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Syed Quadri Vs. Syed Mujeebuddin

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Court : Andhra Pradesh

Decided On : Jul-22-2009

Reported in : 2009(5)ALT502

Judge : A. Gopal Reddy and ;B. Chandra Kumar, JJ.

Acts : Specific Relief Act, 1963 - Sections 12(2), 12(2)(II), 12(3), 12(3)(II), 18 and 20; Contract Act - Sections 55; Code of Civil Procedure (CPC) - Sections 151 - Order 6, Rule 17 - Order 41, Rule 27

Appeal No. : City Civil Court Appeal No. 418 of 2003

Appellant : Syed Quadri

Respondent : Syed Mujeebuddin

Advocate for Def. : Ali Farooq, Adv.

Advocate for Pet/Ap. : J. Prabhakar, Adv.

Disposition : Appeal dismissed

Judgement :

A. Gopal Reddy, J.

1. This is an appeal filed by the plaintiff against the judgment and decree passed by the Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City

Civil Court, Hyderabad in O.S. No. 399 of 1996 dated 04.03.2003 whereby the suit filed by the plaintiff for specific performance of agreement of sale dated 11.08.1995 in respect of the suit schedule property was dismissed.

2. For the sake of convenience, the parties are referred to as arrayed in the Court below.

3. The plaintiff instituted the above suit seeking specific performance of agreement of sale dated 11.08.1995 executed by the defendant in his favour, agreeing to sell the premises to an extent of 200 sq.yds. bearing No. 10-3-16/4/3, Humayunnagar, Asifnagar, Golkonda main road, Hyderabad for a total sale consideration of Rs. 10,50,000/-; out of which the plaintiff paid an amount of Rs. 5,00,000/- on the said date i.e., 11.08.1995 and Rs. 50,000/- on 12.08.1995 being the advance sale consideration. The defendant agreed to receive the balance sale consideration within P/2 months from the date of the agreement/at the time of delivery of possession, and on delivery of such possession the plaintiff shall obtain the registered sale deed. With the amount paid by the plaintiff the defendant could settle all his matters in dispute including 26 sq.yds abutting the area agreed to be sold with neighbours. The plaintiff was ready and willing to purchase the said extra land at a reasonable price upon proper demarcation of the land to be sold with proper compound wall. But, as the demand of the defendant for extra 26 sq.yds of land was exorbitant and unreasonable, the plaintiff wanted a proper demarcation of the land covered by the agreement of sale for 200 sq.yds with a proper front wall at its original place before registration of the sale deed and was under the impression that the defendant will take steps for the proper conveyance of the property and would obtain necessary sanction from the concerned authorities before the sale deed is registered and a conveyance is made in his favour. Plaintiff having advanced huge amount for a small piece of land and having ready to purchase extra 26 sq.yds on proper terms and bear all the charges of registration was always ready and willing to pay the balance sale consideration and kept the amount ready for the said purpose. But, he was surprised to receive an unsigned registered letter dated 06.03.1996-Ex.A6 from the defendant with all false allegations, in spite of receiving huge timely advances to mend his fences with his neighbours from a longstanding litigation. The plaintiff sent a reply on 09.03.1996

under Ex.A3 and filed the above suit for specific performance of agreement of sale and in the alternative for a sum of Rs. 10,50,000/- by way of damages for breach of contract.

4. The defendant contested the suit by filing a written statement, inter alia, contending that the plaintiff lost his right to enforce the agreement, as he failed to fulfil the mandatory conditions embodied in the agreement of sale dated 11.08.1995. Therefore, the defendant himself got issued notice on 06.03.1996 specifically asserting that since the plaintiff failed to pay the balance sale consideration within the stipulated period, the suit agreement automatically stood cancelled. As per condition No. 3 of the sale agreement, time is agreed to be the essence of the contract including the payment of balance of amount within 45 days, and the consequences which flow on failure to pay the balance of sale consideration, the agreement automatically stands cancelled by forfeiting Rs. 1,00,000/- for breach of the agreement. Accordingly, he got issued the notice on 06.03.1996 forfeiting Rs. 1,00,000/- calling upon the plaintiff to receive the balance amount by specifying the bank account number, so that the defendant could arrange for refund of the amount. On receipt of letter covered under Ex.A.3 dated 09.03.1996, as a reply to Ex.A.6, the defendant replied by way of rejoinder on 19.03.1996. Since the plaintiff was not ready and willing to perform his part of obligation in paying the entire balance amount within the stipulated time and in getting the sale deed registered, the defendant suffered loss. Subsequent to the suit agreement, the defendant entered into an agreement to purchase an immovable property from his vendors Mohd. Saleem and Mohd. Ibrahim and paid earnest money as part performance towards sale consideration. But, as the plaintiff dishonoured the terms of agreement by paying the balance sale consideration, which necessitated him for effecting payment to the said vendors. Due to the breach of agreement on the part of the plaintiff, he suffered loss of Rs. 3,00,000/- and the plaintiff has no cause of action and not entitled to any discretionary relief. He admitted about entering into an agreement with the plaintiff under Ex.A1 and receiving of Rs. 5,00,000/- on the date of agreement and Rs. 50,000/- on the next day towards advance amount. He stated that he never agreed to sell 26 sq.yds of land abutting the area at any point of time and as per the agreement, 200 sq.yds. of land alone was agreed to be sold. The plaintiff with an

intention to grab 26 sq.yds of the land put forth the claim that he is agreeable to purchase 26 sq.yds of site. The defendant forfeited Rs. 1,00,000/- in terms of the agreement dated 11.08.1995 and was always ready and willing to refund Rs. 4,50,000/- to the plaintiff.

5. Later, the defendant got amended the written statement through I.A. No. 156 of 2006 allowed on 25.06.2002 stating that subsequent to filing of the written statement, an extent of 54 sq.yds was acquired by the Municipal Corporation for widening of the road from Mehdipatnam junction to Noble Talkies 'X' Roads, Hyderabad and as per the concessions available in G.O.Ms. No. 483 MA dated 24.08.2001, the defendant gave consent by surrendering 54 sq.yds and constructed four new mulgies on the part of the site occupied by the old existing shed by investing Rs. 3,00,000/-. Therefore, the plaintiff is not entitled to the discretionary relief in view of subsequent development. No rejoinder as such was filed by the plaintiff for the said plea.

6. On the above pleadings, the lower settled the following issues for trial:

1. Whether the plaintiff is entitled for the relief of specific performance of the agreement dated 11.08.1995 as prayed for?

2. To what relief?

An additional issue was also framed, which reads thus:

1. Whether in view of the alleged subsequent events, namely acquisition of 54 sq.yds., (15 X 12 X 35) by Municipal Corporation of Hyderabad out of the suit property, and construction of four new mulgies on the other part of the site occupied by the old existing shed with investment of not less than Rs. 3,00,000/-, the plaintiff is not entitled for the equitable and discretionary relief of specific performance under Section 20 of the Specific Relief Act?

7. In order to prove the case of the plaintiff, he himself was examined as P.W.1 and got marked Exs.Al to A6. The defendant himself was examined as D.W.1 and got marked Exs.B1 to B9. He also got examined a third party as D.W.2 and got marked Exs.X1 to X3.

8. The trial court after evaluating the oral and documentary evidence on issue No. 1 held that the plaintiff is not entitled for specific performance of agreement of sale and entitled only for refund of Rs. 4,50,000/- from the defendant with interest thereon at 9% p.a. from 25.09.1995 till the date of payment to the plaintiff. On additional issue the trial court held that in view of acquisition of 54 sq.yds of land by the Municipal Corporation of Hyderabad and construction of four new mulgies by the defendant, the plaintiff is not entitled to the discretionary relief of specific performance.

9. During the pendency of the appeal the plaintiff filed C.C.C.A.M.P. No. 262 of 2009 under Order XLI Rule 27 read with Section 151 of the Civil Procedure Code, seeking leave of the Court to receive the documents by way of additional evidence as Exs.A7 to A12. The appeal was taken up for hearing along with the above C.C.C.A.M.P. on 13.07.2009. After arguing the matter at length and during the course of hearing, when a query has been raised by the Court that in view of the subsequent development of acquisition of 54 sq.yds of land by the Municipal Corporation, unless the plaintiff relinquishes his claim over the said extent and agreeable to obtain a registered sale deed for the balance extent as available, as per Section 12(2)(II) of the Specific Relief Act (for brevity, 'the act') the plaintiff is not entitled to the discretionary relief of specific performance, the learned Counsel for the appellant/plaintiff took time, and on the next day he filed C.C.C.A.M.P. No. 333 of 2009 seeking permission to amend the plaint by adding para 7(a), (b), (c) and in the prayer portion seeking specific performance of the agreement of sale for the balance of 144.61 sq.yds along with constructions thereon.

10. Sri J. Prabhakar, learned Counsel for the appellant/plaintiff contended that time is not the essence of the contract where immovable property is involved. He also contended that the defendant is not justified in forfeiting the amount of Rs. 1,00,000/- without refunding the balance amount of Rs. 4,50,000/-. The acquisition of part of property and construction of mulgies thereon by the defendant would not disentitle the plaintiff from claiming the relief of specific performance of agreement of sale and in such case Section 12(2) of the Act cannot be invoked against the plaintiff, but it can only be for the benefit of the purchaser; when the plaintiff failed to construct the wall as agreed under the agreement of sale and obtain necessary

certificates, defendant cannot insist for payment of the balance of sale consideration which can be payable only at the time of registration of sale deed and delivery of possession of the property. When once the plaintiff also entered into agreement of sale for a part of the property that is 14.33 sq.yds., covered by O.S. No. 85 of 1996, which fact has been suppressed by the defendant, he cannot forfeit the amount. In such an event, the plaintiff is entitled for specific performance of agreement of sale and till the property is un-encumbered, the defendant cannot insist for payment of balance of sale consideration. Therefore, he is not justified in canceling the agreement and forfeiting Rs. 1,00,000/- under the terms of agreement and the lower court is not justified in dismissing the suit for specific performance of agreement of sale. To buttress the above contentions the learned Counsel for the plaintiff relied on Usha Devi v. Rijwan Ahmad : AIR 2008 SC 1147; Surjnder Sing v. Kapoor Singh : (2005) 5 SCC 142; P.C. Varghese v. Devaki Amma Balambika Devi : (2005) 8 SCC 486; Balasaheb Dayandeo Naik v. Appasaheb Dattatraya Pawar : (2008) 4 SCC 464.

11. Per contra, Sri Ali Farooq, learned Counsel for the respondent/defendant while supporting the judgment under appeal contended that Ex.A1 agreement was got prepared by the plaintiff himself and he was aware of the fact of pending registration of the property covered by the agreement of sale. When the document was registered on 10.11.1995 in favour of the defendant, the plaintiff has failed to pay the balance sale consideration within 1 1/2 months as agreed. Even as per the terms of agreement, the failure on the part of the plaintiff to pay the amount within 1 1/2 months not only entitles the defendant for cancellation of the agreement but also forfeiture of Rs. 1,00,000/- out of the advance amount and that when it is specifically agreed that 'time is the essence of the contract', the plaintiff is not entitled to the discretionary relief of specific performance. Even when a notice was issued on 06.03.1996 under Ex.A6 i.e., nearly after three months waiting for the payment of balance sale consideration, in the reply under Ex.A3 the plaintiff has not averred or expressed his readiness and willingness to pay the balance sale consideration as agreed. Even when the written statement was amended by incorporating the subsequent events and an additional issue has also been framed by the lower court to that effect, the plaintiff has not come forward to purchase the remaining property at the same price and the said additional issue was answered

against him. Therefore, the plaintiff is not entitled for the discretionary relief of specific performance and also for amendment of plaint at the appellate stage. When the plaintiff had the knowledge of litigation with regard to the property, which is evident from the agreement itself, his insisting for sale of 26 sq.yds, which is adjacent to the schedule property, shows that the plaintiff is not willing to obtain the registered sale deed unless the defendant agrees to sell the remaining 26 sq.yds as per Ex.A3. In view of the same, dismissal of the suit by the lower court does not call for any interference. To buttress the above submissions, he relied upon Chand Rani v. Kamal Rani : (1993) 1 SCC 519; K.S. Vaidyanadam v. Vairavan : AIR 1997 SC 1751; K. Narendra v. Riviera Apartments (P) Ltd. : AIR 1999 SC 2309; Lourdu Mari David v. Louis Chinnaya Arogiaswamy AIR 1996 SC 2841; Pudi Lazarus v. Rev. Johnson Edward AIR 1976 AP 243; A. Abdulrashid Khan v. P.A.K.A. Shahul Hamid : (2000) 10 SCC 636.

12. In view of the above rival submissions, the points that arise for consideration in this appeal are:

1) Whether the time can be considered as an essence of contract as per the agreement dated 11.08.1995?

2) Whether the plaintiff is entitled for the relief of specific performance of agreement of sale?

3) Whether the defendant is entitled to forfeit a sum of Rs. 1,00,000/- by cancelling the sale agreement?

4) Whether the acquisition of 54 sq.yds of property by the Municipal Corporation and construction of four mulgies by the defendant during the pendency of the suit, would disentitle the plaintiff for the relief of specific performance of agreement of sale?

Point No. 1

13. The fixation of period within which the contract is to be performed does not make the stipulation as to time is the essence of the contract. The intention to make time as the essence of contract may be evidenced by either express

stipulations or by circumstances, which are sufficiently strong to displace the ordinary presumption that in a contract of sale of land, stipulations as to time are not the essence of the contract.

14. In Gomathinayagam Pillai v. Palaniswami Nadar : AIR 1967 SC 868 the Supreme Court observed that fixation of period within which the contract has to be performed does not make the stipulation as to time being the essence of the contract. If the time was not originally the essence, it was open to the vendor to call upon the other party for performance of his part of the contract and to take conveyance within the time fixed by paying the sale consideration.

15. In Govind Prasad Chaturvedi v. Hari Dutt Shastri : AIR 1977 SC 1005 it was again observed that the fixation of period within which the contract has to be performed does not make the stipulation as to time being the essence of the contract, when a contract relates to sale of immovable property, it will normally be presumed that the time is not the essence of the contract.

16. In Jamshed Kodaram Irani v. Burjorji Dhunjibhai AIR 1915 PC 83 the Judicial Committee of the Privy Council observed that the principle underlying Section 55 of the Contract Act did not differ from those which obtained under the Law of England as regards contracts for sale of land. The Judicial Committee observed:

Under that law equity, which governs the rights of the parties in cases of specific performance of contracts to sell real estate, looks not at the letter but at the substance of the agreement in order to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place really and in substance intended more than that it should take place within a reasonable time. Their Lordships are of opinion that this is the doctrine which the section of the Indian Statute adopts and embodies in reference to sales of land. It maybe stated concisely in the language used by Lord Cairns in Tiley v. Thomas (1867) 3 Ch A 61 quoted in : AIR 1967 SC 868).

The construction is, and must be, inequity the same as in a Court of law. A Court of Equity will indeed relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for

completion, or for the steps towards completion, if it can do justice between the parties, and if (as Lord Justice Turner said in Roberts v. berry (1853) 3 Dc.G.M. and G 284 quoted in : AIR 1967 SC 868) there is nothing in the 'express stipulations between the parties, the nature of the property, or the surrounding circumstances' which would take it inequitable to interfere with and modify the legal right. This is what is meant, and all that is meant, when it is said that in equity time is not of the essence of the contract. Of the three grounds...mentioned by Lord Justice Turner 'express stipulations' requires no comment. The 'nature of the property' is illustrated by the case of reversions, mines, or trades. The 'surrounding circumstances' must depend on the facts of each particular case.Their Lordships will add to the statement quoted these observations. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract are to be taken, as having really and in substance intended, as regards the time of its performance maybe excluded by any plainly expressed stipulation. But to have this effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observation of the time-limits prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time-limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation. 'Prima facie, equity treats the importance of such time-limits as being subordinate to the main purpose of the parties, and it will enjoin specific performance notwithstanding that from the point of view of a Court of Law the contract has not been literally performed by the plaintiff as regards the time-limit specified.

17. From the above observations, it is clear that the intention to treat the time as the essence of the contract may be evidenced by the circumstances which should be sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.

18. Keeping the above principles in mind, we shall now proceed to consider the stipulations in the agreement-Ex.A-1, which is not in dispute. In page-2 of the agreement it is recited thus:

Whereas the vendor Mr. Syed Mujeebuddin is the absolute owner of property bearing House No. 10-3-16/4/3, Humayun Nagar, Asifnagar Golconda Main Raod, Hyderabad, admeasuring exactly 200 sq.yds., more fully described in the Schedule and hereinafter referred to as the scheduled property, having purchased the same from Smt. T.S. Sarojini Devi, W/o. Late Amrutha Lingam and five others under a 'pending registered sale deed No. P.3018./93 dated 30.12.1993'.

19. Further, under the agreement clause, it is recited as under:

SYED MUJEEBUDDIN the Vendor shall sell the Schedule property bearing Municipal No. 10-3-16/4/3, Humayun Nagar Asifnagar Golconda Main Road, admeasuring 200 Sq.Yards (exactly) together with structure (Mulgi) which thereon for a total consideration of Rs. 10,50,000/-(Rupees ten lakhs fifty thousand only) out of which the Vendee has paid a sum of Rs. 5,00,000/- (Rupees Five lakhs only) as advance, part sale consideration to the Vendor, the receipt of which the Vendor do hereby admit and acknowledges. The balance sale consideration of Rs. 5,50,000/- shall be paid within (1 1/2) month from the date of this agreement at the time of delivery of possession and on receipt of possession the Vendee shall obtain Registration of the Sale Deed from the Venodr in his name so as to finalise the sale transaction.

If the Vendee fails to pay the balance sale consideration of Rs. 5,50,000/- (Rupees five lakhs fifty thousand only) within a period of 1 1/2 month, this Agreement shall stand cancelled, and in which event the Vendor shall be entitled to forfeit a sum of Rs. 1,00,000/- (Rupees one lakh only) and refund the balance.

The Vendor assures that the scheduled property is free of all encumbrances, and obtained full registration by paying the balance document No. P. 3018/93 by the Vendor and Re-register the plot with the Mulgi in H. No. 10-3-6/4/3, Humayun Nagar, Asigfnagar Golconda Main Road, Hyderabad, in favour of the Vendee as per schedule.

The front wall, subject to measurement needs reconstructing at its original place before Registration of Sale Deed.

The Vendor hereby assures the Purchaser that the possession of the said scheduled property shall be delivered at the time of execution and registration of sale deed.

20. The plaintiff in para-4 of the plaint specifically pleaded as under:

With the above money, the defendant was able to settle all his matter in dispute including 26 sq.yds., abutting the area to be sold. The plaintiff was ready and willing to purchase the said extra land at any reasonable price and a proper demarcation of the land to be sold with proper compound wall. The demand of the defendant for the extra 26 sq.yds., was exhorbitant, unreasonable and therefore, the plaintiff wanted a proper demarcation of the land to be sold consisting of 200 sq.yds with a proper front wall at its original place before the registration of the sale deed.

In para-7 of the plaint it was pleaded that

While the plaintiff believe that the defendant has taken proper steps before the concerned authorities and construct a proper pucca wall in the northern portion, the plaintiff was surprised to receive an unsigned registered letter, dt. 06.03.1996. The adverse remarks and allegations are totally denied. The plaintiff has advanced a huge amount for a small piece of land and was also ready to purchase extra 26 sq.yds on proper terms and give all the charges of registration. It has come as a bolt from the blue with this surprising letter within a short time in spite of receiving a huge timely advance to mend his fences with his neighbours from a longstanding litigation.

21. The plaintiff, who was examined as P.W.1, admitted in the chief examination that on the date of agreement of sale he paid Rs. 5,00,000/- to the defendant under a receipt and two days after i.e., on 12.08.1995 he paid Rs. 50,000/- and obtained a receipt under Ex.A2. By the date of Ex.A1-11.08.1995 the defendant was not yet full owner of the property and the sale deed Ex.A1 which was executed in favour of the defendant in respect of the property was pending with the Sub-Registrar for registration; that fact is mentioned in Ex.A1. The defendant utilised the amount of Rs. 5,50,000/- for the purpose of registration of the sale

deed in his favour by his vendor. He further admitted that under Ex.A1 the condition prescribed is that in case plaintiff or defendant failed to perform their obligation under the contract, he has to forego Rs. 1,00,000/- out of Rs. 5,50,000/- by way of forfeiture and similarly the defendant has to pay Rs. 1,00,000/-. The defendant even after deducting Rs. 1,00,000/- out of Rs. 5,50,000/- paid by him ought to have returned Rs. 4,50,000/- but he did not return even that amount also. He further admitted that the time prescribed under Ex.A1 for completion of the transaction is 45 days from the date of agreement and within that period he was ready to fulfil his obligation, but defendant failed to perform his part of the contract in that period. In the cross-examination, he admitted that he settled the terms of agreement under Ex.A1 personally and he agreed that the balance sale consideration of Rs. 5,50,000/- was to be paid within 45 days from the date of Ex.A1. He did not pay the balance of Rs. 5,50,000/- within 1 1/2 months from the date of Ex.A1. He also admitted about the defendant addressing a letter under Ex.A6 dated 06.03.1995 informing that he has not paid balance sale consideration of Rs. 5,50,000/- within 1 1/2 months from the date of agreement and calling him to receive the balance of Rs. 4,50,000/- payable to him after forfeiting Rs. 1,00,000/-. He also admitted that the property agreed to be sold under Ex.A1 is 200 sq.yds of land and a mulgi existing therein. He admitted that he put forth a further claim of 26 sq.yds of land and it is not covered by Ex.A1 and the defendant orally agreed to give that land. He also admitted that the defendant was in possession of the schedule property on the date of agreement, but stated that on 11.08.1996 the defendant orally agreed to give 26 sq.yds of land at the rate of Rs. 5,250/- per sq.yd and he did not tender any money to the defendant in respect of said 26 sq.yds of land. In his notice or in the plaint or in his evidence in chief examination he did not state that the defendant agreed to sell 26 sq.yds of land @ Rs. 5,250/- per sq.yd, but when the defendant was cross-examined, a suggestion was made to the defendant that on the date of Ex.A1, he was not the owner and possessor of the suit property, which is contrary to the pleadings and evidence.

22. Before we answer point No. 1 framed in the light of the above pleadings and evidence adduced by the plaintiff and defendant, we advert to the judgment on which strong reliance is placed by the plaintiff as well as the defendant.

23. In Balasaheb Dayandeo Naik's case (supra) the plaintiff obtained a decree for specific performance from the trial court, which was set aside by the High Court, where he entered into an agreement of sale for purchase of agricultural land in the village of Nagaon in Hatkanangale Tehsil for a sale consideration of Rs. 85,000/- per acre and paid a sum of Rs. 20,000/- as earnest money and the balance amount of the consideration was to be paid at the time of execution of the sale deed. The plaintiffs' were always ready and willing to perform their part of contract but the defendant avoided to receive the balance amount of consideration and neglected to execute the sale deed. The plaintiffs sent a legal notice to the defendant on 16.07.1988 calling upon him to perform his part of the obligation. In spite of notice, the defendant did not comply with the requirements. Therefore, the plaintiff filed the above suit for specific performance or in the alternative refund of earnest money with interest thereon at 15% per annum. The defendant denied the claim contending that the sale deed was to be executed within a period of six months from the date of contract, as he was in dire need of money for construction of house and, therefore, the time was the essence of the contract. He had called upon the plaintiffs to pay the balance amount of consideration and get the sale deed executed. But the plaintiffs were not in a position to arrange the balance sale consideration and complete the contract. As the market price of agricultural lands was gone up, plaintiffs by purchasing the same intend to dispose of the same to others at a higher price. Therefore, they are not entitled for the relief of specific performance. The Lower Court decreed the suit of the plaintiff. On appeal the High Court reversed the same and on further appeal the Supreme Court after referring the conclusions in Chand Rani's case (supra), Govind Prasad Chaturvedi v. Hari Dutt Shastri : (1977) 2 SCC 539; Indira Kaur v. Sheo Lal Kapoor : (1988) 2 SCC 488; and in Swarnam Ramachandran v. Aravacode Chakungal Jayapalan : (2004) 8 SCC 689 and also the judgment in K.S. Vaidyanadam v. Vairavan : (1997) 3 SCC P1 in paragraph-14 held as under:

On the other hand, the High Court wrongly placed reliance on the decision of this Court in K.S. Vidyanadam's case (supra), as in the facts of that case, this Court found that granting for specific performance was inequitable, however such aspect of the matter was totally absent in the case on hand. Even otherwise, para 11 of the judgment shows that the subject-matter of the property was an urban

immovable property and in such special circumstance relaxed the general rule that time is not the essence of the contract in the case of immovable properties. In the case on hand, the details furnished in the agreement clearly show that the subject-matter of the property is an agricultural land situated in Kolhapur District, Maharashtra. In such circumstances, the decision in K.S. Vidyanadam's case (supra) is not applicable to the facts on hand. In the facts of the present case, which we have already adverted to, neither the terms of agreement nor the intention of the parties indicate that the time is an essence of the agreement. We have already pointed that having raised such a plea the respondent even did not bother to lead any evidence.

24. In Chand Rani's case (supra) the vendor agreed to redeem the property by paying off the loan, out of a sum paid at the time of execution of the agreement and on filing the suit for specific performance of the agreement or in the alternative for damages the defence was when the plaintiff wants possession of the property before payment of the amount it was held that the defendant was not willing to accede to the demand of delivery of possession of the property and the trial court decreed the suit holding that the plaintiff was always ready and willing to perform. On appeal, the Division Bench of the High Court holding that the insistence of the plaintiff to obtain income tax clearance certificate and redemption of the property before the payment of Rs. 98,000/-was unjustified and such an insistence could only be regarded as trying to vary the terms of the agreement and accordingly set aside the decree for specific performance holding that the plaintiffs are entitled to refund of the sum of advance amount. On further appeal, the Supreme Court held that when the plaintiff was not willing to pay the amount unless vacant delivery of possession of one room on the ground floor was given and in the cross-examination it was admitted that since the income tax clearance certificate had not been obtained the amount could not be paid and unless the property was redeemed the payment could not be made. From this attitude it is clear that the plaintiff was insisting upon delivery of possession as a condition precedent for making the payment. The income tax certificate was necessary only for completion of sale and we are unable to see how these obligations on the part of the defendant could be insisted upon payment of Rs. 98,000/-. The Supreme Court further held that though as a general proposition of law time is not the essence of

the contract in the case of a sale of immovable property, yet the parties intended to make as the essence under clause - (I) of the suit agreement and accordingly dismissed the appeal confirming the judgment of the High Court.

25. In K.S. Vidyanadam's case (supra) in para-11 the Supreme Court held that the Court cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties - fuelled by larger scale of migration of people from rural areas to urban centers and by inflation. The representation by the purchaser or the conduct or neglect of him will be an inducing factor for the vendor to change his position to his prejudice or such as to bring about a situation when it would be inequitable to give him such a relief. It was further held that all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the Court should also bear in mind that when the parties prescribe certain time limit. Holding so allowed the appeal and set aside the decree of the High Court restoring the decree of the trial Court, denying the specific performance.

26. In Balasaheb Dayandeo Naik's case (supra) the Supreme Court was dealing with the agricultural land situated in Kollapur district, Maharashtra. In view of the same, the learned judges felt that judgment in K.S. Vidanadam's where the subject matter of property was urban immovable property and in such special circumstances relaxed the general rule that time is not the essence of the contract in the case of immovable properties. In view of the same, the principles laid down in the above case is not applicable to the facts of the present case.

27. As already observed in the preceding paragraphs, whether 'time is the essence of the contract' from the agreement of sale depends upon the circumstances and interpretation of the clauses in the agreement and also the readiness and willingness of the plaintiff and in compliance of the agreement terms. Plaintiff in his evidence admitted that the agreement was got prepared by himself, where he was aware of the fact that the sale deed obtained by the defendant was kept pending for registration with the Sub-Registrar and to obtain the sale deed he was in need of money and entered into an agreement of sale to

complete the sale transaction and he also admitted that the defendant took the amount paid by him towards advance for the purpose of registration and he also admitted that if he fails to pay the balance sale consideration within 45 days, as agreed the same stands cancelled; with the option of the defendant he can forfeit an amount of Rs. 1,00,000/- from out of the advance amount. The plaintiff having knowledge of release of the document in favour of the defendant failed to pay the balance amount within 45 days as agreed nor offered to pay the said amount.

28. A combined reading of clauses in the agreement, referred to above, makes it clear that the parties intended to complete the transaction within 1 1/2 months from the date of execution of agreement. The parties further intended that the sale deed should be executed by paying the balance sale consideration and the possession of the property will be delivered at the time of execution and registration of sale deed. Failure to pay the balance sale consideration by the vendee within a period of 1 1/2 months agreement stands cancelled and in such an event the vendor is entitled to forfeit a sum of Rs. 1,00,000/- and refund the balance. It shows that parties intended to be time is essence of the contract.

29. In view of the same, we answer point No. 1 accordingly.

Point No. 3:

30. On point No. 1 we have held time is the essence of the contract and the plaintiff failed to pay the balance sale consideration within 1 1/2 months as agreed between the parties. When the defendant got issued legal notice on 06.03.1996 under Ex.A6 for which reply was sent by the plaintiff on 09.03.1996 under Ex.A3, wherein he has put up a claim that the defendant utilized the amount paid by him for settling the long standing dispute with regard to 26 sq.yds. and he is ready and willing to purchase the same at reasonable price, but the demand of the defendant was unreasonable, unjust, illegal and, therefore, called upon him to note that plaintiff is ready to buy 26 sq.yds now acquired by the defendant by perfecting his title with old vendors. But nowhere he offered to pay the balance sale consideration as agreed. Since the plaintiff was not always ready and willing to perform his part of contract, but put forward a condition that he is agreeable to perform his part of contract only if the defendant agrees to sell the balance of 26

sq.yds. acquired by him. When the plaintiff committed breach of contract in paying balance sale consideration as agreed and even after termination of contract, the defendant can exercise option of forfeiting Rs. 1,00,000/-. The evidence also shows that the defendant agreed to purchase various other properties and no suggestion was put to the defendant in that aspect that he could complete the sale transaction with the third parties. In the absence of any suggestion to the defendant he is entitled to forfeit a sum of Rs. 1,00,000/- by canceling the sale agreement. Point No. 3 is accordingly answered.

Point Nos. 2 and 4:

31. Point Nos. 2 and 4 have to be considered together.

32. On plaintiff filing the suit for specific performance, the defendant filed an application for amendment by adding para 14-A to the written statement pleading about the acquisition of 54 sq.yards by Municipal Corporation of Hyderabad for road widening and after such acquisition he constructed four mulgies in the remaining site. An additional issue was framed to that extent. But the plaintiff neither amended the plaint, agreeing to purchase the left over site after acquisition, nor filed any rejoinder. When the same was pointed out to the learned Counsel for the appellant on the previous date of hearing, as mentioned above, that in view of the subsequent developments the plaintiff cannot succeed in the appeal, having taken adjournment come up with an application under Order VI Rule 17 C.P.C. seeking amendment of the plaint in C.C.C.A.M.P. No. 333 of 2009. Even in the affidavit filed along with the above application seeking amendment, he has not relinquished his right to compensation either for the deficiency of the land available or for the loss of damage sustained by him. Therefore, he is not entitled to seek amendment of the plaint. We accordingly dismiss the application filed for amendment of the plaint in C.C.A.M.P. No. 333 of 2009. In view of dismissing C.C.C.A.M.P. No. 333 of 2009, we do not find any ground to grant leave to the petitioner/plaintiff to receive the documents as additional evidence and accordingly C.C.C.A.M.P. No. 262 of 2009 is also dismissed.

33. In Surinder Singh's case (2 supra) the plaintiff entered into an agreement of sale on his behalf and on behalf of his sister and the suit was dismissed on the

ground that he was not authorized to enter into an agreement on behalf of his sister. On an appeal, the Division Bench of the High Court allowed* the appeal to the extent of share of the defendants who entered into an agreement subject to his right to comply for his partition for getting the sale demarcation by allowing the application filed by him for amendment of the plaint. On further appeal, the Supreme Court confirmed the decree holding that Sub-section (3) of Section 12 of the Act does not prescribe any limitation for filing such an application for amendment of plaint seeking specific performance to the extent of share of the vendor entered into an agreement of sale.

34. In Usha Devi's case (supra) the trial court rejected the amendment of the suit property as described in the schedule to the plaint and the High Court dismissed the writ petition and on further appeal the Supreme Court allowed the appeal setting aside the orders of the trial court and High Court observed as under:

It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.

35. In P.C. Varghese's case (supra) it was held that in a suit filed by the appellant for decree of specific performance of contract of sale entered by the plaintiff and Narayana Pillai, his wife, two major daughters; the respondents/vendors resisted the claim stating that permission sought on behalf of the minor daughter was refused by the Civil Court. Hence, the performance of contract of sale on their part became impossible and the said suit was decreed by the trial court with a liberty to the plaintiff for effecting partition of 3/4th share in the plaint schedule property. The said decree was set aside by the High Court and on further appeal, the Supreme Court restored the decree passed by the trial court, setting aside the High Court's judgment.

36. In the cases 1 8b 3 supra, the plaintiff agreed to obtain specific performance by amending the plaint, relinquishing the claim for performing the remaining part of the contract as contemplated under the provisions of Section 12(3)(II) of the Specific Relief Act. But in the case on hand, admittedly an additional issue was framed to the effect that whether in view of the subsequent events of acquiring 54 sq.yds., of land by the Municipal Corporation and construction of four mulgies by the defendant, on the remaining part of the site by investing Rs. 3,00,000/- the plaintiff is not entitled to a specific performance. Though the written statement was amended by inserting para-14(a), the plaintiff has not chosen to file any rejoinder agreeing to relinquish his relief against the property which was acquired by the Municipal Corporation and to purchase the remaining extent with the same price, as that of the price offered under the agreement of sale, relinquishing his rights for compensation either for deficiency or for the loss of damage sustained by him due to the acquisition of 54 sq.yds of land by the Municipal Corporation. Having invited finding on the said aspect from the trial court, the plaintiff has not chosen to file an application to amend the plaint along with the appeal, which was preferred in the year 2003.

37. In K. Narendra's case (supra) the Supreme Court held that where the part area of the property agreed to be transferred having been rendered inalienable by the owner on account of its having been acquired by the State and part of the property having been found to be inalienable on account of being in excess of the ceiling limit provided by ULCRA, the respondents were prepared to have a sale deed executed of such remaining part of the property as is available to be transferred without insisting on a corresponding reduction in the price agreed to be paid and further held though the respondents may on their part, in the changed circumstances, be agreeable to have been lesser property being transferred to them, but in our opinion that is not permissible. The case of non-enforcement except with variation is statutorily covered by Section 18 of the Specific Relief Act, 1963. When the defendant sets up a variation then the plaintiff may have the contract specifically performed subject to the variation so set up only in cases of fraud, mistake of fact or misrepresentation or where the contract has failed to produce a certain legal result which the contract was intended to do or where the parties have subsequent to the execution of the contract varied its terms.

Obviously, the case at hand is not covered by any of the situations contemplated by Section 18 above said.

38. In Lourdu Mart David's case (supra) the Supreme Court held that the party, who seeks to avail equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words the party who makes false allegations does not came with clean hands and is not entitled to equitable relief.

39. The Division Bench of this Court in Pudi Lazarus's case (supra) in para-8 held as under:

It is well settled that a plaintiff, who seeks specific performance must, in his turn, perform all the terms of the contract which he expressly or by implication ought to have performed at the date of the action, Where a condition or essential term ought to have been performed by the plaintiff at the date of the suit, the court does not accept his undertaking to perform in lieu of performance but will dismiss the claim.

40. The learned Counsel for the defendant relied upon A. Abdul Rashid Khan's case (supra) to support his plea that when the agreement of sale do not stipulate sale of 26 sq.yds, the pleadings beyond the agreement of the same cannot be considered.

41. Nowhere it is agreed under the agreement that the plaintiff has to obtain income tax clearance certificate for payment of balance sale consideration and the same is a condition precedent. When the parties agreed that the balance of sale consideration shall be paid within 1 1/2 months from the date of agreement and intended that the sale deed should be executed by paying the balance sale consideration and the possession of the property will be delivered at the time of execution and registration of sale deed; when the parties stipulated that in the event of failure to pay the balance sale consideration the agreement shall stand cancelled and on such cancellation the vendor is entitled to forfeit a sum of Rs. 1,00,000/- and refund the balance, which makes 'time is the essence of the contract'.

42. Under Ex.B1 letter, the defendant categorically asserted that there is already a wall in perfect condition and it is a lame excuse for the plaintiff to cover the delay and there is no condition in the agreement that Income Tax Clearance Certificate should be obtained which is nothing but an after thought to cover up the lapses on the part of the plaintiff and called upon the plaintiff to verify about the existence of compound wall which is in perfect condition and the defendant never agreed with the plaintiff to sell 26 sq.yds of land. The plaintiff has not chosen to reply the same, but in para-4 of the plaint it was asserted that he is ready and willing to purchase the extra land at any reasonable price and proper demarcation of the land to be sold with proper compound wall, which is not contemplated under the agreement.

43. In view of the same, we hold that the plaintiff is not entitled to discretionary relief of specific performance of agreement of sale. Point Nos. 2 and 4 are accordingly answered.

44. In view of answering the points framed against the plaintiff, we do not see any merit in the appeal and it is accordingly dismissed and the interlocutory applications filed thereon are also dismissed. There shall be no order as to costs.

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