

(2011) 04 GUJ CK 0134
In the Gujarat High Court
Case No : Second Appeal No. 274 of 2010

Ashabhai Dhulabhai Patel

APPELLANT

Vs

Patel Shardaben

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Specific Relief Act, 1963 — Section 10

Citation : (2011) 04 GUJ CK 0134

Hon'ble Judges : Bela Trivedi, J

Bench : Single Bench

Advocate : Megha Jani, for the Appellant; Mamta R. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Bela Trivedi, J.—This Second Appeal, filed u/s 100 of the Code of Civil Procedure, is directed against the judgment and order dated 18th October, 2010 passed by the learned Additional District Judge, Ahmedabad (Rural), (hereinafter be referred to as "the Lower Appellate Court") in Regular Civil Appeal No. 62 of 2005, whereby it has confirmed the judgment and decree dated 23.10.1981 passed by the learned Civil Judge (S.D.), Narol (hereinafter be referred to as "the Trial Court") in Special Civil Suit No. 175 of 1979.

2. The facts in nutshell, giving rise to the present appeal are that the present Appellant (original Plaintiff) had filed the suit being Special Civil Suit No. 175 of 1979 against one Chandulal Ishwarbhai Patel (original Defendant and the predecessor of the present Respondents), seeking specific performance of the Agreement dated 18.05.1978 (hereinafter be referred to as "the said agreement") executed by the said Defendant in favour of the Plaintiff, for the sale of agricultural lands bearing Survey Nos. 82/4 and 83, admeasuring 10 Gunthas and 9 Gunthas respectively, situated at Village: Narol, District, Sub-District, Taluka: Ahmedabad (hereinafter be referred to as "the suit lands"), and alternatively seeking refund of Rs. 14,000-00, being consideration paid under the

agreement, and further seeking the damages to the tune of Rs. 10,000-00 for the breach of agreement. It was alleged inter alia in the plaint that the Defendant was the owner of the suit lands, who had executed the agreement dated 18.05.1978 in favour of the Plaintiff for the sale of the suit lands for consideration of Rs. 18,000-00, out of which the Plaintiff had paid Rs. 2,000-00 towards earnest money, Rs. 6,000-00 towards sale consideration and another Rs. 6,000-00 towards consideration in cash. According to the Plaintiff, the Defendant had handed over the possession of the suit lands to the Plaintiff at the time of execution of the said agreement and, thereafter, the parties had to apply for obtaining necessary permissions under the Urban Land (Ceiling and Regulation) Act, 1976 and the Bombay Tenancy Act. It was also stated in the plaint that the Plaintiff was ready and willing to perform his part of contract by paying remaining amount of Rs. 4,000-00 to the Defendant, and had also called upon the Defendant to execute the sale-deed in favour of the Plaintiff, however, the Defendant did not execute the same. The Plaintiff had, therefore, filed the suit seeking specific performance of the said agreement and other reliefs as stated earlier. The said suit was resisted by the Defendant by filing written statement at Ex.12, denying the allegations made in the plaint and further contending inter alia that the Plaintiff had paid only Rs. 8,000-00 i.e. Rs. 2,000-00 towards earnest money and Rs. 6,000-00 towards sale consideration, however, had not paid another Rs. 6,000-00 in cash as alleged in the plaint. It was also contended that the possession of the suit lands was never handed over to the Plaintiff pursuant to the said agreement, though it was mentioned so in the agreement. It was also contended that the suit lands were under the charge of the Bank of India and even otherwise, the Plaintiff had not taken any action for obtaining necessary permissions from the Government Authorities and not shown any readiness and willingness to perform his part of contract. According to the Defendant, the Plaintiff had not paid the remaining amount of sale consideration within the period of 9 months fixed in the said agreement and, therefore, earnest money was liable to be forfeited and the said agreement was liable to be treated as cancelled. The Defendant had, therefore, prayed to dismiss the suit of the Plaintiff.

3. The Trial Court, after taking into consideration, the evidence adduced by the parties, dismissed the suit of the Plaintiff vide judgment and decree dated 23.10.1981 by holding inter alia that the Defendant had not handed over the possession of the suit lands to the Plaintiff pursuant to the agreement dated 18.05.1978; that the Plaintiff had not paid the additional amount of Rs. 6,000-00 over-and-above Rs. 8,000-00, as alleged in the suit; and that the Plaintiff had failed to prove that he was ready and willing to perform his part of contract. It appears that being aggrieved by the said judgment and decree passed by the Trial Court, the Appellant-Plaintiff had preferred the First Appeal being First Appeal No. 974 of 1982 before this Court u/s 96 of the Code of Civil Procedure. However, the Civil Courts Act, 2005 having come into force, the said First Appeal was transferred to the District Court, Ahmedabad (Rural). The said Appeal,

thereafter, was registered as Regular Civil Appeal No. 62 of 2005 before the Lower Appellate Court. The Lower Appellate Court, after taking into consideration the evidence on record and hearing the learned advocates for the parties, dismissed the said appeal and confirmed the judgment and decree passed by the Trial Court as per the order dated 18.10.2010. Being aggrieved by the said judgment and order dated 18.10.2010 passed by the Lower Appellate Court, in Regular Civil Appeal No. 62 of 2005, the Appellant-Plaintiff has preferred the present Second Appeal u/s 100 of the Code of Civil Procedure.

4. Ms. Megha Jani, learned advocate for the Appellant taking the Court to the judgments and orders passed by both the Courts below, vehemently submitted that both the Courts below had failed to appreciate the evidence on record and more particularly the agreement in question. Ms. Jani, submitted that the Plaintiff had already paid Rs. 14,000-00 out of Rs. 18,000-00 towards the sale consideration at the time of execution of the agreement by the Defendant, and was ready and willing to pay the balance amount of Rs. 4,000-00 to the Defendant, as stated in the plaint as well as in the deposition of the Plaintiff, however, the Defendant had failed to perform his part of contract by not executing the sale-deed in favour of the Plaintiff. Of course, she has fairly submitted that the possession was not handed over to the Plaintiff at the time of execution of the agreement and that even as on today, the present Respondents (legal heirs of original Defendant) are in possession of the suit lands. She submitted that there was no fault on the part of the Plaintiff and it was the Defendant who had failed to perform his part of the contract.

5. Ms. Jani has placed heavy reliance on the judgment of Hon''ble Supreme Court in the case of Laxmi Ram (Dead) by LR. and Ors. v. Bietshwar Singh and Ors. (2008) 10 S.C.C. 697 , to submit that since the Courts below have misappreciated the evidence on record that itself would be a substantial question of law, as contemplated u/s 100 of the Code of Civil Procedure. Ms. Jani has also placed heavy reliance on the judgment of the Hon''ble Supreme Court in the case of Balasaheb Dayandeo Naik (Dead) through LR. and Others Vs. Appasaheb Dattatraya Pawar, , to submit that time is not the essence of the contract in case of sale of immovable property, and that the intentions of the parties are required to be appreciated for considering whether the specific performance of the agreement should be granted or not. Ms. Jani also pressed into service Section 10 of the Specific Relief Act, to submit that the specific performance of the contract was required to be granted against Defendant as the breach of contract to transfer immovable property could not be adequately relieved by compensation in terms of money. Ms. Jani also relied upon the decision of the Hon''ble Supreme Court in the case of P.S. Ranakrishna Reddy Vs. M.K. Bhagyalakshmi and Another, , to submit that the rise in the price of an immovable property by itself would not be a ground to refuse enforcement of a lawful agreement of sale. According to Ms. Jani, there being difference of opinions between the members of the bench of Hon''ble Supreme Court in the case of Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and Others, , the

question as to whether the equitable relief of specific performance of contract should be granted or refused considering escalation of price of the property or not, was referred to the larger Bench and the Hon'ble Supreme Court in the said case reported in (2002) 8 S.C.C 146 had held inter alia that there is no general rule that the Plaintiff must necessarily be denied the specific performance only on account of phenomenal increase in price of land occurred during the pendency of the litigation. Ms. Jani also relied upon the decision of the Hon'ble Supreme Court in the case of Faquir Chand and Anr. v. Sudesh Kumari, reported in (2006) 12 SCC 146 to submit that the compliance of requirement of the readiness and willingness on the part as the Plaintiff should be seen in spirit and substance, and not in letter and form. In the instant case, runs the submission of Ms. Jani, the Plaintiff had always shown his readiness and willingness to perform his part of contract namely to pay the remaining amount of sale consideration and to get the sale-deed executed in his favour, but the Defendant had failed to perform his part of contract. She also submitted that both the Courts below, while holding that the Defendant had also failed to perform his part of contract, have material erred in law, in not granting the specific performance of the agreement in favour of the Plaintiff.

6. Ms. Mamta R. Vyas, learned advocate for the Respondents (the legal heirs of the original Defendant), however, vehemently submitted that there being concurrent findings of facts recorded by both the Courts below, and there being no substantial question of law involved, the Second Appeal deserves to be dismissed. According to Ms. Vyas, even though time was not the essence of the contract, the time limit fixed in the agreement could not be ignored for the purpose of considering whether the Plaintiff was ready and willing to perform his part of contract or not. Ms. Vyas, taking the Court to the evidence led by the parties in the Trial Court, submitted that the Plaintiff had not come with clean hands and had filed the suit with mala fide intention as the prices of the suit lands had escalated. She submitted that the Plaintiff had failed to prove that the Plaintiff had paid Rs. 14,000-00 out of Rs. 18,000-00 towards sale consideration at the time of execution of the agreement, and had also failed to prove that the possession of the suit lands was handed over to him at the time of execution of the agreement. She further submitted that the Plaintiff had not taken any action for removing the charge of the Bank which was there on the suit lands, and had also not taken any action for obtaining the necessary permissions under the Urban Land (Ceiling and Regulation) Act, 1976 and the Bombay Tenancy Act, prior to filing of the suit, nor had called upon the Defendant to obtain such permissions, and, therefore, it could not be said that the Plaintiff was ready and willing to perform his part of contract.

7. Relying upon the decision of the Hon'ble Supreme Court in the case of A.K. Lakshmipathy (Dead) and Others Vs. Rai Saheb Pannalal H. Lahoti Charitable Trust and Others, , Ms. Vyas submitted that there being concurrent findings of facts on the issue that the Plaintiff had failed to prove his readiness and willingness to perform his part of contract, this Court sitting in second appeal

should not interfere with the said findings of facts. She also submitted that the Defendant had also tried to return the earnest money with interest after the judgment of the Lower Appellate Court, however, the same was not accepted by the Plaintiff. Ms. Vyas also submitted that thereafter during the pendency of this appeal also, the Respondents, by way of good gesture had made offer to pay Rs. 7 Lakhs towards the refund of earnest money with interest and towards the damages, however, the said offer was also not accepted by the Appellant, which conduct of the Plaintiff clearly establishes that the Appellant is taking undue advantage of the litigation which is pending since last thirty three years, only with a view to fetch more money from the Respondents To sum up, Ms. Vyas, submitted that both the Courts below having rightly appreciated the evidence on record and dismissed the suit of the Plaintiff, the present Second Appeal also deserves to be dismissed.

8. At the outset, it is required to be noted that this Second Appeal u/s 100 of the CPC is directed against the concurrent findings of facts recorded by both the Courts below that the Plaintiff had failed to prove that he was ready and willing to perform his part of contract and was entitled to get the sale-deed executed in his favour in respect of the suit lands. Of course, such concurrent findings of facts themselves would not be a ground for not entertaining the present Second Appeal. However, this Court is required to consider as to whether any substantial question of law is involved in the case or not, as contemplated u/s 100 of the Code of Civil Procedure. It is needless to say that what is the substantial question of law would depend upon the facts of each case and there could not be any straightjacket formula which would decide whether any substantial question of law is involved or not in a given case. However, a very pertinent observations made by the Hon"ble Supreme Court in the case of Boodireddy Chandraiah and Others Vs. Arigela Laxmi and Another, , are required to be reproduced, wherein the Hon"ble Supreme Court, considering the earlier decisions, has interpreted the phrase "substantial question of law", as under:

11. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. See: Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., .

12. The principles relating to Section 100 Code of Civil Procedure, relevant for this case, may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

13. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

9. In light of the above settled legal position, let us examine as to whether the Courts below have ignored the evidence or acted on no evidence or have drawn wrong inferences from the proved facts or have wrongly cast burden of proof, so as to find out whether any substantial question of law was involved in the case or not.

10. As stated earlier, the present Appellant-original Plaintiff had filed the suit against predecessor of the Respondents (original Defendant) seeking specific performance of the agreement in question and in the alternatively, seeking refund of earnest money with interest and damages. It cannot be again said that in the suit for specific performance, the Plaintiff is entitled to seek alternative relief of refund or earnest money in the event the decree of specific performance could not be granted for any reason. It is also axiomatic that as per the provisions contained in Section 10 of the Specific Relief Act, though the relief of

specific performance of contract is the relief which could be granted at the discretion of the Court, as per the explanation contained in the said section, unless and until the contrary is proved, the Court is required to presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money. Further, it is also well settled proposition of law that in case of sale of immovable property, there is no presumption as to the time being "essence" of contract. The beneficial reference is also required to be made of the decision of the Hon"ble Supreme Court in the case of Balasaheb Dayandeo Naik (Dead) through LRs. and Others Vs. Appasaheb Dattatraya Pawar, relied upon by Ms. Jani, learned advocate for the Appellant, wherein the Hon"ble Supreme Court after referring the earlier decisions, has observed as under:

10. In Chand Rani v. Kamal Rani a Constitution Bench of this Court has held that in the sale of immovable property, time is not the essence of the contract. It is worthwhile to refer the following conclusion: (SCC pp. 525, 527 and 528, paras 19, 21 and 23)

"19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

21. In Govind Prasad Chaturvedi v. Hari Dutt Shastri following the above ruling it was held at pp. 543-44:(SCC para 5) 5. ...It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract Vide Gomathinayagam Pillai v. Pallaniswami Nadar (at p.233). It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

23. In Indira Kaur v. Sheo Lal Kapoor in para 6 it was held as under: (SCC p.495)

"6. ...The law is well settled that in transactions of sale of immovable properties, time is not the essence of the contract."

11. It is clear that in the case of sale of immovable property, there is no

presumption as to time being the essence of the contract.

11. Thus, it is well settled proposition of law that in case of sale of immovable property, time is not presumed to be the essence of contract, however, it is also well settled that the time limit fixed in the agreement cannot be totally ignored, rather such time limit would assume significance to see the conduct of the parties as regards their readiness and willingness to perform their respective part of the contract.

12. In light of the above stated legal position, the material question that arises before this Court is whether the Courts below have rightly appreciated the evidence on record to conclude that the Plaintiff had failed to prove that he was ready and willing to perform his part of contract before seeking relief of specific performance of the agreement in question. It is needless to say that in suit for specific performance of contract of sale of immovable property, it has to be proved by cogent evidence that the Plaintiff who is seeking for a decree of specific performance of the agreement was always ready and willing to perform his part of contract and to comply with the terms of agreement for sale and that, his intention was to keep the contract subsisting till it was executed. Having regard to the evidence on record and to the paper book it emerges that the agreement in question was executed and signed by the predecessor of the Respondents i.e. Chandulal Ishwarbhai Patel in favour of the Appellant-Plaintiff Ashabhai Dhulabhai Patel on 18.05.1979 in respect of the suit lands for consideration of Rs. 18,000-00. It has been stated in the said agreement that out of the sale consideration of Rs. 18,000-00, the Plaintiff had paid Rs. 2,000-00 towards earnest money and Rs. 6,000-00 towards sale consideration, and that the said Chandulal Ishwarbhai Patel, had to execute the sale-deed in favour of the Plaintiff after making the titles of the suit lands clear and marketable, and the Plaintiff had to make payment of the balance amount of the sale consideration within a period of nine months. It was also stated that the possession of the suit lands was handed over to the Plaintiff. It was also stated that the necessary permissions from the Government Authorities for the sale of the suit lands were to be obtained jointly by both the parties and if the said permissions were not granted by the Government Authorities, the agreement was required to be treated as cancelled.

13. Now, so far as the averments made in the plaint are concerned, it was stated by the Plaintiff in the plaint that at the time of execution of the said agreement, the Plaintiff had in all paid Rs. 14,000-00 out of Rs. 18,000-00, inasmuch as he had paid Rs. 2,000-00 by way of earnest money, Rs. 6,000-00 by way of sale consideration and again Rs. 6,000-00 by cash, and that the Plaintiff was handed over the possession of the suit lands by the said Defendant at the time of execution of the said agreement. It has also been averred in the plaint that the Defendants had not taken any action to make the title of the suit lands clear and marketable even though called upon by the Plaintiff; that no permission, either under the Urban Land (Ceiling and Regulation) Act, 1976 and the Bombay

Tenancy Act was required to be obtained from the concerned authorities and that the Plaintiff was ready and willing to pay the balance consideration of Rs. 4,000-00 to the Defendants, however, since there was rise in the price of the suit lands, the Defendant did not want to execute the sale-deed in favour of the Plaintiff. It is pertinent to note that the Plaintiff has examined himself in the Trial Court at Ex.37 and has reiterated the averments made in the plaint. He has deposed therein that he had sent one Ashwin Maneklal to the predecessor of the Defendants with letter calling upon him to make the title of the suit lands clear and marketable, however, the predecessor of the Defendants had not taken any action to remove the charge over the suit lands. In the cross-examination, he has admitted that he did not have any documentary evidence to show that he had called upon the Defendant to obtain the permission. The said Ashwinbhai has also not been examined by the Plaintiff. Thus, except the bare version of the Plaintiff in his deposition, there is nothing on record to suggest that he had taken any action to obtain the necessary permission or called upon the Defendant to obtain the permissions or to remove the charge over the suit lands.

14. Further, the Plaintiff had deposed that he was put in possession of the suit lands by the Defendant and that he had paid Rs. 6,000-00 by cash over and above Rs. 8,000-00 to the Defendant at the time of agreement executed by the Defendant, and that said amount of Rs. 6,000-00 was borrowed by himself from his brother-in-law Shri Rameshbhai. The Plaintiff had examined the said Rameshbhai Shivabhai at Ex.47, who happened to be the brother-in-law of the Plaintiff. So far as the payment of Rs. 6,000-00 allegedly paid by the Plaintiff in addition to Rs. 8,000-00 is concerned, the said witness had stated that about 15-20 days after execution of the agreement, he had gone to the place of the Plaintiff with cash amount of Rs. 6,000-00, where said Chandubhai was also called, and he was paid Rs. 6,000-00 in cash, however, the said Chadubhai had not given receipt thereof. In the cross-examination, he had admitted that he did not have any documentary evidence to show that the Plaintiff had paid the said amount of Rs. 6,000-00 in cash to said Chandubhai. The said witness had also admitted that he was present at the time of the execution of the said agreement and that the possession of the suit lands was not handed over to the Plaintiff at the time of the execution of the said agreement and that, the possession was with the Defendant only.

15. Having regard to the said evidence adduced by the Plaintiff, it clearly transpires that there were number of contradictions in the pleadings made in the plaint and the oral evidence of the witnesses examined by the Plaintiff including in the evidence of the Plaintiff himself. As regards the payments made by the Plaintiff towards the sale consideration, though it was mentioned in the agreement at Ex.35 that the Plaintiff had paid Rs. 2,000-00 towards earnest money and Rs. 6,000-00 towards sale consideration and in all Rs. 8,000-00, out of total amount of consideration of Rs. 18,000-00, the Plaintiff had come out with a new case in the plaint that over-and-above the said amount of Rs. 8,000-00, he had paid Rs. 6,000-00 in cash to said Chandubhai, and thus, had paid in all

Rs. 14,000-00 at the time of the execution of the agreement. He had stated that the said cash amount of Rs. 6,000-00 was borrowed by him from his brother-in-law Rameshbhai Shivabhai and was paid to said Chandubhai. However, said Rameshbhai Shivabhai examined by the Plaintiff had stated in his evidence that he had gone to the house of the Plaintiff with cash amount of Rs. 6,000-00 about 15-20 days after execution of the said agreement. In this regard, it is required to be noted that material contradictions have surfaced in evidence with regard to the payment of Rs. 6,000-00, allegedly paid by the Plaintiff at the time of execution of the said agreement. As rightly held by both the Courts below, if the said additional amount of Rs. 6,000-00 was paid by the Plaintiff over-and-above Rs. 8,000-00 at the time of execution of the agreement, it would have been mentioned in the agreement itself. That being not mentioned in the agreement and admittedly, there being no documentary evidence with the Plaintiff to show the payment of the said amount of Rs. 6,000-00 on the date of execution of agreement in question, the story put forth by the Plaintiff in the suit that he had paid in all Rs. 14,000-00 out of Rs. 18,000-00 on the date of agreement in question, does not inspire any confidence, more particularly when his own witness Rameshbhai Shivabhai had also not supported the said version. It, therefore, transpires that the Plaintiff, only with a view to exaggerate the facts, to show his readiness and willingness to perform his part of contract, had come out with the false case of having made payment of additional amount of Rs. 6,000-00 on the date of agreement. As rightly pointed out by Ms. Vyas, at the fag end of the trial in the suit, on 13.10.1981, the Plaintiff had filed the purshis at Ex.45, that if the said amount of Rs. 6,000-00 was not believed to have been paid by the Plaintiff, he was ready and willing to deposit the said amount in the Court. The said purshish given subsequently, had no significance, as the Trial Court was required to consider the evidence on record as regards the payments made by one Plaintiff at the time of execution of the agreement and thereafter till the filing of the suit. In view of the said evidence on record, both the Courts below have rightly held that the Plaintiff had failed to prove that he had paid Rs. 14,000-00 out of Rs. 18,000-00 towards the sale consideration.

16. So far as the possession of the suit lands is concerned, it is required to be mentioned that though it was stated in the agreement at Ex.35 that the possession was handed over to the Plaintiff, in fact, no such possession was handed over to the Plaintiff. The said position has been admitted by witness Rameshbhai Shivabhai, examined by the Plaintiff himself. Ms. Jani, learned advocate for the Appellant - Plaintiff has also fairly stated that possession of the suit lands was not handed over to the Plaintiff at the time of execution of the agreement in question and that, the possession was and is with the Respondents only.

17. As regards the other terms of the agreement also, as stated earlier except the bare version of the Plaintiff, there is nothing on record to suggest that the Plaintiff had taken any action for obtaining necessary permission from the Government Authorities or had given any notice to the said Chandubhai, calling

upon him to obtain necessary permission from the Government Authorities and to remove the charge of the Bank over the suit lands. Of course, the the said Chandubhai, original Defendant also does not appear to have taken any action for obtaining such permission, though it was required to be obtained jointly by himself and the Plaintiff as per the said agreement. However, when the suit was filed by the Plaintiff seeking specific performance of the agreement executed by the Defendant, the burden was on the Plaintiff to prove that he was ready and willing to perform his part of agreement. The Plaintiff had also not adduced any evidence, except his bare version in the deposition, to show that he was ready and willing to pay the balance amount of consideration. Thus, in the instant case, the Plaintiff had miserably failed to prove by leading cogent evidence that he was ready and willing to pay the balance amount of sale consideration and had taken the necessary action for obtaining the requisite permissions from the Government Authorities, or had called upon Chandubhai, predecessor of the Respondents to take action for obtaining permission and also to remove the charge over the suit lands before filing of the suit. In the circumstances, both the Courts below have rightly appreciated the evidence on record and rightly held that the Plaintiff having failed to prove that he was ready and willing to perform his part of contract, he was not entitled to the specific performance of the agreement in question. There being no illegality or infirmity in the judgment and orders passed by both the Courts below, this Court finds no question of law, muchless substantial question of law being involved in the case, for the purpose of entertaining the present Second Appeal.

18. There could not be any disagreement with the proposition of law laid down in the decisions of the Hon''ble Supreme Court relied upon by Ms. Jani, learned advocate for the Appellant-Plaintiff to the effect that the rise in prices in immovable properties should not be a ground to deny the Plaintiff the relief of specific performance, however, in the instant case, the Plaintiff has not been denied the said relief on the ground of rise in the price of the suit lands, but the same is denied on the ground that the Plaintiff had failed to prove his readiness and willingness to perform his part of contract. In that view of the matter, there being no substantial question of law involved in this Second Appeal, the same deserves to be dismissed.

19. Before parting with the judgment, it may be stated that during the course of arguments, Ms. Vyas, learned advocate for the Respondents, had offered the Appellant to make payment of Rs. 7 Lakh by way of good gesture towards refund of the earnest money with the interest and towards damages. However, the same was not acceptable to the Appellant, as submitted by Ms. Jani, learned advocate for the Appellant. In any case, having regard to the facts and circumstances of the case and to the said offer made by Ms. Vyas, it is directed that though the relief of specific performance has been denied to the Appellant, the Respondents are required to refund the earnest money with interest and the damages to the Appellant-Plaintiff, which is quantified at Rs. 7 Lakhs, and the same shall be paid by the Respondents to the Appellant within six weeks from today.

20. For the reasons stated above, the present Second Appeal being devoid of merits, is dismissed, with no order as to costs.

21. At this juncture, Ms. Jani, learned advocate for the Appellant requests the Court to extend the interim relief granted earlier for a period of 8 weeks to enable the Appellant to approach the Hon"ble Supreme Court, to which Ms. Vyas, learned advocate for the Respondents has vehemently objected. It is true that the Appellant-Plaintiff has failed to prove his case in both the Courts below, and also in this Second Appeal and that the Respondents have been restrained from selling or transferring the suit lands for about more than three decades due to the pendency of this litigation. However, since the interim relief was in operation during the pendency of the suit and in the appeal, the same is further extended for a period of 4 weeks from today in the interest of justice.