

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Appeal Suit No.208 of 1997

JUDGMENT:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful plaintiff is directed against the decree and judgment, dated 18.12.1996, of the learned Additional Senior Civil Judge, Chittoor, passed in OS.No.58 of 1991.

2. I have heard the submissions of Sri T.G. Prasad Reddy, learned counsel appearing for the appellant-plaintiff, and of Sri K. Somakonda Reddy, learned counsel appearing for the respondent-defendant. I have perused the material record.

3. The parties in this appeal shall hereinafter be referred to as the plaintiff and the defendant as arraigned in the original suit for convenience and clarity.

4. Since this is a first appeal suit and as this Court is the last Court of fact, it is necessary to refer to the pleadings of the parties.

5. The plaint averments, in brief, are as follows: - 'The plaintiff and the defendant entered into an agreement of sale, on 11.05.1990, at Chittoor town in the presence of attestors and scribe. Under the said agreement, the plaintiff agreed to purchase the agreement schedule house and shop property bearing MC.No.11-1-78 more fully described in the schedule annexed to the plaint for a consideration of Rs.1,05,000/- and paid Rs.10,000/- as advance to the defendant and the defendant agreed to execute a registered sale deed on or before 20.10.1990 after receiving the balance of sale consideration. Though time was mentioned in the suit contract of sale, it was never intended to be the

essence of performance of suit contract of sale. At the time of contract of sale, the defendant agreed to provide his documents of title related to the suit schedule property before specific performance of the suit contract of sale. In spite of demands made by the plaintiff, the defendant failed to provide the documents of title. While so, on coming to know that the plaintiff is intending to purchase the subject building, some persons claiming as heirs raised a dispute with regard to the side wall and upstairs portion of the suit building. Recently, the tenant in the suit building also raised a dispute with regard to vacating the premises in the event of sale of the suit schedule property to the plaintiff. Though the defendant is aware of the said facts, he suppressed the same and further represented at the time of suit contract of sale that the defendant is the sole title holder. Without fulfilling the promises made by the defendant and by suppression of the disputes with regard to the property, the defendant issued a notice, on 05.02.1991. The plaintiff gave a befitting reply, on 13.02.1991. In any event, the plaintiff was & is always ready and willing to perform his part of the contract in the event of the defendant producing the original title deed and settling the litigation as well as the doubts about the claims. Without clearing the same, the expression of defendant's readiness to perform his part of the contract is unreasonable. The plaintiff called upon the defendant on several occasions to provide original title deeds and clear the litigation/disputes with regard to the suit schedule property. There was no response from the defendant. Hence, the suit is filed for specific performance to direct the defendant to execute the registered sale deed in respect of the suit schedule property as per the terms of the suit contract of sale after providing documents of title and clearing all disputes with regard to the suit property;

and to put the plaintiff in possession of the suit schedule property; or in the alternative to direct the defendant to refund the advance amount of Rs.10,000/- together with interest at 24% per annum from the date of the suit; and, for costs.'

6. The defence of the defendant, in brief, is as follows: - 'It was specifically agreed between the parties that both the parties shall perform their respective parts of the contract of sale within the time specified; The suit contract of sale also states that the defendant shall execute the sale deed on or before 20.10.1990, after receiving the balance of sale consideration. Therefore, the allegation that time is not the essence of the contract is false. This term was included in the suit contract only with the specific understanding that the plaintiff shall observe the time specified and to make clear that time is the essence of the contract. The suit agreement was written in the house of the defendant at Ambur but not at Chittoor town as alleged in the plaint. The attestation made by the mother of the defendant on the suit contract of sale would amply establish the said fact. The allegations that the defendant promised to provide title deeds of the property before its performance and that he failed to provide the documents of title inspite of demands are false. The negotiations for purchase were made by the plaintiff, his father and the associates of his father for nearly one or one and a half months before the actual execution of the suit contract of sale. The title deeds and the information related to the title deeds and the pending case, OS.No.1065 of 1989 filed by the defendant, were furnished to the plaintiff. The plaintiff and his father visited Ambur atleast three times prior to the suit contract of sale to talk to the defendant and his mother and finalised the suit contract of sale.

During the negotiations for purchase of the suit schedule property, the plaintiff was apprised of the suit filed by the tenant against the defendant. No fact was suppressed and every detail with regard to the suit schedule property was conveyed to the plaintiff both personally and through the broker through whom the plaintiff and his father approached the defendant. The contra allegations made in the plaint are false. The same are made as the plaintiff could not make ready the balance of sale consideration and other expenses for obtaining the registered sale deed in respect of the suit schedule property. Even as on today, the defendant asserts that he is the sole absolute owner of the suit schedule property conveyed under the suit contract of sale. The allegations in the reply notice of the plaintiff are false and vexatious. The plaintiff was never ready & willing to perform his part of the contract and obtain the sale deed after paying the balance of sale consideration. By a letter and also in person, the defendant intimated the plaintiff, on 15.10.1990, that the defendant would be ready and available to go over to Chittoor any day before 20.10.1990 and perform his part of the contract. However, the defendant received a letter from the plaintiff, on 19.10.1990, just a day before the actual date specified in the contract of sale for performance. The allegations in the said letter are false. The reply notice to the notice issued by the defendant's tenant was drafted in the presence of the plaintiff and his father and a copy thereof was also marked and sent to the plaintiff. It was in the middle of August, 1990. If the plaintiff was aggrieved, he could have immediately rescinded the suit contract of sale. However, the plaintiff has taken it as a challenge and assured the defendant that he would fight the litigation and teach a lesson to the tenant. The defendant thought at that time

that the plaintiff would comply with the terms of the suit contract of sale and would relieve the defendant of his tensions in arranging the marriage of his sister. The time till 20.10.1990 was given by the defendant to the plaintiff to get ready with the money and have the sale deed as desired by the plaintiff. However, the plaintiff having received the notice had kept quiet for nearly three weeks and repeated the same allegations in his letters, dated 12.11.1990, 26.12.1990 and 28.01.1991. The said letters were addressed by the plaintiff to cover up his inability to perform his part of the contract. The defendant got issued a registered notice through his counsel, on 05.02.1991, giving the plaintiff a final chance to complete the transaction. In the said notice, it is stated that failing compliance within 15 days therefrom, the defendant would forfeit all the rights under the suit contract of sale and that the plaintiff would be liable to pay to the defendant Rs.10,000/- towards the loss suffered by the defendant. A reply was sent by the plaintiff with false and untenable allegations. The defendant reiterates that he placed all the title deeds before the plaintiff and enabled the plaintiff to have the copies of the same prior to entering into the contract of sale. The defendant furnished to the plaintiff the copies of the settlement deed, dated 24.01.1947, in favour of his father & unregistered Will in Tamil, dated 20.04.1978, left by the defendant's father; and, also the information about the pending suit filed by the defendant's tenant. The plaintiff and his father, on enquiries at the municipal office and Registrar's office about the ownership and encumbrances on the property respectively, were fully satisfied about the title of the defendant over the property. They inspected the suit schedule property more than once. The plaintiff through his father and the broker expressed the desire to purchase the property and

bargained and fixed the price at Rs.1,05,000/-. About ten days later, the plaintiff, his father, five of his associates and the scribe came, on 11.05.1990, with non judicial stamps and insisted upon the defendant to execute the agreement of sale. And the defendant was made to execute the suit contract of sale, even though it was a Friday and an objection was raised by the mother of the defendant. The plaintiff's father wanted the defendant's mother also to attest the contract of sale. Thus, the suit contract of sale came into existence. The defendant was forced to sell the suit schedule property for the purpose of performing the marriage of his sister and for family necessities. On account of the breach committed by the plaintiff, the defendant was put to untold suffering, inconvenience and loss. The defendant was not in a position to sell the property to any other party and intending purchasers are not willing to offer the same price. The defendant was always ready and willing to perform his part of the contract and the doubts raised by the plaintiff are only imaginary and they are only a ruse to avoid performance of his obligations under the contract. After the suit summons are received, the defendant made enquiries in Chittoor; and, on such enquiries, he was informed that the plaintiff and his father could not secure an intending purchaser to purchase the property at a price higher than that was mentioned in the agreement and, therefore, with a view to get profit from the suit agreement they incorporated a clause that the defendant shall execute the sale deed in favour of the person suggested by the plaintiff. The plaintiff was disappointed and could not manage to secure necessary funds and that is the prime reason for avoiding the contract. The plaintiff, who was never ready and willing to perform his part of the contract,

committed breach of the contract and is responsible and liable for all consequences. Hence, the suit may be dismissed.'

7. Having regard to the above pleadings, the trial Court framed the following issues for trial.

1. **Whether the agreement was written at Chittoor or at Ambur?**
2. **Whether the plaintiff has performed his part of contract as per agreement and is entitled for registration?**
3. **Whether the cause of action is correct?**
4. **Whether the defendant is entitled for compensation of Rs.10,000/-?**
5. **To what relief of the parties?**

8. At trial, the plaintiff was examined as PW1 and exhibits A1 to A4 were marked on his side. The defendant and his supporting witnesses were examined as DWs1 to 3 and exhibits B1 to B4 were marked on his side.

9. As noted, on merits and by the judgment impugned, the trial Court dismissed the suit of the plaintiff. Hence, the plaintiff is before this Court.

10. Learned counsel for the plaintiff, while reiterating the pleaded case of the plaintiff, *inter alia*, contended as follows: - 'Though time was mentioned in the suit contract of sale for performance, time was never intended to be the essence of the contract. The 4th issue settled by the trial Court is with regard to the defendant's entitlement to compensation. The defendant did not make a counter claim for compensation by paying the necessary Court fee. The trial Court ought to have seen that in the facts and circumstances of the case, the defendant is not entitled to forfeit the advance amount and that the plaintiff alternatively claimed the relief of refund of the advance amount of Rs.10,000/- with interest. The trial Court ought to have seen that the

defendant voluntarily deposited the said amount of Rs.10,000/- into Court and that the same shows that the defendant has no objection for granting refund of the said advance amount to the plaintiff. Even though the defendant deposited the said amount into Court and the plaintiff claimed an alternative relief of refund of the said amount of Rs.10,000/- with interest, the trial Court erroneously dismissed the suit in respect of the alternative relief also and peculiarly held that the defendant *bona fide* deposited into Court the said amount during the pendency of the suit and that it is for the defendant to decide whether that amount should be given to the plaintiff in the circumstances of the case. The trial Court having so observed in its judgment further erroneously held that in view of the dishonest conduct of the plaintiff it is not directing the defendant to refund the advance received under exhibit A3 and that the discretion is left to the defendant and his honesty in the matter and accordingly decided that aspect against the plaintiff and in favour of the defendant. The said finding is perverse as the conduct of the defendant in depositing Rs.10,000/- into Court during the pendency of the suit would indicate that he has no objection for refund of the same to the plaintiff. In the facts and circumstances of the case, the trial Court ought to have granted refund of the advance amount, which was deposited by the defendant into Court, without leaving that matter to the discretion of the defendant as it is the obligation of the Court to decide the entitlement or not of the plaintiff to the alternative relief of refund of the advance amount of Rs.10,000/-. The trial Court grossly erred in stating that the conduct of the plaintiff is dishonest. The appreciation of the facts and the evidence by the trial Court is not only erroneous but also perverse and, therefore, the findings on all the issues against

the plaintiff and in favour of the defendant are unsustainable and are liable to be set aside. The trial Court wrongly placed heavy onus of proof upon the plaintiff ignoring the demands on the part of the plaintiff and erroneously dismissed the suit on assumptions, presumptions and surmises. The observations in the judgment of the trial Court are contrary to facts, evidence and legal position obtaining. The findings of the trial Court that the plaintiff failed to tender the balance of sale consideration to the defendant and that the defendant provided copies of title deeds and furnished information about the litigation with the tenant are erroneous. The learned Judge of the trial Court erroneously observed that though the plaintiff raised certain doubts about the title of the defendant in respect of the suit schedule property, the plaintiff failed to establish any such defects in the title of the defendant in respect of the suit schedule property. The trial Court erroneously observed that the plaintiff and his father had knowledge about the possession of the tenant over the plaint schedule property. The trial Court was in error in observing that the crucial and very significant fact of the matter is that the plaintiff's failure to deposit the amount either in any bank before filing the suit or into Court after the filing of the suit and that the said alleged omission plays a great role in the light of the defence that the plaintiff never had capacity and means to secure the balance consideration of Rs.95,000/-. The said observation is contrary to settled legal position. The trial Court ought to have seen that there is no obligation under law to deposit the balance of sale consideration into Court in order to show readiness and willingness on the part of the plaintiff and that it is not essential for the plaintiff to tender to the defendant or to deposit into Court any money except when so directed by the Court and that the plaintiff

must aver performance of, or readiness and willingness to perform the contract according to its true construction in view of the explanation to clause (c) of Section 16 of the Specific Relief Act, 1963, and that, therefore, for non tendering the amount to the defendant and not depositing the amount into Court, an inference cannot be drawn that the plaintiff has neither capacity to pay the balance of sale consideration nor is ready and willing to perform his part of the contract. Hence, the appeal suit may be allowed and the decree and judgment impugned may be set aside and the suit of the plaintiff may be decreed as prayed for or in the alternative the relief of refund of the advance amount of Rs.10,000/- may be granted to the plaintiff in the interests of justice as the defendant has already deposited the said amount of advance into Court.'

11. Learned counsel for the defendant, while supporting the decree and judgment of the trial court, *inter alia* contended as follows: 'The agreement of sale is entered into and the property thereunder was agreed to be sold by the defendant for meeting the marriage expenses of his sister. Under the said agreement, Rs.10,000/- was only received as advance and for payment of the balance and for obtaining registered sale deed the date, 20.10.1990, was fixed. Hence, time is the essence of the contract. The plaintiff who is not ready and willing to perform his part of the contract raised un-necessary issues and falsely alleged that some heirs to the property made claims and that the defendant having agreed to provide title deeds failed to provide the same and that the defendant suppressed the fact that there is a dispute with the tenant in possession of the property. Even though copies of title deeds were furnished to the plaintiff and the plaintiff is made aware of the litigation with the tenant

in occupation of the property besides all the details including the fact that there are no rival claims, the said issues were falsely raised by the plaintiff. The trial Court rightly noted that before the suit contract of sale, the plaintiff, his father and their broker made necessary enquires and were satisfied with the title of the defendant and that they are also aware of the occupation of the property by the tenant and also about the suit filed by the tenant and that the plaintiff took it as a challenge and in-fact stated that he wanted to teach a lesson to the tenant by fighting out the litigation. The trial Court rightly observed that the defendant first addressed a letter and also got issued a letter expressing readiness and willingness to perform his part of the contract and that the plaintiff acted with dishonest intentions as he was never ready and willing to perform his part of the contract for lack of capacity to pay the consideration. The aspect of refund of the advance amount of Rs.10,000/- to the plaintiff is rightly left by the trial Court to the discretion of the defendant by rightly observing that the said amount was deposited into Court by the defendant in a *bona fide* manner. In view of the facts and circumstances of the case and the conduct of the plaintiff, the trial Court left the aspect of regard to the refund of the advance amount to the discretion of the defendant as the defendant suffered loss and tension with regard to performance of the marriage of his sister as the suit schedule property was intended to be sold to meet the marriage expenses of his sister. The finding on the said aspect is correct and not perverse. Hence, the well considered judgment of the trial Court calls for no interference. The contentions of the plaintiff are devoid of merit and the appeal is liable for dismissal.'

12. I have given earnest consideration to the facts and submissions. I have carefully perused the material record including the oral and documentary evidence.

13. The points that arise for determination in this first appeal suit are – (i) Whether the plaintiff was & is ready and willing to perform his part of the contract? And, if so, whether the plaintiff is entitled to the equitable relief of specific performance? (ii) Whether the plaintiff is entitled for refund of Rs.10,000/- which was admittedly deposited by the defendant into Court during the pendency of the suit? (iii) Whether the decree and judgment of the trial Court are unsustainable under facts and in law as being contended by the plaintiff? And, (iv) To what relief?

13.1 Point No.1:

To begin with it is to be noted that the execution of exhibit A3, the suit contract of sale, by the defendant in favour of the plaintiff and the terms thereof are admitted. It is also admitted that the defendant agreed to execute a registered sale deed on or before 20.10.1990, after receiving the balance of sale consideration. The total consideration agreed to under exhibit A3 is Rs.1,05,000/-. Under the suit contract of sale, the plaintiff paid Rs.10,000/- as advance to the defendant and the balance of sale consideration payable was Rs.95,000/-. As per the terms of the contract of sale, the defendant agreed to execute the registered sale deed on or before 20.10.1990 in favour of the plaintiff, however, after receiving balance of sale consideration. From the evidence it is discernable that the plaintiff and the defendant agreed under exhibit A3, the suit contract of sale, that damages of Rs.10,000/- should be

paid by the plaintiff, if the balance sale consideration is not paid before the agreed date. PW1 also admits that the bargain for sale took place about ten days prior to the execution of exhibit A3 and that on instructions of the defendant he purchased the stamp and kept it with him for the purpose of execution of the agreement of sale. The stamp paper on which exhibit A3 was written shows that it was purchased on 03.05.1990. The suit contract of sale was executed on 11.05.1990. Nonetheless, the plaintiff contends that even though a date is fixed for performance, the time is not the essence of the contract. However, admittedly, the plaintiff did not pay the balance of sale consideration within the time stipulated in exhibit A3 and failed to obtain a registered sale deed at his expenses either in his name or in the name of his nominee. Nevertheless, just about four days prior to the stipulated date, the plaintiff addressed a letter, dated 16.10.1990, to the defendant stating that the defendant having promised to give the title deeds and antecedent title deeds related to the property agreed to be sold did not furnish the same to the plaintiff despite his repeated requests and that without furnishing the said documents, it is not possible to take a registered sale deed and that the plaintiff's father received a lawyer's notice, dated 26.07.1990, informing that a suit, OS.No.1065 of 1989 is pending in a Court with regard to the property and that the dispute has to be resolved before execution of the sale deed and that the defendant may therefore inform the plaintiff the time required for compliance of the said requirements. For the said letter, the defendant issued a reply letter (in Tamil), dated 24.10.1990, under exhibit A4 wherein it was said to have been stated that the plaintiff may obtain the sale deed on or before 20.11.1990. The case of the defendant is that before writing the agreement of

sale, he showed to the plaintiff, the Will of his father and the gift settlement deed and furnished copies of the said documents. It is also borne out by record particularly the cross examination of PW1 and the evidence of DW2, the mother of the defendant, who also signed the agreement, that the plaintiff, his father and a broker by name Syed Saheb were present at the time, the agreement was written at the house of the defendant at Ambur though the case of the plaintiff is that the suit contract of sale was executed at his shop at Chittoor and that the title deeds were not shown to him at the time of writing of the document and that he did not ask the defendant about the title deed and that the defendant promised to give the same to him at the time of registration. When the mother of the defendant stated about the presence of the broker at the time of execution of the agreement, she was not cross examined on the said aspect. In-fact she asserted in her cross examination that at the time of writing of exhibit A3, she was at her house and that she was called for signing and she signed it and that the broker came to the house on two occasions and that on the third occasion the agreement was written and that the broker did not visit their house for any other purpose; and, she denied the suggestion that exhibit A3 was written at Chittoor and not at Ambur. Her evidence fortifies the contention that the plaintiff visited the house of the defendants at the time of suit contract of sale. It is also borne out by the evidence of DWs1 & 2 that they intended to sell the plaint schedule property under exhibit A3 for meeting the marriage expenses of the sister of DW1, though the said fact is not mentioned in exhibit A3. However, within the time stipulated in the reply letter, exhibit A4, that is, within 20.11.1990, the plaintiff did not pay the balance of sale consideration and obtain the sale deed, and, instead the plaintiff

addressed a letter, dated 12.11.1990, under exhibit B2, wherein he stated as under: 'The defendant mentioned in his reply that the plaintiff requested for time till 20.11.1990 and that accordingly time was given till 20.11.1990 and that the plaintiff may come over to Ambur and talk to the mother of the defendant and his paternal uncle; but, the plaintiff is unwilling to take the sale deed by paying the balance sale consideration until the case dispute is resolved and the title deeds are furnished.' The plaintiff again addressed a final letter, dated 26.12.1990, exhibit B3, and another letter on 28.01.1991, exhibit B4, reiterating his earlier stand. Thereafter, the defendant sent a reply, dated 05.02.1991, under exhibit A2 stating that the time is the essence of the contract and that the plaintiff failed to perform his part of the contract and reiterated that the plaintiff verified the original settlement deed and the Will which reflect that the property absolutely belonged to the defendant and that the plaintiff is bound to pay the balance of sale consideration and take the sale deed and that the defendant is ready and willing to perform his part of the contract and that the plaintiff is un-necessarily sending notices and dragging on the matter as obviously the plaintiff has no funds to purchase the property. In this reply notice, the defendant categorically stated that as a last chance fifteen days time from the date of receipt of the said reply notice is available to the plaintiff to pay the balance sale consideration of Rs.95,000/- and take the sale deed and that failing which the contract of sale stands rescinded and that the advance amount paid would be forfeited and that the plaintiff would be liable to pay Rs.10,000/- as compensation. Despite such an opportunity given, the plaintiff did not avail that opportunity, but gave a legal notice, dated 13.02.1991, exhibit A1, alleging *inter alia* that the defendant having promised to provide the

documents failed to do so inspite of repeated demands of the plaintiff and that it came to light that the tenant in occupation of the property is raising a dispute for eviction with the defendant and that the defendant suppressed the said fact at the time of agreement of sale and that on coming to know that the plaintiff is intending to purchase the property, the heirs of the deceased neighbour of the property are raising a dispute with regard to the side wall and upstairs portion of the property agreed to be sold and that it was also brought to light that the defendant's mother has also got a share in the property though she attested the agreement and hence, the defendant is required to clear off all the points raised in the notice. Eventually, after such exchange of notices, the plaintiff brought the suit for specific performance and the defendant is resisting the suit.

13.2 In this backdrop of pleadings and evidence, proceeding on the assumption that time is not the essence of the contract, it is to be now examined as to whether the plaintiff is entitled to the equitable relief of specific performance.

13.3 Since the plaintiff raised certain above stated issues for not paying the balance sale consideration and obtaining the sale deed and as the defendant is contending that the said issues are raised as the plaintiff has no capacity to pay the balance of sale consideration and to get over the laches on the part of the plaintiff, it is necessary to examine as to whether the issues raised by the plaintiff that lead to the suit are true and *bona fide*.

13.4 Dealing with the first contention of the plaintiff that the defendant did not furnish title deeds in respect of the suit schedule property having promised

to furnish the same, it is to be noted that the specific defence of the defendant is this: - 'He furnished copies of the settlement deed, dated 24.01.1947, in favour of his father; unregistered Will in Tamil, dated 20.04.1978, left by the defendant's father and also the information about the pending suit filed by the defendant's tenant; the negotiations took place with the plaintiff, his father and some associate of the father of the plaintiff for nearly one or one and a half months before the suit contract of sale was executed; that no fact was suppressed and that every detail was conveyed personally and through broker who approached on behalf of the plaintiff and his father; that they made enquiries at the municipal office and registrar's office about the ownership and encumbrances on the property respectively; that the plaintiff and his father were fully satisfied about the title to the property; that after inspecting the suit property more than once, the plaintiff through his father and the broker expressed the desire to purchase the suit schedule property; that after bargaining the price was fixed at Rs.1,05,000/-; that about ten days later, that is on 11.05.1990, the plaintiff, his father, about five associates of the plaintiff and the scribe came to the house of the defendant with non judicial stamps and insisted upon the defendant to execute the suit contract of sale even though it was a Friday and an objection was raised by the mother of the defendant on that count; that the defendant was made to execute the suit contract of sale and the same was attested by the mother of the defendant at the instance of the father of the plaintiff.' The schedule of exhibit A3 also refers to settlement deed and Will. However, PW1 denied the suggestion that before execution of exhibit A3, he was given copies of settlement deed & Will and that on seeing the same exhibit A3 was prepared. As already noted, a suggestion that a broker

was involved in the matter, was put to PW1 in his cross examination and PW1 denied the said suggestion. Further DW2, the mother of the defendant, who also attested the suit contract of sale deposed that a broker was also involved and that he came thrice to their house for this purpose and no other purpose and that on the third occasion the suit agreement was written. The plaintiff, except making a self serving statement in his evidence, did not examine any other witness including his father, who according to the defendant, was present throughout, that is, from the stage of negotiations and till the time the disputes arose. In the light of the defence, the evidence on record in line with the defence and going by the normal conduct that no prudent purchaser would purchase a property without *prima facie* examining the title of the vendor, the contention of the plaintiff that the defendant did not provide copies of title deeds and that a promise was made to provide the same at the time of performance and the said promise was not fulfilled cannot be countenanced. The plaintiff being the vendee is supposed to enter into a contract of sale after satisfying himself with the title of the vendor by examining the necessary documents before the execution of the contract of sale. If the plaintiff entered into the contract of sale without fulfilling such requirement, he has to blame himself for the same and not the defendant. Therefore, on the ground of non furnishing of copies of title documents for satisfying with the title of the defendant, after the execution of contract of sale, the plaintiff cannot excuse himself from performing his part of the contract as the plaintiff has to blame himself for the laches on his part. In that view of this aspect of the matter, this Court finds that the contention of the plaintiff is not *bona fide* and

therefore, the plaintiff is not entitled to the relief of specific performance on this score.

13.5 Dealing next with the aspect that the defendant suppressed the fact that there is a dispute and a court litigation with the tenant in the occupation of the shop (angadi) in the plaint schedule property, it is to be noted that the recitals in exhibit A3 when harmoniously read suggest that the shop in the property is not vacant as on the date of exhibit A3 and that therefore the defendant agreed to assist the plaintiff in all the steps for eviction of the tenant from the suit property. Therefore, by the time of execution of exhibit A3, both parties are aware that the shop in the property is in the occupation of a tenant. Despite the said fact, the date, 20.10.1990, was mentioned as the date for payment of balance of sale consideration and by obtaining the sale deed indicates that the plaintiff agreed to obtain the sale deed by the date fixed in exhibit A3 and take steps to evict the tenant in occupation of the shop in the property. When there is a tenant in occupation in the shop in the property, the plaintiff, who is a business man ought to have visualised the consequences of purchasing such a property under a contract of sale that too by agreeing to perform his part of the contract within a stipulated time. Even before that date fixed for performance, the tenant by name Munirathnam Chetty in the occupation of the shop property issued a notice, dated 20.07.1990, to the defendant. The specific case of the defendant is that when the tenant issued the aforesaid notice, a befitting reply was sent and that the said reply notice was drafted in the presence of the plaintiff and his father and that a copy thereof was also marked and sent to the plaintiff. Further, it also the case of the defendant that the plaintiff took the issue of vacating the tenant from the suit property as a

challenge and wanted to teach a lesson to the tenant in the suit schedule property and that the contentions to the contra of the plaintiff are incorrect. However, the notice, dated 26.07.1990, issued by the tenant and also received by the plaintiff's father is not exhibited on the side of the plaintiff. In the notice, dated 16.10.1990, got issued to the defendant in respect of exhibit A3, the suit contract of sale, the plaintiff got averred that the defendant failed to provide copies of the title deeds inspite of repeated demands and further referred to the suit (with the suit number) between the defendant and his tenant, which was pending. Therefore, it is borne out by the record that even before the time fixed for performance, the plaintiff and his father are aware that the shop is in the occupation of the tenant and that the tenant has to be evicted from the property. The instant suit was filed in the month of April, 1991, seeking specific performance knowing fully well the above said facts. Admittedly, in July, 1990 the plaintiff's father received the notice from the tenant in the occupation of the shop. Therefore, long before the suit was instituted, the plaintiff was aware of the nature of the dispute with the tenant and yet in the plaint it is averred that the plaintiff recently came to know about the tenant in the suit building raising a dispute to vacate the premises. Even after coming to know of the tenant's possession of a shop in the suit schedule property, the plaintiff did not prefer to go back and rescind the contract, but, addressed letters to the defendant to resolve the dispute with the tenant and later filed the suit for specific performance. The above discussed chronology of events probablise the defence that the plaintiff took the issue of seeking eviction of the tenant from the property as a challenge and wanted to teach a lesson to the tenant. If the plaintiff wanted to proceed with the sale

transaction under exhibit A3 despite knowing about the dispute, the plaintiff ought to have obtained the sale deed and attornment of tenancy and ought to have later taken steps for eviction of the tenant in possession of the shop in the property. He did not do so and on the other hand, demanded the defendant to resolve the dispute with the tenant which is not one of the terms of exhibit A3. Therefore, the contention of the plaintiff that on the ground that the property was in the occupation of a tenant and that there is a litigation with the tenant, the plaintiff could not seek specific performance within time mentioned for performance or within a reasonable time thereafter is a contention which requires to be stated only for being rejected as untenable.

13.6 The other issue which was raised by the plaintiff is that on coming to know that the plaintiff is intending to purchase the suit building, the heirs of deceased neighbour of the property started raising a dispute with regard to the side wall and upstairs portion of the suit building. The very pleading reflects that it is vague and bereft of details as to who are the legal heirs of the neighbour and on what basis they raised such alleged dispute. From the pleaded version on this aspect, it is not clear as to whether the dispute was raised before the plaintiff entering into the suit contract of sale or thereafter as it is merely averred in the pleading that such a dispute was raised on coming to know that the plaintiff is intending to purchase the property. If it is to be assumed that the dispute was raised before the suit contract of sale, then it remains unexplained as to why the plaintiff went ahead and entered into suit contract of sale as one would expect a purchaser like the plaintiff to enter into a contract of sale only after the dispute, if any, is cleared. If it is to be assumed that the dispute was raised after the plaintiff entered into the suit contract of

sale, nothing prevented the plaintiff from mentioning in his pleading, the names of such heirs who raised the dispute and the date on which such dispute was raised. However, as noted, the pleading on this aspect is conveniently kept vague and ambiguous. No evidence worth the name was adduced by the plaintiff about any such dispute by any alleged heirs. Thus, the plaintiff failed to establish that there are any other rival claimants in respect of the upstairs portion of the suit schedule property. Hence, the contention that the plaintiff could not perform his part of the contract because of alleged claims made by the alleged heirs cannot be believed. Accordingly this Court finds that there is no truth in the said plea of the plaintiff and that the same was raised as a ruse to cover up the laches on the part of the plaintiff and explain away his unreadiness and unwillingness.

13.7 Be it noted that after examining the facts and the evidence, the trial Court found that the plaintiff who had no capacity to raise the balance sale consideration dishonestly raised the false defence and failed to establish the same. Having analysed the facts and evaluated the evidence carefully, this Court finds itself in agreement with the findings recorded by the trial Court on the issues settled and accordingly holds that the plaintiff is not ready and willing to perform his part of the contract at all relevant times and that the plaintiff having raised certain issues for not performing his part of the contract has failed to establish the said issues by adducing the necessary and required standard of evidence and has rendered himself disentitled to the equitable relief of specific performance. Accordingly, the point is answered against the plaintiff and in favour of the defendant.

14. Point No.2:

The issue is with regard to the entitlement of the plaintiff to the relief of refund of the advance amount of Rs.10,000/- that was paid under exhibit A3. The plaintiff paid the said amount as advance is undisputed. For the reasons afore-stated, this Court held under point no.1 supra that the plaintiff is not entitled to the equitable relief of specific performance. This Court proceeded on the assumption that time is not the essence of the contract for the reason that there is no mention in the agreement that the property was intended to be sold to meet the marriage expenses of the sister of the defendant and as the defendant in one of his notices gave a last chance to plaintiff to obtain a sale deed within the date specified in the notice despite the term in exhibit A3 fixing a specific date for specific performance. Though the defendant claimed that he is entitled to forfeit the advance amount, he voluntarily deposited the said advance amount into Court. Though the defendant also claimed in the notices exchanged that he is entitled to Rs.10,000/- as compensation, such a relief is not claimed by raising a counter claim. The plaintiff is only seeking refund of the said amount admittedly deposited into Court with accrued interest, if any, on it. The defendant in his evidence while seeking dismissal of the suit with costs finally stated in his chief examination that he deposited Rs.10,000/- into Court. The defendant did not depose that the plaintiff is not entitled to receive the same and that he is entitled to the refund of the same. The plaintiff claimed an alternative relief of refund of the advance amount. The trial Court having noted that the defendant *bona fide* deposited the advance amount into Court during pendency of the suit, however, commented upon the conduct of the plaintiff as

dishonest and did not give a direction in the decree and judgment for refund of the advance amount to the plaintiff, but, strangely observed that the discretion is left to the defendant and his honesty in the matter. The trial Court did not even direct the defendant to withdraw the amount deposited with interest thereon. On the above analysis of the matter, this Court is of the view that the suit can be partly decreed for the refund of advance amount and the plaintiff can be permitted to withdraw the advance amount voluntarily deposited by the defendant into Court with interest accrued, if any, thereon. The issue is accordingly answered in favour of the plaintiff.

15. POINT No.3:

As a sequel to the findings supra on point no.1 & 2, it is to be held that the contention of the appellant-plaintiff that the decree and judgment insofar as the refusal of the relief of specific performance are unsustainable under facts and in law is without merit and is liable for rejection. On careful evaluation of the oral and documentary evidence and after going through the judgment of the trial Court, this Court for the reasons assigned under point no.1 of this judgment finds itself in agreement with the findings recorded by the trial Court to the effect that the plaintiff is not entitled to the equitable relief of specific performance. Be that as it may, in view of the finding on point no.2 with regard to the refund of the advance amount, it must follow that the plaintiff is entitled to refund of the advance amount. Point is accordingly answered.

16. POINT No.6:

In the result, the appeal suit is allowed in part and while confirming the decree and judgment impugned insofar as the dismissal of the suit with regard to the relief of specific performance, the decree and judgment insofar as not directing the refund of the advance amount to the plaintiff are set aside and as a sequel, the suit is partly decreed without costs entitling the plaintiff to the relief of refund of the advance amount of Rs.10,000/-. Accordingly, the plaintiff is permitted to withdraw the said advance amount, deposited by the defendant into the trial Court, with interest accrued, if any, thereon after the time for further appeal is over. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

05.03.2018
Vjl

M. SEETHARAMA MURTI, J