

(1992) 12 MAD CK 0032
In the Madras High Court
Case No : A.S. No. 107 of 1983

R. Muniswamy and 6 others

APPELLANT

Vs

P. Pandiarajan and 3 others

RESPONDENT

Date of Decision : 03-12-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 3, 47, 48
Evidence Act, 1872 — Section 45, 73
General Clauses Act, 1897 — Section 3(22)
Specific Relief Act, 1963 — Section 16, 16(c), 19(b), 24, 27
Transfer of Property Act, 1882 — Section 3

Citation : (1992) 12 MAD CK 0032

Hon'ble Judges : Maruthamuthu, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : T.R. Mani and Mr. T. Srinivasa Raghavan, for the Appellant; K. Vaitheeswaran, G. Viswanathan, Dhamodharan and R. Kannan, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Natarajan J.

1. The unsuccessful defendants 1 to 7 are the appellants. The first respondent/plaintiff filed a suit for specific performance of the agreement of sale or in the alternative for return of the advance money. The case of the first respondent/plaintiff as disclosed in the plaint can be briefly stated as follows:- The first defendant is the owner of the suit property and defendants 2 to 6 are his sons. The seventh defendant is the subsequent purchaser from the defendants 1 to 6 and defendants 8 to 10 are the tenants of the suit property. The first defendant borrowed a sum of Rs. 35,500/- from the plaintiff under a registered mortgage deed dated 19-1-1980, mortgaging the plaint schedule property for repayment of the said loan. On the same day, the first defendant and the plaintiff entered into an agreement, under which it was agreed that the plaintiff has to collect the rent from the defendants 8 and 9 and the same has to be adjusted towards interest

payable under the mortgage. The plaintiff also lent a sum of Rs. 700/- under a promissory note dated 15-7-1980 to the first defendant. The first defendant negotiated for the sale of the plaint schedule property. The plaintiff also agreed to purchase the same for Rs. 63,000/-. An agreement of sale deed dated 10-10-1980 was executed in duplicate between the plaintiff and the first defendant and as per the terms of the said agreement, the plaintiff paid Rs. 4,300/- on the date of the sale agreement and the amount payable under the promissory note was agreed to be treated as part of sale consideration under the said agreement. Thus the total sum of Rs. 5000/- made up of these two items was taken as advance. The first defendant has agreed to complete the transaction on or before 9-9-1981 and agreed to receive the balance of sale consideration at the time of registration before the Registrar's Office after deducting the balance amount payable under the mortgage. According to the plaintiff that he had been all along ready and willing to purchase the property and pay the balance of sale deed consideration as per the terms of the sale agreement and complete the sale transaction. The first defendant had been putting off execution of the sale deed on some excuse or other, and promising to get necessary income tax clearance certificate regarding the sale transaction.

2. While so, the plaintiff came to know from a lawyer's notice dated 11-7-1981 sent by the seventh defendant to the ninth defendant, who is the wife of the plaintiff that he claimed title to the suit property by virtue of a sale deed dated 29-10-1980, said to have been executed by the first defendant and calling upon the tenants to pay the rent and deliver possession. After realizing that the defendants 1 and 7 colluded together and had brought about the purported sale deed in favor of the seventh defendant fraudulently and with a view to over reach the plaintiff, he issued a lawyer's notice dated 25-7-1981 to the seventh defendant, marking a copy of it to the first defendant, setting out his rights under the sale agreement in his favor and also challenged the alleged sale deed in favor of the seventh defendant. Though the defendants 1 and 7 have received the notice sent by the plaintiff, the seventh defendant did not send reply. Only the first defendant has sent a reply on 5-8-1981 containing false and untenable contentions. It is stated that the seventh defendant must have been aware of the plaintiffs' right under the sale agreement and must have brought about the sale deed improperly and speculatively and after the defendants have colluded together and brought about the sale deed dated 29-10-1980. The purported purchase by the seventh defendant will not in any way affect the plaintiffs' right under the sale agreement. Though the defendants 2 to 6 had no right over the properties in view of the execution of the sale deed in favor of the seventh defendant by the first defendant for himself and on behalf of the defendants 2 to 6, they are also added as parties. The seventh defendant's claims as a subsequent purchaser cannot prevail against the rights of the plaintiff and he is also bound to join in the sale executed by the defendants 1 to 6. The plaintiff is also advised that he should seek alternative relief of compensation in this suit as per law. Hence the suit for the relief of specific performance or in the alternative

directing the defendants 1 to 7 to pay the plaintiff Rs. 5,000/- with future interest with costs.

3. The said suit was resisted by the defendants 1 to 7 and in the written statement while denying the averments stated in the plaint inter alia contended that it is a fact that the First defendant borrowed Rs. 700/- under a promissory note and also a sum of Rs. 35,000/- under a mortgage deed. He has paid the entire interest till the date of execution of the sale deed in favor of the seventh defendant. It is further stated that the first defendant never agreed to sell the property for Rs. 63,000/- and the allegation that as if a sale agreement dated 10-10-1980 was executed is emphatically denied as false and fraudulent. Further the allegation that the plaintiff is in Possession of one copy of the agreement is also disputed. It is to be stated that somebody has Forged the signature of the first defendant and the Transaction is forged for the purpose of creating Litigation. It is further stated that the first defendant has executed the sale deed Ex. B. I in favor of the seventh defendant for valuable consideration and he is the owner of the suit property and he is entitled to realize the rent from the tenants, who are added as defendants 8 to 10 in this suit. The defendant also denied emphatically that there is collusion between the first defendant and the seventh defendant, and as a result of the same the sale deed has been brought in favor of the seventh defendant with a view to over reach the Plaintiff. It is not open to the plaintiff to dispute or question the validity of the sale deed dated 29-10-1980 executed by the first defendant in favor of the seventh defendant, and the said sale is true, valid and binding all the parties. It is Further stated that the first defendant sent a reply on his own accord and not at the instance of the seventh defendant. Repudiating all the contentions made in the notice dated 25-7-1981, lastly it is stated that the plaintiff is not entitled to either the relief of specific performance or the alternative relief of compensation. Hence pray for dismissal.

4. The seventh defendant in his written statement while, adopting the written statement filed by the defendants 1 to 6 contented that prior to the execution of the sale deed and even during the execution of the sale deed he informed the defendants 8 to 10 and the plaintiff, who is the husband of the 9th defendant, that he required the building for his own use and occupation and that he intends to demolish and reconstruct the building and as they were apprised of the facts agreed to vacate the building and that the fact of purchase was known to them. Since they did not vacate the property as promised he informed them that he would be constrained to take eviction proceedings, they colluded together and with a view to drag on the proceedings and to squat on the property, this suit has been filed as a counter blast to the eviction proceedings. It is stated that the alleged agreement of sale by the plaintiff and first defendant and the various transactions alleged in the plaint, the plaintiff is put to strict proof of the same. It is further stated that he made enquiries and ascertained that there was no encumbrance, that the encumbrance of a mortgage in favor of the plaintiff had been duly provided for and the sale deed has been properly executed and that he is a bonafide purchaser for valuable consideration without notice of the

agreement of sale in favor of the plaintiff. It is further stated that the readiness or willingness on the part of the plaintiff is of no avail and that there was no agreement as stated above. The plaintiff is not entitled to question the right of the seventh defendant to claim rent from the defendants 8 to 10. The defendants 8 to 10 appear to have been set up by the plaintiff to contest the eviction petition filed by the defendants. It is stated that though he received the notice issued by the plaintiff, since he was not a party to the alleged agreement, he did not issue any reply. The plaintiff is not entitled to any decree for specific performance or for the alternative relief.

5A. Defendants 8 to 10 filed a separate written statement, wherein the eighth defendant would state that the monthly rent payable by him is Rs. 275/- and he paid an advance of Rs. 3000/- to the first defendant. By virtue of the agreement between the plaintiff and the First defendant, he has been paying the rent to the plaintiff and obtained receipts. He is willing to abide by the decision of this Court in regard to the claim of the plaintiff. The ninth defendant would also submit that the rent for his portion was agreed at Rs. 75/- and she paid an advance of Rs. 500/- as per the agreement. The seventh defendant filed R.C.O.P No. 690 of 1981 with a view to harass this defendant and the same is being resisted,. The tenth defendant would also state that the monthly rent is only Rs. 65/- and not Rs. 75/- and he is contesting the R.C.O.P. No. 306 of 1977 and he has been remitting the rent into Court.

5. With these pleadings, the trial Court has framed the following issues-

- 1) Whether the suit agreement is true and valid in law?
- 2) Whether the payment of advance of Rs. 5,000/- is true ?
- 3) Whether the sale deed in favor of the seventh defendant is valid?
- 4) Whether the plaintiff is entitled to the relief of specific performance?
- 5) Whether the plaintiff is entitled to the alternative relief of compensation?
- 6) To what relief is the plaintiff entitled?

6. On the side of the plaintiff, he examined himself as P.W. 1 and the scribe of Ex. A.15 was examined as P.W. 2 and the attester to Ex. A.15 was examined as P.W. 3 and Exs. A.1 to A. 22 were marked. On the side of the defendants, the first defendant was examined as D.W. 1 and the seventh defendant was examined as D.W. 2, and Exs. B.1 to B.7 were marked.

7. The learned trial judge after considering the oral and documentary evidence and for the reasonings assigned in the judgment held under issue No. 1 that the suit agreement is true and valid and that under issue No. 2 the payment of advance of Rs. 5,000/- under Ex. A.15 is true; under issue No. 3 it was held that the seventh defendant is not a bonafide purchaser for value and hence the sale deed Ex. B.1 is not valid and binding on the plaintiff; under issue No. 4 it was held that the plaintiff is entitled to a decree for specific performance; under issue

No. 5 it was held that in view of the relief granted under issue No. 4 this issue does not arise for consideration and ultimately under issue No. 6 the court granted the decree for specific performance as prayed for with costs, against the defendants 1 to 7 and no relief is granted against the defendants 8 to 10. Aggrieved by the same, the defendants 1 to 7 have preferred this appeal.

8. Learned senior counsel for the appellants/defendants Mr. T.R. Mani, took us through the pleadings as well as the evidence, both oral and documentary, and the impugned judgment of the trial Court and made his submissions. According to the learned counsel the plaintiff has not established that the signature in Ex. A.15 is that of the first defendant and that the Court below ought not to have accepted the evidence of P.Ws. 2 and 3 who are the scribe and attester of the instrument. According to the learned counsel the Court below ought to have sought the assistance of an expert instead of itself proceeding to find out the genuineness of the signature. According to the learned counsel the Court below ought to have held that the suit agreement is not true and valid and the finding is not sustainable. He would further contend that the finding with regard to the question whether the plaintiff was ready and willing to perform his part of the contract is also not sustainable. According to the learned counsel that the seventh defendant is a bonafide purchaser for valuable consideration without notice under Ex. B. 1 and the Court below has erred in finding that the seventh defendant is not a bonafide purchaser merely because he has not paid the mortgage money due to the plaintiff, overlooking the fact that the time fixed for payment of the mortgage money had not arrived. According to the learned counsel that in view of the fact that the plaintiff had not established the truth and validity of the agreement and his readiness and willingness to perform his part of the contract and on that ground alone the suit ought to have been dismissed. Even otherwise since the seventh defendant is a bona fide purchaser for valuable consideration, the suit ought to have been dismissed.

9. The learned counsel for the respondent countered the above arguments in detail and also submitted the case law in support of his contentions. While considering the respective contentions, the points that arise for consideration in this appeal are:-

- 1) Whether the suit agreement Ex.A. 15 is true ?
- 2) Whether the plaintiff was ready and willing to perform his part of the contract as per Ex.A. 15 ?
- 3) Whether the seventh defendant is a bona fide purchaser for value without notice of the earlier agreement?

10. Point No 2.- The case of the plaintiff is that the first defendant had dealings with him already borrowed a sum of Rs. 35,500/- under a mortgage deed dated 19-1-1980, mortgaging the suit property for repayment of the said loan and towards interest on the same day he executed a Varthamana" letter Ex. A.6 under which the plaintiff was permitted to collect the rent from the tenants i.e.,

defendants 8 and 9. The plaintiff also advanced a loan of Rs. 700/- on 15-7-1980 and got a promissory note from the first defendant, The first defendant agreed to sell the suit property for a sum of Rs. 63,000/- and a sale agreement was executed on 10-10-1980 on a stamped paper and a cash of Rs. 4300/- was paid as advance and a sum of Rs. 700/- payable under the promissory note was also agreed to be treated as part of the sale consideration. As per the terms of the agreement the first defendant had to complete the sale transaction on or before 9-9-1981. The contention of the defendant is that he never executed any agreement but though admitted the borrowing under the mortgage deed and the promissory note. He would submit that the signature in Ex. A.15 is a forged one and the document is fabricated and concocted for the purpose of this case. The burden is only the plaintiff to prove the genuineness of the suit agreement as well as the signature in Ex. A.1 with that of the first defendant that was executed by him and that he had received the advance as alleged.

11. The plaintiff has examined himself as P.W. 1 besides he examined the scribe as P.W. 2 and the attester as P.W.3.

xx xx xx xx xx xx xx xx

[Discussion of evidence is omitted] - Ed. In Ex. A.15- the disputed agreement at first page(one) is similar to his signature but he cannot definitely say whether it is his signature or not. So also in the second and third pages of Ex. A.15 it cannot be definitely stated that it is his signature. But again he admitted that the signature in Ex. A.1, A.3 is that of his signature. It is only in these circumstances that the learned counsel for the respondent contends that in the evidence the answer given by the first defendant is really an admission of his signature in Ex. A. 15 though couched in a very clever manner. Next it was contended by the learned counsel for the appellant that the comparison of the signature disputed by the court in the absence of the opinion of the expert is not proper and the Court ought not have done it. In this connection he drew the attention of this Court to Sections 45 and 73 of the Evidence Act, and relied on a decision reported in State (Delhi Admn.) v. Pali Ram, wherein it was held as follows:-

Although there is no bar to the judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the judge should, as a matter of prudence and caution hesitate to base his finding with regard to the identity of a hand-writing which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other and the prudent course is to obtain the opinion and assistance of an expert.

But in Srichand K. Khetwani Vs. State of Maharashtra, , it has been held as follows:-

(c) Evidence Art. (1872), S. 455 - Expert evidence -whether necessary

examination by handwriting expert is not necessary in every case of disputed writing and no adverse inference can be drawn for not obtaining expert's opinion in such Case

In the State of Gujarat v. Vinaya Chandra, A.I.R 1967 S.C 778 wherein it is held as follows:-

This statement is not factually correct also as the trial Court had itself compared these writings and signatures with certain other writings which had been proved to be of the respondent. A Court is competent to compare the disputed writing of a person with others which are admitted or proved to be his writings. It may not be safe for a court to record a finding about a person's writing in a certain document merely on the basis of comparisons, but a Court can itself compare the writings in order to appreciate properly the other evidence produced before in that regard. The opinion of a handwriting expert is also relevant in view of S. 45 of the Evidence Act, but that too is not conclusive. It has also been held that the sole evidence of an handwriting expert is not normally sufficient for recording a definite finding about the writing being of a certain person or not. It follows that it is not essential that the handwriting expert must be examined in a case to prove or disprove the disputed writing."

In Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, where in it has been held as follows.-

The expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substance live evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

In Magan Bihari Lal v. State of Punjab 1990 2 S.C.R 1007 wherein it has been held as follows: -

It is well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. It is unsafe to base a conviction solely on expert's opinion without substantial corroboration.

In R. Ramaswamy Vs. Seethammal, wherein this Court held as follows: -

S. 73 of the Evidence Act does not specifically state by whom the comparison of a disputed writing with an admitted writing should be made. However, the second paragraph of the Section, dealing with the related subject, expressly provides by way contrast that in that particular connection the Court may make the comparison. The comparison can be made either by a witness acquainted with the handwriting or by an expert witness skilled in deciphering handwriting, or without the intervention of any witnesses at all, by jury themselves, or in the event or there being no jury, by the court. It is not essential that the handwriting expert must be examined to prove or disprove a writing. The Court is competent

to compare the disputed writing with the writing admitted or proved to be that of the person concerned. Of course, the Court may get the writing compared by an expert and examine him if it thinks fit to do so. But it is not bound to do so.

The ratio laid down in the above decisions clearly establishes that it is not essential for the Court to get the opinion of the expert. The Court is competent to compare the signature with the admitted signature and there is absolutely no bar in view of S. 73 of Evidence Act. In the instant case, we have got the evidence of scribe P.W. 2, as well as the attesting witness- P.W. 3, who had categorically stated that it is only the first defendant who had affixed his signature in all the three pages in the agreement--Ex. A. 15, in their presence and we have got admitted signatures in registered documents--Ex. B.1, as well as in other documents and which are available for comparison. In the circumstances, the Court below is justified in comparing the signature of the first defendant in the disputed agreement and come to a conclusion that the signature in Ex. A. 15 is that of the first defendant and there is no doubt with regard to the genuineness of the signature of the first defendant in Ex. A. 15. The procedure adopted by the Court cannot be said to be illegal or improper.

12. It was argued that interest on Ex. A. 3 had not been provided in Ex. A. 15 agreement. It is seen that as per Ex. A.6 "Vanhamana" letter the first defendant had given, power to collect the rent and adjust towards the mortgage deed interest. The said mortgage and the "Varthamana" letter was executed by the first defendant on the same day, i.e., on 19-1-1980. While the suit agreement came into existence on 10-10-1980 and the promissory note--Ex. A. 14 was executed by the First defendant on 15-7-1980 and the period in between the suit agreement and the promissory note was only three months and the amount of interest for three months is negligible and the omission to provide a clause relating to interest has of no consequence.

13. Now as regards the purchase of stamp papers on different dates P.W. 1 gives convenient Reason for the same in his evidence. He has categorically stated in his evidence that he purchased one set of stamp paper about 10 or 12 days prior to Ex. A. 15 and on the morning of 10-10-1980 he purchased another set and by using both the agreement was executed on the same day. Hence there is absolutely nothing to hold that due to the purchase of stamp papers on different dates Ex. A. 15 is not a true and valid document. Thus on a careful consideration of the entire materials, we have no hesitation in holding that the plaintiff has established his case by acceptable evidence that Ex. A. 15 is true and valid document and it is not a fabricated one as contended by the appellants/defendants. This point is answered accordingly in favor of the respondent/plaintiff and against the appellants/defendants.

14. Point No. 2:- As regards the second point is concerned, the contention of the learned counsel for the appellant/defendants is that from the mere fact that the plaintiff owns 8 acres of land it does not matter. The question is whether the plaintiff had capacity to pay or not. It is further contended that in the instant

case there is absolutely no evidence on the side of the plaintiff that plaintiff was capable of performing his part of the agreement, but it is only stated that the plaintiff is always ready and willing to perform his part of the agreement. In this connection the learned counsel/relied on the following decisions. In AIR 1928 208 (Privy Council)) it has been held as follows:-

Specific Relief Act, S. 24 - Suit for specific performance - Plaintiff must show readiness to do his part of the contract up to decree - English law is the same.

Although, so far as the Act is concerned, there is no express statement that in a suit for specific performance the averment of readiness and willingness on plaintiff's part upto the date of decree is as necessary as it was always in England, it seems invariably to have been recognized that the Indian and the English requirements in this matter are the same.

In. Gomathinayagam Pillai and Others Vs. Pallaniswami Nadar, it has been held as follows:-

I am of the opinion that the trial Court was clearly wrong in inferring that the respondent was not ready and willing to perform the contract from the fact that from April 30, 1959 upto the middle of July 1959 the respondent had not taken any steps in the matter and from his failure to explain the delay. If the respondent was guilty of laches, it was the duty of the appellants to fix a reasonable time for the completion of the sale. Mere delay, short of waiver or abandonment of the contract is no ground for refusing relief, nor is it evidence of lack of readiness and willingness. The materials, on the record clearly indicate that the respondent was at all material times ready and willing to perform the contract.

In Rethinasabapathi Pillai V.V. v. T.R. Sriramulu Chettiar, wherein it has been as follows:-

Compliance with S. 16 (c) of the Act is not an empty formality. It is a mandate of the statute. Irrespective of whether the opposite party raises a contention or not with regard to compliance with S. 16(c), it is the duty of the Court to advert to this aspect to find out compliance or otherwise, and when there is non-compliance with this statutory mandate to decline to grant specific performance. Lack of plea by the other side and lack of formulating an issue over the same shall not absolve the Court from its duty to advert to this statutory mandate to find out compliance or non-compliance with it, and in the latter case, the Court is left with no other alternative but to dismiss the suit.

In H.G. Krishna Reddy and Co. v. M.M. Thimmiah, A.I.R 1983 Mad 169 = 96 L.W. 88 wherein it has been held as follows:-

Section 16(c) of the Specific Relief Act, 1963 is prohibitory and a specific performance of a contract cannot be granted in favor of a person unless he avers and proves his readiness and willingness to perform his part of the contract. That being the nature of the statute, it would be the duty of the court to see

whether the person who seeks to enforce the contract satisfies the mandatory provisions of S. 16 of the said Act. If the conditions are not satisfied, the court is bound to dismiss the suit. It is certainly the duty of the plaintiff to have gone into the witness-box and given formal evidence that he was ready and willing to perform his part of the contract and adjusted himself to cross examination. Where in a suit for specific performance of a contract, there is absolutely no evidence on the side of the plaintiff to prove that he was ready and willing to perform his part of the contract and such readiness and willingness continued till the date of the decree, in his absence from witness-box the Courts cannot find that the plaintiff has discharged the duty enjoined on him under S. 16(c) of the Act entitling him to a decree for specific performance.

15. Per contra the learned counsel for the respondent submitted that it has been specifically averred the paragraphs 11 and 14 of the plaint that the plaintiff had all along been ready and willing to purchase the property and to pay the balance of sale consideration as per the terms of the sale agreement and complete the sale transaction. The first defendant had been putting off execution of the sale deed, on some excuse or other. He has also deposed in his evidence that he has been carrying on the business in charcoal and is owning from 1970 about 8 acres of land besides a house of his own and he is possessed of sufficient means to pay the balance and that has not been challenged in the cross-examination. Even the capacity of the plaintiff to pay the balance amount has not been disputed even in the written statement. The learned counsel for the respondent would submit that necessary pleadings have been raised and evidence has been adduced with regard to the readiness and willingness of the respondent to perform his part of the suit agreement.

16. With regard to the contention of the learned counsel for the appellants that the averments required under Ss. 47 and 48 in Appendix A thereto in CPC have not been specifically averred in the plaint and it is not in the same words as stated in the plaint and as such it cannot be a proper compliance. In this connection the learned counsel for the respondent drew the attention of this Court to a decision reported in *V.V. Rethinasabapathi Pillai v. T.R. Sriramuttn Chettiar*, 99 L.W. 239 wherein it has been held as follows:

The Court need not insist that the very language of the section should be repeated in the plaint. After all, the intendment behind the statutory provision is to find out as to whether the plaintiff treated and treats the contract at all relevant points of time as subsisting on the basis of which alone he can ask for specific performance of the contract. Pleadings need not be thrown out on the simple ground that the plaintiff has not borrowed the language the statutory provision. If, on a comprehensive reading of the plaint, it is made out that he has always been ready and willing to perform the essential requirement of making averments under S. 16(c) of the Act. In our opinion, the averments in the plaint are adequate and unambiguous to the effect required by S. 16(c) of the Act.

In *Viswanathan v. K.M. Patanishwamy Gounder* 1992 2 L.W.140 it has been held as follows:-

Held, negative the contention urged. The substantive law" is found in the Specific Relief Act and the provision therein is S. 16(c) in so far as it is relevant for this case. When the Substantive Law prescribes only one requirement, viz. that the plaintiff shall plead and prove his readiness and willingness to perform the contract, the procedural law can not go further than that and impose an additional requirement, which should be fulfilled before any relief is granted as a condition precedent. It is well settled that form or procedure can never be exalted over the substance and procedure should always be the handmaid of justice. It is in that light the provisions of O. 6, R. 3. C.P.C. and Forms 47 and 48 in Appendix A should be interpreted and understood. When S. 16(c) refers, only to the readiness and willingness of the person, who seeks to have the contract enforced, O. 6. R. 3 cannot be understood, as imposing an independent and additional requirement. The contents of Forms 47 and 48 should be interpreted so as to fall within the scope of S. 16 (c) of the Specific Relief Act. If viewed in that light, paragraphs 2 and 3 in Form 47 should be read together. In this case paragraph 9 of the present plaint is sufficient compliance with the requirements of paragraph 2 of Form 47. Even otherwise, the relief of specific performance cannot be denied to the plaintiff, who has proved that, on the facts and circumstances of the case, there was no question at marking a demand on the defendant and waiting for his. Thus reliance by the appellant on S. 16(c) of the Relief Act Or. 6. R. 3. CPC, and on Forms 47 and It in Appendix A thereto will not be of any avail to him.

It is clear from the decisions, enumerated above, that failure to adhere to Forms 47 and 48 In Appendix-A will not in any way affect the case the plaintiff. But there are necessary allegations with regard to the readiness and willingness as required u/s 16(c) of the Act and it has also been spoken to that effect in the evidence also. In this connection, the learned counsel for the respondent cited number of authorities. The learned counsel for the respondent also drew the attention of this Court to S. 16 of the Specific Relief Act and submitted that the said section does not require that the money should be deposited along with the plaint or should be kept ready and he invited the attention of the Court to shed explanation to clause (c)(1) of Section 16, which reads as follows:-

where a contract involved the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed In the court.

He would submit that the defendants themselves admitted the mortgage in favor of the plaintiff and the mortgage amount is Rs. 35,500. The promote under Ex. A.14 is also admitted. As per Ex. A. 15 the advance of Rs. 5000/- includes the promote amount and the cash of Rs. 4300/- paid at the time of execution of the agreement. After the decree of the suit as per the direction of the trial Court, Rs. 22.500/- was also deposited. The plaintiff has already in his plaint itself stated

that he is all along ready and willing to purchase the property and pay the balance of sale consideration and complete the sale transaction. In his evidence also he has stated to that effect In this connection the learned counsel also drew the attention of this Court to a decision reported in *Namazi N.B. v. Central Chinmava Mission Trust* 100 L.W. 582 wherein it has been held as follows:-

mere delay not sufficient to deny specific performance unless there is waiver or abandonment.

Readiness and willingness when major part of consideration is paid purchaser cannot be said to be not ready and willing, merely because of delay due to supervening circumstance.

The time fixed for the performance as per Ex. A.15 is eleven months i.e., upto 9-9-1981. Even prior to that immediately on coming to know of the issue of notice to the ninth defendant in the month of July, the plaintiff issued a notice to the seventh defendant and the first defendant as well as to the tenants, i.e., the eighth and tenth defendants under Ex. A.16. Though both the defendants 1 and 7 acknowledged the notice, the seventh defendant did not send any reply, but the suit was filed even on 23-8-1981. Thus on a careful consideration of the entire materials and applying the ratio laid down in the above decisions, we have no hesitation in holding that the plaintiff has satisfactorily established that he has always been ready and willing to perform his part of the contract and it was only the first defendant, who was evading the same. Accordingly, we answer this point in favor of the respondent/plaintiff and against the appellants/defendants.

19-A. Point No: 3 relate to the question whether the seventh defendant is bona fide purchaser for value without notice. It is the case of the seventh defendant that he purchased the suit property under Ex. B. I sale deed on 29-10-1980 for Rs. 48,000/- and the details of payment towards the sale price are- (1) Rs. 1500/- was paid as advance at the time of the agreement towards the improvement and maintenance of his family on 13-10-1980, (2) adjustment towards the discharge of the mortgage deed in favor of the plaintiff Rs. 35,500/- and (3) payment of Rs. 11,000/- before the Sub Registrar at the time of registration. According to him, he purchased the property for the purpose of demolition and reconstruction and for his own occupation. But the plaintiff in his plaint states that the first defendant and the seventh defendant colluded together and created the sale deed Ex. B.1 in order to defraud the lawful claim of the plaintiff under the agreement Ex. A. 15. Now let us consider the above contentions in seriatim.

17. Section 19(b) of the Specific Relief Act relates to the relief against the claim of the subsequent transferee, which reads as follows:-

19. Except as otherwise provided by this chapter, specific performance of a contract may be enforced against-

* * * * *

(b) Any oilier person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of original contract.

The onus initially lies on the subsequent purchaser that he had no knowledge of any previous contract and then the onus shifts on the plaintiff, the previous contractor, to show that the subsequent purchaser was not a bona fide purchaser for value. It is seen from Ex. B.1 that the major consideration is only to discharge the mortgage debt under Ex. A.3 in favor of the plaintiff for Rs. 35,500/- by the first defendant. In paragraph 8 of the written statement the seventh defendant had stated that the transaction of sale in favor of him is a bonafide transaction made in good faith and for valuable consideration and that he had made enquires and ascertained that there was no encumbrance. The only encumbrance of a mortgage in favor of the plaintiff had been duly proved for and the sale deed has been properly executed. In paragraph 4 of the written statement also he has set out the objects of the purchase, namely, to inform to the defendants 8 to 10 that he required the premises for his own use and occupation and he wants to occupy after demolition and reconstruction and after evicting them. The learned counsel for the respondent rightly contended that if his intention is to demolish the building and to occupy, he is bound to discharge the mortgage created earlier. The seventh defendant says that after he obtained the sale deed, he issued a notice on 11-7-1981 under Ex. B.2 to the three tenants-defendants 8 to 10, about nine months after the execution of the sale deed. If really he wanted to pay money he would have done it earlier. Though in the evidence he would state that the plaintiff agreed to receive the mortgage amount 3 or 4 days after securing the house and he obtained the sale deed and he did not subsequently say that any attempt has been made to discharge the mortgage deed. What all was now contended was that the time fixed for payment under the mortgage is for three years and since the mortgage provides lime for three years lime for redemption hence he is not bound to pay. In this connection the learned counsel for the appellant relied on a decision reported in *Manvadi Sumennal Jamatraj v. Bandade Thukkappa Alias Tlutkkappa*, 1944 1 M.L.J 376= 571 L.W.277 wherein it has been held as follows:-

This section protects a transferee who has "paid his money". If he has not paid any money, Then it rather difficult to literally apply this section. If he has not paid the whole of the consideration, as in *Himatlal Motilal v. Vasudev Ganesh* (36 Bombay 446), it again cannot be said that he has paid the money; for he has paid only a part of it. Where, however a portion of the consideration was in adjustment of an outstanding debt and the remainder was paid in cash, the trans free thereby paid to the transferor all that had been paid under the contract and can therefore la early said to have "paid his money". The facts of this case therefore attract S. 27 and render the suit contract unenforceable against the respondents.

18. Per contra the learned counsel for the respondent drew the attention of this

Court to the decision of this Court reported in *Veeramalai Vanniar (Died) and Others Vs. Thadikara Vanniar and Others*, wherein the Division Bench has observed as follows:--

The plain language of the sub-section (b) show that the subsequent transferee can retain the benefit of his transfer by purchase which. prima facie had no right to get, one after satisfying the two conditions concurrently (i) he must have paid the full value for which he purchased the property and (2) he must have paid it in good faith and without notes. of the prior contract. Further the burden of proof is upon the subsequent purchaser to establish these conditions in order that his rights may prevail over the prior agreement of sale. It will be sufficient to refer to the decision of the Council in *Bhun Narain Singh v. Cokhul Chard Mahten* (1934 66 M.L.J. 255) about the stringent nature of the cautions and the burden of proof u/s 27; (b) in the instant case, Admittedly the full price has not been paid the time when controversy arose and even at the tune when the suit was filed. The Learned Judge was of the view, that because, the bargain as embodied in the: three sale deed provided for the payment of the money in convenient installments and as a substantial portion of the price had been paid the defendants must be regarded as transferees who paid their money. This view is creaky erroneous. It insufficient to. refers to the leading decision *Himatlal Motilal v. Vasudev Ganesh* (ILR. 1912 36 Bombay 446), in which it was held that "in order to defeat the prior equity to which the plaintiff is entitled. the subsequent purchasers were bound to established. Three things that (1) they were purchasers value. (2)..... and (3) without notice: and that if the venture price had not been paid and a security had been given for the payment -" the balance of the purchase price. the defendants, cannot resist the claim for specific performance (vide observation at page 451 of the above decision). Section 27(b) of Specific Relief Act is only the statutory provision of the principles enunciated in the decision-,in *Langland* to when reference has been made in this Bench decision of" the Bombay High Court. The principle in this decision was reefered two with approval in *Mohammed Haneef Sahib v. The (sic) Trustees, fumma Masjid* (1944 1 ML.J. 376). in which it was. held that the words in section 27(b)" who was paid his money-, " mean the transferee who has paid the whole of the consideration and not a transferee who has paid only part of " Our attention was also drawn to the decision of(sic). *Varadachariar in Arunachala v. Madappa* (A (sic) Madras 949), in which the learned Judge (Varadachan. (sic) called for a finding from the trial Court as to the dates which the subsequent purchaser paid and could be deemed to have paid the purchase price. A perusal of the judgment shows that the learned Judge was also of the view that the entire purchase money should have been paid before the subsequent purchaser obtained knowledge of the prior agreement of sale. In the instant case, even at the time when the 1st defendant gave evidence, there was admittedly a balance of Rs. 7,000/- due under the three sale deeds (vide D.W. 1's evidence page 44 of the typed papers). The learned judge has committed a serious error in thinking that the words who has paid his money" in S. 27(b) are equivalent to "who has paid

his money" or "who has agreed to pay his money." The Judge has overlooked that it is actual payment of the money which alone confers the right so as to prevail over a prior agreement of sale.

In *Arunachala Thevar v. Govindarajan Chettiar*, 1977 2 M.L.J. 431 = 90 L.W. 543 wherein it was held as follows:-

"Paid his money":- This expression has been discussed by several High Courts. In *Himaital Motilal v. Vasudev Ganesh* (1912 ILR 36 Bombay 446) the Bombay High Court held that in order to defeat the prior enquiry "to which the plaintiff was entitled, the subsequent purchasers were bound to establish that they were bonafide purchasers for (sic) And without notice and that if the entire price had not been paid and a security had been given for the payment of the balance of the purchase price, the defendant cannot resist the claim for specific performance.

In *Gudur Renga Reddi v. Gendala Picha Reddi* (11 W.S. 79: 25 I.C. 973 : AIR 1915 Mad 37) it was held that this phrase "paid his money in good faith" in S. 27 of the old Act did not cover the case of a person who, after the execution of his co's deed and before his registration, had notice of a prior contract to sell the property to a third person and who does not pay any cash for any sale but takes it in adjustment of a prior outstanding mortgage in his favor. In that case it was found that before the purchaser had notice of the agree memo after the execution of his sale deed, no endorsement of discharge was made on the mortgage bond towards the adjustment of which the sale was taken. Under those circumstances this Court held that the recital in the sale deed that the sale amount was to be adjusted towards the mortgage, does not operate as an adjustment so as to put the purchaser in the same position as a man who "paid his money in good faith.

In the instant case admittedly the seventh defendant has not taken steps to discharge the mortgage till this date and no amount has been paid and as such he cannot be said that he is a transferee for value. Further even in evidence also D.W. 1 would state that at the time of negotiation, some advance was paid, but he cannot say how much was paid and he will have to look into the document, it is noted in the small paper, now that is not available. The seventh defendant in his evidence as D.W. 2 has stated that except Rs. 1500/- he did not pay any other amount and no receipt was obtained for Rs. 1500/-. The first defendant had also given a prevaricating version with regard to the alleged negotiations prior to the sale and whether the amount was paid prior to the sale deed or subsequently and whether the amount of Rs. 1,000/- or Rs. 1500/- was paid and he cannot definitely say about that. The seventh defendant has categorically stated that on the date of the negotiation the agreed amount was not paid before but only six days after the agreement the amount was paid. Hence it is clear that various mutual contradicting evidence adduced with regard to the payment of advance. With regard to the quantum and time also there was no reference in the written statement, which throws doubt. In the circumstances, the learned counsel for the respondent is perfectly justified in contending that I be seventh

defendant is not a bonafide purchaser for value.

19. Next it was contended that the market value given in Ex. B.1 is only Rs. 48,000/-. Even in the year 1975 under Ex. A.19, the market value was given as Rs. 40,000/- and the very property was mortgaged for Rs. 40,000/-. It is not in dispute that the real price of the property in Madras city is increasing day by day by leaps and bound. The learned counsel for the appellant drew the attention of this court to Ex. A.3 mortgage deed. Ex. A.3 mortgage deed shows the value of the property as Rs. 45,000/-. When the seventh defendant was questioned he would state that he obtained the encumbrance certificate and he made enquires and purchased the property with good intention. He has also taken his elder brother-Sieved for the sale transaction. but no exhibit has been produced before the Court and none of the person with whom the seventh defendant enquired was not examined and not even his elder brother was examined. There is absolutely no evidence to show that the price for which the property was purchased is fair, proper and adequate. On the other hand as per Ex. A.15 the property was agreed to be sale for Rs. 63000/-. The learned counsel for the respondent drew the attention of this Court that even taking into consideration of the land value, the property will worth twice the amount than the sale price mentioned in Ex. B.1. Even in Ex. B.1 the land value has not been correctly given and it is admitted by the first and the seventh defendants in their evidence. On the other hand, as per Ex. A.15 the plaintiff has paid an advance of Rs. 5000/- and after adjusting the mortgage amount of Rs. 35,500/- and Rs. 22,500/- already paid deposited in the Court below, the plaintiff is ready and willing to perform his part of the contract. Hence even in respect of the value of sale consideration of Ex. B.1, it cannot be said that the purchase was for a proper value.

20. The next question is whether the seventh defendant is bonafide purchaser without notice. In the written statement he has already stated that he had enquired and ascertained that there was no encumbrance and the only encumbrance is the mortgage in favor of the plaintiff and that had been duly provided for. Except stating the above, the seventh defendant has not chosen to produce the encumbrance certificate in respect of the property in question. The first defendant in his written statement in paragraph 12 has simply stated that the plaintiff is put to strict proof of the allegations made in Para 12 of the plaint, since they concern the seventh defendant. Admittedly there was no attainment of tenancy. At the time of the alleged sale in favor of the seventh defendant as already found under Ex. A.6, the plaintiff was collecting the rent from the defendants 8 and 10 towards the interest payable under the mortgage deed Ex. A.3. The contention of the seventh defendant that there was collusion between the defendants 8 and 9 in order to defeat his sale under Ex. B.1, Ex. A.15 was brought out subsequently. Since points 1 and 2 are found against the defendants, this coronation of the defendant cannot be accepted. The Courts had consistently held where there are tenants in possession, it is the duty of the subsequent transferee to prove substantially that he had made sufficient enquiry. In this connection, the learned counsel for the respondent drew the attention of

this Court to a decision reported in *Veeramalai Vanier v. Thadikara Vanniar*, wherein it was held as follows:-

In other words, the learned Judge holds that if the subsequent purchaser knows at some earlier point of time the person who relied upon the prior agreement of sale was already in possession as a lessee, the subsequent purchaser need not make any enquiry as to whether the lessee was continuing in possession only as a lessee or in the assertion of any other right. It is this identical point which has been considered by the leading decisions in England and in India and the view has been uniformly taken in all the cases that it is the duty of the subsequent purchaser to enquire the person in possession as in the precise character in which he was in possession at the time when the subsequent sale transaction was entered into. In *Tawathanmvil v. Sxuasanf* (sic) (1951-2 M.L.J.(Andhra)6), a usufructuary mortgage was in possession of the property and an agreement of sale was entered into by the mortgagor to sell the property to the usufructuary mortgagee in satisfaction of the mortgage and also for payment of some additional consideration. The contesting defendant was the subsequent purchaser and it was admitted that the latter did not make any enquiry of the usufructuary mortgagee in order to ascertain from him whether he had rights in the property other than as usufructuary mortgagee. This identical argument which was accepted by the trial Court in the instant case was advanced that once it was known the property was in the possession of a usufructuary mortgagee, there was nothing further that a prospective purchaser of the property need have enquired about this argument was rejected in unambiguous terms. The learned Judge has referred to all the leading decisions and in particular has extracted the following statement of in *Samhart v. Greensfw* (4 (sic) 14 E.R.204 at 209)

With respect to the effect of possession merely, we take the law to be that if there be a tenant in possession of land, purchaser is bound by all the equities which the tenant (sic) could enforce against the vendor and that the equity of the tenant extends not only to interests connected with his (sic) as in *Taylor v. Stibert* (1794 2 Ves Jr. 437) but also interests under collateral agreements, as in "(sic) in *Allen v. Anthemy* (1816-1 Mer. 282), the principles being the same in both classes of cases, namely that the possession of the tenant is notice that he has some interest in the land, that a purchaser having notice of that fact, is bound, according (sic) to the ordinary rule, either to inquire what interest he has, or to give effect to it. whatever it may be "Yella" Reddi v. sabbi (1954-2 M.L.J. (Andhra.) 6). was a case in which-, the person in whose favor the prior agreement of sale entered into was already in possession as a lease but the property was subsequently sold to the contesting defendant as here too the same argument was advanced, that in view of the character of the plaintiff's possession as its inception a tenant, there was no duty cast upon the subsequent purchaser to make any further enquiry. This argument was not accepted. As this decision reviews the relevant cases on the topic, it is unnecessary to burden this judgment by referring to all the cases. Reference may, however, be made to the following observations of the Lord Chancellor in the leading decision which has been

followed in all subsequent case in (sic) Davisoril KWN Ves. 249 at 254).

Where there is a tenant in possession under a (sic) on an agreement, a person purchasing part of the Estate must be bound to inquire on what terms that person is in possession that tenant being in possession under a lease, with an agreement in his pocket to become a purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no enquiry (sic) the nature of his possession."

(Vide also 34 Halsbury's Law of England, page(sic) paragraphs 644 and 14. Halsbury's Law of England (sic) paragraph 1024). For all these reasons, n has to be held this the defendants have failed to satisfy both the limbs of sent on 27(b) of the Specific Relief Act (1) they have not paid the money and, (2) they are not transferees in good firth, and without knowledge of the prior agreement of sale 1 the plaintiff will be entitled to a decree for specific case against defendants 2 to 5 and 7.

In this case admittedly the wife of the plaintiff i.e., the ninth defendant, was living along with. the plaintiff as tenant in the suit Drenises." 1 The original title deed is with the mortgagee-plaintiff The seventh defendant as purchaser of the suit premises has not produced the original title deed or the encumbrance certificate and there is absolutely no evidence that he had made any enquiry with the tenants with regard to their nature of possession in the suit property. In this connection, the learned Counsel for the respondent drew the attention of this Court to a decision reported in Sinna Ponnu v. Singant Odayar, wherein this Court held as follows:-

A transferee to claim the protection u/s 27(b) of the Specific Relief Act must have paid the entire consideration and if for any portion of the price a security (like a promissory note) alone had been executed, the transferee cannot claim to be a transferee "who has paid his money". The words "who has paid his money" in the section are not equivalent to the words "who has agreed to pay his money either in whole or in part.

In Antnachala Thevar v. Govidarajan Chettiar which deals with the question of without notice. Wherein it was held as follows:-

Without notice":- The word "notice" is defined in section 3 of the Transfer of Property Act thus:

A person is said to have notice of a fact when he actually knows that fact, or when. but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

This definition includes both actual and constructive notice. A bona fide contract, whether oral or written, prevails against a subsequent registered conveyance if the transferee had notice of the prior contract. The legal presumption of knowledge or notice arises from:

1. Wilful abstention from an enquiry or search;
2. Gross negligence:
3. Registration, omission to search the register kept under the Registration Act. may amount to gross negligence so as to attract the consequences which result from notice.
4. Actual possession and
5. Notice to an agent.

A purchaser is deemed to have notice of anything which, he has failed to discover either because he did not investigate the title properly or because he did not enquire for deeds relating in the property. The onus of proof lies upon the parley seeking to defeat the prior contract, to adduce prime facie evidence that he is a bona fide transferee for value without notice. But, the burden is light and he may discharge it merely denying the factum of notice on oath. In any case, very little evidence is required on his part to prove this fact which is negative. However, each case will have to be examined on its own facts, to find out whether the onus has been fully and satisfactorily discharged or not. If A enters into a contract of sale with B and finds that C is in possession of the property to be sold, then it is incumbent on A to make an enquiry on what terms C is in possession of the property so as to find out whether there is any prior agreement between B and C for transfer of property in C's favor. In *Veetamalai Vannia v. Thadikara Venkayya* (SI L.W.9 G : 1 M.L.J. 437: A.I.R. 138 Mad 383). a Division Bench of this Court, relying on *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*, has observed that it is also the duty of the subsequent purchaser to enquire from the person in possession as to the precise character in which he was in possession at the time when the subsequent sale transaction was entered into.

The learned Judge also considered what is "good faith" in paragraph 14 of the judgment, which reads as follows:-

The expression "good faith" is not defined in the Act. Section 3(22) of the General Clauses Act, 1897 defines "good faith" thus:

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

Though the original Specific Relief Act, 1877 (which has now been renumbered as the 1963 Act) was passed earlier in point of time to the General Clauses Act and as such the definition in the General Clauses Act would not expressly be applicable to the terms used in the Specific Relief Act there are several judicial authorities which have applied the definitions in the General Clauses Act to the Specific Relief Act. on the ground of equity and good conscience. The question of good faith is necessarily a question of fact. The test to be applied to find out whether there is good faith or not is to see whether the person concerned has

acted honestly or not. in short the essence of "good faith" is the honesty of intention. Whether a purchaser has or has not acted in good faith is a question of fact, which has to be determined from the materials placed and the surrounding circumstances appearing in the case.

Applying the ratio laid down in the above cases to the facts of this case, there is absolutely nothing to show that the seventh defendant has acted in "good faith" as he had not made any enquiry about the possession of prior title deed or any encumbrance certificate. Even though attempt has been made to say that he visited three times and enquired certain persons, none of the persons was examined. As already stated that his elder brother, who accompanied him during the above said enquiry, was also not examined. The various answers in the cross-examination of D.W. 1 and 2 about Ex. B.1 will clearly show that it is not a true transaction and the same has been created to defeat the claim of the plaintiff under Ex. A.15. The first defendant is the villain of piece and he colluded with the seventh defendant and created Ex. B. 1. In this connection, the learned counsel for the respondent drew the attention of this Court that even though it was stated by D.W. 1 that about 20 days prior to Ex. B.1 there is a negotiation of sale with the seventh defendant and at that time there was need for money and there was necessity for sale, but he did not get any cash. It is clear that he is trying to get out of the situation, namely, Ex. A. 1 in favor of the plaintiff. The evidence of D.W. 1, with regard to the execution of Ex. A.15 and his subsequent conduct clearly establish that he can be dubbed as a liar. In this connection the learned counsel for the respondent submitted that the defendants 1 and 7 colluded together is evident by filing this appeal jointly. The first defendant joins with the seventh defendant and he did so because D.W. 1 is a film producer and he needed money and having executed the agreement. It had resorted to this sale deed within a few days. In this connection, the learned counsel for the respondent also drew our attention that the seventh defendant did not even choose to send any reply to the notice Ex. A.16 sent by the plaintiff. There is absolutely no explanation for the same for his not sending the reply. The seventh defendant issued notice only to the tenants-defendants 8 to 10 to vacate the premises and resorted to coercive process by filing eviction petition and obtained interim decree of eviction and the tenants have filed a petition to set aside the interim order. The learned counsel for the respondent submits that the seventh defendant is only a tool in the hands of the first defendant and the seventh defendant is not a genuine purchaser. The seventh defendant did not even produce the original sale deed or the copy of the same even though it is stated that he is having the original and is very much available with him. He is unable to give the particulars regarding the purchase of stamp papers on different dates and also the required stamp papers for engrossing the sale deed. The learned counsel for the respondent vehemently argued that the conduct of the seventh defendant "in keeping quiet for nine months and thereafter issued a notice to the defendants 8 to 10 calling upon them to vacate the premises also throws considerable doubt with regard to the genuineness of Ex. B.1 in his favor,

all is not in dispute that the plaintiff was the mortgagee and he has been lending money to the first defendant and has been collecting rent also, there is absolutely nothing to show any acceptable evidence on the side of the seventh defendant that he made any enquiry with the plaintiff or not. On the other hand, there are circumstances available in this case to show that after the first defendant entered into the agreement with the plaintiff, the first defendant and seventh defendant colluded together and brought about Ex. B.1 to defend the suit agreement Ex. A.-15. For all these reasons, we have no hesitation in holding that the seventh defendant is not a bona fide purchaser without notice and accordingly this point is answered against the appellant and in favor of the respondent

21. It was also contended that since the plaintiff asked for the alternative relief he deemed to have given up the main relief and that he would be entitled to only the alternative relief even if the agreement is found to be true. The learned counsel for the respondent drew the attention of this Court to a Division Bench decision reported in *Ratnam Ammal v. Susilammal* in which one of us (K.M. Natarajan, J.) was a part wherein it was held as follows:-

The plaintiff is entitled to relinquish her claim and getting vacant possession and give up her claim compensation in this regard and ask for specific performance of execution of the sale deed with the tenants in possession. It is open to the plaintiff to exercise that option even at the stage of first appeal or second appeal. The mere fact that the plaintiff did not put forward that contention before the trial Court would not bar her from putting forth the said contention before the High Court in appeal.

In *P. Kathavan Servat v. R(sic)* wherein it was held as follows:-

The alternative relief includes refund of any (sic) money or deposit paid or made by the plaintiff. The (sic) alternative relief would arise only in case the plaintiff claim for specific performance is refused. When the plaintiff asks for the alternative relief, there is no legal presumption or assumption that he gives up the main (sic) specific performance of the Contract only in the (sic) the statute which confirm them.

In view of the ratio laid down in the above decisions, the contention of the appellant that the plaintiff is entitled to only the alternative relief even if the agreement is found to be (sic) is untenable. In view of the findings on points 1 to 3 the appeal deserves to be dismissed. In the result, the judgment and decree passed by the Court below are confirmed and the appeal fails and shall stand dismissed with costs.