50 of 2005. According to the respondents 1 to 7 and 7<sup>th</sup> defendant, they did not agree to sell the suit property for a sum of Rs.5,00,000/- and denied receipt of Rs.2,25,000/- as advance and one year time was fixed for completion of agreement of sale. According to them, the respondents 1 & 6 urgently required a sum of Rs.2,25,000/- during June 2006 and the second appellant arranged the said loan with the first appellant, the first appellant insisted respondents 1 & 6 to execute a sale agreement as a security for repayment, as a condition for advancing the loan. Since the respondents 1 & 6 urgently required the money, they agreed for the terms of the first appellant and executed the suit agreement of sale. They did not have any intention to sell the property but it is only a security document. The respondents 1 to 6 have already entered into an agreement of sale with respondents 8 to 10 on 18.02.2006 to sell the suit property and sold the same to the respondents 8 to 10 by deed of sale dated 11.02.2008 and therefore the respondents 8 to 10 are necessary parties and prayed for dismissal of the suit.

3(a) After being impleaded, the 8<sup>th</sup> respondents filed written statement and the same was adopted by respondents 9 & 10. According to the respondents 8 to 10, they entered into an agreement of sale with the respondents 1 & 6 on 18.02.2006 to purchase the suit property for a total sale consideration of Rs.6,00,000/- and paid Rs.50,000/- as advance. They paid the balance sale consideration of Rs.5,50,000/- on 11.02.2008 and got the sale deed executed in their favour and they are in possession and enjoyment of the suit property as owners. They are bonafide purchasers for valuable consideration without notice of prior agreement of sale.

4. Based on the pleadings, the Trial Court framed necessary issues. Before the Trial Court, appellants examined themselves as PWs 1 & 2. Three others were examined as PWs 3 to 5. 11 documents were marked as Exs. A1 to A11 on the side of the appellants. RWs 1 to 5 were examined on the side of the respondents and 12 documents were marked as Exs. B1 to B12.

5. The learned Trial Judge considering the pleadings, oral and documentary evidence and arguments of the counsel for parties, dismissed the suit.

6. Against the said judgment and decree dated 21.09.2015, the appellants filed A.S.No.20 of 2015 before IV Additional District & Sessions Court, Bhavani. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge, considering the materials on record, judgments of Trial Court as well as the arguments of the learned counsel for the appellants and respondents, held that Ex.A4 is the agreement of sale as contended by the appellants and it is not a security document as contended by the respondents. The learned First Appellate Judge, dismissed the appeal confirming the finding of the Trial Judge that the appellants were not ready and willing to pay the balance sale consideration and execute the sale deed.

7. Against the said judgment and decree dated 22.06.2017 made in A.S.Nos.20 of 2015, confirming the judgment and decree dated 21.09.2015 made in O.S.No.42 of 2008, the appellants have filed the present Second Appeal.

8. The learned counsel for the appellants contended that the Trial Court failed to see that Ex.A4 was executed by respondents 1 to 7 and 7<sup>th</sup> defendant voluntarily with open eyes. The First Appellate court having held that Ex.A4 is the agreement of sale and not a security document, have erred in not granting the decree of specific performance. The respondents have not placed any material to show that they will come under Clause (a), (b) or (c) of Section 20 (2) of the Specific Relief Act and in such case, the appellants are entitled for decree of specific performance. The appellants have purchased the stamp paper on 27.02.2006 when O.S.No.50 of 2005 was compromised and respondents 1 & 6 agreed to sell the property to the appellants and the Trial Court disputed the transaction under Ex.A4 on the ground that stamp papers used in Ex.A5 had been purchased on 27.02.2006 and that they were purchased from different places and has not been shown in whose name some of the stamp papers were purchased. The suit is not filed based on Ex.A5. It is not open to the Trial Court to disbelieve Ex.A4 based on Ex.A5.

were always ready and willing to perform their part of contract and have taken a categorical plea that they were ready with sale deed Ex.A5 but respondents sought time to complete the formalities and therefore the appellants paid half of the sale consideration as advance on the date of agreement of sale. The appellants have, as per the terms of the agreement, deposited the balance sale consideration on the date of filing of the suit. The respondents 1 to 7 and 7<sup>th</sup> defendant orally requested the appellants for extension of time whenever the appellants approached the respondents 1 to 7 and 7<sup>th</sup> defendant for completion of sale transaction. The appellants issued telegram and filed suit on 28.07.2008 by paying huge court fee. The appellants have shown their bonafide by approaching the court by filing suit for specific performance and other reliefs. The respondents 1 to 7 and 7<sup>th</sup> defendant have not pleaded that appellants were not ready and willing to perform their part of contract and in the absence of any such plea on the part of the respondents, courts below erred in holding that appellants were not ready and willing to perform their part of contract. The respondents have not come forward with true facts. The respondents have created encumbrance in favour of respondents 8 to 10. The respondents have put forth untrue and wrong allegations and approached the court with frivolous defence.

8(b) The courts below have ignored the conduct of the respondents while denying the decree for specific performance and the same is contrary to number of decisions. The respondents 1 to 7 and 7<sup>th</sup> defendant did not plead the hardship or produce any evidence to show that it will be inequitable to order specific performance of the agreement. On the other hand, they have pleaded that Ex.A4 is executed as a security document for loan transaction which was disbelieved. It is not necessary in law to carry cash on hand to prove the appellants' capacity to pay the balance sale consideration. It is not even the case of the respondents 1 to 7 and 7<sup>th</sup> defendant that the appellants were not ready and willing to perform their part of contract or they did not have capacity to pay the balance sale consideration and complete the sale transaction. The courts below have not framed any issues and the respondents have not taken any defence of hardship and no such issues were framed. In the absence of evidence on record with regard to hardship, the appellants are entitled to specific performance of agreement of sale.

8(c) The learned counsel for the appellants, in support of his contention, relied on the following judgments -

- (i) 2008 (4) SCC 530 [Thiruvengadam Pillai v. Navaneethammal and another]

11. The Trial Court and the High Court have doubted the genuineness of the agreement dated 5.1.1980 because it was written on two stamp papers purchased on 25.8.1973 and 7.8.1978. The learned counsel for first respondent submitted that apart from raising a doubt about the authenticity of the document, the use of such old stamp papers invalidated the agreement itself for two reasons. Firstly, it was illegal to use stamp papers purchased on different dates for execution of a document. Secondly, as the stamp papers used in the agreement of sale were more than six months old, they were not valid stamp papers and consequently, the agreement prepared on such 'expired' papers was also not valid. We will deal with the second contention first. The Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided it was purchased within the period of six months next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp

paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.

12. The Stamp Rules in many States provide that when a person wants to purchase stamp papers of a specified value and a single stamp paper of such value is not available, the stamp vendor can supply appropriate number of stamp papers required to make up the specified value; and that when more than one stamp paper is issued in regard to a single transaction, the stamp vendor is required to give consecutive numbers. In some States, the rules further require an endorsement by the stamp vendor on the stamp paper certifying that a single sheet of required value was not available and therefore more than one sheet (specifying the number of sheets) have been issued to make up the requisite stamp value. But the Indian Stamp Rules, 1925 applicable to Tamil Nadu, do not contain any provision that the stamp papers of required value should be purchased together from the same vendor with consecutive serial numbers. The Rules merely provide that where two or more sheets of paper on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used. No other Rule was brought to our notice which required use of consecutively numbered stamp papers in the State of Tamil Nadu.

(ii) 2003 (1) MLJ 694 (DB) [M.Ramalingam (died) and others v. V.Subramanyam (died) and others]

10. ....When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is inconsistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction all together, and what was recorded in the document was intended to be of no consequence whatsoever. No doubt, the defendant who came with such a plea, can well adduce evidence to show that Ex.A1 agreement though executed by him, was never intended to be operated as an agreement for sale, but only a loan transaction, which was not recorded in the document. After careful consideration of the available materials, the Court may hasten to say that the appellants have miserably failed to prove that it was a loan transaction, and the agreement was never intended to be acted upon. The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record.

(iii) 2009 (6) CTC 301 [T.G.Pongiannan v. K.M.Natarajan & another]

10. The defendants having entered into a registered agreement to sell with their wide open eye and voluntarily and volitionally, cannot expect the Court to assume and presume that the time granted in the agreement to sell was indicative of the fact that it was a loan transaction. It is not the case of the defendants that fraud, coercion or undue influence and such like acts, as contemplated under the provisos to Section 92 of the Indian Evidence Act, were perpetrated by the plaintiff as against the defendants.

any shard or shred, scintilla or pint-sized, iota or molecule extent of evidence that any interest was paid by them to plaintiff towards the alleged loan. As such, this Court can only treat their plea as a false one. Had really D.W.1 (D1), as claimed in his Chief Examination Affidavit, paid 18% interest for the sum of Rs.75,000/- or so, then there would have been at least some passbook or note book or any chit, evidencing the same.

30. At this juncture, I would like to point out that such an alternative argument failed to hold water or carry conviction with this Court, for the reason that it is not the case of the defendants anywhere either in the reply to the pre-suit notice or in the written statement that the plaintiff was not ready and willing to perform his part of the contract. On the contrary, the stand of the defendants was that the plaintiff and the defendants did not enter into an agreement to sell at all. Whereas, the plaintiff in his plaint, in commensurate with Section 16 (c) of the Specific Relief Act, 1963 clearly and categorically, unambiguously and unequivocally pointed out that he has been ready and willing to perform his part of the contract.

31. Trite the proposition of law is that in the absence of any plea on the part of the defendants, they cannot expect the Court to concentrate on a point on its own accord.

(iv) 2017 (5) MLJ 884 SC [Jaspal Kaur Cheema and another v. Industrial Trade Links and others etc.]

8. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short 'the Code'), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the

plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in *Badat and Company v. East India Trading Company* (1964) 4 SCR 19, *Sushil Kumar v. Rakesh Kumar* (2003) 8 SCC 673, and *M. Venkataramana Hebbar (dead by LRs) v. M. Rajagopal Hebbar* (2007) 6 SCC 401.

(v) 2013 (2) SCC 606 [*Gian Chand and Brothers and another v. Rattan Lal alias Rattan Singh*]

23. The said aspect can be looked from another angle. Rules 3, 4 and 5 of Order VIII form an integral code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It is obligatory on the part of the defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. It is clearly postulated therein that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiffs but he must be specific with each allegation of fact (see *Badat and Co., Bombay v. East India Trading Co.*[5]).

25. We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible. In this context, we may profitably refer to a two-Judge Bench decision in *Sushil Kumar v. Rakesh Kumar*[6] wherein, while dealing with the pleadings of election case, this Court has held thus: -

"73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order 8 Rule 3 and 5 of the Code of Civil Procedure. The High Court had also not analysed the evidence adduced on behalf of the appellant in this behalf in detail but merely rejected the same summarily stating that vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid."

(vi) 2017 (4) CTC 734 (DB) S.Deivanai and Ors. v. V.M.Kothandaraman and Ors.]

41. But, it is the case of the plaintiff that he had taken earnest efforts through the panchaytors to insist the defendants to perform their part of the contract, but, the same has failed, thereafter, he has filed the suit. Therefore, it cannot be said that the delay in approaching the equity Court by the plaintiff, for a period of two years and two months, is fatal to the claim of the plaintiff. Further, We find that a plea has been raised by the plaintiff regarding his readiness and willingness and there was sincere effort taken by the plaintiff through the panchayators, after exchanging notices till the date of filing the suit; but, this piece of evidence was not denied by the defendants in the manner provided under Order 8 Rule 5 of CPC, as contended by the learned counsel for the 1st respondent/plaintiff. There is no specific plea in the written statement filed by the defendants to the effect that the plaintiff has waived and abandoned his right under Ex.A.1-Sale Agreement, by not approaching the equity Court immediately after exchange of notices and such a delay has

prejudicially affected the interest of the defendants under the suit agreement. Hence, in view of the failure on the part of the defendants to comply with Order 8 Rule 5 of CPC and failure on their part to cross-examine the plaintiff on material aspects touching Ex.A.1, the submissions made by the learned senior counsel for the appellants/defendants cannot be accepted.

42. In this regard, reference could be placed in some of the decisions. In 1997-2-LW. 589 (R. Singaperumal Vs. Vellikannu and another), this Court has observed as follows "15. Under Order 8, Rule 5, CPC, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. Along with this, the Court can also take note of Section 58 of the Evidence Act. It says that 'No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. So long as the defendant has not denied that he is not the murderer of Ramasami Konar, this is a matter which does not require evidence. Under Order 8, Rule 5, CPC read with Section 58 of the Evidence Act, this fact need not be further proved. It must be deemed to have been admitted."

45. In this regard, a reference could be placed in the decision reported in AIR 1965 SC 1405 (Satyanarayana VS. Yelloji Rao), wherein it has been held by the Hon'ble Supreme Court as follows -

"11. The result of the aforesaid discussion of the case law may be briefly stated thus: While in England mere delay or laches may be a ground for refusing to give a relief of specific performance, in India mere delay without such conduct on

the part of the plaintiff as would cause prejudice to the defendant does not empower a Court to refuse such a relief.  
"

47. .... In this regard, a reference could be made in the latest decision of the Honourable Supreme Court in the case of (Mrs. A. Kanthamani vs. Mrs. Nasreen Ahmed) Civil Appeal No.2714 of 2008 dated 6th March 2017 (cited supra), which gives a fitting answer to this issue. The relevant portion in the said decision reads as follows\_ "28. The expression readiness and willingness has been the subject matter of interpretation in many cases even prior to its insertion in Section 16 (c) of the Specific Relief Act, 1996. While examining the question as to how and in what manner, the plaintiff is required to prove his financial readiness so as to enable him to claim specific performance of the contract/agreement, the Privy Council in a leading case which arose from the Indian Courts (Bombay) in Bank of India and others vs. Jamsetji A.H. Chinoy and Chinoy and Company) AIR 1950 PC 50, approved the view taken by Chagla, A.C.J., and held inter alia that it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness. A reading of the said judgment would show that it is not necessary for the plaintiff to produce the money or vouch a concluded scheme for financing the transaction to prove his readiness and willingness. Further, though it is the submission of the learned senior counsel for the appellants/defendants that when the suit was valued at Rs.1,25,98,000/-, the plaintiff ought to have deposited the said amount, We are of the opinion that as per the Sale Agreement, total sale consideration has to be fixed only on the measurement to be taken by the defendant on or before 10.02.2007 and the suit was valued only for the purpose of paying the court fee. Therefore, We are not inclined to accept the submission made by the learned senior counsel for the appellants/defendants based on the valuation made by the plaintiff for the purpose of paying the Court fee to file the suit. Hence, in the particular background of the case, non-deposit of the money in the Court before filing

the suit is not fatal to the case of the plaintiff. Accordingly, We hold that the plaintiff has established that he was ready and willing to perform his part of the contract.

(vii) 2008 (11) SCC 45 [Silvey and others v. Arun Varghese and another]

14. As regards the false plea of the defendants, the effect needs to be noted. It was pleaded that Defendants 3 had gone to the house of Plaintiff 2 in Alleppey prior to receiving any letter from plaintiffs and had spoken that they had told him that they were not keen on enforcing the application under Ext.A-1. But when examined as DW1, the said Defendant 3 admitted that he had never met the plaintiff as pleaded in the written statement and that he or any other defendant had never gone to Alleppey to meet Plaintiff 2 at his residence to speak about the performance of the contract. The plea stated in the written statement was abandoned in evidence. In *Lourdu Mari David v. Louis Chinnaya Arogiaswamy*, it was noted that the conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance. The High Court has, after analysing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement.

(viii) 2017 (1) CTC 46 [Nagarathinam v. S.Jaya]

16. Relying upon the judgment of the Division Bench Of Delhi 12 High Court in *Bal Krishan Gupta and another -vs Vikas Aggarwal and another* reported in 2014 (142) AIC 337, Mr.N.Manokaran, learned counsel would contend that a direction to deposit the balance sale consideration should not be made routinely as a pre-condition for grant of relief. He would also submit that the division Bench has pointed out that law does not require the plaintiff seeking Specific Performance to deposit the balance of sale consideration into Court at the time of the filing of the

<https://hcservices.ecourts.gov.in/hcservices>. Mr.N.Manokaran, would also rely upon

the judgment of the Supreme Court Zarina Siddiqui -vs- A.Ramalingam alias R.Amarnathan reported in (2015) (1) SCC P.705 wherein Hon'ble Supreme Court had held that the conduct of the defendant should also be considered while exercising the discretion under the Specific Relief Act.

(ix) 2018 (1) LW 500 (DB) [Krishnaveni and Ors. v. Muthumanickam and Ors.]

30.It is a settled principle of law that as per Section 19(b) of the Specific Relief Act, 1963, a bona fide purchaser for value, who paid money in good faith without notice of prior sale agreement is not bound to execute a sale deed in favour of the plaintiff. Under the said circumstances, the 4<sup>th</sup> defendant has to necessarily prove that he is a bona fide purchaser for value without notice of Ex.A1.

31.As animadverted to earlier there is a vast difference between sale consideration mentioned in Ex.B3 and Ex.B1 and further, no mention has been made in Ex.B1 about the existence of Ex.B3. Therefore, the Court can safely come to a conclusion that the 4<sup>th</sup> defendant is not a bona fide purchaser for value and he is not entitled to get the protection available under Section 19(b) of the Specific Relief Act, 1963.

32.The learned counsel appearing for the appellants/defendants has repeatedly contended to the effect that the defendant 22 defendant by virtue of Ex.B1 and under the said circumstances, without cancelling or setting aside Ex.B1, the plaintiffs are not entitled to get discretionary relief of specific performance.

33.As mentioned supra, in some of the decisions of the Hon'ble Supreme Court it is held that sale deed, which stands in the name of subsequent purchaser, should either be cancelled or set aside.

34.The learned Senior counsel appearing for the respondents 1 to 3/plaintiffs has relied

upon the decision reported in 2015(5) Supreme Court Cases 223-Rathnavathi and Another vs. Kavita Ganashamdas, wherein the Hon'ble Supreme Court has dealt with a case of identical facts. The Hon'ble Supreme Court has relied upon the decision reported in AIR 1954 SC 75-Durga Prasad v. Deep Chand, wherein at paragraph No.42, it is observed as follows:

"42.In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in <http://www.judis.nic.in> 23 any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in Kafiladdin v. Samiraddin (AIR 1931 Cal 67) and appears to be the English practice.

35.A mere reading of the decision referred to supra it is made clear that as per Section 19 of the Specific Relief Act, 1963, if a subsequent purchaser is not a bona fide purchaser for value without notice of prior sale agreement, he has to join along with the vendor to execute a registered sale deed in favour of the plaintiff.

37.It is an admitted fact that in Ex.B1, the plaintiffs are not parties. Since the plaintiffs are not parties in Ex.B1, they are <http://www.judis.nic.in> 24 not bound to either cancel or set aside the same. Further, it is a well settled principle of law that only a party to a document is bound to cancel or set aside the same. Under the said circumstances, in view of the decision reported in (2015) 5 Supreme Court Cases 223 and also in view of the decision reported in AIR 1954 SC 75, this Court is of the considered view that the argument advanced by the learned counsel appearing for the appellants/defendants in respect of cancellation of Ex.B1 does not hold good and the same can be ignored.

(Dead) by Lrs. v. Kamal Rani (Smt.) (Dead) by Lrs.]

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 presumption against time being the essence of the contract. ....

25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract.....

(xi) 2015 (1) SCC 597 [K.Prakash v. B.R.Sampath Kumar]

16..... 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.

9. Per contra, the learned counsel appearing for the respondents 1 to 7 contended that the respondents 1 to 7 did not execute Ex.A4 with intention to sell the suit property to the appellants. The respondents 1 & 6 urgently required Rs.2.25 lakhs during June 2006. While so, the second appellant arranged the said loan from the first appellant who insisted for execution of agreement of sale, Ex.A4 as security for repayment of loan paid by him. Since the respondents 1 & 6 urgently required the money, they agreed for the condition imposed by the first appellant and executed Ex.A4 only as a security document. The appellants, in any event were not ready and willing to pay the balance sale consideration. The contention of the appellants that originally the respondents requested for extension of time and appellants agreed for the same are baseless. Ex.A5 produced by the appellants will clearly show that the appellants have not approached the court with clean hands. The respondents 1 to 7 and 7<sup>th</sup> defendant have already entered into agreement of sale with respondents 8

to 10 on 18.02.2006 itself and therefore the contention of the appellants that respondents 1 & 6 agreed to sell the property to the appellants is unbelievable. The respondents 1 & 6 did not agree to sell the suit property. The contention of appellants that on respondents 1 to 6 agreeing to sell the suit property to appellants only, the suit was withdrawn as settled out of court is not correct. The courts below have elaborately considered the readiness and willingness of the appellants to pay the balance sale consideration and held that appellants were not ready and willing to perform their part of contract and prayed for dismissal of Second Appeal.

10. The learned counsel for the respondents 1 to 7 contended that respondents 1 to 7 and 7<sup>th</sup> defendant never agreed to sell the suit property for a sum of Rs.5,00,000/-. They executed the document only as a security for repayment of the loan, as the first appellant insisted the respondents 1 & 6 to execute a sale agreement as a security for repayment as a condition for advance the loan. Since the respondents 1 & 6 urgently required money, they agreed for the terms of the first appellants and executed the agreement of sale. They did not have any intention to sell the property but it is only a security document. As per the earlier agreement dated 18.02.2006, the respondents 1 & 6 sold the property to respondents 8 to 10 by deed of sale dated 11.02.2008.

11. The learned Senior Counsel appearing for the respondents 8 to 10 contended that the respondents 8 to 10 have entered into agreement of sale with respondents 1 & 6 on 18.02.2006 to purchase the property for a total sale consideration of Rs.6,00,000/- and paid Rs.50,000/- as advance on 11.02.2008, they paid the balance sale consideration of Rs.5,50,000/- and got the sale deed executed in their favour. They are bonafide purchasers for valuable consideration without the knowledge of earlier agreement of sale. They are in possession and enjoyment of the suit property from the date of their purchase. The learned Senior Counsel further contended that the appellants, without asking for cancellation of sale deed Ex.B6, not entitled for specific performance of agreement of sale.

11 (a) The learned Senior Counsel appearing for the respondents 8 to 10, in support of his contention, relied on the following judgment -

(i) 2017 (7) MLJ 81 (SC) [B.Vijaya Bharathi v. P.Savitri and others]

17) It must also be noted that though aware of two conveyances of the same property, the plaintiff did not ask for their cancellation. This again, would stand in the

way of a decree of specific performance for unless the sale made by Defendant No. 1 to Defendant No.2, and thereafter by Defendant No.2 to Defendant No.3 are set aside, no decree for specific performance could possibly follow. While Mr. Rao may be right in stating that mere delay without more would not disentitle his client to the relief of specific performance, for the reasons stated above, we find that this is not such a case. The High Court was clearly right in finding that the bar of Section 16(c) was squarely attracted on the facts of the present case, and that therefore, the fact that Defendant Nos. 2 and 3 may not be bona fide purchasers would not come in the way of stating that such suit must be dismissed at the threshold because of lack of readiness and willingness, which is a basic condition for the grant of specific performance.

12. The learned counsel for the appellants, in reply to the arguments made by the learned Senior Counsel for the respondents 8 to 10 contended that on 27.02.2006, a compromise was entered into between the second appellant, sons of the second appellant and respondents 1 & 6. The respondents 1 & 6 agreed to convey the property to the second appellant. As per the compromise, the suit was dismissed as settled out of court on 21.03.2006 and on the same day stamp papers were purchased. The respondents 8 to 10 are not bonafide purchasers. The respondents colluded together and fabricated agreement of sale and respondents 1 to 6 and 7<sup>th</sup> defendant fraudulently executed sale deed in favour of respondents 8 to 10 only with an intention to defeat the interest and right of the appellants. The respondents 8 to 10 are not bonafide purchasers. The appellants are bound to either cancel or set aside the sale deed in favour of respondents 8 to 10. In support of his contention, the learned counsel for the appellants relied on the judgment reported in 2018 1 LW 500 DB, cited supra.

13. Heard the learned counsel for the appellants, respondents 1 to 7 and the learned Senior Counsel appearing for the respondents 8 to 10 and perused the materials available on records.

14. The Second Appeal is yet to be admitted. The following substantial questions of law is to be decided in this Second Appeal.

readiness and willingness to perform their part of contract ?

(b) Whether the appellants are entitled to discretionary relief of specific performance of agreement when the respondents have failed to prove that appellants are not entitled to discretionary relief of specific performance as per Section 20 of the Specific Relief Act ?

Substation questions of law (a) & (b)

15. The appellants have claimed decree of specific performance as per the agreement of sale dated 29.06.2006. According to the appellants, the respondents 1 & 6 agreed to sell the suit property to the appellants for a total sale consideration of Rs.5,00,000/- and received advance of Rs.2,25,000/-. The respondents 2 to 5, 7 and 7<sup>th</sup> defendant in the suit who are the legal heirs, joined together with respondents 1 & 6 executed agreement of sale Ex.A4. As per the said agreement of sale, time for completion of sale is one year. According to the appellants, the respondents requested time for execution of sale deed and time was extended till 30.06.2008. The appellant examined themselves as PWS1 & 2 to substantiate this contention. On the other hand, the respondents 1 to 7 and 7<sup>th</sup> defendant have totally denied the agreement of sale. According to them, they executed Ex.A4 only as a security document for amounts borrowed by the respondents 1 & 6. They did not have any intention to sell the property. The Trial Court, considering the evidence on record, held that the respondents 1 to 7 and 7<sup>th</sup> defendant have not proved that it is only a security document. The learned First Appellate Judge, considering the pleadings and evidence held that Ex.A4 is only an agreement of sale and rejected the contention of the respondents that Ex.A4 is only a security document. The appellants have pleaded that they were always ready and willing to pay the balance sale consideration and get the sale deed executed in their favour.

16. According to the appellants, the respondents 1 & 6 have requested time for execution of sale deed on the ground that their children were not available due to their studies. Before expiry of the extended time on 30.06.2008, the appellants issued telegraphic notice Ex.A6 on 27.06.2008 as the respondents evaded receiving balance sale consideration and executed the sale deed in the said telegram calling upon the respondents to be present in the Sub Registrar's office, Ammapet on 29.06.2008 to receive the balance sale consideration and execute the sale deed. The respondents did not come to Sub Registrar's office and also have not sent any reply. In the written statement and evidence also, the respondents have not given explanation for not sending any reply. In the agreement of sale for immovable property, the time is not essence of contract. At the same time, the

agreement holder should perform his part of contract within a reasonable time and get the sale deed executed in his favour. Reasonable time depends upon the facts of each case. In the agreement of sale if mentioned time is essence of contract for the reasons of necessary of vendor, then purchaser must perform his part of contract within the time limit stipulated in the agreement of sale failing which he will lose his right for specific performance.

17. Appellants, in the present case, apart from pleading their readiness and willingness to perform their part of contract also deposited the balance sale consideration into court at the time of filing of the suit itself and produced the lodgment sheet with the seal of the court for having deposited the balance sale consideration in State Bank of India, Bhavani Branch to the credit of Officer in-charge of the Treasury at State Bank of India. The appellants have also produced sale deed dated 29.06.2006 engrossed on stamp papers and contended that the said sale deed could not be executed and registered due to paucity of time. The courts below did not accept the contention of the appellants with regard to Ex.A5 and have held that appellants would have got the said sale deed executed and registered subsequently instead of waiting for two years of filing of the suit. The courts below have failed to consider Ex.B5 agreement of sale entered into between the respondents 1 & 6 and respondents 8 to 10 is dated 18.02.2006 but respondents 1 & 6 executed the sale deed in favour of the respondents 8 to 10 only on 11.02.2008 by Ex.A6. This creates a suspicion that Ex.A5 agreement of sale dated 18.02.2006 is sham and nominal document, brought into existence only to get over the agreement of sale dated 29.06.2006. The agreement of sale Ex.B5 is brought into existence anti-dated to defeat the necessity of the appellant as per Ex.A4. The respondents 1 & 6 alleged that they were in urgent need of money for the medical and college expenses during June 2006 and only for the urgency, they agreed to the condition of the first appellant and executed Ex.A4 as a security document. The respondents 1 & 6 have not explained as to why they had not insisted on the respondents 8 to 10 to pay the balance sale consideration as per Ex.B5 and get the sale deed executed in their favour. The respondents 1 & 6 have admitted that they have not paid either interest or principal to the appellants. They have not explained as to why they did not repay Rs.2,25,000/- alleged to have been borrowed from respondents 1 to 6 together with interest when they alleged that they executed the agreement of sale only as a loan transaction.

18. The respondents 1 & 6 have not made any efforts to repay the amounts to the appellants. The courts below have considered the facts and oral and documentary evidence in the proper perspective and held that respondents 1 to 6 failed to

prove that Ex.A4 agreement of sale is only a security document. Further, the respondents 8 to 10, in para 5 of their written statement have stated that they are bonafide purchasers for valuable consideration without notice on any prior sale agreement. This also creates suspicion of the genuineness of Ex.B5 agreement of sale dated 18.02.2006. Ex.A4 is dated 29.06.2006 and alleged agreement in favour of respondents 8 to 10 is dated 18.02.2006, prior to agreement of sale with the appellants. It is also not believable that respondents 1 & 6 did not inform respondents 8 to 10 about Ex.A4 or borrowal of money from the first appellant.

19. The courts below, while considering the discretion either to grant or reject the discretionary relief of specific performance, ought to have taken into consideration the attitude of the respondents 1 & 6 and 8 to 10. The reasoning of the courts below that appellants have not issued any notice to the respondents 1 to 7 and 7<sup>th</sup> defendant before expiry of time calling upon them to receive the balance sale consideration and execute the sale deed is erroneous. The courts below failed to consider that appellants have deposited the balance sale consideration into the court at the time of filing of the suit itself. The contention of the learned counsel for the appellants that respondents have not pleaded and proved any of the conditions mentioned in Section 20 (2) of the Specific Relief Act to reject the discretionary relief of specific performance in favour of the appellants has considerable force. Similarly, the contention of the learned counsel for the appellants that hardship is caused to the appellants in rejecting the decree of specific performance and respondents will not be put to any hardship if decree of specific performance is granted to the appellants is also to be accepted. The respondents have not contended that value of the property had increased considerably and they will suffer loss if decree of specific performance is granted to the appellants. It is pertinent to note that respondents 1 & 6 have sold the suit property to respondents 8 to 10 on 11.02.2008 for alleged sale consideration of Rs.6,00,000/- as per agreement of sale entered into on 18.02.2006.

20. From the pleadings, oral and documentary evidence, it cannot be said that the appellants are not ready and willing from the date of agreement of sale to perform their part of contract. It is well settled that an agreement holder who purchases the property need not carry cash on hand throughout the period or money in the Bank Account to complete the sale transaction. It is sufficient if the purchaser proves his capacity to pay the balance sale consideration, after pleading about his readiness and willingness to pay the balance sale consideration. In the present case, the appellants have pleaded that they were always ready and willing to perform their part of contract and proved their capacity to pay the

balance sale consideration by depositing the same into court at the time of filing of the suit itself.

21. The contention of the learned Senior counsel appearing for the respondents 8 to 10 that appellants are not entitled to decree of specific performance without cancelling the sale deed in favour of the respondents 8 to 10 is without merits. The judgments relied on by the learned Senior counsel is not applicable to the facts of the present case. On the other hand, the judgment reported in 2018 1 LW 500 (DB) relied on by the learned counsel for the appellants is squarely applicable to the facts of present case. A Division Bench after considering the judgment of Hon'ble Apex Court has held that when subsequent purchaser is not a bonafide purchaser, without notice of earlier agreement of sale, and when purchaser/plaintiff is not a party to the said sale deed, purchaser/plaintiff is not bound to either cancel or set aside the sale deed in favour of subsequent purchasers. Therefore, the appellants without seeking to set aside the order, cancelled the sale deed in favour of the respondents 8 to 10 are entitled to specific performance as claimed by them.

For the above reason, the substantial questions of law (a) & (b) are answered in favour of the appellants.

22. In the result, this Second Appeal is allowed setting aside the the judgment and decree dated 22.06.2017 made in A.S.No.20 of 2015 and the judgment and decree dated 21.09.2015 made in O.S.No.42 of 2008 is restored. No costs. Consequently, connected Miscellaneous Petition is closed. All the respondents, including respondents 8 to 10 are directed to execute the sale deed in favour of the appellants, within two months from the date of receipt of a copy of this order failing which it is open to the appellants to get the sale deed executed in their favour, through court. The respondents are entitled to withdraw the sum of Rs.2,75,000/- deposited by the appellants to the credit of the suit in O.S.No.42 of 2008.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1.The IV Additional District Judge,  
Erode.

2.The Subordinate Judge,  
Bhavani

3.The Section Officer,  
V.R. Section,  
High Court, Madras.

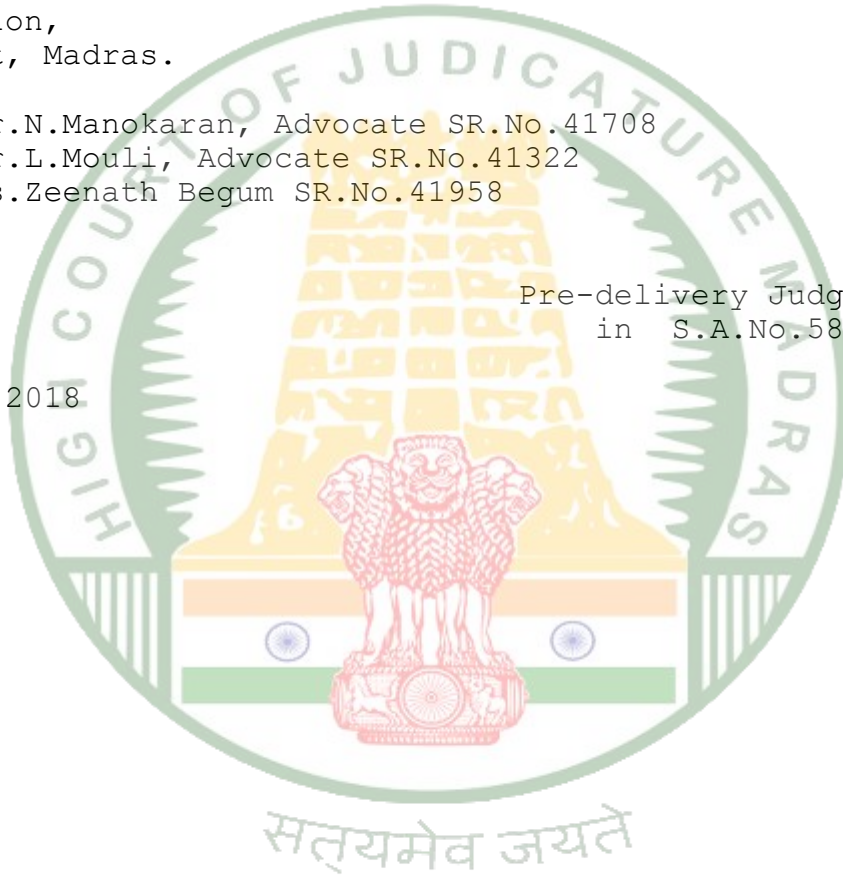
+1cc to Mr.N.Manokaran, Advocate SR.No.41708

+1cc to Mr.L.Mouli, Advocate SR.No.41322

+1cc to Ms.Zeenath Begum SR.No.41958

Pre-delivery Judgment made  
in S.A.No.584 of 2017

GJ(CO)  
SMI/23.08.2018



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