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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th April, 2025
Date of Decision: 7th July, 2025

+ CS(OS) 569/2023 & I.A. 17930/2023 I.A. 6311/2024

JAIRAJ DEVELOPERS LLP

.....Plaintiff

Through: Mr. Raman Kapoor, Sr. Advocate with
Mr. Arun Vohra and Mr. Dilip Kumar,
Advocates

versus

VARENDHISHAKT PRDHIESUBHAAG& ORSDefendants

Through: Mr. Akhil Sibal, Sr. Adv. with Mr.
Jacob Benny and Mr. Shashank Rai,
Advocates for D-1
Mr. Akhil Sibal, Sr. Adv. with Mr.
Gurmeet Bindra and Ms. Aayushi
Mishra, Advocates for D-2 and D-3

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

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J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

IA 6311/2024 (Application under Order VII Rule 11 by the Defendants)

1. The present application has been filed by the Defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') seeking the return of the plaint as being barred under law.
2. The facts as stated in the plaint, which are relevant for the adjudication of the present application are, as under:
 - 2.1 The present suit has been instituted on 14.09.2023 through its partner



Mr. Ankur Arora, who has been duly authorised vide Resolution dated 01.09.2023. The Plaintiff is a limited liability partnership (LLP) engaged in the business of construction and real estate development in Delhi-NCR. The reliefs in the suit pertain to seeking specific performance qua the $\frac{1}{2}$ share of Defendant No. 1 in immovable property bearing no. D-38 Defence Colony, New Delhi 110024, admeasuring 333.33 Sq. yards (hereinafter referred to as **‘suit property’**).

2.2 The Plaintiff contends that the terms of the agreement are indicated in an undated document entitled as “Advance-Payment-Receipt” executed by the predecessor of Defendant No. 1 i.e., late Smt. Kamal Kumar¹, in favour of the Plaintiff. This document records that the total sale consideration for the property was fixed at Rs. 24 crores (Twenty-Four Crores), out of which the vendor had received a payment of Rs. 21 lakhs by cheque no. 000067 dated 30.06.2017 drawn on Kotak Mahindra Bank.

2.3 The defendants in the present suit are Mr. Varendhishakt Prdhiesubhaag [Defendant No. 1], who claims to be the adopted son of the daughter² of late Smt. Kamal Kumar, Mr. Maninder Singh [Defendant No. 2] who claims to be the son of late Smt. Joginder Bedi, pre-deceased sister of Smt. Kamal Kumar, and Mr. Harinder Singh [Defendant No. 3] who claims to be the son of Smt. Mohinder Kaur, pre-deceased sister of Smt. Kamal Kumar.

2.4 It is stated that the suit property was originally self-acquired by Smt. Harbans Kaur, through a registered sale deed dated 03.11.1962.

2.5 It is stated that late Smt. Harbans Kaur was married to Sardar Jagat Singh, who predeceased her in 1958–59. Out of their wedlock, they had five

¹ Also known as Smt. Kamaljeet Kaur

²Defendant No. 1 was adopted by late Shri Anuj Prakash and Smt Mayadhaavi Qirti (daughter of Late Smt. Kamal Kumar)



children, namely: (i) Shri Surjit Singh (son), (ii) Shri Jagmohan Singh (son), (iii) Smt. Joginder Bedi (daughter), (iv) Smt. Mohinder Kaur (daughter); and (v) Smt. Kamal Kumar (daughter).

2.6 It is stated that Smt. Harbans Kaur executed a Will dated 22.07.1987 bequeathing the suit property exclusively in favour of her son, Shri Jagmohan Singh, to the exclusion of her other legal heirs. Accordingly, upon her demise on 02.01.1992, Shri Jagmohan Singh became the absolute owner of the suit property.

2.7 It is stated that Shri Jagmohan Singh died intestate, unmarried and issueless on 25.01.2017, whereupon the suit property devolved under the Hindu Succession Act, 1956 ('Act of 1956') upon his surviving Class-II legal heirs, namely his two sisters – Smt. Kamal Kumar and Smt. Mohinder Kaur. The Plaintiff asserts that by operation of law, each of the two surviving sisters inherited an undivided $\frac{1}{2}$ share in the suit property.

2.8 It is stated that Defendant No. 2, being the son of pre-deceased sister Smt. Joginder Bedi instituted CS(OS) No. 281/2017³ before this Court seeking partition of the suit property on the basis that it formed part of the estate of late Smt. Harbans Kaur, who had died intestate and claimed $\frac{1}{3}$ rd share therein as per Section 15 of the Act of 1956. Vide Order dated 05.06.2017, this Court granted an ex-parte ad interim injunction in CS(OS) 281/2017 directing the parties to maintain status quo in respect of title and possession of the suit property.

In the said suit Late Smt. Kamal Kumar referred to the alleged Will dated 22.07.1987 in her written statement, however, she failed to produce original of the said Will. Defendant No. 2 disputed the existence of the

³ Titled 'Maninder Singh v. Kamaljeet Kaur & Anr.' instituted on 02.06.2017



alleged Will dated 22.07.1987.

2.9 It is stated that late Smt. Kamal Kumar approached the Plaintiff for sale of the suit property and executed the undated Advance-Payment-Receipt, wherein the total consideration payable was agreed at Rs. 24 crores. It is stated that the Plaintiff paid a sum of Rs. 21 lakhs as advance by way of cheque no. 000067 dated 30.06.2017, which was later replaced on her request with a fresh cheque no. 316233 dated 10.07.2017, duly encashed by her. It is stated that late Smt. Kamal Kumar represented herself as the sole and exclusive owner of the entire suit property.

2.10 It is stated that unaware of the ex-parte status quo order dated 05.06.2017 passed in CS(OS) 281/2017, the said Smt. Kamal Kaur accepted the consideration amount of 21 lakhs, produced and showed original title documents, and assured the Plaintiff of her unencumbered ownership.

2.11 It is stated that the Plaintiff remained ready and willing to perform its obligations under the agreement but was prevented from doing so due to the pending litigation. The suit property continued to be embroiled in CS (OS) No. 281/2017.

2.12 It is stated that the Plaintiff received⁴ a notice of Civil Contempt Petition No. 70/2018 filed in CS(OS) 281/2017, stating violation of the Court's status quo order dated 05.06.2017. In her reply to the contempt petition, Smt. Kamal Kumar admitted the sale transaction pertaining to the suit property and acknowledged execution of the undated Advance-Payment-Receipt. However, in an attempt to create an alibi and circumvent the contempt proceedings, she claimed that although a cheque of Rs. 21 lakhs has been received from the Plaintiff, the same was initially not

⁴ On 21.12.2018



presented for encashment and had allegedly become invalid due to lapse of time. She further stated that on 16.08.2017, she was informed by her bank that a suspicious cheque bearing no. 316233 for Rs. 21 lakhs has been credited to her account from the Plaintiff's bank account. It is stated that, this stand, however, was contradicting to her earlier admission in the reply and appears to be a calculated attempt to avoid the legal consequences of the transaction.

2.13 It is stated that in the meantime, the then partner of the Plaintiff, Shri Subhash Arora, underwent multiple medical complications and ultimately passed away on 30.09.2020, after which the affairs of the Plaintiff were taken over by Mr. Ankur Arora.

2.14 It is stated that Smt. Kamal Kumar died in a fire accident on 01.01.2023. FIR No. 011/2023 was registered under Sections 304-A, 285, 337, 427 IPC, and Defendant No. 1, claiming to be her adopted grandson, was named as an accused therein.

2.15 It is stated that after the demise of Smt. Kamal Kumar on 01.01.2023, the present Defendant No. 1, claiming to be her legal heir, entered into a Memorandum of Family Settlement ('MoFS') dated 10.07.2023 with Defendant Nos. 2 and 3, wherein the suit property was divided in 1/3rd share each, amongst themselves. This was followed by a joint application under Order XXIII Rule 3 CPC, culminating in a final decree dated 11.07.2023 in CS(OS) 281/2017.

2.16 It is stated in the plaint that the said compromise is unlawful, void ab initio, and a product of collusion and suppression of material facts. It is further contended that no application for substitution of legal heirs of Late Smt. Kamal Kumar was filed within the limitation period in CS(OS) 281/2017 and that Defendant No. 1's impleadment vide order dated



11.07.2023 was belated.

2.17 It is averred that the Plaintiff was completely unaware of the compromise proceedings and only came to know of the same through a Public Notice published on 23.08.2023 in The Times of India and The Hindustan Times, offering the suit property for sale to a third party.

2.18 It is stated that the Plaintiff has continuously acted in good faith and has a subsisting and enforceable right to seek specific performance of the agreement evidenced by the undated Advance-Payment-Receipt to the extent of $\frac{1}{2}$ undivided share, which was lawfully held by Late Smt. Kamal Kumar.

2.19 The Plaintiff also seeks declaration that the MoFS dated 10.07.2023 and consequential final decree dated 11.07.2023 are illegal and void.

Arguments on behalf of the Applicants/Defendants

3. The learned counsel for the Defendants stated that the instant suit instituted by the Plaintiff is not maintainable and deserves to be rejected at the threshold under Order VII Rule 11 CPC, on multiple independent grounds including bar under law, estoppel, and absence of a valid cause of action.

4. Mr. Sibal, learned senior counsel stated that the foundation of the present suit, namely the undated Advance-Payment-Receipt is inherently flawed and unenforceable in law, having been executed in blatant violation of the status quo order passed by the Court on 05.06.2017 in CS(OS) 281/2017. The Plaintiff seeks specific performance of an agreement that is void-ab-initio as it contravenes a subsisting court injunction, thereby constituting an abuse of process. He placed reliance on **Satyabrata Biswas v. Kalyan Kumar Kisku**⁵ and **Surjit Singh v. Harbans Singh**⁶, both affirming that rights in

⁵(1994) 2 SCC 266 (para 23)

⁶(1995) 6 SCC 50 (para 4)



property under litigation cannot be alienated to defeat Court orders and that undated Advance-Payment-Receipt cannot be made the foundation of any relief, including specific performance, due to its origin in flagrant breach of judicial restraint and is liable to be dismissed as an abuse of process.

5. He stated that late Smt. Kamal Kumar did not encash cheque no. 316233. He stated that the payment of Rs. 21 lakhs was credited to the account of late Smt. Kamal Kumar by the Plaintiff by a separate cheque, which she was made aware of by the bank on 16.08.2017, without the consent of Smt. Kamal Kumar. He stated that Smt. Kamal Kumar complained against the said suspicious credit to her banker and requested them to mark a lien. He stated thus the credit of Rs. 21 lakhs in the account of Smt. Kamal Kumar was unauthorized and without her consent. He stated that this fact is duly reflected in the reply dated 23.07.2019 filed in CS(OS) 281/2017.

6. He further stated that the suit is barred under the mandate of Order XXIII Rule 3-A CPC, which expressly prohibits the challenge to a consent decree through an independent proceeding. He pointed out that the Plaintiff, in effect, seeks to nullify a valid decree dated 11.07.2023 passed on the basis of a MoFS dated 10.07.2023, which is impermissible. Reliance was placed on **Pushpa Devi Bhagat v. Rajinder Singh**⁷ wherein the Supreme Court held that the only remedy against a consent decree is to approach the same Court that recorded it, and no independent suit is maintainable. The same principle was reiterated in **Horil v. Keshav**⁸, wherein it clarified that even allegations of fraud or illegality in the compromise must be raised before the Court that passed the decree.

⁷(2006) 5 SCC 566 (para 17)

⁸(2012) 5 SCC 525 (paras 9–10)



7. He stated that on 23.01.2020, a preliminary decree was passed in CS(OS) 281/2017 declaring the shares of the Defendants as 1/3rd each, in the presence of the Plaintiff, which decree has never been challenged by the Plaintiff.

8. He stated that Plaintiff had filed an application (I.A. 219/2021) seeking impleadment in CS(OS) 281/2017, which was disposed of vide order dated 11.07.2023 and the Plaintiff did not challenge the said dismissal.

9. He further stated that the suit is *ex facie* barred by limitation under Article 54 of the Limitation Act, 1963, which prescribes a period of three years for filing a suit for specific performance, commencing from the date fixed for performance, or if no such date is fixed, from the date when the Plaintiff has noticed that performance is refused. He referred to the Plaintiff's own averments made in I.A. No. 219/2021 filed under Order I Rule 10 CPC in CS(OS) 281/2017, wherein it was unequivocally stated that the execution and registration of the Sale Deed was to take place on or before 30.09.2017⁹. He further pointed out that the Plaintiff had acknowledged receipt of notice of a contempt petition in December 2018, and that Smt. Kamal Kumar's categorical refusal to perform the alleged agreement was clearly recorded in her reply dated 23.07.2019 filed to the contempt petition, wherein she expressly refused to abide by the transaction and stated she had no intent to sell her share. Despite such unequivocal repudiation by Smt. Kamal Kumar, the Plaintiff chose not to act for over four years. The present suit, filed on 14.09.2023, is, therefore, hopelessly barred by limitation and is liable to be dismissed on this ground alone. He relied on **Sabbir v. Anjuman**¹⁰, which

⁹Internal page 12 Document A of Plaintiff document

¹⁰2023 SCC OnLine SC 1292 (para 12)



reiterates that the limitation period begins from the date of refusal or breach.

10. He further argued that the Plaintiff is estopped from taking a contrary stand in this suit after having admitted in CS(OS) 281/2017 that all Defendants had agreed to sell the suit property. In contrast, the Plaintiff now falsely asserts that only Kamal Kumar had represented herself as the exclusive owner, such contradictory pleadings cannot be permitted in law and directly fall within the doctrine of approbate and reprobate. He referred to **Sean Dushyant Manchanda v. Rabia Manchanda**¹¹.

11. He further contended that the undated Advance-Payment-Receipt relied upon by the Plaintiff does not constitute as a valid agreement to sell in the eyes of law. It lacks essential ingredients such as time for performance, obligations of parties, or manner of payment and registration. The document is merely a receipt and not a concluded contract. He relied on **Mool Chand Bakhru v. Rohan**¹² that an oral agreement or a set of vague written admissions lacking certainty in material terms such as time for execution and registration, or responsibility for stamp duty cannot be construed as an agreement for the purpose of specific performance or protection under Section 53-A of the Transfer of Property Act and on **Dahiben v. Arvindbhai**¹³, wherein the Supreme Court held that a plaint based on vague or illusory causes of action, especially one contradicted by admitted documents or conduct, is liable to be rejected under Order VII Rule 11 CPC.

12. He stated that the plaint fails to disclose any legally sustainable cause of action and is a mere attempt to re-open closed issues, cloud title, and delay the enjoyment of lawful rights by the Defendants under the decree dated

¹¹ (2023) 301 DLT 596 (paras 17 & 30)

¹²(2002) 2 SCC 612 (para 15)

¹³(2020) 7 SCC 366 (para 23)



11.07.2023. He urged that the plaint be rejected in its entirety as being barred by law, devoid of merit, and constituting an abuse of the process of court.

13. He stated that as recorded in the MoFS dated 10.07.2023 and decree dated 11.07.2023, the current market price of the suit property can fetch in up to Rs. 36 crores and the Defendants have already entered into an agreement with a third party on 19.08.2023 for a sum of Rs. 33 crores.

Arguments on behalf of the Non-Applicant/Plaintiff

14. The learned counsel for the Plaintiff stated that the present suit, seeking specific performance, declaration, and permanent injunction, has been validly instituted to enforce the undated Advance-Payment-Receipt executed by Late Smt. Kamal Kumar in favour of the Plaintiff, concerning the suit property. He stated that the MoFS dated 10.07.2023, which forms the fulcrum of the Defendant's plea, is illegal, collusive, and a subterfuge to defeat the Plaintiff's pre-existing contractual rights.

15. He further stated that this Court, vide a reasoned Order dated 19.01.2024, has already held that the question of limitation is not ex-facie evident from the plaint and the documents filed and requires full adjudication upon contest, being a mixed question of fact and law. Therefore, the plea that the suit is barred by limitation cannot be the basis for rejection of the plaint under Order VII Rule 11 CPC at this stage. The relevant portion of the said order dated 19.01.2024 is reproduced hereunder:

“8. In view of the aforesaid factual position, I am of the view that the present suit cannot be dismissed at pre-summons stage, where the contents of the plaint have to be taken as correct. The bar of limitation is not ex-facie evident from the plaint and documents filed, so as to invite such an order at this stage. The question of limitation is generally a mixed question of fact and law, which can be properly examined after the defendants enter appearance and have had an opportunity to contest the suit on all grounds available to them.”



16. He stated that the Defendants have attempted to defeat the Plaintiff's contractual rights by entering into a clandestine compromise in CS(OS) No. 281/2017 without issuing notice to the Plaintiff. He highlighted that the suit property originally belonged to Late Smt. Harbans Kaur, who through her registered Will dated 22.07.1987, bequeathed the same to her son, Shri Jagmohan Singh to exclusion of all other legal heirs. This testamentary disposition stands acknowledged and remains undisputed in the written statements filed by Defendant no. 2 in CS (OS) 281/2017.

17. He pointed out that Shri Jagmohan Singh died intestate on 25.01.2017, and by operation of the Act of 1956, his surviving sisters, Smt. Mohinder Kaur and Smt. Kamaljeet Kaur, alone succeeded to the estate. Defendant No. 2, being the son of Late Smt. Joginder Bedi, who had predeceased Jagmohan Singh, had no right, title, or interest in the suit property. This position is conceded in CS(OS) 281/2017 and remains legally unassailable.

18. He stated that the undated Advance-Payment-Receipt evidences a concluded contract supported by consideration payment of Rs. 21 lakhs as advance payment of full consideration amount of Rs. 24 crores. The Plaintiff has at all times expressed readiness and willingness to perform its part of the contract and has not abandoned or waived its rights.

19. In response to the objection regarding the subsistence of the status quo order dated 05.06.2017 in CS(OS) 281/2017 at the time of execution of the Receipt, he submitted that the Plaintiff was not a party to the said suit and the transaction, even if pendente lite, is not void. In this regard, reliance was placed on the judgment of the Supreme Court in **Thomson Press (India) Ltd.**



v. Nanak Builders & Investors (P) Ltd.¹⁴, particularly paragraph nos. 49 to 53, wherein it has been held that a transaction made during the pendency of litigation is not void but remains subject to the outcome of the case.

20. He also referred to **A.K. Chaturvedi v. Ashok Kumar Chatterjee**¹⁵, where it was held that the execution of a sale agreement in violation of a Court's injunction does not by itself render the agreement null and void.

21. He fairly submitted that currently the sale price of similarly situated properties is in the range of Rs. 35-38 crores, depending upon the locations and the size.

22. He concluded by stating that the MoFS dated 10.07.2023 and subsequent final decree dated 11.07.2023 passed in CS(OS) 281/2017 are engineered to defeat the legitimate claims of the Plaintiff. These actions, done without impleadment or notice, violate principles of natural justice and should be declared null and void. Accordingly, he prayed that the application under Order VII Rule 11 CPC be dismissed as wholly misconceived, premature, and legally untenable.

Findings and Analysis

23. This Court has perused the record, heard the submissions of learned counsel for both parties, and examined the plaint as well as the application under Order VII Rule 11 CPC.

The record of CS(OS) 281/2017 was also summoned and referred to, since the Plaintiff appeared and participated in the said suit and has relied upon the said proceedings to plead its cause of action in this plaint.

24. The suit property which is the subject matter in the present suit, was

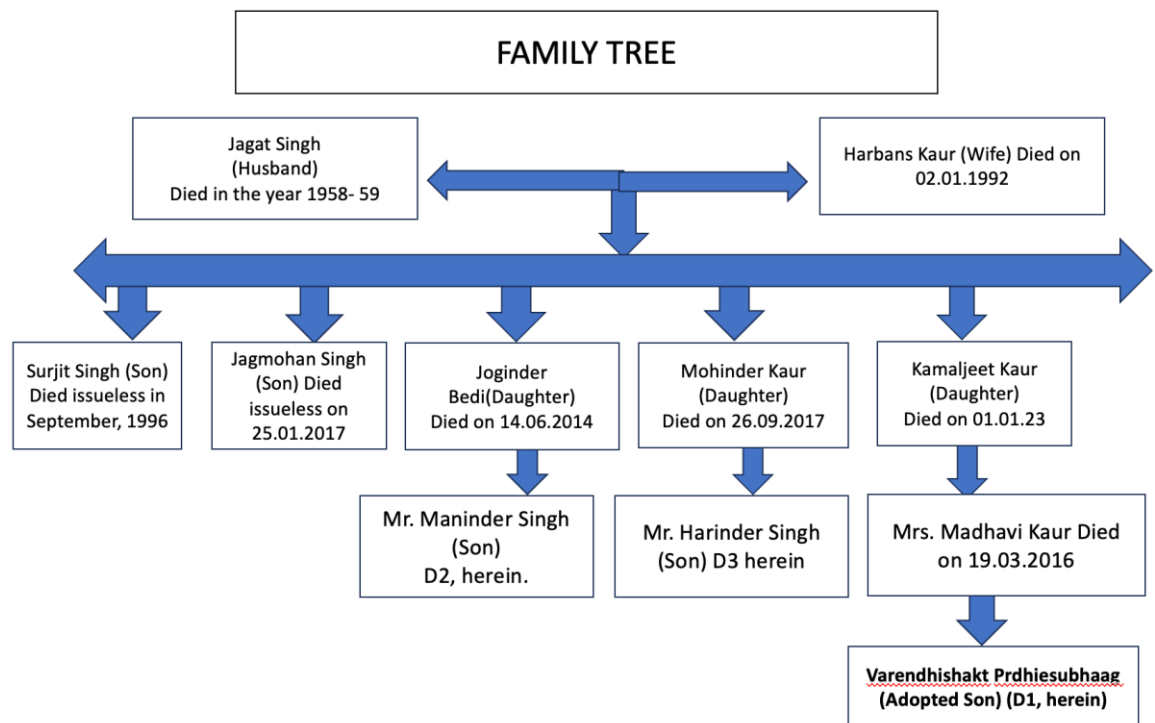
¹⁴ (2013) 5 SCC 397

¹⁵ CS(OS) 2314/1994 (Delhi High Court, decided on 11.12.2008)



originally purchased by Smt. Harbans Kaur vide registered sale deed dated 03.11.1962. The Defendants herein are the descendants of Smt. Harbans Kaur.

25. For ease of reference, the family tree of the recorded owner Smt. Harbans Kaur, her legal heirs and the Defendants is drawn as under:



26. It is averred in the plaint that as per a registered Will dated 22.07.1987, Smt. Harbans Kaur bequeathed the suit property exclusively to her son, Shri Jagmohan Singh. Thereafter, upon demise of said Shri Jagmohan Singh on 25.01.2017 intestate, unmarried and issueless, the suit property devolved under the Act of 1956 upon his two surviving Class-II legal heirs, his sisters, Smt. Kamal Kumar and Smt. Mohinder Kaur, each inheriting an undivided $\frac{1}{2}$ share.

The Plaintiff has filed the present suit asserting contractual rights to purchase the $\frac{1}{2}$ share of Smt. Kamal Kumar and for this, it relies on an



undated Advance-Payment-Receipt purported to have been executed by late Smt. Kamal Kumar on 30.06 2017. The present suit has been filed in the year 2023 seeking specific performance in respect of late Smt. Kamal Kumar's $\frac{1}{2}$ undivided share in the suit property.

27. However, it is a matter of record that CS(OS) 281/2017 was instituted by Defendant No. 2 on 02.06.2017, against Smt. Kamal Kumar and Smt. Mohinder Kaur, claiming $\frac{1}{3}$ rd share in the suit property on the plea that Smt. Harbans Kaur had died intestate. Defendant No. 2 did not accept the validity of the alleged Will dated 22.07.1987.

Smt. Mohinder Kaur died during the pendency of the said suit and Defendant No. 3 was brought on record as her legal heir.

28. The said suit i.e., CS(OS) 281/2017 was contested leading to passing of a preliminary decree dated 23.01.2020 declaring Smt. Kamal Kaur, Defendants No. 2 and 3 as co-owners in equal $\frac{1}{3}$ rd shares. The issue of Will dated 22.07.1987 was raised by Smt. Kamal Kumar but not accepted by the Coordinate Bench. The preliminary decree was challenged by Smt. Kamal Kumar, which was dismissed and the decree attained finality.

Smt. Kamal Kumar passed away during the pendency of CS(OS) 281/2017 and Defendant No. 1 was brought on record as her legal heir.

29. Defendant Nos. 1, 2 and 3 entered to an MoFS recording the modalities for the sale of the suit property and prayed in CS (OS) 281/2017 for a final decree in terms of MoFS. The coordinate Bench accepted the MoFS dated 10.07.2023 and passed a final decree on 11.07.2023 in CS(OS) 281/2017, which was in consonance with the preliminary decree dated 23.07.2020.

30. The Plaintiff was aware of CS(OS) 281/2017 and entered appearance in the said suit proceeding on 19.03.2019. The Plaintiff also sought



impleadment in the said suit by filing I.A. No. 219/2020 and sought a stay of the directions for sale by filing I.A. No. 220/2020 by asserting rights as a vendee under the undated Advance-Payment-Receipt. However, the said applications were not entertained by the Coordinate Bench and disposed of on 11.07.2023 while passing the final decree of sale.

31. The primary relief sought by the Plaintiff, in the present suit, is specific performance of the alleged agreement evidenced by an undated Advance-Payment-Receipt, purported to have been executed by late Smt. Kamal Kumar on 30.06.2017.

The Plaintiff also seeks declaration of nullity in respect of the MoFS dated 10.07.2023 executed by the Defendants inter-se and the subsequent final decree dated 11.07.2023 passed by the coordinate Bench in CS(OS) No. 281/2017 in terms of the said MoFS. In this suit, the Plaintiff has challenged the said final decree dated 11.07.2023 so as to contend that late Smt. Kamal Kumar (i.e., the predecessor of Defendant No. 1 herein) has $\frac{1}{2}$ share in the suit property and not $\frac{1}{3}^{\text{rd}}$ as held by the Coordinate Bench in CS(OS) 281/2017.

32. The issue before the Court is whether the present plaint discloses a cause of action or is barred by any law, thereby warranting rejection at the threshold.

Lack of Readiness and Willingness

Increase in property value

33. The present suit seeking specific performance has been instituted belatedly on 14.09.2023, six years after the alleged undated Advance-Payment-Receipt was executed in June, 2017.

34. The Plaintiff seeks the relief of specific performance by relying upon an undated Advance-Payment-Receipt alleged to have been executed 'only' by Smt. Kamal Kumar agreeing to sell the suit property for a total



consideration of Rs. 24 crores and agreeing to receive advance payment of Rs. 21 Lakhs vide cheque no. 000067 bearing a date of 30.06.2017.

It is a matter of record that the said cheque no. 000067 was not encashed by Smt. Kamal Kumar.

35. It is an admitted fact that the said Receipt was executed by Late Smt. Kamal Kumar (i.e., predecessor of Defendant No. 1) during the subsistence of an interim restraint order passed by Co-ordinate Bench on 05.06.2017 in CS(OS) 281/2017. The interim order was passed on 05.06.2017 and duly served on Smt. Kamal Kumar. Relevant part of the order dated 05.06.2017 is reproduced as under:

“...Counsel prays for grant of an ad-interim ex parte injunction. Having heard the learned counsel for the plaintiff and on perusal of the plaint, application as well as the documents placed on record, I am satisfied that it is a fit case for grant of an ex parte ad-interim injunction. **Hence, till the next date of hearing, all, the parties are directed to maintain status-quo with regard to the title and possession qua the suit property bearing No. D-38, Defence Colony, New Delhi....**”

(Emphasis supplied)

36. As per record, a sum of Rs. 21 lakhs were credited in the bank account of Smt. Kamal Kumar on 16.08.2017 via cheque no. 316233 issued by Plaintiff herein. Smt. Kamal Kumar has stated that the said deposit, in her bank account, was without her consent and made by the Plaintiff unilaterally.

37. It is a matter of record that Defendant No. 3 herein filed a contempt petition CCP No. 70/2018 in CS(OS) 281/2017 against Smt. Kamal Kumar (i.e., predecessor of Defendant No. 1) and Plaintiff's partner Mr. Subhash Arora after he learnt about the execution of the undated Advance-Payment-Receipt as well as the receipt of an advance of Rs. 21 lakhs by Smt. Kamal Kumar in her bank account on 16.08.2017. Smt. Kamal



Kumar was arrayed as contemnor no. 1 and Plaintiff's partner - Mr. Subhash Arora was arrayed as contemnor no. 2.

Pertinently, Smt. Kamal Kumar (i.e., predecessor of Defendant No. 1) in her reply dated 23.07.2019 filed to the said CCP, denied entering into any agreement for sale with the Plaintiff herein. She further denied accepting the advance of Rs. 21 lakhs credited in her account on 16.08.2017. She stated that the credit of Rs. 21 lakhs in her bank account had been manipulated by the Plaintiff's partner Mr. Subhash Arora by unilaterally depositing a cheque no. 316233 in her bank account. She relied upon the correspondence exchanged with the HDFC bank at the contemporaneous time recording her protest to the unauthorized deposit of cheque no. 316233 in her account. It was stated that the credit of Rs. 21 lakhs reflected in the bank account pertained to an unrecognized cheque no. 316233, which was not accepted by Smt. Kamal Kumar as a valid payment. She stated in the reply that the Advance-Payment-Receipt cannot substitute for execution of a (formal) agreement to sell.

Smt. Kamal Kumar thus expressly repudiated the alleged transaction between her and the Plaintiff in the said reply dated 23.07.2019 filed in CCP No. 70/2018 to the knowledge of the Plaintiff herein since its partner was included as contemnor no. 2.

38. Thereafter, the Plaintiff in CS(OS) 281/2017 (i.e., Defendant No. 2 herein) on 23.09.2019 filed an application I.A. 13460/2019 in the said suit seeking a restraint against Mr. Subhash Arora, the partner of the Plaintiff firm herein from creating any third-party rights in the suit property on the plea that a brochure had been published advertising the suit property for sale. The Co-ordinate Bench issued notice in this application on 27.09.2019 and vide



subsequent order dated 23.01.2020, the Co-ordinate Bench issued restraint against both Mr. Subhash Arora and Mr. Ankur Arora (partners of the Plaintiff firm herein) from, in any manner, advertising the sale of the suit property.

Mr. Subhash Arora filed an affidavit clarifying that Mr. Ankur Arora is his son and filed an undertaking that he will take down the listing of the suit property from the brochure.

39. Pertinently, on the same date i.e., 23.01.2020 the Co-ordinate Bench in CS(OS) 281/2017 heard and decided I.A. 7481/2019 filed by Mr. Maninder Singh/plaintiff therein (i.e., Defendant No. 2 herein) under Order XII Rule 6 CPC. The Court held that all the three parties to the said suit were the legal heirs of late Mrs. Harbans Kaur and passed a preliminary decree dated 23.01.2020 declaring each of them to be entitled to 1/3rd undivided share in the suit property. The plea of Will dated 22.07.1987 was not accepted by the Court.

40. After the passing of the preliminary decree dated 23.01.2020, an application for appointment of a Local Commissioner was filed to oversee the sale of the suit property, which was allowed by the Co-ordinate Bench vide order dated 15.07.2020.

41. The Plaintiff herein belatedly through its partner Ankur Arora on 06.01.2021, after nearly a year, filed an application (I.A. 219/2021) seeking impleadment in CS(OS) 281/2017 and also filed an application (I.A. 220/2021) for seeking stay of operation of the order dated 15.01.2020.

Pertinently, in its application seeking impleadment (i.e., I.A. 219/2021) filed in CS(OS) 281/2017 the Plaintiff herein pleaded that (i) parties had agreed that the sale deed would be executed on or before 30.09.2017; (ii) it



was alleged that the agreement for sale was entered with all the three (3) co-sharers; and (iii) it was acknowledged that Smt. Kamal Kumar had stopped responding to the calls of the Plaintiff for execution of the sale deed prior to December 2018.

In this application (i.e., I.A. 219/2021) it was further averred that Plaintiff is in the process of instituting a suit for specific performance. The relevant paras of the application read as under: -

“21. That Defendant No.1 in her reply to the contempt petition clearly admitted that the suit property was sold on the assumption that each party will get Rs. 21 lacs each and accordingly received a cheque from the Applicant. She in order to save herself falsely stated in the said proceedings that she did not encash the cheque and someone mischievously deposited Rs. 21 lacs in her bank account.

...

29. That it is pertinent to mention that it was agreed upon between the parties that if either party fails to perform its part of the duty, the other party would be entitled to get the Sale Deed registered through the Court of Law by Specific Performance of Contract, at the cost and expenses of the defaulting party. Therefore, the Applicant is also filing the Suit for Specific Performance before this Hon'ble Court.”

(Emphasis Supplied)

42. Pertinently, the Co-ordinate Bench CS(OS) 281/2017 did not issue any notice in the Plaintiff's applications I.A. 219-20/2021, and the same remained pending simplicitor. In fact, the Co-ordinate Bench continued to issue directions to the Local Commissioner in CS(OS) 281/2017 to proceed with the local commission vis-à-vis sale of the suit property. However, the Plaintiff herein took no steps to file any suit for specific performance as pleaded in paragraph 29 of I.A. 219/2021 or challenge the directions of the Co-ordinate Bench directing sale of the suit property.

43. In the facts of this case, the pleadings of the Plaintiff in I.A. 219/2021



in CS(OS) 281/2017 clearly show its knowledge of the refusal of Smt. Kamal Kumar to execute the sale deed even prior to December 2018. The Plaintiff was put to knowledge of late Smt. Kamal Kumar's repudiation of the agreement by her reply dated 23.07.2019 in CCP No. 70/2018. Moreover, the Plaintiff despite pleading in I.A. 219/2021 on 06.01.2021 that it is in the process of filing the suit for specific performance, fail to file any such suit until 14.09.2023.

44. The facts noted above show that on the Plaintiff's own showing the cause of action for seeking specific performance of the alleged agreement to sell evidenced by an undated Advance-Payment-Receipt arose on the following dates: -

- (i) On 30.09.2017, the date allegedly agreed between the parties for execution of the sale as per the undated Advance-Payment-Receipt (as pleaded in I.A. No. 219/2021);
- (ii) In December 2018, when Smt. Kamal Kumar stopped responding to the calls of the Plaintiff (as pleaded in I.A. No. 219/2021);
- (iii) On 23.07.2019, when Smt. Kamal Kumar filed her reply in CCP No. 70/2018 in CS(OS) 281/2017 disputing any agreement for sale and repudiating the transaction evidenced by Advance-Payment-Receipt as well as disputing the receipt of Rs. 21 lakhs on 16.08.2017;
- (iv) On 23.01.2020, when the coordinate Bench in CS(OS) 281/2017 passed a preliminary decree declaring the share of Smt. Kamal Kumar as 1/3rd;
- (v) On 15.07.2020, when the Coordinate Bench in CS(OS)



281/2017 appointed a Local Commissioner for the sale of the suit property;

- (vi) On 06.01.2021, when the Plaintiff file I.A. No. 220/2021 in CS(OS) 281/2017, seeking a stay of the order dated 15.07.2020 by relying on the undated Advance-Payment-Receipt; but the coordinate Bench did not entertain the application;
- (vii) On 06.01.2021, when the Plaintiff file I.A. No. 219/2021 in CS(OS) 281/2017 pleading illegal repudiation by Smt. Kamal Kumar and averring that in the process of filing the suit for specific performance.

45. The aforementioned admitted facts (apparent from the record) show that though the cause of action as per the Plaintiff arose on 30.09.2017 (the date allegedly agreed for the execution of an undated Advance-Payment-Receipt) and the Plaintiff had notice of the repudiation by Smt. Kamal Kumar, it elected to file the suit for specific performance on 14.09.2023 (six years later). The deliberate inaction of the Plaintiff from 2017 to 2023 in seeking the relief of specific performance shows that the Plaintiff was not ready and willing to perform its alleged agreement based on an undated Advance-Payment-Receipt of 2017.

46. The delay of six years from 2017 to 2023 has had a material effect on the sale consideration recorded in the undated Advance-Payment-Receipt. The Plaintiff has pleaded that the sale consideration agreed in 2017 for the entire suit property was Rs. 24 crores and this suit has been filed seeking specific performance on the same price for Smt. Kamal Kumar's share in the suit property. The Plaintiff fairly admits, in its written submissions filed on 07.04.2025, that the current price of the suit property would be in the range of



Rs. 35-38 crores in the neighbourhood.

47. The Supreme Court in **Saradamani Kandappan v. S. Rajalakshmi**¹⁶ while dealing with the relief of specific performance with respect to immovable properties authoritatively held that keeping in view the economic trend where market prices increase exponentially and are time sensitive, the conduct of a vendee in not approaching the Court immediately after the refusal of the vendor is a circumstance, which leads to the conclusion that the vendee is not ready and willing to perform its contract. In its judgement, the Court cited with approval its earlier judgment of **K.S. Vidyanadam v. Vairavan**¹⁷ and held that the vendee cannot wait for the entire period of limitation to file a suit for specific performance. The relevant paragraphs of the judgment read as under: -

“36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative

¹⁶(2011) 12 SCC 18

¹⁷(1997) 3 SCC 1



purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

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

...

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

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



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

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

42. Therefore, there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in *Chand Rani* [(1993) 1 SCC 519] and other cases. Be that as it may.

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

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

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

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



of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser.”

(Emphasis Supplied)

48. In the facts of this case, the aforesaid principle settled by the Supreme Court is squarely applicable as the market price of the suit property between 2017 and 2023 has increased from Rs. 24 crores to Rs. 35-38 crores. In these admitted facts, the Plaintiff's delay (of six years) in approaching the Court shows the lack of its readiness and willingness.

49. The aforesaid principle of escalating market prices and the decision of the Supreme Court **Saradamani Kandappan** (supra) was reiterated by the Supreme Court in **P. Daivasigamani v. S. Sambandan**¹⁸, at paragraph no. 30 which reads as under:

“30. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant seller's purpose[See paras 25, 36 & 37 in *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18:(2012) 2 SCC (Civ) 104.]. Therefore, the offer of the plaintiff purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the plaintiff purchaser to the defendant seller may become a relevant fact that merits due consideration.”

(Emphasis Supplied)

50. In the facts of this case, as per the Plaintiff, the sale consideration agreed in 2017 was Rs. 24 crores and the Plaintiff avers that it paid Rs. 21 lakhs to Smt. Kamal Kumar in August, 2017. Smt. Kamal Kumar has disputed

¹⁸(2022) 14 SCC 793, Para nos. 21,22



the said credit as being unsolicited and unilateral in her reply dated 23.07.2019 to CCP No. 70/2018. Notwithstanding, the said denial by Smt. Kamal Kumar, taking the said deposit of Rs. 21 lakhs on its face value, this amount equals to 0.88% of the sale consideration. This nominal advance of Rs. 21 lakhs, which equals to 0.88% of the sale consideration would fail to tilt any equity in favour of the Plaintiff. The Defendant No. 1 has already deposited the said amount of Rs. 21 lakhs with interest at 12% per annum with the registry of this Court vide orders dated 26.03.2025 and 08.04.2025 with the offer to the Plaintiff to accept the said amount.

51. It is a settled law that a party seeking specific performance must not only plead, but also prove, continuous readiness (i.e., financial capability) and willingness to perform their part of the contract from the date of the agreement until the culmination of trial. It is the case of the Plaintiff that the sale deed had to be executed on or before 30.09.2017. With the plaint, no documents evidencing the financial capacity of the Plaintiff from 2017 till 2023 (until the date of filing the suit) have been placed on record showing its capacity to pay the sale consideration of Rs. 24 crores and thus, negate any inference of contractual sincerity.

52. The Hon'ble Supreme Court in **N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao & Ors.** reported in (1995) 5 SCC 115 observed as under: -

"The financial capacity must be proved right from the date of entering into agreement to sell till the disposal of the suit. In a suit for specific performance, a proposed purchaser must necessarily prove his financial capacity, and which is a sine qua non as per Section 16(c) of Specific Relief Act, 1963. Section 16(c) of Specific Relief Act requires that a proposed purchaser must always be and continue to be ready and willing to perform his part of contract. Readiness has been interpreted



to mean financial capacity. Financial capacity must exist to pay the balance sale consideration right from the time of entering into the agreement to sell till the disposal of the suit."

As was further observed as under:-

"it is settled law that remedy for specific Patna High Court FA No.15 of 2008 dt.21-10-2024 performance is an equitable remedy and is in the discretion of the Court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963. Under Section 20 of the Specific Relief Act, the Court is not bound to grant the relief just because there was valid agreement of sale. Section 16 (c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available. Right from the date of execution till date of decree, he must prove that he is ready and has always been willing to perform his part of contract."

(Emphasis Supplied)

53. It is also apposite to refer to the judgment, **P. Daivasigamani** (supra), wherein the Supreme Court reaffirmed that specific performance is an equitable relief available only upon a plaintiff's clear, continuous demonstration of both elements.

21. Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff purchaser, including attending circumstances [See para 2 in *Ganesh Dassji v. Sita Ram Thapar*, (1996) 4 SCC 526]. Continuous readiness and willingness on the part of the plaintiff purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance [See



para 5 in *N.P. Thirugnanam v. R. Jagan Mohan Rao*, (1995) 5 SCC 115. Also see *Ardeshir Mama v. Flora Sassoon*, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 : AIR 1928 PC 208] .”

(Emphasis Supplied)

54. The Supreme Court in **U.N. Krishnamurthy (since deceased) thr. LRs. Vs. A.M. Krishnamurthy**¹⁹ observed as under:

“45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. **This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.**”

(Emphasis Supplied)

55. In suits seeking specific performance of high-value immovable properties, especially in urban areas where property values are steep and fluctuate sharply, mere assertions of readiness are insufficient in law. The Supreme Court in **P. Daivasigamani** (supra), reiterated that “readiness” entails a tangible capacity to perform the contract, including the availability of funds is distinct from the subjective willingness to do so.

The Plaintiff herein has neither pleaded nor placed on record any contemporaneous financial statements, bank records, balance sheets, or transaction logs that would demonstrate its actual financial capacity to tender the balance sale consideration of Rs. 23.79 crores under the purported agreement. The Plaintiff, with the present suit, has not filed any documents (whatsoever) showing its capacity to pay the sale consideration. The absence of any financial documentation, even at the stage of filing the suit in 2023, is a

¹⁹(2023) SCC OnLine SC 840



significant omission that undermines the credibility of the Plaintiff's plea of readiness and willingness.

56. In these facts, keeping in view the judgments of the Supreme Court in **Saradamani Kandappan v. S. Rajalakshmi and others** (supra) and **K.S. Vidyanadam and others v. Vairavan** (supra) the plaint along with the documents filed therewith clearly shows that the Plaintiff was not ready and willing to perform the agreement.

57. Section 16(c) of the Specific Relief Act, 1963 stipulates that specific performance of a contract cannot be enforced in favour of the person, who fails to prove that he has been ready and willing to perform the essential terms of the contract, which are to be performed by him. The Plaintiff at paragraph '25' of the plaint has averred that it is ready and willing to perform this contract. Being ready and willing is an essential part of the cause of action for maintaining a suit for specific performance and in case, the party is not ready or willing, the plaint is liable to be rejected for want of cause of action. In the facts of this case having perused the plaint and the documents filed in support thereof as well as the record of CS(OS) 281/2017 relied upon by the Plaintiff, it is apparent that the Plaintiff is not ready and willing to perform its contract.

58. The Supreme Court in a recent judgment in **P. Ravindranath & Anr. Vs. Sasikala**²⁰ observed as under:

“22. Having considered the submissions, our analysis is as follows:(i) Relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract.

²⁰2024 SCC OnLine SC 1749



The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have to be very direct, specific and accurate. **A suit for specific performance based on bald and vague pleadings must necessarily be rejected.** Section 16(C) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract.”

(Emphasis Supplied)

59. While considering a suit for specific performance based on an oral agreement, in **Vinod Seth v. Devinder Bajaj**²¹, the Supreme Court held that if the Court finds that the plaint fails to disclose a valid cause of action, it may invoke Order 7 Rule 11 of the CPC to reject the suit. Relevant paragraph of the judgment reads as under:

“40. If the High Court felt that the prayer in the suit was vexatious or not maintainable, it could have considered whether it could reject the suit under Order 7 Rule 11 of the Code holding that the plaint did not disclose the cause of action for grant of the relief sought or that the prayer was barred by Sections 14(1)(b) and (d) of the Specific Relief Act. Alternatively, the court could have framed issues and heard the issue relating to maintainability as a preliminary issue and dismiss the suit if it was of the view that it had no jurisdiction to grant specific performance as sought, in view of the bar contained in Sections 14(1)(b) and (d) of the Specific Relief Act. If it was of the prima facie view that the suit was a vexatious one, it could have expedited the trial and dismissed the suit by awarding appropriate costs under Section 35 of the Code and compensatory costs under Section 35-A of the Code. Be that as it may.”

(Emphasis Supplied)

60. Given the significant delay of six years in filing the suit, the absence of any readiness and willingness to perform the agreement, and the acknowledgment of a substantial increase in property value since the initial

²¹2010 SCC OnLine SC 664



agreement, this Court reasonably concludes that there is no cause of action for the suit for specific performance to be maintainable before the Court. In view of the above facts and judgments referred, this Court is of the considered opinion that the conduct of the Plaintiff was not reflective of his readiness and willingness on his part to pursue the purported agreement, and, therefore, the relief sought at prayer clause (a) of the plaint is devoid of merits in view of no cause of action.

No binding agreement between the Plaintiff and Smt. Kamal Kumar

61. The present suit has been filed on the basis of undated Advance-Payment-Receipt. The Receipt simplicitor records the details of the suit property, the total consideration amount of Rs. 24 crores and acknowledges receipt of a cheque no. 000067 dated 30.06.2017 drawn for a value of Rs. 21 lakhs. No essential term of the agreement has been set out in this receipt. Pertinently, in the background, a suit for partition had already been filed by Defendant No. 2 and interim restraint order dated 05.06.2017 had been passed by the Co-ordinate Bench, the execution of the Receipt thereafter being intended to overreach the order is a circumstance that looms large and appears credible. Notwithstanding the issue of over-reaching the proceedings in CS(OS)281/2017, the facts remains that no essential terms of agreement were set out.

62. The fact that parties were not ad-idem about the terms of the agreement is also evident from the fact that the Plaintiff in I.A. No. 219/2021 filed in CS(OS) 281/2017 had pleaded that the agreement was for purchase of the entire suit property and with all the three co-owners (including Defendant No. 1), whereas in the present suit the said plea has been abandoned and the Plaintiff is in fact disputing the rights of co-ownership of Defendant No. 1.



These inconsistent pleas are mutually destructive and evidence that the agreement recorded in the undated Advance-Payment-Receipt was not concluded between the parties.

63. In **Mool Chand Bakhru v. Rohan** (supra), the Supreme Court held that for a document to qualify as an enforceable agreement for sale, its essential terms must be ascertainable with reasonable certainty. Mere acknowledgment of receipt of money, without spelling out the time frame for performance and other critical terms, cannot form the basis of specific performance. The Court further emphasized that vague and unilateral writings, lacking consensus ad idem, do not constitute a binding agreement within the meaning of law.

64. Further, in **Anil Kumar v. Seema Thakur**²², the Delhi High Court reiterated that in order to infer the existence of a valid contract for sale of immovable property, there must be certainty regarding (i) the consideration; (ii) identity of parties; (iii) identification of the property; and (iv) terms relating to execution, registration, and cost of conveyance. The undated Advance-Payment-Receipt dated 30.06.2017 fails to meet these criteria. Accordingly, the document relied upon by the Plaintiff is, at best, a receipt evidencing part payment and does not give rise to any enforceable contractual rights. The suit, premised on such a defective and deficient foundation, is devoid of merit.

65. Thus, applying the judgment of **Mool Chand Bakhru v. Rohan** (supra) **Anil Kumar v. Seema Thakur** (supra), it is held that in the facts of this case, there is no concluded and binding agreement between the parties and, therefore, the Plaintiff has no cause of action to seek the relief of specific

²²(2010) 166 DLT 619 (para 12)



performance on the basis of the undated Advance-Payment-Receipt.

Lack of Locus Standi of the plaintiff to challenge the MoFS final decree dated 11.07.2023

66. The Plaintiff was duly represented in CS(OS) 281/2017, having entered appearance as early as 19.03.2019. The Plaintiff through its partner Mr. Subhash Arora was impleaded as contemnor no. 2 in CCP No. 70/2018.

67. As noted in the earlier part of this judgement, the Co-ordinate Bench in CS(OS) 281/2017 had issued notice to the Plaintiff's partner Mr. Subhash Arora, and vide order dated 23.01.2020 had restrained both Mr. Subhash Arora and Mr. Ankur Arora from advertising the suit property for sale. Mr. Subhash Arora had in fact filed an affidavit in the said proceedings undertaking that the suit property was not offered to sale.

68. Pertinently, on the same date i.e., 23.01.2020 the Co-ordinate Bench in CS(OS) 281/2017 heard and decided I.A. 7481/2019 filed by Mr. Maninder Singh/plaintiff therein (i.e., Defendant No. 2 herein) under Order XII Rule 6 CPC. The coordinate bench held that all the three parties to the said suit were the legal heirs of late Mrs. Harbans Kaur and passed a preliminary decree dated 23.01.2020 declaring each of them to be entitled to 1/3rd undivided share in the suit property. The Court considered the defence of Smt. Kamal Kumar with respect to the alleged Will dated 22.07.1987 and rejected the same since the original of the Will was not produced. This preliminary decree was passed in the presence of the counsel for Mr. Subhash Arora and Mr. Ankur Arora i.e., the partners of the Plaintiff herein in the captioned suit. This preliminary decree was challenged by Smt. Kamal Kumar in RFA (OS) 8/2021; however, the appeal was dismissed by the Division Bench vide order dated 15.02.2021. Smt. Kamal Kumar also filed a review petition no.



60/2021 before the Co-ordinate Bench seeking review of the order dated 23.01.2020 by producing the original of the Will dated 22.07.1987. The said review petition was dismissed by Co-ordinate Bench detailed order on 16.12.2022. The preliminary decree dated 23.01.2020 thus attained finality. The Plaintiff herein, who was duly represented in CS(OS) 281/2017 were aware about the said proceedings and did not raise any challenge.

69. The Co-ordinate Bench vide order dated 15.07.2020 appointed a Local Commissioner for sale of the suit property. The Plaintiff also actively participated in the said proceedings by filing I.A. 219/2021 seeking impleadment, and I.A. 220/2021 seeking stay of the order dated 15.07.2020, by which Co-ordinate Bench had permitted the sale of the suit property. However, the Co-ordinate Bench did not stay the order dated 15.07.2020 and in fact should further direction to the Local Commissioner for the sale.

70. CS(OS) 281/2017 was listed on 11.07.2023, on which date the Co-ordinate Bench, acting upon an application filed by parties therein (i.e., Defendant Nos. 1, 2 and 3 herein) under Order XXIII Rule 3 CPC, decreed the suit in terms of the MoFS. The MoFS recorded the mode and terms of sale agreed between the parties. The Co-ordinate Bench in continuation of its earlier order dated 15.07.2020 accepted the procedure and modalities agreed between the parties to the said suit for the sale of the suit property as set out in the application under Order XXIII Rule 3 CPC.

71. The reliance placed by Plaintiff on Will dated 22.07.1987 to allege Smt. Kamal Kumar has $\frac{1}{2}$ share is barred by res-judicata as the said plea has been expressly negated by Co-ordinate Bench in CS(OS) 281/2017.

72. Furthermore, the Plaintiff did not challenge the final decree dated 11.07.2023 either by filing an appeal under Section 96 CPC or filing an



appropriate application under Order XXIII Rule 3A CPC. The omission to pursue either remedy, underscores the Plaintiff's implicit acknowledgment of its lack of locus to impugn the said decree. The Plaintiff's claim, as advanced in the present proceedings, is premised on the entitlement of Late Smt. Kamal Kumar to an undivided share in the suit property, an entitlement which had already been conclusively crystallized by the preliminary decree dated 23.01.2020.

In the absence of any independent or derivable right, title, or interest in the suit property, the Plaintiff cannot lawfully maintain a challenge to the final decree dated 11.07.2023. The purported challenge in the present suit, therefore, is devoid of merit and fails to disclose any enforceable cause of action. This Court is of the considered opinion that the Plaintiff lacks locus standi to challenge the final consent decree dated 11.07.2023 passed in CS(OS) 281/2017 pursuant to the MoFS dated 10.07.2023.

73. The Plaintiff has in fact suppressed the order dated 23.01.2020 of the Court passing the preliminary decree and the order of the Division Bench dismissing the appeal against the said decree as well as the order dismissing the review.

74. Therefore, the prayer seeking declaration of the MoFS dated 10.07.2023 as unlawful and void ab initio, as prayed at clause (b) of the plaint, is without merit and not maintainable.

Plaintiff cannot maintain this suit for specific performance in light of dismissal of I.A. 219/2021 and I.A. 220/2021 in CS(OS) 281/2017 without liberty

75. On 11.07.2023, while passing the final decree based on the MoFS dated 10.07.2023, the Co-ordinate Bench also disposed of the Plaintiff's pending applications (I.A. 219-220/2021) seeking impleadment and stay of the order



dated 15.07.2020 without reserving any liberty to the Plaintiff herein to pursue a separate remedy, including that of specific performance against Smt. Kamal Kumar (or her successor Defendant No. 1). The Plaintiff did not challenge the order dated 11.07.2023 disposing of its applications by filing an appeal.

76. Re-litigation is recognized as an abuse of process, grounded in the public interest for finality in litigation. The Supreme Court emphasized that re-litigating previously decided matters contradicts justice and public policy.²³ The Division Bench of this Court in **Shiju Jacob Varghese v. Tower Vision Limited**²⁴, held that proceeding ahead with the litigation even after there was finality in the pre-existing litigation amounts to re-litigation and is the abuse of process of law. The relevant part of the judgment reads as under:

“41. It is settled law that relitigation is an abuse of process. This concept is grounded on the principle that there is public interest in finality in litigation. In *Hunter v. Chief Constable of the West Midlands Police*, [1982] A.C. 529 the House of Lords defined as an example of abuse of process, “...the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which had been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had full opportunity of contesting the decision in the court in which it was made.”

42. Relitigation may or may not be barred as *res judicata*. The English Courts in *Henderson v. Henderson*, (1843) 3 Hare 100 while dealing with relitigation amounting to abuse of process extended the *res judicata* principle in two respects, namely, the rule applies not to matters which were decided by a Court, but to matters which might have been decided but were not; the rule applies not just to subsequent litigation between the same parties but also to parties to the subsequent

²³ M. Nagabhushana v. State of Karnataka, (2011) 3 SCC 408, at para 23 and 24.

²⁴ 2023 SCC OnLine Del 6630



proceedings who were not joined as parties to the earlier proceedings. It has also been held by English Courts that there is no distinction in law between cases where the original action concludes by settlement and where it concludes by judgment.

43. Recently, the Jamaican Court of Appeal in *West Indies Petroleum Limited v. Courtney Wilkinson and John Levy*, [2023] JMCA Civ 2 has held as under:—

“....the ground of abuse of the process of the Court based on duplicity includes, but is not limited to, situations such as bringing an action:

(1) between the same parties and based upon the same matters as have already been adjudicated upon, such as to give rise to an issue estoppel;

(2) which could and should have been raised in earlier concluded proceedings between the same parties as in Yat Tung Investment Co. v. Dao Heng Bank Ltd. [1975] A.C. 581, in which a second claim for injuries was struck out following the successful first claim for damages to the car;

(3) which amounts to a collateral attack upon an earlier decision of a court of competent jurisdiction as illustrated in Hunter v. Chief Constable of the West Midlands Police [1982] A.C. 529; and

(4) which would involve the re-litigation of issues already settled by a compromise, which was the point of dispute in Clarence Ricketts v. Tropigas SA Ltd. (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No. 109/1999, judgment delivered 31 July 2000, where this court considered whether a claimant would be allowed to file a claim for the recovery of damages for personal injury suffered in a motor vehicle crash, in circumstances where a judgment in respect of his property loss in that crash, had already been concluded in a previous claim, by way of consent....”

(emphasis supplied)

44. Consequently, the concept of ‘abuse of the process’ in the form of duplicity is wider than the concept of *res judicata* or issue estoppel.

45. In *K.K. Modi v. K.N. Modi* (supra), the Indian Supreme Court has also held that one of the examples of abuse of process of Court is relitigation. The relevant portion of the said judgment is reproduced hereinbelow:—

“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and



decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.....”

46. This Court is of the view that whether relitigation amounts to an abuse depends upon the facts and circumstances of the case. A broad, merit-based judgment has to be adopted, taking into account all the public and private interests involved and all the facts of the case (See : *Johnson v. Gore Wood & Co.* (No. 1) [2002] 2 A.C. 1, HL). This “*broad, merits based*” approach does not refer to the substantive merits but to the merits relevant to the question whether the claimant should be allowed to pursue its second action. This Court is further of the view that the parties' conduct in bringing the first action to an end is relevant and a merits based approach is appropriate in determining whether pursuing the second action after settlement of the first action is fair.

47. Consequently, a suit/appeal may be struck out as an abuse even if that party is not bound by res judicata if it is shown that the new proceeding (i) is manifestly unfair to a party to the new proceeding; or (ii) would bring the administration of justice into disrepute. Needless to state, that this power must be exercised with care and caution.

48. Since the Appellants entered into a Settlement which resulted in the consent order dated 11th May, 2017 without reserving any liberty to continue the Indian proceedings despite being fully aware of the nature of the holding of Respondent No. 2 in the downstream entities, the Appellants by continuing to agitate their rights under Share Entitlement dated 17th October, 2006 in the present appeal are now ‘*mounting a collateral attack*’ on the final consent decree/order passed by a competent Court of law.

49. Consequently, the Appellants by continuing to prosecute the present appeal are re-litigating which is an abuse of process. Any doubt



with regard to the malafide intent of the Appellants in continuing with the present Appeal is dispelled from the email dated 31st January 2023, which shows that they are misusing even the pendency of the present Appeal to ‘scare away’ investors.”

(Emphasis Supplied)

77. The fact that the Plaintiff instituted a fresh suit for specific performance, despite the Co-ordinate Bench’s order dated 11.07.2023, which granted final decree of partition of the suit property based on MoFS permitting sale on the terms recorded therein, and disposed of the Plaintiff’s pending applications (I.A. 219-220/2021) without reserving any liberty to pursue a separate remedy, clearly constitutes re-litigation, and is sheer abuse of the process of law.

78. The effect of the disposal of the said applications by the Co-ordinate Bench, negates the Plaintiff’s claim in the suit property for specific performance as no liberty was reserved to the Plaintiff herein to avail its remedy of specific performance by a separate suit. Thus, in view of the dismissal of I.A. 219-21/2021 without liberty reserved, the Plaintiff herein had no cause of action to maintain a suit for specific performance and, therefore, is estopped from seeking any relief qua the suit property.

79. To sum up, the plaint is thus liable to be rejected for lack of cause of action on the following grounds: -

- i. The Plaintiff is neither ready nor willing.
- ii. There is no concluded and binding agreement between the parties.
- iii. The Plaintiff has no locus to challenge the MoFS and the decree dated 11.07.2023 or rely on the Will dated 22.07.1987.
- iv. The Plaintiff is estopped from seeking relief of specific performance qua the suit property in view of the dismissal of its



applications, without liberty in CS(OS) 281/2017.

80. In view of the settled legal position and the findings recorded hereinabove, the captioned application under Order VII Rule 11 CPC is hereby allowed. Consequently, the plaint stands rejected for failing to disclose any cause of action.

81. All pending applications, if any, stand disposed of.

82. Future dates, if any, are cancelled.

Direction for refund in favour of the plaintiff

83. In any event, Defendant No. 1 has already deposited the said amount of Rs. 21 lakhs along with 12% interest up to 31.03.2025, with the Registry of this Court, as recorded in order dated 26.03.2025 and 08.04.2025. This Court is, therefore, of the opinion that the Plaintiff is only entitled to the return of the aforesaid amount, without any further or consequential relief.

84. Registry is directed to release the amounts of Rs. 30,75,000/- as deposited by Defendant No. 1 on 27.03.2025 and Rs. 9,78,863/- deposited on 01.04.2025 with the Registry of this Court, in terms of the order dated 26.03.2025, to the Plaintiff, within two (2) weeks from the date of receipt of a written request from the Plaintiff.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

JULY 07, 2025/mt/AKP/AM

Click here to check corrigendum, if any