

APHC010585152010



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

FRIDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

FIRST APPEAL NO: 754/2010

Between:

Sajja Subhash Chandra Bose

...APPELLANT

AND

Mr. Kota Suryanarayana and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. V V N NARAYANA RAO

Counsel for the Respondent(S):

1. P NARASIMHA RAO

2. ACHANTA SRINIVAS

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ FIRST APPEAL NO: 754/2010

%21.06.2024

Between:

Sajja Subhash Chandra Bose

...APPELLANT

AND

Mr. Kota Suryanarayana and Others

...RESPONDENT(S)

! Counsel for the Appellant : Sri V.V.N.Narayana Rao

^ Counsel for Respondent(S) : Sri P.Narasimha Rao

< Gist:

> Head Note:

? Cases referred:

1. (2015) 1 SCC 597
2. (2022) 7 SCC 384
3. (2021) 11 SCC 200
4. AIR 1995 SC 491
5. (2009) 7 SCC 363
6. AIR 2011 SC 3234
7. 2002 (0) SCJOnline(AP) 2229

8. 1998 (0) SCJOnline(AP) 741
9. AIR 1999 SC 3571
10. 1999 (0) SCJOnline(SC) 62
11. 2002 (0) SCJOnline(AP) 2102
12. 1997 (1) SCJ 415
13. AIR 2008 SC 403
14. (2009) 2 SCC 582
15. (2023) 10 SCC 725

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
APPEAL SUIT No.754 of 2010

JUDGMENT:

An agreement for sale is the cause of controversy. Seeking specific performance of the agreement for sale, the purchaser filed O.S.No.99 of 2007 before the learned VII Additional District and Sessions Judge, (Fast Track Court) at Vijayawada. After due contest, judgment and decree were passed in favour of the plaintiff. What is to be noticed is that in the said suit the plaintiff/purchaser primarily sought the relief of specific performance of the agreement for sale and made an alternative prayer for refund of advance sale consideration along with interest. The learned trial Court by its judgment dated 02.09.2010 granted the alternative relief. Feeling prick for not getting the primarily relief the plaintiff in the suit preferred this appeal under Section 96 C.P.C. Respondent Nos.1 to 4 in this appeal are the defendants in the suit. In this appeal the appellant prays this Court to grant him the relief of specific performance of agreement for sale.

2. Sri V.V.N.Narayana Rao, the learned counsel for appellant/plaintiff and Sri P.Narasimha Rao, the learned counsel for respondents argued their respective contentions.

3. Prefatory facts:

As could be seen from the record, the facts are that the appellant and the respondents are strangers to each other. A plot of land in an extent of 512.55 square yards with a terraced building therein door No.31-4-4 in Municipal Ward No.27 in Gadde Purnachandra Rao street of Maruthi Nagar, Machavaram area of Vijayawada is a property owned by respondent No.1. His ownership was by virtue of certain relinquishment deeds dated 27.02.1974 and 21.12.1988 executed by the relevant family members. It is this property he offered for sale and the appellant agreed to purchase. The family of respondent No.1 consists of his wife/respondent No.4 and their two sons being respondent Nos.2 and 3. It is undisputed that respondent Nos.2 to 4 have no rights over the property of respondent No.1, but the intending purchaser/appellant requested the first respondent to join the execution by his family members also. Accordingly, all the respondents together executed an unregistered non-possessionary agreement for sale dated 13.11.2000 which was marked as Ex.A.1 by the trial Court. Under this agreement respondents agreed to sell the above referred property to the appellant. Rs.20,00,000/- was settled as the sale consideration. Under three different cheques a total amount of Rs.2,50,000/- was paid by the appellant and was received by the respondents. This money was towards part of the sale consideration. The balance sale consideration of Rs.17,50,000/- was to be paid by the appellant on or before 12.11.2001. Thus, one year time was prescribed for payment of this balance sale consideration. It is

agreed that on making such payment of balance sale consideration the respondents would execute a regular registered sale deed. In this agreement for sale, it is also mentioned that if the purchaser delayed his payment, he had to pay 12% interest per annum over the balance sale consideration. It is also stipulated that if the vendors delayed their execution of sale deed, they would pay 12% interest per annum over the advance sale consideration they had received and the accrued interest could be deducted by the purchaser from the balance sale consideration and then pay the balance sale consideration to the respondents. This agreement for sale refers to certain litigation in the Courts. It is mentioned that O.S.No.139 of 1988 and O.S.No.709 of 1991 were tried and disposed of by learned Principal Senior Civil Judge, Vijayawada whereunder the agreement referred property was found to be exclusively belonging to respondent No.1. Here itself it is to be recorded that this agreement for sale does not contain any other recital about pendency of any appeals or other cases pertaining to those two suits referred therein. It is also mentioned in Ex.A.1 that the vendors agreed to deliver the original settlement deeds and the relinquishment deeds and Court records at the time of execution of regular registered sale deed. It is also agreed, by the time of execution of regular registered sale deeds the vendors would get the tenants vacate the subject matter property and they would deliver vacant possession of the property to the purchaser. A sort of a warranty was also mentioned in this agreement for sale to the effect that vendors were telling the purchaser that the present property was not alienated earlier to anyone and there were no

Court attachments or injunctions and there were no disputes concerning joint rights of anyone before any Courts and there were no mortgages or other earlier agreements nor this property was subjected to any sort of liabilities.

4. Be it noted that the date of this agreement is 13.11.2000. The bargain was to translate itself into a regular registered sale deed on or before 12.11.2001. On 11.09.2002 which is about nine months after the outer limit prescribed in Ex.A.1, the appellant paid Rs.10,000/- and respondent No.1 received the same and to this effect a written acknowledgment was made as per Ex.A.6. Years thereafter on 15.06.2007 appellant got issued a registered notice to respondents as per Ex.A.2 demanding them to receive the balance sale consideration and execute the registered sale deed. On 26.06.2007 the respondents got issued a reply notice through their lawyer as per Ex.A.3.

5. In this reply notice respondents/defendants categorically admitted about the bargain between parties and the settlement of sale consideration at Rs.20,00,000/- and execution of subject matter agreement for sale by the respondents in favour of the appellant and admitted receipt of Rs.2,50,000/- towards advance of part of sale consideration and admitted the remaining terms mentioned in agreement for sale. They stated that the entire fault in not obtaining registered sale deed rests with the appellant/plaintiff and that the agreement for sale stood lapsed and it is barred by limitation and they also denied the other allegations made in Ex.A.2-notice.

6. It was in the above circumstances, the appellant/plaintiff had to file O.S.No.99 of 2007. The essence of pleadings on both sides contains the above referred facts. There are other facts about which reference would be made at appropriate stage.

7. Learned trial Court settled the following issues for trial:

1. Whether the plaintiff is entitled for specific performance of suit as prayed for?
2. To what relief?

8. It further mentioned that those issues have essentially raised the following points for consideration:

1. Whether the time was essence of the contract?
2. Whether the plaintiff was ready and willing to perform his part of contract?
3. Whether the suit is barred by limitation?

9. Both sides led their oral and documentary evidence. Plaintiff testified as PW.1 and the scribe of Ex.A.1-agreement for sale dated 13.11.2000 testified as PW.2 and Exs.A.1 to A.6 were marked. Defendant No.1 testified as DW.1 and Exs.B.1 to B.5 were marked.

10. On considering the arguments advanced on both sides and the evidence placed before it, the learned trial Court recorded that existence and execution and the validity of agreement for sale as per Ex.A.1 and the terms of agreement for sale and the advance sale consideration being paid and received and the vendors

receiving Rs.10,000/- under Ex.A.6, after lapse of time prescribed in Ex.A.1-agreement for sale and exchange of notices between parties prior to the institution of the suit are all facts found undisputed from pleadings and evidence. While considering the aspects whether time is essence of the contract or not and whether the purchaser-plaintiff was ready and willing to perform his part of contract, the learned trial Court held that in Ex.A.1-agreement for sale the earlier litigation concerning this property between the vendors and others did not stand concluded by the time of Ex.A.1-agreement for sale and there were appeals preferred and pending and it was because of that reason though the purchaser-plaintiff has been ready and willing to perform his part of the contract, the vendors were not ready and willing to perform their part of the contract and they were asking the plaintiff to wait till disposal of the said appeals before the superior Courts. In the light of those facts, learned trial Court observed that the defendants by their conduct extended the period of time stipulations. Having so held, it stated that since the time was extended, the question of limitation did not arise as the suit was laid well within three years from the date of Ex.A.3-reply notice of defendants wherein they declined to execute registered sale deed. What prompted the trial Court in not granting the primary relief of specific performance and what convinced it to grant the alternative relief of refund of advance sale consideration along with interest was narrated at paragraph No.18 of the impugned judgment which reads as below:

“It is well established principle that the relief of specific performance is a discretionary relief and the court has to exercise its discretion having regard to the facts and circumstances of the case and other relevant factors. It is evident from the Ex.A1 that the agreement was entered on 13-11-2000 and only during 2007, the plaintiff has issued notice. Due to lapse of time there is much hike in the prices of immovable property. Therefore, though by the conduct of the parties it cannot be said that the suit is barred by limitation but I am not inclined to say that the plaintiff is entitled for specific performance of the contract. Therefore, having regard to the facts and circumstances of the case and the conduct of the parties a conclusion can be arrived that the plaintiff is not entitled for discretionary relief of specific performance of contract but the plaintiff is entitled for the alternative relief for the refund of the earnest money and with interest at 12% p.a as agreed under Ex.A1. Accordingly, this issue is answered.”

11. Thus, in the view of the learned trial Court though the lapse of time has not resulted in applying the principles of limitation or laches the fact remained that there was lapse of time and during that period there was rise in the prices of immovable properties and it is for that reason it declined to grant the specific performance, but granted the alternative relief of refund of sale consideration.

12. In this appeal the main challenge of the appellant is on that reasoning of the learned trial Court.

13. Learned counsel for appellant argued that the learned trial Court ought to have granted the primary relief of specific performance. Mere rise in prices by itself cannot be a ground for refusing specific performance and cited **K.Prakash v. B.R.Sampath Kumar**¹. At paragraph No.18 their Lordships held that subsequent rise in the price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed. After referring to the earlier binding precedent, their Lordships at paragraph No.19 laid down the wisdom to be followed stating that the Court may have to take notice of the increase in the prices and consider the relative hardship and find out whether in the facts and circumstances of the case Court shall exercise discretion and impose any reasonable condition including payment of additional amount by one party to the other either by granting specific performance or refusing specific performance. It may also direct the purchaser to pay additional amount to the seller. That ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on

¹(2015) 1 SCC 597

which parties may not have any control. The totality of the circumstances is required to be seen.

14. Learned counsel for appellant submits that when once it is found by a Court that the subject matter agreement for sale is a valid and enforceable contract and the receipt of a part of advance sale consideration is found to be true, there remains nothing on part of the plaintiff-purchaser to prove and the Courts ought to grant the primary relief and placed reliance on ***P.Ramasubbamma v. V.Vijayalakshmi***². That the pendency of litigation before superior Courts between the purchasers and others with reference to the subject matter property is a matter of fact on record and in such cases blame cannot be laid on the shoulders of the plaintiff/appellant and there shall be no consideration of escalation of prices and at any rate, escalation of prices by itself shall not be a ground to deny specific performance and in this regard the learned counsel places support on the ratio laid down in ***A.R.Madana Gopal v. Ramnath Publications Private Limited***³.

15. As against this, the learned counsel for respondents raised various contentions. It is contended that:

- an agreement for sale is a bilateral contract requiring signatures of both parties on the document and that Ex.A.1 does not contain the signature of purchaser plaintiff/appellant and therefore, it cannot be enforced.

²(2022) 7 SCC 384

³(2021) 11 SCC 200

- That Ex.A.1 is an unregistered agreement for sale dated 13.11.2000. In State of Andhra Pradesh by Act 4 of 1999 with effect from 01.04.1999 Section 17 of the Registration Act, 1908 was amended and now as per Section 17(g) of the Act an agreement for sale of immovable property of value Rs.100/- and upwards is a compulsorily registerable document. Since Ex.A.1 is unregistered, the suit for specific performance ought to have been dismissed by the trial Court. The document which is compulsorily registerable and is not registered is inadmissible in evidence. For this purpose, learned counsel cited ***Sardar Singh v. Smt. Krishna Devi***⁴ and ***Suraj Lamp and Industries (Private) Limited Through Director v. State of Haryana***⁵.
- Learned counsel for respondents further argued that the plaintiff did not examine the attestors to Ex.A.1 and the plaintiff incorrectly mentioned the name of the scribe and these facts do indicate the failure of plaintiff in establishing his case and in such circumstances, the suit ought to have been dismissed and at any rate this appeal shall be dismissed.
- Learned counsel contended that the pendency of appeals is a matter of knowledge between parties and therefore, the timelines stipulated in Ex.A.1-agreement for sale ought to have been obliged by plaintiff and within the time as the plaintiff failed to come forward for specific performance, the

⁴AIR 1995 SC 491

agreement for sale stood lapsed and is barred by limitation and time was the essence of the contract and in such a case granting specific relief to the plaintiff who violated the timelines is incorrect.

- The learned counsel further argued that rise in prices has to be taken notice of judicially and the trial Court did it rightly and this Court need not interfere and cited ***Mrs. Saradamani Kandappan v. Mrs. S.Rajalakshmi***⁶, ***P.Purushotham Reddy v. M/s. Pratap Steels Ltd.***⁷ and ***Sardar Amarjeet Singh v. Nandu Bai***⁸.
- Learned counsel submits that though no cross appeal or cross objections are filed, respondents/defendants are entitled to canvass all and every point or their objection and placed reliance on ***Shri Ravinder Kumar Sharma v. The State of Assam***⁹ and ***Anil Kumar Gupta v. Municipal Corporation of Delhi***¹⁰.
- Learned counsel contends that in terms of Section 16(c) of the Specific Relief Act, 1963, it is up to the plaintiff-purchaser to plead and prove readiness and willingness throughout and any violation shall result in refusal of the relief and cited ***Palika Satyavathi v. Singireddy Ramana Murthy***¹¹ and ***K.S. Vidyanadam v. Vairavan***¹².

⁵(2009) 7 SCC 363

⁶AIR 2011 SC 3234

⁷2002 (0) SCJOnline(AP) 2229

⁸1998 (0) SCJOnline(AP) 741

⁹AIR 1999 SC 3571

¹⁰1999 (0) SCJOnline(SC) 62

¹¹2002 (0) SCJOnline(AP) 2102

¹²1997 (1) SCJ 415

- Learned counsel submits that while applying the precedent to a case at hand, Courts have to necessarily follow the mandate that a decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. For this the learned counsel cited ***Oriental Insurance Co. Ltd. v. Smt. Raj Kumari***¹³.
- Learned counsel for respondents contends that Ex.A.1 is only an agreement and not a contract and it cannot be enforced.

16. From the grounds urged in the appeal and from the material that is placed on record and on considering the rival arguments, the following points fall for consideration:

1. **While a contract being bilateral whether under law its enforceability requires signature of both parties to the contract and whether an agreement for sale signed by only vendor and not by vendees cannot be enforced?**
2. **Whether in a suit for specific performance of an agreement for sale an unregistered agreement for sale can be considered or not?**
3. **Whether parties to the agreement for sale are aware of existence of pending litigation and whether the delay in enforcing the agreement for sale because of**

¹³AIR 2008 SC 403

pendency of litigation can be attributed to the purchaser alone depriving him of the relief of specific performance?

4. Whether the trial Court is incorrect in refusing to grant specific performance on the ground of escalation of prices?

5. To what relief?

Point No.1:

17. An agreement for sale is a contract as mentioned in Section 54 of the Transfer of Property Act, 1872. An agreement for sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be a document in two parts, each party signing one copy and then exchange the signed copy as a consequence of which the purchaser has the copies signed by the vendor and the vendor has a copy signed by the purchaser or it can be by the vendor signing the document and delivering it to the purchaser who accepts it. In the context of the above realities in life, their Lordships of the Hon'ble Supreme Court of India in ***Aloka Bose v. Parmatma Devi***¹⁴ (cited by the learned counsel for appellant) held that in India, an agreement for sale signed by the vendor alone and delivered to the purchaser, and accepted by the

¹⁴(2009) 2 SCC 582

purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. In the case at hand, the subject matter property is owned by the respondents/defendants and Ex.A.1-agreement for sale is signed by the respondents/defendants. It is their former statement. They mentioned in it that they agreed to sell and the purchaser-plaintiff agreed to purchase the property. It is they who delivered this Ex.A.1 to the appellant/plaintiff. That it was accepted by the appellant/plaintiff is crystal clear from the fact that he paid an advance consideration of Rs.2,50,000/- which the executants had endorsed in Ex.A.1 itself and admitted it in Ex.A.3-reply notice and admitted it in their written statement and admitted it in their evidence also. Thus, the facts are governed by the ratio laid down by the Hon'ble Supreme Court of India. Nothing contrary is brought to the notice of this Court by the learned counsel for respondents. It is in these circumstances, this Court holds that Ex.A.1-agreement for sale signed by vendors alone brought out an enforceable contract between the parties. Hence, the contention of the respondents is negated. Point No.1 is answered in favour of the appellant/plaintiff.

Point No.2:

18. Learned counsel for respondents is right to the extent of saying that in State of Andhra Pradesh an agreement for sale of immovable property is a compulsorily registerable document. The precedent cited by the learned counsel for respondents is to the effect that a document which is compulsorily registerable but is

not registered is inadmissible in evidence. Such proposition is laid down based on what is contained in Section 49 of the Registration Act, 1908. However, when a compulsorily registerable agreement for sale is put forth for enforcing it by way of specific performance, whether its non-registration is inhibited by law or not is a point that is relevant for consideration here. In the case at hand, Ex.A.1 is an agreement for sale and it is unregistered. The prayer in the suit made by the appellant/plaintiff is for specific performance of this unregistered agreement for sale. Section 49 of the Registration Act, 1908 is required to be noticed and it reads as mentioned below:

“49. Effect of non-registration of documents required to be registered:-

No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] *[Added by Act 21 of 1929, Section 10.]* to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.”

19. Thus, the proviso provided in the section clearly states that an unregistered agreement for sale can be received in evidence in a suit for specific performance. In this case, Ex.A.1-agreement for sale was rightly received in evidence by the learned trial Court. A suit based on such agreement for sale is a validly constituted suit. Learned counsel for appellant cited ***R.Hemalatha v. Kashthuri***¹⁵. That is also a suit for specific performance of agreement for sale. That arose from Tamil Nadu State. There was Tamil Nadu Amendment Act, 2012 making agreement for sale a registerable document as it amended Section 17 of the Registration Act. It was in such facts and circumstances their Lordships held that the said amendment of Tamil Nadu was only for Section 17 and not for Section 49 and therefore, concluded that a suit based on unregistered agreement for sale seeking specific performance is maintainable. In the case at hand also, it is undisputed that in the State of Andhra Pradesh Section 49 of the Registration Act, 1908 as enacted by the Parliament has not undergone amendment for the State and therefore the ratio in the above cited ruling governs the case at hand also. Nothing contrary is brought to the notice of this Court by the learned counsel for respondents.

20. However, the learned counsel for respondents submits that Section 49 of the Registration Act, 1908 refers to the Specific Relief Act, 1877 and since that Act was repealed and Specific Relief Act, 1963 had come into force and since the same is not incorporated in Section 49 of the Registration Act, the proviso

¹⁵(2023) 10 SCC 725

contained therein cannot be applied. This argument does not stand to scrutiny for the following reasons:

Section 3 of the Specific Relief Act, 1963 reads as below:

“3. Savings:-

Except as otherwise provided herein, nothing in this Act shall be deemed—

(a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(b) to affect the operation of the Indian Registration Act, 1908, on documents.”

Section 8 of the General Clauses Act, 1897 reads as below:

“8. Construction of the references to repealed enactments:-

(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted with or without modification, any provision of a former enactment, then references in any Central Act or in any Regulation or instrument to the provision so repealed shall,

unless a different intention appears, be construed as references to the provision so re-enacted.”

The operational effect of the above stated legislative provisions is that the reference made to an earlier enactment shall be construed as reference made to the substituting new enactment. Thus, in terms of law, the Specific Relief Act, 1877 has to be read as the Specific Relief Act, 1963 while reading Section 49 of the Registration Act, 1908. In that view of the matter, the argument raised by the learned counsel for respondents cannot be sustained.

21. It is in these circumstances, this Court records that Ex.A.1 though an unregistered agreement for sale, the same is valid and is enforceable for the purpose of suit for specific performance. Hence, the point is answered against the respondents and in favour of the appellant.

Point Nos.3 to 5:

22. With reference to the right, title and ownership over the subject matter immovable property owned by respondent No.1 the same was the subject matter of litigation between him and others and certain suits in O.S.No.139 of 1988 and O.S.No.709 of 1991 were filed and the judgments in those two suits finally concluded that the property exclusively belonged to respondent No.1 herein. However, the said litigation did not stop there. The written statement of respondent No.1 and the evidence of respondent No.1 as DW.1 in his cross-examination disclosed the following facts:

That the title of respondent No.1 decided by the judgments of trial Courts are finally carried to the Hon'ble High Court and Ex.A.5 is copy of the judgment dated 05.12.2006 of this Court whereunder the appeal preferred against O.S.No.709 of 1991 became A.S.No.2207 of 2000 and the appeal preferred against O.S.No.139 of 1988 became A.S.No.2208 of 2000 and those appeals were disposed of confirming the title and ownership of respondent No.1 herein. It was therefore under Ex.B.2 warrant for delivery in E.P.No.56 of 2007 respondent No.1 herein obtained the subject matter property on 03.09.2007. Even according to the evidence of DW.1, mutation of entries in relevant records was obtained thereafter under Ex.B.3. Thus, pendency of litigation concerning the subject matter immovable property is a matter of fact available from the record. Section 52 of the Transfer of Property Act stipulates that where an immovable property is subject to Court litigation, alienations and encumbrances are prohibited without obtaining the permission of the Court. Respondent No.1 being the owner of these properties and his property being subjected to litigation it was for him to obtain any permission from the Court to alienate the properties. It is not his case that he had obtained any such permission of the Court where the litigation was pending. It is in the light of these facts and circumstances, the facts available in the present case are to be considered. The evidence of PW.1 is that he was asking his vendors to come forward and receive the balance sale consideration and execute the registered sale deed and the vendors were telling that they could not do it because of pending litigation and asked him to wait. Since the fact was that there was

a pending litigation and since the law is that it inhibits the persons from transacting with this property, any purchase would affect the intending purchaser. When the intending purchaser expressed his readiness and willingness to purchase this property soon after the termination of the litigation it cannot be said that he was asking for enforcement delayedly. The litigation over the immovable property is not at the instance of the purchaser. Even if the purchaser waits till the completion of litigation his conduct should be considered as one which is in accordance with law. Even if the contention of the respondents is accepted that the appellant also knows about the pending litigation that by itself does not allow either of the parties to circumvent Section 52 of the Transfer of Property Act. Therefore, the acts of third parties in litigating about this property shall be considered as a legal obstacle inhibiting parties on both sides from materializing their bargain into a registered sale deed. Therefore, non-observance of timelines prescribed in Ex.A.1 was out of a legal cause for which neither of the parties could be blamed. Even otherwise as rightly held by the learned trial Court, the timelines were abandoned by the respondents themselves by virtue of their conduct in accepting Rs.10,000/- under Ex.A.6 towards some more part of the balance sale consideration. That is a correct finding. It has to be borne in mind that when a bilateral contract is in place between the parties it cannot be countenanced that only one party holds the burden to move a step forward and not the other. During cross-examination of PW.1 these respondents elicited that Ex.A.5-order of the Hon'ble High Court was handed over by the respondents to the appellant. That makes it very

clear that the parties were in conversation with each other and when the other matters with this Court were disposed of, very fairly the respondents handed over a copy of it to the appellant. When the litigation was pending before the Courts respondents were willing to sell their property, but when they were asked under Ex.A.2 to come forward and receive balance sale consideration and execute the registered sale deed, they started evading it. Therefore, the finding of the trial Court that the appellant/plaintiff has always been ready and willing to perform his part of the contract is a valid finding arrived at on facts which on reappreciation of evidence, this Court endorses its concurrence. Since the appellant has always been ready and willing to perform his part of the contract, the respondents are obliged to comply with the terms of the agreement and execute a registered sale deed in favour of the appellant.

23. Rise in prices is a matter of fact. What was the actual price of this property by the time the suit was laid was to be shown by the respondents. They did not exhibit any document showing its price. The contention of the learned counsel for respondents that the property is worth now Rs.2.5 Crores is not borne out through any evidence. Even if there is rise in prices it is obligated on part of the Courts to see what equity and justice demands in such circumstances. The precedent quoted by both sides do indicate that the Courts have to consider that rise in prices is a normal circumstance. Equity demands consideration of this rise in prices. To do justice in such circumstances Courts have to necessarily consider the conduct of the parties. If the purchaser

is at fault the consequence should be in one way. If the vendors are at fault the consequence should be in the other way. In the case at hand, till Ex.A.2-notice is served by appellant there was no refusal to oblige by the terms of the contract on part of the respondents. For the first time they expressed their refusal to execute the sale deed and informed it under Ex.A.3-reply notice and that forced the appellant to seek the relief in the Court. It is already noticed that Ex.A.1 by its terms mentioned payment of interest and it governs two eventualities. One on part of the purchaser and the other on part of the vendors. It is in the light of such circumstances, learned counsel for appellant suggested that in the event of this Court granting specific performance, the appellant is ready to pay the agreed interest in terms of Ex.A.1 over the balance sale consideration from 12.09.2002 which is the next day of Ex.A.6-part payment. In the opinion of this Court that fair proposal really satisfies the equity. The finding of the trial Court that only because of the rise in prices it could not grant specific performance is objectionable at law. Their Lordships of the Hon'ble Supreme Court of India have categorically held that mere rise in prices by itself shall not deprive the eligible purchaser from securing the relief of specific performance. The case facts eminently fall within the conspectus of the said ratio. Thus, to that extent the trial Court finding is incorrect. The contentions raised on behalf of the respondents are incorrect. Point Nos.3 to 5 are answered against the respondents and in favour of the appellant.

24. In the result, the impugned judgment of the learned trial Court shall be modified and hence, this Appeal is allowed. Appellant/plaintiff is entitled for specific performance of agreement for sale. Therefore, O.S.No.99 of 2007 stands decreed in the following terms:

Appellant/plaintiff shall deposit the balance sale consideration with 12% interest per annum from 12.09.2002 before the trial Court on or before 20.09.2024 with due intimation to the respondents. The respondents shall execute a registered sale deed in favour of the appellant and receive the deposited balance sale consideration on or before 20.10.2024. In the event of failure on part of the respondents/defendants, the appellant/plaintiff is entitled to have the registered sale deed obtained through process of the learned trial Court. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 21.06.2024

Note: LR copy to be marked

(B/o)

lvd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

APPEAL SUIT No.754 of 2010

Date: 21.06.2024

lvd