

(2011) 09 KAR CK 0229

In the Karnataka High Court

Case No : Regular First Appeal No. 529 of 2000

Sri. L Krishnoji Rao

APPELLANT

Vs

Agarbathi Workers House Building Co-operative Society
Limited and Others

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Citation : (2011) 09 KAR CK 0229

Hon'ble Judges : A.N. Venugopala Gowda, J.;N. kumar, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Kumar, J.—These two regular first appeals are filed by the lenth defendant in O.S. No. 3341/1992 challenging the common judgment but separate decrees passed in O.S. No. 3341/1992 and O.S. No. 5540/1990, both of which are decreed. O.S. No. 5540/1990 is a suit filed for a bare injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property claiming right to the property under an agreement of sale dated 24.11.1985. The suit O.S. No. 3341/1992 is a suit filed for specific performance of the said agreement dated 24.11.1985. As per order on 1.A. No. VII dated 18.2.1998, O.S. No. 5540/1990 was clubbed with O.S. No. 3341/1992. By the impugned judgment, the trial Court has disposed of both the suits, decreeing the suits as prayed for.

2. The (acts which gave raise to both these suits is one and the same and even the defence taken is also identical. Therefore, the facts set out in O.S. No. 3341/1992 and the written statement filed therein are clearly set out. For the purpose of convenience, the parties are referred to as they are referred to in the original suit.

3. The subject matter of the suit are agricultural lands bearing S.No.38/1 measuring 201/2 guntas and S.No.37 measuring 3 acres 36 guntas. both situate

at Chikkabettahalli Village. Yelahanka Hobli. Bangalore North Taluk, within the boundaries mentioned in the schedule to the plaint and they are hereinafter referred to as the "schedule property".

4. The plaintiff is a society registered under the Karnataka Co-operative Societies Act. 1959. The society is formed for the purpose of forming layouts and allotting sites to its members and also for the welfare of its members. One Shri Syed Mohideen was the absolute owner of the schedule property. He entered into an agreement of sale dated 24.11.1985 agreeing to sell the schedule property for a consideration of Rs. 1,10,000/- per acre. The said Syed Mohideen received a sum of Rs. 2,97,500/- by cheque dated 24.11.1985 towards sale consideration and the cheque was duly encashed. Subsequently, the plaintiff has made payments of Rs. 10,000/- on 4.6.1986, Rs. 1,000/- on 18.6.1986. Rs. 20,000/- on 22.9.1986. Rs. 2,750/- on 17.12.1986 and Rs. 30,000/- on 17.12.1986 by way of cheques all of which have been duly encashed. Thus, the plaintiff has paid a sum of Rs. 3,61,250/- towards sale consideration, which amount has been duly acknowledged by Shri Syed Mohideen.

5. Syed Mohideen died on 9.1.1988 intestate. Defendants- 1 to 6, 8 and 9 are the children of Shri Syed Mohideen and defendant-7 is the wife of Shri Syed Mohideen. They have inherited the properties of late Syed Mohideen and they are bound by the contract entered by late Syed Mohideen in respect of the schedule property with the plaintiff.

6. The case of the plaintiff is that the schedule properties are agricultural lands. It was specifically agreed between the parties that the sale deed has to be executed by the owner in favour of the society within six months from the date of the conversion notice issued by the Special Deputy Commissioner. Bangalore. It was specifically agreed that the owner has to cooperate with the purchaser in obtaining the conversion certificate from the competent authority for non-agricultural purpose. Shri Syed Mohideen, having received a sum of Rs. 3,61,250/- out of Rs. 4,85,375/- , which is the total consideration payable for the sale of the schedule properties, handed over the possession of the schedule properties to the plaintiff society. Only a sum of Rs. 1,24,125/- has to be paid towards the balance sale consideration. Shri Syed Mohideen also deposited the original Title deeds, which were in his custody, with the plaintiff society, as security by way of equitable mortgage for the amount paid. Shri Syed Mohideen could not execute the sale deed in favour of the society in view of the fact that the property was not converted for non-agricultural purposes. Shri Syed Mohideen, with the assistance of the society, applied for conversion of the land for non-agricultural purposes. Shri Syed Mohideen was looking after the conversion proceedings. The Special Deputy Commissioner, Bangalore, granted conversion by his order dated 5.5.1989 subject to the payment of Rs. 1,33,542.50 ps. The plaintiff was not informed about the order and also direction to pay the amount to the society, which the owner was required to inform to the plaintiff as per the agreement dated 24.11.1985. In view of the same, no

amount was paid and (he Special Deputy Commissioner closed the file and rejected the conversion certificate for non-payment of prescribed fee. Immediately after coming to know of the same, the plaintiff persuaded the owners to file an appeal before the Karnataka Appellate Tribunal against the said order.

7. The Tribunal, after hearing the parties, set aside the order and directed the Special Deputy Commissioner to extend the time for payment of conversion fee. Subsequently, the Special Deputy Commissioner issued notice for payment of conversion fee on 28.6.1991 and on 11.6.1991.

8. Immediately after the death of Shri Syed Mohideen, the defendants promised that they would abide by the terms and conditions of the agreement and promised to execute the sale deed immediately after all the formalities were completed. During August 1990, the plaintiff has been advised that the conversion was only a formality and They can get the sale deed executed in their favour since there was already an order of conversion. In view of the same, they requested defendants-1 to 7 to execute the sale deed in their favour. The defendants promised to execute the document after obtaining the conversion order. The plaintiff learnt that defendants-8 and 9 are also the legal heirs of late Shri Syed Mohideen. However, they did not keep the promise. Therefore, the plaintiff got issued a legal notice dated 3.9.1990 calling upon the defendants to execute the sale deed. The said notice is duly served on them but. they have not complied with the demand made therein.

9. The plaintiff contends that granting of a conversion certificate is a condition precedent for execution of the sale deed and it is also necessary to get. The land converted for non-agricultural purposes so as to enable the plaintiff to purchase the same to fulfill the object of the society. After issue of notice, the plaintiff learnt that the defendants are trying to dispose of the schedule property with an oblique motive to escape from the obligation under the said agreement. Therefore, the plaintiff filed O.S.No. 5540/1990 against defendants-1 to 7 for permanent injunction restraining them from interfering with the possession and alienating and disposing of the schedule property. An order of temporary injunction was granted and the said order is still in force.

10. The Deputy Commissioner extended the time and the conversion certificate has been granted. The plaintiff has already paid a sum of Rs. 3,61,250/- towards sale consideration and was ready and willing to pay the balance amount of Rs. 1,24,125/- and perform its part of the contract. The plaintiff had incurred huge expenses for obtaining the conversion order. The defendants, knowing fully well that the conversion has been obtained, were refusing to execute the sale deed. In fact, a paper publication in Deccan Herald daily on 4.9.1991 was duly published informing the public about the order of injunction. Defendants-1 to 9 and the said C.H.Subboji Rao colluded with one another and sold the schedule property in favour of the 10th defendant, who is none other than the nominee of Shri C.H.Subboji Rao. with an ulterior motive to defeat the valuable rights of the

plaintiff. "The sale deed in favour of the 10th defendant was executed on 10.3.1992 for a nominal sum of Rs. 1.30.000/- . The same is during the pendency of the suit where an order of injunction was operating and. therefore, it is not valid and the same is void. Hence, the said sale is liable to be declared as null and void and not binding on the plaintiff. The said sale deed is a nominal and sham transaction made only with a view to overcome the obligation under the agreement dated 24.11.1985 and to defeat, the legal rights of the plaintiff.

11. The plaintiff has paid the defendants the price, which is on the higher side. The plaintiff has invested huge amount for various formalities including to pursue the matter for obtaining the conversion. The entire expenses are met by the plaintiff. The plaintiff has spent money for implementing its scheme. It has invested huge amounts in purchasing schedule lands and has not purchased any other lands to implement the plan intended on this land. The plaintiff has been ready and willing to perform its part of the contract from the inception and even now, it is ready to pay the balance amount and get the sale deed registered. The defendants have not only played fraud on the plaintiff but, they have also played fraud on this court.

12. Without prejudice to the above contention, it was contended that, if this court comes to the conclusion that the sale deed cannot be executed by the defendants in favour of the plaintiff for any reason, then (o direct defendants-1 to 9 to refund the advance amount of Rs. 3,61,250/- as liquidated damages with normal banking rate of interest at 17% to 21% from 1985 to till date. Though the amount to which the plaintiff is entitled would be double the amount of advance paid, the plaintiff is restricting its claim only to Rs. 4,85,325/- .

13. Deceased Syed Mohideen has deposited the title deeds pertaining to the schedule property with the plaintiff as a security by way of equitable mortgage for a sum of Rs. 3.61.250/- . The details of the mortgage are set out in paragraph-18 of the plaint. Therefore, in the event of the court directing refund of the amount, the mortgaged schedule property is liable to be sold for realization of the amount due if the defendants fail to pay the amount. Therefore, the plaintiff has sought for a decree for specific performance of the agreement of sale dated 24.11.1985 and for a declaration that the sale deed executed in favour of the 10th defendant dated 10.3.1992 is null and void and not binding on the plaintiff and to issue permanent injunction restraining the defendants from interfering with the plaintiffs possession and enjoyment of the schedule properties or in the alternative, a direction to refund Rs. 4.85.375/- with interest at 20% per annum and to direct for sale of the schedule property and for other consequential reliefs.

14. Subsequently, by way of amendment, paragraph-15(a) was added in the plaint. In paragraph-15(a). the plaintiff has stated that it was able to ascertain the facts of payment of amount by cheques in favour of Smt. Mehboob Bee and fraud committed by Shri C.H.Subboji Rao in collusion with the defendants recently. Shri C.H.Subboji Rao has got the sale deed registered in the name of

the 10th defendant with fraudulent intention to overcome the interim order granted by this court and to deprive the right of the plaintiff. The defendants, in collusion with Shri C.H.Subboji Rao. have fabricated the sale deed dated 10.3.1992 and have shown only a sum of Rs. 1.30.000/- is paid as consideration. In reality, Shri C.H.Subboji Rao has paid a sum of Rs. 3,18.425/- by cheque bearing No. 010563 dated 11.3.1992 drawn on M/s Janata Seva Co-operative Bank Ltd. for which he was the President. The Bank has issued a Letter dated 30.4.1992 confirming the said payment. The plaintiff also learnt that apart from paying cash, Shri C.H.Subboji Rao has also paid some more amount by cheque in favour of Smt. Mehabood Bee and the same has been encashed. These amounts have been paid towards the sale consideration of schedule property. The plaintiff could get the details of the cheques mentioned in paragraph-15(a) which are drawn on Janatha Seva Cooperative Bank. Vijayanagar, Bangalore-40. On 16.7.1991 Rs. 10,000/- , on 14.9.1991 Rs. 10,000/- . Rs. 15.000/- . on 19.12.1990 Rs. 5.000/- . yet another Rs. 10.000/- on 15.10.1990 and the last of the payment was on 23.1.1991 for a sum of Rs. 20.000/- . The said Shri C.H.Subboji Rao appears to have paid much more than what is stated in the said paragraph. The said Shri C.H.Subboji Rao, knowing fully well about the agreement of sale dated 24.11.1985 executed in favour of the plaintiff by Shri Syed Mohideen had entered into an agreement with Smt. Mehaboob Bee and her three sons on 5.1.1989 and made payments including the aforesaid. The payments make it clear that the defendants have entered into a secret understanding and concocted documents with fraudulent intention to make unlawful gain for themselves and to cause unlawful loss to the plaintiff.

15. Shri C.H.Subboji Rao. in collusion with the 10th defendant and certain other persons, has formulated a scheme in the name and style of "Land Links" to form sites and to sell the same. They called for applications from prospective buyers. The plaintiff got issued a legal notice dated 28.10.1994 to the said "Land Links". The sequence of events are clear that Shri C.H.Subboji Rao and the 10th defendant have fabricated the documents to deprive the right of the plaintiff. The plaintiff also reliably learnt, that Mr.Subboji Rao has made the 10th defendant to enter into an agreement with one Smt. Uma Belagavi, wife of Shri Belagavi, who is working in Secretariat and deputed to Karnataka Appellate Tribunal, Bangalore, and has also received a huge amount. In view of the same, the sale deed dated 10.3.1992 executed in favour of the 10th defendant is bad in law and not binding on the plaintiff,

16. After service of summons, the defendants entered appearance. Defendants-1 to 9 have filed a detailed written statement traversing all the allegations made in the plaint. The defendants admit the relationship with Syed Mohideen as set out in the plaint. However, they deny that. Shri Syed Mohideen was the absolute owner of the schedule properties. It is their case that it was the ancestral property and Syed Mohideen had no exclusive right, title and interest whatsoever over the same. They have pleaded their ignorance about the agreement of sale dated 24.11.1985 set up by the plaintiff, said to have been executed by Syed

Mohideen. They deny that Rs. 1,10,000/- was the sale consideration amount agreed upon per acre and that Syed Mohideen received Rs. 2,97,500/- by cheque towards the sale consideration and that he has encashed the same. They also deny (hat payments were made on six occasions amounting in all Rs. 3.61,250/- as detailed in paragraph-6 of the plaint., Shri Syed Mohideen had no exclusive right or title over the schedule property. The defendants have legitimate share in the schedule properties. Shri Syed Mohideen could not have entered into any contract of sale transaction with the plaintiff. They deny that the schedule properties are agricultural lands. They also deny the stipulation in the agreement that sale deed should be executed within six months from the date of the order of conversion. They deny the deposit of original little deeds by Shri Syed Mohideen with the plaintiff. They submit that the original title deeds of the schedule properties were lost. Therefore, Shri Syed Mohideen had not created any mortgage of the schedule property nor deposited the original title deeds with the plaintiff. They deny the proceedings before the Special Deputy Commissioner, the orders passed by the Special Deputy Commissioner granting conversion and subsequently rejecting the conversion certificate for non-payment as alleged by the plaintiff. They admit that Shri Syed Mohideen died leaving behind defendants-1 to 9 as his legal representatives, who have succeeded to the schedule properties. But, they deny that the agreement of sale binds them to any extent whatsoever. They specifically contend that there is no privity of contract or agreement between the defendants and the plaintiff and. therefore, the question of fulfilling the terms does not arise at all. They admit the issue of legal notice dated 3.9.1990. They deny the allegations that granting of conversion certificate is a condition precedent to execute the alleged sale deed. Neither the defendants nor the said Syed Mohideen had parted with the possession of the schedule properties in favour of the plaintiff. As such, the question of dispossessing the plaintiff does not arise at all. They admit the filing of O.S.no. 5540/1990 and the passing of an order of temporary injunction from alienating and disposing of the schedule properties. It is their specific case that the schedule property had already been sold as on (he dale of filing of the said suit and. as such, the said suit has become infructuous. They admit the sale of the schedule property to the 10th defendant but not on the alleged date. They have pleaded ignorance about any registered letter issued by the plaintiff to Shri C.H.Subboji Rao on 23.9.1992 intimating about the injunction order and the letter accepted by him. They are also not aware of any paper publication in Deccan Herald issued by the plaintiff. They have denied the allegation of collusion between them and C.H.Subboji Rao in selling the schedule properties to the 10th defendant. The plaintiff has no right to question the alienation made by them in favour of the 10th defendant. The alleged agreement dated 24.11.1985 is false, frivolous and concocted for the purpose of the case. They deny the payment of any amount during 1985-86 and that the value of the land fixed was on the higher side, They deny the investments alleged to have been made by the plaintiff for various formalities and the amount spent on the litigation. They specifically denied all the other allegations in the plaint. Therefore, they sought

for dismissal of the suit.

17. The 10th defendant has filed a separate written statement. The 10th defendant, contends that the suit is hopelessly barred by time. The relief of declaration is not properly valued. The relief of specific performance is barred by limitation as the alleged agreement of sale is dated 24.11.1985 and as per the admitted version of the plaintiff, the said Syed Mohideen died on 9.1.1988 and the suit ought to have been filed on or before 9.1.1991. As such, the suit is hopelessly barred by time. Even otherwise, the suit is barred by the sound principle of res judicata. When the plaintiff, in the legal notice, has averred that Syed Mohideen acted contrary to the alleged agreement of sale and that they tiled a suit in O.S.No. 5167/1987 against him, and when they admit that Syed Mohideen did not perform his obligations, they ought to have sought for specific performance of the agreement, if any. at that point of lime itself and, therefore, the filing of a suit for bare injunction and not seeking the relief of specific performance clearly establish that the suit is not merely barred by time but also barred by the sound principle of res judicata. The plaintiff has also filed another suit O.S.No. 5540/1990 against defendants-1 to 7 and even in the said suit, they did not seek the relief of specific performance, Therefore, the suit is barred by res judicata and also by limitation.

18. Even otherwise, under the alleged agreement of sale dated 24.11.1985, there is no specific clause providing for enforcement of the specific performance of the same. The intention of the parties under the alleged agreement is explicit from paragraphs-7 and 12 of the clause. The alleged agreement is, therefore, vague, ambiguous and the specific performance of the same is not possible. The suit is obviously a speculative one aimed at harassing and vexing the 10th defendant, who is the lawful owner in possession and enjoyment of the same. The 10th defendant is a bonafide purchaser of the schedule property for valuable consideration and he cannot be subjected to such frivolous and vexatious litigation nor can the schedule property be in any manner affected by virtue of such unenforceable, time barred, baseless suit. The plaintiff is not properly represented in the suit and the Principal Officer of the plaintiff society has not verified the plaint. The plaintiff is said to be represented by its Director Shri V.C. Reddappa Chetty. who is only its Director and not an office bearer. A House Building Co-operative Society cannot be represented by a Director but can be represented only by its President or Secretary. Accordingly, the suit, is improperly constituted and is wholly misconceived.

19. In the suit, reference is made to the so called mortgage dated 15.11.1986. Assuming the same is correct, then the relief sought for in paragraph-2(a) and (b) at page 20 of the plaint are totally opposed to law, as the plaintiff, which is admittedly a co-operative society, cannot resort to any money lending transaction as The same is haired by the Karnataka Cooperative Societies Act, the Karnataka Co-operative Societies Rules, and the bye-law of the plaintiff society also does not permit the plaintiff to effect any such money lending, be it

by deposit of title deeds or otherwise, to outsiders. The plaintiff has not obtained the specific consent of the Government of Karnataka/Registrar of Co-operative Societies for obtaining a security by deposit of title deeds. Secondly, the suit for recovery of money based on such alleged mortgage is improper and illegal and if at all the suit is for recovery of money simpliciter, then the same is automatically barred by time as the last, payment is said to have been paid on 17.12.1986 and the suit is filed in the year 1992.

20. The plaintiff has never been ready and willing to perform its obligation under the so-called agreement of sale and, therefore, they cannot enforce the suit, for specific performance. The total consideration payable was Rs. 4,85,356/- and the amount paid is only Rs. 3,61,250/- . The 10th defendant denied the agreement of sale set up by the plaintiff with Syed Mohideen. He denied the receipt of consideration from Syed Mohideen. He contended that the plaintiff society has hoodwinked Syed Mohideen and collected some papers from him without making him realise for what reason and why those papers were collected by them. Assuming without conceding that the said Syed Mohideen did deposit the original title deeds with the plaintiff society towards the security for the repayment of the amounts, even then, the alleged equitable mortgage said to have been created by him is illegal and unenforceable as there cannot be a mortgage by deposit of title deeds itself in favour of the plaintiff society. The 10th defendant has reiterated the allegations made by defendants-1 to 9 in their written statement. Therefore, the 10th defendant sought for dismissal of the suit.

21. On the aforesaid pleadings, the trial court framed the following issues in O.S. No. 3341 / 1992:

- 1) Whether the plaintiff proves the due execution of the sale agreement in its favour as contended?
- 2) Whether the suit is properly filed and instituted by competent person representing the same?
- 3) Whether the plaintiff proves the alleged interference by the defendants?
- 4) Whether the plaintiff prove that it was always ready and willing to perform its part of contract?
- 5) Whether the plaintiff prove that the defendants-1 to 10 are liable to execute the sale deed in its favour?
- 6) Whether the suit is in time?
- 7) Whether the plaintiff proves cause of action for the suit?
- 8) Whether the plaintiff is entitled for the reliefs sought for?
- 9) What order or decree?

The trial Court had also framed the following issues in O.S. No. 5540/1990 :-

- 1) Whether this suit is barred by O.S. No. 5167/1987 of this Court?
- 2) Whether this suit is barred by Sections 69 and 70 of the Karnataka Cooperative Act, 1959?
- 3) Does the plaintiff prove the lawful possession of the suit property from 24.11.1985?
- 4) Does the plaintiff prove interference by the defendants?
- 5) Whether the plaintiff is entitled for the permanent injunction?

22. On behalf of the plaintiff, V.C. Reddappachetti was examined as P.W.1. One Ayub John was examined as P.W.2. 24 documents were marked as Exs.P-1 to P-24 on behalf of the plaintiff. One Annaiah was examined as D.W.1 and one Syed Babjan was examined as D.W.2 on behalf of the defendants and they produced in all seven documents. which were marked as Exs.D-1 to D-7.

23. The trial Court on appreciation of the oral and documentary evidence on record held that the plaintiff has proved due execution of the agreement of sale in its favour as contended by them. Syed Mohideen has received the advance sale consideration as averred in the plaint and shown in Ex.P5. It also held the society has passed a resolution on 28.2.1990 authorizing PW1 to approach the lawyer and proceed to initiate legal proceedings in respect of the suit properties on behalf of the society. He is duly authorised to sign the papers on behalf of the society as per Ex.P1 and therefore it held PW1 is the competent person who has duly signed the pleadings and therefore the suit filed by him is legal and valid. It. held the cause of action for the suit in O.S. No. 5167/1987 is for restraining the defendants from alienating the properties whereas in O.S. No. 5540/1990 the cause of action for the suit is to prevent the defendants from interfering with their possession and enjoyment of the suit schedule properties, as such the cause of action in both the suits are not one and the same. As the defendant's counsel did not. press the issue regarding maintainability of the suit as having been hit by Sections 69 and 70 of the Karnataka Cooperative Societies Act, it was not gone into and the said issue was held against the defendant's. On the question of readiness and willingness to perform the contract it held as the plaintiff has paid the sums in terms of the agreement of sale not only on the date of the agreement but also subsequently and the total amount so paid is roughly about 3/4th of the sale consideration, the other material on record clearly establishes they are capable of raising the balance sale consideration at the time of registration of the sale deed and pay the same. The said issue is proved by the plaintiff. It also held defendants 1 to 9 being the legal heirs of Syed Mohideen and the tenth defendant in whose favour they have executed the sale deed on 10.3.1992, all of them are liable to execute the sale deed in favour of the plaintiff. The agreement of sale contains a recital regarding delivery of possession. An order of temporary injunction came to be passed in O.S. No. 5540/ 1990 restraining the defendants from interfering with the possession of the plaint schedule property of the plaintiff and the said order of injunction is

operative on the date of the judgment of the trial Court. There is no material on record to establish that the tenth defendant was put in possession; tenth defendant and eleventh defendant having not stepped into the witness box it held The plaintiff has proved his possession over the plaint schedule property. In respect of the issue regarding limitation it. was held the order of the Deputy Commissioner at Ex.P4 dated 11.6.1991 should be construed as the date from which the limitation began to run and the suit having been filed on 1.6.1992 well within three years from that date, in terms of Article 54 of the Limitation Act. the suit is in time. Therefore, the trial Court, proceeded to decree both the suits for permanent injunction as well as the suit for specific performance of the agreement of sale by its common judgment and decree dated 11.4.2000. Aggrieved by the said judgment and decree, the tenth defendant has preferred these two appeals. It is pertinent to note at. this stage the defendants 1 to 9 have not preferred any appeal against the judgment and decree of the trial Court.

24. The learned counsel for the tenth defendant assailing the impugned judgment and decree of the trial Court contended that, in a suit for specific performance even if the agreement of sale is held to be proved, still the plaintiff has to establish his readiness and willingness to perform his part of the contract to be eligible for a decree for specific performance. In the instant case the material on record do not establish that the plaintiff had the balance sale consideration to complete the sale transaction but still the trial Court committed a serious error in decreeing the suit of the plaintiff for specific performance. Secondly he contended that, in the suit agreement no time is stipulated for the performance of the contract. When no such date is fixed, the three years period of limitation starts running from the day the plaintiff has noticed the performance is refused. In the instant case, the agreement of sale is dated 24.11.1985. "the plaintiff filed a suit for injunction on 20.11.1987 in O.S.No. 5167/1987 for a decree of permanent injunction. Subsequently, the suit came to be dismissed as withdrawn. The very filing of the said suit, accusing Syed Mohideen - the owner of the property trying to alienate the property, in spite of the agreement of sale amounts to refusal of performance by the said Syed Mohideen and therefore the limitation starts running from the date of the said suit. However, the suit is filed on 1.6.1992. nearly alter 5 years and therefore the suit tiled is clearly barred by time. The trial Court has not properly appreciated this undisputed fact in the case and committed a serious error in holding that the suit is within time. In the aforesaid circumstances, the grant of decree for specific performance is illegal and requires to be set aside.

25. Per contra, the learned counsel appearing for the plaintiff-respondent society contended that, a careful reading of the sale agreement shows this is not a case where no date is fixed for the performance as contended by the tenth defendant. Originally the time is fixed for the payment of balance amount as the date on which Section 6(1) notification is issued under the Act, then the balance amount to be deposited with the Bangalore Development Authority. However, subsequently the time to enforce the agreement was fixed from the date of issue

of demand notice by the Special Deputy Commissioner, Bangalore, for payment of conversion fees. If the time is computed from the date of issue of demand notice, the suit Tiled is in time and therefore the finding recorded by the trial Court is legal and valid. In so far as the contention that the plaintiff was not ready and willing to perform his part of the contract is concerned, in the first place the defendants do not admit the agreement of sale at all. Once the agreement is held to be proved, it. is not open to them to raise the plea of readiness and willingness. Even otherwise, admittedly out of the total consideration of Rs. 4,85,375/- a sum of Rs. 2.97,500/- was paid by cheque on the date of the agreement and subsequently the amounts were paid as and when it was demanded by late Syed Mohideen and in all they paid Rs. 3,61.250/- as set out in para 6 of the plaint and only a sum of Rs. 1,24.125/- was the balance payment and the plaintiff being a society at any point of time they could have paid the said balance amount even if necessary by raising funds from Us members and therefore the said finding recorded by the trial Court is proper and legal and based on legal evidence. Therefore. it was contended there is no legal infirmity in the judgment and decree of the trial Court which calls for interference.

26. In the light of the aforesaid facts and the rival contentions, the points that arise for our consideration in this first appeal are as under :-

(1) Whether the finding recorded by the trial Court that the plaintiff has proved its readiness and willingness to perform its part of the contract calls for interference?

(ii) Whether the suit for specific performance is barred by time?

(iii) Whether the 10th defendant is a bonafide purchaser of the schedule property for valuable consideration without notice of the suit agreement?

27. Point No. (i):- The suit for specific performance is based on a written agreement of sale dated 24.11.1985 executed between Syed Mohideen and the Agarbathi Workers Mouse Building Cooperative Society Limited. The recitals in the said agreement make it clear that Syed Mohideen acquired land in Sy. No. 38/1 measuring 20 1/2 guntas and Sy. No. 37 measuring 3 acres 36 guntas, in all 4 acres 16 1/2 guntas situated in Chikkabettahalli Village. Yelahanka Hobli. Bangalore North Taluk. In the schedule to the agreement of sale both the survey numbers are clearly described. The agreement further stipulates the title of the said property to the purchaser has to be conveyed through the Land Acquisition Officer. The price agreed upon is Rs. 1.10.000/- per acre. A sum of Rs. 2.97,500/- was paid as advance vide cheque No. 6702 dated 24.11.1985 drawn on Karur Vysya Bank Limited. Rajajinagar. Bangalore-10. The balance sale consideration has to be paid as under: -

(a) Rs. 63.750/- within 9 months from the date of the agreement to the vendor.

(b) Rs. 1,06.250/- shall be deposited with the BDA and the same will be paid to the vendor by the Government of Karnataka under Section 6(1) of the Act.

It is further averred that the actual amount to be paid to the vendors shall be determined after taking into consideration the award amount deposited with the Land Acquisition Officer towards the cost of the lands and the same being deducted from out of the balance of sale consideration.

Clause 5 of the agreement makes it clear that the vendor shall cooperate with the purchaser in obtaining the No Objection Certificate from the competent authority or the Land Acquisition authorities for conversion of the schedule lands for non-agricultural purposes.

On the hind portion of the agreement, the following endorsements are made:-

Further payment of Rs,10,000/- /Ten thousand only) is made by Ch. No. 6743, dated 4-6-1986 in favour of Syed Mohideen on The Karur Vysya Bank Ltd.. Rajajinagar. Bangalore-10. Towards the part payment of Rs. 63,750/- on this June 4th. 86. The balance of Rs. 53,750/- will be paid as agreed in the agreement.

Further Rs,1,000/- is given on 18-6-1986 vide Ch No. 6745, dated 18-6-1986. Time to enforce this agreement shall be from the date of issue of demand notice by Special DC. Bangalore, for payment of conversion fees purchaser shall pay the same.

Further payment of Rs. 20.000/ paid by Ch. No. 6749. dated 22-9-1986 and Rs. 2.750/- paid by cheque No. 6750. dated 1-10-1986. Further final payment of Rs. 30.000/- is paid by cheque No. 6722. dated 1-11-1986, subject to the delivery of all necessary documents to the Society. Accordingly. title deeds deposited as security on 15-11-1986 and possession handed over.

As the Ch. hearing No. 6722 was lost by the said Syed Mohideen, we have issued another cheque bearing No. 5604. dated 17-12-1986 for Rs. 30,000/- and hence the previous cheque is cancelled.

28. After excluding (he aforesaid payment made in addition to what was paid on the date of the agreement, the balance amount payable would be Rs. 1,24,125/- . The said Syed Mohideen died on 9.1.1988. In the written statement, defendants 1 to 9 who were the legal heirs of Syed Mohideen have categorically pleaded that they are not aware and therefore denied that Syed Mohideen and the plaintiff had entered into any agreement of sale on 24.11.1985 wherein Syed Mohideen had agreed to sell the schedule property for a consideration of Rs. 1,10.000/- per acre and that Sri Syed Mohideen who received a substantial advance of Rs. 2.97,500/- by cheque towards the sale consideration and he had encashed the same. They also denied that the plaintiff had made payments on six occasions amounting to Rs. 3.61.250/- as detailed in para 6 of the plaint to Sri Syed Mohideen and that. the same was accepted by him. It is their specific case that the schedule property is ancestral and late Sri Syed Mohideen had no exclusive right, title, interest, whatsoever over the same. They admit that after the death of Sri Syed Mohideen on 9.1.1988 all of them have succeeded to his

properties. They also denied the allegation in the plaint that the plaintiff has always been ready and willing to pay the balance sale consideration. In other words it is a blanket denial by the defendants 1 to 9. Whereas, the tenth defendant who is a total stranger to the contract after denying all the allegations in the plaint has contended in para 7 of the written statement that the plaintiff was never been ready or willing to perform its obligation under the so called agreement of sale and therefore they cannot enforce the suit for specific performance. In order to prove the readiness and willingness on the part of the plaintiff and the execution of the agreement of sale and payment of consideration thereunder, the plaintiff have examined PW1 Sri V.C. Reddappa Chetty, one of the Directors of the Managing Committee of the plaintiff society. He has spoken to about the execution of the agreement of sale through whom the agreement of sale was marked as Ex.P5. He has also identified the signatures of Sri Syed Mohideen which are marked as Exs. P5(a) to (d). He has also spoken about handing over of the cheques, encashment of the cheques and the payment of the amount mentioned in the agreement as stated in para 6 of the plaint. On these aspects there is no serious cross-examination. The plaintiff has also examined a witness by name Ayub Jan as PW2. He is the person who brought about the sale transaction. He has given a graphic description of what transpired before the agreement of sale came into existence, the consideration agreed upon for sale of the property, the execution of the agreement of sale, the signature of Sri Syed Mohideen in the said agreement of sale. In the cross-examination it is suggested that the said witness is a friend of Mohideen and Mohideen handed over documents to him to enable him to arrange for a loan for him from the bank. Whereas he has colluded with the society and concocted Ex.P5. As against this evidence on behalf of the plaintiff, on defendants' side one Anaiah was examined as DW1 who is a Power of Attorney Holder of the tenth defendant. He has pleaded complete ignorance about Ex.P5 and contents of the same and therefore his evidence is of no assistance in finding out whether Ex.P5 is proved or not and also on the question whether plaintiff was ready and willing to perform his part of the contract. One Syed Baba Jaan. the son of Sri Syed Mohideen was examined as DW2, His evidence is of utmost relevance. In examination-in-chief he has admitted he knows PW1 who was present before the Court, he used to come to his house, his parents were talking to him. On the date of his evidence on 4.2.2000 his mother i.e.. widow of Sri Syed Mohideen was dead. Therefore he deposed that his mother used to tell him that there is agreement of sale with respect to the suit property in favour of Agarbathi Society. At the instance of his mother he has signed the said agreement of sale. He states he has not received the sale consideration, he also do not know what was written in the agreement. He pleaded his ignorance about the contents of the sale deed as well as the agreement of sale. He asserts neither he nor his brothers or sisters have received any sale consideration and he also do not know in whose favour the sale deed has been registered. No cross-examination of the witness is done on behalf of the tenth defendant. In the cross-examination by the plaintiffs he identified his father's signature found at Ex.P5(a). (b), (c) and (d) as well as (f). (g). (h) and

(j). He identified his three signatures at. Ex.P5 which are marked as (k), (l) and (m). He also identified the signature of Jayaramaiah, Narayana Gouda and Ayub Jaan who have also signed Ex.P5. He again reiterates in cross-examination his mother was aware of Ex.P5. He did not know the amount paid by the plaintiff to his father through cheque though cheque has been encashed by his father. It is his mother who told him that his father has received a cheque from the plaintiff. At the time of agreement: of sale in favour of the plaintiff-society his father was healthy.

29. It is on appreciation of this evidence on record, the trial Court has recorded a categorical finding that the execution of the agreement of sale is proved, the payment of consideration mentioned in the agreement as well as in the endorsement is proved, handing over possession of the property on 15.11.1986 is also proved. In so far as readiness and willingness to perform their part of the contract, the aforesaid evidence on behalf of the defendants do not throw any light at all. However. on that, question, the evidence of PW1 discloses that. approximately 300 and odd were the members of the society at the time of Ex.P5. On the date of filing of the suit, the plaintiff had accounts in Bangalore District Central Cooperative Bank and Karur Vysya Bank. He do not know the balance amount in the said accounts as on the date of the suit. There is no operation of the accounts in the DCC Bank and Karur Vysya Bank on the date he was giving evidence. He also do not remember the amount lying in the Rajajinagar Cooperative Bank at Rajajinagar. in Bashyam Circle, ESI Road. Rajajinagar, Bangalore. They have not made any payments towards conveyance charges either to the vendor nor to the Government. They have spent money for expenses for conversion. Society has spent more than Rs. 2 Lakhs towards conversion expenses. Rs. 2 Lakhs for bribing, they have not drawn this amount, from the society accounts, they have pooled this money from some members and spent for bribing, he has also given some amount, he cannot say the names of the members who have contributed the amount, he has contributed Rs. 15,000/- , he cannot say whether he has drawn this amount from his personal account, it is true that the plaintiff society is running under loss as on the date of his deposition. The plaintiff-society was always ready and willing for paying the sale consideration and to get the sale deed executed and to perform their part of the contract, the society intended to acquire this land to form residential sites and to allot the same to its members. The members of the society have invested their hard earned savings in this transaction.

30. A careful appreciation of the aforesaid material on record shows the society entered into this agreement of sale for acquiring the land for the purpose of forming a residential layout for its members. They have opened bank accounts, amounts received from the members are credited to the said account, the consideration under the agreement of sale has to be paid from the said accounts but it. explains the reason why all the payments under the agreement are made by way of cheques all of which have been duly encashed. If they have to spend money to get the conversion by pooling the money from the members they have

made the said expenditure. There are 300 members in (he society. Hardly the balance amount payable was Rs. 1,24.125/- . Though passbooks of the various bank accounts are not produced before the Court, even if there was no amount in the said account in the facts of this case that would not make any difference. Society could have raised the requisite funds from its members and paid the balance sale consideration, stamp duty, registration charges and could have taken the sale deed. When members have paid substantial portion of" the sale consideration certainly they would have paid the balance sale consideration also. When possession of the land is handed over the title deeds of the lands are also handed over, in fact with the intention of creating a mortgage as a security for the amounts received under the agreement of sale, there was absolutely no difficulty for the society to raise the balance sale consideration and perform their part of the contract as is evidenced from their conduct on the date of the agreement and subsequently when they have kept up their words. They were ready and willing to perform their part of the remaining obligations under the contract. Therefore, the finding recorded by the trial Court that the material on record do clearly establish the readiness and willingness on the part of the plaintiff to perform their part of the contract is based on legal evidence and do not suffer from any legal infirmity so as to call for any interference.

31. Point No. (ii):- The contention of the appellant is, in the agreement of sale no period of limitation is prescribed. Therefore, in terms of Article 54 of the Limitation Act, the period of limitation starts when the plaintiff had noticed that the performance is refused. When the plaintiff filed the suit O.S. No. 5167/1987. the limitation of three years commenced and the suit ought to have to been filed within three years therefrom. When admittedly the suit is filed on 1.6.1992 nearly 4 1/2 years after the time begins to run the suit for specific performance is clearly barred by time.

32. Before we appreciate this contention of the plaintiff, it is necessary to take note of the law on the point. Article 54 of the Limitation Act, 1963 which provides for limitation for specific performance of the contract reads as under: -

THE SCHEDULE

PERIOD OF LIMITATION

Description of suit

Period of limitation

Time from which period ; begins to run

54. For specific performance of a contract

3 years

The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that" performance is refused

33. The plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreement.

34. The law on the point is well settled. The Apex Court in the case of Panchanan Dhara and Others Vs. Monmatha Nath Maity (Dead) thr. L.Rs. and Another, held as under: -

20.....4 plea of limitation is a mixed question of law and fact. The question as to whether a suit for specific performance of contract will be barred by limitation or not would not only depend upon the nature of the agreement but also on the conduct of the parties and also as to how they understood the terms and conditions of the agreement. It is not in dispute that the suit for specific performance of contract would be governed by Article 54 of the Limitation Act, 1963. While determining the applicability of the first or the second part of the said provision, the court will firstly see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When, however, no time is fixed for performance of contract, the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract and in that event the suit is required to be filed within a period of three years therefrom. The Apex Court in the case of Gunwantbhai Mulchand Shah and Others Vs. Anton Elis Farel and Others, held as under:-

8.....It was rightly noticed that the suit was governed by Article 54 of the Limitation Act, 1963. Then, the enquiry should have been, first, whether any time was fixed for performance in the agreement for sale, and if it was so fixed, to hold that a suit filed beyond three years of the date was barred by limitation unless any case of extension was pleaded and established. But in a case where no time for performance was fixed, the court had to find the date on which the plaintiff had notice that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. We have explained the position in the recent decision in R.K. Parvatharaj Gupta Vs. K.C. Jayadeva Reddy, The Supreme Court in the case of Antonysami Vs. Arulanandam Pillai (D) by Lrs. and Another, held as under :-

17. The fixation of periods of limitation are bound to be to some extent arbitrary and may at times result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is the (sic) safe guide. The Supreme Court in the case of Rojasa Ramjibhai Dahyabhai vs Jani Narottamdas Lallubhai (Dead By Lrs) and Another [AIR 1986 SC 1912] held as under: -

12..... It is enough to refer to Halsbury's Law of England, Vol 8. 3rd Edn.. p.

121 where the principles are summarised as follows:

In construing a contract a term or condition not expressly stated may, under certain circumstances be implied by the Court, if it is clear from the nature of the transaction or from something actual found in the document that the contracting parties must have intended such a term or condition to be part, of the agreement between them. Such an implication must in all cases be founded on the presumed intention of the parties and upon reason, and will only be made when it is necessary in order to give the transaction that efficacy that both the parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties. Chilly on Contract. Vol 1. 23rd Edn., paragraphs 694-95 points out that a term would be implied if it is necessary in the business sense, to give efficacy to the contract.

15. The next and the last contention that the suit brought by the appellant was barred by limitation is wholly devoid of substance. Under Art. 113 of the Limitation Act. 1963. the limitation prescribed for a suit for specific performance is a period of three years which runs from the date when the cause of action accrues. In the facts and circumstances of the case, the respondents were required to have a (sic) executed immediately upon the conferral of occupancy rights on the abolition and the permission granted by the revenue authorities to him to convert the suit, land into village site. As already stated, the permission to convert the disputed land into village site having been obtained on August 26. 1958 insofar as a part of the land admeasuring 1.000 square yards and on September 10. 1959 as regards the remaining portion, it could not be said that the respondents suit filed on September 6, 1960 was barred by limitation.

This Court in the case of H.M. Krishna Reddy Vs. H.C. Narayana Reddy, held as under:

19. No doubt in the phrase "The date fixed for performance" occurring in the first clause is not merely referable to the "calendar date" but also to any "other date" referable to an event that may happen in future with certainty,

20. The parties at the time of entering into the "Agreement of Sale" must contemplate a future event, which must, be certain to happen. In other words, when they want to "fix the date of performance" in the "Agreement of sale" without reference to a "calendar date", the agreement must mention the nature and description of future event, which according to the knowledge of the parties or "Common knowledge" is "certain to happen". If the "Event" stated in the agreement, according to the knowledge of parties, or according to "Common Knowledge" is of such a nature, it "May" or "May not" happen. Then it cannot be said the parties contemplated a "date" with reference to a "future event" from which event the performance becomes due (As limitation being a Rule of Technality which has the effect of barring a Remedy) in the mind of the parties, "fixing the date" for performance of contract Mere mentioning of any "Event" which was never contemplated "Certain to happen" cannot have the effect of

fixing a date" for performance.

The Supreme Court in the case of Ahmmadsahab Abdul Milla (dead) by proposed Lrs. Vs. Bibijan and Others, held as under :

9. According to Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn.. 2005. the word "date" means as follows:

Date.- (As a noun) The point of time at which a transaction or every takes place: time given or specified; time in some way ascertained and fixed: in a deed, that part, of the deed or writing which expresses the day of the month and year in which it was made. 12B1. Commn. 304; Tomlin). In Bement and Dougherty v. Trenton Locomotive, etc., Co. (NJ Law at p. 515) it is said: The primary signification of the word date, is not: time in the abstract, nor time taken absolutely but, as its derivation plainly indicates, time given or specified time in some way ascertained and fixed; this is the sense in which the word is commonly used. When we speak, of the date of a deed, we do not mean the time when it was actually executed but the time of its execution, as given or stated in the deed itself

Where a deed bears no date, or an. impossible date and in the deed reference is made to the "date" that word must be construed "delivery": but if the deed bears a sensible date the word. "date" occurring in the deed, means the day of the date, and not that of the. delivery (Elph 123. citing Styles v. Wardle (1825) 4 B and.C 908..).

"Date", though sometimes used as the shortened form of day of the date" is not its synonym: but means the particular time on which an instrument is given, executed, or delivered (Howard case (91 ER 1219) : Armitt v. Breme (92 ER 213) and Pe(sic)ress v, Annan. Dowl (1841) 9 Dowl 828 at pp. 834-351.

The word "date" is much more commonly descriptive of a day than of any smaller division of time" [per Stormonth Darling, L.O., Simprson v. Marshall (37 SCLR 31G)].

Date means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days (sic)er date of (sic)ent" it runs for the full 15 days offer the day o: which it was to commence Cartwright v. MacCormack (1963) 1 ALL ER 11 (CA).

10. "Fixed" in essence means Slaving final or crystallised form or character not subject to change or fluctuation.

11. The inevitable conclusion is that the expression "date fixed for the performance" is a crystallised notion. This is clear from the fact [hat the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff" has notice that performance is refused". Here again there is

a definite point of time. when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date hereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.

35. The law on the point is fairly well settled- The suit, for specific performance of contract would be governed by Article 54 of the Limitation Act. 1963. For specific performance of contract three years period has been prescribed for filing a suit. But this three years period has to be counted in the mode in the last column. which is in two parts. The first part indicates that, in case any date has been fixed for performance of contract, in that event three years will be counted from that date. But when there is no date fixed. the second part will be applicable, which in substance is that the period of three years would commence to run when notice of performance is refused. The third column shows that wherever a time is fixed for the specific performance the first part of it would apply and in other cases the second part. While determining the applicability of the first or the second part of the said provision. the court will first see as to whether any time was fixed for performance of the agreement of sale and if it was so fixed, whether the suit was filed beyond the prescribed period unless any case of extension of time for performance was pleaded and established. When however, no time is fixed for performance of contract the court may determine the date on which the plaintiff had notice of refusal on the part of the defendant to perform the contract and in that event the suit is required to be filed within a period of three years therefrom- The principle underlying this article is that when the date is fixed under the first part of column 3, limitation begins to run forthwith as the date is certain, but where no such time is fixed and where the party against whom the limitation runs is not in a position to know of the occurrence of the contingency contemplated by the contract. time begins to run only when he has notice of the refusal of the performance. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. "Date fixed for performance" does not mean a precise date by calendar alone, but the same is comprehensive enough to include a date which can be ascertained with reference to an event certain to happen. The phrase "the date fixed for the performance" must be not only an identifiable date but also a date which the parties intended should be the date when the contract should be performed. The expression "date fixed" under this article means and connotes the date expressly agreed to by the parties in the covenant itself. Of course, where the time under the contract is extended either expressly in writing or by consent, then the new date substituted would be the date fixed. Therefore, the date fixed for the performance must be construed to mean not only the date

which can be identified, but also be a date which the parties intended to be the date when the contract should be performed. No doubt in the phrase "The date fixed for performance" occurring in the first clause is not merely referable to the "calendar date" but also to any "other date in the calendar" referable to an event that may happen in future with certainty. As to whether the words "date fixed" in the first part of column 3. mean the date by calendar or whether they are comprehensive enough to include a date which can be ascertained with reference to an event certain to happen the principle applicable is the doctrine of *id certum est quod cerium reddi potest*. It means certainty need not be ascertained at the time; for if, in the fluxion of time a day will arrive which will make it certain, that is sufficient. The requirement of Article 54 is not that the actual day should necessarily be ascertained upon the face of the deed, but that the basis of the calculation which was to make it certain should be found therein. "Date fixed" means thus either the date fixed expressly or a date that can be fixed with reference to a (sic)ture event which is certain to happen. When date is fixed it means that there is a definite date fixed for doing a particular act.

36. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again there is a definite point of time when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. The refusal to perform the contract may be gathered from circumstances and need not be express. In Article 54 of Act "when the performance is refused" limitation starts running from that date. For the second part of Article 54 to apply, not only that there should be refusal by the defendant, but also that the plaintiff has knowledge of such refusal. When second part of the article applies, limitation begins only from the date of refusal.

37. In this background when we look at the agreement, it is specifically prescribed that Rs. 1,06,250/- shall be deposited with the Bangalore Development Authority and the same will be paid by the vendor to the Government of Karnataka under Section 6(1) of the Act. The said clause has to be understood in the context of the land acquisition proceedings. Section 6(1) refers to the final notification. The said final notification will be published in the official gazette. Once it is published, the date, the month and the year is certain and that is the date prescribed for payment of the balance sale consideration. However that is the date within which the balance sale consideration under the agreement is to be paid by the plaintiff. When the parties did not opt for that mode agreed upon and decided to get the land converted so that the society could take the sale deed from the vendor, in the endorsement made it is specifically averred as under-

Time to enforce this agreement shall be from the date of issue of demand notice by the Special Deputy Commissioner, Bangalore, for payment of conversion fees. purchaser shall pay the same. 38. Therefore, expressly time to enforce the agreement was prescribed as the date of issue of demand notice by the Special Deputy Commissioner for payment of conversion fees. Therefore, the said date is

definite. Admittedly, no final notification under Section 6(1) of the Land Acquisition Act was issued. Therefore, the said expression in the agreement loses its significance. However, the parties approached the authorities for conversion of the land and conversion was granted by an order dated 5.5.1989. If a conversion order was passed the plaintiff was not informed about the order and also direction To pay the conversion fine the reason may be that Sri Syed Mohideen died on 9.1.1988 and the conversion order was granted on 5.5.1989. However, as no payment was made the Special Deputy Commissioner closed the (sic) and rejected the conversion certificate on the ground of non-payment of prescribed fee. Immediately after coming to know of the same, the plaintiff persuaded the owners to file an appeal before the Karnataka Appellate Tribunal against the said order and the order rejecting conversion certificate came to be set aside and a direction was issued to the Special Deputy Commissioner for issue of a notice for payment of conversion fee. Accordingly, the notice for payment of conversion fee was issued on 11.6.1991. If the date of the second demand notice on 11.6.1991 is taken into consideration, there is no dispute that the suit filed on 1.6.1992 is within time. Even if the date of conversion order dated 5.5.1989 is taken into consideration, the suit filed on 1.6.1992. on the date of reopening of the Courts after summer vacation is well within three years period. We accordingly hold that under the agreement, date for the defendant to execute the sale deed was fixed, although not by mentioning a certain date but by a reference to the happening of a certain event namely the publication of the final notification on which date the balance consideration had to be paid and thereafter the defendant became liable to execute the sale deed which the plaintiff was entitled to enforce. Subsequently that date was substituted by the date of the passing of the order of conversion as the date for enforcing the agreement. Therefore, the case is covered by the first part of Article 54 3rd column and not the second part. The period of limitation started running from those dates. Therefore, the suit filed by the plaintiff is within time and not barred by time.

39. If the said agreement is construed as an agreement where the time for performance of the contract is not fixed then the period of limitation starts when the plaintiff has notice of the performance refused. It is in this context it was contended on behalf of the first defendant the date of refusal starts from the date of (sic)ing of suit O.S. No. 5167/1987. A copy of the plaint in the said suit is marked in this case as Ex. D3. That is a suit filed by the society against Syed Mohideen and Reddappa Chetty-the President of the society himself accusing the President of not acting in the interest of the society and detrimental to the society. In the said suit it is alleged the first defendant is trying to execute the necessary documents in favour of third parties even though the agreement with the plaintiff-society is subsisting. The defendant has received substantial consideration in respect of the schedule properly and the amounts are received through cheques issued on behalf of the society. The last payment received by the first defendant is on 1.10.1986. The plaintiff-society is moving for the

conversion and also for other permissions and of which the defendants were undertaken to cooperate with the plaintiff-society, but during the subsistence of the agreement, the defendants even though have received amounts from the plaintiff they are trying to alienate the schedule properties by means of executing the documents such as agreements. Power of Attorneys, etc, in favour of the third parties at the instigation of the President of the plaintiff-society who is working detrimental to the interest of the society and he is possessing the documents of the society illegally including cheque books and signatures of Secretary on blank cheques. If the defendants alienate the schedule properties in favour of the third parties the society will be put to great hardship, wherein lakhs of rupees has been invested on the land in question in the matter of forming the sites for moving conversion and other incidental charges and the object of the society will be forfeited and thereupon the general public who are the members, their interest will be in jeopardy. To sue for specific performance of the agreement number of formalities have to be complied with by the defendants and also to get the permission from the authorities. Since the defendants are trying to alienate the schedule properties in favour of third parties it has become absolutely necessary to file the suit for permanent injunction. Plaintiff reserves his right to sue for specific performance of the agreement- The cause of action for the suit arose on the date of the agreement on the date of payment subsequent to the agreement and subsequently when the plaintiff-society reliably learnt about the intention to alienate the schedule properties by the defendants to the third parties within the jurisdiction of this Court.

40. Therefore, a careful reading of the averments in the plaint make it clear that the suit is filed on the apprehension that the President of the Society and the first, defendant are colluding with each other and are trying to alienate the property in favour of third parties during the subsistence of the agreement of sale. No where in the plaint it is stated that the first defendant has refused performance of the agreement of sale or that they apprehend that the first defendant would not execute a sale deed in favour of the plaintiff. The allegations in the plaint make it very clear the real grievance was the President of the society, who was instrumental in entering into the agreement of sale with the first defendant is now trying to play mischief and by joining hands with the first defendant is trying to alienate the property in favour of third parties. In other words, the first defendant is acting at the behest of the second defendant. The first defendant is not refusing to execute the sale deed. At the behest of the first defendant he may execute the sale deed in favour of third persons. Therefore, it is clear that the first defendant is under the control of the second defendant, it is only an apprehension on the part of the plaintiff. As the plaintiff found their apprehension was misconceived, immediately thereafter, they filed a memo and got. the suit dismissed as withdrawn. Therefore, the said contention that the averments in the plaint in O.S. No. 5167/1987 amounts to the refusal on the part of the first defendant to perform the contract is untenable. The second suit of the plaintiffs is for injunction restraining defendants from interfering with possession.

If was tiled in 1990 in O.S. No. 5450/1990. Even if we take the said date as amounting to refusal to perform the contract, the suit filed in 1992 is well within lime. Therefore, seen from either angle whether the case falls under first part of Article 54 or second part of Article 54, the suit filed by the plaintiff is well within lime and the finding recorded by the trial Court that the suit is not barred by time is legal and valid and do not call for any interference.

41. Point No. (iii):- The suit agreement is dated 24.11.1985. The sale deed in favour of 10th defendant is executed on 10.3.1992. The present suit is filed on 1.6.1992. i.e. roughly after three months of the execution of the sale deed. The 10th defendant contends he is a bona fide purchaser for a valuable and good consideration and after having purchased the lands he has developed the lands spending considerable amounts. Therefore, if any adverse order is passed he would suffer loss, hardship and injustice. The consideration mentioned in the agreement of sale dated 24.11.1985 is Rs. 4.85,375/- . The sale deed is executed nearly 7 years thereafter. However, the consideration mentioned in the sale deed is Rs. 1.30.000/ On the face of it. it is clear, it is not a bona fide transaction and the amount mentioned in (he sale deed on the date of the sale deed is only a nominal amount. It is not a valuable consideration. Therefore, it is a sham transaction. However. the material on record discloses that C. H. Subboji Rao who is the person who is behind the sale deed dated 10-3.1992 has paid a sum of Rs. 3,18,425/- by cheque bearing No. 010563 dated 11.3.1992 drawn on M/s Janata Seva Cooperative Bank Limited for which he was the President. The bank has issued a letter dated 30.9.1992 confirming the said payment. The said amount was paid to Smt. Mehabood Bee. the wife of Syed Mohideen. In para 15(a) the additional amounts paid by Subboji Rao in favour of Smt. Mehabood Bee by way of cheque is also clearly set out. if those payments are taken into consideration then the sale deed which is executed on 10.3.1992 is clearly a nominal document. The 10th defendant is only a name lender. That explains why he did not enter the witness box. Therefore, he is not a bonafide purchaser. The schedule property is in the possession of the plaintiffs. The plaintiff is in possession of all the original documents in respect of the schedule property. Agreement of sale is in their favour. Application for conversion is also made. Earlier O.S. No. 5540/1990 was filed and a temporary injunction was granted restraining Sri Mohideen from alienating the property. Paper publication was also issued The conversion notice came into existence only on 11.6.1991 which would show that it is the plaintiffs who are prosecuting the matter. The said 10th defendant has not entered the witness box. His Power of Attorney Holder cannot speak about the personal knowledge in respect of the 10th defendant. Therefore in the absence of 10th defendant entering the witness box. in the light, of the legal proceedings referred to supra and the fact that plaintiffs are in possession of the property and neither Mohideen or his widow and children were in possession of the properly on the date of the sale deed, it cannot be said 10th defendant, is a bona fide purchaser for valuable consideration without notice of agreement of sale. The evidence of his power of attorney holder is hearsay and is

not admissible in evidence. Therefore, the said plea has remained a plea and is not proved by any acceptable evidence. On the contrary, the plaintiff has disproved the case of the 10th defendant. Therefore, there is no merit in The said contention also.

42. For the aforesaid reasons, we do not see any merit in these appeals. Accordingly, we pass the following : -

ORDER

- a) Both the appeals are dismissed.
- b) Parties to bear their own costs.