SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

G. Janobai Vs. V.N. Devadoss.

G. Janobai Vs. V.N. Devadoss.

SooperKanoon Citation : sooperkanoon.com/926080

Court : Chennai

Decided On : Mar-07-2012

Judge : K. Mohan Ram; G.M. Akbar Ali, Jj.

Appeal No. : A.S.No.1114 of 2007 and MP No.2 of 2007

Appellant : G. Janobai.

Respondent : V.N. Devadoss.

Advocate for Def. : Mr.R. Krishnaswamy, Adv.

Advocate for Pet/Ap. : Mr.T. Viswanatha Rao, Adv.

Judgement :

Appeal filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 21.8.2007 in O.S.No.222 of 2004 on the file of the Additional District Court (Fast Track Court-III), Poonamallee.

JUDGMENT

G.M. AKBAR ALI,J.,

1. Appeal filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 21.8.2007 in O.S.No.222 of 2004 on the file of the Additional District Court (Fast Track Court-III), Poonamallee.

2. The defendants are the appellants. The suit is filed for specific performance of the contract dated 2.9.1996. The brief facts of the case are as follows:

3. The plaintiff and the defendants entered into a sale agreement dated 2.9.1996 and the defendants agreed to sell the suit property to an extent of 10.83 acres comprised in various survey numbers in Srinivasapuram village of Sriperumbudur for a sale consideration of Rs.2,49,09,000 at the rate of Rs.23,000/-per cent. The plaintiff paid a sum of Rs.25,00,000/- as advance and agreed to pay the balance sum of Rs.2,24,09,000/- within 18 months from the date of agreement. The purpose for which the plaintiff entered into a sale agreement was to form a layout. Therefore, the possession was handed over to the plaintiff to apply and obtain necessary permission and also to develop the land for a lay out.

4. The defendants agreed to obtain income tax clearance certificate within 18 months. The plaintiff incurred heavy expenditure to form a lay out and he received a letter from the Chennai Metropolitan Development Authority (CMDA) granting permission for the lay out. The plaintiff had also obtained permission from the Kundrathur Panchayat Union confirming the approval of lay out. The plaintiff was ready and willing to perform his part of the contract. However, the defendants suddenly changed their mind after seeing the plots and approval for the lay out and tried to take possession from the plaintiff. The plaintiff filed a suit in OS No.249 of 2000 for a permanent injunction reserving the right to file the suit for specific performance. The plaintiff was always ready and willing to pay the balance amount and get the sale deed executed. But the defendants were evasive and therefore, the suit was filed for specific performance of the contract.

5. The defendants filed a detailed written statement inter-alia stating as follows:

The execution of the sale agreement was admitted. The payment of advance amount and the sale consideration were also admitted. The time for conclusion of the contract was 18 months from the date of agreement and time is the essence of the contract.

6. The possession was not handed over to the plaintiff. Only for the purpose of preparing a lay out, permission was granted to the plaintiff to enter into the

property. The plaintiff was not ready to pay the balance sale consideration and execute the sale deed within 18 months as agreed. The time expired on 1.3.1998. Even according to the plaintiff, he obtained permission only on 13.2.2000 from the authorities. It is not true that the defendants suddenly changed their mind and attempted to enter into the suit property. The present suit is barred under Or.2. Rule 2 CPC.

7. The plaintiff never produced any draft sale deed to enable the defendants to obtain income tax clearance. The plaintiff had obtained a power of attorney in his favour and he had created number of sale deeds in favour of his benami and henchmen. He had sold an extent of 1 acre 87 cents at the rate of Rs.2000/- per cent.

8. The plaintiff had also introduced benami partners in the 8th defendant partnership firm. The purchasers are necessary parties to the suit and therefore, the suit is not maintainable for non-joinder of necessary parties.

9. The plaintiff was never ready and willing to perform his part of contract and therefore, the suit had to be dismissed.

10. With the above pleadings, the parties went for a trial before the learned Additional District Judge, FTC No.III, Poonamallee. The plaintiff examined himself as P.W.1 and produced Exs.A.1 to A.46 and the 10th defendant was examined as D.W.1 and produced Exs.B.1 to B.69.

11. After considering the various aspects, the learned Additional District Judge, F.T.C No.III, Poonamallee decreed the suit and directed the defendants to execute the sale deed in two months and aggrieved by which, the defendants are before this Court.

12. Though many grounds are raised in the appeal, the main contention of the appellants is that the respondent was not ready and willing to perform his part of contract and he has carried out certain things which he was not authorized to do.

13. The admitted facts are as follows:

The plaintiff entered into a sale agreement on 2.9.1996 with the defendants. 8th defendant is one Sai Krishna Brick Works represented by its Managing Partner, 2nd defendant. Subsequently, he died and the defendants 9 to 11 were added as legal heirs.

14. The properties were purchased in the name of the partnership firm as well as two of the partners. The properties are admittedly agricultural lands. The sale price was agreed at Rs.23,000/-per cent and the total sales consideration was Rs.2,49,09,000/-. Rs.25,00,000/- was paid as advance on the date of agreement. The balance amount shall be paid by the plaintiff to the defendants in 18 months time from the date of agreement or such extended date as may be agreed.

15. The defendants shall obtain clearance certificate from the Income tax department to enable the plaintiff or his nominees to have the sale deed registered in their name.

16. The possession was given to the plaintiff and was permitted to commence the work of converting the land into house sites. It is also admitted that a power of attorney has also been executed in favour of the plaintiff.

17. The plaintiff did certain acts which are now being objected to by the defendants. Assuming the lands and are coming within the purview of Tamil Nadu Urban Land Ceiling and Regulation Act 1978 (herein after referred to as Land Ceiling Act) he inducted new partners in the 8th defendant partnership Firm and apportioned the total extent of 10 acres 83 cents among the partners and applied to the Assistant Commissioner of Urban Land Ceiling, Kunrathur to exempt the property from the land ceiling. He has also formed a lay out and applied for permission from the CMDA as well as from the Kunrathur Panchayat Union for approval.

18. He had also executed a gift deed in favour of Commissioner, Kunrathur Panchayat Union in respect of the pathway as mentioned in the lay out. He obtained No objection certificate from the Assistant Commissioner of Urban Land Ceiling Act on 20.2.1998 and obtained the lay out approval from CMDA. He dealt with the property by executing sale deed dated 27.12.1999 in favour of the newly

inducted partners and also obtained power of attorney from them for the sale of the property.

19. These acts were carried out between 1998 and 1999. On 13.2.2000 the plaintiff obtained the approval from the CMDA. On 8.3.2000, he obtained the approval from the Kunrathur Panchayat Union. On 28.4.2000, the defendants individually sent a Notice to the plaintiff informing him that they had canceled the general power of attorney and asked him not to deal with the property. On 5.6.2000 the plaintiff initially filed a suit for permanent injunction, and he had also filed an application under Or.2 R.2 and the Court had permitted him to reserve his right to file a suit for specific performance.

20. There were exchange of notice between 4.7.2000 and 18.8.2000 and in these circumstances, the plaintiff had filed the present suit for specific performance which came to be decreed.

21. Mr.T.Viswanatha Rao, the learned counsel for the appellants /defendants submitted that the plaintiff has committed an act of fraud and had made false representations and was not ready and willing to perform his part of the contract. The learned counsel pointed out that the properties are coming within the purview of the urban land ceiling act and therefore, the sale agreement itself is not valid and the court cannot grant the relief of specific performance.

22. The learned counsel pointed out that the time is the essence of contract and within 18 months time, the vendor should obtain income tax clearance; however, the plaintiff has not furnished the draft sale deed to enable the defendants to obtain income tax clearance and the time to complete the sale expired on 1.3.1998; and even according to the plaintiff, the permission was obtained only on 13.2.2000 and the suit was filed on 1.3.2001 and therefore, the suit is barred by limitation.

23. The learned counsel pointed out that the plaintiff without any authority had inducted new partners in the partnership firm and has even conveyed 1.87 acres to various persons and gifted three acres to the panchayat union and has come forward with the suit for specific performance for a total extent of 10 acres 87 cents

which is not permissible.

24. The learned counsel further pointed out that the plaintiff has not proved that he was ready to purchase the property by showing his capacity to pay the balance sale consideration of more than Rs.2,00,00,000/- and has not proved that he was willing to purchase the property.

25. The learned counsel pointed out that the purchasers of the property are necessary parties and the suit is bad for non-joinder of necessary parties.

26. The learned counsel though cited various decisions, has relied on only the following case laws:

1999 2 CTC 181 (P. Gopirathnam and 4 others vs Ferrodous Estate (Pvt) Ltd

2006 2 LW 234(M/s Raptakos Brett and Company Pvt Ltd vs M/s Modi Business Centre (Pvt) Ltd

2003 1 LW 696 (Garuda Chit and Trading Co P Ltd and others vs Coramandel Indag Products p Ltd)

2003 1 CTC 129 (Binny Limited vs V. Jagannathan and Co)

1994 1 LW 391 (Mariamma Varghese vs K.V. Balasubramaniam & 11 others)

2007 1 MLJ 479 (Senbagasundari vs Kothandapani Pillai)

AIR 2001 SCC 2783 (A.C. Arulappan vs Smt. Ahalya Naik)

2011 4 CTC 640 (Mrs.Saradamani Kandappan vs Mrs.S. Rajalakshmi & Ors)

27. On the other hand, Mr.R. Krishnaswamy, the learned senior counsel for the respondent/plaintiff pointed out that apart from the execution of sale deed agreement dated 2.9.96, the defendants have also executed power of attorney dated 23.10.1996 and the plaintiff was given possession of the suit property to form a lay out and to do the necessary acts. The learned senior counsel pointed out that during the relevant period the land ceiling act was applicable but, exemption has been obtained from the authorities by filing individual applications

by the partners of the firm and the authorities have also exempted the property from the land ceiling act.

28. The learned Senior Counsel pointed out that once the properties are exempted there is no impediment for the sale of the property as agreed. He also pointed out that the purpose of the purchase of the property itself is to form a lay out and sell the properties in plots and to obtain such permission from the authorities, it was necessary to obtain no objection certificate from the competent authorities under the land ceiling act. The learned counsel pointed out that only in order to comply with the terms of the contract, the plaintiff has acted in the capacity of the power of attorney of the vendors and all the vendors are party to those proceedings and they have not chosen to object to the induction of partners, dissolution of partnership, allotment of individual extent of lands to the partners and application for exemption from land ceiling act and also the execution of gift deed in favour of the Kunrathur panchayat in the capacity of power of attorney and also the sale deeds in the same capacity.

29. He also pointed out that the subsequent purchasers are not necessary parties as the executable decree can be passed against the defendants without the presence of the purchasers and the suit is not bad for non-joinder of necessary parties. He also pointed out that the suit is not barred by limitation as it was filed on 1.3.2001 within three years from the expiry of 18 months time granted under the agreement. He also pointed out that the plaintiff had the authority to act on the power of attorney granted to him and after obtaining the necessary approval and permission from the authorities and on seeing the plots that were developed and ready for sale, the defendants have changed their mind and are evading execution of sale deed.

30. He also pointed out that in order to prove the capacity of the plaintiff he has filed his wealth tax assessment and other relevant documents and therefore, the plaintiff was ready and willing to perform his part of contract. He relied on the following case laws:

AIR 1996 SC 2095 (Swami Ganesh Dassji vs Sita Ram Thapar)

AIR 1982 Allahabad 47 (Ganesh Prasad vs Saraswati Devi and Others)

AIR 1994 SC 105 (Surya Narain Upadhyaya vs Ram Roop Pandey and others)

2002 (1) CTC 334 (V. Udayakumar and 7 others vs Navaneethammal and 5 others)

2004 (4) CTC 150 (P.D' Souza vs Shondrilo Naidu)

2000 (2) CTC 451 (Special Officer and Competent Authority vs P.S.Rao)

31. We have carefully considered the rival contentions made on either side and perused the materials available on record. As a result, the following points arise for consideration and the same are answered accordingly.

32. (a) Whether the suit is barred under Order.2 Rule.2 CPC

The plaintiff has filed a suit in O.S.No.249 of 2000 for permanent injunction. According to the defendants, as he has not obtained any permission to file a suit for specific performance in the earlier suit, the present suit is barred. However, a perusal of the plaint filed in the present suit would show that the plaintiff has stated that they have reserved their right in the earlier suit and obtained permission from the Court to file a suit for specific performance in a later date.

33. The plaintiff has also produced the petition filed under OR.2 Rule 2 seeking such permission and copy of the order issued by the trial court. Therefore, the suit is not barred under Or.2 R.2 CPC.

34. (b) Whether the suit is barred by limitation

The sale agreement was entered on 2.9.1996. The time to complete the contract was agreed as 18 months. In a suit for specific performance, Art.54 of the Limitation Act applies.

35. Therefore, the time starts only from 1.3.1998 or from the date of refusal to perform the contract. Three years is the period of limitation. The agreed date expired on 1.3.1998. Therefore, the suit can be filed on or before 1.3.2001 and the

same has been filed on 1.3.2001. Therefore, the suit is not barred by limitation.

36. c) Whether the lands agreed to be sold are covered under the Urban Land Ceiling Act and that being so, whether specific enforcement of such agreement is opposed to law.

37. The learned counsel for the appellants submitted that the lands are not agricultural lands and are coming under the Urban Land Ceiling Act. The learned counsel relied on Secs.4, 5 and 6 of the Urban Land Ceiling Act.

38. In 1999 2 CTC 181 (P. Gopirathnam and 4 others vs Ferrodous Estate (Pvt) Ltd, where a Full Bench of this Court dealt with Sec.6 of the Land Ceiling Act. The Full Bench of this Court held as follows:

`24. From these decisions, it is clear that even if the contract by itself may not be illegal but its enforcement if violates any law that will be a ground to hold that the agreement cannot be enforced. We have already extracted preamble of state Act and also the decision reported in AIR 1979 SC 1415, why the Act was enacted. It is to prevent concentration of Urban Land in the hands of few persons and speculation in profiteering therein. It is to implement this provision of the Act, this provision under Section 6 and 11(4) of the Act are enacted. If the seller is having land in excess than the ceiling limits and if it is ultimately found that the Act also applies permitting such persons to execute sale deed pursuant to the agreement of sale, it will be defeating or circumventing the provisions of the Act. Equitable distribution of land, which is contemplated under the provisions may not be possible if the sale is allowed to take place. The intention is also very clear that third party right should not be created, which is likely to affect him also. If by enforcement of contract, if it amounts to subvert or circumvent law, court cannot be party to such enforcement. Court will have to discountenance the practice and it will have to safeguard the foundation of Society.

25. The question whether only completed transactions are contemplated under Section 6 of the Act and therefore enforcement of agreement for sale is not a bar is also an argument without any merit. It is true that under the Act, no person is entitled to hold more than the ceiling limit as prescribed under Section 4 of the Act.

Argument is that purchaser is not holding any land on the basis of an agreement unless, he gets some title. It still continues only with the vendor. Therefore, there is no prohibition in enforcement of contract. Section 6 prohibits transfer by a person holding land in excess of ceiling limits. The matter will have to be considered taking into consideration the rights of seller and if that person holds more land than prescribed under Section 5, such transfer shall be deemed to be null and void. The prohibition under Sec.6 is for transferring the land and consequently declares that any violation of law shall be deemed to be null and void. Section 6 contemplate both proposed transfer and completed transfer. An agreement of sale is also affected by Section 6 of the Act.

39. In 2003 1 LW 696 (Garuda Chit and Trading Co P Ltd and Others vs Coramandel Indag Products P LTd) where a Division Bench of this Court held as follows:

34. Issue No.3. Coming to the insistence of the exemption from the purview of the Urban Land Ceiling Act is concerned, this court as well as the Apex Court held that when there is a statutory bar of alienating the property of excess holding, as prescribed under the Urban Land Ceiling Act being illegal one, the same cannot be enforced .

40. The learned counsel also relied on the following case laws for the same preposition.

2003 1 CTC 129 (Binny Limited vs V. Jagannathan and Co)

1994 1 LW 391 (Mariamma Varghese vs K.V. Balasubramaniam & 11 others)

1994 1 LW 392 (Hamsaraj Bokaria etc., and 5 others vs The Government of Tamil Nadu and 3 others)

41. Therefore, this court as well as the Apex Court has held that when there is a statutory bar of alienating the property of excess holding, as prescribed under the Urban Land Ceiling Act being illegal one, the same cannot be enforced.

42. But on the contrary, Mr. R. Krishnasamy, learned Senior Counsel for the plaintiff/respondent submitted that the land agreed to be sold under the sale agreement, dated 2.9.1996 was only an agricultural land on the date of the agreement of sale and only thereafter, it was converted into a lay out to sell the same as house plots.

43. The learned Senior Counsel referred to the recitals in Ex.A1 sale agreement and pointed out that it has been specifically stated in Ex.A1 sale agreement that the vendors are the absolute owners of all that piece and parcel of the agricultural land measuring 10.83 acres and in the schedule to the agreement the subject matter of the suit has been described as all that piece and parcel of nanja lands in Srinivasapuram Village, Sriperumbudur Taluk, Chengalpet, M.G.R. District.

44. Thus according to him, it is established that on the date of agreement of sale under Ex.A1, the subject matter of the suit was only an agricultural land and therefore, Section 6 of the Urban Land Ceiling Act is not attracted. There was no bar for entering into Ex.A1 sale agreement in respect of the subject matter of the suit under Section 6 of the Act since Section 6 applies only in the case of a land which is a vacant land as described under the Act.

45. In all the decided cases referred to and relied upon by the appellant's counsel the land in question in those cases the land was admittedly a vacant land to which Section 6 of the Act was applicable and therefore, it has been held in those decisions that the agreement of sale in respect of the vacant land to which the provisions of the Urban Land Ceiling Act are applicable cannot be specifically enforced during the period when the Act was in force and even after, the Act was repealed. Therefore, according to the learned Senior Counsel the provisions of Section 6 of the Act are not attracted to Ex.A1 sale agreement. But the learned Counsel for the appellants submitted that when the parties decided to convert the agricultural land by levelling the same into a lay out with an intention to plot out the same as house sites then the nature of the agricultural land is changed and then it will become a vacant land to which the provisions of Section 6 of the Act will be attracted. That was the reason why the statement was filed before the competent authority by plaintiff, defendants and other partners of the 8th defendant and after

conducting an enquiry, the Assistant Commissioner for Urban Land Ceiling issued proceedings under Exs.A25 to 46 dated 20.2.1998.

46. The Assistant Commissioner in his proceedings has noted that the enquiry conducted and the perusal of the documents would show that the lands held by the applicants were only agricultural land and even if the same are converted into urban lands as the same is within the ceiling limit prescribed the provisions of the Urban Land Ceiling Act, are not attracted.

47. A perusal of Ex.A1 sale agreement shows that the subject matter of the agreement of sale has been described only as agricultural land both in the body of the agreement as well as in the schedule to the agreement.

48. Further, the plaintiff as well as the defendants have inducted several other partners into the 8th defendant firm and all the partners have become entitled to about 1900 sq.mtrs. and each one of the partners have individually applied to the competent authority under the Urban Land Ceiling Act and the aforesaid proceedings viz. Exs.A25 to 46 of the Assistant Commissioner for Urban Land Ceiling have been sent directly to the applicants individually. Therefore, we are of the considered view that the provisions of the Urban Land Ceiling Act are not applicable to the subject matter of the suit. Therefore, the execution of the sale deed pursuant to the sale agreement Ex.A1 executed by the defendants will not be either illegal or in contravention of the provisions of the Urban Land Ceiling Act.

49. (d) Whether the suit is bad for non-joinder of necessary parties

As far as the question of non joinder of proper and necessary parties are concerned, it has to be pointed out that under Ex.A6 Gift deed dated 24.12.1999 and Ex.A7 to A10 sale deeds a part of the subject matter of the suit have been transferred in favour of third parties and therefore, the transferees under these documents have acquired a title and right over a part of the suit properties and therefore, they have become proper and necessary parties to be impleaded in the suit on the date of the filing of the suit.

50. Under O.1 R.9 C.P.C., if a necessary party is not joined the defect is fundamental and the suit is liable to be dismissed on that ground alone. This is also based on the doctrine that a court will refrain from passing a decree which would be ineffective, infructuous or inexcutable. The inability of the court to pass an effective decree may be due to either the nature of the suit or the interest of the person, who is not made a party to the suit, or subject matter of the litigation. In either of the cases, the court is unable to pass a decree or make an order which can be executed or enforced. An objection as to non joinder of parties must be taken at the earliest opportunity, otherwise it will be deemed to havebeen waived.

51. In this case admittedly an objection has been raised at the earliest opportunity by the appellants regarding the non joinder of the transferees under Exs.A6 to A10. But in spite of such objection raised by the appellants still the respondent had not impleaded the aforesaid transferees, who are the necessary parties to the suit. In the aforesaid factual background, it has to be seen as to whether the non joinder of the transferees under Exs.A6 to A10 warrants the dismissal of the suit.

52. In this case, admittedly, during the pendency of the suit the defendants filed the suit in O.S.No.326 of 2002 on the file of the Sub Court, Poonamallee to declare the gift deed Ex.A6 and the sale deeds Ex.A7 to A10 as sham and nominal and not binding on them. Admittedly, a decree has been passed declaring the gift deed as well as the sale deeds as invalid and not binding on the appellants. The plaint, judgment and decree have been marked as Exs.B.65 to 67. In view of the judgment and decree passed in O.S.No.326 of 2002 declaring the said gift deed and sale deeds as invalid and not binding on the appellants at least from 18.10.2004, namely, the date of the decree, the transferees under Exs.A6 to A10 ceased to have any title, right and interest over the suit property, namely, the land agreed to be sold under Ex.A1 sale agreement. Therefore, after 18.10.2004 the said transferees ceased to be either proper or necessary parties to the suit and the Court can pass an effective decree which can be executed and enforced as against the appellants in respect of the subject matter of the suit. Therefore, the non joinder of the transferees under Exs.A6 to A10 is not fatal to the suit and on that ground the suit cannot be dismissed.

53. e) WHETHER TIME IS THE ESSENCE OF THE CONTRACT OF SALE?

The learned counsel for the appellant submitted that Clause 1 of Ex.A1 sale agreement reads as follows:-

1. The sale price agreed is Rs.23000/- (Rupees twenty three thousand only) per cent of the extent of 10 Acre 83 Cents of thereabouts, actually as measured and found to exist, which shall be paid by the purchaser to the Vendors as under:- Rs.25,00,000/- (Rupees Twenty five lakhs only) now paid by cash at the time of execution of this agreement, the receipt of which amount the vendors do hereby admit and acknowledge.

Rs.2,24,09,000/- (Rupees Two crore Twenty four lakhs nine thousand only) the balance amount shall be paid by the purchaser to the Vendors in Eighteen months time from the date of agreement or such extended date as may be agreed upon.

54. According to the learned counsel as per the said Clause the payment of balance sale consideration of Rs. 2,24,09,000/- shall be paid by the purchaser/plaintiff to the vendors/defendants in 18 month's time from 2.9.1996 or within such extended time as may be agreed upon and admittedly, the time for payment of balance sale consideration was not extended by the vendors. The said 18 months period expired on 2.3.1998, but the plaintiff/respondent had admittedly not paid the balance sale consideration.

55. According to the learned counsel, when the time for payment of balance sale consideration has been specifically stated in the agreement of sale, such time fixed shall be construed to be the essence of the contract of sale as far as the payment of balance sale consideration is concerned. If the purchaser fails to pay the balance sale consideration within the time fixed then the purchaser is deemed to have committed breach of contract and is not entitled to claim specific performance of the agreement of sale. The said condition having been incorporated in Clause 1 of Ex.A1 sale agreement and the other conditions have been incorporated only thereafter, the condition to pay the balance sale consideration takes precedence over the other conditions. The failure of the vendors to obtain clearance certificate under Section 230-A of the Income Tax Act

cannot be pleaded as a reason for non payment of the balance sale consideration.

56. It is contended by the learned counsel for the plaintiff/respondent that unless the clearance certificate under Section 230-A of the Income Tax Act is produced by the vendors the plaintiff cannot get the sale deed executed before the registering authorities and unless such certificate is produced and the purchaser is satisfied that there are no tax arrears payable by the vendors the purchaser cannot be expected to pay the entire balance sale consideration. Only to satisfy the purchaser that there was no tax arrears payable by the vendors the obtaining of the income tax clearance tax certificate under Section 230-A of the Income Tax Act has been incorporated in Ex.A1 sale agreement and therefore, when admittedly, the vendors had not obtained and furnished the income tax clearance certificate to the purchaser/respondent, the purchaser is not liable to pay the balance sale consideration and the purchaser is liable to pay the balance sale consideration only on the furnishing of the income tax clearance certificate.

57. It is no doubt true that the condition to pay the balance sale consideration within 18 months period from the date of entering into the agreement of sale is incorporated as Clause 1 of Ex.A1 sale agreement. But it does not mean that the said Clause has to be read in isolation without taking into consideration the other conditions incorporated in Ex.A1. As rightly contended by the learned Senior Counsel Mr.R.Krishnasamy, unless the purchaser/respondent is satisfied that there was no tax arrears payable by the vendors, the purchaser cannot be expected to take the risk in paying the entire balance sale consideration to the vendors. Once the entire balance sale consideration is paid to the vendors and if subsequently it comes to light that there are income tax arrears payable by the vendors and if the income tax clearance certificate is insisted by the registering authorities then there will be a problem for the purchaser in getting the sale deed registered. Therefore, in our considered view, the obtaining and furnishing of the income tax clearance tax certificate under Section 230-A of the Income Tax Act is a condition precedent for insisting the payment of the balance sale consideration as per Clause 1 of the agreement of sale.

58. The contention of the learned counsel for the appellants that since the respondent had not furnished a copy of the draft sale deed, it was not possible for the vendors/appellants to obtain the income tax clearance certificate under Section 230-A of the Income Tax Act is untenable because for getting the income tax clearance certificate under Section 230-A of the Income Tax Act the production of the draft sale deed before the income tax officer is not necessary. Perhaps the learned counsel for the appellants is misconstruing the income tax clearance certificate under Section 230-A of the Income Tax Act with the no objection certificate that has to be obtained by the vendors under Section 269 UL of the Income Tax Act from the appropriate authority under the Income Tax Act.

59. Clause 2 of Ex.A1 sale agreement only provides that the vendors shall obtain the income tax clearance certificate under Section 230-A of the Income Tax Act and not the no objection certificate from the appropriate authority under Section 269 UL of the Income Tax Act. Even for obtaining the No Objection Certificate from the appropriate authority under Section 269 UL the draft sale deed is not necessary but only the sale agreement entered into between the vendor and the purchaser has to be produced before the Income Tax Officer and therefore, the contention of the learned counsel for the appellants that since the purchaser/respondent had not furnished the draft sale deed the appellants were unable to get the income tax clearance certificate under Section 230-A of the Income Tax Act cannot be countenanced. Therefore, the contention of the learned counsel for the purchaser/respondent that since the appellants have not furnished the income tax clearance certificate as contemplated under Clause 2 of the agreement of sale Ex.A1 the balance sale consideration was not paid is acceptable.

60. Even otherwise, we are unable to accept the contention of the learned counsel for the appellants that the condition incorporated in Clause 1 of the agreement of sale that the balance sale consideration shall be paid by the purchaser within 18 months from the date of Ex.A1 sale agreement is the essence of the agreement of sale. In our considered view that the decision reported in 2011-4-L.W. 97 (Mrs. Saradamani Kandappan vs. Mrs. S. Rajalakshmi and others) relied upon by the learned counsel for the appellants is not applicable to the facts of the case. In that

case, the relevant recitals contained in the sale agreement relating to the payment of the balance sale consideration have been extracted in paragraph 2 of that judgment which reads as follows:- 4. The mode of payment of the balance of Rs.2,75,000/- (Rupees Two lakhs and seventy five thousand only) shall be as under:

(a) Rs.1,00,000/- (one lakh) on or before 28.2.1981.

(b) Rs.1,00,000/- (one lakh) on or before 6.4.1981.

(c) Rs.75,000/- (seventy five thousand) on or before 30.5.1981

5. If however any of the above mentioned dates are subsequently declared as holidays then the next immediate working day shall be the day of the payment.

6. The payments on due dates is the essence of this contract and in case of failure on the part of the party of the second part, the party of the first paty shall cancel this agreement.

Considering the aforesaid recitals, the Apex Court has held in paragraph Nos. 37 and 43 of the aforesaid decision as follows:-

37. The terms of the contract makes it clear that payment of sale price did not depend on execution of the sale deed. The sale deed was not required to be executed within any specific period. The purchaser had to fulfil her obligation in regard to payment of price as provided in clause 4 and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever, required by the purchaser, either in her name or in the names of her nominees. The sale deed had to be executed only after payment of complete sale consideration within the time stipulated. In these circumstances, section 52 of the Contract Act does not help the appellant but actually supports the vendors-respondents.

43. We are therefore of the view taht the failure of the appellant to pay the balance of Rs.75000/- on 6.4.1981 and failure to pay the last instalment of Rs.75000/- on or before 30.5.1981 clearly amounted to breach and time for such payment was

the essence of the contract, the respondents were justified in determining the agreement of sale which they did by notice dated 2.8.1981 (Ex.P5). Therefore rejection of the prayer for specific performance is upheld.

61. As pointed out above, the recitals in Clause 1 of the agreement of sale in Ex.A.1 are totally different from the recitals in the sale agreement relating to the case reported in 2011-4-L.W.-97 (SC) and therefore, the said decision is not applicable to the facts of this case. It was further contended by the learned counsel for the appellants that as the appellants had identified an extent 60 acres of land at Karanodai Village to purchase the same with the sale proceeds and as the purchaser/respondent has not paid the balance sale consideration within the stipulated period of 18 months, they could not purchase 60 acres of land at Karanodai Village and therefore, the appellants had been put to great loss and hardship.

62. The said contention has been made knowing well that no such plea has been put forth by the appellants either in their notice sent to the respondents or in the written statement or in the additional written statement filed by them. It is well settled that any amount of oral evidence in the absence of necessary pleading cannot be looked into and therefore, the said contention is liable to be rejected and accordingly the same is rejected. Therefore, we are of the considered view that the period of 18 months as prescribed under Ex.A1 sale agreement for the payment of balance sale consideration of Rs.2,24,09,000/- is not the essence of the agreement of sale. The non payment of balance sale consideration within the said period will not amount to breach of contract on the part of the purchaser/respondent.

63. Further, it is pertinent to point out that after the expiry of the period of 18 months prescribed for the payment of balance sale consideration, admittedly, the appellants had not issued any notice in writing calling upon the respondent to pay the balance sale consideration, but in his evidence D.W.1 has stated that orally the respondent was requested several times to pay the balance sale consideration. If really the period of 18 months had been considered and treated to be the essence of the sale agreement in so far as the payment of balance sale consideration is

concerned, the appellants would not have kept quiet without issuing a notice. It is pertinent to point out that the said 18 months period expired on 2.3.1998. Even on 16.9.1998 the appellants 1 to 8 have executed Exs.B 42 to 48 Power of Attorneys in favour of the respondent appointing him as their agent to deal with their share in their lands which are the subject matter of the suit.

64. Further, it has to be pointed out that in his cross examination, D.W.1 has stated that even after the expiry of 18 months period, the appellants were ready to execute the sale deed as per Ex.A1 sale agreement. D.W.1 in his cross examination has stated as follows:

VERNACULAR (TAMIL) PORTION DELETED

The fact that the appellants have executed Exs.A42 to 48 Power of Attorneys in favour of the respondent even after the period of six months from the expiry of the period of 18 months stipulated for the payment of balance sale consideration and the admission of D.W.1 that the appellants were ready to execute the sale deed as per Ex.A1 sale agreement even after the expiry of the 18 months period clearly shows that the appellants had not treated the period of 18 months prescribed in Ex.A1 sale agreement as the essence of the contract either for payment of the balance sale consideration or for the completion of the agreement of sale. Therefore, the said contention of the learned counsel for the appellants cannot be countenanced.

65. (d) Whether the plaintiff was ready and willing to perform his part of contract.

The learned counsel for the appellant submitted that the agreement was entered into on 2.9.96 and the time to conclude the contract was 18 months which expired on 1.3.98. Till the defendants issued a notice on 28.4.2000, the plaintiff has not shown any inclination to offer either the whole or part of the sale consideration and has also not taken any steps to perform his part of the contract. The learned counsel pointed out that the plaintiff was not having any capacity to pay the balance consideration of Rs.2,24,09,000/-

66. He relied on various judgments of Apex court as well as this Court which has laid down the principles of readiness and willingness.

67. It is well settled that the plaintiff has to plead and prove the readiness and willingness. The plaintiff must be ready to perform his part of the contract from the date of agreement till the date of filing of the suit and even thereafter.

68. The settled principle in a suit for the specific performance of the sale agreement is that it is the duty of the plaintiff to plead and prove the readiness and willingness. It is also well settled that the time is not the essence of the contract in the case of sale of immovable property unless there is positive evidence regarding the actual intention of the parties to fix the time as the essence of contract. Further the readiness may mean the capacity of the party to perform the contract which includes his financial position to pay the sale consideration. The readiness is also related to the compliance of certain terms which are agreed upon in the sale agreement before completing the sale. The willingness is the conduct of the party.

69. The learned counsel for the defendants also relied on various judgments regarding the readiness and willingness. He relied on the decision reported in 2002 (1) CTC 334 (V. Udayakumar and 7 others vs Navaneethammal and 5 others), where the facts of the case are somewhat similar to the case on hand. In the said case also, the purchaser seems to have obtained the signature from the vendor in order to get no objection from the land ceiling authorities. The Division Bench held when the plaintiff had taken some steps to enforce the agreement, that would be sufficient to establish that the plaintiff was ready and willing to perform his part of contract . The conduct of the plaintiff in taking such steps can impliedly lead to the inference with regard to his readiness and willingness to perform his part of contract .

70. It is also well settled that the purchaser need not actually tender the balance of sale consideration but need to prove that he had or has resources to pay the balance consideration.

71. The readiness relate to the capacity of the purchaser having enough fund to purchase the property. The willingness relate to the conduct of the parties and

more particularly in respect of the plaintiff the steps taken by him to conclude the contract.

72. It was contended by the learned counsel for the appellants that the purchaser/respondent was not always ready and willing to perform his part of the contract as he was not having sufficient funds or the capacity to pay the balance sale consideration and the Court below has not properly considered the evidence on the question of readiness and willingness.

73. The learned counsel submitted that in Ex.B1 which is the affidavit filed by the respondent in support of I.A.No.775/2000 in O.S.No.249 of 2000 on the file of the Sub Court, Poonamallee it is stated as follows:-

In view of the urgency and due to heavy payment made by me on the agreement. I am not in a position to file a suit for specific performance investing huge amount and hence I may be permitted to file a suit for specific performance at a later future date.

74. According to the learned counsel the aforesaid averments in Ex.B1 will clearly show that he was not having necessary funds with him even to pay the court fee on the suit for specific performance. The learned counsel further submitted that in spite of the specific plea raised in the written statement that the respondent is not always ready and willing to perform his part of the contract and he was called upon to produce his income tax returns and account books and in spite of the notice being issued to the respondent calling upon him to produce the income tax returns and accounts the respondent had not produced the same and therefore, an adverse inference has to be raised against him. Further, it was contended that the mere filing of the wealth tax return under Ex.A24 by the respondent is not sufficient to establish that the respondent is having the capacity to pay the balance sale consideration. It is no doubt true that in spite of the specific averments made in the written statement and in the notice issued by the appellants calling upon the respondent to produce the income tax return and the account books, the respondent had not produced the same before the trial Court. From the failure of the respondent to produce the said documents an inference can be drawn against him. But such inference can be rebutted by the other evidence adduced by the

respondent. Admittedly, Ex.A24 Wealth Tax Return of the respondent has been filed. As per Ex.A 24 Wealth Tax Return, the net wealth of the respondent is arrived at Rs.16001000/-. The wealth of the respondent as per Ex.A24 include immovable and movable properties.

75. It is true that in the notice, in the written statement, and in the additional written statement and in the evidence of D.W.1 it is stated that the respondent was not always ready and willing to perform his part of the contract and he was not having necessary funds or he was not having the capacity to raise the necessary funds to complete the sale.

76. In this context, it is relevant to point out that D.W.1 in his cross examination has admitted that Exs.B41 to B48 were cancelled and in the cancellation deeds it has not been stated that since the respondent had not paid the balance sale consideration, the said Power of Attorneys are being cancelled. But in Ex.B.58 he has admitted that due to personal reasons the Power of Attorney is being cancelled. He has further admitted that it has not been stated in the cancellation deeds that since the respondent did not pay the balance sale consideration the Power of Attorneys are being cancelled.

77. In his cross examination D.W.1 has stated as follows:-

VERNACULAR (TAMIL) PORTION DELETED

78. The aforesaid evidence of D.W.1 shows that the appellants are not aware about the business carried on by the respondent, his financial capacity and his income and expenditure details. He has also admitted that since the respondent is carrying on real estate business, they were under the impression that the respondent had the financial capacity and accordingly, they decided to enter into the sale agreement. He has further admitted that he had not made any enquiries regarding the financial capacity of the respondent. He has further admitted that in the lands agreed to be sold, they were running a brick work and there was a brick chamber and because of that the land required levelling. He has further admitted that the low lying area was filled up and it was levelled by the respondent at his own cost. He has also admitted that to convert the land into a lay out as per the

agreement he had done everything at his own cost. P.W.1 the respondent in his evidence has stated that he has incurred huge expenditure for filling up and levelling the lands; for obtaining the clearance under Urban Land Ceiling Act; for obtaining the C.M.D.A. approval and the approval of the Kunrathur Panchayat. The above evidence of P.W.1 has also been admitted by D.W.1. D.W.1 has also admitted that within two months from the date of filing of the suit, as directed by the trial Court, the respondent had deposited to the credit of the suit the entire balance sale consideration. The said evidence of D.W.1 shows that the appellants have not made any enquiries regarding the financial capacity of the respondent and actually they were not aware of the financial capacity of the respondent and that being so, they have made the averments in the written statement as if the respondent was not always ready and willing to perform his part of the contract and he was not having the funds to pay the balance sale consideration. The said defence has been taken only for the purpose of the suit. The said defence in the light of the aforesaid evidence of D.W.1 has no basis and the same cannot be accepted. The fact that the respondent had deposited the entire balance sale consideration to the credit of the suit immediately on being directed by the trial Court also shows his capacity to raise the necessary funds when the time for performance of the agreement of sale comes.

79. As far as the averment contained in Ex.B1 Affidavit of the respondent is concerned, the trial Court has elaborately considered the same and has based reliance on the decision reported in AIR 1982 Allahabad 47 (Ganesh Prasad vs. Saraswati Devi and others) and the decision reported in AIR 1994 SC 105 (Surya Narain Upadhyaya vs. Ram Roop Pandey and others) and has come to the right conclusion that from the said averment in Ex.B1, it cannot be said that the respondent has no capacity to raise the necessary funds to pay the balance sale consideration.

80. In the decision reported in AIR 1982 Allahabad 47 the suit for specific performance was filed in forma pauperis but the court fee was paid well before the expiry of the five years period limited for the reconveyance. When considering the said fact and while deciding the question of readiness of the plaintiff, the Allahabad High Court has held that the suit for specific performance filed in forma pauperis

would not lead to the inference that the plaintiff was not ready to perform his part of the contract.

81. In the decision in AIR 1994 SC 105, the failure of the purchaser to pay sufficient court fee was relied upon by the lower court to draw the inference that the purchaser had no capacity to pay the consideration and therefore, the relief of specific performance was refused. But the Apex Court has held that the mere failure of the purchaser to pay the sufficient court fee initially when the purchaser had pleaded his readiness and willingness to perform his part of the contract and had deposited the balance amount of sale consideration into the Court, the inference drawn by the Court below is not correct and the Apex Court granted the relief of specific performance. The aforesaid two decisions have been relied upon by the trial Court to reject the contention based on the averments contained in Ex.B1 Affidavit. We do not find any reason to interfere with the said reasoning and finding of the trial Court.

82. Another contention was put forth by the learned counsel for the appellants that having deposited the balance sale consideration the respondent filed an application seeking permission to withdraw the amount, which, according to the learned counsel shows that he was not having the capacity and he was not ready and willing to perform his part of the contract. The said contention cannot be countenanced for the reason that even in the affidavit filed in support of the petition seeking permission to withdraw the amount lying to the credit of the suit, it has been stated by the respondent for getting better returns and for better investment he had sought for permission to withdraw the amount. Any prudent businessman would like to utilise the funds to drive maximum benefit out of it rather keeping the amount in a fixed deposit in a Nationalised Bank. Therefore, the mere seeking of permission to withdraw the amount lying in the Court deposit will not lead to the inference that the respondent was not ready and willing to perform his part of the contract or he was not having the capacity to raise the funds.

83. From the evidence on record, it is clear that the plaintiff was making all arrangements to lay out the plots and approach the land ceiling authorities to obtain no objection certificate and also took steps to obtain approval from the

CMDA and as well as from the local panchayat union. Evidently, he had done certain acts like reconstituting the partnership firm, dissolving the same, allotting smaller extent to the individual partners so as to bring the holding within the ceiling limit and executed gift deed and sale deeds. These acts were done in pursuant to the power of attorney given to him and towards the conclusion of the contract. The defendants were either parties to this act or were silent spectators. In any event, the plaintiff has realized the fruits of his efforts on obtaining an approval from the CMDA on 13.2.2000 and an approval letter from the Panchayat Union on 8.3.2000.

.84 The lands were taken possession; levelled and laid out into plots; necessary approvals were obtained from the authorities concerned and the only step remaining was to approach the defendants and tender the sale consideration and get the sale deed executed either in his favour or in favour of the intended purchasers of the plots.

85. Obviously, the defendants seem to have a different idea which culminated into exchange of notices, filing of suits and the plaintiff has filed the present suit for specific performance in accordance with law. He has filed his wealth tax return to prove his capacity and he had also deposited balance sale consideration into the court.

86. As laid down in the decision reported in 2002 (1) CTC 334 (V. Udayakumar vs. Navaneethammal and 5 others) by the Division Bench of this Court when the respondent/plaintiff had obtained Power of Attorneys from the defendants in order to get NOC from the competent authority under Urban Land Ceiling Act and have obtained the necessary certificate to the effect that the Act is not applicable to the subject matter of the suit; he had executed the gift deed to the Kunrathur Panchayat under Ex.A6 and had also taken all necessary steps to obtain sanction from the C.M.D.A. and accordingly, obtained the sanction from C.M.D.A. and also permission of the Kunrathur Panchayat. Thus the plaintiff/respondent had taken so many steps to enforce the agreement that would be sufficient to establish that the plaintiff/respondent was ready and willing to perform his part of the contract. The conduct of the plaintiff/respondent in taking such steps can impliedly lead to the

inference with regard to his readiness and willingness to perform his part of the contract.

87. When the arguments were heard in the appeal, the respondent also filed a Memo stating as follows:

`The respondent submits that with a view to amicably settle the matter, he is willing to pay the Appellants the entire amounts available in Bank deposit, which is the sale consideration mentioned in the agreement of sale with accrued interest deposited by him in Trial Court together with a further sum of Rs.2,00,00,000/- (Rupees Two Crores only) in full and final settlement .

88. Therefore, the trial court was right in holding that the plaintiff was always ready and willing to perform his part of contract and we are also of the considered view that the plaintiff has pleaded and proved his readiness and willingness to perform his part of contract.

(f) Whether the respondent/plaintiff is entitled for the discretionary relief of Specific Performance?

89. The learned counsel for the appellant raised a contention that the plaintiff has committed some fraud and has not come to the court with clean hands. According to the appellants, the plaintiff has reconstituted the partnership firm, dissolved the same, allotted the larger extent to various partners and those things have not been disclosed in the plaint. Any how, we are of the considered view that he has taken those steps only to obtain a no objection from the authorities and as stated earlier the defendants were either parties to his acts or silent spectators and they never objected to the steps taken by the plaintiff.

90. It has to be pointed out that the sale deeds Exs.A7 to A10 and the Gift deed Ex.A6 have been executed by the respondent only as the Power of Attorney Agent of the defendants and when those documents were executed by the respondent the defendants had not objected to the same immediately. But the defendants suddenly cancelled the Power of Attorney deeds only after the sanction from C.M.D.A. and the permission from Kunrathur Panchayat were obtained by the

respondent. The defendants wanted to take advantage of the clearance obtained by the respondent from the Urban Land Ceiling authorities, the sanction granted by the C.M.D.A. for the lay out and the permission granted by the Kunrathur Panchayat but at the same time, they contend that the various steps taken by the respondent are without their knowledge and against public policy etc.

91. In this context it is relevant to refer to Clause 4 of Ex.A1 agreement of sale which reads as follows:-

4. The Vendors shall extend all and every cooperation help and assistance to the purchaser, his agents, servants or representatives in the preparation, conversion and sale of lands as house sites and in obtaining necessary approval, sanction and permission from competent authorities. He shall also sign all applications, forms, plans, papers, if any whatsoever required connection with the Layout of the lands. The purchaser to hereby authorised and empowered to attend to and carry out and perform all and every act, deed of thing as agent and on bahalf of the vendors in matters concerning the sanction and approval of the Layour by competent authorities and their sale subsequently.

92. Only in the light of the recital contained in Clause 4 of the agreement, the defendants have executed the Power of Attorney deeds in favour of the respondent to do various acts as mentioned Clause 4 and they have also signed in various applications, forms etc., for reconstituting the partnership firm, for reducing the holdings of the partners of the firm and for applying to the Assistant Commissioner for Urban Land Ceiling etc. Therefore, we do not find any substance in the contention of the defendants that the plaintiff has committed various acts of fraud and therefore, the same is rejected.

93. It was contended by the learned counsel for the appellants that in the plaint, it has been wrongly stated as if interim injunction was granted pending the suit for injunction filed by the respondent, which, according to the learned counsel will amount to making a false plea. It has been admitted by P.W.1 that such an averment has been made in the plaint but has stated that it has been made due to mistake. Mere making of a false plea, which unless affects the very basis of the suit, the discretionary relief of specific performance cannot be denied to the

plaintiff on that ground. In our considered view, the said plea made in the plaint filed in the suit for specific performance will not affect the basis of the suit and therefore, on that ground the relief of specific performance cannot be denied.

94. It is pertinent to point out in this context that in Ex. A1 sale agreement itself, in Clause 3, it is specifically recited as follows:-

The Vendors have today put the purchaser in physical and actual possession of the property and the purchaser has also entered occupation today. The Purchaser shall be entitled to as and from today to commence the work of survey of lands as converting them into house sites and do all other acts in respect of the same.

95. But quiet contrary to the aforesaid Clause it has been pleaded by the defendants in their written statement, additional written statement and deposed before the Court falsely that the physical possession of the suit property was not handed over to the respondent but he was given only a licence to enter into the property to carry out the survey and other related activities. D.W.1 in his evidence has categorically admitted that at his cost, the respondent has levelled the lands and surveyed the lands and made the lands fit for dividing into house sites and also has obtained lay out sanction from C.M.D.A. and permission from Kunrathur Panchayat. Without handing over the physical possession of the land agreed to be sold it would not have been possible for the respondent to carry out the aforesaid acts. Thus the defendants have raised a false plea which in our considered view affects the very basis of the suit and this false plea disentitles the defendants to get discretionary relief from this Court. Having done all these acts with full knowledge and permitted the respondent to do all acts to get the aforesaid lay out sanction, approval from C.M.D.A., permission from Kunrathur Panchayat etc., it is not open to the defendants to contend that without their knowledge the respondent has committed various acts of fraud.

96. The relief of Specific Performance of the Contract is the discretionary relief. The contract was entered into on 2.9.96. The suit was filed in the year 2001 and the decree was passed by the trial court on 21.8.2007. The appeal was filed in the year 2007 and the arguments were heard only in the month of October 2011, almost after 15 years have passed. Due to the passage of time, the value of the

property has increased by many folds.

97. While considering the issue as to whether the plaintiff/respondent is entitled to be granted the discretionary relief of specific performance is concerned, it will be useful to refer to the provisions under Section 20, particularly sub-sections 2 and 3 of Section 20 of the Specific Relief Act, which read as under:- 20. Discretion as to decreeing specific performance:-

(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 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.

98. It is not the contention of the learned counsel for the appellants that this case falls under sub-section 2 of Section 20. But the contention of the learned counsel for the appellants is that if the defendants are directed to perform the contract by executing the sale deed in favour of the respondent it would cause hardship to the defendants not only due to lapse of time from the date of execution of the agreement of sale but also as the value of the lands agreed to be sold has increased manifold, the defendants would be put to hardship and it would give the plaintiff/respondent an unfair advantage over the defendants.

99. It is not the case of the appellants that the consideration agreed to be paid by the respondent under Ex.A1 sale agreement was inadequate. It is equally not the case of the defendants that at the time of entering into the contract, the contract was onerous to the defendants. As per Explanation 2 to sub-section 2 of Section 20 of the Act the question whether the performance of contract would involve hardship on the defendant within the meaning of Clause (b) shall be determined with reference to the circumstances existing at the time of the contract. Further, it cannot be said that the alleged hardship has resulted from any act of the plaintiff/respondent subsequent to the contract. It has already been held that the plaintiff/respondent was always ready and willing to perform his part of the contract and there was no delay in filing the suit and therefore, the aforesaid contention of the learned counsel for the appellants cannot be countenanced. In our considered view the plaintiff/respondent is entitled to the benefit of sub-section 3 of Section 20 of the Act. Under this provisiion 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.

100. In this case, as has been elaborately stated supra, the plaintiff/respondent has done substantial acts, namely, has incurred huge expenditure in obtaining clearance under the Urban Land Ceiling Act, in obtaining the lay out sanction from C.M.D.A. and in getting the permission from Kunrathur Panchayat and before that for levelling the low lying land and make it fit for converting the same into lay out. This Court can take judicial notice of the fact that the getting of all the aforesaid sanction, approval and permission would involve huge expenditure and payment

of huge amount towards fee and charges therefore, if the relief of specific performance is not granted to the plaintiff/respondent it would result in the plaintiff/respondent suffering huge losses. Therefore, in our considered view, the aforesaid facts and circumstances of the case warrants the exercise of the discretion under Section 20 of the Act in favour of the plaintiff/respondent. The Court below in our view has rightly exercised its discretion as contemplated under Section 20 of the Act and therefore, we do not find any reason whatsoever to interfere with the discretion exercised by the trial Court.

101. In the decision reported in 2004 (4) CTC 150 (P.D.'Souza vs. Shondrilo Naidu) the Apex Court had referred to and relied upon another decision of the Apex Court reported in 2002 (4) CTC 624 = 2002 (5) SCC 481 (Nirmal Anand vs. Advent Corporation (P) Ltd., and others), wherein the Apex Court has held as follows:- 23. Specific performance being an equitable relief, balance of equities have also to be struck taking into account all these relevant aspects of the matter, including the lapses which occurred and parties respectively responsible therefor. Before decreeing specific performance, it is obligatory for courts to consider whether by doing so any unfair advantage would result for the plaintiff over the defendant, the extent of hardship that may be caused to the defendant and if it would render such enforcement inequitable, besides taking into (sic consideration) the totality of circumstances of each case....

The Apex Court has also observed in paragraph 43 as follows:-

43. The Court for arriving at the said finding gave opportunities to the parties to settle the mater and the respondents No.1 and 2 were prepared to pay upto Rs.60 lakhs as against the demand of the appellant to the tune of rupees one and a half crores which was subsequently reduced upto Rs.120 lakhs. In view of the respective stand by the parties the Court inter alia directed the respondents No.1 and 2 to pay a sum of Rs.40 lakhs in addition to the sum already paid by them.

102. In the light of the above decision of the Apex Court and considering the unprecedented escalation in the prices of the lands in and around Chennai, we are of the considered view that the defendants are entitled for some compensation, though not legally. Even during the course of arguments, considering the close

relationship of the parties we suggested to the parties to negotiate and arrive at an amicable settlement, but after negotiations, the parties reported to us through their counsel that there was no possibility for arriving at an amicable settlement. At that juncture, the plaintiff/respondent has filed a memo dated 19.10.11.

103. In the light of the above, the appellants are entitled to receive the entire amount available in bank deposit to the credit of the suit and as undertaken in the said memo, the plaintiff/respondent shall deposit the said sum of Rs.2,00,00,000/- (Rupees Two Crores only) to the credit of the suit and on such deposit, the defendants/appellants are entitled to withdraw the same subject to their executing the sale deed in favour of the respondent.

104. In our considered view, as the defendants/appellants are now held to be entitled to the entire amount lying in deposit to the credit of O.S.No.222 of 2004 and also to the sum of Rs.2,00,00,000/- payable by the respondent, it would adequately compensate the defendants/appellants.

105. For the aforesaid reasons, the appeal fails and the same is dismissed confirming the judgment and decree of the Additional District Judge, FTC No.III, Poonamallee, passed in O.S.No.222 of 2004, dated 21.8.2007.

106. Further, the plaintiff/respondent is directed to deposit a sum of Rs.2,00,00,000/- (Rupees Two Crores only) within eight weeks from date of receipt of a copy of this judgment to the credit of O.S.No.222 of 2004 on the file of the Additional District Judge, FTC No.III, Poonamallee and on such deposit being made, the defendants/appellants are hereby directed to execute the sale deed in favour of the respondent in respect of the suit lands and if they fail to execute the sale deed as directed above, the trial Court shall execute the sale deed in favour of the plaintiff/respondent. However, there will be no order as to costs. Consequently, connected MP is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com