

(2012) 08 KAR CK 0074
In the Karnataka High Court
Case No : Regular First Appeal 2024 / 2007

Smt. Bhagyamma

APPELLANT

Vs

Guru Reddy Since dead by LRS. and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Contract Act, 1872 — Section 51
Specific Relief Act, 1963 — Section 20
Transfer of Property Act, 1882 — Section 40

Citation : (2012) 08 KAR CK 0074

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : M.G. Javed Ahmed Khan, for the Appellant; N. Krishnananda Gupta, for C/R4A, Sri S. Shaker Shetty, for R5 and Sri Shashidhar S. Karmadi, GP for R9-11 and Sri Jayanth, for R3, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr Justice Huluvadi G. Ramesh

1. The plaintiff is in appeal before this Court aggrieved by the dismissal of the suit filed for specific performance, declaration and permanent injunction against the defendants by the XVI Addl. City Civil & Sessions Judge, Bangalore in OS 1223/1996 on 27.7.2007. The plaintiff/appellant filed a suit against the defendants/respondents for specific performance of an agreement of sale dated 31.8.1994 in respect of the suit schedule property - an agricultural land in Sy. No. 35/2 measuring 06 guntas situate at Singasandra Village, Begur Hobli, Bangalore South Taluk, and to execute a registered sale deed in her favour by receiving the balance consideration, put her in possession of the suit property and to declare that the sale deed executed by defendants 1 to 4 in respect of the suit property in favour of the 5th defendant on 31.10.1995 before the Sub-Registrar, Bangalore South, is null and void and also for a permanent injunction restraining the 9th defendant from changing the character or nature of the suit

property by putting up any construction on it in any manner.

2. According to the plaintiff, defendants 1 to 4 are the owners of the agricultural land bearing Sy. No. 35/2 to the extent of 1.18 1/2 acres situate at Singasandra Village, Begur Hobli. On 31.8.1994, defendants 1 to 4 and plaintiff with defendants 6 to 8 entered into an agreement of sale, agreeing to sell the entire suit property to the plaintiff and defendants 6 to 8 for total consideration of Rs. 11,50,000/- and also paid Rs. 4 lakhs (Rs. 1 lakh each) to defendants 1 to 4 on 31.8.1994 itself. Defendants 1 to 4 also agreed to receive balance consideration of Rs. 7,50,000/- within eleven months, at the time of execution of the sale deed before the Sub-Registrar. Pursuant thereto, defendants 6 to 8 and the plaintiff agreed and earmarked their respective portion of the properties marked in the sketch thereby, plaintiff is entitled to get 0.06 guntas of land in the said survey number marked as "B" with boundaries thereto; 6th defendant is entitled to get 16 guntas of land; 7th defendant is entitled to get 0.06 guntas of land and 8th defendant is entitled to get 0.11 guntas of land as marked in the sketch. The remaining extent was left for formation of a road. It is the plaintiff's case, defendants 1 to 4 have executed the registered sale deed in favour of defendants 6 to 8 in respect of their properties as per the sale deed dated 11.8.1995. However, they failed to execute a registered sale deed in favour of the plaintiff by receiving balance consideration of Rs. 20,000/- though she expressed her readiness and willingness to perform her part of the contract by paying the balance consideration. It is stated, defendants 1 to 4 evaded executing the sale deed in favour of the plaintiff with a malafide intention and to get unjust enrichment out of the suit property. Thereafter, it is stated, defendants 1 to 4 have executed the sale deed in respect of the suit property in favour of 5th defendant by suppressing the earlier agreement with her and therefore, the sale deed in favour of the 5th defendant is void. The plaintiff issued a legal notice on 15.11.1995 to defendants 1 to 4 calling upon them to execute the sale deed by receiving the balance consideration, within eight days from the date of receipt of notice but the notice returned unserved. Though the 4th defendant received the notice, but he has not performed his part of contract and has replied on 29.11.1995 with untenable grounds, however, admitting the sale agreement dated 31.8.1994. It is stated, the 5th defendant has purchased the suit property without making investigation as to the title of defendants 1 to 4 and he cannot acquire any title to the suit property conveyed in his favour by defendants 1 to 4.

3. The defendants contested the suit. In the written statement filed by defendants 1 to 4, they have denied the plaint averments regarding the agreement dated 31.8.1994 and the claim of the plaintiff under the agreement and also her claim against the 5th defendant. They have denied any personal knowledge about the plaintiff, her identity and the alleged agreement of sale. According to them, one Ramaiah and H N Gowda came forward to purchase 1.18 1/2 acres of land in Sy. No. 35/2 for consideration of Rs. 11,50,000/- and both of them intended to get the sale deed executed in favour of four persons viz., Munisadappa, H N Gowda, Smt Bhagyamma and Sibagathulla. Accordingly, they

have executed the agreement of sale on 31.8.1994 in favour of the said persons and received the consideration amount of Rs. 4 lakhs as advance amount from HN Gowda and Ramaiah. It is stated, Ramaiah, H N Gowda and Munisadappa themselves visited the land and prepared the sketch. There is no privity of contract between plaintiff and defendants 1 to 4. They were all along ready and willing to perform their part of the contract and accordingly, Munisadappa and two others got the registered sale deed executed. It is stated, the time of eleven months fixed in the agreement of sale is the essence of contract. They have written a letter to Munisadappa to inform all the purchasers to get register the sale deed within the stipulated time. Thereafter, 4th defendant wrote a letter to the plaintiff by stating that the time stipulated under the agreement of sale will expire on 31.7.1995 and also requested her to get the sale deed executed by paying balance consideration amount. Plaintiff did not come forward to get the sale deed registered by paying balance consideration even though defendants 1 to 4 were ready and willing to perform their part of the contract. Though several letters were written, plaintiff did not come forward to perform her part of the contract and thereby, she failed to purchase the suit property. She abandoned her right by committing breach of contract as such, defendants 1 to 4 sold the suit property in favour of the 5th defendant. The 5th defendant was put in possession of the property and he is enjoying the property. It is further stated, plaintiff lost her right under the agreement of sale and she has no right to enforce specific performance. However, defendants 1 to 4 are ready to sell any other portion of the said survey number to an extent of 0.06 guntas. Accordingly, they sought for dismissal of the suit of the plaintiff.

5. The legal representatives of the 4th defendant have reaffirmed the written statement of the 4th defendant.

6. The 5th defendant who is the purchaser of the suit property, in his written statement, has stated he is a bonafide purchaser for valuable consideration. He has verified the details of the suit property prior to purchase. Since defendants 1 to 4 are the owners of the suit property and offered to sell, he accepted their offer and paid full consideration amount and got registered the sale deed from them. Hence, his sale deed dated 31.10.1995 is a valid sale deed. He is in possession and enjoyment of it and plaintiff has no right to challenge his sale deed and is also not entitled for any of the relief in respect of the suit property and accordingly, prayed for dismissal of the suit.

7. Based on the pleadings, the trial court framed the following issues:

1 Whether the plaintiff proves that herself and defendants 6 to 8 have contracted for sale of the suit schedule property by defendants 1 to 4 on 31.8.1994 for a sale consideration of Rs. 11,50,000/-;

2 Whether the plaintiff further proves that in pursuance of the suit contract for sale the defendants 1 to 4 have received the earnest money of Rs. 4 lakhs on 31.8.1994 and have executed the alleged suit agreement of sale;

3 Whether the plaintiff further proves that defendants 1 to 4 have allegedly committed the breach of the suit contract for sale without any valid grounds and lawful excuse for the same;

4 Whether the plaintiff and defendants 6 to 8 prove that they are always ready and willing to perform their part of the suit contract for sale and that defendants 1 to 4 have always avoided the same without any valid reason;

5 Whether the plaintiff proves that the sale deed registered by defendants 1 to 4 in favour of the 5th defendant dated 31.10.1995, in the office of the 9th defendant is null and void ab initio;

6 Whether the 5th defendant proves that he is a bonafide purchaser of the suit schedule property from defendants 1 to 4 for a valid consideration without his knowledge and notice;

7 Whether the 5th defendant has no legal rights to change the nature and character of the suit schedule property in any manner whatsoever;

8 Whether the plaintiff is entitled to enforcement of the suit contract for sale along with defendants 6 to 8 against defendants 1 to 4;

9 Whether the plaintiff is entitled to the relief of permanent injunction against the 5th defendant as prayed for;

10 What order or decree.

8. The trial court while answering issues 1, 2 and 6 in the affirmative and the rest of the issues in the negative, dismissed the suit of the plaintiff. Hence, this appeal.

9. The points for determination would be -

Whether the trial court is justified in holding that the plaintiff failed to prove the defendants have committed breach of contract despite having held that the plaintiff and defendants 6 to 8 have contracted for sale of the suit schedule property with defendants 1 to 4 and that the plaintiff prove that in pursuance to the contract for sale, defendants 1 to 4 have received the earnest money of Rs. 4 lakhs on 31.8.1994 and executed the alleged agreement of sale.

Whether the trial court is justified in holding that plaintiff failed to prove that she was ready and willing to perform her part of the contract and that defendants 1 to 4 have avoided the same without any valid reason;

Whether the trial court is justified in holding that plaintiff failed to prove that the sale deed registered by defendants 1 to 4 in favour of the 5th respondent is null and void;

Whether the trial court is justified in holding that 5th defendant is a bonafide purchaser for value from defendants 1 to 4 without notice;

Whether the trial court is justified in holding that 5th defendant has right to change the nature and character of the suit property;

Whether the trial court is justified in holding that plaintiff is not entitled for enforcement of contract along with defendants 6 to 8 against 1 to 4;

Whether the trial court is justified in holding that plaintiff is not entitled for relief of permanent injunction against the 5th defendant;

Whether the plaintiff proves that she was ready and willing to perform her part of the contract;

Whether plaintiff is entitled for a decree of specific performance as against defendants 1 to 4 and 5;

What order.

10. Heard the counsel representing the parties.

11. According to the appellant's counsel, appellant has already paid Rs. 1 lakh and only Rs. 20,000/- remains to be paid whereas the property sold in favour of the 5th defendant is for a lesser sum. 5th defendant had knowledge of the transaction. He being a witness to the transaction, cannot plead innocence and as a bonafide purchaser for value without notice. It is a fraud played by defendants 1 to 4 and 5. There is no termination of the agreement as against the plaintiff which was executed by defendants 1 to 4 whereas defendants 1 to 4 executed the sale deed in favour of all other three persons who entered into contract along with this plaintiff. Merely on some ifs and buts and stray admissions, trial court dismissed the suit of the plaintiff although substantial amount of consideration has been paid and there is also execution of the sale deed in order to favour the 5th defendant who is a witness to the transaction. Defendants 1 to 4 came out with a different version. Plaintiff being a woman, she had been made a scape goat in the transaction. Even as per the agreement, only Rs. 20,000/- was to be paid. The sale deed - Ex.P9 which is executed in favour of the 5th defendant if taken note of, it is seen the sale consideration is only Rs. 60,000/-. Such being the case, default on the part of the plaintiff does not arise. Even if notice is issued calling upon the plaintiff to get the sale deed executed and even it is served on the plaintiff much less there is no termination of agreement, plaintiff could have been given reasonable time. Although time and again plaintiff has insisted on defendants 1 to 4 to execute the sale deed orally and although she approached them several times, without there being termination of contract and without proof of the same, defendants 1 to 4 executed the sale deed in favour of the 5th defendant for unlawful gain and in breach of contract. Although defendants 1 to 4 have contended that notice was sent, no reasonable time was given nor the plaintiff was called upon to get the sale deed executed when it was executed in favour of all other persons i.e., out of four persons, in favour of three persons the sale deed has been executed. In lieu of execution of the sale deed in favour of the plaintiff, sale deed has been

executed in favour of the 5th defendant who is a witness to the transaction. Even as per the sketch prepared, a portion of the area was earmarked to be given to the plaintiff.

12. It is further submitted, the finding given by the trial court that there is due execution of the agreement and defendants 1 to 4 have received a sale consideration of Rs. 11,50,000/- and have also received the earnest money of Rs. 4 lakhs from the plaintiff. Against that, there is no challenge made by the plaintiff. Only on some surmises, trial court dismissed the case of the plaintiff. The trial court ought to have taken note of the substantial payment of consideration. That itself indicates that plaintiff was ready and willing to perform her part of the contract and has almost performed her part of the contract and the obligation is on defendants 1 to 4 to execute the sale deed. Accordingly, relying upon several decisions, learned counsel tried to contend that the judgment and decree passed by the trial court rejecting the suit of the plaintiff is perverse and does not stand to reason and prays that the appeal be allowed.

13. Per contra, counsel representing the 5th defendant / 5th respondent contended that plaintiff was not at all a party to the agreement. The 5th defendant is a bonafide purchaser for value without notice. Property was purchased by him prior to the institution of the suit and after notice to the plaintiff, property could have been sold by the vendor to a third person and plaintiff was not ready and willing to perform her part of the contract and no separate receipt is produced by the plaintiff regarding payment of Rs. 1 lakh. Accordingly, he prays the appeal be dismissed.

14. Supporting the argument of the 5th defendant, counsel representing defendants 1 to 4 submitted, plaintiff did not come forward to get the sale deed executed and she was not ready and willing to perform her part of the contract and there is inconsistency in her evidence and also of her husband and pray that the appeal be dismissed.

15. The GPA holder of the plaintiff is none other than the husband of the plaintiff. The documents which are produced by the plaintiff are eleven in number. The documents produced especially Ex. P3 - sketch and Ex. P2 - agreement of sale, are the ones which found favour with the trial court by which there was execution of the sale deed in favour of defendants 6 to 8 by defendants 1 to 4. Exs. P4 to 6 are the certified copies of the deeds which are executed by defendants 1 to 4 in favour of defendants 6 to 8. Ex. P10 is the legal notice sent to defendants 1 to 4 by the plaintiff. Ex. P11 is the reply sent by defendants 1 to 4, through their advocate which has been taken note of by the trial court. Ex. P10 (b) and (c) are the postal covers and endorsement regarding refusal of notice by defendants 2 to 4.

16. What is not in dispute as per the finding of the trial court is, defendants 1 to 4 are the owners of the suit property. What is also not in dispute is the agreement entered together between plaintiff and defendants 6 to 8, the area

and the boundaries in the sketch produced. Defendants 1 to 4 have executed the sale agreement acting in terms of Exs. P1 and P2, the GPA executed by the plaintiff in favour of her husband to enter into transaction and the original sale agreement. Admittedly, when Ex. P2 has been acted upon by defendants 1 to 4 i.e., agreement based on which there was execution of sale deed at Exs. P6-8 in favour of defendants 6 to 8, it clearly mandates defendants 1 to 4 have performed their part of the contract in respect of three persons in the contract for which plaintiff through her husband also is a party and receiving of consideration to that extent as is held by the trial court has been proved i.e., payment of Rs. 1 lakh. The stand of defendants 1 to 4 is that, they have written many letters to the plaintiff by extending time to come forward to get the sale deed executed of which the plaintiff pleads ignorance. Even though defendants 1 to 4 have disputed the agreement with the plaintiff, but the trial court has rightly held that agreement has been duly executed by defendants 1 to 4 and also earnest money of Rs. 4 lakhs was received by defendants 1 to 4. In that view of the matter, though inconsistent stand was taken by defendants 1 to 4, the same cannot be made much of to hold that plaintiff was not a party to the agreement. Even defendants 6 to 8 have not disputed the payment of consideration by the plaintiff to the tune of Rs. 1 lakh. As per the agreement, only Rs. 20,000/- was due by the plaintiff to defendants 1 to 4 to be paid at the time of execution of the sale deed. It is also the specific stand of the plaintiff that they were approaching defendants 1 to 4 for execution of the sale deed but, there was a partisan approach by defendants 1 to 4 in not executing the sale deed in her favour rather, they were more in favour of defendants 6 to 8. It is also undisputed that in furtherance of the contract itself, sale deed has been executed in favour of defendants 6 to 8 at Exs. P6-8.

17. The trial court, relying upon clause (6) of the agreement at Ex. P2, tried to analyze that defendants 1 to 4 have to perform their duty as stipulated in clauses (4) and (5) with regard to conversion of land and to obtain permission from the City Survey Department and also opined that as per the agreement, balance amount is to be paid on or before the execution of the sale deed. It has also noted, as per clause (7), it is the duty of the plaintiff to meet all other expenses at the time of registration and as per clause (12), in case of default by any one of the parties, other parties are entitled for specific performance. Holding that time is the essence of contract and plaintiff has failed to perform her duty as per clause (12), the trial court dislodged the case of the plaintiff. In this context, it is to be noted, trial court has not taken the material evidence on record and also the stand of the plaintiff that they were ready and willing and the fact of making substantial payment as per the common agreement between defendants 1 to 4 with defendants 6 to 8 and the plaintiff. Only Rs. 20,000/- remained to be paid and the sale deed executed in respect of the same property in favour of the 5th defendant is only for Rs. 60,000/- Without visualizing the same, opining that time is the essence of contract, trial court has non-suited the plaintiff while found favour with defendants 1 to 4 executing the sale deed in favour of 5th defendant.

18. As per the evidence on record, 5th defendant is a witness and he had knowledge of the transaction between plaintiff and defendants 1 to 4. He is shown to have availed the opportunity of getting the sale deed executed in his favour from defendants 1 to 4. Might be some notice has been issued by the plaintiff but without termination of the contract by issuing a separate notice and without proof of the same, defendants 1 to 4 have executed the sale deed in favour of the 5th defendant. In the circumstances, the 5th defendant cannot be held to be a bonafide purchaser for value without notice. The finding of the trial court that time was the essence of contract and that plaintiff was not ready and willing to perform her part of the contract is perverse in the context.

19. The trial court having analyzed the evidence of PW 1 & 2 i.e., the plaintiff and her husband, has formed an opinion that there is inconsistency and as per clause (12) of the agreement regarding default by any of the parties to the agreement, however without reference to the limitation provided under the Limitation Act seeking for specific performance and without noticing the fact that there is no termination of contract by defendants 1 to 4, only on the score that plaintiff did not come forward to get the sale deed executed on health ground and also the same has not been proved, has dislodged the version of the plaintiff. It has referred to Ex. P2 under which eleven months time was given and plaintiff was to pay the balance consideration amount to defendants 1 to 4 on or before 31.7.1995. It is the evidence of the plaintiff that time and again they approached defendants 1 to 4 but, they did not respond properly. Rather according to the plaintiff, they took steps to issue legal notice and to file the suit on coming to know of defendants 1 to 4 avoiding execution of the sale deed in her favour though they had executed the sale deed in respect of three persons viz., defendants 6 to 8.

20. When substantial payment of Rs. 1 lakh, as per the contention of the plaintiff, is made and what was remaining to be paid is only Rs. 20,000/-, without termination of contract by issuing legal notice and even without giving a reasonable opportunity to the plaintiff, there was no reason for defendants 1 to 4 to execute the sale deed in favour of the 5th defendant that too when the 5th defendant is one of the witness to the agreement. The 5th defendant cannot plead that he is a bonafide purchaser for value without notice. Further, when Ex.P3 has been acted upon by defendants 1 to 4 to execute the sale deed in favour of defendants 6 to 8, the same cannot be ignored to say that boundaries are not available under the agreement. Might be some inconsistency is there in the evidence of PWs 1 and 2. In this regard, counsel for the appellant has relied upon the decision of the Apex Court in the case of Narain Prasad Agarwal (D) by Narain Prasad Aggarwal (D) by LR's. Vs. State of M.P., to contend that mofusil pleadings are not be strictly construed and that inconsistency if any, in the evidence of PWs 1 and 2 and also the pleadings, cannot be taken as a pivotal aspect to deny the relief. What is being noticed is, suit is also filed within six months on coming to know of the breach of contract on the part of defendants 1 to 4 and, when they could execute the sale deed in favour of defendants 6 to 8,

they avoided executing the sale deed in favour of the plaintiff even without terminating the contract.

21. In the case of Prakash Chandra Vs. Angadlal and Others, referring to S. 20 of the Specific Relief Act, the Apex Court has held, ordinary rule is specific performance should be granted. It ought to be denied only when equitable considerations points to its refusal and the circumstances show that the damage would constitute an adequate relief.

22. Appellant's counsel has relied upon the decision of the Apex Court in Smt. Swarnam Ramachandran and Another Vs. Aravacode Chakungal Jayapalan, to contend that time if of essence of the contract and time limit is specified in the contract, it is held that prima facie equity treats the importance of such time limits as being subordinate to the main intention of the parties. In the instant case also, as contended by the appellant's counsel, they had been all along waiting for execution of the sale deed by defendants 1 to 4 and also approached the court immediately on coming to know of the breach of contract by defendants 1 to 4 without there being any delay and also substantial amount of Rs. 1 lakh is paid and what remained to be paid was only at the time of execution of the sale deed. Apart from that, it is noticed, sale deed executed in favour of 5th defendant is only for a consideration of Rs. 60,000/ and that itself depicts that plaintiff has performed their part of the obligation and they were ready and willing to get the sale deed executed.

23. The decision in the case of P. D'Souza Vs. Shondrilo Naidu, has been relied by the appellant's counsel to contend that ready and willingness on the part of the plaintiff to perform his part of the contract would also depend on whether the defendant did everything which was required of him to be done in terms of the agreement as per S. 51 of the Contract Act. No straight jacket formula can be laid down with regard to ready and willingness. In this regard, it is seen, when substantial payment has been made, PW 1 and 2 being rustic witnesses, have pleaded their case in all fairness as appears from the evidence on record, the trial court has not taken note of the same in the true spirit and has taken a technical approach in favour of defendants 1 to 4 and 5 without ascertaining as to whether plaintiff was ready and willing to perform her part of the contract.

24. Counsel for the 5th defendant has relied upon the case of Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, to contend that respondent can question adverse finding without filing cross objection. Filing of cross objection is optional and not mandatory.

25. Further, counsel has also relied upon the case of Nahar Singh Vs. Harnak Singh and Others, to contend, if the agreement did not contain specifications about exact area and the boundaries and also property cannot be identified, specific performance cannot be ordered. But, in the case on hand, Ex.P3 - sketch is the document prepared by the consent of the parties wherein it has also been acted upon by defendants 1 to 4 in favour of defendants 6 to 8. In the

circumstances, the boundary remaining in respect of plaintiff has to be treated as if there is specific boundary available in Ex.P3, a part of the agreement. This judgment is not helpful to the 5th defendant.

26. The case of Smt Chand Rani (dead) by Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs., has been referred to by the counsel for the 5th defendant to contend, a purchaser not willing to make part payment within the specified time without fulfilling certain conditions which is contrary to the agreement, is not entitled for specific performance. This decision is also not applicable to the case on hand.

27. The decision in the case of Narinder Kumar Malik Vs Surinder Kumar Mailk - AIR 2009 SCW 6561 has been relied upon by the counsel to contend, time was the essence of contract. The Apex Court in the said case has opined that the conduct and attitude of the plaintiff was that he had not been ready and willing to perform his part of the contract. It is not so here and hence, not applicable to the present case as the plaintiff has approached defendants 1 to 4 within the shortest time and they also filed suit on such refusal.

28. Counsel has also relied upon the case of Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, in respect of a suit for specific performance by a prior purchaser against his vendor and subsequent purchaser under S. 40 of the Transfer of Property Act wherein, according to one view, the proper form of decree is to declare the subsequent purchase as void as against the prior transferee and direct conveyance by the vendor alone. The other view is both the vendor and vendee should join while third party would limit execution of the conveyance to the subsequent purchaser alone. However, according to the Supreme Court, the proper form of decree is direct specific performance of the contract between the vendor and the prior transferee and direct subsequent transferee to join in the conveyance so as to pass on title which resides in him to the prior transferee.

29. The case of Roop Singh Negi Vs. Punjab National Bank and Others, is relied upon to contend that documentary evidence has to be proved by examining witness and mere production of document is not enough.

30. Further, counsel has relied upon the case of His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar, is relied upon to contend, as per S. 20 of the Specific Relief Act, willingness of the plaintiff to perform his part of the contract has to be ascertained from the conduct of the party and the attendant circumstances.

31. Thus, while marshalling, it appears this plaintiff and defendants 6 to 8 together entered into an agreement to purchase the property from defendants 1 to 4 as per the extent mentioned in Ex.P3. Defendants 1 to 4 have acted upon Exs. P2 and 3 - agreement and sketch of the property sought to be sold and have executed the sale deed in favour of defendants 6 to 8. Whereas on technical reasons, even without termination of contract, only pleading that

plaintiff did not come forward to get the sale deed executed and has committed breach of contract and rather proceeded to execute the sale deed in favour of the 5th defendant who is none other than a witness to the agreement having knowledge of the transaction between the plaintiff and defendants 1 to 4 as such, he cannot plead that he is a bonafide purchaser for value without notice. Apart from that, the conduct of defendants 1 to 4 itself goes to show that they invited the plaintiff to get the sale deed executed and they are blowing hot and cold and are contending that there is nothing on record to show that plaintiff has paid the amount of Rs. 1 lakh. In the event they have not received any substantial amount, they could not have invited the plaintiff to get the sale deed executed. The difficulty pleaded by the plaintiff at one point of time that she was not feeling well to get the sale deed executed appears to be genuine and there is no farce and within a reasonable time of 1 or 2 months thereafter, she has approached defendants 1 to 4 to get the sale deed executed. The plaintiff was ready and willing to perform her part of the contract having paid substantial amount of Rs. 1 lakh out of the agreement amount of Rs. 1,20,000/-. What remained to be paid was only Rs. 20,000/- Even the conduct of defendants 1 to 4 in getting the sale deed executed in favour of 5th defendant only for a sum of Rs. 60,000/- as per Ex.P9 goes to show that neither time was the essence of contract nor immediate payment was required by them. Even otherwise, plaintiff has performed her part of the contract.

32. In that view of the matter, while answering the relevant points for determination accordingly, the finding of the trial on the issues adverse to the plaintiff, are set aside. Defendants 1 to 4 and 5 are hereby directed together to join and execute the sale deed in respect of the property ear marked as shown in the sketch at Ex.P3 annexed to Ex. P2 - agreement, in favour of the plaintiff. It is further held that the sale deed executed by defendants 1 to 4 in favour of 5th defendant is null and void. In the event, defendants 1 to 4 and 5 fail to execute the sale deed in favour of plaintiff by collecting the remaining balance consideration of Rs. 20,000/- and other expenses within three months from the date of receipt of a copy of this order, the trial court shall execute the sale deed in favour of the plaintiff. Further, it is needless to say that any amount paid by the 5th defendant to defendants 1 to 4 as sale consideration for purchase of the property, he is entitled to claim back the amount from them. Accordingly, appeal is allowed. Parties to bear their own costs,.