

(2017) 05 MAD CK 0040
In the Madras High Court
Case No : 409 and 410 of 2008

Ameer & Ors.

APPELLANT

Vs

S.Jayaraman

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

Citation : (2017) 05 MAD CK 0040

Hon'ble Judges : N. Sathish Kumar

Bench : SINGLE BENCH

Advocate : N. Sathish Kumar

Judgement

1. Aggrieved over the judgment and decree dated 28.08.2007 in O.S.Nos.212 of 2004 and 170 of 2005 passed by the learned trial judge decreeing the suit for specific performance filed by the plaintiff in O.S.No.212 of 2004 while dismissing the suit for recovery of possession in O.S.No.170 of 2005 filed by the defendants in O.S.No.212 of 2004, the present appeals in A.S.Nos.409 and 410 of 2008 respectively came to be filed by the defendants in O.S.No.212 of 2004.

2. Since the dispute arose in the suits are between the same parties, the facts are culled out from O.S.No.212 of 2004. For the sake of convenience, the parties are referred to, as per their ranking before the trial Court:

3. The facts of the case are briefed as follows: (i) The defendants 1 and 2 are husband and wife and defendants 3 to 6 are sons and daughters of the defendants 1 and 2. The defendants, who agreed to sell the suit property to the plaintiff, executed sale agreement dated 04.3.1996 for a total sale consideration of Rs. 10,52,000/- and also received an advance of Rs.2,00,000/- on the same date. It was agreed that the plaintiff will have to pay the balance sale consideration of Rs.8,52,000/- on or before 30.8.1996. Thereafter, on 10.5.1996, the 1stst defendant received a sum of Rs. 25,000/- towards the sale consideration. It is his case that he was ready and willing and is able to perform his part of the contract right from the beginning.

(ii) In the meanwhile, son of the defendants 1 and 2, by name, Jan Basha filed a suit on 27.6.1996 in O.S.No.461 of 1996 on the file of the District Munsif, Mettur for permanent injunction restraining the defendants not to execute sale deed in favour of the plaintiff and the same was transferred to District Munsif Court, Omalur and renumbered on O.S.No.963 of 1996. The plaintiff was also added as 2ndnd defendant in the said suit. The above suit was dismissed on 22.2.2002. Since the suit filed by the said Janbasha was pending, the defendants could not execute the sale deed in favour of the plaintiff. Even while the plaintiff prepared the suit for specific performance to be filed against the defendants on the file of Subordinate Judge, Sankari, the defendants themselves on 30.8.1996 approached the plaintiff and received a sum of Rs.1,25,000/- and executed a document whereby they have agreed to execute the sale deed after the suit filed by Janbasha was over. Even on the date of the said suit, possession of the property was handed over to the plaintiff. The appeal filed by the said Janbasha as against the dismissal of the suit in A.S.No.30 of 2002 is also dismissed on 12.11.2003.

(iii) After the suit and appeal were over, the plaintiff approached the defendants on 20.11.2003 and asked them to execute the sale deed after getting the balance of sale price of Rs.7,02,000/-. According to the plaintiff, In spite of the strenuous efforts taken by him to execute the sale deed, the defendants, under one pretext or other, have been evading to do so and lastly, they have taken hostile stand and stated that they are not willing to execute the sale deed. As the denial of execution of the sale deed is against law, the plaintiff has filed the suit. The plaintiff is in possession of money from the beginning to pay the balance sale consideration. Hence, the suit for specific performance.

(iv) Admitting the execution of sale agreement and receipt of Rs.2,00,000/-on the date of execution of the sale agreement dated 04.3.1996, it is the contention of the defendants that the time agreed between the parties is the essence of the contract. In fact, in the year 1996 itself, the 1stst defendant has approached the plaintiff through mediators for performing his part of the contract but he did not come and pay the balance amount. Then a Panchayat was convened by the elders of the village people, the 1stst defendant pressed the panchayators to direct the plaintiff to pay the balance sale consideration and execute the sale deed in his favour. On 30.8.1996 the panchayatdars and the plaintiff requested to the 1stst defendant to receive a sum of Rs.1,25,000/- and execute a Muchalikka in favour of the plaintiff by stating that the possession of the said property is handed over to the plaintiff. As per the request of the plaintiff and the Panchayatdars, the 1stst defendant and his family members executed the Muchalikka but the possession was not handed over to the plaintiff and it was with the 1stst defendant only.

(v) It is further stated by the 1stst defendant that his son Jon Basha has filed a suit against the 1stst defendant and the plaintiff on 27.06.1996 on the file of the District Munsif of Omalur in O.S.No.963 of 1996. Only to prefer a complaint

against the 1stst defendant's son Jon Bhasha before the police to avoid his trespass in the suit property, the plaintiff requested the 1stst defendant to execute the said Muchalikka. After execution of the Muchalikka also, the possession and enjoyment was with the 1stst defendant.

(vi) It is also stated that even after the dismissal of the suit and appeal filed by the son of the 1stst defendant, the plaintiff is not ready to pay the balance sale price and to get the sale deed in his favour. After execution of the sale agreement, eight years have elapsed. Now the present value of the said property is double the time of the amount that was mentioned in the said sale agreement. After dismissal of the suit and appeal filed by the 1stst defendant's son, the plaintiff made an attempt to take the possession forcibly but the same was thwarted by the defendants. Meanwhile in the second week of February, the plaintiff tried to get the possession of the said property forcibly from the 1stst defendant and the plaintiff tried to get the possession with the help of Omalur Police. Therefore, the 1stst defendant issued notice to the plaintiff and Sub Inspector of Police, Omalur Police station on 18.2.2004. The said notice was refused to be received by the plaintiff on 20.2.2004. The 1stst defendant also gave complaint before the Superintendent of Police, Salem on 04.3.2003. Again, he also preferred complaint before the Sub Inspector of Police, Omalur, on 5.3.2004 and the same was registered as complaint No.192 of 2004.

(vii) It is the case of the defendants that they are in possession and enjoyment of the suit property from 1965 to March 2004. On 25.3.2004, the plaintiff came with rowdy elements and took possession of the property forcibly. The 1stst defendant, who is a retired teacher and aged about 78 years, could not able to match the plaintiff with his rowdy elements. Therefore, he filed a suit for recovery of possession, mandatory injunction and permanent injunction in O.S.No.63 of 2004. Even though the suit filed by the 1stst defendant's son was pending, the same was not a bar for the plaintiff to execute the sale deed. The plaintiff has not taken steps to perform his part of the contract.

(viii) According to the 1stst defendant, though he approached the plaintiff several times in person and through mediators for performing his part of contract, he did not comply with the demands of the 1stst defendant. The plaintiff knew that Jon Bhasha has executed release deed in favour of the 1stst defendant and inspite of the same, he has wantonly postponed the performance of the contract with a view to cause wrongful loss to the defendants. The plaintiff has not deposited the balance sale consideration in favour of the defendants either in Court or in any other banks. The suit is filed with a delay of five years. Hence, prayed for dismissal of the suit.

(ix) The defendants 2,4, 5 and 6 have adopted the written statement filed by the 1stst defendant.

(x) The 3rdrd defendant has filed a written statement stating that the lease deed in favour of the defendants 1 and 2 is non-est in law. Filing of the suit by Jon

Basha, the son of the 1stst defendant, has nothing to do with the alleged agreement dated 04.3.1996. The 3drd defendant is also not aware of the receipt of Rs.25,000/- by the 1stst defendant on 10.5.1996. Filing of suit by the said Jon Basha is not a bar for the plaintiff to file the suit for specific performance of the contract. The suit is barred by limitation. It is also denied that the plaintiff approached the 1stst defendant on 20.11.2003. The allegation that the plaintiff is always ready and willing to purchase the property is also denied. Hence, prayed for dismissal of the suit.

4. In view of the above pleadings, the following issues were framed by the trial Court in O.S.No.212 of 2004 :

1. Whether the suit is bad for non joinder of necessary parties.

2. Whether the suit is barred by limitation?

3. Whether the plaintiff is entitled to specific performance?

4. To what relief the plaintiff is entitled to?

4.1. The following additional issues have also been framed by the trial Court :

1. Whether the plaintiff was always ready and willing to perform his part of the contract dated 04.3.1996?

2. Whether the possession of the property was handed over to the 1stst defendant towards part performance of the agreement dated 30.8.1996 as per Muchalikka?

4.2. The following issues were framed by the trial Court in O.S.No.170 of 2005 :

1. Whether the defendant" was in possession of the property as per the agreement of sale?

2. Whether the plaintiff is entitled to recovery of possession?

3. Whether the plaintiff is entitled for mandatory injunction as prayed for?

4. Whether the plaintiff is entitled to permanent injunction as prayed for?

5. To what relief the plaintiff is entitled to?

5. Common trial was conducted and evidence was recorded in O.S.No.212 of 2004. On the side of the Plaintiff, plaintiff examined himself as P.W.1 and Exs. A1 to A8 were marked. On the side of the defendants, 1st st st defendant examined himself as D.W.1 and C.Kandasamy and Ramasamy were examined as D.W.2 and D.W.3 respectively and Exs. B1 to B7 were marked.

6. After appreciating the oral and documentary evidence available on record, the trial Court decreed the suit filed by the plaintiff in O.S.No.212 of 2004 for specific performance and dismissed the suit filed by the 1stst defendant in O.S.No.170 of 2005 for recovery of possession, mandatory injunction and permanent injunction etc. Aggrieved over the same, A.S.No.409 of 2008 is filed against the judgment

and decree of the trial Court granting decree for specific performance and A.S.No.410 of 2008 is filed as against the dismissal of the suit filed for recovery of possession. During the pendency of the appeals the 1stst defendant died and his legal heirs, namely, appellants 2 to 6 were already on record in A.S.No. 409 of 2008. Similarly, the legal legal heirs were brought on record as appellants 2 to 6 in A.S.No.410 of 2008.

7. Learned counsel for the appellants in /defendants in O.S.No.212 of 2004 submitted that there was no dispute with regard to the execution of agreement as well as the receipt of advance amount. Time stipulated in the agreement is the essence of the contract. Even though one of the sons of the 1stst defendant has filed a suit as against father and agreement holder, namely, the plaintiff, the above suit itself is not a bar for performing his part of the contract, since there was no interim order, whatsoever, passed in the the above suit.

8. It is the contention of the learned counsel that Muchalikka was executed on 30.8.1996 in the presence of Panchayatdars only to prevent the 1stst defendant's son Jon Basha from trespassing into the suit properties. Only in the said circumstances, the recital was incorporated in the said Muchalikka as if possession of the suit property was handed over to the agreement holder, namely, the plaintiff, in fact, the possession continued with the original owner. Now Muchalikka dated 30.8.1996 has not been acted upon. The evidence of D.W.1 to D.W.3 clearly shows that Muchalikka has not been acted upon and possession has not been handed over to the plaintiff. The plaintiff has falsely pleaded as if the possession of the property was handed over. Since the plaintiff has come to Court with unclean hands, he is not entitled to specific performance.

9. It is the further submission of the learned counsel that only in the year 2004, the plaintiff has forcibly taken possession of the property with the help of police and rowdy elements. The 1stst defendant was aged about 78 years at the relevant time and he could not resist the forcible possession taken by the plaintiff. To vouchsafe the above facts, legal notice and police complaint were also filed and this fact clearly shows that the plaintiff has not come to Court with clean hands and he has suppressed the material facts. Merely because there is a recital in the Muchalikka, it cannot be presumed that possession of the property has been handed over to him on 30.8.1996.

10. It is also the contention of the learned counsel that though the agreement was entered in the year 1996, suit has been filed in the year 2004. There is an escalation of prices which has caused undue hardship to vendors. It is submitted that since there was no interim order, whatsoever, passed in the suit filed by the son of the 1stst defendant, there was no bar for registering the agreement. The plaintiff has not deposited the balance consideration at the relevant point of time. According to the learned counsel, had the plaintiff paid the amount, the defendants would have invested the same in some other manner. Hence, it is submitted that discretionary relief cannot be granted in favour of the plaintiff. It is the further submission of the learned counsel that the plaintiff has not proved

his readiness and willingness. Therefore, it is submitted by the learned counsel that the judgment and decree of the trial Court in granting specific performance warrants interference of this Court and the suit filed by the 1stst defendant for recovery of possession has to be allowed.

11. In support of his arguments, the learned counsel has placed reliance on the judgments reported in 1976 (1) MLJ 243 (Ramaswamy Gounder v. K.M.Venketachalam and Others), 1978 TNLJ 62 (Vyapuri gounder v. (Minor) Vijayan; 1993 (2) LW 411; (Krishnan Nair v. K.Parameswaran Pillai); 1993 (2) LW 84 (G.Chelliah Nadar v. Periasami Nadar); (1993) 1 LW 219 (Pushparani Shanmughasundaram v. Pauline Manonmani James) and 1994 (1) LW 321 (S.S.Chokkalingam v. R.B.S. Mani).

12. Per contra, the learned counsel appearing for the respondent/plaintiff in O.S.No.212 of 2004 vehemently opposed the appeals contending that there is no dispute with regard to the agreement and receipt of the balance sale consideration and that though time was fixed to complete the sale on or before 30.8.1996, the sale could not be executed by the defendants in view of the fact that Jon Basha, one of the sons of the 1stst defendant has filed the suit for permanent injunction not only against the 1stst defendant but also against the plaintiff. The above suit is also dismissed and the evidence of the 1stst defendant in the previous suit clearly shows that he has admitted the execution and he is ready to sell the property. Because of the pendency of the suit only, the sale could not be executed by the defendants.

13. The learned counsel for the respondent/plaintiff further submitted that possession of the suit property has also been properly handed over plaintiff pursuant to the Muchalikka executed by the 1stst defendant in the presence of Panchayatdars and hence, now contrary to the written document, the 1stst defendant cannot contend that possession was not handed over. Hence, it is the contention of the learned counsel that the judgment and decree passed by the trial Court in both the suits are based on proper appreciation of the evidence and law. Therefore, the learned counsel prayed for dismissal of the appeals. In support of his argument, the learned counsel relied on the judgment reported in 2017 1 CTC 446 (Nagarathinam v. S.Jaya)

14. In the light of the above submissions, now the points that arise for consideration in these appeals are: 1.Whether the plaintiff is always ready and willing to perform his part of the contract dated 04.3.1996?

2.Whether time is the essence of the contract between the parties?

3.Whether the suit property was handed over to the plaintiff in pursuance of the agreement of sale?

4.To what relief?

15. Execution of the agreement dated 04.3.1996 by the defendants in favour of the plaintiff for sale of the suit property for a total consideration of

Rs.10,52,000/- is not in dispute. The receipt of advance amount of balance sale consideration by the 1stst defendant is also not in dispute. The only dispute involved in this case is with regard to Muchalikka dated 30.8.1996 i.e. on the date of expiry of the agreement.

16. The only contention of the 1stst defendant is that Muchalikka was executed only to prevent his son from trespassing into the suit property. Though such contention has been put forward by the 1stst defendant, the receipt of Rupees One lakh twenty five thousand towards balance sale consideration on the date of Muchalikka is not disputed by him. P.W.1, in his evidence, has stated that ever since the date of agreement, he was ready and willing to perform his part of agreement. In the meanwhile, during the time period agreed between the parties in the agreement, Jon Basha, one of the sons of the 1stst defendant, has filed the suit in O.S.No.963 of 1996 on the file of the District Munsif, Omalur, as against the 1stst defendant and also the plaintiff and the said suit was dismissed only on 22.2.2002 and the appeal filed by him was also dismissed on 12.11.2003. Thereafter, he was always ready and willing to perform his part of the contract but the defendants have failed to honour the agreement. The filing of the suit restraining the 1stst defendant and plaintiff/ agreement holder for sale of the property is not disputed by both sides.

17. Evidence of D.W.1 also clearly shows that in fact the 1stst defendant and the plaintiff contested the suit filed by the 1stst defendant's son. Both of them, in fact, sent a reply notice engaging the same lawyer. In the above suit, D.W.1 was also examined wherein the 1stst defendant has, in fact, clearly admitted that possession was handed over to the plaintiff on 30.8.1996. This admission in the previous suit is also filed as Ex.A9. Ex.A9 statement of D.W.1 in the previous suit also put to him and he was confronted with the same during the cross examination in the present suit. Specific admission made by him in the previous suit, with regard to handing over the possession to agreement holder, namely, the plaintiff, also brought to his notice. However, he has just shown ignorance of the same during the cross examination.

18. Having made admission in the earlier suit filed by his son with regard to the suit property and having admitted the handing over of possession of the property to the plaintiff as part performance of the agreement dated 04.3.1996, the defendants, now, cannot take a contrary stand and the same clearly shows that his contention that possession has not been handed over to the plaintiff cannot be reliable. In this regard, when Ex.A1, agreement dated 04.3.1996, was carefully perused, it is seen that apart from the advance amount of Rs.2,00,000/- on the same day, further sum of Rs.25,000/- was also received on 10.5.1996 by the 1stst defendant and that in the agreement, time stipulated to complete the sale was on or before 30.8.1996. It is the admitted fact that within the period agreed between the parties, the 1stst defendant's son Jon Basha has filed a suit in O.S.No.963 of 1996 on the file of the District Munisf, Omalur. To show the same, Exs.A4 and A5, judgment and decree, were filed. The appeal

filed by him against Exs. A4 and A5 was also dismissed on 12.11.2003, which is evident from Ex.A6.

19. It is pertinent to point out that in the above suit, permanent injunction was sought not to alienate the suit property to the agreement holder, namely, the plaintiff in O.S.No.212 of 2004 was made as 2ndnd defendant. When the suit was filed as against the owner of the property and agreement holder, it is highly difficult for any of the parties to deal with the properties as the same will hit by doctrine of lis pendens. Therefore, it cannot be stated that the plaintiff ought to have paid the balance sale consideration within the period of time stipulated i.e. on or before 30.8.1996. When the agreement holder was also made as a party in the suit, he cannot deal with the property without the permission of Court, as, at the relevant point of time, any transaction is hit by doctrine of lis pendens.

20. Of course, the validity of the document executed during the pendency of the suit is always subject to the result of the suit. But an ordinary person, who was also made as a party to the suit, cannot be expected to know the result of the suit to proceed on the basis of the agreement to complete the sale transaction as agreed in the agreement. Therefore, the contention of the learned counsel for the appellants/defendants that the plaintiff ought to have paid the balance sale consideration on or before 30.8.1996 cannot be countenanced. In fact, the 1stst defendant, owner of the property was also made as a party in the suit filed by his son. Therefore, it is the normal conduct of any human being to wait till the decision of the suit.

21. Therefore, this Court is of the view that even though the time agreed between the parties expired on 30.8.1996, time cannot be treated as an essence of the contract in this case, since before the agreed time got expired, the suit has been filed for permanent injunction restraining the transfer of the property. Therefore, the time agreed between the parties cannot be treated as an essence of the contract.

22. In the instant appeals, admittedly, the parties have, in fact, waited till the disposal of the earlier suit and appeal. When Ex.A3 Muchalikka, dated 30.8.1996 is carefully seen, it is clear that the defendants have, in fact, executed Muchalikka in the presence of the Panchayatdars confirming the sale agreement and receipt of advance and subsequent payment of Rs.1,25,000/- (Rupees one lakh Twenty Five thousand only). It has been clearly stated that in view of the suit filed by the son of the 1stst defendant, the matter was getting delayed. After receiving further sum of Rs.1,25,000/- from the plaintiff, the 1stst defendant has handed over possession of the property to the plaintiff. Muchalikka, Ex.A3 is also not denied by the defendants. The only contention of the defendants is that only at the instance of the Panchayatdars the recital to the effect that the suit property was handed over to the plaintiff was incorporated in the agreement whereas in the suit filed by the son, he has categorically admitted that possession of the property was handed over to the plaintiff. Therefore, his contention that possession has not been handed over to the plaintiff cannot be

given any importance.

23. More so, having admitted the execution of Muchalikka, his oral evidence does not help him to invalidate the written document. Further, to show that the recitals with regard to the possession of the property have been written formally, none of the panchayatdars was examined by him. Therefore, the contention of the learned counsel for the appellant/1stst defendant in O.S.No.212 of 2004 that possession of property not handed over cannot be countenanced.

24. Though Exs. B2 and B3 Adangals of the year 2004 has been filed to show as if the defendant was in possession of the property, it is to be noted that these Adangals are normally issued to note down the nature of crops in the suit property and owner names are normally reflected only on the basis of the documents. Admittedly, the suit property has not been transferred in the name of the defendant and these Adangals were obtained only in the year 2004. No earlier documents have been filed to show that the defendants are in possession of the property. Similarly, Village Administrative Officer, who issued such Adangal certificates has not been examined. Hence, the above documents will not help to prove the possession.

25. Even though legal notice Ex.B4 has been filed to show as if the plaintiff has tried to take possession of the property in the year 2004 itself, mere issuing legal notice and giving some complaint and getting receipt itself is not sufficient to infer that the defendants are in possession. Having admitted the fact with regard to handing over of possession in the written documents, now the defendants cannot take a contrary stand than the written contracts.

26. That apart, Panchayatdar, who signed in the Muchalikka, has not been examined by the defendants. Whereas D.W.2 and D.W.3 witnesses were examined to show that only the defendants are in possession of the suit property. D.W.2 in chief examination also admitted about the Muchalikka, dated 30.8.1996. However, D.W.2 stated that possession has not been handed over. D.W.2 and D.W.3 have not signed in the document. If really they were present at the relevant point of time, nothing prevented them to sign in the document as witnesses. Therefore, their evidence cannot be given any importance to infer that Ex.A3 Muchalika was not intended for handing over possession.

27. It is worthy to note that the suit filed by one of the sons of the defendant ended after the dismissal of the appeal on 12.11.2003. It is the evidence of P.W.1 that even after dismissal of the suit, he was always ready and willing to pay the balance sale consideration and also requested the defendants several times to perform their part of the contract but only the defendants postponed the issue till March 2004 and hence, he has filed the suit. This part of P.W.1's evidence is not specifically denied in the cross examination. In fact a suggestion was put to P.W.1 that after the dismissal of the appeal, the 1stst defendant, in fact, sent a legal notice to the plaintiff for payment of balance sale consideration to get the sale deed registered. The above notice has also not seen the light of the day.

28. The very suggestion put to PW1 by the defendants clearly indicates that the defendants were ready to execute the sale deed in the month of February 2004. But the so-called legal notice has not seen the light of the day. The fact remains that the suit has been filed on 05.4.2004 immediately after four months after the disposal of the appeal. The plaintiff has clearly pleaded in his plaint that he requested the defendants several times after disposal of the appeal to execute documents but the defendants have not come forward to execute the sale after receiving sale consideration. The manner in which the plaintiff paid advance and subsequent payments within the agreed period and he has also contested the suit filed by the 1stst defendant's son, clearly indicate that he was always ready and willing to perform his part of the contract. The delay has occurred in this case only due to the pendency of the suit, which was dismissed only on 20.11.2003. Thereafter, it is the categorical case of the plaintiff that he has requested the defendants on several occasions, but they did not come forward to execute the sale deed.

29. On a careful perusal of the entire records more particularly, the pleadings, evidence, Ex.B3, Muchalikka as well as the conduct of the parties, this Court is of the view that as part performance of the contract possession has been handed over pursuant to the agreement dated 04.3.1996. Therefore, now the defendants cannot take contrary stand. As stated earlier, various circumstances pleaded in the plaint and the evidence adduced would clearly prove the fact that the plaintiff was always ready and willing to perform his part of the contract. Therefore, the contention of the learned counsel for the appellants /1stst defendant that plaintiff's readiness and willingness has not been pleaded in the plaint will not help his case as readiness and willingness has to be gathered from the circumstances of each case. Exact phraseology cannot be expected in every plaint. Readiness and willingness can be gathered from the entire pleadings.

30. In the judgment reported in Ramaswamy Gounder v. K.M.Venkatachalam and others (cited supra), it has been held that false allegation pleaded in the plaint dis-entitled the plaintiff. Similarly, in Vyapuri Gounder v. (Minor) Vijayan, which has been cited by the learned counsel for the appellants, it has been held that false averments in the material ingredients in the plaint dis-entitled the plaintiff for specific performance. Likewise, in the case of Krishnan Nair Vs.K.Prameswaran Pillai (cited supra) it has been categorically held that the person coming to Court with unclean hands is not entitled for specific performance. Insofar as the other judgments relied on by the learned counsel for the appellants in G.Chelliah Nadar v. Periasami Nadar; Pushparani Shanmughasundaram v. Pauline Manonmani James and S.S.Chokkalingam v. R.B.S. Mani are concerned, absolutely, there is no dispute with regard to the proposition of law laid down by this Court. But in this case, on the facts and evidence, this Court does not find any suppression of facts by the plaintiff. Only the defendants have taken a contrary stand and, in fact, the 1stst defendant was confronted with his previous admissions and the same would clearly show that he has set up a false plea. Hence, the above judgments are not applicable to the

facts of the present case.

31. The factual matrix indicates that the plaintiff was put in possession in the year 1996 itself. Of course, the delay has occurred only due to the suit filed by the 1stst defendant's son and that there was no fault on the side of the defendants at initial stage. If the sale had taken place within the period as agreed, the defendants would have received entire sale consideration and they would have invested the same in better manner i.e. by investing the same by purchasing some other property. The delay occurred in this case was not due to the mistake on either side and the same was only due to the pendency of the suit from the year 1996 till 2003. The plaintiff was also put in possession of the property from the year 1996. By the passage of time, due to escalation of the price, the value of the suit property also increased. Had the remaining sale consideration of Rs.7,20,000/- was deposited or invested in some other manner in the year 1996, the said amount would have accrued more than 70% as of today. Of course, the defendants have also had the benefit of Rs.3,50,000/- paid by the plaintiff at the time of agreement for more than 20 years. Though the plaintiff was put in possession of the property from 1996, but the defendants, without any fault of them for the delay caused, had lost some amounts and also appreciation, as the same was caused only due to the son of the 1stst defendant by filing the suit.

32. Though this Court is aware of the fact that the Court cannot substitute terms of the contract, taking into consideration of peculiar circumstances of the case, this court is of the view that the defendants may be given additional consideration towards sale of the property.

33. In view of the same, this Court, taking into consideration of equity and the fact that the suit property is more than six acres, in order to meet the ends of justice, is of the view that the plaintiff may be directed to pay the additional sum of Rs.10,00,000/- to the defendants apart from the balance sale consideration which appears to be deposited before the Court, within a period of four months from the date of receipt of a copy of this judgment.

34. Accordingly, the appeal in A.S.No.409 of 2008 is partly allowed and the judgment and decree of the trial Court in O.S.No.212 of 2004 is modified and the plaintiff is entitled to decree of specific performance provided he pays a sum of Rs.10,00,000/- to the appellants herein /defendants in O.S.No.212 of 2004 as additional consideration, apart from the balance sale consideration, within four months from the date of receipt of the copy of this judgment. On such payment or deposit in the Court, the appellants herein / defendants are directed to execute the sale deed in favour of the plaintiff, failing which executing Court shall execute the sale. In view of the above discussions, the appeal in A.S.No.410 of 2008 filed by the appellants herein, i.e. defendants in O.S.No.212 of 2004/ plaintiff in O.S.No.170 of 2005, against the dismissal of the suit in O.S.No.170 of 2005 for recovery of the suit property, stands dismissed confirming the judgment and decree of the trial Court. However, there shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.