

(2010) 12 AP CK 0104
In the Andhra Pradesh High Court
Case No : AS No. 3093 of 2004

Veeramareddy Nagabhushana Rao

APPELLANT

Vs

Jyothula Venkateswara Rao

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5
Evidence Act, 1872 — Section 114
Specific Relief Act, 1963 — Section 13, 16, 20

Citation : (2011) 2 ALD 629 : (2011) 1 ALT 600 : (2011) 1 CivCC 705

Hon'ble Judges : Ghulam Mohammed, J;G. Chandraiah, J

Bench : Division Bench

Advocate : N.V. Anantha Krishna, in AS No. 3093 of 2004 and Vedula Venkataramana for P. Venkaiah Naidu, for the Appellant; N.V. Anantha Krishna and Vedula Venkataramana for P. Venkaiah Naidu, for Respondent in AS No. 3093 of 2004, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—This appeal is preferred by the unsuccessful Defendant questioning the judgment and decree dated 16-4-2004 passed in OS No. 35 of 1997 by the II Additional Senior Civil Judge, Kakinada, East Godavari District, whereby and whereunder the trial Court inter alia decreed the suit directing the Defendant-Appellant herein to execute the sale deed. Cross appeal is also filed by the Plaintiff-Respondent herein assailing the judgment of the trial Court to the extent of awarding interest @ 18% per annum from 13-2-1993 till the date of deposit on the sale consideration. For the purpose of convenience, the parties hereinafter shall be referred to as arrayed before the trial Court.

2. The Plaintiff filed the suit for specific performance of the agreement of sale dated 13-2-1993 executed by the Defendant in his favour in respect of the suit schedule property and for other reliefs. It is the case of the Plaintiff that the suit schedule property belongs to the Defendant and the Defendant and his family members are known to him from some time. That the Defendant purchased the

suit schedule property under a registered sale deed dated 20-4-1967 from Veeramreddy Kondayya and others and that it is his self-acquired property. The Defendant along with the suit schedule property also purchased some other extents of land.

3. It is stated that the Defendant offered to sell the suit schedule property to the Plaintiff at the rate of Rs. 2,00,000/- per acre and pursuant to the offer, the Plaintiff also agreed to purchase the same at the said rate and after both parties, agreed, the Defendant executed the agreement of sale on 13-2-1993 in favour of the Plaintiff agreeing to sell the suit schedule property. At the time of execution of the said agreement of sale, the Defendant received an amount of Rs. 15,000/- from the Plaintiff as advance from out of the total sale consideration. At the time of execution of the sale agreement, the Defendant represented that he would execute the sale deed in favour of the Plaintiff after receiving the balance sale consideration within one year from the date of agreement of sale. The Defendant also stated to have assured that he would show his title deeds and other documents relating to the suit schedule property to the Plaintiff and satisfy the Plaintiff about his marketable title to the suit schedule property and his right to sell the same. That after the execution of the said agreement of sale, the Plaintiff has always been demanding the Defendant to produce his title deeds and other documents to show his unimpeachable title to the suit schedule property and complete the transaction. That the Plaintiff informed the Defendant several times that the balance sale consideration is ready and that the Plaintiff is also ready to complete the transaction, but the Defendant went on representing that the documents are not yet received and, therefore he required some more time for completion of the transaction. The Defendant also represented to the Plaintiff that he himself would intimate him after the documents are received and that he would execute and register the sale deed after taking all the necessary documents, but the Defendant failed to produce the documents and has not completed the transaction even though the Plaintiff periodically requested him to receive the money and complete the transaction. It is stated that under those circumstances, the Plaintiff got issued a registered legal notice dated 23-12-1996 through his advocate to the Defendant calling upon him to produce all his title deeds and other relevant documents showing his unimpeachable and marketable title to the suit schedule property and to execute sale deed on the requisite stamp paper in favour of the Plaintiff and deliver the suit schedule property to him after receiving the balance sale consideration. The Defendant received the said notice on 24-12-1996. The Defendant issued a reply notice on 17-1-1997 through his advocate stating that he requires a photostat copy of the sale agreement, pursuant thereto the Plaintiff's advocate served a photo copy of the sale agreement to the Defendant, but there was no reply from the Defendant thereafter. That the Defendant except asking for a copy of the sale agreement dated 13-2-1993, did not deny any of the averments made by the Plaintiff in the legal notice issued by him.

4. It is stated that the Plaintiff has been always ready and willing to perform his

obligations under the agreement of sale and he has already procured the money that is to be paid to the Defendant. Thus the Plaintiff is entitled to the relief of specific performance or in the alternative to a money decree for refund of the part consideration amount.

5. The Defendant has Tiled the written statement in the suit. Per written statement, the Defendant denied the allegations in the plaint that he agreed to sell the suit schedule property to the Plaintiff at the rate of Rs. 2,00,000/- per acre. The Defendant never agreed to sell the property and there is no need for him to sell the property on 13-2-1993, and that he never signed on any agreement on 13-2-1993 as alleged by the Plaintiff and never executed any agreement of sale and that the allegation in the plaint that he received a sum of Rs. 15,000/- is absolutely false. It was also denied that the Defendant represented to the Plaintiff that he will execute the sale deed within one year from the date of agreement of sale. It is further stated that he never had any contact with the Plaintiff as alleged by the Plaintiff and the Plaintiff knew that he submitted a declaration to the Land Ceiling Tribunal, Kakinada. That the Plaintiff was also aware of the fact that the Defendant has no right to alienate the property or to execute any agreement of sale in view of the pendency of the land ceiling case. That the alleged agreement of sale even if true, is illegal, invalid and not binding on the Defendant. It is stated that the Defendant was made to sign on one hundred rupees non-judicial stamp paper and two blank papers at the time when the sister of the Defendant executed an agreement of sale in favour of the Plaintiff. That the Plaintiff obtained the signatures on blank papers stating that they are required as security, in case the sister of the Defendant failed to comply with the agreement of sale executed by her in his favour. The Defendant was an attestor on the agreement of sale executed by his sister in favour of the Plaintiff. The suit agreement of sale was brought into existence by misusing the signed blank papers. It was further stated that the Defendant never executed any agreement of sale, that he has no right to alienate the property since it is a joint family property of the Defendant and his children and there is no need or necessity for alienating the same. The suit claim is barred by law of limitation and the suit was liable to be dismissed.

6. Based on the above pleadings, the trial Court has formulated the following issues

(i) Whether the suit agreement of sale has come into existence in the circumstances pleaded by the Defendant ?

(ii) Whether the suit claim is barred by limitation ?

(iii) Whether the Plaintiff is entitled to the relief of the specific performance?

(iv) Whether the sale agreement cannot be enforced in view of the land ceiling proceedings ?

(v) Whether the Plaintiff is entitled to alternative relief ?

(vi) To what relief ?

7. To prove his case, the Plaintiff examined himself as PW-1 and the scribe of the agreement of sale was examined as PW-2. The Defendant got himself examined as DW-1. The Plaintiff marked Exs.A-1 to A-23 and the Defendant got marked Exs.B-1 to B-36.

8. The trial Court on consideration of the entire evidence on record decreed the suit as stated supra. Hence, the present appeal by the Defendant and Cross appeal by the Plaintiff insofar as it relates to payment of interest at 18% per annum on the sale consideration.

9. Sri Anantha Krishna, learned Counsel for the Appellant vehemently contended that the trial Court erred in rejecting the plea of the Defendant that Ex.A-1 agreement of sale is not genuine one but it is a fabricated document brought into existence much subsequently due to certain disputes that have cropped up between the two families of the parties. He further contended that the trial Court failed to appreciate that the suit schedule property was in dispute and was not cleared from the land ceiling proceedings as on the date of Ex.A-1 agreement of sale and therefore the trial Court ought not to have decreed the suit. Learned Counsel also contended that the trial Court erroneously rejected the plea of the Defendant that his signatures have been obtained as a surety for the due performance of the contract of sale entered into by Smt. Lakshmi Tulasi, sister of the Defendant in favour of the Plaintiff. Learned Counsel further contended that the trial Court failed to consider the mitigating factors and its discretion u/s 20 of the Specific Relief Act, 1963, in proper prospective and, therefore, the appeal deserves to be allowed. In support of his contentions, learned Counsel relied on the decisions reported in *Kalash Properties Pvt Ltd v. Lilly Pushpam* (5 infra), *B. Rajamani v. Azhar Sultana* (6 infra), *Chand Rani v. Kamal Rani* (7 infra), *A.K. Lakshmipathy v. Rai Saheb Pannalal Hiralal Lahoti* (8 infra), *Sheik Abdual Sattar v. Union of India* (9 infra), *Inder chand Jain (D) through L.Rs. v. Motilal (D) through L.Rs.* (10 infra), *Syed Quadri v. Syed Mujeebudin* (11 infra), *K.S. Vidyanadam v. Vairavan* (12 infra), *N.P. Thirugnanam (D) Lrs. v. R. Jagan Mohan Rao* (13 infra), *P.R Deb and Associates v. Sunanda Roy* (14 infra).

10. On the other hand, Sri Vedula Venkata Ramana, learned senior counsel appearing on behalf of the learned Counsel for the Plaintiff contended that the written statement of the Defendant does not contain specific denial of the plaint averments except omnibus denial, particularly the averment in para 9 of the plaint relating to readiness and willingness to perform his part of the contract and therefore in view of Order 8, Rules 3, 4 and 5 of Code of Civil Procedure, a presumption has to be drawn that the Defendant has admitted the plaint averments. He further contended that the present case is a unique case wherein the Defendant has taken inconsistent pleas in the written statement, for at one stage he took the plea that he never executed Ex.A-1 and at a later stage, he stated that he has signed on the stamped blank papers as surety in relation to the transaction of his sister, who executed agreement of sale in favour of the

Plaintiff. It is further contended that the burden is on the Defendant to prove that the suit document Ex.A-1 is fabricated or his signature on blank stamp paper has been misused and the Defendant failed to discharge the burden of proof. Learned Counsel also stated that it is not the plea of the Defendant that the sale consideration at Rs. 2 Lakhs per acre is unrealistic or non-prevalent in the market and thus the Defendant cannot plead any hardship by reason of the grant of specific performance. Learned Counsel further contended that non-examination of the sister of the Defendant should result in drawing an adverse interference against the case set-up by the Defendant that he only given the stamped blank paper by putting his signature as security. It is stated that the trial Court considering all these aspects of the matter rightly granted the discretionary relief and that the appellate Court shall not interfere with the same unless the trial Court has exercised its discretion in a capricious manner. As regards the cross-appeal, learned Counsel stated that the rate of interest at 18% per annum granted by the trial Court is on the high side, which in fact was not contemplated in Ex.A-1. In support of his contentions he relied on the decisions in *Mademsetty Satyanarayana v. G. Yelloji Rao* (4 infra), *Mysore State Road Transport Corporation v. Mirja Khasim Ali Baig* (15 infra), *Prakash Chandra v. Angadlal* (16 infra), *Vidhyadhar v. Mankikrao* (2 infra).

11. Having heard the learned Counsel for the contesting parties, the issues that fall for consideration in this appeal are-

1. Whether the Plaintiff is entitled to seek enforcement of specific performance of Ex.A-1 agreement of sale in view of the circumstances pleaded by the Defendant ?
2. Whether the trial Court exercised the discretion u/s 20 of the Specific Relief Act properly in decreeing the suit ?

ISSUES 1 and 2:

12. In the background of the evidence of the Plaintiff examined as PW-1 and the evidence of Defendant examined as DW-1 and other documentary evidence, we proceed to examine the case on hand. According to the Plaintiff, the Defendant entered into an agreement of sale dated 13-2-1993 agreeing to sell the plaint schedule property to the Plaintiff at the rate of Rs. 2 lakhs per acre and the transaction was reduced into writing in the form of an agreement of sale dated 13-2-1993 under Ex.A-1 and on the same day, the Plaintiff stated to have paid a sum of Rs. 15,000/-towards part of the sale consideration. As per the recitals of the said agreement of sale, the balance sale consideration is to be paid within one year from the date of the agreement. It is relevant to note the substance of the agreement of sale Ex.A-1 (in telugu) translated in English, reads thus-

... Being absolute owner of the said land, I am agreeing to sell the said land to the Plaintiff at the rate of Rs. 2 lakhs per acre subject to measurement. The balance consideration amount shall be paid within one year and on receipt of the same, the Defendant would execute sale deed or sale deeds in favour of the

Plaintiff. The Plaintiff is permitted to divide the suit land into plots by obtaining layout from the competent authority and based on the layout plots, the Defendant would execute the sale deeds subject to receipt of the sale consideration amount. The receipt of Rs. 15,000/- as part consideration amount, is being acknowledged and the Plaintiff would pay the balance amount within one year. The Defendant has purchased the suit land vide registered sale deed of 1967....

13. The Plaintiff further stated that he issued a registered legal notice dated 23-12-1996 (Ex.A-2) calling upon the Defendant to produce all his title deeds and other relevant papers of title and to execute the sale deed in favour of the Plaintiff after receiving balance consideration. It is useful to extract the relevant portion of the said legal notice, which reads as under -

...You offered to sell the suit property to my client at the rate of Rs. 2 lakhs per acre and executed an agreement of sale on 13-2-1993 in favour of my client agreeing to sell the schedule land of Ac.7-35 cents to my client. At the time of execution of the said agreement of sale, you received a sum of Rs. 15,000/-from my client from out of the sale consideration as advance. At that time you represented that you would execute the sale deed in respect of the schedule property in favour of my client after receiving the balance consideration amount within one year from the date of agreement of sale i.e. 13-2-1993. You have also stated and assured that you would show your title deeds and all other documents to my client to satisfy my client about your title and right to sell the same. You agreed and consented to convey full and marketable title and you wanted one year time stating that the time is required for enabling you to get all your documents and show you clear title.

After the execution of the said sale agreement my client has been demanding you all these days to produce all your documents and show your unimpeacheable title to the property and you have been representing and saying all these days that the documents are not yet received and that therefore you would be require time. You said that you yourself will intimate and inform my client after the documents are all received and that you would execute the sale deed. It is needless to say that my client made the entire balance sale consideration ready for being paid to you and he has always been ready and willing and in fact he is anxious to complete the transaction. It is only on account of your delay the transaction could not be completed till now. You are fully aware about my client's solvency and that he made the money ready....

14. In reply to the said legal notice, the Defendant has addressed a letter dated 17-1-1997 (Ex.A-4) requiring the Plaintiff to furnish a photostat copy of the agreement of sale so that appropriate reply can be given to the legal notice of the Plaintiff. Accordingly, the Defendant was supplied with photo copy of the agreement of sale but the Defendant failed to give any further reply to the legal notice Ex.A-2, the Plaintiff filed the above suit.

15. The case of the Defendant is that he did not execute the agreement of sale, however, his signatures were taken on blank stamp papers as security for performance of agreement of sale executed by his sister Lakshmi Tulasi in respect of the transaction of her land in favour of the Plaintiff. It is his case that since his sister was selling her property to the Plaintiff, at the request of his sister and her husband, he was made to sign on the stamped blank papers as security and nothing was written on the stamp papers at that time when he signed and that he never received any consideration from the Plaintiff.

16. The settled law in matters seeking relief under the special enactment i.e. the Specific Relief Act is crystallized by the Supreme Court. In *Bal Krishna and Another Vs. Bhagwan Das (Dead) and Others*, the Supreme Court observed that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the Court and the Court is not bound to grant such relief merely because it is lawful to do so and that the exercise of the discretion to order specific performance would require the Court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract, and while exercising the discretion the Court would take into consideration the circumstances of the case, the conduct of the parties, and their respective interests under the contract. The jurisdiction of the Court to grant specific performance is discretionary and the role of the Plaintiff is one of the most important factor to be taken into consideration. While exercising the discretionary jurisdiction in terms of Section 20 of the Act, the Court should meticulously consider all facts and circumstances of the case and that the process of the Court is not used as an instrument of oppression giving an unfair advantage to the Plaintiff as opposed to the Defendant in the suit.

17. The evidence of the Plaintiff is that at the time of execution of Ex.A-1, the Defendant assured that he would complete the transaction within one year by receiving the balance sale consideration and handover all documents connected with the suit schedule property to the Plaintiff. It is his case that even though one year time was fixed under Ex.A-1, the Plaintiff was always informing the Defendant that he is ready and willing to complete the transaction, but the Defendant was postponing the transaction on one pretext or the other. When all his oral pleas were in vain, he took recourse to legal proceedings by issuing Ex.A-2 legal notice. It has further come in his evidence that he is having ten acres of wet land in Kapavaram village and that he has got sufficient solvency. It is also a matter of fact that the Plaintiff purchased lands of the sister of the Defendant under Ex.B-2 and B-3. The scribe of Ex.A-1 was examined as PW-2 and he deposed about the writing of the said agreement of sale in presence of Plaintiff and Defendant. It has come in the evidence of PW-2 that after agreement of sale was written on Rs. 100/- stamp paper, the same was read over to both the parties and they agreed, thereafter he asked the Defendant to sign in the agreement and the Defendant signed in the first two pages correctly, in the last page by mistake he has signed at the place intended for witness under the words "induku sakshulu". Immediately he has noticed and told the Defendant

and asked him to sign at the correct place in 3rd page of the agreement and accordingly the Defendant signed under the last line in the 3rd page, thereafter, PW-2 put his signature as scribe. Nothing is elicited in his cross examination to discredit his testimony. It is only on 3rd page of Ex.A-1, the signature of the Defendant is found at the place meant for the executant and also for the attesor. If really the Plaintiff wanted to fabricate an agreement of sale, he could have done so by making use of first two pages and getting it attested by persons favourable to him. But the Plaintiff has filed the agreement of sale with the signature of the Defendant at the place meant for attestors also. The explanation of the Plaintiff is that it is a mistake on the part of the Defendant who has signed there. Therefore, the plea of fabrication of agreement of sale by the Plaintiff does not appear to be probable. The Defendant in his examination stated that he signed the stamped blank papers as security to the transaction of his sister Smt. Lakshmi Tulsi, but he did not choose to seek for return of those stamped blank papers the moment the need ceased i.e. after his sister executed sale deeds in favour of the Plaintiff under Exs.B-2 and B-3 in January, 1996 itself while the Plaintiff issued notice in December, 1996. The onus to prove that the Plaintiff had obtained signatures of the Defendant on stamped blank papers on the pretext of security was entirely upon the Defendant.

18. The best person to speak about the circumstances under which Defendant signed on blank papers and handed over them to the Plaintiff was Lakshmi Tulasi, sister of the Defendant. DW-1 in his evidence stated that there are no disputes between him and his sister Lakshmi Tulasi, but she was not examined, who is a crucial witness as per the stand taken in the written statement and no other witness also examined by the Defendant, in spite of the fact that the burden of proof is exclusively rests on him. In *Vidhyadhar Vs. Manikrao and Another*, the Supreme Court observed that where a party does not appear in the witness box and thus avoids cross examination, an adverse inference is liable to be drawn in terms of Section 114 of the Evidence Act. Dehors that, in common parlance, for an agreement of sale, no security is required. If the agreement of sale of the sister of the Defendant is defaulted, there is no necessity of any security to safeguard about such default since that will give rise to another suit for specific performance between the Plaintiff and the sister of the Defendant.

19. It appears, the terms of the agreement of sale between the Plaintiff and the Defendant is mainly intended to divide the land of the Defendant into house plots, obtain an approved layout and sell house plots. The recitals show that the Defendant agreed for division of the land into house plots and also apply to panchayat for approval of layout. It is well settled that specific performance of contract will ordinarily be granted even if there is default in carrying out the contract within the specified period having regard to the expressed stipulations of the parties, nature of property and other circumstances. It is one thing to admit the suit agreement of sale and to contend that the Plaintiff has failed to establish readiness, but it is altogether a different thing to take a defence that the suit agreement of sale is fabricated and still require the Plaintiff to establish readiness

and willingness. Therefore the plea put forth by the Defendant that he signed on blank papers and Plaintiff fabricated the agreement of sale Ex.A-1 does not merit consideration. The facts in a latest decision of the Supreme Court in Laxman Tatyaba Kankate and Another Vs. Smt. Taramati Harishchandra Dhattrak, are an agreement to sell dated 8-1-1991 was entered into between the parties in terms whereof the Defendant-Appellant therein had agreed to sell the land admeasuring 1H.60R of the land and that a sum of Rs. 10,000/- only was paid at that time. Though the Defendants therein assured that they would execute the sale deed, they failed to do so, hence, notice was served and thereafter the Plaintiff filed suit for specific performance and in the alternative for recovery of amount was filed before the trial Court, and that the trial Court partially decreed the suit dismissing his claim for specific performance and ordered for refund of earnest money with interest. On appeal, the lower appellate Court decreed the suit in its entirety granting decree for specific performance. The legality and correctness of the aforesaid decree was challenged before the High Court of Judicature at Bombay at its Aurangabad Bench and the same was confirmed. The Appellant-Defendant took pleas that there was rapid increase in the market value of the land, that they wanted to obtain loan and had agreed to sign certain papers by way of security, that the Plaintiff on the pretext got certain blank papers signed and that there was no intention to sell the property in question, that sale of suit land was barred under Maharashtra Co-operative Societies Act, 1961. The Supreme Court considering those circumstances held that restriction placed by 1961 Act is conditional and goes once loan of the society is cleared, and bar to sale under re-settlement Act also disappears once permission of Government is obtained, as Sections 13 and 20 of the Act protect the right of the Plaintiff, decree passed for specific performance cannot therefore be faulted. It was further held by the Supreme Court as follows-

...The onus to prove that the Respondent had obtained signatures of the Appellants on blank papers on the pretext of advancing a loan of Rs. 2,000/- was entirely upon the Appellant. No evidence, much less cogent documentary and oral evidence was led by the Appellants to discharge this onus. The averment has rightly been disbelieved and the plea was rightly rejected by the concerned Courts in the judgment under appeal. The Appellants led no evidence and nothing was brought to our notice, even during the course of the hearing, to show that this plea could be accepted....

20. Once the Defendant has failed to prove that the suit agreement of sale is fabricated, all other defences taken by him such as readiness and willingness of the Plaintiff and there is no requirement of selling the suit schedule property are all being supplementary, based on which, equitable relief of decreeing the suit cannot be refused to the Plaintiff when it is otherwise legal and justified to do so. Be that as it may, the Defendant has also not raised any issue on the price of the suit schedule property being Rs. 2 lakh per acre. Though it was contended by the learned Counsel for the Defendant that there is considerable increase in prices of land, that cannot be a ground for denying the decree for specific performance

and the Defendant has also not chosen to lead any evidence on that aspect. Therefore, it has to be construed that there is no grievance from the Defendant that the suit schedule property is being taken away for a paltry consideration. As per the evidence, the suit agreement of sale entered into on 13-2-1993 and the time fixed for performance is one year. Time begins to run from the expiry of period fixed for performance i.e. from 13-2-1994 and the suit was filed within three years from 13-2-1994. The Supreme Court in *Madamsetty Satyanarayana Vs. G. Yellogi Rao and Others*, observed that delay in filing the suit itself should not disentitle grant of relief of specific performance.

21. Coming to the decisions relied on by the learned Counsel for the Defendant, in *Kalash Properties Pvt. Ltd. v. Lilly Pushpam* (5) AIR 2010 Mad (NOC) 772 the suit for specific performance was filed after a period of 30 months from the date of entering into contract and that during such long interregnum period of 30 months, the Plaintiff has not issued any communication or notice, speaking of his readiness and willingness to perform his part of the contract. In those circumstances, it was held by the Division Bench of Madras High Court that mere filing of suit with averment that he was ready and willing to perform the contract would not be sufficient.

22. In *B. Rajamani Vs. Azhar Sultana and Others*, was a case where except an averment in the plaint, no evidence was led to show that balance amount of consideration was kept ready and available, and considering those circumstances, it was held by a learned single Judge of his Court as follows-

Mere assertion in the plaint that Plaintiff is ready and willing to perform the contract is not sufficient. The Plaintiff must not only aver and also prove that he/she has been always ready and willing to perform his part of the contract. Mere use of the words in a mechanical manner would not be sufficient....

23. In *Smt. Chand Rani (dead) by LRs. Vs. Smt. Kamal Rani (dead) by LRs.*, the Supreme Court after referring to its earlier judgments in *Gomathinayagam Pillai*, *Hind Construction Contractors* and *Govind Prasad Chatruvedi* and after analyzing the ratio laid down therein held that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the following conditions are fulfilled. 1. from the express terms of the contract 2. from the nature of the property; and 3. from the surrounding circumstances, for example; the object of making the contract.

24. In *A.K. Lakshmipathy (died) by LR and Others Vs. Rai Saheb Pannalal Hiralal Lahoti Charitable Trust and Others*, it was inter alia held by the learned single Judge of this Court that if a vendee insists upon new terms other than those mentioned in the original agreement of sale, for performance of his part of the contract, an inference be drawn that readiness and willingness expressed by him is not with reference to terms and conditions of original contract and therefore he is not entitled to enforce specific performance of agreement of sale.."

25. In *Sheikh Abdul Sattar Vs. Union of India (UOI)*, it was held by the Supreme Court that specific denial of the plaint averments will not be necessary if the plaint averments are adequately dealt with in the additional pleadings. The relevant portion of the order reads as under-

According to the law of pleadings, the Defendant is bound to deal specifically with each allegation of fact, the truth of which is not admitted. If certain para in the plaint is merely not admitted but the facts therein are not specifically dealt with, it cannot be said that they are denied. Where the truth of the facts alleged in the plaint, though not specifically dealt with in the corresponding para of the written statement were dealt with in the additional pleadings, held, the allegations in the plaint must be considered to have been traversed.

26. In *Inderchand Jain (D) through Lrs v. Motilal (D) through L.Rs (10) 2009 (7) ALT 49* the Supreme Court in relation to Section 16(c) of the Act held thus-

Section 16(c) of the Specific Relief Act, 1963 mandates that the discretionary relief of specific performance of the contract can be granted only in the event the Plaintiff not only makes necessary pleadings but also establishes that he had all along been ready and willing to perform his part of contract. Such readiness and willingness on the part of the Plaintiff is not confined only to the stage of filing of the plaint but also at the subsequent stage, viz at the hearing.

27. A Division Bench of this Court in *Syed Quadri Vs. Syed Mujeebuddin*, held that the fixation of period within which the contract is to be performed does not make the stipulation as to time is the essence of the contract. The intention to make time as the essence of contract may be evidenced by either express stipulations or by circumstances, which are sufficiently strong to displace the ordinary presumption that in a contract of sale of land, stipulations as to time are not the essence of the contract.

28. In *K.S. Vidyanadam and Others Vs. Vairavan*, it was held by the Supreme Court as follows-

In the instant case from the date of agreement to sale till the date of suit notice the purchaser was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the vendors to execute the sale deed and delivery possession of the property. Further, the delay was coupled with substantial rise in prices, according to the vendors three times between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the purchaser.

29. In *N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others*, it was held by the Supreme Court thus

To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the Plaintiff prior

and subsequent to the filing of the suit along with other attendant circumstances. The amount of consideration which he has to pay to the Defendant must of necessity be proved to be available. Right from the date of execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. Where the Plaintiff neither deposited the amount of sale consideration nor furnished bank guarantee as per the direction of the trial court and he was never ready with either money or resources to fulfil his part of the contract, the dismissal of suit on finding of facts that Plaintiff was not ready and willing to perform his part of contract was justified.

30. In *M/s. P.R. Deb and Associates Vs. Sunanada Roy*, it was held by the Supreme Court that when the Plaintiff was unwilling or unable to comply with the terms of the agreement, he cannot be considered as ready and willing to perform his part of the contract.

31. Section 16(c) of the Specific Relief Act envisages that Plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the Defendant. The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of specific performance, and the same is relevant and is required to be considered by the Court while granting or refusing to grant the relief. To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the Plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. There is no dispute and there cannot be any dispute with the ratio laid down by the decisions cited by the learned Counsel for the Defendant.

32. As per the above evidence the suit agreement of sale entered into on 13-2-1993 and time fixed for performance is one year, according to the Plaintiff the Defendant went on postponing the execution of sale deed and did not produce his title deeds for perusal of the Plaintiffs. The Defendant has admitted the signatures but disputed the contents of Ex.A-1. From the conduct of the Plaintiff right from the date of agreement of sale till the date of the decree of this suit is consistent. The Defendant retained the deposit amount without returning the same nor he cancelled the agreement. Therefore, the Defendant cannot claim discharge from the obligation to execute the sale deed. Non-refund of the deposit immediately after the expiry period and the Defendant holding on to such deposit should be considered as extending the time for performance. The Plaintiff cannot be denied the equitable relief and more so the relief of specific performance being discretionary and the trial Court having rightly exercised the said discretion based on the available material, the same is not liable to be interfered with in appeal.

33. In *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another*, the Supreme Court was of the view that when once discretion has been

exercised by the lower Court in a given set of facts in favour of a party, unless that discretion exercised is capricious, the appellate Court would not interfere since another possible result could have come in the suit, had the appellate Court decided the suit. In *Prakash Chandra Vs. Angadlal and Others*, the Supreme Court observed that the ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case, the conduct of the Plaintiff has not been such as to disentitle him from the relief of specific performance.

34. It appears pursuant to the decree the Plaintiff deposited an amount of Rs. 44,01,375/- to the credit of the suit but in view of the interim orders passed by this Court in this appeal, the Plaintiff by way of filing a petition ASMP No. 54 of 2005 sought to withdraw the amounts with the permission of the Court and this Court allowed the petition on 24-1-2004 and the Plaintiff withdrew the amounts, without prejudice to the contentions in this appeal.

35. For the foregoing discussion, we are of the view that the Defendant failed to prove that the suit agreement of sale has come into existence by fabrication by the Plaintiff. On the other hand, the conduct of the Plaintiff has been consistent and he has been making efforts right from the day of the agreement of sale and saved the suit schedule property from surrender as excess land by filing a petition before the Lands Reforms Tribunal and the said Tribunal considering the provisions of the Land Reforms Act, exempted the suit schedule property from ceiling proceedings. It is also a matter of record that the Plaintiff also filed writ petition when the competent authority was about to pass orders declaring the suit schedule property as surplus land and the Defendant is party to the all these proceedings, but he kept quiet and only denied Ex.A-1 when the Plaintiff filed the suit for enforcement of the same. From these sequence of things, it can be held that the Plaintiff was willing and ready to perform his part of the contract. Thus viewed from any angle, the appeal merits no considerations and liable to be dismissed confirming the impugned judgment of the trial Court. The cross-appeal is also liable to be dismissed since on a comparative hardship analysis the trial Court rightly granted interest at the rate of 18% per annum on the sale consideration. In the circumstances, the appeal and the cross appeal are dismissed. No order as to costs.