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O.S.A. No.323 of 2017 and Cross objection No.22 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.S.A. No.323 of 2017 and Cross Objection No.22 of 2018
and
C.M.P. No.20065 of 2017

O.S.A. No.323 of 2017 and
C.M.P. No.20065 of 2017

Chevalier T. Thomas Educational Trust
represented by its Trustees

1. Justice Mr. N. Paul Vasantha Kumar [Retd.,]
2. L. Palamalai I.A.S. (Retd.,)
3. Leelamma John
4. T. Sakthidhar
5. Dr. S. Sridevi
6. M. Rajasekar
7. Meeriam Masilla Jayarani
8. P. Perumal

[amended as per order dated 23.03.2023 made in
C.M.P. No.6705 of 2023]

... Appellant / Plaintiff

Vs.

M/s. Union Carbide Employees Co-operative
House Building Society Ltd.,
represented by its President

... Respondent / Defendant

PRAYER: Original Side Appeal filed under Order 36 Rule 1 of Civil



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Procedure Code read with Clause 15 Original Side Rules praying to set aside the judgment and decree dated 14.11.2014 passed in C.S. No.209 of 2008 on the file of the Original Side of this Court.

For Appellant : Mr. Yashod Vardhan, Senior Counsel
for Mr. V. Shanmugam

For Respondent : Mr. M.V. Vijaya Baskar

Cross Objection No.22 of 2018

M/s. Union Carbide Employees Co-operative
House Building Society Ltd.,
represented by its President

... Appellant

vs.

Chevalier T. Thomas Educational Trust
represented by its Trustees

1. Justice Mr. N. Paul Vasantha Kumar [Retd.,]

2. L. Palamalai I.A.S. (Retd.,)

3. Leelamma John

4. T. Sakthidhar

5. Dr. S. Sridevi

6. M. Rajasekar

7. Meeriam Masilla Jayarani

8. P. Perumal

[amended as per order dated 23.03.2023 made in
C.M.P. No.6705 of 2023]

... Respondent

PRAYER: The cross objection filed under Order XLI Rule 22 of the Code of Civil Procedure, 1908 praying to set aside the decree and judgment



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dated 14.11.2014 passed in C.S. No.209 of 2008.

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For Appellant : Mr. M.V. Vijaya Baskar

For Respondent : Mr. Yashod Vardhan, Senior Counsel
for Mr. V. Shanmugam

COMMON JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Original Side Appeal has been preferred as against the decree and judgment passed by the learned single Judge of this Court in C.S. No.209 of 2008 dated 14.11.2014 on the file of the original side of this Court, wherein the appellant herein has filed a Suit as against the respondent / defendant for the relief of specific performance of contract and the said Suit was partly decreed and partly dismissed and as against the said judgment and decree, this appeal has been preferred by the Plaintiffs.

2. After serving notice in the appeal, the respondent herein, who is the defendant in the Suit, has preferred the cross objections.

3. The appellant in this Original Side Appeal and the respondent in the cross objection, will be, hereinafter, referred to as 'appellant' and the appellant in the cross-objection and the respondent in the original side



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appeal, will be, hereinafter, referred to as 'respondent'.

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4. The case of the appellant / Plaintiff is as follows:-

The appellant herein has filed a Suit for specific performance of contract as against the respondent in the appeal and the appellant in the cross objection. The appellant in this appeal and the respondent in the cross objection is an Educational Trust and the respondent in the appeal and the appellant in the cross objection is the Society, represented by its Special Officer, is the owner of the land of the Suit property. Both the appellant and the respondent entered into a Sale Agreement in respect of Suit property in S.F. No.57/1, Kodungaiyur Village, Fort-Tondiarpet, Chennai to an extent of 13 grounds and 1852 sq. ft. through a Sale agreement dated 31.03.1999. The sale price was fixed at Rs.2,60,000/- per ground of 2400 sq. ft.. The total price amount of 13 grounds and 1852 sq. ft. is Rs.35,80,633/-. The stipulated time for completion of contract is 12 months from the date of agreement. On the date of agreement itself, a sum of Rs.5 lakhs was paid as advance and the vendors have agreed to deliver the vacant possession to the purchasers on the condition that the purchasers have to pay a further sum not less than fifty percent of the total



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price money before June 1999 and the balance sale consideration shall be paid by the purchasers to the vendors before expiry of 12 months from the date of the agreement. The agreement will be extended for further period if necessary, after mutual discussion between the vendor and the purchaser. In pursuance of the same, the period was extended from time to time by mutual consent.

In the meanwhile, two persons interested in the Plaintiff's Trust, had filed a Suit before the High Court for framing a Scheme and the said Suit was dismissed and the same was challenged through an appeal before the Hon'ble Division Bench of this Court and the same was allowed on 05.12.2002 and a Scheme was framed for the administration of the Plaintiff's Trust and appointed a Board of 9 Trustees with retired judges of this Court as Chairman. Thereafter, on 09.01.2004, the Plaintiff wrote a letter to the Special Officer that the Trust is ready with the balance sale consideration and requested to send the draf Sale deed for approval. On 03.11.2004, the Plaintiff received a letter from the Special Officer of the respondent Society dated 26.10.2004 to pay interest for the balance amount of Rs.25,80,633/- within 15 days, failing which, eviction proceedings will



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be initiated. Thereafter, the appellant Trust made representation to the respondent Special Officer that there is no stipulation for payment of interest in the agreement and they were unable to pay interest. Though the appellant Trust was ready and willing to get the Sale Deed in its favour, after payment of the balance amount, the respondent Society was not willing to accede to the lawful and reasonable requests. On 24.07.2007, the appellant Trust issued a notice calling upon the respondent Society to receive the balance amount and to execute the Sale deed. Thereafter, on 13.08.2007, again the appellant Trust sent a notice to the Society, which was then being administered by the Deputy Registrar Housing as Special Officer and the same was received on 21.08.2007, but the respondent Society did not come forward to execute the sale deed. Therefore, the appellant Trust filed a Suit for Specific Performance of Contract.

5. The case of the respondent / defendant are as follows:-

The respondent Society denied the averments of the Plaint through written statement alleging that the Suit agreement was executed on 31.03.1999 and the period of 1 year specified therein lapsed on 30.03.2000. Therefore, the agreement is barred by limitation. The



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respondent Society received a sum of Rs.5 lakhs on the date of agreement and as per the agreement, a further payment of 50% of the total value of the property has to be paid before June 1999. But that amount has not been paid instead, the Appellant Trust only made further payment of Rs.5 lakhs as against the payment of Rs.17,90,316/-. The time was the essence of the agreement. But the appellant was given time only upto June 1999 for 50% of payment and the balance amount of Rs.17,90,316/- has to be paid on or before 31.03.2000. But the Appellant did not pay the amount. The period of agreement has not been extended by the respondent Society at any point of time as claimed by the Appellant Trust. The agreement is no longer in force. The Appellant Trust admitted that they offered balance consideration only on 09.01.2004 after the lapse of term of agreement and the agreement has become stale and otiose. The respondent Society at any point of time not agreed to the extension of time. The Appellant Trust failed to pay the 50% of the sale amount within the stipulated time. Now the property is worth about more than Rs.5 crores and now the Appellant Trust demanded the property after 9 years. Therefore, the Suit is liable to be dismissed.

6. Based on the above said pleadings and perusing the available



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records, the learned single Judge has framed the following issues:-

6.1. *Whether the agreement of Sale entered with the defendant is valid in law?*

6.2. *Whether the Suit is barred by limitation?*

6.3. *Whether the Plaintiff are ready and willing to perform its part of Contract?*

6.4. *Whether the contention of the Plaintiff that the period of contract was extended is correct?*

6.5. *Whether the defendant is entitled for the interest for the delayed payment?*

6.6. *To what other reliefs the plaintiff is entitled?*

7. Before the trial Court, in order to prove the case, on the side of plaintiff, PW1 was examined and marked Ex.P.1 to Ex.P.10. On the side of defendant, DW1 and DW2 were examined and marked Ex.D.1 to Ex.D.6.

8. After analysing the oral and documentary evidences adduced on either side and after hearing the learned counsel appearing on both sides, the learned single Judge has partly decreed the Suit directing the Appellant



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/ Plaintiff to deposit a sum of Rs.80,83,829/- within a period of 3 months from the date of decree and on such deposit, the respondent Society was directed to executed the Sale deed only for 6 grounds from the schedule property including the portion which is in the possession of the Appellant / Plaintiff, failing which the Court shall execute such Sale deed.

Aggrieved by the said decree and judgment, the Plaintiff has preferred the present appeal in O.S.A. No.323 of 2017.

9. Thereafter, the defendant in the Suit, who is the respondent herein has filed a cross objections challenging the execution of sale deed in respect of 6 grounds after receipt of Rs.80,83,829/- from the appellant / Plaintiff.

10. Both the appeal and the cross objections have been taken up for hearing together. This Court heard both sides and perused the records.

11. The learned Senior counsel appearing for the appellant / Plaintiff would contend that the appellant is the Educational Trust running Schools and the respondent / defendant is a Society. Both the appellant



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and respondent entered into a Sale agreement in respect of the Suit property to an extent of 13 grounds and 1852 sq. ft. and as per the Sale agreement, the sale price was fixed at Rs.35,80,633/- and on the date of agreement itself, a sum of Rs.5 lakhs was paid to the respondent Society and thereafter, on 08.09.1999, an another sum of Rs.5 lakhs was paid to the respondent Society. The time fixed for completion of contract is fixed as 12 months. As per Clause 6 of the agreement, the period of agreement can be extended on mutual consent of both the parties. In pursuance of the said Clause 6 of the agreement, the respondent received a sum of Rs.10 lakhs on 20.11.2002 and made endorsement in the agreement by extending time upto 31.12.2003. Thereafter, the appellant issued a letter to the respondent dated 09.01.2004 by expressing his willingness and readiness to pay the balance amount of Rs.25,80,633/- and to get the sale deed. But the respondent Society issued a letter to the appellant dated 26.10.2004 by demanding interest @ 18% p.a. within 15 days, failing which eviction proceedings will be taken in accordance with the procedures. Thereafter, on 24.07.2007, the appellant issued a notice to the respondent to execute the sale deed after receipt of balance amount of Rs.25,80,633/- and again issued a notice on 03.08.2007 to the respondent Society. But no reply was



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sent and failed to execute the sale deed as per the agreement. Therefore, the appellant has filed a Suit for specific performance of contract.

11.1. The trial Court failed to consider that the parties have extended the time of agreement from time to time as per the Clause 6 of the agreement and already the appellant was in possession of the property and the appellant has paid substantial amount of the contract. Since somebody had filed a Suit for framing scheme and as per the judgment of Hon'ble Division Bench of this Court, a scheme was also framed and fresh Trustees were appointed, thereby the appellant was unable to get the sale deed within the time. However, the parties have agreed and extended the time for contract after receipt of amount. The appellant / plaintiff was always ready and willing to perform his part of contract, but the respondent Society evaded from the execution of sale deed. The learned single Judge failed to consider the same and awarded a specific performance of contract only for 6 grounds by awarding 18% interest for the remaining amount of Rs.25,80,633/-. The trial Judge has declined to order for specific performance of contract for the entire property without any valid reasons and therefore, the judgment and decree passed by the learned Single Judge



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are liable to be set aside and the appellant is entitled to specific performance of contract for entire property.

12. The learned counsel appearing for the respondent would submit that the agreement between the parties and the amount of the sale price are admitted and the appellant / Plaintiff had paid only Rs.10 lakhs on two instalments towards advance of sale consideration, as per the agreement, contract has to be completed within 12 months from the date of agreement, but the Plaintiff did not come forward to fulfill the conditions within the stipulated time. Thereafter, only wrote a letter dated 09.01.2004 after the lapse of period of limitation. Though the respondent Society was ready to execute the sale deed, the appellant / Plaintiff Trust was not ready and willing to perform their part of contract and the appellant has altered the agreement as if the respondent received a sum of Rs.10 lakhs on 20.11.2002 and the time was extended upto 31.12.2003 and the same is material alteration. The plaintiff failed to get sale deed within time and the time is essence of contract and the Suit is barred by limitation and the Plaintiff was not ready and willing to perform his part of contract and there is a material alteration in the agreement. But the trial Court failed to



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consider all these aspects and awarded for specific performance of contract in respect of 6 grounds. There is no reason stated by the learned single Judge for awarding specific performance of contract, when the Plaintiff was not ready and willing to perform his part of contract and there is a material alteration in the agreement. Therefore, the judgment and decree passed by the learned single Judge are liable to be set aside and the main Suit is to be dismissed.

13. Upon hearing both sides and perusing the available materials, *the points for determination* in these appeals are as follows:-

- i) *Whether the time is essence of contract or not?*
- ii) *Whether the time was extended by the respondent in favour of the appellant?*
- iii) *Whether the Suit is barred by limitation?*
- iv) *Whether the appellant was always ready and willing to perform his part of contract?*
- v) *Whether the appellant is entitled to decree for specific*



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performance of contract in respect of the Suit properties?

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vi) Whether these appeal is to be allowed or not?

vii) Whether the cross objection is to be allowed or not?

14. **Point No.1:** *Whether the time is essence of contract or not?*

The appellant has filed a Suit before the trial Court for the relief of specific performance of contract as against the respondent. The respondent is the owner of the Suit property and he entered into an agreement with the appellant and the agreement also admitted by both the parties. The sale price was fixed at Rs.35,80,633/- and the receipt of advance of Rs.10 lakhs by the respondent on two occasions is also admitted and the time for completion of contract was 12 months as per the agreement. There is a Clause in the agreement that the period of agreement will be extended to a further period, if necessary, after mutual discussions between the vendor and the purchaser. Both the parties admitted the said extension Clause in the agreement.



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14.1. According to the appellant / Plaintiff, time is not an essence of contract, since there is a Clause for extension of time in the agreement. According to the respondent / defendant, time is essence of contract, thereby, the time was fixed upto June 1999 for 50% of payment in total sale price and as per the Clause 6 of the agreement, time has to be extended after mutual discussions between the vendor and the purchaser. Therefore, it indicates that time is essence of contract. While so, now this Court has to see the evidence of the parties in this regard.

14.2. On the side of Plaintiff, PW1 was examined and Ex.P.1 to Ex.P.10 were also marked before the trial Court. According to the Plaintiff, on the date of agreement itself i.e., 31.03.1999, a sum of Rs.5 lakhs was paid towards advance and on 08.09.1999, another sum of Rs.5 lakhs was paid and totally Rs.10 lakhs was paid. Thereafter, till 09.01.2004, no any correspondence between the parties in respect of the agreement. On 09.01.2004, the Plaintiff has sent a letter to the Special Officer of the respondent that balance amount of Rs.25,80,633/- payable to execute the sale agreement has been mobilized and they are ready to pay the amount by demand draft in favour of the respondent. The date of agreement is



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31.03.1999. The period of execution of sale deed is 12 months. Within that time, the Plaintiff has not taken any steps to get the sale deed in his favour.

14.3. In general, the time is not an essence of contract in respect of the immovable property. However, when the agreement itself recited that the 50% of amount has to be paid before June 1999 and the period of agreement will be extended for a further period, if necessary, after mutual discussion between the parties, would shows that the time is essence of contract. There is no evidence on the side of Plaintiff that the time was extended after mutual discussions between the parties. The Appellant in his evidence stated that the time was extended upto 31.03.2001 after payment of Rs.10 lakhs, but no pleadings in the Plaint in this regard. It is well settled law that without any pleadings, evidence cannot be adduced. Even as per the Plaintiff's side documents, viz., notices sent to the defendant, no whisper about the extension of time and the payment of Rs.10 lakhs. Thereby, no any piece of evidence to show that the time was extended by the parties after mutual discussions. Since there was no any extension of time after discussion between the parties, the contention of



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the appellant that time was extended is not acceptable.

14.4. Moreover, the PW1 in his cross examinataion stated as follows:

"I agree that as per the endorsement dated 20.11.2002 on the said agreement is to the effect that the purchaser paid a sum of Rs.10 lakhs towards sale consideration and also that the time for performance of the agreement was further extended upto 31.12.2003. I am not aware whether endorsement was signed by one Mr. Louis Alexander..... I agree that there is a Clause No.5 in the agreement that "the vacant possession to the purchasers shall be delivered on the payment of a sum not less than 50% of total price money before June 1999". I agree that the 50% of money has not been paid".

The respondent also in the written statement categorically pleaded that the time is an essence of contract, as the Plaintiff was given time upto 1999 for payment of Rs.17,90,316/- representing 50% of the price of the land and the balance amount of Rs.7,90,317/- within one year from the date of agreement i.e.,31.03.2000, but the plaintiff did not pay the said amount. Therefore, the recital in the agreement that the Plaintiff has to pay 50% of the amount within June 1999, Clause 6 for extension of time after mutual discussions by the parties, clearly indicate that the time is an essence of contract. But the trial Court failed to frame appropriate issue in this regard, even there is a pleading to that effect. Though the trial Court



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failed to frame issues in respect of time is essence of contract, both the parties pleaded in their pleadings and evidence also adduced to that regard, thereby no need to give chance to the parties to adduce evidence in respect of the issue 'time is essence of contract'. Therefore, framing of this issue in respect of time is essence of contract is no way affect the right of the parties, since already there is evidence adduced based on the pleadings. Therefore, this Court is of the opinion that the time is essence for contract. Thus the point is answered.

15. Point Nos.2 & 3: Whether the time was extended by the respondent in favour of the appellant? and Whether the Suit is barred by limitation?

The learned Senior counsel appearing for the appellant would contend that the respondent had extended the time as per the Clause 6 of the agreement after receipt of Rs.10 lakhs from the Plaintiff on 20.11.2002 and extended the time upto 31.12.2003. Even as per the Clause 6 of the agreement, with the mutual consent of both the parties, time can be



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extended. One year time fixed in the agreement was lapsed on 01.04.2000.

But the alleged extension of time stated by the learned Senior counsel appearing for the appellant is 20.11.2002. The alleged extension of time dated 20.11.2002 and the payment of Rs.10 lakhs and the endorsement are stoutly denied by the respondent. While so, it is the duty of the appellant to prove that the time was extended on 20.11.2002 after receipt of Rs.10 lakhs and extended upto 31.12.2003. In this context, there is no pleading in the Plaint and even as per the subsequent documents of the Plaintiff dated 09.01.2004, the letter issued by the appellant Trust to the respondent Society and the notices issued by the appellant to the respondent Society dated 26.10.2004 and 24.07.2007, nowhere referred about the alleged payment of Rs.10 lakhs and the endorsement dated 20.11.2002 and extension of time upto 21.12.2003.

15.1. Even assuming that the said endorsement was made by the respondent Society after receipt of Rs.10 lakhs, the remaining amount would be Rs.15,80,633/-, because already a sum of Rs.5 lakhs on the date of agreement and again on 08.09.1999, a sum of Rs.5 lakhs was paid. If the disputed amount of Rs.10 lakhs was really paid, on 20.11.2002, the



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remaining amount would be Rs.15,80,633/-. The notices issued by the appellant dated 09.01.2004, 26.10.2004 and 24.07.2007 which are subsequent to the alleged payment and the endorsement, would show as the remaining amount Rs.25,80,633/- has to be paid. Therefore, it is clear that the alleged endorsement dated 20.11.2002 is false. Moreover, on seeing naked eye, the endorsement printed in two places, one is on the signature of the witnesses and another one is below the previous endorsement. Further the said endorsement was not attested by any witnesses and the Plaintiff has not examined any witness to prove the said endorsement dated 20.11.2002. Therefore, it shows that it was created after signing the agreement.

15.2. Moreover, according to the respondent, the Special Officer alleged to have signed in the endorsement, was transferred to some other place on 11.11.2002 itself and the said fact was revealed from the evidence of DW1 and the same was not denied by the appellant through cross examination. To that effect, they have also produced Ex.D.2. On perusal of Ex.D.2, it reveals that on 11.11.2002 itself, the so called person, who endorsed in the agreement, was transferred to some other place and he was



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not a Special Officer for the respondent Society on the date of 20.11.2002 and one Nellappan was appointed as Special Officer for the respondent Society on 11.11.2002 itself. This Court also perused the Plaintiff side documents. Ex.P.10, is the letter issued by the Special Officer of the respondent dated 16.03.2002. But this document has not been nowhere referred either in the pleadings or in the notice issued by the Plaintiff. If the endorsement and the payment are true, the Plaintiff would have mentioned about the same and it would be reflected in the pleadings as well as in the subsequent notices. Therefore, the Plaintiff has failed to prove the alleged payment and the endorsement dated 20.11.2002 and the period of extension upto 31.12.2003.

15.3. The defendant raised plea that the Suit is barred by limitation. It is an admitted fact that the date of agreement is dated 31.03.1999 and the time fixed was 12 months. Therefore, the date of limitation accrues from 01.04.2000 and the last date for presentation of the Plaint is 01.04.2003, but the Suit has not been presented within the limitation period of 3 years, since the limitation period for specific performance of contract is 3 years.

The Plaintiff has not pleaded for return of advance and prayer is only for



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specific performance of contract. The Suit is filed only on 20.09.2007. Already this Court in the previous paragraphs, after elaborate discussions, decided that no time was extended upto 31.12.2003. Therefore, the Suit is barred by limitation. The learned single Judge has framed an issue in respect of limitation, but in the judgment, has relied endorsement dated 20.11.2002 and the Ex.P.10 letter dated 26.10.2004, which are not referred either in the pleadings or in the documents. Therefore, the findings of the learned single Judge by holding that the period of contract was extended and the Suit is not barred by limitation are unsustainable. Thus the points are answered.

16. **Point No.4:** *Whether the appellant was always ready and willing to perform his part of contract?*

This Suit is filed by the Plaintiff for the relief of specific performance of contract, before the trial Court. In order to get decree for specific performance of contract, the Plaintiff has to prove the readiness and willingness. In this case, already this Court has decided in the



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previous points that the time is essence of contract and the Suit is not filed within the period of limitation and the Suit is barred by limitation.

However, on careful perusal, the conduct of the Plaintiff would show that he was not ready and willing to perform his part of contract. The date of agreement is 31.03.1999 and the time is fixed for 12 months. Within 12 months, the Plaintiff has not taken any steps to get the sale deed in his favour. Moreover, it is an admitted fact that the scheme Suit was filed by some other persons and the Suit was also pending. But thereafter, the Scheme was framed by this Court and till 09.01.2004, no steps have been taken by the Plaintiff to get sale deed in his favour, but by that time, three years time was also lapsed. Though the Plaintiff pleaded that the extension of time was granted by the Special Officer on 20.11.2002 and also made endorsement after receipt of Rs.10 lakhs, this Court in the previous points decided that the endorsement is not true and the Plaintiff has not taken any steps till the date of filing of the Suit, that too after lapse of limitation period. Further it is admitted fact that as per agreement, 50% of the total sale price has to be paid before June 1999. But no such amount was paid as per the terms of agreement. Per contra, the Plaintiff without any pleadings, merely stated in the evidence that they paid Rs.10,00,000/-and



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the same was also discussed by this Court in the previous paras.

Therefore, from the above, it is clear that the Plaintiff was not ready and willing to perform his part of contract in terms of the agreement.

16.1. Moreover the PW1 in his cross examination stated that "I agree that there were some financial difficulty in making payment of the balance amount of the price consideration and in fact we were appointed by the Hon'le High Court of Madras in the scheme and order dated 05.12.2002 because of financial problems faced by the Trust. Therefore, this is the reason for non-compliance of the terms in the agreement and in such circumstances we have written to the Society seeking time to pay the balance amount". From the evidence of PW1, it is clear that due to financial problem, they were unable to pay the balance sale price to the defendant Society. Therefore, the above said conduct of the Plaintiff shows that the Plaintiff was not always ready and willing to perform his part of contract. But the learned single Judge in his judgment, after referring the notices issued by the Plaintiff, has erroneously held that the Plaintiff was always ready and willing to perform his part of contract and the defendant also ready to sell the property on payment of interest. Those



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letters were after the period of limitation and within the period of limitation, no any steps were taken by the Plaintiff to get the sale deed in his favour. Therefore, the findings of the learned Single Judge that the Plaintiff was always ready and willing to perform his part of contract is unsustainable and liable to be set aside. Therefore, as discussed above, this Court is of the opinion that the Plaintiff was not always ready and willing to perform his part of contract. Thus the point is answered.

17. **Point No.5:** *Whether the appellant is entitled to decree for specific performance of contract in respect of the entire properties?*

This Court in the previous points, already decided that the Suit is barred by limitation and the time for execution of sale deed has not been extended and the Plaintiff was not always ready and willing to perform his part of contract. The main requirement for the relief of specific performance of contract is that the Plaintiff has to prove his readiness and willingness, but in this case, the Plaintiff was not ready and willing to perform his part of contract and the Suit is also barred by limitation. Moreover, the Plaintiff obtained endorsement from the erstwhile Special Officer of the respondent Society without any payment and attesting witnesses that too after transfer from the respondent Society. Therefore,



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the said endorsement amounts to material alteration. The above conduct of the Plaintiff would show the malafide intention. The Plaintiff, who approached the Court for the equitable relief of specific performance, must come with clean hands, but in this case, the conduct of the Plaintiff shows his intention and thereby, not entitled to the equitable relief. Therefore, the Plaintiff is not entitled to decree for specific performance of contract.

18. **Point Nos.6 and 7:** *Whether this appeal is to be allowed or not? and whether the cross objection is to be allowed or not?*

This Court already in the previous points decided that the Plaintiff is not entitled to specific performance of contract, since the Suit is barred by limitation, there is a material alteration and the Plaintiff was not always ready and willing to perform his part of contract. However, the learned single Judge by failing to consider the evidences and documents filed by the parties, has erroneously decreed the Suit. Therefore, the decree and judgment passed by the learned single Judge of this Court in C.S. No.209



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of 2008 are unsustainable in respect of passing decree and judgment for specific performance for 6 grounds. As far as the appeal in respect of remaining portion is concerned as discussed supra, the appellant is not entitled to the decree for specific performance. Moreover, the Suit was decreed on 14.11.2004 and no appeal was filed by the appellant / Plaintiff until the respondent / defendant filed petitions for rescinding the contract and to deliver the possession and for damages. After receipt of notice and entered into appearance in those petitions filed by the respondent / defendant, the appellant / Plaintiff preferred this appeal with condone delay petition, after more than 2 years. The above conduct of the appellant / Plaintiff shows the intention, thereby the Plaintiff has not come with clean hands to this Court.

19. The respondent Society has filed cross objections stating that the appellant Trust had no intention to fulfill the terms of agreement dated 31.03.1999 and they failed to pay 50% of the amount within the period of June 1999 and no time was extended by the respondent. The appellant was also not ready and willing to perform his part of contract. Therefore, the trial Court, the learned single judge without considering the above said



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aspects, passed a decree of specific performance of contract in respect of 6 grounds. Even according to the trial Court, the interest was calculated for the entire balance of sale price, but granted decree only for 6 grounds. If so, how the trial Court fixed the price, has to be explained, but no explanation to that regard. As per agreement, sale price per a ground is Rs.2,60,000/-, if so, for 6 grounds, the amount would come at Rs.15,60,000/- and already Rs.10 lakhs paid as advance, if so, the trial Court awarded interest for the entire amount. Therefore, the calculation method adopted by the trial Court is also not correct. This Court already in the previous points, has elaborately discussed about the readiness and willingness, maintenance of the Suit on the ground of barred by limitation and material alteration, thereby the Plaintiff is not entitled to get relief of specific performance of contract and thus, this Court is of the opinion that the appeal is to be dismissed and cross objection is to be allowed by setting aside the decree and judgment passed by the learned single Judge in C.S. No.209 of 2008. Thus, the points are answered.

20. In the result, the Original Side Appeal in O.S.A. 323 of 2017 is dismissed and the cross objections No.22 of 2018 is allowed by setting



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aside the judgment and decree passed by this Court in C.S. No.209 of 2008 dated 14.11.2014 and the Suit is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

(S.S.S.R.J) & (P.D.B.J)

19.11.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

S.S. SUNDAR, J.,

and

P.DHANABAL,J

(mjs)

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