Thomas Vs. Karthu and Others

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Court : Kerala

Decided On : Aug-20-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Thomas

Respondent : Karthu and Others

Advocate for Def. : Sri. Vinod Bhat

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA WEDNESDAY, THE20H DAY OF AUGUST201429TH SRAVANA, 1936 RFA.No. 27 of 2008 (C) ---------------------- AGAINST THE

JUDGMENT
AND DECREE IN O.S5542005 OF ADDL.SUB COURT, IRINJALAKUDA DATED3110-2007 .... APPELLANT/PLAINTIFF: -------------------- THOMAS, S/O.KALLELI DEVASSY, KALLALY HOUSE, KIZHAKKE CHALAKKUDY VILLAGE MUKUNDAPURAM TALUK. BY ADVS.SRI.RENJITH THAMPAN SRI.V.M.KRISHNAKUMAR RESPONDENTS/2ND DEFENDANT AND ADDL. DEFENDANTS3TO8 --- 1. KARTHU, AGED57YEARS, W/O.RAMAKRISHNAN, VETTILAPARA DESOM, PARIYARAM

VILLAGE, MUKUNDAPURAM TALUK.

2. SHAILA, AGED37YEARS, D/O.RAMAKRISHNAN, VETTILAPARA DESOM, PARIYARAM VILLAGE MUKUNDAPURAM TALUK.

3. SHEELA, AGED35YEARS, D/O.RAMAKRISHNAN, VELLILAPARA DESOM, PARIYARAM VILLAGE MUKUNDAPURAM TALUK.

4. SHEEBA, AGED33YEARS, D/O.RAMAKRISHNAN, VETTILAPARA DESOM, PARIYARAM VILLAGE MUKUNDAPURAM TALUK.

5. SHEENA, AGED31YEARS, D/O.RAMAKRISHNAN, VETTILAPARA DESOM, PARIYARAM VILLAGE MUKUNDAPURAM TALUK.

6. NOJI, AGED29YEARS, D/O.RAMAKRISHNAN, VETTILAPARA DESOM, PARIYARAM VILLAGE MUKUNDAPURAM TALUK.

7. BINDU, AGED27YEARS, D/O. LATE KARAYAM PARAMBAN RAMAKRISHNAN, VETTILAPARA DESOM PARIYARAM VILLAGE, MUKUNDAPURAM TALUK. R,R1 TO6BY ADV. SRI.S.VINOD BHAT THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON3107-2014, ALONG WITH CO. 30/2008, THE COURT ON2008-2014 DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

-- R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 -- Dated this the 20th day of August, 2014

JUDGMENT

Asha, J.

Plaintiff in a suit for specific performance of Ext.A1 agreement for sale is the appellant herein, challenging judgment and decree of the court below to the extent it did not grant the relief of specific performance, but limited the relief to a decree for realization of the advance amount. The defendants have filed a Cross

Objection No.30 of 2008 challenging the decree granted.

2. According to the appellant, deceased Ramakrishnan and his wife Karthu - original defendants 1 and 2 agreed to sell the plaint schedule property having an extent of 2 acres and 64 cents for a total consideration of Rs.18,50,000/-, by executing Ext.A1 agreement on 20.10.2005, in favour of the appellant. The time limit for execution of the agreement was fixed as two months. A sum of Rs.10 lakhs was paid on the date of agreement itself to the defendants, which was acknowledged in the R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 2 agreement. An additional sum of Rs.1,25,000/- was paid towards the sale consideration on 25.10.2005, for which an endorsement was made by the 1st defendant on the reverse of the agreement. As the defendants did not take any action in terms of the agreement, appellant issued a lawyer notice on 16.12.2005 demanding execution of sale deed. This was followed by telegrams sent on 19.12.2005. But the defendants did not turn up for execution of the sale deed even though the appellant, who was ready and willing to perform his part with the balance sale consideration, was present in the Sub Registry office on 19.12.2005 and 20.12.2005. The suit was filed at that stage.

3. Sri Ramakrishnan, the original 1st defendant expired subsequent to the filing of the suit, consequent to which his legal heirs were impleaded as additional defendants 3 to 8. In the written statement, defendants denied the very execution of Ext.A1 agreement as well as the receipt of Rs.10 lakhs. According to them, Late Ramakrishnan had approached the appellant, who was a money lender, for a loan of Rs.1 lakh, on account of his financial difficulties. The appellant had paid only Rs.1 lakh to Sri Ramakrishnan, but he had obtained blank stamp R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 3 paper worth Rs.100/- and blank white papers signed by Ramakrishnan and Karthu. Thereafter Ramakrishnan was compelled to make an endorsement on the reverse of the stamp paper, when he could not make any payment towards interest on the loan of Rs.1 lakh availed by him. It was alleged that the plaint schedule properties, were not held by them jointly. They stated that they never intended to sell the plaint schedule property, where they reside. According to the defendants, the agreement was a fabricated one and they were not liable to execute the sale deed. It was also alleged that the

property was liable to fetch about Rs.30 lakhs and the appellant is not a person capable of raising the funds, as per the agreement.

4. On behalf of the plaintiff, PW1 to PW5 were examined and Exts.A1 to A14 were marked. DW1 to DW3 were examined and Exts.B1 to B3 were marked, on behalf of the defendants. Exts.X1 to X10 were summoned and marked through PW4 and PW5. The court below, on examination of the entire records found that the agreement was genuine, disbelieving the version of the defendants. The payment of sale consideration to the tune of Rs.11,25,000/- was also found in favour of the appellant. R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 4 However, the court below decreed the suit only in part, directing the defendants to pay a sum of Rs.11,25,000/- along with interest @ 6% per annum from 20.10.05 till realization, for which there shall be a charge on the plaint schedule property. Proportionate costs was also allowed.

5. Aggrieved by the refusal to grant the relief for specific performance of Ext.A1 agreement, the appellant has approached this Court. At the same time the respondent has filed Cross Appeal as against the decree granted.

6. The contention raised in the Cross Appeal is that Ext.A1 agreement is a fabricated one, after getting the signature of the defendants in blank papers, printed sheet etc. by misusing the same. The readiness and willingness to perform the agreement was not proved by the plaintiff and there was no evidence to prove the payment of Rs.10 lakhs to the defendants. It was also alleged that on the face of the records certifying her presence in the Plantation Corporation, the court below ought not have believed the execution of Ext.A1 agreement, disbelieving Karthu - DW1 and the witnesses DW2 and DW3.

7. We heard the learned Senior Counsel Sri Ranjit R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 5 Thampan appearing for the appellant and Sri S.Vinod Bhat, the learned counsel appearing for the respondents. Relying on various judgments, Shri Ranjith Thampan submitted that the court below ought to have decreed specific performance of Ext.A1 agreement, instead of limiting the relief to return of advance payment alone. It was also submitted that further payment can be made towards sale consideration in the light of the escalation in the land value.

On the other hand, Sri Vinod Bhat, appearing for the respondents submitted that the agreement itself was not genuine and moreover readiness and willingness of the appellant was not proved and therefore the decree granted was liable to be set aside.

8. We have considered the arguments raised by either side, with reference to the pleadings and evidence on record. First of all we will deal with the contentions raised in the cross appeal. Regarding the question of genuineness of the agreement, the court below has found that DW1 has admitted the signature on Ext.A1 agreement. The contention of the defendants was that the signature was obtained on stamp paper as well as blank papers and that Ext.A1 agreement was a R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 6 fabricated document. Ext.A1 contains the signatures of the deceased 1st defendant along with that of the 2nd defendant who was examined as DW1 in addition to the signatures of the appellant in presence of a witness who was examined as PW2. The version of the appellant who was examined as PW1 is corroborated by the testimony of PW2 who was a witness to the agreement Ext.A1 and PW3 who prepared the agreement. Both of them deposed that they have witnessed the defendants affixing their signatures in Ext.A1 and receiving advance payment from the appellant. From the deposition of the defendant DW1 it is seen that she has identified the signatures affixed therein by herself and her husband. She has also admitted the endorsement made by her husband on the reverse of Ext.A1 regarding the receipt of Rs.1,25,000/-, on 25.10.05. On the basis of the evidence thus available, it cannot be said that the court below was not correct in its finding that the agreement was genuine. Another contention raised in the written statement was that the 2nd defendant was attending her duties in the Plantation Corporation on the alleged day of agreement, ie. 20.10.2005. Even though she had produced documents to show R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 7 her presence in the Plantation Corporation and examined the officers therein in support of the documents certifying her presence, the possibility of being go out of the office at least for a short period during the working hours, cannot be ruled out especially when PWs 1 to 3 assert to have seen the presence of the 2nd defendant in the office of PW3 and the affixing of signature in the agreement. DW1 has agreed that her husband was a supervisor in the Plantation

Corporation and he was a leader of the trade union. Therefore, there was every chance for the 2nd defendant, who is the wife of the leader of the trade union and who was the Supervisor in the Plantation Corporation, though retired, to go out with permission, even though her attendance was marked in the attendance register. Moreover the officials of the corporation who were examined as DW2 and DW3 did not have any direct or personal knowledge about the presence of DW1 and her attendance was not marked by either of them.

9. Regarding the consideration received, the version of the defendants is that the appellant had paid only a sum of Rs.1 lakh, that too when they approached him for availing a loan on R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 8 interest. But Exts.X3 and X4 documents produced by the Manager, Canara Bank, who was examined as PW4 as well as Ext.X5 to X10 documents produced by the Secretary of the Service Co-operative Bank, Vettilappara, who was examined as PW5, show that the loan account in the name of the deceased 1st defendant, the 2nd defendant as well as in the name of their daughter were closed within one week of the date on which the agreement was executed. The case of the 2nd defendant is that they were in financial difficulties, on account of which, they had to approach the appellant for a loan of Rs.1 lakh and that the endorsement regarding receipt of Rs.1,25,000/- on 25.10.05 was made since they could not make any repayment, even towards interest. From Ext.X3, which is the Ledger particulars of S.B account No.35 in the name of the deceased 1st defendant in Canara Bank, Aroormuzhy, marked through the Manager of the Bank - PW4, it is seen that a sum of Rs.5,50,000/- has been deposited on 25.10.2005. Ext.X4 as well as the deposition of PW4 show that the deceased 1st defendant closed the agricultural loan availed by him, in loan Account No.3013, by transferring from his S.B account in the Bank, a sum of R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 9 Rs.5,36,244/- on 29.10.2005. From the testimony of PW5, the Secretary of the Pariyaram Co-operative Bank through whom Ext.X5 series were marked, it is seen that the deceased 1st defendant deposited a sum of Rs.1,51,749/- in his S.B account No.161 and that he closed his loan - Account No.KCC95by remitting a sum of Rs.52,317/- on 27.10.2005, as per Ext.X6. Another loan account in the name of deceased 1st defendant was also seen closed on payment of Rs.62,999/- as per Ext.X8. In addition to this, the loan availed in the name of DW1, the original

2nd defendant, was also closed on 27.10.2005 itself, as can be seen from Ext.X9, on payment of Rs.52,742/-. Another loan availed by the daughter of defendants 1 and 2 is also seen closed on the very same day on payment of Rs.1,13,074/-, as evident from Ext.X10. Thus the court below found that defendants 1 and 2 remitted a total sum of Rs.4,74,000/- for closing their loan account in the Service Co-operative Bank, Pariyaram, on 27.10.2005, as evident from Ext.X5 to X10, in addition to the transaction involving a sum of Rs.5,36,244/- in Canara Bank as evident from Exts.X3 and X4. The defendants who were stated to be in financial difficulties and were unable to remit even the R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 10 interest on a loan of Rs.1 lakh, were not able to explain the source of their income for the aforesaid transactions involving Rs.10,24,000/- immediately after the date of the agreement namely, 20.10.2005. Therefore, it can be seen that the defendants failed to establish their contentions. Having regard to the entire circumstances, we find that the court below has rightly, disbelieved the case of defendants.

10. The defendants have disputed the genuineness of the agreement alleging that the various clauses mentioned in the agreement are not in continuation; pagination is incorrect and the schedule of property is shown separately though there was sufficient space in the previous page to incorporate the schedule, etc. On a perusal of the agreement it is seen that the schedule along with the further endorsements could not have been incorporated in any of the previous pages. It is true that one of the pages contains printed materials. But that does not make the agreement a fabricated one. DW1 has admitted the signatures as well as the endorsement on the agreement. The receipt of consideration is also proved, in the circumstances explained above. R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 11 11. As per the terms of the agreement, the sale deed was to be executed before 20.12.2005. On a perusal of Ext.P13 pass book it is seen that there was sufficient funds available with the plaintiff at the relevant time. As per the entry on 12.12.2005, it is seen that there was a sum of Rs.8,85,906/-. For the period up to 03.01.2006, there is about Rs.9 lakhs available in his account. While the defendants are describing the plaintiff as a moneylender, plaintiff has deposed that he is a business man . Apart from that the appellant has stated that he is having accounts in several other banks like H.D.F.C, State Bank etc. in addition to

funds available in the account of his wife. Exts.P13 and P14 series of documents in which the appellant signed as witness show that appellant was available in the Sub Registry Office for getting the sale deed executed on 18th and 19th December, 2005, after giving intimation to defendants by way of Ext.P2 lawyer notice and telegrams.

12. Yet another contention is as to the value of the property shown in the agreement as Rs.18.5 lakhs. It was liable to fetch about Rs.20 lakhs according to PW2 and more than Rs.30 lakhs according to DW1. At any rate, the agreement does not become invalid on account of the value shown. In the above circumstances, we are of the view that the findings of the court below, disbelieving the version of the defendants on execution of agreement, were arrived at on the basis of correct appreciation of evidence on record.

13. Now the Issue to be considered is whether the relief should have been limited to refund of advance money alone. The learned senior counsel Sri Renjith Thampan argued that the court below ought to have granted the decree for specific performance of execution of sale, even on direction to make additional payment towards consideration in accordance with the escalated market value of the land. He relied on the judgments Simon v. Thitheerumma [1990 (1) KLJ587= 1990 KHC250 Panchugopal Barua and Ors. v. Umesh Chandra Goswami and Ors. [AIR1997 Supreme Court 1041 = 1997 KHC874 Faquir Chand and Another v. Sudesh Kumar [(2006) 12 SCC146= 2006 KHC1946, Narinderjit Singh v. North Star Estate Promoters Ltd. [(2012) 5 SCC712= 2012 KHC4279, Satya Jain (D) Thr. Lrs. And others v. Anis Ahmed Rushdie (D) Thr. Lrs. And others [AIR 2013 SC434= 2013 KHC 4009] , Faizal Eroth and Another v. Venkalath Raveendran and Another [2013(3) KHC407, wherein the principles regarding the exercise of discretion in granting decree for specific performance are explained. He argued that the court below erred in limiting the relief and there was no circumstance to deny the descretionary relief of specific performance in his favour, even on direction to pay the market value.

14. Sri Vinod Bhat, the learned counsel appearing for the respondents argued that the appellant is not entitled to a decree for specific performance; on the other hand suit was liable to be dismissed. He relied on the judgments Alex Thomas vs Rajan reported in 2010 (4) KLT842and Aliyas vs Aboobacker reported in 2006(4) KLT842in support of his contention to dismiss the suit.

15. The court below found that the 1st defendant who was one of the signatories to Exhibit A1 died during the pendency of the suit; the defendants were facing great financial difficulty when they executed Exhibit A1 agreement. The sale consideration was also one of the factors based on which the court below exercised its discretion not to grant the decree for R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 14 specific performance and limited it to refund of advance money. Now we will consider whether the conclusion of the court below was correct.

16. It is well settled that granting of specific performance is an equitable relief governed by statutory provisions under Section 20 of the Specific Relief Act, 1963. Section 20 of the Specific Relief Act provides that the jurisdiction of the court to decree specific performance of agreement is discretionary and the court is not bound to grant such relief merely because it is lawful to do so. The discretion envisaged under Section 20 of the Act is to be exercised on sound and reasonable basis guided by judicial principles. Section 20 of the Specific Relief Act reads as follows; "20. Discretion as to decreeing specific performance.--(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. (2) The following are cases in which the court may properly exercise discretion not to decree specific performance-- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such R.F.A No.27 of 2008-C & Cross Objection

No.30 of 2008 15 hardship on the plaintiff; (c)where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanation 1.--Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2.--The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract. (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party." Thus Section 20 (2) (c) provides that the relief of specific performance can be denied if it is found that the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Therefore we have to consider whether it was inequitable to order specific performance in the present case. Relying on the judgment of this Court in Simon v. Thitheerumma :1990 (1) KLT SN62:

1990. (1) KLJ587 Sri. Ranjith Thampan vehemently argued that the discretion R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 16 should not have been exercised by denying specific performance when the defendants raised false contentions denying the execution of the agreement for sale and receipt of advance sale consideration of Rs.11.25 lakhs, even after paying off their debts utilising the advance amount, at a time when they were in dire need. It was contended that the conduct of the parties at the time of entering into the contract or the circumstance prevailed did not in any manner enable the Court to exercise discretion not to decree specific performance. When there is a binding contract Court had to enforce it. In Simon v. Thitheerumma (supra), the trial court declined decree for specific performance but directed to return the advance amount. There the defendants denied the execution of 2nd agreement extending time for execution of sale deed in the light of the land acquisition proceedings, and pleaded false discharge of the advance received by them. In fact the land acquisition proceedings were withdrawn on efforts of the plaintiff. However the Trial Court held that plaintiff is not entitled to the decree for specific performance, seeing that defendants have no other property. In the appeal this Court found that there was no evidence to show R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 17 that the performance of the contract would involve any hardship on the defendants which they could not foresee at the time of agreement. On the other hand, non performance of the agreement would cause hardship upon the plaintiff who strived hard to have the land acquisition proceedings withdrawn. In para 9 it was held as follows: "9. Mere hardship on the defendants will not be sufficient to refuse specific performance. There must be evidence of such hardship being caused to the defendants which they did not foresee at the time of contract. It is equally important that the non performance should not involve hardship on the plaintiff. S.20(3) stipulates that the Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance." It was further held in para 10: "xxx False defence contentions disentitle the defendants to plead that discretion may be exercised in their behalf. As the contentions of the defendants are found to be mendacious, the Sub Judge ought not have denied the plaintiff the decree of specific performance.xxxxxxxx The Sub Judge refused to grant decree for specific performance on the ground that the defendants have no other property. This is hardly a ground to refuse specific performance particularly because the defendants were aware of the impending land acquisition proceedings. Moreover, there is no evidence that they do not have any other property." It is seen that the defendants entered into the agreement at a R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 18 time when they were highly indebted and in dire need of funds. In effect the circumstances compelled them to enter into an agreement for a distress sale of the property including their dwelling house, at reduced rate.

17. It is true that mere inadequacy of consideration cannot be a ground to refuse the decree for specific performance. In Alex Thomas Vs Rajan [2010 (4) KLT842,

it was held that in exercising the discretion while mere inadequacy of consideration may be irrelevant, the passage of time that has gone through with the litigation apparently tilts the scales, since escalation in land value cannot be put to stop; it was absurd that subsection 1 of Section 20 stands to advise that the discretionary jurisdiction to decree specific performance does not oblige the court to grant such relief, merely because it is lawful to do so, but that the discretion is to be exercised in a sound and reasonable manner, guided by judicial principles and capable of correction by a court of appeal. The exercise of discretion shall not be arbitrary and reasonableness has to be founded on some judicial principle. In view of the pendency of the litigation since November 1996 the Division Bench found that discretion R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 19 required to be exercised against decreeing specific performance and therefore ordered that entire cost of litigation will be borne by the defendants. The judgment of the trial court was maintained with the modification that the plaintiff would be eligible for the difference in value of stamp paper, on surrendering the same, in addition to cost.

18. In Aliyas versus Aboobacker [2006 (4) KLT282 a Division Bench of this court held that denial of execution of the agreement will not disentitle the defendants from being benefited of the discretion, even if the defence is unsustainable. The facts arising in this case also are more or less similar. The agreement was executed for sale of the residential property in order to pay off the loans. There the trial court denied the decree for specific performance as the defendants denied the execution of the agreement to sell. The court considered the meaning of "and court is not bound to grant such relief merely because it is lawful to do so" following the words "the jurisdiction to decree specific performance is discretionary" and held that even if it is lawful to decree specific performance, the court need not do so if on exercising the discretion in the manner indicated in Section R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 20 20, the court comes to the conclusion that discretion is to be exercised not to decree specific performance. It was held that the considerations to be made to exercise discretion are different in each case. It found that "conduct of the parties" occurring in sub section 2 of Section 20 of the specific performance is referable to the point of time of entering into contract. The court is bound to look into the fact whether the

plaintiff would get an unfair advantage over the defendant.

19. In A.C. Arulappan v. Ahalya Naik [(2001) 6 SCC600, the Supreme Court was considering the appeal filed by the defendant in a suit for specific performance. He entered into an agreement to sell his RCC building with appurtenant land, in order to clear several loans outstanding on it. This was followed by another agreement incorporating some more terms and conditions. The respondent plaintiff filed the suit alleging that she had all along been ready and willing to perform her part of the contract but the appellant failed to execute the sale deed. The trial court declined relief taking note of the fact that the appellant who was not keeping good health and voluntarily retired from service, executed the agreement with a view to R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 21 discharge some debts and he wanted to move to a small house elsewhere. The trial court found that the appellant would be put to great hardship in case the relief of specific performance was granted to the plaintiff. But the appellate court decreed the suit holding that mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, would not be deemed to constitute an unfair advantage and the ingredients of clause (b) of Section 20(2) of the Specific Relief Act are not attracted. The Apex Court found that the appellant was clearly in impecunious circumstances when he executed the first agreement, in order to raise some funds to pay off the debts and that the respondent-plaintiff had tried to take unfair advantage of the defendant. Reversing the appellate decree passed by the High Court, it was held in para 15: "15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. The trial court, which had the added advantage of recording the evidence and seeing the demeanour of the witnesses, considered the relevant facts and reached a conclusion. The appellate court should not have reversed that decision disregarding these facts and, in our view, the R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 22 appellate court seriously flawed in its decision. Therefore, we hold that the respondent is not entitled to a decree of specific performance of the contract." 20. In Mathew v.Kuruvila [1987(1) KLT7 the Hon'ble

Supreme Court held that while exercising discretion under Section 20 of the Specific Relief Act, court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. Similarly in Gobind Ram v. Gian Chand [(2000)7SCC548(para 7)] it was held that grant of a decree for specific performance of contract is not automatic. The court has to consider whether it would be fair, just and equitable. The court is guided by the principles of justice, equity and good conscience. In Kanshi Ram v. Om Prakash Jawal, (1996) 4 SCC593(para 5) it was held as follows: "It is true that the rise in prices of the property during the pendency of the suit may not be the sole consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 23 fairness to both the parties. Considered from this perspective, in view of the fact that the respondent himself had claimed alternative relief for damages, we think that the courts would have been well justified in granting alternative decree for damages, instead of ordering specific performance which would be unrealistic and unfair. Under these circumstances, we hold that the decree for specific performance is inequitable and unjust to the appellant." 20. In Kallathil Sreedharan v. Komath Pandyala Prasanna (1996 (2) KLT784(SC), the Hon'ble Supreme Court upheld the decision of this Court (Prasanna Vs Sreedharan -1995 (2) KLT499, where specific performance was denied on the ground of impecunious circumstances in which the agreement came to be executed by respondents and hard-up condition of the respondent woman. This court had held that a contract for sale of immovable property, has to be construed with reference to the real situation or context in which it was entered into and not relying upon the mere wording of the contract as fixing the real intention of the parties. This Court relied on Lakshminarayana v. Singara Velu :AIR1963 Mad. 24, rendered in a case with similar fact situation wherein specific performance was refused observing that the plaintiffs secured for themselves the properties, far below the market price, not negotiating for them on equal terms, taking unfair advantage of the situation in R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 24 which the defendants were placed.

21. Recently a Division bench of this court to which one of us was a party (Ramachandran Nair, J.) had occasion to reverse the decree granted by the trial court for specific performance of the agreement for sale, in its judgment dated 28 May 2014 in RFA No. 668/08. There an agreement for sale of 10 cents of land with a building, was executed for a total consideration of Rs.4,40,000/-, out of which a sum of Rs. 3,50,000/- was already paid on the date of agreement, on condition that the sale deed will be executed within a period of four months on payment of balance sale consideration. The contention of the defendant therein was that he had borrowed a sum of Rs.2,50,000/- from chity company, surrendering the title deeds of the property and agreement for sale was executed in favour of the chairman of the chity company as additional security. At the relevant time the value of property was not less than two lakhs percent, in the locality. This court found that at the time of execution of the agreement, the defendant was in debt for a long time to the chity company and was thus under pressure to execute the same without any real intention to sell. Relying on the dictum laid R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 25 down in the judgement of the Hon'ble Supreme Court in Mathew v.Kuruvila (supra) on the scope of Section 20 of the Specific Relief Act, this court found that the discretion had to be exercised in favour of the defendant declining specific performance and dismissed the suit.

22. In the present case, the documents Exhibit X3 to X10 produced at the instance of the appellant himself, coupled with the testimony of the witnesses on either side defendants/respondents show that defendants/respondents herein were in dire need of funds at the time of execution of the agreement. Therefore the appellant/plaintiff cannot be permitted to derive an unfair advantage out of the compelling circumstances of unequal bargaining, which prevailed at the time when the agreement Ext.A1 was entered into for the distress sale and it will be inequitable to decree specific performance. Eventhough the sale consideration alone will not be a factor to deny the decree of specific performance, we find that it will be inequitable to grant such a relief to the appellant in view of the

circumstances arising in the case at the time when Ext A1 agreement was entered into. Hence the judgments relied R.F.A No.27 of 2008-C & Cross Objection No.30 of 2008 26 on by the learned Senior Counsel are not applicable in the factual circumstances arising in case. We are of the view that, the court below has rightly limited the relief to refund of advance money. In the above circumstances, we dismiss the RFA as well as the Cross Appeal. There shall be no order as to costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge