

(2010) 07 MAD CK 0092
In the Madras High Court
Case No : A.S. No. 974 of 2003

Bafna Developers

APPELLANT

Vs

D.K. Natarajan, D.K. Krishnamurthy, K.S. Santha and R.
Anusuya

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Land Acquisition Act, 1894 — Section 4(1), 5A
Specific Relief Act, 1963 — Section 16, 20(3)

Citation : (2010) 4 LW 129

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : P.T. Asha, for Sarvabhauman Associates, for the Appellant; T.R.
Rajagopal for T.R. Rajaraman, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This Appeal arises out of the judgment and decree dated 31.1.2003 made in O.S. No. 104 of 2001 on the file of

Additional District Judge-cum-Fast Track Court, Coimbatore dismissing the Plaintiff/Appellant's suit for specific performance. The unsuccessful

Plaintiff is the Appellant. For convenience, the parties are referred in their original rank in the suit.

2. The suit was originally filed before the Sub-Court, Coimbatore and numbered as O.S. No. 1272 of 1995 and later transferred to the Additional

District Judge -cum- Fast Track Court, Coimbatore and re-numbered as O.S. No. 104 of 2001. The suit property and other properties originally

belonged to late Kuppuswamy Chettiar ½ the father of Defendants. He died intestate on 27.6.1968. After the death of Kuppuswamy Chettiar,

his widow i.e. D.K. Saraswathy and his children partitioned the properties under registered partition deed dated 7.6.1975. Since then Defendants

and their mother D.K. Saraswathy have been in peaceful possession and enjoyment of the suit property. The Government of Tamil Nadu desirous

of acquiring the suit property for the purpose of housing Coimbatore Central Post Office issued 4(1) notification to acquire an extent of 28,222

sq.ft of land situated in T.S. No. 935/2. The Defendants have filed their objections before the Revenue Divisional Officer, Coimbatore.

3. Case of Plaintiff is that after filing of objections for land acquisition proceedings, the Defendants have approached the Plaintiff offering to sell the

suit property. The Plaintiff offered all kinds of assistance to get the suit property de-notified from acquisition. The Plaintiff and Defendants have

entered into an agreement of sale on 2.7.1986 and the price agreed to be paid by the Plaintiffs to the Defendants is Rs. 125/- per sq.ft. Parties

have further agreed that as per the agreement the Plaintiff should pay Rs. 2,75,000/- towards the estimated and agreed value of the buildings

standing in the suit property. The Plaintiff has paid an advance of Rs. 1,00,000/- by way of five cheques of Rs. 20,000/- to each of the Defendants

and their mother i.e. D.K. Saraswathy. As per the terms of agreement, the Plaintiff would endeavour to get the property freed from acquisition

and take the sale deed.

4. Further case of Plaintiff is that in order to assist and help the Defendants in getting the acquisition proceedings dropped and de-notified, the

Defendants and their mother late D.K. Saraswathy gave general Power of Attorney in favour of Bhanwarlal H. Ranka on 2.7.1986 and again after

the death of Saraswathy, Defendants have executed Power of Attorney on 2.5.1989 in favour of the said Bhanwarlal H. Ranka for the same

purpose of cancellation of acquisition proceedings. Further case of Plaintiff is that in furtherance of the terms of agreement the Plaintiff has also

moved Government of India (in short, "GOI") and GoI has agreed to drop the acquisition proceedings on condition that the land owner should

construct 4000 sq.ft in the ground floor and 4,000 sq.ft in the first floor with necessary access roads and the draft agreement was also sent to the

Defendants for the purpose of execution by the Government and the Defendants. But the Defendants did not come forward to enter into agreement

with GoI. In the meanwhile, alleging that the Defendants are trying to alienate the property, Plaintiffs have filed O.S. No. 783 of 1990 for

permanent injunction restraining the Defendants from alienating the property in favour of the 3rd parties. The Plaintiff has also filed O.S. No. 9 of

1991 for decree of mandatory injunction directing the Defendants to enter into an agreement with the Government as proposed by the Government

in the draft agreement sent to the Defendants themselves. According to the Plaintiff, they are professional builders and are financially very sound

and that they have always been ready and willing to perform their part of the contract by paying the balance sale consideration of Rs.

42,73,162.50 and to get the sale deed executed at their cost. The Plaintiff has alleged that the Defendants have taken different stands at each stage

and the 4th Defendant had attempted to return 1/5th of advance amount received by her and the same was returned by the Plaintiff refuting the

contentions made by her. Alleging that the Defendants have committed breach of contract and that they are falsely alleging that the sale agreement

has come to an end, Plaintiff has filed the suit for specific performance to direct the Defendants 1 to 4 to execute the necessary sale deed in respect

of the suit property, and in the event of their failure, to get the sale deed executed through process of Court.

5. Denying the plaint averments, Defendants 1 to 3 filed written statement contending that the parties have clear intention of having the time as

essence of contract. According to the Defendants, the Plaintiff was bound to purchase the property within three years and if the acquisition was not

dropped and if the sale has not taken place within three years the agreement becomes infructuous and invalid and the Defendants are to refund the

earnest money deposit paid by the Plaintiff. According to the Defendants, Plaintiff was never ready and willing to perform his part of the contract

as per the terms of the contract and the Plaintiff did not have the required funds to pay the balance of sale price and to make the expenses of

preparation and registration of sale deed. The Defendants further averred that the draft sent by the GoI for demolishing the existing building in the

suit property and for construction of new building and incorporating the terms that the Defendants should accept the rate fixed by the Central

Public Works Department and the terms are contrary to the terms and spirit of the sale agreement dated 2.7.1986. Further case of Defendants is

that the Power of Attorneys executed in 1986 and 1989 were only in terms of agreement of sale, which was in force at the time of their execution

and they cannot survive beyond the survival of sale agreement. The Defendants further alleged that the Plaintiff was aware of the repudiation of

contract by the Defendants even before filing O.S. No. 783 of 1990 and the Plaintiff has filed frivolous suits - O.S. Nos. 783 of 1990 and 9 of

1991. The main defence plea is that since time was made the essence of contract, suit filed in 1995 is barred by limitation.

6. The 4th Defendant has filed separate written statement alleging that the Plaintiff is guilty of breach of contract and that she has sent a legal notice

on 20.1.1990 to the Plaintiff revoking the contract and returning the advance of Rs. 20,000/-. Reiterating the contentions of other Defendants, 4th

Defendant also prayed for dismissal of the suit.

7. On the above pleadings, the trial Court has framed six issues. Before the trial Court, Plaintiff examined himself as P.W.1 and one Bhanwarlal H.

Ranka, in whose name Exs.A.5 and A.6- Power of Attorneys were executed, was examined as P.W.2. On behalf of the Plaintiff, Exs.A.1 to A.21

were marked. On the Defendants' side, 2nd Defendant ½ Krishnamurthy was examined as D.W.1 and Exs.B.1 to B.9 were marked. Upon

consideration of oral and documentary evidence trial Court held that in view of Clause (8) of Ex.A.1 agreement, the contract has become

impossible of performance. The trial Court further held that adding three years and 3 months to date of agreement (Ex.A.1), the stipulated time

was 2.10.1989, whereas the suit was filed on 16.2.1995 and the trial Court has answered issue No. 3 that the suit is barred by limitation. The trial

Court took the view that by filing of the earlier suits ½ O.S. Nos. 783 of 1990 and 9 of 1991, Order 2 Rule 2 C.P.C. is not attracted and there

is no impediment for the Plaintiff to file the suit for specific performance and issue No. 2 was answered in favour of Plaintiff firm. However holding

that the Plaintiff has not adduced substantive evidence to show the readiness and willingness and since Ex.A.1 agreement has become time barred,

trial Court held that the Plaintiff is not entitled to the decree for specific performance.

8. Challenging the findings, the learned Counsel for Appellant Ms. P.T. Asha submitted that only if acquisition proceedings are dropped the Plaintiff

will have the right to get the sale deed and therefore the time will start run only after the acquisition proceedings were dropped and the land is freed

from acquisition and while so trial Court erred in saying that Ex.A.1 agreement has become time barred. Further contention of the Appellant is that

W.P. No. 4925 of 1987 was allowed in August 1994 and after issuing Ex.A.12 1½ notice on 28.9.1994, the Plaintiff has filed the suit on

16.2.1995 within a period of one year of allowing of the Writ Petition and therefore the suit is well within the period of limitation. The learned

Counsel would further contend that execution of fresh power of attorney 1½ Ex.A.6 would show that the Defendants were satisfied that the

Plaintiff was pursuing the matter in getting the property de-notified from acquisition and while so trial Court erred in finding that the Plaintiff was not

ready and willing to perform his part of the contract. The main contention of the Appellant is that limitation will start only from the date of de-

notification i.e., only in 1994 when in the writ petition land acquisition proceedings came to be quashed and the suit filed in 1995 is well within the

period of limitation. Further contention of Appellant is that when Plaintiff had taken appropriate steps Defendants cannot blame the Plaintiff for

breach of contract.

9. On behalf of the Defendants, learned Senior Counsel Mr. Rajagopal submitted that Clauses 4, 5 and 8 in Ex.A.1 would categorically show that

the time stipulated was only two years plus one year and another 3 months and thereafter the agreement would become infructuous. Further

contention is that Plaintiff, being a real estate dealer, was conscious of the Clauses and that he cannot evade the time stipulated in Ex.A.1. Drawing

our attention to Ex.B.2, order in W.P. No. 4925 of 1987, learned Senior Counsel would further submit that even though the Writ Petition was

allowed the Court has granted liberty to the Government to proceed from Section 5-A enquiry and that the Defendants were pursuing with the

matter even after disposal of the Writ Petition and therefore allowing of W.P. No. 4925 of 1987 would not give any cause of action to the Plaintiff

to file the suit. While supporting the judgment and decree, the learned Senior Counsel also made submissions contending that the findings of the

trial Court for issue No. 2 - Order 2 Rule 2 C.P.C. is erroneous.

10. Upon analysis of evidence, judgment of the trial Court and the submissions

of Plaintiff and Defendants, the following points arise for consideration:

1. Whether, as per Clause 8, Ex.A.1 ½ agreement has become infructuous as it became impossible of performance as it was impossible of getting the property freed from being acquired?
2. Whether the suit for specific performance filed in 1995 is not barred by limitation?
3. Having regard to the filing of two earlier suits ½ O.S. Nos. 783 of 1990 and 9 of 1991, whether Order 2 Rule 2 C.P.C. is attracted in a suit for specific performance filed in 1995?
4. Whether the Appellant/Plaintiff has established the mandatory requirement of Section 16(c) proving his readiness and willingness?
5. Whether the Appellant/Plaintiff is entitled to the discretionary relief of specific performance?

11. Point Nos. 1, 4 and 5:

The suit property relates to prime property measuring an extent of 28,222 sq.ft in Avinashi Raod, Coimbatore. The suit property was sought to be acquired for the purpose of Central Post Office in Coimbatore. The Plaintiff firm, being promoters and builders and also influential, offered to purchase the suit property and also assured that they would get the suit property de-notified from being acquired and get the suit property free from acquisition. On that understanding, the Plaintiff firm and the Defendants entered into Ex.A.1 ½ agreement of sale on 2.7.1986. Price of land was agreed at the rate of Rs. 125/- per sq.ft., and that the Plaintiffs should pay Rs. 2,75,000/- towards the estimated and agreed value of the building standing in the suit property.

12. Parties were quite conscious that time is the essence of contract. Contention of the Plaintiff is that the intention of the parties is to perform their part of contract within three months from the date of notification of land acquisition proceedings and when admittedly land acquisition proceedings are pending it cannot be said that the suit was not filed within three years from the time fixed in the agreement. Further case of Appellant/Plaintiff is that the parties themselves have made it clear in Clause (5) of the agreement that the contract has to be performed within three months from the

date of de-notification and only on that basis the parties have agreed that the time is the essence of the contract. The learned Counsel for the

Plaintiff/appellant Ms. P.T. Asha contended that as stipulated in the agreement ĩ½ Ex.A.1, the Plaintiff was to file the suit within three months from

the date of de-notification and when the land acquisition proceedings were pending, the Plaintiff cannot be faulted for non-filing of the suit for

specific performance at an early date.

13. Clauses (4) to (8) in Ex.A.1 ĩ½ agreement of sale are to the effect that the purchaser would endeavour to get the property freed from

acquisition and take the sale within two years and if not done so, the purchaser had to pay the higher price at 15% increase till the 3rd year only to

get the property freed and take the sale. As per the terms of the contract, the Plaintiff was bound to purchase the property within three years and

within three months thereafter even if the acquisition was not dropped. Clause (4) of Ex.A.1 is to the effect that the Plaintiff should endeavour to

get the acquisition proceedings dropped within two years and if not dropped extended by another period of one year with increase of 15 percent

of the sale consideration amount.

14. To appreciate the contentious points, we may usefully refer to Clauses 4, 5 and 8 in Ex.A.1 ĩ½ agreement of sale, which read as under:

4. The purchasers agree to assist and help to endeavour in getting the Acquisition proceedings dropped and de-notified from being acquired within

two years, and however, if the Acquisition Proceedings are not got dropped within the said period of two years, then this agreement shall be

extended by another period of one year with an increase of 15% of the sale consideration amount, from this date.

5. The sale deed shall be completed within 3 months from the date of de-notification, time being the essence of this contract.

....

8. If it becomes impossible for getting the schedule property free from being acquired within three years from this date as stipulated in para 4, then

this agreement for sale will become infructuous and in that event the vendors herein agree to return back the said earnest money of Rs. 1,00,000/-

they received from them to the purchasers and the purchasers herein agree to receive the said amount from the vendors without claiming any

interest thereon, and the said amount is to be paid back at the earliest.

15. The contention of the Appellants is that only as and when the acquisition proceedings are dropped and it was de-notified and the property is

freed from acquisition, the Plaintiff would get the right to get the sale deed. The contention of the Plaintiff/Appellant is that the Writ Petition W.P.

No. 4925 of 1987 was allowed on 8.8.1994 (Ex.B.2) and immediately thereafter Plaintiff had issued notice Ex.A.12 notice calling upon the

Defendants to receive the balance sale price and to execute the sale deed and thereafter Plaintiff had filed the suit for specific performance and

therefore there are no laches on the part of the Plaintiff.

16. As pointed out earlier, parties i.e. Plaintiff and Defendants were conscious of getting the acquisition proceedings dropped within the stipulated

period of two years and if acquisition proceedings are not got dropped within the period of two years, then the agreement has to be extended by

another one year with an increase of 15 percent of sale consideration. The intention of the parties is that if the property is not freed from acquisition

within three years, the agreement of sale will become infructuous and the intention of parties is clearly manifested in Clause 8. The Plaintiff and

Defendants were conscious as to what should happen if the property is not freed from acquisition within three years. The clear intention of the

parties is that the agreement will become infructuous if it becomes impossible of getting the property freed from the acquisition within three years

and the vendors are to return the earnest money of Rs. 1,00,000/-, which they received from the purchasers/Plaintiff firm. Therefore, it cannot be

contended that identification of the property from acquisition was the sole determining factor for getting the sale deed. On the other hand, the

parties were quite conscious of the terms of the agreement that the de-notification should happen within three years and if it is not possible of

getting the property de-notified from acquisition the agreement would become infructuous.

17. As per Clause (4) of Ex.A.1, the Plaintiff agreed to assist and help to endeavour in getting the acquisition proceedings dropped and de-

notified. To facilitate the same, the Defendants have executed Ex.A.5 i.e. general Power of Attorney on the same day of agreement i.e., 2.7.1986

in favour of P.W.2 i.e. Bhanwarlal H. Ranka and authorising him to represent the

Defendants before the concerned Departments and Officers of the GoI, Government of Tamil Nadu and revenue officials and also Corporation of Coimbatore and postal authorities and take appropriate steps

for deletion of the proposed acquisition. On 2.5.1989, the Defendants have again executed Ex.A.6 i.e. Power of Attorney in favour of P.W.2 i.e.

Bhanwarlal H. Ranka. Laying emphasis upon Ex.A.6, learned Counsel for Plaintiff contended that the very fact that Defendants 1 to 4 have

executed Ex.A.6 i.e. Power of Attorney in 1989 in favour of the Plaintiff and Defendants were conscious in extending the time to the Plaintiff in

getting the property freed from acquisition. The further contention of the Plaintiff is that execution of Ex.A.6 i.e. Power of Attorney in 1989 would

again indicate that time was not made the essence of the contract and that the sale deed has to be taken only on the property being de-notified and

freed from acquisition.

18. Of course, the Defendants 1 to 4 did give Ex.A.6 i.e. Power of Attorney to P.W.2 on 2.5.1989. The execution of second Power of Attorney

- Ex.A.6 necessitated because of death of mother i.e. D.K. Saraswathy, since after her death, Ex.A.5 i.e. general Power of Attorney became

defunct. That apart, at the time of execution of Ex.A.6 on 2.5.1989, the time stipulated under Ex.A.1 - agreement of sale had not expired and time

was still available for completion of contract. In Ex.A.6, there is nothing to indicate that by execution of Ex.A.6, Defendants had the intention of

supplementing Clauses 4 and 8 in Ex.A.1 and thereby extending the time. Ex.A.6 only authorises P.W.2 to approach the officials and do the

needful in getting the property freed from acquisition. Therefore, Ex.A.6 i.e. Power of Attorney is neither renewal nor has effect of extending the

time stipulated under Ex.A.1 i.e. agreement of sale. There is no force in the contention of the Plaintiff that by execution of Ex.A.6 i.e. Power of

Attorney on 2.5.1989, Defendants have intended to extend the time stipulated under Ex.A.1.

19. Case of Plaintiff is that they have taken all steps and also succeeded in the cancellation of the acquisition proceedings to a great extent.

According to the Plaintiff, GoI has agreed to drop the acquisition proceedings on condition that in the place of 28,222 sq.ft and the building

thereon, GoI wanted a separate building measuring 4000 sq.ft of constructed

area of both ground and first floors for which the present standing buildings have to be given up and separate buildings are to be put up. Further case of Plaintiff is that the Government insisted upon an agreement to be executed between the Defendants and the GoI with the conditions mentioned thereon has also sent necessary draft agreement for approval of the same by the Defendants and its execution so that Government could drop the entire proceedings of the suit property. Speaking about the draft agreement sent by GoI, P.W.1 has also stated that only at their instance, the GoI has sent the draft agreement, but the Defendants have not come forward to approve the draft agreement and thereby committed breach. In fact, the Plaintiff has filed O.S. No. 9 of 1991 seeking for mandatory injunction directing the Defendants 1 to 4 to enter into necessary agreement with President of India as per the draft agreement sent by GoI. Case of Plaintiff is that acting in furtherance of terms of the agreement they have approached the GoI, who in turn, had sent the draft agreement.

20. As contended by the Defendants, demolition of the existing buildings and construction of new buildings is not in consonance with the terms and spirit of the sale agreement. In his evidence, D.W.1 has stated that the draft agreement for dropping acquisition proceedings is marked as Ex.B.9.

By reading of Ex.B.9, it is seen that owners/Defendants are to construct 8,000 sq.ft. carpet area within a span of three years with provision of approach road and also to execute long term lease to the GoI for 30 years with option to renew up to 99 years. The owners/Defendants are to agree to the rate fixed by the Central Public Works Department. As per the conditions, if the owners of the property failed to complete the construction of building within the stipulated period of three years, the GoI shall have the right to initiate the acquisition proceedings afresh under the Land Acquisition Act. As rightly contended by the learned Senior Counsel for the Defendants, Ex.A.1 i.e. 1/2 sale agreement does not contemplate any such course. The Plaintiff has not stated as to who should bear the expenses for the construction of the said building with 8000 sq.ft. carpet area. Since the terms of Ex.B.9 - draft agreement are contrary to the terms and spirit of the sale agreement, it cannot be held that the Plaintiff has performed his part of contract.

21. Even according to the Plaintiff, Defendants have not approved the draft

approval sent by Union of India and thereby the Defendants have not co-operated in getting the property excluded from the acquisition proceedings. Though Plaintiff has alleged non-co-operation of the Defendants, at that stage, the Plaintiff has not chosen to file the suit for specific performance. Instead he has filed only suit for mandatory injunction - O.S. No. 9 of 1991 directing the Defendants 1 to 4 to enter into necessary agreement with the President of India as per the draft agreement.

22. As pointed out earlier, construction of new building of about 8000 sq.ft., providing access roads and committing to the Government to lease out the new building for 30 years with options to renew upto 99 years and agreeing to rates of rent to be fixed by Central Public Works

Department are contrary to the spirit of Ex.A.1 agreement of sale. Ex.B.9 is ½ Draft agreement cannot be said to be in furtherance of terms of

contract and intention of the parties. Even assuming that the Defendants have not co-operated in approving the draft agreement and that the

impossibility of performance was due to Defendants' fault, in equity, the Plaintiff would not be entitled to the decree for specific performance.

23. It is pertinent to note that at that stage the 4th Defendant had sent Ex.A.3 notice (20.1.1990) repudiating the contract and sending back the

sum of Rs. 20,000/- received by her as advance as per Clause 8 of the agreement of sale. Even when the 4th Defendant had taken stand

repudiating the contract and also returning the advance amount, the Plaintiff has not then chosen to file the suit for specific performance. On the

other hand, he has only filed the suit is ½ O.S. No. 783 of 1990 for permanent injunction alleging that the Defendants are attempting to alienate the

suit property and sought for permanent injunction restraining the Defendants from alienating the suit property.

24. Clause 8 in Ex.A.1 is emphatic i.e., if the contract becomes impossible of performance for getting the property freed from acquisition within

three years from the date of agreement (2.7.1986), then the agreement for sale will become infructuous. As per Section 20(3) of the Specific Relief

Act, the Court may properly exercise discretion to decree specific performance in any case where the Plaintiff has done substantial acts or suffered

loss in consequence of a contract capable of specific performance. It is only where contract is capable of specific performance and the Plaintiff has

done substantial acts of the contract the Court would exercise its discretion in his favour. Considering the surrounding circumstances and conduct

of the parties, the suit filed by the Plaintiff in 1995 is not maintainable and the Plaintiff is not entitled to any relief.

25. To obtain a decree for specific performance, the Plaintiff has to allege and prove continuous readiness and willingness from the date of the

contract to the time of hearing to perform the contract on his part. Section 16(c) of the Specific Relief Act provides that the plaintiff must plead and

prove that he has always been ready and willing to perform his part of the essential terms of the contract. The continuous readiness and willingness

at all stages from the date of agreement till the date of the hearing of the suit need to be proved. The substance of the matter and surrounding

circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform his part of the

contract.

26. The mere statement in the plaint expressing readiness and willingness would not be sufficient. The material should be placed to prove the same.

In the instant case, the evidence and circumstances would clearly indicate that the readiness and willingness contended by the Plaintiff was only an

empty averment in the plaint. Evidence and surrounding circumstances clearly indicate that the Plaintiff was not ready and willing to perform his part

of the contract.

27. As pointed out earlier, time stipulated under Ex.A.1 ½ agreement of sale was a period of two years from 2.7.1986 and for further one year

with an increase at the rate of 15 percent, totalling 3 years i.e., 2.7.1989. As per Clause 5, the sale deed shall be completed within three months

from the date of de-notification i.e., 2.10.1989. As pointed out earlier, by sending Ex.A.3 notice, even in January, 1990, 4th Defendant has

repudiated the contract and sent back advance amount received by her. In spite of receipt of Ex.A.3 notice and the conduct of the Defendants in

not approving the draft agreement, Plaintiff has not chosen to file the suit for specific performance. Surrounding circumstances and conduct of the

Plaintiff show that the Plaintiff was not ready and willing to perform his part of the contract, But he has only filed O.S. No. 783 of 1990 - the suit

for permanent injunction and another suit - O.S. No. 9 of 1991 to direct the

Defendants to enter into agreement with President of India.

28. In or about 1990, the Central Government has sent Ex.B.9 i½ draft approval containing the terms and conditions for de-notifying the property

from acquisition. No evidence was adduced by the Plaintiff as to who should bear the expenses for the construction of 8000 sq.ft and providing

other infrastructure for the said building like access road, etc., When the Government sent Ex.B.9 i½ draft agreement, if really the Plaintiff was

ready and willing to perform his part of the contract he could have filed the suit for specific performance expressing his readiness and willingness to

abide by the terms of the draft agreement and expressed his willingness to construct the building as required by the Government of India and the

Plaintiff could have insisted for getting and thereby the Plaintiff could have very well filed the suit for specific performance. But that was not to be

so. He has filed only the suit - O.S. No. 9 of 1991 seeking for mandatory injunction directing Defendants 1 to 4 to enter into necessary agreement

with the President of India. The facts, evidence and conduct of parties clearly show that the Plaintiff was not ready to take the sale deed within the

stipulated period.

29. Point No. 2:

Learned Counsel for the Appellant contended that only if acquisition proceedings are dropped, the Plaintiff will have the right to get the sale deed

and when the Writ Petition was pending to quash the acquisition proceedings the Plaintiff could not have earlier filed the suit for specific

performance and the suit is not barred by limitation.

30. Learned Counsel Ms. Asha would further contend that when the Writ Petition - W.P. No. 4925 of 1987 came to be allowed only in August

1994 and thereafter the Plaintiff had issued Ex.A.12 notice (28.9.1994) and immediately thereafter the Plaintiff had filed the suit and therefore the

Plaintiff cannot be faulted for not filing the suit at an early date. The contention that the entire land acquisition proceedings was quashed by the

order in W.P. No. 4925 of 1987 does not merit acceptance. By reading of Ex.B.2, it is seen that while allowing the Writ Petition, the acquisition

proceedings after the stage of Section 4(1) notification was quashed, and the Court has directed a fresh enquiry u/s 5-A of the Act in regard to the

lands in question and the Government could decide to proceed with the

acquisition by issuing a declaration. It is thus evident that even though W.P.

No. 4925 of 1987 was allowed, the Court has directed enquiry u/s 5-A and even after allowing of writ petition, the land acquisition proceedings

continued. The learned Senior Counsel for the Respondents/Defendants Mr. T.R. Rajagopal submitted that in the second round of litigation, land

acquisition proceedings came to be quashed finally only in 2008. Therefore, cause of action could not have arisen on disposal of Writ Petition ĩ½

W.P. No. 4925 of 1987.

31. As discussed earlier, under Ex.A.1, the parties have agreed that the property has to be de-notified from acquisition within two years and with

an increase of 15 percent by another period of one year and the sale deed has to be completed within three months from the date of notification.

As per the recitals in Ex.A.1, the outer time limit for performance of the contract is 2.10.1989. Within three years thereafter the Plaintiff ought to

have filed the suit. As discussed earlier, the 4th defendant repudiated the contract by issuing Ex.A.3 notice (20.1.1990). Even then the Plaintiff had

not chosen to file the suit. The Plaintiff had filed the suit ĩ½ O.S. No. 9 of 1991 seeking for a mandatory injunction directing the Defendants to

enter into contract with President of India as per the draft agreement. The said suit ĩ½ O.S. No. 9 of 1991 was filed on 7.1.1991. The 1st

Defendant has filed written statement on 2.8.1991 alleging that the Plaintiff was guilty of breach of contract and that he was never ready and willing

to perform his part of the contract. All the Defendants have raised their defence in the written statement. The first defendant also raised a plea that

the contract has become infructuous on 2.7.1989 and averred that the Power of Attorney automatically stood revoked. In spite of stiff resistance

by the 1st Defendant, the plaintiff has not chosen to file the suit within three years thereafter, but has only filed the suit on 6.4.1995. Pointing out the

various dates and conduct of the parties, the trial Court rightly held that the suit is barred by limitation and the finding of trial Court on Issue No. 3

is confirmed.

32. Point No. 3:

The Plaintiff has filed the suit ĩ½ O.S. No. 783 of 1990 for permanent injunction restraining the Defendants from alienating the suit property.

Again the Plaintiff has filed O.S. No. 9 of 1991 seeking for a mandatory

injunction directing the Defendants to enter into necessary agreement with the President of India as per the draft agreement. All the contentious points raised between the parties in this suit were raised in the earlier suits. On Issue No. 2, the trial Court has held that even though two previous suits were filed, the present suit, being one for specific performance of contract, is not barred under Order 2 Rule 2 C.P.C.

33. The learned Senior Counsel for the Defendants submitted that both the earlier suits referred to the same set of facts and obligations and also proceeds on the footing of Clauses in Ex.A.2 agreement and therefore the present suit is barred under Order 2 Rule 2 C.P.C. The learned Senior Counsel would further contend that as per Order 41, Rule 22 C.P.C, while supporting the decree, it is open to the Respondents/Defendants to challenge the findings on any specific issue, which were registered against them. Order 41 Rule 22 is a special provision, whereby the respondent, without filing any cross objection, can support the decree and also urge that any issue found against him is erroneous in addition to his right to support the decree on any other point.

34. In order to attract Order 2 Rule 2 C.P.C, the earlier suit should be founded on the same cause of action on which the subsequent suit is based and if in the earlier suit the plaintiff has omitted to sue in respect of or intentionally relinquished any portion of his claim, he will not be subsequently entitled to sue in respect of the portion of his claim so omitted or relinquished. Order 2 Rule 2 C.P.C. is directed in securing the exhaustion of relief in respect of a cause of action.

35. As we have discussed earlier, the earlier two suits are founded on the same cause of action i.e., the agreement of sale and on the same cause of action that the Defendants are not coming forward to perform their obligations and breach of contract. In N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LR's. and Others, , the Appellants/Plaintiffs therein sought for permanent injunction against the Defendants from interfering with their possession of suit property in the earlier suit. In the earlier suit, the Appellants/Plaintiffs neither claimed relief of declaration that original sale deed on basis of which respondents have acquired title to the suit property was a loan transaction nor claimed specific performance of said agreement for re-conveyance in the earlier suit. They have only claimed

permanent injunction restraining the defendants from interfering with their possession of suit property. On such facts, in the said case, the Supreme Court held that the subsequent suit for specific performance of the agreement for re-conveyance is clearly barred by limitation.

36. In similar facts and circumstances in Kalash Properties Pvt. Ltd. Vs. Lilly Pushpam, Sheela, K.K. Ravi and S. Sasikala, , in the earlier suit, the

plaintiff sought for relief of permanent injunction on the averments that a threat was made by the first defendant to dispossess him of the property

and, second suit was one for specific performance. Referring to N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and

Others, and other decisions, the Division Bench in the above judgment has held that pleadings in both the suits and cause of action in both the suits

were based on the very same and identical facts and that the cause of action seeking for the relief of specific performance was available in the

earlier suit and the suit for specific performance is barred under Order 2 Rule 2 C.P.C.

37. The test should be whether the cause of action on which the present suit for specific performance was filed, was available to the Plaintiff. In our

considered view, the cause of action is identical and the present suit for specific performance is barred under Order 2 Rule 2 C.P.C. Upon analysis

of evidence and materials on record, the trial Court rightly held that the suit for specific performance is not maintainable and is clearly barred by

limitation. The finding of the trial Court on Issue No. 2 is also reversed and it is held that the suit is barred under Order 2 Rule 2 C.P.C.

38. The findings of trial Court are based upon facts and evidence. Since the suit filed in 1995 is not maintainable, the plaintiff is not entitled to the

relief of specific performance. Upon analysis of evidence, we find that the findings of the trial Court are based upon evidence warranting no

interference and the Appeal is liable to be dismissed.

39. In the result, the Judgment dated 31.1.2003 made in O.S. No. 104 of 2001 on the file of the I Additional District Court½cum-Fast Track

Court at Coimbatore is confirmed and the Appeal is dismissed with costs.