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AS.No.1060/2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 23.11.2020

DELIVERED ON 18.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AS.No.1060/2009

R.Kasilingam

... Appellant

Vs.

1.S.P.Vadivelu [deceased]

2.S.Bakthavathchalam

3.V.Annakodi [deceased]

****R3 brought on record as LR of
deceased R1 vide order dated
13.04.2010 made in MP.Nos.1&2/2010
in AS.No.1060/2009**

4.S.Natesan

****R4 impleaded as party respondent
vide order dated 06.03.2014 made in
MP.No.3/2010 in AS.No.1060/2009**

5.N.Ponnusamy

****R5 brought on record as LR of
deceased R3 vide order dated
15.10.2020 made in CMP.Nos.1,2&3/2013
in AS.No.1060/2009**

... Respondents

PRAYER : Appeal suit filed under Order 41 Rule 1 read with Section 96 of CPC against the judgment and decree dated 30.04.2009 made in OS.No.12/2007 on the file of the learned Additional District Judge/ Fast Track Court NO.1, Erode.



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For Appellant : Mr.N.Manokaran
RR1&3 : Died
For R2 : No appearance
For R4 : Mr.V.Raghavachari
For R5 : Mr.P.Valliyappan

J U D G M E N T

- (1)The plaintiff in the suit in OS.No.12/2007 on the file of the Additional District Court [Fast Track Court-I], Erode, is the appellant herein in the above Appeal Suit.
- (2)The appellant filed the said suit for specific performance of an Agreement of Sale dated 22.11.2002 by directing the 1st defendant to execute the Sale Deed in respect of the suit property and for delivery of possession and in the alternative, to direct the 1st defendant in the suit to pay the plaintiff a sum of Rs.15,77,533/- with future interest at the rate of 12% per annum on the amount of Rs.12,00,000/- from the date of suit till the date of realisation.
- (3)The 1st defendant who is also the 1st respondent in the Appeal, is the owner of the suit property. It is admitted that the 1st defendant a Power of Attorney Deed in favour of the 2nd defendant authorising the 2nd



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defendant to negotiate for the sale of suit property or to enter into a Sale Agreement, receiving any advance amount and to execute the Sale Deed etc.

(4) It is the case of the plaintiff that on 22.11.2002, the 2nd defendant as Power of Attorney agent of the 1st defendant, entered into a written Agreement of Sale with the plaintiff to sell the suit property and the Sale Agreement contained the following terms:-

- (a) Total sale consideration for the suit property was mutually agreed as Rs.13,50,000/-.
- (b) The 2nd defendant acknowledged the receipt of a sum of Rs.10,00,000/- as advance towards part of sale consideration.
- (c) The 2nd defendant who was in possession and enjoyment of the suit property delivered possession of the suit property to the plaintiff on the date of Agreement.
- (d) The plaintiff agreed to pay the balance and to get the Sale Deed within a period of one year.
- (e) All the documents of Title Deeds were also handed over to the plaintiff.
- (f) In case the plaintiff failed to come forward to pay the balance of Rs.3,50,000/- and complete the transaction within one year, the



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plaintiff will lose the entire amount paid by him as advance.

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(5) The Sale Agreement dated 22.11.2002 was marked as Ex.A2. In the plaint, it is contended that a further sum of Rs.2,00,000/- was paid on 23.04.2003 by the plaintiff on 23.04.2003 by the plaintiff and the 2nd defendant made an endorsement on the back side of the Agreement. It is further stated that the plaintiff was always ready and willing to perform his part of the contract by paying the balance of sale consideration and get the Sale Deed in his favour. Since the defendants started demanding more amount from the plaintiff to which the plaintiff was not ready to pay, the defendants made an attempt to trespass into the suit property on 07.11.2003. The plaintiff, in order to protect his possession and enjoyment of the suit property, was compelled to file a suit for injunction against defendants in OS.No.432/2003. It is also stated that the plaintiff in OS.No.432/2003, reserved his right to file a suit for specific performance.

(6) It is contended by the plaintiff that the 1st defendant is bound by the Agreement dated 22.11.2002 and the payment of Rs.12 lakhs is also valid as against the 1st defendant. The plaintiff, while admitting the filing of another suit by the 1st defendant in OS.No.461/2003 for bare



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injunction, stated further that the defendants attempted to encumber the property concealing the Agreement in favour of the plaintiff and he caused a publication in a Tamil Daily on 02.12.2003 and thereafter, a legal notice to the defendants on 10.12.2003 expressing his readiness and willingness to purchase the property and calling upon the defendants to execute the Sale Deed and calling upon the defendants to execute the Sale Deed. Though the 2nd defendant sent a reply on 20.12.2003 admitting the Agreement and receipt of Rs.12 lakhs as advance and part of sale consideration, expressed his inability to execute the Sale Deed as the 1st defendant himself as cancelled the Power of Attorney Deed on 30.06.2003. Stating that the cancellation of the Power of Attorney Deed is fraudulent, the suit for specific performance was filed by the plaintiff on 01.08.2005.

(7)The 2nd defendant filed the written statement admitting the plaint averments as regards the Sale Agreement and the payment of a sum of Rs.10 lakhs as advance and the further sum of Rs.2 lakhs as acknowledged by him by making an endorsement in the Agreement. It is also stated in the written statement filed by the 2nd defendant that the money received by him from the plaintiff was promptly handed over to the 1st defendant.



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(8) The 1st defendant contested the suit by filing a written statement

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denying the Suit Agreement and the receipt of a sum of Rs.10 lakhs or the further sum of Rs.2 lakhs as alleged in the plaint. It is stated that the plaintiff had no means to advance such a huge amount. Though the 1st defendant admitted execution of the Power of Attorney Deed in favour of the 2nd defendant on 06.01.2000, it is contended that the Power of Attorney Deed was subsequently cancelled on 30.06.2003 and the said cancellation was also informed to the Power of Attorney Deed by telegram on 13.09.2003. It is stated in the written statement by the 1st defendant that the 2nd defendant started behaving against the interest of the 1st defendant and tried to encumber the property without consulting the plaintiff and therefore, the Power of Attorney Deed was cancelled. The 1st defendant further referred to the mortgage that was executed by the 1st defendant in favour of the wife of the 2nd defendant and the handing over of original documents in respect of the suit property to the 2nd defendant in connection with the mortgage. It is therefore stated by the 1st defendant that the 2nd defendant had fraudulently handed over the documents of title to the plaintiff. In short, the 1st defendant tried to impress the Court that the Suit Agreement is not binding on the plaintiff as he is not a party to the



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Agreement and that the Power Agent never informed about the sale transaction. While referring to the suit filed by the plaintiff against the 1st defendant and the 1st defendant against the plaintiff in OS.No.432/2003 and 461/2003 respectively, the 1st defendant specifically contended that the suit property is in possession and enjoyment of the 1st defendant and the recitals in the Sale Deed as regards possession is purposely made to defeat the rights of the 1st defendant. The 1st defendant also raised a defence that the suit for specific performance is barred by Order 2 Rule 2 of CPC as the plaintiff failed to seek specific performance at the first instance. The 1st defendant also pleaded that the previous suit being dismissed, the subsequent suit for specific performance is barred by the principles of *res judicata* by referring to Section 11 of CPC. Having regard to the nature of plea raised by the 1st defendant, the 1st defendant was not serious in his written statement about the readiness and willingness of the plaintiff to perform his part of the contract in terms of the Sale Agreement dated 22.11.2002.

(9)After the 2nd defendant filed the written statement, the 1st defendant filed an additional written statement raising the plea that the previous suit filed by the 1st defendant against the plaintiff in OS.No.461/2003 is



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decreed and therefore, the said judgment and decree in OS.No.461/2003 will operate as *res judicata*. In the additional written statement, the 1st defendant did not raise any plea disputing the readiness and willingness of the plaintiff.

(10)The Trial Court, after framing necessary issues on all the points raised by the 1st defendant, held that the Sale Agreement dated 22.11.2002 was in fact executed by the 2nd defendant as Power Agent of the 1st defendant with an intention to sell the property and the said Sale Agreement is valid and binding on the 1st defendant. The Trial Court also held that the Power of Attorney Deed under Ex.A1 is valid and binding on the 1st defendant. Since the 1st defendant has admitted in the course of cross-examination, the receipts marked as Exs.B2 and B3, acknowledging the payment of money by the 2nd defendant to the 1st defendant, the advance amount as well as the sum of Rs.2 lakhs as recited in the Sale Agreement, the Trial Court came to the conclusion that the Sale Agreement under Ex.A2 is supported by consideration and that the 1st defendant has in fact received the sum of Rs.10 lakhs as recited in the Agreement as well as the further sum of Rs.2 lakhs as per the documents Exs.B2 and B3. During trial, the 1st defendant filed an Interlocutory Application for the purpose of sending the



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documents, namely, Exs.B2 and B3 for expert opinion as he has specifically stated in the written statement that no such amount was received by him. However, the Trial Court dismissed the application on the short ground that the 1st defendant himself has admitted the receipt of money as recited in Exs.B2 and B3.

(11)The Trial Court further found that the plaintiff was ready and willing to perform his part of the contract after considering the evidence. Though an argument was advanced before the Trial Court that the Sale Agreement is not genuine as the Stamp Paper for the Agreement was obtained long back, the Trial Court rejected all such contentions of the 1st defendant and held that the Sale Agreement is genuine and binding on defendants 1 and 2. The plea of bar under Order 2 Rule 2 of CPC was also considered by the Trial Court and the Trial Court held that the cause of action for the suit filed by the plaintiff earlier in OS.No.432/2003 and the subsequent suit for specific performance are different and therefore, the suit for specific performance is not barred either under Order 2 Rule 2 of CPC or by *res judicata*. However, after holding that the Agreement is valid and binding on the 1st defendant and that the sum of Rs.12 lakhs towards sale consideration has been paid to the 1st defendant, the Trial Court refused to grant the



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decree for specific performance on the ground that the Power of Attorney Deed executed by the 1st defendant in favour of the 2nd defendant had been subsequently cancelled and therefore, a decree for specific performance cannot be granted.

(12) Though the Trial Court found that the Agreement of Sale not only refers to handing over of possession to the plaintiff, in view of the fact that the suit filed by the plaintiff in OS.No.432/2003 was dismissed and the suit filed by the 1st defendant against the plaintiff in OS.No.461/2003 was decreed, the Trial Court found that the plaintiff has rightly amended the plaint for recovery of possession. As regards readiness and willingness, the Trial Court categorically given a finding that the plaintiff was always ready and willing and merely because the plaintiff had not deposited the money before filing of the suit, it cannot be concluded that the plaintiff was not ready in terms of the suit Agreement under Ex.A2. Though all the issues framed by the Trial Court was answered in favour of the plaintiff, the Trial Court granted only the alternative relief by directing the defendants to pay a sum of Rs.12 lakhs with interest @ 6% per annum, but refused to grant the relief of specific performance. Aggrieved by the same, the plaintiff as appellant, has preferred the above Appeal Suit.



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(13) This Court heard the learned counsel for the appellant and the learned counsel for the contesting respondents and also perused the materials available on record.

(14) During the pendency of the Appeal, the 1st defendant died and therefore, the 3rd respondent who is the wife of the 1st respondent was brought on record. Subsequently, the 3rd respondent also died and therefore, the 5th respondent was brought on record as the legal heir of the 3rd respondent. It is admitted that pending suit, the 1st defendant sold the property to the 4th respondent herein. Since the sale in favour of the 4th respondent was not brought to the notice of the Court, the 4th respondent was not added as a party before the Trial Court. However, the 4th respondent was impleaded before this Court on the basis of the Sale Deed executed by the 1st defendant in favour of the 4th respondent on 01.04.2009.

(15) The learned counsel for the appellant contended that the Trial Court after holding that the Agreement under Ex.A2 is valid and binding on the 1st defendant, ought to have granted the relief of specific performance and committed an error in ordering the alternative relief without assigning proper reasons to refuse the grant of specific performance. The learned counsel pointed out that the Power of



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Attorney Deed was cancelled much after the Agreement under Ex.A2

and the relief of specific performance cannot be refused on the ground that the Power of Attorney Deed was cancelled long after the suit Agreement and receipt of consideration. When there is no issue regarding the readiness and willingness of the appellant/plaintiff throughout and the appellant has deposited the balance amount before the Trial Court even before the decree was granted, the Trial Court is not right in refusing to grant the relief of specific performance. Learned counsel then pointed out the findings of the Trial Court on the conduct of the 1st defendant/1st respondent throughout and submitted that the appellant is entitled to the main relief of specific performance.

(16) On the other hand, the learned counsel for the contesting respondents submitted that the suit for specific performance is liable to be dismissed mainly on the following grounds:-

- a) The second suit for specific performance is barred by Order 2 Rule 2 of CPC.
- b) The suit for specific performance is liable to be dismissed on the ground of delay and laches as the plaintiff/appellant failed to approach the court within a reasonable time seeking the relief of specific performance. The appellant/plaintiff was never ready and



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willing to perform his part of contract.

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c) The Agreement under Ex.A2 is not bona fide sale transaction and therefore, the appellant is not entitled to get the equitable relief of specific performance.

(17)The learned counsel on either side relief upon several precedents in support of their arguments.

(18)The following points are framed for determination in this Appeal:-

- i. Whether the Agreement of Sale under Ex.A2 is valid and binding on the 1st defendant/1st respondent?
- ii. Whether the appellant/plaintiff was ready and willing to perform his part of contract under Ex.A2?
- iii. Whether the suit is liable to be dismissed on the ground of delay and laches?
- iv. Whether the suit for specific performance is barred by Order 2 Rule 2 of CPC?
- v. Whether the appellant is entitled to the relief of specific performance?

(19)The suit Agreement [Ex.A2] is admitted by the 2nd defendant. The execution of registered Power of Attorney Deed under Ex.A1 dated 06.01.2000 is also admitted by the 1st defendant. The 2nd defendant



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filed the written statement admitting the Agreement and the terms of Agreement under Ex.A2 and the receipt of the sum of Rs.10 lakhs under the Agreement on the date of Agreement and the further sum of Rs.2 lakhs on 23.04.2003. It is also established in evidence that the 1st defendant has acknowledged the receipt of the said sum of Rs.10 lakhs from the 2nd defendant on 23.11.2002, i.e., on the next day of Agreement. Similarly, the further amount of Rs.2 lakhs paid by the appellant to the 2nd defendant was also acknowledged under Ex.B2, the receipt issued by the 1st defendant to the 2nd defendant. Having admitted the payment of Rs.10 lakhs and Rs.2 lakhs respectively as recited and endorsed in the Agreement of Sale, the 1st respondent/1st defendant took a stand denying the execution of Sale Agreement and receipt of consideration by characterising the Sale Agreement as a fraudulent one. The Power of Attorney Deed [Ex.A1] was acknowledged only on 30.06.2003. Though the cancellation of Power of Attorney was subsequently informed to the 2nd defendant on 30.09.2003, the cancellation of Power of Attorney and the information regarding cancellation to the 2nd defendant will not affect the Agreement of Sale under Ex.A2 dated 22.11.2002. Therefore, the appellant has proved the genuineness of the Sale Agreement and the



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payment of a sum of Rs.10 lakhs under the Agreement dated 22.11.2002 and the further sum of Rs.2 lakhs as evidenced from the documents – Exs.B2 and B3. The written statement filed by the 1st defendant indicates the genuineness of the sale transaction and the bona fide conduct of the 2nd defendant in paying the entire money received by him from the appellant/plaintiff under the sale transaction to the 1st defendant. Therefore, this Court has no hesitation to hold that the Sale Agreement under Ex.A2 is proved and that the same is binding on the 1st defendant.

(20) From the pleadings, it is seen that the appellant has specifically pleaded that he was always ready and willing to perform his part of contract in terms of the Suit Agreement under Ex.A2 dated 22.11.2002. Out of the total consideration of Rs.13.50 lakhs, substantial amount, namely, the sum of Rs.10 lakhs was paid on the date of Agreement [Ex.A2]. It is admitted that the Agreement gives one year time to the appellant/plaintiff to pay the balance and complete the transaction. Following the suit Agreement dated 22.11.2002, the 1st defendant had admitted the receipt of a further sum of Rs.2 lakhs on 23.04.2003, which was paid to the 2nd defendant as per the endorsement found in Ex.A2. Therefore, the appellant has promptly

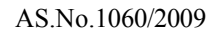


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paid more than nearly 85% of the amount by 23.04.2003. From Ex.A6, the pre-suit legal notice issued on behalf of the appellant/plaintiff to defendants 1 and 2, the appellant called upon the defendants to execute the Sale Deed after asserting that he is ready and willing to pay the balance as agreed. Therefore, the appellant after paying substantial portion of the consideration has also expressed his readiness and willingness to perform his part of the contract by paying the balance amount in terms of the Agreement. It is also admitted that the appellant also caused a public notice on 29.11.2003 informing the public, the Agreement in his favour and the receipt of the substantial amount by the 1st defendant by way of consideration.

(21) It is admitted by the parties that the appellant has deposited the balance amount during the pendency of the suit. It is well settled that time is not the essence of contract normally when the Agreement is for sale in respect of immovable property. Therefore, merely from delay in filing of suit after accrual of cause of action, when the suit is not barred by limitation, this Court is not justified in dismissing the suit on the ground of delay or laches, especially in a case where substantial amount is paid pursuant to the Sale Agreement. Taking note of the fact that the appellant has already paid a sum of Rs.12 lakhs out of total



consideration of Rs.13.50 lakhs, this Court is unable to appreciate the plea of delay and laches.

(22)The Hon'ble Supreme Court and this Court has distinguished the law on this subject and made a distinction as regards the plea of delay in India and in England. In England, the relief of specific performance pertains to the domain on equity and therefore, the time learned Advocate General depending upon circumstances may be a good ground to refuse the relief. However, in India, mere delay cannot be a ground for refusing to grant the relief. However, the Hon'ble Supreme Court in recent decisions, has appreciated the issue on principles of equity and expressed in an unequivocal terms that the plaintiff who has not approached the Court within a reasonable time without any explanation for the delay is not entitled to the relief of specific performance. I have considered the question of delay in several decisions of mine and refused to exercise discretion in all those matters where there is an unreasonable delay while approaching the Court and causing serious prejudice to the defendant. In the instant case, this Court is unable to accept the case of the defendants to reject the relief of specific performance merely because the suit is filed only on 01.08.2005 even though the time granted to the appellant as per



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Ex.A2-Agreement expired on 21.11.2003. The suit notice was issued after paper publication on 10.12.2003. Till such time the notice was issued by the appellant/plaintiff, there was no occasion for the appellant to realise that the 1st defendant was not willing to sell the property to the appellant/plaintiff. The 1st defendant chose to return the notice as seen from the acknowledgment under Ex.A8. The 1st defendant did not issue any notice denying the Agreement. The appellant has received summons in the suit filed by the 1st defendant in OS.No.461/2003. The written statement filed by the 1st defendant in the suit filed by the appellant / plaintiff in OS.No.432/2003 is marked as Ex.A11. In the said written statement, the 1st defendant denied the Agreement as well as receipt of sale consideration under the said Agreement dated 22.11.2002. In short, it is the specific case of the 1st defendant that the Agreement under Ex.A2 is not proved nor binding on him. He also referred to the suit in OS.No.461/2003 filed by him as against the appellant/plaintiff for injunction. The suit Agreement, according to the 1st defendant was collusive or sham and nominal and bogus. Even though the said suit was filed during December 2003, it was highlighted that the plaintiff did not chose to file the suit immediately thereafter.



(23) It is in the said context, the learned counsel for the appellant relied

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upon the judgment of the Hon'ble Supreme Court in the case of

R.Lakshmikanthan Vs. Devaraji reported in **2019 [8] SCC 62**,

wherein it is held by the Hon'ble Supreme Court that *'mere delay in filing the suit after accrual of cause of action cannot be inferred against the plaintiff regarding his readiness and willingness to perform his part of the contract and that if the suit is filed within the period of limitation, it cannot be dismissed on the ground of delay'*.

(24) Assuming that the time is the essence of the contract, the Trial Court has found that the appellant/plaintiff was ready and willing to perform his part of the contract, on appreciation of evidence. However, the Trial Court refused to grant the relief of specific performance only on the ground that the Power of Attorney Deed was cancelled by the 1st defendant. It is seen that the Power of Attorney Deed executed by the 1st defendant is not in dispute. On the date of Sale Agreement under Ex.A2, the power was in force. The subsequent revocation or cancellation of power has no relevance and the subsequent cancellation of power cannot be a reason to deny specific performance to the appellant/plaintiff.



(25) Learned counsel appearing for the legal heir of the 1st defendant,

namely the 3rd respondent submitted that the appellant in stead of filing

a suit for specific performance by paying the balance consideration,

has filed the suit for injunction just to gain time and therefore, this

Court by the conduct of the appellant should hold that the appellant

was not ready and willing to perform his part of the contract. He then

relied upon the judgment of a Division Bench of this court in the case

of ***V.Suresh Kumar Vs. A.Ramasamy and another*** reported in **2020**

[4] CTC 798, wherein the Division Bench has held as follows:-

"14.4. In a suit for specific performance even if both the parties agreed, it is for the appellant/plaintiff to prove his readiness and willingness to execute the contract, and it should be proved each and every day. While answering Point No.i) with regard to Issue No.i) we held that the appellant/plaintiff has not proved his readiness and willingness to execute the contract until the filing of the suit. Further, the moment, the appellant/plaintiff has made part of the sale consideration after the expiry of 90 days period, that per se would show that the appellant/plaintiff was not in a position to pay the entire sale consideration as agreed between the parties until



the filing of the suit. Since the appellant/plaintiff was not ready and willing and was not able to prove his readiness until the filing of the suit, though the Court below has come to the conclusion that time is not essence of the contract, rightly denied to grant the relief of specific performance. Therefore, we concur with the findings of the Court below with regard to the second and third issues."

(26)The learned counsel appearing for the 3rd respondent relied upon a judgment of a Division Bench of this Court in the case of ***T.R.Murugesan Vs. S.Balakrishnan and Others*** reported in **2018 [6] CTC 56**. In a suit for specific performance, this Court after finding that the time fixed under the Agreement is an essence of contract and there was no explanation on the side of plaintiff for the delay in issuing a legal notice after time fixed for performance and that there was no explanation for the delay of three months in filing the suit after receiving the reply notice, the Division Bench held that the plaintiff is not entitled to decree for specific performance, but entitled to the alternative relief of refund of advance money with 9% interest per annum. The said judgment is on the basis of facts. It is to be noted that out of total consideration around Rs.20 lakhs, the plaintiff therein had paid a sum of Rs.2 lakhs as advance and subsequently, a sum of



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Rs.3 lakhs alone was paid before the suit was filed. The said suit was not only filed after the expiry of time, but also with a long delay after the receipt of reply from the defendants therein. It was observed by the Division Bench that there was delay even while issuing the suit notice. Taking note of the conduct of the plaintiff on his readiness and willingness, this Court refused to grant the relief of specific performance after referring to the judgment of the Hon'ble Supreme Court in the case of ***Saradamani Kannappan Vs. S.Rajalakshmi and others*** reported in ***2011 [4] CTC 614 [SC]***, wherein the Hon'ble Supreme Court has emphasised the position that in order to show readiness and willingness, the plaintiff must be ready to perform his part of contract from the date of Agreement till the date of filing the suit and the unexplained delay would also disentitle the plaintiff from seeking the relief of specific performance. The Division Bench, after referring to the fact that the plaintiff therein chose to wait for three months to file the suit after receipt of reply, came to the conclusion that the plaintiff was not ready and willing to perform his part of the contract as seen from the conduct and other circumstances. The said judgment may not have relevance to the present case in view of the peculiar facts that were dealt with by the Division Bench.



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(27)The learned counsel then relied upon the judgment of the Hon'ble

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Supreme Court in the case of *M/s.Citadel Fine Pharmaceuticals V.*

M/s.Raaniyam Real Estates Pvt. Ltd and Another reported in *AIR*

2011 SC 3351. In the said judgment, a complex situation was

considered and the Hon'ble Supreme Court was not inclined to grant

the relief of specific performance on multiple grounds. It was found in

the said judgment that the plaintiff therein had suppressed the fact that

the vendor had returned the Earnest money on efflux of time to

perform the contract, but the plaintiff refused to accept it. It was

further held that the conduct of plaintiff disentitled him to get the relief

of specific performance. The said judgment therefore, has no

application to the facts of this case. A Constitution Bench of the

Hon'ble Supreme Court in *Chand Rani Vs. Kamal Rani* reported in

AIR 1993 SC 1742 : 1993 [1] SCC 519, has held that in the case of

sale of immovable property there is one presumption as to time being

the essence of the contract. However, it was further held that even if

time is not the essence of the contract the Court may infer that it is to

be performed in a reasonable time as it may be seen from the express

terms of the contract or from the nature of property and from the

surrounding circumstances, for example, the object of making the



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contract. From the reading of this judgment, the object of making the contract. From the reading of this judgment, this Court is unable to find that the law on the point was elaborately discussed. A three member Bench of the Hon'ble Supreme Court in ***Hind Construction Contractors rep.by its Sole Proprietor Bhikamchand Mulchand Jain [Dead] by Lrs Vs. State of Maharashtra*** reported in **1979 [2] SCC 70**, has held that even when the parties have expressly provided that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract and the Court may on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental. Though the said judgment is in relation to building contract, it has now been accepted that stipulation with regard to time should be considered along with the other terms of the contract even in cases of sale agreement.

(28) In ***K.S.Vidyanatham and Others V. Vairavan*** reported in **1997 [3] SCC 1**, where six months' period was specified for completing the sale, expired on 15.06.1979 and the suit notice was issued on 11.07.1981, the Hon'ble Supreme Court observed that the Court should also bear in mind that when the parties prescribe certain time limit, it must have



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some significance and that the said time limit cannot be ignored altogether on the ground that time has not been made the essence of the contract relating to immovable properties. The Hon'ble Supreme Court has kept in mind the total inaction of plaintiff for 2 ½ years coupled with substantial rise in prices between the date of Agreement and the date of suit notice while referring to give relief of specific performance. The view in ***K.S.Vidyanatham's case*** was again reiterated in ***Saradamani Kannappan Vs. S.Rajalakshmi and Others*** reported in ***2011 [4] Ctc 614 [SC]*** in the following lines:-

"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.



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(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”

When the Court applies the principles above stated, finds that the equity shifts in favour of plaintiff. Even though the plaintiff should prove readiness and willingness, from the fact that the appellant/plaintiff has filed the suit nearly 1 ½ years after the time granted for the appellant had expired, it cannot be concluded that the appellant was not ready and willing to perform his part of the contract in terms of the Agreement under Ex.A2. The suit is well within the period of limitation and there is no dispute. If the conduct of the appellant herein is likely to cause prejudice to the 1st defendant in terms



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of equity, the Court may refuse to grant the relief of specific performance. However, in this case, the 1st defendant, after accepting the substantial amount towards sale consideration, namely, the sum of Rs.12 lakhs out of the total sale consideration of Rs.13.50 lakhs, has disowned his Agreement and his obligation without a reasonable cause. In such circumstances, this Court is unable to refuse to grant the relief of specific performance to the appellant.

(29) The law is settled that the plaintiff, in a suit for specific performance, must plead and prove that he was always ready and willing to perform his part of the contract continuously from the date of Agreement till the date of suit. Therefore, his / her readiness should be at every point of time after the agreement to perform his part of the contract in terms of the Agreement. Mere readiness also is not sufficient and willingness also should be established. In other words, a person may be ready with the money but still, may not be willing to part with the money so as to prove his willingness to perform the contract in terms of the Agreement. In the present case, the plaintiff has pleaded readiness and willingness and it is admitted that substantial portion of the consideration, namely, 90% of the total sale consideration has been paid by the plaintiff to the defendants. Out of 90%, nearly 80% was



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paid under the Agreement and Rs.2 lakhs was paid within five months from the date of Agreement even though the plaintiff was given one year time. After receiving 90% of the sale consideration, the 1st defendant came with a plea that there was no agreement and no payment was made to him. Even during the pendency of the suit, the balance amount was also paid by the plaintiff / appellant. There is no evidence in this case to indicate that the plaintiff / appellant was ever put on notice that the 1st defendant has rescinded the contract nor he was not willing to perform his part of the contract. The suit Agreement was through the Power of Attorney agent and therefore, the appellant/plaintiff was expected to contact the 2nd defendant who is the Power of Attorney agent of the 1st defendant.

(30) From the stand taken by the 2nd defendant in the written statement, this Court is unable to infer that the 2nd defendant was put on notice by the plaintiff/appellant that the appellant/plaintiff was willing to perform his part of the contract. Mere information regarding cancellation of Power of Attorney Deed cannot be construed as an intimation to the appellant/plaintiff. In the reply notice issued by the 2nd defendant, it is only mentioned that the 1st defendant had cancelled the Power of Attorney and therefore, he was not in a position to execute the Sale



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Deed. Except advising the appellant/plaintiff to approach the 1st defendant to execute the Sale Deed according to the Sale Agreement dated 22.11.2002, there is no indication that the 1st defendant will refuse to execute the Sale Deed if approached. Notice issued to the 1st defendant was returned with an endorsement 'left'. It was thereafter the appellant/plaintiff issued the paper publication about the Agreement and the receipt of money so that anyone who may approach the 1st defendant to purchase the property will have the notice of the previous Agreement. Thereafter, the appellant/plaintiff filed the suit in OS.No.432/2003 for bare injunction. Even from the plaint averments, this Court is unable to find that the appellant / plaintiff has stated anything about refusal and avoidance of the contract by the appellant / plaintiff.

(31)As pointed out earlier, the case of the 1st defendant in the suit filed by him in OS.No.461/2003 is not seen from the plaint in OS.No.12/2007 as no one has filed the plaint in OS.No.461/2003. The common judgment and decree in OS.Nos.432 and 461/2003 is filed as Ex.B1 dated 28.10.2005. The 1st defendant in the present suit has filed OS.No.461/2003 for injunction against the appellant / plaintiff. The plaint averments as extracted from the judgment gives an indication



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that the plaintiff therein / 1st defendant in the present suit has pleaded ignorance about any agreement but referred to the cancellation of Power of Attorney Deed dated 30.06.2003 under the pretext of knowing that the defendants therein, namely, the plaintiff and the 2nd defendant herein, were negotiating for the sale of his property. Even though he has received the plaint in OS.No.432/2003. In the written statement in OS.No.432/2003, as seen from the judgment, the 1st defendant has only stated that the Power of Attorney Deed was cancelled on 30.06.2003 and it was duly informed to the Power of Attorney agent on 13.09.2003. It was stated that the reason for cancellation of the Power of Attorney Deed was that the Power Agent was trying to sell the suit property in collusion that the plaintiff in OS.No.27/2007 [appellant herein] for a lesser price. He described the suit Agreement as false and fraudulent. Therefore, it cannot be denied that the plaintiff / appellant herein was aware of the stand taken by the 1st defendant in the previous suit disputing the genuineness of the Sale Agreement. In the said circumstances, the conduct of 1st defendant denying the agreement and receipt of substantial payment of nearly 90% of the consideration and the delay in approaching the Court by filing the suit for specific performance are also relevant factors in terms



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of equity to be worked out among parties. However, when the suit is in time and there is no evidence produced by the 1st defendant to establish that the appellant / plaintiff was not ready and willing to perform the contract especially in the light of the specific pleadings and facts suggesting plaintiff's readiness and willingness, this Court cannot refuse to grant the relief of specific performance by holding that the plaintiff is not ready and willing.

(32)The learned counsel for the appellant/plaintiff submitted that the appellant has paid 90% of the total sale consideration and that the balance was also paid during the pendency of the suit. Since the 1st defendant has taken a stand knowing fully well that he is pleading a false case, the learned counsel suggested that the discretionary relief should be granted in favour of the appellant in this case. In other words, referring to the conduct of the 1st defendant in denying the suit Agreement and the receipt of a sum of Rs.12 lakhs pursuant to the Agreement, the learned counsel submitted that the Hon'ble Supreme Court and this Court have repeatedly held that the conduct of parties is a relevant factor while granting or refusing to grant the relief of specific performance.

(33)Learned counsel for the appellant relied upon an unreported



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judgment of the Hon'ble Supreme Court in the case of ***Ferrodous***

Estates [Pvt] Ltd V. P.Gopirathnam [Dead] and Others in Civil

Appeal No.13516/2015 dated 12.10.2020, wherein the Hon'ble

Supreme Court has held in paragraph No.32 as follows:-

"32.Shri Giri's fervent appeal that we should not exercise our discretionary jurisdiction under Article 136, given the fact that Rs.2 Crores plus interest is to be paid almost by way of solatium to the appellant, has also to be rejected. As has been found earlier in this judgment, the defendants were held to have taken up dishonest pleas and also held to have been in breach of a solemn agreement in which they were to obtain the Urban Land Ceiling permission which, if not obtained, would, under the agreement itself, not stand in the way of the specific performance of the agreement between the parties. He who asks for equity must do equity. Given the conduct of the defendants in this case, as contrasted with the conduct of the appellant who is ready and willing to perform its part of the bargain, we think this is a fit case in which the Division Bench judgment should be set aside. As a result, the decree passed by the Single Judge is restored. Since the appellant itself offered a sum of



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Rs.1.25 Crores to the Division Bench, it must be made to pay this amount to the respondents within a period of eight weeks from the date of this judgment."

(34)The Hon'ble Supreme Court in the case of ***Silvey and Others Vs.***

Arun Varghese and Another reported in ***2008 [11] SCC 45*** has considered the conduct of parties in the suit for specific performance and the Hon'ble Supreme Court has held as follows:-

*"14.As regards the false plea of the defendants, the effect needs to be noted. It was pleaded that Defendant 3 had gone to the house of Plaintiff 2 in Alleppey prior to receiving any letter from the plaintiffs and had spoken that they had told him that they were not keen on enforcing the application under Ext. A-1. But when examined as DW 1, the said Defendant 3 admitted that he had never met the plaintiff as pleaded in the written statement and that he or any other defendant had never gone to Alleppey to meet Plaintiff 2 at his residence to speak about the performance of the contract. The plea stated in the written statement was abandoned in evidence. In *Lourdu Mari David v. Louis Chinnaya Arogiaswamy [(1996) 5 SCC 589]* it was noted that the conduct of the*



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defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance. The High Court has, after analysing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement."

Therefore, the conduct of the 1st defendant in the instance case assumes some significance while granting the relief of specific performance in favour of the appellant / plaintiff.

(35) It is well settled that the relief of specific performance of an agreement is an equitable and discretionary relief governed by the provisions of the Specific Relief Act, 1963. Even though the power of the Court to direct specific performance of an Agreement is discretionary, such power cannot be arbitrary and the discretion has to be necessarily exercised in accordance with the sound and reasonable judicial principles. Section 20 of the Specific Relief Act as it existed prior to amendment gives some guidance, how discretion should be exercised. However, there is an amendment in 2018, by which Sections 10 and 20 of the Specific Relief Act, 1963 is no longer, a deterring factor. The Amendment came into effect from 01.10.2018.



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By virtue of amendment, a contract can be enforced by the Court subject to the provisions contained in sub-section [2] of Section 11, Section 14 and Section 16 of the Act. Therefore, the relief of specific performance is no longer discretionary after the amendment. However, the amendment came into effect only after filing of the suit and the amendment is in relation to substantive rights of parties and this Court is unable to construe the same as having retrospective effect. Though there are divergent view as to whether the amendment is prospective or retrospective and about the legal implications of the applicability of Section 10 and Section 20 of the Specific Relief Act in pending proceedings, this Court is of the view that the Court cannot ignore the provisions as it exist as on the date of filing. However, the position will not have much relevance in the present *lis*, where the issues are specific and the decision is not going to be affected by the applicability or non-applicability of Section 20 of the Specific Relief Act. Though the learned counsels have made elaborate submissions, even assuming that the arguments of the learned counsel for the contesting respondents are to be accepted, this Court is unable to decline the relief of specific performance even by applying Section 20 of the Specific Relief Act as it stood before amendment.



(36)As already pointed out by this Court, it is the plaintiff/appellant who has paid more than 90% of the sale consideration long before the time specified for performance. Even though the suit came to be filed only on 01.08.2005 and there is a considerable delay in approaching this Court, after perusal of the written statement filed by the 1st defendant in the previous suit in OS.No.432/2003, the 1st defendant was not put to any precarious or serious prejudice. Having regard to the admitted facts, this Court is inclined to grant the relief of specific performance in favour of the appellant/plaintiff for various reasons which were indicated in this judgment while deciding all other issues.

(37)Order 2 Rule 2 of CPC reads as follows:-

"Order 2 Rule 2:-Suit to include the whole claim:-

[1]Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.*



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(3) Omission to sue for one of several reliefs- *A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

Explanation:-*For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."*

(38)The object of Order 2 Rule 2 of CPC is to avoid multiplicity of proceedings. Whenever a plaintiff files a suit on the basis of cause action referred to in the plaint, it is his/her legal obligation to seek every relief he is entitled to against the defendant / defendants which had accrued to him on the cause of action alleged in the plaint. If a person is entitled to two or more reliefs on the cause of action shown in the plaint, he is entitled to claim both the reliefs. However, if he relinquishes any portion of the relief which he is entitled to on the cause of action pleaded, he cannot file a second suit for further relief on the same cause of action before any other Court. It has been held by the Hon'ble Supreme Court in several cases that the *sine qua non* for



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invoking Order 2 Rule 2[2] of CPC against the plaintiff is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff in the previous suit on the same cause of action pleaded in the previous suit against the defendant and yet, the plaintiff did not claim. In the present case, the plaint that was filed by the plaintiff/appellant herein in the previous suit in OS.No.432/2003 is marked as Ex.A11.

(39)The learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of ***Rathnavathi and Another V. Kavita Ganashamdas*** reported in ***2015 [5] SCC 223***, wherein the Hon'ble Supreme Court has held as follows:-

26. One of the basic requirements for successfully invoking the plea of Order 2 Rule 2 CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order 2 Rule 2 CPC to successfully non-suit the plaintiff from prosecuting



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her suit for specific performance of the agreement against the defendants.

27. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order 2 Rule 2 CPC could be allowed to be raised by the defendants and how it was sustainable on such facts.

28. We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.

29. The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. It is the cause of action which is material to determine the applicability of bar



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under Order 2 Rule 2 CPC and not merely the pleadings. For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit.

30. Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits.

31. In the light of foregoing discussion, we have no hesitation in upholding the finding of the High Court on this issue. We, therefore, hold that the second suit (OS No. 2334 of 2000) filed by the plaintiff for specific performance of agreement was not barred by virtue of the bar contained in Order 2 Rule 2 CPC.

(40) However, the learned counsel for the contesting respondents relied upon the judgment of the Hon'ble Supreme Court in the case of ***Vurimi Pullarao Vs. Vemari Vyankata Radharani*** reported in ***AIR 2020 SC 395***, wherein the Hon'ble Supreme Court has held as follows:-



"13. On the other hand, supporting the view which weighed with the trial court, the appellate court and the High Court, it has been urged by Mr Satyajit A Desai, that the plaint in the earlier suit contains a clear reference to the agreement to sell, to the payment of consideration and to the notice of performance that was issued by the plaintiff. Not only this, para 2 of the plaint contained a specific recital of the fact that the plaintiff intended to institute a suit for specific performance before the Court of the Civil Judge, Senior Division, Khamgaon. Despite this, it was submitted that the plaintiff omitted to seek leave of the court under Order 2 Rule 2(3). This, it was submitted, must necessarily result in the bar under the provision being attracted. The learned counsel submitted that the distinction with the situation as it arose before the Constitution Bench in Gurbux Singh [Gurbux Singh v. Bhooralal, AIR 1964 SC 1810] is that in the present case, the plaint in the earlier suit was duly marked as an exhibit without any objection from the plaintiff. The learned counsel in that regard has also relied upon on the decisions of this Court in Virgo Industries (Eng.) (P) Ltd. v. Venturetech Solutions (P) Ltd. [Virgo Industries (Eng.) (P) Ltd. v. Venturetech Solutions



(P) Ltd., (2013) 1 SCC 625 : (2013) 1 SCC (Civ) 679] and Pramod Kumar v. Zalak Singh [Pramod Kumar v. Zalak Singh, (2019) 6 SCC 621 : (2019) 3 SCC (Civ) 370] .

14. Order 2 Rule 2 is extracted below:

“2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this Rule an obligation and a collateral security for its performance and successive claims arising under



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the same obligation shall be deemed respectively to constitute but one cause of action.”

15. Order 2 Rule 2(1) is premised on the foundation that the whole of the claim which a plaintiff is entitled to make in respect of a cause of action must be included. However, it is open to the plaintiff to relinquish any portion of the claim in order to bring the suit within the jurisdiction of the court. Order 2 Rule 2(1) adopts the principle that the law does not countenance a multiplicity of litigation. Hence, a plaintiff who is entitled to assert a claim for relief on the basis of a cause of action must include the whole of the claim. A plaintiff who omits to sue in respect of or intentionally relinquishes any portion of the claim, shall not afterwards be entitled to sue in respect of the portion omitted or relinquished. This is the mandate of Order 2 Rule 2(2). Order 2 Rule 2(3) stipulates that a person who is entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs. However, a plaintiff who omits to sue for all the reliefs, without the leave of the court, shall not afterwards sue for any relief so omitted. The leave of the court will obviate the consequence which arises under Order 2 Rule 2(3). In the absence of leave being sought



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and granted, a plaintiff who has omitted to sue for any of the reliefs to which they were entitled to sue in respect of the same cause of action would be barred from subsequently suing for the relief which has been omitted in the first instance. The grant of leave obviates the consequence under Order 2 Rule 2(3). But equally, it is necessary to note that Order 2 Rule 2(2) does not postulate the grant of leave. In other words, a plaintiff who has omitted to sue or has intentionally relinquished any portion of the claim within the meaning of Order 2 Rule 2(2), shall not afterwards be entitled to sue in respect of the portion so omitted or relinquished."

(41)The term 'cause of action' should be understood to mean every material or the bundle of facts that are necessary leading to the relief prayed for in a suit. For proper appreciation of the legal issue, it is relevant to refer to the cause of action pleaded in two complaints, namely, the complaint in OS.No.432/2003 and the complaint in OS.No.27/2007. The cause of action pleaded in OS.No.432/2003 reads as follows:-

"VIII.The cause of action for the suit arose on 22.11.2002 the date on which the plaintiff and defendant entered into a sale agreement with regard to the suit property and the plaintiff has paid a sum of Rs.10,00,000/- as advance and part



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payment of the sale consideration and the plaintiff was put in possession of the suit property on the same date, and on 07.11.2003 when the defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and in all subsequent dates when the threat continues all at punjai Lakkapuram village, Erode Taluk, within the jurisdiction of this Honourable Court wherein the suit property is situate."

The cause of action paragraph in OS.No.27/2007 reads as follows:-

"12.Cause of suit arose on 22.11.2002 when the 2nd defendant as the Power Agent of the 1st defendant entered into written agreement of sale with plaintiff and received Rs.10,00,000/- as advance and part of sale consideration on 23.04.2003 when the 2nd defendant on behalf of the 1st defendant received a further sum of Rs.2,00,000/- as further advance and further part of sale consideration, on 10.12.2003 when the plaintiff issued a legal notice calling upon the defendants to perform their part of the Agreement dated 22.12.2002 and on all subsequent dated when the defendants failed to execute the sale deed at Lakkapuram Village, Erode, Taluk, where the suit property is situated within the jurisdiction of this Hon'ble Court."



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(42) Before filing the previous suit, this Court finds no material to infer that the appellant herein had any knowledge of possible repudiation of the Sale Agreement by 1st defendant. Therefore, in the previous suit, the appellant has simply referred to the Sale Agreement and possession being handed over to him on the date of Agreement and pleaded about the attempt being made by the defendants to interfere with the appellant's peaceful possession and enjoyment of the suit property on 07.11.2003. However, in the suit for specific performance in OS.No.12/2007, the appellant has referred to the legal notice issued by him and the failure of defendants to execute the Sale Deed as per the Agreement. Therefore, this Court is of the firm view that the cause of action alleged in the previous suit seeking the prayer for injunction is entirely different and that the appellant could not have sought for specific performance at the time when the previous suit was filed, if the Court has to test the real cause of action as stated in the plaint.

(43) It is to be noted that from the admitted facts and evidence on record, this Court is unable to conceive an idea that the appellant would have filed the suit for specific performance at the earliest stage, when he did not even know that the 1st defendant would repudiate the contract. Though it is stated that the 1st defendant demanded the appellant to



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pay a sum more than the amount on account of rise in the value of the property, this Court is unable to hold that the appellant at the time of the earlier suit was filed ought to have included the prayer for specific performance. Therefore, the present suit for specific performance is not barred by Order II Rule 2 of CPC.

(44) This Court has already held that there is no bar for the appellant to sue for specific performance and the appellant was always ready and willing to perform his part of the contract in terms of the Agreement of Sale under Ex.A2. This Court is unable to sustain the judgment and decree of the Trial Court dismissing the suit for specific performance. Having regard to the conduct of the 1st defendant in denying the agreement and the substantial payment of 90% of the sale consideration, the appellant/plaintiff is entitled to the decree for specific performance.

(45) It is seen that the 4th respondent in the above appeal suit is impleaded as a purchaser of *pendente lite*. Since it is admitted that the 4th respondent has purchased the property on 01.04.2009 and the suit was then pending, this Court holds that the 4th respondent has no independent right. Since the property has been registered in his name, he should also join along with the legal heir of the deceased 1st



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defendant/1st respondent herein while executing the decree. Hence,

respondents 4 and 5 are directed to execute the Sale Deed in favour of the appellant herein/plaintiff. Though cost should follow in a suit for specific performance, taking into consideration the delay in issuing suit notice and the filing of suit on the part of the plaintiff/appellant, this Court in enquiry, direct the appellant to bear the cost throughout.

(46)In the result, the Appeal Suit is **allowed** and the judgment and decree dated 30.04.2009 made in OS.No.12/2007 on the file of the learned Additional District Judge/ Fast Track Court NO.1, Erode, is hereby set aside and the suit in OS.No.12/2007 is decreed as prayed for insofar as reliefs [a] and [b] are concerned.

18.11.2022

AP

Internet : Yes

Index : Yes / No

To

1.The Additional District Judge
/ Fast Track Court NO.1, Erode.

2.The Section Officer
VR Section, High Court,
Chennai.



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S.S. SUNDAR, J.

AP

Judgment in
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