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A.S.No.19 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.19 of 2014
and M.P.No.1 of 2014

U.Venkatesan

...Plaintiff/Appellant

-Vs-

1.Susila
2.Selvakumar
3.Senthilkumar
4.Shanmugakumar
5.Gowsalya
6.Vijayalakshmi
7.Subasini
8.Megala
9.Satheeshkumar
10.Kambar

...Defendants/Respondents

Prayer:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of C.P.C., against the judgment and decree dated 28.06.2013 made in O.S.No.18 of 2011 passed by the learned Principal District and Sessions Judge, Ariyalur.



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For Appellant : Ms.K.Abhirame
for Mr.V.Raghavachari

For R1 to R9 : Mr.R.Subramanian

For R10 : Mr.B.Ravi

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

- (1)The plaintiff in the suit in O.S.No.18 of 2011 on the file of the learned Principal District and Sessions Judge, Ariyalur is the appellant in the above appeal.
- (2)The appellant filed the suit in O.S.No.18 of 2011 for the specific performance of an Agreement of Sale dated 04.06.2008 and for other consequential reliefs.
- (3)It is the specific case of the appellant that the suit property measuring an extent of 1.21.5 hectares [3 acres] in S.No.180/3 at Telur Village in Ariyalur Taluk is the absolute property of defendants, and they entered into an Agreement of Sale dated 04.06.2008 for selling the suit property at the rate of Rs.10,000/- per cent. It is stated that an advance of Rs.2,00,000/- was paid as acknowledged under the Agreement of Sale



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and that the parties had agreed to perform the contract within four months from the date of the Agreement of Sale. It is the case of the appellant that, on enquiry, the appellant came to know that the Government is looking for an extent of 100 acres for SIPCOT to establish an industrial center. It is further stated that the officials of SIPCOT have also inspected the suit property as well as other properties to ascertain whether they are more suitable for their purpose. It is stated that on enquiry by plaintiff, he was informed that they have inspected four places and that one of the places would be acquired. It was therefore stated in the plaint that the 2nd defendant was requested to extend the time till such acquisition proposal is finalized by a legal notice dated 30.09.2008. Stating that the defendants after notice, started negotiating for the sale of the suit property with third parties, it is contended that irrespective of finalisation of proposed acquisition on behalf of SIPCOT, the plaintiff expressed his willingness to complete the sale, but the defendants have failed to come forward to execute the Sale Deed as agreed. It is also the case of the plaintiff that time is not the essence of contract.



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(4)The following passage in the plaint is relevant, and it is extracted as follows:

"ஆனால் அசையா சொத்தைப் பொறுத்து ஒப்பந்தத்தின் காலம் முக்கியமானதல்ல என்பது சட்டகருத்தாகும். மேற்படி விவரம் தெரிந்தும் சிறுதொழில் நிறுவன அலுவலகம் சிறுதொழில் மையத்திற்கு எந்த இடத்தை நிர்ணயம் செய்தாலும் கிரையம் பேசிய தாவா சொத்தினை கிரையம் செய்து கொடுக்க அழைத்து அவர்கள் மறுத்து வருகிறார்கள். வாதி கிரைய ஒப்பந்த நாளிலிருந்து ஒப்பந்தப்படி நடந்து கொள்ள விருப்பம் உள்ளவராகவும், தயாராகவும் இருந்து வருகிறார். ஆதனால் வாதி இந்த வழக்கை இந்த பிரதிவாதிகள் பேரில் "ஏற்றதை ஆற்றுகை" பரிகாரத்திற்கு தாக்கல் செய்ய வேண்டிய அவசியம் ஏற்பட்டு வாதி இந்த வழக்கை தாக்கல் செய்துள்ளார். வாதி மீதித் தொகையை கோர்ட் டெப்பாசிட்டில் செலுத்த உறுதி கூறுகிறார்."

(5)It is admitted by both parties that the suit Agreement was signed only by defendants 1 to 5 and 7 to 10. The 6th defendant though was shown as a party, she did not sign. It is the case of plaintiff that other defendants



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promised to get the signature of 6th defendant.

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(6) The suit was contested by all the defendants and the written statement filed by the 4th defendant was adopted by all other defendants. The defendants specifically denied the genuineness of the Sale Agreement. It is their case that the 4th defendant borrowed a sum of Rs.1,00,000/- from the plaintiff as a loan on 04.06.2008 agreeing to repay the same with interest at 12% and the 4th defendant signed on blank stamp papers and blank conquer sheets as security for the loan. It is the further case of the defendants that by pressurising the 4th defendant, the plaintiff obtained signatures from all other defendants on blank stamp papers and blank conquer sheets and gave them to the plaintiff in connection with the loan obtained by the 4th defendant from the plaintiff. Every allegation and averment in the plaint was specifically denied. It is further stated that as per the understanding, the 4th defendant was paying interest every month and the plaintiff did not give a receipt or acknowledgement for the payment of interest on the blank stamp papers or blank conquer sheets signed by the defendants. It is also stated that the 6th defendant was not on good terms with the 4th defendant and hence, she did not sign in the blank



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stamp papers and blank conquer sheets.

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(7) In the written statement, the defendants also disputed the readiness and willingness of the plaintiff to perform his part of the contract as promised under the Sale Agreement. A specific stand was also taken that the case of the plaintiff regarding the proposal for acquisition is false. Therefore, it is seen from the written statement that the defendants while describing the Suit Agreement itself as a product of fraud, forgery, and fabrication, simultaneously questioned the readiness and willingness of the plaintiff as well as the reason alleged by the plaintiff for non performance of his part of the contract as specified in the Agreement. An additional written statement was also filed, disclosing the fact that the suit property had been sold in favour of the 10th defendant / husband of the 6th defendant. It is stated that the suit was dismissed for default on 02.11.2009, and hence, for pressing family necessities, the defendants have sold the suit property on 05.11.2009 in favour of 10th defendant, who was later impleaded.

(8) The Trial Court after recording the pleadings, framed the following



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issues :

- i. Is it true that defendants have executed a Sale Agreement in favour of the plaintiff on 04.06.2008 agreeing to sell the suit property to plaintiff ?*
- ii. Whether the defendants have agreed to sell the suit property at the rate of Rs.10,000/- per cent and received Rs.2,00,000/- as advance ?*
- iii. Is it true that the Suit Agreement is forged one ?*
- iv. Whether the plaintiff is entitled to get a decree for specific performance of contract ?*
- v. To what relief ?*
- vi. Whether the 10th defendant is a bona fide purchaser for value without notice ?*

(9) Before the Trial Court, the plaintiff was examined as P.W.1 and marked Exs.A1 to A16 and the scribe was examined as P.W.2. On the side of the defendants 1 to 9, the 4th defendant was examined as D.W.1 and the 6th defendant was examined as D.W.2. The 10th defendant who purchased the suit property during the pendency of the suit was examined as D.W.3 and Exs.B1 and B2 were marked.

(10) On the issues [1], [2] and [3] framed, the Trial Court held that defendants 1 to 9 excluding 6th defendant executed the Sale Agreement in



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favour of the plaintiff on 04.06.2008, agreeing to sell the suit property to the plaintiff at the rate of Rs.10,000/- per cent and received Rs.2,00,000/- as advance. The Trial Court rejected the contention of the defendants that the Suit Agreement under Ex.A1 is a fabricated one.

(11)On the 4th issue, whether the plaintiff is entitled to get a decree for specific performance of contract, the findings of the Trial Court are as follows:

- a) The Agreement had been made with a person who is not a party to the transaction.
- b) The suit filed with a claim against a person, who is not a party to the transaction is not maintainable.
- c) The plaintiff is not entitled to claim the entire property in a suit for specific performance when one of the co-sharers is conspicuously absent in the suit transaction. Since the extent of the suit property includes the share of the 6th defendant, the Agreement is defective and without rectifying the defect, the suit cannot be sustained.

(12)However, the Trial Court found that the suit if at all can be maintained only in respect of undivided 8/9th shares of defendants 1 to 5 and



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defendants 7 to 9. The Trial Court then held that granting decree in respect of 8/9th shares would lead to a partition decree for the division of 8/9th shares of the decree holder and that would lead to multifariousness. Though the Trial Court did not disclose what is multifariousness, it observed that the Court cannot come to rescue of such parties who are reckless in making the claims.

(13) Admittedly, the Trial Court has not framed any specific issue, whether time was the essence of the Agreement or regarding the readiness and willingness of the plaintiff. However, regarding readiness and willingness, the Trial Court has found that the plaintiff had not produced any document or evidence to prove that he had legitimate information to believe that there was an acquisition proposal in respect of the suit property. Therefore, the Trial Court also held that the plaintiff is not ready and willing to perform his part of the contract. Since the plaintiff entered into an Agreement to conclude the same within the time stipulated, and then came forward with a new plea that the performance should be postponed until he gets a clear picture as to whether there is going to be an acquisition by the Government or not, the Trial Court held



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that the plaintiff is not entitled to the decree for specific performance.

(14) On the 6th issue, whether the 10th defendant is a bona fide purchaser, the Trial Court found that the sale itself occurred during the pendency of the suit for specific performance. Since the 10th defendant is none other than the husband of the 6th defendant and the sale consideration specified in the Sale Deed is only Rs.2,43,000/-, the Trial Court held that the 10th defendant is not a bona fide purchaser. The Trial Court also found that the Sale Deed in favour of the 10th defendant is hit by Section 52 of the Transfer of Property Act. Following the principle of law settled by the Hon'ble Supreme Court the Trial Court observed that the *lis* is deemed to be pending in view of the filing of subsequent applications for restoration and the actual restoration of the suit. In other words, the Trial Court held that the transfer though occurred when the suit was dismissed for default, it is not a ground to save the transaction from the rigor of Section 52 of the Transfer of Property Act. Though the suit for specific performance was dismissed, the Trial Court granted a decree for the recovery of a sum of Rs.1,00,000/- as admitted by the defendants in their written statement. Aggrieved by the same, the plaintiff has preferred the above appeal.



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(15)The learned counsel appearing for the appellant elaborately made her submissions, particularly stressing the following points:

- (a) Time is not the essence of contract, particularly, when the contract is in relation to sale of immovable properties as held in several precedents. The notice issued by the plaintiff under Ex.A3 cannot be used against the plaintiff particularly when the plaintiff's intention was to ensure the vendor's title free from reasonable doubt.
- (b) The learned counsel relied upon Section 17 of the Specific Relief Act to buttress her argument that there is nothing illegal on the part of plaintiff to postpone the sale in order to ensure that the suit property is not likely to be acquired by M/s.SIPCOT.
- (c) The Trial Court ignored Section 12 of Specific Relief Act which specifically enable the plaintiff to seek specific performance in respect of 8/9th share of defendants 1 to 5 and 7 to 9.
- (d) The Trial Court has failed to frame an issue regarding readiness and willingness of the plaintiff and therefore, the judgment of Trial Court is vitiated.



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- (e) When the Trial Court has found that the subsequent Sale Deed executed by defendants 1 to 9 in favour of 10th defendant is hit by Section 52 of the Transfer of Property Act and that the 1st defendant is not the bona fide purchaser for value without notice of Sale Agreement, the Trial Court ought to have decreed the suit for specific performance.
- (f) The plaintiff has specifically pleaded and proved his readiness and willingness. The Trial Court having found that the Agreement is proved and that a sum of Rs.2 lakhs was received as advance, has refused to grant a decree for specific performance and granted alternative relief for payment of a sum of Rs.1 lakh even after holding that the defendants have received a sum of Rs.2 lakhs as advance under the suit Agreement-Ex.A1 dated 04.06.2008.
- (g) The Trial Court erred in holding that the suit Agreement – Ex.A1 is not enforceable merely because one of the parties to the document has not signed the Agreement and that the finding of Trial Court holding that the suit Agreement [Ex.A1] is invalid and hence, cannot be enforced, is contrary to law and several decided cases on this issue.



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(h) The Trial Court failed to appreciate the conduct of defendants in setting up a false case describing the suit Agreement as a fraudulent creation. Since it is settled that the conduct of defendants is also relevant in a suit for specific performance, the Trial Court ought to have exercised the discretion in favour of plaintiff/appellant.

(16) ***Per contra***, Mr.R.Subramanian, learned counsel appearing for respondents 1 to 9 submitted that the suit Agreement is not enforceable in view of the fact that the 6th defendant who is a party to the transaction has not signed the document and that the Sale Agreement [Ex.A1] as such, is not complete and hence, cannot be enforced in a Court of law. Learned counsel then submitted that the Trial Court though has not framed any issue regarding readiness and willingness, has rendered a specific finding that the plaintiff is not ready and willing to perform his part of the contract. He pointed out that the stand taken by the plaintiff that time is not the essence of the suit Agreement under Ex.A1 is contrary to the specific terms by which it can be inferred that parties have specifically understood that the time is the essence of contract by specifically referring to the consequences in case of failure to adhere to the time



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schedule by plaintiff. Learned counsel appearing for respondents has conceded to the finding of the Trial Court regarding the genuineness of the Sale Agreement under Ex.A1 and the receipt of Rs.2 lakhs as advance under Ex.A1. He submitted that the plaintiff who has failed to plead and prove readiness and willingness in terms of the Agreement, is not entitled to specific performance. Learned counsel has not made any submission challenging the findings of the Trial Court that the 10th defendant is not a bona fide purchaser for value without notice of the Suit Agreement and that the Sale Deed executed in favour of the 1st defendant is hit by Section 52 of the Transfer of Property Act.

(17) Having regard to the submissions of the learned counsels appearing on either side and the specific pleadings, evidence and issues framed by Trial Court, this Court finds that the following points are to be determined in this Appeal:-

A) Whether time is the essence of the Suit Agreement [Ex.A1]?

B) Whether the suit Agreement-Ex.A1 is vitiated merely because one of the parties to the document, namely, the 6th defendant, did not sign the suit Agreement?



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C) Whether the plaintiff has averred and proved readiness and willingness in terms of Section 16[c] of the Specific Relief Act?

D) Whether the suit for specific performance can be enforced in respect of 8/9th share of defendants 1 to 5 and 7 to 9 by virtue of Section 12 of the Specific Relief Act?

E) Whether the plaintiff is entitled to the equitable relief of specific performance?

POINT [A]-Whether time is the essence of contract?

(18)The learned counsel appearing for the appellant submitted that time is not the essence of the Agreement. The Trial Court has specifically held that the plaintiff has not proved his readiness and willingness as he failed to perform his part of the contract within the time specified in the Agreement. The Trial Court did not frame the issue whether time was the essence of the Agreement. However, this issue was indirectly answered.

(19)Learned counsel for the appellant relied upon several precedents to



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buttress her argument that time is not the essence of contract, particularly, when the contract in this case is in respect of sale of immovable property and that Court cannot decide time as the essence merely because there is a stipulation specifying time limit within which the contract should be performed.

(20)The learned counsel appearing for the appellant relied upon a judgment of the Hon'ble Supreme Court in the case of ***Chand Rani Vs. Kamal Rani*** reported in ***1993 [1] SCC 519***. This Court has already considered the said judgment in the case of ***G.Banumithra and Others Vs. D.Santhakumar*** in ***AS.Nos.1101/2008 & 1067/2009*** vide judgment dated ***22.12.200***, wherein it has been held as follows:-

*"15.This Court in several similar cases, by following several judgments of the Hon'ble Supreme Court has held in unequivocal terms that the stipulation with regard to time cannot be ignored and that time can also be made as the essence of the contract even by issuing a notice. It would be more appropriate to refer to the judgment of the Constitution Bench of Hon'ble Supreme Court where similar issue was considered in ***Chand Rani [Smt] [Dead] by LRs Vs. Kamal****



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Rani [Smt] [Dead] by LRs reported in 1993 [1] SCC 519 : AIR 1993 SC 742. Though the Hon'ble Supreme Court accepted the principle that in the case of sale of immovable property, time is not regarded as the essence of the contract and that, there is no presumption as to time being the essence of the contract, has held as follows:-

25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

- 1. From the express terms of the contract;*
- 2. from the nature of the property; and*
- 3. from the surrounding circumstances, for example: the object of making the contract."*

16.The Constitution Bench of Hon'ble Supreme Court considered the issue as to whether time is the essence of the contract with reference to the following clause in the Agreement which is extracted in paragraph 26 of the Judgment of Hon'ble Supreme Court:-

"26. In the above legal background, we will now look at the terms of the suit contract dated August 26, 1971. The agreement reads as under:

"Now, therefore this agreement to sell witnesseth and the parties hereto have agreed as follows:



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1. That in pursuance of the said agreement, the 1st party has received a sum of Rs 30,000 (rupees thirty thousand only) from the second party as earnest money the receipt whereof the 1st party hereby separately acknowledges. Rs 98,000 (rupees ninety-eight thousand only) will be paid by the second party to the 1st party within a period of ten days only and the balance of Rs 50,000 (rupees fifty thousand only) at the time of registration of the sale deed before the Sub-Registrar, New Delhi."

17. After extracting the above clause in the Agreement of Sale, the Hon'ble Supreme Court has made the position in clear terms by expressing its conclusion in paragraphs No.27 and 28 of the said judgment which read thus:-

"27. Then comes the question as to the payment of Rs 98,000. The question is as to what is the meaning of the words "within a period of 10 days only"? Does it apply to the amount or the time-limit of 10 days from August 26, 1971. The trial court was of the view that the word "only" was meant to stress and qualify the amount of Rs 98,000 and cannot be read to mean as if payment within 10 days was the essence of the contract. On this aspect, the appellate court takes the contrary view and holds that the amount of Rs 98,000 ought to have been paid on or before September 6, 1971. Failure to do so would constitute a breach committed by the defendant. We are of the considered view that the Division Bench is right in its conclusion. As rightly pointed out in the judgment under appeal, the word "only" has been used twice over

(1) to qualify the amount of Rs 98,000 and



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(2) (2) to qualify the period of 10 days.

28. Therefore, having qualified the amount there was no further need to qualify the same unless it be the intention of the parties to make time as the essence of the contract."

18. Though several judgments have been cited, this Court is unable to find any other judgment more appropriate than the judgment of the Constitution Bench of Hon'ble Supreme Court in **Chand Rani's case [cited supra]**. In the Agreement of Sale under Ex.A1, parties never even agreed for extension of time on any contingency and specified the time limit in unequivocal terms without an option being given to the purchaser in case he fails to pay the balance of sale consideration within the period of two months from the date of Agreement.

(21) The above-mentioned judgment of this Court also applies to the present case. The suit Agreement under Ex.A1 contains the following terms:-

"நம்மில் 1 முதல் 9 வரையிலான நபர்களுக்கு சொந்தமானதும் மேற்படியார்கள் ஆண்டனுபவித்து வருகிறதும் 1 முதல் 9 வரையிலான நபர்களின் பெயரில் கூட்டுபட்டா ஏற்பட்டு பட்டா எண்.241 ஆக பதிவாகியுள்ள அடியில் கண்ட சொத்தினை மட்டும் நம்மில் 10வது நபருக்கு கிரயம் செய்து கொடுப்பதாக கிரயம் பேசி செண்ட் 1க்கு ரூபாய் 10,000/- (ரூபாய் பத்தாயிரம் மட்டும்) வீதம் நிச்சயித்த கிரய தொகையில் நாளது தேதியில் 10வது நபர் நம்மில் 1 முதல் 9 வரையிலான நபர்களிடம்



அடியில் கண்ட சாட்சிகளின் பார்வையில் முன்தொகையாக செலுத்தியது ரூபாய்.2,00,001/- (ரூபாய் இரண்டு இலட்சத்தில் ஒரு ரூபாய் மட்டும்) பாக்கியுள்ள கிரய தொகையினை 10வது நபர் நாளது தேதி முதல் வருகிற நான்கு மாத கால கெடுவிற்குள் (3.10.2008), நம்மில் 1 முதல் 9 வரையிலான நபர்களிடம் செலுத்தி 10வது நபர் தன் சொந்த செலவில் பத்திரம் வாங்கி தன் பெயருக்கோ அல்லது 10வது நபர் விரும்பும் பெயருக்கோ பத்திரம் பதிவு செய்து கொள்ள வேண்டியது. அப்படி கெடு தேதிக்குள் நம்மில் 10வது நபர் பத்திரம் பதிவு செய்து கொள்ள முன் வரும் நம்மில் 1 முதல் 9 வரையிலான நபர்கள் பத்திரம் பதிவு செய்து கொடுக்க தவறினாலோ மறுத்தாலோ பாக்கித் தொகையினை நீதிமன்றத்தில் செலுத்தி கோட்டார் மூலம் சொத்தினை சுவாதீனம் செய்து கொள்ள வேண்டியது என்றும் அப்படி கெடு தேதிக்குள் 10வது நபர் பத்திரம் பதிவு செய்து கொள்ள தவறினால் முன் தொகையினை இழந்து விட வேண்டியது என்றும்."

(22)From the terms of the Agreement – Ex.A1, as extracted above, the parties had mutually agreed that the contract should be performed within four months from the date of Agreement. In case the purchaser/plaintiff fails to perform his part of contract within the time specified, the plaintiff has to forego what he has paid as advance. No other circumstance or conduct of defendants in the present case is relied upon by the learned counsel for the appellant to show that defendants have ever gave hope for extending the time agreed under Ex.A1. Therefore, this Court has no



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hesitation to hold that time is the essence of the contract under Ex.A1.

Hence, point [A] is answered in affirmative and against the submission of the learned counsel for the appellant that time is not the essence of contract.

POINTS [B] & [D]:-

(23)The Trial Court has held that the contract is not specifically enforceable as the 6th defendant who is also shown as a party to the Agreement, has not signed the Agreement. Even though the 6th defendant was one of the vendors shown in the Agreement and it appears that all the owners have agreed to sell the property to the plaintiff, the 6th defendant has not signed the Agreement. The case of plaintiff is that the 6th defendant was not in station and therefore, the other parties to the Agreement, namely, defendants 1 to 5 and 7 to 9 promised to get the signature of 6th defendant later. The question whether such an Agreement is complete and enforceable, has been considered by this Court earlier in the case of ***Sethu Parvathy Ammal Vs. Bajji K.Srinivasan Chettiar and Others***



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reported in **AIR 1972 Mad 222**. A learned Single Judge of this Court has elaborately discussed the issue whether such a contract, in the absence of one of the contracting parties can be enforced against the rest who are parties to the document and held that the contract can be enforced against the signatories to the Agreement if the intention of the parties can be inferred that the signatories have agreed to execute the Sale Deed irrespective of the person who has not signed joined execution or not.

(24) It is useful to refer to the following paragraphs from the said judgment:-

".....Having made the above observations with regard to the legal position, the Federal Court proceeded to deal with the case before it, in the following terms:

“Whether Gobardhandas thought rightly or wrongly that he had authority to dispose of the shares standing in the name of his brother as well, is not material for our present purpose. All that we can say is this that there is nothing in this letter which would show that it was the intention of the signatories that they would sell their shares and interests to the plaintiffs if and only if Badri Prasad sold his. Badri Prasad was not in the picture at all and although Gobardhandas apparently agreed to sell his shares as well, there is no evidence of any understanding, either express or implied, even.



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amongst the defendants inter se that unless Badri Prasad actually came and joined the agreement, the contract would not be perfect or complete. None of the defendants or even their Solicitor was examined as a witness in this case and no questions on this point were put to the plaintiff's witnesses during their cross-examination. The letter of 28th December, 1940 if it shows anything shows unmistakably that the vendors were anxious to dispose of their shares by any means possible and they did not care whether the shares were purchased by Khaitans or anybody else. The letter of both the appellants written to Himatsingka on 5th January, 1941, practically clinches the matter and proves conclusively that the promise to sell their shares and interests in the business was not in any way dependent upon any body else's joining with them in the transaction. Thus there was no intention on the part of the defendants that the contract would not be binding unless Badri Prasad became a party to it and there has been no suggestion made on behalf of the appellants either here or in the courts below that any injustice would be done to them if they are compelled to perform the agreement which they made."

The principles deducible from the above decisions can be now stated as follows:

- 1. When a document is proposed to be executed by several parties and only some of them execute and others do not, whether the document is binding on those at least who have*



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executed it depends upon the intention of the parties; and

2.The intention that the document would be incomplete and would not be enforceable against the executing parties has to be established by the executing parties by showing that they would not have executed the agreement if the other party had not joined in the agreement or that they did not intend to be bound by the agreement until and unless the others who were proposed to be parties to the agreement joined in the execution.

Now, the question for consideration is, what exactly are the facts of the present case with reference to the application of the above principles. Unfortunately the learned District Judge had not borne in mind that the case had to be decided with reference to the intention of the parties. The learned District Judge has extracted the two sentences italicised by me above in the judgment of the Federal Court and he was of the view that those two sentences concluded the matter against the appellant in the present case. I am clearly of the opinion that the learned District Judge has erred in this behalf. It is not only these two sentences in the judgment of the Federal Court which have to be looked into for the purpose of finding out the law, but also the other portions of the judgment which I have already



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extracted. If those portions are also looked into, it will be clear that the Federal Court held in that case that unless the defendants who executed the agreement could show that there was no intention on their part to be bound by that agreement without the others joining the same, the agreement could be enforced as against them.

.....

There is only one other matter to which I shall draw attention. The mother of the first defendant is not a party to the suit. Therefore the decree that is passed in favour of the appellant will not affect any right which the mother of the first defendant may have in the suit property. As a matter of fact, Mr. N.C. Raghavachari, learned counsel for the appellant, having regard to the language of S. 15 of the Specific Relief Act, 1877, corresponding to S. 12(3) the Specific Relief Act, 1963, expressly stated that the appellant is prepared to take the sale deed on paying full consideration agreed upon under Ex. A.1, subject to any rights which the first defendant's mother may have over the suit property."

(25)Learned counsel for the appellant relied upon a judgment of Hon'ble



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Supreme Court in the case of *A.Abdul Rashid Khan [Dead] and Others V. P.A.K.A.Shahul Hamid and Others* reported in *2000 [10] SCC 636*.

Before the Hon'ble Supreme Court, similar Agreement was executed in respect of a property of several co-owners without the signatures of two of the co-owners. Though the parties who have signed the Agreement undertook to get the signatures of two other co-owners, they did not do so. However, the Agreement holder filed a suit for specific performance and also prayed for partition and separate possession of 5/6th share in the suit property. The parties who signed the Agreement denied any assurance or promise to obtain the signatures of their sisters who are also co-owners. A plea was also raised in the additional written statement by the vendors that the sale could only be an indivisible sale in respect of entire property and that the Agreement cannot enforced when the sisters have not joined in the Agreement of sale.

(26)The Hon'ble Supreme Court in the above judgment has held as follows:-

"14. Thus we have no hesitation to hold, even where any property is held jointly, and once any party.



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to the contract has agreed to sell such joint property by agreement, then, even if the other co-sharer has not joined, at least to the extent of his share, he is bound to execute the sale deed. However, in the absence of the other co-sharer, there could not be any decree of any specified part of the property to be partitioned and possession given. The decree could only be to the extent of transferring the share of the appellants in such property to other such contracting party. In the present case, it is not in dispute that the appellants have 5/6th share in the property. So, the plaintiff's suit for specific performance to the extent of this 5/6th share was rightly decreed by the High Court which requires no interference."

(27)Learned counsel then relied upon a judgment of a learned Single Judge of this Court in the case of **Navaneethakrishnan and Others V. S.A.Subramani Raja** reported in **2011 [11] LW 414**. The learned Single Judge of this Court dealt with a case where the plaintiff entered into an Agreement of Sale with defendants 1 to 3 therein who are the co-owners. However, one of the defence raised was that the suit properties are not the properties of defendants 1 to 3 alone as the properties are joint family



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properties to which defendants 4 to 9 are also entitled to a share by birth.

The learned Single Judge of this Court held that the Agreement is valid in respect of 1/3rd share of defendants 1 to 3 and that the plaintiff is entitled to obtain a decree for specific performance by paying the agreed price reduced by consideration for the part which is left unperformed. Relying upon Section 12[3] of the Specific Relief Act, it is observed that the plaintiff therein is entitled to claim specific performance in respect of 1/3rd share in the suit property on payment of 1/3rd of the sale consideration.

(28)Learned counsel for the appellant also relied upon a judgment of Delhi High Court in the case of *Namrita Kalra V. Ram Swaroop and Others* reported in **2001 [58] DRJ 338**. Referring to Section 12 of Specific Relief Act and Section 44 of Transfer of Property Act, a learned Single Judge of Delhi High Court, following the judgment of Hon'ble Supreme Court in the case of *Kartar Singh Vs. Harjinder Singh and Others* reported in **AIR 1990 SC 854**, has held as follows:-

"11. In support of the above contention, learned counsel for the plaintiff has placed reliance upon AIR



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1990 SC 854, *Kartar Singh v. Harjinder Singh and others*, wherein the respondent and his sister owned some property and the respondent therein entered into an agreement with the appellant for himself and for his sister for sale of the property and undertook to get the same registered. It was specifically mentioned in the agreement that he had agreed to sell not only his entire share in the property but also that of his sister, and that he would be responsible for getting the sale deed executed from his sister. However, subsequently the sister refused to sell the property coming to her share. In a suit for specific performance of agreement a decree was granted in respect of half share of suit property. The decree was set aside by the High Court by taking into consideration the provisions of Sections 12 of the Transfer of Property Act, 1882 which reads as under:—

“12. Condition making interest determinable on insolvency or attempted alienation - Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.



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12. The Supreme Court held that the case is not covered under Section 12 of the Specific Relief Act as it relates to the specific performance of a part of the property. It was observed that a mere failure to mention in the agreement that they had such share in the property would not entitle one to come to the conclusion that they did not have that share. When the property is owned jointly, unless it is shown to the contrary, it has to be held that each one of the joint owners owns a moiety of the property. Though in the above referred case the respondents had contracted to sell whole of the property through two contracts viz. for the sale of his share and of his sister's share although these were incorporated in one agreement and these were separate severable from each other.

13. In the case in hand, the stand of the plaintiff is on much stronger footing than the above case. The contracting party had agreed to sell his share in the property and. therefore, the properties agreed to be sold were clearly distinguishable by the share the plaintiff held to his credit.

14. Again on the question whether decree for specific performance can be granted in an



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unpartitioned property and in respect of unspecified share of the vendor, the Supreme Court observed: "The law does not bring any such difficulty in decreeing the suit for specific performance. Whenever a share in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated".

15. In view of the above position of law, the maintainability of suit for specific performance in respect of undivided or undemarcated property of the person entered into an agreement to sell has no element of doubt and is unquestionable."

(29) Though a few other judgments were also relied upon by learned counsel for the appellant, this Court is of the view that it is not necessary to quote every other judgments when this Court has no quarrel with the proposition for which those decisions are cited.

(30) Section 12 of the Specific Relief Act reads as follows:-

12. Specific performance of part of contract.—

(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.



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(2) *Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.*

(3) *Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—*

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 1[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) *When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or*



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ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

(31)Section 12 of Specific Relief Act enables the Court to grant specific performance in respect of a part of contract in respect of situations covered under sub-sections [2], [3] and [4]. In the present case, the execution of Agreement by defendants 1 to 5 and 7 to 9 is not in dispute. Therefore, the contract as such, is valid in respect of 8/9th share which is enforceable against defendants 1 to 5 and 7 to 9. When the contract is held to be valid and binding on defendants 1 to 5 and 7 to 9 except the 6th defendant who is entitled to only 1/9th share, there is no impediment for the Court to grant specific performance, if the plaintiff has otherwise proved his readiness and willingness and entitled to a decree for specific performance in respect of the undivided share of defendants 1 to 5 and 7 to 9 in respect of their 8/9th share. **Hence, points [C] and [E] are decided in favour of plaintiff/appellant that the suit as such maintainable to enforce the contract as regards 8/9th share of**



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defendants 1 to 5 and 7 to 9.

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POINTS [C] and [E]:-

(32) This Court has already extracted the terms of Agreement and held that time is the essence of Agreement. As per the Agreement dated 04.06.2008, the plaintiff should pay the balance of Rs.28 lakhs within four months, i.e., before 03.10.2008. However, just before the expiry of the period of four months, the plaintiff issued a notice through the Advocate on 30.09.2008 which is marked as Ex.A3. In the notice, it is stated as follows:-

"3.While the the facts are to be so, in the month of July 2008 the SIPCOT has announced its intention to acquire lands to an extent of 100 acres in the Ariyalur District. In pursuance of the announcement the officials of the SIPCOT had visited the district and inspected various places accompanied by the District Collector and other Revenue officials and selected 4 areas to establish the SIPCOT complex. The Thelur village where the under mentioned property is situated



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was one among the areas selected by the SIPCOT officials. So far there is no official announcement regarding in which area the SIPCOT complex is going to be established. Further, it is reliably learnt that in the selected area the land will be acquired under the Land Acquisition Act and the Government rate will be fixed as compensation for the land acquired. As such there is no clear picture emerging so far and Thelur Village is under active consideration of SIPCOT. Under these circumstances my client wants to wait until a clear picture emerges in respect of the place of establishment of the SIPCOT. Since my client is purchasing the under mentioned property for huge amount and if these lands acquired by the government he will not get even 1 percent of the amount he has spent. As such though my client is ready and willing even now to pay the entire sale consideration to you he wants to wait till a clear picture emerges in respect of the place of establishment of SIPCOT complex. Once a clear picture emerges, even if it is tomorrow, my client is ready to pay the sale consideration and get the sale deed registered."

(33)Therefore, from the last sentence in the said notice, it is evident that the



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plaintiff's readiness and willingness to perform his part of the contract is only after he gets a clear picture as to the proposal of M/s.SIPCOT. Not even a scrap of paper or independent witness is examined to show that the apprehension of plaintiff about acquisition proposal is true. In other words, there is no evidence to suggest that M/s.SIPCOT was searching for lands for there purpose in and around the suit property. When the plaintiff has agreed to pay the balance within four months, but he has reasons to believe that he will not get the property, it is a good reason for him to repudiate the contract. However, he is not justified in delaying performance under mere pretext that the suit property may be acquired for a public purpose. The question whether the apprehension is proved has to be answered negative as there is no material or evidence regarding such proposal. The question whether the plaintiff is justified in refusing to come forward to pay the balance within the stipulated time, has to be examined.

(34)Learned counsel for the appellant referred to Section 17 of the Specific Relief Act and submitted that the plaintiff has a reasonable doubt and that therefore, he is justified in sending the notice postponing the



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performance. The contention of the learned counsel for the appellant referring to Section 17 of Specific Relief Act, cannot be countenanced as Section 17 of Specific Relief Act speaks about the enforceability of a contract at the instance of the vendors. When a suit is filed by the vendor, the purchaser can plead that the vendor had no title or had a defective title.

(35) When a person is seeking the equitable relief of specific performance, he should come with clean hands and his intention behind delaying performance shall not be to deceive the defendants. Learned counsel appearing for the appellant relied upon a judgment of Calcutta High Court in the case of *Arun Prakash Barhal V. Tulsi Charan Basu* reported in *AIR 1949 Cal 510*, wherein it has held that a plaintiff is not debarred from obtaining specific performance of the Agreement merely on the ground that he had asked for an enquiry as to title and that the plaintiff is entitled to a decree for specific performance. Examination of facts of the case shows that the plaintiff therein filed a suit for specific performance of Agreement of Sale dated 11.09.1956. The plaintiff therein paid a sum of Rs.501/- as earnest money and the defendant therein



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failed to take steps for the ejectment of tenants in the suit premises to be sold and to arrange for giving vacant possession as stipulated under the Agreement. The Agreement provided for giving vacant possession and the sale of premises free from all encumbrances. The plaintiff has pleaded his readiness and willingness. It is the specific case of defendant therein that the defendant had taken sufficient steps for ejectment of tenant by instituting appropriate proceedings. While examining the readiness and willingness of the plaintiff therein, the Court gave a definite finding that the plaintiff was ready and willing to perform his part of the contract and that the defendants has failed to perform their obligation as agreed under the Agreement. When the plaintiff was ready and willing, the Court observed that he has an option to waive compliance of any of the terms of Agreement by the defendant and to seek performance. Therefore, the judgment relied upon by learned counsel appearing for the appellant has no relevance to the present case.

(36)Learned counsel also relied upon yet another judgment of a Division Bench of Bombay High Court in the case of *Lallubhai Rupchand V. Chimanlal Manilal and Others* reported in *ILR [1935] 59 Bom 83* :



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AIR 1935 Bom 16, wherein it is held as follows:-

"Applying these principles to the facts of the present case. I am of opinion that the liability of this property to be compulsorily acquired may fairly be said to amount to a material defects the buyer is entitled to say that he wants a house and not a right to compensation, and the learned trial Judge in dealing with this part of the case has obviously applied the wrong criterion. It has been suggested by learned counsel for the plaintiff-respondent that the notification having been made as long ago as 1912 must be regarded as obsolete and that therefore there is no real likelihood of this property being acquired. I do not feel satisfied, however, that is so. The learned counsel referred us to various sections of the Land Acquisition Act, but, as far as I can see, it is nowhere provided that the acquisition must follow within any limited time after the notification. Difficulties might no doubt arise in the event of steps being taken to acquire property after the lapse of many years. because under the Act the property is to be valued as at the date, of the notification. Possibly the procedure in such cases may be to publish another notification. As to that we have.



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no evidence. But it seems to me that when once there has been a notification by Government at the instance of the Municipality that certain properties are to be acquired for municipal purposes, such as the widening of a street, or a town planning schema, there must always be a likelihood of steps being taken in that direction sooner or later. If this liability to be acquired under the Land Acquisition Act is a material defect, as, in my opinion, it is, there can be no doubt, I think, that it is also one which was not capable of being discovered with ordinary care in the sense of those words as used in section 55(1)(a). As far as we are aware there was really nothing at all to put the buyer on inquiry as to that particular matter. In that respect the fact that the notification was in 1912 is obviously in his favour. The view that this should be regarded as both a material and a latent defect is supported by the cases cited by Mr. Dave for the appellant, Nursing Dass Kothari v. Chuttoo Lall Misser [(1923) 50 Cal. 615.] and Ballard v. Way [(1836) 1 M. & W. 520.] The Calcutta case was decided under section 20 of the Indian Contract Act because it was found that both parties to the contract were unaware of the fact that the



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property had been notified for acquisition. But obviously the position of the purchaser could be no worse if he was ignorant of the fact of the notification while the seller was aware of it."

(37)The question that arose before the Court was in a different situation.

The plaintiff therein, owner of the property, filed a suit for enforcement of an Agreement of Sale and the issue framed by the Court is "whether it is proved that the plaintiff's title to the property agreed to be conveyed was defective so as to entitle the defendant to refuse to complete the contract and accept conveyance." Therefore, the above judgment cannot lend support to the appellant's case.

(38)Again, learned counsel appearing for the appellant relied upon the judgment of Bombay High Court in the case of **Pandurang Laxman Mohite Vs. Kaluram Bahiru Bhikule** reported in **AIR 1956 Bom 254**, wherein, Hon'ble Mr.Justice GAJENDRAGADKAR, as he then was, as a Judge of Bombay High Court, has held as follows:-

"11. Mr. Abhyankar has very strongly relied on the decision of this Court in — 'Lallubhai v. Mohanlal', AIR 1935 Bom 16 (A). It is no doubt true that in this case it has been held that, if the property which is the subject matter of an



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agreement of sale is discovered to be subject to acquisition proceedings, that would introduce both a material and a latent defect in the title of the vendor. and Mr. Abhyankar has referred me to the evidence in this case which shows that the Poona Municipal Corporation has decided to acquire this house for the purpose of widening the road."

(39)The expression of the great Judge in paragraph 11 of the above cited judgment has no application to the facts of the case as the suit filed by the plaintiff therein is for recovery of the amount of earnest money paid under Agreement of Sale and the question was whether the vendor who was unable to perform his part of contract, can refuse to refund the earnest money paid by him at the time of contract. There the purchaser came to know that the subject property was likely to be acquired by the Pune Municipality for the purpose of widening the road and filed the suit for return of money.

(40)Learned counsel also relied upon the judgment of this Court in the case of ***Sakunthala Vs. Murugesan*** reported in ***2002 [2] LW 737***, where a learned Single Judge of this Court has justified the decree granted by the Courts below for refund of the money that was advanced by the purchaser in respect of a property agreed to be sold to the plaintiff. It was also a



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case where the plaintiff entertained a doubt over the defendant's ownership over the property. The learned Single Judge of this Court held that the doubt as to the defect of title must be reasonable and held in that case that the vendor should prove that he had a good and marketable title to the property and the property is free from encumbrances. The question that was considered and decided by this court in the said judgment has no relevance in the present factual context.

(41)Learned counsel then relied upon an article of **Edgar N.Durfee** published in University of Michigan Law School under the topic "**Mutuality in Specific Performance**". The following passages from the text are relevant and hence, extracted below:-

".....After two centuries of litigation and discussion, the current formula was that the remedy must be mutual, must be equally available to both parties. The worst fault of this formula was its plausibility. Equality is equity, and perfect equality between the parties to a contract is not attained unless remedies are equally available to both.- The plausibility of the doctrine served to keep it alive, even to this day.



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It was of the essence of this doctrine that the decision of a cause should be governed, not solely by the situation presented to the court, but as well by the situation which would have been presented in a certain hypothetical case which might have arisen if the now complainant had breached the contract and the now defendant had sued for specific performance. The doctrine was understood to have two aspects, one affirmative, one negative. By the former, complainant, although he had an adequate remedy at law, should be given relief if, in the hypothetical converse case, the other party would have been entitled to relief (provided that there was no affirmative objection to the relief sought in the case before the court, such as impossibility of compelling performance). By the negative doctrine, complainant, although entitled to relief in every other respect, should be denied relief if, in the hypothetical converse case, the remedy could not or would not (even on the affirmative doctrine of mutuality) be given to the other party. Stated in this form, the doctrine seems unbelievably academic, yet this is but a paraphrase in more precise terms of dogmas formulated a hundred times by hard-headed



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judges.

.....On the other hand, the negative doctrine, if ruthlessly applied, would work constant hardship. That one who suffers from breach of contract and has no adequate remedy at law should be turned away from a court of equity because of an "equity" as attenuated as the equity of equality, set up by the contract breaker, is intolerable. The fallacy of such an application of the principle of equality lies in over-emphasis of an essentially sound principle and failure to balance against it the conflicting equities, a fallacy against which equity must stand constant guard. The courts, without seeing the problem broadly enough to recognize the inherent weakness of the doctrine of equality of remedy,⁵ could not but feel the intolerable harshness of its negative application and almost uniformly refused to so apply it. The result was that the negative doctrine was embroidered with exceptions. Justice Fry stated four exceptions,⁶ Dean Ames eight,⁷ and Clark ten.⁸ The exceptions literally ate up the rule. Yet the rule continued to receive lip service, and cases arriving at absurd results by a conscientious application of the rule are sufficiently numerous to



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demonstrate the danger of false doctrine. Judicial instinct will usually correct the errors of judicial reasoning, but not invariably.

...The principle of mutuality, as now- understood, has to do with the mutual performance of mutual obligations and is concerned entirely with securing performance by plaintiff as well as by defendant. Hence it is involved only when a court is asked to enforce a bilateral contract which has not been fully performed on plaintiff's side. It says nothing about equality of remedy. It has nothing to do with any hypothetical case that might have arisen if the now plaintiff had broken the contract and the now defendant had sued. It is concerned entirely with the situation now before the court. What it says about that situation may be roughly stated thus: the contract must be considered as a whole, and the obligations of the plaintiff looked to as well as those of the defendant; so far as practicable, both parties should be required to perform their obligations at the same time; and if simultaneous performance is impracticable the court should either enforce the contract upon terms which will give defendant some assurance of future



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performance by plaintiff, or refuse to enforce the contract at all-whichever is the more just, considering the situation of both parties."

(42) This Court is unable to get any principle to favour the submission of learned counsel appearing for appellan. If the text that is relied upon by the learned counsel for the appellant is considered, this Court is able to see that the doctrine of mutuality as it is understood by the eminent jurists, is certainly against appellant who has failed to perform his part of the contract under the pretext of a mere apprehension about possible acquisition in future. The principle of mutuality applied to different situation may lead to different meaning of the doctrine itself. So far as practicable the parties to an Agreement should be required to perform and the obligations simultaneously. If simultaneous performance is impracticable, the Court should either enforce upon the contract on terms which will give defendant some assurance of future performance by plaintiff or refuse to enforce the contract at all, whichever is more just considering the situation of both parties. If we examine the present case, the plaintiff has paid just a sum of Rs.2 lakhs out of the total sale



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consideration and agreed to pay Rs.28 lakhs within 4 months from the date of Agreement. Just before expiry of the period stipulated in the Agreement, the plaintiff came forward to postpone the time specified in the Agreement on the ground that a proposal to acquire lands in and around the suit property by M/s.SIPCOT is under consideration and that the plaintiff is ready to pay the sale consideration once he get a clear picture. After a reply repudiating the allegations, the suit is filed for specific performance. By virtue of explanation to Section 16[c] of the Act, the plaintiff has avoided payment of any amount during the pendency of suit. Having regard to the specific finding that time is the essence of contract, the contention of plaintiff that time is not the essence of contract and that the plaintiff could not perform his part of the contract because he had received some information regarding a proposal for acquisition of land, cannot be countenanced. The arguments of the learned counsel for the appellant both as to the readiness and willingness of the plaintiff and the entitlement of plaintiff to get the discretionary relief of specific performance is therefore rejected.

(43)The plaintiff/appellant has paid just Rs.2 lakhs which is just the amount



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equivalent to 1/15th of the total consideration. In case a decree is granted for specific performance that will result in unjust enrichment by appellant at the cost and irreparable loss to defendants who had never received amount. It is to be noted that the plaintiff's counsel has referred to the conduct of defendants in denying the genuineness of the Agreement-Ex.A1. It is true that the defendants have taken a stand disputing genuineness of the Agreement and contended that the Agreement was executed in connection with the loan transaction, the plaintiff/appellant had with the 4th defendant. The conduct of defendants or plaintiff in a suit for specific performance may be relevant for the purpose of exercising the discretion whether to grant equitable relief or not. When the plaintiff has failed to prove his readiness and willingness to perform his part of contract in terms of the Agreement, he cannot get relief by referring to the conduct of the defendants. Since this Court has held that the plaintiff/appellant was never ready and willing to perform his part of contract, this Court cannot grant the equitable relief in favour of appellant/plaintiff. **Hence, points [C] and [E] are answered in negative as against the appellant/plaintiff.**



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(44)The Trial Court has rendered a finding that the defendants have received a sum of Rs.2 lakhs under the suit Agreement [Ex.A1]. However, the Trial Court has granted a decree for recovery of a sum of Rs.1 lakh. This Court is unable to sustain the judgment of the Trial Court restricting the amount after finding that a sum of Rs.2 lakhs was advanced to defendants. Therefore, the suit is liable to be decreed as against defendants 1 to 5 and 7 to 9, by directing them to pay a sum of Rs.2 lakhs to the plaintiff/appellant with interest at the rate of 12% per annum from July 2009 till date of payment.

(45)Except the above modification, the judgment and decree dated 28.06.2013 made in O.S.No.18 of 2011 passed by the learned Principal District and Sessions Judge, Ariyalur, is upheld and the **Appeal Suit stands dismissed with cost.** Consequently, connected miscellaneous petition is closed.

[SSSRJ] [AANJ]
10.01.2023

Index : Yes / No
Internet : Yes
Neutral Citation : Yes/ No



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cda/AP
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To

- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The Section Officer, VR Records,
High Court, Chennai.



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S.S.SUNDAR, J.,
AND
A.A.NAKKIRAN, J.,

cd/AP

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10.01.2023

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S.S.SUNDAR, J.
AND
A.A.NAKKIRAN, J.

(Order of the Court was made by S.S.SUNDAR, J.)

The above appeal is listed today under the caption 'for being mentioned' at the instance of the Registry.

2. Registry has entertained a doubt as to the drafting of the decree. It was pointed out by the Registry that though in paragraph 45 of the judgment made in the above appeal, it has been stated that the Appeal Suit stands dismissed, in paragraph 44 of the judgment, this Court has modified the decree of the trial Court by granting a decree for refund of a sum of Rs.2,00,000/- to the appellant/plaintiff. Therefore, the words find place in paragraph 45 of the judgment namely, "the Appeal Suit stands dismissed" should be read as "the Appeal Suit stands partly allowed" and consequently the decree has to be drafted accordingly.



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AND
A.A.NAKKIRAN, J.

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3. The above request of the Registry is fair. Therefore, the words find place in paragraph 45 of the judgment namely, "the Appeal Suit stands dismissed with costs" shall be read as "the Appeal Suit stands partly allowed. No costs" and consequently the decree has to be drafted accordingly.

4. Registry is directed to carry out the aforesaid correction in the judgment. Consequently, the decree in the appeal has to be drafted accordingly.

(S.S.S.R., J.) & (A.A.N., J)
04.09.2023

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