

(2017) 08 KAR CK 0021
In the Karnataka High Court
Case No : 1349 of 2009

CHHANDSI ABROL W/O M.L.ABROL, & ANR.	APPELLANT
Vs	
M.T.RANGASWAMY S/O LATE THIMMAPPAIAH, & ANR.	RESPONDENT

Date of Decision : 19-08-2017

Acts Referred:

[Evidence Act, 1872](#), [Section 114\(g\)](#), [Section 92](#) - Court may presume existence of certain facts -
Exclusion of evidence of oral agreement
[Specific Relief Act, 1963](#), [Section 35](#)

Citation : (2017) 08 KAR CK 0021

Hon'ble Judges : Ashok B. Hinchigeri

Bench : SINGLE BENCH

Advocate : S.SHAKER SHETTY, G.S.PRASANNA KUMAR, B.MANJUNATH

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and decree, dated 24.11.2009 passed by the Court of the XXV Additional City Civil Judge, Bangalore (CCH-23) in O.S.No.1736/2005. The parties are referred to as per their rankings in the suit proceedings.

2. The plaintiff's case in brief is that the Railway Men's House Building Co-operative Society Limited ("R.H.C. Society" for short) allotted the suit site to the defendant No.1. The defendant No.1, agreeing to sell the same to the plaintiff for his family necessity for Rs.9,00,000/- entered into the agreement, dated 9.2.2004. He took the advance of Rs.1,50,000/- from the plaintiff. Subsequently, the plaintiff gave Rs.4,50,000/- to the defendant No.1 towards the sale consideration. The said Society executed the sale deed, dated 12.2.2004 in favour of the defendant No.1. On 7.8.2004, the defendant No.1 handed over the original sale deed, letter of confirmation and Possession Certificate issued by the said Society to the plaintiff. On being put in possession of the suit property, the plaintiff put up the fence. The plaintiff has always been ready and willing to pay

the balance amount of Rs.3,00,000/- and get the sale deed registered in his name.

3. The defendant No.1 failed to get the Khatha changed in his name and to execute the sale deed in favour of the plaintiff. On the other hand, the defendant No.1 caused the issuance of the legal notice, dated 23.8.2004 terminating the agreement. Further, the defendant No.1 sold the suit property to the defendant No.2 by a registered sale deed, dated 27.8.2004. The plaintiff filed the suit for specific performance of the contract and in the alternative, for refund of the advance consideration amount of Rs.6,00,000/- with interest at 18% p.a. and also for damages.

4. The defendant No.1 filed the written statement admitting the sale agreement, dated 9.2.2004 in favour of the plaintiff and the receipt of a sum of Rs.6,00,000/- from the plaintiff towards the advance sale consideration. However, the defendant No.1 contended that the plaintiff failed to fulfill his part of the contract. The plaintiff, who is a real estate agent, could not mobilise the balance sale consideration of Rs.3,00,000/-, as he did not locate the ultimate buyer. Therefore, the defendant No.1 rightly cancelled the sale agreement, dated 9.2.2004. The defendant No.1 was ready to sell the suit property, if the plaintiff had only made the balance payment within the agreed period.

5. The defendant No.1 has further contended in the written statement that the possession of the suit property is handed over to the defendant Nos.2 and 3. The plaintiff is entitled to only the refund of the advance amount with interest thereon. The defendant No.1 has alleged that the plaintiff has illegally collected the original documents from the said Society. The defendant Nos.2 and 3 adopted the written statement filed by the defendant No.1.

6. Based on the rival pleadings, the Trial Court formulated the following issues:-

"1. Whether plaintiff proves that defendant entered into agreement for sale dt.9.2.2004 in respect of suit schedule property for consideration of Rs.9,00,000/- and paid amounts as stated in para 8 of the plaint and put plaintiff in possession of suit schedule property?

2. Whether plaintiff proves that he was always ready and willing to perform his part of contract?

3. Whether the plaintiff is entitled for specific performance of contract?

4. Whether defendant No.2 and 3 prove that they are bonafide purchasers for value?

5. Whether the plaintiff is entitled for any relief?

6. What order? What decree?"

7. The plaintiff got himself examined as PW1. He has got examined two independent witnesses, namely, Sri B.V.Narasimha Murthy, who attended the

meetings at Hotel Chalukya in August 2004 for sorting out the matter and Sri Vijay Kumar, one of the witness to the execution of the sale agreement, dated 9.2.2004 as PW2 and PW3 respectively. The documents at Exhibits P1 to P21 are marked for the plaintiff. The defendant Nos.1 and 2 did not enter the witness box. The defendant No.3 is examined as DW1. No documents whatsoever are produced for or on behalf of the defendants.

8. Based on the pleadings, oral and documentary evidence placed on its record, the Trial Court answered the issues in favour of the plaintiff and decreed the suit for specific performance. The Trial Court has directed the defendants to execute the sale deed in favour of the plaintiff on receipt of the balance amount. Aggrieved by the said judgment, the defendant Nos.2 and 3 have preferred this appeal.

9. Sri S.Shaker Shetty, the learned counsel for the appellants-defendants submits that last endorsement, dated 7.8.2004 stating that the defendant No.1 received a sum of Rs.2,00,000/- by means of a cheque is a false entry. There is absolutely no basis for accepting the plaintiff's claim that he paid Rs.2,00,000/- to the first defendant on 7.8.2004. The passbook, certified statement of the Bank, etc. are not produced before the issuance of the cheque to show that the plaintiff had issued the cheque and the defendant No.1 had encashed the same. The necessary adverse inference has to be drawn against the plaintiff under Section 114(g) of the Indian Evidence Act, 1872.

10. He brings to my notice the Apex Court's judgment in the case of GOPAL KRISHNAJI KETKAR vs. MOHAMED HAJI LATIF AND OTHERS reported in AIR 1968 SC 1413 wherein it is held that if a party cannot put the best evidence, which is in his possession and if he withholds the same from the Court, the necessary adverse inference has to be drawn against him.

11. He submits that the perusal of the Exhibit P1 reveals that the time is the essence of the contract. The plaintiff was required to pay the amount within three months. Admittedly, when the plaintiff has not paid the full sale consideration within three months and when the time is not extended for making the payment, the plaintiff is not entitled to the relief of specific performance of the agreement. On the failure of the plaintiff to pay the balance sale consideration within the stipulated time, the defendant No.1 terminated the contract by causing the issuance of the legal notice, dated 23.8.2004 (Exhibit P5).

12. He submits that after terminating the said agreement on 23.8.2004, the defendant No.1 sold the property to the defendant No.2 by a registered sale deed, dated 27.8.2004 and delivered its possession to the defendant Nos.2 and 3. The defendant No.2 is a bona fide purchaser for a valuable consideration.

13. The learned counsel submits that, if the possession was indeed delivered by the defendant No.1 to the plaintiff towards the part performance of the contract, then such document is a compulsorily registerable document. In the absence of any registered document, the decree holding that the possession was delivered

to the plaintiff is a nullity. Absolutely no documentary evidence whatsoever is placed in support of the plaintiff's claim that the possession came to be delivered to him.

14. The learned counsel submits that once the agreement, dated 9.2.2004 is terminated, the plaintiff cannot straightaway file a suit for specific performance of the contract. Unless he seeks the relief of declaration that the termination of the agreement is bad and that it is not binding on him and succeeds in getting such a relief, he cannot maintain the suit for specific performance of the contract. In support of his submissions, he relies on the Apex Court's judgment in the case of I.S.SIKANDAR (D) BY Lrs. v. K.SUBRAMANI AND ORS. reported in (2014) SAR (Civil) 79.

15. He submits that the sale agreement at Exhibit P1 contains no clause for specific performance. The plaintiff seeking the relief of specific performance of the contract would only amount to the variation of the terms of the agreement.

16. He submits that when the sale agreement at Ex.P1 only provides for the refund of the entire advance amount in case of the breach on the part of the first defendant and when the plaintiff himself has sought the alternative remedy for the refund of the advance amount, the Court can only direct the payment of a particular amount; the Court cannot order specific performance. In support of his submissions, he relies on the Apex Court's judgment in the case of KANSHI RAM vs. OM PRAKASH JAWAL AND OTHERS, reported in AIR 1996 SC 2150. Para 5 of the said decision read out by him is as follows:

"5. Having regards to the facts of this case and the arguments addressed by the learned counsel, the question that arises for consideration is: whether it would be just, fair and equitable to grant the decree for specific performance? It is true that the rise in prices of the property during the pendency of the suit may not be the sole consideration for refusing to decree the suit for specific performance. But it is equally settled law that granting decree for specific performance of a contract of immovable property is not automatic. It is one of discretion to be exercised on sound principles. When the Court gets into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties. Considered from this perspective, in view of the fact that the respondent himself had claimed alternative relief for damages, we think that the Courts would have been well justified in granting alternative decree for damages, instead of ordering specific performance which would be unrealistic and unfair. Under these circumstances, we hold that the decree for specific performance is inequitable and unjust to the appellant."

17. He submits that the defendant No.2 is a bona fide purchaser in good faith and without notice of the claim of the plaintiff in the sale deed executed in favour of the defendant No.2. There is no whisper of the execution of the earlier sale agreement in favour of the plaintiff.

18. The learned counsel submits that the Trial Court is not justified in decreeing

the suit as against the defendant No.2 also, because neither the schedule suit is sold to the defendant No.2 nor there is any relief sought against the defendant No.3.

19. The learned counsel takes serious exception to the plaintiff not mentioning in the plaint the date within which the balance amount has to be paid before seeking the execution of the sale deed. He further submits that there is no direction to pay the balance amount. Paras 9 and 11 of the Apex Court's decision in the case of M/S.P.R.DEB AND ASSOCIATES vs. SUNANDA ROY reported in 1996-I Kar.L.J. 726 (SC) relied upon by him are extracted hereinbelow:

"9. The present case is similar. The clause relating to payment of various amounts under the contract including the sum of Rs.4 lakhs states that the time is of the essence. Moreover, by his letter of 12th April, 1978, also the appellant has made payment of Rs.4 lakhs within a period of seven days from the date of notice, of the essence of the contract pointing out the circumstances which require payment of Rs.4 lakhs within a reasonable time. As the respondent did not comply and was unwilling and/or unable to comply with this term of the agreement, he cannot be considered as ready and willing to perform his part of the contract."

11. In the present case, the right of the appellant to purchase suitable residential accommodation is seriously affected by non-payment of Rs.4 lakhs within a reasonable time. The respondent had failed to comply with the term of the agreement relating to payment of this amount. In these circumstances, in any case, a decree for specific performance cannot be granted as it would be unfair and unreasonable to do so. The High Court, therefore, was not right in setting aside the judgment and order of the Trial Court."

20. The learned counsel submits that the plaintiff was neither ready nor willing to perform his part of the contract. The plaintiff himself has agreed that he has not issued any notice calling upon the first defendant to execute the sale deed before the expiry of the stipulated time or atleast before the termination of the sale agreement.

21. He relies on the Apex Court's judgment in the case NARINDER KUMAR MALIK v. SURINDER KUMAR MALIK reported in (2009) 8 SCC 743 wherein it is held that mere showing of readiness and willingness would not discharge the obligation, unless it is shown to be real and genuine. Paras 21 to 24 of the said decision relied upon by him are as follows:

"21. To ascertain if the time was of the essence of the contract, we have to go through Condition (iii) of the MoU which categorically mentions that the second party viz. the respondent herein shall make the payment of the balance amount of Rs 3.25 crores within a maximum period of one hundred fifty days from the date of execution of the MoU i.e. up to or before 9-7-2005. However, this period of one hundred fifty days was extendable by another ten to twenty days, if need be with the consent of both the parties but not more.

22. The High Court certainly fell into error in construing the said provision in right perspective and erred in coming to the conclusion that since time was extendable, the time could not have been made the essence of the contract. A bare perusal of the aforesaid provision makes it clear that ultimately the time was fixed only up to 9-7-2005. However, with an intention to give further leverage to the respondent herein, the time was made extendable by ten to twenty days and not more and that too only with the consent of the parties. Even if it is said that 9-7-2005 could not have been the last date, at least after twenty days the said last date expired.

23. Admittedly, the respondent has not honoured his commitment, within the extendable period given to him, even though he had no right to claim the benefit as of right for the extendable period.

24. The respondent sent the photocopies of three pay orders two of which were for a sum of Rs 1 crore each and the third one for a sum of Rs 1.25 crore. It was neither here nor there as the originals were never tendered to the appellant and only photocopies were sent to make a semblance that the respondent had been ready and willing to perform his part of the contract. When MoU had already been arrived at between the parties then mere show of readiness and willingness would not discharge the obligation resting on one of the parties unless it is shown to be real and genuine. From the conduct, behaviour and attitude of the respondent it is clearly made out that he had not been ready and willing to perform his part of the contract as mentioned in the MoU."

22. Drawing support from the Hon'ble Supreme Court's decision in the case of Mrs.SARADAMANI KANDAPPAN v. Mrs.S.RAJALAKSHMI & Ors. reported in AIR 2011 SC 3234, he contends that the agreement, dated 9.2.2004 (Ex.P1) is clear that the time for the payment of balance price is the essence of the contract and such payment was not depending upon the purchaser's satisfaction of the vendor's title.

23. He also relies on the Hon'ble Supreme Court's decision in the case of PRAMOD BUILDINGS & DEVELOPERS (P) LTD. v. SHANTA CHOPRA reported in AIR 2011 SC 1424 wherein it is held that the plaintiff- vendee in a specific relief suit cannot succeed, unless he proves that he was ready and willing to perform the contract.

24. He submits that under Section 20 of the Specific Relief Act, 1963 the Court is not bound to grant the relief of specific performance because it is lawful to do so. The Court has to exercise its discretion guided by sound judicial principles.

25. Relying on the Apex Court's judgment in the case of SMT.RANGANAYAKAMMA vs. N.GOVINDA NARAYAN reported in AIR 1982 KAR 264, he would contend that if the enforcement of the contract is resulting in hardship to the defendant and its non-enforcement is not causing hardship to the plaintiff, the relief of specific performance has to be refused.

26. He also sought to draw support from the Apex Court's decision in the case of A.C.ARULAPPAN vs. SMT. AHALYA NAIK reported in AIR 2001 SC 2783 wherein it is held that the plaintiff is not entitled to the decree of specific performance of contract, if under the terms of the contract the plaintiff gets an unfair advantage over the defendant. So also the specific relief may not be granted, if the defendant is going to be put to undue hardship, which he did not foresee at the time of the agreement. If it is inequitable to grant the relief of specific performance of contract, then also the Court would desist from granting a decree to the plaintiff.

27. He submits that no amount of oral evidence can come to the rescue of the plaintiff when the same is contrary to the terms and conditions set out in the sale agreement at Ex.P1. He read out the provisions contained in Section 92 of the Indian Evidence Act, which are, as follows:

"92. Exclusion of evidence of oral agreement - When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms."

28. Per contra Sri G.S.Prasanna Kumar, the learned counsel appearing for the plaintiff (respondent No.1 herein) submits that the plaintiff has paid Rs.6,00,000/- as advance out of the agreed total consideration of Rs.9,00,000/-. He furnishes the payment particulars as follows:

9.2.2004 By way of cash 1,00,000=00

11.2.2004 By way of cheque 50,000=00

22.02.2004 By way of cash 1,00,000=00

5.5.2004 By way of cash 1,00,000=00

12.5.2004 By way of cash 50,000=00

7.8.2004 By way of cheque 2,00,000=00

29. He submits that the defendant No.1 has issued the legal notice on 23.8.2004 and has in a mortal hurry executed the sale deed in favour of the defendant No.2 on 27.8.2004.

30. Relying on the Apex Court's judgment in the case of M.M.S.INVESTMENTS, MADURAI & Ors. v.

V.VEERAPPAN & Ors. reported in (2007) SC 2663, the learned counsel contends that the defendant Nos.2 and 3 have not discharged their burden of proving that they are the bona fide purchasers for value without notice. The readiness and willingness aspect will not give any relief to the appellants. He submits that as

the defendant No.1 has abstained from witness box, the plaintiff's appearance in the witness box and deposing about his readiness and willingness cannot be disputed at all.

31. He relies on this Court's decision in the case of T.MOHAN v. P.VENKATARAMA REDDI reported in ILR 2003 KAR 3533. Para 10 of the said decision read out by him is as follows:

"10. Coming to the question of readiness and willingness of the plaintiff to perform her part of the contract, it was so averred in the plaint and reiterated in the notice dated 18/19.5.1981 and also in the evidence of the plaintiff. Further, the question of readiness and willingness to pay the balance consideration money is not of much importance in view of the admitted factual position that the vendor had parted with possession of the property in favour of the purchaser even before expiry of the period stipulated in the agreement. In that view of the matter, no exception can be taken to the finding of the High Court that the plaintiff duly satisfied the requirement of law of readiness and willingness to perform her part of the contract."

32. He relies on this Court's decision in the case of DEVENDRA BASAPPA DODDANNAVAR v. SMT.PONUBAI & OTHERS reported in 1971(1) Mys.L.J. 245 and contends that the intention to make time as the essence of the contract is to be inferred from what transpired between the parties before and after the signing of the agreement. The circumstances that the value of property has increased cannot be a ground to deny the relief of specific performance.

33. He relies on the Division Bench's decision of Madras High Court in the case of VAIRAVAN v. K.S.VIDYANANDAM AND OTHERS reported in AIR 1996 MADRAS 353 wherein it is held that where there was no express stipulation in the sale agreement saying that time was the essence of the contract, though it mentioned that within six months from the date of the contract the performance must be completed by executing and registering the sale deed by paying the balance price and that if within the said six months" period, the purchaser fails to carry out his part of the contract.

34. The submissions of the learned counsel have received my thoughtful consideration. I have browsed through the L.C.Rs. The following three questions fall for my consideration in this appeal:

"(i) Whether time is the essence of the contract between the plaintiff and the defendant No.1?

(ii) Whether the plaintiff proves that he has paid an advance of Rs.6,00,000/- out of the agreed sale consideration Rs.9,00,000/- and whether the plaintiff proves that he has always been ready and willing to perform his part of the contract?

(iii) Whether the defendant Nos.2 and 3 prove that they are the bona fide purchasers of the schedule property for a valuable consideration?"

In re.Question No.1:

35. The sale agreement, dated 9.2.2004 (Ex.P1) stipulates the condition that within three months the balance sale consideration of Rs.7,50,000/- was to be paid by the plaintiff to the defendant No.1. It is not in dispute that the defendant No.1 has received an advance sale consideration of Rs.1,50,000/- on the date of signing the agreement, dated 9.2.2004. The endorsement [Ex.P1(c)] shows that a further sum of Rs.1,00,000/- was received by the defendant No.1 from the plaintiff on 22.2.2004. The endorsement [Ex.P1(f)] shows that the defendant No.1 has received a sum of Rs.50,000/- on 12.5.2004. The said endorsement further states that hitherto (till 12.5.2004), the defendant No.1 has received a total advance consideration of Rs.4,00,000/-. The endorsement [EX.P1(j)] is in the nature of an acknowledgement by the defendant No.1 of receiving Rs.2,00,000/- by cheque from the plaintiff.

36. When the last date for receiving the balance sale consideration was 9.5.2004, it is not known why the defendant No.1 received the said amount after the expiry of the last date for the receipt of the balance sale consideration. By his conduct, the defendant No.1 has shown that there was nothing sacrosanct about the date, 9.5.2004. What can be inferred from the conduct of defendant No.1 is that he impliedly extended the period for making the balance payments. As lately as on 7.8.2004, he has accepted Rs.2,00,000/- from the plaintiff. The same is evident from Ex.P1.

37. The defendant No.1 has not issued any notice terminating the agreement immediately after the completion of three months" period. On the other hand, he continued to receive the balance sale consideration even after the expiry of the three months" period.

38. For all the aforesaid reasons, I answer Question No.1 in the negative.

In re.Question No.2:

39. It is difficult to accept the statement of defendant Nos.2 and 3 that the entry regarding receipt of a sum of Rs.2,00,000/- lakhs by the defendant No.1 from the plaintiff is false. Firstly, because the defendant No.1 has not entered the witness box and denied the said receipt of Rs.2,00,000/-. Secondly, because the defendant No.1 has admitted in para 5 of the written statement of the receipt of Rs.6,00,000/- out of Rs.9,00,000/-. The averment in para 5 of the written statement reads as follows:

"The very fact that the plaintiff had paid a sum of Rs.6 lakh even though the agreement is in respect of the Rs.9 lakh itself proves that the plaintiff was not having money to complete the transactions."

The defendant No.1 has not mentioned the dates on which he has totally received Rs.6,00,000/-. On the contrary, the plaintiff has furnished the details of payment in para 8 of the plaint and in para 8 of the affidavit filed by way of examination-in- chief.

40. One Sri Vijaya Kumar is examined as PW3. He has deposed that he has introduced the plaintiff to the defendant No.1. Further, he has deposed that he has witnessed the execution of the sale agreement, dated 9.2.2004 and that on different dates a sum of Rs.6,00,000/- was paid by the plaintiff to the defendant No.1 in his presence.

41. The sale agreement, dated 9.2.2004 (Ex.P1) contains the first defendant's undertaking to give all the documents pertaining to the suit site. Obviously the same would also include the khatha and the tax paid receipts. But the first defendant has not placed on record any document to show that the khatha was transferred to his name and that he was paying the property tax, as on the date of the issuance of notice (Ex.P5) canceling the sale agreement. The defendant No.1 has not fulfilled his part of the contractual obligations.

42. The plaintiff has paid two-third of the agreed sale consideration. The plaintiff has examined one Sri B.V.Narasimha Murthy as PW2, who has deposed that the meeting was held in Chalukya Hotel for settling the matter. PW3 has stated that he was also present along with PW2 in the meeting held at Chalukya Hotel and that the defendants failed to come forward to register the sale deed in favour of the plaintiff.

43. As noticed supra, the defendant No.1 has not chosen to deny the plaintiff's case. My perusal of the extract of pass-sheet (Ex.P11) issued by the Vijaya Bank in respect of the plaintiff's account shows that the plaintiff had requisite funds to pay the balance sale consideration of Rs.3,00,000/-. The plaintiff's capacity to pay the balance sale consideration cannot be disputed by the defendants with any rate of success.

44. Now what remains to be examined is whether the plaintiff was willing to perform his part of the contract. The panchayats held at Hotel Chalukya and the oral evidence of PW3 in support thereof are clearly demonstrative of the plaintiff's anxiety to pay the balance consideration and get the registered sale deed executed in his favour. If the defendant No.1 refused to accept the balance sale consideration, the plaintiff cannot be blamed for it.

45. Taking all these circumstances and factors into consideration, I affirm that the plaintiff has proven that he has paid an advance of Rs.6,00,000/- out of the agreed sale consideration of Rs.9,00,000/- and that the plaintiff has always been ready and willing to perform his part of the contract.

In re.Question No.3:

46. The defendant No.3 has stated in his affidavit filed by way of examination-in-chief that there is no agreement between the plaintiff and the defendant Nos.2 and 3. Though there may not be any impediment for the execution of the sale deed directly without there being a preceding sale agreement, the normal and prudent practice is to enter into the sale agreement. It is also not known how the defendant Nos.2 and 3 could have purchased the schedule property without

obtaining the title deeds like, sale deed executed by the R.H.C. Society in favour of the defendant No.1. In the course of his cross-examination, the defendant No.3 has stated that he does not know who are the neighbours of the suit site, even when he claims to be in possession of it. He has also admitted that the khatha of the suit site was not transferred to the name of the defendant No.1, when the defendant Nos.2 and 3 purchased the same from the defendant No.1. He states that the tax assessment was also not done in respect of the suit site in the name of the defendant No.1.

47. The defendant No.1 has not even stated in his written statement as to the price for which he has sold the suit site to the defendant Nos.2 and 3. The defendant Nos.2 and 3 have adopted the written statement filed by the defendant No.1. The defendant No.1 has not entered the witness box. The defendant No.1 has not cared to cross-examine the plaintiff. The defendant No.3 gets himself examined as DW1. His evidence is also silent on the sale price paid by the defendant Nos.2 and 3 to the defendant No.1. This being the non-committal pleadings and evidence, this Court finds it difficult to accede to the claim of the defendant Nos.2 and 3 to be the bona fide purchasers for a valuable consideration.

48. The Trial Court refers to the contention urged on behalf of the defendant Nos.2 and 3 that they have purchased the suit site for Rs.4,85,000/-, which price is lesser than the one agreed under the sale agreement, dated 9.2.2004 (Exhibit P1). This raises the cloud over the sale transaction between defendant No.1 and defendant Nos.2 and 3. No prudent man would under-sell the property, more so, when one prospective buyer has agreed to pay higher consideration. Thus the circumstances are such that the subsequent purchasers cannot be held as bona fide purchasers for value without notice.

49. For all the aforesaid reasons, the third question is answered in the negative.

50. Even when the evidence is re-appreciated, I find it difficult to arrive at the conclusions different from the ones reached by the Trial Court. In the result, I dismiss this appeal. No order as to costs.