

***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+A.S.Nos.498 and 521 of 2005

% 19-02-2018

V.Kalavathi, W/o late V.Ramakrishna,
Malkajgiri Mandal, Ranga Reddy District and
two others.

... Appellants/
Defendants

Vs.

T.r.Srinivasan, S/o late Sri Ramaswamy,
Retired Air Indian Executive and 4 otehrs.

... Respondents/
Plaintiffs

! Counsel for the appellants: Sri V.Hari Haran and
Sri Ch.A.B.Satyanarayana

Counsel for the Respondents: Sri P.S.Venkatesh,
Sri Sarang Afzalpurkar
N.Raghavan and G.P. for Appeals

< Gist:

> Head Note:

? Cases referred:

¹ 1969 (3) SCC 120

² 2004 (6) SCC 649

³ 2011 (12) SCC 18

⁴ MANU/KA/0489/1990

⁵ LAWS (MAD) 2012 3 29

⁶ 2017 (4) SCC 654

⁷ AIR 1998 Allahabad 195

⁸ 2015 (5) SCC 223

⁹ 2017 (12) Scale 696

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.Nos. 498 and 521 of 2005

J U D G M E N T:

These two appeals arise out of the decree and judgment dated 07.03.2005 in OS.No.319 of 1996 on the file of the I Additional Senior Civil Judge, Ranga Reddy District.

As these are first appeals, the parties are referred to as they are in the lower Court itself.

The brief facts of the case are as follows:

The defendants Nos.1 to 3 had approached the plaintiff and expressed their willingness to sell the plaint schedule property and the plaintiff agreed to purchase the same for consideration of Rs.4,25,000/- per acre. Pursuant to the same, the defendants 1 to 3 have executed an agreement of sale dated 21.07.1995. On the date of agreement of sale, the plaintiff had paid Rs.4,25,000/- to defendants 1 to 3 as a part of the sale consideration. On the date of agreement of sale, the defendants 1 to 3 have delivered the vacant and peaceful possession of the plaint schedule property to the plaintiff. Pursuant to the same, the plaintiff had constructed an out-house and also invested Rs.1,15,000/- for development. As per the agreement of sale, the time fixed for registration of sale deed was 90 days from the date of its execution. As per clause (3) of the agreement of sale, it was declared by the defendants that the plaint schedule property is free from all

encumbrances and any kind of litigation. The plaintiff, as a measure of abundant caution, had issued paper notice in the daily News Paper Eenadu dated 30.07.1995 calling for objections from the third parties. In response to paper notice, the plaintiff had received registered letters from V. Mallesh, V. Srinivas, V. Krishna, V. Venkata Swamy and V. Jagan, all are residents of Yapral Village, Ranga Reddy District informing the plaintiff that the suit for partition in respect of the plaint schedule property vide OS.No.212 of 1994 is pending on the file of the Principal Senior Civil Judge, Ranga Reddy District. The plaintiff then issued a legal notice to the defendants 1 to 3 through his counsel calling upon them to furnish the copies of papers pertaining to OS.No.212 of 1994 on the file of the Principal Senior Civil Judge, Ranga Reddy District. The defendants 1 to 3 having received the said notice, failed to reply, till a reminder notice was issued on 05.10.1995. The defendants 1 to 3 failed to procure necessary documents along with Income Tax Clearance Certificate, so as to enable the plaintiff to get the sale deed registered in their favour. As per clause (10) of the agreement of sale, the defendants 1 to 3 had to conduct joint survey of the land to ascertain the actual extent of land for payment of balance sale consideration. The defendants 1 to 3 failed to conduct the joint survey of the above said lands. The plaintiff had got the land surveyed on 20.10.1995 through M/s. Veeaar Architects and Engineers and it was revealed that the

defendants 1 to 3 are in actual physical possession of Acs.4.02 guntas of land, as against Acs.4.20 guntas mentioned in Pahanies. The sale consideration is thus proportionately reduced from Rs.19,12,500/- to Rs.17,21,250/-. The defendants, instead of procuring necessary documents for the purpose of registration, delayed the same. Despite several oral requests made by the plaintiff to the defendants to procure the documents for the purpose of registration, the defendants failed to do so and so the plaintiff got issued notice dated 18.05.1996 demanding registration of a sale deed. The plaintiff, as per the terms of agreement of sale, is ready with the balance sale consideration and in proof of the same, he filed a bankers certificate confirming the availability of Rs.20,00,000/- as short term fixed deposit in plaintiff's bank account. The defendants 1 to 3 failed to execute the sale deed and are avoiding the registration. Finding no other alternative remedy, the plaintiff was constrained to file the present suit.

The first defendant filed a written statement which was adopted by the defendants 2 and 3 and the brief averments of the written statement are as follows:

The suit filed by the plaintiff is neither maintainable in law nor on facts. The plaintiff has not come to Court with clean hands. The plaintiff has committed breach of contract since beginning. Therefore, he cannot enforce the agreement

of sale dated 21.07.1995. The agreement of sale dated 21.07.1995 is automatically cancelled due to the deeds of the plaintiff. In terms of clause (12) of the agreement of sale dated 21.07.1995, which reads that in the event of non-payment of balance sale consideration amount on or before 90 days being the date fixed for registration from the date of the agreement, the agreement stands cancelled automatically without notice. Thus by this clause, the agreement stood cancelled automatically by the 91st day as the plaintiff was never ready and willing to perform his part of contract. The defendants are ready to pay back the amount with deduction of 25% received towards penalty in terms of clause (12) of the agreement of sale. It is a fact that time fixed for registration of sale deed is 90 days from the date of its execution. The defendants categorically explained the existence of suit filed for partition in OS.No.212 of 1994 on the file of the Principal Senior Civil Judge, Ranga Reddy District. The plaintiff, on getting the clearance of the title, had gone ahead with the paper notice and expressed that he received a letter from V.Mallesha, Srinu and others. The defendants got issued reply notice through their advocate on 28.09.1995 refuting the allegations. In the said notice, the defendants have cautioned to register the agreement of sale according to the terms of agreement of sale in clause (12) of it. They have also stated that they are ready to honour the terms of agreement of sale. Therefore, the plaintiff is a person who committed breach of

contract and so he does not deserve any relief and the suit is liable to be dismissed. The plaintiff has no intention to perform his part of contract and got issued unwarranted notices. The suit is not valued properly and the Court fee paid is not sufficient. Finally, they prayed for dismissal of the suit.

The defendants 4 to 6 being proforma parties have not filed written statements.

On the basis of above pleadings, the following issues were framed:

- (1) whether the plaintiff is entitled for the relief of specific performance of the suit agreement of sale dated 21.07.1995 as prayed for?
- (2) whether the plaintiff is entitled for damages of Rs.4,25,000/- from D.1 to D.3 as prayed for?
- (3) whether the plaintiff is entitled for interest at the rate of 36% p.a. on the sum of Rs. 4,25,000/- paid under suit agreement as prayed for?
- (4) whether the court fee paid is correct?
- (5) to what relief?

During the pendency of suit, the sole plaintiff died and his wife came on record as his sole legal representative. She was examined as PW.1, Austin Paul Michel was examined as PW.2, Y.Balreddy as PW.3 and Y.Narasimha Reddy was examined as PW.4. They marked documents as Exs.A.1 to A.32. The contesting defendants 1 to 3 examined the second defendant as DW.1; Mr. Ajaymaru as DW.2; K.Hanumanth Rao as DW.3 and marked EXs.B.1 to B.3 documents.

After trial, the lower Court passed the judgment and decree dated 07.03.2005, which is now impugned in the present appeals. The lower Court partly decreed the suit directing the defendants to execute the sale deed in respect of Ac.1.00 of land only, which is delineated in blue colour in the plan appended to Ex.A.1. The rest of the claim was dismissed. The suit against defendants 4 to 6 was also dismissed. Against the said judgment and decree, the present appeals are filed.

AS.No.521 of 2005 is filed by the plaintiff, who is dissatisfied with the order and wants a decree for specific performance for the entire extent of land. AS.No.498 of 2005 is filed by the defendants 1, 2 and 3 in the suit, who are dissatisfied with the decree granted and want the entire suit to be rejected.

As both the appeals are from the same judgment, the matters were heard together with the consent of the learned counsels. The lead was taken in AS.No.521 of 2005 by Sri V.Hari Haran and Ch.A.B.Satyanarayana appearing for the appellant. The learned counsel for the respondent Sri P.S.Venkatesh and Sri N.Raghavan, Government Pleader for Appeals replied to the case.

Since this is a suit for specific performance, the first issue that was framed in the lower Court was taken up and argued by both the counsels. This Court also agreed with

this procedure as this is the critical and most important issue to be decided, namely, “whether the plaintiff is entitled to a relief of specific performance for the suit agreement of sale dated 21.07.1995.”

The facts leading to the suit are not really in dispute. After the agreement-Ex.A.1 was concluded, the plaintiff issued a public notice which lead to claims from third parties. According to the plaintiff, he was unaware of the claim of the third parties which relates to the suit OS.No.212 of 1994. According to the defendants, the plaintiff was fully aware of the said suit. Later, after an exchange of few notices and reply notices, the suit was filed for specific performance and other reliefs.

Since this is a suit for specific performance and as per the settled law on the subject, which was relied upon by both the learned counsels, the plaintiff will have to prove that he was ready and willing to get the sale deed executed while the defendants will also have to show that their conduct is blemishless for the suit to be dismissed. The mutual obligations assumed under the agreement of sale and their order of performance are also important and need to be examined.

In the opinion of this Court, the terms and conditions of the agreement of sale-(Ex.A.1) are of crucial importance in this case.

The total sale consideration agreed upon as is *ex facie* visible from page 3 of Ex.A.1 is Rs.19,12,500/- @ Rs.4,25,000/- per acre and the total extent is Acs.4.20 guntas. The advance paid which was acknowledged in Ex.A.1 is Rs.4,25,000/-.

The critical clauses bearing numbers 2,3,4,5,6,7,10,11,12,13 and 14 of the agreement of sale (Ex.A.1) dated 21.07.1995, which are necessary for adjudication of the case are reproduced here:

Clause (2) The balance sale consideration amount of Rs.14,87,500/- (Rs. Fourteen Lakhs eighty Seven thousand five hundred only) is payable on or before 90 days by the VENDEE to the VENDOR being the date and time fixed for registration of the sale deed.

Clause (3) The VENDOR hereby declare and covenants with the VENDEE that the sale of the scheduled property in favour of the VENDEE is free from all charges, mortgage, lien, agreement or agreements of sale, litigation or any kind of encumbrances of whatsoever nature and that the VENDOR undertakes to indemnify the VENDEE against any tenable rival claims.

Clause (4) As on this day of this deed the VENDOR has delivered the vacant and peaceful possession of the scheduled property to the VENDEE as is where is the condition for his absolute use and development.

Clause (5) The VENDOR shall sign all necessary applications and other papers reasonably required for obtaining necessary permission and clearance

that may be required for conveyance of the scheduled property.

Clause (6) The VENDOR shall obtain necessary documents from the competent authority required for the purpose of registration and as a mutually agreed shall handover the same to one Mr.P.B.Maru S/o B.Maru, Hindu, aged about 69 years, Occ:agriculturist, R/o S.No.154, of Yapral Village, Malkajgiri Mandal, R.R.District. s

Clause (7) If either of the parties violate the terms and conditions of the agreement of the sale either of the parties are at liberty to enforce specific performance of the contract in the court of law.

Clause (10) Though the possession of the schedule property has been delivered by the VENDOR to the VENDEE, where as the VENDOR undertakes to conduct a survey of the schedule mentioned land at his own cost on or before 18/8/95 in the presence of the VENDEE to ~~determine the~~ actual quantum of the land for the purpose of the payment of balance sale consideration.

Clause (11) In case the VENDOR fails to conduct a survey of the schedule mentioned land on or before 18/8/95, then the VENDOR agrees to accept the survey conducted by the VENDEE in annexure 1 as true and correct and shall accept the sale consideration accordingly.

Clause (12) In the event of the non payment of balance sale consideration amount on or before 90 days being the date fixed for registration from the date of this agreement, then the agreement stands cancelled automatically without notice. However, the VENDOR shall repay the sale consideration received as advance back to the VENDEE by deducting 25% of

the same towards penalty within one month thereafter.

Clause (13) In case the VENDOR fails to pay the advance amount received within one month to the VENDEE from the date of the termination of this agreement, then the VENDEE shall hold the proportionate portion of the scheduled land to the extent of the total advance consideration paid for which the VENDOR has agreed for the same which is delineated in the site plan marked in blue colour being acre 1.00 guntas.

Clause (14) That the VENDOR shall execute and register the sale deed or deeds either in favour of the purchaser, his nominee or nominees after receipt of the entire balance of the sale consideration as and when called upon to do so by the VENDEE on or before 90 days of this agreement

In this case, as there are allegations and counter allegations of breach being committed by the other party and as the agreement in the case is a document of critical importance, the terms of the agreement are being considered at the very outset since the evaluation of the actions of the parties *vis a vis* the terms of Ex.A.1 would have a bearing on the issue: whether there was a breach and if so, who committed a breach.

The date of agreement is 21.07.1995. The date fixed for the registration is 90 days from the date of the agreement i.e. 21.10.1995. Thus the registration had to be completed on or before 21.10.1995 as per Ex.A.1.

As per clause (2) also, the balance sale consideration is payable before 90 days by the Vendee to the Vendor being the date and time fixed for the registration. Therefore, the agreement makes it clear that the 90 days period is the period fixed or the upper limit fixed for the registration of the sale deed.

Clause (3) contains a declaration that the property is free from all encumbrances or litigations.

Clause (4) clearly states that the Vendor has delivered vacant possession of the property to the Vendee on as is where is condition for his absolute use.

Clauses 5 and 6 say that the Vendor shall sign all necessary applications and papers to secure the necessary statutory permissions. Clause (6) says that the Vendor shall obtain necessary documents from the competent authority required for the purpose of registration.

Clauses (10) and (11) talk of the survey to be conducted by the Vendor on or before 18.08.1995. It is mentioned that the survey will be conducted by the Vendor on or before 18.08.1995 or in the alternative, he will accept the survey conducted by the Vendee in Annexure-I as true and correct.

Clause (12) also makes it clear that in the event of non-payment of the balance sale consideration on or before 90 days, the agreement shall stand cancelled automatically, but

the Vendor shall repay the sale consideration after deducting 25%.

The learned senior counsel appearing for the plaintiff/appellant argued that a plain language interpretation is the first and foremost canon of interpretation of the documents. It is his contention that a plain language interpretation of this document leads to the following conclusions.

(a) that 90 days is fixed for the purpose of registration of the document. The words for the registration of the sale deed according to the learned senior counsel occurs in clauses (2), clause (5) (for conveyance), clause (6), clause (12) and clause (14) of Ex.A.1.

(b) It is the submission of the learned counsel that 90 days period that was fixed was the period for the registration of the sale deed itself. It is therefore, his contention that the conduct of both the parties should be examined to see in the facts and circumstances of the case as to who is in breach in this case and whether due to the conduct of the parties; the 90 days period could be adhered to or not.

The learned senior counsel drew the attention of this Court to Section 230A of the Income Tax Act, 1963 which clearly mandates that in case of a transaction of more than Rs.5,00,000/-, permission of the Income Tax Department is

necessary. He points out that in this case or in any other case, without the permission under Section 230A of the Income Tax Act, the sub-registrar would not have registered the sale deed. Therefore, it is the contention of the learned senior counsel that it was incumbent upon the defendants/Vendors to obtain the necessary permission from the competent authority for the purpose of registration and hand them over to a designated person P.B.Maru. It is the contention of the learned senior counsel that clauses (5) and (6) were specifically incorporated because both the parties were aware that unless the permission under Section 230A of the Income tax Act was obtained, registration would not be concluded. Permission will only be granted when the Vendors file the necessary application before the Income Tax authorities.

According to him, this was a pre-condition for the registration of the sale deed and that is the reason why clause (6) is so clearly worded as follows:- “Vendor shall obtain necessary documents from the competent authority for the purpose of registration” and hand them over to a designated person also. Similarly, he points out that in clause (5), it is mentioned that the Vendor shall sign all papers required for obtaining permissions and clearances for conveyance. Even in the written statement filed, it is admitted (para 9 page 7) that it is mandatory to obtain the income tax clearance.

As per him, it is admitted that this permission was not even applied for; let alone obtained. Learned counsel points out that DW.1 clearly admitted in his cross-examination on 04.10.2004 that the income tax permission was not obtained. As per him, both as per the Income Tax Act and the relevant clauses of Ex.A.1, the entire burden to obtain this mandatory permission lies on the Vendor/defendant only. It is the submission of the learned counsel for the appellant that his client can be called upon to pay the balance sale on or before 90 days, which is the date fixed for registration, if the Vendors were ready for registration. As per him, without the actual measurement of the land and without the Section 230A clearance, the property can never be ready for conveyance/registration. As per him that the survey was not done as required by 18.08.1995 and the plaintiffs opted for their survey on 20.10.1995, which is final. As far as the Income Tax Clearance is concerned, the learned counsel stresses the fact that no application was filed at all to obtain the same.

He relies upon sections 51 and 52 of the Indian Contract Act, which are as follows:

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. —

52. Order of performance of reciprocal promises.—Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

He argued that the sequence of obligations and their order of performance as per the very nature of the transaction are as follows:

- (1) measurement of the land by Vendor by 18.08.1995 (Clause 10).
- (2) In case of Vendors failure; survey by the purchasers (Clause 11).
- (3) With the price determined by the result of the survey; filing of application before the authorities to secure permission for conveyance of the land with draft sale deed or agreement of sale copy. (Clause 5).
- (4) Delivery of the said permission to Sri P.B.Maru (Clause 6)
- (5) Payment of balance sale consideration as determined by the survey and the registration on or before 90 days from 21.07.1995 i.e. by 21.10.1995.

This, according to the learned counsel, is the order in which the obligations were to be performed. Therefore, he contends that plaintiff was not in breach at all. He relies upon the following case law to prove that the sequence or

order of performance cannot be fixed but has to depend on the terms and conditions agreed upon.

Nathulal v. Phoolchand¹, P.D'Souza v. Shondrilo Naidu² and also Saradamani Kandappan v. S.rajalakshmi and others³.

He also relies upon **Shantha Bai PrabhuVs. Shahul Hameed⁴** and the case of **G. Janobai v. V.N. Devadoss⁵** to show that the burden of securing permission under Section 230A lies fully on the Vendor/defendants only.

In reply to this, the learned counsel for the respondents in this appeal agrees that (a) the plaintiff was never ready and willing to perform his part of the agreement. (b) that he was aware of the pendency of the suit OS.No.212 of 1994 and he used the pendency of the case as an excuse to avoid payment of the balance sale consideration. (c) that the plaintiff did not have the balance sale consideration ready. (d) that the agreement was automatically terminated after the expiry of 90 days (clause 12). (e) that the payment of the balance sale consideration was not contingent upon the Income Tax Clearance etc.

¹ 1969 (3) SCC 120

² 2004 (6) SCC 649

³ 2011 (12) SCC 18

⁴ MANU/KA/0489/1990

⁵ LAWS (MAD) 2012 3 29

In view of the submissions made and to decide Issue No.1, this Court will now discuss the points raised:

(1) OS.No.212 of 1994: This was a suit that was pending by the date of Ex.A.1 agreement. Soon after Ex.A.1 agreement; the plaintiffs issued Ex.A.4 public notice inviting objections. The plaintiffs received objections vide Exs.A.5; A.6 and A.7, wherein the pendency of suit OS.No.212 of 1994 was mentioned. The plaintiffs then sent Ex.A.5 notice (dated 09.08.1995) and a reminder dated 09.10.1995 (Ex.A.11) to which a reply dated 28.09.1995 (Ex.A.12) was issued by the defendants. This was back dated and posted as per the plaintiffs reply dated 21.10.1995 (Ex.A.13).

The case of the plaintiff/appellant is that he came to know about OS.No.212 of 1994 after Ex.A.1 agreement. The case of the defendants is that on the date of Ex.A.1 itself, they told the plaintiff of the pending litigation. PW.1 admits this fact while PWs.2 and 3 (attestors to Ex.A.1) and PW.4 (another attesting witness) deny that at the time of Ex.A.1, there was a discussion about OS.No.212 of 1994. In reply, DW.1 speaks about this in his chief-examination but agrees in his cross-examination as follows: "I do not know whether pendency of OS.No.212 of 1994 was mentioned in the agreement or not". He also agrees that OS.No.212 of 1994 was the only reason for the

dispute between the parties and that the suit was also dismissed on 27.09.2003.

On a review of this matter of OS.No.212 of 1994; this Court finds that:

(a) there is no explanation why clause (3) was so drafted stating that there are no litigations pending if OS.No.212 of 1994 was actually discussed.

(b) the admission of PW.1 is not very convincing and the fact that she was not present when Ex.A.1 was signed is clear.

(c) the defendants in their written statement stated that they have merely informed the plaintiff about the suit OS.No.212 of 1994, but DW.2 also stated that the copies of papers in OS.No.212 of 1994 were handed over. This is an improvement both over the pleading and the deposition of DW.1.

(d) the oral evidence is also contrary to the terms of a written contract and so the bar under Section 92 of the Evidence Act will apply as the evidence is being given to vary the terms of a written document. This is impermissible legally.

(e) calling upon the plaintiff to pay the balance consideration is not correct in view of the issue regarding

permission under Section 230A of the Income Tax Act, and the survey being not completed, irrespective of pendency of OS.No.212 of 1994.

2. READINESS: The case of the plaintiff is that he had the necessary resources to pay the balance sale consideration. He filed Ex.A.27 certificate along with the plaint. It is a certificate dated 20.06.1996 showing that Rs.20,00,000/- is in fixed deposit in the name of the deceased-plaintiff since 18.06.1995. Both the main witnesses spoke of the 'readiness' to take the sale deed. The lower Court however held that the plaintiff was not ready with the consideration since two other sale deeds were obtained on 18.09.1996 and so there was no cash with the plaintiff. The lower Court failed to notice that Exs.B.2 and B.3 are not in the name of the plaintiff, but are in the name of the plaintiff's son and a firm. No evidence is available to show that the funds under Ex.A.27 were actually used for Exs.B.2 and B.3. It is also clear that certified copies of Exs.B.2 and B.3 were obtained in July, 2004 and after that the plaintiff's witnesses were examined. No question was put about Exs.B.2 and B.3 nor were they confronted with these documents. Therefore, this Court is of the opinion that the finding of the lower Court on the issue of readiness (availability of funds) is wrong. There is no evidence to show that Ex.A.27 funds were actually used up for acquiring

Exs.B.2 and Ex.B3 property. Hence, the finding of the lower Court is wrong in this matter.

3. WILLINGNESS: This is the intention and the conduct of the plaintiff to take the registered sale deed. The actions of the plaintiff are to be analysed. The agreement was concluded on 21.07.1995. The publication (Ex.A.4) was made on 30.07.1995. The first notice was given on 09.08.1995 (Ex.A.8) followed by Ex.A.11 dated 05.10.1995 and Ex.A.13 dated 21.10.1995. The survey of the land was conducted on 20.10.1995 (Ex.A.17). The certificate (Ex.A.27) shows that Rs.20,00,000/- were available from 18.06.1995 to 20.06.1996 (date of certificate). The suit was filed on 26.06.1996 for specific performance. Therefore, this Court holds that the plaintiff's intention/"willingness" cannot really be doubted. **A. Kanthamani v. Nasreen Ahmed's**⁶ case relied on by the appellant is relevant here.

In contradiction to this, the essential prerequisite for registration of the sale deed was the statutory clearance as per Clauses (5) and (6). This was never ever applied for or obtained by the defendants. The survey, which was to be conducted by 18.08.1995, was not conducted and the plaintiff got the survey done on 20.10.1995. Therefore, when the conduct of the plaintiff, *vis a vis*, the defendants is examined, this Court finds that the conduct of the plaintiff is

⁶ 2017 (4) SCC 654

blameless in the circumstances and the conduct of the defendants is blameworthy. The clauses and the clear language of Ex.A.1 make it clear that registration of the sale deed within 90 days is the crux of the matter. The plaintiff could not be called upon to be ready for registration unless the clearance under Section 230A of the Income Tax Act was obtained and the survey was done. This Court is of the opinion that the sequence of performance of obligations is determined by the agreement which emphasizes the registration of the sale deed as the end result to be completed in 90 days. Asking the plaintiff to pay the balance sale consideration when the end objective registration within 90 days cannot be achieved is an exercise in futility only. The counsel for appellant rightly relies upon ***Bishambhar Nath Agarwal v. Kishan Chand and Others***⁷ for this proposition and ***Saradamani's*** case (3 *supra*) (paragraphs 48 to 50).

4. AUTOMATIC TERMINATION AFTER 90 DAYS: The contention of the learned counsel for the defendants is that after 90 days, the contract is automatically terminated. (Clause 12). This Court is of the opinion that the same is not correct. This clause is to be read with all the other clauses in the agreement and cannot be read in isolation. This Court holds that termination for failure to pay the balance consideration will only arise when all the reciprocal obligations are fulfilled and still the plaintiff fails to pay the

⁷ AIR 1998 Allahabad 195

consideration. Clause 4, which says that property was given for the absolute use of the Vendee also militates against this theory of automatic termination. In addition, the defendants did not also refund the advance paid after deducting 25%.

The learned counsel for respondents/defendants relied upon the following case law ***Ratinavathi and another v. Kavita Ganashamdas***⁸, ***Dharmabiri Rana v. Pramod Kumar Sharma (D) thr. L.Rs and others***⁹ and ***Saradamani's*** case (3 supra) to argue that the plaintiff committed breach and is not entitled to a decree of specific performance. This Court finds that the terms of the contract in ***Saradamani's*** case (3 supra) case are different. Clauses 4 and 6 are totally different from the present case. The repeated use of the words 'for registration of the sale deed' make it clear that this was the end objective in this case plus there was a pre-condition for registration namely Section 230A in this case.

Basing on ***Ratinavathi 's*** case (7 supra) – the learned counsel argued that time is the essence of the contract as per para 36 of this judgment. He also argued that on the failure of the contract, parties must be relegated to their original position (para 59). He therefore, submits that the decree for Ac.1.00 granted by the lower Court should be set aside and that parties should be relegated to the pre-Ex.A.1 position.

⁸ 2015 (5) SCC 223

⁹ 2017 (12) Scale 696

The learned counsel for appellant argues that a reading of the present terms make it clear that time was not the essence and that there were mutual obligation which had to be fulfilled. If these were fulfilled, he argues that then the 'time clause' can be looked into. He relies on **Saradamani's** case (3 supra) case to argue that unlike in the present case, there were no mutually dependant obligations for the payment of the balance sale consideration. He in fact states that defendants did not disclose the encumbrance on litigation on the property. The last case i.e. **Dharmabiri Rana's** case (8 supra) does not apply to the facts of the present case, which has its own distinct terms and obligation.

On a review of all the case law and the facts, this Court finds that in view of the ~~express~~ clauses in Ex.A.1, the defendant committed a breach by not obtaining the Section 230A permission, which would have facilitated the registration. This obligation is independent of the Vendees obligations. To get the sale deed ready for registration, this permission along with the survey should have been completed. Thus, this Court holds that registration of the sale deed within 90 days was just not possible in this case due to the defendants alone.

As per Section 51 of the Indian Contract Act, the plaintiff was not bound to perform his part; as the defendants failed to perform their part of the obligation.

Hence, this Court holds that the plaintiff is not in breach and is entitled to specific performance of the contract of sale as his conduct *vis a vis* the agreed clause of Ex.A.1 is in line with the settled case law on the subject. Issue No.1 is decided in favour of the plaintiff and against the defendants.

The counsel for plaintiff also pointed out that the lower Court granted a decree of specific performance for Ac.1.00 guntas only based on a wrong interpretation of clause (13). This Court finds force in the submission. Clause (13) says that the Vendee shall HOLD the proportionate portion of land of Acs.1.00 guntas, if the Vendor does not refund the advance paid less than 25%. The lower Court wrongly granted a decree for specific performance for Ac.1.00 guntas. This clause is a clause for providing security in the form of land up to Ac.1.00 guntas in case of the Vendor's failure to refund the advance. This 'finding' is therefore reversed.

In conclusion, it is held that the plaintiff is entitled to a decree for specific performance for the entire 4 acres 1.82 guntas as per Ex.A.17 survey plan. The balance sale consideration shall be deposited within four (4) weeks from this date. If the defendants do not execute a sale deed within two (2) weeks of the said deposit; the plaintiff is at liberty to approach the lower Court for execution of the sale deed. After the execution of the sale deed; the defendants are at liberty to withdraw the amount. In view of these findings, the

alternative reliefs covered by Issue Nos.2 and 3 for refund of advance with interest do not survive for consideration. As far as Issue No.4 is concerned, it is on the issue of payment of Court fee. As the sale consideration is reduced based on the survey of the land; the Court concurs with the finding of the lower Court on the issue of Court fee. (Issue 4).

Thus, in conclusion, AS.No.521 of 2005 is allowed and AS.No.498 of 2005 is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 19.02.2018
KLP

Note: L.R.copy marked.

D.V.S.S. SOMAYAJULU, J

