C.Chandrasekaran Vs. R.Srinivasan

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SooperKanoon Citation : sooperkanoon.com/920905

Court : Chennai

Decided On : Aug-30-2011

Judge : A.Selvam, J.

Acts : Indian Contract Act, 1872 - Section 56; Indian Evidence Act, 1872 - Sections 91, 92

Appeal No. : SA(MD)No.526 of 2005

Appellant : C.Chandrasekaran

Respondent : R.Srinivasan

Advocate for Pet/Ap. : Mr.S.V.Jayaraman, Adv.

Judgement :

1.This second appeal has been directed against the Judgment and decree passed in Appeal Suit No.121 of 2004 by the Principal District Court, Tirunelveli, wherein the Judgment and decree dated passed in Original Suit No.185 of 2001 by the Sub Court, Sankarankoil are reversed.

2. The respondent herein as plaintiff has instituted Original Suit No.185 of 2001 on the file of the trial Court for the reliefs of specific performance and perpetual injunction, wherein the present appellant has been shown as sole defendant.

3. The epitome of the plaint averments can be stated like thus:

The suit property is originally belonged to the plaintiff. In the year 1998 the suit property is worth of Rs.45,000/-. The plaintiff has mortgaged the suit property in Kuruvikulam Cooperative Land Development Bank. The defendant has desired to purchase the suit property. The plaintiff has informed the defendant about the mortgage debt which is in existence in favour of the said bank. The defendant has agreed to discharge the entire mortgage debt. Under the said circumstances, the plaintiff has executed a sale deed in favour of the defendant on 04.05.1998 in respect of the suit property for a sum of Rs.12,000/- . The defendant has failed to discharge the mortgage debt and a heavy amount has become due. During July 2000, the plaintiff has met the defendant and enquired about his non-performance as agreed by him at the time of executing the sale deed dated 04.05.1998. The defendant has stated that since he is residing in a different place he has not been able to discharge mortgage debt and he voluntarily told the plaintiff that he would sell the suit property. On 14.07.2000 the suit sale agreement has come into existence between the plaintiff and defendant in respect of the suit property and sale consideration has been fixed at Rs.4,75,000/-. On the date of sale agreement the plaintiff has paid a sum of Rs.1,10,000/- by way of advance. The plaintiff has agreed to get a sale deed from the defendant within a period of three months by way of paying the balance of sale consideration. The plaintiff is always ready and willing to perform his part of the contract. But the defendant has failed to perform his part of the contract and he issued a legal notice dated 27.01.2011 stating some allegations against the plaintiff. After receipt of the notice given by the defendant a panchayat has been conducted, wherein the defendant has agreed to discharge the entire mortgage debt which is in existence in favour of the said Bank. Further it has been decided that the plaintiff need not give any reply notice to the defendant. As agreed by the defendant in the presence of panchayatars he failed to discharge the mortgage debt. The bank officials have pressurised the plaintiff to pay off the mortgage debt and the plaintiff has paid a sum of Rs.4,80,105/-. The plaintiff has given a legal notice on 15.10.2001 and the same has been received by the defendant, wherein the defendant has been directed to execute a sale deed. But the defendant has failed to execute a sale deed in pursuance of the sale agreement. The defendant has made arrangements to sell away the suit property to third parties. Under the said circumstances the present suit has been instituted

for the reliefs of specific performance and perpetual injunction.

4. The contraction of the written statement filed on the side of the defendant can be stated as follows:

It is false to say that in the year 1998 the the suit property is worth of Rs.45,000/- and it is also equally false to contend that the plaintiff has informed about the mortgage debt obtained from Kuruvikulam Cooperative Land Development Bank to the defendant and he has been directed to discharge the same and due to that the suit property has been sold to the defendant for a sum of Rs.12,000/-. The plaintiff has not met the defendant during July 2000 and enquired about the alleged non discharge of mortgage debt by him. It is true that on 14.07.2000 the suit sale agreement has come into existence amongst the plaintiff and defendant and sale consideration has been fixed at Rs.4,75,000/- and on the date of sale agreement, the defendant has received a sum of Rs.1,10,000/-. The plaintiff has failed to get a sale deed from the defendant within the stipulated period of three months. It is false to say that the plaintiff has always been ready and willing to perform his part of the contract. Since the plaintiff has failed to discharge his part, the defendant has chosen to issue a legal notice dated 27.01.2001 to the plaintiff. It is false to contend that after receipt of notice dated 27.01.2001 a panchayat has been convened, wherein the defendant has agreed to discharge the entire alleged mortgage debt and subsequently he failed to discharge the same. The defendant has not known anything about the alleged discharge of mortgage debt by the plaintiff by way of paying Rs.4,80,105/-. The plaintiff is having close contact with the defendant. Under the said circumstances the defendant has obtained sale deed dated 04.05.1998. The suit property has been subsequently converted into house plots and due to that its market rate has become galloped. Under the said circumstances the plaintiff has come forward to purchase the same for a sum of Rs.4,75,000/-. After receipt of notice given by the defendant to the plaintiff, the plaintiff has approached the defendant and told him that he committed a mistake by way of mortgaging the suit property along with other properties and therefore, he is ready to forego the advance amount of Rs.1,10,000/-. The plaintiff has no right to institute the present suit and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the divergent pleadings raised on either side, the trial Court has framed necessary issues and after poring both the oral and documentary evidence has dismissed the suit stating that the plaintiff has failed to perform his part of the contract. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No.121 of 2004 on the file of the first appellate court.

6. The first appellate Court after hearing arguments of both sides and upon reappraising the evidence available on record has allowed the appeal and thereby set aside the Judgment and decree passed by the trial Court and ultimately decreed the suit as prayed for. Against the Judgment and decree passed by the first appellate Court the present Second Appeal has been preferred at the instance of the defendant as appellant.

7. At the time of admitting the present second appeal, the following substantial questions of law have been formulated for consideration:

“(a) Whether the findings of the Courts below are vitiated by its failure to consider in the absence of any pleadings and evidence regarding readiness and willingness on the basis of Ex.A1 especially when the respondent as plaintiff came to Court with unclean hands?

(b) Whether the lower appellate Court is correct in granting the relief of specific performance having regard to the facts that the respondent came to Court with unclean hands and the conduct of the respondent even after Ex.B2?

8. Before contemplating the rival submissions made on either side it would be apropos to look into the following admitted facts.

9. The suit property is originally belonged to the plaintiff and he executed a sale deed in favour of the defendant under a registered sale deed dated 04.05.1998. The original sale deed dated 04.05.1998 has been marked as Ex.B4 and its registration copy has been marked as Ex.B1. After a lapse of two years both the plaintiff and defendant have entered into the suit sale agreement dated 14.07.2000 and the same has been marked as Ex.A1. In Ex.A1 it has been specifically stated

that the sale consideration is fixed at Rs.4,75,000/- and on the date of Ex.A1 Rs.1,10,000/- has been given to the defendant by way of an advance by the plaintiff. In Ex.A1 it has been clearly stated that the plaintiff should get a sale deed from the defendant within a period of three months from the date of execution of Ex.A1. After a lapse of five months from the date of execution of Ex.A1 the defendant has chosen to issue a legal notice dated 27.01.2001 and a copy of the same has been marked as Ex.B2 and subsequently after a lapse of nine months the plaintiff has chosen to give a demand/reply notice dated 15.10.2001 and a copy of the same has been marked as Ex.A2. The present suit has been instituted mainly for getting the relief of specific performance on the basis of Ex.A1, suit sale agreement. Under the said circumstances the Court has to analyse the correct legal position on the basis of the decisions accited on either side, before going into the merits of the present case.

10. On the side of the appellant/defendant the decision reported in 2011 (4) CTC 640 SC. (Saradamani Kandappan vs. S.Rajalakshmi @ Others) has been relied upon, wherein the Honourable Apex Court has held that “the Court while granting or refusing to grant specific performance should apply greater scrutiny and strictness whether purchaser was ready and willing to perform his part of contract. Simply because Limitation Act prescribes larger period of limitation, plaintiff cannot postpone his suit to last day and ought to file suit immediately after breach of refusal.”

11. On the side of the respondent/plaintiff a catena of decisions have been accited.

(i) In Vasantha Ammal Vs.Bahu Chettiar (died) and others [(2009) 1 MLJ 457], this Court has held that “depositing remaining amount of sale consideration is not a sine qua non for seeking specific performance of the agreement of sale. Burden of proof is entirely upon the plaintiff/purchaser to prove that he has been ready and willing to perform his part of the contract throughout and he cannot pick holes in the case of the defendant/vendor.”

(ii) In A.Ramanathan Chettiar v. R.Ranganayaki and others [(2008) 4 MLJ 766] this Court has held that “'time is essence of the contract' cannot be inferred by

mere wordings".

(iii) In Swarnam Ramachandran (Smt) and another v. Aravacode Chakungal Jayapalan [(2004) 8 SCC 689] the Honourable Apex Court has held that "burden of proving whether time was of the essence is upon the person alleging it. Further it is held that time limit specified in a contract is nothing to subordinate to the main intention of the parties."

(iv) In Ramnath Publications Pvt. Ltd., rep. by its Managing Director K.Natarajan and Another Vs.A.R.Madana Gopal and Others [(2008) 8 MLJ 873], the Division Bench of this Court has held that "in a case where time is emphasised to be the essence of contract, burden of prove falls upon the person alleging it."

(v)In N.Saraswathi Ammal v. Jayaram Rao and 2 others [1998 (II) CTC 613] this court has held that "mere stipulation of date or time limit in agreement is not conclusive."

(vi) In G.Ramalingam v. T.Vijayarangam reported in [(2007) 1 MLJ 591] this Court has held that "evidence on record does not show any compelling circumstance to draw an adverse inference that parties intended to treat time as essence of the contract."

(vii) In Nirmala Anand v. Advent Corporation (P) Ltd., and others [(2002) 8 SCC 146], the Honourable Apex Court has held that "if there is any price escalation at the time of passing a decree for specific performance, relief of specific performance cannot be denied. But the Court can direct the concerned plaintiff to pay some additional amount."

(viii) In P.D'Souza v. Shondrilo Naidu [(2004) 6 SCC 649] the Honourable Apex court has held that "escalation of price is not a ground for refusing specific performance."

(ix) In Motilal Jain v. Ramdasi Devi (SMT) and others [(2000) 6 SCC 420], the Honourable Apex Court has held that "two-thirds of consideration has been settled at the time of execution of agreement. Under the said circumstances, the concerned plaintiff is entitled to get a decree for specific performance."

(x) In Sukhbir Singh and others v. Brij Pal Singh and others [1996 (II) CTC 295], the Honourable Apex Court has held that “purchasers need not have ready cash with them. It is enough that purchasers have necessary funds to pass on sale consideration and have capacity to pay sale consideration.”

(xi) In V.Udayakumar and 7 others v. Navaneethammal and 5 others [2002(1) CTC 334], the Division Bench of this Court has held that “if the plaintiff in pursuance of sale agreement has taken some pleas to enforce the same, his readiness and willingness can be inferred from his conduct.”

(xii) In Syed Destagir v. T.R.Gopalakrishna Setty [2000 (1) MLJ SC 1], the Honourable Apex Court has held that “as per Section 16(c) of the Specific Relief Act (XLVII of 1963) pleas to the effect that the plaintiff is ready and willing to perform his part of the contract are very much essential.”

(xiii) In Sita Ram and others v. Radhey Shyam [(2008) 1 MLJ 146 (SC)] the Honourable Apex Court has held that “in a suit for specific performance, plea of 'readiness' and 'willingness' need not be in any specified form and the same can be inferred from the averments of the concerned plaint.”

(xiv) In Silvey and Others v. Arun Varghese and another [(2008) 3 MLJ 951 (SC)] the Honourable Apex Court has held that “if the defendant has abandoned the plea taken in the written statement in a suit for specific performance, concerned plaintiff is entitled to get the relief as sought for.”

(xv) In Vijay Lalchand HUF & another v. K.M.Lulls HUF [1995 (I) CTC 556], the Division Bench of this Court has held that “non mention of particulars and details relating to tender of sale consideration in plaint, will not disentitle the plaintiff to get relief. Law requires only an averment that plaintiff is ready and willing to perform contract.”

(xvi) In Guruswami Gounder v. Kesave Reddiar and another [1996 (I) CTC 155] this Court has held that “every incorrect case pleaded by the plaintiff cannot be called as approaching Court with unclean hands.”

(xvii) In K.M.Rajendran v. Arul Prakasam and another [1998 (III) CTC 25] this Court has held that “mere delay is not sufficient to deny specific performance, unless there is waiver or abandonment.”

12. At this juncture the Court can also look into the following decisions:

(i) In Balraj Taneja v. Sunil Madan, [AIR 1999 SC 3381] it is held that “in a suit for specific performance to plead readiness and willingness of the plaintiff to perform his part of the contract, being a mandatory requirement. The court, before passing Judgment against the defendant has to scrutinise the facts set out in the plaint and to find out whether the said requirements specifically those indicated in Section 16 of the Specific Relief Act have been complied with or not.”

(ii) In Ram Awadh (dead) by Lrs. v. Achhaibar Dubey and another, [(2000) 2 SCC 428] the Honourable Apex Court has observed that “there is an obligation imposed by Section 16 of the Specific Relief Act on the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. It is further observed that the Court is not bound to grant a decree for specific performance to the plaintiff who has failed to aver and prove that he has performed or has always ready and willing to perform his part of the contract.”

(iii) In Vasantha and others V. M.Senguttuvan [1997 2 MLJ 576] it is observed that “in a suit for specific performance even if for a single day, plaintiff/agreement holder is not ready to take the sale deed, equitable remedy should not be granted. Readiness and willingness must be there continuously from the date of agreement upto the date of hearing. Once it is held that the plaintiff is not ready and willing to take the sale deed, even if he claims the benefit of section 53-A of the Transfer of Property Act, that claims will have to be found against him.”

13. From the cumulative reading of the decisions referred to earlier, the Court can deduce the following aspects:

(a) In a suit for specific performance, the concerned plaintiff must plead and prove his readiness and willingness from the date of concerned agreement of sale.

(b) If time limit is fixed for performance of contract, it is depending upon the evidence of person who pleads that time is essence of contract. (c) In an agreement of sale of immovable property, normally time is not essence of contract.

(d) From the date of agreement, the concerned plaintiff must prove his readiness and willingness throughout till date of hearing and if there is any wilful delay is noted on his part, the concerned suit for specific performance is liable to be thrown out.

(e) In a suit for specific performance, escalation of price is not a sine qua non for rejecting relief sought for therein.

14. With these legal backgrounds the Court has to analyse the divergent contentions put forth on either side.

15. The learned counsel appearing for the appellant/defendant has contended that the plaintiff has sold the suit property in favour of the defendant under Ex.B4 on 04.05.1998, wherein sale consideration has been mentioned as Rs.12,000/- and subsequently on 14.07.2000 the defendant has agreed to sell the suit property in favour of the plaintiff under Ex.A1 for a sum of Rs.4,75,000/- and on the date of execution of Ex.A1, Rs.1,10,000/- has been received by the defendant as an advance and in Ex.A1 it has been specifically stated that the plaintiff should get a sale deed within a period of three months. But he failed to perform his part of the contract and the defendant has voluntarily issued a legal notice dated 27.01.2001 which has been marked as Ex.B2 to the plaintiff wherein it has been clearly assorted about the non- performance of the plaintiff and even after receipt of notice dated 27.01.2001 the plaintiff has not come forward to get a sale deed from the defendant. But after a lapse of nine months the plaintiff has chosen to issue a notice of demand/reply dated 15.10.2001 stating that the defendant has agreed to discharge mortgage debt obtained by the plaintiff from Kuruvikulam Cooperative Land Development Bank even at the time of execution of Ex.B4 and further it is stated on the side of the plaintiff that on the date of execution of Ex.A1, sale agreement the defendant has agreed to discharge the entire mortgage debt which is in existence is favour of the said Bank and no necessary recitals are found place either in Ex.B4 or in Ex.A1 and in order to get an excuse for non performing the

contract on the part of the plaintiff, the plaintiff has taken a defence to the effect that the defendant has agreed to discharge the entire mortgage debt and further the plaintiff has purposely introduced in Ex.A1 as well as in the plaint that a panchayat has been convened amongst the plaintiff and defendant, wherein the defendant has agreed to discharge mortgage debt and in fact the names of panchayatars have not at all been mentioned either in the plaint or in Ex.B2 and one of the alleged panchayatars has been examined as PW3 and his specific evidence is not in consonance with the alleged panchayat and the trial Court after assessing the entire evidence properly has rightly found that the plaintiff has failed to plead and prove that he is always ready and willing to perform his part of the contract and ultimately dismissed the suit. But the first appellate Court without considering the over all circumstances prevailing in the present case and also without assessing the evidence properly has erroneously decreed the suit and therefore, the Judgment and decree passed by the first appellate Court are liable to be set aside.

16. As a riposte to the argument advanced by the learned counsel appearing for the appellant/defendant, the learned counsel appearing for the respondent/plaintiff has advanced his argument stating that at the time of execution of Ex.B4 the suit property is worth of Rs.45,000/- and before executing Ex.B4 the plaintiff has obtained a mortgage debt from Kuruvikulam cooperative Land Development Bank and since the defendant has agreed to discharge the same, the sale consideration under Ex.B4 has been fixed at Rs.12,000/-. But he has not discharged the same and subsequently the mortgage debt has become swelled. Under the said circumstances, the defendant has come forward to sell the suit property in favour of the plaintiff and due to that Ex.A1 sale agreement has come into existence and even at the time of executing Ex.A1 sale agreement, the defendant has agreed to discharge the mortgage debt and to that effect necessary recital is found place in Ex.A1 and since the defendant has failed to pay off mortgage debt as agreed by him at the time of execution of Ex.A1 and since he has given the notice dated 27.01.2001 (Ex.B2), a panchayat has been convened, wherein it has been decided that the defendant should discharge the entire mortgage debt and in order to prove the alleged panchayat PW3 has been examined and further the defendant has been examined as DW1 and he candidly admitted in his evidence

that the plaintiff has discharged mortgage debt and the trial Court without considering the market value of the suit property at the time of executing Ex.B4 as well as quantum of consideration mentioned therein and also without considering the available evidence on record with regard to panchayat has erroneously dismissed the suit. But the first appellate Court after evaluating the evidence available in a proper perspective has rightly decreed the suit and therefore, the Judgment and decree passed by the first appellate Court need not be interfered with.

17. As stated earlier, the present suit has been instituted mainly for getting the relief of specific performance. Section 16 of the Specific Relief Act, 1963 deals with Personal bars to relief and in sub section (c) it is stated like thus:

“who fails to aver and prove that he has 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 terms the performance of which has been prevented or waived by the defendant.”

18. Section 16(c) of the said Act can be vivisected into two parts.

(a) There must be necessary pleadings in plaint.

(b) The plaintiff must prove by evidence that he has always been ready and willing to perform his part of the contract. The plaintiff cannot be allowed to succeed if he fails to fulfil any of the requirement mentioned in the said section.

19. As expounded earlier, the suit property is originally belonged to the plaintiff and he sold the same in favour of the defendant under Ex.B4 and subsequently the defendant has executed the suit sale agreement viz., Ex.A1 in favour of the plaintiff. In Ex.A1 total sale consideration is fixed at Rs.4,75,000/- and on the date of its execution Rs.1,10,000/- has been given by the plaintiff to the defendant and the plaintiff has agreed to get a sale deed from the defendant within a period of three months from the date of its execution. Admittedly the plaintiff has not obtained a sale deed from the defendant within the period stipulated in Ex.A1. The only defence put forth on the side of the plaintiff is that before executing Ex.B4 he

has obtained a mortgage loan from Kuruvikulam Cooperative Land Development Bank and due to that the sale consideration has been fixed in Ex.B4 at Rs.12,000/- even though the worth of suit property is Rs.45,000/- at the time of executing Ex.B4 and the defendant has agreed to discharge the entire mortgage debt and subsequently he failed to discharge and therefore, he has come forward to sell the suit property in favour of the plaintiff which resulted execution of Ex.A1 and even on the date of execution of Ex.A1 the defendant has agreed to discharge the entire mortgage debt and he failed to discharge the same and therefore a panchayat has been convened, wherein it has been agreed that the defendant should discharge mortgage debt and even after panchayat he has failed to discharge the same and ultimately the plaintiff has discharged the entire mortgage debt and due to that the plaintiff has not been able to obtain a sale deed from the defendant within the stipulated period and he has always been ready and willing to perform his part of the contract and in fact he performed his part of the contract from the date of Ex.A1 till date of filing of the suit and thereafter.

20. On the side of the appellant/defendant the defence put forth on the side of the respondent/plaintiff for not performing the part of the plaintiff has been clearly denied. Since there is a clear denial with regard to the defence put forth on the side of the plaintiff for not performing his part of the contract within the stipulated period, the entire burden lies upon him to prove the defence to the satisfaction of the Court.

21. In fact this Court has closely perused Ex.B4 and Ex.A1. In both the documents no mention has been made with regard to alleged mortgage debt obtained by the plaintiff from Kuruvikulam Cooperative Land Development Bank and also alleged undertaking given by the defendant to discharge the same. Therefore virtually no recital is found place with regard to the said aspect either in Ex.A1 or in Ex.B4.

22. The learned counsel appearing for the respondent/plaintiff has repeatedly contended that at the time of executing Ex.B4 the suit property is worth of Rs.45,000/- and since the defendant has agreed to discharge the entire mortgage debt, sale consideration has been fixed at Rs.12,000/- and to that effect PW2 has given evidence.

23. If really the defendant has undertaken to discharge the mortgage debt, definitely the alleged actual value of the suit property at the time of executing Ex.B4 would have been mentioned therein and further necessary recital with regard to alleged undertaking should also be found place in Ex.B4 and likewise, no recital is found place with regard to alleged undertaking in Ex.A1. In Ex.A1 in the description of property, it has been simply stated that the vendor/defendant should execute a sale deed in favour of the plaintiff free of encumbrance and that itself is not sufficient to come to a conclusion that the defendant has undertaken to discharge the mortgage debt alleged to have been received by the plaintiff. Of course it is true that the defendant has admitted in his evidence that the plaintiff has paid mortgage debt and he has given the said part of evidence only on the basis of materials found in Ex.A2, demand/reply notice given by the plaintiff. Therefore, viewing from any angle, undertaking alleged to have been given by the defendant to the effect that he would discharge the entire mortgage debt is nothing but apologue and the same cannot be given effect to.

24. It has already been pointed out that in order to wriggle out non performance of the contract on the part of the plaintiff, in Ex.A2 as well as in the plaint, a panchayat has been introduced. In fact this Court has closely perused Ex.A2 as well as entire averments made in the plaint, wherein it has not been specifically stated as to when and also in whose presence the alleged panchayat has been convened. In order to encrust the alleged panchayat one Thanushkodiraman has been examined as PW3 and his specific evidence during the course of cross examination is that prior to panchayat he does not know what actually happened between the plaintiff and defendant. Further he has candidly admitted as to what purpose the alleged panchayat has been convened. As stated supra, the names of alleged panchayatars have not at all been mentioned either in Ex.A2 or in the plaint. Therefore, the service of PW3 has been purposely introduced in the present case and further PW3 has given only rickety as well as nebulous evidence and the same cannot be taken into consideration. Therefore, it is quite clear that the alleged panchayat has not at all been established on the side of the plaintiff.

25. In Ex.A2 as well as in the plaint it has been specifically stated that since the defendant has failed to discharge the mortgage debt alleged to have been

received by the plaintiff, the concerned Bank officials have pressurised him to pay off the debt and accordingly he has given the same and due to that the plaintiff has not been able to perform his part of the contract.

26. It has already been pointed out that either in Ex.A1 or in Ex.B4 no recital is found place with regard to alleged mortgage debt and also alleged undertaking given by the defendant. Even though no recitals are found place either in Ex.A1 or in Ex.B4 with regard to alleged mortgage debt or alleged undertaking given by the defendant, it is specifically averred in the plaint that only due to non discharge of mortgage debt by the defendant, the plaintiff has not been able to come forward to get a sale deed from the defendant.

27. At this juncture, it would be more useful to look into section 56 of the Indian Contract Act, 1872 and the same reads as follows:

Agreement to do impossible Act.-An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.-A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful."

28. It is a pristine principle of law that Section 56 of the Indian Contract Act, 1872 deals with frustration. Frustration signifies a certain set of circumstances arising after the formation of the contract, the occurrence of which is due to no fault of either party and which renders performance of the contract by one or both parties physically and commercially impossible.

29. In the instant as stated supra either in Ex.A1 or in Ex.B4 no necessary recitals are found place with regard to alleged mortgage debt incurred by the plaintiff and alleged undertaking given by the defendant to the effect that he would discharge the same. But however, the plaintiff has himself introduced the said obligation and ultimately paid off the amount due therein. To put it in short, the plaintiff himself has created a self-induced frustration for the purpose of showing that he has not

been able to perform his part of the contract.

30. At this juncture, it would condign to look into the decision reported in AIR 1969 SC 110(Boothalinga Agencies v. V.T.C. Poriaswami Nadar), wherein the Honourable Apex Court has dealt with Section 56 of the Indian contract Act, 1872 and ultimately observed that “doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. Further the Honourable Apex Court has held that provision of section 56 of the Indian Contract Act, 1872 cannot apply to a case of “self-induced frustration”. In other words, the doctrine of frustration of contract cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party.”

31. Even at the risk of repetition the Court would like to point out that the only reason given on the side of the plaintiff for not performing his part of the contract as mentioned in Ex.A1 is that the defendant has failed to discharge mortgage debt as agreed by him and subsequently the plaintiff has discharged the same. As stated earlier, no necessary recitals are found place either in Ex.A1 or in Ex.B4. Therefore, even assuming that the plaintiff has discharged mortgage debt, the alleged discharge has no way connected with the performance of contract as per the terms and conditions stipulated in Ex.A1. Under the said circumstances the plaintiff himself has created self-induced frustration and the same cannot be construed as a frustration under section 56 of the Indian Contract Act, 1872.

32. As stated in many places, the only reason given on the side of the plaintiff for not performing the contract as mentioned in Ex.A1 is that the defendant has failed to discharge mortgage debt. Neither in Ex.A1 nor in Ex.B4 necessary recitals are found place. But however, in the plaint as well as in the evidence adduced on the side of the plaintiff it has been stated that the defendant has failed to discharge mortgage debt as agreed by him.

33. Section 91 of the Indian Evidence Act reads as follows:

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.-When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained."

34. Section 92 of the said Act reads as follows:

Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

35. From the conjoint reading of the said provisions it is easily discernible that if any transaction has been reduced into writing, no oral evidence is permissible against its terms.

36. In the instant case, in many places it has been clearly pointed out that no recitals are found place either in Ex.A1 or in Ex.B4 with regard to alleged discharge of mortgage debt by the defendant and in view of the provisions of sections 91 and 92 of the Indian Evidence Act, 1872 it is needless to say that the plaintiff is totally precluded from putting forth the averments and also adducing evidence with regard to alleged mortgage debt received by the plaintiff and also with regard to alleged undertaking given by the defendant to the effect that he would pay off the entire mortgage debt. On that score also the defence taken on the side of the plaintiff for not performing the contract on his part as per terms and conditions mentioned in Ex.A1 is totally incorrect.

37. It is an admitted fact that Ex.A1 has come into existence amongst the plaintiff and defendant on 14.07.2000, wherein the defendant has agreed to sell the suit

property for a sum of Rs.4,75,000/- and he received a sum of Rs.1,10,000/- by way of advance. In Ex.A1 it has been clearly stipulated to the effect that the plaintiff should get a sale deed within a period of three months from the date its execution by way of paying balance of sale consideration. But he has not done it. But on the other hand, for the first time the defendant has issued a legal notice dated 27.01.2001, wherein it has been explicitly stated that the plaintiff has failed to perform his part of the contract and therefore, he is bound to loose the advance amount given by him and the same has been received by the plaintiff and after a lapse of nine months from the date of Ex.B2 the plaintiff has given a notice dated 15.10.2001 by way of setting forth the alleged undertaking given by the defendant as well as discharge etc.

38. As per section 16(c) of the Specific Relief Act, 1963 the plaintiff must show his readiness and willingness to perform his part of the contract from the date of concerned agreement of sale till filing of the suit and also thereafter. In the instant case absolutely there is no convincing and trustworthy evidence on the part of the plaintiff to the effect that the plaintiff has always shown or exhibited his readiness and willingness. It is an everlasting principle of law that mere pleading is not at all sufficient about readiness and willingness. But the same should be proved from the date of inception of alleged sale agreement. But in the instant case as taunted earlier, for the first time the defendant has given Ex.B2 wherein he has stated clearly about the failure on the part of the plaintiff. But the plaintiff after a lapse of nine months has given Ex.A2 by way of setting forth the alleged undertaking given by the defendant as well as panchayat and the same are nothing but false. Therefore, it is quite clear that the plaintiff has failed to perform his part of the contract in pursuance of the terms and conditions mentioned in Ex.A1. Since the plaintiff has failed to perform his part of the contract inconsonance with the terms and conditions mentioned in Ex.A1, since the main relief sought for in the present suit is purely a discretionary relief, the same cannot be given to the plaintiff.

39. Even though no necessary recitals are found place either in Ex.A1 or in Ex.B4 with regard to alleged mortgage debt received by the plaintiff and also with regard to alleged undertaking given by the defendant, the plaintiff has filed the present suit purely on the basis of alleged undertaking given by the defendant as well as

the alleged discharge made by him (plaintiff). This Court after analysing the entire both oral and documentary evidence has clearly come to a conclusion that the alleged undertaking given by the defendant is nothing but a myth. Therefore, it is needless to say that the plaintiff has approached the Court by way of setting forth a fraudulent reason or defence.

40. In 1994 -1 - L.W 21 (S.P.Chengalvarayan Naidu (dead) by LRs v. Jegannath (dead) by LRs and others) the Honourable Apex Court has held that “a person, whose case based on falsehood, has no right to approach the Court and he can summarily be thrown out at any stage of the litigation.”

41. It has already been pointed out that even though necessary recitals are not found place with regard to alleged undertaking given by the defendant to discharge alleged mortgage debt incurred by the plaintiff, the plaintiff has filed the present suit by way of setting forth a false plea and as per the dictum given by the Honourable Apex Court, the case of the plaintiff is liable to be thrown out and further it has already been pointed out that the plaintiff has failed to perform his part of the contract from inception of Ex.A1.

42. The trial Court after considering the over all evidence available on record has rightly dismissed the suit. But the first appellate Court without considering the lapses on the part of the plaintiff and also non performance of the terms of contract on his part, has erroneously decreed the suit and in view of the discussion made earlier, this Court is of the view that the Judgment and decree passed by the first appellate Court are not correct and the same are liable to be set aside.

43. The substantial questions of law formulated in the present second appeal are as to whether the first appellate Court is correct in granting a relief of specific performance without considering the alleged readiness and willingness on the part of the plaintiff and also as to whether the first appellate Court is correct without considering the fact that the plaintiff has not approached the Court with clean hands.

44. It has already been discussed in ex tenso and ultimately found that the plaintiff has failed to prove his alleged readiness and willingness in consonance with the

terms and conditions mentioned in Ex.A1 and further he has not approached the Court with pure and clean hands. Under the said circumstances the substantial questions of law formulated in the present second appeal are decided in favour of the appellant /defendant and altogether the present second appeal is liable to be allowed.

45. In fine, this second appeal is allowed with cost. The Judgment and decree passed in Appeal Suit No.121 of 2004 by the Principal District Court, Tirunelveli are set aside and the Judgment and decree passed in Original Suit No.185 of 2001 by the Sub Court, Sankarankoil are restored.