

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.634 of 2019
and
C.M.P.No.19116 of 2019

G.Manoharan

..Appellant/Defendant

Vs.

R.Edwin Solomon

..Respondent/Plaintiff

Appeal under Section 96 read with Order 41-A & Rule 1 of Code of Civil Procedure, to set-aside the Judgment and Decree in O.S.No.128/2015 dated 15.03.2019 passed by the Learned District Judge, District Court No.II, Kanchipuram, and thereby dismiss the suit in O.S.No.128/2015 with exemplary costs.

For Appellant : Mr.V.Raghavachari for
Mr.T.Sundaravadanam

For Respondent: Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.V.G.Sureshkumar.

JUDGMENT

The judgment and decree dated 15.03.2019 passed by the learned District Judge, District Court No.II, Kancheepuram in O.S.No.128 of 2015 is under challenge in the present appeal suit.

2. The appellant in the appeal suit is the defendant in the suit and the respondent in the appeal suit is the plaintiff in the suit.

3. For the sake of convenience, the ranking of the parties in the appeal suit would be referred to as per their ranks before the Trial Court.

4. The defendant in the suit is the appellant in the appeal suit. The respondent plaintiff instituted the suit for Specific Performance of the contract, directing the defendants to execute and register the sale deed with regard to the suit property in favour of the plaintiff as per suit sale agreement

dated 23.07.2010 after receiving the balance sale consideration of Rs.8,57,900/- and a relief of permanent injunction is also sought for.

5. The facts in nutshell as narrated in the plaint are as under:

The plaint schedule mentioned property belongs to the defendant. The defendant has entered into a sale agreement with the plaintiff with regard to the schedule mentioned property on 14.10.2005 by fixing the value per cent as Rs.21,000/- with a total sale consideration of Rs.24,99,000/-. The plaintiff paid Rs.50,000/- as advance. The original settlement deed in the name of the defendant is deposited by the defendant in securing a loan with State Bank of India. He assured that he will undertake to give the original document of title after discharging the said bank loan by handing over certain other document of title to the plaintiff on the date of agreement. The period fixed for execution of sale agreement is 60 days, the time is only a tentative arrangement. The time is not the essence of contract. The plaintiff paid a sum of Rs.50,000/- on 14.10.2005, Rs.1,00,000/- on 15.10.2005, Rs.50,000/- on 16.10.2005, Rs.50,000/- on 04.12.2006, Rs.50,000/- on 05.12.2006, Rs.2 lakh on 25.05.2007, Rs.2 lakhs on 04.07.2007, Rs.1 lakh on 01.09.2007, Rs.1 lakh on 06.10.2007, Rs.50,000/- on 28.12.2007, Rs.50,000/- on 12.01.2008. Rs.1 lakh on 12.04.2008, Rs.1 lakh on 14.04.2008, Rs.1,01,000/- on 24.02.2008, Rs.1,50,000/- on 09.06.2008 totalling Rs.14,51,000/-. After paying the above said sum, he insisted to give the document of title i.e., the settlement deed executed by G.Govindaraj in favour of the defendant on 22.08.2003. At the time of entering into agreement, the defendant handed over only the Xerox copy of settlement deed. Endorsement were made for payments on the back side of the sale agreement. Some endorsements has signed on in English and some other documents, the defendant has signed in Tamil. In view of the large amount paid to the defendant, to safeguard the plaintiffs money, the defendant advised the plaintiff to take a sale deed regarding the 3rd item stated in the agreement of sale dated 14.10.2005. The defendant has voluntarily with full consent executed a sale deed with regard to 3rd item of the schedule in favour of plaintiff and his wife E.Sujee on 09.06.2008 under Doc.No.4842/2008 by mentioning the sale consideration of Rs.11,55,000/- in view of already the defendant is having the plaintiffs money to the tune of Rs.14,51,000/-. Hence, so far the 3rd item is concerned, the entire sale consideration is paid o the defendant. The plaintiff verified the actual extent available to the 3rd item as per FMB sketch, the extent is more for which the defendant has stated to the plaintiff by which the entire property covered by the boundaries therein with the said survey number is sold to the plaintiff by which only the said

sale deed dated 09.06.2008 is taken from the defendant by plaintiff and his wife Sujee. After execution of the sale deed, the defendant received Rs.3 lakhs on 25.06.2008 and Rs.50,000/- on 26.06.2008, Rs. 1 lakh on 26.08.2008, Rs.50,000/- on 22.06.2009, Rs.1,00,000/- on 29.06.2009. In the above said payments, the defendant has not signed on the agreement of sale by way of endorsement. He is postponing to execute and register a regular sale deed with due registration for 1 and 2 items to the plaint schedule. In total, a sum of Rs.8,96,000/- is paid by the plaintiff to the defendant. As per the agreement of sale total sale consideration Rs.24,99,000/- but after deducting the total payment of Rs.20,51,000/-, the plaintiff has to pay Rs.4,48,000/- along for item 1 and 2 of the plaint schedule. The defendant is keeping the plaintiffs money to the tune of Rs.4,48,000/- in excess. The balance of sale consideration is payable to the defendant under the agreement is Rs.4,48,000/-. The plaintiff is ready and willing to perform his part of contract in taking a regular sale deed to the Item 1 & 2 of the plaint schedule alone, but the defendant is postponing the same without any justifiable cause. On 25.09.2015, he came to know that he received an advance from third parties for the item 1 and 2 of the plaint schedule. The factum of execution of the registered sale deed in favour of the plaintiff on 09.06.2008 would go to show that time is not the essence of the contract. From the date of knowledge on 25.09.2015, the plaintiff has every right to enforce the sale agreement for the 1 & 2 item of plaint schedule. On 07.10.2015, he issued notice to the defendant giving two weeks time to execute and register the sale deed in favour of plaintiff and handing over the registered settlement deed dated 22.08.2003. But, the defendant refused to receive the same on 17.10.2015. He is always ready and willing to perform his part of contract after paying the balance of sale consideration. The suit is not barred by limitation in view of the defendant executed by the sale deed on 09.06.2006 by keeping the excess payment with him and the suit is also filed within 3 years from the date of notice. Hence, the suit is not barred by limitation. Hence, the suit for specific performance of contract.

6. The appellant/defendant disputed the contentions as well as the allegations set out in the plaint and denied the same in toto and filed his written statement in brief as under:

It is admitted that the suit property belongs to the defendant. The defendant executed an unregistered sale agreement on 14.10.2005 by fixing the value per cent at Rs.21,000/- with total consideration of Rs.24,99,000/-. The property situated at Koothanur Village, Sriperumbudur Taluk. The total extent is Acre 1.19 cent. The defendant received Rs.50,000/- on the date of sale agreement and after that on various dates, the plaintiff paid sale consideration. Final

payment was made on 22.04.2008. In total, the plaintiff paid Rs.13,01,000/- only. The time limit for specific performance was fixed as 60 days. But, the plaintiff has not willing to complete the sale transaction. In the month of May 2008, the plaintiff expressed his inability to purchase the entire properties and after mediation, the plaintiff agreed to purchase the 3rd item in the sale agreement and adjust the remaining advance amount paid by the plaintiff as compensation for non performance of remaining part of sale agreement. Accordingly, the defendant executed a sale deed in respect of 3rd item on 09.06.2008 in Doc.No.4842/2008. Accordingly, the suit sale agreement came to an end. But after 8 years, the plaintiff filed this vexatious suit. Hence, the suit is liable to be dismissed. The plaintiff obtained the signature of the defendant in the sale agreement and also some of the part payments. The plaintiff has created some endorsement without the signature of the plaintiff. The defendant received sale consideration only for 3rd item in the sale agreement. He has not received any money for item Nos.1 & 2 i.e, for suit property. The defendant is keeping the land for his own use and not making any attempt to dispose the suit property to third parties. There is no cause of action for the suit. The suit is barred by limitation. Hence, the suit is liable to be dismissed.

7. The trial Court framed the issues as to whether the plaintiff is entitled to decree for specific performance as prayed for; whether the plaintiff is entitled to permanent injunction as prayed for and to what relief the parties are entitled.

8. An additional issue was framed by the trial Court whether the suit is barred by Limitation or not?

9. On the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.28 were marked. On the side of the defendant, D.W.1 was examined and Ex.B1 marked. The Commissioner report and plan were marked as C1 and C2 by consent.

10. With reference to Issue No.1 as well as the additional issue regarding the limitation, the trial Court considered the documents as well as the evidences produced by the respective parties and arrived a conclusion that the suit is not barred by limitation and the time is not essence of contract. The trial Court concluded that Ex.A1 suit sale agreement is in force and therefore, the plaintiff is entitled for the decree for Specific Performance. The trial Court proceeded on the footing that after executing the suit sale agreement Ex.A1, the defendant had received further advance amount on many occasions and those acknowledgements are made in

the back side of the suit sale agreement.

11. Relying on the last payment of advance, which was made on 22.04.2008, the trial Court considered the limitation point. The trial Court found that the parties initially had agreed to execute the sale within a period of 60 days from the date of suit sale agreement Ex.A1. Though the agreed time limit expired long back, from the date of suit sale agreement, i.e., on 14.10.2005, considered the subsequent advances received by the defendant on various dates and the final advance amount paid on 22.04.2008.

12. It is an admitted fact that the suit sale agreement was executed on 14.10.2005 and further, it is admitted that the time limit fixed for completion of sale is 60 days. The trial Court arrived a conclusion that the time is not the essence of contract, in view of the fact that even after the expiry of 60 days, the plaintiff was going on paying further advances in piecemeal and the said advance amounts had been received by the defendant and entries were made in the backside of the suit sale agreement.

13. Ex.A2 document is the certified copy of the sale deed executed by the defendant in favour of the plaintiff and his wife. In this regard, it is contended by the appellant/defendant that in respect of all the suit schedule properties, the suit sale agreement was entered into. However, the defendant, considering the fact that he was receiving further advances on various occasions, had negotiated with the appellant plaintiff and executed the sale deed in favour of the plaintiff and his wife on 09.06.2008 in Ex.A2 with reference to the portion of the suit schedule property.

14. The learned counsel appearing on behalf of the appellant/defendant contended that the suit is clearly barred by limitation. To substantiate the said ground, the learned counsel for the appellant urged this Court by stating that the unregistered Sale Agreement was entered between the appellant and the respondent on 14.10.2005. The said Sale Agreement reveals that Rs.21,000/- per cent was fixed as sale consideration and the total sale consideration agreed was Rs.24,99,000/-. Further advances were paid to the appellant by the respondent on several occasions and those entries were also available in the backside of the agreement. However, after 22.04.2008, the amounts paid by the respondent had not been acknowledged by the appellant. There is no signature of the

appellant in the subsequent payment allegedly made by the respondent on 09.06.2008 onwards. Thus, the subsequent payments allegedly made by the respondent is false and the said payments were not acknowledged by the appellant as there is no signature of the appellant is found.

15. Taking note of the fact that the last payment of advance was on 22.04.2008, which was acknowledged by the appellant, the suit was instituted by the respondent on 19.12.2015, after a lapse of about 7 years from the last payment of advance and 10 years from the date of agreement. The notice itself was issued by the respondent after a lapse of about 7 years. Therefore, the suit is clearly barred by limitation.

16. The learned counsel for the appellant solicited the attention of this Court regarding the cause of action set out in the plaint. In paragraph-10 of the plaint, it is stated that the suit is not barred by limitation in view of the defendant executed by the Sale Deed on 09.06.2008 by keeping the plaintiff's excess payment with him and also the suit is filed within three years from the date of notice on 07.10.2015.

17. Relying on the paragraphs-10 and 11 of the plaint, the learned counsel for the appellant reiterated that the date of notice is taken as a cause of action, which is unknown to law. The date of notice issued cannot be the cause of action for institution of a suit and therefore, the suit filed after a lapse of about 7 years from the last payment of advance, even as per the agreement, is barred by limitation. Thus, the suit is to be dismissed on the ground of limitation.

18. The learned counsel for the appellant made a submission that the appellant had acknowledged the advance amount of Rs.13,01,000/- from and out of the total sale consideration of Rs.24,99,000/-. Even regarding the said advance amount of Rs.13,01,000/-, it was compromised between the parties and the appellant had executed the Sale Agreement with regard to Item No.3 of the suit Sale Agreement dated 14.10.2005. The appellant executed a Sale Deed in favour of the respondent and his wife in respect of the third item of the Sale Agreement on 09.06.2008, which is admitted by the respondent. In lieu of the said advance amount of Rs.13,01,000/-, which was received by the appellant, the suit Sale Agreement was executed in favour of the defendant on 09.06.2008.

19. On execution of the suit Sale Deed in respect of one item of the Sale Agreement measuring 55 cents, the entire transaction between the appellant and the respondent came to an end in the year 2008 itself. After a lapse of about 7 years from the date of execution of the Sale Deed in favour of the respondent on 09.06.2008, in lieu of the advance amount of Rs.13,01,000/-, which was received by the appellant, the respondent falsely instituted the suit for specific performance based on the Sale Agreement, which was not enforced. The Sale Agreement dated 14.10.2005 came to an end on execution of the Sale Deed executed by the appellant in favour of the respondent on 09.06.2008 in lieu of the advance amount paid by the respondent to the appellant, i.e., Rs.13,01,000/-.

20. The learned counsel for the appellant further reiterated that the Trial Court also noted down all these factors. Further, the Trial Court has found that the admitted advance amount by the appellant is Rs.1,01,000/-. The details of the endorsements available in the suit Sale Agreement Ex.A-1 was extracted in the judgment and further the fact regarding execution of the sale was admitted by the respondent. Though all these facts were dealt with by the Trial Court elaborately, the Trial Court has erroneously arrived a conclusion that the respondent/plaintiff is entitled for the relief of specific performance. The Trial Court cannot supplant the reasons which are not pleaded or established by the parties. In this case, the Trial Court has committed an error in going beyond the scope of the terms of the suit Sale Agreement and granted the relief of specific performance and therefore, the judgment and decree of the Trial Court is liable to be set aside.

21. The learned Senior Counsel appearing on behalf of the respondent opposed the contentions raised on behalf of the appellant by stating that the suit Sale Agreement Ex.A-1 document is admitted by the appellant. The learned Senior Counsel has stated that admittedly, certain advance amounts paid by the respondent to the appellant had not been acknowledged by the appellant in the suit Sale Agreement Ex.A-1. Further, the learned Senior Counsel said that the Sale Deed dated 09.06.2008 is also admitted by the respondent.

22. However, it is contended that the time is not the essence of contract in this case as the 60 days fixed has not been complied with by the appellant and therefore, the appellant cannot blame the respondent for the delay in execution of the Sale Deed. It is not the respondent, who is responsible for such a delay. The respondent was always read and willing to perform

his part of the contract. Once the appellant received the further advance amount, then the time limit of 60 days fixed in the suit Sale Agreement lapsed on mutual consent and therefore, the time is not the essence of contract in respect of the presence case on hand. When time being not the essence of contract and the advance amount is admitted, then there is a delay on the part of the appellant in performing his part of the contract by submitting original documents and clearing the encumbrances, then the Trial Court is right in granting the relief of specific performance.

23. The learned Senior Counsel appearing on behalf of the respondent reiterated that in the suit Sale Agreement, the appellant agreed the patta, chitta and adangal (revenue documents) will be transferred in the name of the appellant and further the appellant agreed that the entire land will be measured by the Government Surveyor and further he will clear the loan dues in the bank and made an assurance that he will keep all the original documents intact and clear the encumbrances before the expiry of 60 days as fixed in the agreement.

24. The learned Senior Counsel reiterated that even after the lapse of 60 days after receiving further advances on various dates, the appellant has not fulfilled his obligations to clear all these documents as agreed and therefore, the appellant is not entitled for any relief and the Trial Court has rightly granted the relief of specific performance. When the appellant had not performed his part of the contract, then the respondent is entitled for the relief of specific performance.

25. The learned Senior Counsel solicited the attention of this Court with reference to the contentions raised by the plaintiff by stating that the appellant/defendant had handed over the xerox copy of the Settlement Deed and requested time by stating that the original documents are with the State Bank of India and therefore, the plaintiff has to wait for sometime. The learned Senior Counsel said that the limitation is to be calculated from the date of notice dated 07.10.2015 and therefore the suit is also not barred by limitation.

26. Considering the arguments as advanced by the learned counsel for the appellant as well as the learned Senior Counsel appearing on behalf of the respondent, this Court is of the considered opinion that regarding limitation, the facts are

relevant. It is an admitted that that the unregistered Sale Agreement was entered into between the appellant and the respondent on 14.10.2005. Further, it is admitted that the appellant acknowledged the advances paid by the respondent on various dates till 22.04.2008. The subsequent alleged advances are not endorsed by the appellant and verification of the original documents reveal that the signature of the appellant in the subsequent payments are not available. In the absence of the signature of the appellant in respect of further advances paid by the respondent, this Court is of an opinion that the said advance amounts cannot be taken into consideration in favour of the respondent. Thus, the last advance amount endorsed by the appellant was on 22.04.2008 and thereafter admittedly the appellant executed a Sale Deed with reference to Item No.3 of the agreement mentioned property on 09.06.2008 and thereafter, there was no transaction between the appellant and the respondent.

27. The entire facts would reveal that the transaction between the appellant and the respondent ended on 09.06.2008 when the Sale Deed was executed by the appellant in favour of the respondent in respect of one item of the property mentioned in the Sale Agreement dated 14.10.2005 measuring 55 cents. Thus, there is every reason to believe that towards the advance amount of Rs.13,01,000/-, the appellant had consented to execute a Sale Deed and accordingly executed the Sale Deed on 09.06.2008 with reference to one item of the property mentioned in the suit Sale Agreement dated 14.10.2005 measuring 55 cents. The facts established between the parties are clear that there is no transaction between the appellant and the respondent after 09.06.2008 and admittedly, the suit was instituted by the respondent/plaintiff on 19.12.2015, after a lapse of 7 years.

28. The cause of action set out in the plaint also reveals the said fact that the suit was instituted based on the notice issued to the appellant by the respondent on 07.10.2015. The issuance of notice would not be a point for cause of action. Thus, the very cause of action set out in the plaint itself is in violation of the Law of Limitation. The Trial Court has erroneously arrived a conclusion that the suit is not barred by limitation. In fact, the last transaction is the Sale Deed executed by the appellant in favour of the respondent on 09.06.2008 and the suit being instituted on 19.12.2015. The suit is clearly barred by limitation and therefore, the suit is liable to be dismissed on the ground of limitation.

29. As far as the other grounds raised by the parties to the lis are concerned, this Court is of the considered opinion that the Trial Court referred Ex.A-1 Sale Agreement and

the agreement mentioned property are originally belonged to the defendant's father Mr.Govindaraj Naicker. Exs.A-7, A-8 and A-9 are the title deeds stand in the name of Mr.Govindaraj Naicker. The said Govindaraj Naicker executed a Settlement Deed in favour of the appellant/defendant by settling all the properties set out in the suit Sale Agreement and the certified copy of the Settlement Deed is marked as Ex.A-6. Thus the appellant/defendant is the owner of the property in Item Nos.1 to 3 in the suit Sale Agreement. Ex.A-1 is the unregistered Sale Agreement entered into between the plaintiff and the defendant on 14.10.2005 in respect of following three items:

- | | | |
|----------------|---|-----------|
| 1. S.No.65/1B5 | - | 0.32 cent |
| 2. S.No.65/1B3 | - | 0.32 cent |
| 3. S.No.65/1B4 | - | 0.55 cent |

Total 1.19 Acre
=====

30. Admittedly, the sale consideration was fixed at Rs.21,000/- per cent and the total sale consideration was Rs.24,99,000/-. The appellant/defendant admitted the receipt of advance amount of Rs.13,01,000/- till 22.04.2008. The further advances said to have been paid by the respondent/plaintiff had not been admitted by the appellant/defendant and on verification of the original agreement dated 14.10.2005 Ex.A-1, the signature of the appellant/defendant is not available and therefore, this Court is able to arrive a conclusion that the said payments of advances are not endorsed by the appellant/defendant. With reference to the time limit of 60 days fixed in the suit Sale Agreement, this Court is of the considered opinion that time is not the essence of contract as far as the present case is concerned. In view of the fact that after the expiry of 60 days, the appellant/defendant also received further advances from the respondent/plaintiff till 22.04.2008 and therefore, the time is not the essence of contract.

31. The next is the question of readiness and willingness arise. As far as the readiness and willingness is concerned, unregistered Sale Agreement was signed between the parties on 14.10.2005. The respondent/plaintiff has made several payments as advance and those payments were endorsed in Ex.A-1 as follows:-

S.No.	Date	Amount	Signature of defendant
1	14.10.2005	Rs.50,000/-	Available
2.	15.10.2005	Rs.1,00,000/-	Available
3.	16.12.2005	Rs.50,000/-	Available
4.	04.12.2006	Rs.50,000/-	Available
5.	05.12.2006	Rs.50,000/-	Available
6.	25.05.2007	Rs.2,00,000/-	Available
7.	04.07.2007	Rs.2,00,000/-	Available
8.	01.09.2007	Rs.1,00,000/-	Available
9.	06.10.2007	Rs.1,00,000/-	Available
10.	28.12.2007	Rs.50,000/-	Available
11.	12.01.2008	Rs.50,000/-	Available
12.	12.04.2008	Rs.1,00,000/-	Available
13.	14.04.2008	Rs.1,00,000/-	Available
14.	22.04.2008	Rs.1,01,000/-	Available
15.	09.06.2008	Rs.1,50,000/-	Not available
16.	25.06.2008	Rs.3,00,000/-	Not available
17.	26.06.2008	Rs.50,000/-	Not available
18.	26.08.2008	Rs.1,00,000/-	Not available
19.	22.06.2009	Rs.50,000/-	Not available
20.	29.06.2009	Rs.1,00,000/-	Not available
	Total	Rs.20,51,000/-	

32. In view of the fact that the signature of the appellant/ defendant is available in respect of the advance amount paid till 22.04.2008. Further payment of advances paid thereafter cannot be taken into consideration as the said payments are not acknowledged by the appellant/defendant and no signatures are found. Thus, for all purposes, the advance amount of Rs.1,01,000/- paid on 22.04.2008 is to be considered as the last payment of advance.

33. Perusal of the details regarding the advance payment made by the respondent/plaintiff, interestingly till 14.04.2008 an amount of Rs.50,000/-, Rs.1,00,000/- and Rs.2,00,000/- are paid. However, the last payment on 22.04.2008 paid was Rs.1,01,000/-. Considering the nature of payment of Rs.1,01,000/- on 22.04.2008, the version of the

appellant/defendant is to be believed. The appellant/ defendant has stated that as on 22.04.2008, the respondent/plaintiff had paid an advance of Rs.13,01,000/- and in lieu of the said advance amount, he agreed to sell one item of the property in favour of the appellant/defendant and executed a Sale Deed on 09.06.2008 in favour of the respondent/plaintiff in respect of third item of the property mentioned in the Sale Agreement measuring 55 cents. Therefore, the version of the appellant/defendant in this regard is to be accepted.

34. The Trial Court though recorded all these facts with reference to the documents marked, arrived at a conclusion that the plaintiff is entitled for the relief of specific performance.

35. With reference to the readiness and willingness, the fact remains that the suit Sale Agreement, which is unregistered dated 14.10.2005 and the last payment of advance by the respondent/ plaintiff was on 22.04.2008 and thereafter, the appellant/defendant had executed the Sale Deed in favour of the respondent/plaintiff on 09.06.2008 in respect of one item of the property mentioned in the suit Sale Agreement dated 14.10.2005. Therefore, the entire transaction between the appellant and the respondent came to an end and thereafter, there was no transaction at all.

36. After a lapse of about 7 years, the respondent/plaintiff issued legal notice on 07.10.2015 and instituted the suit for specific performance on 19.12.2015. The very fact reveals that the respondent/plaintiff was not ready and willing and further the transaction between the appellant and the respondent came to an end on execution of the Sale Deed on 09.06.2008. Thus the question of readiness and willingness thereafter would not arise at all. Even in respect of the argument advanced by the learned Senior Counsel that the respondent/plaintiff was ready and willing to perform his part of the contract. With reference to other two items mentioned in the Sale Agreement, this Court is of the considered opinion that the initiation of time by the respondent for issuing notice on 07.10.2015 and institution of the suit on 19.12.2015 after a lapse of about 7 years after the last year of transaction is self-evident that the respondent/ plaintiff was not ready and willing to proceed with the Sale Agreement dated 14.10.2005 and therefore, the Trial Court has committed an error in accepting the case of the respondent/plaintiff.

37. As far as the facts of the present case is concerned, the entire facts and circumstances reveal that the respondent/plaintiff has set out a false case against the appellant/defendant. It is well known that a person who has come to Court with false case is not entitled to the equitable relief of specific performance. The relief of specific performance is made available only to a person who approaches the Court with clean hands and with clear facts. In the present case, the respondent/plaintiff has instituted the suit with false case and therefore, the Trial Court has committed an error in granting the relief of specific performance.

38. In this regard, it is relevant to cite the judgment of the Hon'ble Division Bench of this Court in the case of S.S.Chokkalingam vs. R.B.S.Mani and 5 Others [1994 (1) LW 321], wherein in paragraphs 24 and 25, it has been observed as under:-

"24. It is not necessary to refer to the evidence of the respondents as the evidence of the appellant is wholly unsatisfactory. It is clear from what we have stated above that the appellant has never been ready and willing to perform his part of the contract. It is well settled that a person cannot claim the relief of specific performance unless he proves his readiness and willingness to perform his part of the contract. (Vide H.G. Krishna Reddy & Co. vs. M. Thimmiah (AIR 1983 Madras 169 = 96 L.W. 88). It is also seen that the appellant has come to Court with a false case that no time limit was fixed for completion of the transaction and that he was permitted to pay the amounts in dribblets. We have already referred to the letters which show that the appellant himself fixed the time limit and the respondents gracefully agreed for such extensions. In spite of such extensions, the appellant failed to perform his part of the contract. It is also seen that the appellant has put forward a false case that there was a panchayat. There is no evidence whatever to substantiate that case.

25. As regards the character of possession the appellant has again

chosen to deny the tenancy. In fact, in the written statement filed by him in O.S. No. 3 of 1987 he has categorically asserted as follows:-

"This defendant specifically denies having executed a letter of tenancy either in favour of the plaintiffs or their vendor".

This written statement was filed on 26.3.1982. Six months later, he has filed the suit for specific performance on 23.9.1982. Once again he has reiterated that there was no tenancy and he is in possession only pursuant to the contract of sale. That case is falsified by the production of Ex. B11, which he had to admit. We have already referred to his admission that there was a tenancy agreement before the agreement for sale. Thus, the appellant is guilty of making a false plea. It is well known that a person who has come to court with a false case is not entitled to the equitable relief of specific performance. Vide G. Chelliah Nadar (died) and 4 others vs. Periasamy Nadar and 3 others (1993-2-L.W. 84) and Nallaya Gounder and another vs. P. Ramaswami Gounder and 3 other (1993-2-L.W. 86)."

39. In Ramaswamy Gounder vs. K.M. Venkatachalam and others [1976 (1) M.L.J. 243], M.M. Ismail, J., as he then was, held thus:-

"... the falsity of the case put forward by the plaintiff disentitled him from obtaining the discretionary relief of specific performance of agreement."

40. In Parakunnan Veetil Joseph's son Mathew vs. Nedumbara Kuruvila's son and others [AIR 1987 S.C. 2328], their Lordships held thus:-

"S. 20, Specific Relief Act, preserves judicial discretion to

Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff." (Italics supplied)."

41. With reference to the cause of action set out in the present plaint, it is relevant to consider the judgment of this Court in the case of Pankajam Parthasarathy and five others vs. Kasturi Guna Singh [2001 (1) CTC 200], wherein in paragraph-17, this Court observed that "the subsequent payment made on 23.1.1978 does not have the effect of extending the period of limitation from which the time for institution of the suit begin to run. In my view, learned trial Judge was not correct in holding that the time limit for institution of the suit should be computed from the date of subsequent payment. I hold that it is not a money suit, but it is a suit for specific performance of contract and the subsequent payment has no effect while computing the period of limitation".

42. In paragraph-19 of the judgment, cited above, this Court made the following observations:-

"19. The next question that arises is whether the first part or the second part of Article 54 of the Limitation Act would apply to the transaction in question. A careful reading of the various decisions reveals that if the date for the performance of agreement is fixed or can be inferred from the surrounding circumstances, then the first part of Article 54 of the Limitation Act would apply and if no date has been fixed or inferred, then the second part of Article 54 of the Limitation Act would apply. Under Clause-7 of the agreement, the execution and registration shall be completed within three months from the date of agreement subject to sanction by the competent authority. The agreement also provides that the sale is subject to sanction by the competent

authority. It is no doubt true that the plaintiff, neither in the notice dated 7.1.1981, nor in the plaint, has stated about the failure on the part of the defendants to obtain sanction from the competent authority under the provisions of the Urban Land Ceiling Act, 1976. In the evidence also, the plaintiff has not deposed anything about the requirement of obtaining the sanction from the competent authority. I hold that notwithstanding the fact that the plaintiff has not stated either in the notice or in the plaint or in his evidence about the requirement of obtaining the sanction from the competent authority, in considering the questions whether the suit is barred by limitation or not, and whether any date has been fixed for the performance of the contract, all the clauses in the agreement have to be taken into account."

43. As far as the present case is concerned, the last advance payment was made by the respondent/plaintiff on 22.04.2008 and in lieu the total advance received by the appellant/defendant was Rs.13,01,000/- and he executed a Sale Deed on 09.06.2008 in favour of the respondent/plaintiff in respect of third item of the property mentioned in the suit Sale Agreement dated 14.10.2005. Therefore, for all purposes, the transaction between the appellant and the respondent came to an end. Thus, the suit instituted based on the legal notice issued on 07.10.2015 is undoubtedly unsustainable and the suit is clearly barred by limitation.

44. This apart, the respondent/plaintiff had not established that he was willing to perform his part of the contract within the reasonable period from the stipulated period. Taking note of the last payment of advance on 22.04.2008 and on execution of Sale Deed in favour of the respondent/plaintiff on 09.06.2008 and thereafter, the respondent/plaintiff had not made any demand for execution of the Sale Deed based on the Sale Agreement dated 14.10.2005 nor issue any notice within the reasonable period and the said notice itself was issued after the lapse of about 7 years from the date of execution of the Sale Deed on 09.06.2008.

45. This being the factum, there is no iota of doubt that the respondent/plaintiff was not ready and willing to

proceed with the suit Sale Agreement dated 14.10.2005 as the transaction between the appellant and the respondent came to an end on execution of the Sale Deed dated 09.06.2008.

46. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court of India in the case of Saradamani Kandappan vs. S. Rajalakshmi [(2011) 12 SCC 18], wherein in paragraphs 28, 29, 35, 37, 41, 43, 87 and 88, it has been held as under:-

"28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If, for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time-bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

29. Let us consider the terms of the agreement of sale in this case to find out whether time was the essence. The standard agreements of sale normally provide for payment of earnest money deposit or an advance at the time of execution of agreement and the balance of consideration payable at the time of execution/registration of the sale deed. In the absence of contract to the contrary, the purchaser is bound to tender the balance consideration only at the time and place of completing the sale [see clause (b) of Section 55(5) of the Transfer of Property Act, 1882 ("the TP Act", for short)]. In this case we find that there is a conscious effort to delink the terms relating

to payment of balance price (Clauses 4, 5 and 6) from the term relating to execution of sale deed (Clause 7) and making the time essence only in regard to the payment of the balance sale consideration. There is also a clear indication that while time would be the essence of the contract in regard to the terms relating to payment of balance price, time would not be the essence of the contract in regard to the execution of the sale deed.

35. An aside regarding the principle "time is not of the essence" for future consideration

It is of some interest to note that the distinction between contracts relating to immovable properties and other contracts was not drawn by Section 55 of the Contract Act (or any other provisions of the Contract Act or the Specific Relief Act, 1963). The courts in India made the said distinction, by following the English law evolved during the nineteenth century. This Court held that time is not of the essence of the contracts relating to immovable properties; and that notwithstanding default in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief. (Vide Gomathinayagam Pillai [AIR 1967 SC 868 : (1967) 1 SCR 227] , Govind Prasad Chaturvedi [(1977) 2 SCC 539] , Indira Kaur vs. Sheo Lal Kapoor [(1988) 2 SCC 488] and Chand Rani [(1993) 1 SCC 519] following the decision of the Privy Council in Jamshed Khodaram Irani vs. Burjorji Dhunjibhai [(1915-16) 43 IA 26 : AIR 1915 PC 83] and other cases.) Of course, the Constitution Bench in Chand Rani [(1993) 1 SCC 519] made a slight departure from the said view.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to

complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyadnam vs. Vairavan [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in Chand Rani [(1993) 1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that

effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ...

11. ... We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.”

(emphasis supplied)

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was “ready and willing” to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special

cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.

87. Further, Defendants 1 to 3 in their written statement filed in the specific performance suit had agreed to refund all amounts received by them from the plaintiff. It is true that the offer was conditional upon the plaintiff not creating any hindrance in the way of the defendants by filing false, frivolous and mischievous suits. Though we have affirmed the decision of the learned Single Judge and the Division Bench that the plaintiff is not entitled to the relief of specific performance, it cannot be said that the plaintiff had filed false, frivolous and mischievous suits.

88. In view of the above, in terms of the agreement and in terms of its offer, the plaintiff was entitled to recover the amounts paid by her. A sum of Rs 2,25,000 was paid under the agreement of sale to Defendants 1 to 3. The finding of the learned Single Judge that the sum of Rs 1,25,000 paid by the plaintiff to the fourth defendant was also the consideration for the movables in addition to the consideration of Rs 3,75,000 under the agreement of sale, has not been challenged by the defendants. In the circumstances, the Division Bench was justified in granting a decree in favour of the plaintiff for Rs 3,50,000 with interest. These appeals are therefore liable to be dismissed."

47. In the case of P.Arumugam vs. M.Shunmugam Pillai [2013 (3) MWN (Civil) 110], this Court in paragraphs-13 and 15(b) observed as under:-

"13. It is a settled principle of law that as per Section 16(c) of the said Act, in a Suit for Specific Performance, the Plaintiff must plead and prove his readiness and willingness to get a Sale Deed from the Defendant from the date of execution of Sale Agreement. Further it is also a settled principle of law that the concerned

Defendant need not deny the alleged readiness and willingness on the part of the concerned Plaintiff.

15.
..
(a)
..

(b) The second decision is reported in *Saradamani Kandappan vs. S. Rajalakshmi*, 2011 (4) CTC 640 (SC) : AIR 2011 SC 3234, wherein at Paragraph-28, the Hon'ble Apex Court has culled out as follows:

"(i) Courts, while exercising discretion in Suits for Specific Performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and, therefore, time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every Suit for Specific Performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. Court will also 'frown' upon suits which are not fled immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a Suit and obtain Specific Performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

48. Even recently, the Apex Court of India in the case of *Surinder Kaur vs. Bahadur Singh* [(2019) 8 SCC 575], made an observation that "A perusal of Section 20 of the Specific Relief

Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

49. In view of the above principles well elaborated by the Courts, this Court is of the considered opinion that the suit instituted by the respondent/plaintiff is barred by limitation and further, the transaction between the appellant and the respondent came to an end on execution of the Sale Deed dated 09.06.2008 in respect of the third item of the property mentioned in the suit Sale Agreement dated 14.10.2005 in lieu of consideration of Rs.13,01,000/- received by the appellant/defendant. The advance sale consideration of Rs.13,01,000/- received by the appellant/defendant was taken as a sale consideration for one item of the property mentioned in the suit Sale Agreement and accordingly, the Sale Deed was executed. Thus, the suit instituted after lapse of about 7 years on 19.12.2015 is clearly barred by limitation and accordingly, the same is liable to be rejected.

50. As far as the point of readiness and willingness is concerned, it is not the defendant, who has to prove the readiness and willingness, the plaintiff who instituted the suit at the first instance is obligated to prove his case and in the present case, the respondent/ plaintiff himself has not established his readiness and willingness as there is a long delay of 7 years after the last transaction and payment of advance on 22.04.2008 and therefore, the respondent/plaintiff himself has not proved his readiness and willingness

51. This apart, the respondent/plaintiff has relied on the acknowledgement of advance amounts, which were endorsed by the appellant/defendant. All these facts and circumstances establishes that the respondent/plaintiff instituted a false case against the appellant/ defendant for the relief of specific performance.

52. This being the factum, this Court has no hesitation in arriving a conclusion that the Trial Court has committed perversity and infirmity in granting the relief of specific performance in favour of the respondent/plaintiff. Consequently, the judgment and decree dated 15.03.2019 delivered by the learned District Judge, District Court No.II, Kancheepuram in O.S.No.128 of 2015 is quashed and the appeal suit in A.S.No.634 of 2019 stands allowed. However, there shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Kak/Svn

To

The District Judge,
District Court No.II,
Kancheepuram.

+1 CC to Mr.V.G. Suresh Kumar, Advocate sr 16122.

+1 CC to Mr.T. Sundaravadanan, Advocate sr 16802.

A.S.No.634 of 2019

VD(CO)
SP(19/03/2020)

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