
(2011) 12 MAD CK 0134

In the Madras High Court

Case No : A.S. No. 661 of 2006 and M.P. No. 1 of 2006

R. Chinna Raju and P. Balasubramanian

APPELLANT

Vs

S. Natarajan

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Limitation Act, 1963 — Article 54

Specific Relief Act, 1963 — Section 12

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1)

Citation : (2011) 12 MAD CK 0134

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : P.T. Asha, for, M/s, Sarvabhauman Associates, for the Appellant; G. Ashokapathy, for, M/s. Pass Associates, for the Respondent

Final Decision : Dismissed

Judgement

Justice K. Mohan Ram

1. The unsuccessful plaintiffs in O.S.No.151 of 2011 on the file of the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, are the appellants in the above appeal. The plaintiffs originally filed O.S.No.220 of 1996 before the Sub-Court, Coimbatore, which was subsequently transferred to the Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, and re-numbered as O.S.No.151 of 2001. The suit was filed seeking a decree of specific performance against the respondent herein directing him to execute the sale deed in respect of the suit properties on the basis of the agreements of sale, dated 17.06.1987 and 25.03.1991. The appellants also sought for a decree for permanent injunction against the respondent from alienating and encumbering the suit properties and alternatively sought for a direction against the respondent to refund the advance amount of Rs.3.5 lakhs with 18% interest per annum.

2. The case of the appellants is as follows:-

The appellants are engaged in Real Estate Business; they entered into an agreement of sale, dated 17.06.1987 with the respondent for the purchase of an extent of 3.21 acres in S.F.No.378/2 and 5 cents and 27 sq.ft., in S.F.No.365/1 of Karundampalayam Village; 5 cents and 27 sq.ft., land was exclusively meant for the purpose of the access; the sale price of the land was fixed at the rate of Rs.1,45,500/-per acre; Rs.50,000/-was paid as advance and another sum of Rs.50,000/-was paid on 14.09.1987; on 31.12.1989 another sum of Rs.50,000/-was paid towards the sale consideration and necessary endorsements have been made in the sale agreement to that effect; another agreement, dated 25.03.1991 was executed by the respondent in favour of the appellants agreeing to sell an extent of 2.68 acres compromised in S.F.No.381/2 and an extent of 4.48 acres compromised in Survey No.382/2 of the same village; as far as the agreement, dated 25.03.1991, the sale price was fixed at Rs.3,50,000/-per acre and on the date of agreement, a sum of Rs.1 lakh was paid as advance and subsequently on 18.09.1991 another sum of Rs.50,000/-was paid; necessary endorsement has also been made in the agreement; a further sum of Rs.50,000/-was received and acknowledged by the defendant on 10.10.1994; thus under both the agreements of sale, a total sum of Rs.3,50,000/-have been received by the respondent.

(ii) As per paragraph 1 of the agreement, dated 17.06.1987, the respondent shall survey the entire property and execute the sale deed within ten months from the date of survey free from all encumbrances; according to the appellants, at the time of entering into the second sale agreement, as the respondent has expressed his willingness to join as one of the parties to promote the sale of house sites and agreed to share the profit of 1/3rd on certain terms and conditions, another agreement was entered into on 25.03.1991 itself; as per clause 4 of the agreement, after the sale proceeds are realised the respondent is entitled to receive his 1/3rd share in the net profit along with balance sale consideration as mentioned in the agreement.

(iii) The respondent was adopting delaying tactics even to measure and survey the lands and the said condition is mandatory and only if that condition is fulfilled, the appellants can perform their part of the obligation; after lot of persuasion, the respondent agreed for the survey of the lands and the appellants arranged for a Survey of the schedule mentioned properties through a Civil Engineer and prepared a lay out plan on 02.10.1995; even thereafter the respondent continued his delaying tactics; thereafter, the respondent with an ulterior motive started negotiating sale of the schedule mentioned properties directly to third parties; in such circumstances, the appellants filed a suit in O.S.No.3148 of 1996 for permanent injunction before the I Additional District Munsif Court, Coimbatore and in I.A.No.1309 of 1996, an order of interim injunction was also passed and the same was in force.

(iv) The appellants issued a lawyer's notice to the respondent calling upon him to execute the sale deed on 09.09.1996; in the said notice, the appellants clearly

expressed their willingness to take the sale on or before 30.09.1996; the respondent sent a reply notice with false averments which was received on 21.09.1996; in such circumstances, the suit is filed seeking a decree for specific performance; the suit is well within time, since clause 1 of the agreement, dated 18.06.1987 specifies a time limit of ten months from the date of survey and further the respondent had received and acknowledged various payments and the last endorsement was made on receipt of Rs.50,000/-on 10.10.1994; the appellants are ready and willing to take the sale and ear-marked necessary financial resources to meet the balance 2/3rd of the balance sale consideration less advance paid.

3. The suit was contested by the respondent herein, by filing a detailed written statement, inter-alia contending as follows:

(i) The appellants have suppressed very many material facts and hence they are not entitled to the discretionary relief of specific performance and the suit has been filed just to harass the respondent; the agreement of sale, dated 17.06.1987, is admitted; the endorsements for receiving a sum of Rs.50,000/- each on three occasions are admitted; the second agreement of sale, dated 25.03.1991, is also admitted; the sale price fixed is also admitted; the receipt of the sum of Rs.1 lakh towards the advance is admitted; the appellants agreed to pay a further sum of Rs.3 lakhs within three months and further sum of Rs.2 lakhs within a period of two months, but the appellants have not paid the amounts as agreed in the sale agreement; instead of paying Rs.3 lakhs before 26.06.1991, the appellants paid only Rs.50,000/-on 18.05.1991; the averment that on 10.10.1994 a sum of Rs.50,000/-has been paid is to be proved by the plaintiffs; the third agreement, dated 25.03.1991 is also admitted; the lands have already been surveyed, but the averment that the respondent was adopting delaying tactics to measure the land is false; the averment that the respondent had fallen back and started negotiating the sale of the properties to the third party is denied; the appellants have not honoured the conditions stipulated in the sale agreement and only with a view to drag on the payment, the appellants have filed the suit in O.S.No.3148 of 1996 before the District Munsif Court, Coimbatore.

(ii) It is further contended that 5.75 acres of land had been acquired by the Government and challenging the same, the respondent had filed a writ petition before the High Court and the same is pending. Because of the pendency of the acquisition proceedings, the appellants did not come forward to complete the sale; the factum of acquisition proceedings are known to the appellants, but they have purposely suppressed the same; the appellants have not come forward to pay the balance sale price and the price of the lands have gone up by manifold; with ulterior motives and after a long delay, the present suit has been filed to make unjust enrichment; the appellants have committed breach of contract and the agreement has become non-est and unenforceable in law and the defendants have sent a suitable reply on 13.09.1996 to the lawyer's notice sent by the

appellants; the appellants are not entitled to the equitable relief of specific performance.

4. An additional written statement was filed by the respondent inter-alia contending that the appellants are not entitled to seek the alternative relief of refund of advance amount; the last payment was made on 18.09.1991 and as such the suit should have been filed within three years there from and therefore the suit is barred by limitation; as per the recitals of the agreement, the respondent is entitled to forfeit the advance amount and hence the appellants are not entitled for refund of the advance amount with interest at 18% per annum; the claim for compensation is also not maintainable; because of the breach committed by the appellants, the respondent has incurred heavy loss; on the aforesaid contentions, the suit was sought to be dismissed.

5. On the aforesaid pleadings, the Court below framed the following issues:

(i) Whether the plaintiffs are entitled for a decree of specific performance of the agreements of sale and whether they are entitled for a decree for permanent injunction and the alternative relief of refund of the sum of Rs.3,50,000/-?

(ii) Whether it is true that the plaintiffs have not complied with the conditions contained in the agreements?

(iii) Whether it is true that the plaintiffs knew about the land acquisition proceedings initiated by the Government?

(iv) Whether it is true that the defendant had received only a sum of Rs.3 lakhs as advance?

(v) Whether it is true that the suit is barred by limitation?(vi)To what other relief, the parties are entitled to?

An additional issue was also framed by the Court below, which reads as follows:-

(vii) Whether it is true that the plaintiffs were always ready and willing to purchase the suit property?

6. On the aforesaid issues, the parties went into trial and during trial, on the side of the appellants herein, the first plaintiff was examined as P.W.1 and one Kaliyappa Gounder was examined as P.W.2 and Exs.A-1 to A-12 have been marked. On the side of the defendant / the respondent herein, the respondent has been examined as D.W.1 and on his side Exs.B-1 to B-10 have been marked. On a consideration of the evidence on record, the trial court rejected the relief of specific performance, but granted a decree for refund of a sum of Rs.3 lakhs with 9% interest from the date of suit till the date of the decree and thereafter at 6% interest. Being aggrieved by that, the plaintiffs have filed the above appeal.

7. Heard the learned counsel on either side.

8. Learned counsel for the appellants made the following submissions:-

The Court below is not right in decreeing the alternative prayer alone rejecting the main relief on the ground that the lands had been acquired by the Government for the purpose of putting up houses for the lands to the harijans; the court below failed to see that only an extent of 5.75 cents had been acquired out of 10.41 acres and the remaining extent of land is in the possession and enjoyment of the respondent; D.W.1 has admitted in his evidence that the lands continued to be in his possession; the Court below after accepting the validity of Exs.A-1 to A-3 ought to have decreed the suit as prayed for; the court below has failed to appreciate that the respondent had not put the appellants on notice about the acquisition proceedings, which is evident from Exs.A-1 and A-2 and therefore, it is the respondent, who has committed breach of contract; the court below erred in observing that after receipt of the notice under Ex.B-8 in and by which the respondent has been put on notice about the land acquisition proceedings, the subsequent agreement of sale cannot be enforced; the court below has sought to non-suit the appellants on the ground that they had notice about the acquisition under Ex.A-5, since Ex.A-5 is dated 13.09.1996, which is five years after coming into existence of Ex.A-2; the finding of the court below that the sum of Rs.50,000/-was not paid by the appellants on 10.10.1994 is contrary to the evidence of P.W.2.

9. Basing reliance on a decision of this Court reported in *Thailammal and Others Vs. Angammal*, the learned counsel for the appellants submitted that u/s 12 of the Specific Relief Act the appellants are entitled to claim an equitable relief of specific performance of a part of a contract under certain circumstances; the purchaser, if he is willing, may accept a part of the property contracted on payment of full stipulated price for the entire property. Learned counsel further submitted that even at the appellate stage, the appellants can seek specific performance of a part of the contract. He further submitted that since the entire extent of land agreed to be sold had not been acquired and only a part of it had been acquired, the appellants are entitled to seek specific performance of the remaining un-acquired extent of lands. Basing reliance on a decision of the Apex Court reported in *Surjit Kaur Vs. Naurata Singh and Another*, the learned counsel for the appellants submitted that the appellants can accept part performance of the contract at any stage of litigation. He further submitted that mere filing of a suit for specific performance of the agreement and not averring that the party was willing to accept performance in part does not preclude a party from subsequently electing to accept performance in part.

10. Countering the said submissions, the learned counsel for the respondent made the following submissions:-

The notification u/s 4 (1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act (Act 13/1978) (hereinafter will be referred to as "the Act") was issued on 26.12.1990 and the notice Ex.B-8, dated 22.02.1991 was issued to the respondent; as per the recitals contained in Ex.A-1 the time fixed for completing the sale is within ten months from the date of survey of the lands

agreed to be sold; under Ex.B-1, dated 23.06.1987, which is the receipt for payment of fee for survey of Survey No.381/2 and 382/2, the respondent has paid the necessary fee for surveying the lands; the respondent, as D.W.1, has deposed that pursuant to the payment of fee for survey, the land was surveyed; if there was no survey, the appellants would not have paid the additional advance and Ex.A-2-agreement also would not have been entered into; if really there was no survey, the appellants would have issued a notice calling upon the respondent to survey the lands, but no such notice was issued, that itself will show that the survey of the lands had taken place; under Ex.A-1, dated 17.06.1987, the last advance amount was paid on 31.12.1989, but the suit has been filed only on 22.12.1996 and as such the suit is barred by limitation; as evidenced from Ex.B-1, the survey fee was paid as early as on 26.03.1987 and subsequently the survey was also conducted and if really there was no survey the appellants would not have entered into the second agreement Ex.A-2, dated 25.03.1991; the ten months time from the date of survey has expired in April 1988 itself, therefore, the time fixed for performance of the agreement of sale, Ex.A-1 has expired by the end of April 1991; the appellants have kept quiet till 09.09.1996 to issue the legal notice; by the time Ex.A-4 notice was issued, the period of three years had expired from the date of expiry of the time fixed for performance of the agreement and therefore the suit is clearly barred by limitation; as per the recitals contained in Ex.A-2, the time fixed for performance of the contract is one year from the taking responsibility over the property after survey; the last admitted advance payment made was on 18.09.1991; the alleged payment of Rs.50,000/-on 10.10.1994 has been denied by the respondent and the Court below has also found that the said payment has not been proved; when the respondent has specifically denied the receipt of Rs.50,000/-on 10.10.1994 and the endorsement made therefor in Ex.A-2 does not contain his signature the burden is on the appellants to prove that the agreement contains the signature of the respondent, but the same has not been proved by getting a hand writing expert's opinion; even P.W.2 has not deposed that on 10.10.1994 a sum of Rs.50,000/-was paid, but what he has deposed is that a sum of Rs.50,000/-was paid; therefore the suit filed more than nearly five years after 18.09.1991 in respect of Ex.A-2-agreement of sale is also clearly barred by limitation; the court below is not right in holding that the suit is filed within time; basing reliance on the reply notice, Ex.A-5, dated 13.09.1996 where-under the respondent had refused to execute the sale deed; the period of limitation of three years commences from the date of expiry of the time for performance stipulated in the agreement of sale or from the date of refusal of performance of the vendor; in this case, as three years period from the date of expiry of time for performance has expired even in 1994, the subsequent refusal under Ex.A-5 cannot be taken as a starting point of limitation.

11. Learned counsel for the respondent further submitted that the land acquisition proceedings were very well known to the appellants as in the affidavit filed in support the Writ Petition for impleading himself as a party, he had

mentioned about the land acquisition proceedings; since 5.35 acres out of 7.16 acres had been acquired, Ex.A-2 agreement has become impossible of performance; the appellants had sought for specific performance of the entire extent of 7.16 acres and the 3.21 acres covered by Ex.A-1-sale agreement; in the plaint, the appellants had not expressed their willingness to get the sale deed executed in respect of the un-acquired portion of the land agreed to be sold under Ex.A-2 by paying the entire sale consideration fixed in Ex.A-2; even during the pendency of the appeal, the appellants have not filed any application to amend the plaint to incorporate such a prayer and therefore the learned counsel submitted that the appellants are not entitled to seek a decree for specific performance in respect of the un-acquired portion of land covered by Ex.A-2. He further submitted that as per the terms of Ex.A-2 the appellants had undertaken to pay a further sum of Rs.3 lakhs within three months from 25.03.1991, but only a sum of Rs.50,000/-was paid on 18.09.1991 i.e., nearly after six months from the date of Ex.A-2 and further it has been agreed under Ex.A-2 that a further sum of Rs.2 lakhs was to be paid to the respondent by the appellants within two months there from, but both these conditions have not been complied with by the appellants, which itself will show that the appellants were not having necessary funds and they were not ready and willing to perform their part of the agreement of sale.

12. As far as Ex.A-1-sale agreement is concerned, the learned counsel for the respondent submitted that the same was entered into in the year 1987, but the suit has been filed after a period of nine years i.e., in the year 1996, but as far as Ex.A-2 is concerned, it was entered into in March 1991 and the suit has been filed on 22.11.1996 i.e, after five years; since there is escalation of prices of immovable properties, the appellants have filed the suit to take advantage of the escalation in prices; the relief of specific performance, being a discretionary relief, the appellants are not entitled to get the same when the equity is not in their favour, but the equity is in the favour of the respondent. The learned counsel for the respondent further submitted that the agreement Ex.A2 is merged with the agreement Ex.A3 and a novation has taken place and therefore, Ex.A2 cannot be enforced.

13. Learned counsel for the respondent relied upon the following decisions in support of his contentions:

(i) CDJ 2009 APHC 521 (Syed Quadri v. Syed Mujeebuddin)

(ii) CDJ 1995 SC 461 (Gian Chand v. Gopala)

14. We have heard and considered the submissions made by the learned counsel on either side and perused the materials available on record.

15. At the outset, it has to be pointed out that the cause of action for filing the suit in respect of Exs.A1 and A2 sale agreements are distinct and separate. The causes of action in respect of the two agreements have arisen on different dates and as such, there is misjoinder of cause of action. Had the trial Court pointed

out the same and directed the appellants to file two separate suits, the trial Court could have appreciated the case in a better perspective and decided the issue of limitation correctly. But at the same time, it has to be pointed out that on the ground of misjoinder of cause of action, the suit cannot be dismissed.

16. The relief sought for by the appellants in respect of Exs.A1 and A2 sale agreements have to be considered separately. Admittedly, Ex.A1 sale agreement came to be executed on 17.6.1987 in respect of the total extent of 3.21 acres in S.F.No.378/2 and 5 cents 27 sq.ft. in S.F.No.365/1 of Karundampalayam Village. The sale price fixed for one acre is Rs.1,45,500/-. The time fixed for the execution of the sale deed is ten months from the date of survey of the said lands. As per Clause 6 of Ex.A1, the appellants have agreed to pay a further sum of Rs.50000/-on or before 15.9.1987.

17. It is the case of the appellants that as agreed to in Clause 1 of Ex.A1, the respondent had not surveyed the lands and therefore, the sale deed could not be got executed. According to the appellants, they arranged for the survey of the properties through a Civil Engineer and prepared a lay out plan on 2.10.1995 and even thereafter, the respondent continued his dilly-dallying tactics and started negotiation with the third parties for sale and hence, a suit in O.S.No.3148 of 1996 for permanent injunction was filed by the appellants and an order of interim injunction was obtained. By Ex.A4 legal notice, dated 9.9.1996 the appellants called upon the respondent to execute the sale deed on or before 20.9.1996. But the respondent sent a reply notice with false averments and stated that the suit is well within time.

18. But on the contrary, it is the case of the respondent that under Ex.B1 receipt, fee was paid for surveying the land on 23.6.1987 itself and subsequently survey has been done.

19. It is the contention of the learned counsel for the respondent that if really no survey had been done by the respondent the appellants would not have paid further advance amount of Rs.50000/-each on 14.9.1987 and 31.12.1989 and further the appellants would not have entered into the second agreement under Ex.A2 in respect of other lands and another agreement under Ex.A3 on 25.3.1991. D.W.1 in his evidence has also stated that necessary fee was paid and the survey has been done but nothing has been elicited in his cross examination to discredit his evidence. As rightly contended by the learned counsel for the respondent that if really the respondent had not surveyed the lands, the further advance payment of Rs.50000/-each would not been made by the appellants and they would not have entered into Exs.A2 and A3 agreements also. Therefore, the case of the appellants that the respondent had not completed the survey as agreed under Ex.A1 cannot be accepted. The time for completing the sale as per Clause 1 of Ex.A1 is ten months from the date of survey of the lands. Ex.B1 is dated 23.6.1987 and subsequently survey had been done before the end of July 1987 and therefore, the ten months time will expire in May 1988. But even thereafter, on 31.12.1989, the respondent has received a

sum of Rs.50000/-and made necessary endorsements at the back of Ex.A1.

20. The three years period from 31.12.1989 has expired on 31.12.1992 and in the interregnum period, no notice has been issued by the appellants to the respondent pointing out that he had not done the survey as agreed and calling upon the respondent to execute the sale deed. The suit for specific performance ought to have been filed on or before 31.12.1992. But admittedly, the suit has been filed only on 22.11.1996. Thus, the suit is clearly barred by limitation. But the Court below by considering the refusal of the respondent to execute the sale deed under Ex.A5, dated 13.9.1996 has held that the suit has been filed in time as the same has been filed within three years from 13.9.1996, i.e., the date of refusal to execute the sale deed. In our considered view, the said approach of the trial Court is not correct. As pointed out above, by 31.12.1992, the three years period for filing the suit has expired and thereafter, in reply to Ex.A4 lawyer's notice the respondent had sent a reply notice under Ex.A5 pointing out that the period of limitation has expired and is not prepared to execute the sale deed, which, in our considered view, will not constitute a fresh starting point of limitation.

21. Under Article 54 of the Limitation Act, the period of limitation for filing the suit for specific performance of a contract is three years and the starting point of limitation is the date fixed for the performance or if no such date is fixed when the plaintiff has notice that the performance is refused. In this case, as pointed out above, though the time fixed for performance has expired in May 1988, since the respondent has received a further advance of Rs.50000/-on 31.12.1989, the fresh period of three years starts from that date and hence, the last date for filling the suit will be 31.12.1992 and the date of refusal under Ex.A5, dated 13.9.1996 cannot be taken as starting point of limitation. Therefore, as far as Ex.A1 sale agreement is concerned, the suit is clearly barred by limitation.

22. As far as Ex.A2 sale agreement, dated 25.3.1991 is concerned, it is the contention of the learned counsel for the respondent that the same is merged with Ex.A3 which was also executed on the same date and a novation has taken place and therefore, Ex.A2 cannot be specifically enforced. A perusal of Ex.A3 shows that it has been executed on 25.3.1991, i.e., on the same day when Ex.A2 had been executed. In fact, in Ex.A3 there is a mention about Ex.A2.

23. As per Clause 1 of Ex.A3, it is the duty of the respondent that he must clear all encumbrances over the property covered by Ex.A2 and he should survey the lands at his own cost. As per Clause 2 of Ex.A2 for the purpose of selling the property either as a land or as house sites the land should be cleared; putting up of lay outs by planting stones; provision of drainage and drinking water facilities; obtaining of approval and the expenses for developing the land into house sites should be borne equally by all the three, namely, the appellants and the respondent. As per Clause 3 of Ex.A2 the various acts contemplated in Clause 2 shall be done by the appellants and it is further stated that the respondent is entitled to 1/3rd share in the net profit. As per Clause 4 of Ex.A2, out of the total

sale proceeds realised by selling the lands covered by Ex.A3, namely, 7.14 acres the respondent is entitled to get the sale consideration mentioned in Ex.A2 and he is also entitled to 1/3rd of the net profits, i.e., after deducting the sale consideration and the developing charges from the total sale price received by the sale of the house sites. Thus, it could be seen that totally a new contract has been substituted in the place of Ex.A2. Under Ex.A2 the respondent vendor is only entitled to get Rs.3,50,000/-per acre for the total extent of 7.14 acres and the time limit of one year has been fixed. Further as per Ex.A2, a sum of Rs.3,00,000/-had to be paid within three months from 25.3.1991 and a further sum of Rs.2,00,000/-had to be paid within two months there from, i.e., within five months from 25.3.1991. but no such terms have been incorporated in Ex.A3, whereas under Ex.A3 the respondent vendor is not only entitled to total sale consideration payable under Ex.A2 but is also entitled to 1/3rd share in the net profit and no time limit has been fixed in Ex.A3. Thus, the terms of the contract under Ex.A2 have been varied by Ex.A3 and a novation has taken place. But the suit has been filed by the appellants seeking specific performance of Ex.A2 sale agreement and no relief has been asked for in respect of Ex.A3 sale agreement, though Ex.A3 has been mentioned in the plaint. Thus when a novation has taken place, the suit for specific performance of the contract of sale under Ex.A2 is not maintainable. This aspect has not been looked into by the trial Court.

24. Further, it has to be pointed out that as per the endorsement found in the agreement of sale Ex.A2, dated 25.3.1991, a sum of Rs.50000/-has been admittedly paid on 18.9.1991. Though another sum of Rs.50000/-is said to have been paid as per the endorsement, dated 10.10.1994, the said payment and the endorsement have been denied by the respondent in his notice as well as in the written statement and evidence. The Court below has also found that the endorsement, dated 10.10.1994 and the payment of Rs.50000/-has not been proved. Though the appellants have examined P.W.2, who has attested Ex.A2 sale agreement and the endorsement made therein, the Court below has pointed out that P.W.2 has not specifically mentioned the date of the second payment. When the respondent as D.W.1 has denied his signature under the second endorsement and the receipt of Rs.50000/-, it is the duty of the appellants to prove that the signature found in the endorsement is that of the respondent. But the appellants have not taken any steps to get the handwriting expert's opinion. The trial Court has considered all these aspects and has rightly found that the sum of Rs.50000/-said to have been paid on 10.10.1994 has not been proved.

25. In Ex.A2 also, the time for performance of the contract has been mentioned as one year from the date of survey of the lands. Hereagain, it is the case of the appellants that the respondent has not carried out the survey. But it is the specific case of the respondent that the survey had been done. If really, the respondent had not surveyed the lands, the appellants would not have kept quiet without issuing any notice calling upon him to survey the lands and would not have paid further advance of Rs.50000/-on 18.9.1991. If one year period prescribed for performance of the contract is taken from 25.3.1991, then it

expires on 25.3.1992 and since the survey had been done in September 1991, the one year period expires by the end of September 1992. The three year period for filing the suit expires by the end of September 1995. But admittedly, the suit has been filed on 22.11.1996, i.e., after the expiry of the period of limitation and hence, we are of the considered view that the suit for specific performance in respect of Ex.A2 sale agreement is also barred by limitation. On this ground also, the suit is liable to be dismissed. Though the trial Court has dismissed the suit for specific performance, it has decreed the alternative relief of refund of advance amount of Rs.300000/-, which was, admittedly, received by the respondent from the appellants as advance, holding that the suit is not barred by limitation by taking the starting point from the date of Ex.A5 whereby the respondent had refused to execute the sale deed, which, in our considered view, is not correct.

26. When a time for specific performance of contract has been mentioned in Exs.A1 and A2 then the period of limitation starts from the last date fixed for performance of the contract and not the date of refusal. If no time limit is fixed for performance then only the date of refusal to perform by the vendor can be taken into consideration. Thus, the trial Court is not right in decreeing the alternate prayer of refund of the advance amount received by the respondent.

27. Admittedly, the extent of 5.75 acres out of total extent of 7.14 acres agreed to be sold under Ex.A2 has been acquired by the Government by issuing a notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme (Act 31 of 1978). The said notification has been issued on 26.12.1990 itself, i.e., even before Ex.A2 was entered into. Further, Ex.B8, dated 22.2.1991 shows that the respondent has to appear for an enquiry on 14.3.1991. Thus the respondent was aware of the acquisition proceedings and in spite of the same he has entered into sale agreement, dated 25.3.1991. Once a notification for acquisition of the land is issued, then all encumbrances or alienation made by the land owner will become void and the same will not be binding on the Government. In this case, the respondent had filed W.P.No.4094 of 1992 challenging the acquisition proceedings but the same was dismissed as seen from Ex.B2, dated 20.3.1992. According to the respondent, the writ appeal was filed in W.A.No.2023 of 1999 and the same is pending. According to the learned counsel for the respondent the land acquisition proceedings were known to the appellants but according to the appellants, they were not aware of the acquisition proceedings. It is the case of the respondent that only because of the land acquisition proceedings the appellants were delaying the completion of the sale.

28. When a major portion of the lands agreed to be sold under Ex.A2 has been acquired then Ex.A2 has become impossible of performance. It was contended by the appellants that in respect of the remaining extent a decree can be passed. In the plaint, the appellants had sought for specific performance for the entire extent and they have not expressed their readiness and willingness to get the sale deed executed in respect of the remaining extent by paying the entire sale

consideration fixed for 7.14 acres.

29. The learned counsel basing reliance on the decision reported in Surjit Kaur Vs. Naurata Singh and Another, , submitted that the appellants can accept part performance of the contract at any stage of litigation. It has to be pointed out that even at the appellate stage though the appellants could have sought for an amendment of the plaint to incorporate such prayer, the same has not been done and therefore, the said contention of the learned counsel for the appellants cannot be countenanced.

30. For the aforesaid reasons, we are of the considered view that the appellants are not entitled to seek a decree for specific performance of agreements of sale under Exs.A1 and A2. But yet another question that remains to be answered is whether the Court below is right in granting the decree for the alternate relief of refund of advance amount paid by the appellants under Exs.A1 and A2?

31. Though the respondent has not filed any appeal or cross objection questioning the said decree, yet this Court by exercising its power under Order 41 Rule 33 C.P.C., can reverse the decree in order to do complete justice between the parties. The object of the said rule is to do complete justice between the parties. The exercise of powers under Order 41 Rule 33 C.P.C., no doubt, is discretionary and has to be normally exercised only in cases in which the orders passed would lead to impossible, contradictory and unworkable orders. This power can be exercised by the appellate Court in favour of all or any of the respondents although such respondents may not have filed any appeal or objection.

32. As we have held that the suit for specific performance in respect of Exs.A1 and A2 sale agreements is barred by limitation, then the inevitable result could be that the suit is liable to be dismissed in its entirety. When the suit is barred by limitation and the same is dismissed on that ground alone, neither the main relief nor the alternate relief could be decreed. Therefore, if the decree of the trial Court is allowed to stand, it will be contrary to the aforesaid finding. Therefore, we are of the considered view that the decree passed by the trial Court granting the alternate relief of refund of Rs.3,00,000/-paid as advance by the appellants to the respondent under Exs.A1 and A2 sale agreements is liable to be set aside and accordingly, the same is set aside.

33. The court below having dismissed the suit for specific performance and only decreed the alternate relief is not correct in awarding the costs to the appellants and therefore, the same is set aside and the parties are directed to bear their respective costs through out.

For the aforesaid reasons, the appeal is dismissed. Connected M.P. is also dismissed.