

(2004) 08 MAD CK 0093

In the Madras High Court

Case No : A.S. No. 1097 of 1989 and Tr.A.S. No. 1142 of 1993

Ranganatha Gounder

APPELLANT

Vs

Sahadeva Gounder, Selvaraj, Anandaraj, Arokiasamy
(respondents 2 and 3 represented by guardian Arokiasamy)

Renganatha Kounder and Others Vs Selvaraj, Anandha
Raj and Sahadevan (respondents 1 and 2, represented by
grandfather Arokiasamy)

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Specific Relief Act, 1963 — Section 10, 16, 16(c), 19, 20
Transfer of Property Act, 1882 — Section 53 A

Citation : (2004) 08 MAD CK 0093

Hon'ble Judges : M. Thanikachalam, J;Karpagavinayagam, J

Bench : Division Bench

Advocate : S. Parthasarathy, for the Appellant; T.V. Bhadri Narayanan for M/s. Sampath Kumar Associates, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Arokiasamy and minors filed a suit in O.S. No. 85 of 1986 for declaration and injunction against Renganatha Gounder and others. Renganatha Gounder filed a suit in O.S. No. 47 of 1987 seeking for specific performance of the suit property against Arokiasamy and another. Arokiasamy in O.S. No. 85 of 1986 claimed in the suit for declaration and injunction stating that the said property was purchased by him from Sahadevan, 7th defendant and the possession was being disturbed by Ranganatha Gounder and others, the defendants 1 to 6.

2. Renganatha Gounder, the first defendant in O.S. No. 85 of 1986 claimed for the relief of specific performance in O.S. No. 47 of 1987 against the vendor Sahadevan and Arokiasamy, the purchaser, stating that he obtained a sale agreement from the original owner Sahadevan and as such, both the vendor and purchaser should execute the sale deed in his favour.

3. Since the issue would relate to the same property, a common trial was conducted in both the suits. In the common judgment and decree rendered on 29.3.1989, the trial Court decreed the suit in O.S. No. 85 of 1986 for declaration and injunction in favour of Arokiasamy and minors and dismissed the suit in O.S. No. 47 of 1987 rejecting the claim for specific performance by Renganatha Gounder. This common judgment and decree is challenged in these two appeals.

4. Since these two appeals arise out of a common judgment, these are being disposed of by this common judgment.

5. We will now go into the details of the case of the respective parties.

6. For the sake of convenience, the parties are referred to as they are arrayed in O.S. No. 85 of 1986.

7. The case of Arokiasamy, representing the minor plaintiffs in O.S. No. 85 of 1986 who are the defendants in O.S. No. 47 of 1987, is as follows:

"The suit property belongs to Sahadeva Gounder, the 7th defendant. He sold the property to the plaintiffs by a registered sale deed for a valuable consideration on 5.9.1986. On the same day, the plaintiffs were given possession of the property by the 7th defendant. From then onwards, the possession and enjoyment were with the plaintiffs. While so, Renganatha Gounder, the 1st defendant sent a notice to the plaintiffs on 27.9.1986, claiming that he has got a sale agreement dated 20.11.1983 in his favour from Sahadevan, the 7th defendant for a sum of Rs. 31,000/- and in pursuance of the agreement, he paid Rs. 21,300/-. This notice was sent to both the 7th defendant and the plaintiffs, the purchasers. The plaintiffs gave a reply to the said notice stating that they were not aware of the alleged sale agreement, and they are the bona-fide purchasers for value without notice and as such, the first defendant cannot claim any title against the plaintiffs. After receipt of the reply, the first defendant, along with the defendants 2 to 6, in order to dispossess the plaintiffs, began to indulge in unlawful acts, thereby disturbing the possession of the plaintiffs. Hence, the plaintiffs filed the suit for declaration and permanent injunction."

8. The case of the defendants 1 to 6 in O.S. No. 85 of 1986 who is the plaintiff in O.S. No. 47 of 1987, is as follows:

"The plaintiffs Arokiasamy and minors are not the bona-fide purchasers. On 20.11.1983, the sale agreement was executed between Renganatha Gounder, the first defendant and Sahadevan, the 7th defendant for a sale consideration of Rs. 31,000/- and towards the advance. Rs. 10,000/- was paid. On the very same day, the possession of the suit property was handed over to the first defendant by the 7th defendant. Since then, the first defendant has been in possession and enjoyment of the suit property. He was also paying electricity charges. From the beginning, he was ready and willing to perform his part of the contract. After six months of the agreement, he paid Rs. 7,000/- on the first occasion. Rs. 4,000/- on the second occasion and Rs. 600/- on the third

occasion. He also made payment towards motor loan and current charges on behalf of the seventh defendant. Thus, totally, he made payment of Rs. 21,300/-. The plaintiffs knew well about the execution of agreement of sale. After sale, he sent notice dated 27.9.1986 to both the vendor and purchasers. The reply sent by them contained false averments. Therefore, the defendants 1 to 6 are entitled to get the relief of specific performance."

9. The 7th defendant Sahadeva Gounder in support of the plaintiffs, filed the written statement, which is as follows:

"He entered into a sale agreement with the first defendant on 20.11.1983 for a sum of Rs. 3 1,000/- and received a sum of Rs. 10,000/- as advance. It was agreed that the first defendant has to pay the balance within three months" time. But, he failed to perform his part of the contract. The 7th defendant, after expiry of the agreement period, offered to sell the property to the prospective purchasers. The first defendant never objected to the said proposal, nor he offered to purchase the property. Therefore, he sold the property. Only after 2-1/2 years, that too after the sale, the first defendant issued notice containing false allegations. So, the first defendant had lost the right to enforce the agreement, as his agreement had become a nullity after the lapse of agreed time."

10. On the basis of the above pleadings, issues were framed in both the suits. Common trial was conducted in O.S. No. 85 of 1986 and O.S. No. 47 of 1987. Though there were two suits in which the plaintiff in one suit was a defendant in the other suit, the plaintiff in O.S. No. 85 of 1986 was treated as plaintiff and the defendant in the said suit was referred to as defendant in the common trial. On behalf of the plaintiffs, P.W.1 to P.W.4 were examined and Exs.A1 to A12 were marked. On the side of the defendants, D.W.1 to D.W.5 were examined and Exs.B1 to B15 were marked.

11. After appraisal of the evidence adduced by the parties, as mentioned above, the trial Court decreed the suit in favour of the plaintiffs in O.S. No. 85 of 1986 granting declaration and permanent injunction and dismissed the suit in O.S. No. 47 of 1987 refusing the grant of relief of specific performance. Challenging the same, these two appeals, namely A.S. No. 1097 of 1989 and Tr.A.S. No. 1142 of 1993 have been filed.

12. Mr. Parthasarathy, the learned counsel for the appellant in both the appeals would make the following contentions:

"From the date of agreement of sale, the first defendant/appellant has been in possession and enjoyment of the suit property. From that date onwards, the first defendant/appellant was ready and willing to perform the remaining part of his contract. Therefore, he is entitled to the benefits of Section 53 A of the Transfer of Property Act. Further, Exs.B1 and B6 to B9 would clearly show that the possession of the suit property was with the appellant. The lower Court has failed to consider the evidence adduced on the side of the defendants to the effect that

apart from the advance, he has paid Rs. 7,000/- in two instalments towards the balance consideration and also paid current consumption charges. Exs.B6 to B9 would establish that the first defendant/appellant had paid the balance consideration. The first defendant has not committed any breach of agreement of sale. There is no evidence on the side of the plaintiffs to show that the appellant was not possessed of enough funds to perform his part of the contract. It is the specific case of the appellant that he has already paid the entire amount under the contract and nothing remained for him to perform under the contract. Even if it is found by the Court that he has not paid the said amount, he is willing to pay the balance of consideration. No importance could be attached to the period of three months" time stated in the sale agreement, as it is settled law that time is not the essence of contract in sale of immovable property. The trial Court overlooked the fact that the vendor himself was not very keen on completing the transaction within the stipulated period of three months. The respondents are not bona fide purchasers for value without notice of the earlier agreement of sale. D.W.1, the vendor himself admitted that every one knew about the agreement of sale in favour of the appellant. Therefore, it cannot be held that the respondents are bona fide purchasers for value without notice. Admittedly, the entire sale consideration, namely Rs. 37,000/- has not been paid by the plaintiffs to the 7th defendant on the date of sale deed, i.e. on 5.9.1986. Only Rs. 27,000/- was paid and for the balance of Rs. 10,000/-, a promissory note was executed. Therefore, the respondents are not entitled to the benefits of Section 19 of the Specific Relief Act, since subsequent purchaser can claim benefits of Section 19 only if he has paid the full price in good faith without notice of the prior agreement of sale. As such, the decrees passed by the trial Court in both the suits are liable to be set aside and the relief of specific performance has to be granted and the relief of declaration and permanent injunction has to be rejected."

13. The learned counsel for the appellant would cite the following authorities to substantiate his plea:

- 1) Gomathinayagam Pillai and Others Vs. Pallanishwami Nadar,
- 2) Veeramalai v. Thadikara (A.I.R. 1968 Mad 383 = 81 L.W. 90);
- 3) Sinna Ponnu and Others Vs. Singaru Odayar and Another,
- 4) Govind Prasad Chaturvedi Vs. Hari Dutt Shastri and Another,
- 5) M/s. Arosan Enterprises Ltd. Vs. Union of India and Another,
- 6) V. Ramanujam and Jagadeesan Vs. Rajamani and Others,

14. On the other hand, the learned counsel appearing for the respondents, in justification of the reasonings given in the judgment rendered by the trial Court, would point out various portions of the evidence to establish that the finding of the trial Court is correct. He would cite the following decisions:

- 1) Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs.,

2) S.S. Chokkalingam Vs. R.B.S. Mani and Others,

3) Ramti Devi (Smt) Vs. Union of India (UOI),

4 K.S. Vidyanadam and Others Vs. Vairavan,

5 Veerayee Ammal Vs. Seenii Ammal,

6) Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others,

15. We have heard the counsel for the parties and given our anxious consideration to the merits of the rival contentions.

16. According to the appellant/first defendant, the respondents/plaintiffs are not entitled for the relief of declaration and permanent injunction as the appellant, the holder of agreement of sale earlier in point of time, is entitled to the relief of specific performance, in the light of the fact that the respondents are not the bona fide purchasers.

17. On the other hand, it is contended by the respondents/plaintiffs that they are the bona fide purchasers and they did not know on the date of sale that there was a sale of agreement entered into between the appellant and the vendor and even assuming that they knew about the agreement, the schedule time contemplated under the agreement of sale was only three months and even after expiry of the said period, the appellant was not showing the readiness and willingness to perform his part of the contract, the vendor would be entitled to sell the property to the respondents and as such, the said agreement of sale is not binding on the respondents.

18. On the basis of these contentions, the points for determination to be decided by this Court are these:

1) Whether the respondents are bona fide purchasers for value without notice of the earlier agreement of sale in favour of the appellant? 2) Whether time was essence of the contract? 3) Whether the appellant was ready and willing to perform his part of the contract?

19. Before discussing various aspects relating to the points for determination, it may be proper to deal with the nature of the power of the Court which can be exercised while granting the relief of specific performance. We will now refer to various provisions which are relevant.

20. Section 20 of the Specific Relief Act, 1963 provides for the discretion as to decreeing specific performance. Section 20(1) envisages as follows:

"The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."

21. Sub-section (2) sets out the situations in which the court may refuse specific

performance:"

The following are cases in which the court may properly exercise discretion not to decree specific performance:--

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance .

22. Sub-section (3) of Section 20 says as follows:

"The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance."

23. Section 16 would deal with the personal bars to relief. It says thus:

"Specific performance of a contract cannot be enforced in favour of a person-

(a).....

(b) who has become incapable of performing, or violates any essential terms of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.-- For the purposes of clause (c),--

(i).....

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

24. Thus, the above provisions would make it clear that the jurisdiction of the court is purely discretionary. Merely because the party asks for the relief of specific performance and it is lawful to do so, the court is not bound to grant the said relief. The discretion of the court must be sound and reasonable. While dealing with the relief of specific performance, the court shall take into

consideration the circumstances in each case, the conduct of the parties and the respective interest under the contract.

25. If necessary ingredients regarding the performance of the part of the contract by respective parties have not been pleaded and proved before the court, the specific performance of a contract cannot be enforced.

26. In the light of the above provisions, it shall be necessary to go into the points for determination mentioned above.

27. The first point would relate to the plea of the respondents that they are the bona fide purchasers.

28. It is not in debate that Ex.BI, the agreement of sale was executed by the owner of the suit property, namely 7th defendant in favour of the appellant, the first defendant on 20.11.1983. It cannot also be debated that the vendor, the 7th defendant sold the suit property to the plaintiffs/respondents on 5.9.1986 under Ex.AI.

29. According to the appellant/first defendant, the respondents/plaintiffs were not the bona fide purchasers. On the other hand, it is the case of the respondents/plaintiffs that they did not know about the agreement of sale entered into between the 7th defendant and the appellant by virtue of Ex.BI, the agreement of sale dated 20.11.1983.

30. The witnesses P.W.1 and P.W.2, examined on the side of the plaintiffs, would specifically state that they were not aware of the sale agreement between the appellant, the first defendant and the 7th defendant, the vendor. As a matter of fact, a suggestion was put to P.W.2 that there was a panchayat with reference to the sale agreement before the sale and as such, P.Ws.1 and 2 knew about the sale agreement and then, the sale was effected in respect of the suit property. This suggestion was emphatically denied.

31. Had there been an actual panchayat, the appellant would have examined one of the panchayatdars to establish that such a panchayat was held with reference to the sale agreement and that P.Ws. 1 and 2 knew about this. No such witness was examined. On the other hand, D.W.1, the 7th defendant, the vendor would specifically state that the agreement entered into between himself and the appellant, the first defendant was not known to P.Ws.1 and 2. He further admitted that he did not inform the same to P.Ws.1 and 2. No other witness has been examined by the appellant to establish that P. Ws. 1 and 2 knew about the agreement of sale prior to sale. Strangely, D.W.3, examined on the side of the appellant, himself would admit in the cross-examination that P.Ws.1 and 2 were not aware of the existence of the sale agreement Ex.BI.

32. Further, it is the case of the appellant that from the date of the agreement of sale, he is in possession and enjoyment of the suit property. This has not been proved by the appellant. Not only that, this plea of the appellant cannot be taken as true, in view of the fact that Ex.B 1, the sale agreement does not contain

about the handing over of the possession of the suit property to the appellant on the date of sale agreement. On the other hand, it is noticed from Ex.A1, the sale deed executed in favour of the respondents/plaintiffs by the vendor that only on the date of the sale deed, namely 5.9.1986, the possession was handed over by the vendor to the plaintiffs.

33. In the light of the absence of the proof to the effect that the appellant was in possession of the suit property from the date of the sale agreement and the absence of material relating to the knowledge of sale agreement, there is no difficulty in accepting the case of the respondents/plaintiffs that they are the bona fide purchasers, they were not aware of the sale agreement and possession was handed over only by the vendor, the 7th defendant to the plaintiffs/respondents on the date of sale deed. Therefore, even if such an agreement of sale was in existence, it is to be held that it is not binding on the plaintiffs. The first point is answered accordingly.

34. In regard to the point Nos. 2 and 3, it would be better to have a common discussion as both the points are inter-connected. According to the appellant, time is not the essence of contract with reference to the sale of immovable property and as such, the three months" period mentioned in Ex.B 1 is only secondary and when there is evidence to show that the appellant was ready and willing to perform his part of the contract, the appellant would not be denied of the relief of specific performance of the suit property even though the three months" period has elapsed. We would now deal with the question relating to the other two points in common.

35. At this juncture, it would be worthwhile to refer to the legal principles laid down by the Supreme Court with reference to the question, whether time is the essence of contract, which are as follows:

(A) In the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract.

(B) Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement.

(C) It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

(D) Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable. It may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract.

(E) If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence.

(F) The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.

(G) In the case of sale of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time.

36. These principles have been laid down in the following decisions:

- 1) Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs.,
- 2 K.S. Vidyanadam and Others Vs. Vairavan,
- 3) Veerayee Ammal Vs. Seenii Ammal,
- 4) Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others,

37. From these decisions, it is clear that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract. At the same time, it cannot be stated that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. In other words, it would not be reasonable to say that because time is not made the essence of the contract, the time-limit specified in the agreement has no relevance and can be ignored with impunity. If the concept of time being the essence of contract is accepted in toto, it would mean denying the discretion vested in the court by both Sections 10 and 20 of the Specific Relief Act.

38. As held by the Constitution Bench of the Supreme Court in Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs.,

"it is clear that in the case of sale of immovable property, there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are: (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances."

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised in favour of the party who approached the Court of Law within a reasonable time.

39. What is the definition of the word "reasonable"? It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its

conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The "reasonable time" is to be so much time as is necessary under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

40. In the light of the above dictum, if we look at the facts of the case, it is clear that specific period has been contemplated for the purpose of the contract in the agreement of sale, namely Ex.BI. The relevant portion is this:

Translation is given below:

"We have negotiated for sale of Nanja lands belonging to first party of us for Rs. 31,000/- to second party of us. Out of the sale amount, today, the first party has received Rs. 10,000/- as advance from the second party. The second party of us must get the sale deed executed and registered on paying the balance amount of Rs. 21,000/- to the first party within three months. In default of payment of balance amount and completion of the sale deed by the second party within the stipulated period, he would lose the advance amount of Rs. 10,000/-paid today."

41. The above words would indicate that the time of the contract as agreed by the parties is three months. In the instant case, there is no material to show that any attempt was made by the appellant being the plaintiff in the specific performance suit to approach the vendors/respondents with the balance of consideration demanding for execution of the sale deed within three months as stipulated in the agreement.

42. As indicated above, even though time is not the essence of the contract, the person who seeks for the relief of specific performance, must show that within a reasonable time though not in three months as stipulated in Ex.B 1 had approached the vendor demanding for execution of the sale deed. Therefore, though as a general proposition of law that time is not the essence of the contract in the case of a sale of immovable property, yet the parties herein intended to make time as the essence of the contract under the clause referred to in the sale agreement Ex.B 1. When such being the case, the appellant must have produced the evidence indicating that he approached the vendors for execution within reasonable time, though not in three months. The appellant miserably failed to prove the same.

43. The mandate of the Supreme Court is that although time was not the essence of contract, it is obligatory on the part of the party to file a suit for specific performance within a reasonable time. In this case, the appellant has approached the civil Court only after 2 years delay which has not been admittedly explained.

44. Under those circumstances, we have to hold, in the light of the facts of this case, that the parties intended to finish the transaction within three months, but the requirement contemplated under Ex.BI has not been complied with by the appellant even after expiry of three months within reasonable time.

45. The subsidiary question is as to whether, even though the time is not the essence of contract, the party seeking the relief of specific performance would be deprived of equitable relief, if he is able to establish that he had performed or always been ready and willing to perform the terms of the contract?

46. As indicated above, the relief of specific performance, being an equitable relief, the same could not be enforced in favour of the party, the agreement-holder, who was found to have failed to prove that he was ready and willing to perform the terms of the contract.

47. In terms of Section 16(c) of the Specific Relief Act, it is obligatory on the part of the plaintiff both to plead in the plaint and prove in the Court that he had all along been ready and willing to perform the essential terms of the contract which were required to be performed by him. In other words, in a suit for specific performance, it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, but also he must go further and plead that he has been and is still ready and willing to perform his part of the contract and he has applied to the other party specifically to perform the agreement pleaded by him but the other party, namely, the vendor has not done so.

48. It is well settled that a person cannot claim the relief of specific performance unless he proves his readiness and willingness to perform his part of the contract. Readiness and willingness to perform includes ability to perform. It is incumbent upon the buyer to satisfy the Court that he was ready and willing with the money or had the capacity to pay for the property and that he had at all events made proper and reasonable preparations and arrangements for securing the purchase money. Unless this is established. Section 16(c) of the Specific Relief Act would create a bar to the grant of this discretionary relief.

49. In this case, the sale agreement Ex.BI was entered into between the parties on 20.11.1983. The sale was effected by the vendor to the respondents/plaintiffs on 5.9.1986 through Ex.AI. For the first time, the notice asking for execution of the sale deed was sent by the appellant only on 27.9.1986, i.e. after the sale deed was executed on 5.9.1986. Immediately, reply was sent by the 7th defendant stating that he was waiting for more than 2-1/2 years and since the appellant/first defendant had not performed his part of the contract, he had sold the property to the respondents/plaintiffs.

50. Admittedly, there is no acceptable material to show that between 20.11.1983, the date of execution of the agreement and 27.9.1986, the date of the notice, any attempt was made by the appellant to demand for execution of the sale deed or to intimate to the 7th defendant that he is ready and willing to perform his part of the contract as he has got money with him. Curiously, it is the case of the appellant that he paid the amount of Rs. 7,000/- on the first occasion, again Rs. 7,000/- and thereafter, Rs. 4,000/-and subsequently, he paid Rs. 600/-. Unfortunately, he did not choose to get the receipts from the vendor, the 7th defendant. On the other hand, the case of the 7th defendant as D.W.1 in

the suit is that he never received any amount towards the balance of sale consideration from the appellant.

51. The details of the payments with dates have not been given in the written statement. On the other hand, the curious plea made by the appellant is that even if the Court comes to the conclusion that no money was paid towards the balance of sale consideration, he would be prepared to pay the entire balance. This shows that the stand taken by the appellant is not assertive and consistent.

52. Even the other sale agreements entered into between 7th defendant and others filed by the appellant/first defendant himself would show that along with Ex.BI, the sale agreement dated 20.11.1983, two other sale agreements, namely Exs.B5 and B15 have been executed by the 7th defendant in favour of two defence witnesses, viz., Kadavul Gounder and Ramalingam and the sales have been effected in favour of those parties subsequently. Those things would show that the other parties who got the agreement of sale from the 7th defendant, paid the amount in time and the sale deeds were executed in favour of the sale agreement holder. This means that the sale deed has not been executed by the vendor, the 7th defendant in favour of the appellant in view of the failure of the appellant to perform his part of the contract as there was lack of readiness and willingness.

53. There is no explanation offered by the appellant through evidence as to why he had kept quiet all along from 1983 to 1986. On the contrary, it is the specific plea of the vendor, the 7th defendant that he approached the appellant several times and asked for the balance consideration to execute the sale deed and as there was no readiness and willingness, he proposed to offer to sell the property to other party after 2-1/2 years and this was also known to the appellant who did not object to the sale and ultimately, he executed the sale deed in favour of the respondents/plaintiffs on 5.9.1986. In the light of the above assertion which has been proved, we are to hold that the appellant failed to prove the necessary require merit under the relevant sections so as to have the relief of specific performance.

54. Lastly, the learned counsel for the appellant faintly attempted to argue that the sale deed dated 5.9.1986 cannot be said to be valid document since even as per Ex.AI, the full value for which the property was purchased was not paid. He would cite AIR 1968 Mad 383(supra). This decision is of no use to the appellant as it is the evidence of P. Ws. 1 and 2 and D.W. 1, the 7th defendant that the sale amount under Ex.AI has been fully paid by P.W.1 and the same was received by D.W.1. Further, as pointed out by the learned counsel for the respondents, the Supreme Court in Ramti Devi (Smt) Vs. Union of India (UOI), would hold that when a duly registered sale document remains valid and binds the parties of the sale deed, the sale cannot be challenged until the sale document is avoided or cancelled by proper declaration. Therefore, this contention also would fail.

55. As such, it is to be held that it has been proved by the plaintiffs/respondents

through the evidence of P.Ws.I and 2 and D.W.1, the 7th defendant that they are the bona fide purchasers and they have been in possession and enjoyment of the suit property from the date of the sale deed, namely 5.9.1986. Under those circumstances, we do not find any infirmity in the reasonings given by the trial Court in rejecting the relief of specific performance in favour of the appellant and in granting the relief of declaration and permanent injunction in favour of the respondents/plaintiffs. Therefore, both the appeals are dismissed. Consequently, connected C.M.P. is closed. No costs.